FORM OF ABUSE OF THE POSITION OF NOTARY IN PARTICIPATIONS FOR MAKING A SALES BUYING AGREEMENT WHICH CAUSES LOSS
(Case Study of Supreme Court Decision No. 451K/Pid/2018)

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As a public official, a notary has to implement the provisions in article 16 paragraph (1) letter of the Notarial Act in performing his position to prepare autenthic deeds; a notary is also obliged to act honestly, be independent, be impartial and secure interest of the parties concerned in the authentic deeds prepared by the notary; which is watched and witnessed by all parties so that their aims are set forth in the deeds.

Keywords:
Abuse; Position; Of a Notary; Partiality; Harm.

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I. INTRODUCTION

As regulated in Article 16 paragraph (1) letter a of the UUJN, in carrying out his/her position, the Notary is obliged to act honestly, thoroughly, independently, impartially and safeguard the interests of the parties involved in legal actions. In addition, it is mandatory to prioritize the balance between the rights and obligations of the parties. Notaries are required to always listen and consider the wishes of the parties so that their actions are stated in a notary deed, so that the interests of the parties are maintained proportionally which are then poured into the form of a notary deed.

An authentic deed made by a Notary in the practice of a Notary, seen and witnessed by the Notary and the parties themselves at the request of the parties, so that the actions or actions of the parties carried out are poured into the form of a Notary deed, which contains a description or information, statements of the parties given or reported before a Notary. The parties wish that their descriptions or statements be poured into the form of a notarial deed (Habib Adjie, 2008). Notary Deeds are born because of the direct involvement of the parties who appear before the Notary, they
are the main actors in making the authentic deed made by or before the Notary according to the forms and procedures stipulated by the Law (Wawan Tunggal Alam, 2001).

The contents of the information contained in the deed apply as correct between the parties and the heirs and beneficiaries of their rights. If the deed is used before the court, then it is considered sufficient for the judge without having to ask for other evidence, because the deed was made in writing, complete with the parties, the object is clear, and the date the deed was made. Such an understanding is one of the juridical characters of a notary deed, it does not mean that the notary is the perpetrator of the deed, the notary remains outside the party or is not a party to the deed.

With the position of a Notary like that, so that if a Notary deed is disputed, then the position of the Notary is not as a party or participating in conducting or assisting the parties in the qualification of Criminal Law or as a Defendant or Co-Defendant in civil cases. The deed itself has the ability to prove itself as an authentic deed, as regulated in Article 1875 of the Civil Code (Taufik Makarao, 2004).

As raised in this study, in the Supreme Court's Decision Number 451 K/Pid/2018 Notary Hamdani Abdul Kadir was proven to have legally and convincingly violated the Criminal Act of Forgery of Letters guilty of committing the crime of "ordering" to enter false information into an authentic deed. What is seen from the Notary Position Act Number 2 of 2014 violates Article 16 Paragraph 1 letter (a), committing a violation in carrying out his duties has been proven not to act in a trustworthy, honest, thorough, independent, impartial and safeguarding party's interest in the act. law that is being implemented.

II. RESEARCH METHOD

The type of research used in writing this thesis is by using normative juridical research, namely by emphasizing on secondary data by studying and reviewing positive legal principles derived from library data and comparative law, as well as elements or factors related to the title of this research.

Normative juridical research or research that analyzes the law, both written in books and the law decided by a judge through a court process (Litigation) (Bismar Nasution, 2003). This study also uses a type of field research, namely research conducted by conducting interviews with a predetermined sample.

The data source of this research uses secondary data. Secondary data is data obtained through library research using legal materials.

This study also adds techniques and data collection by interview (Interview). The interview method is data collection by way of one-sided question and answer in a systematic way and based on research objectives (Sutrisno Hadi, 1997). This interview method is used to obtain information, information or explanations about problems from experts in their fields. The interview used in this study was a guided free interview, namely by preparing questions as a guide in advance, but did not
rule out the possibility of variations in questions according to the situation when the interview took place. This interview will be conducted by interviewing informants such as, Notaries, and the Notary Regional Supervisory Council.

III. RESULTS AND DISCUSSION

3.1. Forms of Misuse of Notary Positions That Cause Loss to Others

According to Notary Tony who also serves as the Regional Honorary Council, taking sides with one party in the daily life of a Notary in carrying out his duties, among others:

a. Clients who regularly deal with clients who are attending for the first time or have never met;
b. The existence of family ties with boundaries and;
c. There is an emotional bond or a close relationship either from friendship or there is a cause that will benefit the party and the Notary.

1. Notary Partisanship

Article 16 paragraph 1 letter (a) states that "the notary in carrying out his duties and authorities must act honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions".

Notaries in carrying out their duties as public officials have the main characteristics, namely in their impartial and independent (independent) position, even explicitly said "not as one of the parties".

2. Abuse of Power of Authority by a Notary

Power is often confused with authority, and power is often used interchangeably with the term authority, and vice versa. In fact, authority is often equated with authority and power usually takes the form of a relationship in the sense that there is one party who rules and the other party is ruled (the rule and the ruled) (Miriam Budiardjo, 2008). There are three types of authority seen from the way it is obtained, namely authority by attribution, delegation, and mandate.

The concept of authority but also of authority. The elements included in the authority include:

1) The existence of formal power; and
2) Power is given by law

3. Notary Violation

Examples of violations of the Law on Notary Positions committed by Notaries in making Notary deeds are:

1) The deed was made without the presence of witnesses, even though in the deed it was stated and stated "in the presence of witnesses".

This violates Article 16 paragraph (1) of the Law on Notary Positions, which stipulates that a Notary in making a deed which includes the reading and signing of the deed must be attended by 2 (two) witnesses and an appearer.
2) The deed in question is not read by a Notary

   This violates Article 16 paragraph (1) letter I of the Law on Notary Positions, that every Notary deed before being signed must be read in its entirety to the appearers and witnesses, both the party's deed and the official's deed.

3) The deed in question is not signed before a notary, even the minutes of the deed are brought by another person and signed by and in a place unknown to the notary.

4) The notary makes a deed outside his area of office, but the notary concerned shall include it in the deed as if it was carried out within the jurisdiction of his authority or as if it was carried out at the domicile of the notary.

5) A notary opens a "branch office" by means of each "branch" at the same time carrying out and producing a notarial deed as if all the deeds were made before the notary concerned.

3.2. Legal Liability of Notaries Who Do Abuse of Position in Partisanship Making Sale and Purchase Agreements That Cause Loss to Others

3.2.1. Notary Legal Responsibilities

   Notaries in carrying out their duties both in terms of authority and obligations, the Notary must be responsible. Meaning: (Muhammad Adam, 1985)

   a. Notaries are required to make the deed properly and correctly, meaning that the deed made fulfills the legal will and requests of interested parties because of their position.

   b. Notaries are required to produce a quality deed, meaning that the deed made is in accordance with the rule of law and the will of the interested parties in the true sense, not making it up. The notary must explain to interested parties the truth of the contents and procedures of the deed he made.

   c. It has a positive impact, meaning that anyone will admit that the Notary deed has perfect evidence.

3.2.2. Responsibilities of a Notary as a Public Official

   The notary must be responsible for the deed he made, if there are the following reasons: (Lumban Tobing, 1996)

   a) In matters that are expressly determined by the Notary Position Regulations;

   b) If a deed does not meet the requirements regarding its form (gebrek in the vorm), it is canceled in court, or only applies as an underhand deed.

3.2.3. Forms of Notary Responsibility

   The Notary's responsibility for the deed made before or made by him is divided into 3 (three) forms, namely: (Lumban Tobing, 1996)
1. Civil responsibilities of a Notary

Acts against the law here in the nature of active or passive. Active, in the sense of carrying out actions that cause harm to other parties. While passive, in the sense of not doing an act that is a must, so that the other party suffers a loss.

2. Administrative Responsibilities of a Notary

Administrative responsibility for a Notary who commits an unlawful act in making an authentic deed may be subject to administrative sanctions. Administrative sanctions based on the UUJNP state that there are 5 (five) types of administrative sanctions given if a Notary violates the provisions of the UUJNP, namely verbal warnings, written warnings, temporary dismissal, respectful dismissal and dishonorable dismissal. The sanctions apply in stages, starting from a verbal warning to dishonorable dismissal.

3. Criminal Liability

The elements in a criminal act, the Notary is obliged to be responsible for the authenticity of the deed he made, however, in the examination of criminal cases, the Notary cannot also be presented in the examination, because in Article 66 UUJN paragraph 1 (one) which reads:

"For the sake of every judicial process, investigators, public prosecutors or judges with the approval of the Regional Supervisory Council are authorized to:

a. Take a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the protocol of the Notary in the Notary's storage; and

b. Calling the Notary to attend the examination related to the deed he made or the Notary Protocol that is in the Notary's storage.

3.2.4. Responsibilities in a Code of Ethics

Regarding behavior as a notary, Ismail Salih stated that there are four main things that must be considered, namely: (Supriadi, 2006).

1). Have solid moral integrity In carrying out his professional duties, a notary must have solid moral integrity. In this case, all moral considerations must underlie the implementation of his professional duties. Although it will get a high reward for services, but something that is contrary to good morals must be avoided.

2.) Must be honest with clients and themselves (intellectual honesty) Notaries must be honest, not only with their clients, but also with themselves. Notaries must know the limits of their abilities, not make promises just to please their clients or to keep clients willing to use their services.

3). Be aware of the limits of their authority

Notaries must be aware of the limits of their authority. The notary must comply with the applicable legal provisions regarding how far he can act and what is allowed and what cannot be done.
4). Not solely based on money, even though the expertise of a notary can be used as a straightforward effort to get money, but in carrying out his professional duties he is not solely driven by money considerations.

3.3. Sanctions and Mechanisms for Imposing Legal Sanctions Against Notaries Who Do Abuse of Position in Partisanship Making Sales and Purchase Agreements That Cause Loss to Others

3.3.1 Setting sanctions against Notaries who abuse their positions in the making of a Sale and Purchase Agreement that causes harm to other people.

a. Civil Sanctions

Compensation of costs, compensation or interest that can be sued against a Notary must be based on a legal relationship between the Notary and the parties facing the Notary because of inaccuracies, inaccuracies, inaccuracies in the administrative technique of the deed based on UUIJN and the application of various legal rules contained in the deed concerned. for the faces, which are not based on ability

b. Administrative Sanctions

In terms of targets, there are three types of sanctions, namely:

1. Reparative sanctions mean sanctions that are applied as a reaction to the violation of norms, which are intended to return to the original condition before the occurrence of the violation, for example this sanction is intended to correct violations of the legal order. It can be in the form of cessation of prohibited acts, the obligation to change attitudes/actions so that the predetermined original state is achieved, actions to correct something that is contrary to the rules. For example, government coercion (bestuurdwang) and imposition of forced money (dwangsom);

2. Punitive sanctions mean sanctions that are solely intended to give punishment or sanctions that are punitive, are an additional burden on a person, for example in the form of imposition of administrative fines (bestuurobeete), strong reprimands.

3. Regressive sanctions are sanctions that are applied as a reaction to non-compliance with the provisions contained in the issued decree. For example revocation, change or suspension of a decision.

c. Criminal sanctions

The actions of a Notary which constitute a crime include: (Habib Adjie, 2008)

1. Making fake/falsified documents and using fake/forged letters (article 263 paragraphs (1) and (2) of the Criminal Code);

2. falsifying authentic deeds (article 264 of the Criminal Code);
3. Ordered to include false information in an authentic deed (Article 266 of the Criminal Code);
4. Doing, ordering, participating in doing (article 55 in conjunction with article 263 paragraphs (1) and (2) of the Criminal Code or article 264 or article 266;
5. Assist in making fake/or falsified documents and using fake/falsified letters (article 56 paragraphs (1) and (2) in conjunction with article 263 paragraphs (1) and (2) of the Criminal Code or article 264 or article 266.

The absence of criminal sanctions in the UUJN does not mean that the Notary is free from criminal sanctions in carrying out his position. In this case, the Notary concerned can still be held criminally responsible. Notaries who violate these can be given criminal sanctions based on the Criminal Code (KUHP). Thus, for criminal acts committed by a Notary in carrying out his position, the provisions of the current Criminal Code will apply.

d. Code of Conduct Sanctions

The Honorary Council coordinates with the Supervisory Council which is authorized to conduct an examination of the violation and may impose sanctions on the violator.
1) rebuke;
2) Warning;
3) Schorsing (temporary dismissal) from association membership;
4) Onzetting (dismissal) from membership of the association;
5) Disrespectful dismissal from association membership.

3.3.2. The mechanism for imposing legal sanctions against Notaries who abuse their positions in the making of a Sale and Purchase Agreement that causes harm to others

1. Notary Examination

The examination carried out by the Examining Team includes examination of: (Habib Adjie, 2017)

b. Notary Office (address and physical condition of the office);
c. Letter of appointment as Notary
d. Minutes of the oath of office of a Notary;
e. Notary leave permit certificate;
f. Notary leave certificate;
g. Notary Protocol which consists of:
   1. Minutes of deed
   2. Register of deeds or repertoire
   3. A special book for registering under-handed letters that are ratified by their signatures and recorded under-handed letters.
4. A list of names of the appearers or klapper from the list of deed and a list of legalized letters under the hand
5. Protest register
6. will register book;
7. Other register books that must be kept by a Notary based on statutory provisions.

h. Archive state
i. State of deed storage (binding and security)
j. Monthly report on delivery of certified copies of the list of deeds, list of legalized documents and list of registered documents.
k. Pick test on the deed.
l. Protocol submission aged 25 years or older
m. The number of employees consisting of Bachelors and Nongraduates.
n. Office facilities include computers, desks, cupboards, guest chairs, typewriters, filing cabinets and telephone sets.
o. Examination assessment; and
p. Time and date of inspection.

There are 3 (three) institutions with the task of supervising and examining Notaries with their respective authorities, namely:

a. Supervisory Council (Regional, Regional and Central); with the authority to supervise the implementation of the Notary's duties and the Notary's Code of Ethics and the behavior or behavior of the Notary's life.
b. Examining Team; with the authority to examine the Notary Protocol periodically 1 (one) time in 1 (one) year or at any time deemed necessary.
c. Examination Board (Regional, Regional and Central); with the authority to examine and receive reports received from the public or from fellow Notaries.

3.3.3. Judge's Basis in Supreme Court Decision No.451/K.Pid/2018

That from these facts it is clear that the actions of the Notary Defendant Hamdani Abdul Kadir who ignored the request of the witness Rita Sofiati, the witness Yusuf Achmadi and the witness Achmad Nuryadi so that the Defendant Notary Hamdani Abdul Kadir stopped all actions related to the certificate, but the Defendant Notary Hamdani Abdul Kadir continued. Thus, the actions of the Notary Defendant Hamdani Abdul Kadir eventually led to the emergence of a new Authentic Deed while the information used for that was false information because those who appeared before the Defendant Notary Hamdani Abdul Kadir were not the real witnesses of Yusuf Achamdi and Achmad Nuryadi.
Considering that based on these considerations and it turns out that the judex facti decision in this case does not conflict with the law and/or legislation, the appeal is declared rejected;

Considering whereas because the Defendant has been convicted, he is burdened to pay court fees at the cassation level;

IV. CONCLUSION

The form of the Notary's partiality in making the Sale and Purchase Agreement of the Supreme Court's Decision Number 451K/Pid/2018 The Notary does not carry out the wishes/requests of the party who has Legal Standing to take legal actions in making the deed.

For Notaries who commit violations, the Honorary Council can impose sanctions on violators, sanctions imposed on members of the Indonesian Notary Association who have violated the code of ethics in the form of: Reprimand, Warning, Schorzing (temporary dismissal) from membership of the association, Onzetting (dismissal) from membership association, dishonorable discharge from membership of the association. However, the sanction of dismissal given to a Notary who violates the code of ethics is not in the form of dismissal from the position of a Notary but dismissal from the membership of the Indonesian Notary Association so that even though the Notary concerned has been proven to have violated the code of ethics. Regarding the dismissal of a Notary,

Legal accountability in UUJN is purely civil and administrative sanctions. And that in the Supreme Court Decision No. 451/K.Pid/2018 fulfills the indictment of Article 266 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code which has been legally and convincingly proven guilty of committing the crime of “ordering or entering false information or ordering other people to use the letter as if that the contents are true and not false in an authentic deed” and that rejects the reasons for the cassation submitted by the defendant. However, The article is not correct because it is more appropriate to apply Article 264 paragraph (1) number (1) in conjunction with Article 55 paragraph (1) to (1) of the Criminal Code. Notary/PPAT in this case was sentenced to 8 (eight) months in prison. In addition to being held criminally responsible, a Notary/PPAT can also be held accountable both civilly and administratively.
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