



## Legal Protection for Notaries for Fraud Crimes Addressed to Him Related to Formal Obligations for Notaries in Making Deeds (Case Study of Decision Number 196/Pid. B/2019/Pn Dps Jo Decision Number 27/Pid/2019/Pt. Dps Jo. Decision Number 20 Pk/Pid/2020)

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### ABSTRACT

Based on the results of the study, it was found that the notary's liability for fraud committed by one of the witnesses to the power of attorney made before the notary must first be seen, whether the notary was involved in the fraudulent act. The judge's consideration in decision Number 196/Pid.B/2019/PN.Dps based on the provisions of Article 378 jo Criminal Code, Article 56, paragraph 2. Although the panel of judges in Decision Number 20 PK/Pid/2020 found that the defendant had been careless in creating a power of attorney to sell land between the victim witness and witness Gunawan Priambodo, the act was within the notary's administrative, not criminal, purview. According to decision Number 196/Pid.B/2019/PN Dps Jo. Decision Number 27/Pid/2019/PT.Dps Jo. Decision Number 20 PK/Pid/2020, notaries can take legal action through review when making deeds related to fraud crimes.

## **INTRODUCTION**

According to Article 1 number 7 of the UUJN, a notary deed is a legitimate document created by or in front of a notary using the format and process specified by the law. Because the Notary Deed has perfect evidential power, whomever evaluates or declares that the deed is false must provide evidence to support their evaluation or assertion in line with the law.

According to what the parties have been told, a genuine deed comprises a formal truth. By reading the document and providing clarification, the notary must attest that the terms of the deed have been truly understood and in line with the parties' intentions. As a result, a notary must be aware of the rules and legislation pertaining to the document he will be creating. A notary is seen as a person whose assertions are trustworthy and dependable, whose seal and signature offer solid guarantees and proof, an impartial expert, and an untouchable advisor who keeps quiet and signs a contract that will protect him in the future.

Notaries' deeds may serve as the legal foundation for an individual's property, rights, and responsibilities. If the notary makes mistakes in the deed, the person may be liable to an obligation or have their rights revoked. If the deed made shows a dispute behind the scenes, it must first be decided if the notary made a mistake in drafting the deed, whether the parties were dishonest in their statements to the notary, or whether an agreement was formed between the notary and one of the parties present. Notaries are only responsible for the formalities of drafting the deed. As a result, the notary cannot be prosecuted for the material truth of the deed he executed. In the event of a legal dispute in court, a notary's deed must be a solid piece of evidence until it can be shown to be false; in other words, the notary provides the parties with a perfect proof.

According to the UUJN, a notary may face civil, administrative, and code of ethics consequences for the position if it is determined that the notary violated any of the duties associated with his job. These penalties were previously outlined in the Regulation of the Notary Position (PJN), the Law on the Notary Position (UUJN), and the notary profession's code of conduct.

Every time a notary fulfills his duties in establishing a valid deed, he is accountable for the document he makes as an expression of the parties' wishes. The authority, obligations, and morals of a notary as a public official and as a person are closely linked to their responsibilities. It is possible for notaries to create deeds incorrectly. The deed loses its legitimacy and becomes void or rescindable if this is demonstrated.

Notary deeds that are disputed by parties or other parties, often also attract Notaries as parties who participate in committing or helping to commit a criminal act. Sometimes the legal process involving the Notary does not only come from within the Notary in relation to the authority and responsibility he carries out his profession as a Notary, but can also come from the persons who come to the Notary, with all their interests related to the deed that he wants to make before the Notary. So, Notaries must be ready if at any time they are made a party involved in civil and criminal law cases, resulting from the legal products they make.

In fact, notary deeds are sometimes used as a tool to commit fraud crimes and other crimes by the witnesses. One of the cases involving Notaries in criminal acts committed by the defendant is Number of Decision 196/Pid.B/2019/PN Dps. Using false names or false dignity, deceit, or a series of lies, the defendant, a notary, was accused of intentionally giving the witness, Gunawan Priambodo (the defendant in another case file), the opportunity, means, or information to commit acts that would benefit him or others illegally as well as persuading someone to give him something, transferring a debt, or writing off receivables.

In the decision, it was stated that the Defendant as a Notary did not check the material truth of the documents brought by the Witness Gunawan Priambodo as the basis for making the deed of Selling Power of Attorney between the Witness Gunawan Priambodo and the Witness Marhendro Anton Inggriyono (the victim), including regarding the object of the transaction that was originally kept by the Defendant and had also been taken by the original by the Witness Gunawan Priambodo through his staff. When a Power of Attorney deed is created, the Witness (victim)'s outstanding receivables are erased and accumulated by Witness Gunawan Priambodo. This process also includes a number of unsuccessful transactions between Witness Gunawan Priambodo and the Witness (victim) totaling Rp.11,673,500,000, - (eleven billion six hundred and seventy-three million five hundred thousand rupiah). This indicates that Witness Gunawan Priambodo made a deed of selling power of attorney to the witness (victim) in order to pay off the debt. The Deed of Power of Sale was created since the sale and purchase could not be completed because the transaction's object still needed to be resolved.

The Witness (victim) finally reported all of the defendant's and witness gunawan priambodo's actions to the police after six (six) months had passed since the aforementioned Power of Attorney Deed was made and he had not yet received the Building Rights Certificate from either party. This led to the defendant, a notary, being sentenced to one year and four months in prison in the District Court of First Instance, one year and two months in prison in the appeals court, and being declared exempt from all lawsuits in the Supreme Court's ruling, because the judge stated that the Defendant's act did not constitute a criminal act.

Looking at the case, it can be seen that as a public official, a notary must be careful in making a deed so as not to cause a criminal act as a result of the notary's carelessness in examining the documents presented by the person in front of the notary. The criminalization of notaries is a phenomenon that primarily results from law enforcement officials and those who are unhappy with notaries' services or legal products not having a thorough understanding of the notary profession. Unquestionably, there are "rogue" notaries in the real world who conduct crimes out of deliberate carelessness and disregard for their official duties.

Legal protection is therefore necessary for notaries to perform their functions and exercise their authority. Article 66 of the UUJN provides legal protection for notaries. It states that investigators, public prosecutors, or judges may take photocopies of the deed minutes and/or letters attached to the minutes

of the deed or notary protocol in the notary's custody with permission from the Regional Supervisory Council. They can also request a visit from the notary to go at the deed or the notary protocol that is being stored. The legislative safeguard is intended to prevent investigators from behaving carelessly when they wish to call a notary public during the trial.

Related to this background, it is interesting to conduct more in-depth research related to the case, which is outlined in research in the form of a thesis entitled "**Legal Protection of Notaries for Fraud Crimes Addressed to him Related to Formal Obligations for Notaries in Making Deeds (Case Study Decision Number 196/Pid.B/2019/PN Dps Jo. Decision Number 27/Pid/2019/PT.Dps Jo. Decision Number 20 PK/Pid/2020)**".

## **THEORETICAL REVIEW**

The issue of criminal liability of notaries in cases of fraud has become a critical concern in legal practice, particularly when a notary is considered to be directly or indirectly involved in the criminal act. In this context, the role of the notary as a public official who drafts and legalizes legal documents carries significant legal responsibilities.

Under Indonesian positive law, there are no specific provisions regarding the criminal liability of notaries in the Notary Law (UUJN), making the Criminal Code (KUHP) the primary legal reference. A notary may be held criminally liable if proven to be actively involved in a criminal act or facilitating the occurrence of a criminal act committed by another party, such as a witness in a deed. This aligns with the principle of criminal law that a person can only be held accountable for their own actions that fulfill the elements of a criminal offense (Sudarto, 1986).

The court decision Number 196/Pid.B/2019/PN.Dps serves as an important precedent, where the first-instance court found a notary guilty of participating in fraud under Article 378 in conjunction with Article 56 paragraph (2) of the Criminal Code. However, in the appellate decision Number 27/Pid/2019/PT.Dps, the panel of judges stated that although the District Court's legal reasoning regarding the criminal act was correct, the sentence imposed was considered too severe. Therefore, the sentence was reduced to one year and two months, taking into account the defendant's eleven years of service as a public official.

A significant development can be seen in the Supreme Court review decision Number 20 PK/Pid/2020, in which the judges concluded that the defendant's actions as a notary in drafting the power of attorney for land sale did not constitute a criminal offense, but rather fell under administrative negligence. Thus, the Supreme Court ruled that although the defendant had committed the acts as charged, those acts did not amount to a criminal offense. This decision reflects a more proportional legal perspective between administrative violations and criminal liability (Marzuki, 2008).

Legal protections for notaries can be classified into two types: preventive and repressive. In this case, Supreme Court decision Number 20 PK/Pid/2020 serves as a form of repressive legal protection, namely a final legal remedy pursued after a dispute or alleged crime has occurred. This protection not only resulted in the dismissal of the criminal charges but also included the restoration

of the defendant's rights, including their dignity, status, and professional standing, which had been compromised during the legal process.

Other literature also emphasizes the importance of professionalism and prudence in the notarial profession to avoid direct or indirect involvement in criminal activities (Habib Adjie, 2011). Therefore, this case serves as an important lesson in notarial practice that beyond having legal force, notarial deeds must be made with prudence, objectivity, and professional integrity.

## **METHODOLOGY**

Normative legal research is the methodology employed in this study in order to get qualitative findings. Both a law and a case approach are used in the study methodology. This study uses secondary data as its data source. The thesis research employs a literature study as its method of data acquisition. This study's method of gathering data is a document analysis. Additionally, the gathered information will be recognized and subjected to qualitative analysis.

## **RESEARCH RESULTS AND DISCUSSION**

### ***Notary Liability for Fraud Committed by One of the Witnesses to the Power of Attorney Deed made before the Notary***

Because they produce written proof with evidentiary power, notaries are considered law enforcement officials. Legal experts believe that although a notary deed might be admitted in court as unquestionable proof of its contents, witnesses may nevertheless refute it with evidence that contradicts the notary's explanation in the deed.

Law No. 2 of 2014's Article 1 number 1 and Article 15 paragraphs (1), (2), and (3) grant notaries the authority to create authentic deeds because of their position as public officials with the authority to attribute inherent legal variables in the implementation of the "verlijden" function from the law. The process of creating a legitimate deed that must be executed in compliance with the law is known as the "verlijden" function in notary practice.

Article 378 of the Criminal Code specifies the term "oplichting," which has a narrow connotation of fraud, On the other hand, fraud, or "deception," is defined as fraud in its broadest sense under Chapter XXV of Article 395 of the Criminal Code.

If a notary knowingly or in concert makes a deed to commit a crime, they may also be held criminally responsible. Naturally, the Notary is likewise subject to penalties for committing these crimes. To fulfill the responsibilities of the Notary office, criminal penalties must be considered. This means that the deed's creation or process must be founded on the applicable laws, in this case the UUJN. The fact that notaries have been sanctioned demonstrates that they are not above the law. The Criminal Code and other general criminal rules apply to criminal penalties against notaries; the law does not control specific crimes committed by notaries.

Criminal cases related to the formal aspects of the Notary's deed, the investigator, the public prosecutor, and the judge will include that the Notary has committed legal action:

1. Making a forged letter and using a forged letter (Article 263 paragraph (1), (2) of the Criminal Code);
2. Forgery (Article 264 of the Criminal Code);
3. Ordering to include false information in an authentic deed (Article 266 of the Criminal Code);
4. Doing, ordering to do, who participates in doing (Article 55 jo Article 263 paragraphs (1) and 92) or 264 or 266 of the Criminal Code);
5. Assisting in making a fake or forged letter and using a fake or forged letter (Article 56 paragraphs (1) and (2) jo Article 263 paragraphs (1) and (2) or 264 or 266 of the Criminal Code).

The following conditions must be met for a notary to be subject to criminal liability:

#### *Engaging in criminal activity*

In this instance, it is believed that a notary committed a crime by issuing inaccurate information in a notary deed. Unless they commit a crime, a notary cannot be held accountable under the criminal code;

#### *Have the ability to be responsible*

To be held liable under criminal law, a notary must be capable of taking responsibility. The ability to be responsible, which is basically the perpetrator's inner state that is, their mental state in a way that serves as justification for the imposition of a criminal sentence is one of the prerequisites for the existence of error in the broadest sense. This implies that if someone is judged capable of being responsible, they may be held liable under criminal law. Notaries are likewise subject to this clause, which implies that individuals could face criminal charges if they have the mental capacity to be responsible as well as the will and desire to engage in unlawful behavior, whether on purpose or accidentally.

By drafting a deed based on false information, a notary may unintentionally or purposely commit a felony. A notary must make mistakes, whether deliberate or careless, in order to be prosecuted. A notary may have purposefully assisted in the production of the deed if it was made using inaccurate information. But does his inner attitude support the commission of a crime? In this instance, it must be demonstrated that the notary intends the illegal act (forgery) to be conducted and that the perpetrator is aware of the repercussions of his acts, which obviously hurt other parties. Furthermore, when creating a notary deed, a notary may act carelessly. For instance, the notary is careless when replying to the information provided by the parties or presenters or is not meticulous when reviewing the evidence presented by the parties or witnesses; and There is no excuse for forgiveness.

If a notary has no justification for forgiveness, they may be held criminally accountable. If the notary in question cannot provide an explanation for creating a deed based on claimed incorrect information, he may be held criminally accountable.

Responsible ability is a state of psychological normality and maturity or intelligence of a person that leads to three abilities:

1. Able to understand the value and consequences of themselves;

2. Being able to realize that the act is not allowed in the eyes of the community;  
and
3. Able to determine the intention in doing the deed.

Responsibility is the measuring point of a person's character, whether he is able to take responsibility for what he has done. Considering that everything has risks. Notaries as public officials and public servants must act honestly, fairly, and impartially. He must also be able to be responsible for the products he produces. In this case, he must be responsible for the deed he has made. Essentially, everyone is ultimately responsible for their acts, whether they are deliberate or not, especially when they involve their vocation. The dedication that the notary must have to its implementation as outlined in the UUJN is demonstrated by the fact that responsibility is one of the professional attitudes. Notaries can be held criminally liable as long as these restrictions are violated, that they are considered to have violated the provisions of the Law and the Criminal Code. So that if in the future there is one of the witnesses who has a problem with the deed that has been made by the Notary, then he is obliged to prove it and if at the time of the judicial process the Notary is proven intentionally or unintentionally, together with the witness making the deed with a certain intention and harming other parties, then he must be punished according to the provisions that govern it.

*The judge's considerations in decision number 196/pid.b/2019/pn.dps jo. Decision number 27/pid/2019/pt.dps jo. Decision number 20 pk/pid/2020. Differences in the Judge's Decision in Case 196/PID. B/2019/PN.Dps jo.*

Decision No. 27/PID/2019/PT.Dps jo. Decision No. 20 PK/PID/2020 In the decision of the Denpasar District Court No. 196/PID. B/2019/PN.Dps, the verdict reads:

1. Notifying the public prosecutor that Ketut Neli Asih, SH, the defendant in question, has been legally and thoroughly proven guilty of the crime of "Deliberately Providing Opportunity or Means in the criminal act of Fraud" as stated in the second indictment;
2. Imposing a penalty on the Defendant therefore with a prison sentence of: 1 (one) year and 4 (four) months;

In the decision of the Denpasar High Court No. 27/PID/2019/PT.Dps, the verdict reads:

1. Received the appeal request from the defendant Ketut Neli Asih, S.H.
2. Correcting the decision of the Denpasar District Court No. 196/Pid.B/2019/PN Dps dated April 25, 2019 which was requested for the appeal is only about the criminal sentence imposed on the Defendant so that the appeal reads as follows: "Imposing a criminal sentence on the Defendant, therefore with a prison sentence during: 1 (one) year and 2 (two) months";
  - a) Upholding the decision of the Denpasar District Court Number 196/Pid.B/2019/PN Dps dated April 25, 2019 for the rest;
  - b) Stipulating that the Defendant remains in custody.

In its decision, the Denpasar High Court took into account the memorandum of appeal and the ruling of the Denpasar District Court in Case

Number 196/Pid.B/2019/PN Dps dated April 25, 2019. After thoroughly reviewing the case, the High Court agreed that the Defendant had been proven to have committed the criminal act as charged. However, it found that the sentence handed down by the District Court was too severe. This occurred because, in line with Law Number 2 of 2014, which amends Law Number 30 of 2004 governing the Notary Position, the lower court neglected to take into account the defendant's lengthy 11-year tenure as a public official allowed to issue legitimate deeds. The High Court viewed this extended period of public service as a mitigating factor that should have led to a lighter sentence.

On the basis of the previously mentioned factors, the panel of judges of the Denpasar High Court rejected the appeal memorandum submitted by the defendant's attorney, which sought the defendant's release from all lawsuits on the grounds that all elements of the criminal act charged by the public prosecutor against the defendant could not be legally and convincingly proven.

In Supreme Court Decision No.20 PK/PID/2020, the verdict reads:

1. Declaring that although the conduct against Convicted Ketut Neli Asih, S.H., was established to have been done, it was not a criminal offense;
2. Consequently, exclude the convicted party from any litigation (ontslag van alle rechtsvervolging);
3. Restoring the rights of the Convicted in their ability, position and dignity;

The judge's view of the case was in conformity with the law in the Supreme Court's ruling. Therefore, even though the facts of the trial demonstrated that the defendant did not gain anything from the transaction of establishing a power of attorney for the sale and purchase of land in Paradise Loft, it was decided that the defendant was subject to criminal law with regard to the death of victim witness Marhendro Anton Ingriyono, who was hurt by witness Gunawan Priambodo, who failed to fulfill his obligations or accomplishments or defaulted. The police report that the victim, not the defendant, submitted after reporting the witness served as the basis for this.

Since the witness, Gunawan Priambodo, dealt with the victim witness rather than the defendant, formal law is applied in this case just as much as material law. As a result, the victim witness did not report the defendant's investigative procedure at all. Because Gunawan Priambodo was present as a witness at the trial as a party who harmed the victim witness, the legal procedure for applying Article 56 of the Criminal Code regarding "assistance" is that the primary offender is processed as reported by the victim witness, not "assistance" as in this case. Unless the primary criminal (aided party) is on the Persons Search List (DPO), his aid may be tried.

The defendant, a Notary/PPAT, is suspected of being negligent in establishing a power of attorney between witness Gunawan Priambodo and the victim's witness. But this isn't a criminal case; it's an administrative one. based on and legally justified in stating that the case of the application for review on behalf of Ketut Neli Asih, S.H. and that the Denpasar High Court's decision to correct the Denpasar District Court's judgment was "null and void" for the purposes of the law.

The Supreme Court Justice Sri Murwahyuni, S.H., M.H., dissenting opinion states that, in accordance with the provisions of Article 30 Paragraph (3) of Law Number 5 of 2004 concerning the Supreme Court, there has been a dissenting opinion in the Panel of Judges' deliberations and it has been tried seriously, but no consensus has been reached. that the petitioner's arguments for review are without merit;

1. That the Convict may not be exonerated of the indictment, released from any litigation, or have the sentence reduced in this instance based on any new evidence that the Petitioner has presented for evaluation;
2. That there are no obvious errors or mistakes in the Denpasar District Court Number 196/Pid.B/2019/PN Dps decision dated April 25, 2019 in conjunction with the Denpasar High Court Number 27/Pid/2019/PT Dps decision dated June 27, 2019, as the *judex facti* has considered the testimony of the Convicted, the testimony of witnesses, and the trial's submitted papers, which have been found to be as follows:
3. That when the Convict and the parties (the victim witness and witness Gunawan Priambodo) signed the power of attorney document to sell the land listed in SHGB number 7062, the Convict did not have custody of the SHGB number. The deed of power of attorney is created solely using a copy of certificate number 7062, the Sale and Purchase Binding Agreement (PPJB), and the power of attorney deed that Notary Putu Trisna Rosilawati executed two (two) years ago;
4. PT. Nuansa Bali Utama revoked the power of attorney deed made two years ago, and SHGB number 7062 is still in the name of PT. Nuansa Bali Utama, not Gunawan Priambodo. The convict failed to confirm the validity of the power of attorney deed with Notary Putu Trisna Rosilawati.
5. If a copy of the land certificate or power of attorney deed is submitted without the original, it is obvious that the purpose of the deed is to sell the land; if the transaction or creation of the deed is unclear, the convicted party should decline or delay until the witness Gunawan hands over the SHGB number 7062 to the convicted party; 3. That the petitioner's review was solely motivated by the defendant's defense (*pledooi*);

The above explanation demonstrates that the rulings from the District Court, High Court, and Supreme Court levels of the case varied in a variety of ways. While the panel of judges in the District Court found the defendant guilty and sentenced him to one year and four months in prison, The High Court justices affirmed the Denpasar District Court's verdict and sentenced the defendant to one year and two months in jail. Although Supreme Court Justice Sri Murwahyuni, S.H., M.H., dissentingly agreed with the earlier rulings, the cassation panel of judges eventually declared that, while the convict Ketut Neli Asih, S.H., was proven to have committed the act charged against him, it was not a criminal act.

Analysis of the law pertaining to the judge's factors in determining the defendant's acquittal in case number 196/PID. B/2019/PN.Dps jo. Decision No. 27/PID/2019/PT.Dps jo. Decision No. 20 PK/PID/2020

1. Analysis According to Administrative Law

The administrative sanctions that can be applied to notaries are based on Article 3 of the Regulation of the Minister of Law and Human Rights Number 61 of 2016 about Procedures for Imposing Administrative Sanctions on Notaries, namely:

2. Administrative sanctions as referred to in Article 2 consist of:
  - a. Written warning;
  - b. Temporary stops;
  - c. Honorable dismissal; or
  - d. Disrespectful dismissal.
3. In compliance with the sequence mentioned in paragraph (1), administrative punishments are imposed in phases, starting with the least severe sanction and progressing to the most severe.
4. In some circumstances, notaries who violate significant duties and office restrictions may face administrative consequences right once, without a phased implementation.

Additionally, Article 13 states that the Minister may impose administrative sanctions in the form of dishonorable dismissal if the Notary commits a crime for which a five-year prison sentence has been threatened, found guilty by the court, and has been granted permanent legal force.

The notary is subject to these penalties in relation to both their prior and later deeds. This indicates that in order to perform his obligations in line with the Law on the Notary Position, the Notary does not always meet certain conditions or do specific measures.

Because the defendant's acts in the case did not amount to a criminal violation, the panel of judges in decision Number 20 PK/PID/2020, 196/PID. B/2019/PN.Dps Jo, announced that the defendant was exonerated of all accusations. Based on Article 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for the Imposition of Administrative Sanctions Against Notaries mentioned above, the defendant is entitled to administrative penalties in the form of a written reprimand because, in this instance, he has exercised his authority negligently, specifically with regard to the principle of prudence, as mentioned in Article 16 paragraph (1) letter a.

#### *Analysis According to Civil Law*

The threat of civil sanctions for Notaries who do not fulfill their responsibilities in line with the code of ethics and UUJN and result in losses for the person or party concerned, according to the terms of Article 1365 of the Civil Code, the Notary may be sued in a civil suit. If the Notary commits a violation, then the deed in question is included in the deed that only has the power of proof as a deed under hand. Article 1869 of the Civil Code specifies the limitations of a Notary deed that has the power of proof as a deed under the hand can occur if it does not meet the provisions because:

- 1) The authority of the public official concerned, or
- 2) The inability of the public official concerned, or
- 3) Defective in form

A Notary deed's sanction has the power of proof, meaning that if it is handled improperly, it becomes void for legal reasons. This is an external sanction, meaning that the Notary is not allowed to perform his official duties by taking a number of actions that must be taken against (or for the benefit of) the parties who appear before him and other parties that would compromise the parties' interests. So, civil liability in accordance with the provisions of Article 1365 of the Civil Code can be requested against the notary for fraud committed by a witness to the power of attorney that was presented to the notary, if the power of attorney made causes losses to other parties. The party who suffers losses to demand reimbursement, damages, and interest to the Notary. A Notary Deed made due to fraud can also be downgraded to a deed under hand and/or void for the sake of the law.

It is not always the case that a notary's criminal sentence renders the deed they executed void. When a criminal court rules to revoke a notary deed because it has been established that the notary committed a crime of forgery, it is not a legally acceptable action. Therefore, in order to have a deed made by or before the notary in question declared a convict, the parties who wish to do so must bring a civil complaint to have the deed revoked. Thus, in the decision 196/PID. B/2019/PN.Dps, if the Victim Witness Marhendro Anton Inggriyono as the aggrieved party in the case wants to cancel the Selling Power of Attorney deed Number 3 and 4 dated September 4, 2014, can take a civil lawsuit to cancel the two Selling Power of Attorney deeds.

#### *Analysis According to Criminal Law*

In the Supreme Court decision No. 196/PID.B/2019/PN.Dps, the defendant was found not guilty. Although it was confirmed that the act involving Ketut Neli Asih, S.H. had occurred, the panel of cassation judges concluded that the act did not constitute a criminal offense.

The Supreme Court's ruling emphasized that the judges' legal reasoning aligned with applicable laws. In connection with the death of victim-witness Marhendro Anton Inggriyono who was injured by witness Gunawan Priambodo due to his failure to meet obligations or fulfill an agreement it was concluded that the defendant was not criminally liable. This was despite the fact that the defendant, acting as a Notary and Land Deed Official (PPAT), facilitated the issuance of a power of attorney for the land transaction at Paradise Loft. Importantly, the evidence showed the defendant did not personally gain from the transaction, and the original police report was filed against witness Gunawan Priambodo, not the defendant.

During the trial, witness Gunawan Priambodo himself expressed confusion over why the defendant was prosecuted, given that it was Gunawan who had engaged with the victim-witness, not the defendant. While the defendant had prepared the power of attorney in the sale and purchase transaction between the witnesses, the nature of this issue was administrative rather than criminal, particularly as the defendant was acting in an official public capacity as a Notary/PPAT.

Both formal and substantive law were applied in this case. The investigation was not based on a complaint from the victim-witness against the defendant, but rather from Gunawan Priambodo, who directly interacted with the victim-witness. According to the Criminal Code's Article 56 regarding "assistance," the primary offender must first be dealt with before any accomplice can be prosecuted. In this case, the primary perpetrator Gunawan Priambodo was present at trial and caused harm to the victim-witness. His role could be prosecuted, except if he were listed as a fugitive (DPO).

The defendant's alleged negligence in drafting the power of attorney was seen as an administrative oversight, not a criminal act. Therefore, it was legally correct to declare the Denpasar High Court's amendment of the District Court's ruling as null and void, and to approve the judicial review request filed on behalf of Ketut Neli Asih, S.H., in the interest of justice.

Forms of Legal Protection for Notaries in Making Deeds Involved in Fraud in Decision Number 196/pid. b/2019/PN DPS jo. Decision number 27/pid/2019/pt.dps jo. Decision number 20 pk/pid/2020

### ***Limitations of Notary Deeds that Can Be Used as a Basis for Criminalizing Notaries***

The UUJN should be followed when addressing the formal restrictions of a notary deed that may serve as the foundation for criminalizing notaries. Depending on the type of infraction and the notary office code of ethics, the notary may face civil or administrative sanctions if it is established that the formal aspect was violated. A notary deed may be based on laws and regulations requiring certain legal activities to be completed in the form of a genuine deed, or it may take the shape of a scenario, event, or legal act that specific parties request be used as evidence. It is crucial to remember that even while the notary has the power to create an official deed, this does not imply that the notary can do so without the parties' consent. In essence, a notary deed is a record of the parties' agreement rather than the notary's actual labor.

Consequently, the parties to the deed are obligated by it in the event of a dispute pertaining to the document made before a notary public and it comes out that one of the parties committed fraud. Since the notary is not a party to the deed and the deed is made for the parties, notaries are not bound by any obligations or responsibilities stated in the notary deed.

According to Article 1 of the UUJN, notaries are the only public servants with the authority to create genuine deeds. Three (three) evidential powers are available in a notary deed, specifically:

#### *Lahiriah (external evidential value);*

The exterior component of the deed's evidentiary value requires that it be viewed as such, not as it is. External evidence does not need to be contradicted. In the event that someone determines that a notary deed is not a deed, they must demonstrate why the document is not an authentic one. The evidential evaluation must be predicated on the notary deed's criteria as an authentic deed in the event that it is denied that it is not a genuine deed on its face. This type of proof needs to be presented to the court through a lawsuit. The plaintiff must be

able to demonstrate that the deed at issue in the litigation is not a notary deed on its face.

1. Formal

In accordance with the procedures decided upon during the deed's production, the notary deed must formally certify that the events and facts included within were, in fact, carried out by the notary or explained by the parties present at the time given in the deed. Formally, to demonstrate that the notary observed, heard, and documented the statements made by the parties and witnesses in the party deed; additionally, to demonstrate the accuracy and truthfulness of the day, date, month, year, time (time) of the face, the parties present, and the initials and signatures of the parties and presenters, witnesses, and notaries.

2. Materil (Materiele Bewijskracht);

Unless there is evidence to the contrary, it is crucial to be certain that the terms of a deed are legitimate proof against the parties who made it or those who have rights and universal applicability. It is necessary to accurately evaluate any statements made by the parties in front of the notary, in the minutes of the proceedings, or in the deed of office. The person in question must be able to demonstrate that the notary failed to explain or state the truth in the deed, or that the parties who spoke correctly in front of the notary were mistaken. If this is the case, reverse proof must be used to refute the notary deed's material aspects.

In light of the three (three) previously mentioned factors, the first step in resolving a legal issue with a notary deed is to determine who caused the error. The Notary has performed his duty in accordance with the law as long as he followed the proper processes and made the deed.

There are several legislative regulations that control the form and process for a notary to create a genuine deed., namely:

1. According to Article 15 paragraph (1) of the UUJN, the notary is authorized to make an authentic deed regarding all acts, agreements, and provisions that are required by laws and regulations and/or that the interested party wishes to be stated in the authentic deed. Therefore, the deed must be made by or before an authorized notary. Furthermore, it is stressed for comparison in the requirements of Article 1868 of the Civil Code that an authentic deed is one that is executed in the manner prescribed by law by or in the presence of a public official who is allowed to do so at the location where the deed is executed.
2. Completing the legal requirements for the form, including those outlined in Article 38 of the UUJN, which requires that the notary deed include the complete names of all parties as well as the date and location of the deed's creation, addresses, and identities of the parties involved, as well as contain a description of the legal acts that are the subject of the deed, and finally the signature of the witnesses, witnesses, and notaries.
3. The requirements of Article 38 paragraph (1) letter an of the UUJN, which highlight that the deed must contain the date of manufacturing, which gives

certainty regarding the time of execution of notarized legal actions, are referred to as the certainty of the date of creating the deed.

4. The identity of the parties involved is in line with the provisions of Article 16 paragraph (1) c of the UUJN which stipulates that Notaries are obliged to verify the identity of the parties involved in the deed by checking valid official identity documents such as ID cards or passports.
5. The content of the agreement or legal act made as part of the main premise in accordance with Article 38 paragraph (1) letter c of the UUJN, which mandates that the deed include a description of the agreement or legal act that served as the foundation for the deed's creation.
6. Verification of the identity and legal capacity of the parties as part of the minor premises is regulated in the provisions of Article 16 paragraph (1) letter c of the UUJN which emphasizes that the Notary is obliged to examine and ensure that the parties appearing have sufficient legal capacity to act in notarized legal acts.
7. The process of reading the deed before the parties and witnesses, known as the notary's *verlijden* function, is a crucial aspect of notarial practice. This obligation is stipulated in Article 16 paragraph (1) letter m of the Notary Law (UUJN), which requires the notary to read the deed aloud in the presence of the parties and at least two witnesses, ensuring that the contents are clearly understood. Furthermore, Article 16 paragraph (1) letter l of the same law mandates that the notary must not only read the deed but also confirm that the parties comprehend its content.
8. The most crucial step in closing the deed is having the parties, witnesses, and notaries sign it. This is governed by Article 16 paragraph (1) letter l of the UUJN, which highlights the necessity of having the parties, witnesses, and notaries sign the deed as soon as it is read. Furthermore, as stated in Article 38, paragraph (3) of the UUJN, the deed must be signed by the parties, witnesses, and notaries after it has been read.
9. The most crucial aspect of the notary's role as a reliable public official (*officium trust*) is the preservation of *minuta* and the giving of *grosse*, copies, or citations of deeds. The notary must specifically keep a register book to record every deed he performs and archive the *minuta*, or original document, of the deed. A notary's duty to furnish interested parties with a copy, citation, or *grosse* (official copy) of the deed is also mentioned in Article 16 paragraph (1) b of the UUJN.

10. 10. The Notary's duties and the verification process are fully outlined in Article 16 paragraph (1) letter c of the Law, which states that the Notary is in charge of confirming the parties' identities and legal capacity and making sure that legitimate official identification documents are used for this purpose. Furthermore, in accordance with Article 16 paragraph (1) letter f of the UUJN, which highlights that notaries are required to protect the privacy of the information and details provided by the parties to the case. Furthermore, as stated in Article 16 paragraph (1) letter an of the UUJN, notaries are required to behave in a way that is independent, impartial, thorough, honest, and trustworthy while also safeguarding the interests of

the parties to legal proceedings. Similarly, it is stressed that notaries are required to offer legal advice in connection with the creation of deeds, as per the rules of Article 16 paragraph (1) letter k of the UUJN.

In essence, the Witnesses who have fulfilled all formal conditions for creating a deed are sufficient to serve as the foundation for the Notary to do the legal actions that the Witnesses have requested. A notary may decline to make a deed of the witnesses if there are uncertainties or oddities in the documents that are necessary for the deed's creation, but they are not required to find the truth materially.

### ***Legal Protection for Notaries in the Performance of Their Duties Associated with Fraud***

The UUJN is a legal instrument designed to give notaries legal protection and clarity while they perform their duties as officials who authenticate deeds, particularly when they are engaged in criminal situations. The form of protection is in the form of:

Provisions governing notaries' obligations and rights of default are found in Articles Four, Paragraph (2), Sixteen, Paragraph 1, Letter F, and Fifty-Four. Habib Ajie called the right to default the responsibility to default (*verschoningsplicht*). Habib Ajie stated that one of the Notary's oaths and pledges is to keep secret the information obtained in the performance of the Notary position and the contents of the deed, in accordance with Article 4 paragraph (2) and Article 16 paragraph (1) letter f of the UUJN. According to their oath or promise of office, notaries must maintain the confidentiality of any information relating to the deed they make and any information they gather for the deed, unless the law specifies otherwise.

Attach fingerprints to the deed minuta in compliance with Article 16 paragraph (1) letter c, which states that in order for the notary to carry out his responsibilities, he must attach letters and papers to the deed minuta together with their facing fingerprints. The process of confirming the completeness of the supporting material needed to create deed minutes is under the supervision of the Notary Supervisory Board. In this case, the fingerprint strengthens the evidence even further. Therefore, the difficulty of evidence is strengthened by his fingerprint legislation. Fingerprints are believed to provide notaries with additional legal protection.

Provisions concerning notary organizations are governed by Article 82, paragraph 2. It makes clear that the Notary Organization Forum referred to in paragraph (1) is the Indonesian Notary Association. Members' legal protection is given within the framework of a dedication to the dignity of notaries as public officials and to the importance of unity among professions. The main reason INI was founded was to ensure that notaries would be protected in their role as public servants and in their line of work. INI also collaborates with police authorities to offer legal protection for its members because notaries, as a profession built on trust, have a distinct legal protection relative to the secrecy of office. In order to do this, INI and the National Police have a memorandum of agreement (number 01/MoU/PP-INI/V/2006) that effectively governs the

growth and enhancement of professionalism in the legal industry. If a notary is contacted or questioned by law enforcement, they must adhere to the aforementioned memorandum of agreement.

A notary must be examined or questioned through his professional organization, in this case the Notary Honorary Council (henceforth referred to as "MKN"), the Notary Supervisory Council (henceforth referred to as "MPN"), and the Notary Honorary Council (henceforth referred to as "DKN"), in accordance with Law No. 2 of 2014's Article 66, paragraph (1). This implies that with the approval of the honorary council of notaries, investigators, public prosecutors, or judges are permitted to:

1. Taking a photocopy of the Deed Minuta and/or the letters that are attached to the Deed Minuta or Notary Protocol in the Notary's possession; and
2. Calling the Notary to appear for an examination about the Notary Protocol or Deed that is in the Notary's possession.

Based on Article 66 paragraph (2) of Law No. 2 of 2014, it stipulates that "The minutes of submission are created using a photocopy of the Minuta Deed or letters mentioned in paragraph (1) letter a". Notaries, as citizens, are unable to avoid looking into criminal matters, nonetheless, as state investigators have the authority to issue compelled summonses.

In the event of a dispute, the Supreme Court's review process is a last resort for coercive legal protection – a legal remedy. Obtaining justice from the criminal, civil, and administrative spheres is the anticipated goal of legal protection.

A legal document that offers ultimate legal certainty for the guilty person's legal status is the Supreme Court judge's decision. In addition, measures must be made to restore the defendant's rights that were violated during their incarceration and detention during the trial process in order to release them from prison. Article 97, paragraph (1) of the Criminal Code, which states that "A person has the right to obtain rehabilitation if the court decides to be free or is decided to be free from all lawsuits whose decision has permanent legal force," governs the restoration of the defendant's rights (rehabilitation). Therefore, a defendant is eligible to rehabilitation if he is found not guilty or acquitted by a court ruling that has lasting legal effect. The court's decision to acquit or release the defendant also includes this rehabilitation.

He declared in Supreme Court Decision Number: 20 PK/Pid/2020 that convicted individuals' rights regarding their capacity, status, and dignity must be promptly reinstated. The Defendant Ketut Neli Asih did not meet the requirements to be dishonorably dismissed as a notary by the Minister, according to UUJN Article 13, because he was not sentenced to prison based on a court decision that has obtained permanent legal force for committing a criminal act that carries a five-year or longer prison sentence.

## **CONCLUSIONS AND RECOMMENDATIONS**

Whether the notary is also involved in the fraudulent act must be determined before determining the notary's responsibility for fraud perpetrated by one of the witnesses to the power of attorney made in front of the notary. The

notary may be prosecuted for criminal responsibility if, in creating the deed, he participates in or aids in the witness's illicit activity. Since the law does not govern the requirements of unique criminal activities for notaries, criminal penalties against them are governed by general criminal rules, namely the Criminal Code.

In ruling Number 196/Pid.B/2019/PN.Dps, the judge took into account the requirements of Criminal Code Article 378 jo. Article 56 paragraph 2. The panel of judges in Decision Number 27/Pid/2019/PT.Dps believed that the Denpasar District Court's analysis and ruling in Case Number 196/Pid.B/2019/PN Dps, dated April 25, 2019, concerned the evidence of the defendant's illegal activity, was correct and correct, but the criminal sentence of the Denpasar District Court was considered too high, In order to lower the defendant's criminal sentence to one year and two months, the High Court panel of judges took into account the defendant's eleven-year service as a public official. Meanwhile, Although the panel of judges in Decision Number 20 PK/Pid/2020 found that the defendant had been careless in creating a power of attorney to sell land between the victim witness and witness Gunawan Priambodo, the act was within the notary's administrative and not criminal domains. Therefore, despite a dissenting opinion during the panel of judges' deliberations, the panel of judges at the cassation level concluded in Decision No. 20 PK/Pid/2020 that the Convicted Ketut Neli Asih, S.H., was proven to have committed the act as charged against him, but the act did not constitute a criminal act. The researcher believes that the legal factors in Supreme Court Decision Number: 20 PK/Pid/2020 are suitable.

The legal protections granted to notaries when executing papers related to fraud offenses by decision Number 196/Pid.B/2019/PN Dps Jo. PT. Dps Jo Decision Number 27/Pid/2019. Decision Number 20 PK/Pid/2020 is to take legal measures through review which was ultimately granted by the panel of judges and the Defendant was declared free from prosecution, because the judge stated that the defendant's actions did not constitute a criminal act. These legal remedies are a form of repressive legal protection as a final protection effort provided if a dispute has occurred. Efforts to release the defendant from prison must also be accompanied by efforts to restore the rights of the defendant that have been taken away during the defendant's detention and imprisonment throughout the trial process. In the Supreme Court Decision Number: 20 PK/Pid/2020, he stated that the rights of convicts in their ability, position, and dignity must be immediately restored.

### **ADVANCED RESEARCH**

This research examines notary liability in fraud cases through key Indonesian court decisions, highlighting the distinction between administrative negligence and criminal liability. By analyzing rulings such as Decisions 196/Pid.B/2019/PN.Dps, 27/Pid/2019/PT.Dps, and 20 PK/Pid/2020, the study finds that notaries may only be held criminally liable if proven to be directly involved or complicit.

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