

## Notary Legal Protection Against Crime in The Case That Called as Witnesses or Suspect

Novi Ahmad Arifin<sup>1</sup>, Roswati Dewi<sup>2</sup> and Ngadino<sup>3</sup>

Abstract. The purpose of this study were 1) to identify and explain the legal protection of the notaries who was called as a witness or a suspect in the Process of Investigation and Prosecution Pre. 2) To determine the constraints in the implementation of legal protection against notaries who were called as witnesses or suspects.

This research using normative juridical approach. Normative approach research problems in terms of its legislation. Methods normative constitute legal research done by examining the data or materials library that is secondary data in the form of legislation, a wide range of literature and Internet sources that are supported by field research is the primary data, which analyzes the rules relating to the Notary Public.

Based on data analysis concluded that: 1. Notaries are obliged to keep confidential all matters communicated to him in his capacity as a notary, even though there are some that are not listed in the deed, and has been considered to represent themselves notary in a trial that deed, made by or in the presence of a notary public is an evidence that has the strength of evidence Perfect. 2. Notary criminal cannot be held accountable when there is a loss to either party as a result of the false documents of one of the parties, as Notary simply record what is conveyed by the parties to be poured into the deed. False information submitted by the parties is the responsibility of the parties.

Keywords: Notary Act (UUJN); Notarization; Notary Liability.

### 1. Introduction

Indonesia is a country of law, then the law has the highest position in the government and the law is the protection of human interest.<sup>4</sup> The law regulates all legal relations between individuals, individuals with society and the individual with the government.<sup>5</sup>

The demands of society in order to ensure certainty, order and protection of the law, one of which is reflected in the development of business law, activities in the fields of banking, land, social events and others. That is where the traffic laws of evidence required an authentic deed which clearly define the rights and obligations of a person as a subject of law.<sup>6</sup>

Notary as a legal profession, was born out of necessity in the association community members who want the evidence authentic on the relationship civilization happened between them, in order for an agreement made by the parties authentically received confirmation, order and protection of the law as a tool of perfect evidence later. In order to ensure certainty, order and protection of the above mentioned law, the government set

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<sup>1</sup> Students Master of Notary law, Faculty of Law, Universitas Islam Sultan Agung, E-mail: [arifinvino2@gmail.com](mailto:arifinvino2@gmail.com)

<sup>2</sup> Students of Master of Law, Faculty of Law, Universitas Islam Sultan Agung email [roseatmadja@gmail.com](mailto:roseatmadja@gmail.com)

<sup>3</sup> Notaris/PPAT in Semarang City

<sup>4</sup> Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, 2003. p.21.

<sup>5</sup> Mochtar Kusumaatmadja, *Pengantar Ilmu Hukum Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, Alumni, Bandung, 2000. p.43.

<sup>6</sup> Supriadi, *Etika dan Tanggungjawab Profesi Hukum di Indonesia*, Sinar Grafika, Jakarta, 2008. P.29.

further in Act No. 2 of 2014 jo Act No. 30 of 2004 concerning Notary (UUJN).

Article 1 point 1 UUJN asserts that "an official Public Notary Deed. Notary authorized to make an authentic deed and have more authority as referred to laws and legislation."<sup>7</sup> The article is a special elaboration of Article 1868 of the Civil Code which states that "An authentic deed is a deed made in the form prescribed by law or before the competent public authority for the place of the deed was made."<sup>8</sup> The same thing is explained by Hadi Setia Tunggal that "The deed is authentic deed made by or before a notary in the form and manner specified by law."<sup>9</sup>

According to Habib Adjie,<sup>10</sup> authentic deed containing essentially the material truth in accordance with what is actually notified the parties to the Notary applicant. However, the notary has the obligation to ensure that what is contained in the deed truly understood and in accordance with the will of the parties, that is the way to read it so that it becomes clear the contents deed made, as well as provide access to information, including access to legislation that Related to the parties signatory to the deed. Thus, the parties may determine to be free to approve or not the contents of the deed to be signed.

Authentic deed of birth is not only required by the legislation,<sup>11</sup> but also authentic birth certificate for the desired stakeholders.<sup>12</sup> Deed authentic as evidence, provide instructions and material truth about matters stated in the deed, so that in assessing an authentic certificate valid presumption needs to be prioritized.<sup>13</sup>

In carrying out his post, a notary must uphold the oath of office are on duty and the right to secrecy regarding everything that had been made and are, or obtained from its clients (Article 4, paragraph 2 UUJN).<sup>14</sup> Notary authority under Article 15 UUJN, in addition to the notary must have sufficient knowledge in the field, conscientious, responsible, uphold the law and act in accordance with the code of ethics in providing a professional service to their clients.<sup>15</sup>

Positions associated with the profession, the practice was found the fact that often a notary deed as the products in question by the parties applicant notary public or other third parties,<sup>16</sup> it is often also called as a witness helped notary or a suspect in the investigation process, not infrequently even a notary named as defendant or co-defendant in the civil judicial process.

In a criminal case, a notarial deed cannot be considered as a perfect proof and binding investigators, prosecutors and judges. In criminal cases, a certificate can still be aborted with other evidence that is stronger, for example, by a third party or the testimony of witnesses or by other documentary evidence relating to the manufacture of such deed. Opinion was basing the provisions of Article 183 Criminal Procedure Code which asserts

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<sup>7</sup>Tan Thong Kie, *Buku I Studi Notariat, Beberapa Mata Pelajaran dan Serba-serbi Praktik Notaris*, Ichtar Baru Van Hoeve, Jakarta, 2000. P.162.

<sup>8</sup> R.Subekti & R.Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, Pradnya Paramita, Jakarta, 2008. p.475.

<sup>9</sup>Hadi Setia Tunggal, *Peraturan Pelaksana Undang-undang Jabatan Notaris Dilengkapi Putusan Mahkamah Konstitusi & AD, ART dan Kode Etik Notaris*, Harvarindo, Jakarta, 2006. p.37.

<sup>10</sup> Habib Ajie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap Undang-undang nomor 30 tahun 2004 tentang Jabatan Notaris*, Reka Aditama, Bandung, 2008. p.87.

<sup>11</sup>Liliana Tedjosaputro, *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*, Bigraf Publishing, Yogyakarta, 1994. p.3.

<sup>12</sup>G.H.S.Lumban Tobing, *Peraturan Jabatan Notaris*, Erlangga, Jakarta, 1992. p.5-6.

<sup>13</sup>Komar Andasamista, *Notaris Selayang Pandang*, Alumni, Bandung, 1983. p.3.

<sup>14</sup>Liliana Tedjosaputro, *Etika Profesi dan Profesi Hukum*, Aneka Ilmu, Semarang, 2003. p.80.

<sup>15</sup>Rahmat Setiawan, *Pokok-pokok Hukum Perikatan*, Putra A Bardin, Bandung, 1999. p.3.

<sup>16</sup> Habib Adjie, *Ibid*, p.22

"The judge must not convict someone unless at least two valid evidence, he gained confidence that a no crime actually occurred and the defendant who is guilty." On the other hand in the Trial Judgment No. 702K / Sip / 1973 dated September 5, 1973 explains that "in construction law wrong notation the duty office of the notary is to formulate the desire / applicant action / the applicant into the form of a deed is authentic, with due regard to applicable laws. Notary function is only to record / write what is desired and raised by the parties to the notary's face. There is no obligation for the notary to investigate any material (things) raised by applicant before the notary. "

In this case the investigator, prosecutor and judge in the criminal case not judge an act as "what" but would seek "what" behind the "what is" or in other words every applicant come to the notary had been "really say" and manifested in a deed is authentic, and if it proves applicant not "telling the truth" or "there is no right" to be "not telling the truth" then it is by the investigating authorities can lead the notary as a party "told to do" or "to help carry out" or "join in and do" and can be suspect.

Based on the description above, in this paper, the author identifies the subject matter as follows:

- How legal protection against notaries who was called as a witness or a suspect in the Process of Investigation and Pre-Prosecution?
- What are the obstacles in the implementation of legal protection against notaries who were called as witnesses or suspects?

## Research Methods

This research using normative juridical approach.<sup>17</sup> Normative approach research problems in terms of its legislation. The method is a normative legal research done by examining the data or materials library that is secondary data in the form of legislation, a wide range of literature and Internet sources that are supported by field research is the primary data,<sup>18</sup> which analyzes the rules relating to the Notary.

This study is a descriptive analysis in order to assess the materials are sourced from literature and the legislation in force as positive law in Indonesia, linked to legal theories regarding the problems faced to describe and analyze the facts in a systematic, factual, logical and have a clear premise, in order to obtain alternative solutions in accordance with the provisions or principles of law.<sup>19</sup>

## 2. Discussion

### 2.1 The Legal Protection of Notary In Case As Witnesses in a Crime Case

As described in the chapters beforehand that Article 1868 of the Civil Code explains that "A deed of authenticity is a deed made in the prescribed form of laws, created by or before the competent public authority for it in the certificate was made." In other words if a certificate is made does not meet the form and procedures as set forth in the law, then an act can only be regarded as a note under her hand.

Basing Article 1868 of the Civil Code, an authentic deed can be divided further into authentic deed made by officials and authentic deed made by the parties. Deed made by a competent authority is an authentic deed, which in the authentic deed of the competent authorities to explain what is seen and what is experienced. As to the authentic deed made by the parties means that the authentic deed made by a competent authority that

<sup>17</sup>Soerjono Soekanto, *Metode Penelitian Hukum*, UII Press, Jakarta, 2002. p.82.

<sup>18</sup>Bambang Sunggono, *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2001. p.17.

<sup>19</sup>Burhan Ashofa, *Metode Penelitian Hukum*, Rineka Cipta, Jakarta, 1996. p.59.

on the request or the whim of the parties concerned to the competent authority such that, for example, is a deed of sale, deed of grant, etc. While that is a deed under the hand is a deed that purports to verification by the parties without the help of an official, so only between interested parties only. Article 1875 of the Civil Code explains that "A caption under the hand that is recognized by the people against whom the article was going to be used, or by way of statutory considered as recognized, give it to the people who signed it and their heirs and those who got the right of them, the evidence is perfect as an authentic deed, and so are the operator from the provisions of Article 1870 of the Civil Code for the writing."

The same thing is explained by G.H.S.Lumban Tobing, that a deed can be divided into two kinds, namely:

- *Ambtelijk Acten*, namely deed made by and in front (*door enn*) notary public or "official certificates" (*ambtelijke akten*), is based on observations made by the notary. Deed of this type include the minutes of the AGM deed of a limited liability company, the certificate of registration or an inventory of inheritance and deed of the minutes of the draw.
- *Partij Acten*, or deed the parties, meant as a deed made by and before a notary based on the will or desire of the parties in relation to the legal actions undertaken by the parties. Deed of this type include the deed of sale, deed of grant, lease deed, deed of credit agreement and so on.
- Deed has two functions:
  - Formal function (*Formality Causa*)  
Formal function means the deed serves to complete or perfect a legal act, so it is not the validity of a legal act. So the deed is a formal requirement for the existence of a legal act.
  - Functions evidence (*Probationis Causa*)  
The function of the evidence means the deed has the function as evidence, because since the beginning of the deed was created intentionally to proof later. The nature of an agreement in the form of a written deed does not make the validity of the agreement but merely to be used as evidence in the future.

In evidence, an authentic certificate serves as evidence which was perfect because there are several elements in an authentic certificate, namely:

- Visible Proof strength, What is meant by the strength of evidence of birth means the strength of evidence that is based on birth condition certificate itself. The strength of evidence of birth in accordance with the principle of "*acta publica probant seseipsa*" which means a birth certificate which appears as an authentic deed as well as meeting the requirements that have been determined then the deed was valid or can be considered as an authentic deed until proven otherwise.
- Formal Proof strength, Meaning of Authentic deed it proved that what is stated and listed in the deed it is really a description of the will of the parties were facing at the time listed in the deed. Formally, the authentic act guarantee the truth and certainty of the day, date, month, year, at (time) is facing, and the parties are facing, tanga sign of the parties, the witnesses and the notary and deed made. In a formal sense notarial deed also prove the truth of what is seen is seen, heard and experienced by a notary as a General Officer in the running position. The deed under the hand does not have a formal evidentiary force, except when the signatories of the letter / certificate that recognizes the truth of the signature.
- Strength of Evidence Material; Is certainty about the material deed, that what is mentioned in the deed is valid evidence against the parties who made the deed. Applicant statement given to the notary stated in the deed judged to have true. If

the description of the applicant not true, then it is the responsibility of the parties themselves.

## **2.2 Constraints In Implementing the Legal Protection Against Notary That Called As Witnesses In Case Crime**

So based on the above description then, is a constraint in the implementation of legal protection against the notary called as a witness in a criminal case are as follows:

Conceptually, the essence and meaning of law enforcement lies in harmonizing relations activities that span the 'hierarchy of values in the rules that established or attitude acts as a series of translation of the value of the final stage to create, maintain, and, maintaining social peace alive. Truly principal law enforcement lies in factors that may affect it. These factors have a neutral meaning, so that a positive or negative impact lies in the content. The factors are factors were as follows: Factors legislation (a legal substance); Factor law enforcement; Factors means or facilities to support law enforcement; Factors society; Cultural factors,

These five factors are interrelated tightly, by because the essence of the rule of law, also is a benchmark rather than the effectiveness of law enforcement. Thus, these five factors will discussed further by pointing to the examples taken from the life of Indonesian society, namely:

- Law enforcement, is a role model in the community group, which should have certain abilities within their community aspirations. They must be able to communicate and understanding of target groups, in addition to be able to run or bring the role that can be accepted by them. There are some obstacles that may be encountered in the application that should be of class or law enforcement, these constraints are: a. Limited ability to put yourself in the role of other parties with whom he interacted b. Aspiration level has not been high relative 30c. Excitement very limited to think about the future so it is very difficult to make projections
- Factors Without any means or facility or facilities means certain, it is unlikely that law enforcement will go smoothly. Means or the facility include the manpower educated and skilled, good organization, adequate equipment, adequate financing, and so on. Means or facility has a very important role in law enforcement will go smoothly. Means and the facility, it will be possible acts of law enforcement role should harmonize with the actual role. Especially for facilities or the facilities, should be adopted way of thinking, as follows: a. Its no-held that true b. Damaged or mis-corrected or rectified c. Or less plus d. A stuck-launched
- Factors law enforcement community and culture comes from the community, and aims to achieve peace in the society. By because it is viewed from a certain angle, then the public can influence law enforcement. Indonesian society has a great tendency to interpret the law and 31 even identification with the clerk (in this case law enforcement as a person). One result is that the merits of the law is always associated with a pattern of behavior that law enforcement agencies.

## **3. Closing**

### **3.1 Conclusion**

Based on the description that has been stated above, it can be concluded as follows:

- In terms of giving testimony, a notary public can not express the deed that made balk whole or in part to any other party, it is in accordance with Article 54 of Notary Law since as a trust, notaries are obliged to keep confidential all matters communicated to him in his capacity as a notary , although there are some that are not listed in the deed, and has been considered to represent themselves in a court that a notary deed, made



by or in the presence of a notary is a tool that is as strong evidence proving perfect.

- The responsibility of the Notary in the event of forgery committed by the parties to the deed Notary according UUJN and the Law on Amendments to UUJN is when a Notary in running position proved to have violated, then the Notary responsible in accordance with the act of doing good responsibility in terms of Administrative Law , the Civil code, which is in accordance with the sanctions set forth in Article 84 and 85 of Law Amendment UUJN and code of conduct, but in UUJN and UUJN Amendment Act did not impose criminal sanctions. In practice, found the fact that a violation of the sanctions subsequently qualified as a criminal offense committed by a Notary. Aspects mentioned above are intimately associated with the act Notary violation of Article 15 of Law Amendment UUJN, where its mouth is when a Notary not execute the provisions of the article will cause the occurrence of acts of counterfeiting or falsifying certificates referred to in Article 263, 264, and 266 of the Criminal Code so that it can causes damage to the parties concerned.

### 3.2 Suggestion

- It is expected that the Government as the legislative body, namely parliament to clarify the regulation of Article 16 paragraph (1) letter a UUJN-P on the obligation notary to act carefully in the process of making the deed, so that later the notary in the deed has guidelines and guidance to prevent problems law in deed he made later
- The government should provide the infrastructure to support the activities carried out by the Regional Supervisory Council, so that the legal protection for Notaries can run better.

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