

## The Liability of PPAT Notary against Fraud Crimes in Carrying Out His Position

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**Abstract.** *This writing aims to understand and analyze the process of examining a Notary who is suspected of committing a criminal act of fraud and the Notary's responsibility for criminal acts of fraud in carrying out his position. The research method using the problem approach that will be used in this thesis is a normative juridical approach. The results of the study show that the process of examining a Notary who is suspected of committing a crime of fraud is carried out in accordance with statutory regulations, namely Article 66 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, Regulation of the Minister of Law and Rights Human Rights Number M.03.HT.03.10 of 2007 which specifically regulates the taking of minutes and summons of a Notary (Permen 03/2007). Notary Bachtiar did not report his case to the Pekalongan City Regional Management Council, so Bachtiar did not receive legal assistance from the MPD. This was confirmed by the investigators that during the examination at the investigative level and at the Attorney General's Office, Notary Bachtiar was not accompanied by the MPD. However, at the time of the trial, he was accompanied by an expert, namely Notary Prof.Dr. Widhi Handoko, SH, M.Kn. The notary is criminally responsible when in the process of proving that the notary is proven to have committed a crime or mistake. The Law on Notary Office and the notary's code of ethics do not regulate the responsibility of a notary criminally against the deed he made if it is proven that he has violated the criminal law.*

*Keywords: Accountability; Fraud; Notary; Public.*

### 1. Introduction

The Republic of Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every citizen. To guarantee order and legal protection, authentic

written evidence is needed regarding actions, agreements, stipulations and legal events made before or by authorized officials.<sup>1</sup>The relationship between society and law is expressed by a well-known adage in legal science, namely: *ubi societas ibi ius* (where there is society there is law).<sup>2</sup>

Notary is a public official appointed by the Government to assist the general public in making agreements that exist or arise in society. The need for this written agreement to be made before a Notary is to guarantee legal certainty for the parties to the agreement. A written agreement made before a Notary is called a Deed.<sup>3</sup>The legal profession, especially notary public, is a profession that demands the fulfillment of moral values and their development. Moral value is the force that directs and underlies noble deeds, therefore notaries are required to have strong moral values.<sup>4</sup>

Notaries in carrying out their profession of providing services to the community should behave according to applicable rules, this is important because notaries carry out their duties not solely for personal interests, but also for the interests of society, and have an obligation to guarantee the truth of the deed they make, therefore a Notaries are demanded to be more sensitive, honest, fair and transparent in making an authentic deed.<sup>5</sup>Notary/PPAT in carrying out their duties freely, without being influenced by the executive body and other bodies. The meaning of freedom here is so that the Notary profession will not be afraid to carry out his position, so that he can act neutrally and independently.<sup>6</sup>

Notary liability is determined by the nature of the violation and the legal consequences it causes. In general, the liability that is usually imposed on a Notary/PPAT is criminal, administrative and civil liability. Criminal liability is subject to criminal sanctions, administrative responsibility is subject to administrative sanctions, and civil liability is subject to civil sanctions. This is a consequence of the violation or negligence committed by the Notary in the process of making an authentic deed.

The current situation is that many Notary/PPAT persons are experiencing legal problems, both problems that are not realized or realized by the person concerned. One of the legal problems that occurred with a Notary/PPAT was the crime of fraud as stipulated in Article 378 of the Criminal Code which states that:

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<sup>1</sup>M. Luthfan Hadi Darus, 2017, *Notary Law and Notary Responsibilities*, Uii Press, Yogyakarta, p.1.

<sup>2</sup>Satjipto Raharjo, 1983, *Law Enforcement Issues*, Sinar Baru, Bandung, h. 127.

<sup>3</sup>GHS Lumban Tobing, 1992, *Notary Office Regulations*, Erlangga, Jakarta, p.15

<sup>4</sup>Supriadi, 2008, *Ethics & Responsibilities of the Legal Profession in Indonesia*, Jakarta, Sinar Graphic, p.29.

<sup>5</sup>Komar Andasasmita, 1981, *Notary With History, Role, Duties, Secrets of His Position*, Wells, Bandung, h. 14

<sup>6</sup>*Ibid.*

“Whoever with the intent to unlawfully benefit himself or others, by using a false name or false prestige, by trickery, or a series of lies, incites another person to hand over something to him, or to give him a debt or write off a debt, is threatened because fraud with a maximum imprisonment of four years.”

Based on the description above, the authors formulate a problem related to how the process of examining a Notary who is suspected of committing a criminal act of fraud and how is the Notary's responsibility for criminal acts of fraud in carrying out his position.

## **2. Research Methods**

This research method uses a sociological juridical approach. Sociological juridical research is legal research that is carried out by examining how reactions and interactions occur because often legal expectations are different from the reality that occurs in society, or it can be called the gap between *Das Sein* (facts/reality) and *Das Sollen* (norms/expectations). The specification of this research is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations. Data sources and data collection methods use primary data obtained by interviewing informants who are considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic. The data that has been obtained is analyzed qualitatively which is described in a quality manner in the form of sentences that are coherent, orderly, logical, and do not overlap so as to facilitate understanding of the results of the analysis.

## **3. Results and Discussion**

### **3.1. The process of examining a notary who is suspected of committing a crime of fraud**

Based on the results of the author's interview with Notary Aminudin that in its implementation it is related to the examination of the Notary conducted by the MPD of Pekalongan City, namely:

- a. convene a hearing to examine allegations of violations of the Notary's Code of Ethics or violations of the performance of a Notary's office;
- b. examine the Notary Protocol periodically 1 (one) time in 1 (one) year or at any time deemed necessary;
- c. grant permission to leave for a period of up to 6 (six) months;

- d. appoint a Substitute Notary Public by taking into account the recommendation of the Notary concerned;
- e. determine the storage place for Notary Protocols which at the time of handover of Notary Protocols are 25 (twenty five) years old or more;
- f. appoint a Notary who will act as the temporary holder of the Notary Protocol who is appointed as a state official as referred to in Article 11 paragraph (4);
- g. receive reports from the public regarding alleged violations of the Notary's Code of Ethics or violations of the provisions of this Law; and
- h. prepare and submit the reports referred to in letters a, b, c, d, e, f, and g to the Regional Supervisory Council.

In connection with only the Regional Supervisory Council which has the authority to give approval at the request of investigators, public prosecutors or judges in terms of taking minuta and/or summoning a Notary, the mechanism or implementation of Article 66 UUJN must be carried out honestly, fairly, transparently, ethically and in accordance with applicable laws and regulations.

A Notary in carrying out his official activities must be in accordance with the authority and duties specific to his position, this has been completely regulated in all laws and regulations, both from civil and criminal elements, as well as specifically regulated in UUJN. In the event that a Notary has carried out his duties and authorities in accordance with the law, then he is free from any charges. However, in the event that a Notary commits a violation and results in certain parties feeling disadvantaged, it is possible that the party who feels disadvantaged will sue the Notary concerned for their actions which are detrimental.

For the party who feels aggrieved, he will first conduct an investigation into the cause of the loss. In the event that the loss is suspected to have originated from a Notary who committed a violation and the party who feels aggrieved will sue the Notary concerned, then it will be seen that the violation of the Notary in question is a violation in which case, it can be a violation of the code of ethics, it can be a violation UUJN, it can be a violation of civil provisions or more than that, the action of the notary concerned is a crime that contains a criminal element. Therefore, the further summons of the Notary is determined beforehand, whether the Notary's violation is in a civil element or contains a criminal element.

The police, in conducting an investigation, may request information from a witness, and a notary may be asked for information as a witness by the police. A

Notary can also be upgraded in status, from a witness to a suspect in the event that the Police have conducted an investigation and investigation.

The actions of the Public Prosecutor in summoning a witness where the witness is a Notary in connection with the duties carried out in accordance with his position, the summons is not as regulated in the Criminal Procedure Code. The Public Prosecutor who will summon a Notary must first go through a series of predetermined regulations.

Regarding the taking of minuta deed and summoning a Notary, for the benefit of the judicial process, investigators, public prosecutors, or judges, previously in UUJN this authority was given to the Regional Supervisory Council. As stated in Article 66 UUJN. Article 66 UUJN determines as follows:

(1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Honorary Council of Notaries are authorized to:

- a. take a photocopy of the Minutes of the Deed and/or the letters attached to the Minutes of the Deed or the Notary Protocol in the Notary's safekeeping; and
- b. summon the Notary to attend the examination relating to the Deed or Notary Protocol which is in the Notary's custody;

(2) Taking photocopies of Minutes of Deeds or letters as referred to in paragraph (1) letter a, making minutes of submission;

(3) Honorary Council of Notaries within a maximum period of 30 (thirty) working days from the receipt of the request for approval as referred to in paragraph (1) shall provide an answer accepting or rejecting the request for approval;

(4) In the event that the Honorary Council of Notaries does not respond within the period referred to in paragraph (3), the Honorary Council of Notaries shall be deemed to have accepted the request for approval.

Based on the results of interviews with the Police, it was explained that in terms of taking minuta deed and summoning a Notary by the Investigator, it was carried out in accordance with the mandate of the Law. Investigators are very attentive and carry out in accordance with statutory regulations.<sup>7</sup>

Provisions regarding the Honorary Council of Notaries and their authorities are further regulated in Permenkum HAM Number 7 of 2016 concerning the Honorary Council of Notaries, where Article 1 point (1) states that the Honorary

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<sup>7</sup>Interview with Bripka Isnovim CH, SH, MH at the Pekalongan City Police, on June 9, 2022

Council of Notaries is a body that has the authority to carry out notary development and is obliged to give approval or refusal to the interests of the investigation and the judicial process, for taking photocopies of the Minutes of the Deed and summoning the Notary to attend the examination relating to the Deed or Notary Protocol which is in the Notary's custody.

Arrangements for summoning a Notary as a witness by the Public Prosecutor must be in accordance with the Regulation of the Minister of Law and Human Rights Number M.03.HT.03.10 of 2007 which specifically regulates the taking of minuta and summons of a Notary (hereinafter referred to as "PerMen 03/2007").

Requirements and procedures for taking photocopies of minuta deed and/or letters attached to minuat deed or Notary protocol in the Notary's depository are as follows:

(1) Investigators, Public Prosecutors, or Judges for the purposes of the judicial process may take photocopies of Minutes of Deeds and/or letters attached to Minutes of Deeds or Notary Protocols in the Notary's repository by submitting a written request to the Regional Supervisory Council.

(2) The application referred to is submitted to the Notary in paragraph (1) a copy of which is submitted to the Notary.

(3) The application as referred to in paragraph (1) contains reasons for taking photocopies of the Minutes of Deed and/or letters attached to the Minutes of Deed or Notary Protocol in the Notary's safekeeping.

After the Investigator submits the application letter, the Investigator waits for 14 days to determine whether the application is approved or rejected by the MPD. In the event that within 14 days counting from receipt of the application letter by the MPD, the MPD does not provide any statement, then the Investigator may assume that the MPD has agreed to the summons of the Notary concerned, this is in accordance with Article 18 of PerMen 03/2007. However, if the application is rejected by the MPD, then nothing can be done by the Police or Investigators, and the Notary concerned is free from any charges.<sup>8</sup>

In the event that the MPD approves the summons of a Notary as a Witness, and in the process of investigation and investigation, the Notary concerned whose status as a Witness is upgraded to the status of a Suspect, the Notary may refuse to be made a Suspect on the grounds that his/her calling is as a witness in accordance with the application approved by the MPD as a witness. If the Notary

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<sup>8</sup>Interview with Bripka Isnovim CH, SH, MH, at the Pekalongan City Police, on June 9, 2022

concerned is to be made a suspect by the Police, the Police must again submit a written request accompanied by reasons to the MPD in accordance with Article 14 of PerMen 03/2007.

The terms and procedures for taking the minutes of the deed and/or letters attached to the minutes of the deed or the notary protocol in the notary's depository are:

- a. Investigators, Public Prosecutors, or Judges for the benefit of the judicial process may take Minutes of Deeds and or letters attached to Minutes of Deeds or Notary Protocols in the notary's custody, by asking the Notary concerned to bring Minutes of Deeds and or letters attached to them. Minuta Deed or Notary Protocol in the notary's custody by submitting a written application to the Regional Supervisory Council.
- b. A copy of the application as referred to in paragraph (1) shall be submitted to the Notary.
- c. The application as referred to in paragraph (1) contains the reasons for taking the Minutes of Deed and or letters attached to the Minutes of Deed or Notary Protocol in the Notary's safekeeping.<sup>9</sup>

The Regional Supervisory Council gives approval for taking the Minuta Deeds and/or letters attached to the Minutes of Deeds or Notary Protocols in the Notary's custody if there is an allegation of a crime related to the Minutes of Deeds and/or the letters attached to the Minutes of Deeds or Notary Protocols in notary storage.

An application for approval to take minuta deed or notary protocol and summon a notary by the investigator, public prosecutor, or judge to attend the examination related to the notary deed or protocol that is in the notary's custody, is submitted to the Chairperson of the Regional Notary Honorary Council in accordance with the notary's working area. concerned. The application is submitted in writing in the Indonesian language and a copy is submitted to the Notary concerned, which at least contains information regarding:

- a. name of the notary;
- b. Notary office address;

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<sup>9</sup>Article 8, Regulation of the Minister of Law and Human Rights Number M.03.HT.03.10 of 2007 concerning Taking Minuta and Summoning a Notary

- c. the number of the deed and/or letter attached to the minutes of the deed or the Notary's protocol in the Notary's safekeeping; and
- d. suspected matter.

The Chairperson of the Regional Notary Honorary Council must provide an answer in the form of approval or rejection of the application as mentioned above, within a maximum period of 30 (thirty) working days from the date of receipt of the application, it is deemed that the Regional Notary Honorary Council has received the request for approval. However, based on Article 66 point (4), if the Pekalongan City Notary Honorary Council does not provide an answer within 30 (thirty) days, the Pekalongan City Notary Honorary Council is deemed to have received the request for approval.

Approval or rejection from the Pekalongan City Notary Honorary Council after hearing direct information from the Notary concerned, is included in the inspection report. If the panel of examiners approves the request of the investigator, public prosecutor or judge, then based on Article 25 point (3) of the Minister of Law and Human Rights 7/16, the Notary is obliged to:

- a. provide photocopies of minuta deed and/or letters required to investigators, public prosecutors, or judges; and
- b. submit photocopies of minuta deed and/or letters with minutes of submission signed by the Notary and investigator, public prosecutor, or judge witnessed by 2 (two) witnesses.

Furthermore, in Article 26 of the Minister of Law and Human Rights 7/16 which regulates the Retrieval of minuta deed and/or Notary documents in Notary storage as referred to in Article 25, it is carried out in terms of; (a) there is an alleged criminal act related to minutes of deeds and/or letters attached to minutes of deeds or Notary protocols in the Notary's safekeeping; (b) the right to sue has not yet been waived based on the provisions regarding the expiration in the laws and regulations in the field of criminal law; (c) there is a denial of the validity of the signature of one or more parties; (d) there is an allegation of reducing or adding to the minutes of the deed; or (e) there is an allegation that the Notary has postponed the date (antidatum).

Summoning a Notary for examination at level II (Attorney's Office) contains conditions and procedures for summoning a Notary, namely:

- a. Investigators, public prosecutors or judges for the benefit of the judicial process may summon a notary as a witness, suspect or defendant by submitting a written application to the Regional Supervisory Council.



b. A copy of the application as referred to in paragraph (1) shall be submitted to the Notary.

c. The application as referred to in paragraph (1) contains reasons for summoning a Notary as a witness, suspect or defendant.

The conditions for summoning a notary are related to giving approval to investigators, public prosecutors or judges for the benefit of the judicial process in summoning a notary, based on Article 27 point (1) of the Minister of Law and Human Rights 7/16, carried out in the event that:

a. there is an allegation of a criminal act related to minutes of deed and/or Notary documents in the Notary's safekeeping;

b. the right to sue based on the stipulation regarding expiration in the laws and regulations in the field of criminal law has not lapsed;

c. there is a denial of the validity of the signature of one or more parties;

d. there is an allegation of reducing or adding to the Minutes of the Deed; or

e. there is an allegation that the Notary has postponed the date (antidatum).

In conducting an examination of a Notary Public, the Chairperson of the Regional Notary Honorary Council forms an examining committee consisting of 3 (three) members consisting of each member of the Regional Notary Honorary Council. The examining committee consists of 1 (one) chairperson who is also a member, and 2 (two) members. In carrying out the examination, the board of examiners is assisted by 1 (one) secretary. The establishment of the board of examiners is carried out no later than 5 (five) working days from the date the report is received. The examining committee has the authority to examine and give approval or rejection of requests by investigators, public prosecutors or judges regarding taking photocopies of minutes of deeds and letters attached to minutes of deeds and/or notary protocols in the notary's safekeeping and summons of a notary.

In conducting an examination of a Notary, if the Examining Council has a marital relationship or blood relationship, as stated in the provisions of Article 22 number (1) of the Minister of Law and Human Rights 7/16, it is obligatory to refuse to examine a Notary who has a marital relationship or blood relationship in a direct lineage to down and/or up without degree restriction, as well as in a sideways line up to the third degree. Furthermore, it is explained in Article 22 point (2), Chairperson of the Council. In the event that the panel of examiners

has a marriage or blood relationship, the Chairperson of the Regional Notary Honorary Council shall appoint a replacement.

### **3.2. Accountability of a Notary against Fraud in Carrying Out His Position**

Notary negligence and acts violating provisions in statutory regulations are not regulated in the Law on Notary Office, but that does not mean that a notary cannot be subject to criminal sanctions for his actions. Notaries can still be subject to criminal sanctions as long as they comply with the formulation of violations stipulated in the Criminal Code. Deliberately, that is, there is an intention in the hearts of the perpetrators to cause certain harm to the victim or at least know for certain that the consequences of what he has done will occur or may occur. If the Notary is proven to have committed a criminal act of fraud, then the Notary must be responsible both civilly and criminally.<sup>10</sup>

Criminal sanctions are the most severe sanctions for unlawful acts committed by Notaries and criminal sanctions are ultimum remedium, namely the final sanction if civil and administrative sanctions or code of ethics sanctions are not capable of becoming a deterrent Notary/PPAT.<sup>11</sup> Notaries can be held liable in civil, code of ethics, and administrative terms if in carrying out their authority it is proven that they have abused their authority which has caused losses to parties who have an interest. In the case of the position above, it can be seen that the Notary who is Defendant I has violated the provisions in Article 16 Paragraph (1) letter a of the Notary Office Law which contains:

"Act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions".

According to Lumban Tobing, the notary's responsibility for the deeds made is if there are reasons as follows:<sup>12</sup>

1. In matters expressly determined by law.
2. If a deed, because it does not meet the requirements regarding its form (gebrek in de vorm), is canceled before the court, or is considered to only apply

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<sup>10</sup>Result of interview with Notary Aminudin as Pekalongan Regional Ethics Council, on 2 June 2022

<sup>11</sup>Aad Rusyad and Siska Widia Astuti, "Responsibility of a Notary/Land Deed Official for Sale and Purchase Deeds Containing Elements of a Fraud Crime (Analysis of the Decision of the Supreme Court of the Republic of Indonesia Number 66Pk/Pid/2017), Thesis, Master of Notary Education, University of Indonesia, Depok, 2020, p. 649

<sup>12</sup>Lumban Tobing, 1996, Regulations for Notary Office, Erlangga, Jakarta, p. 55

as a private deed. 3. In all matters, where according to the provisions in Article 1365 to Article 1367 of the Criminal Code there is an obligation to pay compensation, meaning that all these matters must go through a balanced proving process.

According to Abdulkadir Muhammad, the theory of responsibility in unlawful acts (tort liability) is divided into several theories, namely:<sup>13</sup>

1. Liability due to unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant has done will result in a loss.
2. Responsibility for unlawful acts committed due to negligence (negligence tort liability) is based on the concept of fault relating to morals and law which has been mixed (intermingled).
3. Absolute responsibility due to unlawful acts without questioning mistakes (strict liability), is based on his actions either intentionally or unintentionally.

Author analysis:

That if it is connected between the case that happened to Notary B with the theory of accountability according to Abdulkadir Muhammad, it has a connection or continuity. Notary B in his case is ready to take responsibility for something that has been carried out in carrying out his duties by following legal procedures. The client's report to the Pekalongan Police is still being welcomed with a sense of full responsibility which can be seen from the cooperative attitude of Notary B in following the flow of legal proceedings, until the accountability court decision process ends with a court decision that acquits defendant B so that, in the verdict, the defendant is acquitted of detention as soon as this decision is pronounced and restore the rights of the accused in terms of ability, position, dignity and status as a Notary.

Whereas for legal certainty it is necessary to have a deed of transfer of title certificates (9) for land parcels in the village of Salit, Kajen sub-district, Pekalongan Regency, from the victim-witness who received the power of attorney to sell, to be on behalf of the victim-witness

Whereas with the presence of a victim-witness, the defendant Bachtiar carried out legal responsibility by being cooperative in attending all procedures determined in the criminal justice system, starting from the investigation,

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<sup>13</sup>Abdulkadir Muhammad, 2010, Indonesian Corporate Law, Citra Aditya Bakti, h. 336

prosecution and judicial process at the Pekalongan District Court which was finally acquitted of all charges by the public prosecutor.

Evaluation of the author based on the description above can be evaluated that the Notary in carrying out his duties must provide legal counseling to his client so that the procedures and procedures for obtaining land certificates can be known and do not lead to interpretations that lead to criminal acts.

#### **4. Conclusion**

The process of examining a Notary who is suspected of committing a crime of fraud is carried out in accordance with statutory regulations, namely Article 66 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, Regulation of the Minister of Law and Human Rights Number M .03.HT.03.10 of 2007 which specifically regulates the taking of minuta and summons of a Notary (Permen 03/2007). The terms and procedures for retrieving minutes of deeds and/or letters attached to minutes of deeds or notary protocols in the Notary's repository are carried out in accordance with Article 8 of Permen 03/2007. While summons for a notary to be examined at level II (prosecutor's office) there are conditions and procedures for summoning a notary regulated in Article 14 of Permen 03/2007. The notary is criminally responsible when in the process of proving that the notary is proven to have committed a crime or mistake. The Law on Notary Office and the notary's code of ethics do not regulate the responsibility of a notary criminally against the deed he made if it is proven that he has violated the criminal law. UUJN only regulates the provisions of civil and administrative legal sanctions, however, criminal responsibility of a notary is imposed if the notary is proven to have committed a criminal act. If a criminal offense is committed by a notary, the notary may be subject to criminal sanctions based on the Criminal Code. In addition, the Notary must also be responsible civilly if there is a loss suffered because of him.

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*Regulation:*

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[2] Code of Civil law.  
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[4] The Criminal Procedure Code.  
[5] Act No. 2 of 2014 Amendment to Act No. 30 of 2004 concerning the Position of Notary.