

The Process of Investigation and Investigation of a Notary Who Is Allegedly Committing a Criminal Act of Forgery

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Abstract. *The Indonesian state is a state based on law, therefore all aspects of the implementation and administration of the state are regulated in a system of applicable laws and regulations. In this sense, the state is implemented based on a constitution or the Constitution of the State and other legal regulations.¹ The existence of protection for the position of a notary as an official (general) seems to be a simalakama fruit in the police investigation process in terms of criminal responsibility, the position of a notary who is full of great responsibility must be protected. On the other hand, when indications of a criminal offense have been committed by a notary, absolute law enforcement becomes a must. The obligation to maintain confidentiality is an obstacle when in this case there is an allegation of a criminal offense committed by a Notary, because it is not easy because investigators/Investigators are starting the initial stages of Investigation and Investigation related to the summons of a Notary for Examination and confiscation of minuta deed because it must be through a series of processes as stated in article 66 UUN.*

Keywords: Allegedly; Forgery; Investigation.

1. Introduction

Considering that a notary is a position in a field in which all forms of work and responsibilities are regulated by law, it is also a position that is given certain authority and is sustainable. In terminology, the definition of a notary according to the legal dictionary is: "a person who has the power of attorney from the government to legalize and witness various agreements, wills, deeds and so on". Gandasubrata stated that a notary is a public official appointed by the government, including elements of law enforcement who provide services to the public.²

¹Sri Endah Wahyuningsih, Rismanto, "Criminal Law Enforcement Policies Against Money Laundering Countermeasures in the Context of Reforming Criminal Law in Indonesia", in the law reform journal, Volume 2 No 1 (2015).

²Al Halim, 2020, Principles of Notary Law, UII Press, Yogyakarta, p. 2.

"In Act No. 2 of 2014 concerning the Office of a Notary in Article 15 it states that a Notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that must be carried out by laws and regulations and/or which are desired by interested parties to be stated in the deed authentic, as well as guaranteeing the certainty of the date of making the deed, storing, providing grosse, copies and excerpts of the deed. The position of notary was created by the state in order to implement the state's obligations in terms of providing services to the community, in making legal and authentic evidence that is recognized by the state. The rights granted by the state based on legislation against notaries aim to create certainty, order, a sense of security, and provide legal protection aimed at preventing conflicts between communities. A notarial deed is an authentic deed that is valid and can be a perfect legal evidence against a legal event, statements, statements, confessions, is proof that an authentic deed made before a notary contains a complete and valid, because it was witnessed and ratified directly by officials authorized by the state based on law. In the case of drawing up a deed before a notary, it must be based on a direct request from the parties who appear before it, and is not a desire of the notary. In addition, the notary is given the authority to certify the signature and determine the certainty of the date of the private letter by registering it in a special book; record private letters by registering in a special book; make a copy of the original private letter in the form of a copy containing the description as written and described in the letter concerned; verify the compatibility of the photocopy with the original letter; provide legal counseling in connection with the making of the Deed; make Deeds related to land; or make a deed of minutes of auction. An authentic deed is a deed drawn up in a form determined by law by or before a public official who is authorized to do so (such as a notary, judge, clerk, bailiff, civil registration employee) at the place where the deed was made (article 1868). Civil Code, Article 165 *Herziene Indonesisch Reglemen (HIR)* and Article 285 *Reglement Buitengewesten (RBg)*,³

In practice, it is not easy to examine notaries who have committed criminal offenses, Notaries who are (general) officials seem to be impressed that they are protected or protected by (UUJN) where the Notary Honorary Council (MKN) has the authority to refuse requests by law enforcement to take protocols from notaries, and summons a notary for the purposes of investigation and judicial process. The formal aspect of a notary deed can be used as a basis or basis for convicting a notary, summons to a notary in the examination process either as a witness or a suspect by the police can conflict with the principle of confidentiality which is the essence of the responsibilities and obligations of a notary.

³Widhi Handoko, SH, Sp.N and Dr. Sugeng Budiman, SH., M.Kn, 2020, Legal Policy Against Notaries as Witnesses and Evidence of Authentic Deeds Based on Values of Justice, unissula press, Semarang, p., 9.

Rules regarding investigations are included in article 1 point 1 of the Criminal Procedure Code, and Act No. 20 of 2002 concerning the Indonesian National Police. In the process of examining a notary who is suspected of committing the crime of forgery, investigators must refer to Article 66 UUJN, which is also regulated in more detail in the regulation of the Minister of Law and Human Rights number M.03.HT.03.10 of 2007 concerning taking Minutes of Deeds and Notary summons. In the interest of the investigative process, the investigator must submit a written request to the notary's honorary council, so that the notary can reveal the secrets he keeps based on the provisions of general regulations. So indirectly, the implementation of the duties of a police investigator often ends up facing obstacles in the examination process.

2. Research Methods

The approach method that will be used in this study is the Sociological Juridical Approach which is research that emphasizes how to obtain legal knowledge empirically by going directly to the object under study, Sociological Juridical is research that implements secondary data as initial data, then it is then forwarded with primary data in the field or on the public, researching the effectiveness or not of a Regulation with research that you want to explore between various symptoms or variables, which in this case is used to find out what problems arise related to Investigation and Investigation of Notaries as a tool or method of collecting the data consisting of document studies or library materials and interviews.

3. Results and Discussion

3.1 The Process of Investigation and Investigation of Notaries Who Are Allegedly Committing Criminal Acts and Forgery by the Resort Police of the Big City of Semarang

At this stage the series or process of investigators seeks and formulates anything that is suspected of being a crime. In the case of an investigation of a Notary, according to MS, the beginning of the process of investigating a notary that so far has departed from reports from the public or parties directly related to the alleged crime of forgery by a notary, investigators in terms of following up reports relating to the notary, usually in the cases handled, the notary does not stand alone as the reported party, because it is also necessary to know and pay attention to that the notary actually only carries out the duties and responsibilities given by the state to him, of course there are people or parties who initially come and ask to make a product from a Notary, so that the notary in this case is also not the only subject to be reported, and precisely in cases like this according to him, the notary is often involved because of his status as a person or Participating subject in a legal event, or a criminal act which in this case is related to Article 55 of the Criminal Code, participating, together, or assisting. So the notary is not the only legal subject that

is reported. So that investigators in initiating or starting an investigation start from the party that requested it first, only then develop towards the Notary himself, according to him the notary is a public official and is regulated in the Act of office so that there is legal protection that must be paid attention to by the police in this case investigator/investigator.

According to MS as the investigator/investigator of the Semarang Polrestabes, the notary as the only legal subject that is reported on average is rare, because the notary has duties and responsibilities considering that a prodak or notarial deed is a bridge from a legal action by the parties, then in the process and the steps for examining a notary, according to him, the notary has a place where the notary resides, MKN, MPD, and so on. So the police are obliged to coordinate with the bond or container sheltered by the notary, but according to him, if the notary confirms that he does not need to obtain the permit, the investigator can immediately carry out the interview process or ask for information from the notary concerned. but if the notary objected on the pretext that he must first obtain permission or approval from the MKN. According to the statement from MS (Kasubnit II Unik Idik II Ketreskrim Polrestabes Semarang). Criminal liability by a notary who commits a criminal act of forgery is not solely for investigators/investigators only to make the Deed the only confirmation regarding the birth of a legal violation that is included in the element of forgery, according to his statement the deed is indeed the main means of evidence but investigators must look and search know the history as well, starting from how the deed was drawn up, in what case, and the request/request from the parties for what purpose, or any deed related to the notary itself, from all the things contained in the contents of the deed, which includes just about anything. Because the deed becomes an object of criminal activity where investigators clearly and thoroughly examine what is contained or contained therein. The deed is indeed the main means of evidence but is not the only means of criminal evidence. There must be supporting evidence regarding anything related to forgery contained in or related to articles 263-266 of the Criminal Code, he said. As a whole, that investigation and investigation by the police is a series of activities and or efforts by the police to find and determine whether a criminal incident has actually occurred. Investigations and investigations are carried out after it is suspected that a crime has been committed, whether based on community reports, complaints and/or information from the public or parties directly related. Furthermore, reports, complaints or information that have been received by the police, in this case investigators or investigators, are given the obligation to study, examine and filter related information. Then the police continue to visit the location or place where a criminal incident began or occurred. These actions have been correct and have been in accordance with what is stipulated in the laws and regulations governing procedural processes in the process of investigation and investigation by the

police. with the aim of seeking and obtaining information and evidence to prove whether or not a crime has occurred.

According to the statement from MS, criminal responsibility by a notary who commits a criminal act of forgery is not solely for investigators/investigators only to make the deed the only confirmation regarding the birth of a law violation which is included in the element of forgery, according to his statement, the deed is indeed the main means of evidence, but investigators must see and find out the history as well, starting from how the deed was made, in what case, and the request/request from the parties for what purpose, or whatever the deed is related to the notary itself, from everything that is contained in the contents the deed, which includes anything. The deed is indeed the main means of evidence but is not the only means of criminal evidence. There must be supporting evidence regarding anything related to forgery contained in or related to articles 263-266 of the Criminal Code, he said. according to him, a notary is a public official and is regulated in the Act on positions so that there is legal protection that must be paid attention to by the police, in this case investigators. In the process and steps for examining a notary, according to investigators, the notary has a place where the notary resides, MKN, MPD, etc. So the police are obliged to coordinate with the bond or container sheltered by the notary, however, according to him, if the notary confirms that he does not need to obtain the permit, the investigator can immediately carry out an examination of the notary himself.⁴

3.2. Obstacles and Solutions Faced by the Police in the Process of Investigating and Investigating a Notary Who Is Allegedly Committing a Criminal Act of Forgery by Investigators from the Semarang Big City Police

Related to the obstacles in the Investigation faced by investigators in examining a Notary who is suspected of committing the Criminal Act of Forgery, in the Investigator's statement that Notary is often a Participant contained in the Provisions concerning participating in and helping to commit can be seen in Article 55 (co-conducting) and Article 56 of the Criminal Code (the Criminal Code) (help to do): Article 55 of the Criminal Code:

1. Punished as a person who committed a criminal act:
 - 1) The person who did, ordered to do, or took part in the act;

⁴Interview with Kasubnit II Unik Idik II Economics Satreskrim Polrestabes Semarang, 7 June 2022

2) A person who by means of a gift, agreement, wrongly uses power or influence, violence, threats or deception or by giving an opportunity, effort or information, intentionally persuades to do something.

2. Concerning the people mentioned in sub (2), those who are accountable to him are only the actions that were deliberately persuaded by them, and their consequences.

Article 56 KUHP: Convicted of having aided in the commission of a crime:

- 1) Whoever intentionally helps commit the crime;
- 2) Whoever intentionally provides an opportunity, effort, or information to commit the crime.

In reality and what has been stated in the UUJN, it finally requires that the Police in the initial stages (investigators) carry out matters in the form of summons and confiscation of minuta deeds by the Police against Notaries must refer to article 66 UUJN For the benefit of the judicial process, investigators, public prosecutors, or Judges With the approval of the Notary Honorary Council, the stages that must be carried out and considered in this implementation are generally as follows:

- 1) The investigator sent a letter requesting approval to MKN
- 2) The investigator must wait 30 days to get a response that the Honorary Council of Notaries accepts or rejects.
- 3) If the approval letter or permit is approved then the investigator can proceed to the next stage
- 4) Meanwhile, if the letter of approval or permit does not receive a response within the period specified in the UUJN, it is deemed to have agreed to the letter requesting approval.

According to investigators, the position of a notary should be more flexible, the notary in this case has legal implications so that whatever is the product issued is the responsibility of the notary, when the notary is confirmed by the investigator, the MKN shall carry out a formal investigation that complies with the law. that we have gone through, then MKN cannot immediately reject which gives the impression that Notaries and MKN seem uncooperative because according to Investigators, notaries must comply with the general law (KUHP). When MKN refuses, in terms of the interests of the legal process, as long as Polri has strong legal reasons.

The notary objected to the confiscation carried out by the police investigator, the notary was only given rights in pre-trial matters, because the realm of confiscation, arrest, detention and now the determination of suspects is also developing, it falls under the auspices of pre-trial.

That it is true that the Notary as an official authorized by the state and is also required to protect and maintain the secrecy of the deed or product that has been

made, is contradictory because the Investigator, in this case carrying out his duties, is required to seek and formulate existing evidence and also matters related to it, according to the mandate of the law, while the notary is also burdened with responsibilities that have been regulated in UUJN where if the notary violates his obligations, the notary will also get sanctions from the organization he is sheltering.

However, in the case of a Notary who is indicated to have committed a criminal act, then the Investigator confirms on behalf of the law, while the notary what is requested by the applicant becomes the confidentiality of the notary and the parties contained in a minutes of the deed and may not disclose secrets or anything contained in the deed or product thereof to other parties, except the investigator in this case This is because there is an investigation that must be passed on the minutes of the deed issued by the notary. Because in terms of investigations and investigations the police are independent because it is their job to prepare whatever is needed in terms of fulfilling all legal processes that are carried out.⁵

Investigations and investigations into a notary who is suspected of committing the crime of forgery are becoming more complex because there are rights of a notary who must also be considered, there are rules that must be properly considered and there are rights and obligations attached to a notary, because this is also which is a limitation for a notary, because the notary himself in his position is obliged to keep the contents of the deed and information obtained in carrying out his position confidential. In article 322 (the Criminal Code) paragraph 1 states "Anyone who deliberately discloses a secret that must be kept secret because of his position or search, both present and former, is threatened with imprisonment for a maximum of nine months or a fine of up to nine thousand rupiah".

The obligation to maintain the secrecy of the contents of this deed is the reason that is often used to reject the process of investigation and investigation by the police, even though "every legal subject who is questioned by the police as a witness is obliged to give his statement for and so as not to hinder the investigation process and use it."find legal certainty" in the event that a notary is proven to have committed a crime, in this case regarding the forgery of documents and so on.

4. Conclusion

In relation to a notary whose deed or product he made indicates and or is proven to have occurred a criminal act when the Notary Honorary Council did not give approval for the examination of the notary and the taking of minutes of the deed in the context of investigation purposes, it is necessary to note that there is a 2007 Law and Human Rights Meter Regulation concerning taking minuta deed and

⁵Interview with Kasubnit II Unik Idik II Economics Satreskrim Polrestabes Semarang, 7 June 2022

summons of a Notary, this regulation was not revoked by the Regulation of the Minister of Law and Human Rights number 7 of 2016 concerning MKN so that the Regulation of the Minister of Law and Human Rights of 2007 can still apply, in accordance with the Regulation of the Minister of Law and Human Rights Number M.03.HT.03.10 Year 2007 concerning the taking of minuta deed and summons of a notary which is contained in several articles related to summons of a notary and confiscation of minuta deed which is in the possession of a notary.

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