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Compensation for Notaries who are found not guilty in Court Decisions that have Permanent Legal Force

¹ Raudya Niesa Ghani Purnomo, ² Moh. Ali, ³ Ainul Azizah
^{1,2,3} Master of Notary, Faculty of Law, University of Jember, Indonesia

Corresponding Author: **Raudya Niesa Ghani Purnomo**

Abstract

The task of a notary is to pour out the data and information provided by the parties without further investigating the veracity of the data. As we all know, a notary does not have the authority to conduct an investigation or seek material truth from the data and information provided by the parties (appears). This had an impact on the deed he made which later became problematic. Problems arise in terms of the form of notary accountability for the process of making authentic deeds where the data and information are not based on the truth. Facing. The reality is that there are many cases where notaries are involved in criminal acts, so they must be held accountable for their actions either as the main actors or participating in committing criminal acts, especially related to their authority to make authentic deeds. However, over time, based on evidence in court, the notary was declared free and innocent, so the notary was acquitted. As stipulated in the provisions of Article 50 of the Criminal

Code that a person who commits an act to carry out the provisions of the law, may not be punished also applies to a notary as long as what has been done is in accordance with the procedures of the applicable laws and regulations. The Notary Office Law does not regulate the procedures for recovering the rights of a Notary after a period of detention in a court proceeding caused by a case. The Notary Office Law only provides for the application of Civil and Administrative sanctions in the Notary Office Law. The application of these sanctions is not matched by the recovery of the rights of the Notary after being subject to legal sanctions and in particular the restoration of the rights of the Notary after a period of detention in court proceedings. With no regulation of recovery of the rights of a Notary after a period of detention in the process of a court decision in the provisions of the Law on the Position of a Notary, it forms a legal vacuum.

Keywords: Legal Protection, Notary, Criminal

Introduction

The law states that, proof using written evidence or authentic deeds is a recognized means of evidence and some actions are considered very important so that it requires the making of a deed.¹ Notaries in carrying out their positions have the authority to make authentic deeds which are regulated in Article 15 of the Notary Office Law and other authorities stipulated in the law. In addition to having the authority, the notary office law also regulates the obligations and prohibitions where both of these must not be violated.

Notary as a public official who is authorized to make a deed that contains formal truth in accordance with what the parties have told the Notary.² According to Subekti, "the so-called deed letter is a writing that is solely made to prove a matter or event, therefore a deed must always be signed".³ Meanwhile, according to Sudikno Martokusumo, "what is called a deed is a signed letter containing events that form the basis of a right / obligation made from the beginning intentionally for proof".⁴ Thus, the

¹ Habib Adjie, *Merajut Pemikiran dalam Dunia Notaris dan PPAT*, Citra Aditya Bakti, Bandung, 2014, h.21

² Maya Puspita Dewi, Herowati Poesoko, & Aries Harianto, *Prinsip Pembacaan Akta Oleh Notaris Dihadapan Penghadap dan Saksi*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, (2021), h. 91-115.

³ R. Subekti, *Pokok-Pokok hukum Perdata*, Cetakan ke-XXVIII, Intermedia, Jakarta, 1992, h.178

⁴ Sudikno Martokusumo, 1998, *Hukum Acara Perdata Indonesia*, Edisi Ke-6, Liberty, Yogyakarta, 1998, h.142

making of a notarial deed can be used as evidence in a legal dispute which is used as a tool to recall events that have occurred, so that it can be used for evidentiary purposes".⁵

Article 1866 of the Civil Code (hereinafter referred to as the Civil Code) states that, "written evidence is one of the written evidence". Similarly, Article 1867 of the Civil Code stipulates: "Proof by writing is carried out by authentic writings or by writings under hand". "In practice, it is often found that if a notarial deed is disputed by the parties or other third parties, the notary is often drawn as a party who participates in committing or assisting in committing a criminal offense, namely making or providing false information in a notarial deed".⁶

Notarial deeds are made according to the will of the parties concerned to ensure or guarantee the rights and obligations of the parties, certainty, order and legal protection of the parties. Notarial deeds essentially contain formal truths in accordance with what the parties have told the public official (Notary). The Notary is obliged to include in the deed what has really been understood in accordance with the will of the parties and read to the parties about the contents of the deed. The statement or information of the parties by the Notary is set forth in the Notarial deed.⁷

The task of a notary is to pour out the data and information provided by the parties without further investigating the truth of the data.⁸ As we all know, notaries do not have the authority to investigate or seek material truth from the data and information provided by the parties. This has an impact on the deed he makes which later becomes problematic.⁹ Problems arise in terms of the form of notary responsibility for the process of making authentic deeds whose data and information are not based on the truth, this is due to factors from the notary himself due to lack of prudence, negligence or intentional factors and other factors, namely information falsified by the parties facing.

In reality, there are many cases where notaries are involved in criminal offenses, so they must be held accountable for their actions either as the main perpetrators or co-conspirators of criminal offenses, especially related to their authority to make authentic deeds. However, over time, based on evidence in court, the notary is declared free and innocent so that the notary is free. As an example of a case in the Judgment of Review (PK) Number 20 PK/Pid/2020 where based on the Denpasar District Court Decision Number 196/Pid.B/2019/PN Dps dated April 25, 2019, the Defendant Ketut Neli Asih, S.H., (Notary) was found guilty of intentionally providing opportunities or facilities in the crime of fraud as regulated and punishable in Article 378 of the Criminal Code in conjunction with Article 56 paragraph (2) of the Criminal Code in the SECOND indictment of the

Public Prosecutor. To impose a punishment against the Defendant Ketut Neli Asih, S.H., in the form of imprisonment for 2 (two) years 6 (six) months deducted while the Defendant is in detention with the order that the Defendant shall remain in detention. Furthermore, the defendant Ketut Neli Asih, S.H., filed an appeal, where the appeal judge through the Denpasar High Court Decision Number 27/Pid/2019/PT.DPS dated June 27, 2019 corrected the appealed Court decision only regarding the sentence imposed on the Defendant so that it reads as follows: "Sentencing the Defendant to 1 (one) year and 2 (two) months imprisonment and affirming the decision of the Denpasar District Court Number 196/Pid.B/2019/PN Dps dated April 25, 2019 for the rest.

The convicted person's legal counsel filed an application for judicial review of the Denpasar High Court's decision, with several reasons that although there have been *judex facti* decisions which are now requested for review (PK) by the PK Applicant Ketut Neli Asih, S.H., a Notary/PPAT in Denpasar, Bali, it turns out that after tracing the legal facts and analyzing juridically, it was found that the charges of the Public Prosecutor underlying the *judex facti* decision were proven in fact but did not constitute a criminal act of fraud or other criminal acts, on the basis that the Defendant's actions were included as a party exercising his authority as a Notary/PPAT in accordance with the Notary Position Law.

That the reasons for the review have fulfilled the provisions of Article 263 Paragraph (1) and Article 263 Paragraph (2) of the Criminal Procedure Code by finding that there is a real mistake and error of the Judge so that based on the law to grant the request for review from the convicted Ketut Neli Asih, S.H., as the applicant for review which is regulated by law so that based on the law to be granted a request for review where the PK judge cancels the Denpasar High Court Decision Number 27/Pid/ 2019/PT DPS dated June 27, 2019 and gives a verdict, among others:

1. To declare that the convicted person Ketut Neli Asih, S.H., is proven to have committed the act as charged, however the act does not constitute a crime;
2. To release the convicted person from all legal charges (*ontslag van alle rechtsvervolging*);
3. To restore the rights of the convicted person in his/her capacity, position and dignity;

Based on the case above, there was a detention of a Notary who was not proven guilty of committing a criminal act of fraud. The verdict states that the Notary is not proven to have committed a criminal act and releases the Notary from all legal charges and detention and restores the Notary's rights in his ability, position and dignity. With the detention of the Notary, the image of the Notary is seen as bad in the eyes of the public and indirectly the State has deprived the dignity of a Notary. It is as if the Notary has committed a serious illegal act that requires detention. This is very influential in the continuity of the Notary position in the future and is considered to greatly undermine the dignity of a public official whose duties are directly related to the general public. So that in order to create justice for all parties involved, it is necessary to know the procedures for restoring the rights of a Notary after a period of detention in a court process so that the dignity of a Notary returns to what it was before being exposed to legal cases. As stipulated in the provisions of Article 50 of the Criminal Code that: People who perform actions to carry out the

⁵ R. Soegondo Notodisoerjo, *Hukum Notariat Di Indoensia Suatu Penjelasan*, Pers, Jakarta, 1982, h.19

⁶ Habib Adjie, *Hukum Notariat Di Indoensia Tafsiran Tematik Terhadap Undang Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Rafika Aditama, Bandung, 2009, h.24

⁷ *Ibid.*, h.45

⁸ Khafid Setiawan, et.al., *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, 2021, h. 47.

⁹ Bayu Indra Permana, et.al., *Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence*, Jurnal Justiciabellen, Vol. 7, No. 1, 2024, h. 71.

provisions of the law, may not be convicted also applies to notaries as long as what has been done is in accordance with the procedures of the applicable laws and regulations. Based on the background description, it is interesting to study and examine further the restoration of Notary rights after being subject to legal sanctions and in particular the restoration of Notary rights after the detention period in the court process, in a study, with the title: **“Indemnification of a Notary Declared Not Guilty in a Court Decision with Permanent Legal Force”**

Methods

The type of research used in the completion of this thesis is normative juridical research, with a statutory approach (statute approach) and conceptual approach (conceptual approach) and case approach. The legal materials used are primary legal materials and secondary legal materials, which include laws and regulations issued in the jurisdiction itself and judges' decisions. Secondary legal materials are legal materials that are closely related to primary legal materials and can help to analyze and understand existing primary legal materials. Secondary legal materials such as the results of scientific papers of scholars and experts in the form of literature so that they can support, assist and complement in discussing the problems that arise in the context of preparing this thesis. In addition, secondary legal materials are obtained from books, legal articles, legal journals, scientific papers, and other related supporting data. The analysis of legal materials used is descriptive qualitative.

Discussion

Forms of Legal Protection against Notaries who have been Convicted and Dismissed from their Position for Committing Crimes, but are declared not Guilty based on Court Decisions that have Permanent Legal Force

Law enforcement is one of the efforts to achieve or create order, security, and peace in society, both as a preventive effort and eradication or action after a violation of the law. One of the manifestations of development in the field of law is the eradication of criminal acts, which is carried out through the policy of legislation and enforcement of criminal law.¹⁰ Criminal law enforcement is applied with the intention of punishing defendants who are proven to have committed a criminal offense, but in practice there is a possibility that the defendant is not legally and convincingly proven to have committed the crime so that he is acquitted by the court, whose decision has obtained permanent legal force.

Defendants who are acquitted by the court are entitled to claim rehabilitation and compensation, taking into account the losses suffered by the defendant during the trial, from the preliminary examination stage (investigation, investigation, prosecution) to the decision stage (court hearing). Such losses include damage to honor and reputation, loss of liberty, and serious harm, all based on justice and truth.¹¹ Rehabilitation and compensation for

acquitted defendants is a form of application of human rights values and recognition of the rights of defendants. The legal basis for rehabilitation and compensation is contained in Article 9 of the Judicial Power Act which is further elaborated into Article 95, Article 96 and Article 97 of the Criminal Procedure Code. Rehabilitation and compensation for decisions are regulated in Article 95 paragraph (1) and Article 97 paragraph (1) of the Criminal Procedure Code. Article 95 paragraph (1) of KUHAP states that: Suspects, defendants, or convicts have the right to claim compensation for arrest, prosecution, and prosecution or other actions without reason based on the law or because of errors against persons or laws. Furthermore, Article 97 paragraph (1) of KUHAP states that: A person is entitled to rehabilitation if the court decides to acquit or dismiss all charges with permanent legal force.

Rehabilitation and compensation for defendants who are not proven to have committed a criminal offense are based on the principles of human rights and judicial procedures manifested in the Universal Declaration of Human Rights in 1948, namely arbitrary arrest, detention or exile are prohibited. Article 9 of Law No. 48 of 2009 on Judicial Power, namely:

1. Every person who is arrested, detained, charged or tried without justification under the law or because of a mistake as to his person or the law applied, shall have the right to claim compensation and rehabilitation.
2. Officials who intentionally commit the acts referred to in paragraph (1) shall be punished in accordance with the provisions of laws and regulations.
3. Provisions regarding the procedures for the prosecution of compensation, rehabilitation, and the imposition of compensation shall be regulated by law.

The regulation of this issue in the Indonesian courts can be found in Article 9 of Law No. 48 of 2009, which addresses a defendant who is acquitted by the court because he or she was not found guilty in a trial that was open to the public. This is referred to in Articles 95 and 97 of the Criminal Procedure Code. A verdict that “releases or acquits the defendant of all charges” (*vrijspraak* or *onslag rechtsvervolgung*).

The legal procedures for rehabilitation and compensation have been regulated in the Criminal Procedure Code (KUHAP), but in reality, there are still problems between the implementation of rehabilitation and compensation for defendants who are acquitted. In this case, rehabilitation can be provided directly, namely at the same time as the court decision is read out, although there are still shortcomings in its dissemination, while compensation has never been applied, so problems can be raised in the implementation of rehabilitation and compensation for defendants who are acquitted.

In an examination at trial there is a possibility that the defendant is not legally and convincingly proven to have committed a criminal offense, as referred to in the explanation of Article 191 paragraph (1) of the Criminal Procedure Code which states: “What is meant by the act charged to him is not proven legally and convincingly, is that it is not sufficiently proven according to the judge's judgment on the basis of proof using evidence according to the general provisions of criminal procedure” So it can be said that the defendant's guilt and / or the act charged is not proven based on valid evidence as stipulated in Article 184

¹⁰ Angel Nikho, Cindy Sekarwati, Zain Irawan, *Penegakan hukum di Indonesia: Peran Pemerintah dalam Mewujudkannya*, Surakarta, Universitas Sebelas Maret, Vol. 2., No. 6., 2023, h. 416.

¹¹ Andi Hamzah, *Pengantar Hukum Acara Pidana Indonesia*, Ghalia Indonesia, Jakarta, 1985, h.63

of the Criminal Procedure Code at the examination in court so that the defendant is acquitted. The concept of acquittal comes from the concepts of verdict and freedom. The decision is the result of investigation and evaluation in writing or orally as a whole. While the definition of acquittal in everyday terms includes release from all legal charges, what is meant by acquittal (*vrijspraak*) is a defendant who in a trial is not legally proven to have committed the act charged.

An acquittal is formulated in Article 191 paragraph (1) of the Criminal Procedure Code: If the court is of the opinion that from the results of the trial examination, the guilt of the defendant for the acts charged to the defendant has not been proven legally and convincingly, the defendant shall be acquitted. Acquittals can occur, among others, because:

1. Errors regarding the article charged.
2. Errors regarding the application of "deelneming".
3. Errors regarding the perception of "state financial losses"
4. Errors regarding the elements of the offense.
5. The fallacy of "omission delict" Rehabilitation and Compensation in Criminal Justice.

The law governing this rehabilitation is Law no. 48 of 2009 on Judicial Power, as stated in Article 9, as follows:

1. A person who is arrested, detained, charged or tried without justification based on law or because of a mistake concerning his person or the rules applied, shall have the right to claim compensation and rehabilitation.
2. Any official who intentionally commits the act referred to in paragraph (1) shall be punishable.
3. The methods for claiming damages, rehabilitation & waiver of damages shall be further regulated by law.

Rehabilitation is further regulated in the Criminal Procedure Code, Chapter XII, Second Part, Article 97, namely:

1. A person is entitled to rehabilitation if the court is acquitted or sentenced according to all regulatory demands whose decisions have permanent legal force.
2. The rehabilitation is given and included at the same time in the court decision as referred to in paragraph (1).
3. The request for rehabilitation of a suspect for arrest or detention without a statutory reason or for an error in the person or the rule applied as referred to in Article 95 paragraph (1) whose case is not submitted to the district court shall be decided by the pretrial judge as referred to in Article 97.

Rehabilitation is one of the rights owned by the defendant, whose existence is evidence of the guarantee and protection of human rights values.¹² The implementation of rehabilitation refers to the principle of presumption of innocence as stipulated in the provisions of the Criminal Procedure Code which states that everyone must be considered innocent before a court decision stating his guilt and obtaining permanent legal force. This principle means that a person who is a defendant is not necessarily guilty, as

¹² Barhamudin, Abuyazid Bustom, *Ganti Rugi Dan Rehabilitasi Terhadap Terdakwa Yang Diputus Bebas Menurut Kitab Undang-Undang Hukum Acara Pidana (KUHP)*, Fakultas Hukum Universitas Palembang, Vol. 20, No. 2, 2022, h. 193.

long as there is no court decision stating his guilt and there is even a possibility that the defendant will be acquitted by the court. However, in reality, this principle is contrary to the condition of our society which tends to assume that a person who becomes a defendant is definitely guilty and has been proven to have committed a criminal offense (crime), especially if the defendant during the judicial process was arrested, detained, prosecuted and even had a trial before the court.¹³

The implementation of providing rehabilitation for defendants who are acquitted has been carried out in accordance with the Criminal Procedure Code, which is given and included at the same time in the court decision, as stipulated in Article 97 paragraph (2) of the Criminal Procedure Code, then efforts are made to restore the good name of the defendant who was acquitted, by posting the contents of the rehabilitation decision on the announcement board. Furthermore, it is also explained that rehabilitation is given directly in the court decision and announced by the court clerk by placing it on the court notice board. This announcement notifies the public that the court has granted rehabilitation to the defendant, so that the good name, dignity and honor of the defendant is expected to be restored immediately.

The implementation of compensation is different from providing rehabilitation, compensation cannot be given at the same time as the court decision is read, but must be prosecuted by the defendant himself. However, in reality compensation was never implemented, this was because no defendant filed a claim for compensation on the grounds that the compensation rules were unclear, apart from that there was a possibility that the defendant who was acquitted was quite satisfied with the court's decision and no longer want to deal with the judicial process. According to Article 11 of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, payment of compensation from the Minister of Finance is within 14 days. Rehabilitation and compensation are forms of human rights protection whose implementation is intended to protect the rights of suspects or defendants.

Indonesia as a legal state provides legal protection and gives equal status to every legal subject. This can be seen from the provisions in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states, "All citizens have equal status under the law and government and are obliged to uphold the law and government without exception." This provision explicitly states that there is legal protection provided by the Indonesian state to all its citizens. Protection for all Indonesian people is further confirmed in the amendment to the 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1), which states that: "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. ". The existence of the two articles above can provide the meaning that Indonesia as a natural law country in the form of its legislative products must always be able to guarantee legal protection for all its citizens, and must even be able to capture the aspirations that develop in society, as is the case with the form of legal protection for

¹³ Martiman Prodjohamidjojo, *Ganti Rugi dan Rehabilitasi Ghalia Indonesia*, Jakarta, 1986, h.18

notaries in carrying out his profession in connection with a legal case where he was later arrested and dismissed but was declared not guilty based on a legal decision that has permanent legal force.

The task of a notary is to convey the data and information provided by the parties without further investigating the veracity of the data.¹⁴ As we all know, a notary does not have the authority to carry out investigations or seek material truth from the data and information provided by the parties (persons). This had an impact on the deed he made which later became problematic. Problems arise regarding the form of notary responsibility of the task of a notary is to convey the data and information provided by the parties without further investigating the veracity of the data. As we all know, a notary does not have the authority to carry out investigations or seek material truth from the data and information provided by the parties (persons). This had an impact on the deed he made which later became problematic. Problems arise regarding the form of notary responsibility for the process of making authentic deeds whose data and information are not based on truth. This is due to factors within the notary himself due to lack of caution, negligence or intentional factors and other factors, namely information falsified by the parties involved. Facing. Or the process of making authentic deeds whose data and information are not based on truth. This is due to factors within the notary himself due to lack of caution, negligence or intentional factors and other factors, namely information falsified by the parties involved. Facing.

There are many cases where notaries are involved in criminal acts, so they have to be held accountable for their actions, whether as the main perpetrator or participating in committing criminal acts, especially regarding their authority to make authentic deeds. However, over time, based on evidence in court, the notary is declared free and not guilty so that the notary is free. As an example of the case in Judicial Review Decision (PK) Number 20 PK/Pid/2020 where based on Denpasar District Court Decision Number 196/Pid.B/2019/PN Dps dated April 25 2019, the Defendant Ketut Neli Asih, S.H., (Notary) was declared proven guilty of committing a criminal act of intentionally providing an opportunity or means for a criminal act of fraud as regulated and punishable by crime in Article 378 of the Criminal Code in conjunction with Article 56 paragraph (2) of the Criminal Code in the SECOND indictment of the Public Prosecutor. Sentencing the Defendant Ketut Neli Asih, S.H., in the form of imprisonment for 2 (two) years 6 (six) months minus the time the Defendant was in custody with an order that the Defendant remain in detention. Furthermore, the defendant Ketut Neli Asih, S.H., filed an appeal, where the appeal judge through the Denpasar High Court Decision Number 27/Pid/2019/PT.DPS dated 27 June 2019 corrected the Court's decision that was requested to be appealed only regarding the sentence imposed on the Defendant so that the ruling stated as follows: "Sentenced the defendant to prison for 1 (one) year and 2 (two) months and confirmed the

¹⁴ Vitto Odie Prananda, *Perlindungan Hukum Terhadap Notaris Atas Pembuatan Akta Oleh Penghadap Yang Dinyatakan Palsu (Analisis Putusan Mahkamah Agung Republik Indonesia Nomor 385 K/PID/2006)*, Jurnal HUMANI (Hukum dan Masyarakat Madani), Vol. 8, No. 2., 2018., h. 133.

decision of the Denpasar District Court Number 196/Pid.B/2019/PN Dps dated April 25 2019. Furthermore, the convict Ketut Neli Asih, S.H., and his legal advisor did not submit a cassation effort, therefore the high court's decision was inkracht.

The Convict's legal advisor submitted a request for extraordinary legal action for Judicial Review of the High Court's decision on several grounds that even though there have been *judex facti* decisions, PK Petitioner Ketut Neli Asih, S.H., Denpasar Notary/PPAT work is now requesting a review (PK)., Bali, it turns out that after tracing the legal facts and analyzing them juridically, it was found that the Public Prosecutor's charges which were the basis for the *judex facti* decision were proven in fact but did not constitute a criminal act of fraud or other criminal acts, based on the actions of the Defendant, including as a party exercising his authority as a Notary /PPAT in accordance with the Notary Position Law.

That the reasons for the review have fulfilled the provisions of Article 263 Paragraph (1) and Article 263 Paragraph (2) of the Criminal Procedure Code with the discovery of real errors and errors by the Judge so that it is based on law to grant the request for review from the convicted person Ketut Neli Asih, S.H., as the review applicant return which is regulated by law so that based on the law the request for review is granted where the PK judge cancels the Denpasar High Court Decision Number 27/Pid/2019/PT DPS

Another example of a case where a Notary was declared not proven guilty is the Supreme Court Decision Excerpt Number 41 PK/Pid/2021, where the Panel of Judges in their decision stated:

1. Granted the request for judicial review from the applicant for judicial review/convict Hartono, S.H.
2. Cancel the decision of the Supreme Court of the Republic of Indonesia Number 534 K/Pid/2020 dated 30 June 2020.
3. Retry: Declare that the Defendant Hartono, SH has not been legally and convincingly proven guilty of committing the acts as alleged in the Public Prosecutor's indictment.
4. Acquit the convict therefore from all charges.
5. Order the convict to be released immediately.
6. Restoring the rights of convicts in terms of their abilities, position and honor and dignity.
7. Determine that the evidence be returned by the Public Prosecutor to be handed over to those most entitled to it (a complete description of the evidence is as contained in the Denpasar High Court Decision Number 78/PID/2019/PT.DPS dated 21 January 2020).
8. Charge case costs at all levels of justice and at the judicial review level to the State.

In the Decision of the Supreme Court of the Republic of Indonesia Number 41 PK/PID/2021, the ability, position, and dignity as a Notary has been restored and there is also an element of rehabilitation and compensation for losses. There is already a law that regulates and allows people to apply for rehabilitation and compensation losses, but in practice the compensation provided by the State in law is deemed to be less significant or in other words less than the reality of natural losses.

Based on this case example, there has been an arrest of a Notary who was not proven guilty of committing a criminal act of fraud. The decision stated that the Notary was not

proven to have committed a criminal act and released the Notary from all legal demands and detention and restored the Notary's rights in terms of his abilities, position and honor and dignity. By detaining a notary, the image of notaries is seen as bad in the eyes of the public and indirectly the state has robbed a notary of the honor and dignity of a notary. It is as if the notary has committed a serious illegal act so that he is required to be detained.

This has a big impact on the continuity of the Notary's position in the future and is felt to seriously undermine the honor and dignity of a public official whose job is to deal directly with the general public. So that in order to create justice for all parties involved, it is deemed necessary to know the procedure for restoring the rights of a Notary after a period of detention in the court process so that the honor and dignity of a Notary returns to what it was before being exposed to a legal case. As regulated in the provisions of Article 50 of the Criminal Code that: People who commit acts to implement the provisions of the law, may not be punished, this also applies to notaries as long as what has been done is in accordance with the procedures of the applicable laws and regulations.

The provisions of Law 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN) as amended by UUJN-P do not regulate the procedures for restoring Notary rights after a period of detention in court proceedings resulting from a case. UUJN and UUJN-P only provide for the application of Civil and Administrative sanctions in UUJN which can be seen in the provisions of Article 84 UUJN and Article 85 UUJN. The application of these sanctions is not balanced with the restoration of the Notary's rights after being hit by legal sanctions and in particular the restoration of the Notary's rights after a period of detention in court proceedings.

In establishing a standard of authority for Notaries, sanctions are necessary. This is used if a Notary who violates authority will receive sanctions. Therefore, the Notary is obliged to be responsible for the position he holds, including in carrying out his authority. In carrying out this authority, the Notary must have a responsible attitude towards the products he issues. The existence of responsibility or responsibility begins with the existence of an obligation that must be obeyed which causes the birth of responsibility. Obligations are something that must be done by a Notary while Prohibitions are something that a Notary must not do.¹⁵

The obligations of a notary are contained in the provisions of Article 16 of the Law on the Position of Notaries, while the Prohibition of Notaries is contained in Article 17 of the Law on the Position of Notaries. A notary is someone who is seen as having an important role in society because of his authority in making authentic deeds. Therefore, a Notary must maintain his behavior, honor and dignity to avoid sanctions. Sanctions are a legal tool to create law enforcement and to make a person or society orderly regarding the legal rules that have been made, if someone violates the rules of obligations or prohibitions that have been made in the regulations. Sanctions are punishment and are also a means of coercion for someone who does not obey the laws and regulations.

¹⁵ Hartanti Sulihandari & Nisya Rifani, *Prinsip-prinsip Dasar Profesi Notaris*, Dunia Cerdas, Jakarta, 2013, h.16

In criminal law there are 3 concepts, including criminal acts/criminal acts, criminal liability or mistakes, punishment. Based on this concept, a Notary who has been proven to have committed a criminal act is obliged to be responsible for what he did as a perpetrator of a criminal act. Notaries who make mistakes will be subject to criminal sanctions according to the actions they have committed. Notaries who have been sentenced to prison based on a court decision may be subject to sanctions contained in the Notary Position Law.¹⁶

Based on the discussion regarding sanctions against notaries which are linked to the theory of justice, that notaries as bearers of the mandate and trust of the community and their important role in legal traffic, it is appropriate for Notaries to receive justice along with legal protection in carrying out their office, including allegations of criminal elements, the principle of presumption of innocence must be prioritized and the serious role of associations to provide legal protection. To declare a notarial deed invalid, the invalidity must be proven from the physical, formal and material aspects of the notarial deed.

The assessment of notarial deeds must be carried out with the principle of "presumption of validity" which is used to assess notarial deeds, namely that notarial deeds must be considered valid until a party declares the deed is invalid.¹⁷ To declare or judge the deed to be invalid, a lawsuit must be filed in the general court. The truth of a Notary's deed is formal truth, meaning that the basis for making the deed refers to the identity of the comparator and formal documents as support for a legal act, so that the deed made by the Notary is formal truth, it is called that because the Notary does not carry out investigations and research into the field regarding formal documents attached so that the Notary's deed is not material truth as is the search for truth and justice in the legal process in court.¹⁸

Justice is an abstract thing; how can you realize justice if you don't know what justice means? For this reason, it is necessary to formulate a definition that is at least close and can provide an idea of what justice means.¹⁹ The definition of justice is very diverse, it can be shown from the various opinions expressed by experts in the field of law who provide different definitions of justice.²⁰ Justice according to Aristotle is appropriateness in human actions. Feasibility is defined as the midpoint between the two extremes of too much and too little. Both the extreme ends of it involves two

¹⁶ Sjaifurrahman, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Mandar Maju, Bandung, 2011, h.36

¹⁷ Farzan Sirajudin, *Implikasi Hukum Terhadap Penggunaan Duplikasi Nama Persekutuan Komanditer Yang Belum Pernah Didaftarkan Ke Pengadilan Negeri Menurut Permenkumham Nomor 17 Tahun 2018*, Jurnal Officium Notarium, Vol. 1., No.1., 2021, h. 39.

¹⁸ Ahmad Reza Andhika, *Pertanggungjawaban Notaris Dalam Perkara Pidana Berkaitan Dengan Akta Yang Dibuatnya Menurut Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004*, Premise Law Journal, Vol. 2., No. 6., 2016., h. 4.

¹⁹ Muhammad Tahir Laming, *Keadilan Dalam Beberapa Perspektif; Suatu Kajian Beberapa Paradikma Tentang Keadilan*, Meraja Journal, Vol. 4., No. 2. 2021., h. 270.

²⁰ Muhammad Muslehuddin, *Filsafat Hukum dan Pemikiran Orientasi, Studi Perbandingan Sistem Hukum*, Tiara Wacana, Bandung, 1991, h. 29.

people or objects. If the two people are equal in a predetermined measure, then each person will receive an unequal share, while a violation of this proportion means injustice. Justice is an action or decision given regarding something (either winning/giving or dropping/rejecting).²¹ Meanwhile, according to John Rawls, justice is the main policy in social institutions, as is truth in systems of thought. A theory, however elegant and economical, must be rejected or revised if it is untrue; likewise laws and institutions, no matter how efficient and neat, must be reformed or abolished if they are unjust.²² Every person has honor that is based on justice so that even the entire community cannot cancel it. On this basis, justice rejects that the loss of freedom for some people can be justified by the greater gain of others. Justice does not allow sacrifices imposed on a few to be outweighed by the benefits enjoyed by the many. Therefore, in a just society, the freedom of citizens is considered established, the rights guaranteed by justice are not subject to political bargaining or calculations of social interests.²³

From this research, one important thing is obtained that the Law on the Position of Notaries does not regulate explicitly and in detail regarding notaries who commit criminal acts in connection with their profession, so that criminal acts committed will still refer to the Criminal Code (KUHP) so that Notaries who dishonorably discharged due to a violation in the event that a Notary has been sentenced to imprisonment based on a court decision which has permanent legal force for committing a criminal act against his deeds (forgery) and a prison sentence of 5 years or more, then the protocol is handed over to another Notary appointed by the minister based on the proposal of the Central Supervisory Council.

A Notary can be subject to criminal sanctions related to his authority to make deeds which often intersects with formal aspects and can be due to criminal fraud (forgery) whether unintentional (lack of accuracy) or intentional or known by the Notary concerned, so that the sanctions imposed are Article -articles in the Criminal Code (KUHP) because the UUN only regulates sanctions for the Code of Ethics, Civil and Administrative Code. A notary in carrying out his position as a public official who makes an authentic deed is actually between the possibility or impossibility of falsifying the deed with the party appearing to ask for the deed to be made.²⁴ This is because if a notary as a public official no longer upholds his professional ethics/deviates from UUN legal regulations or for reasons of wanting to benefit one of the parties to take part and help other parties and vice versa, a deed containing false information is produced.

A Notary can be held responsible if it can be proven that the Notary is guilty. In relation to Notary errors, what is used is

²¹ Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis*, Nuansa dan Nusamedia, Bandung, 2004, h. 24

²² Ahyuni Yunus, *Aspek Keadilan Perjanjian Baku (Standard Contract) Dalam Perjanjian Kredit Perbankan*, Maleo Law Journal, Vol. 3, No. 7, 2017. h. 112.

²³ John Rawls, *A Theory of Justice*, London, Oxford University Press, terjemahan dalam Bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, 2006, *Teori Keadilan*, Pustaka Pelajar, Yogyakarta, 2005, h.9

²⁴ Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, ((2021)), h. 69-90.

beroeopsfout, which is a special term aimed at errors committed by professionals with special positions, for example Doctors, Advocates, or Notaries.²⁵ These mistakes are made in carrying out an office.²⁶ However, to examine the meaning of error in criminal law, you can refer to the definition of error in general, and specifically in criminal law. If these aspects are proven to be violated by the Notary, then the Notary concerned may be subject to civil or administrative sanctions, or these aspects are limitations which, if proven, can be used as a basis for imposing administrative sanctions and civil sanctions against the Notary.

A notary is required in carrying out his profession not to behave in a disgraceful manner and demean the honor and dignity of his profession and position. According to A.A. Andi Prayitno, "Notaries have a very noble position and position, have very high and honorable dignity and respect, because this position is a position of trust given by the government on behalf of the state to meet the needs of the community in the field of civil law."²⁷

The provisions of Article 13 of Law 30 of 2004 in conjunction with Law 2 of 2014 regulate that "Notaries are dishonorably dismissed by the Minister because they are sentenced to imprisonment based on a court decision which has obtained permanent legal force for committing a criminal act which is punishable by imprisonment for 5 (five) years or more". As a position of trust, the nobility and dignity of the Notary's office must be maintained, both when carrying out the duties of the office and the life behavior of the notary which directly or indirectly affects the nobility and dignity of the Notary's office.²⁸ This dishonorable dismissal is an implementation of the notary's position as a position of trust. Apart from that, the notary in question is deemed to have undermined the nobility and dignity of the notary's position.

In relation to the UUN jo UUN-P, in fact the provisions of the KUHP have regulated judicial review efforts which are often referred to as extraordinary legal efforts, in this case regulated in Article 263 of the KUHP. If a notary has been dishonorably dismissed based on Article 13 UUN jo UUN-P, then submits a review and is declared not guilty.²⁹ So, the legal protection that can be received by a notary in this case has not been explicitly regulated in UUN in conjunction with UUN-P or related laws and regulations. Dishonorable dismissal based on Article 13 is an implementation of the position of notary as a position of trust. Apart from that, the notary in question is deemed to

²⁵ Pengurus Pusat Ikatan Notaris Indonesia, *Jati Diri Notaris Indonesia*, Gramedia Pustaka, Jakarta, 2008, h.63

²⁶ Andika Putra Eskanugraha, *Penandatanganan Akta Notariil Diluar Kantor Notaris Yang Masuk Dalam Lingkup Wilayah Jabatannya*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, (2020), h.74-93.

²⁷ A.A. Andi Prayitno, *Seri A Kewenangan Notaris dan Contoh Bentuk Akta*. PMN, Surabaya, 2018, h. 41

²⁸ Khafid Setiawan, Bhim Prakoso, & Moh. Ali, *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, (2021), h. 43-52.

²⁹ Dinda Suryo Febyanti, Fanny Tanuwijaya, Echwan Iriyanto, *The Legal Consequences of Heirs Not Submitting the Notary Protocol to The Regional Supervisory Board*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), h. 119-129.

have undermined the nobility and dignity of the notary's position. Furthermore, the decision to dismiss the notary from his position and the appointment of another notary as the protocol holder is determined no later than 30 (thirty) days from the date of the court decision and has permanent legal force. This is regulated in Article 70 of Minister of Law and Human Rights Regulation Number 62 of 2016 jo. Minister of Law and Human Rights Regulation Number 25 of 2014. According to the provisions of Article 13 UUJN jo UUJN-P, there are several elements that can cause a notary to be dishonorably dismissed, namely:

1. Carried out by the Minister
2. Sentenced to prison based on a court decision that has permanent legal force
3. Committing a criminal offense is punishable by imprisonment for 5 (five) years.

The minister in question is a minister whose field of duties and responsibilities includes the field of notarial affairs, as regulated in the provisions of Article 1 number 14 UUJN in conjunction with UUJN-P. Meanwhile, what is meant by "a court decision which has permanent legal force", it is necessary to first understand that a court decision which has not yet obtained permanent legal force is a decision which, according to statutory provisions, there is still an opportunity to take legal action against the decision. For example, resistance (verzet), appeal or cassation, while a decision that has obtained "permanent legal force" is a decision that according to statutory regulations there is no longer an opportunity to take legal action such as resistance (verzet), appeal or cassation to oppose the decision. So, it can be concluded that the decision cannot be contested."³⁰

The legal protection that a notary has who is dishonorably dismissed is based on the provisions of Article 13 UUJN in conjunction with UUJN-P, namely by taking legal action as regulated in the provisions of Article 1 point 12 of the Criminal Procedure Code. However, because Article 13 UUJN in conjunction with UUJN-P contains the element of "decisions with permanent legal force", the ordinary legal remedies regulated in the KUHAP cannot be used any longer, in this case namely opposition, appeal and cassation. The legal remedy of judicial review is provided to provide an opportunity for every person involved in criminal justice to prove that he is innocent, until there is a court decision that has permanent legal force stating otherwise. As was done by the Notary in the case studied, he was proven to have committed a criminal act of fraud.³¹ Regarding the Court Decision which is used as the basis for dishonorably dismissing a notary based on Article 13 UUJN in conjunction with UUJN-P, legal action can be taken against this decision. Even though you cannot submit ordinary legal remedies, you can still submit extraordinary legal remedies, namely judicial review as regulated in the provisions of Article 263 of the Criminal Procedure Code. Extraordinary legal action/judicial review itself only applies to court decisions that have obtained permanent legal force. After filing a judicial review, in this case the defendant submitted

³⁰ Abdul Kadir Muhammad, *Hukum Acara Perdata Indonesia Cet. V.* Citra Aditya Bakti, Bandung, 1992, h.15

³¹ Maraja Malela, *Perlindungan Hukum Terhadap Notaris Yang Telah Diberhentikan Berdasarkan Pasal 13 Undang Undang Jabatan Notaris*, Jurnal Sapientia et Virtus, Vol. 4., No. 2., 2019. h. 106.

a review and was proven not to have committed a criminal act of fraud.

Therefore, it can be concluded that the remaining legal remedy is extraordinary legal remedy, in this case namely judicial review as regulated in the provisions of Article 263 of the Criminal Procedure Code as formal law or procedural law. So, in fact, even though the mechanism for re-appointment is not clearly regulated in the UUJN in conjunction with UUJN-P, it can be interpreted that the process of submitting or requesting re-appointment is equated with the process of requesting appointment as in Article 3 of Permenkumham Number 25 of 2014.

Restoration of the rights of a notary who has been dismissed, but is proven not guilty based on a judicial review decision, namely by re-appointing him as a notary. However, this regulation is not clearly regulated regarding the mechanism. However, it is possible to submit a request for re-appointment directly or address it to the Minister of Law and Human Rights, as regulated in Article 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2014 concerning Requirements and Procedures for Appointment, Transfer, Dismissal and Extension Term of Office, that:

- 1) An application to be appointed as a Notary Public is submitted to the Minister by filling in the Notary Appointment Form.
- 2) The application as intended in paragraph (1) is only for 1 (one) domicile in the district/city.

Apart from the method above, there are other ways to provide restoration of rights to the notary, namely that the notary has the right to request restoration of his or her rights that have been violated. The right referred to in this case is to request compensation and rehabilitation. What is meant by compensation is regulated in the provisions of Article 1 point 22 that: The right of a person to obtain fulfillment of his demands in the form of compensation for a sum of money for being arrested, detained, prosecuted or tried without reason. Based on law or due to a mistake regarding the person or the law applied in the manner regulated in this law.

In addition to these provisions, according to the provisions of Article 1 point 23 of the Criminal Procedure Code which determines that: The right of a person to receive restoration of his or her rights in terms of ability, position and honor and dignity given at the level of investigation, prosecution or trial because of being arrested, detained, prosecuted or tried without a valid reason. Law or for reasons of error regarding the person or the law applied in the manner regulated by this law.

Efforts to apply for compensation and rehabilitation as mentioned above are carried out through Pretrial efforts, because compensation and rehabilitation is the authority of the Pretrial as regulated in the provisions of Article 77 of the Criminal Procedure Code that, the district court has the authority to examine and decide, in accordance with the provisions regulated in the law. This law is about:

1. Whether or not the arrest, detention, termination of investigation or termination of prosecution is legal;
2. Compensation and/or rehabilitation for a person whose criminal case is stopped at the investigation or prosecution level.

Therefore, it can be concluded that the restoration of rights for notaries who were dishonorably dismissed based on

Article 13 UUJN in conjunction with UUJN-P, but who were not proven guilty in the Judicial Review Decision, is entitled to receive compensation from the state and restoration of their good name through rehabilitation.

Conclusion

The form of legal protection for notaries who have been detained and dismissed for committing a criminal act, but are declared not guilty based on a court decision that has permanent legal force, is through compensation and rehabilitation. The notary as the defendant was acquitted referring to Article 9 of Government Regulation Number 27 of 1983 jo. Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code which in reality, the amount of compensation is appropriate and balanced with the material losses suffered by the defendant. A notary has the right regulated in the provisions of the Criminal Procedure Code to prove that he is innocent by taking legal action as regulated in Article 1 point 12 of the Criminal Procedure Code. In this case, the only legal remedies available are extraordinary legal remedies as regulated in Article 263 of the Criminal Procedure Code. The result of the decision from extraordinary legal efforts that can prove that the notary is innocent can overturn the previous court decision.

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