

Notary Criminal Liability on the Fictional General Meeting of Shareholders (Gms) Deed

Article History
<p>Received: 26.02.2022 Revision: 07.03.2022 Accepted: 19.03.2022 Published: 30.03.2022</p>
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How to Cite the Article:
<p>Fendy Ridwan Andriyanto, <i>et al.</i>, (2022). Notary Criminal Liability on the Fictional General Meeting of Shareholders (Gms) Deed. <i>Int Aca. J Law</i>, 3(2), 6-14.</p>
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<p>DOI: 10.47310/iajl.2022.v03i02.002</p>

Abstract: This study aims to examine and analyze the responsibility of the Notary to the Fictitious General Meeting of Shareholders (GMS) which was made not in accordance with the existing legal rules. This research is a normative legal research that is descriptive in nature with a statutory approach and a case approach. The sources of legal materials used are primary legal materials and secondary legal materials. The results of this study are based on Decision Number 69/Pid.B/2016/PN.Plk the judge gave his legal considerations by stating that the notary or the defendant had violated Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) of the 1st Book of the Law. Criminal Law (hereinafter referred to as the Criminal Code) and must be held criminally responsible for his actions because there has never been a meeting between shareholders and a notary. Notaries in carrying out their duties and positions are regulated in Law Number 30 of 2004 concerning Notary Positions, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions which are special provisions or *lex specialis*. In this case, the notary's actions are categorized as having fulfilled the criminal elements in the Criminal Code which are general provisions or *lex generalis*. Therefore, every notary cannot be separated from sanctions if he violates the applicable laws and regulations.

Keywords: Notary, Fictitious General Meeting of Shareholders, Criminal Liability.

INTRODUCTION

Notaries are public officials who are authorized to make authentic deeds and have other authorities. Based on Law Number 30 of 2004 concerning Notary Positions, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary

Positions (hereinafter referred to as UUJN), Article 1 number 1 states that " Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws. The position of a notary is a position of trust, so the nobility and dignity of the position of a notary must be maintained, both when carrying out his duties and the behavior of a notary's life as a human being which directly or indirectly affects the dignity of the notary position, as well as the position of a notary as a public official.¹ The presence of a notary to meet the needs of the community who require authentic documents so that they have the responsibility to serve the community and can be sued if their work is not in accordance with the provisions of the applicable regulations. This relates to the form of notary accountability for the deed he made.² The deed made by a notary can be the legal basis for the status of one's property, rights and obligations. Mistakes on a notarial deed can cause a person's rights to be revoked or a person's burden to be burdened with an obligation.³

In the Civil Code there are 2 types of deeds, namely authentic deeds and private deeds. Meanwhile, in notarial practice, the notarial deed is divided into two, namely, the partij deed (*partij acte*) or party deed and the relaas deed (*ambtelijke acte*) or official deed. In the partij deed there is always the strength of material evidence so that it is considered perfect evidence. This is because in the party deed, the truth of the contents of the deed is determined and recognized by the parties and officials who explain what they see and know from the parties. On the other hand, the

¹ Habib Adjie, *Indonesian Notary Law (Thematic Interpretation of Law Number 30 of 2004 concerning Notary Positions)*, Refika Aditama, Bandung, 2008, p. 40

² Habib Adjie, *Law on Notary Positions as Unification of Legal Arrangements concerning Notaries*, Renvoi Journal, edition No. 28/Vol. III, September 2005, p. 38

³ Abdul Ghofur Anshori, *Indonesian Notary Institute from Legal and Ethical Perspectives*, UII Press, Yogyakarta, 2009, p. 25

relaas deed does not always have material evidence, meaning that everyone can deny the truth of the authentic deed as long as they can prove it, because what the official sees and does is only based on what the interested party wants.⁴

One example of an authentic deed made by a notary is the deed of the general meeting of shareholders (GMS) of a limited liability company (PT). The position of a notary becomes important, especially in terms of making the minutes of the general meeting of shareholders (GMS). The role of the notary in making the minutes of the general meeting of shareholders (GMS) can be seen from the public opinion adopted in each authentic deed, in which case the notary is responsible for the correctness of the contents contained in a deed, for what is seen and witnessed in relation to a incidents of legal action. So that the deed made has a proving value as an authentic deed.

The strength of the minutes of the general meeting of shareholders (GMS) has juridical power, when the decision of the general meeting of shareholders (GMS) is stated by a notary in the form of a deed, either in the form of a deed of relaas or in the form of a deed of partij. The deed of the minutes of the general meeting of shareholders (GMS) is included in the relaas deed, in which the notary explains/provides in his position as a public official testimony of all what he has seen, witnessed and experienced by other parties. So that the relaas deed can have the power as an authentic deed.⁵

In writing this legal journal, there are cases of legal violations caused by the mistakes of the notary himself or the client's which were carried out intentionally or unintentionally. If a notary in carrying out his duties and position is proven to have acted against the law/deviated from the laws and regulations, a notary can be held accountable in civil, criminal, and administrative forms. As in the case of Decision Number 69/PID.B/2016/PN.PLK dated 18 April 2016, the notary was asked to be held criminally responsible for making the deed of the GMS of PT. Anugerah Alam Katingan is not in accordance with the UUJN and the Limited Liability Company Law (UUPT). The deed of the GMS was declared fictitious, because based on legal facts the GMS was never held. This information was obtained from two shareholders of PT. Katingan Nature Award. So that the issuance of the deed can be said to have administrative defects.

According to the provisions of Article 15 paragraph (1) UUJN, explaining that "a notary has the authority to make an authentic deed regarding all acts, agreements, and stipulations required by legislation and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law. Then the provisions of Article 16 paragraph (1) letter a UUJN, explains that "in carrying out his office, notaries are obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions". The above provisions explain that, a notary is an official who is authorized to make a deed in accordance with the laws and regulations.

Based on the description above, the authors are interested in researching and studying more deeply about the criminal liability of a notary to the Fictitious General Meeting of Shareholders (GMS) Deed. Based on the things described above, in this paper will be studied: how is the criminal liability of a notary towards the making of a fictitious General Meeting of Shareholders (GMS) deed?

RESEARCH METHODS

In this study, the authors used legal research. Legal research has a definition, namely research based on legal materials (*library based*) which focuses on reading and studying primary and secondary legal materials. So that legal research is carried out to produce arguments, theories or new concepts as prescriptions in solving problems at hand.⁶

The nature of this legal research is prescriptive, meaning that as a prescriptive science, legal science studies the purpose of law, legal concepts, legal norms, legal rules, validity of the rule of law and values of justice.⁷ The approach that the author uses in this research is the statutory approach and the case approach. The statutory approach (*statute*

⁴ Abdulkadir Muhammad, *Indonesian Civil Procedure Code*, Citra Aditya Bakti, Bandung, 1992, p. 136

⁵ Mustakim, *Position of Minutes of General Meeting of Shareholders (GMS) as Authentic Deed in Relation to Notary Responsibilities as Public Officials*, *Kanun Jurnal Ilmu Hukum*, edition No. 1/ Vol. 18, April 2016, p. 159-172

⁶ Peter Mahmud Marzuki, *Legal Research*, Prenadamedia Group, Jakarta, 2014, pp. 60

⁷ *Ibid*, p. 41-42

approach) is carried out using an approach using legislation and regulations, while the *case approach* is carried out using an approach using cases that have occurred.⁸

Study using the types and sources of primary legal materials, namely the Criminal Code (hereinafter referred to as the Criminal Code), UUPT, UUJN, Decision Number 69/Pid.B/2016/PN.Plk and secondary legal materials, namely text books written legal experts, legal journals, articles, internet, and other sources that examine or discuss the criminal liability of notaries in this writing. In this research, the writer uses deductive analysis technique. The deduction method is a method that stems from the submission of a major premise which is then proposed a minor premise, then a conclusion is drawn from the two premises.⁹

RESULTS OF RESEARCH AND DISCUSSION

On Notary Criminal Liability

Notary is given attributive authority by the state, therefore he is obliged to serve the community to meet their needs in regulating legal relations between one another, which is then poured in writing in the form of a deed and can used as evidence in the form of an official document and has perfect evidentiary power.¹⁰ According to one theory of authority from HDvan Wijk / Willem Konijnenbelt, defining "attribution is the granting of government authority by legislators to government organs".¹¹ Notaries carry out their duties and positions are bound by the rules that have been regulated in the UUJN.

There is one case that happened to a notary in carrying out his duties and positions in Palangka Raya City. This case began in 2003 when a company named PT. Anugerah Alam Katingan, which is engaged in the mining business. This is based on the deed of establishment number 39 dated December 31, 2003. Then, it was amended by the deed of amendment to the articles of association number 39 dated December 31, 2005. PT. Anugerah Alam Katingan has been approved as a legal entity based on a decree from the minister of law and human rights (hereinafter referred to as Menkumham) number C0993 HT.01.01. TH 2006 dated April 3, 2006.

At the end of 2009, PT. Anugerah Alam Katingan intends to hold a GMS. One of the shareholders named Adinata Tupel before December 23, 2009 contacted the notary by telephone, conveying and informing that a GMS will be held for amendments to the articles of association, changes in share ownership and changes in management. GMS PT. Anugerah Alam Katingan was held on December 31, 2009 which resulted in deed number 101. Due to problems with the administrative system of legal entities (hereinafter referred to as *sisminbakum*) of the ministry of law and human rights (hereinafter referred to as the Ministry of Law and Human Rights), the request for approval of the GMS deed cannot be processed until it is declared expired. At the suggestion of the Ministry of Law and Human Rights, then a deed of GMS was made on November 23, 2010 which resulted in deed number 109.

Deed number 101 dated December 31, 2009 and deed number 109 dated November 23, 2010 made by notary Agustri Paruna, SH, were used by Adinata Tupel to sell the company's shares. With this sale and purchase, all of the company's shares have been transferred to other parties. The dispute arose when two shareholders of PT. Another Anugerah Alam Katingan, namely Sulastri and Sriwati (heirs of Hernalius Encu Dehen) reported the actions of Adinata Tupel and the notary to the Palangka Raya District Court. These two shareholders felt aggrieved by the deed number 101 and deed number 109 which were used as the basis for selling all of the company's shares. Both shareholders considered the GMS to be fictitious, because they had never attended a meeting together or signed the deed file related to the GMS.

According to the provisions of Article 15 paragraph (1) UUJN, explaining that "a notary has the authority to make an authentic deed regarding all acts, agreements, and stipulations required by legislation and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or

⁸ *Ibid*, p. 133

⁹ *Ibid*, p. 89

¹⁰ Luh Putu Cynthia Gitayani. "Application of professional ethics by a notary in providing services to clients". *Acta Comitas*, edition No.3/Vol.3, 2018, p. 428.

¹¹ Denico Doly. "Authority of a Notary in Making Deeds Related to Land". *Journal of the State of Law*, edition No.2/Vol.2, 2011, hlm. 275

excluded to other officials or other people stipulated by law. One of the authentic deeds that can be made by a notary is the deed of the GMS of PT.

The strength of the minutes of the general meeting of shareholders (GMS) has juridical power, when the decision of the general meeting of shareholders (GMS) is stated by a notary in the form of a deed, either in the form of a deed of relaas or in the form of a deed of partij. In the event that a notary is present at the general meeting of shareholders (GMS), the deed made by the notary is in the form of a relaas deed which is called the minutes of the general meeting of shareholders (GMS) and if only the decision of the meeting is submitted to the notary to be included in a deed, then the deed is classified into a partij deed which is named the statement of decision of the general meeting of shareholders (GMS). Both forms of deed containing the minutes of the general meeting of shareholders (GMS) contain evidentiary value, as long as the procedures and requirements meet the provisions of the law. The deed of the minutes of the general meeting of shareholders (GMS) is included in the relaas deed, in which the notary explains/provides in his position as a public official testimony of all what he has seen, witnessed and experienced by other parties. So that the relaas deed can have the power as an authentic deed.¹²

Thus, notaries in carrying out their duties and positions must always be guided by the laws and regulations, code of ethics, and morals. Because, if there is a violation committed by a notary, it will be very detrimental to the parties. If the deed he made contains a legal defect due to the notary's error, either negligence or intentional, then the notary must provide moral and legal responsibility. An authentic deed made by or before a notary can be used as evidence in a legal dispute that is used as evidence to recall events that have occurred, so that it can be used for evidentiary purposes.

The case in Decision Number 69/Pid.B/2016/PN.Plk dated 18 April 2016 regarding the responsibilities of a Notary in the Fictitious GMS Deed, the panel of judges gave the following decisions:

1. Stating that the defendant Agustri Paruna, SH Bin Senas Sukur has been legally and convincingly proven guilty of committing the crime of "participating in placing false information in an authentic letter".
2. Sentencing the defendant, with imprisonment for 3 (three) months.
3. Determining the period of detention that has been served by the defendant will be deducted entirely from the sentence imposed.
4. Determining that the defendant remains in custody.
5. Determine if the evidence remains attached to the case file.
6. Burden the defendant to pay court fees of Rp. 1000. (one thousand rupiah).

Regarding the judge's decision in the decision Number 69/PID.B/2016/PN.PLK regarding the fictitious GMS Deed made by a notary, the judge in his legal considerations stated that the notary was legally and convincingly proven guilty of committing the crime charged by the prosecution. public for his actions.

Considering that a defendant can be declared legally and convincingly guilty of committing a criminal act if the defendant's actions fulfill all the elements of the crime charged by the public prosecutor and the defendant is able to take responsibility for his actions.

Considering that the defendant has been indicted by the public prosecutor with a single charge as stipulated in Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. To prove the elements, the panel of judges made legal considerations, which can be described as follows:

1. Whoever element

Considering that what is meant by whoever is every person (*natuurlijke persoon*) who is capable according to law (*recht bekwaam*) supports rights and obligations, and can be held accountable for the actions committed.

Considering, that whoever in the *aquo* is the defendant Agustri Paruna, SH, who was proposed by the public prosecutor as a defendant with all his identities. Thus, there is no *error in persona* case *aquo*, and based on these considerations, the element of whoever has been fulfilled.

2. Order to include false information in an authentic deed, regarding a matter whose truth must be stated by the deed.

¹² *Ibid*, p. 159-172

Considering that what is meant is ordering to include false information in an authentic deed, regarding a matter whose truth must be stated by the deed.

Considering, whereas based on the testimony of witness Herlinawaty and witness Sovia Agustina, deed number 101 dated 31 December 2009 and deed number 109 dated 23 November 2010 was made by the defendant. The two witnesses explained that at the request of Kusnadi and Adinata Tupel, the defendant drafted the deed, then the defendant asked the witness to type and edit the concept made by the defendant, and after the witness finished typing and editing the words contained in the deed, the witness print and then hand it over to the defendant.

Considering, whereas in the deed it is stated that Mrs. Sulastri sold 50% of his shares to Adinata Tupel or 2,500 (two thousand five hundred) shares and Mr. Hernalis Encu Dehen sold 1,000 (one thousand) shares to Adinata Tupel and 1,000 (one thousand) shares were sold to Ir. Masdandung. The statement about the sale of shares mentioned is not true, according to the witness Mrs. Sulastri and witness Mrs. Sriwati explained that she had never sold her shares. During the trial the defendant was unable to prove the truth of the deed he made, either by submitting evidence of a letter that could explain the occurrence of the GMS, the resignation of the shareholders, and the defendant could not prove the truth of the sale of the shares.

Considering that from the considerations above, the panel of judges is of the opinion that the element of ordering to include false information in an authentic deed, regarding a matter whose truth must be stated by the deed has been fulfilled.

3. With the intention of using or ordering someone else to use the deed, as if the statement was true.

Considering that this element is alternative, so that if one of these elements is fulfilled, then the other elements do not need to be considered, in other words, that the panel of judges there is no need to consider the elements as a whole.

Considering, that from the facts of the trial from the testimony of witness Herlinawaty, witness Sovia Agustina, witness Kusnadi, witness Ir. Masdandung, witness Adinata Tupel, it was revealed that deed number 101 was made by the defendant, because there were problems at the Ministry of Law and Human Rights which was declared expired. Then, as a solution to the problem, deed number 109 was issued. Based on the testimony of witnesses who explained that PT. Anugerah Alam Katingan has been sold to witness Harun Abidin, using the deed of establishment of PT. Anugerah Alam Katingan number 39 of 2003, deed number 39 of 2005, and deed number 109 of 2010. Deed number 109 made by the defendant contains false information or does not match the facts.

Considering, that based on these considerations, the element with the intention to use or to order another person to use the deed as if the information is true has been fulfilled.

4. If the use of the deed can cause losses

Considering that the meaning contained in this element is fluctuating so that it causes losses that are not absolute but have the potential to cause harm to other parties.

Considering, that from the facts of the trial from the testimony of the witness, Mrs. Sulastri, Mrs. Sriwati, witness Ir. Masdandung which basically explained that after the sale of shares in PT. Anugerah Alam Katingan, it turns out that the witnesses did not get any money from the sale proceeds, and the witnesses in this case are the aggrieved parties.

Considering, that from these considerations, the element if the use of the deed can cause harm has been fulfilled.

5. They do, who order to do it, and who participate in doing

Considering, that this element is also alternative, meaning that if one part of the element is proven, then the other part does not need to be proven again, and the panel of judges can consider the part of the element that is proven in accordance with legal facts revealed at trial.

Considering that the panel of judges considers the element of taking part in doing (*mede plegen*) and what is meant by participating in committing are those who take part in a criminal act on condition that there is conscious cooperation from each participant without the need for an agreement but there must be intentionality to achieve a result. in the form of a crime.

Considering, that from the facts of the trial from the testimony of witness Adinata Tupel, witness Kusnadi, that the emergence of deed number 101 at the request of the witness. Whereas deed number 101 was made by the defendant as if the GMS of PT. Anugerah Alam Katingan at the notary's office in the presence of all shareholders.

Considering, that when the defendant made deed number 101, the witness Mrs. Sulastri and witness Mrs. Sriwati has never appeared and has never submitted her resignation from her position, and has never sold her shares. From this fact, the defendant with full awareness continues to issue a deed which incidentally contains false information, the existence of a lie in the deed should be realized by the defendant, in this case the element of intent is on the defendant and not negligence, because in the making of the deed number 101 there was no element of pressure. or coercion from other parties against the accused.

Considering, that from these considerations it is proven that there was cooperation between Adinata Tupel, Kusnadi, and the defendant so that the issuance of deed number 101 and then deed number 109 as a deed of confirmation. From these considerations, the elements of those who do, who order to do, and participate in doing have been fulfilled.

Based on the legal facts described in the trial for Decision Number 69/Pid.B/2016/PN.Plk, that the composition of the shareholders of PT. Anugerah Alam Katingan based on deed number 39 dated December 31, 2005 consists of 3 (three) people, namely Adinata Tupel acting as the main director, Sulastri acting as director, and Hernalis Encu Dehen acting as commissioner. As of December 31, 2009, PT. Anugerah Alam Katingan intends to hold a GMS which aims to amend the articles of association, change share ownership and change management. According to the provisions of Article 76 paragraph (1) of the Company Law, it explains that "GMS is held at the domicile of the company or at the place where the company carries out its main business activities as determined in the articles of association". In this case, the GMS was held at the notary's office at Jl. Dr. Murjani No. 45, Langkai Village, Pahandut District, Palangka Raya City. This is in accordance with the provisions of Article 76 paragraph (1) UUPT, GMS PT. Anugerah Alam Katingan is located where the company conducts its business activities.

According to the provisions of Article 81 paragraph (1) of the Company Law, it explains that "the board of directors shall summon shareholders before holding the GMS". In this case, the board of directors did not summon shareholders regarding the existence of the GMS agenda. One of the shareholders, namely Adinata Tupel, on December 23, 2009, secretly contacted a notary to make a deed of the GMS of PT. Anugerah Alam Katingan (without the knowledge of the other two shareholders). Then, the notary made a deed on the grounds that he was familiar with Adinata Tupel, which in fact had never held a GMS of PT. Katingan Nature Award.

According to the provisions of Article 16 paragraph (1) letter a UUJN, explains that "in carrying out his office, a notary is obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions". In this case, the notary acts deviating from the existing rules. Notaries cannot maintain the mandate in carrying out their duties and positions. In addition, the notary also clearly sided with one party, namely Adinata Tupel. This means that in carrying out their duties and positions, a notary does not stand in a neutral/impartial position.

In this case, the notary made a deed of minutes of the GMS number 101 dated December 31, 2009 which contains changes in the composition of shareholders. According to the provisions of Article 21 paragraph (4) of the Company Law, it explains that "changes to the articles of association as referred to in paragraph (2) and paragraph (3) are contained or stated in a notarial deed in Indonesian". Based on these provisions, the function of a notary when the GMS is held is to record the minutes of the GMS, this deed includes a *relaas deed (ambtelijke acte)* or official deed. Thus, the form and content of the deed are fully the responsibility of the notary. This is because the notary becomes the minutes of the GMS of PT. The notary sees everything that has been heard, seen and on what was decided at the meeting, then pours it into the deed. Due to a problem with the SISminbakum of the Ministry of Law and Human Rights, the request for approval of the GMS deed cannot be processed until it is declared expired. At the suggestion of the Ministry of Law and Human Rights, deed of GMS number 109 dated 23 November 2010.

Deed number 101 dated 31 December 2009 and deed number 109 dated 23 November 2010 were used by Adinata Tupel to sell the company's shares. Based on this sale and purchase, all of the company's shares have been transferred to another party. According to the provisions of Article 55 of the Company Law, it explains that "in the articles of association of the company it is determined how to transfer rights to shares in accordance with the provisions of the

legislation". Then, according to the provisions of Article 57 paragraph (1) of the Company Law, it explains that "in the case of the articles of association, conditions regarding the transfer of rights to shares can be regulated, namely: a. must offer to shareholders with a certain classification or other shareholders, b. must obtain prior approval from the company's organs, and/or c. must obtain prior approval from the competent authority in accordance with the provisions of the legislation". In this case, the transfer of shares of PT. Anugerah Alam Katingan does not comply with existing regulations. This is due to the transfer of shares without prior offering to other shareholders and not obtaining prior approval from the company's organs.

Two shareholders of PT. Anugerah Alam Katingan which is legally valid, namely Sulastri and Sriwati (heirs of Hernalius Encu Dehen) feel aggrieved by deed number 101 and deed number 109 which is used as the basis for the sale of all company shares. Both shareholders considered the GMS to be fictitious, because they had never attended a meeting nor signed the deed file related to the GMS of PT. Katingan Nature Award. According to Dr. Thea Farina, SH, M.Kn, who is an expert in this case, explained that "if there is a board member who has died but the deed is stated to come before a notary, then the deed is a fake deed". The deed stated that the GMS was attended by Adinata Tupel, Sulastri and Hernalis Encu Dehen. Based on information from Sriwati, Hernalis Encu Dehen passed away on November 27, 2006. Meanwhile, the GMS of PT. Anugerah Alam Katingan was only held on December 31, 2009.

Sulastri and Sriwati reported Adinata Tupel and the notary to criminal law enforcement officials. Both were reported to the authorities in separate files. The notary has been accused of Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) of the 1st Criminal Code. Article 266 paragraph (1) of the Criminal Code, explains that "anyone who orders to enter false information into an authentic deed regarding something whose truth must be stated by the deed, with the intention of using or ordering other people to use the deed as if his statement was in accordance with the truth, is threatened, if the use can cause harm, with a maximum imprisonment of seven years. Then, Article 55 paragraph (1) 1 of the Criminal Code, explains that "those who do, who order to do, and who participate in doing the deed". In this case, the notary's actions in making deed number 101 dated December 31, 2009 and deed number 109 dated November 23 have violated several rules contained in UUJN and UUPT. The two deeds resulted in losses suffered by one of the parties, in this case Sulastri and Sriwati.

According to Lanny Kusumawati, the legal responsibility of a notary in carrying out his profession is classified into 2 (two) forms, namely:¹³

- a. Civil law liability, if a notary makes a mistake due to breaking a promise as specified in the provisions of the Civil Code Article 1234 or violating the law as specified in the provisions of the Civil Code Article 1365. The error has caused losses to the client or other parties.
- b. Criminal law liability, when a notary has committed a legal act prohibited by law or committed an error/act against the law either intentionally or negligently causing harm to another party.

Criminal liability is born with the continuation of objective reproaches (*verwijbaardheid*) against actions that are declared as criminal acts based on applicable criminal law, and subjectively to perpetrators who meet the requirements to be subject to criminal charges because of their actions.¹⁴ So, criminal liability is talking about mistakes in criminal law. The element of error in criminal law is the most important element, because based on the principle of *geen straf zonder schuld* or *liability based on fault/guilt or culpability*, the existence of an error is the first to be sought in every criminal act.

The punishment of a notary in carrying out his duties and positions can be carried out with the following limitations:¹⁵

- a. there is a legal action from a notary against the formal aspect of the deed which is intentional, full of awareness and conviction and planned, that the deed made before a notary or by a notary jointly (agrees) to be used as a basis for committing a crime;
- b. there is a legal action from a notary in making a deed before or by a notary which if measured based on the UUJN amendments is not in accordance with the UUJN amendments;

¹³ Lanny Kusumawati, *Responsibilities of the Notary Position*, Refika Aditama, Bandung, 2006, p. 49

¹⁴ Yudi Wibowo Sukinto, *Crime of Smuggling in Indonesia*, Sinar Graphic, Jakarta, 2013, p. 72

¹⁵ Billy Adhi Pramarta, Rahmad Safa'at, Prija Djatmika. "Criminal Liability of Notaries and Parties Falsifying Certificates of Inheritance Objects". *Scientific Journal of Pancasila and Citizenship Education*, edition No.1/Vol.3, 2018, p. 26

- c. the notary's actions are not appropriate according to the agency authorized to assess the actions of a notary, in this case the MPN.

In this case, after an examination and legal process have been carried out, the notary's actions are deemed to have fulfilled the elements contained in Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. Notaries intentionally, with full awareness and conviction, participated in entering false information into deed number 101 dated December 31, 2009 and deed number 109 dated November 23, 2010. It was as if the information contained in the two deeds was true. Then, with the existence of the two deeds, there were parties who were harmed, namely Sulastri and Sriwati. Against a notary, a decision which has permanent legal force (*inkracht van gewijsde*) is stated in Decision Number 69/Pid.B/2016/PN.Plk dated April 18, 2016.

In legal science, there is an adage "*lex specialis derogate lex generali*" which means Specific provisions override general provisions. Notaries in carrying out their duties and positions are regulated in the UUJN, which aims, among other things, to protect the notary profession. UUJN is a special provision or *lex specialis*. In this case, the notary's actions are categorized as having fulfilled the criminal elements in the Criminal Code which are general provisions or *lex generali*. For his actions, the notary has been sentenced to imprisonment for 3 (three) months.

Law Number 30 of 2004 concerning Notary Positions, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions does not regulate criminal sanctions against notaries. However, in practice it is found that a legal action or violation committed by a notary related to an authentic deed made is qualified as a criminal act. If a notary deviates from the deed he made and creates a criminal case, he must be held accountable for what he has done. The punishment imposed on a notary is in the form of an act committed by a notary in his capacity as a public official who has the authority to make a deed. This is not in the context of the individual as a citizen in general.

CONCLUSION

The Notary's criminal liability against the Fictitious General Meeting of Shareholders (GMS) Deed as in the case of Decision Number 69/Pid.B/2016/PN.Plk, the judge in giving his legal considerations that the Notary intentionally, with full awareness and conviction, participated in entering false information into deed number 101 dated December 31, 2009 and deed number 109 dated November 23, 2010. It is as if the information contained in the two deeds is true. It has fulfilled the offense of Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) of the 1st Criminal Code . In law, there is an adage "*lex specialis derogate lex generali*" which means that specific provisions override general provisions. Notaries in carrying out their duties and positions are regulated in the UUJN, which aims, among other things, to protect the notary profession. UUJN is a special provision or *lex specialis*. In this case, the notary's actions are categorized as having fulfilled the criminal elements in the Criminal Code which are general provisions or *lex generali*. For his actions, the notary has been sentenced to imprisonment for 3 (three) months. It can be concluded that special provisions cannot always override general provisions. Therefore, every notary cannot be separated from sanctions if he violates the applicable laws and regulations.

SUGGESTIONS

In carrying out their duties and positions, notaries must be based on the provisions of Law Number 30 of 2004 concerning Notary Positions, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, Notary Code of Ethics and related laws and regulations. So that the role of the Notary in providing services to the community in making the deed can provide legal certainty for the deed he made and not cause harm to the parties.

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