

# Criminalization of Notary Profession in Indonesia

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**Abstract—** The background of this research was intended to study the problem of punishment for Notary profession in Indonesia. The phenomenon of criminalization towards Notary is a form of criminalization. Therefore, in order to facilitate the difference in perception between the Notary and the law enforcement officers, a criteria or punishment for crime application is required for Notary as a profession as normative reference that could provide legal protection for Notary in the future.

**Keywords:** Notary, profession, punishment, criminalization.

## I. INTRODUCTION

The objective of this research is to formulate a model of legal protection for the profession notary in the process of punishment. Such objective comes from an assumption that a punishment for notary in the context of duty and authority implementation as common officials requires certain limit or criteria that must be fulfilled in order to prevent criminalization towards notary profession.

Punishment for notary could not just be executed based on the legal principles of common crime as stated in the Criminal Code [1], since notary is a profession created by the state to serve the people in terms of civil code and administration[2]. Law enforcement officers must have an adequate understanding about the public notary in order to process the criminal law enforcement in the scope of public notary[3], which does not end in the criminalization of profession notary.

The phenomena of punishment for Notary has been a legal and social fact that could not be ignored. However, in practice, there are still gap and different perspective between the Notary and law enforcement in applying the criminal sanction to Notary. In one side, Notary tends to refer closely to The Law of Notary Profession (UUJN) which did not mention the provision of criminal sanction in addressing the phenomena of punishment for Notary[4].

As the consequences of such different perspective, a perception arises among the Notary that the phenomenon of punishment towards Notary is a form of criminalization. In order to facilitate the different perception between the Notary and the law enforcement officers, a criteria or punishment for crime application is required for Notary as a profession as normative reference that could provide legal protection for Notary in the future.

Notary is public officials for they were designated and terminated by the government[5]. The position of Notary has been created by the state as an implementation of the obligation of the state to provide service to the people,

especially in producing authentic evidence acknowledged by the state[6].

Notary runs the duty of the state and the deed they made, i.e. *minuta* (original deed), is state gazette[7]. Notary is called as public officials because they are designated and terminated by the government, they are given an authority and obligation to serve the public in certain matters, hence they have to carry out government's authority. Notary as public officials is given an authority by the state to state the occurrence of legal relationship among the parties in a deed recording directly the clauses of agreement of the parties promising[8]. The promises that have been stated in the deed are the reflection of sincere will from the parties.

In carrying out the position, Notary must be professional based on the noble personality by always carrying out their duties based on the applied constitution as well as upholding the Notary Professional Code as the guidelines that must be obeyed. Notary needs to pay attention to what is called as professional behaviour with certain elements such as: (a) to have solid moral integrity; (b) to be honest to the client or to themselves (intellectual honesty); (c) aware of their authority boundaries; and (d) not merely based on materialistic consideration[9].

In the practice of justice, Notary who has been proven to violate certain clauses of the Criminal code are often charged with criminal sanction. In this case, Notary usually is treated as the suspect, witness or expert. Investigator from the Indonesian Police Force usually calls the Notary and place them as witness over dispute of the parties of which the deed made by them or in front of them. Notary being called as the witness in such investigation process frequently level up their legal status into suspect after the investigation was carried out by the Police Force.

Field fact shows that many Notary charged with the criminal sanction as the form of responsibility over the violation they have done in the implementation of their position as Notary. Punishment for Notary referring to the conclusion of clauses within the Criminal Code without any clear basic understanding about the world of notary and the scope of responsibility of the Notary could be said as the unjustifiable action juridically and scientifically. Many cases of punishment towards Notary frequently are caused by the less comprehensive understanding from the law enforcement apparatus as well as the parties who are not satisfied with the service of the notary and their products of law, so that Notary in running its position is frequently processed legally in terms of crime.

The process of punishment for profession Notary basically is not a simple matter. There are many aspects that must be considered so that it does not sacrifice the legal protection for Notary running their duty and authority either as public officers or as a profession. Profession Notary may not be sacrificed for the sake of law enforcement based on the unclear legal interpretation, moreover in the law of crime, there is a term adage that the witness of a crime is “the last medication” (*ultimumremedium*). If the law enforcement does not understand many aspects related to the notary world, then such phenomenon of punishment to Notary would tend to lead to criminalization of profession Notary.

## II. METHODS

This research is normative law research, i.e. a type of law research placing the concept of law as a rule. As for the method used in this research was normative juridical method, i.e. a process to find a regulation of law, principle of law and doctrine of law to answer legal issues being encountered. In normative law research, the data needed was secondary data. The secondary data has a highly wide scope, including personal letters, diaries, up to legal documents issued by the government.

## III. RESULTS AND DISCUSSION

Law enforcement officers generally argued that Notary could be punished if they were proven to perform criminal offense in the implementation of their duty and authority as a profession or as a public official[10]. However, the perspective of the law enforcement apparatus around the boundaries of punishment towards Notary varied and not entirely the same.

Punishment towards notary, in general, is related to the authentic deed they made[11]. The cases that frequently occurred usually were related to fraud, forgery, fake information related to the authentic deed and etc. The suspicion of criminal action towards Notary usually was related to the actions maintained within the clauses of 263, 264, 266, 378, and 372 of the Criminal Code.

Punishment for Notary does not have certain specific boundaries. As far as the elements of crime as ruled in the Criminal Code were met, then a Notary could be punished. In other words, punishment for a Notary does not refer to UUJN entirely, it refers to Criminal Code instead.

In the investigation process over the suspicion of criminal action performed by a notary, an investigator usually was guided by the subjective and objective elements of criminal action. If the subjective element and criminal action performed by the Notary could be proven, then the investigator would continue to the subjective element. On the contrary, if the subjective element was not proven, then the investigator would terminate the legal process of the related notary. In other words, even though the action that was suspected as criminal action existed, but if the bad intention of

the Notary could not be proven, then the investigator would not continue the legal process towards such notary.

To prove the subjective element in the handling of criminal action issue performed by the Notary, the investigator usually referred to the Clause 16 about the Obligation of the Notary in implementing their position, especially the prudence or the thoroughness of the Notary in checking or verifying the documents and the information from the parties, for example the subject of law performing the agreement, the content of the agreement of the parties, ID or other documents presented before the Notary and etc. The prudence of the Notary, in this case, became a parameter for the investigator to determine the existence of subjective element in handling criminal matter performed by the Notary.

In terms of procedure, the effort of the investigator to prove the *mens rea* was not based on the information from the Notary first, but based on the information from the parties, especially the parties that had been upheld as the suspect[12]. If the suspect convincingly stated that the Notary involved in crime, then the investigator would examine the Notary. In other words, the effort to prove the subjective element in handling the criminal issue involving the Notary remained refer to the provision of Clause 184 of Criminal Code.

Punishment towards notary entirely referred to the provisions in Criminal Code[10]. Practically, frequently, Notary performed criminal action related to the authentic deed they created. In some cases, Notary was involved in criminal action as the party who participated, but in another case, the Notary themselves were the one who made fake information or information which was not the real condition. The fact that the Notary themselves sometimes became the active actor in forgery was ironic, since Notary should be passive or only recorded the information from the parties.

In the general explanation of Act No 30 of 2004 juncto Act No. 2 of 2014 about Notary Position, it was mentioned that authentic deed substantially contained formal truth based on what was informed by the parties to the Notary. However, the Notary had an obligation to enter that what was inside the Deed, the Notary had indeed been understood and based on the will of the parties, i.e. by reading it so that the content of the deed was clear. It means that even though the responsibility of the notary was only formal responsibility towards the deed they made, yet, the notary in making an authentic deed, must have been prudent in presenting the will of the parties into the deed they made.

## IV. CONCLUSIONS

Punishment for Notary could only be executed if the Notary violate the procedure of authentic deed making as regulated in UUJN. The limit of penal responsibility of the Notary highly depends on the type of authentic deed the notary made. The notary could only be asked for their responsibility over the formal aspect of the deed they made. In terms of violation of formal aspect, the notary could be determined as the actor

(plegen), instead only as inclusion (medeplegen) of criminal action.

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