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NOTARY POSITION AS DEFENDANT OR CO-DEFENDANTS AGAINST AUTHENTIC DEED THAT THE APPEARERS USE FALSE IDENTITIES

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ABSTRACT : The objective of this research was to review a notary that has been placed as co-defendant or defendant against an authentic deed based on false identity. The research used normative method by observing literature or secondary data. The result of this study is the notary must be not placed or positioned as co-defendant or defendant, because the authentic deed is not notary action and or legal action, but those action of the appearers themselves that stated into notarial deed.

Keywords - notary, law, position, authentic deed, false identity, defendant, co-defendants.

I. INTRODUCTION

A notary is public officials has authority to make authentic deed as long the certain authentic deed drafting is not specific to other public officials. Beside that, the authentic deed that made before the notary, is not only must made by the law, but also it is needed by interested parties to ensure right and obligations of the parties for certainty, discipline, and law protection for interested parties as well the entire citizen. One of notary's obligations is act honestly, accurate, independent, non unilateral and keeping parties interest related whatever legal action in authentic deed drafting. (Calvin & Amirudin, 2018). Notarial deed is made because of direct involvement by the parties that appear before the notary, they are main roles in authentic deed drafting. The notarial need authentically states action, deals, will that be witnessed by the appearers and the witness (Wawan Tunggal Alam, 2001:85). Follow-up of the duty conducted by the notary has legal consequences, or in other words. Each notarial deed can be evidence tools.

When there are dispute among the parties, the judge hold authorities and single decisions over the dispute. Because of that, the judge hold the right to examine about what or how the action can be debatable. (A. Kohar, 1983:28). In practice, sometimes notary made a mistake in deed drafting. The root problem can be appear directly from notary mistakes or indirectly from the appearers. (Sri Utami, 2015). If the mistakes are proven then the deed is not longer authentic dan it is not legitimate legally or null and void. Additionally, internal factor as society moral where notary faces the false document then the document contains legal consequences for the owner. (Centre management of Notary Association, 2008:226). In this case, if it make harms for related parties with the deed, sometimes the notary can be sued both criminally and civil. According to law classification based on the interest that protected by the law, criminal law includes the public law. (Falahdika & Aprilianto, 2020). Criminal penalty are given in criminal sentence and civil sentence are given in compensation to related parties. (Tan Thong Kie, 2007 : 149). Criminal penalty over the notary under general criminal regulation that is KUHP. Notary position law doesn't regulate the punishment criminal penalty over the notary.

Additionally, notary that has been punished criminally is considered commits small violation, so he is only sentenced penalty such as civil penalty or reprimand. But in practice, the notary can commit violation in Notary Position Law, actually he can be sentenced administrative penalty or civil or ethic codes of Notary Position, but it can be qualificated as Notary legal action. These aspects are limitations if it can be proven then it could be basis for giving administrative and civil penalty against the notary. But in fact, other side of the limitations can be basis to sentence notary with reason that notary had made false letter or false deed. (Pasal 263, 264 and 266 KUHP) with qualification as criminal action that committed by the notary. This is might be occurred because of the appearers use false identities that are not suitable with its authentic or false identities. It has consequences that many problems arise because of the false deed. Notary as public official that his ultimate product is authentic deed, then automatically the products are binded in civil law especially evidence law. In practice, sometimes notary is placed as defendant or co-defendant by other parties, that see the notary action

included against the law. In this problem, is it correct to place the notary as defendant or co-defendant concerning his deed that made before and by the notary concerned.

II. WRITING METHOD

The study reviewed notary position as defendant and co-defendant against the authentic deed that the appearers use false identities. The method that used was normative that was the research conducted by observing literature or secondary data (Soeryono Soekanto, 2007:5). This research also used collecting data such as literature, with reading and studying the primary data, they are law regulation and secondary material data namely some literature, books, international journal, national journal and other documents to review the problems of this study

III. DISCUSSIONS

Indonesia notary is classified as latin notary that is serves society needs in private and civil, and notary is *amaneunsis*, they are only conclude what it is said. Notarius in Roman Law is Draughtsman, *an amneunsis* is person who notes what should do by other or recognizes what are written by others. Characteristics of Latin notary are firm and neutral in his position and attitude. The serving given by notary close related with trust problems, in other words, the state gives strong trusty to notary (Julen & Sudarwanto, 2018). Notary should not makes a deed without request. Notarial deed must written and readable and fulfil the regulation. (Partomuan, 1996). The authentic deed is strongest evidence tools and fully that has important roles in each law relation and society lives.

In various business relationship, the activities in social, land, banking, and others. There are much legal action concerning contract or agreement between two parties or more. It is needed legal certainty as submission basis to the contract (Fathul & Istislam, 2020). The needs about written evidences in form authentic deed more increasing along with demands to legal certainty in any economic and social relationship, both national, regional, and global. Through the authentic deed which determines clearly about rights and obligations, ensuring legal certainty and also it is expected to avoid disputes. Even on the disputes it is inevitable, in that disputes settlement, the authentic deed as strongest evidence and fully gives real supporting to settle the case. Agreement is a legal action where one or more parties binding themselves to others. (Maniah & Wibisono, 2020). An authentic deed can be said as parties request to make an agreement. Dealing among the individuals that binded each others (Faizal & Srihandayani, 2020). The agreement among them implies that each parties will fulfilled and agreed each other. Because the notarial deed is obdience under article 1320 Civil Code concerning legitimate requirements of the agreement, as follow:

- a. Agree to bind themselves
- b. Capable to make an agreement
- c. Certain things
- d. Causa halal.

A notary does his duties making an authentic deed, has obligations to conduct provisions under the notary position law according to article 16 of notary position law that a notary is required to act honestly, accurate, independent, non unilateral and keeping the parties interest related to legal action. Because of that, notary must scrupulous and carefull as well accurate when making an authentic deed. The procedures of drafting the deed are request mails or documents that required to be stipulated in a deed. The documents is required by the notary to attach its fotocopy in original deed is appearers identities card (Rahmad, 2012). Notary makes sure the appearers capable to do legal action to deed that be made.

The requirements that must be fulfilled by the appearers is regulated in article 39 of Notary position law as follows:

Article 39

- (1) The appearers must meet the requirements as follows:
 - a. At least aged 18 years old or married
 - b. Capable to do legal action
- (2) The appearers must known by notary or introduced to him by 2 known witnesses aged 18 years old or married and capable to do legal action or introduced by other 2 appearers.

The introduction as above mentioned verse 2 clearly stated in the deed.

Related with notary authority, notary only allowed doing his duties in determined area and it is stipulated in Notary position law as well in that area notary authorized. If the provisions does not considered, then the deed that notary made is not legitimate. Notary has 4 authorities, they are:

- a. Notary has authorities along related to the deed that he made
- b. Notary has authorities along related to person who has interest the deed made
- c. Notary has authorities along related to the place where the deed is made.

- d. Notary has authorities along related to the time when the deed is made. (G.H.S Lumban Tobing, 999:49-50)

Notary as public officials that his ultimate products is an authentic deed, then automatically the products is binded under civil law provisions especially in evidence law.

It is not rarely an authentic deed is in trouble causes the notary is placed as co-defendant and defendant against his deed. According to court verdict no. 287/Pdt.G/2014/PN.Skt, the notary has been sued because the deed he made is false based on information. A lawsuit/sue is a civil right each person and notary that sued in inevitable position, he must face it. On the other side there are lawsuits does not be accepted because the lawsuits is not fully with parties. That is mean the notary doesn't placed as co-defendant and defendant. In that case, the judges in Indonesia must establish consistency to prevent different handling among the court concerning that case. (Habib Adjie, 2017:91). Additionally, notary is not a party that contained in the deed he made, because non unilateral. The authentic deed usually covers formal facts based on parties information to notary (Sela & Hermawan, 2020). The notary does not has parties but he can provide the legal way that apply, in order to parties means that asking written evidences will occur law relationship among the parties, can be supported through the right ways (Koesbiono, 1996). Thus their means could be reached according their desire, here is the notary must has wide legal knowledge to place rights and obligations of the parties proportionally.

Notary position and functions based on deed characteristics he made as follow:

- a. Provides authentic evidences that there are informations given by the parties to notary and stipulated into the deed. In that deed notary ensures that the parties really give the information that contained in that deed concerned.
- b. Provides authentic evidences that is not about what described to notary, but the authentic evidences of legal or facts that happened before the notary as deed drafting done.

Article 1 Notary Position Law and article 15 clearly states that the main duty of notary is drafting authentic deed and it will provide perfect evidence to the parties that made the deed. This is can be seen as stipulated on article 1870 Civil Code that states that an authentic deed gives among the parties includes their heirs or persons who get their rights then them, a perfect evidence about what it is contained in the deed. Here is the main roles of notary profession, that the notary based on regulation which gives he authority to create perfect evidences, that means all the things contained in that deed is valid. This is important for those people that need evidence tools for something, both private or enterprises interest. (Soegondo R. Notodisorjo, 1993:9). According to Pilito in M. Isa Arief book states that the deed has many functions in the law. The functions are:

1. Condition to state there is a legal action
2. As evidence tools

The only evidence tools (M. Isa Arief, 1986:54). So the function of drafting the deed is to proof that indeed, there are things or events mentioned in the deed. Making sentence over the notary based on those aspects without depth investigation by observing intentional factors or notary mistakes is an action without legal basis which can be accounted for. As a public officials (*openbaar ambtenaar*) notary has authority drafting an authentic deed. Related to that, notaris must not be placed or positioned as co-defendant and defendant even as a witness because the notary is not a party that does not stipulated in the deed and the deed is made by requesting or desire by the appearers. If in each make problems with notarial deed, the notary always placed and positioned as co-defendant or defendant then it will conflict in law concerning notary association present in Indonesia that is constructed that notary running a part of his authorities in civil law, especially makes the evidence tools that recognized by the states, then for the notary is given authority to use states symbol in running his duties. (Habib Adjie, 2017:93).

IV. CONCLUSION

A notary is public officials who also has roles to give legal advices according to the problems to the appearers, authentic deed is desire/will of the appearers that is not as statement or information from the notary, so if the notarial deed in problems, then notary position can not as defendant and co-defendant or party that helping the appearers.

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