

## EXPLORING THE NOTARY LIABILITY IN TORTS

(An Exclusive Interview with the Chairman of the Indonesian Notary Association of Batam City)<sup>1</sup>

Triana Dewi Seroja, Nurlaily, Rina Shahriyani Shahrullah, Nur Hadiyati, KwariyonAltison

Fakultas Hukum, Universitas InternasionalBatam, Batam, Indonesia

Email: [seroja@uib.ac.id](mailto:seroja@uib.ac.id), [nurlaily@uib.ac.id](mailto:nurlaily@uib.ac.id), [rina@uib.ac.id](mailto:rina@uib.ac.id),[hadiyati@uib.ac.id](mailto:hadiyati@uib.ac.id), [kwariyon\\_78@yahoo.com](mailto:kwariyon_78@yahoo.com)**Info Artikel**

Masuk: 01 - 01 - 2021

Revisi:

Diterima:

Terbit: 28 - 02 - 2021

**Keywords:** Deeds,  
Liability, Notary, Torts**Kata kunci:**Akta, Tanggung  
Jawab Hukum,  
Notaris, Perbuatan  
Melawan Hukum**P-ISSN:** 1412-310X**E-ISSN:** 2656-3797**DOI** : 10.33061**Abstract**

*In practice, it often occurs that a notary is summoned to the court on the ground that he/she provides information on the deeds or documents containing torts (an act against the law). This study questions whether a notary is liable when the torts occur. This study utilizes a socio-legal research method by adopting qualitative juridical data analysis. It found that torts may occur due to 2 (two) factors, namely (1) lack of precaution when drafting the deeds, and (2) deliberately making the deeds which do not meet the specified conditions. As the results, the notary is liable to bear all losses arising from the issuing of the deed, including a liability due to a criminal lawsuit. In order to prevent torts, a notary must disclose all relevant information, clarify documents, and have more legal awareness.*

**Abstrak**

Dalam prakteknya sering kali notaris dipanggil ke pengadilan dengan alasan bahwa ia memberikan informasi tentang perbuatan atau dokumen yang mengandung gugatan (perbuatan melawan hukum). Studi ini mempertanyakan apakah seorang notaris bertanggungjawab ketika gugatan terjadi. Penelitian ini menggunakan metode penelitian sosiologi hukum dengan mengadopsi analisis data yuridis kualitatif. Ditemukan bahwa gugatan dapat terjadi karena 2 (dua) faktor, yaitu (1) kurangnya kehati-hatian saat menyusun akta, dan (2) sengaja melakukan perbuatan yang tidak memenuhi syarat yang ditentukan. Akibatnya, notaris bertanggung jawab untuk menanggung segala kerugian yang timbul dari penerbitan akta tersebut, termasuk tanggung jawab akibat gugatan pidana. Untuk mencegah gugatan, notaris harus mengungkapkan semua informasi yang relevan, mengklarifikasi dokumen, dan memiliki kesadaran hukum yang lebih.

<sup>1</sup>The article is funded by Universitas InternasionalBatam under the Collaborative Research Publication Between Lecturers and Students Scheme, the Contract No.032/LPPM/KP-UIB/X/2020 dated 31st October 2020.

## INTRODUCTION

In various commercial relations pertaining to banking, land, social activities, the need for written evidence in the form of original documents is necessary to meet a legal certainty, both in economic and social relations at local or national level.<sup>2</sup> Authentification constitutes as the most convincing and the most comprehensive evidence which plays an important role in all legal relations in community life. As it is confirmed by Law No. 2 of 2014 concerning the Position of Notary (the Notary Law) under Article 1 number 1 that the Notary is authorized to take legal actions and has other powers as required by this Law or by other Laws. Furthermore, it is emphasized in Article 1 point 7 of the Notary Law that notarial deeds are the authentic deeds made by or for Notary in accordance with the forms and procedures stipulated in this Law.

Notary is a government official who has the authority to create authentic instruments.<sup>3</sup> Making legal documents is legally required to establish security, order, and legal protection. It is also because there is a guarantee of the rights and obligations of the parties and as well as for security, order, and legal protection for both the involved parties and the public at large.<sup>4</sup>

The authentic instrument basically contains the official authorization as it is conveyed by the parties. The Notary has the obligation to register those contained in the Notary deed, and the deed must be well understood and in accordance with the wishes of all parties in the deed. In this regard, the Notary must read the deed until it becomes clear to the parties regarding the contents. The parties are free to agree or reject the contents of the deed. If they agree, they sign it.<sup>5</sup> It may seem that the tasks of Notary are quite simple, therefore there is no way of suing the notary. However, in practice, Notaries are often summoned to court even though the notary deed has problems. In addition, even though the Notary carries out his/her tasks in accordance with the Notary's code of honor, one party may conduct wrongful acts by using the notary deed either intentionally or unintentionally, for example a fraudulent in giving information for the deed, may disadvantage or cause damages for the other party.<sup>6</sup> For example, the Supreme Court Decision No. 1873 K / Pd / 2012 jo. Central Sulawesi Court No. 4 / PDT / 2011 / PT.PL jo. Palu District Court Decision Number 77 / Pdt.G / 2010 / PN.PI states that the Notary's actions violate the law.<sup>7</sup> Based on these explanations, there are 2 (two) problems that will be discussed

<sup>2</sup>Andi Mutmainnah, Ma'ruf Hafidz, Mu. Rinaldy Bima, "Efektivitas Pelaksanaan Tanggung Jawab Notaris", *Kalabbirang Law Journal*, Vol. 2 No 1, 2020, p. 14-29. See also Hilda Sophia Wiradiredja, "Pertanggungjawaban Pidana Notaris Dalam Pembuatan Akta Yang Didasarkan Pada Keterangan Palsu Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Jo Undang-Undang Nomor 2 Tahun 2014 Dan KUHP", *Jurnal Wawasan Yuridika*, Vol. 32 No 1, 2016, p. 58-81, <http://jurnal.ahmar.id/index.php/kalabbirang/article/view/27> and Accessed on 22th December 2020.

<sup>3</sup>Dina Nurkharisma, Budi Ispriyarso, Irma Cahyaningtyas, "Pertanggungjawaban Notaris Terhadap Perjanjian Dibawah Tangan Yang Telah Dilegalisasi Yang Mengandung Perbuatan Melawan Hukum", *Notarius*, Vol. 13 No 2, 2020, p. 749-762, <https://ejournal.undip.ac.id/index.php/notarius/article/view/31122> and Accessed on 22th December 2020.

<sup>4</sup>Pipit Saputri Utami, "Pertanggungjawaban Notaris/PPAT terhadap Akta Pemindehan Hak atas Tanah dan/atau Bangunan yang BPHTB-nya Belum Dibayar", *Jurnal Wawasan Yuridika*, Vol. 3 No 2, 2019, p. 235-250, <https://ejournal.sthb.ac.id/index.php/jwy/article/view/282> and Accessed on 22th December 2020.

<sup>5</sup>Andi Mutmainnah, Ma'ruf Hafidz, Mu. Rinaldy Bima, "Efektivitas Pelaksanaan Tanggung Jawab Notaris", *Kalabbirang Law Journal*, Vol. 2 No 1, 2020, p. 14-29, <http://jurnal.ahmar.id/index.php/kalabbirang/article/view/271> and Accessed on 22th December 2020.

<sup>6</sup>Hilda Sophia Wiradiredja, "Pertanggungjawaban Pidana Notaris Dalam Pembuatan Akta Yang Didasarkan Pada Keterangan Palsu Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Jo Undang-Undang Nomor 2 Tahun 2014 Dan Kuhp", *Jurnal Wawasan Yuridika*, Vol. 32 No 1, 2016, p. 58-81, <https://ejournal.sthb.ac.id/index.php/jwy/article/view/90> and Accessed on 22th December 2020.

<sup>7</sup>Putusan Mahkamah Agung Nomor 1873/Pdt/2012 Jo. Pengadilan Tinggi Sulawesi Tengah Nomor 47/Pdt/2011/PT.PL Jo. Putusan Pengadilan Negeri Palu Nomor 77/Pdt.G/2010/PN.PI, 2012.

in the study, namely, 1) what is the liability of the Notary when he/she conducts wrongful acts (torts) in making deeds?; and 2) What are the efforts made to prevent wrongful acts (torts) committed by Notaries in making deeds?. This study aims to analyze the gap between the legal norms (*Das Sollen*) and reality (*Das Sein*) of parties who are prone to experiencing losses due to notarial deeds.

## RESEARCH METHODS

This study adopts a socio-legal research which uses secondary data, and it is followed by primary data or field data. Data collection techniques is conducted through document research and interviews. The socio-legal research focuses on the Notary Law by examining its application (*Das Sein*).<sup>8</sup> The secondary and primary data are analyzed based on their contents by applying a qualitative approach.

## DISCUSSIONS

### 1. THE LIABILITY OF THE NOTARY WHEN CONDUCTING WRONGFUL ACTS (TORTS) IN THE MAKING OF A NOTARIAL DEED

Profession is a permanent job in a certain field which is based on a special expertise and it is pursued responsibly to earn income. Professions can be based on certain skills and abilities. It becomes a permanent and sustainable profession. The profession aims to earn income and it imposes legal responsibility (liability) on the owner of the profession and the community.<sup>9</sup>

Abdul Ghofur Anshori explained that "Notary is a legal profession and thus the Notary profession is a noble profession (position). The actions of a Notary can provide a legal basis for a person's property status, rights and obligations. Errors in notarial deeds can lead to deprivation of someone's rights or imposition of obligations on someone".<sup>10</sup> Thus, this profession involves jobs with specific skills that require broad knowledge and liability. It involves the interests of many people and has a professional organization or association. Thus, it is recognized by the public and has a code of ethics.<sup>11</sup>

Notary is a profession which is protected by the Notary Law. Legal protection is not only given to the notarial profession, but also to the deeds made by Notaries. Accordingly, if a Notary commits tort in a deed, the loss shall be borne by the Notary since legal protection is also given to parties who utilize the service of a Notary. This notion is in line with the theory of legal protection, in which the theory of legal protection mandates that the law must provide protection for human rights that are harmed by others. This protection is given to everyone to enjoy the rights given by law.

The Legal Protection Theory also reinforces that the law must protect human rights and legal security provided by law. Consequently, this theory also suggests protection for individuals against notary deeds.<sup>12</sup> If parties are aggrieved by a Notary deed because of tort, then it is the Notary's fault. If it can be proven, then the notary must fully bear the loss so that the injured party gets justice. The existence of such justice constitutes a legal protection. Accordingly, every person who violates the law, whether intentionally or unintentionally, which causes harm to other parties, will be imposed on

<sup>8</sup> Amiruddin, 2012, *Pengantar Metode Penelitian Hukum*, Jakarta : PT. Raja Grafindo Persada, p.118.

<sup>9</sup> Abdulkadir Muhammad, 1997, *Etika Profesi Hukum*, Bandung : Citra Aditya Bakti, p.58.

<sup>10</sup> Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia*, Yogyakarta: UII Press, p.48.

<sup>11</sup> Liliana Tedjosaputro, 1995, *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*, Yogyakarta : Bigraf Publishing, p.38.

<sup>12</sup> Ibrahim Siranggi, Sukanda Husin, Busyra Azheri, "Liability of Substitute Notary in Deed Correction", *International Journal of Multicultural and Multireligious Understanding*, Vol. 6 No 4, 2019, p. 30-41, <https://ijmmu.com/index.php/ijmmu/article/view/945> and Accessed on 25<sup>th</sup> December 2020.

strict sanctions.<sup>13</sup> This liability arises because of a legal relationship between the person who is injured and the person who causes the loss.<sup>14</sup>

According to Hans Kelsen, there are 4 (four) types of liability, namely: 1) Individual liability means an individual is responsible for the violations he/she has committed; 2) Joint liability means that one person is liable for crimes committed by another; 3) Liability is based on error, which means that someone is liable for a crime that was committed on purpose and must have caused harm; and 4) Absolute liability, which means that someone is liable for a violation that was committed accidentally and unexpectedly.<sup>15</sup>

Based on the interviews to Mr. Dr. Dian Arianto, S.H, S.E, M.Kn., the Chairman of INI (Indonesian Notary Association) in Batam City, he said that if a Notary is proven to have committed torts in the preparation of a deed, the Notary can be liable for civil and criminal cases based on the results of the Court's decision.<sup>16</sup> Accordingly, the torts can be punished either as criminal or civil wrongful acts or they can be punished based on both criminal and civil wrongful acts.<sup>17</sup> This is in line with the opinion of Abdul Ghofur Anshori who said that the liabilities of notaries as government officials can be divided into: 1) Civil liability, 2) Criminal liability, 3) Occupational liability, and 4) Ethical liability.<sup>18</sup> These types of liabilities are discussed as follows:

**a. Notary's civil liability**

If the parties consider that the Notary's actions contain torts, they may sue the Notary regardless of whether the Notary's deed is not in accordance with external, formal, or material aspects and shows damages.<sup>19</sup> Abdul Ghofur Anshori stated that "Civil liability for the correctness of material in the actions of a notary public can be derived from actions against the law, which can be differentiated based on active or passive nature. Acting against the law is an action that causes detriment to another party. Acting against the law is passive in the sense of not taking an action that is necessary for the other party to suffer a loss. So, in this case, the element of action against the law is an act that violates the law, there is an error and damage caused".<sup>20</sup> Actions against the law are broadly interpreted as an act not only against the law, but it is also against the politeness, decency or rights of others and causing detriment. An action is considered an act against the law if that action violates the rights of a third party; breaks the rules; in contrast to politeness; and contrary to comfort by considering the personal interests and property of others in everyday life.<sup>21</sup>

**b. Notary criminal liability**

The role of a Notary is also to provide legal advice based on existing problems, as required by Article 15 paragraph (2) letter e of the Notary Law. Any legal advice that is given to

<sup>13</sup>Henny Saida Flora, "Tanggung Jawab Notaris Peggantidalam Pembuatan Akta", *Kanun: Jurnal Ilmu Hukum*, Vol. 14 No 2, 2012, p. 179-199, <http://jurnal.unsyiah.ac.id/kanun/article/view/6206> and Accessed on 25<sup>th</sup> December 2020.

<sup>14</sup>Az Nasution, 2002, *Hukum Perlindungan Konsumen*, Jakarta : Diapit Media, p.77.

<sup>15</sup>Hans Kelsen, 2006, *Teori Hukum Murni*, Terjemahan Raisul Mutaqien, Bandung : Nuansa dan Nusamedia, p.140.

<sup>16</sup>Ketuakatan Notaris Indonesia Kota Batam, Wawancara, 2020.

<sup>17</sup>Andi Mutmainnah, Ma'ruf Hafidz, Mu. Rinaldy Bima, "Efektivitas Pelaksanaan Tanggung Jawab Notaris", *Kalabbirang Law Journal*, Vol. 2 No 1, 2020, p. 14-29. <http://jurnal.ahmar.id/index.php/kalabbirang/article/view/271> and Accessed on 22<sup>th</sup> December 2020.

<sup>18</sup>Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*, Yogyakarta: UII Press, p.16

<sup>19</sup>Habib Adjie, 2008, *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Bandung : Refika Aditama, p.50-51.

<sup>20</sup>Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*, Yogyakarta : UII Press, p.16.

<sup>21</sup>Rahmad Hendra, "Tanggung Jawab Notaris Terhadap Akta Otentik yang Penghadapnya Menggunakan Identitas Palsu di Kota Pekanbaru", *Ilmu Hukum*, Vol. 3 No 1, 2009, p. 17. <http://jurnal.unsyiah.ac.id/kanun/article/view/6206> and Accessed on 22<sup>th</sup> December 2020.

the parties and then inserted into the relevant action is always a wish. The form of desire according to Article 55 of the Criminal Code is to participate in the same crime commission, there must be at least two people, the person who committed the crime and the person who participated in the crime.<sup>22</sup> However, based on the interviews to Dr. Dian Arianto, S.H, S.E, M.Kn. as the Chairman of INI (Indonesian Notary Association) in Batam City, he said that "it is very rare for a Notary to be dragged into a criminal case as long as a Notary is willing to follow the rules that applies it in accordance with the Notary Law. In the making of deeds relating to torts, especially criminal cases, a Notary is only treated as a witness and not as a defendant or suspect. In fact, the parties in the deed are those deliberately committed criminal acts such as fraud or document falsification."<sup>23</sup>

**c. Notary liability due to profession**

According to Ima ErlieYuana, "the liability of a notary stated in Article 65 of the Notary Law is a material liability".<sup>24</sup> There is a very strong correlation between the Notary Law and the Notary profession because it implicitly regulates the notary profession. In an interview with Dr. Dian Arianto, S.H, S, E, M.Kn, he said that "notary in carrying out his / her duties must uphold the principle of prudence, especially in making deeds in accordance with the Notary Law to prevent future illegal acts. If a Notary is proven to have violated the Notary Law related to his/her position, then he/she can be responsible in an occupational manner based on a position sanction decided by the Regional Supervisory Council (*MajelisPengawas Daerah/MPD*) and the Regional Honorary Council (*MajelisKehormatan Daerah/MKD*). The MPD and MKD are inaugurated by the Minister of Law and Human Rights through the Notary, Government and Academic Elements."<sup>25</sup> The notary's liabilities include the material correctness of his/her work. Therefore, the liability of an official notary solely lies in the truth of the factual actions he/she has done. Sanctions in carrying out his/her duties are regulated in articles 84 and 85 of the Notary Law in the form of verbal warning; written warning; temporary suspension; honourably evictions; and disengagement without response.

**d. Notary liability due to the code of ethics**

The profession as a Notary must not deviate from the applicable rules in Law Number 2 of 2014, the Amendment to Law Number 30 Year 2004 concerning Notary Profession. There is a very strong correlation between the Notary Law and the professional code of ethics. The professional code of ethics regulates Notary internally and the Notary Law regulates Notary externally. According to Dr. Dian Arianto, S.H, S, E, M.Kn., Notaries in carrying out their duties are required to make deeds properly and correctly. This means that the deed made fulfills the legal will and requests of the parties concerned in accordance with the provisions of law because of their position. The Notary is required to produce a quality deed that does not cause detriment the parties in the future, meaning that the deed he/she makes is in accordance with the law and the wishes of the interested parties in the true sense. Hence, the Notary must first explain to the

<sup>22</sup> R. Soesilo, 1989, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentari-komentarnya lengkap pasal demi pasal*, Bandung : (PT. Karya Nusantara), P.72.

<sup>23</sup> KetuakatanNotaris Indonesia Kota Batam, Wawancara, 2020.

<sup>24</sup> Ima ErlieYuana, Tesis: "*Tanggung Jawab Notaris Setelah Berakhir Masa Jabatanyaterhadap Akta yang Dibuatnya Ditinjau dari Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*", (Univesitas Diponegoro (Magister Kenotariatan), 2010).

<sup>25</sup> KetuakatanNotaris Indonesia Kota Batam, Wawancara, 2020.

interested parties the correctness of the contents and procedures of the deed he/she has drafted. This has a positive impact in the sense that anyone will admit that the Notary deed has perfect evidentiary power both in court and outside court. And if the Notary is proven to have violated the code of ethics and is not in accordance with the disciplinary code of ethics of the Notary Public, the Notary can be liable according to the code of ethics. Sanction based on the ethics are rendered by the Regional Honor Council (*Dewan Kehormatan Daerah/DKD*). DKD is appointed based on the National Working Meeting (RAKERNAS) by the Indonesian Notary Association.<sup>26</sup>

## 2. The efforts to prevent wrongful acts (torts) committed by Notaries in making deeds

Prevention is a way to avoid an incident that may arise. Prevention is an anticipation so that problems that will arise in the future can be resolved. The enactment of the Notary Law as the basis for all Indonesian Notaries to make deeds, has already thought in advance about the prevention of actions that may result in torts on a Notary deed. There are preventive steps prior to the occurrence of a tort because of a Notary deed. Based on the interviews to Dr. Dian Arianto, S.H, S.E, M.Kn., he said that "there are several steps in preventing notaries from a tort in making a deed, namely: 1) disclosure of information from the Notary and the parties, 2) clarification of documents by the Notary to authorized agency, 3) legal awareness from the Notary and the parties, (4). the efforts and roles of *IkatanNotaris Indonesia/INI* (the Indonesian Notary Association)".<sup>27</sup> These preventive steps are discussed as follows:

### a. Disclosure of information from the notary and the parties

The transparency of the parties is very important in making a deed so that the validity of the deed can be accounted for. This openness applies to all parties, namely Notaries or the parties. The Chairman of INI (Indonesian Notary Association) in Batam City, Mr. Dr. Dian Arianto, S.H, S.E, M.Kn. said that "when the notary deed is drafted, it must be explained to the parties and provide them the opportunity to ask questions, so that they understand the rules or norms as well as the legal consequences contained in the deed. If they do not understand, the Notary will explain again the purpose and the contents of the deed. In the sale agreement for example, when the parties have read and understood the meaning and purpose of the contents of the agreement, the notary will ask the parties to initialize one page at a time and then put a stamped signature which is deemed that the parties have read and understood all the contents of the sheet which has been initialized".<sup>28</sup> The parties must provide clear information to the notary, both identity and other documents. The importance of honesty in providing documents of the parties so that the validity of a deed can be accounted for. Torts do not only occur because of the Notary's conduct; the parties can also cause the torts. A tort often occurs because the parties are not honest about the document which is submitted to a Notary. For example, A sells the house to B and they agree to make a notary deed. A provides documents such as the house certificate and personal data required for the deed. But A said that his wife had passed away then A gave the death certificate document of his wife. After the sale agreement occurred, his wife later sued the sale deed because the wife of A is still alive. From this example, the emergence of tort is due to the dishonesty of parties regarding

<sup>26</sup>KetuakatanNotaris Indonesia Kota Batam, Wawancara, 2020.

<sup>27</sup>KetuakatanNotaris Indonesia Kota Batam, Wawancara, 2020.

<sup>28</sup>KetuakatanNotaris Indonesia Kota Batam, Wawancara, 2020.

documents such as death certificates. So, the importance of openness and honesty must exist to prevent incorrect data in making deeds.<sup>29</sup>

**b. Clarification of documents by the Notary to authorized agency**

The function of coordination is to ensure that the parties' documents are correct before the issuance of a deed. The process of coordination today is very easy due to the advance technology such as via email, Gmail, WhatsApp, telephone, and sending letters for the purpose of clarifying the truth of documents. With the help of technological media, the requests for clarification were less time-consuming compared to visiting the relevant agencies directly. The purpose of such coordination is to prevent lies, falsification, fraud or the parties' non-disclosure of a document that will be used on a deed. Based on interviews conducted to Dr. Dian Arianto, S.H, S.E, M.Kn., he said that "before making a deed, a notary should be very careful and use a sharper premonition in analyzing a document submitted by the parties. Lots of fake documents submitted to the Notary for the sake of one of the parties. Therefore, it is very important to clarify the document to the stakeholders who issued the document by checking the authenticity of a document to avoid a tort in making the deed in the future".<sup>30</sup>

**c. Legal awareness from the Notary and the parties**

Soerjono Soekanto said that "legal awareness is a narrative of the values that a person has in implementing the applicable or existing law".<sup>31</sup> Sudikno Mertokusumo stated that "legal awareness means an awareness of what we should do or what we should do or not do, especially towards other people". This means awareness is each individual's obligations.<sup>32</sup>

Public life requires legal certainty in the public sector, including public services provided by a Notary to citizens. This means that the Notary is responsible for overseeing the planned actions. Public services are provided by Notaries must be in accordance with actual practice.<sup>33</sup> Legal awareness is self-awareness without external pressures, coercions, or orders to comply with the applicable laws. The interviews with Dr. Dian Arianto, S.H, S.E, M.Kn who has served as a Notary for about 10 years in Batam City and currently the Chairman of the Indonesian Notary Association in Batam City said that "actually, before being appointed as a Notary Public, the counselings and trainings have been carried out by the Notary Public Organization. The Notary gives an official oath and has understood the applicable legal rules and laws, particularly those governing the Notary itself, namely the Notary Law". Hence, a Notary is required to have high legal awareness and uphold the principle of prudence. This makes the Notary to be professional and has high integrity in the community. Most Notaries who are inflicted in illegal acts are caused by their lack of knowledge on the latest regulations and information issued by the Notary Organization.<sup>34</sup>

**d. The efforts and roles of *Ikatan Notaris Indonesia/INI* (the Indonesian Notary Association)**

Notary Public Organization is a certified professional association which constitutes a legal entity association. As an organization, the Indonesian Notary Association (*Ikatan Notaris*

<sup>29</sup>KetualkatanNotaris Indonesia Kota Batam, Wawancara, 2020.

<sup>30</sup>KetualkatanNotaris Indonesia Kota Batam, Wawancara, 2020.

<sup>31</sup>SoerjonoSoekanto, 2002, *Kesadaran Hukum dan Kepatuhan Hukum*, Jakarta :Raja GrafindoPersada, p.215.

<sup>32</sup>SudiknoMertokusumo, 1981, *Meningkatkan Kesadaran Hukum Masyarakat Edisi Pertama*, Jakarta :Liberti, p.13.

<sup>33</sup>SatjiptoRaharjo, 1983, *Masalah Penegakan Hukum*, Bandung :SinarBaru, p.127.

<sup>34</sup>KetualkatanNotaris Indonesia Kota Batam, Wawancara, 2020.

*Indonesia/INI*) has a code of conduct for its members. All Notaries must comply with ethical rules. The current Notary Code is a Notary code based on the extraordinary decision of the Indonesian Notary Association (INI) Congress dated 27 January 2005 in Bandung. Notary Supervision is administered by the Minister and under his supervision the Minister forms the Supervisory Board. The Supervisory Board at the district / city level is called the Regional Supervisory Council (MPD), at the provincial level it is called the Regional Supervisory Council (MPW), at the national level it is the Central Supervisory Council. Dr. Dian Arianto, S.H, S.E, M.Kn. as Chairman of the INI (Indonesian Notary Association) in Batam City said that "the role of the Indonesian Notary Association is very important to prevent torts in the making of a deed. Accordingly, INI provides trainings, the latest information, and seminars especially in the making of a deed. In addition, it fosters Notary, supervises the duties and powers of the Notary to be in accordance with the code of ethics. If irregularities occur, the Notary Organization has the authority to issue recommendations to the Regional Honorary Council (DKD) related to the code of ethics violations and to the Regional Honorary Council (MKD) related to violations of the Notary's Profession so that the Notary Organization can forward the recommendations to the Minister of Law and Human Rights. It can render administrative sanctions on the Notary if there has been a decision from the court regarding the existence of a tort committed by the said Notary. The sanctions may be administrative sanctions, temporary suspensions, or written warnings.<sup>35</sup>

## CONCLUSION

Notary may be liable because of torts. In case, the Notary is proven to have committed torts, he/she is liable for all losses arising from the existence of a deed. The liability for the losses does not abolish the crime against the Notary. Apart from that, there are also sanctions given by INI (the Indonesian Notary Association). Yet, the applicability of the sanctions cannot precede the Court's decision. In case, the torts arise because one of the parties and / or the parties' conducts, then the Notary is free from any liability since he/she has complied with the Notary Law when making a deed. The liabilities of notaries as government officials can be divided into civil, criminal, occupational and ethical liability.

Efforts have been made in preventing torts committed by a Notary when making a deed. The efforts consist of a disclosure of information from the notary and the parties, clarification of documents by the Notary to authorized agency, legal awareness from the Notary and the parties, the efforts and roles of *Ikatan Notaris Indonesia/INI* (the Indonesian Notary Association) in monitoring, supervising and imposing sanctions on Notaries in order to carry out their duties based on the Notary Law and the Notary Code of Ethics.

## REFERENCES

Adjie, H. 2008. *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung : Refika Aditama.

<sup>35</sup>Ketua Ikatan Notaris Indonesia Kota Batam, Wawancara, 2020.



- Amiruddin.2012. *Pengantar Metode Penelitian Hukum*. Jakarta : PT. Raja Grafindo Persada.
- Anshori, G. 2009a. *Lembaga Kenotariatan Indonesia*. Yogyakarta : UII Press.
- Anshori, G. 2009b. *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*. Yogyakarta : UII Press.
- Flora, H. S. (2012). Tanggung Jawab Notaris Pengganti dalam Pembuatan Akta. *Kanun: Jurnal Ilmu Hukum*, 14(2), Pp. 179-199. <http://www.jurnal.unsyiah.ac.id/kanun/article/view/6206> Accessed on 22th December 2020.
- Hendra, R. 2009. Tanggung Jawab Notaris Terhadap Akta Otentik yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru. *Ilmu Hukum*, 3(1), 17.
- Kelsen, H. 2006. *Teori Hukum Murni, Terjemahan Raisul Mutaqien*. Bandung : Nuansa dan Nusamedia.
- Ketua Ikatan Notaris Indonesia Kota Batam. (2020). *Wawancara*.
- Mertokusumo, S. 1981. *Meningkatkan Kesadaran Hukum Masyarakat Edisi Pertama*. Yogyakarta: Liberti.
- Muhammad, A. 1997. *Etika Profesi Hukum*. Bandung : Citra Aditya Bakti.
- Mutmainnah, A., Hafidz, M., & Bima, M. R.2020. Efektivitas Pelaksanaan Tanggung Jawab Notaris. *Kalabbirang Law Journal*, 2(1), 14-29. <https://doi.org/http://jurnal.ahmar.id/index.php/kalabbirang/article/view/27> Accessed on 22th December 2020.
- Nasution, A. 2002. *Hukum Perlindungan Konsumen*. Jakarta : Diapit Media.
- Nurkharisma, D., Ispriyarso, B., & Cahyaningtyas, I. (2020). Pertanggungjawaban Notaris Terhadap Perjanjian Dibawah Tangan Yang Telah Dilegalisasi Yang Mengandung Perbuatan Melawan Hukum. *Notarius*, 13(2), 749-762. <https://doi.org/10.14710/nts.v13i2.31122> Accessed on 22th December 2020.
- Putusan Makamah Agung Nomor 1873/Pdt/2012 Jo. Pengadilan Tinggi Sulawesi Tengah Nomor 47/Pdt/2011/PT.PL Jo. Putusan Pengadilan Negeri Palu Nomor 77/Pdt.G/2010/PN.PI, (2012).
- Raharjo, S. 1983. *Masalah Penegakan Hukum*. Bandung: Sinar Baru.
- Siranggi, I., Husin, S., & Azheri, B. (2019). Liability of Substitute Notary in Deed Correction. *International Journal of Multicultural and Multireligious Understanding*, 6(4), 30-41. <https://doi.org/10.18415/ijmmu.v6i4.945> Accessed on 25th December 2020.
- Soekanto, S. 2002. *Kesadaran Hukum dan Kepatuhan Hukum*. Jakarta : Raja Grafindo Persada.

- Soesilo, R. 1989. *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-komentarnya lengkap pasal demi pasal*. Bandung : PT. Karya Nusantara.
- Tedjosaputro, L. 1995. *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*. Yogyakarta : Bigraf Publishing.
- Utami, P. S. (2019). Pertanggungjawaban Notaris/PPAT terhadap Akta Pemindahan Hak atas Tanah dan/atau Bangunan yang BPHTB-nya Belum Dibayar. *Jurnal Wawasan Yuridika*, 3(2), 235-250. <https://doi.org/10.25072/jwy.v3i2.282> Accessed on 22th December 2020.
- Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, Pub. L. No. DPRI, Pasal 1 Angka 5 (2014).
- Wiradiredja, H. S. (2016). Pertanggungjawaban Pidana Notaris Dalam Pembuatan Akta Yang Didasarkan Pada Keterangan Palsu Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Jo Undang-Undang Nomor 2 Tahun 2014 Dan Kuhp. *Jurnal Wawasan Yuridika*, 32(1), 58-81. <https://doi.org/10.25072/jwy.v32i1.90> Accessed on 22th December 2020.
- Yuana, E. (2010). *Tanggung Jawab Notaris Setelah Berakhir Masa Jabatannya terhadap Akta yang Dibuatnya Ditinjau dari Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*. Univesitas Diponegoro (Magister Kenotariatan).