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NOTARY RESPONSIBILITY IN CHECKING HALAL CAUSA REQUIREMENTS ON OBJECTS PROMISED

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Abstract

This research is motivated by there is a case of cancellation (null and void) of an authentic deed made by a notary because it does not meet the halal causa requirements. This study aims to analyze and find the form of liability of the Notary in halal causa requirements on the promised object. The results of the study using the normative legal research with the statute approach, conceptual approach, and comparative approach. The results of this study showed that the form of legal liability of the Notary in examining halal causa requirements on the agreed object, namely using the type of liability based on fault, because if halal causa requirements are not fulfilled in the authentic deed which results in the deed being null and void, then it is mistakes of Notaries as officials who are authorized to make and be responsible. At the end of this study, the researcher also provided advice to the government to updated Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position by adding clauses related to the Notary's obligation to check the legal terms of the agreement; as well as advice to the Notary to be more careful, thorough, careful, not taking sides in checking halal causa requirements in the object of the agreement.

Keywords: Halal Causa; Liability; Notary

1. INTRODUCTION

In this current globalization era, law enforcer and legal protection are crucial, especially the legal protection for parties who own property. Property owned by a person whether originating from a sale and purchase, lease and so on to get guaranteed protection and legal certainty, then the method that can be used is to pour it into a written agreement in the form of an authentic deed. The authentic deed itself is a deed which its form determined by the law and made by or before the general official authorized for that at the place where the deed was made, (Article 1868 Civil Code). The general authority meant is Notary Public, as stated in Article 15 paragraph (1) Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position (hereinafter referred to as Notary Position Law), namely:

"The notary has the authority to make

an authentic deed regarding all deeds, agreements and stipulations required by legislation and/or that is desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the deed making date, keeping the deed, giving grosse, copy and citation of the deed, all of that as long as the drafting of the Deed is not also assigned or excluded to other officials or other people determined by law. "

In connection with the above provisions, it can be seen that the authority of a notary is to make a deed in which the name of the agreement is inseparable. According to the Civil Code, an agreement is an event where someone promises to someone else or where two people promise to do something, (Subekti, 1992). The agreement is also interpreted as an act by which one or more people commit themselves to one or more people (Article 1313 of the Civil Code). In connection with this, in agreeing, a notary

must pay attention and fulfil the legal requirements of the agreement so that the agreement made is valid and can be held accountable before the law, namely (Article 1320 of the Civil Code).

Agree to those who commit themselves;

The ability to agree;

Regarding a certain thing;

Halal Causa.

Regarding the four requirements above, the first and second requirements are called subjective requirements, because it involves the parties to an agreement, while the third and fourth requirements are called objective requirements because it involves the object of the agreement, (Sari, 2017). Regarding the legal consequences of the four requirements, if the first and second requirements are not fulfilled, the agreement can be cancelled, but if the third and fourth requirements are not fulfilled, the agreement is null and void, (Gunadi, 2012).

In connection with the explanation above, from the two forms of the legal requirements of the agreement, there are still many agreements made before the Notary (authentic deed) that have not met the objective requirements, one of them is halal causa requirements. This is like two examples of cases including: first, the case of the cancellation of the deed because the deed made by the Notary does not meet halal causa requirements and null and void, namely the case which has been decided by the Syar'iyah Sigli Court in Decision Number 291/Pdt.G/2013/Ms.Sgi, wherein Mr Iskandar sells inheritance land that has not been shared by inheritance to Mr Daud and Tgk. Din, so in this case, the Judge decides that the sale of land between Mr Iskandar and Mr Daud and Tgk. Din has no legal force, besides all the correspondence (including notary deed of sale and purchase) relating to the land declared null and void by law (<https://media.neliti.com/media/publications/164819-ID-analisis-kasus-tentang-jual-beli-tanah-w.pdf>) accessed on 09 April 2020). The second case is the cancellation of agreement or deed of Notary, wherein this case is started from the results of Bandung High Court of Justice Decision No. 507/PDT/2017/PT.BDG that one of the decisions state that Loan Agreement, Binding Agreement of Sale and Purchase,

Deed Power to Sell, and Sale and Purchase deed between Mrs Ami Rahmiati and Mr Roni Oktapiori with Mr Subur Herman made before the notary is invalid and null and void, because in making Binding Agreement of Sale and Purchase, one of the parties made a sale and purchase deed to reverse the name of ownership in his name without the other party knowing (http://admin.pt-bandung.go.id/uploads/file/perkara_perdata/2018/Januari/507_Pdt_2017_PTBDG.pdf) accessed on 21 April 2020).

In connection with the two cash above, objective requirements are not fulfilled thus resulting in a deed made null and void is the responsibility of Notary as an official who is authorized in making authentic deed, understanding the legal requirements of the agreement, and understanding the law. This is as stated in Article 65 of Notary Position Law which states that Notary, Substitute Notary, Special Substitute Notary, and Temporary Notary Officer is responsible for any deed he makes even though the Notary Protocol has been submitted or transferred to safekeeping party of the Notary Protocol.

Previously, there are some latest related study that have been conducted by the researchers such as (Hikmah, Sugiri, & Sukarni, 2016) that studied about "The Notary's Responsibility in Making a Simulation Agreement in the Form of a Notary Deed Judging from the Law of the Agreement". The results showed that based on the validity of the terms of the agreement, the agreement in the form of notarial deed simulation did not meet the two conditions of validity of the agreement which they agreed that bind him and a cause that is halal. Legal consequences can be canceled and void. Notary responsibility as a public official dealing with the truth material to the treaty in the form of simulation that is authentic act civilly, to the extent not result in losses for the parties, the Notary will not be liable to civil liability. Criminal charges cannot be prosecuted for not fulfilling aspects of crime. Regulation Notary, be held accountable if it does not provide access to the notary regarding a particular law. Based on the code of ethics Notary is the personal responsibility of the deed is made. Thus, should the Notary in their duties should be committed to the code of conduct, the Government in collaboration with legislators to immediately enhance the community regulations regarding the agreement and active role in terms of supervision. Moreover, (Tan, 2019)

conducted the similar study entitled "Controversial Issues on the Making of Notarial Deed Containing Chained Promise (Beding Berantai) with the Freedom of Contract Principle". Based on the background and the latest related studies above, this study aims to know the responsibility terms of the Notary in checking *halal causa* requirements on object promised.

2. METHOD

The method used in this study is normative legal research or doctrinal research. Normative legal research is research in which the object of study is the legal documents and library materials, (Soejono & Abdurrahman, 2003). The object of this study is in the form of legal rules related to the responsibility of the Notary in examining *halal causa* requirements on object promised. In connection with this, to examine the legal rules as described above, it is necessary to use the approach. The approach used is a statute approach, conceptual approach, and comparative law approach. First, statute approach is the approach taken towards legal products, (Nasution, 2016), by examining all statutory regulations, both laws and other regulations related to legal issues that are being solved or handled (Marzuki, 2005). Related to this, the application of the statutory approach in this study in the form of the rules review (Civil Code and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position) related to the responsibility of the Notary in examining *halal causa* requirements and the rules related to *halal causa* itself. The second approach is a conceptual approach, which is done by not getting out of the prevailing legal regulations, due to the absence of regulations governing the topic of the problem being faced, by also referring to legal principles, concepts and legal principles, (Susanti & Efendi, 2014). The application of a conceptual approach in this research is the analysis of the principles, and the legal concept derived from various literature books of law related to the responsibility of Notary, the definition and things that related to Halal Causa. In connection with the third approach that is the comparative approach is the approach by comparing the legal system or the laws of the legal system or other rules, includes the properties of law until the nature of legal development, (Susanti & Efendi, 2014).

Related to the application of the comparative approach to this study, that is a comparison between the legal understanding of *halal causa* according to Islamic law and positive law, which is from this comparison can be found the similarities and differences of each legal system.

3. DISCUSSION

Based on the objectives of this study, it derived the results that can be described in the following discussion. In this discussion, the author is based on two cases as has been mentioned in the background above that is first, the sale and purchase case made by Mr Iskandar with Mr Daud and Tgk. Din, wherein the object being traded is in the form of a piece of land is inherited land from the late Mr Teuku Usman (father of Mr Iskandar) is not divided the inheritance yet, so Judge Syar'iyah Sigli in Decision Number 291/Pdt.G/2013/Ms.Sgi granted the lawsuit Syarifah Zubaidah as the plaintiff who was also another heir of the late Mr Teuku Usman namely to decide that the sale and purchase deed done by Mr Iskandar with Mr Daud and Tgk. Din is null and void, (<https://media.neliti.com/media/publications/164819-ID-analisis-kasus-tentang-jual-beli-tanah-w.pdf>) accessed on 09 April 2020). The sale of the object of the agreement in the form of inherited land that has not been divided by inheritance is an act that violates the provisions of Islamic law and the Law, namely Article 1471 of the Civil Code whose the contents are as follows:

"Buying and selling other people's goods is cancelled and can provide a basis for the buyer to demand reimbursement of costs, losses and interests if he does not know that the goods belong to someone else."

The other provisions are also contained in Article 183 President's instructions of the Republic of Indonesia No. 1 of 1991 concerning the dissemination of Islamic Law Compilation which states that:

"The heirs can agree to make peace in the division of inheritance after each of them realizes their parts."

The provisions above indicate that there are inheritance rights that must be shared so that if the property is not shared the inheritance yet but is sold by one of the heirs, of course it has violated the provisions of Islamic law and law. Related to this, if Mr Iskandar wants to sell it, then there must be an agreement from all heirs,

in this case, Syarifah Zubaidah as the party who also gets ownership rights to the land due to inheritance, (Article 833 paragraph (1) of the Civil Code).

Furthermore, the second case is the existence of a case originating from Bandung High Court of Justice Number: 507/PDT/2017/PT.BDG that one of the decision states that the Loan Agreement, Binding Agreement of Sale and Purchase, Deed Power to Sell, and Sale and Purchase deed between Mrs Ami Rahmiati and Mr Roni Oktapiori with Mr Subur Hermanto, which was made before a Notary, was invalid and null and void. This began when both parties make a Lending and Borrowing Agreement for Money/Debt which explains that the parties made Loan Agreement, Binding Agreement of Sale and Purchase, in connection with lending funds of 1,000,000,000 (one billion rupiahs) with the guarantee of Ownership Certificate No. 320/Kelurahan Pasteur on behalf of Mrs Janda Ami Rahmiati. Related to this, the parties then made Loan Agreement, Binding Agreement of Sale and Purchase before the Notary as stated in the loan agreement previously. In the process of making the Loan Agreement, Binding Agreement of Sale and Purchase, Mr Subur did not disclose that the loan agreement had been made previously and considered that the 1 billion received by Mrs Ami and Mr Roni was money to buy a house, even though the money was a loan, so the Loan Agreement, Binding Agreement of Sale and Purchase was then upgraded to a deed of sale and purchase and continued with the return of the name of the Certificate of Property Rights unbeknownst to Mrs Ami and Mr Roni. In this regard, it can be seen that the act in making the Borrowing and Loan Agreement, the Loan Agreement, Binding Agreement of Sale and Purchase up to the sale and purchase agreement, there is halal causa because the agreement contains the tacit effort of Mr Subur to forcibly purchase the object promised by means to own it, and the efforts to own the object by abusing the situation (undue influence), wherein this is an illegal act because it causes losses to Mrs Ami and Mr Roni, (http://admin.pt-bandung.go.id/uploads/file/perkara_perdata/2018/Januari/507_Pdt_2017_PTBDG.pdf), accessed on April 21, 2020).

Based on the two cases described above, it can be seen that the cancellation of the deed made by the Notary is caused by the promised object, the

inheritance is not divided yet and the effort to own the object secretly, indicating that the deed did not fulfil one of the legal requirements of the agreement is halal causa. In connection with the understanding of halal causa, there are 2 words that the author wants to describe, namely causa and halal. In connection with the word causa translated from the word oorzaak (Dutch) or causa (Latin) does not mean something that causes someone to agree, but refers to the contents and purpose of the agreement made, this is exemplified wherein the sale and purchase agreement, the contents and purpose or its causa is the first party who wants ownership of an item, while the other party wants money, (Panggabean, 2010). Another definition causa is the thing that causes legal relations in the form of a series of interests that must be fulfilled as set out in the contents of the legal relationship, (Prodjodikoro, 1988). Further on the definition of halal, is defined as the thing allowed to do, because there are no binding restrictions, (Panggabean, 2010). Related to this, the meaning of halal also has a meaning that is something that is not haram, where haram is an act that results in sin, (Shihab, 2003).

Based on the explanation above, in normative, halal causa is not interpreted, but it is mentioned in the Civil Code using the terms "prohibited cause" as stated in Article 1335 of the Civil Code whose contents are as follows:

"An agreement without a cause, or is based on a false or forbidden cause, has no power."

Related to the origin above, because it is said to be false if it is held to cover the real cause, and the cause is said to be prohibited if it is contrary to the law, decency, and public order (Santoso & Lestari, 2017). This is as stated in Article 1337 of the Civil Code which also provides an understanding of prohibited causes, namely:

"A cause is prohibited, if prohibited by law or if it is contrary to good decency or public order."

Based on the certainty above, it can be seen that the definition of normative halal causa is not the cause in the sense of causing or encouraging people to agree, but the cause in the sense of the contents of the agreement itself, (Muhammad, 1992) which describes the objectives to be achieved by the parties, whether it is contrary to public order and decency or

not.

It is different from the meaning of *halal causa* in terms of Islamic law, which at this level, *halal cause* in the agreement are intended for the existence of an agreement or *maudhu'ul 'aqd* meaning for what an agreement is done (*al-maqshad al ashli alladzi syariah al 'aqd min ajlih*) by the parties who made it in the context of carrying out an muamalah, based on *syara'*, (Santoso, 2016). Related to this, certainly in implementing the objectives of the agreement based on *syara'* will not be separated from the objectives of Islamic law (*maqshid syariah*) itself, namely the benefit of human life, both spiritual and physical, individual and social, (Ali, 2011) where that benefit can be realized through five main elements namely maintaining religion, soul, ancestry, intellect, and property, (Ali, 2011). This implies that in agreeing, the purpose of its making must pay attention to the five main elements, whether the contents promised have been based on the objectives of Islamic law or not. Concerning that, Ahmad Azhar Bashir in Lukman Santoso determines the requirements that must be met in order an agreement's purpose can be said to be valid and has legal consequences, such as: first, the purpose of the agreement is not an obligation that already exists on the parties concerned without the agreement being held, or in other words that the purpose of the agreement should be at the time of the agreement was made; second, the objectives must continue as they are until the end of the agreement; third, the purpose of the agreement must be justified by the *Syara'*, (Santoso, 2016). Regarding this, if the three requirements are not met, the agreement is not valid. Based on the explanations that have been described above, thus the non-fulfilment of *halal causa requirements* on making agreements in the form of a deed made by Notary cause legal consequences, namely the deed is made invalid and null and void so that in this case the notary must take responsibility for his actions.

In this regard, in the legal dictionary, there are two terms of responsibility, namely liability and responsibility which have different meanings. Liability in English is defined as accountability while responsibility means responsibility, and from these two terms, liability is a word often used in the field of law. Related to this, according to Peter Mahmud Marzuki, liability or accountability is a specific form of responsibility, wherein accountability

refers to the position of a person or legal entity that should pay for something as a form of compensation from the existence of a legal event or legal action committed by that person or legal entity, (Marzuki, 2008).

In connection with the matters above, in Indonesian Language Thesaurus, the term of accountability is not known but uses the term responsibility which nominally means burden, obligation, responsibility, and duty, whereas as a verb, responsibility has the meaning of obligation, consequence, consistent, (Tesaurus Bahasa Indonesia, 2008). Similarly, Dictionary Indonesian that is not familiar with the term accountability, but the responsibility, in which were as a noun means that the condition is obliged to bear everything, where this is exemplified if a person's actions cause losses, then that person may be prosecuted, while the definition of responsibility in the verb, interpreted as 1) obliged to bear; assume responsibility; 2) bear everything, (Tim Redaksi Kamus, 2008). Concerning the other definitions related accountability or liability, some scholars express their opinions, including G. Frey and Christopher W. Morries, which revealed that the liability at least means that a person is responsible for his actions or for negligence that does not do (omissions), where broadly, liability includes three notions, namely first, a person is responsible for the mistakes he did, second, responsibility for someone who caused it; and third, responsibility for a person that is when a case is filed and must be responsible for the case, (Frey & Morries, 1991). Regarding Frey and Christopher's opinion, Hans Kelsen argues that liability is related, but not identical with the concept of legal obligation. This he believes that by law, individuals are not required to behave in certain ways if their behaviour is contrary to certain methods, then they will be subject to sanctions, and individuals who are subject to sanctions are said to be legally responsible for their violations, (Kelsen, 2005). Regarding some definitions related liability above, it can be seen that the liability of a person arises because there is a mistake that can harm the others' rights and interests so that people who make mistakes must bear, either by doing something or compensate for losses. This is the example of the case above, where the Notary as the author of an authentic deed made a mistake that the deed made did not meet *halal causa requirements*, so the deed was null

and void, and this would certainly harm the buyer who had made payment for the promised object. Related to this, the mistake of Notary by not paying attention to *causa halal* requirements in making an authentic deed which then raises responsibility. In connection with that, to be responsible for the action as intended, there are several types of responsibilities, they are, (Rangkuti, 2005): 1) *liability based on fault*; 2) the responsibility based on a fault with reversed of proof; 3) *Res ipsa liquitur*; 4) *Strict liability*, and 5) *Absolute liability*.

Regarding the first type, namely liability based on faults, a person must be responsible for the mistakes made and harming others, (Sidabalok, 2008). The mistakes referred to Hans Kelsen's opinion is an act of a person that has causing consequences for others, where the act is intended by that person, (Kelsen, 1995). This is as regulated in Article 1365 of the Civil Code which is the content as follows:

"Every act that violates the law and causes the losses to others obliges the person who caused the loss due to his mistake to replace the loss."

Based on the explanation above, it can be seen that the concept of liability based on the fault is the responsibility that requires there is proofing of the mistakes that cause losses, meaning that the plaintiff is obliged to prove the fault of the defendant, (Fadli, Mukhlis, & Lutfi, 2016). Referring to the explanation, if it is associated with two example case as described previously, the application of this responsibility is based on fault, in which the notary mistakes, in that case, arises when a notary violates one of the objective requirements of the agreement, namely *halal causa*, where in the first case, inherited land which was the object of buying and selling are not divided inheritance yet, whereas in the second case, the notary was not careful in checking the ownership status of the promised object, so that the agreement or deed is invalid and null and void. Notary, in this case, has certainly violated the provisions in Article 16 paragraph (1) letter a of the Notary Position Law jo. Article 3 number 4 in the provisions of the Notary Ethics Code which explains that in carrying out his position, the Notary must act trustfully, honestly, thoroughly, independently, impartially, and safeguard the interests of the parties involved in legal actions. In this regard, not fulfilling *halal causa* requirements on the deed

drawn up by a notary is evidence that there is the dishonesty of the notary or there is even an interest between the notary and one of the parties (in cooperation), wherein the example above case, before the sale and purchase deed is made, the notary should first check the origin of the object that was promised, that is, concerning with the objects derived from inheritance, or the status of ownership of the object being promised.

In connection with the matters above, if when checking the origin of the object, it is found that the object of sale and purchase is an inheritance that has not been divided up in inheritance and there are still other heirs' rights (*unhalal causa*), and there is an attempt to abuse the situation of one of the parties to have the object agreed, the notary may refuse to make the sale and purchase deed, (Article 16 paragraph (1) letter d of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary), as an effort to prevent disputes. Still related to the application liability based on fault, if the notary continues to make the sale and purchase deed, even though he knows that the promised object contains *unhalal causa* to cause a deed to be null and void, then the party suffering losses may demand compensation and interest from the notary. Furthermore, if it is also found that in making a deed, the notary acts dishonestly, siding with one person, and safeguarding the interests of the other party (for example not notifying the buyer that the object being traded has not been divided the inheritance, then the notary may be subject to administrative sanctions as a form of responsibility for his mistakes, in the form of 1) verbal reprimands; 2) written warning; 3) lay off; 4) respectful dismissal; or 5) dishonourable discharge, (Article 85 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. See also Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position).

Second, liability based on the fault with reversed proof that a person is considered guilty until the person concerned can prove conversely if the person cannot prove, it must pay compensation, (Purwadi, 2017). Regarding this matter, the notary who makes an authentic deed that does not meet *halal causa* requirements on the object promised as the case example above, is

considered guilty until the notary can prove that the cancellation of the authentic deed was not caused by him. Related to this, however, the fact is that this type of liability is difficult to be applied, considering the authentic deed is made directly by the notary concerned, and the notary should know the origin of the promised object so there is no reason for the notary to argue that the notary is innocent.

The third type of liability, *res ipsa loquitur* is the form of responsibility that frees the plaintiff from the burden of proof, (Handayani, Arifin, & Virdaus, 2019). According to this concept, the defendant's mistake is assumed to have existed, so that the defendant that has the burden to prove that the defendant is innocent. The defendant is responsible because it is assumed that he has committed an illegal act, but the defendant will be released from that responsibility if he succeeds in proving that the defendant is innocent or has not committed an illegal act, (Wibisana, 2016). This is actually in line with liability based on the fault with reverse proof, which refers to the previous case so that the notary is not required to pay compensation, the notary must prove that the unfulfilling of halal causa requirements on the object of the agreement is not caused by a notary mistakes, if the Notary cannot prove it, then the notary is stated have committed an illegal act and must be responsible for paying compensation.

Furthermore, on the fourth liability that is strict liability is a legal responsibility imposed on someone who commits an illegal act without considering whether the person involved in carrying out the act contains mistakes or not, (Fuady, 2010). In this regard, the person can be held liable, even though in doing so, the person did not do it intentionally or negligently (Fuady, 2010). Another definition also explained that strict liability are the liability that arises at the time of the action, without questioning the defendant's mistake, (Fadli dkk., 2016). Regarding this matter, it can be seen that according to this concept of responsibility, mistakes is not a factor that determines a responsibility, because there are exceptions that allow someone to be released from responsibility, such as a state of a natural disaster (*force majeure*). Similarly, if there is a loss suffered by the plaintiff, then it is only necessary to show the causality

relationship between the perpetrator's actions and the losses he suffered, (Shidarta, 2006). Based on the explanation, if it is connected with the example of the case above, then the application of strict liability in examining halal causa requirements that is to impose responsibility to the Notary Public as the party that makes the authentic deed, regardless of the mistake made, whether the mistake was intentional or not. Related to this, according to the opinion of the author, giving the responsibility without seeing mistakes is difficult to practice, because this relates to how much loss must be paid, which is certainly closely related to the mistakes made.

The last type of responsibility for the latter is an absolute liability. This liability is often associated with strict ability because they are both forms of responsibility without mistakes, but both have different meanings. Absolute liability is the liability principles without mistakes which is no exception, other than that this liability type does not require a causal relationship between the person responsible for the loss, and in this case, the release of responsibilities (usual defences) does not apply unless stated explicitly and specifically in the legislation, (Nasution, 2014). This is as Hans Kelsen's opinion states that there is no relationship between the mental state of the offender and its consequences is not important, but his action is enough to have caused losses to other, (Kelsen, 1995). Regarding this explanation, according to the concept of absolute ability, the mistake in making an authentic deed may not be a notary fault but it could be the fault of another party or parties involved in the agreement. Related to this, however, this concept cannot be applied in the problems in the two cases previously described. This is because in Article 15 (1) jo. Article 65 of the Notary Position Law has confirmed that the Notary is an authorized official in making an authentic deed and be responsible for making the deed he made so that in this case there can be no mistake in making an authentic deed which does not meet *halal causa* requirement which is delegated to another party which is not in the domain of its authority.

In connection with the explanation above, it can be seen that halal causa requirements in making agreements in the form of a deed made by a Notary is crucial, and in this case, the Notary is required to be thorough, careful,

and careful in making an authentic deed. In this regard, before making a deed, the Notary must first check the requirements starting from the identities of the parties, the object promised, until the contents promised must meet the legal requirements of the agreement, especially *halal causa* requirements. Related to this, in the Notary Position Law itself, the obligations of the notary in checking the validity requirements of the agreement in making the deed, especially *halal causa* requirement, until now still not been set, although the notary's obligation to check the legality of the agreement, especially *halal causa* is an urgent to do, so that the authentic deed, the notary did not underestimate and do deviations towards the requirements for validity of the agreement

4. CONCLUSION

Based on the results and discussion above, it can be concluded that of the five types of responsibilities as described, then the form of notary responsibility in checking *halal causa* on the object which agreed most precisely using the type of liability based on fault. This is because the notary has the authority and responsibility for the authentic deed he made, considering the notary as an official who knows and understands the rules in making authentic deeds, so that if there is a defect in the authentic deed, that is, that is, the unfulfilling of *halal causa* requirements which results in the deed being invalid and null and void, then it is a mistake of the notary itself. Related to this, based on the concept of liability based on fault, then the party who suffer losses must prove the existence of an element of deeds, mistakes, and losses committed by the notary so that the party can hold accountable to the notary in the form of compensation as stated in Article 84 of the Notary Position Law. Even though the legal consequences are not fulfilled *halal causa* in making the deed as a form of responsibility the Notary has been regulated as mentioned above, but the Notary's obligation in checking *causa halal* requirements itself is still not regulated in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Position of Notary so that in this case the Notary can still freely deviate *halal causa* requirements in making authentic deeds. Therefore, it can be suggested that 1) to the government,

the addition of articles in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position related to the Notary's obligation in checking the legality of agreements in making authentic deeds, especially for *halal causa* requirement, so that the notary do not have space to deviate from the legal requirements of the agreement, especially *halal causa* requirements. 2) to the Notary, should be more careful, thorough, not negligent, and comply with the provisions contained in the Civil Code, the Notary Position Law, and the Notary Code of Ethics in making authentic deeds. Related to this, before making an authentic deed, the Notary must first check the origin of the object to be promised, as well as check whether the object has met *halal causal* requirements or not.

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