

Sanctions for Notaries for Breach of Position and Code of Ethics Conduct in the Exercise of the Authority

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ABSTRACT

Notary is a public official who is authorized to make authentic deeds and other powers based on Law Number 2 of 2014 concerning Notary Office (UUJN), and based on other statutory regulations. According to the UUJN conception that a Notary deed is an Authentic deed made by a Notary according to the forms and procedures established by laws and regulations. Violations made by notary according this provisions have legal consequences in the form of sanctions, particularly administrative sanctions, civil sanctions and criminal sanctions as well as ethical sanctions related to violations of the Code of Ethics. This paper will review what causes a notary to be subject to sanctions in carrying out his authority, also how is the form of breach of position carried out by a notary. This papers belongs to normative legal research using secondary legal materials. The cause of the notary can be subject to sanctions in carrying out his authority because the notary in carrying out his position is not in accordance with the UUJN and other laws and regulations. The form of sanctions for the breach of positions carried out by a notary against a notary himself and his position that administratively can be subject to sanctions in the form of a written warning to dishonorable dismissal, against a Notary in a civil manner may be subject to sanctions in the form of reimbursement of costs, compensation and interest, for criminal violations may be subject to criminal sanctions, and violation of ethics may be subject to code of ethics sanctions. Notaries in carrying out their positions and authorities must prioritize the principles of prudence, thoroughness, scrutiny and always apply the law in carrying out their authority. Furthermore, the notary must also properly understand the impact that may arise for the mistakes and violations committed by the notary.

Keywords: Notary, Code of Ethics, sanctions.

1. INTRODUCTION

Law has a very important role in society, because the law contains orders for sanctions, obligations, and sovereignty. [1] Lawrence M. Friedman suggests four functions of the legal system: first, as part of the social control system that regulates human behavior. Second, as a means to resolve disputes (dispute settlement). Third, the legal system has a function as a social engineering function. Fourth, law as social maintenance, which is a function that emphasizes the role of law as maintenance of the "status quo" that does not want change. [2]

In carrying out its authority, a Notary as a Public Official is authorized to make an Authentic deed, and also has other powers, as referred to in the Act and other statutory regulations. The concept of Law number 2 of 2014 concerning Amendments to Law number 30 of 2004 with the Position of a Notary (UUJN), that a

Notary deed is an authentic deed made by or before a Notary according to the forms and procedures stipulated by law (see Article 1 number 7 UUJN). With this concept, it means that the notary deed must fulfill two absolute conditions that must be met, namely:

- 1). The form of a notary deed made before him is determined by law.
- 2). The notary deed must comply with the procedures determined by law..

Besides having to fulfill the provisions of Article 1 point 7 of the UUJN, the authority of a notary in making an authentic deed must be based on the UUJN and other laws and regulations (see article 1 paragraph 1 UUJN). When the Notary deed has fulfilled these requirements, the Notary deed is included in the category as perfect evidence. UUJN provides very strict requirements for authentic deeds as perfect evidence. However, in fact, there are still legal issues related to the Notary deed which is not in accordance with Article 1 paragraph 1 and Article 1 paragraph 7 of the UUJN, such as making

the substance contrary to the Law, the procedure is not in accordance with the laws and regulations, so that in reality the matter is This does not only result in the deed being canceled or null and void, or the deed can be relegated to a deed under hand. In this regard, it can have an impact on the notary and interested parties, namely civil, criminal, administrative and ethical claims.

Whereas in the Law on Notary Positions, as a Notary public official, he is required to be responsible for the deed he has made. If the deed made later turns out to contain a dispute, this needs to be questioned, whether this deed is the notary's fault or the fault of the parties or whether there is an agreement that has been made between the notary and one of the parties who appear. If the deed issued by a notary contains a legal defect that occurs due to the notary's error either due to his negligence or because of the notary's own intention, then the notary is supposed to provide accountability. [3].

Notary as a public official who has certain authority as stated in article 15 UUJN where with the authority that is in the notary, the notary deed binds anyone with an interest in the deed. If in the making of a notarial deed all conditions have been met, such as: [4]

1. A notary has the authority to make a deed according to the wishes of the parties.
2. Outwardly, formally and materially, it is in accordance with the legal rules regarding the making of a Notary deed including the procedure determined by law.

Besides having to apply the law in making authentic deeds and in exercising their authority, Notaries must also comply with the Notary Code of Ethics, as mandated in the Congress of the Indonesian Notary Association (INA). (namely the INA Banten Congress on 29 and 30 May 2015).

The realm of law influenced by positivism needs to be backed up by ethics. If the law is identified with the rules of life that are attached to sanctions from the external power of the government, then the law must be positive, meaning that it is concrete and there are statutory regulations.[5] The position of a notary is not a position that can be carried out for life, but the position is limited by time and other reasons. [6] Notaries who are proven to have violated the obligations and prohibitions of a Notary as regulated in Articles 16 and 17 of the UUJN, may be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics sanctions and even criminal sanctions. [7] Civil sanctions are generally sanctions given for violations of private law, namely the law that regulates interpersonal relationships in fulfilling their interests. [8]

Administrative sanctions was means that the penalties get imposed a notary who has violated the applicable laws and regulations. [6] Based on the applicable provisions, the definition of administrative sanctions is stated in Article 1 point 1 of the Regulation of the Minister of Law and Human Rights Number 61 of 2016

concerning Procedures for Imposing Administrative Sanctions against Notaries (hereinafter referred to as Permenkumham No. 61 of 2016). In carrying out the duties and authority of a notary, a notary is surrounded by a vortex of sanctions for errors and omissions as well as unintentional acts as an official authorized to make authentic deeds. The responsibility is delegated to the notary to guarantee legal certainty of written evidence as perfect evidence, according to positive law in Indonesia.

2. RESEARCH QUESTIONS

This study aims to find out and analyze what causes a notary to be subject to sanctions in carrying out his authority and to find out and analyze the form of sanctions for violating positions carried out by a notary and his position.

3. METHOD

The research method used is a normative juridical approach. normative legal research methods or library law research methods are methods or methods used in legal research conducted by examining secondary materials. [9] This type of legal research conceptualizes the law as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate. [10]

4. RESULTS AND DISCUSSIONS

4.1 Causes of Notaries Can Be Subjected to Sanctions In Carrying Out Their Authority

Notaries as public officials are authorized to make authentic deeds and other powers according to the UUJN and other laws and regulations. This provision is emphasized in Article 1 paragraph 1 of the UUJN, which means that the notary's authority must be based on the provisions stipulated in the UUJN and the applicable laws and regulations, meaning that the scope of the notary's authority is formal and not in the realm of policy. UUJN as a guide for notaries must be obeyed, as well as other statutory regulations, both regarding procedures and the substance of the material in the notary deed itself. On the other hand, the form of an authentic deed must be determined based on the law and also the procedure must be in accordance with those stipulated in the UUJN and based on other regulations as regulated in Article 1 paragraph 7 of the UUJN. Therefore, the cause of the notary being subject to sanctions in exercising his authority is because the notary in exercising his authority is not based on the UUJN and other laws and regulations and also because the manufacture is not in accordance with the procedures regulated in the UUJN and in other laws and regulations.

Based on the description above, it can be inventoried in accordance with the provisions in the UUJN as well as in other laws and regulations. As the cause of notaries being subject to sanctions in carrying out their powers, they are as follows:

1. In general, because the notary violates what has been required to be implemented in carrying out his authority as regulated in article 16 of the UUJN and also because the notary does not leave what is prohibited to be abandoned as regulated in article 17 of the UUJN.
2. Because the making of the deed made by or before a Notary is not in accordance with or contrary to the applicable laws and regulations, including:
 - a. To make the transfer of rights to objects that have been certified, do not first check the original of the certificate in question at the local land office so that it violates the provisions of Article 97 of the Minister of Agrarian Spatial Planning / Head of the National Land Agency number 3 of 1997 concerning implementing regulations of Government Regulation number 24 of 1997 concerning Land Registration. Legal actions that do not heed these provisions are related to the object and it turns out that the object of the transfer of rights made before a notary is blocked by certain parties, it will result in losses for the interested parties. On the basis of this, it can lead to claims and lawsuits from interested parties. Against such legal actions, the notary can be blamed for not applying the law in making the deed before him.
 - b. Making a grant deed does not refer to article 210 of the Compilation of Islamic Law, for those who are Muslim, where the grant cannot be more than 1/3 of the assets of the grantor. The legal act of transferring rights in addition to buying and selling, exchanging is also a legal act of transferring rights through grants. A grant is a legal act that results in the transfer of the object of the grant to the recipient of the grant but is carried out free of charge. On the basis of this, to protect certain interested parties, the grantor is not allowed to donate all his assets to the grantee, this can be understood not to let the granting harm those who have a legal relationship from the grantor to certain parties, especially related to lineage ties. such as children, relatives and others in order to avoid demands from these interested parties.
 - c. Transfer of Rights to the shares of a Limited Liability Company where the GMS has not conducted prior approval for the transfer of Shares as regulated in Article 57 of Law number 40 of 2007 concerning Limited Liability Companies or the Company's Articles of Association. Limited Liability Company or abbreviated as Limited Liability Company, is a business entity categorized as a Legal Entity, where the highest authority in a Limited Liability Company is the General Meeting of Shareholders or also abbreviated as GMS. Once the urgency of the position of the GMS in a Limited Liability Company, the shareholders in the Limited Liability Company are Persons or Legal Entities that must be agreed and approved and accepted by those who have shares in the Limited Liability Company. So that the transfer of shares of the Limited Liability Company must obtain the approval of the shareholders in the Limited Liability Company, where the transfer of shares must first be offered to the holders of the said Company. This means that the buyers of the shares to be transferred are given the opportunity to other shareholders and if the shareholders in the Limited Liability Company are not interested in buying the shares to be transferred, then with the approval of the GMS, the transfer of shares can be transferred to other parties outside the shareholders in the Limited Liability Company.
 - d. The action of the Commissioner is not based on Article 108 of the Law. Number 40 of 2007 concerning Limited Liability Companies, where the Commissioner in giving approval to the Board of Directors is Collective or Council if there is more than one commissioner. In a Limited Liability Company, the Commissioner is one of the important organs in controlling the actions of the Board of Directors. Based on these provisions, several actions of the Board of Directors must obtain approval from the Board of Commissioners, so that if the Board of Directors does not obtain the approval of the Board of Commissioners, the actions of the Board of Directors will be invalid. In this case, the legal actions of the directors can be canceled through a lawsuit and the directors can be held accountable for these actions. On the other hand, the notary is considered not to apply the law in making an authentic deed.
3. The making of a Deed made by or before a Notary is not in accordance with the procedures prescribed by Law, including:
 - a. The signing of the deed by the parties and witnesses before a notary is carried out not simultaneously and is not first read by a notary in front of the parties and witnesses, the norm that is violated is the provisions of article 44 UUJN. With the signing done not at the same time, it is vulnerable to denial by one of the parties stating that one party has never met the other party. Regarding the witness whose signing is not in front of the witness, the

witness never knows of the signing of the deed, so that it has an impact on the authenticity of the deed made before the Notary.

- b. Amendments to the deed are not ratified by the parties, witnesses and notaries. This violation is regulated in article 48 of the UUJN. In the event that such an event causes a renvoi or change to be considered invalid and results in the parties not recognizing the change.
- c. The signing of the deed is not carried out in the presence of two witnesses unless the legislation provides otherwise. This violates the provisions of Article 40 UUJN. The notary commits a violation in Article 54 of the UUJN, regarding the giving of copies, quotations and goose deed not to parties who are directly interested, heirs or people who are entitled..

The description above describes the factors that cause a notary to be subject to sanctions in carrying out his authority. The authority of a notary in the UUJN has been described in article 15 of the UUJN, which in exercising this authority must of course be in accordance with the applicable laws and regulations, namely the UUJN and related regulations and procedures that have been determined based on the applicable laws and regulations.

4.2 The form of sanctions for violations committed by a notary to his position

Violation of the position of a notary will ultimately lead to responsibility for the professional bearer, whether it is administrative responsibility or civil compensation. Violation of the position of a notary will ultimately lead to responsibility for the professional bearer, whether it is administrative responsibility or civil compensation.. [11]

In administrative sanctions, UUJN regulates the imposition of sanctions on notaries due to the violations committed, namely Article 91A UUJN regulates the procedures for imposing sanctions as referred to in Article 7 paragraph (2), Article 16 paragraph (11) and paragraph (13), Article 17 paragraph (2), Article 19 paragraph (4), Article 32 paragraph (4), Article 37 paragraph (2), Article 54 paragraph (2), and Article 65A are regulated in a Ministerial Regulation.

Permenkumham No. 61 of 2016 Article 1 point 1 explains that Administrative Sanctions are punishments imposed by authorized officials to Notaries for committing mandatory violations or fulfilling provisions prohibited by laws and regulations. Sanctions are the imposition of punishment on someone who is caused by not implementing the norms that have been regulated by the ruler. In Ehrlich's view, the norms governing life in any society are only partially reflected in traditional formal legal sources, such as laws and case decisions. [12]

Administrative sanctions given to notaries based on Permenkumham No. 61 of 2016 the element is to commit a mandatory violation and fulfill the provisions

prohibited in Article 5 paragraph 1 letters a to h. [13] The form of sanctions given to notaries is based on Permenkumham no. 61 of 2016 article 5 paragraph 2 to paragraph 5, a notary will be subject to a written warning. Furthermore, Article 6 paragraph 1 and paragraph 2 explain that in the event that the obligations as referred to in Article 5 paragraph (4) are not fulfilled within the stipulated time or make other mistakes, the Notary Regional Supervisory Council may submit a proposal for temporary dismissal to the Notary Central Supervisory Council and the Supervisory Council. The Notary Center conducts an examination based on the proposed temporary suspension as referred to in paragraph (1). In article 10 of the Minister of Law and Human Rights no. 61 of 2016 emphasized that the Minister can impose administrative sanctions in the form of honorable and dishonorable dismissal.

Against civil sanctions given to a Notary, it is caused because the authentic deed he made is degraded to underhand. Based on this, there are several reasons that cause authentic deeds to be degraded into private hands, namely: [13]

1. a. The deed was read out, not attended by 2 witnesses or 4 special witnesses for the maker of the private will.
 - b. The deed is not signed at the same time by the appearer, witness and notary when the deed is read. (see article 16 paragraph (9) in conjunction with article 16 paragraph (1) letter m UUJN).
 - c. The deed that is read is not explained in the closing of the deed and each page is not signed by the appearers, witnesses and notaries (see article 16 paragraph 7 UUJN).
 - d. In the event that the parties read it themselves, the notary does not read the head of the deed, the comparison, a brief and clear explanation of the contents of the deed and the closing of the deed. (see article 16 paragraph 8 UUJN).
2. Notaries violate the provisions of articles 38, 39 and 40, (see the provisions of article 41 UUJN).
3. Violating the provisions of article 44 paragraph 1 to paragraph 4 UUJN (see article 44 paragraph 3 UUJN).
4. Violating the provisions of Article 48 paragraphs 1 and 2 regarding how to enquire. (see article 48 paragraph 3 UUJN).
5. Violating the provisions of article 49 paragraphs 1 and 2 regarding the appointment of the amended section. (see article 4 UUJN).
6. Violate the provisions of article 50 paragraph 1 to paragraph 4 and article 38 paragraph 4 letter d, (see article 50 paragraph 5 of the UUJN related to envoying).
7. Violating the provisions of article 52 paragraph (3) related to the prohibition of making deeds for oneself, wife/husband and so on which are regulated in article 52 paragraph 1 UUJN).

The legal consequences of civil sanctions given to a notary, then for those who suffer losses to claim

reimbursement of costs, compensation, and interest to a notary, this is based on the provisions of the UUJN in article 44 paragraph 5, article 48 paragraph 3, article 49 paragraph 4, article 50 paragraph 5, and article 51 paragraph 4.

Notary deed as an authentic deed is evidence that cannot bind investigators and judges in proving, or is free. [14] The power in the form of evidence of a notary deed in a criminal case is a valid evidence according to the law and has perfect value. [14]

Notaries in carrying out their positions and authorities may be subject to criminal sanctions caused by several things, namely :

- a. Fulfilling the elements of the provisions of the Criminal Code article 263, namely making a fake letter or falsifying a letter that can give rise to a right, engagement or debt relief, or which is intended as evidence of something with the intention of using or ordering other people to use the letter as if the contents are true and not falsified, threatened if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years.
- b. Fulfilling the elements of the provisions of the Criminal Code Article 264, namely forgery of letters is punishable by a maximum imprisonment of 8 years.
- c. Fulfilling the elements of Article 266 of the Criminal Code, namely entering false information into an authentic deed, is punishable by a maximum imprisonment of 7 years.

The legal consequences of criminal sanctions given by a notary in accordance with article 13 of the UUJN that a Notary is dishonorably dismissed by the Minister because he was sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more.

Notaries in carrying out their positions have a moral responsibility to their profession. According to Paul F. Camanisch, the profession is a moral community that has shared ideals and values. Professional groups have their own powers and special responsibilities. As a profession, this group has a reference called the Professional Code of Ethics. [11]

According to the provisions of article 1 number 2 of the Notary Code of Ethics Chapter 1 concerning the general provisions that the Notary Code of Ethics and hereinafter referred to as the Code of Ethics is a moral code determined by the Indonesian Notary Association, hereinafter referred to as the "Association" based on the decision of the Association Congress and/or the determined by and regulated in the laws and regulations governing this matter and which applies to and must be obeyed by each and all members of the Association and all people who carry out their duties as a Notary, including Temporary Notary Officials, Substitute Notaries when carrying out position. Furthermore, number 4 explains that a notary is a person who holds

and carries out his duties as a public official, as referred to in the Law on Notary Positions.

Based on his duties and position as a public official, a Notary is obliged to comply with and implement all that is in the UUJN and the Notary Code of Ethics. In the notary code of ethics article 3 regarding obligations and article 4 regarding prohibitions, in both articles the notary is obliged to follow and obey and make guidelines for carrying out his duties and positions. Notaries who violate the obligations and prohibitions in the code of ethics will be subject to sanctions according to the provisions of article 6 paragraph 1 of the Notary Code of Ethics, namely the sanctions imposed on members who violate the Code of Ethics can be in the form of:

- a. Rebuke;
- b. Warning;
- c. Temporary suspension from membership of the Association;
- d. Dismissal with honor from membership of the Association;
- e. Disrespectful dismissal from the Association's membership.

5. CONCLUSIONS

The cause of the notary can be subject to sanctions in carrying out his authority because the notary in carrying out his position is not in accordance with UUJN and other laws and regulations and also because its manufacture is not in accordance with the procedures regulated in the UUJN and in other statutory regulations.

The form of sanctions for violation of positions carried out by a notary against himself and his position that Administratively can be subject to sanctions in the form of a written warning to dismissal with disrespect, against a Notary in a civil manner can be subject to sanctions in the form of reimbursement of costs, compensation and interest, then on the other hand if there are customers who commit criminal acts can be subject to criminal sanctions and violations of ethics can be subject to code of ethics sanctions.

Notaries in carrying out their positions and authorities in principle must prioritize the principles of prudence, thoroughness, scrutiny and always apply the law in carrying out their authority. Furthermore, the notary must also properly understand the impact that may arise for the mistakes and violations committed by the notary.

REFERENCES

- [1] w. Friedmann, *Teori & Filsafat Hukum Telaah Kritis Atas Teori - Teori Hukum (Susunan I)*, diterjemahkan oleh Muhammad Arifin., Jakarta: Rajawali, 1990.
- [2] A. H. Barkatullah, *Filsafat, Teori & Ilmu Hukum, Pemikiran Menuju Masyarakat yang berkeadilan*

- dan bermartabat, Jakarta: Raja Grafindo Persada, 2013.
- [3] P. D. et.al, "PERTANGGUNG JAWABAN NOTARIS DALAM PEMBUATAN AKTA BERDASARKAN PEMALSUAN SURAT OLEH PARA PIHAK," *Acta Comitatus : Jurnal Hukum Kenotariatan*, ISSN 2502-7573, vol. 2, no. <https://ojs.unud.ac.id/index.php/ActaComitatus/article/view/34268>, 2017.
- [4] H. Adjie, *Kebatalan dan Pembatalan Akta Notaris*, Bandung: Refika Aditama, 2011.
- [5] A. G. Anshori, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, Yogyakarta: UII Press, 2013.
- [6] S. HS, *Peraturan Jabatan Notaris*, Jakarta: Sinar Grafika, 2018.
- [7] P. A.R., *Perlindungan Hukum Terhadap Notaris (Indikator Tugas - Tugas Jabatan Notaris yang Berimplikasi Perbuatan Pidana)*, Jakarta: Softmedia, 2011.
- [8] P. P. Soerjono Soekanto, *Sendi - Sendi Ilmu Hukum dan Tata Huikum*, Bandung: Citra Aditya Bakti, 1993.
- [9] S. M. Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan ke-11, Jakarta: Raja Grafindo Persada, 2009.
- [10] Z. A. Amiruddin, *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2004.
- [11] E. Sumaryo, *Etika Profesi Hukum: Norma-Norma Bagi Penegak Hukum*, Yogyakarta: Kanisius, 1995.
- [12] W. Menski, *Perbandingan Hukum Dalam Konteks Global Sistem Eropa, Asia dan Afrika*, Bandung: Nusa Media, 2014.
- [13] Suprayitno, "POTENSI TERJADINYA PEMANGGILAN NOTARIS OLEH MAJELIS PENGAWAS NOTARIS DAN MAJELIS KEHORMATAN NOTARIS," *DISAMPAIKAN PADA ACARA SOSIALISASI PENGUATAN LEMBAGA MAJELIS PENGAWASAN NOTARIS SUMATERA UATARA*, 28 - 30 Juli 2019.
- [14] M. Y. Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang di Pengadilan Banding, Kasasi dan Peninjauan Kembali*, Jakarta: Sinar Grafika, 2000.
- [15] P. D. Cruz, *Perbandingan Sistem Hukum Common Law, Civil Law and Socialist*, Jakarta: Nusa Media, 2017.