

Legal Consequences Against Notary with Convicted Status by Court Decisions

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ABSTRACT

Notary is one of the legal professions that carry out some of the duties of state administration to provide legal services to the general public in the civil sector. law. Moreover, until now there is no professional standard for notary services or SOPs in providing services to the community, so that notary in carrying out their positions are vulnerable to potential legal problems, driving members of this profession to be quite apprehensive because many were reported by their clients against the deed they made or matters under their authority. The reporting continues until the trial stage until the court's decision that determines the notary as a convict. Performing actions by deceiving, embezzling and falsifying in the position of a notary can indeed be categorized as a disgraceful act and a form of violation of obligations that are prohibited in the position of a notary and a code of ethics, which can be subject to temporary dismissal, where UUJN stipulates the length of the temporary sentence is determined at the longest 6 (six) months. In addition to the legal implications, of course there are things that need to be investigated further if a notary is temporarily dismissed for a criminal case whose sentence is less than 5 (five) years, of course the dismissal and reappointment have mechanisms and procedures.

Keywords: *Notaries, Violation, Court*

1. INTRODUCTION

The Unitary State of the Republic of Indonesia (NKRI) with the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945) as the written legal basis confirms that Indonesia is a state of law. As the law states, this means that all actions taken by governments and citizens are bound by the rules of law having force and position the same in the eyes of the law.

That the existence of law made by the state aims to regulate and protect society in order to create order and peace. The existence of law in society is not only to maintain order, but also to limit actions that are detrimental to the community and as a means of solving legal problems that occur in the community. Thus, it can be said that all activities and community action or legal professions such as notaries for example, cannot be separated from the rules of law and for the party that violate legal rules that may be penalized in accordance with the follow actions .

A notary is one of the legal professions that carries out part of the task of administering the state to provide legal services to the general public in the civil sector. Such authority is obtained through attribution which is delegated based on statutory provisions, so that the notary has authority to make important documents in the form of a deed otentik and authority of the other concerns the legal acts, as well as the determination of the

desired agreement by the parties expressed in an authentic deed.

One of the reasons behind the state giving broad authority to the notary profession is because the Indonesian state as a state of law guarantees certainty, order and legal protection to every citizen based on truth and justice. Therefore, in order to fulfill the interests, then the required written evidence of authentic nature, where it is the authority of the notary.

Given the breadth of notary authority that the state has given, the government issues legal regulations to regulate all notary activities, ranging from authorities, obligations to prohibitions that are not allowed to be violated because there are sanctions from such actions. The regulation is contained in Law Number 2 of 2014 as a substitute for Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) whose existence is made to define and determine all obligations given by the government to this profession so that the aim of establishing a profession that is independent and serve the community can be realized as expected.

Profession as a notary is a legal profession in practice requires scientific specialty that according Habi b adjie called the office of the *ice oterik*, which means that it should be studied specifically, in this case through the special education and have the skills and capabilities are adequate for running notarial duties. Therefore, carrying out the profession as a notary is required to comply with all

legal provisions that govern it and avoid potential violations of the law regulated in the UUJN and the Notary Code of Ethics Likewise, in carrying out his duties, he must also be careful, thorough and impartial and master specifically in the field of notary science and in general master in the field of law.

In providing services to the community, sometimes notaries fall or are vulnerable to legal problems because of their behavior in carrying out their positions which ultimately leads to legal problems. Moreover, until now there is no professional standard for notary services or SOPs in providing services to the public, so that notaries in carrying out their positions are vulnerable to potential legal problems.

In practice, it is often the events in which the notary as officials who are authorized by the state experience a state of considerable concern due to being reported by the client with regards to the deed he made or things under its authority. The reporting continues until the trial stage until the court's decision that determines the notary as a convict. In carrying out their duties and authorities to make authentic deeds, not a few notaries are entangled in legal cases or made suspects in criminal cases such as fraud, embezzlement, and forgery or ordering to forge a deed or signature. At least, based on the author's search, it was found that court decisions that dragged a notary into convict status, including:

1. The case of forgery that occurred in Pekanbaru as stated in the decision Number 137/Pid.B/2016/PN.Pbr *juncto* Decision Number 166/PID.B/2016/PT. PBR, with the defendant PS, Bin Slamet Basoeki, was declared to have been legally and convincingly proven guilty of participating in the criminal act of Forging Authentic Deeds and was sentenced to 1 (one) year and 6 (six) months in prison.
2. The embezzlement case that occurred in Balikpapan as stated in the decision Number 685/Pid.Sus/2019/PN Bpp *juncto* the Decision Number 69/PID/2020/PT SMR with the defendant ASC, was declared proven and legally and convincingly guilty of committing the crime of embezzlement by receiving a sentence 2 (two) years in prison.
3. The fraud case that occurred in Surabaya as stated in the Decision Number 2200/Pid.B/2020/PN Sby with the defendant DC, was legally and convincingly found guilty of committing a criminal act of fraud and was sentenced to 1 (one) year and 6 (six) months in prison.

Based on the description of the cases above, that the position of a notary is very vulnerable to being entangled in criminal cases due to his carelessness or carelessness in carrying out his duties and authorities. Surely there will be implications for the law of the position of the notary when dismissed, which sanctions the UUJN least have sanctions from the mildest to the most severe level yes i tu sanctions in the form of a written warning, suspended, honorable discharge, or a dishonorable discharge.

The sanctions for temporary dismissal are explained in Article 9 letter e of the UUJN which is then reaffirmed in Article 86 letter e of the Regulation of the Minister of

Law and Human Rights Number 19 of 2019 concerning Terms and Procedures for Appointment, Leave, Transfer, Dismissal, and Extension of the Office of a Notary (hereinafter referred to as Permenkumham 19/2019), the notary is temporarily dismissed because he is undergoing a period of detention or punishment.” Meanwhile, for dishonorable dismissal based on Article 13 of the UUJN, it is applied to a notary who based on a court decision has committed a criminal offense which is punishable by 5 (five) years in prison or more. Thus, it can be interpreted that for a notary whose sentence is or based on a court decision that decides a sentence of less than 5 (five) years, then according to the law, the sanction given is a temporary suspension. However, if the court's decision to punish the notary for more than 1 (one) year is in accordance with Article 9 Paragraph (4) of the UUJN which confirms that the temporary suspension is valid for a maximum of 6 (six) months, especially for a notary who commits a disgraceful act and violates the obligations and prohibitions of positions as well as the notary code of ethics.

Performing actions by deceiving, embezzling and falsifying in the position of a notary can indeed be categorized as a disgraceful act and a form of violation of obligations that are prohibited in the position of a notary and a code of ethics, which can be subject to temporary dismissal, where UUJN stipulates the length of the temporary sentence is determined at the longest (six) months, whereas if you look at the existing cases, the notary is subject to a sentence of more than 1 (one) year and above whether it can be categorized as a temporary sentence considering that the punishment for dishonorable dismissal is applied to a notary who commits a crime whose sentence is 5 (five) years or more.

In addition to the legal implications, of course there are things that need to be investigated further if a notary is temporarily dismissed for a criminal case whose sentence is less than 5 (five) years, of course there are mechanisms and procedures for the dismissal and reappointment. Therefore, d ith the enactment as a convict by the decision of the Court, the authors wanted to investigate further about the result of the law notary status as a convicted by a court ruling which of his prior status of the convicted person in advance as a suspect which of these positions writer would describe about how UUJN regulate the duties and authorities of a notary who has the status of a suspect who later becomes a convict based on a court decision as well as regarding the mechanism of temporary dismissal and reappointment for notaries who have passed the detention or sentence period. This needs to be studied because the UUJN does not clearly regulate how to re-appoint a notary who is temporarily dismissed for committing a crime whose sentence is less than 5 (five) years.

1.1. Related Work

Based on the description above, the title of the research entitled: Legal Consequences Against Notaries with Convicted Status by Court Decisions

1.1.1. The legal consequences for a notary who has the status of a convict by a court decision.

Notaries who are entangled in a criminal act include fraud, embezzlement and forgery until the court there are factors that cause this phenomenon to occur, namely because "the notary has deviated from the provisions of Article 4 paragraph (1) in conjunction with Article 16 paragraph (1) letter a UUJN regarding the oath of office and obligations that must be adhered to in carrying out their positions, namely trustworthy, honest, thorough, independent, and impartial in legal actions. UUJN regulates 4 (four) levels of sanctions, namely written warnings, temporary dismissal for 3 months and 6 months, respectful dismissal, and dishonorable discharge. If the notary is caught in a legal case and has the status of a suspect, the notary can still carry out his duties and authorities as long as the Decree on the appointment as a notary has not been revoked and the judge's decision does not have permanent legal force. However, there are things that need to be anticipated and criticized, namely if the notary is in detention or in prison and is still making a deed. Such a condition is not justified because it is not in accordance with the inherent dignity and honor of the position, namely trust as a notary based on the code of ethics and applicable law. This means that even though the notary concerned is in custody and there has been no revocation of the letter of appointment, in order to maintain the honor of the notary, he should not make a deed. Even though a notary has been named a suspect, he still has to put forward the principle of the presumption of innocence before a court judge's decision has permanent legal force.

1.1.2. The mechanism for reappointment of the position of a notary who is temporarily dismissed due to committing a crime whose sentence is less than 5 (five) years.

Notaries who have been dishonorably dismissed can submit an application to the Minister for reappointment as Notary. The application is submitted by a Notary who has been dismissed with a return decision who stated that he was not legally proven to have committed a crime punishable by imprisonment of 5 (five) years or more. With this application, the Minister is expected to make changes to the decision of dishonorable dismissal that has been issued previous. The changes in question can be in the form of or revocation of the decision to dismiss dishonorably.

1.2. Our Contribution

Based on the background and problem formulation, the objectives in this research are to find out the legal consequences of a notary who has the status of a convict by a court decision and to find out the mechanism for reappointment of the position of a notary who is temporarily dismissed due to committing a crime whose sentence is less than 5 (five) years.

1.3. Paper Structure

This paper structure is using research method to collect data, manage data, and conclude data according to the problem formulation. This legal research is to study the particular law. This legal research is carried out with a series of scientific activities based on methods, systematics, and a certain thought. The definition of normative research is research that provides a systematic explanation of the rules governing a certain legal category, as well as analyze the relationship between regulations and future development. The author uses three legal materials that obtain from the results of a literature review, library material, and legal material.

2. LITERATURE REVIEW

2.1. Legal Basic Value Theory

Basically, the existing laws are codified in the form of legislation was deliberately created, operated and developed through the mechanism of law (*rule of recognition*), dispute resolution (*rule of adjudication*), and changes to the law (*rule of change*). The existence of the law not only aims to provide security and order and ensure their well-being gained by the community of negara as an umbrella society, will but to create relationships and regularly between community members needed an order, or better known as *potato societas ibi ius* or if there is a society there is law. Because of this order, life becomes orderly.

The existence of law is very important and needed to regulate human behavior in order to create peace and order in society. Law that regulates, compels, and protects every individual from the threat of danger and to protect the rights of everyone and maintain a balance between the interests that exist in the life of the nation and the state. Law as an order supported by norms

In addition, law also has a purpose as stated by Aristotle, a philosopher and thinker from Greece who said that the purpose of law is solely to achieve a better human life. Therefore, to obtain a better life, law is needed. Another view is also put forward by Hobbes which states that the purpose of law is none other than to create social order. John Locke also stated the purpose of the law is to preserve the natural rights, namely the right to life, the right to liberty, and property. Likewise, Jeremy Bentham is of the view that the main purpose of law is to achieve security for its citizens.

2.2. Legal Certainty Theory

One of the legal goals that society aspires to is the creation of legal certainty. Legal certainty can be reflected in a set of laws and regulations that legally regulate clear legal norms. If legal norms do not clearly regulate matters that can cause a notary to be declared bankrupt, then the law

does not represent all thoughts or ideas regarding legal certainty.

Although the legal certainty is reflected in the form of legality, would be but the rule of law does not mean only the rules that concrete containing articles of the law, but the need for constancy in the judge's decision in the case between the verdict of the judge's ruling that other words for similar cases have been decided. That means that legal certainty may be achieved through positivist legal regulations, but at the level of practice in court there must also be a consistent attitude from judges as implementers of the rules that have been made so as to create legal certainty. One of the determining factors for achieving legal certainty as described previously is that the rules may not have multiple interpretations and restrictions on interpretation, so a strict consideration is needed in making laws but must also pay attention to the most fundamental nature of the law itself, namely morality. The strict consideration of laws without the risk of multiple interpretations and also restrictions on interpretation will only reduce the morality that is behind legality. The law feels like a shell, is technical-instrumental in nature, and its implications in the application of the law can fall into practices that are wrong from human expectations.

Therefore, Frans Magniz Suseno once argued that behind legality there is actually an ethical legitimacy that makes the legitimacy of state authorities based on moral principles, while legality also gives functions to the state so that these functions are carried out in accordance with the applicable legal corridors. Legality is therefore not the same as ethical legitimacy, because legality is presented to prevent the decline of a country into arbitrary conditions and practices. Therefore, Magnis Suseno, legality is an important element in the concept of the rule of law because morally, the state can be organized and carry out its duties based on the principle of legal certainty.

Justice is part of the purpose of law in addition to certainty and expediency. In John Rawls' view, justice concerns the principle of freedom and freedom that is evenly distributed to everyone, and able to reorganize the socio-economic gaps that occur so that they can provide reciprocal benefits.

The theory of justice was chosen in this study due to looking at the legal rules regarding temporary dismissal in the case of a notary who is a convict. Performing actions by deceiving, embezzling and falsifying in the position of a notary can indeed be categorized as a disgraceful act and a form of violation of the obligations prohibited in the position of a notary and a code of ethics, which can be subject to a temporary dismissal sanction, where UUJN regulates the length of time the temporary sentence is determined no later than 6 (six) months, whereas if you look at the existing cases, the notary is subject to a sentence of more than 1 (one) year and above whether it can be categorized as a temporary sentence considering that the punishment for dishonorable discharge is applied to a notary who commits a crime whose sentence is 5 (five) years or more.

Meanwhile, in Article 13 of the UUJN, the Notary is dishonorably dismissed by the Minister because he was sentenced to imprisonment based on a court decision that

has permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more. Referring to the article above, it can be interpreted that the notary has the status of a convict, then the punishment that can be imposed is temporary dismissal if the sentence is less than five years and otherwise will be sentenced to dishonorable discharge if sentenced to five years or more.

3. CONCLUSION

1. Notary are public officials, so they must at all times maintain their honor and dignity and display a good personality based on the applicable code of ethics and positive legal rules. When a notary commits an act that violates the rule of law until a criminal sentence is imposed, the UUJN will impose administrative sanctions which can be in the form of a written warning, temporary dismissal to dishonorable discharge.
2. In connection with the case studied in this study, a notary was sentenced to a criminal sentence for forgery, embezzlement, fraud and returned to carrying out his position as a notary while undergoing parole. The practice of the notary public is due to the fact that the MPN does not carry out its duties, functions and obligations properly. The MPD which is domiciled in the city/regency is obliged to find out notary in their area who are unable to serve the community, including notary who are serving a period of detention. MPD's failed to report to MPW and subsequently resulted in a notary who underwent a period of detention and was later sentenced to a criminal by the court not temporarily dismissed by the Ministry of Law and Human Rights. Moreover, the crime of forgery, fraud and embezzlement by a notary has fulfilled the classification of actions subjecting the notary in question to be dismissed with disrespect for the MPN proposal according to Article 12 UUJN. The threat of punishment of more than 5 (years) also fulfills the element that the notary can be dismissed with disrespect directly by the said Ministry.

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