

Legal Sanctions for Notaries Violating the Code of Ethics in Making Deeds in Indonesia

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Abstract

The authority of notaries in Indonesia is regulated by Law Number 2 of 2014 concerning Notary Positions (UUJN). UUJN was established to ensure that notaries carry out their professional duties by providing legal protection and certainty to the public. However, the implementation of this law has not been optimal, leading to violations that contradict its provisions. In the year 2022, 67 notaries were suspected of violating the code of ethics. Through normative legal research, it was identified that notarial code of ethics violations, such as failure to read out deeds or allowing others to sign deeds in the presence of their staff, have been on the rise. Therefore, there is a need for the optimization of sanctions against notaries who breach the code of ethics, both in civil and criminal aspects, in accordance with the severity of their offenses. Supervision of notaries aims to ensure compliance with existing regulations and the code of ethics. If proven guilty of violations, notaries should face sanctions commensurate with their transgressions. The Notarial Code of Ethics encompasses five levels of sanctions, ranging from warnings

to dishonorable discharge from the Notary Association membership. Notaries are obligated to adhere to UUJN, the Notarial Code of Ethics, and maintain integrity and dignity in the execution of their profession.

Keywords: *Notary, Code of Ethics, Sanctions.*

Abstrak

Kewenangan notaris diatur dalam Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris (UUJN). UUJN dibentuk untuk memastikan notaris menjalankan tugas profesionalnya dengan memberikan perlindungan hukum dan kepastian kepada masyarakat. Namun, pelaksanaan UU ini belum optimal dan terdapat pelanggaran yang bertentangan dengan UU tersebut. Tahun 2022, 67 Notaris diduga melanggar kode etik. Melalui penelitian hukum normatif, diketahui bahwa terdapat pelanggaran kode etik Notaris, seperti tidak membacakan akta atau membiarkan pihak lain menandatangani akta di hadapan stafnya. Pelanggaran tersebut mengalami peningkatan, sehingga perlu pengoptimalan sanksi bagi notaris yang melanggar kode etik, baik secara perdata maupun pidana, sesuai dengan kesalahan yang dilakukan. Pengawasan kepada notaris bertujuan agar mereka mematuhi peraturan yang berlaku dan kode etik, dan jika terbukti melanggar, akan dikenakan sanksi sesuai pelanggarannya. Kode Etik Notaris memiliki lima tingkatan sanksi mulai dari teguran hingga pemberhentian tidak hormat dari keanggotaan Perkumpulan Notaris. Notaris harus mematuhi UUJN, Kode Etik Notaris, dan menjaga integritas serta martabat dalam menjalankan profesi mereka.

Kata Kunci: Notaris, Kode Etik, Sanksi.

Introduction

Notary is a public official who has the responsibility to provide services and legal consultations to the public. The main task of a notary is to serve individuals who need evidence in the form of authentic documents that can be trusted. In addition to notaries, public officials who are authorized to make authentic deeds are auction officials, burlijke stand civil registration employees, deurwaarder bailiffs, judges, court clerks and so on (Supomo, n.d.). An authentic deed issued by a notary has the power as evidence in all types of agreements and decisions required by laws and regulations, and in accordance with the wishes of the parties involved as stated in the deed. The authority of a notary is strictly regulated by Law Number 2 of 2014, which is an amendment to Law Number 30 of 2004 concerning the Office of a Notary (UUJN).

UUJN is established to ensure that notaries can carry out their duties as legal service providers with a high level of professionalism to the public. In addition, this law aims to provide legal protection and certainty to the public who need original written evidence related to situations, events or legal actions that occur in the context of a notary's work. One of the principles that form the basis of the UUJN is the principle of a rule of law, which guarantees security, order and legal protection. This principle recognizes that in social life, law requires clear

evidence to determine the rights and obligations of each individual as a legal subject (UUJN 2016).

The formation of the Notary Office Act (UUJN) was based on the objective of ensuring that the position of a notary public can provide professional legal services to the public *Konsiderans B* (UUJN 2016). In addition, UUJN also aims to regulate protection and guarantees in realizing legal certainty, security, order and legal protection for those who need legal written evidence related to various situations, events or legal actions carried out through the work of a notary *Konsiderans C* (UUJN 2016).

One of UUJN's main objectives is to guarantee the principle of a rule of law, which provides certainty, order and legal protection. This principle recognizes that in social life, law requires clear evidence to determine the rights and obligations of a person as a subject of social law. In this context, the role of a notary in providing clear and valid evidence is very important in legal transactions and other agreements.

With UUJN, it is expected that notaries can carry out their duties with high professionalism. UUJN provides a strong legal basis for notaries in carrying out legal services to the public. This includes providing legal advice, drafting authentic deeds and certifying other legal documents. As a public official, a notary is also responsible for serving the public who need valid written evidence, which can be used as the basis for various agreements and decisions required by law or requested by interested parties.

In addition, UUJN also regulates the authority of a notary. This includes provisions regarding the making of authentic deeds, ratification of authentic deeds, as well as procedures and procedures that must be followed by a notary in carrying out his duties. UUJN provides clear guidelines for notaries in carrying out their duties, so as to ensure that legal services provided to the public run according to established standards.

Thus, UUJN is an important legal umbrella in maintaining the integrity and professionalism of notaries. Through good implementation and strict supervision, it is hoped that notaries will continue to provide quality legal services, provide legal certainty to the public, and support the realization of the principles of a just and equitable rule of law.

UUJN aims to ensure the principle of a rule of law that guarantees security, order and legal protection. This principle is based on truth and justice, and recognizes that in social life, law requires clear evidence to determine the rights and obligations of a person as a subject of social law (*Penjelasan Umum* (UUJN 2016)).

However, in reality the implementation of this law has not run optimally and there are several problems that conflict with this law. One example of the case is "During 2022, 67 Notaries Allegedly Violated the Code of Ethics" which was launched by JawaPos.com on Tuesday, April 5, 2022. Informed that many notaries have committed violations in carrying out their duties (Mubyarsah 2022).

Based on the explanation that has been explained in the background, the formulation of the problem in this article is how to violate the notary's code of ethics in making a deed based on Law Number 2 of 2014 concerning the Office of a Notary and how to sanction a notary who violates the code of ethics based on the Law Number 2 of 2014 concerning the Position of Notary.

This study aims to examine more deeply the violation of the code of ethics committed by a notary in making a deed along with the sanctions that apply if the notary violates the code of ethics based on UUJN. Furthermore, the benefits of research are as material for study in handling problems regarding violations of the code of ethics committed by notaries, especially in making authentic deeds.

This study aims to analyze violations of the notary's code of ethics in the process of making a deed (Rifa'i, Ahmad 2018). This study uses a normative legal research method, which aims to analyze the laws and regulations governing the duties and obligations of notaries, as well as the code of ethics that must be obeyed by notaries in carrying out their duties. In this research, the main focus is to look at violations that occur in notary practice that are not in accordance with the ethical standards regulated in laws and regulations.

The first step in this research is to collect data in the form of laws and regulations that regulate the duties and obligations of notaries, as well as the code of ethics that must be obeyed by notaries. Data can also be obtained through literature studies involving legal literature, books, journals, and related court decisions. After the data has been collected, the next step is to identify the relevant notary code of ethics in the context of making the deed. This involves reading and analyzing the laws and regulations governing the notary's code of ethics, such as professional ethics, integrity, independence and objectivity (Iftitah 2023b).

After the notary's code of ethics has been identified, the next step is to analyze the laws and regulations governing the duties and obligations of a notary. This analysis aims to understand in depth the requirements and obligations of a notary in making a deed, and to see how far violations of the code of ethics can occur. In this stage, the research will involve identifying and analyzing violations of the notary's code of ethics in the process of making a deed. Such violations may include non-compliance with the principles of integrity, independence, objectivity, or other violations regulated in the notary's code of ethics. After identifying the violations, the next step is to analyze the research findings.

Furthermore, these findings will be discussed in depth, relating them to the applicable legal principles and related laws and regulations. This study ends with a conclusion which is a summary of the findings and analysis that has been carried out. This conclusion includes conclusions on violations of the notary's code of ethics in making the deed, its legal implications, as well as recommendations to improve the notary's compliance with the code of ethics (Sonata, n.d.).

Results and Discussion

Legal protection is steps or efforts taken to protect the public from arbitrary actions by authorities who are not in accordance with the rule of law (Tim Hukumonline 2022). This principle emphasizes that the public has the right to get legal protection when the ruler violates the rule of law. Often, society faces injustice as a result of arbitrary actions by law enforcement. Therefore, it is important for the legal system to guarantee legal protection against the actions of authorities who violate the rules.

Justice, according to WJS Poerwadarminto (2003), is a principle that emphasizes that justice must be upheld objectively and not arbitrarily. Justice must apply fairly, without favoring one party (Pandit 2018). This principle implies that the legal system must be able to uphold justice by upholding the rule of law that

applies equally to all individuals. Therefore, the notary as the executor of legal duties must act fairly and impartially to certain parties. They must carry out their duties with integrity and in compliance with the rule of law.

Notaries play a crucial role in facilitating legal processes, and it is imperative that they execute their duties with fairness, avoiding any violations that may adversely affect other parties involved. The responsibility of a notary extends beyond the mere execution of documents; they must ensure that the entire legal process occurs justly, transparently, and in strict adherence to relevant laws. The principle of justice must guide notaries in their actions, emphasizing the need to consider the interests of all parties involved (Enggarwati. 2015).

In the realm of legal practice, notaries are expected to act as impartial authorities, committed to upholding the rule of law. Arbitrariness in the exercise of their authority is strictly prohibited, and any deviation from established legal procedures can have severe consequences. Legal protection serves as a safeguard against arbitrary actions by those in positions of authority, ensuring that the rule of law prevails. Justice, as the cornerstone of the legal system, necessitates fair and unbiased administration (Iftitah 2023a).

In conclusion, the importance of legal protection cannot be overstated, particularly in shielding society from potential abuses of power that violate the principles of justice and fairness. Notaries, as key figures in legal transactions, bear the responsibility of ensuring that their actions align with the principles of legal protection and justice. This involves a commitment to fairness, a meticulous adherence to legal procedures, and a dedication to upholding the rule of law.

By adhering to these principles, notaries contribute to the overall sense of security within society. Individuals can trust that their legal affairs are handled justly and that they receive adequate protection from the legal system. The fair execution of notarial duties not only upholds the integrity of legal processes but also fosters public confidence in the legal system. Therefore, the role of notaries as guardians of justice and legal protection is pivotal in maintaining a society where the rule of law prevails and citizens can rely on a fair and impartial legal system (Khasanah, D. D., Iftitah, A., Abas, M., Sipayung, B., Hastarini, A., Arifuddin, Q., & Rohmah 2023).

Violation of the Notary Code of Ethics in Making Deeds Based on UUJN

A code of ethics serves as a foundational framework of standards embraced by a professional group, offering guidance to its members on proper conduct. The primary objective of such a code is to ensure that the ethical standards of the profession are not only maintained but also recognized and respected by society. This set of principles transcends various professions and encompasses diverse types of work, providing a universal foundation for ethical behavior. The overarching purpose of a code of ethics extends beyond the individual practitioner to act as a mechanism of social control. By establishing clear standards, it serves as a preventive tool, hindering external interference, minimizing misunderstandings and conflicts, and offering a means to assess whether members of the profession are fulfilling their obligations. This social control function is essential for maintaining the integrity and reputation of the profession, fostering trust among professionals and the public alike. In the realm of notarial duties, a specific code of ethics governs the authority of notaries when creating authentic deeds. This code

is tailored to the unique responsibilities and functions carried out by notaries. Given the pivotal role of notaries in legal transactions, adherence to ethical standards becomes particularly crucial. The code outlines the expected conduct, ensuring that notaries execute their duties fairly, transparently, and in compliance with legal regulations. For notaries, the code of ethics serves as a comprehensive guide, delineating the boundaries of their authority and responsibilities. It addresses issues specific to notarial practice, such as the proper execution of authentic deeds and the prevention of any unethical practices that may compromise the integrity of legal processes. By adhering to the code, notaries contribute to the maintenance of ethical standards within their profession and instill confidence in the broader legal system. In conclusion, the significance of a code of ethics cannot be overstated. It acts as a unifying force across professions, fostering a collective commitment to ethical conduct. For notaries, a specific code governs their actions, ensuring that the creation of authentic deeds aligns with ethical principles. As a tool of social control, the code prevents misconduct, establishes trust, and reinforces the ethical fabric of the notarial profession. Ultimately, the adherence to a code of ethics is essential for upholding the reputation and integrity of the notarial profession within the legal landscape (Betty Ivana Prasetyawati 2022).

As a public official, a notary is appointed and revoked by the Government through the Minister. The duties and powers of a notary include making authentic deeds and all actions, agreements and decisions based on laws or required by interested parties to be included in the deed. The notary is responsible for ensuring the certainty of the completion date, maintaining the authenticity of the deed, keeping large copies and quotations of the deed, and validating the deed. An authentic deed is the most powerful and complete means of proof, and makes a real contribution to dispute resolution. In addition, an authentic deed also functions as a written document used as evidence (Prabawa 2016).

A notary is obliged to uphold the dignity of his position, both in carrying out his position and outside of carrying out his position (Notodisoerjo 1982). As a public official whose duty is to serve the public interest, it is possible for a Notary to make mistakes in carrying out his/her duties (Rifa'i, Ahmad 2018).

Mistakes made by a Notary in making a deed can be an illegal act if it is caused by negligence. In the field of administration and the code of ethics for a Notary Public, there are a number of unlawful acts that must be avoided (Rifa'i, Ahmad 2018). First, a Notary may not have more than one office, be it a branch office or a representative office. In addition, it is also prohibited to put up a signboard or writing stating "Notary/Notary Public Office" outside the office environment.

Furthermore, Notaries are also prohibited from carrying out publications or self-promotion either individually or collectively by using print and/or electronic media. This includes advertisements, congratulations, condolences, thanks, marketing activities and sponsorship activities in the social, religious and sporting fields.

Cooperating with a service bureau/person/legal entity that acts as an intermediary to seek or obtain clients is also a prohibition for a Notary. In addition,

a notary may not sign a deed whose drafting process has been prepared by another party. The notary must send the minutes of the deed to the client to be signed.

Furthermore, a Notary is prohibited from making efforts to make a person move from another Notary to him, either through direct efforts to the client concerned or through another person's intermediary. Coercive acts on clients by withholding documents that have been submitted and/or applying psychological pressure are also prohibited.

Notaries are not allowed to carry out unhealthy businesses that can lead to unfair competition with fellow notaries. Another prohibition is to set a lower honorarium than what has been set by the association. Intentionally employing people who are still employees of another Notary's office without prior approval from the Notary concerned is also an act that is not allowed.

In discovering a serious error and/or endangering a client in a deed made by a colleague, a Notary is obliged to notify the colleague without patronizing, but as a precaution against things that are not desirable to the client and the colleague.

Furthermore, it is prohibited to form exclusive groups with colleagues aimed at serving the interests of an agency or institution and closing the possibility for other Notaries to participate. The use of titles that are not in accordance with the applicable laws and regulations is also not permitted.

Finally, it is prohibited to violate the provisions of Law Number 30 of 2004 concerning the Office of a Notary, the elucidation of Article 19 paragraph (2) of Law Number 30 of 2004 concerning the Office of a Notary, the contents of the oath of office of a Notary, and other provisions stipulated by the organization Indonesian Notary Association.

However, even though there are rules regarding the code of ethics, violations still occur. For example, there is a notary who does not read the deed directly, so the deed becomes a private deed. In the deed, the notary included a statement that the deed "has been read by me, Notary," but in reality it was not. Actions like this are acts of fraud and falsification of deeds. In addition, many notaries let the parties involved sign the deed in the presence of their assistants or staff, so that the validity of the notary's statement that they "dealt with the parties" becomes doubtful. The act of not reading the deed and not paying attention to who signed this deed will degrade the dignity of the work and position of a noble notary (Ayuningtyasa 2020).

Violations of the code of ethics have also increased in several areas. According to the JawaPos.com report, the Head of the East Java Kemenkumham Regional Office stated that there were 154 complaints regarding violations of the code of ethics by notaries in 2021. This number of complaints increased to 55 complaints only in March 2022 (Mubyarsah 2022). Therefore, it is necessary to optimize sanctions against notaries who violate the applicable code of ethics. Notaries who violate the code of ethics need to be subject to sanctions both in the civil and criminal fields, in accordance with the mistakes that have been made by the notary. This is because many notaries, in carrying out their duties, commit negligence. A notary who deliberately violates the code of ethics can harm all parties involved, including himself. The enforcement of these sanctions is regulated in Article 16 letters a and m (Ayuningtyasa 2020).

Sanctions Against Notaries Who Violate the Code of Ethics Based on UUJN

In examining notaries and instances of code of ethics violations, it is crucial to acknowledge the substantial responsibility inherent in their role. As per Poerwadar Minta's theory, notaries bear the responsibility of acting with fairness and impartiality towards all parties involved in their duties. Adherence to statutory regulations is paramount, and any breach of these regulations exposes notaries to potential sanctions corresponding to the nature of the violations committed. This underscores the significance of upholding ethical standards in notarial practices, emphasizing the need for practitioners to conduct their responsibilities in a manner that aligns with established regulations and ethical principles. Failure to do so not only compromises the integrity of individual notaries but also has broader implications for the legal system and the public's trust in notarial processes (Virgin Venlin Sarapi, Anna S. Wahongan 2021).

Sanctions that can be given to a notary who is proven to have violated the obligations and prohibitions of a notary, as stipulated in Articles 16 and 17 of the Notary Office Law (UUJN), can be in the form of civil sanctions, administrative sanctions, ethical sanctions, even criminal sanctions (Ayuningtyasa 2020). This aims to provide legal protection to the community from the arbitrary actions of the authorities. In serving the community, a notary must not ignore the law, because the consequences can be very fatal. Notaries must maintain their dignity both at work and in interactions with the public. This leads to an option:

1. are prohibited from doing wrong in carrying out their duties and positions
2. prohibited from trying to break the law or commit acts that are inappropriate in terms of office ethics and public morals (Wijayanto 2017).

They are prohibited from making mistakes in carrying out their duties and positions, and are not allowed to violate the law or commit acts that are ethically or morally inappropriate.

Violations committed by a notary that are contrary to the law and code of ethics of a notary's position in carrying out his profession can have detrimental legal consequences for both the notary himself and other parties who have trusted him. However, a notary also has special rights in carrying out his position, namely the right of denial. This right is not to protect the notary from the crime he has committed in connection with the making of the notarial deed, but to protect the interests of the parties listed in the deed as an official secret. If a notary continues to commit violations, legal action will be taken against him, and the notary concerned will be subject to sanctions in accordance with applicable regulations, taking into account the type of violation committed (Bombing 2015).

Based on Article 85 UUJN (UUJN 2016) and Article 6 of the Notary Code of Ethics, there are five types of sanctions in the Notary Code of Ethics which are arranged hierarchically based on the level of violation, starting from the lowest violation to the most serious violation that can be imposed on a notary who violates the code of ethics (Latifah 2021). The first sanction is a reprimand, which is the lightest sanction and is delivered verbally. However, apart from the Regional Honor Council (DKN), this organization can also give a direct warning. The second sanction is a written warning given by the DKN to the notary concerned. Unlike a

warning, giving a warning sanction requires an internal DKN meeting before the sanction is imposed. The third sanction is temporary dismissal from association membership or what is often referred to as suspension. Even though a notary who gets suspended can still open an office and carry out his duties as usual, this sanction does not affect his position as a notary. The fourth and fifth sanctions are honorable and dishonorable dismissal from association membership (Ayuningtyasa 2020).

After DKN determines sanctions for violations, they will notify the dismissal to the Supervisory Board (Jamil 2018). If the Supervisory Board does not take action on the notification of dismissal, the sanctioned notary can still carry out their duties, even though they are not considered members of the association. Thus, the implementation of sanctions for violations of the code of ethics by a notary in carrying out his position by the DKN is still not considered optimal, because it does not affect the status of a notary in carrying out his duties. Dishonorable discharge from the association, which is the highest sanction that can be given for a violation, has no significant effect because the notary is only terminated from membership of the association and can still carry out his duties as usual (Kurniawan, Y., & Tanawijaya 2018).

In dealing with violations of the code of ethics by a notary, it is necessary to have strict supervision and firm law enforcement (Bombing 2015). Notaries who violate the code of ethics must be held accountable for their actions and receive commensurate sanctions. Effective supervision and law enforcement will improve the quality and ethics of the notary profession, as well as provide legal certainty for people who use notary services. Therefore, it is important for the authorities to continue to improve the monitoring and law enforcement system regarding violations of the code of ethics by notaries, in order to maintain integrity and public trust in the notary profession.

Conclusion

Actions that are contrary to the notary's Code of Ethics are unacceptable. Rules are made to monitor and prevent public officials from abusing their power in carrying out their duties. Supervision of notaries aims to ensure that they comply with applicable laws and regulations and the Notary Code of Ethics in carrying out their positions. If a notary is proven to have violated the code of ethics, sanctions will be imposed on his actions.

Articles 16 and 17 of the Notary Office Law in detail regulate prohibitions for notaries to act outside the law and violate existing regulations. In addition, Article 6 of the Notary Code of Ethics of the Indonesian Notary Association (INI) also explains the sanctions that can be given to notaries if they violate the Notary Code of Ethics. If the notary violates these rules, they will be subject to sanctions according to the violation committed. It is important for notaries to comply with the UUJN so that they can become better and more responsible notaries in carrying out their duties without harming the public or clients. Notaries must also always comply with the Notary Code of Ethics and maintain the integrity and dignity of their profession.

With strict supervision of notaries and imposition of appropriate sanctions for violations of the code of ethics, it is hoped that a better legal environment will be created. This will improve the quality and ethics of the notary profession and

provide legal certainty to the public who use the services of a notary. Therefore, efforts continue to be made to improve the monitoring and law enforcement system regarding violations of the code of ethics by notaries, in order to maintain integrity and public trust in the notary profession. Thus, notaries can carry out their duties and responsibilities properly and provide professional services to the community.

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