

Law Enforcement Against Notaries for Negligence in Carrying out Their Duties and Responsibilities

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Abstract. A notary is a professional who serves the general public in the legal field and is in charge of authenticating written documents, deeds, and letters for use in court. The main basis of the notary profession is trust and as an elite community, the professionals who are members of this community bear a heavy mandate for the trust placed in them. This study is Normative research that used statutory and conceptual approach. Secondary data is the source of the data used. Qualitative and descriptive data analysis was done. Conclusions are drawn using a deductive method. According to the findings of this study, notaries must not give copies of deeds to uninvited parties and must maintain the confidentiality of any information entrusted to them. Article 15 paragraph (1) UUJN covers this power and states, among other things, making a deed instead of making a letter, such as a Power of Attorney to Impose Mortgage Rights (SKMHT), or making other letters, such as a Certificate of Inheritance (SKW). Furthermore, it is stressed that Notaries are chosen and removed by the government, which implies that the Minister of Law and Human Rights appoints and dismisses Notaries in the course of their employment. The role of a notary public is crucial in fostering community protection and legal clarity.

Keywords: Law Enforcement, Notary Duties and Responsibilities Implementation

1 Background

Notaries as Public Officials are professionals whose statements must be trustworthy, whose signatures and seals can provide guarantees and serve as strong evidence, as well as independent parties in legal counseling who are without flaws. According to Law No. 30 of 2004 about the Position of Notaries (UUJN), Article 1 Number 1 defines a notary as a public official with the power to make valid deeds and exercise other authorities as specified by this law. Notaries shall not give copies of deeds to uninvited parties and must maintain the confidentiality of all information entrusted to them. Article 15 paragraph (1) UUJN covers this power and states, among other things, making a deed instead of making a letter, such as a Power of Attorney to Impose Mortgage Rights (SKMHT), or making other letters, such as a Certificate of Inheritance (SKW). Furthermore, it is stressed that Notaries are chosen and removed by the government, which implies that the Minister of Law and Human Rights appoints and dismisses Notaries in the course of their employment. Notaries are administratively appointed and removed by the government, but this does not imply that they are government employees; rather,

in performing their responsibilities, notaries must be independent, impartial, and self-sufficient.[1].

Established under Pancasila and the Republic of Indonesia's 1945 Constitution, the Unitary State of the Republic of Indonesia is a legally recognized entity, is required to enact justice-based law enforcement, certainty, and maximum benefit to protect law, order, and the welfare of the people. To support the success of law enforcement, authentic evidence is needed regarding circumstances, events, or legal acts carried out through certain positions, namely by notaries as public officials. As a public official, he has a central role in enforcing the law in Indonesia, because apart from the large quantity of notaries, notaries are known to be part of the elite group in Indonesia. Notaries as an elite group means that notaries are a scientific community that sociologically, economically, politically, and psychologically is in a relatively higher stratification among society in general. The main basis of the notary profession is trust and as an elite community, the professionals who are members of this community bear a heavy mandate for the trust placed in them. The greater value of a profession is the extent to which a professional can resist the temptation to misappropriate such great beliefs.

Notaries have special privileges in the process of examining criminal cases to protect their position and position. Therefore, some provisions must be fulfilled first by law enforcement before summoning a notary. This is in accordance with Law Number 2 of 2014's Article 66 paragraph (1) amending Law Number 30 of 2004 about the Position of Notaries (UUJNP), which specifies that in the course of the legal system, investigators, public prosecutors, and judges with permission Photocopies of the Deed Minutes and/or letters attached to the Deed Minutes or Notary Protocol in the Notary's custody may be taken by the Notary Honorary Council.[2]

A notary is a professional who serves the general public in the legal field and is in charge of genuine correspondence as proof, deeds, and written documents for various legal acts. The position of a notary is very important in helping to create legal certainty and protection for the community. Notaries have a very strategic position in the realm of civil law, because this profession concerns the most basic matters in every legal act, especially in the field of civil law. The community, which is both the subject and object of every legal act, will be very burdened with legal administration matters. Documents relating to legal acts that will be carried out will not be arranged correctly according to legal procedures, if they are done by people who are not experts and have mastered the field, that's why notaries are present and offer services to help the public[3].

As an official based in the realm of law (such as advocates, judges, prosecutors, and police), notaries directly or indirectly have the right, apart from making authentic deeds, to also ensure the smooth running of legal processes, including those related to judicial processes, both in criminal and civil justice. The judicial process referred to here is closely related to evidence, both written evidence and evidence by testimony. In the criminal justice process, there will be an evidentiary process that emphasizes evidence based on Criminal Procedure Code Article 184, which includes the defendant's statement as well as witness and expert declarations, correspondence, and directions. Written evidence, evidence with witnesses, accusations, confessions, oaths, and everything else that complies with the Civil Code's requirements can all be used as evidence under Article 1866 of the Civil Code.

The existence of a notary as a witness or even as a suspect, if it is related to the existence of his position in the legal field which is intended to support the smooth running of a law

enforcement process, including the judicial process, would not be a problem, in other words, it is only natural for a notary to act as a witness or even as a suspect in a judicial process. On the other hand, a notary in carrying out his position as a public official, In addition to being connected to a position regulation, it is also associated with the oath of office that he takes upon being appointed as a notary. Under Article 4 Paragraph (2) of Law Number 30 of 2004 concerning the Position of Notary, the notary is required to maintain the confidentiality of the information he obtains and the contents of the deed, I will keep the contents of deeds and information obtained in the performance of my office confidential.[4].

Moreover, as per Article 54 Passage (1) of Regulation Number 2 of 2014 concerning Revisions to Regulation Number 30 of 2004 concerning the Place of Public accountant Public, a public accountant may just give, show, or tell the items in the deed, the grosse of the deed, a duplicate of the deed, or a selection from the deed to people who have an immediate premium in the deed, beneficiaries, or people who get freedoms, except if generally determined by legal guidelines. There are further regulations governing the exercise of the right to keep secrets pertaining to one's position under civil law, criminal procedural law, and the Criminal Code. According to Criminal Procedure Code Article 170 Paragraph (1), individuals who are obligated to maintain confidentiality due to their employment, dignity, or status may request to be excused from exercising their right to testify as witnesses, specifically on things that have been entrusted to them.

As a legal instrument, on the one hand, notaries have the right to disavow as professional public officials who must uphold their oath of office not to reveal the contents of their deeds, on the other hand, notaries must stand in the interests of the state which refers to the public interest to complete the legal process in court to produce decisions that are fair, useful, and guarantee certainty, as specified in the final phrase of Law Number 2 of 2014's Paragraph 16(1) of Article F Concerning Amendments to Law Number 30 of 2004 Regarding the Notary Public Position, it is clarified that, unless the legislation specifies otherwise, and that, unless statutory rules provide otherwise, the final phrase of Article 54 UUJN[5].

2 Methodology

Normative research is the kind of study that this is. The approaches used are a statutory approach and a conceptual approach. Secondary data is the source of the data used. Qualitative and descriptive data analysis was done. [6]. Conclusions are drawn using a deductive method, namely concluding from general to specific, especially those related to the research topic, namely law enforcement against notaries who fail to carry out their duties and responsibilities. When empirical data cannot be classified into categories and is instead a collection of words rather than a set of numbers, qualitative data analysis is performed. There are several methods for gathering data, including documenting incidents, interviewing people, and collecting tapes. Before being utilized in qualitative research, material is often processed. This includes triangulation, data reduction, analysis, interpretation, and interview transcript outcomes.[7].

3 Results and Discussion

3.1 Review of Notary Law Enforcement in Failure to Carry Out Duties and Responsibilities

In carrying out his official duties, a notary does not rule out the possibility of coming into contact with legal issues, even though he is careful in carrying out his official duties and by statutory provisions because a Notary is still an ordinary human being who is not free from mistakes. Notaries must be prepared to face if at any time they become parties involved in cases in the fields of Civil Law or Criminal Law, resulting from the legal products they create. Therefore, in carrying out the duties of his office it cannot be denied that quite a lot of criminal cases are occurring due to the behavior of Notaries who are unprofessional and who favor one party in the deeds they make. These legal problems can even bring the Notary to the point of being questioned by law enforcement officials.

Before Law Number 2 of 2014 was passed, which amended Law Number 30 of 2004 regarding the Notary Position Law, law enforcement officials had to get the Regional Supervisory Council's permission before conducting examinations of Notaries for the court process. To exercise its authority over Notaries at the district or municipal level, the Minister founded the Regional Supervisory Council[5]. The Constitutional Court's Decision Number 49/PUU-X/2012, which struck away the phrase "with the approval of the Regional Supervisory Council" from Article 66 paragraph (1) of Law Number 30 of 2004 regarding the Position of Notary Public, effectively eliminated the relevant authority. The Notary Honorary Council has been legally granted the ability to authorize Notary examinations for the legal system with the passing of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position Law.

In this case, the Notary who carries out his obligations, duties, and authority complies with applicable legal regulations, so the risk of the Notary facing a lawsuit as a result of a violation is very small. A notary's legal responsibilities may include compliance with criminal and civil laws, the Notary Code of Ethics, and the legislation pertaining to the post of notary. There are four (four) categories of duties that a notary public has in relation to material truth. These are as follows: a. Notary's civil responsibility for the material truth of the deed he or she makes; b. Notary's criminal responsibility for the truth of the material deed he or she has made; c. The Notary's responsibility is based on the Law on the position of Notary regarding the material truth in the deed he has made; d. Notary responsibilities in carrying out office duties are based on the existing Notary Code of Ethics. The solution to overcome this violation is to implement supervision of Notaries[8]. It is hoped that Notary supervision can be carried out well if the party in charge has mastery and understanding of the Notarial field.

3.2 Urgency of Notary Law Enforcement in Failure to Carry Out Duties and Responsibilities

The Republic of Indonesia's 1945 Constitution and Pancasila established the Unitary State of the Republic of Indonesia as a legal entity, is required to enact justice-based law enforcement, certainty, and maximum benefit to protect law, order, and the welfare of the people. To support the success of law enforcement, authentic evidence is needed regarding circumstances, events, or legal acts carried out through certain positions, namely by notaries as public officials. As a public official, he has a central role in enforcing the law in Indonesia, because apart from the large quantity of notaries, notaries are known to be part of the elite group in Indonesia. Notaries as an elite group means that notaries are a scientific community that sociologically, economically, politically, and psychologically is in a relatively higher stratification among society in general. The main basis of the notary profession is trust and as an elite community, the professionals who are members of this community bear a heavy mandate for the trust placed in them. The greater value of a profession is the extent to which a professional can resist the temptation to misappropriate such great beliefs[3].

The primary goal of the Notary Supervisory Council, and especially the Supervisory Council that heads the Supervisory Council, the Regional Supervisory Council, is to oversee the enforcement of the Notary's Code of Ethics and the Office of Notary's implementation. In carrying out supervision, the Regional Supervisory Council must be responsive in handling violations committed by Notaries. Apart from that, the Regional Supervisory Council must also be transparent in handling every case of violation that occurs so that its authority and capabilities are maintained in the eyes of the public. Talking about violations of the office of a Notary or Violations of the Notary's Code of Ethics, the benchmark for violations committed by a Notary is that the Notary carries out actions that are prohibited by Law number 30 of 2004. Material responsibility for deeds made before the notary also needs to be emphasized that the authority of a notary in making notarial deeds does not mean that the notary can freely, according to his wishes, make authentic deeds without the parties asking for the deed to be made. The notarial deed is the deed of the interested parties, not the deed of the notary concerned[9]. That is why, in the event of a dispute regarding an agreement contained in a notarial deed made for them and before a notary, those who are bound are those who agreed themselves.

The rules contained in the Code of Ethics are sometimes not respected. Compliance with the Notary Code of Ethics is always due to the negative influence of being an individual in society and working relationships within professional organizations. Being internally confident that the individual Notary himself may also be due to his human nature, for example, the nature of consumerism or the values he obtains in carrying out his profession as a Notary. Meanwhile, external factors may be due to the cultural environment surrounding the Notary. The application of sanctions is very important to realize professionalism, therefore when existing sanctions have not made a major contribution to increasing the professionalism of Notaries' work, then there should be additional sanctions imposed which of course must also be agreed upon first by fellow Notaries, namely sanctions in the form of fines because fines of course also have a direct effect when a Notary commits a violation related to the Notary Code of Ethics[4].

However, many people don't know for sure about the advantages of notaries, so there are still many people who do not use the services of a notary to make legal acts that

must be made authentic so that problems do not arise. Even if anyone knows, there are still many who think that notaries are only for the elite, so in reality, there are still many in remote areas who don't understand and are even afraid of dealing with notaries[10]. Some people understand that they thought a Notary was someone who only wanted to know about the affairs of wealthy people since there are still some Notaries whose attitude paints a bleak picture. Apart from that, the Notary when making a deed does not investigate the truth of the documents submitted. by the party who made the deed. This means that the Notary as a public servant can act quickly and precisely, and stating whether a document is valid or not in the event of forgery is not the authority of the Notary, so that the Notary only checks the administrative completeness to make a deed. Professional behavior that a Notary must have includes (1) strong moral integrity; (2). honest, and (3) aware of the limits of his authority[9]. So the notary must comply with the applicable legal provisions regarding how far he can act and what he can and cannot do.

4 Conclusion

1. Notaries shall not give copies of deeds to uninvited parties and must maintain the confidentiality of any information entrusted to them. Article 15 paragraph (1) UUJN covers this power and states, among other things, making a deed instead of making a letter, such as a Power of Attorney to Impose Mortgage Rights (SKMHT), or making other letters, such as a Certificate of Inheritance (SKW). Furthermore, it is stressed that Notaries are chosen and removed by the government, which means that the Minister of Law and Human Rights appoints and dismisses Notaries in the course of their employment.
2. A notary is a professional who serves the general public in the legal field and is accountable for genuine correspondence as proof, deeds, and written documents for various legal acts. The position of a notary is very important in helping to create legal certainty and protection for the community.
3. Notaries have privileges in the process of examining criminal cases to protect their position and position. Therefore, some provisions must be fulfilled first by law enforcement before summoning a notary. This is in accordance with Law Number 2 of 2014's Article 66 paragraph (1) amending Law Number 30 of 2004 about the Position of Notaries (UUJNP), which specifies that in the course of the legal system, investigators, public prosecutors, and judges with permission Photocopies of the Deed Minutes and/or letters attached to the Deed Minutes or Notary Protocol in the Notary's custody may be taken by the Notary Honorary Council.

5 Suggestion

1. It is hoped that in this instance, the Notary carrying out his responsibilities, duties, and authority would adhere to the relevant legal restrictions; thus, there is very little

chance that the Notary will be sued for a breach. A notary's legal responsibilities may include compliance with civil and criminal laws, the Notary Code of Ethics, and the legislation pertaining to the post of notary.

2. It is intended that the Notary will need to be ready to deal with any situation in which he finds himself a party to a criminal or civil law matter., which results from the legal product he created. Therefore, in carrying out the duties of his office it cannot be denied that quite a lot of criminal cases are occurring due to the behavior of Notaries who are unprofessional and who favor one party in the deeds they make.
3. It is hoped that the process of material responsibility for deeds made before a notary also needs to be emphasized that the notary's authority in making notarial deeds does not mean that the notary can freely, according to his wishes, make authentic deeds without the parties requesting the deed to be made. The notarial deed is the deed of the interested parties, not the deed of the notary concerned. That is why, in the event of a dispute over an agreement contained in a notarial deed made for them and before a notary, those who are bound are those who agreed themselves.

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