

SANCTION AGAINST NOTARY IN AUTHENTIC DEED MALPRACTICE

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Abstract

The notary profession has a responsibility to the community and must comply with the Notary Position Law and the Notary Code of Ethics. A Notary is also a human being who is not free from mistakes in making authentic deeds. These malpractices can sometimes be realized and can also be unconscious, especially in making the authentic deed. There has been no update regarding the UUJN but there are many forms of notarial errors. Therefore, this study raises the forms of notary consequences that must be accepted by him if there is malpractice in making authentic deeds. This research is a normative research, using legislative and conceptual approaches, obtaining secondary data with literature studies which are then analyzed with descriptive qualitative. The results of this study indicate that the application of both civil sanctions, administrative sanctions, and code of ethics sanctions. Because it is proven to commit an offense.

Keywords: Notary; Notary office; Malpractice.

Abstrak

Profesi Notaris itu memiliki tanggung jawab kepada masyarakat dan harus tunduk pada undang – undang Jabatan Notaris dan Kode Etik Notaris. Seorang Notaris juga adalah manusia yang mana manusia tak luput dari suatu kesalahan dalam pembuatan akta otentik. Malpraktik tersebut yang terkadang dapat disadari dan juga bisa tidak disadari terutama dalam pembuatan akta otentik tersebut. Belum ada pembaruan mengenai UUJN tetapi sangat banyak macam bentuk kesalahan notaris tersebut. Oleh karena itu, kajian ini mengangkat bentuk – bentuk konskuensi notaris yang harus di terima olehnya apabila terjadi malpraktik dalam pembuatan akta otentik. Penelitian ini merupakan penelitian normative, menggunakan pendekatan perundang – undangan dan konseptual, mendapatkan data sekunder dengan studi kepustakaan yang kemudian dianalisa dengan deskriptif kualitatif. Hasil kajian ini menunjukkan bahwa penerapan sanksi baik perdata, sanksi administrative, dan sanksi kode etik. Karena terbukti melakukan suatu pelanggaran.

Kata Kunci: Notaris; Jabatan Notaris; Malpraktik.

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INTRODUCTION

A notary is a public official entrusted by the public for the creation of authentic acts. An authentic act is used as a means of proof, an authoritative act concerning acts, agreements and arrangements which must be established by law - an invitation or at the will of an interested party can be stated in an authentic act. The profession of notary is also a public official whose duty and duty is to provide legal services and advice to the public. The presence of a notary as given to serve the public who needs the means of proof of an authentic document of the government concerned with the notary, so the purpose of that interest very much requires the presence. Every profession must have and be bound by a code of ethics. The profession of notary is a profession of trust written in the law and society, then a notary has a responsibility in the implementation of the trust given to him by always respecting the ethics of law and law and the dignity of his office, because if ignored by a notar then it can cause damage to the general public and interfere with the ongoing law enforcement process.

Notaries in the exercise of their profession are subject to and obey the code of ethics and the RUJN. The code is a rule of law in the "committee", which applies to every obligation and must be observed in daily life. A notary in the exercise of his duties will always find a problem, either that arises because of malpractice or because of such insensitivity allows to find the legal act that he intends to do, not to mention the question contained in the provisions of the new law¹.

The profession of a notary as an ordinary human being, in carrying out his duties, can commit misconduct or violation. Errors or biased violations are indicated when in the authentication of the act, the notary does not read the act in the presence of at least two sanctioning persons, or four special witnesses for the creation of an act under the hand. And signed the signature at that time also by the prosecutor, witnesses and notaries. Even the bias was handled at the time also outside of his office. Such matters violate the obligations and prohibitions for notaries have been in articles 16 & 17 of the UUJN².

It has been written in articles 16 & 17 UUJN become guidelines for all notaries means when someone breaches, bias impose civil sanctions, sanski administrative, sanctions code of ethics even criminal. The Code of Ethics sanctions the profession of a notary who malpractice or make a mistake exists because the notary is a position that has a great responsibility to the public to obtain a legal certainty. So far, there is no update on UUJN but as time goes by, cases of violations of the code of ethics are increasing. Interestingly, it is necessary to carry out further studies on the types and arrangements of sanctions known in the UUJN, on the basis of the above observations, researchers are interested in studying further on "giving sanctions against notaries in improper practice of authentic acts". From the background description of the problem above, the writing formulates the problem, that is, how is the application of sanctions for notaries who Malpractice in the creation of authentic acts?

¹ Budi Untung, *Karakter Pejabat Umum (Notaris Dan Ppat) Kunci Sukses Melayani* (Yogyakarta: Cv. Andi Offset, 2015).

² Achmad Asfi Burhanudin, "Peran Etika Profesi Hukum Sebagai Upaya Penegakan Hukum Yang Baik," *El-Faqih : Jurnal Pemikiran Dan Hukum Islam*, 2018, <https://doi.org/10.29062/Faqih.V4i2.25>.

METHOD

According to Soerjono Soekanto, legal research is a form of scientific activity, based on methods, systematics, and certain thinking, aimed at studying one or more specific legal symptoms, by means of their analysis. In addition, an in-depth examination of a legal factor was conducted, in order to find a solution to the problems arising in the symptoms concerned.³

The type of compulsion used in this study is normative law research. The approaches used in this study are the statutory approach, the sociological approach and the case approach. (Case Approach). The data analysis technique in this study uses qualitative analysis through a method of descriptive analysis, which is an activity carried out to specify the content of the rule of law that is used as a reference in solving the problem that is the object of the study. The statute approach is carried out by examining all the laws and regulations that relate to the legal issues that are being dealt with. The historical approach is carried out within the framework of understanding the philosophy of the rule of law from time to time, as well as understanding the changes and developments of philosophies underlying that rule. Conceptual approaches originate from the views and doctrines that evolve within the law science. This approach is important because an understanding of the developing views/doctrines in law science can be the basis for building legal arguments when solving legal issues. The view/doctrine will clarify the ideas by providing legal interpretations, legal concepts, or legal bases relevant to the question of the authority of the Honorary Assembly of Notaries at the stage of the investigation of a criminal case involving Notaries.

The sources of material used in this research are primary legal material, secondary law material and tertiary law materials. This research will be studied normatively by studying and investigating the scope and substance of the provisions governing the Department of Notaries as well as the duties and powers of the Honourable Notary Assembly as regulated in the Act No. 2 of 2014 on Amendments to the Law No. 30 of 2004 on the Office of Notarians and the Regulation of the Minister of Law and Human Rights No. 7 of 2016 on the Honorable notary assembly. Secondary legal material is legal material that supports and provides an explanation of primary legal materials such as draft laws, results of research, work of law that has relevance to the topic of this research. Tertiary legal material is legal material that provides clues or explanations about primary and secondary legal materials. Tertiary legal materials include legal dictionaries, Indonesian dictionary, internet data and websites as well as scientific journals.

RESULT AND DISCUSSION

The Constitution of the Republic of Indonesia of 1945 explicitly stipulates that the Union State of the Indonesian Republic is the rule of law. The principle of the rule of law guarantees certainty of order, and the protection of the law that brings truth and justice. The authentic act as the strongest and most fulfilled means of proof has legal force in every legal relationship in the life of the public because the authoritative act is the source of law and legitimacy in committing a legal act. Indonesian citizens need a mediator in a legal event to be faced, trustworthy, whose signature provides a strong assurance and proof in such an enforced legal event. If a lawyer is with a person so that his rights are not violated,

³ Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum* (Bandung: Citra Aditya Bakti, Bandung, 1991).

then the notary is not in a position, but is among the parties in the act of law that the defendants are to do.⁴

“The presence of a notary as a public office is a response to the need of the public for legal certainty for every alliance they make, of course alliances related to everyday life and also business. Pursuant to article 1, paragraph (1) of Act No. 30 of 2004 on the Office of Notaries, it is stated that notaries are public officials who are given general authority to make authentic acts and other authority as referred to in this Act. The consideration of the need to be given in the form of an authentic act is to guarantee legal certainty in order to protect the parties, either directly the parties directly interested in the act or indirectly the public. A proof shall have a strong character in proof, if it has proof between the parties present and the third party, so that it is a guarantee to the parties that the deed or testimony presented is a proof that cannot be removed”

The current phenomenon is not the least authentic acts made by a notary become a tool of proof and questioned in court, or his notary is directly called to be a witness, even a notar because of his duties and duties, the notary must be able to provide legal certainty to the public users of notary services.

The Code of Ethics of Notaries is the whole moral code established by the Association of Notary Association of Indonesia (INI), which is generally and obligatory to be observed by all members of the Association and other persons who regard the profession of notary both in the performance of their duties and in daily life. It is essential for a notary to know and understand the code of ethics, which regulates any act that may be considered a violation of the code and the sanctions imposed when violating the code.⁵

Based on the Great Dictionary of Indonesian Language (KBBI), it turns out that there are no misconduct words in Indonesians. But what you mean can have meaning when the word "trade" is combined with "practice" to mean the damage caused in the execution of the job, this style is generally used against the behavior of doctors, lawyers and accountants. Failure to provide professional service and perform at the measure of the level of skill and intelligence reasonable in his society by an average mate of the profession, thus resulting in injury, loss or loss to the recipient of such service who tends to place confidence in them⁶. ncluded in it every wrong professional attitude. Malpractice could have occurred in the creation of authentic acts, as if one of them had a lack of witnesses in the reading of authoritative acts and was signed at that time also by the guardian, witness and notary. It's even bias that happens by deliberately making an act outside of his jurisdiction. This is a violation of the law as set out in articles 16 & 17 of the UUJN⁷.

Legal sanctions are necessary for members of the community to obey a rule of law. Legal sanctions as a means of protecting the interests of the individual by means of threatening the law as sanctions against violations of the law.

Notaries who have proved to have committed misconduct in the creation of authentic acts have been established to have violated the obligations and rules as stipulated in articles 16 & 17 of the UUJN, but so far there has not been a change of the new regulations concerning the violation of notaries so that at present there is a wide variety of misconducts from notaries against the creations of authoritative acts. It's noted that notary sanctions are abolished in the form of civil sanctions, administrative sanction,

⁴ Nyoman Arya Et Al., “Sanksi Bagi Notaris Dalam Hal Terjadinya Pelanggaran” 4, No. 1 (2022): 85–90.

⁵ Ufuk Robert Wibowo, “Apa Wujud Tanggung Jawab Notaris Akibat Akta Otentik Terdegradasi Menjadi Akta Di Bawah Tangan” 10, No. 1 (2020): 62–82.

⁶ Ilman Hadi S.H, “Hukum Malpraktik Di Indonesia,” Hukum Online.Com, 2014.

⁷ Fuad Brylian Yanri, “Pertanggungjawaban Notaris Terhadap Akta Autentik Yang Berindikasi Tindak Pidana” 6, No. September (2019): 68–87.

sanction code of ethics, even criminal sanction. Sanctions for notaries who misbehave in liability have a great deal of dependence on the public to obtain a legal certainty⁸.

Legal sanctions are meant to be a means of legal protection for the interests of the community, even the individual. Sanctions have the essence of a jurisdictional instrument that can normally be granted when a duty – an obligation that is contained in a legal provision, and beyond that the government has sanctions available to enforce compliance.

Notaries in carrying out their duties and duties must always be guided by the UUJN and the Code of Ethics of Notaries. The term ethics is formed from two Latin words, mores and ethos, which are merged as a chain of decency of a society and human morality. Ethics is etymologically understood to be the same as moral values and norms that hold people or groups in regulating their behavior. According to Article 3 of the Code of Ethics of Notaries, the Notaries Association of Indonesia (I.N.I) states that notaries must have good morality, morality and personality, notaries shall respect and uphold the dignity and dignity of the notary's office, preserve and defend the honour of the Association, act honestly, independently, impartially, with a sense of responsibility, according to the regulations of the legislation and the jury of the Notary, enhance the knowledge that has been possessed without limitation to the science of law and governance, and give priority to devotion to the interests of the public and the State. In article 3, a notary must have dignity and will be able to help the public or prospective clients without distinction from their social status⁹.

The notary may be punished for his or her fault, the society or the injured client may report such a matter to the police in the case of fraud contained in Article 378 of the Code of Civil Procedure or the obscuration contained under Article 372 of the code of civil proceedings. If the public or the client is injured by behaviour or non-compliance with the codes of ethics (related to the drafting of acts) the notary can be referred to the Regional Supervisory Assembly located in the district or city. The authority of the Regional Surveillance Council is in Article 70 of the UUJN, among other things, namely: to organize a trial to examine the presumption of violation of the Notary Code of Ethics or violations of the performance of the office of a Notary and to receive a report from the public about presumptive violation or violation in the provisions of the Act¹⁰.

In addition to the code of ethics of notaries, UUJN is a guideline notary in the exercise of his profession also contains no sanctions for notaries who are Malpractice, among them are:

a. Confidentiality Sanctions

This sanction will punish a sanski who has been sentenced for a misdemeanour or an act against the law. (onrechtmatige daad). It is said that when a man breaks an agreement, he will be disobedient to the law. But if he is against the law, or against his own duty, The relevance of this study is that the notary's misconduct means that he has committed an act against the law.

The civil sanctions against notaries who violate the articles on obligations and prohibitions in the UUJN are articles 16 paragraph (1) letter m of the UUDN, articles 41 with reference to articles 38, 39 and articles 40, articles 48, articles 49 50 and articles 51 of the uUJN. Civil sanctions as described in the above articles are the compensation of costs, damages and interest is a consequence that will be

⁸ Wibowo, "Apa Wujud Tanggung Jawab Notaris Akibat Akta Otentik Terdegradasi Menjadi Akta Di Bawah Tangan."

⁹ Maleo L A W Journal, Melanggar Kode, And Etik Notaris, "Maleo Law Journal" 8, No. 1 (2024): 14–32.

¹⁰ Rio Cahya Nandika, "Penjatuhan Sanksi Bagi Notaris Yang Melfteakukan Tindak Pidana Dengan Ancaman Pidana Penjara Lima Tahun Atau Lebih" 3 (2021).

accepted notaries and the lawsuit of the respondents when the act in question has only the probative force as an act under hand. Replacement of bribes, damages can be sued to the notary. But first of all, there must be a legal relationship between the notary and the parties. What is the basis for such a description can be known that sanski confidentiality for the notary arose from the occurrence of malpractice against the authentic acts themselves under the hand because the mistake was in himself.

b. Criminal Sanctions

This criminal sanction is an effective tool, has the nature of confronting crime or major danger as well as facing threat – threat. In this case, this sanction constitutes an ultimatum remedium or a basis which states that criminal law should be used as a last resort in law enforcement. Criminal sanctions against notaries can be observed within the framework of office duties. If all the procedures are met, then the notary will deliberately jointly or help the guardian consciously make the act to commit a criminal offence. Criminal sanctions against notaries are subject to general criminal provisions, namely KUHP.²¹ This is because, both the Code of Ethics of Notaries and the UUJN do not directly regulate criminal sanctions.

UUJN is not just regulating criminal acts specifically for notaries. The validity of a criminal sanction can be imposed against a notary, this must be understood by the cumulation of sanctions against the notary. Legislative law – an invitation in the area of administrative law basically does not contain a sort of sanction, but there are some cumulations even sometimes a provision of a statutory rule – the invitation not only threatens the offender with criminal but must have an administrative sanction in it. With regard to UUJN, it is not just regulating the cumulative sanctions as above. UUJN only regulates civil sanctions and administrative penalties, and these two sanctions cannot be applied jointly – because each one of these sanctions can be imposed with different types of violations.

c. Code Of Conduct Sanctions

Ethical sanctions are legal acts against members of associations that violate the rules and basic budgetary provisions of the associations or organizations concerned, in the sense of violating the provisions that are in the membership or notary profession. The profession of a notary has a code of ethics, which is regulated in the amendments to the Code of Ethics of Notaries of the extraordinary Indonesian Congress of the Notaries in Banten, on 29-30 May 2015.

Violations of the code of ethics dealt with by the Honorary Council are, among other things, if notaries advertise themselves or use bureaucracy to network their clients. Including also humiliating or slandering his peers about the work of other notaries. Between the Honorary Council and the Supervisory Assembly each has the right to conduct its own investigation if there is a notary who has committed a violation. According to article 6 of the Code of Ethics of the Notary Association of Indonesia (I.N.I), the sanctions that can be imposed against the notary who commits a violation of the code of ethics can be the suspension, warning, schorsing (temporary dismissal) of the membership of the Association, unsetting (dismissal), disrespectful termination of membership. The honorable and dignified office of the notary is expected to provide legal certainty with the act he makes without violating the code of ethics, authority and obligations that are always enforced. The obligation to make an act and to keep an act as a notary must always be enforced.¹¹

The essence of the code of ethics of the notary is to contain the general provisions, scope of the Code of Ethics, obligations, prohibitions and derogations, sanctions, procedures of enforcement of the codes of ethic, supervision, inspection and removal of sanction, violations of the new code, violation of

¹¹ Arya Et Al., “Sanksi Bagi Notaris Dalam Hal Terjadinya Pelanggaran.”

the ethics code and provisions of closure. When noted in chapter IV on sanctions under article 6, sanctions are known such as foreclosure, warning, temporary suspension of membership, respectful termination of the membership of the congregation and respectful revocation of the member of the association. The sanctions that exist dal mkode ethics notaries, are of the same nature as the administrative sanctions as where the expression above. The notary may be subject to a secondary code sanction, if it is proven to have violated or misused his obligations which are closely related to the administrative sanctions in the UUJN, this is due to the fact that the notary has been temporarily dismissed from his office for violation of the obligations and prohibitions of office as well as the code of ethics of a notary.

A notary must be monitored if a violation is committed and then an investigation is carried out. Then the notary concerned is sanctioned according to the rules in force by seeing the violation. UUJN explains that the lightest sanski is the oral torture. The second sanction is a written warning, and the third is a sanski temporary suspension for a maximum of 6 months. And the last is the dismissal of his office either with respect or disrespect, contained in article 85 of the new law¹².

CONCLUSION

Based on the explanations presented above, the author would like to draw the conclusion, that the application of sanctions to notaries who misbehave or commit negligence can be subject to sanctions such as the code of ethics of notaries, administrative sanctions, criminal sanctions. Until now, there has been no change from the UUJN, so the provisions of the UJN until now remain in force as they have been prescribed. A notary may also be subject to a criminal sanction as an Ultimatum Remendium or confiscation of law enforcement with certain limitations as described. This is because, UUJN is basically only the scope of administrative sanctions, civilian sanction, criminal sanction and sanction code of ethics which basically all stand with the respective violations of the law provisions.

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¹² Ahmad Fitra Avicenna, "Penerapan Sanksi Bagi Notaris Yang Lalai Dalam Membuat Akta Otentik" 2, No. 3 (2022): 466–75.



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