

The Role of Notary Supervision Institutions and Notary Responsibilities for Violations of Their Obligations

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ABSTRACT

Keywords: Notary Responsibility, Authority, Supervision. The objective of this study is to further examine regulations related to the Notary Supervisory Board concerning the supervision of notarial ethical codes and to assess the responsibilities of notaries in case of duty violations. The research method employed is normative, utilizing a legislative approach and descriptive analysis. The findings of the study aim to evaluate the effectiveness of the Notary Supervisory Board in fulfilling their duties in terms of legislation, assess the need for regulatory updates to enhance supervisory effectiveness, and evaluate the impact of notarial duty violations on parties involved in transactions or acts prepared by notaries.



Introduction

The State of the Republic of Indonesia as a state of law based on Pancasila and the Constitution guarantees the certainty of law, order, and legal protection for every citizen. To ensure this, authentic written evidence is needed regarding legal acts, agreements, determinations, and legal events made by authorized officials (Madyastuti, 2020).

For this reason, a Notary is appointed as a general official appointed by the Minister to agree because the Notary has the authority to make authentic deeds that can provide legal protection and certainty for the parties in the Agreement (Sugianto, 2019).

A notary position as a general official has an important role in making deeds because it is required to have a good personality, work hard, independent, honest and impartial and full of a sense of responsibility, notaries are also required to have competence or mastery in the field of law that is their competence, in terms of serving the needs of the community in providing services in the field of civil law, notaries are required to be able to provide legal counseling to Clients (Sa'adah, 2023).

The power attached to an authentic deed is perfect and binding, therefore the authority attached to the notary office is what makes the state regulate supervision and sanctions for notaries who violate the performance of their office (Handayani, Suryaningtyas, & Mashdurohatun, 2018). Notaries must comply with the Notary Position Law, Notary Code of Ethics and other regulations relating to the position of Notary. Because the role of Notary as a general official is to serve the preparation of authentic

deeds that have the aim of protecting the interests of the community (Tunggu & Chandra, 2018).

Supervision of Notaries is carried out by the Minister of Law and Human Rights of the Republic of Indonesia in whose implementation the Minister establishes a Notary Supervisory Council, as stipulated in Law number 2 of 2014 the supervision includes notary behavior and the implementation of notary positions. The Supervisory Board is a body that has the authority and obligation to supervise and guide notaries (Sundah, 2014).

Supervision of Notaries in addition to being carried out by the Supervisory Panel is also carried out by the Honorary Council (Tirajoh, 2015). If a Notary Public commits a violation in carrying out its duties, supervision of the Notary Public is a necessary thing, because the duty of the Notary Honor Board is to monitor the implementation of the Notary (Triuspita & Adisurya, 2020).

Ideally, the Notary Supervisory Board has the authority to supervise the implementation of the notary position which has the aim of minimizing or eliminating violations committed by Notaries and the Notary Honor Board can conduct examinations on members of organizations suspected of violating their code of ethics and impose sanctions as stated in Article 6 paragraph 1 of the Code of Ethics (Ginting, 2019).

Violations committed by notaries can cause the deed they make to experience a degrading or degradation of the deed where the deed that was previously an authentic deed becomes a deed under hand, therefore the Notary in carrying out his position must be in accordance with Law Number 2 of 2014 concerning the position of Notary and other laws and regulations relating to the position of notary.

Problem Statement

Based on the background exposure above, the author can conclude the formulation of problems arising in this study, including:

1. What is the role of the Notary Supervision Institute in terms of supervising and coaching related to the Notary Code of Ethics?
2. What is the Notary's Responsibility for the validity of deeds that are not read and not signed before a Notary?

Research Objectives

The objectives of this study are:

1. To know the role of the Supervision Agency in terms of coaching and supervising the notary code of ethics
2. To find out how the notary's responsibility for the validity of deeds that are not read and not signed before a notary.

Research Methods

This journal applies qualitative-normative research methods, normative legal research using case studies in the form of legal behavior products, for example reviewing laws. The subject of study is the law that is conceptualized with norms or rules that apply in society and become a reference for everyone's behavior, normative research methods

are chosen because they use legal theories and positive legal regulations to analyze the problems of researchers using related laws and regulations.

Results and Discussion

The role of the Notary Supervision Institute in terms of supervising and coaching related to the Notary Code of Ethics.

Notary is a General Officer who has the authority to make authentic deeds and other authorities regulated in the Notary Office Law, in Article 1866 of the Civil Code states that an authentic deed is a deed made based on the rules of law, and made by a Notary who has the authority (Yanri, 2019).

Notary Authority in carrying out its position as stated in the Law on Notary Position Number 30 of 2004, Notaries have the authority to make authentic deeds whose provisions must be in accordance with laws and regulations or desired by those with the authority stated in the authentic deed.

Notaries in carrying out their duties can express what is the desire of the parties in the original deed by taking into account the applicable legal rules and authentic deeds produced by notaries have perfect legal proof and bind the parties.

Notaries in carrying out their duties are required to always follow the code of ethics which is an ethical guideline for a notary. Ethics is a collection of principles and values that are in favor of the norms that exist in society and are generally recognized as moral methods and guidelines in behavior, so that ethics both individually and in groups will always be different.

The Notary Code of Ethics regulates what are the obligations and prohibitions for notaries, in order for notaries to carry out their duties properly, notaries must harmonize between their expertise and uphold the notary code of ethics. With the notary code of ethics, public trust in the notary profession will be stronger, because each client has certainty that his interests will be guaranteed.

The violations of the code of ethics committed by notaries are grouped into 2 (two) elements, namely:

1. The element of intentionality, this happens if the notary already knows the possibility of what will happen but the notary still does it.
2. The element of ignorance, this is because violations occur because a notary does not know or does not understand the regulations of the Notary Code of Ethics.

Supervision of notaries is carried out by judicial institutions and the government, the purpose of supervision is so that notaries in carrying out their duties always meet the requirements related to the implementation of the duties of the notary office for the benefit of the community. The authority to conduct examinations of Notaries is the Minister of Law and Human Rights in whose implementation a Notary Supervisory Board is formed and in addition there is a Notary Honor Board as a complement.

The authority of supervision by Notaries is in the hands of the Minister of Law and Human Rights, but in practice it is the Notary Supervisory Panel which is given the authority by the Minister to supervise and the authority of the Minister to supervise

notaries by UUJN is given in the form of Delegative delegation to the Minister to form a Notary Supervisory Panel, not to carry out the functions of the Notary Supervisory Panel that has been determined by explicit becomes the authority of the Notary Supervisory Panel.

The Supervisory Panel formed by the Minister consists of elements of the government, notary organizations and academic experts, each consisting of 3 (three) people. The Supervisory Panel as referred to consists of the Regional Supervisory Council, the Regional Supervisory Council and the Central Supervisory Council which in this case have different duties.

Supervision and coaching, in the word "coaching" it means that the duties and authorities of the Supervisory panel prioritize preventive actions, while in the word supervision it is repressive to impose sanctions on notaries who are proven to have committed a violation. In other references, it is stated that coaching contains the meaning of preventive activities, while the word supervision contains a repressive-curative meaning, namely the act of examining notary deeds that are suspected of having violations of position and behavior.

The Supervisory Panel has the authority to conduct examinations to Notaries, this authority can be in the form of holding hearings against Notaries suspected of violating the notary code of ethics or violations of the notary position, decision making to sanctioning notaries who violate the UUJN, and the Notary Code of Ethics. Supervision is divided into behavior / actions carried out by notaries in carrying out their positions regulated by the Supervisory Council, while outside of carrying out their positions supervised by the Notary Honor Council, supervision is basically a form of legal protection to notaries. The form of preventive supervision is carried out by the Notary Supervisory Board to prevent violations of the code of ethics carried out by reflecting on the position of the Notary Code of Ethics to provide material related to the implementation of the notary position.

Supervision and guidance by the Notary Supervisory Board can be in the form of coming to the Notary Office at least once a month to check the Notary Protocol, or by holding seminars on notary, and holding meetings once a month attended by the Supervisory Panel to provide direction in carrying out their profession as a notary. Supervision carried out by the Notary Supervisory Panel to prevent violations is passive because only waiting for reports from the public, notaries who are suspected of committing these violations and proven guilty will be given guidance in the form of imposing sanctions adjusted to the severity of the violation.

The Honor Board has the main task to supervise the implementation of the code of ethics, if there is a notary who is proven to have committed a violation, the Notary Honor Board can impose sanctions according to the type of violation.

As with the Notary Supervisory Council, the importance of the Notary Honor Board according to the Code of Ethics is so that Notaries in carrying out their duties as public officials do not commit violations or violations of the applicable code of ethics

regulations. With the existence of the Notary Honor Council, it can guarantee order and protection to Notaries in carrying out their positions.

The authority of the Notary Honor Board in enforcing the Notary Code of Ethics is more to examine allegations of violations of the internal code of ethics, in this case it is not related to the notarial deed or not related to the client / community. In addition, the Notary Honor Board can provide advice and opinions to the Notary Supervisory Board in the event of an alleged violation of the code of ethics.

The Notary Honor Board has a very strong role in terms of enforcing the notary code of ethics, because it requires evaluation and improvement, of every enforcement of the code of ethics carried out as a supporting factor in the event of violations so as to minimize violations.

The Notary Supervisory Board and the Notary Honor Board both have the authority to conduct guidance to Notaries, but this authority is not clearly regulated regarding the scope of guidance that can be carried out by the Notary Authority Board or by the Notary Supervisory Council. However, Notary Supervision is distinguished between behavior and actions carried out in carrying out their position supervised by the Notary Supervisory Council, while outside their position is supervised by the Notary Honor Council.

The Notary Supervisory Panel supervises the performance of Notaries based on the UUJN and Notary behavior based on the code of ethics, the Notary Supervisory Panel also supervises those related to external organizations whose impact is not the same as fellow notaries but the impact on society for example distinguishes one party from another, while the Notary Honor Board has the authority to enforce the code of ethics concretely in terms of supervision of notary behavior outside its position, Supervision is carried out on internal organizations related to fellow notaries (Yahya & Diantoro, 2023).

Related to reporting carried out by the public, reports can be made to the Supervisory Board or to the Notary Honor Board, but the Notary Supervisory Board is only in the form of receiving reports on coaching and sanctions imposed on the organization concerned, because basically the Notary Supervisory Panel may not reject reports as stated in the Regulation of the Minister of Law and Human Rights No.M.02.PR.08.10 of 2004 Article 13 paragraph 4.

However, if the report is in the form of a violation that has a relationship with the code of ethics, for example posting promotions on social media, the Supervisory Board must forward it to the Notary Honor Board. Basically, there is no significant difference between the supervision carried out by the Notary Honor Board or the Notary Supervisory Board because their supervision is preventive, which is preventive and countermeasures so that there is no violation of the notary code of ethics or the authority of the notary office.

The purpose of supervision is to protect legal subjects through harsh laws and regulations imposed by sanctions. There are 2 (two) types of legal protection, namely:

1. Preventive legal protection where this legal protection is made by notary associations that have the aim of preventing violations, this is contained in laws and regulations that have the intention to prevent and provide signs and limitations in carrying out their obligations

2. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute occurs or a violation of a notary code of ethics has been committed.

It can be concluded that the purpose of preventive in this case is the coaching process while repressive means that the imposition of sanctions on notaries who in carrying out their positions are proven to have violated the code of ethics. This coaching function is intended for notaries to always comply with and understand the rules contained in the notary code of ethics or other laws and regulations.

Notary's responsibility for the validity of deeds that are not read and not signed before a Notary.

Notaries in carrying out their positions have their own authority. Every authority must have a legal basis, for example, the notary's position as a general official, the meaning of the authority that exists in the notary has never been given to other officials as long as the authority is not the authority for other officials in making authentic deeds or other deeds, then the authority belongs to the notary.

Notaries in making notarial deeds are divided into two forms, namely the deed of partij where this deed is made before a notary and the notary has the obligation to listen to what is the desire of the parties or explained by the parties before a notary, and the deed of relaas is a deed made by a notary as a general official that contains an authentic description of all events or events seen, experienced, and witnessed by the notary himself.

Notarial Deed is evidence that has perfect legal force, notarial deed has a strong position as referred to in article 1875 BW that minuta becomes an authentic deed because it is made before a notary and written in accordance with the rules in UUJN. The Notary's obligation in making an authentic deed is to read it to the complainants and sign it directly in front of the parties, witnesses and notaries, this is regulated in Article 16 Paragraph (1) of the Notary Office Law.

The purpose of reading and signing the deed must be done in the presence of a notary, witnesses and parties and must be included at the end of the deed, the purpose is so that the parties involved in making the deed know what is stated in the deed, this is also a consideration for the panel of judges who conduct the examination of the deed in terms of evidence.

In addition, the purpose of reading the deed is so that the parties in it consciously know what is stated in the deed and as a last chance for the parties to ask the notary if there is a list of provisions that are unclear or poorly understood, Notary and the deed is an effort by the state in creating legal certainty and protection for members of the community, as stated in Article 1 of the Notary Office Law.

A deed that is not read by the parties can cause losses by the parties, for example there is a inclusion of provisions that harm one of the parties and to ordinary people who do not understand the contents of this deed can immediately agree to the contents of the agreement and sign the deed without understanding the contents.

Provisions regarding notary obligations as stated in Article 16 and the word before which has the definition of the presence of a notary and the parties involved in it physically. Notaries who do not fulfill their obligations may be sued if the parties suffer losses.

The reading of the deed to the deed to the deed is reaffirmed in Article 44 paragraph (1) of the UUJN which states that immediately after the deed reading is carried out, it must be signed immediately in the presence of the parties, witnesses and notaries unless there are faces who do not paraf by including the reasons so that it can be concluded that the notary has the obligation to read the deed to the parties before signing.

Notaries who violate these obligations have legal effects that will result in the notary, which can be in the form of temporary dismissal from office because they have committed violations or because negligence in their obligations causes the deed to be degraded into a deed under hand.

The notary inaugurates the deed of the deed he made, then the notary also has the obligation to read it and may not submit it to the notary candidate or other notary assistants, not only for the reading of the deed but also for the inauguration of the deed.

The reading of the deed not only has benefits to the facers, but also to the notary because with the reading of this deed the notary has the last opportunity to examine the deed made by him before the deed is ratified or formalized with the signatures of the face, witnesses, and notaries to conduct a review or rethink so as to minimize the occurrence of problems in the future.

A legal consequence that can occur as a result of such violations can be:

1. The deed is void.
2. The deed is null and void.
3. The deed can be canceled.

Acts of violation of law and wrongdoing, each of which is a necessary condition and together is a sufficient condition for liability under Article 1365 of the Civil Code, in the existing doctrine regarding it, responsibility and losses caused to others can be divided into 3 (three) theories, namely:

1. Responsibility Wrongdoing, has a broad meaning where the person who caused harm to another person is responsible to the extent that the damage was the result of a violation of a norm and the perpetrator regrets having committed a violation of the law.
2. Responsibility by reversal of the proof of the injured party, and required to prove that someone's behavior caused harm, here the violation is considered to exist and further requires the perpetrator to negate this presumption or suspicion by showing that he did not violate the law.
3. The theory of risk responsibility for a superior who is responsible for losses made by his subordinates is set forth in the scope of his duties.

As a result of negligence or violation made by a notary can be sanctioned in the form of:

1. Civil Liability

This responsibility in the form of a Notary in carrying out his position is related to civil liability, which is a consequence that must be asked of a notary if there is a violation committed by him.

2. Administrative Responsibilities

Administrative responsibility is imposed on a notary in the event of a violation, namely in the form of written, verbal reprimands, temporary dismissal, and dishonorable and honorable dismissal, sanctions against notaries can be in the form of temporary dismissal from their intended positions so that notaries do not carry out their duties temporarily.

3. Criminal Responsibility

Notary is a general official who has the authority to make authentic deeds, notaries in this case also act as advisors to the parties. If there is a notarial deed disputed by the parties, the notary can also be withdrawn because it has committed a criminal act.

According to some factors, notaries are considered to have carried out their actions correctly, but this comes back to the implementation to be able to carry it out properly, then There are other factors such as public factors that do not know related to regulations regarding the performance of a notary, namely the notary code of ethics, because the majority of the public does not know the existence of a notary code of ethics, violations arise by notaries against clients on the basis of this ignorance.

In addition, attitudes and values in society according to Friedman Bufaya law can be in groups, certain communities, communities of legal experts, professional communities, including those who have an internal legal culture.

Notaries have both formal and material responsibility for the deeds they make, because of the authentic deeds they make and if when proven to have legal defects, the notary can be sued to make reimbursements of costs, damages and interest. While material responsibility can be in the form of notary authority in making authentic deeds, it does not mean that notaries can freely make a deed, but the making of authentic deeds must be based on the will of the parties involved in it.

Conclusion

In the context of supervising and coaching notaries, the notary supervisory panel has a position as a party that has the authority to supervise not only as a structuring in the code of ethics but also has a broader task, namely so that notaries can still carry out their duties in accordance with the conditions stipulated by law in order to protect the interests of the community they serve. The notary supervisory panel has administrative authority, namely to supervise notaries in order to issue deeds in accordance with the provisions of the UUJN. Guidance for Notaries in carrying out their positions is carried out by the Notary Supervisory Board located in each region, with the provisions in Law Number 2 of 2014 concerning the position of notary guidance by the Notary Honorary Council

regulated in Article 66A, while supervision carried out by the regional Supervisory Council is regulated in Article 67. The imposition of sanctions can only be carried out by the Notary Honorary Council, when the notary commits a violation while carrying out his position against the notary code of ethics.

Notary responsibility due to non-reading of the deed and the signing of the deed not before the notary may be subject to civil sanctions for unlawful acts as it turns out in article 1365 of the Civil Code, Notaries may be subject to criminal sanctions if it is proven that there is an element of intentionality to make a deed due to the wishes of one of the parties, Administrative sanctions in the form of notaries can be reprimanded up to dishonorable dismissal 137 from their positions and code sanctions ethics because notaries do not carry out their obligations in accordance with what is regulated in the notary code of ethics.

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