


Application of code of conduct sanctions against notary officials sentenced to prison

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Article Info	ABSTRACT
Keywords: Notary, Board of Supervisors, exercise their position	Notary is a general official who is authorized to make an Authentic Deed to carry out his duties and functions in serving the community, Notaries are Members of the Association, namely the Indonesian Notary Association (INI) and Notaries are subject to the Code of Ethics, and are supervised by the Supervisory Council, but do not close the fact that there are still Notaries who violate the Code of Ethics, even commit criminal acts, and there are Notaries after leaving prison continue to carry out their positions, The method used is normative juridical research, which is conducting legal research by reviewing library materials or secondary data as a basis for research. The Indonesian Notary Association is the Notary Honorary Council which is authorized to allow or not allow the authorities, courts, prosecutors to process laws against Notaries involved in a case
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INTRODUCTION

A notary is a public official responsible for the ratification of deeds. State bodies are essential to carry out their responsibilities and roles effectively in serving society. This State Body acts on behalf of the State and represents the State. Public officials have direct authority from the State which is the highest authority. This indicates that public officials have their own place in the field of civil law. The responsibilities of Indonesian Notaries are clearly defined including:

In the exercise of his office, "Notaries shall:

- act in a trustful, honest, comprehensive, independent, and impartial manner, and protect the interests of parties involved in legal proceedings;
- make a Deed in the form of a Minutes of Deed and save it as part of the Notary protocol;
- attach letters and documents and fingerprints of the person to the minutes of the deed;

In addition, it is regulated in the Notary Code of Ethics of the Indonesian Notary Association (INI). It was first regulated in Article 3 of the Notary Code of Ethics of the Indonesian Notary Association (INI) in 2005. Then it was refined by Article 3 of the INI Code of Ethics stipulated in Banten on May 29-30, 2015, and presented as follows:

1. Have high morals, ethics, and personality.
2. Maintain the dignity and dignity of the Notary Office.
3. Safeguarding and protecting the honor of the association.
4. Act honestly, independently, and impartially, as well as be trustworthy, conscientious, and responsible, in accordance with the provisions of laws and regulations and the provisions of the Notary oath of office.

However, from time to time there are many Notary Officials violating the provisions passed by the Government, the INI Code of Ethics (Indonesian Notary Association) and even potentially subject to Crime for abusing Position or other criminal acts, even after being released from prison or after carrying out a sentence of Notary Prison continues to carry out their position or carry out their profession ".

METHODS

In this chapter, the author uses a normative juridical approach, namely conducting legal research by reviewing library materials or secondary data as a research basis. His research methodology includes searching the Notary Office Law and relevant literature related to the problem under study. In addition, an empirical juridical approach is also used, namely analyzing research problems by combining secondary legal materials with primary data obtained through empirical methods such as interviews.

RESULTS AND DISCUSSION

Notary's breached obligations

The types of violations committed by Notaries in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Positions are not acting trustfully, dishonest, not independent, partial, and not safeguarding the interests of parties involved in legal actions, as well as in terms of the Notary Code of Ethics of the Indonesian Notary Association, which has no morals, have no morals, no good personality, no respect. does not uphold the dignity and dignity of the Notary, does not maintain honor, does not behave honestly, is not independent, partial, not trustful, not full of responsibility, based on laws and regulations and the content of the Notary oath of office.

The offense in question such as making a fake signature that falls into the criminal realm and the elements of a criminal act fulfill intentionality or negligence, while in civil terms it is beneficial for General Officials, Notaries who commit fake signatures are criminal acts that have elements of intentionality while in the side of the Law the position of Notary is prohibited from adding to the Minuta deed. In the form of intentionality such as changing or adding intentionally that results in losses to other parties. Losses in terms of law include: Criminal Code, Civil Code, Notary Position Law, Notary Code of Ethics Indonesian Notary Association (INI). Violations committed by Notaries, as listed above result in losses to the parties.

Criminal Definition

Definition of Criminal according to some experts

- a. Mezger said that criminal law can be defined as the rule of law, which binds to an act that satisfies certain conditions an effect that is criminal.² By an act that meets certain conditions is meant an act committed by a person, which allows the commission of a crime. Such acts can be called criminal acts or abbreviated as evil deeds (*Verbrechen* or *Crime*). Since in this evil deed there must be someone who does it, hence the question of deeds
- b. Van Hamel said the criminal law is the obligation to enforce the law, that is, all the bases and rules made by the state by prohibiting what is unlawful and inflicts suffering (suffering) on those who violate the prohibition.
- c. According to Prof. Moeljatno, S.H. Criminal Law is part of the overall law in force in a country, which establishes the basics and rules for:
 1. Determine which acts should not be done and which are prohibited, accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition.
 2. Determine when and in what ways to those who have
Violation of these prohibitions may be imposed or punished as threatened.
 3. Determine in what manner the criminal imposition may Carried out if there are people suspected of violating the prohibition.
There are 2 (types) of Criminal Law functions, namely:
 - a. The general function of criminal law is to regulate social life and administer rules in society.
 - b. The special function of criminal law is to protect legal interests against actions that want to disturb it, with sanctions in the form of criminal sanctions that are coercive and binding. Legal interests in this case include individuals, groups (society, state, and so on).

Notary acts that commit criminal acts

Notaries who commit criminal acts such as making false signatures are listed in the Criminal Code (Criminal Code) in Article 263 which reads:

"(1) Whoever makes a forged letter or forges a letter, who may issue a right, a covenant (obligation) or a discharge of debt, or which may be used as a description of an act, with the intention of using or instructing others to use the letters as if they were genuine and unforged, then if using them may bring any harm punishable by forgery of letters, with imprisonment for up to six years."

"(2) With the same penalty it is also punished, whoever knowingly uses a forged or forged letter as if it were genuine and unforged, if the use of it may bring any harm. (K.U.H.P. 35, 52, 64-2, 276, 277, 416, 417, 486).

Based on the Article above, what is meant by Surat is as follows:

1. Who can issue a Right (for example: Diploma, Admission Ticket, Letter of Entry, etc.);
2. Who can issue an agreement (for example: Accounts Receivable Agreement, Lease Agreement, Sale and Purchase Agreement);
3. Who may issue a Waiver of Debt (for example: Receipt or such letter);

4. Which can be used as information for an act or event (for example: Birth certificate, postal passbook, cash book, ship diary, transport letter, bond, etc.)

According to R. Soesilo there are forms of forgery of letters by:

1. Creating a Fake Letter: making its contents improper (incorrect).
2. Forgery: altering the Letter in such a way that its contents become different from the contents of the original. The method varies, not always the Letter is replaced with another, it can also be by subtracting, adding or changing something from the Letter.
3. Forging Signatures also includes the notion of forging Letters.
4. Pasting Photos of Others from the entitled holder. For example, Photos in School Diplomas.

In the Article there are 2 (two) elements, namely the Subjective element and the Objective Element. Objective Elements include: Creating Fake Letters, Counterfeiting
While in Subjective Elements include

1. Who's Who's
2. Letter
3. Fake Mail or Contains Something That Is Not True
4. Give rise to any right or engagement or discharge of debt or as evidence
5. To
6. Wearing/telling Others to wear
7. May incur Losses
8. Maximum sentence of 6 (six) years

The article related to forgery of Authentic Deeds is regulated in Article 264 of the Criminal Code (Criminal Code) which reads: Forgery of letters is punishable by imprisonment of up to eight years, if committed against:

1. Authentic Deeds
2. debentures or certificates of indebtedness of any country or part thereof or of a public institution
3. sero letter or debt or sero certificate or debt of a associations, foundations, companies or airlines
4. Talon, proof of dividend or interest from one of the letters described in 2 and 3, or evidence issued in lieu of those letters
5. Letters of Credit or Trade Letters intended for Released.

There is also Article 266 of the Criminal Code which reads:

- (1) Whoever orders to put false information into

An authentic deed concerning an event whose truth must be stated by the deed, with the intention of using or instructing others to use the deed as if the description were compatible with the real thing, then if in using it it can bring harm, it is punishable by imprisonment for not more than seven years.

- (2) With the same punishment it is also punished whoever knowingly uses the deed as if its contents match the real thing if the use of the letter can bring harm. (K.U.H.P. 35, 52, 64, 264-1,274, 276, 279, 451 bis, 451 tar, 452, 486).

Criminal liability lies with a person who have the ability to be criminally responsible. A person can be said to be criminally liable if:

1. Able to know that his actions are contrary to law;
2. Able to determine his will with his consciousness.

If one sentence is incomplete then one does not may be subject to criminal sanctions. Thus it can be concluded that people who commits a criminal act has not been sentenced to a criminal offense, depending on whether the person can be held accountable criminal or not. On the contrary, the person who was sentenced to criminal sanctions, already must have committed a criminal act that can be accounted for Intention or *mens rea* is one of the factors that become a benchmark to determine whether someone can be criminally responsible or not. Mens Rea can be interpreted as evil intentions that exist in the perpetrators of criminal acts. Dualists separate guilt (*mens rea*) from criminal acts (*actus reus*). *Mens rea is a mental element while actus reus is a physical element.* This understanding is based on the principle of "*actus non facit reum nisi men sit rea*" or if interpreted is that no act can be subject to criminal sanctions if there is no malicious intent in it. A behavior cannot be called evil if there is no evil will. Both opinions define *mens rea* as *vicious will* or *guilty of mind*. Both terms when translated to Indonesian mean "evil will" or "evil will."

Analysis of Notary Summons by the Police

The police in this case as an investigator have the authority in terms of making summons, summons is one of the coercive efforts in the investigation phase in addition to arrest, detention, search and confiscation of letters. What is meant by investigation is a series of actions of investigators in terms and according to the manner regulated by law to search for and collect evidence that by that evidence makes light of a criminal act in order to find the suspect. Thus, the purpose of summons as one of the efforts to find evidence to make light of a criminal act. The investigator's authority to make such summons also applies to the Notary, to present the Notary both as a witness and co-defendant when a dispute arises relating to the deed he made.

In the case of the subject matter of a criminal case that is directly related to the deed made by the Notary, the notary of his position and authority, the investigator usually summons the Notary with charges or suspicions of doing:

1. Making forged letters/forged letters and using forged letters/forged letters (Article 263 paragraphs (1), (2) of the Criminal Code).
2. Committing forgery of letters (Article 264)
3. Ordering to include false information in an authentic deed (Article 266 of the Criminal Code).
4. Doing, ordering to do, participating in Article 263 paragraphs (1) and (2), Article 264, Article 266 (Article 55 of the Code of Criminal Procedure).
5. And assist in carrying out Article 263 paragraphs (1) and (2), Article 264, Article 266 (Article 56 paragraphs (1) and (2)).

A Notary Deed is an authentic deed made by or before a Notary Public according to the forms and procedures stipulated in this Law. It can be further explained through the following elements:

1. Authentic Deed

Authentic Deed, is a valid deed made by and before certain bodies or officials in accordance with their duties and authorities for it, and has absolute or perfect legal force or proof.

2. Made by or before a notary

Made by explaining that the deed must be made by a notary in accordance with the will of the parties who will make the agreement. And before a notary, for example, they make an agreement of the parties whose contents are the will of the parties who will perform a certain act containing the rights and obligations of the parties by telling or writing all the will or understanding before the notary, and for the process of making even the signing is carried out before a notary. The deed made by a notary in notary practice is called the Deed *of Relaa*s which contains a description of the notary that the notary himself sees and witnesses upon

The request of the parties, that the actions or deeds of the parties carried out be poured into the form of a notarial deed. In essence, all the basis for making an authentic deed is the will or understanding of the parties without coercion from any party.

3. The forms and procedures stipulated in this Law.

Explain that the procedures and forms must be in accordance with the applicable provisions in this law. In Chapter VII articles 38-55 of UUJN, it has explained how the form and procedure for making deeds by notaries. The supervision in question is a preventive and repressive activity. Preventive means a coaching process, while repressive means imposing sanctions on Notaries in the implementation of their positions if proven to have committed violations

Analysis of the Application of Code of Conduct Sanctions Through the Summoning Process Notary Goes to Jail

By applying for a Code of Ethics sanction, for violating the Notary Position Law, the Notary Code of Ethics of the Indonesian Notary Association (INI), the Criminal Code (KUHP), it must be brought to a Code of Ethics hearing, which after obtaining sanctions, is required to the Notary Honor Council. Then the author thought about how to summon notaries who have gone to prison and the author was informed by way of an interview between the author and H. Mohammad Ryan Bakry, who is the chairman of the Regional Supervisory Board (MPW) of the Indonesian Notary Association in DKI Province (Special Capital Region) Jakarta on October 21, 2023, explaining regarding the summoning of Notaries who have already gone to jail, that the Regional Supervisory Panel makes a Letter of Application to the authorities or the Prosecutor's Office or to the Court for the Notary concerned to be presented in a hearing according to the code of ethics, and the factor of this is where the aggrieved parties report to the authorities and then report to the Regional Supervisory Board (MPD), or if the Notary concerned appeals to the Regional Supervisory Panel (MPW)

but is detained in the authorities or court, then MPW makes a letter of application to make a Letter of Application to the authorities or the Prosecutor's Office or to the Court, as well as the Central Supervisory Panel (MPP).

CONCLUSION

Based on the discussion above, the author concludes that: Notaries are part of the Members of the Indonesian Notary Association (INI) or also called Association Members and are supervised by the Supervisory Council, especially the Regional Supervisory Council, also the Regional Supervisory Council is a place of complaints for parties who feel aggrieved and have the authority to conduct hearings against Notaries who allegedly violate the Code of Ethics, and on the other hand there is an Honor Council that is authorized to conduct hearings internally, namely the Regional Honor Council, Regional Honor Council, the Central Honor Council which has another authority to remove from the Association Members through Congress. On the other hand, there is a forum from the Indonesian Notary Association, namely the Notary Honor Council which is authorized to allow or not allow the authorities, courts, prosecutors to process laws against Notaries involved in a case. In practice in the field, the implementation of sanctions against Notary Officials who have already gone to prison is only known by the Regional Supervisory Council (MPD) because MPD has only received reports from aggrieved parties who have previously reported Notaries to the authorities, and the solution to be heard by the Code of Ethics is to make an Application Letter, as well as at the Regional Supervisory Council (MPW) and Central Supervisory Council (MPP) levels when the Notary submits an appeal between 2 (two) This level is but held by the authorities, the MPW or MPP makes a letter of application to the authorities so that it can be presented in the Code of Ethics hearing.

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