

## The Territory Supervisory Assembly Sanctions for Double Deeds of Sale and Purchase

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**Abstract.** *Notaries have an important role in resolving legal problems in society, the evidence used by notaries is written. Notaries are responsible for maintaining public trust and upholding legal ethics and dignity in carrying out their profession. On the other hand, notaries must be proper and comply with the Code of Ethics which is based on Notary Position Law No. 2 of 2014, as amended by Law No. 30 of 2004, hereinafter referred to as UUJN. Notaries are required to comply with statutory regulations. If the notary does not comply with applicable statutory regulations, he will receive sanctions in accordance with the violations he has committed. Notaries who are proven to have violated the obligations and prohibitions of Notaries as regulated in Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, and Article 16 paragraph (1) letter m UUJN, can be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics sanctions and even criminal sanctions. Notaries who commit violations are not immediately punished, Article 7 paragraph 2 states that "Notaries who violate the provisions may be subject to sanctions in the form of: written warning; temporary dismissal; honorable dismissal; or dishonorable dismissal." Notaries who violate these provisions will be given the opportunity, if the notary who violates continues to repeat the same violation, the Honorary Board and the Supervisory Council each have the right to carry out their own examination if there are individual notaries who commit violations. Notaries who knowingly violate the code of ethics can be subject to sanctions and can harm the parties and the notary himself.*

**Keywords:** Agreement; Notary; Sanctions; Supervisory.

## 1. Introduction

A notary is a public official who has the duties and obligations to provide legal services and consultations to the public. Notaries are brought in to serve the legal interests of people who need evidence in the form of authentic deeds according to the person's request to the Notary, so that without people who need Notaries, Notaries are of no use.<sup>1</sup>

In carrying out any profession, we will encounter a code of ethics. This is deemed necessary to provide behavioral guidelines for its members. The position of notary is a position of trust given by law and society, for this reason a notary is responsible for carrying out the trust given to him by always upholding legal ethics and the dignity and nobility of his position, because if this is ignored by a notary it can cause losses for the general public and disrupting the ongoing law enforcement process carried out during the reform order, especially in the last few years.

Notaries as ordinary people, in carrying out their official duties, can make mistakes or violations. Notaries who are proven to have violated the obligations and prohibitions of Notaries as regulated in Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, and Article 16 paragraph (1) letter m UUJN, can be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics sanctions and even criminal sanctions.<sup>2</sup>

Notaries have an important role in resolving legal problems in society, the evidence used by notaries is written. Notaries are responsible for maintaining public trust and upholding legal ethics and dignity in carrying out their profession. On the other hand, notaries must be proper and comply with the Code of Ethics which is based on Notary Position Law No. 2 of 2014, as amended by Law No. 30 of 2004, hereinafter referred to as UUJN.

Notaries are required to comply with statutory regulations. If the notary does not comply with applicable statutory regulations, he will receive sanctions in accordance with the violations he has committed. Notaries who are proven to have violated the obligations and prohibitions of Notaries as regulated in Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, and Article 16 paragraph (1) letter m UUJN, can be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics

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<sup>1</sup>Habib Adji, (2010). *Majelis Pengawas Notaris Sebagai Pejabat Tata Usaha Negara*, Surabaya: Refika Aditama

<sup>2</sup>Putri AR, (2011). *Perlindungan Hukum Terhadap Notaris (Indikator Tugas-Tugas Jabatan Notaris Yang Berimplikasi Perbuatan Pidana)*, Jakarta: PT Softmedia

sanctions and even criminal sanctions. Notaries who commit violations are not immediately punished, Article 7 paragraph 2 states that "Notaries who violate the provisions may be subject to sanctions in the form of: written warning; temporary dismissal; honorable dismissal; or dishonorable dismissal." Notaries who violate these provisions will be given the opportunity, if the notary who violates continues to repeat the same violation, the Honorary Board and the Supervisory Council each have the right to carry out their own examination if there are individual notaries who commit violations. Notaries who knowingly violate the code of ethics can be subject to sanctions and can harm the parties and the notary himself.

Problems at the trial at the Banten Regional Notary Supervisory Council have taken legal action in accordance with the provisions of Article 75 of Law No. 30 of 2004 concerning the Position of Notary Jo. Article 27 paragraph (3) Minister of Law and Human Rights Regulation No. 15 of 2020 concerning Procedures for Examination by the Supervisory Board of Notaries. Based on the Decision of the Notary Regional Examination Council Number M.09/ MPWN. Prov. Banten/ 2022 dated June 20, 2023.

## 2. Research Methods

This research used normative juridical approach method or doctrinal legal research, namely legal research that uses secondary data sources. This is done by emphasizing and adhering to juridical aspects. Normative legal research is library research, namely research on secondary data. Secondary data has a scope that includes personal letters, books, and even official documents issued by the government. This normative approach will focus on juridical issues regarding legal rules regarding sanctions against Notaries.

## 3. Results and Discussion

The Notary Code of Ethics is all the moral rules determined by the Association of Indonesian Notary Association Organizations (INI), which apply and must be adhered to and complied with by all members of the association and other people who hold the position of Notary both in the performance of their office and in daily life. Notaries really need to know and understand the code of ethics, which regulates any actions that can be considered a violation of the code of ethics and the sanctions imposed if they violate the code of ethics.<sup>3</sup>

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<sup>3</sup>Alfiyan Mardiansyah et al., "Kewenangan Majelis Kehormatan Notaris Pada Proses Penyelidikan Suatu Perkara Tindak Pidana Yang Melibatkan Notaris," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 9, no. 1 (2020): 48–58, <https://doi.org/http://dx.doi.org/10.28946/rpt.v9i1.596>.

The code of ethics established in Banten, on 29-30 May 2015, previously in effect the Notary Code of Ethics established at the INI congress (Member Meeting) in Bandung on 28 January 2005, contains obligations, prohibitions and exceptions for notaries in carrying out their positions. Notaries can be subject to sanctions if they are proven to have violated the provisions contained in the Notary Code of Ethics. The relationship between the Notary profession and the Notary organization is regulated by the Notary's code of ethics, where the existence of the Notary's code of ethics is a consequence of work related to violations of the behavior of Notaries which only amount to moral sanctions. This Notary's code of ethics contains elements of obligations, prohibitions, exceptions and sanctions that will be imposed if it is proven that the Notary has violated the code of ethics.

According to Article 1 paragraph 1 of Law on the Position of Notaries Number 2 of 2014, upon amendment to Law No. 30 of 2004, hereinafter referred to as UUJN, which reads: "A Notary is a Public Official who has the authority to make authentic deeds and has other authorities as intended in the Law -this law or based on other laws" In carrying out the position of notary, the notary must comply with Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary. These regulations are binding as long as a person is still serving as a notary before being declared to have retired honorably and/or retired.

Notaries have the authority to make deeds, deeds made by notaries have the power inherent in authentic deeds, namely perfect (*volledig bewijskracht*) and binding (*bindende bewijskracht*), which means that if the authentic deed evidence submitted meets the formal and material requirements and opposing evidence presented by the defendant does not reduce its existence, it also has the power of perfect and binding evidence (*volledig en bindende bewijskracht*), so that the truth of the contents and statements contained therein becomes perfect and binding on the parties regarding what is stated in the deed.

Notaries who violate the law in carrying out their office, either intentionally or negligently, can no longer remain calm. Parties who feel disadvantaged can make complaints to the Notary Supervisory Board and the Police. If a Notary ignores the duties of his position and the nobility of his dignity and violates Law No. 30 of 2004 concerning the Position of Notaries and other applicable laws and regulations, the Supervisory Council can act firmly and impose sanctions. It can even provide recommendations to the Minister of Law and Human Rights to revoke its operational permit.<sup>4</sup>

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<sup>4</sup>Criwitin Sasauw, "Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris," *Jurnal Lex Privatum* III, no. 1 (2015): 100.

The Notary concerned is not excluded from the possibility of being sued in court, either in a criminal case or a civil case. Based on Article 16 paragraph 1 UUJN,<sup>5</sup>In carrying out his duties, a notary is obliged to:

- a. act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of parties involved in legal actions;
- b. make a Deed in the form of Deed Minutes and save it as part of the Notary Protocol;
- c. attach letters and documents as well as the person's fingerprints to the Deed Minutes;
- d. issue Grosse Deed, Copy of Deed, or Quote of Deed based on Minutes of Deed;
- e. provide services in accordance with the provisions of this Law, unless there are reasons to refuse;
- f. keep confidential everything regarding the Deed he or she makes and all information obtained for the purpose of making the Deed in accordance with the oath/promise of office, unless the law stipulates otherwise;
- g. bind the Deeds he makes within 1 (one) month into a book containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds can be bound into more than one book, and record the number of Minutes of Deeds , month and year of publication on the cover of each book;
- h. make a list of deeds of protest against non-payment or non-receipt of securities;
- i. make a list of Deeds relating to wills in order of when the Deeds were made each month;
- j. send the list of Deeds as referred to in letter i or the nil list relating to wills to the center for the will register at the ministry that handles government affairs in the field of law within 5 (five) days of the first week of each following month;
- k. record in the repertory the date of delivery of the register of wills at the end of each month;
- l. has a seal or seal containing the state symbol of the Republic of Indonesia and in the space surrounding it is written the name, position and place of the relevant position;
- m. read the Deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making the Deed of Will privately, and signed at that time by the presenter, witness and Notary; And
- n. accepting apprentice Notary candidates.

This law regulates in detail regarding the making of deeds, prohibitions, obligations in carrying out notarial duties and sanctions that will be obtained if

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<sup>5</sup>"Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Public"

the notary is proven to have violated the notary's code of ethics. Notaries can receive civil or criminal penalties, depending on what mistakes the notary has committed. Many notaries, while carrying out their duties, commit negligence. For example, there is a Notary who does not read the deed so that the deed becomes a private deed. In the deed he wrote that the deed "was read by me, the Notary, even though he did not read it. He lied and thereby forged the deed. Moreover, many Notaries let the presenters sign the deed in the presence of their assistant or staff, so that the Notary's statement "has been in contact with the presenters" also needs to be doubted. That by not reading the deed and not seeing who is signing the deed, the Notary who does so lowers the dignity of his noble job and position.<sup>6</sup> Notaries who knowingly violate the code of ethics can be subject to sanctions and can harm the parties and the notary himself. It is stated in Article 16 letters a and m that the notary must act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of the parties involved in the legal action and must read the deed in front of an audience attended by at least 2 (two) witnesses. , or 4 (four) special witnesses for making the Deed of Will privately, and signed at that time by the presenter, witness, and Notary.

According to Dr. Drs. Widodo Suryandono, SH, MH said that if a notary commits a violation that is "outside the duties of a notary", for example a crime of fraud, the notary supervisory board recommends that it be reported to the police. Meanwhile, regarding public reports of notaries who commit violations "in the context of their notarial position", the truth is that the police cannot directly examine the notary. "What is being examined is only the deed made by the supervisory board."<sup>7</sup>

Forms of notary responsibility include civil, criminal, administrative responsibility and the notary's code of ethics. The legal consequence of violating the code of ethics made by a Notary who commits an unlawful act is that it does not comply with the code of ethics contained in the UUJN and being a notary does not carry out his profession according to existing rules, it can cause losses to the notary himself or other parties who have believe it. However, notaries also have special privileges in carrying out their positions, namely the right of recusal. The right of disapproval is not intended to protect the notary from criminal acts he has committed related to making a notarial deed. The right of recusal attached to a notary only protects the interests of the parties stated in the deed as a secret of office.

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<sup>6</sup>Purwaningsih, "Bentuk Pelanggaran Hukum Notaris Di Wilayah Provinsi Banten Dan Penegakan Hukumnya," *Mimbar Hukum Jurnal Hukum Universitas Gadjah Mada* 27, no. 1 (2015): 15.

<sup>7</sup>Media Notaris, 2020, [http://medianotaris.com/sudah\\_pindah\\_tapi\\_masih\\_pasang\\_papan\\_nama\\_berita120.htm](http://medianotaris.com/sudah_pindah_tapi_masih_pasang_papan_nama_berita120.htm).

If a notary who is being supervised continues to commit violations, action will be taken. For this reason, the notary concerned is subject to sanctions in accordance with applicable regulations by looking at the violations he has committed. UUJN states that the lightest sanction is a verbal warning. The second sanction is a written warning, and the third sanction is temporary dismissal for a maximum of 6 months. The final sanction is dismissal from one's position either with honor or dishonor. It is found in Article 85 UUJN.

Violations of the code of ethics handled by the Honorary Council include notaries advertising themselves or using bureaux to attract clients. This also includes demeaning or badmouthing colleagues about the work of other notaries. The Honorary Council and the Supervisory Council each have the right to carry out their own inspection if a notary commits a violation. Based on Article 6 of the Code of Ethics for Notaries, the Indonesian Notary Association (INI) states that sanctions that can be imposed on Notaries who violate the Code of Ethics can be in the form of reprimands, warnings, suspension (temporary dismissal) from membership of the Association, *onzetting* (dismissal) from membership of the Association, dismissal with disrespect from the membership of the Association. The noble and dignified position of a notary is expected to provide legal certainty with the deeds he makes without violating the code of ethics, authority and obligations that are always carried out. The obligation to make deed minutes and keep deed minutes as a notary protocol must always be carried out.

Notaries in carrying out their duties and positions must always be guided by UUJN and the Notary Code of Ethics. The term ethics is formed from two Latin words, mores and ethos which are combined as a series of civility in a society and human morals. Etymologically, ethics is defined as the same as morals in the form of values and norms that are used by humans or groups in regulating their behavior.<sup>8</sup>

Based on Article 3 of the Notary Code of Ethics of the Indonesian Notary Association (INI), it is explained that notaries must have good morals, morals and personality, notaries must respect and uphold the honor and dignity of the position of Notary, maintain and defend the honor of the Association, act honestly, independently, impartially. , full of a sense of responsibility, based on statutory regulations and the contents of the Notary's oath of office, improving the knowledge that is already possessed, not limited to legal and notarial knowledge, and prioritizing service to the interests of society and the State. In Article 3, notaries must have honor and dignity and be able to help the public or prospective clients without distinguishing from their social status.

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<sup>8</sup>Herlien Budiono, (2013). *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan Buku Kedua*, Bandung: PT Citra Aditya Bakti



Notaries can be subject to sanctions commensurate with their mistakes, the public or clients who are harmed can report this to the police if it involves fraud in Article 378 of the Criminal Code or embezzlement in Article 372 of the Criminal Code. If the public or clients are harmed by behavior or do not comply with the notary's code of ethics (related to making deeds), it can be reported to the Regional Supervisory Council located in the Regency or City. The authority of the Regional Supervisory Council is contained in Article 70 UUJN, namely: holding hearings to examine alleged violations of the Notary's Code of Ethics or violations of the performance of the office of a Notary and receiving reports from the public regarding alleged violations of the Notary's Code of Ethics or violations of provisions in the Law.

In this case, the Notary can be sued civilly or criminally because of violations he has committed while carrying out his duties as a public official. In responding to all forms of demands or lawsuits from parties or clients who report the notary, the position of the notarial deed must be reviewed as an authentic deed that has perfect evidentiary power. Errors in deeds are included in violations of the notary's code of ethics.

According to Hj. Tuti Sudiarti, SH stated that if a notary violates the code of ethics, they will be reprimanded first. If after being reprimanded and reminded he does not improve himself then the MPD, DKD and regional administrators will write to him. This letter was copied to the central management, namely MPP, INI and DKP. "If there is a violation of the code of ethics in the field, I am always reminded by telephone by friends who report it."

Notaries who are proven to have committed unlawful acts or violated the code of ethics in carrying out their profession are obliged to be held accountable for their actions. In imposing sanctions on a Notary, there are several conditions that must be met, namely fulfilling the formulation that the act is prohibited by law, there is loss resulting from the act and the act must be unlawful, both formally and materially. Formal in the sense that it meets the formulation in the law, materially meets the test by the code of ethics and UUJN. Aspects of limitations in terms of violations by Notaries are measured based on UUJN.

Based on Article 13<sup>9</sup>stated that: "Without reducing the provisions governing procedures or procedures as well as the imposition of sanctions in stages, a member of the Association who has violated Law No. 30 of 2004 concerning the Position of Notary and the person concerned is declared guilty, and sentenced based on a court decision which has permanent legal force, the Central Management is obliged to temporarily dismiss a member of the Association

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<sup>9</sup>"Code of Ethics for Notaries of the Indonesian Notary Association"



accompanied by a proposal to Congress that the member of the Association be dismissed as a member of the Association."

In this research, the Decision of the Notary Regional Examination Council Number M.09/ MPWN. Prov. Banten/2022 dated 20 June 2023 concerning the subject matter and legal facts, namely making or issuing 2 (two) Deeds of Sale and Purchase Agreement with 2 (two) different numbers for the same subject and object, therefore the Regional Supervisory Council decided on the Decision of the Regional Audit Council Notary Number M.09/ MPWN. Prov. Banten/ 2022 dated 20 June 2023 as follows:

*DECIDE*

- 1. declare that the Complainant's complaint is based and reasonable, and can be accepted;*
- 2. stated that the Reported Party was proven to have violated the obligations to carry out the Notary's position as regulated in Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, and Article 16 paragraph (1) letter m of the Law. Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions;*
- 3. impose sanctions on the Reported Party in the form of a proposal to the Notary Central Supervisory Council (MPP) to suspend him temporarily for 6 (six) months as a Notary.*

The threat of sanctions for violations by Notaries is given based on the UUJN so that in carrying out their duties and positions, a Notary is required to be responsible to himself, clients or society, and also to God Almighty. The provisions stated in Article 16 and Article 17 UJIN clearly state the obligations and prohibitions to be carried out by notaries. Everything a notary does will definitely have sanctions if it is violated, not only notaries but all professions have binding regulations for the benefit of an organization or association.

#### **4. Conclusion**

Actions that are not in accordance with the Notary's Code of Ethics cannot be justified, however, regulations are made to regulate and prevent public officials from being arbitrary in carrying out their duties. In Conclusion to the Decision of the Notary Regional Examination Council Number M.09/MPWN. Prov. Banten/ 2022 dated 20 June 2023 as follows: 1). declare that the Complainant's complaint is based and reasonable, and can be accepted; 2). stated that the Reported Party was proven to have violated the obligations to carry out the Notary's position as regulated in Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, and Article 16 paragraph (1) letter m of the Law. Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions; 3).

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