

Sanctions of the Notary Supervisory Board of Banten Province Against Notaries Who Do Not Provide Services in Accordance with the Notary Law

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Abstract. *This Notary Code of Ethics contains various matters related to the duties and authorities of Notaries in carrying out their profession and position as public officials. The material elements contained in this Notary Code of Ethics include obligations, prohibitions, exceptions and sanctions that will be imposed on Notaries who violate this Code of Ethics. This study aims to determine and analyze: 1) To find out and analyze what kind of Notary can be said not to provide services in accordance with the provisions of the Notary Law; 2) To find out and analyze the form of Sanctions imposed by the Notary Regional Supervisory Board in Banten Province; and 3) To find out and analyze the basis for consideration of the Banten Province Regional Supervisory Board in imposing sanctions. The conclusion of the research results of the Banten Province Regional Supervisory Board imposes Sanctions on Notaries who Do Not Provide Services in Accordance with the Provisions of the Notary Law, the Notary Supervisory Board can impose sanctions on violators, the sanctions imposed on members of the Indonesian Notary Association who violate the code of ethics can be: Reprimand, Warning, Schorzing (temporary dismissal) from members of the association, Onzetting (dismissal) from members of the association, and Dishonorable Dismissal from members of the association. However, the dismissal sanction given to Notaries who violate the code of ethics is not in the form of dismissal from the notary position but dismissal from membership of the Indonesian Notary Association.*

Keywords: Code; Ethics; Notary; Violation.

1. Introduction

The position of Notary is one of the answers required by legal regulations with the aim of helping and serving the community who need authentic written evidence regarding a situation, event or legal act.¹The Notary profession interprets notarial deeds and or authentic deeds very importantly. The ability to understand the wishes of the parties who will make an agreement is also needed. Because notarial deeds are a community need, and notarial deeds are also very important in the context of legal certainty, it is not an exaggeration to say that the notarial profession is a noble profession and is a profession that is highly expected to provide good service to the community. The dynamics of relationships in social, national, and state life, in certain fields require evidence of authentic deeds. In such cases, the notary will provide his services.

In carrying out the duties of the Notary's office, he adheres to the Notary's Code of Ethics. The Code of Ethics is a guideline, guidance, moral or ethical guideline for a particular profession in carrying out a profession that is compiled by members of the profession itself and is binding in practicing it. Thus, the Notary's code of ethics is a guideline, guidance, moral or ethical guideline for Notaries both as individuals and as public officials appointed by the government in order to provide services to the general public, especially in the field of making deeds.²

The position of the code of ethics for Notaries is very important, not only because Notaries are a profession that needs to be regulated by a code of ethics, but also because of the nature and essence of the work of Notaries which is very oriented towards legalization, so that it can become the main legal foundation regarding the status of property, rights, and obligations of a client who uses the services of a Notary.³

Talking about ethics, it cannot be separated from the moral philosophy related to morals, integrity and behavior that cannot be separated from a person's conscience. The ethics of the notary profession are more dominated and prioritized for the formation of character/personality and morals that must be reflected and manifested in the behavior of the deeds of a person who carries out the profession or holds the position of notary.

¹Habib Adjie, 2011, *Civil and Administrative Sanctions Against Notaries as Public Officials*, Refika Aditama, Bandung, p. 32

²Liliana Tedjosaputro, 1995, *Professional Ethics of Notaries in Criminal Law Enforcement*, Bigraf Publishing, Yogyakarta, p. 29

³Munir Fuady, SH, MH, LL.M., 2005, *Legal Professional Ethics for Judges, Prosecutors, Advocates, Notaries, Curators, and Administrators: Noble Profession*, PT. Citra Aditya Bakti, Bandung, p. 133

So with the holding of a notary code of ethics, it is hoped that it will shape notaries into individuals with good personalities, professional, upholding dignity, honor and playing an active role in community life.⁴

Notaries in carrying out their functions and responsibilities as Public Officials, not infrequently Notaries deal with legal processes, and must provide information and testimony regarding the contents of the deeds they have made, even though the Notary has made the deed in accordance with the rules of law and the Notary Law. As a logical consequence, along with the Notary's responsibility to the community, continuous guidance, supervision and protection must be guaranteed so that the Notary's duties are always in accordance with the legal principles underlying the authority and can avoid abuse of authority or trust given.⁵

That supervision of Notaries is intended so that Notaries in carrying out their duties are required to be based on and follow the laws and regulations governing the position of notaries. So that based on the laws and regulations governing the position of Notaries in an inherent manner, it means that everything mentioned in the laws and regulations governing the position of Notaries must be followed.⁶

Supervision of Notaries is carried out by the Minister by forming a Notary Supervisory Board as an agency authorized to carry out coaching, supervision, examination and impose sanctions on Notaries, consisting of the Regional Supervisory Board, Regional Supervisory Board and Central Supervisory Board in accordance with the provisions of Article 68 of Law Number 30 of 2004 concerning the Position of Notaries. That in carrying out supervision and examination, the Notary Supervisory Board involves several elements as referred to in Article 67 paragraph 3 including the Notary element which is internal supervision, meaning it is carried out by fellow Notaries who understand the world of Notaries inside and out, while the government, experts/academics as external elements so that Notaries in carrying out their positions do not deviate from the Notary Position Law.

Based on the background above, the problems in this research are as follows:

⁴Betty Ivana Prasetyawati and Paramita Prananingtyas, "The Role of the Notary Code of Ethics in Building Notary Integrity in the 4.0 Era", *NOTARIUS*, Number 1, Volume 15, p. 311

⁵Winanto Wiryomartani, *Duties and Authorities of the Notary Supervisory Board*, Paper presented at the Indonesian Notary Association Congress, 13-16 July 2005 in Makassar, South Sulawesi.

⁶Habib Adjie, 2014, *Indonesian Notary Law Interpretation (Thematic Regarding Law No. 30 of 2004 Concerning the Position of Notary)*, PT Refika Aditama, Bandung, p. 42

1. How can a Notary be said to not provide services in accordance with the provisions of the Notary Law?
2. What form of sanctions are imposed by the Regional Notary Supervisory Board in Banten Province?
3. What is the basis for the considerations of the Banten Province Regional Supervisory Board in imposing sanctions?

2. Research Methods

This study uses the Normative Legal research method or literature. Data collection techniques in normative legal research are carried out by means of a Literature study of legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials and/or non-legal materials. The search for these legal materials can be done by reading, viewing, listening, or now many searches for these legal materials are carried out through the internet media.⁷

Specification study This is analytical descriptive, namely a method or procedure for solving research problems by describing the condition of the object being studied (a person, institution, society, company, agency, etc.), as it is based on actual facts at the present time.⁸

The data collection method is obtained from library research supported by field research. Library research is collecting data by conducting a review of library materials or secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials.⁹ Written or image data sources in the form of official documents, books, magazines, archives, documents related to research problems.¹⁰

Data analysis is an activity in research in the form of conducting a study of the results of data processing. The data analysis used by the author in this study uses a descriptive nature, namely the author in analyzing wants to provide a description or explanation of the subject and object of research as the results of the research conducted by the author.¹¹ And dThe data

⁷Ronny Hanitijo Soemitro, 1982, *Legal Research Methodology*, Ghalia Indonesia, Jakarta, p. 9.

⁸H. Hadari, HM. Martini Hadari, 1992, *Social Research Instruments*, Gajah Mada University Press, Yogyakarta, p. 42

⁹Soerjono Soekanto and Sri Mamudji, *Op. Cit*, p. 39

¹⁰Sudarto, 2002, *Philosophical Research Methodology*, Raja Grafindo Persada, Jakarta, p. 71

¹¹Mukti Fajar and Yulianto Achmad *Op. Cit*, p. 183

that has been collected will then be analyzed qualitatively, namely data analysis that does not use numbers but is based on laws and regulations, the views of sources so that it can answer the problems of this research.¹² All data obtained are systematically arranged, processed, researched and evaluated. Then the data is grouped into similar data, for the purpose of analysis, while the evaluation and interpretation are carried out qualitatively which are recorded one by one to assess the possibility of similar answers. Therefore, the data that has been collected is then processed, analyzed qualitatively and translated logically systematically to then draw conclusions using the deductive approach method. The conclusion is a specific answer to the problem being studied, so it is expected to provide solutions to the problems in this study.

3. Results and Discussion

3.1. A Notary Who Can Be Said to Not Provide Services in Accordance with the Provisions of the Notary Law

A Notary must act honestly, carefully, independently and impartially in order to protect the interests of the parties involved in making the deed. To fulfill these obligations, in carrying out the implementation of his duties and office, a Notary must have guidelines, namely principles. Habib Adjie put forward the principles that must be used as guidelines in carrying out the duties and office of a Notary with substance and understanding for the benefit of the Notary. According to Habib Adjie, these principles are adopted from the Principles of Good Governance Law according to Philipus M. Hadjon and Article 3 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism.

If we look at the explanation above, a dishonest Notary can be said to be someone who says something that is not in accordance with the truth and reality or does not acknowledge something according to the truth. If a Notary acts dishonestly, there will be many incidents that are detrimental to the community. Not only that, dishonesty will reduce the level of public trust in the Notary.

The notary has a role to determine whether an action can be stated in the form of a deed or not. Before reaching a decision like this, the notary must consider and see all documents shown to the notary, examine all evidence shown to him, listen to the statements or statements of the parties. The decision must be based on legal reasons that must be explained to the

¹²Bambang Sunggono, 1997, *Legal Research Methodology*, Raja Grafindo Persada, Jakarta, p. 10

parties. Notaries who act carelessly or improperly do not do this which can then have fatal consequences in the making of the deed.

Notaries in carrying out their duties and authorities as public officials have the main characteristic, namely in their position (position) which is impartial and independent, even firmly stated "not as one of the parties". If the Notary turns out to provide treatment that is detrimental to one party or benefits one party, this will result in the Notary being said to be not independent. This situation will clearly benefit one party or harm one of the parties.

Notaries who are not honest, fair, independent, and impartial as stated above will essentially harm the parties, especially those involved in making the deed. Therefore, notaries who do not carry out these obligations will not protect the interests of the related parties, which is the last element in Article 16 paragraph (1) letter a of the Notary Law.

3.2. Sanctions for Notaries Who Are Proven Not Providing Services in Accordance with the Provisions of the Notary Law

Violations of the notary code of ethics can be seen in the following cases:

The reported party, a Notary, was reported by the reporter, namely one of the heirs of the notary service user for all deed administration, taxation, and name change processes using the Reported Party's services as a Notary for 2 (two) plots of land located in Kosambi and the Reported Party did not carry out his obligations or work as agreed.

The aggrieved parties then reported this case to the Notary Honorary Council with a Letter addressed to the Tangerang Regency Notary Supervisory Council (MPD) Number UM.MPDN Tangerang Regency 03.22.021, dated March 14, 2022, concerning the Submission of Minutes of Examination and Recommendations. In the case between "RA" as the Reporter accompanied by his attorney "Dr. AH" against the Reported Party, a Notary "NG" for the case that the Reported Party did not carry out his obligations or work as agreed. After reading and studying the report on the results of the examination of the Tangerang Regency Notary Supervisory Council (MPD), in the form of a letter from the Reporter dated January 28, 2022, the Minutes of Examination of the Tangerang Regency Notary Supervisory Council (MPD) Number 003 / BAP / MPDN Kab.Tgr / III / 2022; and Recommendations from the Results of the Examination of the Tangerang Regency Notary Supervisory Council (MPD).

violation of office which automatically violates the Notary's code of ethics, especially in Chapter III Article 3 paragraph (4) of the Amendment to the Notary's Code of Ethics Resulting from the 2015 Extraordinary General

Meeting which states that Notaries and other people (as long as the person concerned is carrying out the office of Notary) must behave honestly, independently, impartially, honestly, carefully, with a full sense of responsibility based on laws and regulations and the contents of the Notary's oath of office. In addition to violating Article 3 paragraph (4) of the Amendment to the Notary's Code of Ethics Resulting from the 2015 Extraordinary General Meeting, in this case the Notary also violated the provisions in Article 16 paragraph (1) letter a of the UUJN, violated Article 16 paragraph (1) letter d of the UUJN, violated Article 16 paragraph (1) letter e of the UUJN, violated Article 16 paragraph (1) letter m.

It can be concluded that the Notary did not act in a trustworthy, honest, thorough, independent, impartial manner, did not protect the interests of the parties involved in the legal act, did not provide services in accordance with the provisions of the Notary Law, and issued a Copy of the Deed that was not based on the actual Minutes of the Deed. For this violation, the notary was given a sanction of being temporarily suspended for 6 (six) months. As a public servant, the notary should be responsible for the deed he made that is different from the minutes of the deed by correcting the deed or replacing the deed with a new deed according to the minutes of the deed so that the injured parties get legal certainty for the notarial deed made so that the deed becomes perfect and authentic. In fact, the deed can still be corrected and it is the notary's responsibility to correct it. For the deed to be corrected, it is still used as evidence in court, so to fix it, wait for the trial process itself to take place.

3.3. Basis for Consideration of the Banten Province Regional Supervisory Board in Imposing Sanctions

Violation of the Notary code of ethics can occur due to negligence of a responsibility, this is usually the most common thing. In addition, it can also be due to the absence of strict sanctions and a lot of bias towards the Notary Office. The Notary Supervisory Board (MPN) as a body trusted to supervise Notaries in behaving, is considered to have not taken strict action so that Notaries are deterred or afraid to commit violations that have been regulated by existing regulations, this can be one indicator of violations committed by Notaries.

Every report, which is given to the Regional Supervisory Board and delegated to the Regional Supervisory Board for further examination and to decide the case, must be done fairly and correctly, so that there are no errors in deciding the decision. The decision must be fundamental, because if the decision is wrong, one party will definitely be harmed by the decision, the Regional Supervisory Board must provide a decision like a judge in a general court. If the decision states that the Notary is guilty, it will have an

impact on the bad history of the Notary's performance, and it will tarnish the Notary's name. Therefore, the decision is not only about whether it is wrong or not, but a decision must be based on what is true and fair. Not all reports from the public are considered true that there has been a violation, they must be examined carefully, because basically a Notary is an official who must be respected, so that not every public can arbitrarily report because it can bring down the Notary, this is where the MPN as a supervisor who also examines the Notary is considered necessary to protect the Notary so that there is no arbitrariness in the Notary's position.

The Supervisory Board has a basis for consideration in deciding on indications of violations of the code of ethics committed by a notary. The supervisory board will see the good faith of the notary concerned not to repeat the violation again and this will be used as a consideration by the supervisory board in deciding or imposing sanctions.

4. Conclusion

A Notary who does not provide services in accordance with the Notary Law, can be seen from the explanation regarding honesty, fairness, independence, impartiality that has been stated above. If we look at the explanation above, a dishonest Notary can be said that the Notary says something that is not in accordance with the truth and reality or does not admit something according to the truth. If a Notary acts dishonestly, there will be many incidents that are detrimental to the community. Not only that, dishonesty will reduce the level of public trust in the Notary. A Notary who is dishonest, fair, independent, impartial as stated above will essentially harm the parties, especially those involved in making the deed. Based on this case, the Notary violated Article 16 paragraph (1) letters a, d, e and m of the Notary Law. The Banten Province Notary Supervisory Board imposed sanctions on the Notary who did not act in a trustworthy, honest, thorough, independent, impartial manner, did not protect the interests of the parties involved in the legal act, did not provide services in accordance with the provisions of the Notary Law, and issued a Copy of the Deed that was not based on the actual Minutes of the Deed. For this violation, the notary was given a sanction of being temporarily suspended for 6 (six) months. As a public servant, the notary should be responsible for the deed he made that is different from the minutes of the deed by correcting the deed or replacing the deed with a new deed according to the minutes of the deed so that the injured parties get legal certainty for the notarial deed made so that the deed becomes perfect and authentic. The Supervisory Board has a basis for consideration in deciding on indications of violations of the code of ethics committed by a notary. The Supervisory Board will see the good faith of the notary concerned not to repeat the violation again

and this will be used as a consideration by the supervisory board in deciding or imposing sanctions.

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