

The Responsibility of Public Notary in Case of Ethical Code Violation

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Abstract. This study aims to find out the responsibility of public notary and the legal consequence in case of ethical code violation by public notary. This research used empirical juridical method, with analytical descriptive research specification. The data have been analyzed qualitatively in describing the research problem. The result is done by taking the conclusion result deductively. The results of the research are: 1) the responsibility of public notary is obeying the ethical code. Ethical code is a moral guidance or direction for a particular profession or a list of responsibility in carrying out a profession composed by members of the profession itself and bidding them in practice. The punishment is organically applicable when the public notary violates professional ethical code as a guideline made by the professional organization. 2) the legal consequences in case of ethical code violation by public notary is a) in term of obedience, morality, and religion and based on conscience, it should be done by a public notary who holds and carries an honor position especially as a trustee. b) violations done by public notary against professional manner which have been recorded or regulated which have been arranged in written and binding and must be obeyed by all members of professional group and for those who violate the rules will get sanctions; c) the public notary who violates the ethical code as determined in legal constitution are accomplished based on the provision, so that the legal assurance of public notary's profession are more guaranteed.

Keywords: Responsibility; Public Notary; The Violation Of Ethical Code.

1. Introduction

Essentially, morals are closely related to ethics, which has 2 (two) meanings. First, as a collection of judgments about human actions, secondly, it is ethical: it is used to distinguish human actions, between ethical values and norms and must be supported by high moral integrity.³

The legal profession of public notary needs inseparable moral and law in order to carry out the professional duties from the public professionally and flawlessly. Legal professions include police, prosecutors, judges, advocates, public notary, and others. All of them run legal activities and become valued object by public for bad or good of the law enforcement effort, even though the legal awareness of the public community are very decisive.⁴

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Similarly, the public notary is one of legal profession which has professional ethical code in carrying out its profession, because the public notary also participates in national development, especially in field of law. The ethical code of public notary arrange that a public notary in performing his duties is aware of his obligations, working independently, honest, impartial and full of responsibility.

The performance of ethical code is regulated in the *Reglement op Het Notary Ambt* in Indonesia/the regulation of notary-public position in Indonesia (Staatsblad 1860 Number 3 of 1860) as amended by legal constitution number 3 of 2004 regarding notary-public position (furthermore it is known as the constitution of notary-public position), it is completed with sanctions. The first part, it regulates the public notary in carrying out the position and working area. Secondly is the term of public notary recruitment and the procedure of recruitment that must be fulfilled. If the regulation is not fulfilled, the deed made in front of the public notary is not valid. Third, it regulates the form of deed, original deed, duplicate, and repertory. Fourth, it regulates the supervision of the public notary and deeds, fifth, regulating the storage procedure and taking over original deed (*minuta*) and repertory in the in case of the death, dismissed, and removing of the public notary.

Related to that matter, if the public notary is proven violating the rules in the constitution of notary-public position, they will get a sanctions based on the violation. Up to the admitting of the constitution of notary-public position number 30 of 2004, Indonesia still has some notary-public organization. Indonesian Notary Associations (Indonesian Notary Association (INI)) is one of organizations which has ethical codes and admitted by the government. Indonesian Notary Association is an organization of notary-public profession which has ethical code established and approved by this congress. The first congress was held in Surabaya in 1972 and then it is amended and rearranged in the XIII congress held in 1981 in Bandung. Ethical code is the norms and rules about ethic both written and unwritten.

The ethical code consists of 5 Articles, one of them is about the personality of public notary, the public notary in performing his duties, the public notary associated with clients, the public notary associated with colleagues, and the notary-public supervision. In carrying out the duties, the public notary is as the general official is inspired by the Pancasila, aware, and obeys the law and also has a good personality and raise the dignity and honor of Public notary (Article 1 of ethical code of public notary).

Article number 3, the ethical code of public notary mentions that among notaries public must respect and stay away from the unhealthy competition and the public notary must keep his corps. The ethic responsibility of the public notary relates to moral norm which is the measurement for the public notary to determine between the wrong and right or the good and the bad actions in carrying out the profession. The responsibility includes 3 (three) points. First, the actions are done in the normal function of mind ability. Second, the public notary violates the rules freely. Third, the public notary deliberates the action with the bad purpose and cause harm.

Starting from the previous explanation, the researcher investigated further about the problem and arranged in a research entitled: "The responsibility of public notary in case of ethical code violation"

The research questions in the research are: how is the responsibility of public notary in a case of ethical code violation? What are the legal consequences of ethical code violation done by the public notary?

Research Methods

The method used was empirical juridical approach. Research specification is analytical descriptive research. This research used primary data source supported by secondary data, namely: data supporting information or supporting completeness. Primary data were obtained from the libraries and collection of personal researchers, it was conducted by library or literature study. The data were analyzed qualitatively, after the data collected and explained in logical and systematic description, and then analyzed to obtain the clarification of problem solving, and then taking the conclusion deductively, from general to specific.⁵

2. Discussion

2.1. The Responsibility Of The Public Notary In A Case Of Ethical Code Violation

The notary-public occupation is a profession and part of the executive so that a person who has capacity academically becomes a public notary, but if the government do not approve him/her proposal then the person cannot be a public notary. This distinguishes the notary-public occupation from other occupation. Therefore, the public notary uses the term of public notary profession because essentially the public notary is approved by the government even though he does not get the salary as civil servant.

Public notary as a public official (*openbaar ambtenaar*) authority to make an authentic deed has a responsibility for his action related to his profession in arranging the deed. The scope of responsibility of public notary includes the material truth of the arranged deed. Regarding the responsibility of the public notary as a public official related to the material truth are divided into four points, namely:⁶

- The civil responsibility of the public notary for the material truth and the arranged deed.
- The criminal responsibility of public notary for the material truth in arranged deed
- The responsibility of public notary based on the regulation of public notary for the material truth and the arranged deed
- The responsibility of public notary in carrying out his duties based on the ethical code of public notary.

There is a relationship between ethical code and UUJN (Notary Law). The first relationship is found in the Article 4, talking about the commitment of profession. The public notary through his commitment to keep his attitude, behavior, and carry his duties related to ethical code of the occupation, honor, dignity, and responsibility as the public notary. The ethical code of the occupation is established and enforced by the organization of the public notary.

⁵ *Ibid* p. 10

⁶ Nico 2003 *Tanggungjawab Notaris Selaku Pejabat Umum* Yogyakarta Center for Documentation and Studies of Business Law p. 250

The relationship between the ethical code of public notary and UUJN gives meaning to the profession of the public notary itself. UUJN and the ethical code of public notary require the public notary to carrying out his duties as a public official. Besides, the public notary must obey the ethical code of occupation and also has responsibility for the public community, the organization of profession (Indonesian Notary Association or INI) or the state. Related to this, the public notary who ignores the nobility of profession prestige will get sanctions, warning, or dismiss from his membership of the profession, and also dismiss from his position as a public notary.

Relation to the sanctions as the method in enforcing the ethical code of public notary for the ethical code violation is defined as a punishment used for a medium, an effort, and an obedience enforcement tool and the discipline of public notary. The sanctions of ethical code of public notary are mentioned in Article 6 stated that the sanction got by the member who violates the ethical code is getting warning, suspension, dismissal from the association membership, and dismiss with no respect from the association membership.

In relation to the ethical code violation, the investigators invited the public notary who violate the ethical code, the criteria of investigating the public notary by the investigator can be fulfilled or not, only after the supervisor discuss to determine whether the investigation is relevant or not.

As long as the public notary activity is appropriate with the rule of constitution especially the legal constitution of public notary position (UUJN) and don't violate the ethical code which has been determined, so that the supervisor council disallows the public notary to accept the investigation by the law enforcement officers if only as a witness. With the establishment of the supervisor council (from the regional to the center level), it is expected the public notary becomes more professional in carrying out his duties. Because the existence of supervisor council both the regional and central level has duty to supervise and protect the public notary in order to carrying out their duties based on the acceptable law.

The legal protection given by the supervisor council but do not refer to the personal notary-public itself but to his profession, if the legal problem of the public notary is not related to the profession then it is not the authority of the supervisor council. Organizational responsibility is needed when the public notary violated the guideline of the professional ethical code arranged by the professional organization. The ethical code is the direction, or moral guidance for a particular profession or a list of obligations in carrying out a profession which is arranged by the member of profession and binding them in practice. Therefore the ethical code of public notary is direction, or moral guidance not only for personal need but also for public official which is approved by the government in order to give a public service especially in making deed.

The ethical code based on the material meaning is the norm or rule both written and unwritten about ethics which related to attitude and the decision of the fundamental points of the values and behavior standard of people who judged as good or bad in carrying out his profession which formulated, established, and enforced independently by the professional organizations.⁷

⁷ Abdul Ghofur Anshori 2009 *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika* Yogyakarta UII Press p.196

Thus, the public notary is a profession that has hard duty, because it must put the public service above all. Besides, the occupation of ethical code is also expertise. Therefore, both the individual and social responsibility, especially the obedience of the positive legal norms and willingness to obey the ethical code of profession, is a must so that it will strengthen the existent of the positive legal norms.⁸

In order to help people carry out his profession in accordance with the demands of professional ethics, the public notary must have three moral characteristics:⁹

- Must be a good person who strict to the good things, he/she cannot be determined by all kinds of feelings of fear, lazy, embarrassed, emotion, and so forth. It means that he must have a strong moral personality;
- Be aware that maintaining the demands of professional ethics is a heavy obligation;
- Must have enough idealism.

In practice nowadays, many parties argue that a notary is no longer an independent official because there is still dependence/binding with certain parties. This happens because of a system error affecting the notarial deed that was originally a legal product, now only a mere administration product so that when there is a mistake in making the deed, the notary can easily be exposed to crime case.¹⁰

The existence of this error system is also indicated by the appointment of a notary originally conducted by the Head of State, now conducted by the Minister of Law and Human Rights. Furthermore, in the realm of oversight of the performance of notaries originally in the district court or the Supreme Court, it is now the researchery of the Local Supervisory Council (MPD), where MPD often allows investigators to examine notaries suspected of involvement in certain cases. Based on the above description, according to the researcher, basically the notary should responsible to any crime case he/she made before the organization.

2.2. Legal Consequences In the event of a Violation of the Code of Conduct by Notary

I Gede A.B. Wiranata inventoried eight factors that affect the decline of the morality of the legal profession which includes: professional misuse, profession into business activities, lack of awareness and social awareness, continuity of judicial system, the influence of office, consumerism lifestyle, faith factor and the influence of kinship.¹¹

Violations of the Code of Ethics are often only an issue as sanctions for violations are only moral sanctions even though they have been expressly regulated in the Notary Code of Ethics, so the data on violations in the application of the Code of Ethics are few. Violations of the Code of Ethics that occur but only become the issue include: there is a Notary who in making the deed, not read and witnessed the signing of the deed in front of him as a notary in question, but in the presence of employees of the Notary's office. Such violations often occur in the case of a Notary who cooperates with

⁸ Liliana Tedjosaputro 1995 *Etika Profesi Notaris Dalam Penegakan Hukum Pidana* Yogyakarta BIGRAF Publishing p.13

⁹ Franz Magni Suseno dkk, 1989 *Etika Sosial* Jakarta Gramedia Pustaka Utama p. 69

¹⁰ Doddy Radjasa *Pergeseran Habitat Notaris Akibat Kesalahan Sistem* Artikel dalam Majalah Revoi Edisi No. 9. V Pebruari 2008

¹¹ I Gede A.B. Wiranata 2005 *Dasar-Dasar Etika dan Moralitas (Pengantar Kajian Etika Profesi)* Bandung Citra Aditya Bakti p. 261.

the Bank in the production of credit agreement deeds. Such notaries usually offer services with a substantially below standard fee.

There are two principles that affect the service reward system. First, the principle of serving to the extent of wages received. This principle takes place or is exercised when a professional person bases his or her services rewards for real profits or material benefits and services performed for members of the community. This principle allows for various forms of fraud or serious abuse. Such a system allows people to use their abilities selfishly, even incorrectly, against each other. Second is the principle of serving according to demand. This principle can be found in the person of the profession who based his reward on his time, energy and expertise/specialization as he perceived as the things that are indeed necessary to be provided. In general this second principle is considered more reasonable, and the possibility of fraud or abuse of office will be small.¹²

The provisions concerning the reading and signing of the deed shall be conducted jointly by the interrogators, witnesses and notaries. It is important that the parties understand the contents of the deed, and to guarantee the authenticity of a deed. The deed which is not read and signed before the Notary becomes an underhand deed. This is not only a violation of the Code of Ethics, but also an offense set out in the Notary Law.

Clear sanctions in case of violation of the Code of Ethics are in the form of¹³: Warning; suspending (temporary dismissal) of the Association membership; *Onzetting* (permanent dismissal) of the membership of the Society; and Dismissal with disrespect from membership of the Society.

The granting of sanctions in the form of oral reprimands is more intended to the process of guidance to the Notary, so that the Notary concerned does not repeat the violation of the code of ethics in the future. In cases of violation of code of ethics Regional Council of Public notary of Semarang City does not necessarily give sanction in the form of written warning of suspending or dismissal with disrespect from membership of the association.

Sanctions granted by the Notary Supervisory Council are based on the provisions contained in the Notary Law in the form of reprimands (oral or written) and temporary dismissals (3 to 6 months) and dismissal with disrespect. Before the Regional Supervisory Board of Notary (MPDN) makes a decision to the Notary in question, there is also the possibility of organizational interference in this case the Regional Administrator of the Indonesian Notary Association (Pengda INI), to request "capability" to the Notary concerned. This is certainly natural as a form of organizational protection of its members, as long as it is within the limits of reasonableness.

The implementations of sanction for violation of code of ethics by Notary in running its position by Regional Honorary Broad, according to researcher, have weakness. Since it does not affect Notary status in performing duty of office, the highest sanction imposed on an offense, is disrespectful dismissal of the association.

If such a condition is applicable to a Notary, the Code of Conduct shall function properly and shall be a "fence" of Notary to professional conduct, so that the existence

¹² E. Sumaryono 2003 *Etika Profesi Hukum* Yogyakarta Kanisius p. 43

¹³ *Ibid*

of the Code of Conduct is no longer ambivalent but it is clear and existent, having the power in the public notary. To overcome this issue, according to the researcher, any violation of the Code of Conduct conducted by the notary must be given strict sanctions by the Regional Honorary Board and there should be a good oversight mechanism of the implementation of such sanctions. Under the provisions of the Notary Law, it is stated that the supervision of Notary is done by the Minister of Law and Human Rights by establishing the Supervisory Board. Such supervision covers the behavior of Notary and the implementation of Notary Position. Thus, the Supervisory Board, using the Code of Conduct which has been made by the Indonesian Notary Association (INI), as a supervisory material to Public notary. The Supervisory Council shall take action if there are any complaints from the public regarding the behavior of a Notary who deviates.

3. Conclusion

Based on the results of research and discussion, it can be concluded that:

- The responsibility of the notary in the event of a violation of the code of ethics is when the notary violates the professional code of ethics as a guideline made by professional organizations applicable to all members of the Indonesian Notary Association or other person who holds and runs a notary both in the performance of the office as well as in everyday life.
- Legal consequences if there is a violation of the code of ethics by Notary are as follows:
 - If it is based on decency, moral and religious aspect and according to conscience, it should not be done by a notary who holds and carries the honorable title above all as the holder of the mandate. If there has been a violation and still left to it the noble values of the notary then the punishment that is lived and perceived is a sense of uneasiness, because covered by feelings of guilty.
 - Violations committed by a notary to professional ethics that have been recorded or regulated by the association must be obeyed by all members of the professional group. It may be subject to sanctions for those who violate the provisions.

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