

## The Legal Consequences of a Notary Who Violates Official Ethics in Making Authentic Deeds

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**Abstract.** *This research on "Legal Consequences of a Notary Who Violates Occupational Ethics in Making Authentic Deeds" aims to identify and analyze the legal consequences of a notary who violates office ethics in making an authentic deed. This study uses an empirical juridical approach. Data collection was carried out through interviews, literature studies and documentation studies. Data analysis was carried out qualitatively. This research shows that the legal consequences of a notary who violates office ethics in making an authentic deed include two aspects, namely the legal consequences for an authentic deed and the legal consequences for a notary as a profession and/or as an individual member of the community. The legal consequences for an authentic deed, namely an authentic deed are degraded as an underhanded deed, while the legal consequences for a notary, namely that he can be subject to sanctions as a profession and/or as an individual in society in the form of administrative sanctions in the form of a. Verbal warning; b. written warning; c. temporary stop; d. Honorable discharge; e. Dishonorable discharge, civil sanctions in the form of compensation and criminal sanctions in the form of criminal and or fines.*

**Keywords:** *Consequences; Ethics; Violation.*

### 1. Introduction

A notary is an official who makes authentic deeds as stated in Law Number 30 of 2004 concerning the Position of Notary (UUJN). Notaries in carrying out their duties and authorities as authentic deed makers have a very large role in the framework of realizing legal certainty and public protection. This is based on the fact that an authentic deed is a perfect means of proving an act and or a certain legal event.

A deed drawn up before a notary is called a notarial or authentic deed or an authentic deed.<sup>1</sup>To be said to be an authentic deed, namely a deed made before a notary according to the form and procedure stipulated by UUJN.<sup>2</sup>An authentic deed made by or before a notary public is not only due to the necessity determined by laws and regulations but also due to the will of the parties who have an interest to obtain certainty of the rights and obligations of the parties for the sake of certainty, order and legal protection, both for the who have an interest as well as for society as a whole. Based on this, it can be said that a notarial deed is already a necessity for the community to obtain certainty, order and legal protection for acts and or legal events committed.

When talking about the professional ability of a notary, it is imperative that this matter be discussed about the problems of notary legal services provided to the public. The professionalism of a notary in carrying out his duties and authorities gives rise to the assumption that the more the professional ability of a notary increases in carrying out his duties as a public official with his function of regulating legal relations between parties in writing and authentically, the better the public will be in receiving legal services provided by a notary<sup>3</sup>.

A notary in carrying out his duties and authorities as a general official making authentic deeds, apart from having to work professionally, must also carry out his profession based on the Notary Code of Ethics. This is because professionalism alone is not strong enough to provide legal services to the community, but must be accompanied by strong moral ethics. Notary as a profession has norms that must be upheld in carrying out their profession. The ethical norms referred to are guidelines for notaries in carrying out their duties and authorities both as a profession and as private members of the public<sup>4</sup>.

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<sup>1</sup>Nawaaf Abdullah and Munsyarif Abdul Chalim, "Position and Authority of a Notary in Making Authentic Deeds", *Journal of Deeds*, Vol. 4 No. 4 December 2017, p. 657

<sup>2</sup>Anny Mawartiningsih, Maryanto, : "Juridical Review of the Practice of Making Notary Deeds in the Case of Appearing in Different Timeframes and Places", *Journal of Deeds*, Vol. 4 No. 2 June 2017, p. 121

<sup>3</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> see Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

<sup>4</sup> Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536> see Yaya Kareng, Ong

The Notary Code of Ethics is a moral principle that obtains agreement from the Indonesian Notary Association association which is decided on a Decree of the Association Congress and/or whose determination and regulation are based on statutory regulations governing this matter. The notary's code of ethics applies to and must be obeyed by every member of the association and all people who carry out their duties and positions as a notary.

Knowing the importance of the duties and position of a Notary in the midst of society and the strength of evidence from the authentic deed he made, it can be said that the position of a Notary is a position of trust. The position of trust given by law and society requires that a person who works as a Notary Public is responsible for carrying out this trust as well as possible and upholding legal ethics, dignity and the nobility of his position.<sup>5</sup>

In fact, in practice, notaries sometimes occur in carrying out their duties and authorities, either intentionally or unintentionally, making authentic deeds that are not in accordance as determined by laws and regulations which cause losses for their clients. If a notary in making a deed turns out that the contents of the deed are problematic, there are doubts about the truth of the contents of the deed, there are violations of law and justice causing losses to his client, then the notary can be said to have committed a violation of professional ethics in making the deed.

Notaries who violate office ethics in making authentic deeds, causing losses, will cause legal consequences. The legal consequences of a notary who violates office ethics arise as a legal consequence of an authentic deed he made which causes harm to the client.

## **2. Research Methods**

The approach method used is an empirical juridical approach, namely legal research on the application or normative legal provisions in action on certain legal events that occur in society. This study uses research specifications in the form of analytical descriptive research, namely research that only describes or describes how applicable legal regulations are related to their implementation

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Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

<sup>5</sup>Abdul Jalal, Suwitno, Sri Endah Wahyuningsih, "The Involvement of Notary Officials in Unlawful Acts and Participating in Crime in Forging Documents", *Journal of Deeds*, Vol 5 No 1 March 2018, p. 228

practices, then analyzed with applicable legal theories. Data collection was carried out by means of interviews, literature studies and documentation studies. The research data were analyzed qualitatively, namely a method that produces data analysis based on what the respondents stated in writing/orally.

### **3. Result and Discussion**

Notary is a public official who has the authority to make authentic deeds and has other authorities as referred to in UUJN. When it is related to the ethics of the notary's office, there are two aspects in the notary's position related to making authentic deeds, namely authentic deeds as a legal product of a notary and notaries as a profession. Based on this, there are two aspects of legal consequences for notaries who violate office ethics in making authentic deeds, namely legal consequences for authentic deeds made by notaries and legal consequences for notaries themselves as a profession and as individual members of the community.<sup>6</sup>

In the aspect of authentic deed, the legal consequences of a notary who violates office ethics in making authentic deed causes an authentic deed to be degraded as an underhanded deed. Meanwhile, in terms of the notary as a profession and as an individual member of the public, the legal consequences of a notary who violates office ethics in making authentic deeds causes a notary to be subject to sanctions in accordance with the notary's professional ethics and/or legal sanctions for notaries as individuals which include administrative sanctions, civil sanctions to criminal sanctions.<sup>7</sup>

Based on this then a legal consequences of notaries who violate office ethics in making authentic deeds include:<sup>8</sup>

1. The legal consequence of an authentic deed is that it is degraded as an underhand deed.

Viewed from the aspect of an authentic deed made by a notary, a legal consequences of notaries who violate office ethics in making authentic deeds cause authentic deeds to be degraded into underhanded deeds.

Based on this, if there is an indication that an authentic deed only has the strength of proof of an underhanded deed, then the deed is still binding on the parties as long as there is no decision from a court that has permanent legal force stating that the authentic deed has violated the conditions for making a

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<sup>6</sup>Interview with Suprihatnowo, SH., M.Kn., Tegal District Notary, June 19, 2023.

<sup>7</sup>Interview with Ega Farel, Sh., M.Kn., Tegal District Notary, June 19, 2023.

<sup>8</sup>Interview with Suprihatnowo, SH., M.Kn., Tegal District Notary, June 19, 2023.

deed stipulated in the UUJN, so that the deed only has the power of an underhand deed.<sup>9</sup>

So if the notary makes a mistake, then the authentic deed does not merely become a private deed, but there must be a party that submits it to the court and the court has the right to determine whether the authentic deed will be degraded into a private deed or the deed is null and void or even the deed remains an authentic deed if the court does not find a flaw in the deed. So that the cancellation of an authentic deed is not determined by a notary, but the following is the cancellation of an authentic deed that can occur in accordance with what was quoted from Habib Adjie, which is sourced from the Notary Deed Table, namely: 1. Can be canceled 2. Canceled by law 3. Canceled by the parties themselves 4. Based on the principle of presumption legal 5. the power of proof is only limited to the deed under the hand.

2. Legal consequences for a notary, namely that he may be subject to sanctions as a profession and/or as an individual in the community in the form of administrative sanctions, civil sanctions and criminal sanctions.

UUJN is a statutory regulation that serves as a guideline for a notary in making a deed, apart from what is desired by the parties, besides that the notary may also not override other statutory regulations related to the making of authentic deed, such as the Civil Code, especially those that regulate regarding the validity of an agreement. This is because the deed is basically an agreement for the parties who make it.

Therefore, the notary must pay attention and be careful in the process of making the deed, where the original notarial deed is an agreement that binds the parties who have an interest. So that the notary must not forget to fulfill the legal requirements of an agreement that has been regulated in Article 1320 of the Civil Code. The legal terms of the agreement are the existence of an agreement (consensus, agreement), being able to act legally (capacity). Certain things/objects, and lawful causes.<sup>10</sup>

The Civil Code which in this paragraph has subjective requirements and objective conditions. If the subjective conditions are not met, then the deed can be canceled by the interested parties so that the deed is no longer binding on them. If the objective conditions are not fulfilled, then the deed is deemed to have never been made or never existed so that it is not binding on the parties, without

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<sup>9</sup>M Luthfan Had Darus, 2014, *Notary Law and Notary Responsibilities*. UII Press, Yogyakarta, p. 109-110.

<sup>10</sup>Devirly, Juwita Putri Cahyono and Wahyono, Dipo. "Dispute Settlement between Private Higher Education Organizing Bodies and Lecturers". *Justice Forum Journal of Law Science*, 1, 2017 , p. 33.

the need for a request from interested parties which is usually called null and void.

So the responsibility of the notary will appear when the judge's decision on the deed is canceled or degraded so that it only has the power of the deed under the hand where from the decision there are parties who are harmed due to a notary's mistake during the process of making the deed. Article 1365 of the Civil Code has stipulated that anyone whose actions against the law cause harm to other people is obliged to compensate for the loss suffered by the person who was harmed.

According to one of the principles of accountability put forward by Hans Kelsen, namely the principle of responsibility based on an element of error.<sup>11</sup>This means that someone can be responsible when there is an element of error that has been done. In Article 1365 of the Civil Code, there are 4 (four) important elements where if a person fulfills all of these elements, he must be responsible, the elements are as follows: a) There is an unlawful act b) There must be an element of error c) There must be an unlawful loss suffered d) There is a causal relationship between errors and losses.

When viewed from the elements above, there is a new mistake that someone is responsible for, but if the loss incurred is due to the person's negligence or carelessness, then he must still be responsible according to what is regulated in Article 1366 of the Civil Code.

This principle is used in the notary profession, where if a notary in the process of making a deed makes a mistake which results in a loss and can be proven to be true, then the notary must be responsible for the mistake he has made. If the mistake was made by the parties themselves, here the notary is not responsible as long as the notary follows all the existing rules and the notary is not involved or deliberately sided with the parties or one of the parties.

The responsibility of a notary from a legal perspective can be criminal, civil or administrative. So if the notarial deed causes a loss, the parties can file a lawsuit in court. When viewed from a civil perspective on a notarial deed, the contents of a notarial deed regarding civil matters, namely an agreement that occurs from the parties which determine the contents of the deed themselves, the notary here makes the deed because of the wishes of the parties, not because of their own desires, so the notary nor can the parties cancel the deed, which can cancel the deed, the parties themselves made it. So that there is an error in the contents of the deed, the notary is not responsible, except if the notary gives

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<sup>11</sup>Hans Kelsen, 2006, *Pure Legal Theory*, Translation of Raisul Mutaqien, Nuansa & Nusamedia, Bandung, p. 140

legal advice regarding the interests of the parties and it turns out that the legal advice in the future causes losses,

We can see the liability of the civil notary above in terms of reimbursing fees, compensation and interest as a result of a claim if the notary is proven guilty and the notary deed loses its power either degraded or null and void, then the basis for prosecution that has been regulated in UUJN only takes the rules from Article 1365 of the Civil Code, so that even though these sanctions are not regulated in the UUJN, in general, parties who have been harmed by a notary can sue the notary to compensate for their losses. Where according to the subekti what is meant by costs, namely something that has actually been issued, then losses, namely losses suffered as a result of the notary and interest, namely profits that he should have gotten.<sup>12</sup>Therefore UUJN should pay more attention to these civil sanctions and be made more specific for notaries, not to follow general sanctions as a whole because the notary profession is given special authority and special protection against the law so that how relevant the sanctions received are made specifically.

Meanwhile, the notary does not rule out the possibility of being involved in a criminal case. Where in practice when carrying out the duties of the notary profession, it is often found that when there is a notarial deed that is used as a dispute, the parties withdraw the notary in the matter as a party participating in committing the wrong act, because they have made a deed with false information. But keep in mind that the notary is only a recorder of what the appearers have given, seen, explained by the parties and then the notary wraps all of that outwardly, formally and materially in a deed, even though there is legal advice relating to the problems or interests of the parties given by a notary, but when stated in the deed it is considered as the will of the parties, not a statement from the notary, because the notary here is in charge of providing legal advice so that the interests of the parties do not violate the applicable legal rules, if the parties do not agree then they will not sign the deed, because the notary makes the deed not because of his own will but there are parties who appear to make an authentic deed. But it does not rule out the possibility of a notary committing an unlawful act, in which from the beginning the notary deed was made for the purpose of providing unilateral benefits to certain parties.<sup>13</sup>When a notary is proven to have violated the law before a court, a notary may be subject to criminal sanctions.

If the mistakes made in the process of making the deed by a notary are not related to violations of the code of ethics, then the notary will examine the

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<sup>12</sup>Subekti, 2011, *Agreement Law*, Intermedia, Jakarta, p. 47

<sup>13</sup>Habib Adjie, 2008, *Indonesian Notary Law (Thematic Commentary on Law No. 30 of 2004 Concerning the Position of Notary)*, PT Reflika Aditama, Bandung.



notary, namely the judge, which will be processed in court. The judge's final decision in imposing sanctions can be in the form of the deed being null and void, canceled or only having the power of an underhand deed (degradation). Therefore, investigators need information from a notary so that there are no errors in imposing charges, so from the investigation level to trial the notary's statement is needed whether the judge's decision has an effect on the notary's deed only or has an impact on the notary as well. But to request information from a notary, even though it is an official law enforcer, must have the rules as stated in Article 66 UUJN as explained above,<sup>14</sup>

If the judge in the trial of the notary deed is given a decision to cancel, then if there is a loss suffered by the parties, then the parties can claim compensation from the notary on condition that if this is caused by a notary's mistake if there is no error from the notary, then the notary cannot be forced to compensate for the loss even though it has lost its good name. Arrangements for criminal sanctions should also be specifically regulated in the UUJN or at least explained in the UUJN if criminal sanctions against a notary can be imposed for violating certain articles in the Criminal Code. So that there is an explanation or legal certainty regarding criminal sanctions that will be accepted by the notary.

Then the administrative sanctions that can be imposed by a notary are usually due to violations against violations while carrying out their duties (stipulated in UUJN) and violating the Notary's Code of Ethics, where the one who checks whether it is right or wrong and has the authority to impose sanctions, namely the Notary Supervisory Board. There is a correlation between UUJN and the Notary Professional Code of Ethics, where UUJN regulates notaries externally and the Notary Professional Code of Ethics regulates internally.

In practice, cases arising regarding violations while carrying out their positions include not carrying out the obligations that must be carried out by a notary, carrying out prohibitions that a notary may not do, not fulfilling the requirements as a notary, not fulfilling duties as a notary or a violation of the code of ethics. So that the notary can be subject to a sanction, namely as follows: a. Verbal warning; b. written warning; c. temporary stop; d. Honorable discharge; e. Dishonorable discharge. Of the sanctions above, which are included as administrative sanctions against a notary, namely temporary dismissal, honorable discharge, and dishonorable dismissal.<sup>15</sup>

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<sup>14</sup>Ibid., p. 24-25.

<sup>15</sup>Habib Adjie, 2009, *Civil and Administrative Sanctions Against Notaries as Public Officials*, PT. Refika Aditama, Bandung, p. 114-116.



#### 4. Conclusion

The legal consequences of a notary who violates office ethics in making an authentic deed include two aspects, namely the legal consequences for an authentic deed and the legal consequences for a notary as a profession and/or as an individual member of the community. The legal consequences for an authentic deed, namely an authentic deed are degraded as an underhanded deed, while the legal consequences for a notary, namely that he can be subject to sanctions as a profession and/or as an individual in society in the form of administrative sanctions in the form of a. Verbal warning; b. written warning; c. temporary stop; d. Honorable discharge; e. Dishonorable discharge, civil sanctions in the form of compensation and criminal sanctions in the form of criminal and or fines.

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