

The Law Enforcement of the Notary Honorary Council against Violations of the Notary Code of Ethics in Cirebon Regency

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Abstract. *The aim of this research is to study and analyze constraints and solutions in law enforcement of the Notary Honorary Council against violations of the Notary Code of Ethics in Cirebon Regency. This study uses Sociological Juridical approach method. Based on the research concluded that the obstacles faced by the Honorary Council in enforcing the Notary Code of Ethics in Cirebon Regency, the increasing number of Notaries, the Honorary Council only numbering 3 (three) members and is collective in nature so that if someone is unable due to busyness or other constraints, the Honorary Council not carry out their duties optimally, and there are some unscrupulous notaries who want to be examined who have been notified but are not in the office without any reason, with a large working area. The solution carried out by the Honorary Council to prevent and reduce the occurrence of violations of the code of ethics is to provide guidance, supervision, guidance and counseling. Evaluate and improve every violation of the code of ethics committed by a Notary so that the factors that support the occurrence of violations can be minimized and eliminated. And they must have a way to plan strategic steps to be carried out by the Honorary Council to suit the objectives to be achieved.*

Keywords: Enforcement; Ethics; Notaries.

1. Introduction

The existence of a notarial deed becomes the legal basis for the status of property, and also becomes the basis for the emergence of rights and obligations for the party making the deed, so that if there is a mistake in the notary deed it can cause the revocation of someone's rights or burden someone with an obligation, and the consequences of this mistake will be detrimental to the parties who are bound by the deed. If in carrying out their duties advocates

defend someone's rights when a difficulty arises, the Notary's duty is to try to prevent these difficulties from occurring.¹ Authentic deed essentially contains formal truths in accordance with what the parties notify the Notary.²

In carrying out his position, a notary must adhere to the notary's code of ethics which is all of his moral principles. The scope of the notary's code of ethics based on Article 2 of the notary's code of ethics of the Indonesian Notary Association (INI) applies to all members of the association and other people who assume and carry out the position of a notary both in the implementation of office and in the life of a notary.³

Article 16 paragraph (1) letter a UUJN-P, requires that every Notary must be trustworthy, honest, thorough, independent, impartial and protect the interests of the parties involved in legal actions. The provisions in Article 3 point 4 of the Notary's Code of Ethics also determine the obligations for a Notary in carrying out his/her position, namely that a Notary must behave honestly, independently, impartially, trustworthy, thorough, full of responsibility, based on statutory regulations and the contents of the Notary's oath of office.

The Preamble to the Results of the Extraordinary Congress of the Indonesian Notary Association, Bandung, January 27, 2005, explained again regarding the obligations for Notaries, that Notaries as public officials and one of the elements of legal servants, are obliged to participate in upholding the law in accordance with their profession, by donating energy and mind and carrying out their duties reliably, honestly, thoroughly, independently and impartially.

If the notary does not carry out the provisions referred to in the said regulation, it may cause losses to the appearers or other parties who have an interest in that matter. After being appointed as a Notary, the Notary must comply with the rules determined by the only Notary Organization association, namely the Indonesian Notary Association. contained in the Notary Code of Ethics.⁴

Supervision, examination and imposition of sanctions against Notaries prior to the entry into force of the Notary Position Law were carried out by the judiciary

¹Tan Thong Kie, 2007, *Notary Studies and Miscellaneous Notary Practices*, (Jakarta: PT. Ichtiar Baru van Hoeve, p. 449

²Sri Yuniati, Sri Endah Wahyuningsih, "Mechanism of Imposing Sanctions Against Notaries Who Violate the Notary's Code of Ethics", in *Journal of Deeds* Vol. 4 No. December 4, 2017 p. 585 <http://jurnal.unissula.ac.id/index.php/akta/article/view/2501/1865>

³Tri Ulfi Handayani, Agustina Suryaningtyas, Anis Mashdurohatun, "Urgency of the Notary Honorary Council in Enforcing the Notary Code of Ethics in Pati Regency", in *Journal deed* Vol 5 No 1 January 2018: p. 51 [url'shttp://jurnal.unissula.ac.id/index.php/akta/article/view/2531/1893](http://jurnal.unissula.ac.id/index.php/akta/article/view/2531/1893)

⁴Delivered by Musthofa, in the Notary Code of Ethics Exam Training event organized by the UII Notary Masters Study Program, March 12 2017, in the UII FH postgraduate building at 08.00 WIB

that existed at that time. Then supervision of the Notary is carried out by the General Court and the Supreme Court as referred to in Articles 32 and 54 of Act No. 13 of 1965 concerning Courts within the General Court and Supreme Court. Then the Supreme Court Circular of the Republic of Indonesia Number 2 of 1984 concerning Procedures for Monitoring, Enforcement and Self-Defense of Notaries was also made, and finally in Article 54 of Act No. 8 of 2004.⁵

The Notary Office Law, provides an explanation that related to supervision of all members of the Notary in carrying out his position, is carried out by the Minister, then the Minister forms an institution called the Notary Supervisory Council. Notary supervisory board based on Article 1 number 6 UUJN-P means "Notary Supervisory Board is a body that has the authority and obligation to carry out guidance and supervision of Notaries." Supervision in question is regarding the implementation of positions and enforcement of the Notary's code of ethics. Based on Article 68 UUJN-P Notary supervisory board consists of Regional Supervisory Council, Regional Supervisory Council, Central Supervisory Council.

In its implementation, there are Notaries who do not carry out their obligations as determined by laws and regulations, so the Notary concerned must deal with the Notary Supervisory Board. The Notary Supervisory Council generally has the scope of authority to hold hearings to examine alleged violations of the Notary Code of Ethics or violations of the exercise of office. Notaries have a big responsibility to the community so that the interests of the community must be guaranteed by supervision and guidance to Notaries in exercising this authority.⁶

Notaries in carrying out their duties to serve the interests of society should maintain their dignity. Tan Thong Kie stated that there is a habit among Notaries who no longer read their deeds so that the deeds become private deeds.⁷This act is a falsification of the deed. Moreover, most notaries allow appearers to sign the deed in the presence of their assistants, so that the notary's statement "has been faced with appearers" needs to be doubted too. That by not reading the deed and not seeing who signed the deed, the notary who did so degrades the dignity of his position and noble work.⁸Based on the author's research, there are many notary cases where the notary did not sign in front of him and the notary did not read the deed before him, only a few were reported/followed up.⁹Such a practice actually not only violates the notary's oath of office, but can even be categorized

⁵Habib Adjie, *Civil and Administrative Witness Against a Notary as a Public Official*, (Bandung: Refika Aditama, 2013), p. 137.

⁶Winanto Wiryomartani, *Duties and Authorities of the Notary Supervisory Board*, Paper presented at the Congress of the Indonesian Notary Association in Makassar, South Sulawesi, 13-16 July 2005

⁷*Op. cit.* Tan Thong Kie, p. 634.

⁸Endang Purwaningsih, *Forms of Notary Law Violations in Banten Province and Law Enforcement*, Journal, Field of Business Law, Faculty of Law YARSI Jakarta, 2014.

⁹*Ibid*

as a notary not having good faith and intentionally wanting to make a fake deed, which leads to a criminal act and can be brought to court, but in reality it is difficult to do because in general people who requires the services of a Notary who does not know about and does not care about these practices.

The Notary Supervisory Council should increase its role in carrying out efforts to guide Notaries and impose sanctions on Notaries who commit violations, both violations in the code of ethics, as well as violations in the implementation of office. Starting from verbal and written reprimands, temporary dismissal to dishonorable dismissal proposed to the minister by taking into account the Notary's office regulations.¹⁰

A notary who does not maintain and implement the provisions in the code of ethics or in the Law on Notary Position, it is possible for other violations to occur, namely the notary makes a copy of the deed that does not comply with the minutes of the deed, the notary does not read the deed in front of the audience in the presence of witnesses at least 2 witnesses and signed directly (at the same time) by the appearers. With the violation committed by the Notary, it will cause losses to other people.

2. Research Methods

Method The approach used in this study is Juridical Sociology, the specifications in this study are analytical descriptive in nature, the data used are primary data and secondary data. Data collection is by interview and literature study, data analysis is qualitative, problems are analyzed by theory, law enforcement and legal certainty.

3. Results and Discussion

The extent of authority given to a notary public results in the need for supervision so that a notary can carry out his/her position properly and improve services and legal protection for the public who use notary services. UUJN stipulates that the Minister shall exercise the supervision provided in the form of legislative delegation to the Minister to form a Notary Oversight Council. The delegation of authority is carried out through a Ministerial Decree to subordinate officials, namely the Director General or Head of Regional Office to sign on behalf of the Minister to form a Supervisory Council.¹¹ Supervision carried out by the Notary Supervisory Council is carried out based on UUJN and Regulation of the Minister

¹⁰Tinnike, Violations of the Implementation of the Notary's Office Regarding the Making of a Deed of Statement Based on Evidence in the Form of Photocopies of Letters, Thesis, Master of Notary, Faculty of Law, University of Indonesia, 2012, p. 8.

¹¹Sjaifurrachman and Habib Adjie, 2011, Aspects of Notary Liability in Making Deeds, Bandung: Mandar Maju, p. 245

of Law and Human Rights of the Republic of Indonesia Number 40 of 2015 concerning Organizational Structure, Procedures for Appointing Members, Dismissing Members, and Working Procedures of the Supervisory Board.

Article 1 point 4 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 40 of 2015 concerning Organizational Structure, Procedures for Appointing Members, Termination of Members, and Working Procedures of the Supervisory Council explains that Supervision is an activity that is preventive and curative in nature including coaching activities carried out by Supervisory Board of Notaries. Activities that are preventive and curative can be interpreted that supervision is carried out by carrying out prevention and guidance for Notaries. This supervisory action aims to protect the Notary in carrying out his position so that he continues to prioritize the nobility of the Notary. The membership of the Notary Supervisory Board is 9 (nine) people consisting of 3 (three) members of the government.

In carrying out its duties, the Notary Supervisory Council consists of three tiered assemblies namely the Regional Supervisory Council (MPD), which was formed and domiciled at the Regency or City level, the Regional Supervisory Council (MPW), which was formed and domiciled at the Provincial level, and the Central Supervisory Council (MPP).), which was formed and domiciled at the Capital level Country.

Basically, the law that has been chosen as a means to regulate the life of the community, state and nation in the form of laws and regulations through the state apparatus, it is necessary to follow up efforts to implement the law properly in accordance with the provisions that have been stipulated. Here we have entered into the field of law enforcement. In this case, it is necessary to pay attention to the components contained in the legal system, namely the substance structure and culture.¹²

In connection with law enforcement, Soerjono Soekanto said that law enforcement as a process, is essentially the application of discretion which involves making decisions that are not strictly regulated by the rule of law, but have an element of personal judgement. Interpreted by Roscoe Pound, that essentially discretion is between law and morals (ethics in the narrow sense).¹³ There are 5 factors that influence law enforcement, namely: the legal

¹²Duane R. Monete, Thomas J. Sulvian, Cornel R. Dejong, 1986, Applied Social Research, New York, Chicago, San Francisco, Holt, p. 27.

¹³Soerjono Soekanto, 2004, Factors Influencing Law Enforcement, Rajawali Press, Jakarta, , p. 4.

factor itself, the law enforcement factor, the facility factor or facilities that support law enforcement; Community factors; cultural factors.¹⁴

The above can be interpreted, that law enforcement in the implementation of the code of ethics is defined as the process of embodiment of the ideas, values contained in the code of ethics itself as law within the organization itself, especially by the Notary Supervisory Board in Cirebon Regency.

The notary's civil liability for the deed he made. The juridical construction used in civil liability for the material truth of the deed made by a Notary is a construction of an unlawful act. Unlawful acts have a wide scope so that if there is an element of harm to other parties and the loss has a causal relationship, it can be included in an unlawful act. The loss suffered by the victim must really be the result of the actions committed by the perpetrator, not the result of other actions.¹⁵

It is possible for a notary to be included in an unlawful act because if there is an element of harm to other parties and the loss has a causal relationship between the notary as the maker of the deed and the parties entrusting the deed to the notary. For his actions, it is possible for a Notary to commit an unlawful act against Article 1365 of the Indonesian Civil Code which states that any unlawful act that causes harm to another person obliges the person who, due to the mistake of issuing the loss, to compensate for the loss.

Article 1366 of the Civil Code states that everyone is responsible not only for losses caused by their actions, but also for losses caused by negligence or carelessness. Notaries who commit violations because of their negligence by violating the notary's code of ethics. The element of an unlawful act committed by a notary is sufficient to prove the behavior or actions that are contrary to the articles stipulated in the Law on Notary Position, namely Article 16 paragraph (1) letter a UUJN, for not acting reliably, not being honest, not thorough, taking sides and not protecting the interests of related parties in legal actions and violating the Notary's oath of office Article 4 paragraph (2) UUJN,

Just like Sjaifurrachman's view that civil sanctions are sanctions imposed on mistakes that occur due to default, or unlawful acts (onrechtmatigedaad). This sanction in the form of reimbursement of costs, compensation and interest is the result that will be received by the Notary from the lawsuit of the plaintiffs if the

¹⁴Moh. Abd Basith, and Anis Masdurohatun, Effectiveness Of Act Number 23 Of 2004 Regarding Elimination Of Violence In Household (PKDRT) Against Psychological Violence In Semarang, in Daulat Hukum Journal: Volume 2 Issue 3, September 2019 : 413 – 420, url <http://jurnal.unissula.ac.id/index.php/RH/article/view/5673/3422>

¹⁵Rosa Agustina, et.al, 2012, Law of Obligations, Denpasar: Library Larasan, p. 11

deed in question only has evidence as a private deed or the deed is null and void.¹⁶

The difficulty in implementing the professional code of ethics by members of the profession is unfortunate, because basically the profession is run by professionals who have the ability, knowledge, and competence who are competent in their fields. There are several weaknesses in the professional code of ethics, including:¹⁷

1. The idealism contained in the professional code of ethics is not in line with the facts that occur around professionals, so expectations are very far from reality. This is enough to intrigue professionals to turn to reality and ignore the ideals of a professional code of ethics. A professional code of ethics is nothing more than a framed display of writing.
2. The professional code of ethics is a set of moral norms that are not accompanied by harsh sanctions because their enforcement is solely based on professional awareness. It seems that this deficiency gives opportunity to professionals who are weak in faith to deviate from their professional code of ethics.

In order for the code of ethics to be adhered to by a Notary, a Notary's personal awareness is needed so that he can maintain his behavior, maintain the authority of the Notary, and the Notary Organization.

If there is a violation of the notary's code of ethics in carrying out his position if it is associated with the morality of a notary, then according to the Chairperson of the Cirebon Regency Regional Honorary Council, it is stated that the code of ethics is a collection of ethics and norms, so that a notary in carrying out his position as a public official must have good behavior and morals, not just -eyes rely on his ability and knowledge in the field of notary

The Chairperson of the Regional Honorary Council in enforcing the notary's code of ethics has several obstacles faced by the Cirebon Regency Notary Honorary Council, namely, the number of Notaries is currently increasing, while the Regional Honorary Council only has 3 (three) members and is collective in nature, so that if there are those who are unable to do so due to busyness or other constraints, the Regional Ethics Council cannot carry out its duties and authorities optimally. And there are some unscrupulous notaries who want to be

¹⁶Sjaifurrachman and Habib Adjie, 2011, *Aspects of Notary Liability in Making Deeds*, Bandung: Mandar Maju, p. 195

¹⁷Abdulkadir Muhammad. 2001. *Ethics of the Legal Profession*. Bandung. Aditya image devotion., p. 78

examined who have been notified but are not at the office without any clear reason. With so many notaries and a fairly wide working area, it is difficult for the Regional Ethics Council to properly supervise and develop a code of ethics for all Notaries as required in the code of ethics.

Ira Koesoemawati and Yunirman Rijan were of the opinion that regarding the weak enforcement of the Notary Ethics Code by the Notary Ethics Council, they stated that the code of ethics was made firmly and clearly and an Honorary Council was formed, in fact there were still many violations in the field. Starting from violations that occur due to the notary's ignorance of the code of ethics to violations that occur because they pretend not to know, or there are also those who do not care about the existence of a notary's code of ethics. Violations that occur can arise due to various factors, for example the factor of ineffective internal supervision by the Honorary Council. This happened because those who supervised the notaries were fellow notaries themselves, so that it did not have much effect among notaries. even though members of the Honor Council are senior notaries. Another factor is the feeling of reluctance that arises in the Honorary Council to act more decisively if the person violating the code of ethics is a notary who is as senior as a member of the honorary council. 24

Honorary Council carries out supervision and guidance that has not run optimally because there are several factors that hinder the Honor Council in carrying out its duties. These factors include the imposition of sanctions that are less strict, therefore notaries who commit violations of the code of ethics are not deterrent, psychological, the quality of the imposition of sanctions and the time and scope of the area which are considered too broad.

Guidance and supervision in enforcing the code of ethics for Notaries in Cirebon Regency, the solution carried out by the Notary Honorary Council is to implement preventive and curative supervision, namely to prevent violations of the Notary's office and provide guidance to the Notary himself. The supervisory function carried out by the Honorary Council in making efforts to prevent and reduce the occurrence of violations of the code of ethics, the efforts carried out by the Honorary Council are in the form of preventive and curative supervision. Preventive and curative supervision include:

1. Preventive supervision and guidance is carried out by the Honorary Council in the form of counseling and guidance which can be carried out at the time of examination of the Notary. Counseling and coaching are not only related to technical and ethical matters in carrying out their profession but can be other things. Every time the Honorary Council conducts an examination it can also provide legal advice and legal views as well as improvements to the applicable code of ethics regulations so that the Notary in carrying out his duties and positions does not deviate from these regulations.

2. The Honor Council's curative form provides sanctions in accordance with the quantity and quality of violations committed by the Notary. The imposition of sanctions aims to reduce violations of the code of ethics that occur, and is also part of the guidance on the implementation of the Notary's office and behavior. So that the supervision and guidance of Notaries must continue to be carried out and evaluated periodically by the Honorary Council so that they are able to adjust to legal and societal developments. Because the Honor Council's sanctions are organizational.

According to Herlien Budiono, there are several efforts so that notaries in carrying out their duties and positions are aware of and disciplined about the notary's code of ethics, including:¹⁸

1. Consciously with the support of a strong will from each Notary to uphold the Notary's Code of Ethics.
2. Maintaining the autonomy of the Notary Code of Ethics through a notary organization that is independent and recognized and respected by the community.
3. The notary science curriculum, processes, and educational methods contain efforts to systematically cultivate ethical attitudes that are in line with the notary profession.

In connection with supervision, the guidance on enforcing the code of ethics solutions carried out by the Honorary Council is to evaluate and correct every violation committed by a Notary so that the factors that support the occurrence of violations can be minimized and eliminated. And members of the Honorary Council in carrying out their duties must be firm in their stance and focused so as not to be influenced by anyone's persuasion.

Efforts to realize the enforcement of the Honor Council's code of ethics must be more pro-active in finding forms of violations that occur, not just waiting for reports. And must have a way to plan strategic steps that will be carried out by the Honorary Council to suit the goals to be achieved by the organization. The solution must be systematically and carefully structured so that the results obtained can be measured and will make it easier for the Ethics Council to carry out an evaluation. Related to the Ethics Council's solution, it relates to the theory of legal certainty where general rules make individuals aware of what actions may or may not be carried out by Notary Public. And in the form of legal security for the Notary from the mistakes that have been made.

¹⁸Herlien Budiono, Collection of Civil Law Writings in the Notary Sector, Bandung, Citra Aditya Bakti, 2010

Protection for the Notary Profession who is criminalized in making Authentic Deeds in the form of a Notary cannot be arbitrarily summoned in court proceedings by investigators, public prosecutors or judges, must first get approval from the Regional Ethics Council. However, if the Regional Honorary Council gives approval for the notary to be examined, then as a legal protection against himself, the notary can exercise his right of refusal.¹⁹

4. Conclusion

Based on the research concluded that The obstacles faced by the Honorary Council in enforcing the Notary Code of Ethics in Cirebon Regency, the increasing number of Notaries, the Honorary Council only numbering 3 (three) members and is collective in nature so that if someone is unable due to busyness or other constraints, the Honorary Council not carry out their duties optimally, and there are some unscrupulous notaries who want to be examined who have been notified but are not in the office without any reason, with a large working area. The solution carried out by the Honorary Council to prevent and reduce the occurrence of violations of the code of ethics is to provide guidance, supervision, guidance and counseling.

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¹⁹Agus Wijayanto, Legal Protection Against Criminalization of Notaries in Carrying Out Their Duties and Functions as Public Officials Based on Law Number 2 of 202014 Concerning the Position of Notary in Journal of Deeds Vol. 4 No. December 4, 2017 p. 769. <http://jurnal.unissula.ac.id/index.php/akta/article/view/2620/1971>

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