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Legal Review of Violations of the Code of Ethics by Notaries in the Preparation of Share Sale and Purchase Deeds (Study of Supreme Court Decision Number 15k/Pid/2020)

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Abstract. *A notary is a public official authorized to make authentic deeds as evidence with perfect evidentiary force and is required to carry out his/her duties professionally, with integrity, and in compliance with the code of ethics. However, in practice, violations of the code of ethics still occur, resulting in criminal acts, as stipulated in Supreme Court Decision Number 15K/Pid/2020. Therefore, this study analyzes the legal responsibility of notaries and the legal consequences of authentic deeds made. This study uses a normative juridical method with a statutory and case approach, based on secondary data analyzed prescriptively to assess the suitability of the application of the law with legal norms and principles. The results of the study indicate that notaries can be held accountable for ethical, administrative, civil, and criminal matters, and authentic deeds containing false information can lose their evidentiary force, so supervision and preventive-repressive efforts are needed.*

Keywords: *Authentic; Notary; Sale; Violation.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state based on law as stipulated in Article 1 paragraph (3). This principle of a state based on law is the main foundation in the notary sector.[1]The authority and duties of a Notary are further regulated comprehensively in the Notary Law, particularly Article 15, which includes the creation of authentic deeds, confirmation of signatures, provision of legal counseling, and other authorities determined by statutory regulations.[2]

Notaries are required to act professionally, honestly, independently, impartially, and uphold the professional code of ethics. Deeds prepared by notaries

[1] Ni'matul Huda, 2015, Indonesian Constitutional Law, Rajawali Press, Jakarta, 2015, page 88.
[2] Habib Adjie, 2021, Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary, Refika Aditama, Bandung, page 8.

essentially contain formal truth based on the statements of the parties. However, notaries remain obligated to ensure that the contents of the deed are understood and align with the wishes of the parties. Notarial deeds serve a formal function as a requirement for the completion of legal acts and serve as evidence for future proceedings.[3]

Problems arise when authentic deeds are not based on actual legal facts, either due to negligence or intent. In practice, violations of the Notary Code of Ethics, including forgery of deeds, are still found, which seriously impact legal certainty and public trust. One concrete example is Supreme Court Decision Number 15K/Pid/2020, which revealed the involvement of a Notary in the creation of an invalid Share Sale and Purchase Deed used as a means of criminal fraud. In this case, it was proven that the deed was made without the presence or signature of one of the parties, and was not supported by actual legal facts.[4]

The Supreme Court's ruling affirms that notaries are not immune from the law and can be held ethically, administratively, civilly, and criminally accountable if proven to have violated their official duties. A notary's actions in knowingly creating or using a false deed constitute a serious violation of the professional code of ethics and the provisions of the Notary Law. The lack of oversight and weak enforcement of sanctions for notarial ethical violations are important points in improving the notarial system. Therefore, the Notary Supervisory Board and professional organizations must play an active role in strengthening oversight, enforcing the code of ethics, and ensuring that the notary's office is carried out in accordance with the principles of integrity, professionalism, and legal certainty.[5]Based on this description, the author is interested in further examining the violation of the code of ethics by Notaries in making share sale and purchase deeds through a study of Supreme Court Decision Number 15K/Pid/2020.

2. Research Methods

The research method used is normative juridical research with a statutory and case-based approach. This study utilizes secondary data consisting of primary, secondary, and tertiary legal materials, which are analyzed from a perspective to assess the suitability of the application of the law to ideal legal norms and principles.

[3] Rudy Haposan Siahan, 2020, Indonesian Notary Law Volume 1, Media Sains Indonesia, Bandung, p. 214
[4] Abdulkadir Muhammad, 2006, Ethics of the Legal Profession, Citra Aditya Bakti, Bandung, p. 93
[5]Pandam Nurwulan.2023.Textbook of Notary Regulations and Code of Ethics.Litera Book.Yogyakarta.Page 80

3. Results and Discussion

3.1. Legal Liability of Notaries for Violations of the Code of Ethics in the Preparation of Share Sale and Purchase Deeds in Accordance with the Case Decided by the Supreme Court Number 15K/Pid/2020

A notary is a public office established by the state based on statutory provisions. Article 1, number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public affirms that a notary is a public official authorized to draw up authentic deeds and exercise other powers stipulated by law. This position places a notary in a strategic position within the national legal system because the deeds they draw up have perfect evidentiary force and serve as the basis for legal certainty for the parties.[6] The authority of a Notary is expressly regulated in Article 15 of the Notary Law, which includes the authority to make authentic deeds regarding all legal acts, guarantee the certainty of the date, keep the minutes of the deed, and provide grosse, copies, and extracts of the deed. In the context of corporate law, a Notary also has the authority to make deeds of sale and purchase of shares as regulated in Article 53 of Law Number 40 of 2007 concerning Limited Liability Companies, which states that the transfer of rights to shares is carried out by a written deed, either a notarial deed or a private deed. Although optional, a notarial deed provides more legal certainty because it meets the requirements as an authentic deed.[7] The transfer of shares in a limited liability company often requires the approval of a General Meeting of Shareholders (GMS), as stipulated in Article 57 of the Limited Liability Company Law. In this regard, a notary plays a crucial role in documenting the minutes of the GMS or drafting a deed of declaration of GMS decisions, which serves as the legal basis for the share transfer. Therefore, the notary's role is not only administrative but also substantive, ensuring that the entire share transfer process complies with the articles of association and applicable legal provisions.[8]

In practice, notaries continue to encounter ethical and legal violations, including the forgery of deeds. This is reflected in Supreme Court Decision Number 15 K/Pid/2020 concerning the Deed of Sale and Purchase of Shares of PT Graha Mahardika. In this case, the Supreme Court declared that the deed used by defendant Tedja Widjaja constituted a means of fraud.

In its verdict, the Supreme Court found the defendant guilty of fraud under Article 378 of the Criminal Code. The notarial deed, containing false information, was used to deceive others and cause harm. This incident confirms that an

[6]Habib Adjie, Indonesian Notary Law (Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary), Refika Aditama, Bandung, 2011, pp. 23-24.
[7]GHS Lumban Tobing, Regulations on the Position of Notary, Erlangga, Jakarta, 1999, p. 38.
[8]R. Ali Rido, Legal Entities and the Legal Status of Limited Liability Companies, Alumni, Bandung, 2004, p. 97

authentic deed drawn up without due care and honesty can become a means of criminal activity. The legal facts in the Supreme Court Decision Number 15 K/Pid/2020, as analyzed from the chronology of the case, include three main points which are the basis for the cassation decision for criminal fraud related to the deed of sale and purchase of shares of PT Graha Mahardika based on the Decision of the North Jakarta District Court Number 1087/Pid.B/2018/PN.JKT.UTR and evidence strengthened in the Decision of the Supreme Court of the Republic of Indonesia Number 15K/Pid/2020 including:

1) Making a Formal Defect Deed

The deed prepared by Notary Otty Hari Chandra Ubayani is clearly invalid, because:

a. There is no buyer's signature (Michele Darsono).

b. Not registered with the authorized agency.

c. Not owned by the parties listed in the deed.

d. In fact, the deed was controlled and used by a third party who had no legal relationship with the contents of the deed.[9]

There are no initials on each page of the minutes by the presenter, buyer and seller, and the deed is not read in full, violating Article 16 paragraphs (7) and (8) of the Law on the Office of Notaries. As a result, the deed loses its authentic power and is only equivalent to an underhanded deed.

2) Use of Deeds for Criminal Acts

The deed was used by convict Tedja Widjaja for fraud and embezzlement of shares, as admitted in court and the Jakarta Metropolitan Police's investigation report. This use fulfills the elements of Article 378 of the Criminal Code in conjunction with Article 56 paragraph (2), with material losses for the victim. Confirmation of this fact is strengthened by an excerpt from the Supreme Court's decision which stated that the deed is evidence of fraud.[10]

3) Monitoring and Registration Failures

Deeds that are not registered with authorized agencies such as the Ministry of Law and Human Rights or the AHU-Online system indicate administrative

[9]Tri Wahyu Nugroho, 2022, Legal Analysis of Violations of the Notary's Code of Ethics in the Preparation of Share Sale and Purchase Deeds (Study of Supreme Court Decision 15k/Pid/2020), Galuh Justisi Scientific Journal, Vol.10, No.02. Page 216
[10] Article 378 of the Criminal Code in conjunction with Article 56 paragraph (2

negligence on the part of the notary.[11]The legal facts in Supreme Court Decision Number 15 K/Pid/2020 indicate serious violations related to the deed of sale and purchase of shares in PT Graha Mahardika drawn up by Notary Otty Hari Chandra Ubayani. First, the deed was formally flawed because it was not signed by the buyer, second, it was not registered with the authorized agency, was not owned by the listed party, and was instead controlled by an unauthorized third party. In fact, Notaries play a crucial role in the sale and purchase of shares in Limited Liability Companies (PT) in Indonesia to ensure legal certainty through authentic deeds. Deed Number 10 drawn up before Notary Otty Hari Chandra Ubayani was not registered with the authorized agency, which means the Notary was negligent or did not carry out his obligations in the sale and purchase process of limited liability company shares.

According to Abdul Kadir Muhammad, a Notary acts as a public official who guarantees legal certainty, so that his obligations include examining documents, verifying the identity of the parties, and ensuring that the deed reflects legitimate wishes.12Legal certainty is the guarantee that the law is enforced, that those entitled to sue can obtain their rights and that decisions can be enforced. Legal certainty is justifiable protection against arbitrary actions, legal certainty is aimed at protecting the interests of each individual so that they know what actions are permitted and conversely which actions are prohibited so that they are protected.[13]

From a civil law perspective, the share sale and purchase agreement also fails to meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, specifically the elements of agreement and capacity of the parties. Consequently, the agreement is null and void, or at least voidable, and opens the door to a claim for damages under Article 1365 of the Civil Code concerning unlawful acts.[14]The exercise of this authority cannot be separated from the principle of legal responsibility. According to Hans Kelsen, legal responsibility arises when a person is subject to sanctions for unlawful acts. In the context of notaries, this responsibility includes administrative, civil, criminal, and ethical responsibilities. Notaries are required to act honestly, thoroughly, independently, and impartially, as affirmed in their oath of office and Article 16 of the Notary Law. In addition to criminal and civil liability, the notary's actions in this case also give rise to ethical liability. The Indonesian Notaries Association's Code of Ethics

[11] Decision of the Supreme Court of the Republic of Indonesia Number 15K/Pid/2020 dated April 9, 2020

[12]Abdul Kadir Muhammad, 2010, State Administrative Law, RajaGrafindo Persada, Jakarta. p. 93

[13]Sudikno Mertokusumo, 2007, Understanding Law: An Introduction. Liberty. Yogyakarta, p. 160.

[14]Widodo Suryandono, Notary Practice in Indonesia, Prenadamedia Group, Jakarta, 2019, pp. 143-146

requires notaries to act honestly, independently, and maintain the dignity of their office.[15]

Violations of the Notary Code of Ethics are basically characterized by the fulfillment of several main elements, namely the existence of dishonest, careless, or abusive actions by the Notary in making or using deeds; the use of authentic deeds as a means for purposes contrary to law and propriety; the occurrence of losses for the parties or other parties; and the violation of the Notary's obligation to maintain the integrity, independence, and dignity of the position as regulated in the Code of Ethics of the Indonesian Notary Association (INI). If these elements are fulfilled, then the Notary in question should be subject to ethical sanctions as a form of professional accountability.[16]Imposing ethical sanctions on Notaries is the authority of the Notary Supervisory Board and the Notary Honorary Council in accordance with the scope of their respective duties. The Notary Code of Ethics stipulates that supervision and enforcement of the code of ethics is carried out in stages, starting at the regional level, continuing with the regional level as an appeal forum, and up to the central level as a final inspection. This mechanism is intended to ensure prudence, objectivity, and a balance between disciplinary enforcement and the protection of Notary rights. Any alleged violation must be processed through a trial by the Notary Honorary Council, upholding the principles of justice and the right to self-defense, and providing Notaries with the opportunity to appeal against the decision. Decisions that have permanent legal force must be implemented, recorded, and announced as a form of accountability and transparency in ethics enforcement.[17]

Sanctions that can be imposed on a Notary found to have violated the Code of Ethics include reprimands, written warnings, temporary suspension, and even dismissal from membership of the Indonesian Notaries Association. However, the dismissal of a Notary from office cannot be imposed directly by the Honorary Council, but must instead be carried out through a legal mechanism involving the Notary Supervisory Board and relevant agencies. This demonstrates that although enforcement mechanisms are in place, the effectiveness of disciplinary enforcement still requires strengthening to provide a deterrent effect and prevent similar violations in the future.[18]

Violations of the Notary Code of Ethics have broad legal implications, both for the validity of the share sale and purchase deed and for the notary's legal

[15]Habib Adjie, Civil and Administrative Sanctions against Notaries as Public Officials, Refika Aditama, Bandung, 2008, pp. 71-74
[16]Habib Adjie, 2015, Supervisory Board of Notaries as State Administrative Officials, Refika Aditama. Bandung. Page 10
[17]Indonesian Notary Association, Notary Code of Ethics, Indonesian Notary Association, Jakarta, 2015.
[18]Indonesian Notary Association, Notary Code of Ethics, Indonesian Notary Association, Jakarta, 2015.

responsibilities. Notaries are responsible for ensuring that all legal procedures for the transfer of rights, including shares in a limited liability company, are carried out in accordance with statutory provisions.[19]Negligence or involvement of a Notary in the creation or use of a deed containing false information, as reflected in Supreme Court Decision Number 15 K/Pid/2020, not only results in the deed losing its legal force, but also gives rise to administrative, civil, criminal and ethical liability.

Thus, enforcing sanctions and responsibilities against Notaries who violate the Code of Ethics is a necessity to maintain the dignity of the position, uphold the integrity of the profession, and maintain public trust in notarial institutions as the main pillar of legal certainty and protection.

3.2. Legal Consequences of Authentic Deeds Made by Notaries for Violations of the Code of Ethics from a Legal Perspective and Its Protection

A notarial deed, as an authentic deed, essentially contains formal truth, namely the truth regarding what the parties state before the notary. In this case, the notary is not responsible for the material truth of the parties' statements, but is obliged to ensure that all information contained in the deed has been understood, agreed to, and consciously stated by the parties. This obligation is carried out through reading the deed, providing adequate legal explanations, and verifying the identity and authority of the parties before signing the deed.[20]

An authentic deed made by a Notary has perfect evidentiary power as stipulated in Article 1870 of the Civil Code, because it contains three elements of evidentiary power, namely external, formal, and material evidentiary power. External power relates to the validity of the form and origin of the deed as a product of a public official, formal power guarantees the truth of what the Notary sees, hears, and witnesses, while material power makes the contents of the deed binding and considered true for the parties and third parties who obtain rights from it. For a deed to obtain authenticity, Article 1868 of the Civil Code requires that the deed must be made by or before an authorized public official and in a form determined by law. This provision is emphasized in the Notary Law (UUJN), which regulates in detail the procedures and structure for making a deed, starting from the beginning, body, to the closing of the deed. If these formal requirements are not met, the deed made loses its authenticity and only has evidentiary power as a private deed.[21]

The notary is responsible for the formal accuracy of the deed, including the validity of the identity of the parties, the authority to act, and compliance with

[19]Habib Adjie, Civil and Administrative Sanctions against Notaries as Public Officials, Refika Aditama, Bandung, 2008, pp. 105-108
[20]Sudikno Mertokusumo, Indonesian Civil Procedure Law, Liberty, Yogyakarta, 2006, p. 159.
[21]R. Subekti, Law of Evidence, Pradnya Paramita, Jakarta, 2008, p. 54

the form and procedures for making the deed in accordance with the UUJN. The notary bases the making of the deed on documents and information submitted by the parties, so that if the information turns out to be materially false, this situation does not necessarily make the notarial deed a forged deed, as long as the notary has acted in accordance with the provisions of the law and the professional code of ethics. However, if it is proven that the notary intentionally or through negligence was involved in the making or use of a deed containing false information, then the deed not only loses its authenticity, but can also become a means of criminal action.[22]

This is reflected in Supreme Court Decision Number 15 K/Pid/2020, in which authentic deeds were used as instruments of fraud and document forgery. The decision emphasized that authentic deeds can lose their function as perfect evidence and give rise to criminal, civil, and ethical liability for the Notary concerned. From a criminal law perspective, forgery of authentic deeds is regulated in the new Criminal Code, specifically Articles 391 and 392 of Law Number 1 of 2023. The main element of this crime lies in the act of creating or using a forged document as if it were genuine with the intent to cause harm. If these elements are met, the perpetrator, including the Notary involved, can be held criminally responsible. Furthermore, such actions also constitute a serious violation of the Notary Code of Ethics because they violate the principles of honesty, independence, and the dignity of the office. Violations of the code of ethics that result in the birth of a defect in the will in the agreement can result in the cancellation of the deed through a court decision and the imposition of ethical and administrative sanctions by the Notary Supervisory Board and the Notary Honorary Council.

From a material legal certainty perspective, a violation of the Notary's code of ethics that results in a defect in the will in an agreement can result in the annulment of an authentic deed through a court decision. This annulment is intended to restore legal certainty by placing the parties in a legal position as if the legal act had never occurred. Therefore, a Notary plays a central role in ensuring the fulfillment of the valid requirements of an agreement, namely free consent, legal capacity and authority, a specific object, and a lawful cause. If the deed is made in accordance with the provisions of the law, the deed stands as an authentic deed with perfect evidentiary force, but if it is proven to contain a defect in the will due to threats, errors, fraud, or abuse of circumstances, then the deed can only be annulled through a court decision that has permanent legal force. There are several legal implications regarding the annulment and cancellation of a Notarial Deed:[23]

[22]M. Yahya Harahap, Law of Evidence in Civil Cases, Sinar Grafika, Jakarta, 2012, pp. 595-598
[23]Niken Ariska Handayani, Aminah, 2023, Notary's Responsibility Regarding False Information in Deeds He Draws Up, Humani, Vol.13, No.1, Page 123

1) A Notarial Deed Canceled is a sanction for a legal act that contains a legal defect (cause of cancellation), which means that the legal act can be cancelled at the request of a certain party, and the consequence of the cancellation is that the legal act has no legal consequences since the cancellation or cancellation was carried out.

2) Notarial Deeds are Void by Law: Notarial deeds can be void by law if they do not fulfill the terms of the agreement in question. Void by law is a civil sanction against a legal act that is caused by a legal defect (cause of invalidity), in the form of a legal act that has no legal consequences since it was carried out or has become invalid.

Thus, the deed no longer has full evidentiary force, but only has the same evidentiary force as a private deed. Therefore, legal protection is necessary for interested parties to ensure legal certainty and justice. This is in line with Philipus M. Hadjon's opinion, which distinguishes legal protection into two forms: preventive legal protection and repressive legal protection.24Preventive legal protection is realized through the obligation of Notaries to act carefully, honestly, neutrally, and professionally, while adhering to the UUJN and the Notary Code of Ethics. Meanwhile, repressive legal protection is implemented through civil and criminal justice mechanisms, as well as the enforcement of ethical and administrative sanctions. Dispute resolution can be achieved through deliberation, court mediation, arbitration, or general judicial proceedings in accordance with statutory provisions.

Thus, a notarial deed, originally considered an authentic deed, can lose its full evidentiary force if it contains formal defects, defects in intent, or elements of forgery. Therefore, the professional and responsible exercise of a notary's authority is an absolute requirement to ensure legal certainty, justice, and public trust in authentic deeds and the notarial profession.

4. Conclusion

The legal responsibility of Notaries in making share sale and purchase deeds, as emphasized in Supreme Court Decision Number 15 K/Pid/2020, shows that Notaries as public officials are not immune from the law and bear ethical, administrative, civil, and criminal responsibilities to ensure certainty, order, and legal protection through authentic deeds made in accordance with the Notary Law, the Code of Ethics, and the principles of prudence, honesty, and professionalism, where deeds containing false information or elements of forgery can be degraded to private deeds. Therefore, comprehensive legal protection is needed through preventive and repressive efforts, accompanied by evaluation and improvement of regulations by the government, strengthening of continuing

[24]Philipus M. Hadjon, Legal Protection for the People in Indonesia, Bina Ilmu, Surabaya, 1987, p. 29

education by the Indonesian Notary Association, increasing competence and integrity by Notaries, and active public participation in supervision, in order to maintain the dignity of the position, the integrity of the notary profession, and public trust in authentic deeds as the main instrument of legal certainty.

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