

Notary Liability When Committing Disgraceful Acts Based on Article 9 Paragraph 1 Letter C of Act No. 2 of 2014 concerning the Position of Notary

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Abstract. *Disgraceful acts are regulated in Article 9 paragraph 1 letter c of Act No. 2 of 2014 concerning the Office of a Notary. Disgraceful acts are degrading honor and dignity, such as gambling, drinking, using drugs and adultery. Meanwhile, disgraceful acts are those who have committed acts that are not in accordance with existing norms in Indonesia such as religious norms, decency and customs. The purpose of this research is to find out what are the types of dismissal of a notary and how is the responsibility of a notary who has committed a disgraceful act. The research method used is normative juridical research. The source of legal material used by the author is secondary data. The result of the research is that a Notary who is caught committing a violation of a disgraceful act as stated in Article 9 paragraph 1 letter C of Act No. 2 of 2014 Concerning Notary Positions, the board of trustees decides for the notary to be temporarily dismissed for 6 months based on the Notary Office Law.*

Keywords: *Accountability; Disgraceful; Sanctions.*

1. Introduction

Indonesia is a legal country. The definition of Indonesia as a country based on law is contained in Article 1 paragraph (3) of the 1945 Constitution, namely "Indonesia is a country based on law." Indonesia, which is a rule of law country, has the characteristic that everyone has the same equality in the eyes of the law. This means that all Indonesian citizens or Indonesian citizens are equal in the eyes of the law, regardless of social status, whether those with high-ranking officials or those without positions, rich or poor. In this case, if a notary is a public official. If a disgraceful act is committed, it must still be processed in accordance with applicable legal regulations.

A notary is one of the public officials who is authorized and tasked with making authentic deeds, this is stated in Article 1 paragraph (1) of Act No. 2 of 2014 concerning the Position of a Notary "A notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws." Everyone in society really needs a notary to make a deed, whether authentic or private. People need the help of a notary to make credit agreement deeds, PPJB, and other deeds which are under the authority of the notary.

In the case of people who need the help of a notary to make a deed, there will be a legal relationship between them where there will be something called evidence, namely a deed called an authentic deed made by a notary on the basis of its clients. The authentic deed itself is evidence issued by a competent official authorized, this statement is in accordance with Article 1868 of the Civil Code "An authentic deed is a deed which, in the form determined by law, is made by or in the presence of public officials who are authorized to do so in the place where the deed is made." Irawan Soerodjo argues that there are 3 (three) essential elements in an authentic deed, namely¹:

- 1) The form that has been determined by statutory regulations
- 2) Made by and in the presence of a General Officer
- 3) The deed made by or before the authorized Public Official for that purpose and at the place where the deed was made

The role of a notary who has a very important role related to making authentic deed, because an authentic deed is a strong piece of evidence and one authority of a notary is to make a deed in accordance with Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions. Where an authentic deed is a deed issued by a notary or can be called a notarial deed in accordance with Article 1 paragraph 7 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary "Notarial Deed, hereinafter referred to as Deed, is an authentic deed made by or before a Notary in accordance with the form and procedures stipulated in this Law." An authentic deed which is evidence that can be used as evidence is regulated in Article 1866 of the Civil Code, there are 5 (five) pieces of evidence, namely: written evidence, witness evidence, allegations.

As already explained, the authority of a notary is contained in Article 15 Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries in their authority to make authentic or private deeds which are written evidence which has also been explained in Article 1866 of the Civil Code,

¹ Irawan Soerodjo, 2003, *Kepastian Hukum Hak Atas Tanah di Indonesia*, Arkola, Surabaya, p. 148.
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so the authentic deed is perfect evidence as regulated in Article 1870 of the Civil Code "An Authentic Deed provides between the parties and their heirs or people who obtain rights from them, a complete or perfect and binding proof of what is contained therein.

Notary in carrying out his position to make an authentic deed so as not to an undesirable act occurs, all notaries need guidance and supervision so that they carry out their position in accordance with existing laws and regulations. As in Article 1 paragraph 6 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries "The Notary Supervisory Council, hereinafter referred to as the Supervisory Council, is a body that has the authority and obligation to carry out guidance and supervision of Notaries." Supervision of all notaries in Article 67 UUJN that the guidance and supervision of notaries is carried out by the Minister of Law and Human Rights. However, to carry out supervision, the Minister forms a Notary Supervision Council (MPN) at each level, if in a region it is called a Regional Supervisory Council (MPN), if in the province it is called the Regional Supervisory Council (MPW), in the center it is called the Central Supervisory Council (MPP).² However, not all notaries carry out their duties according to their position, there are definitely those who commit acts that should not be done by a notary, then the notary can be subject to sanctions in the form of: Written warning ; temporary stop; Dismissal with honor; or Dishonorable discharge.

In Article 9 paragraph (1) of Act No. 2 of 2014 concerning Changes to the Top Act No. 30 of 2004 concerning the Position of Notary, a notary can be temporarily dismissed from his position due to:

- a. In bankruptcy proceedings or suspension of debt payment obligations;
- b. Being under guardianship;
- c. Committing a disgraceful act;
- d. Violating the obligations and prohibitions of the position as well as the notary's code of ethics; or
- e. Currently serving a period of detention.

One of the temporary dismissals of a notary is in Article 9 letter C Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries, namely committing disgraceful acts according to Habib Adjie in his book, the Notary Supervisory Council as State Administrative Officials, is an act that is contrary to or not in accordance with the norms of decency, religion and

² Henry Donald Lbn Toruan, Jurnal, *Legalitas Keberadaan Majelis Pengawas Notaris Dan Majelis Kehormatan Notaris*, Jurnal Penelitian Hukum, Vol 20, No 3 (2020). P. 436.

custom.³ Examples of despicable acts are using drugs, drinking which harms the surrounding community. Another example of a specification is that a female notary who is married is caught having an affair with her own client and has children, so this is a disgraceful act committed by the Notary.

Before the notary carries out his temporary dismissal, the Notary is given the opportunity to defend himself before the Supervisory Council in stages, which is carried out by the Minister at the suggestion of the Central Supervisory Council. Temporary dismissal based on reasons for committing a disgraceful act for a maximum of 6 (six) months in accordance with Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 regarding the Office of Notary. The function of the Supervisory Board should be carried out actively. As soon as it becomes aware of a violation, the Supervisory Board can act immediately, without the need to wait for a report. So that the Supervisory Board needs to extra supervise notaries who commit disgraceful acts.

With a Notary who commits a disgraceful act that violates Article 9 letter C of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries. The author here intends to raise the issue of how a notary is liable if he commits a disgraceful act based on article 9 paragraph 1 letter c of Act No. 2 of 2014 concerning the position of notary and procedures for dismissing notaries who have committed disgraceful acts. In the description outlined above, the aim of the research is to explain the responsibilities of notaries and to know the procedures for dismissing notaries who commit disgraceful acts.

2. Research Methods

Research methods have an important position in research. The research method used is normative juridical research. Normative juridical is an approach taken by searching for legal materials and statutory regulations laws that are appropriate to this research. The source of legal materials used by the author is secondary data in the form of primary legal materials such as the 1945 Constitution, the Civil Code, Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, Secondary Legal Materials such as books, articles, journals, research results, papers and so on that are relevant to the problems to be discussed, and tertiary legal materials such as newspapers, the internet, legal dictionaries and the Big Indonesian Dictionary.

³ Laras Maryati, Elita Rahmi, & Raffles, *Penanganan Perbuatan Tercela Notaris Dalam Perspektif Hukum Kenotariatan*, Jurnal Politik dan Hukum, Vol 1, No. 1 (2021). p. 5.

3. Results and Discussion

3.1 What are the types of dismissal from a notary?

Notary in carrying out his position must have a good personality as well uphold the dignity and honor of a notary both when working and when not working. Notaries in carrying out their positions need to be responsible in serving the public who request notary services by always remembering laws, ethics, public order and good Indonesian.⁴

A notary can be subject to sanctions if the notary does not comply with the regulations in the Notary Position Law and the Notary Organization Code of Ethics⁵. Sanctions that will be given to notaries if they violate the regulations in the Notary Position Law, such as honorable dismissal and temporary dismissal, as well as dishonorable dismissal contained in Articles 8 to 14 of Act No. 30 of 2004 concerning Notary Positions as amended by Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions.

a. Honorable discharge⁶

Article 8 (1) A notary resigns or is honorably dismissed from his position because:

- a) Die;
- b) 65 (sixty five) years old;
- c) own request;
- d) Able spiritually and/or physically to carry out the duties of a Notary position continuously for more than 3 (three) years; or
- e) Concurrently holds the position as intended in Article 3 letter g.

If you are 65 (sixty five) years old as in letter b, it can be extended to 67 (sixty seven) years old by considering the notary's health.

b. Article 9 The notary is temporarily dismissed from his position due to:⁷

- a) In bankruptcy proceedings or suspension of debt payment obligations;
- b) Being under guardianship;
- c) despicable act; or
- d) Violation of obligations and prohibitions of office.

⁴ Munir Fuady, 2005, *Profesi Mulia*, Citra Aditya Bakti, Bandung, p. 133.

⁵ Nilna Muna Yulindari, Yu Un Oppusunggu, Upaya Hukum Notaris Yang Diberhentikan Dengan Tidak Hormat Ditinjau Dari Peradilan Tata Usaha Negara, *Jurnal Usm Law Review*, Vol 4, No. 2 (2021). p. 845

⁶ Article 8 Act No. 30 of 2004 amending Act No. 2 of 2014 concerning Notary Positions

⁷ Article 9 Act No. 30 of 2004 amending Act No. 2 of 2014 concerning Notary Positions

Before the temporary dismissal as intended in paragraph (1) is carried out, the Notary is given the opportunity to defend himself before the Supervisory Council in stages. The temporary dismissal of the Notary as referred to in paragraph (2) is carried out by the Minister on the recommendation of the Central Supervisory Council. Temporary dismissal based on the reasons referred to in paragraph (1) letter c and letter d is valid for a maximum of 6 (six) months.

e) Article 12, a Notary is dishonorably dismissed from his position by the Minister on the recommendation of the Central Supervisory Council if: ⁸ Declared bankrupt based on a court decision that has permanent legal force;

f) Being under continuous care for more than 3 (three) years;

g) Commit acts that humiliate the honor and dignity of the position of a notary;
or

h) Committing serious violations of the obligations and prohibitions of office. The Notary was dishonorably dismissed by the Minister because he was sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal act that is punishable by imprisonment for 5 (five) years or more.

So above are the types of dismissal of a notary official, so it can be seen from the various factors that influence the dismissal of a notary official based on the Notary Position Law or the laws in force in Indonesia.

3.2 What is the responsibility of a notary who commits a disgraceful act?

Notary who is a public official in accordance with Article 1 paragraph 1 of the Law Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries who are not only experts in the field of law but are required to always be responsible for their actions because notaries are considered to have good ethics in their work because it involves making deeds and meeting clients. . In Article 16 (1) of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notaries in carrying out their positions, Notaries are obliged to act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of parties involved in legal actions. Notaries in carrying out their work do not always run smoothly, there are certainly obstacles that hinder or hinder their work, whether intentionally or unintentionally.

Dishonorable dismissal in Article 7 paragraph 2 of Act No. 2 of 2014 Concerning Amendments to Act No. 30 of 2004 concerning Notary Positions. The notary is temporarily suspended from his position in Article 9 paragraph 1 of the Law

⁸ Article 12 Act No. 30 of 2004 amending Act No. 2 of 2014 concerning Notary Positions

Number 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public due to:

- a. In bankruptcy proceedings or suspension of debt payment obligations;
- b. Being under guardianship;
- c. Committing a disgraceful act;
- d. Violating the obligations and prohibitions of the position as well as the notary's code of ethics; or
- e. Currently serving a period of detention.

A notary who commits a disgraceful act in Article 9 paragraph 1 letter C means that the law has strict state sanctions and can be enforced. Disgraceful actions themselves mean that the word action means that it lowers honor and dignity, for example gambling, drunkenness, using drugs and committing adultery. Meanwhile, disgraceful acts are those who have committed acts that are not in accordance with existing norms in Indonesia such as religious norms, morality and customs⁹.

The authority of the Notary Honorary Council is to examine violations of the Notary's Code of Ethics which are internal to the organization, notary behavior which is within the scope of supervision of the Supervisory Board outside the supervision of the implementation of the notary's duties, has limitations:¹⁰

- a. Committing disgraceful acts that are contrary to religious norms, moral norms and customary norms.
- b. Committing acts that humiliate the honor and dignity of the Notary Office, for example, such as gambling, drinking, using drugs and committing adultery. Every act that is outside the notary's office law, which is contrary to the dignity of the notary's office, is included in an oversight and must be sanctioned against the notary.

The supervisory board should be implemented actively. Supervisory board Regarding efforts to prevent disgraceful acts, they have not been implemented perfectly due to many obstacles regarding differences in perceptions of the meaning of disgraceful acts themselves. The actions of the supervisory board are passive, namely by waiting for reports from the community first. If they find out that a notary has committed a violation, the

⁹ Hendrik Pondaag, Cindy Bella N Tumundo, & Firdja Baftim, *Pemberhentian Sementara Notaris Dari Jabatannya Berdasarkan Undang-undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, Jurnal Hukum Administrasi Negara, Vol. 9, No. 3 (2021), p. 208.

¹⁰ Fagustien Zaharani, Tesis, *Pelanggaran Kode Etik Berdasarkan Pasal 9 Uujn Sebagai Dasar Pemberhentian Sementara Notaris*, (Surabaya, Universitas Narotama Surabaya, 2019), p. 83.

supervisory board will immediately act, without having to wait for a report. For example, there is a male notary who is married, who has a female notary friend, both of whom are married, but they are both involved in inappropriate love and are living together. In this example, it is a violation of the code of ethics and the Law on the Position of Notaries, because he has committed disgraceful acts and norms. So the supervisory panel imposed a temporary dismissal for 6 months in accordance with Article 9 paragraph 4 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary. Temporary dismissal based on the reasons as intended in paragraph (1) letters c and d is valid for a maximum of 6 (six) months.

4. Conclusion

Notaries who commit violations of the regulations in the Notary Office Law are given sanctions contained in Articles 8 to 14 of Act No. 302004 concerning Notary Positions, honorable dismissal (Article 8), temporary dismissal (Article 9), and dishonorable dismissal (Article 12). Notaries who commit disgraceful acts in Article 9 paragraph 1 letter C will receive a temporary suspension. The Supervisory Board is outside supervision implementation of the duties of a notary public office, has limitations, namely: committing disgraceful acts that are contrary to religious norms, decency and customs, as well as committing acts which demean the honor and dignity of the Notary's position, for example gambling, drinking, using drugs and committing adultery. The supervisory council has not been implemented perfectly due to many obstacles regarding differences in perception of the meaning of the disgraceful act itself. The actions of the supervisory board are passive, namely waiting for reports from the public first. If a notary knows that he has committed a violation, the supervisory board will act immediately, without having to wait for a report.

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Henry Donald Lbn Toruan, *Legalitas Keberadaan Majelis Pengawas Notaris Dan Majelis Kehormatan Notaris*, Jurnal Penelitian Hukum, Vol 20, No 3 (2020). P. 436.

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