

Enforcement Against Extraordinary Members (ALB) of Notaries Who Violate the Notary Code of Ethics

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Abstract. *The Notary Code of Ethics is a set of rules that are enforced and obeyed by notaries, used as guidelines for all notaries regarding what they should do, and at the same time guarantee the quality of notaries' conduct in the eyes of the public. Notaries who violate the provisions of the code of ethics will damage the reputation of the notary profession in the eyes of the public. The Indonesian Notary Association (INI) has three types of members: Regular Members, Extraordinary Members, and Honorary Members. To become a member of the INI association, prospective notaries must meet the requirements of a bachelor's degree in Law and a Notary Education/Specialized Notary Education diploma, and have passed the ALB selection process conducted by the INI as an official member of the INI organization. Once they have passed the ALB Notary exam and become members of INI, ALB Notaries must undergo an internship at a Notary office with the requirement of having served as a Notary for a minimum of 5 (five) years and having drafted at least 100 (one hundred) deeds. The internship must be completed as a prospective Notary for a consecutive period of 24 (twenty-four) months. During the internship period, the ALB Notary must already adhere to the Notary Code of Ethics since they are already a member of the INI organization. However, under the provisions of the Notary Code of Ethics, the ALB Notary is not included among those required to comply with the Notary Code of Ethics. The Notary Code of Ethics is only mandatory for those who have already assumed the position of Notary. Therefore, there is still a legal loophole for ALB Notaries if they engage in actions that violate the Notary Code of Ethics. The author used normative legal research in this study. A legislative approach and a conceptual approach were used in this study. The purpose of this study is to analyze and understand the handling of ALB Notaries who violate the Notary Code of Ethics.*

Keywords: Code; Ethics; Notary.

1. Introduction

A state governed by the rule of law recognizes the principle of providing guarantees of clarity, order, and legal protection based on facts and fairness. Such a state governed by the rule of law can be realized and requires evidence that can document a legal action or event. An authentic deed is the strongest and most complete form of evidence, playing a crucial role in society. The need for authentic deeds as evidence has increased with the growing awareness that authentic deeds can provide legal certainty regarding certain rights. With the availability of such evidence, the rights and obligations of legal subjects regarding a particular legal act or action can be clearly determined.

The position of Notary is one of the positions specifically authorized by law to create authentic evidence with perfect probative force. As a public official, the Notary is tasked with providing services to the public in the creation of authentic written evidence in the field of civil law. According to Law No. 2 of 2014 amending Law No. 30 of 2004 on the Notary Position (hereinafter referred to as the Notary Law), the Notary position is a public official with the authority to draft and formulate authentic deeds, as well as other authorities as regulated in this Law or based on other laws.

Authentic deeds can provide three functions for legal subjects, namely:

- a) Evidence that the legal subjects concerned have entered into a specific agreement;
- b) Evidence for the legal subjects that what has been agreed upon in the agreement is the intention of the legal subjects;
- c) Evidence to third parties stating the certainty of the recording date, unless otherwise determined by the parties to the agreement, that the contents of the agreement have been agreed upon with the will of the legal entities (Salim, HS. 2006: 43).

The duties and functions performed by a Notary require official authority. A Notary is granted authority by the executive branch, meaning that a Notary exercises part of the executive branch's authority. Article 2 of the Notary Law states that the Minister has the authority to appoint and dismiss Notaries. In this context, the Minister refers to the Minister responsible for the scope and responsibilities of the notary field. This authority is limited to the position held, including matters that must be carried out by the Notary position in accordance with the rules set forth in the law and regulations (Habib Adjie, 2020: 5).

Every task based on this authority ultimately entails responsibility. This responsibility is based on the legal rules that govern it, as well as on ethical and moral principles. Therefore, the position of Notary is bound by the legal provisions

that govern the position, including the Notary Code of Ethics, which must always be adhered to. It is hoped that the position of Notary can act professionally to assist the interests of the community that requires their expertise. Regulations related to Notaries are governed by statutory provisions such as the UUJN, but provisions regarding Notaries are also regulated in the Code of Ethics. The responsibilities of Notaries to the public in providing services require them to comply with the provisions of the UUJN and the Notary Code of Ethics as moral guidelines and to participate in professional organizations and serve the state (Endang, P. 2011: 330). The Notary profession requires legal protection, and the existence of the Notary Code of Ethics as a binding rule serves as a moral standard for performing duties and exercising authority effectively within society. With such social control in place, it is hoped that notaries will be able to maintain their position as a trusted profession in society.

Notaries, in performing their role as public officials, require a notary organization. This organization establishes and enforces standards regarding internal rules for its members as well as the code of ethics governing the notary profession. These regulations must be obeyed by its members. With the existence of a notary organization, it is possible to supervise the notaries who are members of the organization. Although there are legal regulations and supervisory functions, this does not guarantee that notaries will perform their duties and authorities properly, but it can prevent things that could be detrimental, especially to the credibility of the notary position. The only Notary organization in Indonesia, as mentioned in the UUJN, is the Indonesian Notary Association (hereinafter referred to as INI), which is a legally recognized association. In addition to performing supervisory functions, the Notary Organization also conducts activities to organize various conferences,

In accordance with INI Association Regulation Number: 22/PERKUM/INI/2021 regarding the Registration of Extraordinary Members (hereinafter referred to as ALB) of INI, to become an ALB Notary, one must meet the following qualifications: holding a Bachelor's degree (Level 1) in Law Studies and a Notary Education/Specialized Notary Education diploma, and have passed the ALB selection process conducted by INI, as a member of the INI organization. If they have passed the ALB Notary exam and become a member of INI, the ALB Notary must undergo an internship at a Notary office that has been operating as a Notary for at least 5 (five) years and has produced at least 100 (one hundred) deeds. This internship must be carried out as a prospective Notary for 24 (twenty-four) consecutive months. During this internship process, the ALB Notary must already adhere to the Notary Code of Ethics as they are already a member of the INI organization.

However, in practice, ALB Notaries do not fully comply with the Notary Code of Ethics. In fact, violations occur that are inconsistent with the UUJN and the Notary

Code of Ethics. Such violations can harm clients and lead to lawsuits being filed in court.

2. Research Methods

Normative legal research was used in this study. According to Peter Mahmud Marzuki, normative legal research is a process in which legal rules are found, including legal principles and legal doctrines, in order to find and seek solutions to legal issues. Normative legal research is an effort to formulate arguments, theories, or new concepts as formulations and descriptions to resolve a legal problem (Muhaimin, 2020: 47). The approaches used in this study are the legislative approach and the conceptual approach. This study uses legal materials, namely primary legal materials and secondary legal materials. The primary legal materials in this research are the UUJN, the Notary Code of Ethics from the Extraordinary Congress of the Indonesian Notary Association in Banten, May 29-30, 2015, and the Articles of Association of the Indonesian Notary Association from the Extraordinary Congress of the Indonesian Notary Association in Bandung, January 27, 2005. Secondary legal materials include textbooks, legal journals, information from the internet, and other sources related to this study. In this paper, the type of research used is normative legal research. The technique for collecting legal materials involves a literature review, obtained through the examination of written information related to law from any source and widely published.

3. Results and Discussion

The position of notary is established or regulated by law with the aim of providing assistance to members of the public who require authentic written evidence regarding circumstances, phenomena, or legal actions. A notary is a public official with the authority to prepare authentic deeds regarding all actions and agreements governed by general provisions or by those who require them to be formulated in an authentic deed, to provide certainty regarding the date, to store the deed, and to provide gross copies, copies, and excerpts of the deed, all of which are prepared in accordance with provisions that are not generally assigned to or excluded from other officials (H. Adjie, 2017: 32).

The Association Regulation (hereinafter referred to as Perkum) INI Number: 22/PERKUM/INI/2021 on the Registration of ALB INI, as stipulated in Article 1, which regulates ALB INI, is any person who holds a bachelor's degree in Law and a Notary Education/Specialist Notary Education diploma and has passed the ALB Selection conducted by the Association, with the selection based on the Articles of Association, Bylaws, and Association Regulations, conducted through a written test and interview organized by the INI Regional Board. Article 2, which regulates the requirements to become an ALB, states that one must hold a bachelor's degree in Law and a Notary Education/Specialized Notary Education certificate and pass

the ALB selection conducted by the Association with the following materials: Articles of Association, Bylaws, and Association Regulations through a written test and interview conducted by the INI Regional Board. Based on the above provisions, it can be understood that those eligible to hold the position of Notary must not only possess theoretical knowledge from higher education but also undergo an internship at a Notary office to gain practical experience and handle cases related to the field of notary services.

Notary ALB who undergo an internship at a Notary office and participate in the joint internship program organized by the INI Regional Board have certain obligations that must be fulfilled, including:

- 1) As stipulated in Article 16A of the UUJN, regarding the obligations of prospective Notaries, prospective Notaries are required to act, comply with the regulations set forth in Article 16(1)(a), which states that “they must act with integrity, honesty, diligence, independence, impartiality, and safeguard the interests of the parties involved in legal transactions,” and (b), which states that “prospective notaries are also obligated to keep confidential all matters related to the deeds they create and all information obtained for the purpose of creating such deeds”;
- 2) Regulated in Article 10(1)(d) of the Minister of Law and Human Rights Regulation No. 25 of 2017 regarding the Notary Appointment Examination, which stipulates that “Prospective Notaries must actively participate or be involved by having their names listed on at least 20 (twenty) deeds”;
- 3) Must have an internship report book;
- 4) Must maintain good conduct, politeness, discipline, and ethical standards by the Notary supervising the internship and other Notary staff;
- 5) Notary candidates, or ALB (Association of Indonesian Notaries), are required to actively participate in association activities by earning 30 (thirty) points;
- 6) Participate in joint internships conducted by INI through the INI Regional Management in the local province (Rani, Y. 2018: 2).

Prospective Notaries who will serve as Notaries are required to join the INI association beforehand. Prospective Notaries who meet the requirements are eligible to participate in the ALB Notary selection process, and if they pass the ALB Notary exam, they become official registered members of INI. These ALB Notaries are officially registered members of the INI association but have not yet been appointed as Notaries. Therefore, prior to being appointed as Notaries, they must complete an internship program at a Notary office designated by the Regional Supervisory Board (MPD). As stipulated in Article 9(1) of the INI Constitution

adopted at the Extraordinary Congress of INI in Bandung on January 27, 2005, regarding Membership, which states that the association's members consist of Regular Members, Extraordinary Members, and Honorary Members. In accordance with these regulations, ALB Notaries who have passed the ALB Notary examination are already members of the INI Association.

ALB Notaries must undergo an internship period of 24 (twenty-four) consecutive months. During the internship period, ALB Notaries must continue to comply with the Notary Law and the Notary Code of Ethics. The Amendment to the Notary Code of Ethics of the Extraordinary Congress of INI Banten, May 29-30, 2015, regulates the code of ethics that must be followed by all members of the INI Association and all parties who hold the position of Notary, including Interim Notaries and Substitute Notaries who exercise the authority of the position. However, Article 2 of the Code of Ethics states that the code of ethics applies while the person is acting in the capacity of a Notary, both in the performance of their duties and in their daily life. Therefore, ALB Notaries are not actually bound by the Notary Code of Ethics. The Code of Ethics for ALB Notaries is limited to guidelines to be followed as prospective Notaries who are completing the requirements to serve as Notaries. If an ALB Notary is found to have violated the rules as stipulated in the Notary Code of Ethics, sanctions as outlined therein cannot be imposed. This constitutes a weakness in the Notary Code of Ethics regulations for members of the INI Association.

ALB Notaries are prospective Notaries who will eventually serve as Notaries. The regulations regarding the Code of Ethics should also apply to ALB Notaries. For example, in the regulations regarding the Notary Code of Ethics adopted in the Netherlands, there are regulations in the Code of Ethics *Verordening beroeps- en gedragsregels* 2011 established by the *Koninklijke Notariële Beroepsorganisatie* (KNB). The provisions of the Code of Ethics stipulate that the code of ethics applies to notaries and prospective notaries. The status of a prospective notary in the Netherlands is equivalent to that of a notary. The difference is that a prospective notary is not yet permitted to have their own office because they are still in their apprenticeship period, similar to an ALB Notary. Additionally, responsibility for the content and signing of deeds is delegated to the Notary who has already assumed their position. This is noteworthy because the regulations are not only applied to Notaries who have already assumed their positions but also to prospective Notaries. The application of ethical principles is already implemented even before assuming the role of Notary.

Prospective Notaries in the Netherlands or Junior Notaries are similar to ALB Notaries in Indonesia. Prospective Notaries in the Netherlands must undergo a six-year internship at a Notary office and are required to participate in professional training organized by the Notary organization in the Netherlands (KNB). During the internship period, Junior Notaries are given the obligation to collect points by

attending seminars is similar to that of ALB Notaries. In addition, they are required to provide legal consultation to clients. Junior Notaries undergoing their internship can learn more knowledge because the internship period is longer than that in Indonesia.

The legal system in Indonesia has adopted the Dutch legal system from the outset. The regulations regarding the Code of Ethics in the Netherlands are relevant because they already address Notaries and Notary Candidates who will eventually serve as Notaries. This is important to apply to the legal system in Indonesia because the position of Notary is closely related to public service. Notaries who draw up deeds related to the wishes of the parties, as long as those wishes do not violate laws and regulations, violate norms of decency and morality. The exercise of authority requires good ethics and should be applied in everyday life.

ALB Notaries are the successors to Notaries who are already in office. It is possible that violations of the Notary Code of Ethics may occur. This may be influenced by weak legal regulations governing the ethics of ALB Notaries, as well as a weak supervision system. In other words, there is a possibility that Notaries who accept ALB Notaries for internships in their offices may be negligent due to their busy schedules. ALB Notaries who are still in their internship period are under the direct supervision of the Notary. With the Notary's busy schedule and the possibility of human error due to lack of attention to detail and lack of caution on the part of the Notary, ALB Notaries may take advantage of the opportunity to commit violations related to the Code of Ethics. Clear and strict legal regulations are clearly needed as a preventive measure to minimize violations.

The code of ethics is one of the efforts to prevent its members from unethical behavior. Every code of ethics is written in a structured manner. Everything reflected in it is good behavior. However, the code of ethics has weaknesses such as:

- a) The idealism contained in the code of ethics is not relevant to the facts found among professionals, so it still seems inconsistent with expectations;
- b) A code of ethics is a set of moral norms that are not enforced with severe sanctions because its application relies on professional conscience (Abdulkadir M, 2014: 78).

A code of ethics plays an important role as a means of social control in performing the duties of a Notary and in daily life.

The position of the code of ethics for Notaries is important, not only because Notaries are a profession that requires a code of ethics, but also because the nature and essence of the Notary profession is aimed at legalization, thereby serving as the primary legal basis regarding the status of property, rights, and a client who has an obligation to use the services of a Notary. The Code of Ethics has

binding provisions for all Notaries because the INI has the authority under the law to establish rules contained in a code of ethics that must be obeyed by all Notaries in Indonesia (M. Fuady, 2005: 133).

As a means of enforcing legal rules, legal sanctions must be regulated. Sanctions are defined as penalties for non-compliance with a provision. According to Philipus M. Hadjon, sanctions are instruments of power with the nature of public law, administrative law norms. Sanctions are an essential part of the law, making legal regulations binding on all those subject to them. Non-compliance or violations can result in undesirable irregularities in the legal system. This is in line with the function of the law as a tool for law enforcement, which includes prohibitions and sanctions.

The imposition of sanctions on all members of the association will serve as a control against possible violations of the code of ethics. However, this does not rule out the possibility that violations will occur. The Notary Code of Ethics stipulates the sanctions that can be imposed on members of the association who violate the provisions. The sanctions imposed, as stipulated in Article 6 of the Notary Code of Ethics, can take the form of:

- a) Reprimand;
- b) Warning;
- c) Temporary suspension from membership of the association;
- d) Honorable dismissal from membership of the association;
- e) Dishonorable dismissal from membership of the association.

In the Code of Ethics regulated in the Netherlands, prospective notaries may be subject to sanctions if they violate the Notary Code of Ethics. However, in Indonesia, there are no regulations regarding the Code of Ethics that can be imposed on ALB Notaries. This is a legal weakness because there are no clear sanctions for ALB Notaries. Although ALB Notaries have not yet performed their duties and authorities as Notaries, this needs to be regulated to prevent any form of violation by ALB Notaries. In addition, the Notary Code of Ethics can also serve as a habit for ALB Notaries, even though they are still undergoing an internship.

This serves as a guideline that must always be applied, whereby members of the INI association, including ALB Notaries, must always remember and apply the Notary Code of Ethics wherever and whenever. Since a Notary is a position of trust, where the duties and authorities are closely related to and involve the public, it is essential to build a good reputation. This applies not only in performing their duties as Notaries but also in their daily lives.

4. Conclusion

The Notary Code of Ethics must be adhered to by all members of the Association and others (as long as they are performing the duties of a Notary), both in the performance of their duties and in their daily lives. On the one hand, ALB Notaries are already members of the INI Association. However, the Notary Code of Ethics applies to all members of the Association as long as they are performing the duties of a Notary. This means that the Notary Code of Ethics is intended for those who hold the position of Notary, while ALB Notaries who are still in their probationary period do not hold the position of Notary. If an ALB Notary violates the rules related to the Code of Ethics, they cannot be sanctioned in accordance with the rules set forth in the Notary Code of Ethics. Therefore, in this case, clearer and more stringent legal regulations are needed for ALB Notaries who commit violations related to the Notary Code of Ethics.

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