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The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE

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ABSTRACT

Notary is a public official who is authorized to make authentic certificates and other authorities referred to in Article 1 (1) of Law No. 30 of 2004. Through the deed he had done, the notary must be able to provide legal certainty to users notary services. Deed made by or before a notary may be authentic proof in providing legal protection to the other parties concerned to the deed regarding the certainty of events or legal actions that do Notary is a professional in his duties should be based on the setting in legislation or code ethics into its internal settings.

This research is empirical juridical and socio legal research with constructivism. To answer the question in this study the sociological approach of law.

Supervision of the notary in order to uphold the dignity Notary office. Notary responsibility as a public official related to material truth, which is liable to civil Notary of the material truth of the deed he had made; Notary criminally liable for the truth material in deed he made; responsibility Notary Regulation Notary of the material truth in deed that made ;, and responsibility in performing tasks Notary office by a Notary ethical code. Reconstruction accountability Notary as a public official in the deed based on the values of justice through law enforcement against Notary mewujudkan legal certainty based on values of Pancasila, rekonsturksi legal relationship Notary with the parties, the reconstruction of the rights and obligations dissenter Notary, as well as the reconstruction of Article 65 of Law Notary to Notary time limit liability.

Suggested to the Notary in their duties must have the precision, which this austerity is acting honestly, thoroughly, independently, impartially, and safeguard the interests of the parties involved in a legal action.

Keyword: Accountability, Notary Public, PPAT, Creating Authentic Deed, The Value of Justice.

A. Background

Constitution of the Republic of Indonesia Year 1945 (UUD 1945) explicitly determines that the state of the Republic of Indonesia is a constitutional state. The rule of law guarantees certainty, order, and legal protection that core truth and justice.

Notary is a public official who is authorized to make authentic certificates and other authorities referred to Law No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary.

Notary profession is very important, because of the nature and essence of the work of notaries who strongly oriented towards legalization, so that it can be a fundamental principal legal status of property, rights and obligations of the parties involved. In making the notarial deed should contain the desire or the will of the parties who poured into the agreement (deed) is. This is regulated in Article 15 paragraph (1) of Law No. 2 of 2014: "Notary authorized to make the deed authentic of all deeds, agreements, and determination required by legislation and / or desired by the stakeholders to be declared in authentic deed, guaranteeing a deed, saving certificates, giving grosse, copy, and official copies, all of it throughout the making of the deed was not also assigned or excluded to other officials or others specified by law ".

According to Liliana Tedjasaputra, there are four (4) things to be aware of the notary, namely:

1. In carrying out professional duties, a notary must have a solid moral integrity. In this case, all moral considerations should underpin the implementation of tasks profession. Although it will obtain recompense high, but something that is contrary to good morals should be avoided
2. A notary must be honest, not only with his clients, also to himself. He must know the limits of their capabilities, do not give promises simply to please his client, or that the client still wants to use his services. All of it is a separate measure of the level of intellectual honesty of a notary
3. A notary public must be aware of the limits of their authority. He must comply with the provisions of the applicable law on how far he can act and what is allowed and what not to do. Is contrary to professional behavior when a notary turns domicile and residence is not in a position as a notary. Or put up signs and has offices in his seat, but his residence elsewhere. A notary public is also prohibited to run his post outside his area. If these provisions are violated, then the deed in question will lose the power of authentic.
4. Even if an individual's expertise can be utilized as a straightforward effort to make

money, but in implementing the tasks profession he is not driven solely by considerations of money. A notary who Pancasila- must still adhere to the intrinsic sense of justice, is not affected by the amount of money, and does not merely create formal evidence pursue their legal certainty, but it ignores the sense of justice

The extent of trust and authority in the field of work owned by the notary provides a great moral responsibility towards his work. So as to create certainty, order and protection of the law and prevent abuse of the trust given to the notary law then held office during supervision order tasks notary necessarily correspond to the underlying legal principles. Supervision is done by the state through the Government (Minister of Justice and Human Rights), Notary Professional Organization through the Indonesian Notaries Association (INI), Notary Code and other underlying legislation. As for the supervision conducted by the not yet fully capable of tracking error or abuse of power during his notary because influenced by certain factors so that it can escape the scrutiny. Errors in implementing the office and abuse of authority are sometimes only revealed after the notary no longer takes office as a public official.

Responsibility as a Notary Public Officials (*openbaar ambtenaar*), which became the responsibility for his actions that focused on the job he does that require technical skills and specialized expertise in the field of manufacture of the authentic act professionally and truth material over the deed he made. It has the quality of science is no doubt in serving clients and able to work independently. Legal liability, Notaries in stints profession are bound by the rules that govern law, is required to be able to master all the applicable legal rules. Regarding the responsibility of the Notary as a public official related to material truth, namely:

1. Notary civil responsibility to the truth material to the deed he made;
2. Notary criminally responsibility of the material truth in deed he made;
3. The responsibility of the Notary Regulation Notary of the material truth in deed he had made;
4. Responsibility Notaries in stints Notary office by a code of ethics.

In carrying out his position, a notary is obliged:

1. Acting trustworthy, honest, thorough, independent, impartial and keep the interest involved in legal actions;
2. Make the deed in the form of Minuta Deed and save them as part of the protocol Notary;
3. Reattaching letters and documents and fingerprints *penghadap* on Minuta Deed;
4. Remove the Grosse Deeds, Copy of Deed or Deed Excerpt based Minut Deed;

5. Providing services in accordance with the provisions of this Act, unless there is a reason to reject it;
6. Keeping everything regarding the deed had made and all information obtained in accordance with the deed to the oath / pledge of office, unless otherwise undnag Act;
7. Stapling deed is made in one (1) month to book that contains no more than 50 (fifty) certificate, and if the number of certificates can not be contained in one book, The deed can be bound to more than one book, and record number minuta deed, month, and year of manufacture on the cover of each book;
8. Make a list of the deed of protest against not being paid or non-receipt of securities;
9. Make a list pertaining to wills chronologically deed every month;
10. Submitting a list of certificates referred to in the letter i or register zero with respect to the will to Center List arrange Testament in the ministry of government affairs in the field of law within 5 (five) days in the first week of the following month;
11. Noting the Repertorium delivery date will list at the end of each month;
12. Has the seal / stamp which contains the emblem of the Republic of Indonesia and the space encircling written the name of office, and the position in question;
13. Reading the deed before penghadap in the presence of at least two (2) witnesses or four (4) witnesses specifically for the manufacture of the Miraculous Deeds under the hand, and signed on the spot by penghadap, witnesses and Notary;
14. Receive Notary internship candidates.

Notaries are prohibited:

1. Running positions outside the office;
2. Leaving the office area of more than 7 (seven) consecutive working days without a valid reason;
3. Accredited as a public servant;
4. Accredited position as state officials;
5. Accredited position as an advocate;
6. Accredited position as a leader or employees of State Owned Enterprises, Regional-Owned Enterprises or private entity;
7. Accredited position as the Land Deed Official and / or Class II Auction officials outside the seat of the Notary;
8. Become a Notary substitute; or
9. Perform other jobs that conflict with religious norms, decency or propriety that may

affect the honor and dignity of the office of Notary Public.

Besides qualify predetermined law in order for a certificate to be authentic, a notary in carrying out these duties shall carry out their duties with discipline, professional and moral integrity should not be in doubt. What was stated in the beginning and end of the deed is the responsibility of the notary is a phrase that reflects the true situation at the time a deed. As stated in Article 65 of Law Notary: Notary, Substitute Notary, Special Substitute Notary, and Acting Notary responsible for every deed he made despite the Notary Protocol has been submitted or transferred to the depositary Notary Protocol.

UUJN cursory reading of Article 65, has caused the problem and also the question until when the time limit liability notaries, notary substitute, substitute notary special, and acting on any notary deed made before or him? In this case Article 65 UUJN considered that:

1. They are appointed as a notary, notary substitute, substitute notary special, and acting notary regarded as a personal duty and a lifetime so indefinitely accountability.
2. Accountability notaries, notary substitute, substitute notary special, and acting notary is inherent, wherever and wherever the former notary, a former notary replacement, former special substitute notary, and former acting notary located.

Based on the description above, the writer interested in studying the Accountability of Public Officials Against Notary Deed As Value-Based Justice.

B. Law Enforcement Against Notary Consummate Pancasila Values-Based Legal Certainty

As a constitutional state based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, the Republic of Indonesia shall perform law enforcement that reflect fairness, certainty and maximum benefit for the purposes of the protection of law, order and welfare.

Sila meaning Almighty God is faithful and pious to God Almighty according to the religion and beliefs of each base according to a just and civilized humanity; reverence and respect and cooperate between religions and faiths are different so that nurtured harmony; mutual respect in accordance with the freedom to practice religion and belief respectively; not impose a religion or belief to others.

Associated with the profession of notary, the notary should equip themselves with strong moral, religious so that underlie each behavior, not for reward money, then the

contents of the agreement are not distorted or procedural appropriate authority and office area.

Meaning sila just and civilized humanity is recognizing equality, equal rights and equal obligations among men; loving fellow human beings; develop an attitude of tolerance; not arbitrarily against others; upholding the values of humanity; fond of doing humanitarian activities; brave stand for truth and justice; Indonesian nation feels itself as part of the International World peoples and with the need to develop an attitude of mutual respect and cooperation with other nations. Linked to the performance of independent notaries, notary impartially anyone because they do not want anyone to win, not biased and are obliged to provide public services equally to all parties.

Meaning sila Indonesian Unity Unity is to maintain the Unitary Republic of Indonesia; willing to sacrifice for the nation and the State; love of country; proud as a part of Indonesia; and promote association for the unity and integrity of the nation's air-Unity in Diversity.

Associated with the profession of notary, the notary should uphold the integrity of a moral, not to sell the name of the state and the nation only to the interests of investors who require legalization, but always with great caution and in good faith, that as a public official accountable to society, religion and nation as well as the state. Notaries also should have a good cooperation links with members of the profession in order to maintain the dignity of the nation and uphold the ethics of the profession of notary.

Meaning sila Democracy Led by Wisdom Wisdom of the Consultative / Representative prioritizes the interests of the state and society; not to impose the will of others; culture prioritizes rembug or deliberation in taking decisions together; and deliberation to reach a consensus or consensus word suffused with a spirit of brotherhood. Associated with the profession of notary, the notary accommodate the aspirations and will of the parties who want to create authentic act, sincerely help realize agreements with the agreement in the form of a written deed enforceable. The services provided should be friendly and open, despite being told to conceal what is stated in the agreement and the manufacturing process.

Meaning principle of Social Justice For All People Indonesia is: be fair to the others; respect the rights of others; helping others; respect for others; do useful work for the common good and shared. Associated with the profession of notary, notaries should uphold the values of justice with equipment based on the divinity of the Lord, that every eprilaku notary in

running position must not be biased in order to reach the coveted justice. The services provided should also not be half-hearted when dealing with the poor, because they are also entitled to obtain justice in the public service.

In addition to the implementation of Pancasila values, it needs three basic pillars supporting a nation's ability to implement good governance, namely: government, society and business world. Good governance and responsible only reached when the application of political authority, economy and administration of these three elements has a similar network and interaction and sinerjik. Such interaction and partnerships can thrive when there is trust, transparency, participation, and governance are clear rules and definite. Successful implementation of the reform of the bureaucracy will be very important driving force in the successful implementation of the overall task of the notary profession.

C. Reconstruction Law Article 65 of Law Notary Public Notary Against Time Limit Liability

According to the Law on Notary, the Notary is the duty and authority to make authentic act and other authorities referred to in Law Notary. The authentic deed made by Notary cover all acts, agreements. and provisions required by legislation and / or desired by the stakeholders to be stated in an authentic, guaranteeing the creation date of the deed, saving certificates, giving grosse, copy, and official copies, all of it throughout the making of the deed was not also assigned or exempt to another official or other person specified by law (Article 15 paragraph 1).

Moreover authorized notary certify the signatures and set a firm date in the letter under the hand by enrolling in a special book: Recorded letters under the hand by enrolling in a special book; Make copies of the original letters under the hands of the copy that contains a description as written and illustrated in the letter in question; Approve their compatibility with a photocopy of the original letter; Providing legal counseling in connection with the making of the deed; A deed relating to land; or a deed treatise auctions (Article 15 (2)). Notary also has the authority to do counseling related to the deed he made.

The responsibility of the notary includes three cases, the ethical responsibility, professional responsibility and legal liability.

1. Notary ethical responsibilities associated with moral norms is a measure of the Notary to determine right and wrong or good or bad acts committed in their profession.
2. The responsibility of the profession requires Notaries to have technical skills and

specialized expertise in the field of manufacture of the authentic act in a professional, quality science is no doubt in serving clients, and be able to work independently.

3. Liability Notary is a legal responsibility if the deed is made having problems. In this case the legal responsibility borne Notary covering civil and criminal liability.

Article 65 Notary Act states: "Notary, Substitute Notary, Special Substitute Notary, and Acting responsible for every deed he made even though protocol notary are assigned or transferred to the storage protocol".

Cursory reading Article 65 of Law Notary, especially the clause even though the protocol notary are assigned or transferred to the storage protocol, has caused the problem and also the question until when the time limit liability Notaries, Notary Substitute Substitute Notary Special, and Acting Notary on every deed made before or him? Temporary answer to that question is up to the notary died. Whether such a deadline of its responsibilities under Article 65 of Law Notary since the article is not clear so it needs interpretation.

Thus Article 65 of Law Notary, which reads: Notaries, Notary Substitute and Acting Notary responsible for every deed he made despite the Notary Protocol has been submitted or transferred to the depositary Notary Protocol. This article cause confusion because the word is responsible ... although ... gives the sense that the Notary responsible for the deed he had made in his life

This article provides also an understanding that a Notary is no limit in the account for the deed he had done, so that a Notary may be requested at any time his responsibilities until the Notary died. This is something that is unfair, given the Notary is a human being and have limitations of age or health factors. Something unfair also be done, if at the age of notaries who have been too dusk, but he still sought his responsibilities because of a lawsuit from the parties who feel aggrieved because of the Notary deed made

The provisions of Article 65 of Law Notary reconstruction is done by adding in paragraph (2), namely: Accountability jawabah referred to in paragraph (1) does not apply to, as the provisions of Article 8.

Definition of Notary protocol stipulated in Article 1 point 13 Notary Law, which states that: Notary Protocol is a document that is the state archives to be stored and maintained by the Notary in accordance with the statutory provisions. Article 62 Notary Act states that: Submission of Notary Protocols done in terms of the Notary:

1. Death of the world;
2. Has end of his tenure;

3. Ask yourself;
4. Not being able to spiritually and / or physically to perform the duties of office as Notary continuously more than 3 (three) years;
5. Appointed as a state official;
6. Move the area office;
7. Suspended; or
8. Dismissed with disrespect.

To specify a time limit should be responsible for the Notary deed made before or created by him, it must be associated with the concept of a notary as a function (ambt). Notary as a public official (openbaar ambtenaar) authorized to make authentic act can be charged with the responsibility for his actions in connection with the making of the deed. Everyone who carry or hold certain positions in any field as the implementation of a structure of the state, government or organization has a limit, this limit can be viewed in terms of authority and can also be viewed in terms of time. In connection with the Notary as someone who took a post of responsibility in making the Notary deed must be in accordance with the authority set out in the Notary Law Notary. When viewed in terms of time limits, can be associated with up positions when carried or someone's lap Notary must end.

Based on the subject matter of both is about the time limit Notary responsibility towards authentic act that results null and void by the time his term ends, the first can be seen in Article 8 of Law Notary. This section of the Second Part Dismissal of a Notary Public. Under Article 8 of Law Notary stated that:

3. Notary stop or honorably discharged from his position with respect because:
 - a. Die;
 - b. Have over 65 (sixty-five) years;
 - c. Own request;
 - d. Not able to spiritually and / or physically to carry out the task of continuously Notary office more than three (3) years; or
 - e. Concurrent position as referred to in Article 3 letter g..
4. Provision of age as referred to in paragraph (1) letter b may be extended until the age of 67 (sixty seven) years taking into account the relevant health.

The boundaries of the above is the deadline for notaries who have been unable to do any authority. Based on the contents of the article above, it can be seen that the term of office ends when a Notary Public Notary been aged 65 (sixty-five) years and can be extended up to

the age of 67 (sixty seven) years.

Words ending the term of office of a Notary Public Notary herein are within the meaning of the retirement from office. In this regard it should be understood as a notary Indonesian rule of law, that the Notary has the authority to carry out his duties, as long as the authority attached to him. The authorization expires if the concerned Notary leave (ending temporary) or retirement or have stopped no longer be held accountable because it has no more authority on him.

Notaries have a limit in accordance with the domicile and office area as well as in terms of authority. The responsibility of its forms is sanctioned (moral and / or legal). In terms of sanctions, responsibility Notary include: responsibility is personal and institutional responsibilities (organization). Legal responsibility rooted in Notary Law, Criminal Law and Civil Law.

Each has a time limitation any position of responsibility, which is served by all concerned because if someone's lap positions have been exhausted, concerned stopped anyway accountability in the office ever dipangkunya. By looking at the office of the Notary as a Notary responsibility towards aktanya only when the Notary is authorized or served as a Notary Public. In other words, if a Notary has resigned his post as a Notary under Article 8 of the Law Notary mentioned above, it is also the responsibility off to the Notary deed made.

Relating about responsibility Notary ended in accordance with the expiration of the Notary office, did not cause the deed which made be worth it or not binding on the penghadap. Authentic deed before a Notary remain valid as evidence were perfect although Notary makes such deed has ended his tenure. Problems arise when the authentic act resulting void on the current term of office expires Notary and cause harm to the parties concerned. Arises an assumption that the Notary escape from its responsibilities towards the authentic act is null and void because notary end of his tenure.

To be able to know how long an authentic act is null and void can be held accountable by those who feel aggrieved, it can be seen from the expired certificate. Western law expired familiar sense. In the fourth book BW, among others, is set on expiration:

1. As for that cause a person released from an obligation or the right to demand that causes a person to be dead, praescriptio (Latin) and extinctieve verjaring (Dutch);
2. As for the cause someone to gain a specific right. This shelf requires good faith from the person who will acquire these rights, usucapio (Latin) and acquistieve verjaring (Dutch).

Understanding of expiration (verjaring) KUHPdt set out in Article 1946 is as follows:

expiry is a tool to get something or to be released from an engagement with the lapse of a certain time and on the terms prescribed by law. KUHPdt Article 1947 states that: Not allowed a release expired, before the time comes, but so-so he releases a shelf gains. Furthermore, Article 1967 of the Civil Code states that: All the lawsuits, both stock and individualistic, remove as expired by lapse of thirty years, while anyone who showed a shelf that does not have to demonstrate a right base, and anyway is not it can be brought forward against something rebuttal based on the itikadnya bad.

One can not get something right because the shelf when the time has not yet arrived, but one can let go of something that rights acquired since expired. The release of expiry can be done in two ways, namely the release of expiry done firmly and release expired conducted secretly. Waiver expired quietly set out in Article 1948 (2) of the Civil Code, namely: "The release of secretly concluded from an act which led to speculation that one is not entitled to use the rights they have gained something".

According to C.S.T Kansil, while the agency through time (expiration date) can be distinguished between:

1. Through time for property rights. In stock law, an honest bezitter on an object that does not move over time can acquire ownership rights to the object. If he can show a legitimate title, then over time twenty years since he began to master the thing, he became the legal owner of the object.
2. Through the time to be released from a claim. By law established that the lapse of thirty years, every person acquitted of all billing or lawsuits. This means that if someone sued to pay the debt that is already more than thirty years, he can reject the suit by simply asking that for thirty years she has never received a claim or lawsuit.

Article 1969 KUHPdt set about making a claim expired after the expiration of 2 (two) years. The expiration date is enforced by:

1. The doctors and pharmacists for visits, treatments and medicines;
2. The bailiff to notify wage deeds and carry out the work expected of them;
3. Employers boarding school for money meals and teaching to his students, as well as other demands of teachers for teaching provided by them;
4. The workers with the exception of those referred to in Article 1968 KUHPdt for payment of their wages and the amount of their wage increases according to Article 1602 letter q.

Furthermore, Article 1970 KUHPdt set the expiration date after the expiration of 2 (two) years. The expiration date starting from diputusnya matter or achieve peace among the

parties about the demand:

1. Advocates for payment of their services;
2. The lawyers for the payment of advance-advance and their wages;
3. The Notary for advance-advance payments and wages, calculation expired since made the deed.

Expiration known also to the criminal law. In criminal law, when a crime is investigated in a relatively long time, the people do not remember him so as not to feel the benefits. This makes it lighter offenses, namely class entirely violations and class crime punishable by imprisonment, the more fines. Importance shelf can provide legal certainty to the suspects, other than that if the investigation is not done it is increasingly difficult to obtain sufficient evidence if the accused deny guilt.

Expired in criminal law set forth in Article 78 paragraph (1) Criminal Code. Criminal authority demanding void due to expiration stipulated in Article 78 paragraph (1) Criminal Code, which reads as follows:

1. Regarding all the violations and crimes committed by the printing after one year;
2. Regarding the crimes punishable by fines, imprisonment or imprisonment for a period of three years, after six years;
3. Regarding crime punishable by imprisonment of more than three years, after twelve years;
4. Regarding the crimes punishable by death or life imprisonment, after eighteen years.

The grace period expired entry into force provided by Article 79 Criminal Code. Article 79 of the Criminal Code reads as follows: Grace expiration enter into force on the day after the deed is done, except for the following things:

1. Regarding the falsification or destruction of currency, grace comes into force on the day after the goods were forged or tampered currency used;
2. Regarding the crime under Article 328 of Criminal Code, Article 329 of Criminal Code, Article 330 Criminal Code and Article 333 of the Criminal Code, grace begins on the day after the person directly affected by crime freed or dead;
3. Regarding the offenses in the Criminal Code Article 556 to Article 558 of the Criminal Code letter, grace begins on the day after the list-a list of the violations, according to the general rules which determine that the registers of civil

Based on an examination of the shelf it can be concluded that expired under civil law is thirty years whereas criminal law is based on the expiration of twelve years. When an

authentic deed before a Notary has been proven to be null and void and detrimental to the parties, the Notary should be held accountable even though the term of office of the Notary has expired. This can be done by the parties of all time authentic act is null and void is still there which is within the time limit of thirty years. Certificate expired as of the date the deed is made.

D. Conclusion

Reconstruction of accountability Notary as a public official in certificates based on values of justice through the reconstruction of Article 65 of Law Notary Notary liability against the time limit by adding in paragraph (2), namely: Accountability jawabah referred to in paragraph (1) shall not apply to as the provisions of Article 8. in other words, if a Notary has resigned his post as a Notary under Article 8 of the Law Notary of the above, it is also the responsibility off to the Notary deed made.

Through Limited liability theory by way of reconstructing the provisions of Article 65 of Law Notary, the Notary Jawabah realize Accountability For Against Public Officials Act The Value-Based Justice. In this case, if a Notary has resigned his post as a Notary under Article 8 of the Law Notary of the above, it is also the responsibility off to the Notary deed made.

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