

Legal Consequences for Notaries in Self-Promotion through Electronic Media

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KeyWords

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ABSTRACT

This study aims at finding out the role of the Indonesian Notary Association (INI) in supervising Notary who violates the Notary code of ethics and the legal consequences for a notary who is proven to commit violations using electronic media. The type of study was normative juridical research. The collection of legal materials employed literature study which was obtained through inventory database directories of laws and regulations, books, journals, and others in print and electronic form. This study showed that legal consequences for notaries who have been proven to commit violations in self-promotion through electronic media might be subject to sanctions in the ethical sanction form. The scope of the ethic codes for notaries was very diverse, and the sanctions for violations included the organizational domain so that they cannot be subject to legal sanctions if a notary has been proven to have violated the Law on the Position of Notary Public. The imposition of sanctions can be such as admonitions, warnings, temporary dismissal, honorific dismissal or disrespectful dismissal of association membership.

INTRODUCTION

In Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public or UUJN mentioned that notary is a public official who has the authority to make authentic deeds regarding all actions, agreements, and stipulations required by a general regulation or those with interest to be explained in an authentic deed, guarantee the certainty of the date, keep the protocol and provide the grosses, copy or excerpt to the parties as well as other powers as stated in other laws.

Notary is one of the legal professions, and notary profession is a noble profession (*nobile officium*). This is called a *nobile officium* because the notary profession has an inseparable relationship with humanity. The deeds made by notaries can be used as a legal basis for a person's property status, rights and obligations. The errors in deeds made by a notary can result in the loss of one's rights or the burden of someone on an obligation.¹(Anshori, 2009)

Notary has a central and role function in Indonesia. It is also a form of law in Indonesia. The work carried out by a Notary has legal consequences, namely the deed made has authentic and executorial power. Notary guarantees the protection of law and order to the people who use their services. Notary also has a very close and inseparable relationship with morals and laws so that when carrying out their duties, they must be guided by the Notary Professional Code of Ethics and the Position of Notary Public, because without this the dignity and standard, the professionalism can be lost. The existence of the professional notary code of ethics has been regulated and determined by the notary professional organization contained in the UUJN, the organization's forum, namely the Indonesian Notary Association, hereinafter referred to as INI. The professional notary code of ethics in it regulates what actions a Notary should take and what actions fall into the category of violations, as well as rules regarding sanctions imposed if proven to have vi-

¹ Abdul Ghofur Anshori, 2009, Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika, (Yogyakarta : UII Press), hal. 7

olated the code of ethics.

The Notary Professional Code of Ethics is all moral principles that have been regulated and determined by INI, the code of ethics stipulates several rules that must be adhered to by a Notary, in addition to the regulations of notary office, including:² (Lubis, 1994)

1. Notary personality, this is described as follows:

- a. in carrying out their duties, they must have the spirit of *Pancasila* (Five Basic Principles), be aware and obey the laws of the Notary Position Regulation, Position Oath, Notary Professional Code of Ethics and speak in good Indonesian Language;
- b. Notary must have a professional attitude and participate in national development, especially in the field of law; and
- c. Notary has a good personality and upholds the dignity and honor of a Notary, both inside and outside of their duties.

2. At the time of carrying out their duties, the Notary must:

- a. have an awareness of their obligations and carry out them, work independently, honest and impartial, full of a sense of responsibility;
- b. only have one office and do not open a representative branch office anywhere as stipulated by law and do not use intermediary services; and
- c. do not use the internet or electronic media.

3. The notary relationship with the client must be based on:

- a. Notary in providing services to people who need their services as well as possible.
- b. Notary must provide legal education in order to achieve high legal awareness, and the public is aware of their rights and obligations.
- c. Notary may not take sides and must provide the best possible service to underprivileged people without expecting an honorarium.

4. Notary public with other notary colleagues are required to:

- a. respect in the family structure;
- b. do not engage in actions or competition that may cause losses among fellow notaries; and
- c. protect each other and defend the honor and name of the notary corps based on a sense of solidarity and constructive help.

Shidarta argued that notary professional ethics could be implemented if there are 3 (three) characteristics of morality including the notary's actions must not deviate from the demands of the profession, are aware of their obligations, and have high idealism. The essence of morality itself has a very close relationship with ethics. There are 2 (two) meanings including, as a collection of ethical values and norms that have human nature and must be upheld by a high moral integrity.

In daily activities, notary often finds various kinds of irregularities. Indeed, this is a natural thing because what is, in reality, is often not in accordance with the ideal (what you aspire to). However, if the deviations are quite large and far away from their ideal form, it can lead to a crisis of fundamental change. Indeed, this can cause a large negative impact on society, so that in the end it will diminish the dignity of the profession itself.

Along with the development of information and communication technology, humans are given the convenience of carrying out daily activities because one of the objectives of the use of information and communication technology is to increase the effectiveness and efficiency of public services, for example, notary profession. The Notary can use this technology to disseminate legal documentation, legal information, and solve legal problems related to the notary profession.³ (Pandu, 2014) The government presents the notary profession to help and serve people who need authentic and written evidence regarding circumstances, events, or legal actions.

In carrying out their duties and positions, Notary is often found when providing services to the public by using publications/promotions through electronic media. Indirectly, the Notary has violated the professional notary code of ethics as stated in article 4 point (3) of the Notary Code of Ethics that in carrying out their position, the Notary is prohibited from conducting self-publication or promotion, either alone or collectively, by including their name and position, using print and/or electronic media such as advertisements. The promotion that should be carried out by a notary is only through a signpost installed around the notary office environment or a sign installed within a maximum radius of 100 meters from the notary office without including the name of the notary public.

Based on the description above, the main issues that will be presented in this study are:

1. What is the role of the Indonesian Notary Association (INI) in supervising Notary who violates the Notary code of ethics?
2. How is the legal consequence for a notary who is proven to commit violations in self-promotion through electronic media in terms of the Notary Position Law and the Notary Code of Ethics?

METHODS

This study employed a normative juridical research method that emphasized legal norms by analyzing the relevant laws and regula-

² Suhrawardi K. Lubis, 1994, *Etika Profesi Hukum*, Jakarta, Sinar Grafika, hlm. 36.

³ Yudha Pandu, 2014, *Suplemen Jabatan Notaris*, (Jakarta: Indonesia Legal Center Publishing), hal. 20-21.

tions. In this study, the researcher used two methods of approaching the problem, namely⁴: a) Statute Approach is an approach by examining all laws and regulations related to the problem (legal issue) being faced; b) Conceptual Approach is an approach that departs from the views and doctrines developed in the science of law. The type and source of legal materials are divided into primary and secondary legal materials. The technique of collecting legal materials used was a literature study obtained through inventory database directories of laws and regulations, books, journals, and others in print and electronic form. The data analysis technique in this study was to use prescriptive legal research in order to obtain arguments for the results obtained through research sources.⁵ (Nd & Achmad, 2010)

FINDING AND DISCUSSION

The role of the Indonesian Notary Association (INI) in Supervising Notary who violatethe Notary Code of Ethics

The Indonesian Notary Association (INI) in carrying out supervision has a role as implementing the Notary Code of Ethics by forming an Honorary Council which must guide, advise and supervise its members. The supervision of the Notary Code of Ethics, which is carried out by the Honorary Council, is the supervision of professional ethics to maintain agreed professional principles so this supervision can be ascertained to what the notary carries out extent work professionalism obligations in accordance with the morality of the position.

In carrying out their duties as an Honorary Council, a Notary must meet certain criteria, such as:

- a. has opened an office and has a license to practice for at least 5 years;
- b. has good morals; and
- c. does not have a history of committing violations or criminal acts.

Through the above criteria, it is hoped that the Honorary Council can carry out its duties properly and correctly. Based on Article 7 of the Amendment to the Notary Code of Ethics for the Extraordinary Congress of the Indonesian Memorandum of Understanding in Banten, the supervision of the implementation of ethics code is carried out by:

- a. the Regency/City level by Regional Administrators and Regional Honorary Councils;
- b. the provincial level by the Regional Management and the Regional Honorary Council; and
- c. the national level by the Central Executive and the Central Honorary Council.

The form of Code of Ethics enforcement carried out by the Honorary Council is by providing coaching, supervision, guidance, improvement of members in upholding the code of ethics, examining and making decisions on suspected violations of the provisions of the code of ethics internal or have no direct connection with the public interest and provide suggestions and opinions to the Supervisory Council for alleged violations of the code of ethics and the position of notary.

Other roles played by the Honorary Council are by holding (routine) meetings every 6 months in a national up-grading & refreshing event. One of the materials at the event is to add insight to Notaries based on applicable regulations, as well as the behavior of Notaries in carrying out their duties. The quality of notaries and their abilities must always be improved. Therefore, every 6 (six) months the Indonesian Notary Association (I.N.I), as the only Notary Professional organization, holds a national upgrading & refreshing. This activity aims to collect Notaries in a certain area and provide the latest information needed by Notaries in carrying out their duties. For example, after Law Number 30 of 2004 concerning the Position of Notary Public is promulgated, when the 2005 national up-grading & refreshing was held, the main thing done is the socialization of these regulations within the Notary Public so that the Notary can adjust to the new provisions in force. However, not all members or notaries are always present at these regular meetings so that coaching is not effective.

In practice, the supervision carried out by the Honorary Council to supervise Notaries is difficult to examine and apply sanctions to good morals, characters and personalities. This is because a person's personality cannot be controlled continuously, and they feel "hesitant" or "reluctant" because they have to remind their colleagues to have a good personality. Meanwhile, in implementing the Code of Ethics, the Honorary Council faces many obstacles. Constraints that are often encountered are generally because the system that has been established cannot work properly. This system does not work because of the low/lack of sanctions implementation. So far, the sanctions given have only been in the form of moral sanctions such as reprimands and warnings. For temporary dismissal (suspension), it has never even been done. From this case, it can be seen that the sanctions have not been enforced firmly because the Honorary Council feels "hesitant" or "reluctant" to impose sanctions on the dismissal of colleagues.

However, in the end, the individual notary itself can be one of the biggest supporting factors in enforcing the Notary Code of Ethics. Individual notaries must have an awareness of themselves in maintaining the nobility and character of the notary position, by optimizing the implementation of the Notary Code of Ethics can make a major contribution to fellow notaries and the authority of the organization and professional positions.

⁴ Peter Mahmud Marzuki, 2017, Penelitian Hukum, Jakarta, Kencana Preneda Media Group. hlm 130.

⁵Mukti Fajar ND dan Yulianto Achmad, 2010, Dualisme Penelitian Hukum: Normatif dan Empiris, Yogyakarta, Pustaka Pelajar. hlm 183.

Legal consequences for a notary who is proven to commit violations in self-promotion through electronic media in terms of the Notary Position Law and the Notary Code of Ethics

Notary as public officials must comply with the regulations that apply to Notary, especially UUJN and the Notary Code of Ethics. The Notary Code of Ethics and UUJN contain guidelines for notaries in carrying out their duties and positions as well as procedures for their daily behavior. If these regulations are not implemented or violated, then there will be sanctions imposed on the notary who is proven to commit the violation.

The Notary Code of Ethics contains a series of rules which are the agreement of the organization stated in the Notary Extraordinary Congress as a form of support for UUJN. Every appointed notary is obliged to take the official oath of a notary, as stated in Article 4 paragraph (2) UUJN. The current Notary Code of Ethics is a change from the code of ethics for the Extraordinary Congress of the Indonesian Notary Association which was held in Banten on 29-30 May 2015, which contains the moral principles that have been determined by the Indonesian Notary Association, hereinafter referred to as INI. All these rules must be obeyed and implemented by every member of INI and all people who carry out their duties as a notary, including temporary notary officials and substitute notaries.

In article 4 point (3) of the Notary Code of Ethics, there are rules regarding the form of notary promotion which is a violation of UUJN and the Code of Ethics, namely the notaries, in carrying out their duties, may not publish or promote themselves, either alone or collectively by including their name and position using print and/or electronic media such as advertisements, congratulations, thanks, marketing or sponsorship activities, whether in the social, religious or sports fields. This is a form of violation because it is feared that it will reduce the dignity and prestige of notaries who are public officials. In a formal manner regarding this action, if it is related to the contents of Article 4 paragraph (3) regarding the prohibition in the Notary Code of Ethics mentioned above, it is not clearly explained that it is included in the category of marketing activities, but if it is further examined and brought closer to the essence of the purpose and objective of the Notary Code of Ethics which aims to regulate the behavior of a notary as a public official who is limited by the prohibition of the Notary Code of Ethics where the contents are the attitude, behavior, and actions that may not be carried out by members of the association or other people who hold and carry out a notary office, so that it can reduce the image and authority of notary institutions as well as the overall dignity of the notary position, then regarding the actions of notaries who carry out legal opinion publication activities, provide legal information, legal counseling and so on who participate in writing information about himself as a notary public and by stating the name and address of the office, materially including in activities to carry out promotions or self-publication.

Promotion is an effort to inform or offer a product or service to attract potential customers so that these consumers use their services. The prohibition on promotion in the Notary Code of Ethics is because the notary profession is not an entrepreneur or a Business Entity Office. However, a general officer who is under the auspices of the government, therefore publications/promotions that aim to invite and or lead the public to use the services of a notary cannot be justified in notary law behavior. In addition, this publication/promotion behavior can lead to unfair competition among fellow notaries. Promotions widely hit by the public include advertising activities, personal selling, sales promotion, public relations (PR), word of mouth, direct marketing, as well as publication.⁶ (Halim, 2019)

Electronic media is a medium that can be played by various groups, with extensive coverage, both from children and adults and from several types of professions, especially notary. Notaries who do not heed UUJN regulations and the Notary Code of Ethics in advertising their services often choose electronic media so that people prefer to use their services over other notary services in their respective areas of the office. The use of electronic media by notaries in advertising their services can qualify as a violation of the notary's code of ethics.

Generally, a violation is a criminal act which, if seen in quality, has a low level of crime so that the general violation can be resolved based on administrative law or internal settlement if it occurs in an organization, association or agency. The responsibility of a notary who is proven to commit a violation and as long as the violation is known, the Regional Supervisory Council will summon the notary. The Regional Supervisory Council will immediately make a summons to warn that the notary has violated the applicable Notary Code of Ethics. The summons is made to confirm whether the action is intentional or negligent. As for the enforcement of the Notary Code of Ethics, it is enforced by the Notary Honorary Council, hereinafter referred to as DKD, which has been given the authority to examine violations of the code of ethics and impose sanctions on violators based on their respective authorities. The regulation regarding the supervision of the implementation of the code of ethics is in Article 23 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures, and Procedures for Examination of the Notary Supervisory Council.

The supervision of the notary behavior related to the Notary Code of Ethics is assigned to the DKD in which the notary is domiciled, if the DKD gets a report regarding the behavior of a notary who violates the Notary Code of Ethics, the DKD will first issue a

⁶ Ronald Halim, et al, 2019, Penawaran Jasa Notaris Melalui Website, Riau Law jurnal Vol. 3 No. 2, hlm. 268.

verbal warning. If the reprimand is not heeded, the matter is transferred to the Regional Supervisory Council within the notary's domiciled area. The Regional Supervisory Council will first give a verbal warning to the notary public, if it is not heeded, the Notary Supervisory Council will provide a written warning to hear the reasons from the notary. If there is no complaint, the regulations will only be empty words.

The DKD has the task of being an executive, supervisor, handling notary members of the notary code of ethics. At the first level, the DKD will give a warning to a notary who is reported to have violated the provisions of the code of ethics and/or organizational discipline. If the notary ignores this warning, then the DKD will then hold a meeting attended or not attended by the regional management of the organization. The results of the decisions obtained must be written in the form of an official report for later meeting to determine the sanctions to be applied. If the notary is still ignorant, the DKD will give a warning and recommendation to the Regional Supervisory Council for alleged violations of the notary code of ethics. DKD, in this case, does not have an obligation to provide a report from the minutes of examination to the MPD, if the problems occurred are deemed able to be resolved internally.

The notary violations are then examined and followed up by the Regional Supervisory Council. Reporting of complaints is made in writing to the chairman of the Regional Supervisory Council in the area of the notary who carries out their position in accordance with the area of their position assisted by the secretary of the Regional Supervisory Council. The Regional Supervisory Council follows up on the report and holds a meeting to gather evidence that the notary has committed a violation and summons the notary concerned to be present at the hearing and their statement heard. Then, the Regional Supervisory Council makes an examination report based on the results of the session at the meeting, and it is notified to the Regional Supervisory Council.

A notary who is proven to commit a violation will receive the following sanctions, namely:

- a. Moral sanction, this sanction is in the form of shame because fellow notaries will isolate and discuss the notary who is proven to commit the violation; and
- b. Juridical sanction, the notary will be given a sentence from the Regional Supervisory Council in a stratified form, including:
 1. Verbal warning;
 2. Written warning;
 3. Suspension; and
 4. Dismissed/fired.

The legal consequences of a notary who is proven to commit a violation the Notary Code of Ethics is carried out self-promotion through electronic media. The Regional Honor Council coordinates with the Regional Supervisory Council which is authorized to supervise and examine the violation and may impose sanctions on the violator. In this case, the supervision carried out by the Regional Supervisory Council is not only in carrying out the duties of a notary office so that it is in accordance with the provisions of UUJN, but also the Notary Code of Ethics and the behavior of notaries that can damage the dignity of the notary office under the supervision of the Supervisory Council as regulated in Article 67 paragraph (5) UUJN.⁷(Adjie, 2010)

Philipus M. Hadjon argued that sanction is a tool of public law power and is used by the authorities as a reaction to non-compliance with administrative law norms. The elements in the sanction consist of⁸(M. Hadjon, 1996):

- a. As a tool of power;
- b. Public law;
- c. Used by rulers; and
- d. As a reaction to non-compliance.

Sanction is an important closing part of the law, and every rule of law that applies in Indonesia there is always a sanction at the end of the rule of law. Fostering sanctions in Indonesia does not only exist in the form of laws but can take the form of other regulations, such as ministerial decrees or other forms under the law. The inclusion of sanctions in the various legal rules such as obligations must be included in each legal rule as if the relevant legal rule is toothless or cannot be enforced or will not be obeyed if the end does not include sanctions. There is no point in implementing legal principles when those rules are procedurally (procedural law).

A notary who commits violations may be subject to sanctions such as ethical sanctions because the scope of the code of ethics is in the domain of the organization, so they cannot be subject to legal sanctions such as if a notary has been proven to commit a violation the UUJN, where the application of sanctions can be in the form of admonitions, warnings, temporary dismissal, honor or disrespectful dismissal of association membership.

CONCLUSION

The role of the Indonesian Notary Association (INI) in conducting supervision, namely by forming an Honorary Council which

⁷Habib Adjie, 2010, *Hukum Notaris Indonesia Tafsir Tematik Terhadap Undang-Undang No 30 Tahun 2004 Tentang Notaris*, Surabaya, Refika Aditama, hlm. 18.

⁸Philipus M. Hadjon, "Penegakan Hukum Administrasi Dalam Kaitannya Dengan Ketentuan Pasal 20 Ayat (3) Dan (4) UU No. 4 Tahun 1982 Tentang Ketentuan-Ketentuan Pokok Pengelolaan Lingkungan Hidup", *Yuridika, Fakultas Hukum Universitas Airlangga*, No. 1 Tahun XI, Januari-Februari 1996, hlm. 1

must guide, advise and supervise its members. Other roles played by the Honorary Council are by holding (routine) meetings every 6 months in a national up-grading & refreshing event. However, the notary itself is one of the biggest supporting factors for enforcing the Notary Code of Ethics. Individual notaries must have an awareness of themselves in maintaining the nobility and character of the notary office, by optimizing the implementation of the Notary Code of Ethics can make a major contribution to fellow notaries and the authority of the organization and professional positions.

The Regional Honorary Council coordinates with the Regional Supervisory Council which is authorized to supervise and examine the violation and may impose sanctions on the violator. In this case, the supervision carried out by the Regional Supervisory Council is not only in carrying out the duties of a notary office so that it is in accordance with the provisions of UUJN, but also the Notary Code of Ethics and the behavior of a notary that can damage the dignity of the notary office under the supervision of the Supervisory Council as regulated in Article 67 paragraph (5) UUJN. The legal consequence of a Notary who has been proven to commit a violation may be subject to sanctions such as ethical sanctions. The scope of the code of ethics for notaries is very diverse, and the sanctions for violations include the organizational domain, so they cannot be subject to legal sanctions if a notary has been proven to have violated the UUJN. The imposition of sanctions can be such as admonitions, warnings, temporary dismissal, honorific dismissal or disrespectful dismissal of association membership.

During the period of notary education, it would be better not only to provide technical skills but also to inculcate professional and ethical responsibilities. Thus, when a prospective notary public becomes a notary, it does not make the person who is a notary profession run wild. This is because he/she is unable to carry out his profession professionally. In the end, it can cause enormous losses towards the legal profession as a whole. Lawmakers and the Notary Code of Ethics should be more explicit about the sanctions that can be applied if a notary has been proven to commit a violation.

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