

## Notary Responsibility for Violations & Prohibitions in Connecting Its Position in Related with Notary Code of Conduct

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**Abstract.** *For Notaries who do not carry out their obligations as determined by the laws and regulations, the Notary concerned must face the Assembly. Notary Supervisor. In general, the Notary Supervisory Council has the scope of authority to hold sessions to examine any suspected violations of the Notary's Code of Ethics or violations of the implementation of office. Purpose of research it's to Know Responsibilities of Notaries against Violation of the Notary Code of Ethics. The method used in this research is sociological juridical method, the specification in this research is descriptive analytic, the data used are primary data and secondary data, using data collection by interview and literature study, qualitative data analysis, problems analyzed by theory, law enforcement and legal certainty. The results of this study indicate that It is possible for a notary to be included in an illegal act because if there is an element of detrimental to other parties and the loss has a causal relationship between the Notary as the deed maker and the parties entrusting their act to the Notary. Violation of the notary code of ethics can occur due to negligence of responsibility, this is usually the most frequent occurrence. In addition, it could also be due to the absence of strict sanctions and a lot of side with the notary position. The Notary Supervisory Council (MPN) as a body that is trusted to supervise Notaries in their behavior, is considered to have not given any firm action so that the Notary is deterred or afraid of committing violations that have been regulated by existing regulations, this can be an indicator of the occurrence of violations by a Notary.*

*Keywords: Notary Responsibilities; Code of Ethics; Professional.*

### 1. Introduction

Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in this Law or based on other Laws. Notaries have a very important role in legal traffic, especially in the field of civil law, because Notaries have the status of public officials, who have the authority to make authentic deeds and other powers.<sup>1</sup>

Notary is a noble profession or it is called the nobile officium because the notary profession is closely related to humanity.<sup>2</sup>In carrying out their profession, notaries must

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<sup>1</sup> Salim, H.S. (2015). *Teknik Pembuatan Akta Satu Konsep Teoritis, Kewenangan Notaris, Bentuk dan Minuta Akta*. Jakarta: PT Rajagrafindo Persada p.33.

<sup>2</sup> Anshori, Abdul Ghofur. (2009). *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*. Yogyakarta : UII Press. p. 25

act professionally. The term public official is a legal status that is given to a person so that he is legitimate as an official in carrying out legal actions. Status as a public official determines the nature and value of a deed. The nature of the deed made by a notary as a public official is an authentic deed which has perfect evidentiary value. The existence of the Notary deed becomes the legal basis for the status of property, and also becomes the basis for the emergence of rights and obligations for the party who made the deed, so that if there is an error on the Notary deed it can cause someone's rights to be revoked or someone's burden of an obligation, and the result of the mistake will be detrimental to the party that binds itself to the deed.<sup>3</sup>

Article 1 number 1 in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN-P), expressly gives authority to Notaries to make authentic deeds. The term authentic deed in English is called authentic deed, while in Dutch it is called *authentieke akte van*, which has been regulated in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) and various other statutory regulations.<sup>4</sup>

Article 1868 of the Civil Code, states that an authentic deed is a deed which is in the form prescribed by law, made by and before a general official who has power for it at the place where the deed was made.<sup>4</sup> If Article 1868 of the Civil Code is connected with the provisions contained in Article 165 of the HIR, the meaning becomes more complete, namely: "An authentic deed, namely a deed made by or in front of an official who is authorized to do so, constitutes complete evidence between the party and their heirs and those who get the right about what is stated in it and also what is contained therein as mere notification, but the latter is only so long as what is notified is closely related to the subject of the deed. "

Authentic deeds are given by the parties along with their heirs or people who get rights from them, a perfect proof of what is contained therein. The sound of this article is identical to the provisions in Article 165 HIR. Then Article 1869 of the Civil Code determines the limits of a Notary deed that has the power of proof as an underhand deed can occur if it does not meet the provisions because:

1. The public official concerned is not authorized, or
2. The inability of the public officials concerned, or
3. Defect in its form, however, the deed still has the power of proof as an underhand deed if the deed is signed by the parties.

Notary as a public official appointed by the government, and the government as an organ of the State appoints a Notary not only for the benefit of the notary itself, but also for the benefit of the wider community. The services provided by the Notary are closely related to the issue of trust (trust between the parties), meaning that the State gives great trust to the Notary.

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<sup>3</sup>Tan Thong Kie. (2007). *Studi Notariat dan Serba-Serbi Praktek Notaris*. Jakarta : PT. Ichtiar Baru van Hoeve. p. 449

<sup>4</sup> Ibid, p. 17

Article 1 number 1 of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN-P) states that Notaries are public officials who have the authority to make authentic deeds and have other powers as referred to in the Law. -this law or based on other laws.

The authority of a Notary based on Article 15 of the UUJN-P is to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or those desired by those with an interest to be stated in authentic deeds, guaranteeing the certainty of the deed making date, keeping the deed, provide grosse, copies and excerpts of deeds, all of which as long as the deed is made or not assigned or excluded to other officials or other persons stipulated by the Law invite. In addition to authority, notaries also have obligations including provisions

Article 16 paragraph (1) letter a UUJN-P requires that every Notary Public must be trustworthy, honest, thorough, independent, impartial and safeguard the interests of parties involved in legal actions. The provisions in Article 3 point 4 of the Notary Code of Ethics also determine the obligations of Notaries in carrying out their positions, namely Notaries must behave honestly, independently, impartially, trustworthy, carefully, full of responsibility, based on statutory regulations and the contents of the notary's oath of office.

The Preamble of the Results of the Extraordinary Congress of the Indonesian Notary Association, Bandung January 27, 2005, re-explained the obligations for the Notary, that the Notary as a public official and one of the elements of a legal servant, is obliged to participate in upholding the law according to his profession, by contributing energy and thoughts and carrying out his duties with trustworthiness, honesty, thoroughness, independence and impartiality.

If the notary does not comply with the provisions referred to in the regulation in question, it is possible for losses to the parties or other parties who have an interest in it. After being appointed as a Notary Public, the Notary Public must comply with the rules determined by the only Notary Public Association, namely the Indonesian Notary Public Association.

Article 82 UUJN-P, stipulates that every Notary is obliged to assemble in one Notary organization. The container for Notary Public Organization as referred to is the Indonesian Notary Association. The Indonesian Notary Association is an organization in the form of an association which is a legal entity as the only organization for notary office for every Notary throughout Indonesia, with the aspiration to maintain and foster the dignity and position of a Notary.<sup>5</sup> Every organization, can be sure has rules that must be obeyed and implemented by every member. No exception in the Notary profession organization, in its position as a member of the Indonesian Notary Association. If in carrying out his duties and positions, the Notary has violated the Law,

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<sup>5</sup> The Preamble Section of the Articles of Association, Results of the Extraordinary Congress of the Indonesian Notary Association, Bandung January 27, 2005

then automatically the Notary also violates the provisions contained in the Notary's Code of Ethics.<sup>6</sup>

Ethics in a profession are arranged in a Code of Ethics. Thus, the Code of Ethics in a profession is closely related to human social values which are limited by norms that regulate the attitudes and behavior of humans themselves, so that there is a balance of their respective interests in society. So norms are rules or rules used to judge something. There are at least three kinds of social norms that become guidelines for humans to behave in society, namely norms of decency or etiquette, legal norms and moral or ethical norms.

Ethics or manners contain norms that tell us what to do. In addition, both ethics and etiquette regulate human behavior normatively, meaning that it provides norms for human behavior. Thus they both state what to do and what not to do.

The Indonesian Notary Association has a body tasked with enforcing a code of ethics, namely the Notary Honorary Council. The Honorary Council represents the Association in terms of coaching, monitoring and imposing sanctions in enforcing the Notary Code of Ethics. Sanctions referred to for violations committed by a Notary based on the Notary Code of Ethics are:

1. Warning
2. Carefull
3. *Schorsing* (temporary dismissal) from association membership
4. *Onzetting* (dismissal) from membership
5. Disrespectful dismissal of association members.

Supervision, examination and imposition of sanctions on Notaries prior to the enactment of the Law on Notary Position shall be carried out by the existing judiciary. Then the supervision of Notaries is carried out by the General Courts and the Supreme Court as stated in Articles 32 and 54 of Act No. 13 of 1965 concerning Courts within the General Court and the Supreme Court. Then a Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 1984 concerning Procedures for Supervision, Education, and Self-Defense of Notaries, and finally in Article 54 of Act No. 8 of 2004.<sup>7</sup>

The Law on Notary Position, provides an explanation that in relation to the supervision of all Notary members in carrying out their positions, it is carried out by the Minister, then the Minister forms an institution called the Notary Supervisory Council. Based on Article 1 point 6 UUJN-P, the Notary Supervisory Council is defined as "The Notary Supervisory Council is a body that has the authority and obligation to carry out guidance and supervision of Notaries." The supervision referred to is regarding the implementation of office and enforcement of the Notary's code of ethics. Based on

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<sup>6</sup> Delivered by Musthofa, in the Notary Code of Ethics Exam Training event held by the UII Notary Master Study Program, March 12, 2017, at the UII FH Postgraduate Building at 08.00 WIB

<sup>7</sup> Habib Adjie. (2013). *Saksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung: Refika Aditama. p. 137.

Article 68 UUJN-P, the Notary Supervisory Council consists of the Regional Supervisory Council, the Regional Supervisory Council, the Central Supervisory Council.

In its implementation, there is a Notary who does not carry out the obligations as determined by the laws and regulations, so the Notary concerned must face the Assembly. Notary Supervisor. In general, the Notary Supervisory Council has the scope of authority to hold hearings to examine suspected violations of the Notary Code of Ethics or violations of the implementation of office. Notaries have a big responsibility to the public so that the interests of the community must be guaranteed by the supervision and guidance of the Notary in exercising this authority. The purpose of such supervision is so that the Notary is serious in fulfilling the existing regulations in carrying out his/her position and also carries out his duties in accordance with the applicable provisions in order to protect the interests of the public who use the Notary's services.<sup>8</sup>

Notaries, in carrying out their duties to serve the interests of society, should maintain their dignity. Tan Thong Kie stated that there is a habit among notaries who no longer read the deed so that the deed becomes an underhand deed.<sup>9</sup> In the notary deed it states that the deed "has been read by me, Notary", even though he has never read it.

This act was deed forgery. Moreover, many Notaries allow the parties to sign the deed in front of their assistants, so that the Notary's statement "has dealt with the applicants" is also doubtful. Whereas by not reading the deed and not seeing who signed the deed, a notary who does so reduces the dignity of his position and noble work.<sup>10</sup> Based on the author's research, there are many cases of Notaries whose parties do not sign in front of them at the same time the Notary does not read the deed in front of them, only a few reported/followed up.<sup>11</sup> In addition to the above violations committed by the Notary against the Code of Ethics, Fitrizki Utami in his dissertation at Hasanuddin University found several forms of notary profession, including clients not signing before the Notary, a reduction in tariffs, not reading the deed, wrong in giving legal action, carrying out tasks outside the work area, using intermediary services and badmouthing fellow Notaries.

Such practice actually not only violates the notary's oath of office, but can even be categorized as a Notary who is not in good faith and deliberately wants to make a false deed, which leads to criminal acts and can be brought to court, but in reality it is difficult to do because generally people who requires the services of a Notary who is ignorant and does not care about these practices.

The Notary Supervisory Council should increase its role in providing guidance to Notaries and imposing sanctions on Notaries who commit violations, both violations of

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<sup>8</sup> Winanto Wiryomartani, Duties and Authorities of the Notary Supervisory Council, Paper presented at the Indonesian Notary Association Congress in Makassar, South Sulawesi, 13-16 July 2005

<sup>9</sup>Op. Cit.Tan Thong Kie, p. 634.

<sup>10</sup> Endang Purwaningsih, Forms of Notary Law Violations in Banten Province and Law Enforcement, Journal, Business Law, Faculty of Law, YARSI Jakarta, 2014.

<sup>11</sup> Ibid

the code of ethics, as well as violations in the implementation of their positions. Starting from verbal, written warning sanctions, temporary dismissal to disrespectful dismissal proposed to the minister with due observance to the position of a Notary Public<sup>12</sup>

Notary who does not maintain and implement the provisions in the code of ethics or in the Law on the Position of Notary, then it is possible for other violations, namely the Notary Public makes a copy of the deed that is not in accordance with the minimum deed, the Notary does not read out the deed in front of the audience in the presence of witnesses at least 2 witnesses and signed directly (on the spot) by the parties. With the violation committed by the notary, then it will cause losses for others. Based on the description above, there are problems regarding the provisions of responsibilities for Notaries in carrying out their duties, which are related to Occupational Violations and Code of Conduct Violations, this is closely related to the aspect of accountability in carrying out their duties.

## **2. Research methods**

The approach method used in this study is a sociological juridical approach. Sociological juridical approach is an approach that is based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research.

## **3. Result and Discussion**

### **3.1. Responsibility Notary Response against Violation of Notary Code of Ethics**

One of the obligations of the state is to provide and guarantee a sense of legal certainty for members of its society. In carrying out these state obligations, the state, among others, gives an attributive authority to the Notary as a general official to carry out some of the public functions of the state, namely specifically in the field of civil law in making written evidence in the form of authentic deeds. The notary is authorized to make authentic deeds regarding all actions, agreements, and stipulations required by the laws and regulations and/or that the interested party wants to be stated in the authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, provides grosse, copies and excerpts of the deed, all of this as long as the making of the deed is not assigned or exempted from other officials or other people stipulated by law. In addition to these powers, Notaries also have other powers granted by Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN) and also other powers regulated in other laws. The extent of authority granted to Notaries results in the need for supervision so that Notaries can continue to carry out their positions properly and improve legal services and protection for the public who use Notary services. Notaries also have other powers granted by Act No. 2 of 2014 concerning Amendments to Act

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<sup>12</sup> Tinnike, Violation of Notary Position Implementation Regarding Deed of Statement Based on Evidence in the Form of Photocopy of Letter, Thesis, Master of Notary, Faculty of Law, University of Indonesia, 2012, p. 8.

No. 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN) as well as other powers regulated in other laws. The extent of authority granted to Notaries results in the need for supervision so that Notaries can continue to carry out their positions properly and improve legal services and protection for the public who use Notary services. Notaries also have other powers granted by Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN) as well as other powers regulated in other laws. The extent of authority granted to Notaries results in the need for supervision so that Notaries can continue to carry out their positions properly and improve legal services and protection for the public who use Notary services.

UUJN stipulates that the Minister shall exercise oversight which is given in the form of legislative delegation to the Minister to form a Notary Supervisory Council. The delegation of authority is carried out by means of a Ministerial decree to his senior official, namely the Director General or the Head of the Regional Office to sign on behalf of the Minister to form a Supervisory Council.<sup>13</sup> Supervision carried out by the Notary Supervisory Council is carried out based on UUJN and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 40 of 2015 concerning Organizational Structure, Procedures for Appointing Members, Dismissing Members, and Working Procedures of the Supervisory Council.

Article 1 point 4 Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 40 of 2015 concerning Organizational Structure, Procedures for Appointment of Members, Dismissal of Members, and Work Procedures of the Supervisory Council explains that Supervision is an activity that is preventive and curative in nature including coaching activities carried out by Board of Supervisors for Notaries. Activities that are preventive and curative in nature can mean that supervision is carried out by taking precautions and fostering Notaries. The supervisory action is aimed at safeguarding the Notary in carrying out his/her position in order to maintain the dignity of the Notary. The membership of the Notary Supervisory Council is 9 (nine) people consisting of 3 (three) government elements.<sup>3</sup>

In carrying out its duties, the Notary Supervisory Council consists of three tiered assemblies, namely the Regional Supervisory Council (MPD), which is formed and domiciled at the Regency or City level, the Regional Supervisory Council (MPW), which is formed and domiciled at the Provincial level, and the Central Supervisory Council (MPP). ), which is formed and domiciled at the level of the State Capital.<sup>4</sup> The existence of a position as a Notary is very important and needed by the wider community, considering that the function of a Notary is as a General Officer who makes written evidence in the form of an authentic deed. An authentic deed or letter can be said to be the most perfect evidence. Deeds made by a notary can serve as a legal basis for the status of a person's property, rights and obligations, an error in a notary's deed can result in the loss of one's rights or the burden of a person on an obligation.

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<sup>13</sup> Sjaifurrachman and Habib Adjie. (2011). *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta*. Bandung: Mandar Maju. p. 245

Notaries in carrying out their duties and positions must always be guided by UUJN and the Notary Code of Ethics. The term ethics is formed from two Latin words, mores and ethos which are combined as a series of societal politeness and human morals. Etymologically, ethics is defined as the same as morals in the form of values and norms that are used by humans or groups in regulating their behavior. When carrying out their positions, Notaries must adhere to the Notary Code of Ethics.

Professional responsibility arises from the obligations and authorities granted to Notaries, especially in terms of making deeds, in which these obligations and authorities are legally and bound to come into force since the Notary pronounces his oath of office as Notary. In connection with making deeds, a notary is required to:<sup>14</sup>

1. Doing deed properly and correctly. This means that the deed that is made fulfills the legal will and requests of the parties concerned because of their position. This is in accordance with the oath of office of a notary in Article 4 paragraph 2 UUJN which requires that in carrying out its duties, notaries must be mandated. What is the will of the parties must be stated in the deed as long as it does not conflict with the law.
2. Produce a quality deed. This means that the deed made is in accordance with the rule of law and the will of the parties concerned in the true meaning, not making it up. One of the good quality deeds is by fulfilling the provisions regarding the form of deed stipulated in Article 38 of the UUJN and of course by following other legal provisions relating to legal acts set forth in the deed. The notary must also explain to interested parties the accuracy of the contents and procedures of the deed he has drawn up;
3. It has a positive impact, meaning that anyone will acknowledge that the Notary deed has perfect evidentiary power. In the Law on the Position of Notary Public, it has been determined that there are provisions which, if these provisions are violated, will result in the deed being made losing its perfect proof. Therefore, a Notary or holder of a Notary's position has the responsibility to ensure that the deed has perfect evidentiary power, namely by following the applicable legal rules both in the Law on Notary Position and other legal rules.
4. Basically the law that has been chosen as a means to regulate the life of the community, state and nation in the form of statutory regulations through the state apparatus, it is necessary to follow up efforts to implement the law properly in accordance with the stipulated provisions. Here we have entered into the field of law enforcement. In this case, it is necessary to pay attention to the components contained in the legal system, namely the structure of substance and culture.<sup>15</sup>

Regarding law enforcement, Soerjono Soekanto said that law enforcement as a process is essentially an application of discretion concerning making decisions that are not strictly regulated by legal principles, but have an element of personal judgment.

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<sup>14</sup> Anshori, *Lembaga Kenotariatan Indonesia*, p. 49

<sup>15</sup> Duane R. Monete, Thomas J. Sulvian, Cornel R. Dejong. (1986). *Applied Social Research*, New York, Chicago, san Fransisco, Holt. p. 27.



Defined by Roscoe Pound, that in essence discretion is between law and morals (ethics in the narrow sense).<sup>16</sup> Furthermore, according to Soerjono Soekanto, law enforcement is an activity to harmonize the relationship of values that are outlined in principles, solid views embodying them in attitude, acting as a series of defining the final stage of values to create social peace.<sup>17</sup>

According to Soerjono Soekanto, there are 5 factors that influence law enforcement, namely:

1. The legal factor itself, which in this paper will be limited to law only.
2. Law enforcement factors, namely the parties who form or implement the law.
3. Factor of means or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity, and taste based on human initiative in social life.<sup>18</sup> The five factors are closely related, because they are the essence of law enforcement, and are also a measure of the effectiveness of law enforcement.<sup>19</sup>

The above means that law enforcement in the implementation of the code of ethics is defined as the process of embodying ideas, values, which are contained in the code of conduct itself as law in the organization itself, especially by the Notary Supervisory Council in Padang City. The need for legal management requires a forum called an organization and its bureaucracy. In an increasingly complex society, the presence of organizations to manage all the necessities of life is very prominent. To be able to carry out its duties, the organization is required to realize the objectives of the law by having a certain degree of autonomy. This autonomy is needed to be able to manage the available resources in order to achieve organizational goals.<sup>20</sup>

Civil notary responsibility for the deed he makes. The juridical construction used in civil liability for the correctness of the material on the deed made by a notary is a construction of an illegal act. Acts against the law have a wide range so that if there is an element of detrimental to other parties and the loss has a causal relationship so it can be included in illegal acts. Losses suffered by the victim must really be the result of an act committed by the perpetrator and not the result of another act.<sup>21</sup>

A notary may be included in an illegal act because if there is an element of detrimental to other parties and the loss has a causal relationship between the Notary as the deed maker and the parties entrusting their act to the Notary. For his actions, the Notary may be allowed to commit acts against the law against Article 1365 of the Civil Code states that every act of violating the law, which brings harm to another person, obliges the person who due to his wrongdoing to issue the loss, to compensate the loss.

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<sup>16</sup> Soerjono Soekanto. (2004). *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Press. p. 4.

<sup>17</sup> Ibid p. 5

<sup>18</sup> Ibid p. 7

<sup>19</sup> Ibid p. 8

<sup>20</sup> Abdul Ghofur Anshori, Op. Cit, p. 177-178

<sup>21</sup> Rosa Agustina, et.al. (2012). *Hukum Perikatan (Law of Obligations)*. Denpasar: Pustaka Larasan. p. 11

Article 1366 of the Civil Code states that every person is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness. Notary who commits a violation due to negligence by violating the notary code of ethics. The element of unlawful acts committed by a notary is sufficiently proven by the existence of behavior or actions that are contrary to the articles stipulated in the Law on Notary Position, namely Article 16 paragraph (1) letter a UUJN, due to not acting trustworthy, dishonest, inaccurate, taking sides and not safeguarding the interests of related parties in legal actions and violating the oath of office of a Notary in Article 4 paragraph (2) UUJN, so that the legal consequences that can be received by the Notary on a civil basis are by compensating for such losses.

It is the same as Sjaifurrachman's view that civil sanctions are sanctions imposed for mistakes that occur due to default, or unlawful acts (*onrechtmatigedaad*). These sanctions in the form of reimbursement of expenses, compensation and interest are the result that will be received by the notary from the lawsuit of the parties if the deed only has evidence as a deed under hand or the deed is null and void by law<sup>22</sup>

Every criminal act contained in the Criminal Code can generally be translated into elements consisting of subjective elements and objective elements. Subjective elements are elements that are attached to the doer or associated with the doer, and include everything that is contained in his heart. Meanwhile, the objective element is the elements which have to do with conditions, that is, under which circumstances the actions of the doer must be carried out.<sup>23</sup> The subjective elements of a criminal act are:

1. Deliberate or unintentional (*Dolus* or *Culpa*);
2. Purpose or *Voornemen* in an experiment or *pogging* as referred to in Article 53 paragraph 1 of the Criminal Code;
3. Various types of purposes or brands such as those contained in, for example, in crimes of theft, fraud, extortion, forgery and others;
4. Planning in advance or *voorbedachte raad* as contained in the crime of murder under Article 340 of the Criminal Code;
5. Feelings of fear, which are found in the formulation of a criminal act according to Article 308 of the Criminal Code.

The objective elements of a criminal act are the nature of breaking the law or *wederrechtelijckheid* and the quality of the perpetrator. That way, the Notary who commits the violation has fulfilled the elements in the subjective element. Article 378 of the Criminal Code can prosecute criminal acts committed by a notary as a public official who has the authority to make a deed regarding fraudulent acts, namely, anyone who with the intention of unlawfully benefiting himself or another person, uses a false name or fake dignity, with trickery, or a series of lies, stirring up other people to

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<sup>22</sup> Sjaifurrachman and Habib Adjie. (2011). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Bandung: Mandar Maju. p. 195

<sup>23</sup> P.A.F. Lamintang. (1997). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: PT. Citra Aditya Bakti. p.193

hand over something to him, or to give a debt or write off a loan, shall be punished for fraud with a maximum imprisonment of four years.

Violations committed by a Notary in carrying out his/her position will result in sanctions that will be accepted. Sanctions are a means of coercion, in addition to punishment, they are also to obey the provisions stipulated in regulations or agreements. Sanctions are also defined as a means of coercion as punishment for not obeying the agreement. Sanctions are an important closing part of law, and every rule of law that applies in Indonesia there is always a sanction at the end of the rule of law.<sup>24</sup>

### 3.2. Providing Ethical Sanctions against Violations and Prohibitions by Notaries

In this case, the Reported Party, a Notary Public, has been reported by the reporter, namely one of the users of the notary services for the making of the deed of power to sell where the parties did not sign the deed before the reported. The aggrieved parties then reported this case to the Notary Honorary Council with a letter addressed to the Regional Notary Supervisory Council of Tangerang-City of Tangsel on the case that the reported party did not act honestly, thoroughly, independently, took sides and protected the interests of the parties involved in legal actions, apart the reported party makes a copy of the deed that is not in accordance with the minimum deed,

The Regional Notary Supervisory Council of Banten Province has conducted an examination on March 3, 2010 as outlined in the examination report Number W29/T.Pem/Not 3/2010/MPW Notary of Banten Province which states as follows:

1. In the hearing on January 26, 2010 which was attended by the reported, the Notary District Audit Board of Banten Province in conducting an examination of the reported and the report files from the Reporting's attorney found the facts that the Reported Party had made a power of attorney to sell where the parties either the power of attorney or the recipient of power of attorney did not. signed the deed before the Reported Party;
2. the reported party did not act honestly, thoroughly, independently, took sides and safeguarded the interests of parties involved in legal proceedings (article 16 paragraph (1) letter A);
3. The reported party makes a copy of the deed that is not in accordance with the minimum deed;
4. The reported party did not read out the deed in front of the tappers in the presence of at least 2 (two) witnesses and it was signed at that time by the tappers;
5. The actions of the reported party have resulted in other people's losses in the form of transfer of rights to land and buildings.

The Banten Province Notary Inspection Council regarding the above examination, has submitted a letter to the Chairman of the Notary Public Supervisory Council

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<sup>24</sup> Habib Adjie. (2009). *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung : Refika Aditama. p. 89

W29/T.Pem/Not 3/2010/MPW Notary of Banten Province dated March 12, 2010 as outlined in the Decree of the Chairman of the Banten Province Notary Regional Council March 3, 2010, when the letter of the break-up reads, decided:

1. Declare that the reported party has violated the provisions of Article 16 paragraph (1) letter a, c and 1 of Act No. 30 of 2004 concerning the Position of a Notary
2. The regional supervisory council agreed that for violations as referred to in point 1, it is necessary to impose sanctions on the reported party in the form of a temporary suspension of 3 (three) months.
3. Propose to the Central Supervisory Council that the Reported Party be sanctioned in the form of a temporary suspension of 3 (three) months.

The Regional Notary Supervisory Council of Banten Province in deciding to have a clause, namely;

1. In accordance with the provisions of Article 33 paragraph (1) 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, stipulates that the Reporting Party and or the Reported Party who has objections to the Regional Inspection Council Decision shall have the right to file an appeal against the Central Supervisory Council.
2. Regarding the decision of the Banten Province Notary District Inspector Council Number W29/T.Pem/Not 3/2010/MPW Notary Banten Province dated March 3, 2010, the notary Central Supervisory Council through its letter Number C-MPPN.09.10-61 dated September 16 2010 Appeal law addressed to the Banten Province Notary Supervisory Council;
3. Regarding the letter of the Notary Central Board of Supervisors Number C-MPPN.09.10-61 dated September 16, 2010 regarding the Legal Remedies for the appeal of the Banten Province Notary District Audit Board to provide information through a certificate number W29/Not.41/2010/MPW dated 24 September 2010 that the Reported Party ( Notary Ratna Wijayanti, SH) and Reporting Party (Ineke Widjaja/Heru Susanto, SH and colleagues) did not file an appeal against the Decision of the Banten Provincial Notary Council Number W29/PTSN/Not 05/2010/MPW Notary of Banten Province dated March 3, 2010 concerning proposal to impose sanctions on notaries;
4. In accordance with the provisions of Article 73 paragraph (1) letter f, Act No. 30 of 2004 concerning the Position of Notary Public states that the Regional Notary Supervisory Council has the authority to propose to impose sanctions on Notaries to the Notary Central Supervisory Council in the form of a temporary suspension of 3 (three) months to 6 (six) months or dishonorable discharge;

5. Based on the provisions of Article 77 letters c and d Act No. 30 of 2004 concerning Notary Position, which states that the notary central supervisory board has the authority to impose sanctions on disrespectful dismissal of notaries.

Article 35 paragraph (1) 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, states that the Council The Central Examiner can strengthen, change or cancel the District Inspector Council Decision and send it himself.

In connection with the provisions of Article 79 of Act No. 30 of 2004 concerning Notary Office, it is stated that the Central Pegawai Council is obliged to convey the decision as referred to in Article 77 to the Minister of Law and Human Rights of the Republic of Indonesia. Based on the letter of the Chairman of the Regional Notary Supervisory Council of Tangerang Regency and South Tangerang City Number 218/MPD/Kab.Tgr-Kota Tangsel/XI/2010 dated November 29, 2010 regarding the Appointment of a Substitute Notary Protocol that proposed Esti Yulianty, SH Notary of South Tangerang City as the Protocol holder Ratna Wijayanti, SH Notary for the City of Tangerang Regency and the City of South Tangerang as long as the person concerned has been temporarily suspended from his position as Notary. On the basis of the violation, based on the results of the examination of the Notary concerned and the violation of article 16 paragraph (1) letters a, c and l of Act No. 30 of 2004 concerning the position of a Notary, the Banten Province Regional Supervisory Council gave a temporary dismissal of 3 (three) months as administrative sanction for notaries. As long as the notary concerned is temporarily suspended and proposes to the Notary Center Supervisory panel for the notary concerned to be temporarily suspended for 3 (three) months. In this case Majelsin, the Regional Superintendent of Banten Province, has provided legal certainty in violating the notary code of ethics The Banten Province Regional Supervisory Council provides a temporary suspension of 3 (three) months as an administrative sanction for notaries. As long as the notary concerned is temporarily suspended and proposes to the Notary Center Supervisory panel for the notary concerned to be temporarily suspended for 3 (three) months. In this case Majelsin, the Regional Superintendent of Banten Province, has provided legal certainty in violating the notary code of ethics The Banten Province Regional Supervisory Council provides a temporary suspension of 3 (three) months as an administrative sanction for notaries. As long as the notary concerned is temporarily suspended and proposes to the Notary Center Supervisory panel for the notary concerned to be temporarily suspended for 3 (three) months. In this case Majelsin, the Regional Superintendent of Banten Province, has provided legal certainty in violating the notary code of ethics

Legal certainty according to JanMichiel Otto defines it as the possibility that in certain situations:

1. There are rules that are clear (clear), consistent and easy to obtain, issued by and recognized because of the (power) of the country.

2. The ruling (government) agencies apply these legal rules consistently and also submit to and obey them.
3. In principle, citizens adjust their behavior to these rules.
4. Judges (judiciary) who are independent and do not think consistently apply these legal rules when they resolve legal disputes.
5. Concrete judicial decisions are implemented.<sup>25</sup>

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be carried out in a proper manner. Legal certainty requires efforts to regulate law in legislation made by an authorized and authoritative party, so that the rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.<sup>26</sup>

In this case, the Notary has been proven to have committed a violation of office and is subject to a sanction in the form of a temporary suspension for 3 (three) months based on the decision of the Notary Supervisory Council. Examination carried out by the Notary Supervisory Board based on Article 9 Changes to the KEN Result of the KLB 2015 regarding examination and imposition of sanctions at the first level Legal implications if the notary neglects the provisions regarding the code of ethics for making the authentic deed, the deed made by the notary will lose its authenticity and relegated as deed under hand only. Although the deed is not degraded, this is because the Notary is still considered competent by the Regional Supervisory Council. The Honorary Council and the Supervisory Council jointly conduct examinations regarding violations of the Code of ethics and position. Regarding the deed, in practice the client makes another notary's deed, written and submitted the deed revocation from the previous notary in the deed that will be made. Therefore, the deed is degraded by itself.

In carrying out the task of making an authentic deed, it must pay attention to the rules and regulations stated in the Notary's Office Regulation regarding the procedures for making authentic deeds so that the deed does not lose its authenticity, such as recognition through the identities of the parties, completeness of supporting documents and authenticity. -Terms of a witness, the domicile of the notary, provisions regarding notary leave and so on. In addition, making deeds must not conflict with the rules and interests of the parties.

The aggrieved parties can file compensation against the notary concerned. based on the act of violating the law, as referred to in Article 1365 Burgerlijk Wetboek (hereinafter abbreviated as BW). Article 1365 BW determines that every act of breaking the law that brings harm to another person obliges the person who due to his wrongdoing to issue the loss, to compensate the loss.

Violation of the notary code of ethics can occur due to negligence of responsibility, this is usually the most frequent occurrence. In addition, it could also be due to the

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<sup>25</sup> Soeroso. (2011). *Pengantar Ilmu Hukum*. Jakarta: Pt. Sinar Grafika. p. 35

<sup>26</sup> Asikin Zainal. (2012), *Pengantar Tata Hukum Indonesia*. Jakarta: Rajawali Press

absence of strict sanctions and a lot of side with the notary position. The Notary Supervisory Council (MPN) as a body that is trusted to supervise Notaries in their behavior, is considered to have not given any firm action so that the Notary is deterred or afraid of committing violations that have been regulated by existing regulations, this can be an indicator of the occurrence of violations. by a Notary.

Notary in carrying out his position, there are no parties who supervise directly. For example, when the deed is signed, MPN members are not there to witness whether the notary has implemented what is regulated by law, such as reading the deed, witnessing the signing, and so on. This will only be revealed, if there is an aggrieved party reporting to the competent authority, if no party reports the alleged violation of the deed made by the notary concerned, the present society is not a stupid society, for an interest, someone can find loopholes from related parties to achieve these interests. Each report, which is given to the MPD and submitted to the MPW for further investigation and deciding on the case, It must be carried out fairly and correctly, so that there are no mistakes in making decisions. The decision must be fundamental, because if the decision is wrong, one of the parties must be harmed by the decision, the MPW or MPP (the level that has the right to decide) must make a decision like a judge in a general court. If the verdict finds the Notary at fault, it will result in a bad history in the Notary's performance, and it will tarnish the Notary's name. Therefore, a decision is not only in the form of wrong or not, but a decision must be based on what is true and fair. Not all reports from the public are deemed true that violations have occurred, they must be examined carefully, because basically a Notary is an official who must be respected,

## **4. Closing**

### **4.1. Conclusion**

1. The legal implication of a deed made by a notary who violates the resulting deed will lose its authenticity and be degraded into an underhand deed. Although the deed is not degraded, this is because the Notary is still considered competent by the Notary Supervisory Council. Notary in carrying out its duties to make an authentic deed must pay attention to the rules and regulations stated in the position of the Notary Public regarding the procedures for making authentic deeds so that the deed does not lose its authenticity.
2. The basis for the consideration of the Regional Supervisory Council in imposing sanctions apart from being based on examination at trial is also seen from the good faith of the Notary who is aware of his mistake and wants to make improvements to the deed he has made. The Notary Supervisory Panel considers that negligence in drawing up deeds which results in violation of the Notary's code of ethics is still forgivable and the Notary is still considered competent and capable in carrying out his position.

### **4.2. Suggestion**

1. Notaries should understand very well about the ethics of the notary profession so that there is no violation of the Notary code of ethics which results in losses for the notary public.

2. The parties who use Notary services should be critical and observant in choosing a notary who is trustworthy so that they are not harmed due to a violation of the code of ethics committed by a notary in making deeds which tends to benefit one of the parties and the Notary Supervisory Board should provide heavier sanctions to Notaries who are proven to have violated ethics profession so that in the future violations of notary ethics can be minimized.

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