NOTARY’S RESPONSIBILITY IN THE EXERCISE OF AUTHORITY AS AN AUTHENTIC DEED OFFICIAL

aMuhammad Kamran, bZainuddin, cSufirman Rahman, dMulyati Pawennei

ABSTRACT

Purpose: This research endeavors to investigate the obligations of notaries in their capacity as officials endowed with the power to authenticate deeds. These obligations consist of ethical, administrative, civil, and criminal, duties.

Theoretical Framework: Notaries have obligations as public officials. Indeed, a notary bears accountability not only to his fellow professionals but also to clients and members of the public who require his services by legal regulations and societal interests.

Method: This research is descriptive and the type of research is normative juridical. This research uses secondary data derived from primary sources, such as journals and secondary sources, namely the Internet and books

Results: The findings indicated that notaries must fundamentally adhere to the Notary Position Law and the Notary Code of Ethics when performing their duties and positions. This ensures that the notary always follows the procedures outlined in the Notary Position Law and Code of Ethics, thereby providing legal certainty to the parties involved in the deed. For each task that their clients entrust to them, notaries take full responsibility. There are always matters that accompany each occupation and become its responsibility.

Conclusions: The Notary Position Law specifies that if a notary commits an offence while performing his or her duties and responsibilities, the notary may be held accountable and punished through administrative, civil, and ethical sanctions. The Notary Position Regulation, the Notary Position Law, and the Notary Code of Ethics previously governed criminal sanctions against notaries, but these sanctions are no longer subject to legal regulation. Punishments for criminal offenses against notaries may be enforced by the provisions of the Criminal Code.

Keywords: authentic deed, notary, responsibilities.

Received: 01/22/2024
Accepted: 03/22/2024
DOI: https://doi.org/10.55908/sdgs.v12i4.3342

*Master in Law, Universitas Muslim Indonesia. E-mail: muhkamran@unimerz.ac.id
Orcid: https://orcid.org/0009-0009-7669-6319

bPh.D in Law, Universitas Muslim Indonesia. E-mail: zainaddin.zainuddin@umi.ac.id
Orcid: https://orcid.org/0000-0002-7321-8516

cPh.D in Law, Universitas Muslim Indonesia. E-mail: sufirmanrahman@umi.ac.id
Orcid: https://orcid.org/0009-0003-4972-3138

dPh.D in Law, Universitas Muslim Indonesia. E-mail: mulyati.pawennei@umi.ac.id
Orcid: https://orcid.org/0009-0009-0158-9949
RESPONSABILIDADE DO NOTÁRIO NO EXERCÍCIO DA AUTORIDADE COMO FUNCIONÁRIO AUTÊNTICO

RESUMO

Objetivo: Esta pesquisa procura investigar as obrigações dos notários em sua capacidade como oficiais dotados do poder de autenticar escrituras. Essas obrigações consistem em deveres éticos, administrativos, civis e criminais.

Estrutura teórica: Os notários têm obrigações como funcionários públicos. De fato, o notário é responsável não apenas perante seus colegas profissionais, mas também perante os clientes e membros do público que requerem seus serviços de acordo com as normas legais e os interesses da sociedade.

Método: Esta pesquisa é descritiva e o tipo de pesquisa é jurídico normativo. Esta pesquisa usa dados secundários derivados de fontes primárias, como periódicos e fontes secundárias, a saber, a Internet e livros

Resultados: Os resultados indicaram que os notários devem aderir fundamentalmente à Lei do Cargo Notarial e ao Código de Ética Notarial no desempenho de suas funções e cargos. Isso garante que o notário sempre siga os procedimentos descritos na Lei do Cargo Notarial e no Código de Ética, proporcionando assim segurança jurídica às partes envolvidas na escritura. Para cada tarefa que seus clientes lhes confiam, os notários assumem total responsabilidade. Sempre há questões que acompanham cada profissão e se tornam responsabilidade dela.

Conclusões: A Lei da Função Notarial especifica que, se um notário cometer um delito no exercício de suas funções e responsabilidades, ele poderá ser responsabilizado e punido por meio de sanções administrativas, civis e éticas. O Regulamento do Cargo de Notário, a Lei do Cargo de Notário e o Código de Ética Notarial regiam anteriormente as sanções penais contra notários, mas essas sanções não estão mais sujeitas a regulamentação legal. As punições por infrações penais contra notários podem ser aplicadas pelas disposições do Código Penal.

Palavras-chave: escritura autêntica, notário, responsabilidades.

RESPONSABILIDAD DEL NOTARIO EN EL EJERCICIO DE LA AUTORIDAD COMO FUNCIONARIO AUTÉNTICO

RESUMEN

Objetivo: Esta investigación busca indagar las obligaciones de los notarios en su calidad de funcionarios dotados de la facultad de autenticar escrituras. Estas obligaciones consisten en deberes éticos, administrativos, civiles y penales.

Estructura teórica: Los notarios tienen obligaciones como funcionarios públicos. De hecho, los notarios son responsables no sólo ante sus colegas profesionales, sino también ante los clientes y los miembros del público que requieren sus servicios de conformidad con las normas jurídicas y los intereses de la sociedad.

Método: Esta investigación es descriptiva y el tipo de investigación es legal y normativa. Esta investigación utiliza datos secundarios derivados de fuentes primarias, como publicaciones periódicas y fuentes secundarias, a saber, Internet y libros

Resultados: Los resultados indicaron que los notarios deben apegarse fundamentalmente a la Ley de Notariado y al Código de Ética Notarial en el desempeño de sus funciones y cargos. Esto garantiza que el notario siga siempre los procedimientos descritos en la Ley de posición notarial y el Código de Ética, proporcionando así seguridad jurídica a las partes involucradas en la escritura. Por cada tarea que sus clientes les encomiendan, los notarios asumen plena
responsabilidad. Siempre hay temas que acompañan a cada profesión y se convierten en su responsabilidad.

Conclusiones: La Ley de la Función Notarial especifica que si un notario comete un delito en el ejercicio de sus funciones y responsabilidades, puede ser considerado responsable y sancionado mediante sanciones administrativas, civiles y éticas. El Reglamento del Notariado, la Ley del Notariado y el Código de Ética Notarial regulaban anteriormente las sanciones penales contra los notarios, pero esas sanciones ya no están sujetas a regulación jurídica. Las sanciones por delitos penales contra notarios pueden hacerse cumplir en virtud de las disposiciones del Código Penal.

Palabras clave: escritura auténtica, notario, responsabilidades.

1 INTRODUCTION

A notary is an individual who holds the dual roles of a professional and a public official. Notaries, in their capacity as legal experts, contribute to the establishment of legal certainty within the community, particularly in matters of law enforcement. The notary profession originated indirectly from community-to-community interactions, from which it subsequently evolved to serve the community's requirements. The notary's job as a preventative authority to avoid legal problems is done by having a real deed that can be used as proof in any court case (Devi & Westra, 2021).

The notary's presence is crucial to community life because it ensures that authentic deeds required for social, political, and economic activities conducted with legal certainty. As such, the notary contributes significantly to the community's welfare. In the context of deeds about land rights or apartment unit rights, the Land Deed Official (PPAT) assumes a critical role. To ensure legal certainty and acceptance by all parties involved, the execution of this authentic deed requires the assistance of a notary or PPAT. When an event transpires, a deed is a notarized document that is intentionally crafted to serve as evidence. Parties' agreements are typically recorded in deeds. Such is governed by the law.

Notaries are essentially entrusted with the responsibility and jurisdiction to advocate for the public interest in matters of civil law. Notaries are also entrusted with the responsibility of mitigating the occurrence of legal complications, encompassing both civil and criminal matters. This is a result of the fact that the notary's authenticated deed serves as binding written evidence (Wibowo & Aminah, 2023).

A notary is a public official with the authority to authenticate documents used in agreement-making processes. Concerning the determination necessary for a public
regulation or for individuals with a vested interest in having documents recorded authentically, a notary is obligated to ensure the date's accuracy, retain the document, and provide a copy and citation. However, this obligation does not apply to documents based on public regulations that are not accessible to officials or other individuals (Subagja & Priyana, 2022).

Notary positions are appointed and removed by the government under Article 2 of Law No. 30 of 2004 regarding the Notary Position, as amended by Law No. 2 of 2014 regarding Amendments to Law No. 30 of 2004 regarding the Notary Position (Notary Position Law), which specifies that the minister in charge of notaries presides over notary appointments and removals. Despite being administratively appointed and terminated by the government, the notary's position does not indicate subordination to the government. Thus, the notary is autonomous, impartial, and independent in the performance of his or her duties; that is, neither the party that appointed him or her nor any other party may interfere with his or her performance of duties (Saputra & Wahyuningsih, 2017).

As an organized profession, notaries possess distinct authority and unique obligations. The Professional Code of Ethics serves as a guide for this discipline as an organization. In addition, a notary may be held criminally liable if, in the course of performing his or her duties and positions, a violation of the notary profession provides the bearer of that profession with liability, whether in the form of administrative liability or civil compensation (Rizqiyah, 2021).

This study aims to examine the obligations of notaries, in their capacity as public officials, with regard to the execution of genuine deeds. Such actions may give rise to ethical, administrative, civil, and criminal ramifications.

2 RESEARCH METHODS

This research is descriptive, and the type of research is normative-legal. In connection with the type of research used, namely normative research, the approach used is a conceptual approach and a statutory approach. This research is normative or doctrinal research. This type of legal research methodology, known as normative legal research, relies for its analysis on relevant laws and regulations applicable to the legal issues that are the main focus of the research. This research uses secondary data derived from
primary sources, such as journals, and secondary sources, namely the internet and books (Khalid et al., 2023).

3 RESULTS AND DISCUSSION

3.1 ETHICAL RESPONSIBILITIES OF NOTARIES

In 2015, the Indonesian Notary Association completed its Extraordinary Congress. The code of ethics for notaries encompasses two stances: (1) to prevent injustice arising from the granting of property status, rights, and obligations that are not in accordance with the rules and principles of law and jus cogens, and (2) due to the legal nature of notary work, which is highly focused on legalization and hence can serve as the primary legal foundation concerning the status of property, rights, and obligations of a party utilizing the notary's services (Latifah, 2021).

To ensure adherence to professional ethics and the effective performance of one's duties, a notary must possess the following three moral attributes: (1) Be a decent person who upholds the law; (2) resist giving in to irrational emotions like fear, laziness, shame, and so forth. This requires the following: (1) a robust moral compass; (2) an understanding that upholding the ethical standards of the vocation entails a significant responsibility; and (3) an adequate amount of idealism (Sofwan & Purnawan, 2018).

Despite the Notary Law and the Code of Ethics governing the duties of notaries, certain notaries today are susceptible to substandard notarial practices that diminish their nobility and dignity as public officials due to environmental influences and mental fragility (Natasari et al., 2020). Both the Notary Law and the Code of Ethics require strict observance and application. Failure to comply may result in the notary incurring penalties from the authorized institution or agency responsible for imposing such sanctions. Consequently, an assembly or council is entrusted with the responsibility of overseeing the conduct of notaries in the performance of their profession, so as to ensure compliance with the Notary Code of Ethics and the Notary Position Law. A notary may also be subject to a written reprimand, temporary dismissal, dishonorable dismissal, honorable dismissal, dishonorable dismissal, or other sanctions in the event that obligations and prohibitions are violated (Anom et al., 2022).
In general, notaries commit two types of violations of the code of ethics: a) intentional violations, in which the notary is aware that his or her actions violate the code but continues to perform them; and b) ignorance-based violations. Typically, novice notaries who are not acquainted with and oblivious to the regulations of the notary profession's code of ethics commit violations in this category (Pakarti & Erni, 2022). Consciousness on the part of the notaries themselves is necessary for them to adhere to the code of ethics. As a notary organization, they must uphold high moral standards in the performance of their responsibilities and roles so that they may preserve and safeguard their authority. Moral principles ought to inform the guidelines that individuals adhere to when serving and performing their duties (Subagja & Priyana, 2022).

A notary who has been found to have contravened the Notary Code of Ethics may face penalties imposed by the Honor Council. The Notary Code of Ethics delineates five sanctions: (1) reprimand; (2) warning; (3) temporary disqualification from association membership; (4) honorable dismissal from association membership; and (5) dishonorable dismissal from association membership. The specific sanctions imposed by a violating notary are contingent upon the gravity or seriousness of the violation committed. A notary may face disciplinary action ranging from reprimand, which is the least severe penalty for trivial infractions, to dishonorable dismissal, which is a form of violation of the Notary Code of Ethics committed by notaries (Saly et al., 2023).

The Regional Honorary Council is obligated to summon the member who is suspected of violating the Code of Ethics (compromising the provisions established by the association), whether the allegation originates from the Regional Management or other parties to the Regional Honorary Council or from information known to the council itself. If a strong suspicion of a code of ethics violation materializes, the council is further authorized to convene the member in question. The sanctioning of the Regional Honor Council will occur upon confirmation of the violation.

The Indonesian Notary Association (INI) administers sanctions to members who violate the Code of Ethics. Depending on the severity and quantity of the violations, sanctions may include reprimands, warnings, schorsing (temporary dismissal) from association membership, onzetting (dismissal), or dishonorable dismissal from association membership. Because sanctions imposed by the Honor Council only bind the notary as an association member, they do not apply to the position of notary. Nevertheless, the Notary Supervisory Council may receive or be notified of the sanctions imposed by
the Honor Council so that they may be factored into its deliberation regarding the imposition of sanctions on the Notary.

3.2 ADMINISTRATIVE RESPONSIBILITIES OF NOTARIES

Inadequate performance of the notarial's duties will result in the notarial incurring administrative responsibility. Notary accountability can be sought by petitioning the notary institution or organization, as opposed to the judicial system, which is required for criminal or civil accountability. Assessing whether a notary is subject to administrative legal liability based on whether he is found culpable and liable for punishment or whether his conduct violates the provisions explicitly outlined in the notarial position law. Article 16 paragraph 1 letter m, Article 38, Article 39, and Article 40 of the Notary Position Law Amendment must be adhered to when creating an authentic deed; otherwise, it is deemed to be in breach of the terms and conditions.

The Notary shall be liable for any alleged breach of oath or promise, obligation, or prohibition of a Notary as delineated in Article 4, Article 16, Article 17, and Article 19 of the Notary Position Law. If an examination of the notary reveals that the notary has contravened the performance of the notary position's duties and the notary code of ethics, the notary shall be held accountable for the violation. Naturally, due consideration must be given to the gravity of the transgression committed by the notary when implementing the provisions governing the imposition of sanctions, given that the disciplinary measures are implemented gradually (Armansyah et al., 2021).

The Regional Supervisory Assembly (MPD) or the Central Supervisory Assembly (MPP), which will then summon the notary or PPAT for an explanation of the genuine deed he made and submit and acknowledge, can receive administrative sanctions for notaries, specifically for parties who are disadvantaged due to acts by notaries or PPATs. After the trial, the MPD will decide whether or not to impose sanctions against Notaries and Land Deed Officers based on their compliance with the code of ethics and other laws and regulations (Sari & Priandhini, 2022).
3.3 CIVIL RESPONSIBILITY OF NOTARIES

In the context of tort law, notaries bear civil liability for the deeds they authenticate, specifically regarding the material truth of the document in question. Active and passive unlawful actions are inherent in this context. Engaged in an action that results in damage to an additional party; active. However, passive behavior entails neglecting a required action, resulting in a detriment to the opposing party. Unlawful acts consist of three essential components: the presence of error, the infliction of loss, and the existence of unlawful acts. An act that not only contravenes the law but also infringes upon decency, the rights of others, or their honor and inflicts injury is considered unlawful under this definition (Rosadi, 2020).

The form of the error or dereliction committed by the Notary/PPAT, namely breach of promise (default) or tort (onrechtmatige daad), can certainly be scrutinized about the error (beroepsfout). The adequacy of the act that induced the error naturally dictates this. To classify an action as a tort, it must satisfy the following four criteria: a) it must be in direct opposition to the perpetrator's legal obligations; b) it must be in direct opposition to the subjective rights of others; c) it must be in direct opposition to decorum; and d) it must be in direct opposition to improper conduct, accuracy, and prudence (Mulyana & Abdughani, 2021).

The notary bears obligations not only during the process of authenticating a deed but also up until its execution, including situations involving legal complications arising from the deed's validity. The notary may incur liability when the court declares an authentic deed invalid due to the failure to meet the valid requirements for creating such a deed. In such cases, the notary may be held responsible for any losses incurred by the parties as a result of the authentic deed being cancelled, declared null and void, or relegated to an underhand formality. After establishing that the client has incurred a tangible detriment due to a notary error, the notary's obligation may manifest itself in the form of compensating the affected client (Romauli et al., 2023).

Article 84 of the Notary Position Law that a party harmed by the notary's actions may demand compensation, interest, and compensation from the notary who committed an act that is detrimental to the parties. Such an act would transform an authentic deed, which is the only evidentiary power, into a void deed executed under the notary's hand. It is deemed an illicit act for a notary or PPAT to execute a deed of sale and purchase in
which one of the parties is harmed in a manner not consistent with the agreement of the parties. In light of this, the Notary/PPAT has contravened the stipulations outlined in Government Regulation Number 24 of 2016, specifically Explanation of Article 10 paragraph (3) letter a, in addition to letter d, letter g, and letter i of Article 28 paragraph (4) of the Land Agency Head Regulation No. 1 of 2006. As a consequence, the executed deed is rendered void, invalid, and legally flawed.

The notary who authenticated a deed executed by hand is deemed to have committed a severe breach, as specified in the description of the Official Land Deed, which authorizes the parties to execute legal actions based on the deed he authenticated. In cases where the sale and purchase deed is deemed invalid or null and void, the Power of Attorney for Sale and Purchase Act cancellation also extends to the sale and purchase deed. Civil court proceedings may also involve a notary or PPAT as a defendant or co-defendant, subject to sanctions including fees and compensation. This is because the notary's lack of diligence and attention to detail results in detrimental consequences for the involved parties following the court's ruling (Sari & Priandhini, 2022).

3.4 CRIMINAL RESPONSIBILITY OF NOTARIES

The foundation of the criminal justice system in Indonesia is the principle of legality, which is defined in Article 1, Paragraph 1 of the Criminal Code. This principle states that no action is considered unlawful or punishable if it has not received express legal authorization (nullum delictum nulla poena sine praevia lege). As a consequence, in the absence of a prior declaration in a statutory regulation, no action is prohibited or subject to penalty (Cahyanti et al., 2018).

A criminal notary must ensure the material truth of the instrument he executes. While neither the Notary Position Law nor the Regulation on the Position of the Land Deed Official address criminal provisions, the Notary is liable for criminal liability if he or she commits an unlawful criminal act. The only things that the Notary Law governs are penalties for violations. Sanctions in the form of deeds executed by notaries lack authentic authority or are equivalent to the authority of a handwritten deed, or the court may legally annul the deed (Theixar & Dharmawan, 2021).

Criminal penalties may be levied against notaries who violate the aforementioned restrictions; that is, in addition to the criteria specified in the Notary Position Law and the
Code of Ethics for the Notary Position profession, breaches of these criteria must also satisfy the criteria outlined in the Criminal Code (KUHP) (Muhammad et al., 2019). Therefore, if it can be proven in court that a notary, working with one of the parties or confrontants, signed a document with the clear goal of helping one of them at the expense of the other parties, the notary could be charged with a crime (Muhammad et al., 2019).

The party who caused damage to the notary and the opposing party must be punished if it is established that the notary has engaged in criminal activity. As a public official who authenticates deeds, the notary's role is to strike a balance between the likelihood and impossibility of the deed being falsified and the party requesting the validity of the deed. A deed bearing false information results when a notary, in their capacity as a public official, fails to adhere to the ethical standards of their profession or otherwise deviates from the legal regulations of the Notary Position Law for the purpose of benefiting one party at the expense of the other, or vice versa.

The formulation of the elements of the criminal offense of forgery as stated in Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) of the Criminal Code does not apply to notaries. Consequently, notaries cannot be held criminally culpable for the creation of a party deed using false information. Criminal liability may be imposed on a notary if they intentionally or negligently create a false deed that results in damage to third parties, such as an official deed (ambtelijke akten) or a deed of release (Wiradiredja, 2016).

Legal protection is provided by Article 50 of the Criminal Code in accordance with applicable legal procedures, the Notary Position Law, Code of Ethics, and other laws and regulations (as per Articles 50 and 52 of the Criminal Code). However, in the event that the Notary exercises authority in contravention of other laws and regulations, specifically the Criminal Code (general applicable regulations), they will be held criminally liable.

In general, potential criminal problems that often occur in notary duties are as follows: a) the deed is made in a condition where the parties are not facing each other; b) the identity data of one of the parties in the deed is deemed incorrect or deemed to provide false information; c) the data regarding the agreed object does not match the facts; d) the data provided by one or both parties is incorrect so that the notarial deed issued is deemed a fake deed; e) two deeds are circulating among the parties, which have the same number
and date but different contents; f) the signature of one of the parties in the minutes is forged (Cahyanti et al., 2018).

From a legal standpoint, the notary/PPAT lacks immunity rights. This means that should the Notary exercise authoritative power while mens rea and actus reus are present and the statutory elements of a criminal offense are satisfied, the Notary may be held criminally liable for both general and special crimes. This is because no one, including government and state officials, law enforcement personnel, or individuals, possesses legal immunity in the event of a violation of the law.

4 CONCLUSION

The Notary Position Law specifies that if a notary is found to have committed an offense while performing his or her duties and responsibilities, the notary may be held accountable and punished with administrative, civil, and ethical sanctions. While the Notary Position Regulation, the Notary Position Law, and the Notary Code of Ethics previously governed these sanctions, the law no longer governs criminal sanctions against notaries. Punishments for criminal offenses committed against notaries may be enforced by the provisions of the Criminal Code. As sanctions against notaries demonstrate, they are not exempt from the law. In addition to ethical and criminal sanctions, notaries may face civil and administrative penalties. However, the simultaneous imposition of multiple types of sanctions against the notary will give rise to complications concerning the accumulation of sanctions against the notary.
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