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POSITION OF A NOTARY PUBLIC IN INVESTIGATIONS RELATING TO ALLEGED VIOLATIONS

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Abstract

A notarial deed is a perfect form of evidence and must therefore be prepared to serve as a strong evidentiary basis in the event of a breach of contract. Thus, a notary in carrying out his/her duties must act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions. In fact, the notary's duty is basically to express the wishes or actions explained by various parties which will be included in the deed. Thus, the interesting problem in this study is how the notary's position in the investigation related to alleged violations. This study uses a normative legal approach or doctrinal research. For notaries suspected of committing violations in the investigation, the notary can be positioned as a witness or suspect or co-defendant, depending on the notary's involvement in the alleged violation. In the process of examining a notary, investigators are required to obtain approval from the Notary Honorary Council, both for examination as a witness and for confiscation of documents. Therefore, regarding the approval of the Notary Honorary Council, it is not intended to complicate the investigation process or the need for examination of the notary, because this has been anticipated by the provisions of Article 66 paragraph (3) and paragraph (4) of Law 2/2014. Where investigators can obtain an answer no later than 30 (thirty) days. Therefore, there are no issues related to the request for approval from the Notary Honorary Council. If the 30-day deadline is exceeded, the request is deemed approved.

Keywords*: *alleged violations, status, notary, investigation.

INTRODUCTION

As a nation governed by the rule of law, society requires evidence of legal acts in the civil sphere. Therefore, the role of notaries is essential. Notaries play a key role in drafting authentic deeds that can serve as valid and strong evidence for legal acts, particularly in contracts. Life requires interaction and relationships, particularly in establishing cooperation with other members of society. To ensure relationships between individuals, legal certainty is essential. To achieve this, laws and regulations play a crucial role. Furthermore, legal professionals, acting as public officials, are needed, including notaries, whose duties include facilitating and assisting the public. The duties and authorities of a notary are regulated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number

30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491, hereinafter referred to as Law 2/2014), which states "A notary is authorized to make authentic deeds regarding all acts, agreements and determinations required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and extract of the deed, all of which as long as the making of the deed is not also assigned or excluded to another official or other person determined by law."

The notary's authority to create authentic deeds provides legal protection for the parties. If an incident occurs, the deed or other written document created as proof of validity can be used as evidence in the event of a dispute (Subekti, 2001). A notarial deed is a perfect form of evidence, and therefore must be prepared to serve as a strong basis for proof in the event of a breach of contract. Therefore, notaries must be meticulous and focused in carrying out their authority and obligations, ensuring that every notarial deed can be accounted for.

In Article 16 paragraph (1) letter a of Law 2/2014, a notary in carrying out his/her duties is obliged to act in a trustworthy, honest, thorough, independent, impartial manner, and safeguard the interests of the parties involved in legal acts. When carrying out his/her duties and authorities, a notary must have the responsibility to draft a deed in accordance with the requests of the parties involved and the wishes of the law, by producing a quality deed, in the sense that it does not constitute a lie or fabrication. The notary also needs to provide an explanation to the parties regarding the correctness of the procedures and contents of the deed that has been drafted, and to provide a positive impact. This means that anyone recognizes the contents of a notarial deed that has high legal validity and can be used as valid evidence (Panjaitan, 2017).

Therefore, the notary's primary duty is to document the wishes or actions of various parties, which will be incorporated into a deed. Therefore, a notary must thoroughly understand the contents of the agreement or deed they are drafting. They are also required to provide legal counseling regarding the deed they are drafting. Furthermore, they must explain the contents of the deed so that they cannot later deny that they merely signed without understanding its contents. Therefore, vigilance and caution are required when drafting agreements and deeds. Therefore, this study examines the notary's position in investigations related to alleged violations. This study aims to determine the position of a notary when an alleged violation occurs.

RESEARCH METHOD

The research method applied in this study is a normative research approach that emphasizes norms, regulations, or principles that should be followed. This research is prescriptive in nature, examining the relationship between legal principles, legal norms, legal rules, and individual behavior in the context of legal science. The approach used is library research. This library research was conducted by reviewing various relevant literature sources, both theoretical and practical, to analyze legal aspects, policies.

DISCUSS AND ANALYSIS

A notary has the authority, namely being responsible for preparing authentic deeds regarding all agreements, actions, and provisions required by law or desired by the interested parties to be recorded in an authentic deed. In addition, the notary is also responsible for guaranteeing the date of creation and storage of deeds, as well as issuing grosse, derivatives

(copies), and extracts thereof as long as the creation of the deed is not entrusted to another official or individual (Darus, 2017). Initially, the function of a notary was as a public official, also known as a private notary, who was authorized by the public to fulfill civil law requirements by creating authentic evidence to provide assurance.

According to the provisions of Article 1868 of the Civil Code (KUHPerdata), which states, "An authentic deed is a deed made in a form determined by law by or before a public official authorized to do so at the place where the deed is made." In carrying out their duties, notaries have a number of authorities that must be carried out. Based on Article 1 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432, hereinafter referred to as Law 30/2004), which states:

A notary is a public official authorized to make authentic deeds and other authorities as referred to in this Law.

Meanwhile, Article 15 of Law 30/2004 states:

(1) A notary public is authorized to make authentic deeds regarding all acts, agreements, and provisions required by laws and/or desired by the interested party to be stated in an authentic deed, to guarantee the certainty of the date of the deed's creation, to store the deed, to provide a grosse, copies, and extracts of the deed, all of which are provided that the creation of the deed is not assigned or excluded to another official or other person as determined by law.

(2) A notary public is also authorized to:
   a. validate signatures and determine the certainty of the date of private letters by registering them in a special book;
   b. record private letters by registering them in a special book;
   c. make copies of the original private letters in the form of copies containing the descriptions as written and illustrated in the letter in question;
   d. verify the conformity of the photocopies with the originals;
   e. provide legal counseling regarding the creation of deeds;
   f. Making deeds related to land; or
   g. Making auction minutes.

(3) In addition to the authority referred to in paragraph (1) and paragraph (2), a Notary Public has other authority as regulated in laws and regulations..

Based on Article 1 paragraph (1) and Article 15 of Law 30/2004, notaries are recognized as public officials who have the authority, including making authentic deeds and other authorities in accordance with the provisions of Law 30/2004. Although the main authority of a notary is to make authentic deeds, not all actions that are manifested in the form of authentic deeds are within the authority of a notary. To make a deed made by a notary an authentic deed, the notary must have authority that includes four things, including: (Adjie, 2018)

1. A notary must have authority regarding the deeds to be drawn up. A notary is not permitted to act outside the authority assigned by law.
2. A notary has authority regarding the person for whose benefit the deed is drawn up. A notary is prohibited from drawing up a deed for themselves, their spouse, or any other individual with whom they are related. This prohibition includes both

marital relationships and blood relations in the direct or ascending line without distinction of degree. The prohibition also applies to lateral lines up to the third degree, and includes the notary as a party for themselves, either in a position or under a power of attorney regulation.

3. A notary has authority regarding the domicile of the notary where the deed is drawn up. A notary must be domiciled in the district or city where the deed is drawn up. The notary's jurisdiction covers all provinces in which they are domiciled.
4. A notary must have authority for the duration of the deed's drawing up. A notary is not permitted to draw up a deed while on leave, temporarily suspended, or temporarily unable to perform their duties. Apart from that, notaries may not make deeds before assuming office.

Based on the construction of Notary Law, one of the duties of a notary is "Formulating the wishes/actions of the parties appearing/appearing in the form of an authentic deed, by paying attention to the applicable legal regulations." The notary is charged with responsibility for the formal and material truth of the deed he made if the notary is proven in court that the notary acted carelessly or intentionally to the detriment of the parties (Notodisoerjo, 1982). In terms of accountability for deeds made during his/her term of office, the notary remains responsible for all deeds until the notary retires.

The responsibility for the deed is divided into four, namely:

1. Civil Liability of Notaries

Notaries are responsible for the deeds they issue. The notary's authority includes providing legal advice to the parties appearing (Article 15 letter e of Law 30/2004). If the notary makes an error in providing legal advice to the parties appearing, which is related to the deed they issue, the notary is liable from a civil perspective for the material accuracy of the deed they issue.

2. Criminal Liability of Notaries

Criminal acts are actions prohibited by law. This prohibition is accompanied by threats, namely sanctions in the form of specific penalties for anyone who commits the violation.

3. Notary Liability under Law 30/2004

Article 65 of Law 30/2004 states that notaries are responsible for the deeds they issue, even if the notarial protocol has been submitted to the recipient. This article explains that notaries are responsible for their deeds based on Law 30/2004.

4. Notary Responsibilities Based on the Code of Ethics

As public officials, notaries must adhere to ethics in carrying out their duties. This ethics refers to the existing code of ethics for the notarial profession, which aims to ensure that notaries carry out their duties professionally, morally, and skillfully in rational argumentation..

Sanctions for notaries are divided into four types: warning, temporary suspension, honorable suspension, and dishonorable suspension. Article 70 letter b of Law 30/2004 and Article 15 of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02 PR.08.10 of 2004 stipulate preventive measures by conducting

routine inspections, at least once a year or whenever necessary, to assess the notary's compliance in carrying out their duties.

Article 1 number 13 of Law 30/2004 defines a notarial protocol as a collection of documents that constitute state archives that must be stored and maintained by a notary public in accordance with statutory regulations. Article 11 paragraph (6) and Article 16 paragraph (1) letter b of Law 30/2004 provide the legal authority to store notarial protocols by the Regional Supervisory Council or the Minister. Meanwhile, according to Article 62 of Law 30/2004, the obligation to store is not only limited to the minutes of the deeds that have been made by the notary, but also includes other notary protocols that he receives, whether due to the end of his term of office, death, or other reasons.

The notary's retention of notarial protocols aims to maintain the legal validity of notarial deeds as a perfect means of evidence for the parties or their heirs regarding the entire contents of the deed. As long as the minutes of the deed are kept and maintained by the notary, all matters arising from them become the responsibility of the notary concerned. Although notaries are generally responsible for keeping notarial protocols, there are certain regulations that stipulate that the minutes of the deed are also kept by the Regional Supervisory Board. Tan Thong Kie expressed his view that notarial protocols belong to the community, not to the notary who prepares the deeds. Furthermore, notarial protocols do not belong to the notary who is tasked or appointed by the Minister of Justice to keep them. According to him, a person who keeps notarial protocol documents generally has the confidence that the documents are safe under the responsibility of the notary (Kie, 2017).

The preservation of deed minutes as an obligation of notarial protocol aims to ensure the integrity and authenticity of a deed by storing it in its original form. Thus, if there is misuse or falsification of copies, grosse, or extracts of the deed, this can be detected by comparing it with the original. Notaries are responsible for the careful and careful preservation of notarial protocols. For a notary who does not maintain notarial protocols properly, sanctions may be imposed in accordance with Article 6 of the Notarial Code of Ethics. These sanctions include warnings, reprimands, temporary suspension from association membership, honorable dismissal from association membership, and dishonorable dismissal from association membership. Outside of the administrative sanctions stipulated in the Notarial Code of Ethics, notaries who do not maintain notarial protocols properly may be subject to administrative sanctions in accordance with Law 12/2014. Article 16 paragraph (11) of Law 2/2014 authorizes the issuance of sanctions in the form of written warnings, temporary dismissal, and dishonorable dismissal. Sudikno Mertokusumo defines a deed as a signed letter which contains an event which forms the basis of a contract or right, which is made from the start deliberately for the purposes of proof (Adjie dan Sjaifurrachman, 2011). A Notarial Deed has perfect evidentiary power, but its evidentiary value can decrease to the evidentiary power of a private deed if it violates certain rules. An authentic deed is a deed made by or before a notary or other official for an agreement. On the other hand, a private deed is a deed made by both parties without the intervention of a notary or other official.

Based on the parties who made them, as stipulated in Article 165 of the Herzien Inlandsch Reglement (Herziene Indonesisch Reglement) and Article 285 of the

Buitengewesten Reglement (Rechtsreglement voor de Buitengewesten), 1868 Burgerlijk Wetboek, it can be concluded that deeds are divided into two types:

1. Deeds of the parties (partij acte), which contain information desired by the parties to be included in the deed in question.
2. Official Deeds (Ambtelijk Acte or Relaas Acte), which contain official statements from authorized officials regarding what the notary saw and witnessed before him..

Regarding the notary's position in investigations related to alleged violations, a notary can act as a witness or a suspect, depending on the notary's involvement in the alleged violation. As a witness, a notary can be summoned to provide information regarding the deeds they have drawn up. Notary information is considered important in clarifying a case. Furthermore, if a notary is a suspect, meaning if the notary is suspected of being directly involved in a criminal act (for example, document forgery), their status can be elevated to that of a suspect. In this case, the notary is obliged to comply with the summons for examination.

CLOSURE

Conclusion

For notaries who are suspected of committing violations during an investigative examination, the notary can act as a witness, suspect, or co-defendant, depending on the notary's involvement in the alleged violation. In the process of examining a notary, investigators are required to obtain approval from the Notary Honorary Council, both for examination as a witness and for the confiscation of documents. Therefore, the approval of the Notary Honorary Council is not intended to complicate the investigation process or the need for examination of the notary, because this has been anticipated by the provisions of Article 66 paragraph (3) and paragraph (4) of Law 2/2014. Where investigators can obtain an answer within a maximum of 30 (thirty) days. So there are no problems related to the request for approval from the Notary Honorary Council. Because if the 30 (thirty) day deadline passes, the request is considered approved.

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