

# REGULATION OF PUBLIC NOTARY OBLIGATIONS IN INDONESIA TO PROVIDE LEGAL EDUCATION BASED ON THE INDONESIAN LAW SYSTEM

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**Abstract :** *The notary is obliged to provide legal counsel and explanations to the parties concerned in connection with making an authentic deed which will, is being and / or made until the deed is complete. Article 16 letter a of LawJN Number 2 of 2014, the Notary is obliged to act honestly, thoroughly, independently and impartially and safeguard the interests of the parties involved in legal actions. As explained in Article 16 paragraph (1) letter a, in the case of taking legal action for his client, a notary may not side with one of his clients. The notary is expected to provide legal counseling for and for legal actions taken by the notary at the request of his client. The purpose of legal education by notaries is to provide a better understanding of making authentic deeds. The legal counseling given by the notary is very useful both to the notary and those who will make the deed. This use is so that it can provide legal certainty in making the deed, where the parties will understand the legal provisions that are mandatory in fulfilling the deed making, so there is no violation of the law because the notary has been notified through legal counselling*

**Keywords :** *Public Notary, Legal Education, Indonesian Legal System.*

## 1. INTRODUCTION:

The role of the Notary in the service sector is as an official who is authorized by the state to serve the public in the civil field, especially in the making of authentic deeds. Notary Public is the authorized official to make an authentic deed and other authorities as referred to in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, hereinafter referred to as LawJN Number 2 of 2014. Philosophical foundation of the establishment of the Act - The position of a Notary Public is the realization of a guarantee of legal certainty, order and legal protection with core truth and justice through the deed he made, a Notary must be able to provide legal certainty to the community of Notary services users. It is important for the notary to be able to understand the provisions governed by the law so that the general public who does not know or lack understanding of the rule of law, can understand correctly and does not do things that are contrary to the law.

Therefore a Notary is demanded to be more sensitive, honest, fair and transparent in making a deed in order to ensure the legal certainty of all parties directly involved in making an authentic deed. The notary public plays an important role in the life of the community at this time, especially with regard to making authentic written evidence. This aims to ensure legal certainty, order and legal protection needed by the public in relation to written evidence that has an authentic nature regarding the circumstances, events, or legal actions. Certainty, order and legal protection require, inter alia, that legal traffic and people's lives require evidence that clearly defines a person's rights and obligations as a legal subject in society.

The above if related to the development of the current era of globalization, along with the contractual needs in society, the need for authentic deeds is also increasing. Article 1868 of the Civil Code (Civil Code) emphasizes that: "Authentic Deed is a deed in the form determined by the law made by or in front of the public official authorized for that place where the deed was done" (1).

From the explanation contained in Article 15 paragraph (2) letter e UUJN Number 2 of 2014 there is a meaning that is less clear, the meaning of providing legal counseling in connection with the making of the deed results in obscurity / obscurity of norms regarding notary authority. In this Article is not implemented precisely, so the scope is unclear. The UUJN itself does not explain the limitations relating to the provision of legal counseling by a notary public, even in the explanation of Article 15 paragraph (2) letter e the UUJN states that it is quite clear. Although the notary obligation has been arranged in providing legal counseling in connection with the making of the deed. but there is still an authentic deed that is questioned to the autopsy to be submitted to the judge to be judged, it indicates that the implementation of Article 15 paragraph 2 letter e of LawJN Number 2 of 2014 is not yet optimal by the notary.

So if the deed made by the Notary is degraded into a deed under the hand, then later it can be detrimental to the parties. To prevent errors in the community in making an authentic deed in accordance with the provisions of the applicable laws and regulations, it is necessary to provide legal counseling by notaries to their clients by providing legal

certainty for clients who need evidence, so as to provide benefits for those in need. **REGULATION OF PUBLIC NOTARY OBLIGATIONS IN INDONESIA TO PROVIDE LEGAL EDUCATION BASED ON THE INDONESIAN LAW SYSTEM**

## 2. OBJECT OF RESEARCH:

Based on what has been described in the background of the problems mentioned above, and to provide scope of research or provide limits on the issues to be investigated, the authors formulated several issues to be discussed in this scientific work, namely:

- What is the form of legal counsel to the parties to prevent mistakes in the formulation of the contents of the deed?
- What is the responsibility of the notary public in legal counseling to the parties in making an authentic deed?
- What are the legal consequences if a mistake is made to the deed made by a notary?

## 3. LITERATURE REVIEW:

### History Of Notary

The beginning of the notary is known as a notary, notarius is a designation in Roman times given to people who do the work of writing. The function of this notary is still very different from the function of the notary at this time. The name of the notarius gradually has a different meaning from the beginning, so that in the second century after Christ, the so-called notarius names are those who take notes in quick writing. (2) So it's like a stenograph now. In addition there are also other opinions that say that the notarius comes from the words of the literary memorandum, which is a sign (letter brand or character) which states something. Then in the fifth and sixth centuries the designation of the notarius was given to the personal writer (secretary) of the king (emperor), whereas at the end of the fifth century

### Notary Regulation

In the description above it has been stated, that regarding the provisions of the Notary that first came into force in Indonesia is regulated in the Op Het Notary In Nederlandsch Indie Regulation / Indonesian Notary Position Regulation (Stb. 1860 No.3), which consists of 66 articles and is divided into five chapters . The above provisions basically constitute a copy of the regulations concerning the Notary in the Netherlands, which took effect in Indonesia on August 1, 1860. This provision has been subject to several changes since coming into force in Indonesia, among others. Changes with Stb. 1907-485. In the general provisions of this regulation states that articles 4 and 5 and the notary regulation no longer apply, likewise the contents of the two articles have been regulated in Articles 6b and 6n of Staatblad 1860 No.3.

Further changes are contained in Law No. 33 of 1954 concerning Deputy Notary and Deputy Notary Public. Where in this provision confirms what is meant by the Deputy Notary and Notary Public. In Article 2 paragraph (1) and paragraph (2) it is stated that:

(1) If a notary is not available, the Minister shall carry out the work of a notary public.

(2) While waiting for the Minister of Justice's decision, the Chairperson of the District Court may appoint a person who is temporarily required to carry out the work of the Notary referred to in paragraph (1). Fungsi Profesi Notaris dan Tanggung Jawab dari Notaris

### Legal Education Of Notary

In the context of increasing public awareness of law, the activities of fostering legal culture include, among others, legal counseling, the main objective of which is to improve the image of citizens of the law regarding the meaning of legal education itself based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.01-PR. 08.10 of 2006 concerning the Pattern of Legal Education, namely

Legal education is one of the activities of disseminating information and understanding of legal norms and applicable laws and regulations in order to create and develop community legal awareness so as to create a legal culture in an orderly and obedient manner or to comply with legal norms and legislation in force for upholding the rule of law.

Regarding the basic pattern of legal education and operational patterns of legal education are intended to be used as guidelines in outline in planning to carry out legal education in a directed and integrated manner. In essence, the basic patterns and operational patterns of legal counseling (3)

## 4. DISCUSSION:

### Forms of Legal Counsel Against the Parties to Prevent Mistakes in the Formulation of the Deed Content

Can be seen that there are differences in views related to the implementation of legal counseling that must be done, the authors conducted field data collection to see the implementation of the legal counseling authority by the

Notary to clients in the city of Padang. Field data collection in this study involved representatives of 8 (eight) notaries in Padang as respondents who could be grouped into 3 (three) groups, namely:

1) The first group is the representative of the Notary who provides legal counseling which is only related to making the deed to the client regarding formal truth

- a. Based on the results of an interview with Mr. Indra Jaya, SH., M.Kn, he said that the main task of the Notary was to make the authentic deed desired by the parties. The main task of the Notary Public besides making the Deed is to help the parties who come to the Notary but do not understand the deed that will be made by him, when the parties who come to him are only able to convey the purpose and purpose of arrival but do not know the applicable regulations, the terms necessary, the consequences that may arise from the deed to be made, here the role of the Notary (4)
- b. Notary In providing legal counseling must be done. legal counseling is only limited to the deed made, not in detail must be explained to the parties. often the form of legal counseling is given only when the parties ask questions and need an explanation related to the deed to be made, if there are no questions from the parties, the Notary considers that the parties have understood and understood the related deed to be made, so the Notary will only provide general information related to the deed to be made.
- c. Based on the results of an interview with Ibuk Tissa Putri Astria Dharma, SH., M.Kn, he said that legal counseling can occur when the parties will make the deed, are making the deed, after the deed is finished and when conflicts arise due to deed made. However, during his practice he said that, not all parties who came to him, were always given detailed legal counseling until after the deed, the legal counseling given usually occurs at the beginning of the deed making, by providing an explanation and understanding related to the deed to be made. And if the parties encounter a case and ask the Notary to help find a solution, as long as the parties have no problems experienced, the Notary will only listen to the parties' wishes and ask the parties to prepare the documents needed to make the deed. According to him the form of legal counseling given by the Notary Public is in terms of providing explanations related to the problems faced by the parties and the possibility of problems that would occur, the explanations were already a form of legal counseling carried out by the Notary to the parties (5)

The second group is the representative of the Notary who provides legal counseling related to the making of the deed and related consequences that will arise in the future to the client which is only related to formal truth. Based on the results of interviews with Dr. Ibuk Beatrix Benni, SH., M.Pd., M.Kn, He said that legal counseling is provided fundamentally to the parties related to legal actions to be carried out. The form of legal counseling carried out is to provide detailed explanations to the parties regarding the types of legal actions to be carried out by the parties, the consequences that may arise and be faced by the parties, as well as solutions that can be given to the parties in their position as a notary. In providing legal education the Notary must play an active role in explaining matters in detail related to legal actions and deeds that are made later (6)

The active role of the Notary begins before the deed is made, when the deed is being made, and after the deed is completed until the signing of the deed. Legal education conducted by a Notary becomes very important both for the parties and for the Notary to avoid and minimize conflicts that will occur in the future. The notary in providing legal education must be comprehensive. In carrying out his position providing legal counseling in the form of giving explanations, providing information and providing understanding relating to legal actions that will be applied in the deed. The form of legal counsel referred to among other things is an act that must be done by the parties or parties of the Notary before making the deed or after making the deed. The act before making the deed is information and evidence that must be given by the tappers for the purpose of making an authentic deed. While legal counseling after drafting is a continuation of the use of the deed

## **Notary Responsibility In Legal Counseling To The Parties In Making Authentic Deed**

### **a. Moral Responsibility**

In carrying out its duties must be in accordance with lawsuits and the interests of the community, must not conflict with public order or morality. Regulations relating to public order directly involve the public interest, both regulations that are a mixture of civil law and public law. Regulations regarding good morals are those that have a relationship with morals that apply in the community of life. In this moral responsibility a notary must be responsible to the community.

### **b. Code of Ethics Responsibilities**

A notary in carrying out his position must have sufficient legal skills based on a sense of responsibility for the appreciation of the wholeness, dignity of his position, values and ethics. A notary who does his profession must behave professionally, have a good personality, and uphold the dignity of the honor of the Notary and are obliged to respect colleagues and look after each other and defend the honor of the corps or organization's good name.

### c. Legal liability

Liability can be termed in two forms according to the legal dictionary, namely: Liability is a broad legal term, in which among others it contains the most comprehensive meaning, covering almost every character of risk or responsibility, which is certain, which depends or is possible. Liability is defined to designate all the characteristics of rights and obligations. Liability is also a condition of being subject to actual or potential obligations; the condition of being responsible for actual or possible things such as loss, threat, crime, expense, or burden; conditions that create the duty to implement the Act immediately or in the future Responsibility means things that can be accounted for by an obligation and includes decisions, skills, abilities and abilities. Responsibility also means the obligation of responsibility for the Act implemented and improve or otherwise provide compensation for any damage that has been caused. Responsibilities relating to material truth include:

Civil Notary responsibility for the material truth of the deed he made. Juridical construction used in civil liability for the material truth of the deed made is the construction of acts against the law.

Criminal Notary's responsibility for the material truth in the deed he made. Regarding criminal provisions not regulated in the Law of Notary Position, but the responsibility of Notary is criminally imposed if the Notary Public commits a criminal act that violates the law. The Notary Position Act only regulates the sanctions for violations committed and the sanctions can be in the form of a deed made by a Notary that does not have authentic power or only has power as a deed under the hand or even the deed was legally canceled by the Court.

## Legal Consequences If There Is A Mistake Of Deed Made By A Notary

### a. Legal Consequence Of Notary

The author believes that it is necessary to look at the legal consequences that arise later due to violations of the provisions of the law on the deed made or there is a violation of the prohibition and obligations of the Notary. The first thing that needs to be seen is in the case of a Notary making a deed that is not followed by granting a legal counsel and in the future there will be a problem in the deed, it is necessary to see whether the deed has been made in accordance with applicable procedures and provisions. If the deed has been made as it should, then the Notary cannot be blamed or sanctioned due to the absence of legal counseling during the process of making the deed, because there is no legal basis to provide sanctions for the Notary.

The party who feels aggrieved must be able to prove the loss suffered due to negligence or intentionality of the Notary, if it is successfully proven then the deed can be degraded into a deed under the hand and the Notary can be sued for compensation. The second thing that needs to be seen is in the case of a Notary making a deed that is not followed by granting a legal counsel and in the future there will be a problem in the deed, the deed is made in accordance with the procedures and provisions of the applicable laws and regulations but the Notary does not carry out legal counseling in the form of reading the deed before it is signed by the parties, where the reading of the deed is an obligation that must be done by a notary, then sanctions can be given to the notary as stipulated in force and the deed made can be degraded into an underhand deed.

The legal consequences that can arise to the deed made by a notary or sanctions that can be applied to the notary, not because there is no legal counsel. Notaries who do not carry out legal counseling cannot immediately be subject to sanctions because there are no arrangements which can be the basis of the imposition of sanctions for Notary. There are no regulations regarding the process of granting legal counseling and the form of legal counseling conducted by a Notary Public resulting in a lack of uniformity in the form and time for the Notary to provide legal counseling to the parties during the process of making the deed, so that in the future there will be problems related to the deed drawn up, the Notary cannot be penalized for not giving legal counsel.

The notary is given the authority to pour all the deeds, agreements and stipulations that are desired by the parties that come to him then poured into an authentic deed. The goal is that the deed has complete strength of evidence and validity. The notary must fulfill all the conditions of his position and other regulations. The notary also has the role to study whether or not what is desired by the parties to be poured into the Deed does not conflict with the applicable laws and regulations. The notary is obliged to know and understand the terms of authenticity, validity and the reasons for the cancellation of a deed, it is very important to prevent preventive legal defects from a notary deed which can result in the cancellation of the Deed and cause harm to the parties concerned.

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The role of the notary in providing legal counseling must provide an explanation of the actual legal situation in accordance with the provisions of the law, explaining the rights and obligations of each party, the goal is to achieve a

high and correct legal awareness in the community, honest, impartial, and with full sense of responsibility. The notary gives legal counsel he must understand the problem that is being asked by the client, so that the notary does not provide a wrong explanation. If a notary gives legal counsel to the client outside of his duties and authority, then the act is not considered to be contrary to UUJN, as long as the act is related to the law and is related to the deed. As a result of the implementation of legal counseling is not regulated, the notary concerned also still has his responsibility, that is, the moral responsibility of the position he holds. Because notaries are trusted officials and in carrying out their duties are always imbued with Pancasila, aware and obedient to the law of the Notary Position, oath of office and also the notary code of ethics.

#### **b. Notary Role in Legal Consequence**

The role of the notary in providing legal counseling must provide an explanation of the actual legal situation in accordance with the provisions of the law, explaining the rights and obligations of each party, the goal is to achieve a high and correct legal awareness in the community, honest, impartial, and with full sense of responsibility. The notary gives legal counsel he must understand the problem that is being asked by the client, so that the notary does not provide a wrong explanation. If a notary gives legal counsel to the client outside of his duties and authority, then the act is not considered to be contrary to UUJN, as long as the act is related to the law and is related to the deed. As a result of the implementation of legal counseling is not regulated, the notary concerned also still has his responsibility, that is, the moral responsibility of the position he holds. Because notaries are trusted officials and in carrying out their duties are always imbued with Pancasila, aware and obedient to the law of the Notary Position, oath of office and also the notary code of ethics.

The notary gives a legal counseling followed by making a deed, apparently causing a loss for his client because of the mistake of the notary himself, according to him Mr. Dasman, the Notary can be held liable. Conversely, if the losses incurred are not the fault of a notary, then the notary cannot be held liable. Conversely, if the losses incurred are not the fault of a notary then the notary cannot be held liable. Before a notary provides legal counseling, he must understand well the problems that are questioned by the client to him, so that the notary does not provide an incorrect or inappropriate explanation and even violates the applicable provisions. In addition, in giving legal education notary must be able to assess in advance what is really desired by the parties who came to him, provide advice in accordance with the law, and look for legal forms that are appropriate and desired by the parties.(7)

In carrying out his position, if a Notary Public violates based on the provisions stipulated in the Law, then the Notary must be held responsible by being sanctioned or sanctioned in the form of civil sanctions, administrative sanctions, criminal sanctions, notary position code of ethics or a combination of sanctions. Thus the Notary must be responsible for the Deed that has been made.

### **5. CONCLUSION:**

- Notary in carrying out his position providing legal counseling can be in the form of giving explanations, providing information and providing understanding relating to legal actions that will be applied in the deed. The form of legal counsel referred to includes acts that must be done by the parties or parties of the Notary before making the deed or after making the deed. Acts before making a deed are information and evidence that must be given to the user for the purpose of making an authentic deed, while legal counseling after the making of the deed is a continuation of the use of the deed including the necessary permits in accordance with applicable laws and regulations. Legal counseling is done to avoid future mistakes.
- In carrying out his position if the Notary Public violates based on the stipulated provisions, the Notary must be responsible for the mistake of the deed he made by being responsible for the formal form of the authentic deed as regulated by law. With responsibilities related to material truth, namely: civil notary responsibility, criminal notary responsibility, and administrative notary.

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