

The Legal Consequences For a Notary Who Acts As A Land Realtor In Terms of Code of Ethics and Based on Law Number 2 Year 2014 Concerning Amendment To Law Number 30 Year 2004 on Notarial Law

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Abstract: *The notary must uphold the dignity of his profession as a position of trust and carry out her/his duties appropriately and honestly which means to act according to the truth in accordance with the oath of Notary. A Notary is also a human being who is not free from deliberate mistakes or due to negligence. Deviations from the authorities and obligations of the Notary, allow these Notaries to deal with legal liability both **civil responsibility, administrative responsibility, and criminal responsibility**. In practice, it was found that several Notary committed violations, one of which was acting as a land realtor in the land acquisition project. This study aims to determine the understanding of land realtors conducted by a notary and the legal consequences caused by the Notary Ethics Code and the Notarial Law. In the research, for every Notary who acts as a land realtor and conducts management is considered to have violated Article 4 paragraph (1) jo. Article 16 paragraph (1) letter a jo. Article 17 letter i jo. Article 52 paragraph (1) jo. Article 53 paragraph (1) of Notarial Law and Article 3 paragraph (3) jo. Article 4 paragraph (3) letter r Notary Ethics Code (INI).*

Key Words: *Notary, Land Realtor, Notary Ethics Code.*

1. INTRODUCTION:

As a profession, a notary who upholds ethical values will get a good appreciation from the community in addition to being obedient in implementing the provisions of the Law. This can be interpreted that the role of the Notary in providing legal services in the private sphere can be justified legally and according to its Code of Ethics. Ethics are needed as an introduction to critical thinking, which can distinguish what is legal or not according to law and what is not morally. Thus ethics gives the possibility to the Notary to take his own position and participate in determining the direction of community development. The professional code of ethics is the result of the self-regulation of the profession concerned in realizing essential moral values and not imposed from outside the professional code of ethics is only effective by the ideals and values that live in the professional environment itself. [1]

The Code of Ethics for Notaries was first regulated in Stb 1860 Number 3 and then the latest is in the Notary Ethics Code of the Indonesian Notary Association (INI) which was last stipulated on May 30, 2015 and in Article 89 of the Notary Position Act along with sanctions . The Notary Professional Code of Ethics is compiled by a Notary Professional Organization in Article 1 paragraph (2) of the Notary Ethics Code of the Indonesian Notary Association (INI) which explains that the Notary Code of Ethics and hereinafter referred to as the Code of Ethics is a moral code determined by the Indonesian Association of Notaries based on the decision of the Congress of the Association of Societies and / or as determined by and regulated in the legislation governing it and what is applicable and obliged to be obeyed by each and every member of the association and all people who carry out their duties as Notaries, including Temporary Acting Notaries or Substitute Notaries.[2] The Code of Ethics can be described as moral rules related to a particular profession, occupation or position that bind and guide its members about good and bad values, right and wrong in the organization. The existence of the Code of Ethics as a form of awareness of humans in the environment and certain groups about the importance of ethics in carrying out certain professions.[3] Without the ethics of human beings will not be a noble creature that gives blessing to all nature.[4] In serving the public interest, the Notary is confronted with a variety of human characters and desires that differ from each other from each party who comes to the Notary to make an authentic deed or just legalize it for confirmation or as written proof of an agreement he made. The regulation regarding Notary is regulated in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Notarial Law (UUJN). Based on Article 1 paragraph (1) of the UUJN it is regulated that a Notary is authorized to make an authentic deed and other authorities as stipulated in this Law.

Furthermore, it is also determined in Article 15 of Notarial Law that the Notary is authorized to :

- 1) Make an authentic deed regarding all deeds, agreements and provisions required by statutory regulations and / or that is desired by the interested parties to be stated in an authentic deed, guarantee the certainty of the date of

making the deed, keep the deed, give a grosse, copy and quote the deed, all of this as long as the making of the deeds is not also assigned or excluded to other officials or others stipulated by law.

- 2) Notaries are also authorized :
 - a. Ratify the signature and determine the certainty of the date of the private deed by registering in a special book
 - b. Posted the private deed by getting a special book
 - c. Make a copy of the private deed containing the description as written and described in the relevant letter
 - d. To validate and match the copy with the authentic deed.
 - e. Provide legal counseling in connection with the making of the deed
 - f. Make a deed relating to land
 - g. Make an auction treatise deed.
- 3) In addition to the authorities as referred to in paragraphs (1) and (2), the Notary shall have other authorities regulated in the Statutes

Nowadays, there is a lot of competition for clients. Therefore, many Notaries began to try to carry out other business activities besides carrying out their job duties, where in this case one of them was by providing document management services and other administrative products. The field is much in demand by Notaries, because they already know the ins and outs of the management. In addition there is also a Notary who is a realtor in the process of buying and selling land. This could be in the background of noaris knowledge in the field of land, because in general a notary also serves as an Acting Officer for Land Deed. Either by providing document management services, or by becoming a realtor in the process of buying and selling land which is the main orientation for the Notary who runs it is to gain profit or additional income. Moreover, from these side businesses sometimes the benefits are higher than making a deed. Therefore the necessity of embahasan regarding a Notary in this case also as a realtor According to the Notary Ethics Code and the Notarial Law, the prohibition of a Notary in carrying out his position also acts as a land realtor and carries out its management. Furthermore, the study of the legal consequences of a notary who acts as a land realtor is associated with the Notarial Law and the Notary Ethics Code.

2. CONCEPTUAL FRAMEWORK:

- 1) **Legal Results** : Legal consequences are an effect caused by the law, on an action carried out by legal subjects.[5]
- 2) **Official/Functionary** : According to the Legal Dictionary, officials/functionary are government employees who hold important positions (leadership elements).[6]
- 3) **Notary** : In Article 1 number 1 UUJN states that a Notary is a Public Official authorized to make an authentic deed and other authorities.
- 4) **Land Realtor** : The meaning of a realtor/brokers in KBBI is the trade intermediary between the seller and the buyer, people who sell goods or find buyers, realtorage.[7]

3. THEORITICAL REVIEW:

- 1) **Legal Certainty Theory** : Normative legal certainty is a regulation made and promulgated with certainty because it regulates clearly and logically.[8] The doctrine of legal certainty comes from dogmatic-juridical teachings based on the positivist of thought in the world of law, which tends to see law as something autonomous, independent because for adherents of this thought, law is nothing but a collection of rules. For adherents of this flow, the purpose of law is nothing but guaranteeing the realization of legal certainty.
- 2) **Theory of Liability** : Hans Kelsen's theory of legal liability is a concept related to legal obligations and legal responsibility. That a person is legally responsible for certain acts or that he bears legal responsibility, the subject means that he is responsible for sanctions in conflicting legal acts.[9] Regarding the issue of official accountability according to Kranenburg and Vegtig, there are two theories underlying it, namely:
 - a. *Fautes Personalles* theory, which is a theory which states that losses to third parties are borne by officials who because of their actions have incurred losses. In this theory the burden of responsibility is directed at humans as individuals.
 - b. *Fautes de services* theory, namely the theory which states that losses to third parties are borne by the agency of the official concerned. According to this theory the responsibility is be imposed with the position or functionary.

- 3) **Legal Professional Ethics Theory** : According to Liliana Tedjosaputra's opinion, professional ethics are all moral demands that are affected by the implementation of a profession, so that professional ethics pay attention to the ideal problems and practices that develop due to the responsibilities and privileges inherent in the profession, which is an expression of an effort to explain circumstances that are not yet clear and are still vague and constitute the application of general moral values in specific fields which are more concrete in the Code of Ethics.[10] According to K. Bertens, ethics is a critical, methodical and systematic reflection on human behavior, as far as norms are concerned.[11] To find out an ethic requires several approaches, namely:[12]
- a. Descriptive ethics, describing moral behavior in the broadest sense, customs, assumptions, about the good and bad of actions which are allowed or not allowed.
 - b. Normative Ethics, evaluating a fact in the form of human behavior.
 - c. Meta Ethics is a theory of ethics that studies morals as a conceptual system.

4. LITERATURE REVIEW:

1) Notary Role

The notary entered and became known in Indonesia at the beginning of the 17th century with the existence of *Vereenigde Oost Ind. Compagnie* (VOC) in Indonesia.[13] In Article 1 number 1 of the Notarial Law (UUJN), a Notary is defined as a public official authorized to make an authentic deed and other authorities as referred to in the UUJN. This means that the notarial deed is directly related to the values and dignity of the promised parties. Where the Notary has the duty as a public official and has the authority to make authentic deeds and other authorities regulated by UUJN.

2) Notary as a Public Servant

According to Pitlo referred to in Article 1868 of the Civil Code (Article 1905 of the Dutch Civil Code), it is a Notary that is by looking at the rules of the Notary's position. He further said that this provision only applies in the area of civil law, whereas in public law this authority is given to a large number of employees or government agencies. All Notary position regulations according to Pitlo are nothing but a description of Article 1905 BW (Article 1868 of the Civil Code).[14] In addition, the term 'General Servant' is used in Article 1 of Law number 30 of 2004 which has been amended to Law number 2 of 2014 concerning Notarial Law (UUJN) replacing of Staatblad Number 30 of 1860 concerning Notary Position Regulation (PJN), which is Meant by a notary is a public servant authorized to make an authentic deed and other authorities as referred to in this Law. The notary public plays a role in carrying out the duties of the state in the field of civil law, and to the Notary is qualified as a Public Servant authorized to make an authentic deed. Authentic deed requires the formulation of the wish or will formulation (*willsforming*) of the parties as outlined in the notarial deed made before or by the Notary, and other authorities as referred to in the Notary Position Act Article 1 number 1 and Article 15 paragraph (1).[15] Thus the Notary is a servant that has characteristics, namely: As a public servant, has certain authority, appointed and dismissed by the government.[16]

3) Notary According to the Notarial Law (UUJN)

The Legal Foundation of Notary Professionals experienced significant legal developments in terms of:

- a. Expansion of Notary authority, according Notarial Law No. 30 of 2004 in Article 15 paragraph 2 letter f and Article 15 paragraph 2 letter g, namely the authority to make words relating to land, authority to make akat auction minutes and expansion jurisdiction. Pursuant to Article 18 paragraph 2, namely notary has an area of office covering the entire province with a status of place in the district / city.
- b. The implementation of the Notary Oath, Minister of Law and Human Rights of the Republic of Indonesia based on Letter Number: M.UM.01.06-139 dated November 8, 2004 has delegated the authority to carry out the Notary Oath to the Head of the Regional Office of the Ministry of Law and Human Rights.
- c. Notaries are permitted to carry out their positions in the form of civil union in accordance with the provisions of Article 20 paragraph 1 of Act No. 2 of 2014 concerning the Notarial Law who can jointly establish a Notary.
- d. The issue of Notary surveillance, the Minister of Law and Human Rights of the Republic of Indonesia in accordance with their authority based on Article 67 paragraph 1 of the Notarial Law forms a notary supervisory assembly.
- e. Mandating that the Notary be put together in one organization of the Notary according to Article 82 paragraph 1 of the Notarial Law. As is known to date there is only one notary organization to organize the Indonesian Notary Association (INI) as a single forum for all Indonesian notaries.

4) Notary Code of Ethics

The notary association which is incorporated in a Notary organization in this case is the Indonesian Notary Association (INI) above statement also applies to the Notary profession. In Article 1, notary code of conduct of the Indonesian Notary Association (INI) referred to as the Notary Ethics Code is: *"All moral rules determined by the Indonesian Association of Notaries, hereinafter referred to as" associations "based on the decisions of the congress of the association and / or as determined. by and regulated in the laws and regulations governing it and which apply to and must be obeyed by any and all members of the association and all those who carry out their duties and positions as Notaries, including the interim officials of Notaries, substitute Notaries and special substitute Notaries. Organizational discipline is the compliance of members of the association in order to fulfill obligations, especially administrative obligations and financial obligations that have been arranged by the association."*

In its journey, the Notary Code of Ethics has undergone several amendments conducted through the congress of the Indonesian Notary Association. The congress was first held in Surabaya. In 1974 and then changed and rearranged at the XIII Congress held 1981 in Bandung. Furthermore, the Notary Code of Ethics was amended again through an extraordinary congress of the Indonesian Notary Association (INI) in Bandung on 29 January 2005. Until now the Code of Ethics that has been enacted is the Code of Ethics resulting from the Indonesian Notary Association congress which was held on May 29 until May 31, 2015 in Banten. For notaries who violate the Code of Ethics, the honorary board coordinates with the supervisory board authorized to examine the violations and can impose sanctions on violators. The notary obligation has been specifically and specifically regulated in Article 16 paragraph (1). Whereas the provisions of sanctions in UUJN are regulated in Article 84 and Article 85.

5. METHOD:

This research uses an approach with Normative Juridical Method which is a research method that uses deductive thinking and is based on coherent truth in finding truth and analytical through library materials and field research that is analyzing documents related to the research.[17] The character of this research is evaluative descriptive, namely research aimed at describing the exact nature of an individual, condition, symptoms or certain groups, or to determine the frequency of a symptom, accompanied by an assessment of the researcher on the activities or programs that have been carried out.[18]

6. DISCUSSION:

Discussion on the causes and prohibitions of Notaries in carrying out their positions which also act as land realtor/brokers so that they will have a legal impact for the notary who acts in terms of the Notarial Law and Notary Ethics Code.

7. ANALYSIS:

1) Realtor/Brokers in the Code of Commercial Law (KUHD)

The Realtor has special characteristics which are further regulated in Article 62 through Article 72 of KUHD, namely:[19]

- a. The realtor/broker must obtain an official appointment from the government;
- b. Before carrying out his duties, the realtor must swear in front of the Head of the District Court, that he will carry out his obligations properly.

In carrying out his actions, the responsibility of the realtor should be seen as if he were the buyer himself, but not based on the existence of a sale and purchase agreement between the seller and the seller, but rather the accountability arising from the desires expected (*opgewete verwachtingen*). In practice, there are many illegal realtors who carry out tasks such as realtors, but without government permission and without being sworn in. They are more a liaison between, and are not subject to the provisions that apply to realtors so that they are outside government control.[20]

2) Notary Who Runs His Position Acting as a Land Realtor/Broker (Case of the Corruption Court Decision on February 22, 2008 (DECISION 98 PK / Pid.Sus / 2009).

In 2007 in the city of Bogor, a Notary acted as a realtor/broker for a land acquisition project, a government institution conducted the management of the sale and purchase of his land, which included the making of the sale and purchase deeds, the handling of taxes and the receipt of a certain amount of payment for the land price. This

notary argues that this is a request from the grantor, because they trust the Notary more. Whereas the landowner as the authorizer over the sale of land and only wants to accept it is settled, therefore the authorizer accepts the offer of a Notary who offers himself as a realtor/broker and conducts the sale and purchase of his land. This was revealed in the corruption case trial of the institution's employees in the Corruption Court on Wednesday, December 5, 2007. As reported in Renvoi magazine, on February 22, 2008 the Special Court of Corruption Crimes ruled that the two defendants were judged to have misused their authority for allowing Notary implemented the land acquisition. The two BAPETEN employee should direct the land acquisition project which at present must be in accordance with Presidential Decree Number 55 of 1999 on Land Procurement.[21]

Furthermore, the provisions of Article 17 letter f of the UUJN state that Notaries are prohibited from holding concurrent positions as leaders or employees of State-owned business entities, regionally-owned business entities or private business entities. Likewise, the same is true with the provisions in the Notary Ethics of the Indonesian Notary Association (INI), the prohibition of concurrent Notaries from serving in Article 4 number 4, the Notary Ethics Code of the Indonesian Notary Association, which states that Notaries are prohibited from cooperating with service bureaus / persons / legal entities that in essence act as an intermediary or become a party in it looking for or getting clients. In the trial according to the Judge, the Notary concerned had violated the Professional Code of Ethics, namely by making a deed of selling power for himself. What is even worse is that the authority to sell is denied by the parties.[22] In this case, Notary Fenny has violated Article 52 (1) UUJN that Notaries are not allowed to make a deed for themselves, wife / husband, or other people who have a familial relationship with the Notary, either because of marriage or blood relations in a straight line down and / or above without limitation of degree and in the lateral line with the third degree, as well as being a party for oneself or in a position or through the power of attorney, while Article 53 (1) UUJN regulates a notarial deed may not contain stipulations or provisions which give any rights and / or benefits for a Notary, wife or husband of a Notary.

3) Legal Consequences for a Notary Who Acts as a Land Broker Attributed to a Notary Ethics Code and Notarial Law (UUJN).

When the notary took the oath, contains 2 (two) things that must be understood:

- a. In a horizontal straight line that the community and the state have given trust to the notary to carry out some of the tasks of the state in the field of civil law, namely the manufacture of strong evidence, and to the people who have trusted that the notary is able to unite his will into the form of a notary deed, and believe that the notary is able to keep / keep all information / statements given before the notary.
- b. In a straight line up (vertical), the notary is obliged to be responsible to God, because of the promises or oaths that we make based on their respective religions and beliefs, thus meaning that everything that is done will be held accountable in the form desired by God. With the notary oath, will enliven the conscience, present God in the consciousness of the soul and make God the center of orientation.
- c. The provisions of the Notary Code of Ethics regarding the obligation of notaries to take sides as stipulated in the Law on National Social Security Law are also regulated in the Notary Ethics Code stipulated by the Indonesian Notary Association. holding and running the position of notary is obliged to act honestly, independently, impartially, full of responsibility based on the laws and regulations and the contents of the notary oath.

According to the provisions of Article 4 paragraph (1) jo. Article 16 paragraph (1) letter a jo. Article 17 letter i jo. Article 52 (1) UUJN and the provisions in Article 3 number 2, 3, and 4 jo. Article 4 number 15 letters a and c of the Notary Code of Ethics (INI), it can be concluded that the Notary who in carrying out his / her duties also perform other work, namely as an intermediary in relation to the sale and purchase of land, is a violation of the Law and the Code of Ethics, because the act violates the principle of impartiality and propriety which can affect the honor and dignity of the position of the Notary and the honor of the Society. Therefore, several sanctions can be applied, namely:

- a. Sanctions According to the Indonesian Notary Association (INI) imposed on this members who violate the Code of Ethics can be in the form of:[23]

- (1) Reprimand
- (2) Warning
- (3) Suspension (temporary dismissal) of membership of the association
- (4) Onzetting (dismissal) of membership of the association.

- b. Sanctions According to the Notarial Law, regarding sanctions imposed on Notaries as individuals according to Article 85 UUJN can be in the form of:

- (1) Oral reprimands
- (2) Certain reprimands
- (3) Temporary termination
- (4) Dismissal with respect
- (5) Disrespectful dismissal

4) Notary Dimissal Process in connection with a criminal offense

In the event of a violation committed by the reported or based on the results of the examination, the Regional Supervisory Council (MPD) summoned the Notary concerned then MPD made the minutes of the examination of the reported and pickled news findings of the results of the inspection of the Notary protocol, then the MPD can study the case whether it leads to a criminal act and take the case with other MPD members to see the extent to which the criminal act committed by the Notary has been decided in court, if it is decided, it can be seen again how long the criminal threat has been received by the Notary. Then MPD proposes to impose sanctions on the Notary to the MPW and MPP whether to be suspended temporarily or dishonorably dismissed. If the Notary has been decided in court which obtains permanent legal force, then the Notary is not allowed to make a deed while in detention, if the Notary issues a deed then the deed may be void by law.

8. CONCLUSION:

- Notary who runs his position acting as a land realtor/broker has violated the provisions of Article 16 paragraph (1) letter a, Article 52 paragraph (1) and Article 53 of the UUJN. This is because the Notary makes a deed of sale and purchase of land and also acts as the power of attorney of the land which violates the provisions of the Notary as concurrently another position and takes advantage of it which affects the status and dignity of the position of the Notary may be subject to sanctions in accordance with Article 85 of UUJN.
- Legal consequences for a Notary who acts as a realtor/broker in the form of the application of sanctions imposed by the Notary Honorary Board against the Notary who acts as an intermediary in relation to the sale and purchase of land is a temporary dismissal from the membership of the Indonesian Notary Association and a dishonorable dismissal by the Board of Trustees proposing to the minister . The notary has also violated the principle of impartiality which is also contained in Article 3 paragraph (3) jo. Article 4 paragraph (3) letter r of the Notary Ethics Code of the Indonesian Notary Association so that it can be subject to sanctions in accordance with Article 6 paragraph (1) of the Notary Code of Ethics.

9. SUGGESTION :

- The notary should focus and be consistent with his profession, and be professional in carrying out his job duties. The existence of other activities besides carrying out their duties as a notary public, can result in notaries not focusing in carrying out the duties of a notary and must act honestly and uphold the honor and dignity of the notary.
- The regulation on sanctions as regulated in Article 6 paragraph (1) of the Notary Code of Ethics is deemed lacking because of the resulting loss due to moral or ethical violations committed by the Notary. To anticipate similar incidents, it is recommended that the UUJN and the Notary Ethics strengthen the regulation regarding sanctions against the notary who have violated both the substance / type of sanction procedures and the mechanism of the application of sanctions. , also maximizing the role of the Honorary Council of the supervisory assembly.

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