

# Responsibilities And Notary Law As A Legal Consultant

**Reidha Novyca Putri N.S, Habib Adjie**

Faculty of Law, Narotama Universty Surabaya

E-mail: reidhanirmalasari91@gmail.com dan adjie61@gmail.com

## ABSTRACT

Notary is a public official with the authority to make authentic deed as strong evidence. In the process of making an authentic deed, the client needs advice about legal actions that will be recorded in the authentic deed, this is referred to as legal consulting services by a notary. In practice found a notary as a legal consultant with the inclusion in a separate sign in the notary's office. The purpose of this study is to examine the actions of a notary as a legal consultant. This research method uses a normative juridical method with a conceptual approach and legislation. The conclusion of this research is that the act of installing a signboard as a legal consultant is an unjustified act and the notary can be held accountable for the results of the consultations given.

**Keywords:** Liability, Notary, Legal Consultant

## 1. INTRODUCTION

In conducting civil transactions, the parties need someone's help to record their legal actions. Rules regarding notary office in Law No. 30 of 2004 concerning the position of Notary amended by Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning the Position of Notary Public. Notary based on Article 1 number 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Position, is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws (Roesli, Heri, & Rahayu, 2017). Furthermore, the notary authority is regulated in Article 15 of Law No. 2 of 2014 which states that "Notary is authorized to make an authentic deed regarding all deeds, agreements, and stipulations required by statutory regulations and / or desired by the interested parties to be declared in an authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, giving the grosse, copy and quotation of the Deed, all of it as long as the drafting of the Deed is not also assigned or excluded to other officials or other people determined by law.

"To provide limits regarding the obligations and prohibitions of notaries in accordance with the principle of legality, the notary position law and its amendments regulate the notary liability as referred to in article 16 of law No. 30 of 2004 namely in carrying out his position, the notary must: " act trustfully, honestly, careful, independent, impartial, and safeguarding the interests of the parties involved in legal actions, making the Deed in the form of Deed Minutes and keeping it as part of the Notary Protocol, attaching letters and documents and fingerprints to the Duta Minutes, issuing Grosse Deed, Copy of Deed, or Deed Quote based on Deed Minutes, providing services in accordance with the provisions in this Law, unless there is a reason to reject

it, keep everything confidential about the Deed that was made and all information obtained for making the Deed in accordance with oaths / promises, except the law the law determines otherwise, binding the Deed he makes in 1 (one) month becomes a book that contains no more than 50 (fifty) Deed, and if the number of Deed cannot be contained in one book, the Deed can be bound to more than one book, and records the Minutes of Deed, month, and year of making it on the cover of each book, making a list of the Deed of protest against not being paid or not receiving the securities, making a list of Deed with regard to the will according to the time series of making the Deed every month, and so on.

Notary in working in accordance with the authority given by the undnag- given rules regarding prohibition as a guideline in carrying out his duties and positions, Article 17 of Law No. 30 of 2004 provides a prohibition to notaries including: "not carrying out a position outside of the jurisdiction, leaving the territory more than 7 (seven) consecutive working days without valid reason, concurrently serving as a civil servant, concurrently serving as a state official, concurrently serving as an advocate, concurrently serving as a leader or employee of a state-owned enterprise, regionally-owned enterprise or business entity private sector, concurrently serving as an Official of Land Deed Makers outside the area of the position of Notary Public, becoming a Substitute Notary; or do other work that is contrary to religious norms, decency, or propriety that can affect the honor and dignity of the position of Notary.

In working as an active notary and as a member of the Indonesian Association of Notaries, each notary is bound by the rules of law and code of ethics to avoid the things that are not desired and maintain the spirit of the notary public. Basing on the moral values and ethical values of a Notary, the development of the position of Notary is a service to the community (client) independently and not taking sides in the field of notary living which is lived out as a vocation of life based on the spirit of dedication to fellow human beings for the public interest and rooted in respect for dignity humans in general and notary dignity in particular. (Herlien Budiono (2007), Notary and its Code of Ethics, Upgrading and Refreshing Course National Indonesian Notary Association). The legal basis for the code of ethics Article 83 of Law No. 30 of 2004 which states that the Notary Organization establishes and enforces the Notary Ethics Code. This code of ethics was established by members of the Indonesian Notary Association in 2005 and 2015, the concept of the code of ethics according to Article 1 of this Code of Conduct is amoral code determined by the Indonesian Association of Notaries, hereinafter referred to as associations based on congressional decisions of associations and / or as determined by and stipulated in the legislation governing it and which applies to and must be obeyed by each and every member of the association and all those who carry out their office assignments as notaries, including the Temporary Notary Officials, Substitute Notaries at the time of their positions.

Article 15 paragraph 2 letter e of Law No. 2 of 2014 states that the notary is authorized to provide legal counseling in connection with the Deed, this article is used by the notary public to open legal consulting services and in practice there are notaries who put up a signboard and are mentioned as legal consultants . Legal issues in the regulation are not explained regarding legal counseling, resulting in various interpretations in the article. Furthermore, Article 3 of Law No. 2 of 2014 states that one of the requirements to become a notary is someone who is not an advocate. So that when drawn in conclusion there are several legal issues / issues, namely the position of a notary as a legal counselor in the process of making a deed, Interpretation of the meaning of legal counsel is associated with the legal advocate and legal consultant profession, responsibility and accountability in the process of providing legal counseling services, the role and supervisory assembly regions in applying the Indonesian notary public code of ethics to notaries who put up a nameplate as a legal consultant and what sanctions are most appropriate given to notaries who violate the code of ethics. On the legal issues in the description, the researcher is interested in making a study with the title LIABILITY AND NOTARY LAW AS A LEGAL CONSULTANT

## **2. RESEARCH METHODS**

This type of research in legal research is normative legal research, which is a process for discovering the rule of law, legal principles, and legal doctrines in order to address the legal issues encountered (Peter Mahmud Marzuki, *Legal Research*, 2011). Researchers use this type of normative research because this research is to find coherence, namely whether there are legal rules in accordance with legal norms and whether norms in the form of commands or prohibitions are in accordance with legal principles, and whether one's actions are in accordance with legal norms or legal principles (Peter Mahmud Marzuki, *Legal Research Revised Edition*, 2014) As this research is to find. In this study, researchers used three methods of problem approach namely, including the legislative approach, conceptual approach.

The statutory approach is carried out by examining all laws and regulations relating to the legal issues being addressed. [1] A regulatory approach is needed to further study the Responsibilities and Responsibilities of Notary Public as Legal Consultants. In this study, the legislation used is Law Number 30 of 2004 concerning Notary Position, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, Code of Ethics of Indonesian Notary Association and its amendments.

The conceptual approach moves from the views and doctrines that develop in the science of law. Studying the views and doctrines in law, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issue at hand. In the conceptual approach, new concepts will be found in accordance with the objectives of this study,

namely the responsibility and accountability of a notary public as a legal consultant. The formulation of the problem will then be analyzed with existing concepts and theories. In this study, the theories and concepts used include the concept of a code of ethics and the concepts of responsibility and accountability.

In this study, researchers used sources of legal material, including: Primary legal material is legal material that is authoritative, meaning that it has authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. Primary law that will be used in this study include Act Number 30 of 2004 concerning Notary Position, Act Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, Act Number 30 of 2004 concerning Position Notary, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, Code of Ethics of Indonesian Notary Association 2005 and amendments thereto. Secondary legal material in the form of all legal publications which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and comments on court decisions. In this study, secondary legal materials used include: books in the field of law, papers, articles, and theses.

### **3. DISCUSSION**

#### **Notary As a Legal Consultant**

A legal scholar should be able to provide legal advice or opinions to people who need his help. The act of providing legal advice / opinion can be categorized as providing legal consulting services. In practice, legal consultancy offices are often found, but a legal consultant is not an advocate, the concept of an advocate of a person who provides legal services, both inside and outside the court, who meets the requirements based on statutory provisions.

To become an advocate must pass a number of conditions such as a citizen of the Republic of Indonesia, residing in Indonesia, not having the status of a civil servant or a state official, at least 25 (twenty-five) years old, having a bachelor's degree with a legal tertiary education background, graduating an examination held by an Advocate Organization, an internship of at least 2 (two) years continuously at the Advocate's office, has never been convicted of a criminal offense threatened with imprisonment of 5 (five) years or more, behaves well, honestly, is responsible, is fair, and has high integrity, and is obliged to go through the oath swearing procedure before the high court.

Activities undertaken by legal consultants such as activities carried out by *paralegals*, definition of paralegals according to the *black law dictionary* " a person who has been trained, and holds authority to provide A specified number of legal services. A paralegal is not a lawyer, but is usually on their way to becoming one. Neither legal consultants nor paralegals are allowed to

provide legal aid services and practice as advocates because they do not meet the requirements set in the legislation. Allowed paralegal activities such as legal counseling, legal consultation, case investigations both electronically and non-electronically, legal research, mediation, negotiation, community empowerment, legal document drafting, policy advocacy.

In the notary position law, a notary public can provide legal counsel in connection with the making of the Deed. Legal Education is one of the activities of disseminating information and understanding of legal norms and legislation in force to create and develop public legal awareness so as to create a legal culture in the form of orderly and obedient or obedient to the legal norms and laws and regulations that apply for the upholding rule of law.

The legal counseling method consists of persuasive methods meaning that legal counselors in carrying out their duties must be able to convince the instructed community, so that they feel interested and pay attention and interest in the things delivered by the instructor, the second method is an educative method meaning that the instructor must behave and behave as an educator who with patience and perseverance guides the community toward the goal. Communicative method means that legal counsel must be able to communicate and create climate and atmosphere in such a way as to create a conversation that is friendly, open and reciprocal, and accommodative method means that with the submission of legal problems by the community, legal counsel must be able to accommodate, accommodate and provide solutions to languages that are easily understood and understood by the public.

Legal counseling conducted by a notary is given in order to assist in making the required deed and this is a unity that cannot be separated from one another. Notaries in providing legal counseling in the form of legal consultations to their clients are prohibited from collecting fees as advocates do. These provisions contain the value of service, prioritizing the interests of its clients. In carrying out his position, the notary has two essential characteristics and characteristics, namely impartiality and independence (independence) in providing assistance to his clients. impartiality.

This can be fulfilled properly if the parties have given a thorough explanation of all the provision of legal counseling by a notary public that can affect the client in determine the choice to determine legal action Depending on the client to determine his choice, while the notary to maintain the legal signs. In practice, a notary is often found putting up a legal consultant's signboard. If related to the Law of Notary Position and Notary Professional Code of Ethics, this is not appropriate. Provisions regarding nameplate are regulated in the Indonesian Notary Association Code of Ethics Article 3 number 9: Installing 1 (one) nameplate in front of / in the office environment with a choice of rules of 100 cm x 40 cm, 150 cm x 60 cm or 200 cm x 80 cm which loading:

- a. Full name and legal title;



- b. Date and number of the last appointment decision letter as a notary public;
- c. Domicile;
- d. Office address and telephone / fax number.

The base of the signboard is white with black letters and the writing on the signboard must be clear and easy to read. Unless the office environment is not possible for the installation of the intended signboard.

The Notary Position Law does not regulate the prohibition of a notary to serve as a legal consultant, only that there are a number of Article 17 (1) Notaries are prohibited from:

- a. carry out office outside the area of office;
- b. leaving the area of office for more than 7 (seven) consecutive working days without a valid reason;
- c. concurrently as a civil servant;
- d. concurrently serving as a state official;
- e. concurrently serving as an advocate;
- f. concurrently serving as a leader or employee of a state-owned enterprise, a regionally-owned business entity or a private business entity;
- g. concurrently a position as Acting Officer for Land Deed and / or Class II Auction Officer outside the domicile of the Notary;
- h. become a Substitute Notary; or
- i. do other work that is contrary to religious norms, decency, or propriety that can affect the honor and dignity of the position of Notary.

So that the conclusion of the discussion above that the notary can provide legal consultation in making an authentic deed, but not as a legal consultant accompanied by the installation of a signboard.

#### **Notary Liability and Liability as a Legal Consultant**

In this study the concept of responsibility cites several theories put forward by several experts. According to Hans Kelsen in his theory of legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the case of a contradictory act (Hans Kelsen, *General Theory Law and State Basics of Normative Legal Studies as Empirical Descriptive Legal Studies*, 2007). Furthermore, Hans Kelsen states that "Failure to carry out the precautions required by law is called negligence and negligence is usually seen as another type of error (culpa), although not as hard as the mistakes that are fulfilled because of anticipating and desiring, with or without the intention of negligence. evil, dangerous consequences.

According to Abdulkadir Muhammad, the theory of responsibility in unlawful acts (*tort liability*) is divided into several theories, namely (Abdulkadir Muhammad, *Indonesian Company Law*, 2010):

- a. Liability due to unlawful acts that are done intentionally (*intentional tort liability*), the defendant must have committed the act in such a way that is detrimental to the plaintiff or know that what the defendant will do will result in losses.
- b. Liability due to unlawful acts committed due to negligence (*negligence tort liability*), is based on the concept of error (*concept of fault*) relating to morals and laws that have been intermingled (*intermingled*).
- c. Absolute responsibility due to acts that violate the law without questioning the mistake (*strict liability*), is based on his actions both intentionally or unintentionally, meaning that even though it is not his fault he remains responsible for the losses arising from his actions.

According to **Agus Yudha Hernoko**, matter accountability is a the circuit to bear the losses that are caused due to errors or risks (Siti Kotijah, *Corporate Liability due to management of Coal Mining*, 2011). According to **Nieuwenhuis**, 10 responsibilities a lawsuit arises because of an act breaking the law (*onrethmatige daad*) and is the cause (*oorzaak*) emergence loss. While the culprit is guilty (*schuld*), then that person must be accountable claim for the loss (JH Nieuwenhuis, *Hoofdstukken verbintenissenrecht*, 1985). The term *onrethmatige daad* dalam Dutch usually has meaning narrow, that is the meaning used in Article 1365 BW and only related with interpretation of the article.

While the term "misconduct law" is directed to that law generally applies in Indonesia and some of it is legal custom. the concept of violating the law is every tort by hence causing harm to other people, oblige people who are due his mistake caused that loss compensate. Form of accountability according to acts that violate the law is a form of accountability that emphasizes the factor of error (*liability based on fault*), so if unlawful acts are the basis of a lawsuit, the injured party has an obligation to prove the existence of mistakes that caused the loss.

On unlawful acts apply conditions that in general the plaintiff must be able to prove the loss suffered is a result of actions breaking the law committed by defendant. someone must be held accountable for other people's loss, if an action is committed an unlawful act is preceded by an act of the offender. Generally accepted the assumption that by doing here it is meant, either doing something or not doing something, for example not doing something, intended, either doing something, even though he has a legal obligation to make it an obligation which arises from the applicable legal provisions (because there are also obligations that arise from the provisions of applicable law (because there are also obligations arising from an agreement.)

Besides that what is meant regarding legal actions can be said but also violates the rights of others, contrary to the legal obligations of the offender, contrary to decency, contradicting meticulousness that must be heeded in community traffic towards self and goods others, There are losses to parties others, the existence of a loss (*schade*) for the victim is also a requirement that lawsuits against unlawful acts can be used.

In the discussion above, it can be concluded that the notary who provides legal services to clients other than outside the making of the deed, then he can be sued personally if the legal services provided are wrong / inappropriate. It can be said that consulting services in making authentic deeds should be provided, so that clients feel safe and there are no demands in the future with the argument that the notary does not explain the contents of the deed.

#### **4. CONCLUSION**

In the discussion, the act of notary putting up a name as a legal consultant cannot be ethically generated on the grounds that the nameplate in the code of ethics only explains the name, appointment letter, and office address for the purpose of publication of the notary's office. For violations of the code of conduct, the notary may be subject to sanctions. The definition of sanctions in the Indonesian Notary Association code of ethics in Article 1 number 12 is a sentence imposed by an honorary council intended as a means, effort and means of forcing obedience and discipline of members of the association as well as other people who assume and carry out the notary's position, as for the rules regarding sanctions as referred to in Article 6 of the Indonesian Notary Association Code of Ethics, that:

1. Sanctions imposed on members who violate the code of ethics can be in the form of:
  - a. Rebuke
  - b. Warning
  - c. Temporary termination of association membership
  - d. Termination with respect from membership of the association
  - e. Disrespectful dismissal of membership of the association
2. Imposition of sanctions as outlined above for members who violate the code of ethics adjusted to the quantity and quality of violations committed by the member
3. The central honorary council is authorized to decide and impose sanctions for violations committed by ordinary members (notary active) the association, against violations of moral norms or behaviors that demean the notary's dignity and dignity or actions that can reduce public trust in the notary



4. Violations of the code of conduct committed by other people who are carrying out notary positions) sanctions can be issued a reprimand and / or warning
5. Decision of the Honorary Board in the form of a warning or warning cannot be appealed
6. Decision of the Regional Honorary Board / Regional Honorary Council in the form of a temporary dismissal or dismissal with respect or dismissal with no respect from the membership of the case an assembly can be appealed to the Central Honorary Board
7. The decision of the first-level Central Honorary Council in the form of a temporary dismissal or dismissal with respect or dismissal with respect from the membership of the association can be appealed to the congress
8. The Central Honorary Board is also authorized to provide recommendations accompanied by proposals for dismissal as notary to the Minister of Law and Human Rights of the Republic of Indonesia

The second conclusion is that the notary in providing legal consultation in making the deed is a Free Actions in the hope that the client understands what deed will be made by the notary and the contents of the deed.

## **REFERENCES**

- Hans Kelsen (2007), *General Theory of Law and State, Fundamentals of Normative Legal Studies as Empirical Descriptive Legal Studies*, Jakarta: *BEE Media Indonesia*.
- JH Nieuwenhuis (1985), *Hoofdstuken verbintenissenrecht*, translation of Djasadin Saragih, Surabaya.
- Kotijah, Siti (2011), *Corporate legal liability resulting from the management of Coal Mining*, *Yuridika Journal* Volume 26, Surabaya.
- Marzuki, Mahmud Peter (2011), *Legal Research*, Jakarta: Kencana Prenada Media Group 2011.
- Muhammad, Abdulkadir (2010), *Indonesian Corporate Law*, Bandung: Citra Aditya Bakti.
- Roesli, M., Heri, A., & Rahayu, S. (2017). Authority of Land Procurement Committee In The Implementation of Compensation For Land Acquisition. *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 10(2), 46–59.