



Law Enforcement Against Notary for Loss Olographic Will

Debora Imanuel Santoso¹, Ummi Maskanah², Udin Narsudin³

¹A student of Notary Postgraduate Program, Pasundan University, Bandung

^{2,3}A Lecturer of Notary Postgraduate Program, Pasundan University, Bandung

e-mail: debora@gmail.com

ABSTRACT

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The notary has the duties and responsibilities of making and at the same time keeping the olographic inheritance deed desired by the heir before he dies, which is written manually and contains the distribution of his inheritance after he dies without the potential heirs knowing. However, there are times when the olographic will is lost or damaged due to the notary's negligence, resulting in a loss to the maker of the olographic will. This study uses a descriptive normative juridical method; secondary data will be analyzed qualitatively through primary and secondary legal materials supplemented by interviews with notaries using purposive sampling. From the results of the research, it is known that based on Article 933 of the Civil Code requires that the will be submitted to a notary to be stored and sent to the Probate Court and the Central List of Wills. Furthermore, Article 1 paragraph (13) states that the notary has the duty and responsibility to keep the olographic will. Therefore, if the olographic kept by the notary is lost and or damaged, in addition to violating the code of ethics, it also violates Article 1365 of the Criminal Code in conjunction with Article 1367 of the Criminal Code so that the notary can be held accountable by the injured party based on Article 84 UUJN. 7 of 2016.



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INTRODUCTION

As public officers, notaries have a function in imposing the law in Indonesia due to the fact, aside from many notaries, notaries are acknowledged to be part of the elite institution in Indonesia. therefore, a notary is a profession with each man or woman and social obligations toward fine prison norms that require adherence to a professional code of ethics that need to be obeyed to strengthen existing positive laws. Consistent with Article 1 paragraph (1) UUJN, Notaries as country officers are given the task and authority to make actual deeds. one of the capabilities of an proper deed is to provide criminal fact for the maker and, at the same time, provide a sense of security so that it can be used as proof in a dispute or dispute.

Article 1868 of the Civil Code states, "An authentic deed is a deed made in a form decided by means of manner of law through or before a public reliable who is prison to accomplish that at the region where the deed was made." So it could be interpreted that a mistake in a notarial deed can cause a person's rights to be revoked or a person's burden of an obligation.

One shape of an real Deed that a notary can make is a Will. Making an olographic will is criminal due to the fact a person determines how the assets he owns will be divided after the person dies. An olographic will is a crook act made unilaterally because of the fact a will is closed in nature, and there must be no agreement or coercion from unique occasions. developing a will should be finished by myself without interference from other events. it is as stipulated in Article 930 of the Civil Code.

The olographic will is regulated in Article 932 of the Civil Code, which states that "The olographic will have to be honestly handwritten and signed with the useful resource of the testator" and witnessed by means of the use of witnesses, then it must be deposited at a notary by means of doing a deposit deed signed by way of using the testator, notary and witness, and is closed.

In carrying out his feature, a notary is obliged to make a list of deeds concerning wills in step with the order in which the deeds have been drawn up each month, ship a list of wills or a list of nil deeds concerning wills to the precious take a look at in department whose duties and responsibilities are in the notary region inner 5 (five) days in the first week of every month, and to record within the repertorium the date of sending a list of wills at the prevent of each month. accordingly, the notary has a totally essential role in making a will.

However, there are times when the notary has not or has forgotten to carry out his duties and obligations and has even neglected to keep the will deed belonging to the testator and ends up losing the inheritance deed, which requires a legal settlement to avoid harming the will-maker. For this reason, a problem arises regarding the notary's responsibility for such negligence and what sanctions can be given to such a notary. Based totally on the description above, the trouble can be formulated as follows: How is the law enforcement against a notary who commits negligence in keeping an olographic will, which results in the loss of the will, and what sanctions can be imposed on such a notary?

RESEARCH METHODS

The specifications in this study are analytical descriptive, namely analyzing, describing and summarizing the data obtained through library research and field studies through interviews and applying the data to research. The implementation phase uses 2 (two) research stages, namely, the library and the field research stages, to collect primary data as secondary data support.

The library studies level uses secondary statistics obtained from primary legal substances, secondary felony substances and tertiary prison substances. moreover, the secondary and primary records can be examined thru a normative juridical method with the help of an empirical juridical associated with norms, principles, theories and other legal principles. Furthermore, the data will be analyzed using qualitative juridical and interpretation methods, and then conclusions and recommendations will be drawn.

RESULTS AND DISCUSSION

1. Responsibilities of a Notary in making an olographic will

A notary must keep deeds made by and or before a notary because the deed is a very important document that must be kept and archived by a notary. It is also inseparable from the olographic will, and the notary must save and send the testament he has made to the Probate Court (BHP) and the list of testament centres (DPW).

inside five (5) days from the primary week of every month, the notary is obliged to send a list of deeds relating to the will to BHP, in whose jurisdiction the notary's dwelling house is placed. Furthermore, from each shipment, a record is made in the repertorium (which is a notary's obligation based on Article 16 UUJN) at the end of each month.

Implementation of UUJN provisions for notaries is absolute without any exceptions. If the notary does not carry out the obligation to keep the minutes of the deed or is negligent in keeping the deed, it can cause a legal consequence in which the notary can be called negligent or does not carry out his obligations following the applicable laws; therefore such a notary can be categorized as not carrying out his obligations properly and tends to be said to have violated the law because the notary is a strong document maker in a law enforcement process. Therefore a notary must be able to be responsible for all obligations imposed on him according to law.

Assume the issues raised on this research prove that the notary is negligent and/or does now not carry out his/her duties as stipulated in Article three of the INI Code of Ethics. if so, the Honorary Council may also impose sanctions, which includes reprimand, caution, suspension (temporary dismissal from contributors of the notary association (INI), onsetting (dismissal) from individuals, and dishonourable dismissal of association members. however, the dismissal sanction given to a notary demonstrated to have violated the code of ethics (as a moral rule) isn't inside the form of dismissal from the position of notary however handiest dismissal from membership. consequently, in line with the researcher, such sanctions lack binding energy for notaries who violate the code of ethics. moreover, these sanctions may be appealed to the local and vital Honorary Council in stages.

As previously described, the notary must keep the olographic (administrative) testamentary deed of the testamentary and will submit the intended will to the local BHP after the testamentary dies. However, it turns out that the notary acted negligently in storage, which resulted in the loss or damage

of what he had made. In that case, this causes the notary not only to be morally and ethically responsible but also to be legally responsible.

For a deed that is lost or damaged due to the negligence of a notary, the whereabouts of the deed are unknown, and the value of the deed can be different so that the parties involved in it can feel disadvantaged, so the consequences of negligence can make the deed an underhand deed. Such matters legally can be used as a basis (the person who is harmed) can claim compensation to the court. So in civil terms, such a notary based on Article 16 paragraph (12) in conjunction with Article 44 paragraph (5) UUJN can be prosecuted by the aggrieved party.

2. Sanctions Applied Against Notaries

Notaries who violate their obligations in keeping the deed can cause legal consequences that must be accepted against the notary in the form of sanctions. In this case, it will be discussed regarding the sanctions imposed on the Notary Office. Sanctions governing notaries are divided into civil, ethical, administrative, and criminal sanctions. Sanctions are coercive and related to law to deter the wrong person from doing it again. Sanctions are also related to legal certainty, where sanctions are applied to carry out existing laws so that sanctions are coercive and everyone obeys applicable laws.

A notary who no longer heeds the rules of law (obligations) that apply. Philosophically, the law aims to control people's behaviour, including notaries as public officials who do not obey the law. For the law to have binding force, it must be formalized by an authorized institution. Likewise with the Notary Profession, with formal legality, a notary should be able to create order and certainty in society.

It is in keeping with Article 4 paragraph (1) of law no. 30 of 2004 regarding the workplace of a Notary, in which every notary need to be sworn in earlier than sporting out his or her function, at the same time as the notary's oath sufficiently emphasizes that the notary will perform my feature in a trustful, honest, thorough, impartial and unbiased way, and could perform my obligations following the code of ethics of the profession, honour, dignity and my obligations as a notary.

If, in carrying out his role, the notary is discovered to have dedicated an act that violates the regulation and the code of ethics, specifically negligence in retaining the Olographic Inheritance Deed, in keeping with the researcher, this kind of notary can be situation to sanctions as follows:

a. Civil Sanctions

A notary is a trusted profession, different from other professions, in which in wearing out his function, he need to be able to offer legal fact and act in keeping with his oath of workplace.

As said above, a notary has the authority to problem various deeds, agreements and conditions that require a general rule or more that are interested in being stated in an authentic letter. In this study, it is an oligraphic testamentary deed. The notary is also tasked with keeping, registering and legalizing documents/deeds drawn up by or privately.

The obligations of a notary regulated in Article sixteen paragraph (1 letter a, b, d, h, I and j to six and 9) UUJN expressly country that a notary is obliged to hold the deed well and thoroughly, however if the notary makes a mistake or is negligent in keeping the Olographic Deed ensuing in harm or lack of the deed to the detriment of the consumer (inheritor), then this kind of notary can be categorised as committing an act as stipulated in Article 1365 of the Civil Code and Article 13 67 of the Civil Code, then in line with Article 84 UUJN that could be a cause for occasions who are suffering losses to demand repayment of fees, compensation and hobby from the notary. Claims in opposition to the sort of notary may be made in strategies: the consumer can record a lawsuit in court docket, be settled out of court, or use mediation or amicable strategies.

b. Code of Ethics Sanctions

The code of ethics for the notary profession is, of direction, very lots needed to maintain the high-quality of jail services to the public; because of this, the Indonesian Notary association (INI) is the satisfactory professional agency that follows the truth following regulation amount 30 of 2004 collectively with amount 2 of 2014 regarding the vicinity of Notaries establishes a Code of Ethics for its members.

Article 80 three, paragraph (1) of law range 30 of 2004, regarding the administrative center of Notaris, states, "Notary corporations set up and placed into impact a notary code of ethics." Then within the provisions of Article thirteen paragraph (1) of the Articles of association of the Indonesian Notary

association, which have become decided primarily based mostly on the great Congress of the Indonesian Notary affiliation in Bandung on January 28 2005, it states, "To maintain the honor and nobility of the placement of the notary public, the association has a notary code of ethics installation by way of the usage of the congress and is a ethical rule that each member of the affiliation have to obey." Notaries of their career who offer services to the majority want to act in line with relevant guidelines. Notaries are obligated to guarantee the reality in their deeds; consequently, notaries need to be greater sensitive, honest and honest in making a deed.

In reference to the problem in this check, specially the negligence of a notary in retaining the Olographic testament deed which resulted in the loss or damage of the deed, so that the customer or maker of the deed suffers from the loss, and Article 80 4 UUJN, legally and morally it also violates the code of ethics of the notary profession.

Article 6 paragraph (three, 7 and 8) of the Notary's Code of Ethics can study to sanctions that may be given to such notaries; sanctions might be given to violators of the Code of Ethics after receiving a ramification from the primary or close by Ethics Council or close by Ethics Council. therefore, sanctions that can be imposed on humans of the Indonesian Notary affiliation who violate the code of ethics can be inside the form of termination, warning, suspension (short dismissal) from association club and onsetting (dismissal) from affiliation membership.

c. Administrative Sanctions

In carrying out their duties as public officials authorized to do authentic deeds, notaries are supervised by the Notary Supervisory Board formed by the Minister. Provisions regarding the supervision of Notaries are regulated in UUJN Chapter IX concerning Supervision. The purpose of the supervision carried out on a Notary is so that the notary can fulfil the requirements demanded of him. Notaries who violate the provisions of UUJN may be subject to administrative sanctions. Based on Article 2 paragraph (1) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016, in conjunction with Number 15 of 2020 concerning Procedures for Imposing Administrative Witnesses Against Notaries, states that the Minister (through the Supervisory Board) has the authority to impose administrative sanctions on Notaries who have committed violations or obligations based on statutory provisions (See also Article 36 paragraph (1) Permenkumham). Notaries are responsible for losses caused by their actions and losses caused by the actions of people who become their responsibility or caused by goods under their control. Therefore the notary's negligence in keeping the Olographic Deed of Will (administratively), which results in the loss or damage of the deed, is entirely the responsibility of the notary, even if his employees do it because the deed is fully under his supervision (vicarious liability), then the examiner imposes sanctions. The Regional Supervisory Council has the authority to impose sanctions on Notaries, and Article 77 UUJN also determines the Central Supervisory Council, which has the authority to impose sanctions. Administrative sanctions can be written warnings, temporary dismissals, respectful discharges, or dishonourable discharges. The imposition of these sanctions will be determined according to the level of the violation committed and the imposition of tiered sanctions depending on the decision of the Honor Council.

d. Criminal sanctions

Notaries who are examined to have violated the duties and prohibitions of Notaries as stipulated in Article sixteen and Article 17 UUJN may be issue to sanctions within the shape of civil sanctions, administrative sanctions, code of ethics sanctions and even crook sanctions.

The UUJN does no longer stipulate crook sanctions in the direction of a notary, but if it's far examined that the notary has violated the provisions of the relevant law, especially excellent the criminal elements listed in the provisions of the crook Code, the notary may be punished or sentenced to jail.

Adhering to the rule of thumb of law precept, all and sundry is same before the regulation, that means all and sundry, consisting of notaries, has the identical function. even though the notary inside the UUJN does not regulate criminal sanctions for violations of the rules achieved via a notary, if a public reliable is negligent in sporting out his responsibilities, then the crook detail has been fulfilled.

So based on the results of an interview with a notary in Bandung who did not want to be named, it was stated that a notary could be given criminal sanctions if he is negligent in carrying out the

obligations specified by law, even though the UUJN does not contain criminal provisions for notaries who violate the law.

In the case of a notary who is negligent in carrying out his obligations, namely keeping the Olographic Deed which results in the loss and/or damage to the deed according to the theory of cause and effect (the teaching of causality) in Criminal Law. Such problems, in the opinion of researchers, are types of criminal acts that cause consequences, not by active actions but by inaction or passive actions (nalaten or niet doen).

It can be explained in the existing problems where the notary's negligence in keeping the deed resulted in the client experiencing losses due to loss or damage to the testator's Olographic Deed.

Based on the above doctrine, the behaviour of such a notary can be subject to criminal sanctions, while one of the articles of negligence which harms other people is regulated in Article 359 of the Criminal Code. However, several elements of the negligence article must be met to be considered negligence or culpa first.

CONCLUSION

Based totally on the discussion above, it is able to be concluded that law enforcement in competition to a notary who commits negligence in retaining the Olographic Will is as follows :

A notary is a public official authorized to make and shop olographic wills in order that apart from pleasurable his obligations and obligations, he should also be answerable for the behaviour of himself (notary) and/or folks that are legally bound to him as stipulated in UUJN, Notary Code of Ethics, law of the Minister of law and Human Rights of the Republic of Indonesia quantity M.02.PR.08.10 of 2004 and the Civil Code (KUHPperdata), in addition to the crook Code (KUHP).

Moreover, sanctions that can be given to a notary who is negligent in wearing out his responsibilities and duties to maintain the customer's olographic testimony will bring about the loss and/or harm to the olographic testament so that the client suffers a loss, namely the notary can be situation to civil sanctions based totally on Article 1365 and/or Article 1367 of the Civil Code, or sanctions at the Code of Ethics as stipulated in Article 6 paragraph (three, 7 and eight), or administrative sanctions through Article 2 paragraph (1), or crook sanctions also can receive if the act of negligence is tested to fulfil the criminal factors of Article 359 of the criminal Code.

REFERENCES

Books :

- Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia*, Perspektif Hukum dan Etika, UII Press, Yogyakarta.
- Budiono, Herlien, 2013, *Dasar Teknik Pembuatan Akta Notaris*, Citra Aditya Bakti, Bandung
- Liliana Tedjosaputro, 1995, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, PT. Bayu Indra Grafika, Yogyakarta.
- Tan Thong Kie, 2001, *Serba Serbi Praktek Notaris*, Ichtar Baru, Jakarta .
- Topo Santoso, *Asas-Asas Hukum Pidana*, Depok, Rajawali Pers, Raja Grafindo Persada, 2023

Journal :

- Abdillah, S., Ghapa, N.B., & Makhtar, M. (2023). A Comparative Study Between Indonesia and Malaysia on the Role of Notaries and Advocates. *JURNAL USM LAW REVIEW*.
- Fajar, T., & Wibowo, A. (2023). Application of Administrative Sanctions in Decisions on State Administrative Cases at the State Administrative Court. *JUSTICES: Journal of Law*.
- Iryadi, I., Ansari, T.S., Saputra, J., Afrizal, T., & Thirafi, A.S. (2021). The Role of Jurisprudence as Form of Legal Prescriptions: a Case Study of Notaries in Indonesia.
- Kusuma, N., Witasari, A., & Suwondo, D. (2022). The Role of Notaries in Making Wills Regarding the Distribution of Inheritance according to Islamic Compilation Law. *Sultan Agung Notary Law Review*.
- N Saly, J., Eka Putri, A.F., Mariana Sitorus, L., Michellena, M., Syamila, N., & Ayu Puspita, S. (2023). Legal Sanctions for Notaries Violating the Code of Ethics in Making Deeds in Indonesia. *Legalite : Jurnal Perundang Undangan dan Hukum Pidana Islam*.
- R.W., & Suranto, S. (2022). The Examination of Sanctions on Violation of the Broadcasting Code of Conduct to Build a Healthy and Sustainable Broadcasting Industry in Indonesia. *JCommsci - Journal of Media and Communication Science*.

- Tjandraningsih, D. (2023). Implementation of the Law on Notary Positions Concerning the Obligations of Notaries in Providing Free Legal Services in Tangerang City. *The International Journal of Education Management and Sociology*.
- Yulia, A., Benny Riyanto, R., & Joko Priyono, F. (2018). The Role of Notary Public Honorary Council in The Enforcement of the Notary Code of Ethics in Indonesia. *IOP Conference Series: Earth and Environmental Science*, 175.
- Widyaningrum, L. (2022). Legal Consequences For Notaries Who Corruption Criminal Acts. *International Journal of Educational Research & Social Sciences*.
- Xing, J., & Li, M. (2023). Moving to Formality and Openness? An Analysis of China's New Two-Tiered Sanctions Policy. *China Review*, 23, 377 - 406.