



Trends in Violation of the Notary Code of Ethics in Indonesia

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ABSTRACT

Notaries are public officials who have a big responsibility to the community in terms of making authentic deeds. Notary in carrying out activities to act professionally by complying with the code of ethics of the Notary position. However, the fact is that violations of the code of ethics still often occur which makes the image of the Notary tarnish. Describe the forms of violations of the Notary code of ethics in Indonesia for the last 5 (five) years. This research is a qualitative research with data collection methods through the study of SINTA indexed journals that violate the code of ethics violations committed by a Notary and then analyzed using qualitative data analysis. The forms of violations of the code of ethics committed by Notaries in Indonesia during the last 5 (five) years consist of planned violations (planned violations) originating from the wishes of the Notary himself and unplanned violations (unplanned violations) which originate from the Notary's fault. . Notaries who commit violations make Notaries unprofessional, because they do not carry out their duties according to their responsibilities and as stated in the Notary's code of ethics.

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INTRODUCTION

Notaries as public officials appointed by the state/government are tasked with meeting the needs of the community in the field of civil law (Prajitno, 2018). Regulations regarding the Notary profession are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN) and the Notary Code of Ethics issued by the Indonesian Notary Association. Therefore, in carrying out his position, a Notary must be submissive, obedient, and uphold the values, obligations, and prohibitions stipulated in the two regulations, both UUJN and the Notary Code of Ethics (Putri & Marlyna, 2021).

However, in practice, as stated by the Minister of Law and Human Rights of the Republic of Indonesia (Menkumham), recently there have been many public complaints against violations committed by Notaries (Beritasatu, 2019). This statement is reinforced by the report of the Notary Supervisory Board which states that there are still many cases of violations by Notaries where

violations that often occur are violations of the position and code of ethics of the Notary and deviations from the position of the Notary in making and issuing deeds (Antara, 2021).

One of the factors that cause Notaries to commit violations is the level of professionalism of the Notary itself which is still low, where the Notary does not understand his authority, but there are also Notaries who understand the authority and duties of the function but because of material needs that cause the Notary to be trapped in it (Fitri et al., 2019). Notaries are required to be professional when carrying out their duties and functions (Prajitno, 2018). Therefore, notaries have the obligation to act professionally in carrying out their duties as public officials or as holders of certain positions who carry out their profession in legal services to the public (Article 16 paragraph 12 letter n of the UUJN).

Based on these reviews, this study aims to describe the forms of violations of the Notary code of ethics in Indonesia during the last 5 (five) years. This research is important considering that notaries are a type of profession that requires public trust. It is hoped that this research can be used as a recommendation for notary institutions in developing a model for developing Notaries in Indonesia.

RESEARCH METHOD

This research is a qualitative research with a descriptive approach. Data collection was carried out through a literature study with data sources coming from SINTA journals which contained violations committed by Notaries during the last 5 (five) years. The data analysis technique uses Miles and Hubermann's qualitative data analysis which consists of 3 (three) stages, namely data reduction, data presentation, and compilation of conclusions/verification (Miles et al., 2014).

RESULTS AND DISCUSSIONS

Notaries have the authority and responsibility in carrying out their duties as public officials. In carrying out these duties, notaries are supposed to be professional. However, in reality there are still Notaries who violate the code of ethics in carrying out their duties which causes the Notary to become less professional.

Violations committed by Notaries when carrying out their duties based on the results of previous studies include: the formation of a Notary civil partnership for profit (Fonni et al., 2018), typing errors in making authentic deeds (Mahendra, 2019), falsification of evidence against safekeeping of tax money (Safitri, 2019), not registering and reporting wills to the Will Register Center (Annisa et al., 2019), forgery of authentic deeds (Thaliasya & Priandhini, 2021; Wahyudin & Muliawan, 2021), notary ignorance of power of attorney used have no legal force (Simanjuntak & Hoesin, 2022), and cannot properly maintain and protect client certificates (Immanuela & Hoesin, 2022).

1. Formation of a Civil Guild for Profit

One of the violations committed by Notaries is the formation of a Notary civil partnership with the motive of obtaining profits to be shared with partners (Fonni et al., 2018). This behavior is a form of violation committed by a Notary, because the civil partnership regulated in UUJN in Article 20 where the Notary can carry out his position in the form of a civil partnership while still paying attention to independence and impartiality in carrying out his office. Notaries who are members of civil partnerships carry out their professions as job responsibilities, so that profits do not become part or orientation in carrying out their profession (Adjie, 2015). Besides that, This is also contrary to Article 3 of the Notary Code of Ethics where the implementation of the position of a Notary has an obligation to prioritize service to the interests of the community and the State and there is no honorarium collection from the poor. In a Notary civil partnership, there is no profit sharing but the receipt of an honorarium in return for Notary services (Fonni et al., 2018).

2. Typo in Authentic Deed

Typing errors in the making of the deed cause the format of the deed to be incompatible with the good and correct writing that is done by the Notary in carrying out his duties, is a form of negligence in working on an authentic deed. A typo is an act committed by a notary unintentionally, which is caused by a lack of prudence and thoroughness of a notary when pouring out all forms of will that has been given by the parties. The Notary's actions are not in accordance with what is mandated in the UUJN where a Notary must act carefully and thoroughly which can be interpreted as prioritizing an attitude of thoroughness and prudence when making a deed so that the deed he makes can give a sense of justice to the parties concerned (Mahendra, 2019).

3. Counterfeiting of Evidence for Depositing Tax Money

The evidence for depositing tax money is in the form of a receipt. Counterfeiting evidence that is only in the form of receipts becomes easy to do because it is shaped under the hand. The notary falsifies the proof of payment of the Building Land Acquisition Duty (BPHTB) by not paying taxes and using the client's money for personal interests. This action is brave to do because of the weakness of the evidence that can weaken the position of the Notary. In order to protect the client, then in making tax money deposit receipts must be legalized. The Notary has committed a violation, because the actions taken are not in accordance with Article 3 of the Notary Code of Ethics relating to morality where the Notary's obligation is to have honest behavior. Honesty is the main capital that must be owned by a Notary.

4. Not Registering and Reporting Wills to the Will Register Center

The Notary's authority to make a will must also be accompanied by the responsibility to register a will and to report will deeds every month to the Will Register Center. Notaries who do not register and report the will to the Center for the Will Register have met aspects of 2 (two) violations, namely violations of the code of ethics and violations of the UUJN. In violation of the code of ethics it is said that a Notary is a person who assumes and carries out his duties as a public official, so that attitudes, behaviors and actions or actions that are not allowed by the Notary position in order to maintain and maintain the image and authority of which notarial institution or the nobility of dignity and the dignity of the position of a Notary. Meanwhile, in violation of UUJN,

5. Authentic Deed Forgery

The notary processes and makes the deed of the grant as if the land being granted was indeed given by the grantor to the grantee. Even though the grantor has never made a grant and has never put a thumbprint/fingerprint on the grant deed made by the Notary. The presence of witnesses and the owner of the object of the grant was not presented. (Thaliasya & Priandhini, 2021). The notary deliberately keeps making a fake deed as requested by the appearer, even though the notary knows that the appearing parties do not meet the legal requirements of the engagement (Wahyudin & Muliawan, 2021). This action is a violation committed by a Notary, because it is not in accordance with Article 3 of the code of ethics related to morality where as a Notary before carrying out his position and at the time of taking the oath of office he is obliged to seriously dedicate himself as a public official. Moral values must be upheld to choose good and bad actions so that they carry out their duties according to the rules. In addition, the Notary must also have honest, independent and impartial behavior. Honesty is the main capital that must be owned by a Notary. Because running this profession is not easy if it is not based on honesty, it will lead to unlawful acts. Partisanship is also prohibited because the position of the Notary is as a neutral party between the parties in order to prevent future disputes (Safitri, 2019).

6. The Notary's Ignorance of the Power of Attorney Used Has No Legal Force

A power of attorney that does not have legal force is the loss of the authenticity of the deed, and its legal force is the same as a deed under the hand. This is because the power of attorney no longer has legal force, so that the authority of the appearer in the deed is based on the power of attorney that has been revoked and is considered invalid and invalid, so that the legal ability of the power of attorney to represent the recipient of the power of attorney is not legally competent. Notaries should be more responsible for the work they do. The responsibility in this case is the responsibility for the

material truth of the deed, in the construction of an unlawful act. Share grants must be made with a special power of attorney, The negligence and carelessness of a Notary who wants to make a deed of grant based solely on a general power of attorney has resulted in losses to the plaintiff. Such action is a violation because it is not in accordance with Article 3 paragraph (4) of the Notary Code of Ethics which states that a Notary must have a sense of responsibility based on the laws and regulations and the contents of the Notary's oath of office. In addition, this action is also contrary to the Notary's responsibility for the material truth of the deeds he made, both in civil and criminal forms based on the UUJN and the code of ethics (Simajuntak & Hoesin, 2022). Such action is a violation because it is not in accordance with Article 3 paragraph (4) of the Notary Code of Ethics which states that a Notary must have a sense of responsibility based on the laws and regulations and the contents of the Notary's oath of office. In addition, this action is also contrary to the Notary's responsibility for the material truth of the deeds he made, both in civil and criminal forms based on the UUJN and the code of ethics (Simajuntak & Hoesin, 2022). Such action is a violation because it is not in accordance with Article 3 paragraph (4) of the Notary Code of Ethics which states that a Notary must have a sense of responsibility based on the laws and regulations and the contents of the Notary's oath of office. In addition, this action is also contrary to the Notary's responsibility for the material truth of the deeds he made, both in civil and criminal forms based on the UUJN and the code of ethics (Simajuntak & Hoesin, 2022).

7. Not Maintaining and Protecting Client Certificates Well

Notary office employees commit an act against the law, namely giving the client's certificate to someone other than the client without the notary's knowledge. The obligations of a Notary as if not fulfilled due to the actions of the Notary's office employee. The actions of a Notary's office employee are not only the responsibility of the employee, but are also the responsibility of the relevant Notary. The Notary is responsible for the violation committed by the part of the Notary's office. This shows that the certificates submitted to the Notary are as if not properly protected and guarded. This action is a violation, because it is contrary to Article 16 paragraph (1) UUJN where one of the obligations of a Notary is to protect the interests of parties, especially clients. Notary's client's certificate is one of the things that must be maintained properly by a Notary. The delivery of a certificate belonging to a Notary client should be given to the client with the knowledge of the Notary concerned. This is done in order to create legal protection for the certificate holder and the implementation of the authority and obligations of a Notary as regulated in the UUJN (Immanuela & Hoesin, 2022).

Violations committed by Notaries as described previously can be divided into 2 (two) types, namely planned violations and unplanned violations. The planned violation occurs because of the intention or desire of the Notary himself, for example the formation of a civil partnership for profit, falsification of evidence of depositing tax money, and falsification of authentic deeds. Meanwhile, unplanned violations are caused by human error or related to the negligence of the Notary, such as typos in the authentic deed, not registering and reporting the will to the Will Register Center, the Notary's ignorance of the power of attorney used has no legal force, and does not maintain and protect client certificates well.

Violations of the code of ethics by a Notary have resulted in a Notary being unprofessional. As the opinion which states that if a Notary cannot refuse things that violate the law, then a Notary cannot be said to be a professional Notary (Thaliasya & Priandhini, 2021). Notaries in carrying out their positions must be able to behave professionally based on a noble personality and always carry out their duties in accordance with applicable laws and regulations while upholding the professional code of ethics (Fonni et al., 2018).

CONCLUSION

The forms of violations committed by Notaries during the last 5 (five) years consist of planned violations and unplanned violations. Violations that are motivated by a desire or human error have violated the Notary's code of ethics, so that in the eyes of the law both are still wrong. Notaries as

public officials have the obligations and responsibilities listed in the Notary's code of ethics. If the Notary is unable to comply with the code of ethics and acts against the law, it will result in the Notary being unprofessional. Therefore, Notaries should be able to uphold professionalism in carrying out their duties by prioritizing the Notary Code of Ethics as appropriate. In addition, there needs to be strict supervision and improvement of the Notary development strategy as well as the imposition of strict sanctions from the relevant agencies, namely the Notary Supervisory Council and the Indonesian Notary Association.

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