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### RESEARCH ARTICLE

#### IMPLEMENTATION OF CODE OF ETHICS SANCTIONS AGAINST NOTARIES WHO HAVE COMMITTED CRIMINAL ACTS WITHIN THE SCOPE OF THEIR DUTIES

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#### Abstract

The Notary Code of Ethics sets the standards of behavior that Notaries must adhere to in order to act ethically and in accordance with the law. One of the sanctions for violations of the Notary Code of Ethics is dismissal with dishonor. This study aims to analyze the implementation of ethical code sanctions against Notaries who have committed criminal acts within the scope of their duties based on a final and binding court decision, which must go through a complaint process, and to analyze the ethical code sanctions in the form of dismissal with dishonor that can be imposed on Notaries who have committed criminal acts based on a final and binding court decision. Using a normative juridical approach, this research is prescriptive in nature. Data collection was conducted through literature study, presented in a systematically arranged narrative text, and analyzed qualitatively normatively. Based on the results of the research and discussion, it can be concluded that the implementation of ethical code sanctions against Notaries who have committed criminal acts within the scope of their duties based on a final and binding court decision must go through a complaint process. In the process of applying ethical code sanctions to a Notary proven to have committed a criminal act while performing their duties, the Honorary Council can seek facts regarding the alleged ethical code violation committed by the Notary either after receiving a written complaint from members of the organization or the public who have been harmed by the Notary, accompanied by convincing facts and evidence of the alleged ethical code violation by a member of the association. This process indicates that efforts to enforce the ethical code against Notaries who commit criminal acts within the scope of their duties still depend on complaints from aggrieved parties. Ethical code sanctions in the form of dismissal with dishonor can be imposed on Notaries who have committed criminal acts based on a final and binding court decision. The decision to impose such ethical code sanctions is an appropriate and suitable step as a consequence for Notaries regarding the code of ethics and Notary Law (Undang-Undang Jabatan Notaris, hereafter UUNJ). The Notary Code of Ethics establishes standards of behavior that Notaries must adhere to, including acting ethically and by the law, as well as preventing similar violations. This indicates that the Notary profession and public interest

take precedence over individual interests and is also an important step in maintaining the reputation of the Notary profession.

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### **Introduction:-**

A Notary is a Public Official who has the duty and obligation to provide legal services and consultations to the general public. The legal assistance that a Notary can provide includes creating written evidence with authentic power, such as authentic deeds or other authorities as stipulated by law. Currently, the existence of Notaries is regulated by law, namely Law No. 30 of 2004 on Notary Position (UUJN), as amended by Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Notary Position. Law No. 30 of 2004 replaced the previous regulation, namely the Notary Position Regulation based on Stbl 1860-3 (Notary Regulation) which was in force in Indonesia for 244 years. This Notary Position Regulation replaced the *InstructievoorNotarissen* in Indonesia (Stbl 1822- 11).<sup>1</sup>

The Notary Institution is a community institution known as the "Notariat," which arose from the public's need for evidence regarding civil legal relationships that exist and/or occur among them. The Notary institution and its officials are assigned by public authority (*openbaargezag*) to create written evidence with authentic power when required by law or desired by the public. Thus, the position of Notary was established due to societal needs, not as a position that was deliberately created and then introduced to the general public.<sup>2</sup>

The functions and roles of Notaries in the increasingly complex national development activities are becoming more extensive and evolving. The smoothness and legal certainty of all endeavors undertaken by all parties are increasingly dependent on the services and legal products produced by Notaries. Both the government and the public expect that the services provided by Notaries truly have reliable value and quality. The position of Notary, in addition to dealing with technical legal issues, must also actively participate in national legal development. Therefore, Notaries must continually embrace the nation's idealism in its entirety. Notaries must always keep up with the development of national law, which ultimately enables them to perform their profession proportionally. In carrying out their duties, Notaries must adhere strictly to the Notary code of ethics, as without this, the dignity and professionalism will be entirely lost.<sup>3</sup>

A Notary can become involved in criminal liability and may be held criminally responsible if they meet the elements prohibited by law. These elements include the capacity to be held responsible, the internal relationship between the perpetrator and their act in the form of intent (*dolus*) or negligence (*culpa*), and the absence of grounds for the elimination of wrongdoing or justification.<sup>1</sup>

The Notary code of ethics is regulated by the professional organization of Notaries, in this case, the Indonesian Notary Association (hereinafter referred to as INI), at the Extraordinary Congress of the Indonesian Notary Association (*KongresLuarBiasalkatanNotaris Indonesia*) held in 2015. There are two (2) positions of the code of ethics for Notaries:

*Due to the nature and essence of the Notary's work, which is highly oriented towards legalization, it can serve as the primary legal foundation regarding the status of property, rights, and obligations of the parties using the Notary's services.*

*To prevent injustice resulting from the assignment of property status, rights, and obligations that do not conform to legal norms and principles of justice, which could disrupt the personal rights of justice seekers, it is essential for the Notary profession to have a good and modern code of ethics.*<sup>4</sup>

Article 1, Paragraph (8) of the Notary Code of Ethics asserts that if a Notary violates the code of ethics, it will be followed up by the enforcers of the Notary Code of Ethics, namely the Notary Honorary Council. Oversight of Notaries within the Notary Code of Ethics is regulated in Article 7 of the Notary Code of Ethics, which includes the institution authorized to oversee Notaries, namely the Notary Honorary Council.<sup>4</sup>

As an example case related to the accountability of Notaries and Implications on the Notary Code of Ethics, it is found in the Judgment of the Purwokerto District Court No. 135/Pid.B/2022/PN Pwt. In the judgment of the Judge

of the Purwokerto District Court, considering Article 374 of the Criminal Code and Law No. 8 of 1981 concerning Criminal Procedure Law, as well as other relevant regulations, it was adjudicated that the defendant, RudhyFluorentinusDewanto, S.H., M.Kn, was proven guilty beyond a reasonable doubt of committing the criminal act of "Embezzlement in Office" as stated in the first alternative indictment by the Public Prosecutor, and therefore sentenced the defendant to imprisonment for 2 (two) years, ordering the defendant to remain in custody.

In connection with the aforementioned judgment, it is only appropriate that, in line with the imposition of sanctions under the Notary Code of Ethics, the follow-up actions by the enforcers of the Notary Code of Ethics should proceed according to the complaint process, as stipulated in the Amendments to the Notary Code of Ethics at the Extraordinary Congress of the Indonesian Notary Association, formulated in Banten on May 29 to 30, 2015. It is regulated in Part Two Examination and Imposition of Sanctions, number 1 regarding the Allegation of Violation, Article 8 as follows:

*Regional Honorary Council/Regional Honorary Council/Central Honorary Council may seek facts regarding the Alleged Violation of the Code of Ethics by members of the Association on their own initiative or after receiving written complaints from members of the Association or others accompanied by convincing evidence that there has been an Alleged Violation of the Code of Ethics by members of the Association.*

*Violations or receipt of complaints that have been examined by one Honorary Council shall not be examined by another Honorary Council.*

In connection with the above judgment, the appropriate ethical code sanction to be imposed is dismissal with dishonor, as stated in Article 12 and Article 13 UUJN, which reads:

#### Article 12

*"A Notary shall be dismissed with dishonor from office by the Minister upon the proposal of the Central Supervisory Board if:*

- a) declared bankrupt based on a court decision that has obtained final legal force;*
- b) under continuous guardianship for more than 3 (three) years;*
- c) engages in acts that degrade the honor and dignity of the Notary profession; or*
- d) commits serious violations of the duties and prohibitions of the profession."*

However, in the following article in the UUJN, it is stated as follows:

#### Article 1

*"A Notary shall be dismissed with dishonor by the Minister because they have been sentenced to imprisonment based on a court decision that has obtained final legal force for committing a criminal act punishable by imprisonment of 5 (five) years or more."*

### **Problems**

Based on the introduction above, the problem statement posed in this study is as follows: First, how is the implementation of ethical code sanctions against Notaries who have committed criminal acts within the scope of their duties based on a final and binding court decision that must go through a complaint process? Second, how can the ethical code sanction of dismissal with dishonor be imposed on Notaries who have committed criminal acts based on a final and binding court decision?

### **Research Objectives:-**

The objective of this research is to understand how the implementation of ethical code sanctions against Notaries who have committed criminal acts within the scope of their duties based on a final and binding court decision that must go through a complaint process, as well as how the ethical code sanction of dismissal with dishonor can be imposed on Notaries.

### **Methods:-**

The author employs a juridical normative research method, which is a normative legal research. The research object to be examined by the author is a Literature Study of primary legal materials, namely Law No. 2 of 2014 concerning

the Notary Position and the Criminal Code (KUHP). Secondary legal materials consist of literature related to the research object, such as books written by legal experts, doctrines, opinions, or teachings from legal experts, legal journals, scholarly works, and materials from the internet. Tertiary legal materials consist of dictionaries to understand unclear terms in legal or other terms. The qualitative analysis used is perspective-oriented, aiming to provide existing data and assess them, then analyze the issues related to the implementation of Notary accountability. Additionally, solutions will be proposed to address these issues

### **Research Result:-**

#### **The implementation of ethical code sanctions against Notaries who have committed criminal acts within the scope of their duties based on a final and binding court decision must proceed through a complaint process**

As a Public Official, the Notary plays a crucial role in society and is often regarded as an honorable profession. The scope of authority held by Notaries is not limited to what is stated in the Notary Law alone but also based on other laws and regulations. The expansion of Notary authority extends as long as it is mandated by existing and future laws and regulations. To prevent Notaries from abusing their authority, there needs to be a benchmark for the use of their authority. The presence of authority must be accompanied by sanctions; if a Notary acts beyond their authority, there will be consequences. Notaries bear full responsibility for the duties they undertake, including their actions while performing those duties.<sup>5</sup>

Notaries, in carrying out their duties, must adhere to Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Notary Position. This regulation is binding as long as someone holds the position of Notary before being declared to have ceased respectfully and/or retired. Notaries are authorized to create deeds, and deeds made by Notaries have inherent power known as authentic deeds, which are complete (*volledigbewijskracht*) and binding (*bindendebewijskracht*). This means that if an authentic deed is presented as evidence, meeting both formal and material requirements, and the opposing evidence presented by the defendant does not diminish its validity, it carries complete and binding probative force (*volledigenbindendebewijskracht*). Thus, the truth of the content and statements contained therein becomes complete and binding to the parties regarding what is stated in the deed.<sup>6</sup>

Regarding the implementation of ethical code sanctions against Notaries who have committed criminal acts within the scope of their duties based on a final and binding court decision that must go through a complaint process, it becomes increasingly clear that honesty is a moral foundation that every Notary must possess in carrying out their duties. C.S.T Kansil and Christine S.T. Kansil in Melyana assert that the position of Notary is a Public Official who is professionally required to perform their duties; a Notary must realize that the professional obligation is to be independent, honest, impartial, and fully responsible. With good morals, honest attitudes, and the ability to uphold integrity as law enforcers, Notaries should ideally not easily fall into professional issues, one of which is embezzlement. Embezzlement is an act that violates morality and certainly breaches the law, especially criminal law.<sup>7</sup>

The Notary Code of Ethics is established by INI in accordance with the decision of the General Assembly of the Association. The Notary Code of Ethics generally encompasses understanding related to obligations, prohibitions, sanctions, procedures for implementing the Notary Code of Ethics, and the duties of INI officials. The Notary Code of Ethics can be considered as a complement to the Notary Law, as well as a guide for Notaries in carrying out their duties and upholding ethical values. The purpose of the Notary Code of Ethics is to enable Notaries to perform their functions professionally and foster motivation to work well. Additionally, certain abilities such as intellectual enhancement, factual and critical argumentation, as well as prioritizing morals, can be achieved through the existence of this code of ethics. As the organization of Notary Association, the Indonesian Notary Association plays a significant role in ensuring the enforcement of Notary code of ethics rules. Notaries must be able to perform their duties in accordance with the legal regulations that have been established.

According to Article 9 Paragraph (1) of the Notary Code of Ethics, after a violation of the code of ethics is found or after receiving a complaint no later than 14 (fourteen) working days, the Regional Ethics Council is obliged to contact the relevant member to confirm the violation. In addition, the alleged violator is also given the opportunity to explain and defend their actions. Then, based on Article 9 Paragraph (5) of the Notary Code of Ethics, the Regional Ethics Council creates meeting minutes signed by the member in question, the chairman, and a member of the Ethics Council who conducted the examination, within a maximum of 30 (thirty) working days after the date of the last hearing. The Regional Ethics Council is obligated to make a decision on the results of the examination and determine the appropriate form of sanctions for the violation that occurred.

Actions that are not in accordance with the Notary Code of Ethics cannot be justified; regulations are made to ensure that public officials do not act arbitrarily in carrying out their duties. Notaries are obliged to comply with the Notary Law in order to become better Notaries and to ensure that their actions can be accounted for without harming the public or clients. Notaries must act in accordance with the Notary Code of Ethics and uphold legal ethics and dignity in performing their profession. Notaries who violate these regulations will be subject to sanctions appropriate to their violations, in accordance with applicable regulations.

The application of ethical code sanctions against a Notary who has committed a criminal act within the scope of their duties based on a final and binding court decision must proceed through a complaint process. The process of applying ethical code sanctions to a Notary proven to have committed a criminal act in carrying out their duties involves the Ethics Council seeking facts regarding alleged violations of the Notary's code of ethics or, upon receiving a written complaint from a member of the organization or the public harmed by the Notary, accompanied by convincing facts and evidence indicating an alleged violation of the association's code of ethics by a member. This process demonstrates that the enforcement of the code of ethics against a Notary who commits a criminal act within the scope of their duties still relies on complaints from aggrieved parties.

### **Ethical Code Sanctions in the Form of Dismissal with Disgrace Can Be Imposed on Notaries Who Have Committed Criminal Acts Based on a Final and Binding Court Decision**

Notaries who are proven to have committed unlawful acts or violated the Code of Ethics in the course of their profession are required to be held accountable for their actions. The imposition of sanctions on a Notary requires several conditions to be met: the act must be prohibited by law, the act must have caused harm, and the act must be unlawful in both formal and material senses. Formal refers to fulfilling the provisions of the law, while material involves compliance with the code of ethics and the Notary Law. The limits of violations by a Notary are measured based on the Notary Law.<sup>6</sup>

The threat of sanctions for violations by a Notary is provided based on the Notary Law to ensure that in carrying out their duties and positions, a Notary is required to be accountable to themselves, their clients or the public, and also to God Almighty. The provisions outlined in Articles 16 and 17 of the Notary Law clearly specify the obligations and prohibitions for Notaries. Any actions taken by a Notary that violate these provisions will incur sanctions. This is true not only for Notaries but for all professions, which have binding regulations for the benefit of an organization or association. The Notary Code of Ethics is designed to regulate and prevent Notaries from acting arbitrarily in their duties; actions that do not comply with the Notary Code of Ethics are not justifiable. According to the formulation of Article 13 of the Amendment to the Notary Code of Ethics at the Extraordinary Congress of INI in Banten on May 29-30, 2015, it states:

*"Without prejudice to the provisions governing the procedure or imposition of sanctions in stages, if a member of the Association who has violated Law No. 30 of 2004 concerning the Office of Notary and is declared guilty and sentenced based on a court decision that has permanent legal force, the Central Management is obliged to temporarily dismiss the member from the Association and propose to the Congress that the member be expelled from the Association."*

Regarding the code of ethics sanction in the form of dishonorable discharge, it can be imposed on a Notary who has committed a crime based on a decision that has obtained permanent legal force. Violations of the duties and authorities regulated by the Notary Law can be categorized as serious violations. For these serious violations, a Notary can be subjected to a dishonorable discharge sanction through a decree issued by the Minister of Law and Human Rights at the suggestion of the Central Supervisory Council.<sup>8</sup>

Other violations that can lead to the dismissal of a Notary in a dishonorable manner are regulated in Article 12 of Law No. 30 of 2004 concerning the Position of Notaries. These include: if a notary is declared bankrupt based on a final and binding court decision; if a Notary is under guardianship for more than 3 (three) years continuously; if a Notary engages in acts that degrade the honor and dignity of the notarial profession. A Notary who is sentenced to imprisonment based on a final and binding court decision with imprisonment of 5 (five) years or more will be subjected to a dishonorable dismissal by the Minister of Law and Human Rights (Article 13 of the Notary Law).

Regarding honorable or dishonorable dismissals that can be imposed on Notaries, the Notary Position Law has already regulated that if a Notary violates obligations, prohibitions, or provisions stipulated in the Notary Position

Law, the Notary will be subject to administrative sanctions including written warnings, reprimands, temporary dismissal, or dishonorable dismissal, as stipulated in Article 8 of the Notary Position Law. Provisions regarding temporarily and dishonorably dismissed Notaries from their positions are regulated in Articles 9 and 12 of the Notary Position Law.

In addition to the aforementioned articles, Article 13 of the Notary Position Law also regulates dishonorable dismissals. The provision states:

*"A Notary shall be dismissed dishonorably by the Minister because they have been sentenced to imprisonment based on a final and binding court decision for committing a criminal act punishable by imprisonment of 5 (five) years or more."*

A Notary must be able to safeguard the interests of clients and seek the easiest and most cost-effective way, but this should not be used as a reason to circumvent legal provisions. Because a notary not only serves the community but also the government that places full trust in them. A Notary must be honest and loyal to all parties, and only by working in this manner can a Notary expect recognition. If a Notary commits a deviation or violation, no matter how small, it will eventually backfire on them. According to W. Voors in Auliaurrosidah and Hatta Isnaini Wahyu Utomo, the attitude of a notary towards society is very important, especially in making a decision. Do not be swayed by the words of a braggart, even if someone threatens another notary. Honor and dignity (*eeenwaardigheid*) must be upheld.<sup>9</sup>

A Notary must adhere strictly to the Code of Ethics of their profession and the Notary Position Law (UUJN) as guidelines for their duties. However, the rules that bind every Notary have not been implemented as they should. In reality, there are still Notaries who violate the provisions stipulated in the Notary Position Law and the code of ethics. Many Notaries are influenced or consciously commit criminal acts because of the vast authority bestowed upon them, not to mention negligence and deliberate actions due to the temptation of profit, thus engaging in criminal activities. Notaries who commit violations will undoubtedly affect public perception of the Notary profession and diminish public trust in Notaries.

Ethical sanctions such as dishonorable dismissal can be imposed on Notaries who have committed criminal acts based on final and binding court decisions. The decision to impose such ethical sanctions is a fitting and proper step as a consequence of Notaries' adherence to the code of ethics and UUJN. The Notary's code of ethics establishes standards of behavior that must be adhered to by Notaries, including acting ethically and in accordance with the law and preventing similar violations. This demonstrates that the Notary profession and public interest are prioritized over individual interests and are also an important step in maintaining the reputation of the Notary profession.

### **Conclusion:-**

Based on the discussion above, it can be concluded that, firstly, the implementation of ethical sanctions against Notaries who have committed criminal acts within the scope of their duties based on final and binding court decisions must go through a complaint process. The process of applying ethical sanctions to a Notary proven to have committed criminal acts in performing their duties involves the Honor Council seeking facts regarding alleged violations of the code of ethics by the Notary or after receiving written complaints from members of the organization or the public who have been harmed by the Notary, accompanied by convincing facts and evidence that there has been an alleged violation of the code of ethics by the association member. This process shows that efforts to enforce the code of ethics against Notaries who commit criminal acts within the scope of their duties still depend on complaints from aggrieved parties.

Secondly, ethical sanctions such as dishonorable dismissal can be imposed on Notaries who have committed criminal acts based on final and binding court decisions. The decision to impose such ethical sanctions is a fitting and proper step as a consequence of the Notary's adherence to the code of ethics and UUJN. The Notary's code of ethics establishes standards of behavior that must be adhered to by Notaries, including acting ethically and in accordance with the law and preventing similar violations. This demonstrates that the Notary profession and public interest are prioritized over individual interests and are also an important step in maintaining the reputation of the Notary profession.

**Suggestion:-**

Based on the conclusions above, the writer provides the following recommendations. Firstly, considering that the Notary's code of ethics has established standards of behavior that must be adhered to by Notaries, it is suggested that, as an effort to protect the public from losses and maintain trust in the institution of Notaries, a Notary is expected to act ethically and in accordance with the law in carrying out their duties. Secondly, for parties who are aware of or feel aggrieved by the criminal actions of a Notary, it is recommended to report them to the Honor Council or the relevant authorities. Protection of the reporter should also be a priority. The public should feel safe and protected when they report violations committed by Notaries.

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