LEGAL RESPONSIBILITY OF A NOTARY WHO IS ALSO AN INTERMEDIARY IN THE MANAGEMENT OF LAND RIGHTS

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Abstract: This study aims to examine and analyze the Basic Legal Responsibility Notary as an Intermediary in the Management of Land Rights, and Legal Consequences Notary Implementing Activities as an intermediary in the management of Land Rights. This research is a Normative Empirical research. Research conducted by researching library materials which is secondary data and also called library research, and research on primary data conducted by interview to informant and responder as resource person. By using Statutory Approaches, Conceptual Approaches, Case Approaches, and Qualitative Descriptive Analysis Methods. Result of research Notary who in his position also acts as an intermediary in the management of land rights has violated the provisions of Article 17 letter (i) Law Number 2 Year 2014 About Notary Position (UUJN), and Article 4 Code of Ethics Indonesian Notaries Association which has been formed as a rule morals determined by the Association of Indonesian Notary Bonding Organizations. With respect to a notary who performs activities as an intermediary for the management of land rights and allegedly violates the Code of Ethics and Notary Position Law, the Regional Supervisory Board may conduct examination of the notary concerned. If the notary is proven to violate the Law of Notary and Code of Ethics, the notary may be given administrative sanction in the form of: warning; temporary dismissal, and permanent dismissal.

Keywords: notary, intermediary

I. INTRODUCTION

The existence of a Notary institution is based on the needs of the community in making authentic deed as binding evidence. Notary's role in providing such public services is to provide services in the making of deeds and other duties that require the services of Notaries. A Deed issued by a Notary provides legal certainty to the public. Notaries have a role in running the legal profession that cannot be separated from the fundamental issues relating to the function and role of law itself.
The Notary’s position as a public official is an honorable position granted by the State through law to the person it believes. Notary positions cannot be placed in an executive, legislative, or judicial institution. Notary is expected to have a neutral position, so that if placed in one of the three state agencies then Notary can no longer be considered neutral. Notaries are expected to be able to provide legal counseling to the public in the field of notary; in addition a Notary is also prohibited to side with his client, because the task of Notary is to prevent the occurrence of problems.

Currently in Indonesia, the Arrangement on Notarial Institutions is regulated in Law no. 30 Year 2004, About Position Notary (UUJN). Based on Article 1 paragraph (1) of the Notary Law, it is stipulated that a Notary is a Public Official authorized to issue authentic deeds and other powers as regulated in this Law.

As a general official, a Notary must fulfill the Pancasila soul element; obey the law, oath of office, Notary Code of Ethics, good and correct Indonesian language. So that the behavior of a Notary both inside and outside of his office must always pay attention to applicable law, and that is not less important also Notary Code of Ethics.

Notary is a profession designation for a person who has obtained legal education licensed by the government to do legal matters, especially as witnesses signing on documents. The forms of the notary profession vary depending on the legal system.

This notary is not placed in an executive, legislative, or judicial institution. Notary is expected to have a neutral position, so that if placed in one of the three state agencies then the notary can no longer be considered neutral. With such a neutral position, a notary is expected to provide legal counsel for and for legal action by a notary at the request of his client. In the case of taking legal action for the client, the notary also may not side with his client, since the duty of the notary is to prevent the occurrence of the problem.

The more mushrooming Notaries in big cities, making competition among the notaries, to get the client more stringent. Therefore, many notaries who perform other business activities in addition to performing their duties, either by providing document management services, as well as intermediaries in the management of land sale and purchase, the main orientation for the Notary who run it is to gain profit or additional revenue. Moreover from the side business sometimes the benefits can be higher than the making of the deed.

Basically, Law Number 2 Year 2014 About Amendment to Law Number 30 Year 2004 Concerning Position of Notary is a guidance and legal umbrella for notary in carrying out its duties and authority, as well as the provisions stipulated in the Code of Ethics of Notary Bond Indonesia (INI). In other words, as long as it does not conflict with the provisions set forth in these two rules, the notary is granted the freedom to engage in any other business activity of any kind.

Although the Notary Law only regulates the prohibition of multiple positions on certain types of occupations or occupations only, but in fact other positions or other works not included in the notarial prohibition clause are very vulnerable to cause a collision or offense if done by a notary.

The purpose of this study is to analyze the Basic Legal Responsibility Notary as an Intermediary in the Management of Land Rights and analyze the Legal Consequences of Notary Who Conducts Activities as an Intermediary in the Management of Land Rights.
II. RESEARCH METHODS

This research is a Normative Empirical research. Research conducted by researching library materials which is secondary data and also called library research, and research on primary data conducted by interview to informant and responder as resource person. By using Statutory Approaches, Conceptual Approaches, Case Approaches, and Qualitative Descriptive Analysis Methods.

III. RESULT AND DISCUSSION

3.1 Basic Legal Responsibility of Notary Who Conducts Activities as an Intermediary in the Management of Land Rights

3.1.1 Basic Legal Accountability Notary

The profession implies a job with special expertise requiring widespread knowledge and responsibility, devoted to the benefit of the people, having professional organizations or associations and gaining public recognition and having a code of ethics. The profession is a permanent job in a particular field based on the specialized expertise that is carried out responsibly for the purpose of earning income.

Notary profession as explained can be seen in its perspective integrally. Through this integrated perspective, the notary profession is a profession relating to individuals, professional organizations, communities in general and the state. Notary acts will relate to these elements therefore a wrong act of notary in the performance of its work will not only harm the notary itself but may also harm the professional organization, the society and the state.

A notary public relation with the public and the state has been regulated in UUJN and other laws and regulations. While the relationship of the notary profession with the notary profession organization is regulated through a code of notary ethics. The existence of a notary code of ethics is a logical consequence of for a job referred to as a profession. There is even an opinion that the notary as a trustworthy public official must adhere not only to the rules of legislation but also to the code of ethics of his profession, because without any code of ethics, the dignity and dignity of his profession will be lost.

Violations related to a notary code of ethics are acts or actions committed by members of the Association of Indonesian Notary Association or any other person holding a position of notary in violation of the code of ethics and / or organizational discipline.

The scope of the code of ethics applies to all members of the Association of Indonesian Notary Association or any other person who holds and runs a notary both in the performance of office and in everyday life.

In connection with a notary who carries out activities as an intermediary in the management of land rights, according to Notary Samsaimun, such act has violated the Code of Ethics this so that the notary who performs such an intermediary activity shall be given sanctions in accordance with the provisions of this Code of Ethics. However, must still see the provisions in the Law Notary, because between the two legal umbrellas notary has a linkage.¹

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¹ Interview with Samsaimun, as Notary and PPAT domiciled in West Lombok regency. June, 2018
There is a relationship between the code of ethics and UUJN. The first relationship is found in Article 4 regarding the oath of office. Notary through his oath pledges to maintain his attitude, behavior and will perform his duties in accordance with professional code of ethics, honor, dignity and responsibility as a notary. Notary profession ethics codes are established and enforced by notary organizations.

The existence of the relationship between the codes of notary ethics with UUJN gives meaning to the notary profession itself. UUJN and notary code of ethics require that the notary in carrying out his duties as general official, in addition must be subject to UUJN also must obey the professional code of ethics and must be responsible to the community it serves, professional organizations (Indonesian Notary Association or INI) or to the state. Given this relation, the notary who ignores the nobility of the dignity of his position other than to be subject to moral sanction, reprimanded or dismissed from his professional membership may also be dismissed from his position as a notary public.

With the establishment of the Supervisory Board (from the regional level up to the center), it is expected that the Notary will be more professional in carrying out its duties. This is because the existence of the Supervisory Assembly for both the regional and the central level is the supervisor as well as protecting and protecting the Notary in order to keep performing their duties in accordance with the applicable law.

According to the authors, many cases that befell the Notary should be used as learning in order to maintain professional ethics and perform the task in accordance with applicable provisions. In addition, the mechanism of appointment of Notaries throughout Indonesia should be transparent and consistent with existing provisions. If there are irregularities to be resolved legally, one of them is to conduct supervision and provide legal protection to Notary.

Organizational liability applies when a notary violates the professional code of conduct as a guideline made by a professional organization. A code of ethics is a guidance, guidance or moral or moral guideline for a particular profession or a list of obligations in carrying out a profession composed by members of the profession itself and binding them in practice. Thus the code of notary ethics is guidance, guidance or moral guidance or morality of a notary both as personal and public officials appointed by the government in the framework of public service delivery, especially in the field of making the deed.

Code of Ethics in, the material meaning is the norm or rule that is practical both written and unwritten about the ethics related to the attitude and decision making on the fundamental things of the values and standards of behavior of people who are judged good or bad in carrying out its profession independently formulated, established, and enforced by professional organizations.2

The current Notary Code of Conduct is a moral norm determined by the Association of Indonesian Notary Societies under the Decision of the Congress of the Association and / or specified and stipulated in the laws and regulations governing it and applicable to and shall be obeyed by any and all members of the association and all persons performing duties and positions as notaries.

According to the provision of Article 83 paragraph (1) of Law Number 2 Year 2014 concerning Notary Position stating that “Notary Organizations establish and enforce the code

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of Notary ethics”. The aforementioned provisions are followed up by the provisions of Article 13 paragraph (1) of the Articles of Association of Indonesian Notaries which states:

“To maintain the honor and dignity of a notary's office, the Association has a Notary Code of Ethics established by Congress and is a moral rule that must be obeyed by every member of the Society”.

3.1.2 The responsibility of a notary in carrying out his / her duties based on the code of notary ethics

Basically, the law provides the burden of responsibility for the deeds done, the law itself provides boundaries or signs of notary responsibility, so that not all losses are borne by the notary but must be investigated in advance who the offending party.

Atmadja holds that accountability is a freedom of action to carry out the burdened task, but ultimately it cannot escape the freedom of action, in the form of a prosecution to properly perform what is required of it. The view corresponds to the Administration Encyclopedia restriction which defines the responsibility as the imperative of a person to properly perform what has been obliged to him.³

Mulyo Sudarmo divides the notion of accountability in two aspects as follows:⁴

Internal aspect of responsibility is realized in the form of reports of the exercise of power given by the leadership in an agency.

The external aspect of accountability to a third party, if an act creates a loss to another party or in other words a liability for damages incurred to another party for the action of the office which is done.

In passing, from a variety of notions of responsibility make it difficult to give an agreed definition of accountability. How accountability is defined, understood, understood, and its limitations depends on the context and point of view used to examine it. It is simply understood that the existence of accountability as an object in rights and obligations to any context of accountability is to be understood and realized.

A notary can be liable if it can be proven that the Notary is guilty. Responsibility is a state of psychological normality and maturity or intelligence of a person who brings to the three abilities that are able to understand the value and the consequences themselves. Being able to realize that the act is in the eyes of the public is not allowed. Able to determine the intention in doing the deed.

There is a very strong correlation between UUJN and professional code of ethics. The professional code of ethics organizes notaries internally and UUJN externally. According to Muhammad, as quoted by Nico, and Abdul Ghofur Anshori, a notary in performing his job duties:⁵

1. Notary is required to make deed with good and right. This means that the deed made fulfills the legal will and requests of the interested parties because of his position.

³ Sutarto, Encyclopedia Administrasi, MCMLXXVII, Jakarta, p. 291
2. Notary is required to produce a quality deed, meaning that the deed is made in accordance with the rule of law and the will of the parties concerned in the real sense, not making it up. The Notary must explain to the parties concerned the truth of the contents and procedures of the deed he made.

In carrying out its duties and position the notary must hold fast to the Code of Conduct of Notary Public, because without it, the dignity of professionalism will disappear altogether. In a speech delivered by Soedharmono (then Vice President of the Republic of Indonesia) revealed that especially since our National Development is nothing but the practice of Pancasila, the practice of each profession in their respective fields, including the notary profession must be based on the attitude and principle of balance and harmony between the interests of individuals and the public interest, between pursuing material interests and spiritual ethical interests.⁶

Mochtar Kusumaatmadja also revealed that education is not only about technical skills but must be accompanied by professional and ethical responsibilities. If not accompanied by professional and ethical responsibilities will result in the future of the profession become wild, because it cannot perform professionally, which ultimately lead to great losses to the professional as a whole.⁷

3.2 Due to the Law of Notary Who Conducts Activities as an Intermediary in the Management of Land Rights

There are various possible violations committed by a notary to the code of ethics. M. Zaini Arista proposes some forms of non-notary profession offenses that may occur, among others, include non-signing clients before a notary, a tariff reduction, not reading a deed, wrong in giving legal action, performing duties outside the work area, using the services of an intermediary and vilify fellow notaries, including notaries who play an active role in the management of land rights.⁸

The rules contained in a code of ethics are sometimes ignored by a notary. The neglect of a notary code of ethics is certainly due to negative influences both as individuals in society and in employment relationships in professional organizations. Internally, in the individual the notary itself may be due to his human nature, such as the nature of consumerism or salary values obtained in running the profession as a notary. While external factors may be due to the cultural environment surrounding the notary. The following is outlined on the fundamental reasons why notaries tend to ignore and even violate the notary code of ethics.

Based on the results of research in the field can be seen that the violation of the Code of Ethics that occurs is often only an issue because sanctions for violations are only in the form of moral sanctions even though it has been expressly regulated in the Code of Conduct Notary, so data on violations in the application of the Code of Ethics only slightly.

Violations of the Code of Ethics that occur but only become the issue include notary in making the deed, not reading and witnessing the signing of the deed in front of him as a

⁸ Interview with M. Zaini Arista as Notary and PPAT based in Mataram City, May 2018
notary in question, but in front of the employees of the Notary's office. Such violations often occur in the case of a Notary who cooperates with the Bank in the production of credit agreement deeds. Such notaries usually offer services with honoraria that are far below standard.  

Sanctions granted by the Notary Board of the West Nusa Tenggara Regional Notary against the violation of the code of conduct by the Notary, only verbal reprimands are not written. The action ever undertaken by the Notary's Board of Honor is limited to questioning the notary concerned and giving verbal reprimands.

In the Congress of the Indonesian Notary Association (INI), in January 2005 in Bandung, the Notary Code of Ethics was established based on the Notary Law, so there are clear sanctions in case of Code violation in the form of:  

a. Warning;  
b. Warning;  
c. Schorsing (temporary dismissal) of the Association membership;  
d. Onzetting of the membership of the Association;  
e. Dismissal with disrespect from membership of the Society.

The granting of sanctions in the form of oral reprimands is more intended to the process of guidance to the Notary, so that the Notary concerned does not repeat the violation of the code of ethics in the future. In cases of violation of the code of ethics of the Regional Board of Notary of the City of Mataram does not necessarily impose sanctions in the form of a written warning of schorsing or dismissal with disrespect from the membership of the Association.

3.2.1 Sanctions for Code violations

Notary's code of ethics constitutes all moral principles that serve as guidelines in running a Notary's office. The scope of the code of ethics Notaries apply to all members of the Association and others who hold and run the position of Notary, both in the implementation of office and in everyday life. THIS as an association of organizations for Notaries has a very important role in enforcing the implementation of the professional code of ethics for Notaries, through the Honor Board which has the main duty to supervise the implementation of the code of ethics.

There are several violations of code of ethics conducted by Notary in performing their duties, among others are:

a. The making of a deed which is inconsistent with the Notary's Office Law, such as a deed which has been prepared by another Notary so that the Notary in question is just to sign.  
b. Mutual between one notary to another.  
c. 3. Using the services of intermediaries such as service bureaus in search of clients  
d. Provisions concerning the installation of a nameplate in the front or office environment of a Notary. The discovery of a Notary that makes the signboard exceeds a

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9 Interview with M. Zaini Arista as Notary and PPAT based in Mataram City, May 2018  
10 Code of Conduct of Indonesian Notary Bond, Article 6  
11 Interview with M. Kurniawan, selau Supervisor at the Regional Supervisory Board of West Nusa Tenggara Province, May 2018
predetermined size. Unhealthy tariff competition, that there is Notary who put very low tariff to get the client.

e. Conduct publication or self-promotion by stating the name and position. Like the delivery of wreaths at a particular event.

f. Hold a person's file in order to force a person to make a deed to a Notary who holds the file.

g. To persuade a client to make a deed or to persuade a person to transfer from another Notary.

In an effort to maintain the honor and dignity of the position of Notary, I.N.I form a professional code of ethics stipulated by the congress which is a moral guideline that must be obeyed by every member I.N.I. The Honorary Board is an organ of INI equipment consisting of members elected from INI members and Werda Notary’s, dedicated and loyal to the society, good personality, wise and prudent, so that it can be a role model for members and appointed by the congress for a term of office same as the term of management.

The Council of Honor has the authority to examine violations of the code of ethics and impose sanctions on its violators in accordance with its authority and has the duty to:

1. Conducting guidance, guidance, supervision, revamping the members in upholding the code of ethics;

2. To examine and make decisions on the suspicion of violation of provisions of the code of ethics that are internal or that have no community directly;

3. To provide advice and opinion to the supervisory board on the alleged violation of the code of ethics and the position of Notary.

Implementation of sanctions imposed by the Honorary Board of INI as a professional organization of Notary in violation of the code of ethics as mentioned in Article 6 of Notary's Code of Conduct may be in the form of reprimands, warnings, schorzing of membership of association, onzetting of membership of association, dismissal disrespectful of the membership of the association. The imposition of such sanctions against members violating the code of ethics shall be adjusted to the quantity and quality of the offenses committed by that member.

The Honorary Board is authorized to examine any violation of the code of conduct which is internal or which has no direct relation with the public interest and impose sanctions on the violator in accordance with its authority. A member of I.N.I may be temporarily dismissed from his membership by the Central Executive for performing one or more of the following acts:

a. Committing an act which constitutes a grave violation of the provisions of the articles of association, bylaws, codes of ethics and the legitimate decision of the association;

b. Conduct an act that defames, harms or demeans the association;

c. Abusing the name of the association for personal gain.

If the suspended member is found guilty, the member concerned may be dismissed from the membership of the Association. Sanction of dismissal granted to a Notary who commits a violation of the code of ethics is not a dismissal from the position of Notary, but
the dismissal of membership I.N.I. Notary who is proven to violate the code of ethics can still make deed and exercise other authority as a Notary. Sanctions in the form of dismissal from membership of the association does not affect the position of a Notary who has committed a violation of the code of ethics, because the sanction does not mean the Notary is immediately dismissed from his position, because only the minister authorized to dismiss the Notary from his position.

IV. CONCLUSION

Notary who in his position also acts as an intermediary for the management of the land has violated the provisions of Article 17 letter i Law Number 2 Year 2014 About Notary Position (UUJN), and Article 4 Code of Ethics Indonesian Notary Bonds which have been established as moral rules determined by the Association of Indonesian Notaries Association.

To a notary who performs activities as an intermediary for the management of land rights and allegedly violates the Code of Ethics and Notary Position Law, the Regional Supervisory Board may conduct examination of the notary concerned. If the notary is proven to violate the Law of Notary and Code of Ethics, the notary may be given administrative sanction in the form of: warning; temporary dismissal; and permanent dismissal.

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