

Legal Consequences Of A Notary Who Non-Granting A Copy Of Sale And Purchase Agreement (Ppjb) Deed To The Client (Case Study of Jakarta High Court Decision Number 501/PDT/2020/PT DKI)

Clarissa Angeline¹, R. Ismala Dewi²

[¹clarissaangeline@ui.ac.id](mailto:clarissaangeline@ui.ac.id), [²ridewi@ui.ac.id](mailto:ridewi@ui.ac.id)

Master of Notarial Law Postgraduate Program, Faculty of Law,
Universitas Indonesia

Article Info

Received: 2024-08-20

Revised: 2024-10-21

Accepted: 2024-12-30

Keywords: notary; professional code of ethics; ppjb.

Abstract

In carrying out their profession, notaries are required to comply with the professional code of ethics and all provisions of applicable laws and regulations regarding the position of notary. However, in practice, several cases were found that showed a violation of the notary's obligations, one of which was the non-granting of Sale and Purchase Agreement ("PPJB") Deed to the client. Based on this, the problems that need to be studied are: the application of sanctions against notaries who violate the notary code of ethics and the law on notary positions; and the authority of the notary supervisory council that examines, adjudicates, and decides the violation in question. To answer these problems, this study uses a normative juridical research method with literature review. The results of this study shows that the legal consequences of notaries who violate the provisions regarding the position of notary as stated in the law and other legal provisions is the disrespectful dismissal of the notary from his position. Regarding the authority of Notary Supervisory Council, in this case Central Supervisory Council is authorize to summon the reported Notary for an examination; impose a sanction of temporary dismissal; and propose a disrespectful dismissal sanction to Minister. Consequently, the legal consequences

of this breach are expected to provide a valuable lesson for notaries in their professional conduct.

1. Introduction

A Notary, as a public official, shall adhere to applicable laws and regulations, specifically the Notary Code of Ethics and the Notary Law, considering a notary as public official who has the authority to prepare authentic deeds that is exclusively attributed by the government to sign a document.

As a public official, the notary is obliged to pour declarations or statements agreed by the parties into a deed and read the contents of the deed to the parties. However, sometimes notaries do not act properly or carefully when carrying out their duties in making deeds.¹ The procedure that should have been carried out to protect the interests of the client and the notary himself, turned out to be not obeyed or violated by the notary in question. Therefore, a professional code of ethics and the provisions of laws and regulations is needed in the form to prevent and crack down on these violations, as well as provide a deterrent effect on notaries who are proven violate the code of ethics and the provisions of the laws and regulations in question.

Based on the background of the problems mentioned above, it is necessary to conduct research that will examine the application of sanctions against notaries who violate the notary code of ethics and the law on the position of notary. In addition, the authority of the notary supervisory council in examining and prosecuting notaries who commit violations was also discussed, especially in the decision of the Jakarta High Court Number 501/PDT/2020/PT DKI.

The discussion in this study will begin with a description of the authority of notaries as public officials, the ins and outs of Notary Professional Ethics as a guideline for notaries in exercising their authority, then continued with a description of the authority of the Notary Supervisory Council in fostering and supervising notaries. This research then ended with an analysis of the verdict that outlined the violation of the professional code of ethics and the notary position law by Muhammad Irsan in the form of not giving deed of PPJB to clients. The violation resulted in Muhammad Irsan being dishonorably dismissed from his position by the Central Supervisory Council. Muhammad Irsan then filed a lawsuit for Unlawful Acts ("PMH") to the South Jakarta District Court. However, the Panel of Judges of the South Jakarta District Court rejected Muhammad Irsan's lawsuit in its entirety. The first-instance decision was then upheld by the Jakarta High Court through Decision Number 501/PDT/2020/PT DKI.

2. Research Method

¹ Riduan Syahrani, *Basic Material Book of Civil Procedure Law*, (Jakarta: PT Citra Aditya Bakti, 2004), p. 83.

This research uses a normative juridical research method, where a study of positive legal provisions is carried out based on secondary data in the form of literature materials.² This research is descriptive analytical using a qualitative method where the information collected is processed to provide an understanding of the dismissal of the notary from his position as a result of not being given a PPJB deed to the client. The result of this analysis method is analytical data that explains the existing state or situation.³ The data used came from the Jakarta High Court decision Number 501/PDT/2020/PT DKI which was analyzed qualitatively.

3. Results And Discussion

3.1. Notary Authority as a Public Officer

Melchior Kerchem was the first person to be appointed as a notary in the Dutch East Indies. He was appointed a notary on August 27th, 1620. Kerchem was assigned to carry out his work in accordance with his professional oath before Baljuw at Kasteel Batavia and was required to register all the documents and deeds he made.⁴ From 1822 to 1860, the notary position was only regulated through 2 (two) reglement. One of them is the Instructie voor de Notarissen Residerende in Nederlands Indie, where the provisions of Article 1 of the regulation is to regulate the limits of the notary's authority in making, ratifying, and giving force to deeds and contracts. The notary is also required to keep the original copy of the deed and issue its grosse, as well as a copy of the deed legally and correctly.⁵

In 1860, the Dutch East Indies government issued the Reglement op Het Notary Ambt in Nederlands Indie (Stbl. 1860:3) ("Notary Reglement"). With the issuance of the reglement, the notary position has been legally institutionalized in the Dutch East Indies. The Notary Reglement itself contains 66 articles and the provisions contained more sanctions and reasons for the dismissal of the notary from his position.⁶ In 2004, the Notary Reglement was revoked through the promulgation of Law No. 30 of 2004 concerning the Notary Position ("Law No. 30/2004").

Based on Law No. 30/2004 as amended through Law No. 2 of 2014 ("Law No. 2/2014"), a notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in Law No. 30/2004 [and its

² Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Press, 2010), pp. 51-53.

³ *Ibid.*

⁴ G.H.S. Lumbantobing, *Regulation of Notary Offices*, (Jakarta: Erlangga, 1996), p. 15.

⁵ *Ibid.*, p. 18.

⁶ *Ibid.*, pp. 20-21.

amendments] and other laws.⁷ Notaries are public officials who obtain authority from the state attributable in the field of civil law, namely making evidence in the form of authentic deeds that have perfect evidentiary power.⁸ A strong power of proof means that the things mentioned in the notary deed must be considered true as long as it has not been proven otherwise.⁹ A notary is a public official (openbaar ambtenaar) who is responsible for making a written certificate that is intended as evidence of legal acts.¹⁰ The position of a notary is respected because it holds the role of a functionary in society. A notary is generally considered as an official who can provide reliable advice. Everything he wrote was true and the documents he compiled had perfect evidentiary power in the legal process.¹¹

The authority of the notary is specifically regulated in Chapter III of Law No.2/2014. Based on the provisions of Article 15 paragraph (1) of Law No.2/2014, notaries are authorized to make authentic deeds regarding acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, ensuring the certainty of the date of making the deed, storing the deed, providing grosses, copies, and excerpts of the deed, all of which are as long as the making of the deed is not also assigned or exempted to other officials or any other person prescribed by law.¹² In addition, the notary is also authorized to: (a) certify signatures and determine the certainty of the date of the letter under the hand by registering it in a special book (related to the legalization of the deed under the hand made by a person himself or by the parties on a paper that is stamped sufficiently by means of registration in a special book provided by a notary);¹³ (b) filing under hand letters by registering in a special book; (c) make a copy of the original under hand letters in the form of a copy containing the description as written and described in the letter concerned; (d) certify the compatibility of the photocopy with the original letter; (e) providing legal counseling in relation to the making of deeds; (f) making deeds relating to land; or (g) making an auction minutes deed¹⁴ (i.e. if the notary concerned is appointed as a Class II Auction Officer by the Minister of Finance)¹⁵, as well as other authorities regulated in laws and

⁷ Indonesia, *Law on Notary Positions*, Law No. 30 of 2004, LN No. 117, TLN No. 4432, Year 2004, Ps. 1 Number 1.

⁸ Lumbantobing, *Regulation of the Notary Office*, p. 37.

⁹ Ghansham Anand, *Characteristics of the Notary Position in Indonesia: A Series of Regulations on the Notary Position*, (Sidoarjo: Zifatama Jawara, 2014), p. 101.

¹⁰ Herlien Budiono, *The Principle of Balance for Indonesian Treaty Law*, (Bandung: PT Citra Aditya Bakti, 2006), p. 256.

¹¹ Tan Thong Kie, *Notary Studies: Miscellaneous Notary Practices*, (Jakarta: PT Ichtiar Baru Van Hoeve, 2000), p. 15.

¹² *Ibid.*, Ps. 15 ayat (1).

¹³ *Ibid.*, Explanation of Ps. 15 paragraph (2) letter a.

¹⁴ *Ibid.*, Ps. 15 ayat (2).

¹⁵ *Ibid.*, Explanation of Ps. 15 paragraph (2) letter g.

regulations.¹⁶ Other authorities referred to here are the authority to certify transactions carried out electronically (cyber notary), make waqf pledge deeds, and aircraft mortgages.¹⁷

In order to carry out this authority, the Notary needs the help from other parties to help prepare and carry out work in his office. For example, accepting prospective clients who will make deeds, as a link between the notary and his client. Preparing a draft deed, in the sense of receiving files and helping to prepare the necessary files related to the deed to be made, typing the draft deed, preparing the deed number, and so on. After the deed is completed, the other party will prepare for the storage of the deed, type a draft copy or quotation, and so on in connection with the activities of the notary office. In essence, notary employees do their work according to the direction of the notary, and receive a fixed wage based on the employee agreement. The notary office will cease its activities if the notary retires or ceases to be a notary and the protocol is handed over to the substitute notary.¹⁸

Notaries in carrying out their duties and authorities as public officials have the main characteristics, namely their impartial and independent position.¹⁹ What is meant by impartiality is that notaries are free from anyone's influence in carrying out their duties to ensure truth and justice. Meanwhile, what is meant by independent is that notaries in carrying out their duties are able to act on their own without the help of other parties. An impartial and independent notary will form notary behavior that adheres to the principles, code of ethics, and applicable laws and regulations.

3.2. Notary Professional Ethics as a Guideline for Notaries in Authority Implementation

The word "ethics" etymologically comes from the Greek word *ethos*, which means "customs, dispositions, or human behavior".²⁰ Meanwhile, the word "ethics" when translated into English as ethics refers to the science of morality that determines how humans should behave in society.²¹ In Indonesia, there are 3 (three) types of ethical definitions, namely:²²

¹⁶ *Ibid.*, Ps. 15 ayat (3).

¹⁷ *Ibid.*, Explanation Ps. 15 paragraph (3).

¹⁸ Siti Hajati Hoesin, "The Responsibility of Notaries as Employers in the Event of Unlawful Acts," *Journal of Law & Development*, Vol. 49, No. 3 (July-September 2019): 747.

¹⁹ Komar Andasasmita, *Notary with History, Roles, Duties, Obligations, Secrets of His Office*, (Bandung: Sumur Bandung, 1981), p. 95.

²⁰ Refik Isa Beekum, *Etika Bisnis Islami*, (Yogyakarta: Pustaka Pelajar, 2004), hlm. 3.

²¹ E. Y. Kanter, *Ethics of the Legal Profession: A Religious Approach*, (Jakarta: Stora Grafika, 2001), p. 12.

²² *Ibid.*, p. 13.

1. Values and moral norms are held by a person or a group of people in society to regulate their behavior;
2. Basic groups or moral values; And
3. The science of good and bad.

Ethics can also refer to a branch of philosophy that talks about the good or bad behavior, deeds, movements, and even words of humans. If the whole behavior and deeds, as well as the words are done consciously by a person, then we can make an assessment of the person concerned. However, if the person concerned has done or behaved unconsciously, then we cannot judge the person based on ethics.²³ According to Keniston, ethics refers to something that people think and reflect, especially about what humans consider to be a good or bad thing, which they desire or not in their world. When a man violates his own ethical will, he does not feel guilty, but feels an existential failure that makes him think that he is not the person he has been thinking or aspiring to:²⁴

“By ‘ethics’, however, ... refer[s] to the individual’s thought-out, reflective and generalized sense of good and evil, the desirable and the undesirable, as integrated into his sense of himself and his view of the world. When an ethical man violates his own ethic, he feels not guilt but a sense of human failure, a kind of existential shame that he has not been who he thought himself to be.”

The ethics studied in this research is normative ethics, which are ethics that can provide an assessment of the good or bad actions of a person, including about how a person should act, namely whether the person concerned needs to do something or not do something.²⁵ Normative ethics divided into general ethics and special ethics. General ethics traces general principles, namely values, motivations, and conscience behind an action. Meanwhile, ethics specifically discusses general principles that are guidelines in community relations and in carrying out a job.²⁶

Professional ethics is part of social ethics, namely philosophy or rational critical thinking about the obligations and human responsibilities as human beings. Every profession that is carried out with a good moral foundation and upholds professional ethics will create respect and trust for the people who have the profession from the community they serve.²⁷ The relationship between ethics and the legal profession is that the ethics of the legal profession show the attitude of legal experts who are willing to provide professional services in the legal field

²³ Cindawati, *Philosophy of Ethical and Professional Law*, (Palembang: CV Putra Penustu, 2011), p. 20.

²⁴ Kenneth Keniston, “Morals and Ethics,” *The American Scholar*, Vol. 34, No. 4 (Agustus 1965): 628.

²⁵ *Ibid.*

²⁶ Franz Magnis Suseno, *Political Ethics: Basic Moral Principles of Modern Statehood*, (Jakarta: PT Gramedia Pustaka Utama, 2016), p. 12.

²⁷ Franz Magnis Suseno, *Ética Sosial*, (Jakarta: APTIK Gramedia, 1991), hlm. 9th

fully to community who need legal services. The provision of services to the community is also accompanied by careful reflection on the provided services.²⁸

Notary is a profession because it has met certain conditions. The conditions in question include:²⁹

1. The existence of job specialization;
2. The work is done based on expertise and skills;
3. Work is fixed and continuous;
4. The precedence of service over reward;
5. Have a high sense of responsibility; and
6. The workers are members of a professional organization.

The notary profession is bound by the values and moral norms that must be observed and carried out by him, which has been poured into a professional code of ethics.³⁰ It is necessary to note that the professional code of ethics is a product of applied ethics. This is because the professional code of ethics is produced based on the application of ethical thinking to a profession that can change along with the development of science and technology. The professional code of ethics is the embodiment of essential moral values and cannot be imposed from the outside so that it can only be effectively applied if it is imbued with ideals and values in the professional environment itself.³¹

The code of ethics compiled by notary professional organizations in Indonesia is called the Notary Code of Ethics. The Notary Code of Ethics can only be implemented if: (1) it is made by a notary professional organization; and (2) its implementation is continuously supervised by a notary professional organization recognized by the state.³² The professional organization in question is called the Indonesian Notary Association ("I.N.I").

The I.N.I organization is an association for notaries that was established on July 1st, 1908 and is legally recognized as a legal entity based on *gouvernements besluit* (Government Decree) dated September 5th, 1908 Number 9. As the only unifying forum for everyone who holds and carries out the duties of a public official (notary) in Indonesia, I.N.I received ratification from the Indonesian government based on the Decree of the Minister of Justice of the Republic of Indonesia dated January 23rd, 1995 through decree number C2-1022. HT.01.06 of 1995, and has been announced in the State Gazette of the Republic of Indonesia dated April 7th, 1995 Number 28, Supplement Number 1/P-1995. Therefore, I.N.I is a notary organization formed based on the mandate

²⁸ M. Nuh, *Legal Professional Ethics*, (Bandung: Pustaka Setia, 2011), p. 3.

²⁹ Abdulkadir Muhammad, *Ethics of the Legal Profession*, (Bandung: PT Citra Aditya Bakti, 2001), p. 58.

³⁰ Daryl Koehn, *Landasan Etika Profesi*, (Yogyakarta: Kanisius, 2000), hlm. 75.

³¹ Muhammad, *Ethics of the Legal Profession*, p. 72.

³² K. Bertens, *Ethics*, (Jakarta: Gramedia Pustaka Utama, 1997), p. 113.

of Law No. 30/2004.³³ In Article 1 Number 13 of the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number M.01.HT.03.01 of 2003 concerning Notary Society, it is stipulated that the notary organization is the Indonesian Notary Association as the only professional public official organization that is authorized as a legal entity. Further provisions regarding the procedures for appointing members, dismissing members, organizational structure, and working procedures of the supervisory board are regulated in the Regulation of the Minister of Law and Human Rights Number M.02.PR.08.10 of 2004.³⁴

The Notary Code of Ethics regulates all moral rules determined by the Indonesian Notary Association. The code of ethics must be obeyed by any and all members of the organization and all persons who carry out the duties of the office as a notary, including temporary notary officials, substitute notaries, and special substitute notaries.³⁵ The code of ethics is applied to all members of associations (professional organizations) and other people concerned in carrying out the position of notary, both in the implementation of their positions and in daily life.³⁶ There are 3 (three) foundations for the existence of the Notary Code of Ethics. The three foundations in question are:³⁷

1. Socio-psychological foundations

A notary is a person who has expertise in the field of notary to provide services to the community. Notaries have a personally responsibility for the quality of services they provide. The client will give trust to the notary with the hope that the notary will provide services in a professional, quality, and dignified manner. In connection with the interests involved between the client and the notary, the notary profession requires that in its service be imbued with a certain ethical attitude, namely the ethical spirit of the notary profession.

1. Moral Foundations

The Notary Code of Ethics provides legal certainty for clients and notaries themselves in the event of mistakes or mistakes by notaries while running their positions.

2. Practical Foundations

³³ Indonesian Notary Association, *Code of Ethics*, Ps. 1.

³⁴ Regional Supervisory Council of Tangerang Regency and South Tangerang City, "Notary Code of Ethics Material," Socialization of Notary Development and Supervision of Tangerang and South Tangerang Regency (May 2010), p. 1.

³⁵ Indonesian Notary Association, *Code of Ethics*, Ps. 1.

³⁶ *Ibid.*, Ps. 2.

³⁷ Herlien Budiono, *A Collection of Civil Law Writings in the Field of Notary: The Second Book*, (Bandung: PT Citra Aditya Bakti, 2013), pp. 168-169.

The Notary Code of Ethics aims to maintain the dignity of the notary profession and protect clients from abuse of expertise and notary authority.

According to the Notary Code of Ethics, every notary is obliged to respect and uphold the dignity and honor of the position; behave honestly, independently, impartially, trusted, thoroughly, full of responsibility, based on laws and regulations and the content of the notary oath of office; establish one office at the place of residence and the office is the only office for the notary concerned in carrying out the duties of his or her daily position; and carry out the notary position in office, except for certain reasons.³⁸ Similar obligations are also regulated in the provisions of Law No.2/2014.³⁹

The obligations stipulated in the Notary Code of Ethics aim to realize notaries who behave professionally. According to Sumaryono, what is meant by notary professional behavior is that every notary is obliged to:⁴⁰

1. Guided by justice supported by high knowledge and experience;
2. Having moral integrity means that all moral considerations must be based on professional duties. Professional considerations must be aligned with societal values, manners, and religion;
1. Guided by honesty towards the parties and oneself;
2. Not be materialistic and discriminatory in carrying out their duties; and
3. Uphold the code of ethics of their professional organizations.

Notaries in carrying out their duties and positions are required to always be guided by laws and regulations and the code of ethics, because violations committed by notaries can certainly harm the involved parties. If an event is found where a copy of the deed is not provided by the notary, the notary must provide accountability both ethically and legally. However, a notary cannot be criminally prosecuted based on the provisions of Article 50 of the Criminal Code, if the error in question occurs outside the authority of a notary.⁴¹

3.3. Authority of the Notary Supervisory Council in Coaching and Supervision of Notaries

In essence, the Minister of Law and Human Rights has the authority to supervise and examine notaries. This authority is then implemented through the establishment of the Notary Supervisory Council. The Notary Supervisory

³⁸ *Ibid.*, Ps. 3.

³⁹ Indonesia, *Law on Notary Positions*, Ps. 16 paragraphs (1)-(10).

⁴⁰ E. Sumaryono, *Legal Professional Ethics: Norms for Law Enforcement*, (Yogyakarta: Kanisius 1995), p. 159.

⁴¹ Halwa Fairuzia and Rouli Anita Velentina, "Ultimum Remedium on Notary Involvement in Unlawful Acts," *Journal of Law & Development*, Vol. 52, No. 3 (July-September 2022): 650.

Council consists of the District Supervisory Council, the Regional Supervisory Council, and the Central Supervisory Council.

The idea of supervision and enforcement of notaries is based on the consideration that the notary position is a public office (*vetrowenambt*). The community puts their trust (public trust) in notaries as public officials who are authorized to make authentic deeds. As a consequence, the notary position is carried out by keeping in mind the dignity or position that demands accountability and moral integrity of a notary. The supervisory function of notaries is very important to ensure the continuity of coordination between government task organizers in the regions and to ensure the smooth implementation of government in an effective and successful manner at the central.⁴²

The provisions of Article 67 paragraph (1) of Law No. 30/2004 stipulate that the supervision of notaries is carried out by the Minister.⁴³ In carrying out its supervisory function, the Minister formed a Supervisory Council consisting of 3 (three) government elements, a notary organization of 3 (three) people, and experts/academics as many as 3 (three) people. The Supervisory Council consists of 3 (three) levels, namely:

1. District Supervisory Council

Some of the authorities of the Regional Supervisory Council related to the cases studied in this study include: holding a session to examine alleged violations of the Notary Code of Ethics or violations of the implementation of the Notary position; receive reports from the public regarding alleged violations of the Notary Code of Ethics or violations of the provisions of this Law; and make and submit reports to the Regional Supervisory Council.⁴⁴

1. Regional Supervisory Council

Some of the authorities of the Regional Supervisory Council include: recording and holding sessions to examine and make decisions on community reports that can be submitted through the Regional Supervisory Council; summoning the reported Notary to conduct an examination of the report; sanctioning both verbal and written warnings; and propose sanctions against Notaries to the Central Supervisory Council in the form of:⁴⁵

1. temporary suspension for 3 (three) months to 6 (six) months; or
2. disrespectful dismissal.
3. Central Supervisory Board

⁴² Viktor M. Situmorang and Cormentya Sitanggang, *Law of Government Administration in the Regions*, (Jakarta: Sinar Grafika, 1993), p. 233.

⁴³ Indonesia, *Law on the Notary Position*, Ps. 67 paragraph (1).

⁴⁴ *Ibid.*, Ps. 70.

⁴⁵ *Ibid.*, Ps. 73 ayat (1).

Some of the authorities of the Central Supervisory Council include: holding a hearing to examine and make decisions at the appeal level against the imposition of sanctions and refusal of leave; summoning the reported Notary for an examination; imposing sanctions for temporary dismissal; and propose sanctions in the form of disrespectful dismissal to the Minister.⁴⁶

The implementation of notary duties is also colored by various mistakes that will ultimately cause violations that harm many parties, these various violations can be intentional or negligent. These violations include notary practices outside the notary's jurisdiction, notary's partiality towards one of the parties, participating in promoting a commercial activity, or denouncing colleagues (other notaries). These violations, whether consciously or unconsciously, often occur and are able to cause losses to many parties, especially clients.⁴⁷

The Regional Supervisory Council will first conduct an examination of every report received from the community or aggrieved parties. If it is necessary to follow up, the Regional Supervisory Council will forward its report to the Regional Supervisory Council. The trial process to examine violations committed by notaries is carried out at the Regional Supervisory Council. Notaries have the right to defend themselves if prosecution is carried out by parties who feel aggrieved. Regarding the results of the decision of the Regional Supervisory Council, the notary (reported) and the aggrieved party (complainant) can appeal to the Central Supervisory Council. Sanctions that can be given by the Notary Supervisory Council include:

1. Verbal reprimands;
2. Written warning;
3. Temporary suspension;
4. Respectful dismissal; or
5. Disrespectful dismissal.

Disrespectful dismissal is the authority of the Central Supervisory Council, either on the results of its own examination or on proposals and/or reports from the results of the examination of the Regional Supervisory Council.⁴⁸

3.4. Jakarta High Court Decision Position Case Number 501/PDT/2020/PT DKI

This case is related to the making of a deed of binding sale and purchase agreement between Mrs. Widya Augustien who acted on Budi Susena, Fadjar Putra and Ade Cahyono as heirs based on a power of attorney and a special power

⁴⁶ *Ibid.*, Ps. 77.

⁴⁷ Ira Koesoemawati and Yunirman Rijan, *To Notary*, (Jakarta: Raih Asa Sukses, 2009), p. 64.

⁴⁸ Indonesia, *Law on Notary Positions*, Ps. 77 letter d.

of attorney dated November 2, 2017 as the seller as well as the owner of 2 (two) plots of land with Certificate of Ownership Number 10.27.09.01.1.04798 and Certificate of Ownership Number 10.27.09.01.1.04799.⁴⁹

Mr. Hartawan Widjaja as a representative of Mr. Rivan Putera Yuwono (developer or land developer) wants to buy the two plots of land from Mrs. Widya Augustien. The deed of binding sale and purchase agreement regarding the two plots of land was then made by Notary Muhammad Irsan. However, the process of signing the sale and purchase agreement deed was carried out separately by Muhammad Irsan. She also did not read the head of the deed, the comparison, the explanation of the main deed and the closing of the deed, so Mrs. Widya Augustien did not know clearly about the deed she signed.⁵⁰ In addition, the process of signing the deed was carried out at the office of the land buyer, namely in Pantai Indah Kapuk, North Jakarta, so that it was carried out outside the notary's office and place of residence, namely in Tangerang, Banten.⁵¹ Not only that, Mohammad Irsan also did not fulfill his obligation to provide a copy of the sale and purchase binding agreement deed at the request of Mrs. Widya Augustien.⁵²

The alleged violations were reported by Mrs. Widya Augustien to the Banten Regional Supervisory Council. The Regional Supervisory Council then followed up on the report of Mrs. Widya Augustien regarding the alleged violation of the implementation of the notary position regarding the Deed of Binding Sale and Purchase made by Muhammad Irsan. The results of the examination by the Regional Supervisory Council show that Muhammad Irsan has violated the provisions regarding the position of notary as stated in Law No. 30/2004 and its amendments, the Notary Code of Ethics, and other legal provisions. Therefore, the Regional Supervisory Council through the Minutes of Examination Number 02/BAP/MPDN Tangerang City/III Year 2018 dated March 27, 2018 proposed that the Regional Supervisory Council impose sanctions on Muhammad Irsan and require Muhammad Irsan to submit a copy of the deed he made to Mrs. Widya Augustien.⁵³

Regarding the results of the examination of the Regional Supervisory Council, the Regional Supervisory Council issued Decision Number

⁴⁹ Ando Iqbal Noorhadi, "Notary Responsibility for the Validity of the Deed Reading Procedure in the Preparation of a Sale and Purchase Binding Agreement (Study of the Decision of the Central Supervisory Council of Notaries Number 11//MPPN/XII/2018," *Indonesian Notary*, Vol. 2 (March 2020): 265.

⁵⁰ *Ibid*, hlm. 266.

⁵¹ *Ibid*.

⁵² *Ibid.*, hlm. 268.

⁵³ Jakarta High Court, Decision Number: 501/PDT/2020/PT. DKI, p. 20.

07/Pts/Mj.PWN Prov Banten/V/2018 dated April 10, 2018 which reads in part as follows:⁵⁴

"4) Declaring that the Reported Party is proven to have violated the Notary Code of Ethics and the performance of the Notary position as stipulated in Article 16 paragraph (1) letter a, letter d, and letter m, and Article 17 paragraph (1) letter a of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Notary Position;"

"5) Imposing sanctions on the Reported Party in the form of a dismissal proposal is not respectful."

Regarding Decision Number 07/Pts/Mj.PWN Prov Banten/V/2018 dated April 10, 2018, Muhammad Irsan filed an appeal to the Central Supervisory Council. The Central Supervisory Council then issued Decision Number 11/B/MPPN/XII/2018 dated December 10, 2018 which reads:

"1) Declaring that it rejects the Appellant's appeal before the Reported Party in its entirety;"

"2) Declaring that it strengthens the Decision of the Banten Provincial Notary Regional Auditor Council No. 07/PTS/Mj.PWN.Prov.Banten/V/2018 dated May 17, 2018;"

"3) Propose to the Minister of Law and Human Rights to dismiss disrespectfully the Appellant/Reported Person Muhammad Irsan, S.H. domiciled in Tangerang City, Banten in his position as a Notary;"

"4) Ordering the Tangerang City Notary Regional Supervisory Council, to appoint a Notary of Protocol Holder over Notary Muhammad Irsan, S.H.;"

"5) Ordering Muhammad Irsan, S.H., Notary of Tangerang City to hand over the Notary Protocol in his possession to the Notary of the Protocol Holder within 30 days from the issuance of the dismissal decree."

Muhammad Irsan, who did not accept the verdict No. 11/B/MPPN/XII/2018 dated December 10, 2018, then filed a lawsuit against the Law ("PMH") to the South Jakarta District Court. Through Decision Number 64/Pdt.G/2019/PN. Jkt.Sel, the Panel of Judges of the South Jakarta District Court rejected Muhammad Irsan's lawsuit in its entirety and sentenced Muhammad Irsan to pay the case fee of Rp.776,000 (seven hundred and seventy-six thousand rupiah).⁵⁵ This decision was then upheld by the Jakarta High Court through Decision Number 501/PDT/2020/PT DKI.⁵⁶

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, hlm. 27.

⁵⁶ *Ibid.*, hlm. 30.

3.5. Analysis of the Jakarta High Court Decision Number 501/PDT/2020/PT DKI

Before discussing the subject matter of the case, it will first be determined whether the Central Supervisory Council has the authority to propose sanctions in the form of disrespectful dismissal of Muhammad Irsan to the Minister. Article 77 letter d of Law No.30/2004 states that the Central Supervisory Council is authorized to "d. propose the imposition of sanctions in the form of disrespectful dismissal to the Minister."⁵⁷ Therefore, the Central Supervisory Council is indeed authorized to propose the dismissal in question. Moreover, based on Article 35 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for the Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures, and Procedures for the Examination of the Notary Supervisory Council ("Permenkumham No. M.02.PR.08.10/2004"), the Central Supervisory Council is authorized to "strengthen, change, or cancel the decision of the Regional Supervisory Council, and decide on its own" this case.⁵⁸

In accordance with the provisions of Article 12 letter d of Law No.2/2014, a notary can be dismissed disrespectfully from his position by the Minister on the proposal of the Central Supervisory Council if he commits a serious violation of the obligations and prohibitions of the notary position.⁵⁹ The serious violations committed by Muhammad Irsan in this case include:

1. The process of signing the land sale and purchase agreement deed between the seller and the buyer of the land is carried out separately;
2. Not reading the head of the deed, comparison, explanation of the main deed and the closing of the deed to the seller;
 1. The process of signing the land sale and purchase agreement is carried out at the buyer's office, namely at Pantai Indah Kapuk, North Jakarta; and
 2. Not providing a copy of the deed of binding land sale and purchase agreement to the seller.

These actions are proven to violate the provisions of Article 4 paragraph (1), Article 15 paragraph (1), Article 16 paragraph (1) letter a, Article 17 paragraph (1) letter a, and Article 54 of Law No.2/2014. Muhammad Irsan violated the oath/promise of a notary pronounced in front of the Minister or

⁵⁷ Indonesia, *Law on Notary Positions*, Ps. 77 letter d.

⁵⁸ Minister of Law and Human Rights of the Republic of Indonesia, *Regulation on Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures, and Procedures for Examination of the Notary Supervisory Council*, Permenkumham Number M.02.PR.08.10 of 2004, Ps. 35 paragraph (1).

⁵⁹ Indonesia, *Law on the Notary Position*, Ps. 12 letter d.

appointed officials.⁶⁰ In addition, he also violated the obligation to provide the grosse, copy, and quotation of the deed to the client.⁶¹ In relation to the position he held, Muhammad Irsan did not act in a trustworthy, honest, thorough, independent, impartial, and failed to safeguard the interests of clients related to legal acts.⁶² Another violation he committed was to run a position outside his office area.⁶³

In addition to violating the provisions as stipulated in Law No. 2/2014, Muhammad Irsan was also proven to have violated the provisions of Article 3 of the Notary Code of Ethics, especially the notary's obligation to:⁶⁴

"(4) behave honestly, independently, impartially, trustedly, thoroughly, full of responsibility, based on laws and regulations and the content of the oath of office of the notary;"

"(8) Stipulate one office at the place of residence and the office is the only office for the notary concerned in carrying out the duties of his or her daily office;"

"(11) respect, abide by, and implement the rules and decisions of the association;"

"(15) Exercising the office of a notary in his office, except for certain reasons."

The Decision of the Central Supervisory Council Number 11/B/MPPN/XII/2018 dated December 10, 2018 which gave a proposal to the Minister of Law and Human Rights to dismiss Muhammad Irsan with disrespect is in accordance with the provisions of the code of ethics and laws and regulations. Sanctions in the form of disrespectful dismissal from his position should be given because Muhammad Irsan had also made the same mistake in the process of making a deed with the complaint report of Mrs. Waliati Mangun Perbawa to the Tangerang City Regional Supervisory Council. Although he was sentenced to temporary suspension for 6 (six) months by the Regional Supervisory Council, Muhammad Irsan again committed the same violation.⁶⁵

In this case, notaries who commit serious violations of their obligations and prohibitions from office can be immediately sanctioned administratively without being carried out in stages. The Minister can impose administrative sanctions in the form of respectful and disrespectful dismissal at the proposal of the Central Supervisory Council. This is in accordance with the provisions of

⁶⁰ *Ibid.*, Ps. 4 ayat (1).

⁶¹ *Ibid.*, Ps. 15 ayat (1).

⁶² *Ibid.*, Ps. 16 paragraph (1) letter a.

⁶³ *Ibid.*, Ps. 17 paragraph (1) letter a.

⁶⁴ Indonesian Notary Association, *Code of Ethics*, Ps. 3 paragraphs (4), (8), (11), and (15).

⁶⁵ Jakarta High Court, Decision Number: 501/PDT/2020/PT. DKI, p. 22.

Article 3 paragraphs (2)-(3) jo. Article 10 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposition of Administrative Sanctions Against Notaries ("Permenkumham No.61/2016").⁶⁶

Muhammad Irsan's action of trying to cancel the decision of the Central Supervisory Council by filing a PMH lawsuit at the South Jakarta District Court is inappropriate, because there is no valid legal reason to cancel the decision of the Central Supervisory Council. Notaries who are sanctioned for violations of the code of ethics can make efforts to defend themselves and can appeal the decision of the Regional Supervisory Council in stages to the Regional Supervisory Council, then to the Central Supervisory Council as a final examination.

4. Conclusion

From the description above, the following things can be concluded:

1. Notaries in carrying out their duties and positions are required to always be guided by laws and regulations and the code of ethics, because violations committed by notaries can certainly harm the parties involved. If an event is found where a copy of the deed is not provided by the notary, the notary must provide accountability both ethically and legally. The legal consequences of notaries who violate the provisions regarding the position of notary as stated in Law No. 30/2004 and its amendments, the Notary Code of Ethics, oath of office, and other legal provisions are the disrespectful dismissal of the notary from his position.
2. The authority of the Central Supervisory Council is to hold a hearing to examine and make decisions at the appeal level against the imposition of sanctions and refusal of leave; summoning the reported Notary for an examination; imposing sanctions for temporary dismissal; and propose sanctions in the form of disrespectful dismissal to the Minister. In the case of Muhammad Irsan, the Central Supervisory Council through decision number 11/B/MPPN/XII/2018 dated December 10, 2018 gave a proposal to the Minister of Law and Human Rights to dismiss Muhammad Irsan with disrespect. Muhammad Irsan's actions have been proven to violate the provisions of Law No. 30/2004 and its amendments and the Notary Code of Ethics. The decision has been in accordance with the provisions of the notary profession code of ethics and the provisions of laws and regulations. Muhammad Irsan's action in attempting to overturn the decision of the Central Supervisory Council by filing a PMH lawsuit at the South Jakarta District Court is inappropriate, because the Central Supervisory Council is a forum for examining disputes over notary positions at the last level. Therefore,

⁶⁶ Minister of Law and Human Rights of the Republic of Indonesia, *Regulation on Procedures for Imposition of Administrative Sanctions Against Notaries*, Permenkumham Number 61 of 2016, Ps. 3 paragraphs (2)-(3) jo. Ps. 10.

Decision Number 501/PDT/2020/PT DKI which strengthens the first-level decision is in accordance with the provisions of the applicable laws and regulations.

References

Laws and Regulations

Indonesia. Undang-Undang tentang tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Law Number 2 of 2014. LN No. 3. TLN No. 5491. Year 2014.

Indonesia, Undang-Undang tentang Jabatan Notaris, LN No. 117. TLN No. 4432. Year 2004.

Minister of Law and Human Rights of the Republic of Indonesia. Peraturan tentang Tata Cara Penjatuhan Sanksi Administratif Terhadap Notaris. Permenkumham Number 61 of 2016.

Minister of Law and Human Rights of the Republic of Indonesia. Peraturan tentang Tata Cara Pengangkatan Anggota, Pemberhentian Anggota, Susunan Organisasi, Tata Kerja, dan Tata Cara Pemeriksaan Majelis Pengawas Notaris. Permenkumham Number M.02.PR.08.10 of 2004.

Verdict

Jakarta High Court. Decision Number: 501/PDT/2020/PT. DKI.

Book

Anand, Ghansham. Karakteristik Jabatan Notaris di Indonesia: Seri Peraturan Jabatan Notaris. Sidoarjo: Zifatama Jawara. 2014.

Andasasmita, Komar. Notaris dengan Sejarah, Peranan, Tugas, Kewajiban, Rahasia Jabatannya. Bandung: Sumur Bandung. 1981.

Beekun, Refik Isa. Etika Bisnis Islami. Yogyakarta: Pustaka Pelajar. 2004.

Budiono, Herlien. Asas Keseimbangan bagi Hukum Perjanjian Indonesia. Bandung: PT Citra Aditya Bakti. 2006.

Budiono, Herlien. Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan: Buku Kedua. Bandung: PT Citra Aditya Bakti. 2013.

Cindawati, Filsafat Hukum Etika dan Profesi. Palembang: CV Putra Penuntun. 2011.

Kanter, E. Y. Etika Profesi Hukum: Suatu Pendekatan Religius. Jakarta: Stora Grafika. 2001.

Kie, Tan Thong. Studi Notariat: Serba-Serbi Praktek Notaris, Jakarta: PT Ichtiar Baru Van Hoeve. 2000.

Koehn, Daryl. Landasan Etika Profesi. Yogyakarta: Kanisius. 2000.

Koesoemawati, Ira. dan Yunirman Rijan. Ke Notaris. Jakarta: Raih Asa Sukses. 2009.

Lumbantobing, G.H.S. Peraturan Jabatan Notaris. Jakarta: Erlangga. 1996.

Muhammad, Abdulkadir. Etika Profesi Hukum. Bandung: PT Citra Aditya Bakti. 2001.

Nuh, M. Etika Profesi Hukum. Bandung: Pustaka Setia. 2011.

- Situmorang, Viktor M. dan Cormentya Sitanggang. Hukum Administrasi Pemerintahan di Daerah, Jakarta: Sinar Grafika. 1993.
- Soekanto, Soerjono. Pengantar Penelitian Hukum. Jakarta: UI Press. 2010.
- Sumaryono, E. Etika Profesi Hukum: Norma-norma Bagi Penegak Hukum. Yogyakarta: Kanisius 1995.
- Suseno, Franz Magnis. Etika Politik: Prinsip-prinsip Moral Dasar Kenegaraan Modern. Jakarta: PT Gramedia Pustaka Utama. 2016.
- Syahrani, Riduan. Buku Materi Dasar Hukum Acara Perdata. Jakarta: PT Citra Aditya Bakti. 2004.

Journal Articles

- Fairuzia, Halwa. dan Rouli Anita Velentina. "Ultimum Remedium Terhadap Keterlibatan Notaris Dalam Perbuatan Melawan Hukum". Jurnal Hukum & Pembangunan. Vol. 52. No. 3. Juli-September 2022.
- Hoesin, Siti Hajati. "Tanggung Jawab Notaris Sebagai Pemberi Kerja Dalam Hal Terjadi Perbuatan Melawan Hukum". Jurnal Hukum & Pembangunan. Vol. 49. No. 3. Juli-September 2019.
- Keniston, Kenneth. "Morals and Ethics". The American Scholar. Vol. 34. No. 4. Agustus 1965.
- Noorhadi, "Ando Iqbal. "Tanggung Jawab Notaris Terhadap Keabsahan Prosedur Pembacaan Akta Dalam Pembuatan Perjanjian Pengikatan Jual Beli (Studi Putusan Majelis Pengawas Pusat Notaris Nomor 11//MPPN/XII/2018". Indonesian Notary. Vol. 2. Maret 2020.

Paper

- Majelis Pengawas Daerah Kabupaten Tangerang dan Kota Tangerang Selatan. "Materi Kode Etik Notaris", Sosialisasi Pembinaan dan Pengawasan Notaris Kabupaten Tangerang dan Tangerang Selatan. Mei 2010.