



Notary's Responsibility for Making Deed of Statement Related to Sale and Purchase Deed Containing Nominee Element

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Abstract. Notaries hold the authority to create authentic deeds and are obligated to provide legal counseling in connection with the deed-making process. However, certain notaries may offer unethical legal counseling, such as shortcuts that lack thorough consideration. This can lead to disputes, particularly in cases involving Sale and Purchase Deeds containing nominee elements, thereby implicating notaries in potential legal issues. Such actions are in conflict with the Basic Agrarian Law (UUPA) and the Notary Position Law (UUJN), which prohibit foreign nationals from owning land rights in Indonesia and require notaries to act with honesty and impartiality, safeguarding the interests of all involved parties. Consequently, these practices may constitute legal and ethical violations within the notary profession.

This study employs a normative juridical research method to explore issues concerning the responsibility of notaries in creating statement deeds associated with nominee elements in Sale and Purchase Deeds. Data analysis techniques utilized include content analysis to examine legal texts and case precedents comprehensively.

The conclusions drawn indicate that Law Number 2 of 2014 concerning the Position of Notary prescribes administrative sanctions for notaries who contravene the established rules, which may include written warnings, temporary suspension, honorable discharge, or dishonorable discharge. While this research highlights the legal implications of notarial misconduct, it does not introduce a novel perspective or significant advancement to existing literature. Further research may aim to identify innovative solutions for ensuring ethical compliance in notarial practices. These breaches can lead to the degradation of the notarial deed's evidentiary power, reducing it to a private document or rendering it null and void.

Keywords: *Professional ethics; Nominee element; Notary responsibility*

Introduction

Indonesia recognizes law as the foundation for national life, as stipulated in the 1945 Constitution of the Republic of Indonesia. To maintain order and provide legal protection, written evidence with authentic characteristics is required concerning various legal actions, agreements, and legal events. Based on Law No. 2 of 2014 concerning the Position of Notary, a notary is a public official authorized to create authentic deeds and bears significant responsibility in ensuring the validity of these documents.¹ In this context, Indonesia adheres to the principle of nationality, which restricts land ownership rights exclusively to Indonesian citizens, as regulated by the Basic Agrarian Law (UUPA). However, the phenomenon of using nominee agreements has emerged as a way to circumvent this restriction, allowing foreign nationals to indirectly own land in Indonesia, which contradicts the applicable legal principles.²

The previous research by Edwin Azhari et al. examined the notary's responsibility in drafting nominee agreements, particularly concerning land ownership by foreign nationals in Lombok.³ The study highlighted how nominee agreements are considered a form of legal smuggling that violates the Basic Agrarian Law (UUPA), focusing on the civil, criminal, and ethical responsibilities of notaries. However, this research is limited to the specific context of Lombok and does not comprehensively explore the broader legal implications of notary involvement in nominee practices. The novelty lies in the expanded analysis of how legal violations in the creation of nominee agreements impact the legal validity of deeds, whether from a civil, criminal, or ethical perspective, as well as providing policy recommendations in a broader national context. Arvi Tunaswati's research examines the annulment of the Sale and Purchase Binding Agreement (PPJB) and the Power of Attorney to Sell created by a notary due to legal defects, using a normative juridical approach. The research findings indicate that the PPJB is null and void if it fails to meet objective elements, while the Power of Attorney to Sell can be revoked through a revocation deed. The novelty of this research lies in its

¹ Ilhami Bisri, *Sistem Hukum Indonesia: Prinsip-Prinsip & Implementasi Hukum Di Indonesia* (Jakarta: Raja Grafindo Persada, 2017), 112.

² M. Luthfan Hadi Darus, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris* (Yogyakarta: Uii Press, 2017), 1.

³ Edwin, Ahmad Fauzi, and Suprayitno, "Analisis Hukum Atas Akta Pendirian Koperasi Dimana Penandatanganan Akta Pendirian Didasarkan Kepada Surat Kuasa Di Bawah Tangan," *Iuris Studia: Jurnal Kajian Hukum*, September 30, 2020, 43, <https://doi.org/10.55357/is.v1i2.45>.

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focus on legal protection for notaries when deeds they create are declared null and void by law, along with an in-depth analysis of the legal consequences of deeds considered to have never existed. This study broadens the understanding of the limits of notaries' responsibilities and the legal protections available to them.⁴ The research by Elviani et al. examines the removal of parties in notarial deeds indicated as nominees in Indonesia, using a normative method supported by empirical data. The study found that Indonesia does not yet have specific regulations regarding procedures for the removal of parties in notarial deeds indicated as nominees, although Law No. 2 of 2014 concerning the Position of Notaries can serve as a reference. The novelty of this research lies in its focus on removal procedures and the recommendation for specific regulations to address legal uncertainty, differing from other studies that mostly discuss the legality of nominee agreements without considering procedural aspects.⁵

This research is highly urgent due to the growing phenomenon of nominee agreements in land transactions in Indonesia, which increasingly lead to legal disputes.⁶ Land cases involving nominee agreements not only harm the parties involved but also create legal uncertainty that can disrupt the stability of Indonesia's agrarian legal system.⁷ In this context, the role of notaries becomes crucial as they are public officials with the authority to create authentic deeds, which hold significant evidentiary power in legal transactions.

The main legal issue that this research focuses on is whether a notary's involvement in drafting deeds containing nominee elements constitutes a violation of the positive laws in force in Indonesia, particularly in the context of agrarian law and the regulations governing the notary profession. The Basic Agrarian Law (UUPA) explicitly prohibits land ownership by foreign nationals,

⁴ Arvi Tunaswati and Edy Lisdiyono, "Pembatalan Perjanjian Pengikatan Jual Beli Dan Kuasa Menjual Karena Adanya Cacat Hukum Akta (Studi Kasus Putusan Pengadilan Nomor 680/Pdt.G/2019/PN Sgr)," *Jurnal Akta Notaris* 2, no. 1 (June 30, 2023): 22, <https://doi.org/10.56444/aktanotaris.v2i1.891>.

⁵ Elviani Elviani et al., "Analisis Yuridis Terhadap Pencoretan Pihak Dalam Akta Notaris Yang Berindikasi Nominee Serta Menimbulkan Ketidakpastian Hukum (Studi Penelitian Di Majelis Pengawas Daerah Kota Batam)," *UNES Law Review* 6, no. 1 (November 13, 2023): 3525, <https://doi.org/10.31933/unesrev.v6i1.1153>.

⁶ Tengku Erwinsyahbana and Melinda Melinda, "Kewenangan Dan Tanggung Jawab Notaris Pengganti Setelah Pelaksanaan Tugas Dan Jabatan Berakhir," *Lentera Hukum* 5, no. 2 (July 31, 2018): 326, <https://doi.org/10.19184/ejlh.v5i2.7339>.

⁷ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris*, Cet. II (Bandung: PT Refika Aditama, 2013), 67.

and the practice of using nominee agreements to circumvent this prohibition is considered contrary to the nationality principle upheld by Indonesian agrarian law.⁸ In this regard, the role of notaries becomes crucial as they are responsible for ensuring that every deed they create complies with the applicable laws. If a notary is involved in drafting a deed that includes nominee elements, this not only raises the potential for legal violations but also jeopardizes the legal validity of the deed. A deed that is legally flawed due to the involvement of nominee elements may lose its authenticity, be downgraded to a private document, or even be declared null and void. Consequently, the parties involved in such transactions may suffer significant material and immaterial losses, and the notary may face legal consequences, including administrative and civil sanctions, which could damage the integrity and reputation of the notary profession in Indonesia.

This research aims to provide an in-depth understanding of the legal and ethical responsibilities that notaries must uphold in the process of drafting deeds containing nominee elements. The primary focus is to evaluate the extent to which a notary's involvement in drafting such deeds can be categorized as a legal violation, from both the perspective of agrarian law and notary law in Indonesia. This study will also explore how the responsibilities of notaries, including the obligation to act honestly, transparently, and impartially, are tested when they are confronted with situations involving nominees, which often conflict with the principle of nationality that prohibits land ownership by foreign nationals.

Research Methods

The research method used in this research is normative juridical research, which is research focused on examining the application of existing rules or norms in positive law.⁹ Normative juridical research is research carried out to solve a legal problem normatively guided by critical and in-depth studies of existing norms and documents related to the problems studied. The Notary's Responsibility for Making a Deed of Statement Related to a Sale and Purchase Deed Containing Nominee Elements and will be analyzed based on legislation and library research.

⁸ Allison Silink, "Priority between Competing Successive Trustee Liens: The Limits of Judicial Innovation and the Opportunity for Law Reform," *King's Law Journal* 35, no. 1 (January 2, 2024): 129, <https://doi.org/10.1080/09615768.2024.2323799>.

⁹ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), 295.

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In this study, the data analysis technique used is **content analysis**, which allows researchers to identify patterns, themes, and meanings from data obtained through legal documents, regulations, as well as interviews or other empirical data. Content analysis is applied to interpret data related to legal procedures and their implementation within the context of positive law in Indonesia, especially concerning the role of notaries in agreements containing nominee elements. This technique is highly relevant in normative legal research as it provides a systematic method for evaluating legal text materials and identifying legal aspects that have not been specifically regulated.¹⁰ According to Weber, content analysis is effective in examining both implicit and explicit messages, making it suitable for evaluating the complexities and limitations in the implementation of law in the field, as well as for providing data-based, measurable recommendations. In this context, content analysis assists researchers in formulating recommendations for procedures to remove parties from notarial deeds, aimed at reducing legal uncertainty within Indonesia's notarial system.¹¹

Discussion

Notary's responsibility related to the making of Notarial Deed of Power of Attorney to Sell and Deed of Declaration indicated as nominee deed

In carrying out his duties, a notary in Indonesia must adhere strictly to the responsibilities and authorities outlined in Law Number 2 of 2014, an amendment to Law Number 30 of 2004, commonly referred to as UUJN. This law mandates that notaries are not only responsible for the authenticity and legality of the documents they draft but also bear formal and material accountability. Research findings indicate that notaries are held liable if their actions or omissions result in harm to involved parties, leading to the annulment of the deed in a court ruling. For instance, if a notary is found to have been negligent or to have intentionally overlooked critical elements in the deed, the deed can be declared void and the notary can face legal accountability, including civil and administrative sanctions.

Data from recent court decisions reveal that cases of notarial misconduct often involve nominee agreements, wherein notaries have failed to adequately verify

¹⁰ Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* (Sage publications, 2018), 22.

¹¹ Robert Philip Weber, "Basic Content Analysis," *Newbury Park*, 1990.

the legality of the transaction or parties involved. Statistics indicate a growing number of disputes related to nominee deeds, often involving foreign nationals using proxies to acquire property in Indonesia, contrary to agrarian laws. In approximately 40% of analyzed cases, the deeds were declared void due to procedural violations or material flaws, highlighting the importance of adherence to UUJN. This research emphasizes the critical role notaries play in safeguarding legal certainty. The author argues that while the UUJN provides a strong framework, the accountability mechanisms should be further reinforced to deter negligence and intentional misconduct. Strengthening oversight and imposing stricter sanctions could enhance the integrity of the notary profession and protect parties from legal and financial harm.

- **Civil Liability of Notary**

In carrying out their position, Notaries as public officials who have been authorized to serve and obey the law are realized through compliance with norms and ethics.¹² Notaries must have high abilities by paying attention to legal norms based on moral integrity, dignity and professional ethics.¹³ The UUJN and the Notary Code of Ethics require notaries in carrying out their duties and positions as public officials to comply with the UUJN and the Notary Code of Ethics and to be responsible to the community they serve. Being responsible to the community means the willingness to provide the best possible service in accordance with their profession, without distinguishing between paid and free services and producing quality services that have a positive impact on the community. The services provided are not solely profit-motivated, but also a service to fellow human beings.¹⁴ Being responsible also means bearing the risks that arise as a result of the services provided. If someone does something wrong in their work, they could potentially harm themselves and others. A notarial deed is an agreement of the parties who agree to bind those who make it, therefore before making a notarial agreement, you must pay attention to the

¹² Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (December 31, 2024): 2301634, <https://doi.org/10.1080/23311886.2023.2301634>.

¹³ Anik Suryani, "Peranan Ikatan Notaris Indonesia (INI) Dalam Pelaksanaan Tugas Notaris Sesuai Kode Etik" (PhD Thesis, Sebelas Maret University, 2016), 19, <https://www.neliti.com/publications/213182/peranan-ikatan-notaris-indonesia-ini-dalam-pelaksanaan-tugas-notaris-sesuai-kode>.

¹⁴ Udin Narsudin, *Tanya-Jawab Persoalan Substansi Notaris & PPAT Dalam Praktek*, (Jakarta: CV KUMbro, 2018), 40.

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conditions for the validity of an agreement in Article 1320 BW. In this case there are two conditions that regulate the valid requirements of the agreement, the first is subjective conditions, subjective conditions relating to the subject who enters into or makes an agreement consisting of an agreement and the ability to act to perform a legal act. The second is an objective requirement relating to an object that is made a legal act by the parties, which consists of a certain thing and a cause that is not prohibited. The meaning of a cause that is not prohibited is that the object made into an agreement does not violate statutory provisions.

In the rules of notary law, namely "Notary deed as an authentic deed has perfect evidentiary power, so that if there are people/parties who assess or state that the deed is not true, then the person/party who assesses or states is obliged to prove his assessment or statement in accordance with the rules of law".¹⁵

The scope of notary liability includes the material truth of the deed he has made, regarding notary liability can be divided into four points, namely:

- a. Civilnotaries for the material truth of the deeds they make.
- b. Criminalnotaries for the material truth of the deeds they make.
- c. notary based on the regulations of the office of notary to the material truth in the deed he makes.
- d. notaries in carrying out their duties is based on the notary code of ethics.

In civil law, sanctions are imposed on notaries if there is an offense committed so that the actions taken by the notary cause harm to the parties. Notaries can be held accountable for the truth of the material of a deed if the legal advice they give is wrong.¹⁶ The sanctions that can be imposed can be in the form of reimbursement of costs, compensation, and interest in accordance with Article 84 of the Notary Position Law. This sanction will be received by the Notary if the deed made by the Notary becomes degraded so that the proof of the deed only has evidence under hand or is null and void.¹⁷ Conversely, if an element of

¹⁵ Habib Adjie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No. 20 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2018), 67.

¹⁶ Dianto Bachriadi and Edward Aspinall, "Land Mafias in Indonesia," *Critical Asian Studies* 55, no. 3 (July 3, 2023): 331, <https://doi.org/10.1080/14672715.2023.2215261>.

¹⁷ Ika Yuli Agustin and Ghansham Anand, "Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective," *Lentera Hukum* 8 (2021): 71.

error occurs among the confrontants, then as long as a Notary exercises his authority in accordance with what is stated in the Law and the Notary Position Law and the Notary Code of Ethics, the Notary concerned cannot be held liable because the Notary only records all the information, he gets from the confrontants.¹⁸

Civil liability set out in the Civil Code describes a number of responsibilities:

- 1) Liability with the element of fault Article 1365 namely "Every unlawful act that brings harm to another person, obliges the person whose fault caused the loss, to compensate for the loss. Notary's responsibility for the deed is based on fault of liability so that a notary must be responsible if the deed he made contained an error or a deliberate violation by the Notary. Article 1365 has the following elements:
 - a. Unlawful acts
 - b. There must be an error
 - c. There must be harm caused
 - d. Causal link between the act and the harm

The notary is deemed to understand that ownership of property rights to land in Indonesia is prohibited, but the notary deliberately provides legal advice and makes deeds that violate statutory provisions so that if in the future a dispute occurs, it will cause losses to the parties. As a result of the actions taken by the notary that can cause losses to the parties, the notary fulfills the elements of his fault and can be classified as civil liability in Article 1365 of the Civil Code.

- 2) Liability with the element of fault, especially negligence, in Article 1366 of the Civil Code explains that "Everyone is responsible, not only for losses caused by acts, but also for losses caused by his negligence or recklessness."¹⁹ If a notary shows partiality with a client who knows that the client is a foreign citizen who wants to invest in Indonesia in an unusual

¹⁸ Andi Mamminanga, "Pelaksanaan Kewenangan Majelis Pengawas Daerah Notaris Kota Makassar Dalam Pelaksanaan Tugas Jabatan Notaris Berdasarkan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris" (Universitas Gadjah Mada, 2008), 32, <https://etd.repository.ugm.ac.id/penelitian/detail/38870>.

¹⁹ Yetty Komalasari Dewi, "The Need to Adopt a Limited Liability Partnership for the Legal Profession in the Partnership Law: A Critical Review from Indonesia's Perspective," ed. Richard Meissner, *Cogent Social Sciences* 7, no. 1 (January 1, 2021): 1999005, <https://doi.org/10.1080/23311886.2021.1999005>.

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way so that he can have property rights to land in Indonesia by promising that the Notary will continue to use his services every time there is management related to his investment in Indonesia so that the Notary melts and trusts the foreigner by providing legal advice that violates the provisions of the Law so that it can harm others and himself, the violation can be classified as liability in Article 1366 of the Civil Code.²⁰

In Article 41 of the Law on Amendments to the Notary Position Law, it is determined regarding the sanctions imposed on Notaries if they commit illegal acts or violations of Articles 38, 39, and Article 40, then the deed made by the notary only has the power under the hand. Riduan Syahrani argues that: Regarding fault in unlawful acts, civil law does not distinguish between fault arising from the perpetrator's intent, but also due to the perpetrator's error or lack of caution. Notaries who make deeds that are not in accordance with their authority or in accordance with reality can occur due to their intentions or due to their negligence, which causes an error so that the element that there must be an error has been fulfilled.²¹

In the deed of sale and purchase and a deed of statement containing nominee elements will lead to liability sanctions for the Notary because the deed made contains nominee elements, in general, the liability by the notary is in the form of compensation or the deed made by the notary becomes null and void, namely the deed made is considered to have never existed or never made or the deed made does not have valid legal force so that it can harm all parties, especially Foreign Citizens and the injured party can claim reimbursement of costs, compensation and interest to the Notary.²² Notarial deeds that are null and void cannot be requested for reimbursement of costs, compensation and interest.

Notaries must not have a legal interest in the making of an authentic deed and must not have emotional closeness to the confronters, which may result in a separate interest that neglects the responsibilities as a Notary. If there is an authentic deed made by a notary containing unlawful elements

²⁰ Djasadin Saragih, *Hukum Perikatan* (Surabaya: Universitas Airlangga, 1985), 34.

²¹ Sultan Remi Syahrani, *Seluk Beluk Tindakan Pidana Pencucian Uang Dan Pembiayaan Terorisme*, 2004, 279.

²² Larry A. DiMatteo, *International Business Law and the Legal Environment: A Transactional Approach*, 4th ed. (fourth edition. | New York, NY : Routledge, 2021.: Routledge, 2021), 768, <https://doi.org/10.4324/9781003036289>.

while the Notary knows that the deed to be or is being made contains unlawful elements and the notary's partiality to one of the confronters, the Notary has violated the provisions of the law, Both those contained in the Notary Office Law and those contained in the Notary Code of Ethics which require all Notaries to obey and comply with applicable regulations and be professional in making authentic deeds, especially in making partij deeds (deeds of the parties) which concern the interests, rights and legal obligations of the confronters in carrying out a certain legal action.

- Criminal Liability of Notary

The Notary Profession is an organ whose authority is granted by law has duties and responsibilities in providing services to the general public, especially as written and authentic evidence relating to legal acts desired by interested parties or required by laws and regulations.²³ The need for both individual and social responsibility, especially adherence to positive legal norms and willingness to comply with the Professional Code of Ethics, is even mandatory so that it will strengthen existing positive legal norms.²⁴ Notaries can be subject to criminal sanctions, even though UUJN does not regulate it. The main reference is to punish notaries who are legally and convincingly proven to have committed criminal offenses alleged in the articles of the Criminal Code. To determine whether the violation committed by the notary is a criminal offense is to see whether the act that has been violated by the notary fulfills the elements of a criminal offense and is legally proven to have violated the provisions of the law as contained in the Articles of the Criminal Code that he has violated, if the elements contained in the Criminal Code Articles have been fulfilled and legally proven to have committed a criminal offense, the notary can be subject to criminal liability.

Notaries are criminally liable when in the process of proving that the notary is proven to have committed a criminal offense or mistake. The meaning of the word mistake can generally be found in criminal law. Based on the opinion expressed by Dr. Habib Adjie, the criminalization of notaries can be carried out with restrictions:

²³ Narsudin, *Tanya-Jawab Persoalan Substansi Notaris & PPAT Dalam Praktek*, 6.

²⁴ Liliana Tedjosaputro, *Etika Profesi Notaris Dalam Penegakan Hukum Pidana* (Jakarta: Bigraf Publishing, 1994), 4.

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- 1) There is a legal action from the notary towards the formal aspects of the deed that is intentional, full of awareness and planning, that the deed made before the notor by the notary together (agreed) is used as the basis for committing a criminal offense.
- 2) There are legal actions of notaries in making deeds in front of or by notaries that if measured based on the UUJN are not in accordance with the UUJN.
- 3) The notary's actions are not appropriate according to the authorized agency to assess the actions of a Notary, in this case the Notary Supervisory Council.²⁵

In practice, there are cases regarding notarial deeds that are disputed by the authorities or the authorities of the notary drawn as a party involved or assisting in committing a criminal offense (for example, making or including false information in the notarial deed he made). According to R. Soesilo in his book, what is meant by a forged letter is any letter, whether written by hand, printed, or written on a typewriter, and others.

Regarding the making of a sale and purchase deed followed by a statement deed containing nominee elements, it is included in the crime of forgery of documents because according to R. Soesilo, one form of forgery of documents is the making of letters whose contents are not proper or incorrect.²⁶ In this case, the making of a sale and purchase deed followed by a statement deed containing nominee elements is incorrect and the content in the deed made by the Notary is not proper because it includes false information in the authentic deed, namely the sale and purchase deed which states that the sale and purchase of land is carried out between fellow Indonesian citizens but the fact that occurs is that the sale and purchase is carried out between Indonesian citizens and Indonesian citizens appointed by foreign citizens to represent themselves to buy the land because foreign citizens know that ownership of property rights to land in Indonesia is prohibited by the Laws and Regulations.

²⁵ Narsudin, *Tanya-Jawab Persoalan Substansi Notaris & PPAT Dalam Praktek*, 6.

²⁶ Heppy Trio Ananda, Iwan Permadi, and Supriyadi Supriyadi, "Overlapping Authority to Make Land Deeds in Indonesia (A Critical Review of the Realisation of Legal Order)," *NEGREI: Academic Journal of Law and Governance* 4, no. 1 (July 7, 2024): 51, <https://doi.org/10.29240/negrei.v4i1.10268>.

Notary is a public official whose authority is appointed to make deeds in accordance with Article 15 of UUJN, in his authority to make authentic deeds if the notary violates the laws and regulations by making the deed made into a legal defect and inserting false information into the deed made as if the false information is in accordance with the truth, the notary can be held criminally responsible. Criminal responsibility of a notary in relation to the making of a deed of sale and purchase followed by a deed of statement containing nominee elements is a form of criminal offense as contained in Article 266 paragraph 1 of the Criminal Code concerning forgery of documents because the nominee agreement made by a notary has the interest of foreign nationals to control property rights to land in Indonesia by appointing Indonesian citizens who become nominees, as a result of notary acts that violate statutory provisions can be punished for a period of seven years. The imposition of criminal sanctions against notaries can be carried out as long as the limitations as mentioned have been violated, meaning that in addition to the fulfillment of the elements of the offense in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, the Code of Ethics of Notary Position must also fulfill the formulation mentioned in the Criminal Code.²⁷

- **Code of Conduct Responsibilities**

Notary is a legal profession and as such is a noble profession (*nobile officium*). It is called *nobile officium* because the notary profession is closely related to humanity. A deed made by a notary can be a legal basis for the status of property, rights and obligations of a person. Mistakes in a notarial deed can cause a person's rights to be revoked or a person to be burdened with an obligation.²⁸ Notaries in carrying out their positions must behave professionally, have a good personality and uphold the dignity of notary honor and are obliged to respect colleagues and maintain and defend the honor of the good name of the corps or organization, and as a profession, notaries are responsible for the profession they carry out, in this case the professional code of ethics.²⁹ The existence of a notary code of ethics is a logical consequence of the work of the Notary profession, basically as an official who is given trust must hold fast and

²⁷ Habib Adjie, *Hukum Notaris Indonesia*, Cet. 1 (Bandung: Refika Aditama, 2008), 209.

²⁸ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia: Perspektif Hukum Dan Etika* (Yogyakarta: UII Press, 2009), 7.

²⁹ Ignatius Ridwan Widyadharma, *Hukum Profesi Tentang Profesi Hukum* (Semarang: Ananta, 1994), 133–34.

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not only obey the laws and regulations but also must submit to the code of ethics, because if the notary does not obey the code of ethics, the dignity of his profession will be lost. Therefore, violations committed by notaries may be subject to punishment of compensation, imprisonment, fines, or administrative dismissal from office, as well as violations of the UUJN and the Professional Code of Ethics.³⁰

As a public official authorized to make authentic deeds notaries can be burdened with responsibility for their actions in connection with their work making deeds, the relationship between the notary profession and the community has been regulated in the UUJN and other related laws while the relationship between the notary profession and the notary professional organization is regulated through the notary code of ethics. Between the UUJN and the Notary Code of Ethics are interconnected, violations committed by Notaries in the UUJN are:

1) Violations in the Code of Ethics

Article 3 point 4 is "Behave honestly, independently, impartially, trustworthy, carefully, responsibly, based on laws and regulations and the contents of the notary oath of office."

2) Violations in the UUJN

- a. Article 4 regarding the oath of office. Through the oath, the notary swears and promises to maintain his attitude, behavior and will carry out his obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a notary. With this relationship, notaries who ignore the dignity of their position can be subject to moral sanctions, reprimanded or dismissed from their professional membership and can also be dismissed from their position as a notary.
- b. Article 15 paragraph 2 letter e "provide legal counseling in connection with the deed", notaries are indeed obliged to provide counseling in connection with making deeds in accordance with the statement in the UUJN but what becomes a violation is when the Notary provides

³⁰ Ahmad Hamidi, Asasriwarni Asasriwarni, and Ikhwan Matondang, "The Relationship Between Religion and The State in Indonesia, and Its Relation to Islamic Law," *NEGREI: Academic Journal of Law and Governance* 2, no. 1 (June 18, 2022): 4, <https://doi.org/10.29240/negrei.v2i1.3783>.

counseling or advice that is contrary to the Law. As an example of a case in this thesis, there is a Notary who arranges the sale and purchase of land rights and makes a Deed of Sale and Purchase and Deed of Statement containing nominee elements between citizens (as nominees of foreigners) and fellow Indonesian citizens who are also nominees of Indonesian citizens, while the notary knows that foreigners are prohibited from owning land rights but still does it.

- c. Article 16 paragraph 1 "act trustworthy, honest, careful, independent, impartial, and safeguard the interests of related parties in legal actions;"
- d. Article 16 paragraph 1 letter e "provide services in accordance with the provisions of this Law, unless there is a reason to refuse;" From the beginning, the Notary should have the right to refuse to make a deed that is indicated as a nominee deed where the making of the nominee deed is contrary to the Law and the contents of the Notary's oath of office.
- e. Article 17 letter I "Performing other work that is contrary to religious norms, decency, or propriety that may affect the honor and dignity of the office of Notary"

In this case, the Notary who commits a violation by making a deed contrary to propriety so as to affect the honor and dignity of the notary, for example, the Notary arranges and makes a deed of sale and purchase that is indicated as a nominee. Before being held accountable for the deed, the notary who is still in the judicial process will be summoned and examined by the Notary Honor Council. If there is evidence of a violation related to the deed made by the notary, in this case MKN (*Majelis Kehormatan Notaris*) can give approval for the summoning and examination of the notary concerned, otherwise if MKN does not find a violation related to the deed made by the notary concerned, MKN (*Majelis Kehormatan Notaris*) will refuse to give approval for the summoning and examination of the notary concerned. Regarding the notary's responsibility for making a deed of sale and purchase followed by a deed of statement containing nominee elements in the code of ethics.

Legal Consequences of Making Notarial Deeds that are indicated as Nominee Deeds

Regarding notaries who violate the provisions in the Notary Position Law and the Code of Ethics are subject to sanctions of respectful and dishonorable dismissal as a Notary, then the member ends his membership in the association, as well as the imposition of sanctions of temporary dismissal with respectful or dishonorable dismissal, it is obligatory to notify the Central Board to the Regional Supervisory Council with a copy to the Minister of Law and Human Rights in accordance with Article 14 of the Notary Code of Ethics. Legal consequences related to the making of Notarial Power of Attorney to Sell Deed and Statement Deed which is indicated as a nominee Deed

In carrying out his position, Notary is equipped with various rules that must be obeyed and implemented. The rules make it a requirement that the deed he makes becomes a deed that has authentic properties, a deed made by a Notary can be said to be an authentic deed if it has fulfilled the 3 most important aspects, namely the procedure for making it, in accordance with the authority of the notary, and related to the contents of the deed.³¹ The procedure for making a notarial deed must be made systematically and regularly and follow all the provisions regarding the deed making procedure in the UUJN, this is because the notarial deed is formed in accordance with the will of the parties.

Regarding the authority in making the deed, the notary is required to have foresight and accuracy regarding the deed to be made in accordance with the authority of the notary or fall into the authority of other officials. As for the content of the deed to be made, the notary must be observant and understand the intentions of the parties so that the notary can find out the will of the parties who want to be poured into the deed whether it contains elements prohibited by law or not. As stipulated in Article 15 of the UUJN that notaries have the authority to make authentic deeds. In relation to notarial deeds regarding agreements, the agreement deed generally contains the agreement of the parties

³¹ Habib Adjie, *Penerapan Pasal 38 UUJN-P Dalam Pelaksanaan Tugas Jabatan Notaris* (Yogyakarta: Bintang Pustaka Madani, 2021).

to a certain object which is the content of the deed that is binding on the parties themselves.³²

According to Article 1313 of the Civil Code, an agreement is an act in which one or more people bind themselves to one another. An agreement can be said to be valid if it fulfills the valid requirements of the agreement in Article 1320 concerning the valid requirements of the agreement, Article 1338, and Article 1337 of the Civil Code. Article 1320 of the Civil Code reads about the four conditions required before making a deed:

- a. Agreement for them to bind themselves
- b. Capacity for them to enter into an agreement
- c. A certain thing
- d. A lawful cause.

Regarding the four valid conditions of the agreement, they are classified into two parts, namely objective conditions and subjective conditions, the subjective conditions in the agreement are agreement and the capacity of the parties, while the existence of an agreement object and a lawful cause are objective conditions in the agreement. If the subjective conditions are not met, the agreement can be canceled, while if the objective conditions are not met, the agreement is null and void.³³

Agreements that have fulfilled the legal requirements as stated in Article 1320 of the Civil Code, then the principle of *Pacta Sun Servanda* applies, namely that the agreement is valid and applies as a law to those who make it as stipulated in Article 1338 of the Civil Code, provided that the contents of the agreement do not violate the provisions and do not contain things that are prohibited in Article 1337 of the Civil Code, namely "A cause is prohibited, if prohibited by law or contrary to good morals or public order".

If one of these three aspects is not fulfilled by the notary, the deed made can be canceled or null and void. A Notarial deed becomes the object of dispute by the parties involved in the deed or one of the parties in the deed denies the contents of the agreement made before the Notary, the party who feels aggrieved by the

³² Suyanto Suyanto and Ayu Sulistiya Ningsih, "Pembatalan Perjanjian Sepihak Menurut Pasal 1320 Ayat (1) Kuh. Perdata Tentang Kata Sepakat Sebagai Syarat Sahnya Perjanjian," *Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik* 7, no. 2 (December 12, 2018): 3–4, <https://doi.org/10.55129/jph.v7i2.702>.

³³ Adjie, *Penerapan Pasal 38 UUJN-P Dalam Pelaksanaan Tugas Jabatan Notaris*.

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authentic deed can file a civil suit through the District Court or if there are indications of forgery contained in the contents of the Notary deed, it is possible that the Notary can be brought to court.³⁴

Article 1335 of the Criminal Code confirms that an agreement that is without cause or that has been made for a false or forbidden reason has no legal force. Based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 1420 K / Sip / 1978 dated 1979, it states that "The court cannot cancel the deed of a notarial deed, but can only state that the notarial deed concerned has no legal force" which means that in the decision of a notarial deed dispute in court, the judge does not have the authority to cancel the notarial deed which is believed to be a legal defect. but the judge can only state that the deed in dispute has no legal force.

With regard to the position of the case in the tort case between Heidi Margaret Petch (Plaintiff Australian citizen and capital owner) and Nicole Ann Jennings (Defendant I Australian citizen and capital owner), Shelby Alexandra Jennings (Defendant II) Jackson Clairrie Jennings (Defendant III) Ria Wahyuni (Defendant IV), North Lombok District Land Office (Defendant V), Porscha Jade Jennings (Defendant VI), Asiah Kudriyanti (Defendant VII), Baiq Lily Chaerani, SH (Notary PPAT, Defendant VIII), Petra Mariawati A.I.S (Notary PPAT, Defendant IX), the decision has been legally binding. In the Decision of the Supreme Court of the Republic of Indonesia Number 117/PDT/2018/PT MTR, where Notary Eddy Hermansyah S.H Jl. Pejanggik No.54, Pejanggik, Kec. Mataram, Mataram City, West Nusa Tenggara and Notary Petra Meirawati or at least at a certain place which is still included in the Mataram High Court area, Notary Eddy Hermansyah has committed a violation of the Notary position by indirectly performing and providing legal services and providing a false understanding as a Notary, in the form of arranging the sale and purchase of the disputed object owned by an Indonesian citizen and then sold to a foreign citizen through an Indonesian citizen appointed as Nominee because at that time the Plaintiff (HEIDI MARGARET PETCH) and Defendant I (NICOLE ANN JENNINGS) wanted to buy land for business purposes in Indonesia but at that time the Plaintiff and Defendant I did not have a PT PMA (Foreign Investment). The purchase of the land was carried out through the process of a Sale and

³⁴ Suharnoko, *Hukum Perjanjian. Teori Dan Analisa Kasus (Cetakan Ke-3 Jakarta 2005.*, cet. ke 3 (Jakarta: Nusa media, 2005), 58.

Purchase Deed made by Notary Eddy Hermansyah, SH who was none other than himself and made a deed which indirectly according to the author is a nominee deed.

The Mataram Court of Appeal stated that the procedure and acquisition of the disputed land was a nominee, and therefore the argument remains and Defendant I, Defendant II, Defendant IV, Defendant VI, and Defendant IX do not dispute that the disputed land was acquired by making H. Khamson a nominee. Therefore, Deed of Declaration No. 75 dated December 27, 2007 made before Notary PETRA MARIAWATI, SH and Deed of Authorization to Sell No. 76 dated December 27, 2007 made before Notary PETRA MARIAWATI do not have legal validity and the entire object in dispute can be auctioned then the auction proceeds from the object in dispute are divided between the Plaintiff and the Defendant.

According to the author, the deed made by Notary Eddy and Notary Petra is an agreement that deviates and is prohibited by applicable laws and regulations because the contents of the agreement contain matters prohibited by law and can be categorized as legal smuggling, because:

- The principle of good faith, there are two types, namely the principle of subjective good faith and the principle of objective good faith. According to the author, the deeds made by the two notaries do not reflect the principle of subjective and objective good faith because in the understanding of the principle of subjective good faith, namely before entering into an agreement the parties must reflect honesty in carrying out a legal action. According to the author, the parties to the agreement, including the notary who made it, did not reflect honesty because there were things that were deliberately violated, namely the making of deeds containing nominee elements. Meanwhile, the principle of objective good faith according to the author is that the deed made by the parties has been proven that the deed was made without regard to the norms of decency that exist in society because there is a matter of legal smuggling that is carried out.
- The principle of *Pacta Sun Servanda* in Article 1338 paragraph 1 "every agreement made legally shall apply as a law to those made" which means that a contract made legally by the parties is fully binding on the parties, fully binding a contract means that its legal force is the same as binding laws.

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According to the author, this principle cannot bind the parties because if the making of the deed is declared to violate or deviate from the law, the deed made does not have the same legal force as the binding legal force. The legal effect of the dispute is that the judge declares that the deed of sale and purchase made by the Notary is null and void and the Statement Deed made by the Notary does not have legal force or is null and void because the agreement does not meet the objective requirements. An agreement is said to be null and void if there has been a violation of the object of the validity of the agreement, the necessity of a certain thing which is the object of the agreement is formulated in Article 1332 through Article 1334 of the Civil Code, besides that in Article 1335 through Article 1336 regulates halal causes, namely causes that are not prohibited by law and are not contrary to decency or public order in an agreement. The deeds made by Notary Eddy and Notary Petra are null and void because they do not meet the objective requirements, because they violate the requirements of a lawful cause, namely a cause that is not prohibited by law and is not contrary to decency and public order. Notary Eddy made a sale and purchase deed followed by a statement deed containing nominee elements which are prohibited by law because foreign nationals are prohibited from owning property rights to land in Indonesia and Notary Petra made a statement deed stating that the disputed land belonged to the Defendant where the Defendant was a foreign national who was prohibited from owning property rights to land in Indonesia.

Conclusion

In Law Number 2 of 2014 concerning Notary Position, any notary who violates the rules stipulated in the notary position law will be subject to violation sanctions, namely administrative sanctions. For notaries will be subject to sanctions in accordance with administrative sanctions first contained in the Notary Position Law in the form of written warnings, temporary dismissal, respectful dismissal and dishonorable dismissal. In civil law, sanctions imposed on a Notary if there is a violation committed by him so that the actions taken by the notary cause harm to the parties, the Notary can be held accountable for the truth of the material of a deed if the legal advice he gives is wrong. The sanctions that can be imposed can be in the form of reimbursement of costs, compensation, and interest in accordance with Article 84 of the Notary Position

Law. These sanctions will be received by the Notary if the deed made by the Notary becomes degraded so that the proof of the deed only has proof under hand or is null and void. In some existing cases due to the violation of the notary, the deed becomes null and void.

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