

The Realization of Precision Principle in Deed Making by Law Number 2 Year 2014 Jo. Number 30 Year 2004 Regarding Notary Position

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ABSTRACT

Notary is a public official who is authorized to make authentic certificates and other authority as referred to in Law No. 2 in 2014 and No. 30 of 2004 concerning on Notary position. Notary should really be able to provide better services to the community so that there is no one who will get disadvantaged. Therefore, a notary is required to be more sensitive, honest, fair and transparent in the deed to ensure all parties involved directly in the making of an authentic deed. The principle of accuracy is a principle that requires notaries to always act carefully, professionalism and good faith in carrying out the obligations and authority. The principle of accuracy is the principle of risk control through laws and regulations that apply consistently. The purpose of the application of the precision principle is to maintain the security of the notary and the second parties themselves. The principle is explicitly implied accuracy and Law No. 2 in 2014 and No. 30 of 2004 on the post of Notary Article 16 paragraph 1 (a). To become a notary who is qualifies and obey the principle of Accuracy, he needs to be based on the principles of professionalism in the practice of good governance which requires knowledge, skills, insights and attitudes that support the work of the profession so that it can be properly implemented as planned.

Keywords: Accuracy Principle, Deed, Law No. 2 years jo No. 2014 30 year 2004 concerning Notary

INTRODUCTION

As a constitutional state that based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, the Republic of Indonesia shall perform law enforcement that reflects fairness, certainty, and the maximum benefit for the purposes of the protection of law, order and welfare of the people. To support the success of law enforcement, it takes the authentic evidence of the circumstances, events, or the legal actions undertaken by certain positions, namely by the notary as a public official. Law No. 2 in 2014 and No. 30 of 2004 concerning Notary about the change that has been imposed on Reglement op Het ambt in Nederlands Indie (Stbl. 1860: 3) or Notary position Regulation (PJN).

Notary as a public officials is a professional explanations should be believed that the signature and seal can provide a guarantee and as a strong evidence, as well as an independent party in a legal education without blemish. In Article 1 paragraph 1 of the next Act No. 2 of 2014 on changes to the Act No. 30 of 2004 concerning Notary (UUJN) stated that the Notary is a public official who is authorized to make an authentic deed and other authorities referred to in this Act.

Notaries are required to keep every secret entrusted to him and should not submit copies of the deeds to people who are not interested. Such powers included in Article 15 paragraph (1)

of Law No. 2 in 2014 and jo 30 year 2004 concerning about Notary that states that: makes the deed not make a letter, such as *Surat Kuasa Membebaskan Hak Tanggungan* (SKMHT) or make other letters, such as Certificate of Inheritance (SKW). Moreover, it is confirmed that a Notary is appointed and dismissed by the government, meaning that Notary in performing their duties and appointed by the Minister of Justice and Human Rights. Although administratively notary appointed and dismissed by the government, it does not mean being a subordinate of the government notary, but notary in performing their duties must be independent, impartial to anyone, and do not depend on anyone¹.

Today, rolling cases involving law notary has been made possible because of his position in violation of Code of Professional Ethics, the Regional Supervisory Council may even protect the notary so it was not allowed to testify in court. Maybe there is a person who has violated the principle of Notary that is accuracy or participate faith and violated the deed office in making authentic example in the purchase agreement and so on. Code of Ethics for Notary very important in their profession, because of the nature and essence of the work is very oriented notary legalization, the legal basis of the status of the property, rights, and obligations of the clients who use the services of a notary.

NOTARY OBLIGATIONS AND AUTHORITY

The presence of a notary is very important in the midst of people's lives. Notary guarantees certainty, order and protection of the public regarding the law on an authentic deed. The authentic act is indispensable in every aspect of community life. Making authentic document containing the formal correctness in desperate need of help and services of a notary deed so authentic it will be understood and accepted by all parties as well as more legal certainty in the midst of society.

The notary, in their profession, should really be able to provide good services to the community so that no disadvantaged communities. Therefore, a notary is required more sensitive, honest, fair and transparent in making a deed in order to ensure all parties involved directly in the making of an authentic deed.

Notary is a profession that would require a rule of professional ethics of the profession in the form of a code of ethics. The position of a code of conduct for notaries is extremely important, not only because the notary is a profession, but also because of the nature and the nature of notarial work oriented legalization, so it can be a fundamental element of the primary law on the status of the property, rights and obligations of the clients who use the services of as a notary³.

In relation to the provisions of Law No. 2 year 2014 and No. 30 Year 2004 concerning about Notary above, you should use good and true Indonesian for the notary deed if in case the client do not understand the language used in the deed, the Notary is obliged to translate or explain the contents of the deed in a language understood by the client. In performing the duties of Notary has a basic principle held that in assessing a presumption of lawful deed or better known as *presumptio iustae causa*, meaning deed made by Notary shall be considered legally valid until the deed stating invalid. In addition, the Notary in a deed does not investigate the truth of the letters submitted by the party making the deed. It is intended that the notary as a public servant can act quickly and appropriately and stating whether or not a

letter or legitimate case of forgery is not authorized by the Notary, so Notary only check administrative completeness to make a deed.

Behaviors that must be owned by the Notary profession are: (1) a steady moral integrity; (2) honest, and (3) aware of the limits of their authority. So, the notary must comply with the provisions of applicable law on how far he can act and what should and what should not be done. If the forbidden provisions have been violated, the deed will lose the authentic power. A notary who Pancasilaist, he must have a solid moral integrity; honest, and aware of the limits of their authority and also have a sense of justice that is essential, is not affected by the amount of money, and not merely formal evidence pursue creating legal certainty, but ignore the sense of justice. Code of Conduct also play an important role as a means of social control, in addition to preventing control or interference by the government or by the community is also a code of ethics also play a very important role in the development of the profession of notary to the extent possible to prevent misunderstanding and conflict.

Notary in performing his duties required to be guided by the rules and regulations in force. In carrying out his obligations specified either in the Act No. 2 in 2014 and No. 30 of 2004 concerning Notary, in particular in Article 16 and Law No. 2 in 2014 and No. 30 of 2004 concerning Notary and Notary Code of Ethics Indonesian Notaries Association, which the notary in the run position, shall act honestly, thoroughly, independently, a sense of responsibility and must also apply the principles of accuracy in any action to be performed. However, from the analysis conducted in the notary's ability to perform its obligations is not optimal because it has not kept pace with product quality certificate in accordance with the provisions of the legislation. It can be inferred from the presence of a notary deed disputed by the parties.

In carrying out his duties of a notary must hold fast to the notary office code of ethics, because without it, the dignity of professionalism will disappear altogether⁴. According to Bertens, professional code of ethics is a set of norms and accepted by professional groups, who directs or gives guidance to its members how it should be done and at the same time ensuring the moral quality of the profession in the public eye⁵.

Notary as a profession has a code of conduct created by the Notary Organization in Indonesia or known by the Indonesian Notaries Association (INI). In Indonesia, Notary Code of Ethics has been established a few rules that must be held by a notary (in addition to Law No. 2 in 2014 and No. 30 of 2004), which are⁶:

1. Notary Personality, this is described into:
 - a. In performing its duties should be based on Pancasila, aware and obey the rule of notary law, oath for the position, code of ethics and a good Indonesian notary public speaking.
 - b. Have a professional conduct and participate in national development, particularly in the field of law.
 - c. Good personality and uphold the dignity and honor the notary, both inside and outside of their office.
2. In carrying out its duties, the notary must:

- a. Recognizing its obligations, working independently, impartially and honestly with full sense of responsibility.
 - b. Using the office in accordance with lay down by law, and not open branches and representative offices and does not use intermediaries.
 - c. Do not use promotional mass media.
3. Relationship between clients and notary must be based on:
- a. Notary providing services to people who require their services appropriately.
 - b. Notary give legal counseling to achieve a high awareness of the law, so that members of the public aware of their rights and obligations
 - c. Notary must provide services to the underprivileged members of society.
4. Notary with fellow notary must:
- a. Respect each other in a family atmosphere.
 - b. Does not do anything detrimental to competition or fellow.
 - c. Maintain and defend the honor of the corps notary on the basis of solidarity and mutual help in a constructive way.

In connection with the importance of the code of professional conduct in a profession, the Mochtar Kusumaatmadja suggests that technical skills education without education professional and ethical responsibility is dangerous. It certainly can not be denied because if education just about technical skills without professional responsibility and ethics, of course, will result with the profession would be illegal because he was not able to carry out their profession in a professional manner. It would cause a great loss to the legal profession as a whole with. Notary in running position has the authority, obligations and prohibitions. Authority, obligation and prohibition are the core of the practice of notary. Without these three elements, then the office of the notary profession and become useless.

Notary as a position would have its own authority. The authority is a legal action that is regulated and given to a position based on the laws and regulations in force governing the respective positions⁸. Article 15 of Law No. 2 in 2014 and No. 30 of 2004 concerning Notary has set the notary authority as stated that⁹:

- 1) Notary is authorized to make authentic act of all deeds, agreements, and provisions that are required by legislation and / or desired by stakeholders to be declared in an authentic deed, deed of guarantee certainty the date of manufacture, store certificates, giving grosse, copy and official copies, all of it throughout the making of the deed was not also assigned to or excluded other officials or any other person specified by law.
- 2) Authorized Notary also:
 - a. Certify the signatures and set a date of certainty under hand by enrolling in a special book;
 - b. Letters posted under hand by enrolling in a special book;

- c. Make copies of the original letters under the hand that contains a copy of the description as written and described in the letter in question;
- d. Approve their compatibility with the photocopy of the original letter;
- e. Provide information on the law in relation to the deed;
- f. Making deed relating to land; or
- g. Make treatise deed auction.

3) In addition to the authority referred to in paragraph (1) and (2), another notary has the authority set out in legislation.

Other than the authority code in Article 1868 Civil Code is the source to authenticate a notary and also the legal basis of the existence of the notarial deed, with the following terms:

1. It shall be made by or in the presence of a public official.
2. It shall be made in the form prescribed by law.
3. Public officials by or before whom the deed was made, must have the authority to make the deed.

Based on the articles mentioned above it is clear that as a notary public official job duties and provide public service or service to the community to create authentic deeds, besides that the notary is also tasked to perform and validate the registration papers are made under the hand . In addition, the notary is also responsible for providing advice and explanation of the law to the parties concerned.

Notary obligation is something that must be done by a public notary if not done or violated, then, any such violations will be penalized to the notary. The obligation under Article 16 of the Law No. 2 in 2014 and No. 30 of 2004 concerning Notary, as follows:

- 1) In carrying out his post, the notary is obliged to:
 - a. Act honestly, thoroughly, independently, impartially, and safeguard the interests of the parties involved in legal actions;
 - b. Make minuta deed in the form and save it as part of the protocol notary;
 - c. Attach letters and documents as well as fingerprints of the client on minuta deed;
 - d. Grosse issuing certificates, a copy of the deed, or deed quote based minuta deed;
 - e. Provide services in accordance with the provisions of this Act, unless there is a reason to reject it;
 - f. Keep everything that made the deed and any information obtained to a deed in accordance with the oath / pledge of office, unless the statute;
 - g. Bind deed made in 1 (one) month to book that contains not more than 50 (fifty) certificate, and if the amount of the deed can not be contained in one book, the certificate can be bound to more than one book, and

- h. Make a list of the deed of protest against not being paid or non-receipt of securities;
 - i. Bind the year of manufacture on the cover each book;
 - j. Make a list of deed relating to wills chronological deed every month;
 - k. Submitting a list of the deed referred to in the letter h or list nil with respect to the will to Probate Department of the Central List of duties and responsibilities in the field of notaries within 5 (five) days in the first week of the next month;
 - l. Noted in the Repertorium delivery date list of wills at the end of each month;
 - m. Have a seal / stamp which contains the symbol of the Republic of Indonesia and the space around it is written the name, position and place the relevant position;
 - n. Read the deed in the presence of the client presence of at least two (2) witnesses and signed on the spot by the client, witnesses, and notary;
 - o. Receive notary internship candidates.
- 2) The obligation Saving minuta deed referred to in paragraph (1) letter b shall not apply in the case of a notary deed issued in the form of originally.
- 3) Deed originally as referred to in paragraph (2) is the deed:
- a. Payment of rent, interest and pensions;
 - b. Offer cash payments;
 - c. Protest against non-payment or non-receipt of securities;
 - d. Deed of power;
 - e. Specification of ownership; or
 - f. Other Acts based legislation.
- 4) Original Deed referred to in subsection (2) may be made more than 1(one) copy, signed on time, form and contents of the same, with the provisions of any deed of writing the words "act as one and one applies to all".
- 5) Deed originally contains the power that has not been filled in the name of the authorized person can only be made within 1 (one) copy.
- 6) The shape and size of stamp / stamp referred to in paragraph (1) letter k determined by regulation of the Minister.
- 7) The reading of the deed referred to in paragraph (1) letter l is not mandatory, if the client requires that the deed was not read because the clients have read themselves, know, and understand its contents, provided that it is stated in the deed cover and on each page minuta deed initialed by the client, witnesses and a notary.
- 8) The provisions referred to in paragraph (7) excluded the reading head of Deed, comparison, explanation of the principal Act briefly and clearly, as well as cover Deed.

- 9) If one of the conditions referred to in paragraph (1) letter m and (7) are not met, the deed in question only has the strength of evidence as a deed under hand.
- 10) The provisions referred to in subsection (9) shall not apply to the manufacture of Deed's will.
- 11) Notaries who violate the provisions referred to in paragraph (1) letter A to letter I may be subject to sanctions in the form of:
 - a. A written warning;
 - b. Temporary termination;
 - c. Honorable discharge; or
 - d. Dishonorable discharge.
- 12) In addition to subject to sanctions as described in paragraph (11), violation of the provisions of Article 16 paragraph (1) letter j can be the reason for the party who suffered a loss to claim reimbursement of expenses, damages, and interest to the notary.
- 13) Notaries who violate the provisions referred to in paragraph (1) letter n may be subject to sanctions in the form of a written warning.

In connection with the authority and obligations as well as the strength of evidence of an authentic deed made by a notary public or before the above, it is concluded Habib Adjie 2 (two) of the following:

- 1) The task of notary is to formulate wishes or the actions of the parties in an authentic deed, subject to applicable law.
- 2) Deed as authentic deed shall have the force of proof perfect, so it is not necessary to prove or coupled with other evidence, if any person / party or the judge stated that the deed is not true, then the person / party who is not properly assessing or stating the , to prove the assessment or statement in accordance with applicable law. The notarial deed of strength of evidence related to the nature of the office of notary public.

Based on the matters that have been described above, it can be said that the position of the notarial deed as written evidence in the Indonesian legal system is an authentic act because it has met the requirements contained in the provisions of the legislation, but if the role and functions of notaries in the running position does not pay attention to aspects of precision, accuracy and honesty can also have an impact on the criminal liability.

The main authority of the notary is to make authentic act, but not an authentic deed all the authority of the notary, such as birth certificates, marriage and divorce are made by officials other than a notary. The notarial deed made will only be authentic deed, if the notary has the authority which includes four things, namely:

- 1) Notary must be authorized as far as the deed made it. This is in accordance with Article 15 paragraph (1) of Law No. 2 in 2014 and No. 30 of 2004 concerning Notary, where the notary is a public official who can make the certificate that is assigned to it under the legislation.

- 2) All Notaries must be authorized person in whose interests the deed was made. Article 52 paragraph (1) of Law No. 2 in 2014 and No. 30 of 2004 concerning Notary stating that the notary is not allowed to make a deed for yourself, your wife / husband, or those who have family ties with the notary either by marriage or blood relationship in a straight line downward and / or upward without limitation degrees, as well as in the line to the side of the third degree, as well as be a party for yourself, or in a position of authority or with intermediaries. The intent and purpose of this provision is to prevent the occurrence of acts impartially and abuse of office.
- 3) Notary must be authorized along the place where the deed was made. According to Article 18 of Law No. 2 in 2014 and No. 30 of 2004 concerning Notary, notaries have a position in the district / city. Notary office covers the whole territory of the province of domicile. Deed made out of office is not valid.
- 4) Notary must be authorized throughout the time of making the deed. Notary deed should not be made while he was still on leave or fired from his position, as well as the notary deed should not be made before he took office.

Article 16 paragraph (1) letter a and Law No. 2 in 2014 and No. 30 of 2004 concerning Notary in determining that his duties shall act honestly, thoroughly, independently, impartially and maintain interest in the relevant legal act. In addition, the Notary shall give priority to the balance between the rights and obligations of the parties. Notaries are required to constantly listen and consider the wishes of the parties that the actions outlined in the deed.

CONCLUSION

The accuracy principle is a basic/important principle in notarial practice in Indonesia. Basic accuracy requires the notary to always be careful in carrying out their duties and discretion, in the sense should always be consistent in implementing the legislation in the field of professional notary and in good faith. Basic sense of accuracy principle of the risk through the statutory regulations is applicable provisions consistently. The purpose of the application of the basic accuracy is to protect the security of the parties or the notary himself. Although Law No. 2 of 2014 jo Number 30 Year 2004 regarding Notary Department does not explain with certainty on the basis of accuracy, but on the basis of accuracy explicitly implied in the Act No. 2 of 2014 jo Number 30 Year 2004 regarding Notary department, article 16 paragraph 1 (a) carry out an obligatory act of trust notary department, honest, thoughtful, independent, impartial and protect the interests of those involved in the legal action.

Notary has a role in determining an action that can be poured in the act or not. Before arriving at a decision like this, the notary must consider and look at all the documents presented to the notary, examined all the evidence presented to him, listen to testimony or statements of the parties. The decision should be based on the grounds that the law should be explained to the parties. Consideration should pay attention to all aspects of the law, including legal issues that will arise in the future. Moreover, every act done before or by the notary must have a reason and the fact that support for the act or any legal considerations that must be explained to the parties / clients.

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