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## LAW ENFORCEMENT AND PROTECTION OF NOTARIES IN THE CRIMINAL DOMAIN AND LAW OF NOTARY POSITION (CASE STUDY OF DECISION NUMBER 196/PID.B/2019/PN DENPASAR)

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### Abstract

Notary is an official authorized to make an authentic deed in accordance with the provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position of Notary (UUJNP). In carrying out his duties, the notary must uphold the moral values and professional ethics and must obey the applicable law so as not to make mistakes which will carry risks for the notary himself and cause harm to the community. Risks arising from negligence for the notary public in their duties are in the form of enforcement of sanctions both civil sanctions, criminal sanctions and administrative sanctions. This study analyzes criminal enforcement of notaries, as well as norm conflicts that arise between criminal decisions by judges against notaries and the applicable laws. The aims of this study is to find out the enforcement and sanctions against notaries in the realm of criminal law and notary office law based on case study of decision number 196 / pid.b / 2019 / pn Denpasar), and to determine the form of legal protection against notaries. This study uses the normative juridical method. The results of this study revealed that there are two elements in law enforcement and protection of notaries, namely preventive and repressive. Preventive in the form of supervision of notary practices and repressively is the imposition of sanctions. The form of legal protection for notaries is carried out by the Notary Supervisory Board and the Notary Honorary Council.

**Keywords:** Enforcement; Protection; Supervision; Guidance; Sanctions; Notary

### 1. INTRODUCTION

The existence of a notary is now regulated in the Law, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJNP). Based on Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Position (UUJNP) in article 15 paragraph 1 which reads:

"The notary has the authority to make authentic deeds regarding all deeds, agreements, and provisions required by legislation and / or that is desired by the interested parties to be stated in authentic deeds, guaranteeing the certainty of the date of making the deed, keeping the deed, giving grosse, copy and quotation of

the deed, all of this as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by law."

The main task of the Notary is to confirm or express the wishes and wishes of those who need his services into an authentic deed, the Notary also has an obligation to guarantee the validity of the authentic deed so that the interests of the tappers can be protected. Notaries in carrying out their duties when making an authentic deed cannot be separated from mistakes or mistakes caused by the improper behavior of the parties or even due to bad or unprofessional behavior of the Notary himself. The greatest temptation of a Notary in carrying out his position is often faced with issues such as

making an authentic deed based on false information or data falsified by the parties in order to achieve personal goals. Lack of accuracy and professionalism applied by Notaries such as taking sides, adding, subtracting or making and falsifying deeds of things that could have been avoided, could plunge the Notary himself into big problems. Negligence in carrying out their duties in addition to causing the revocation of the rights of either party or the contributor, the Notary may be prosecuted as a legal consequence of liability by applying administrative sanctions, civil sanctions and criminal sanctions.

The notary profession must uphold the moral values and professional ethics and must obey the applicable law so as not to make mistakes which will bring risks to the notary himself and cause harm to the community. Likewise, the Notary Profession in carrying out his position is also required to be neutral and impartial, act sincerely, sincerely, carefully, thoroughly and accurately, and must provide legal protection and certainty to the parties equally. Basically, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position of Notary Public (UUJNP) which serves as a legal umbrella and signs for notaries, if the Notary Public is proven to have violated the provisions contained in UUJN and UUJNP, The notary concerned will be subject to law enforcement in the form of sanctions in accordance with the types of violations that have been carried out according to the law. A notary in carrying out his position, if not careful in doing both can violate the provisions of the legislation regarding his position and the professional code of ethics, or even get caught in a criminal act.

Examples of cases of notary violations in Denpasar, Bali which were named as suspects in criminal cases and violations related to notary professionalism. The notary, based in Denpasar, was detained and made a suspect by the Bali Regional Police for the case of partisanship and participating in one of the parties which caused harm to the other party. The notary was convicted of being proven legally in violation of Article 378 in conjunction with article 56 paragraph (2) of the Criminal Code and is believed to be guilty of committing a criminal act intentionally giving an opportunity or means in a criminal act of fraud. Based on the case example, it is said that the notary public has violated the criminal provisions,

the notary also indirectly is said to have violated the notarial position law. The interesting thing for researchers, is that in practice and its application there are a number of cases that notaries in carrying out their positions that have acted in accordance with the Laws of UUJN and UUJNP as well as the code of ethics but can also be said guilty if there are demands, and on the one hand there are also a number of cases which is said that the notary violates the UUJN and UUJNP as well as the code of ethics but not guilty. In this case there was a conflict of norms related to the settlement of criminal law enforcement because there was a conflict between the decision issued by the Law. Notaries as officials who are authorized to make authentic deeds in practice need to get legal protection. Legal protection for a notary public is a protection against dignity and in maintaining professional honor, so that in the application of law enforcement against a notary in the event of a problem, the investigator cannot act arbitrarily against the notary.

Some similar studies have been conducted previously by the researchers. (Ngadino, 2020) in his research, examined the different roles of Indonesian police investigators in handling criminal acts committed by notaries after the Constitutional Court Decision No. in legal protection for notaries related to the deed makes, then examined the model of legal protection for notaries who commit crimes related to the deed made after the Constitutional Court Decision No 49 / PUU-X / 2012 and Ministerial Regulation and Human Rights Number 7 of 2016. The result of this study showed that after the issuance of MK Decision Number 49 / PUU-X / 2012, the investigator, in summoning and examining notaries suspected of having committed a criminal act related to their authority as a notary, is in accordance with Article 66 paragraph (1) of Law Number 2 of 2014 concerning The position of a Notary, namely there is no need to ask for approval from the Regional Supervisory Council (MPD). However, with the existence of Regulation of the Minister of Law and Human Rights Number 7 of 2016, the investigator process in calling a Notary must be with MKN permission. In addition, the protection model for notaries after the Constitutional Court Decision Number 49 of 2012 and Permenkumham Number 7 Tagun 2016 is as follows: a) MKN can still provide legal protection to Notaries who are in conflict with the law through the means of contract approval

while still coordinating with police investigators. b) Police investigators, if they are going to examine or summon a notary, may not directly without notification to MKN. c) POLRI, MKN, and INI investigators can form a special forum as a forum for dialogue to discuss several important decisions related to notaries who are in conflict with the law. The similarity of this study with the present study is discussing the same object which is the legal protection for notaries. Another similar study was also conducted by (Fadly, Danil, & Yoserwan, 2021) that focused on the position of the deed made by the notary if it is proven that it used the proceeds from the crime of money laundering, the position of the deed made by the Notary if it is proven that it used the proceeds from the crime of money laundry, and the legal protection for Notaries who report the existence of client transactions that are suspected of being proceeds from the crime of money laundering. The results obtained are 1) Notaries are required to carry out their obligations as Reporting Parties mandated by the Law on the Prevention and Eradication of the Crime of Money laundering. 2).The deed made by a notary will not result in the cancellation of the deed, because to cancel a deed must be based on a court decision 3).In this case, notaries can carry out their duties by examining carefully the files and profiles of service users so that they can find out early if there is a suspicion of money laundering. The focus of this study is similar with this present study which examined the legal protection of notary.

Based on the background of the problems mentioned above, this study aims to analyze the enforcement and legal sanctions are received by notaries in the event of criminal violations and notarial office laws. In addition, this study aims to determine the form of legal protection against notaries in the notary position law. This study has two benefits theoretically and practically. Theoretical benefits, for researchers, are efforts to develop scientific insights, especially the development of legal science theories and provide benefits in the development of reading for legal education to readers. The practical benefit is that it can be used as a guideline for readers and also the legal profession is inseparable by the Notary to be more careful in carrying out their duties and can be used as valuable experience and lessons so that in carrying out the profession as much as possible reduce risk

by upholding the professionalism of their work.

## **2. METHOD**

Normative legal method is the method used in this study. Normative legal methods namely, a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems encountered. Normative legal research is a research conducted by examining laws and regulations that apply or are applied to a particular legal problem. According to (Diantha, 2017), normative legal research functions to provide juridical argument when there is an emptiness, obscurity and norm conflict. Furthermore this means that normative legal research has the role of maintaining critical aspects of legal science as a normative science.

## **3. RESULT AND DISCUSSION**

### ***Enforcement and Notary Sanction in Criminal Offenses and Notary Position Law (Denpasar District Court Decision Number 196 / PID.B / 2019 / PN DPS)***

Law enforcement is the activity of harmonizing the relationships of values that are set out in the rules or views of good values and attitudes to act as a series of translation of the final stages of value to create, maintain and maintain peace of life relationships. Law Enforcement can be done in a preventive and repressive way. Preventive can be done with supervision to ensure legal certainty, and can be done repressively by imposing sanctions. Sanctions aimed at notaries constitute awareness that notaries in carrying out their duties have violated the provisions concerning the implementation of the notary public duties as stated in the Law JN, and to restore the notary's actions in carrying out their office duties in an orderly manner in accordance with the Law.

In this case, the enforcement of criminal sanctions by the Panel of Judges against the notary Ketut Neli Asih, SH, was based on the facts revealed in the trial. Based on this case, the Notary was charged with violating Article 378 jo article 56 paragraph 2 of the Criminal Code, regarding fraud and about participating in helping to make or give opportunities. Article 378 of the Criminal Code concerning Fraud reads as follows:

"Anyone with the intention to benefit themselves or others unlawfully, using a

false name or false dignity, with deception, or a series of lies, moves others to hand over something to him, or so that he gives debt or eliminates receivables, is threatened for fraud with a maximum imprisonment of 4 (four) years."

While article 56 of the Criminal Code concerning participating in helping to reads as follows:

Convicted as a person who helped commit a crime:

1. Whoever intentionally helps commit the crime,
2. Whoever deliberately gives the opportunity, effort, or information to commit the crime.

Referring to this case, the result of the decision determined by the Panel of Judges was to adjudicate the defendant Ketut Neli Asih, SH. above, has been proven legally and convincingly guilty of committing a crime "Deliberately Giving Opportunity or Means in a Fraud Criminal Act". The process which became the basis of the decision by the Panel of Judges regarding the imposition of sanctions received by Notary Ketut Neli Asih, SH, was based on the following elements:

1. Whose elements,
2. The Purposeful Element,
3. Element Give an opportunity, means or information
4. Elements With the intention to benefit oneself or others illegally,
5. Elements By using a false name or fake dignity, with deception, or a series of lies,
6. Element Moves other people to hand over something to him, or to give debt or write off receivables.

Enforcement of a criminal offense against a Notary Public in the case above results in legal consequences for the notary criminal sanction. The defendant Notary is subject to violation of Article 378 of the Criminal Code in conjunction with Article 56 paragraph (2) of the Criminal Code concerning fraud and about participating in helping / giving opportunities. The judge stated that the defendant Notary Ketut Neli Asih, SH mentioned above, had been legally and convincingly proven guilty of committing the crime of "Deliberately Giving Opportunities or Facilities in Fraud Crimes" as in the second indictment of the Public Prosecutor. Judges impose criminal sanctions on the defendant, namely prison

for one (1) year and four (4) months.

Enforcement in terms of the Notary Position Law in the above case is preventive and repressive enforcement. Philipus M. Hadjon stated that administrative law enforcement includes supervision and application of sanctions. The supervision is a preventive step to enforce compliance, while the application of sanctions is a repressive step to impose compliance. Preventive or supervisory measures contained in the Law of Notary Position, it is said that in practice supervision of the notary is overseen by a body called the Notary Supervisory Board. The Notary Supervisory Board has the duty to foster, maintain and supervise notaries so that they are assigned according to the notary's authority, obligations and prohibitions, so that the notary acts in accordance with a notary code of ethics that upholds notary values, norms and dignity. The authority of Notary in carrying out his position is stated in article 15 paragraph 1 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary (UUJN-P), namely:

"The notary has the authority to make an authentic deed regarding all deeds, agreements and stipulations required by statutory regulations and / or that is desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, granting the certificate, copy, and quotation. deeds, all of them as long as the drafting is not also assigned or excluded to other officials or other people stipulated by law".

Preventive supervision of notaries in enforcement efforts is in practice, regulated and clearly stated in UUJN and UUJNP, which function as signs so that notaries are not trapped in a case in the future. Supervision of notaries conducted by the Notary Supervisory Board, namely those that are preventive and repressive, including coaching activities carried out by the Board of Trustees of Notaries. Preventive means a coaching process, whereas repressive means imposing sanctions against Notaries in carrying out their positions if they are proven to have violated the Notary Position Law. Enforcement of violations committed by a notary public if not in accordance with the authorities and obligations stated in UUJN / UUJNP is the imposition of sanctions. Sanctions against Notaries are regulated in Article 85 of the UUJN, which

can be in the form of verbal reprimands, written warnings, temporary dismissals, dismissal with respect, or dismissal with disrespect.

Defendant Notary Ketut Neli Asih, SH, in carrying out his duties as a notary has acted in accordance with his authority, namely making an authentic deed in accordance with the agreement of the parties, but the gap in this case study is a notary making a deed with unclear rights because it is only in the form of rights photocopy of the certificate, and the notary did not convey to the victim that the certificate had been returned to the defendant Gunawan Priambodo and was no longer in the hands of the defendant Notary Neli Asih, SH Referring to the violation in the case study above, the imposition of sanctions received by the Notary Ketut Neli Asih, S.H., is in the form of imposing sanctions for temporary termination.

***Analysis of Enforcement and Sanctions Against Notaries in Criminal Violations and Notary Position Law (Denpasar District Court Decision Number 196 / PID.B / 2019 / PN DPS)***

The researcher analysis in this case is that the defendant Ketut Neli Asih, S.H, as the official authorized to make an authentic deed between the victim and the perpetrator, has carried out their duties and authorities in accordance with the provisions of the Law. Law Number 30 of 2004 concerning Notary Position in article 15 paragraph (1) states:

The notary is authorized to make authentic deeds regarding all deeds, agreements, and provisions required by legislation and / or as desired by the interested parties to be stated in authentic deeds, guaranteeing the certainty of the date of making the deed, keeping the deed, giving the gross, copy and quotation of the deed , all of this as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by law.

Based on the quotation of the Act above it is concluded that in this case the Notary is only authorized to make an authentic deed in accordance with the agreement of the parties. Deed made by the defendant notary is the result of the formulation of an agreement or the will of the victim witness and the perpetrator. In the above case it is said that the defendant made a notarial deed based on

PPJB No.30 dated November 20, 2012 and a copy of the deed of attorney No. 31 dated November 20, 2012 made at Notary Putu Trisna Rosilawati, SH. In practice the notary has the right to get to know the parties, to ensure identity and to construct the intent and purpose of making a deed, but in this case it does not have the authority to inquire deeply related to the deeds that have been made by the perpetrator in the notary before. It's just that the defendant Notary was not careful / careful in conveying information to the victim that the status of a certificate of HGB as an object in the deed was no longer available to him, but had been taken by the perpetrator's staff for resolution.

From the criminal aspect, in carrying out his position as a notary, the intended criminal is a criminal committed by a notary in his capacity as a public official authorized to make an authentic deed mandated by UUJN, not a personal or individual capacity of the notary as a legal subject. The imposition of criminal sanctions against notary defendants namely violating article 378 jo article 56 of the Criminal Code in this case needs to be explored in more depth, article 56 of the Criminal Code says that being convicted as a crime aide is:

*those who deliberately provide assistance when a crime is committed,*

*those who deliberately provide opportunities, facilities or overt to commit crime.*

To be criminally accountable, a notary must have an intention (*mensrea*) to participate. However, in this case, if examined in more depth, the notary defendant does not want to commit a crime (forgery), does not have the intention to take part in participating in acts of fraud (does not meet the *Menrea*). Quoting R. Soesilo's statement regarding Article 56 of the Criminal Code, he explained that a person "helps to do" if he deliberately provides assistance, at the time or before (so not afterwards) the crime was committed. In the elucidation of Article 56 of the Criminal Code it is said that the element of "intentional" must be present, so that people who accidentally do not know have given an opportunity, effort, or information to commit the crime are not punished. The "intention" to commit the crime must arise from the person given the assistance, opportunity, effort or information. If the intention arises from the person who gives his own

assistance, then that person is guilty of "persuading" (uitlokking). Article 55 of the Criminal Code says:

*(1) Convicted as a person who commits a crime:*

*1e. People who do, who order to do, or participate in doing that;*

*2e. People who by giving, agreement, misuse of power or influence, violence, threat or deception or by giving opportunity, effort or information, deliberately persuade to do something.*

*(2) Regarding those mentioned in sub 2e, only acts that are intentionally persuaded by those who can be held accountable, and with the consequences*

Article 55 paragraph (2) of the Criminal Code above reaffirms that what can be accounted for and with its consequences is an act deliberately persuaded by those who commit a criminal offense. Conflicts of norms in this case can also be further investigated regarding Article 50 and Article 51 of the Criminal Code. Article 50 of the Criminal Code states that:

*"Whoever commits an act to carry out the provisions of the law, may not be convicted."*

and Article 51 of the Criminal Code states:

(1) Anyone who commits an act to carry out an office order given by an authorized authority is not convicted.

(2) A position order without authority does not cause criminal offense, except if the one being ordered, in good faith thinks that the order is given with authority and its implementation is included in the work environment.

The existence of a norm conflict between the decision given by the judge to the notary defendant is contrary to the laws and regulations namely articles 50 and 51 of the Criminal Code, because in practice the Defendant Notary as an official authorized by the state and as an extension of the government, is authorized to make an authentic deed in the case above acted according to the Notary Position Law. So if it refers to articles 50 and 51 of the Criminal Code, notaries cannot be convicted for carrying out the task of carrying out the provisions of the Law of Notary Position.

Another thing researchers see in UUJNP where the provisions of article 9 paragraph (1) letter d amended and 1 (one) letter, namely letter e, so article 9 is as follows:

(1) Notary is temporarily dismissed from his position because:

a. in the process of bankruptcy or postponement of debt payment obligations;

b. under authority;

c. do misconduct; or

d. violating the obligations and prohibitions of office as well as the notary code of ethics; or.

e. Currently undergoing detention

and in Article 10 which regulates the re-appointment of the Notary Office is suspended as follows:

(1) Notary who is suspended temporarily as referred to in Article 9 paragraph (1) letter a or letter b may be reappointed as Notary by the Minister after his rights have been restored.

(2) Notaries suspended temporarily as referred to in Article 9 paragraph (1) letter c or letter d may be re-appointed as Notaries by the Minister after the termination period ends.

If examined further, in the case of re-appointment the Notary is suspended temporarily in paragraphs (1) and (2) only regulates article 9 paragraph (1) letters a, b, c, and d only, while in letter e, the notary is suspended temporarily because is undergoing an unregulated detention period. Then what is the status of the notary defendant's reappointment if the notary defendant's detention period has been completed in the future, so it needs to be examined again regarding the changes to the Notary Position Law.

### ***The Forms of Notary Legal Protection in the Notary Position Act***

(Hadjon, 2005) stated that legal protection is the protection of dignity and dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will protect one thing from another. There are two (2) types of legal protection tools according to Philipus M. Hadjon, namely preventive and repressive. The form of legal protection for notaries in the Notary Position Law is given by the Notary Supervisory Board and the Notary Honorary Council. Preventively given when supervising and fostering the daily practice of notaries in terms of carrying out the protocols of duties, functions, obligations, authority, and notary behavior in accordance with the rules in UUJN and

UUJNP. If in practice there has been a violation of both the UUJN and UUJNP, the Notary who is in the process of being examined by the Notary Supervisory Board and the Notary Honorary Council is given the freedom to submit an appeal and submit an opinion. The formation of the Regional Supervisory Council and the Regional Honorary Council is in the context of "defending the Notary" and placing the problem on its portion.

Repressive protection provided by the Notary Supervisory Board and the Notary Honorary Council is related to the summon of Notaries by Investigators, Public Prosecutors, and Judges. The Notary Honorary Council has special authority to permit, reject the request of investigators, judges or public prosecutors if the notary will be examined. Investigators, Public Prosecutors and Judges must obtain approval from the Notary Honorary Council in the process of calling and examining the Notary Public. As mentioned in Article 27 paragraph (1) Permenkumham Number 7 of 2016 concerning Notary Honorary Council, Granting approval to investigators, public prosecutors, or judges for the benefit of the judicial process in calling for a Notary, is carried out in terms of:

*the alleged crime is related to the minutes of the deed and / or Notary papers in the storage of the Notary,*

*the right to sue has not been terminated based on the provisions regarding expiration in the legislation in the field of criminal law,*

*there is a denial of the signature of one or more parties,*

*any allegation of reduction or addition of Deed Minutes; or*

*any allegation that the Notary Public has postponed the date (antidatum).*

The Notary Honorary Council is to provide oversight of the notary public so that the notary will continue to work as a professional who has a form of legal protection when the notary has acted in accordance with the Law and notary ethics, the notary is not permitted to attend or be examined either as a witness or as a suspect. The Regional Supervisory Council and the Regional Honorary Council will provide a preliminary assessment (inspection) in advance of the reported notary. If according to the Notary Supervisory Board and Notary Honorary Council that the Notary has carried out his / her job duties in accordance with the rules (right on the track) in accordance

with the Laws on UUJN and UUJNP, then it is certain that the Regional Supervisory Council and Regional Honorary Council will provide maximum protection to the Notary concerned. If according to the Notary Supervisory Board and Notary Honorary Council that the Notary concerned does not carry out his office duties in accordance with the provisions of UUJN and UUJNP, then of course the Regional Supervisory Council and the Regional Honorary Council will not protect the concerned Notary. In addition to not protecting the notary concerned, the Regional Supervisory Council and the Regional Honorary Council will also impose sanctions in accordance with violations made by the notary concerned.

#### 4. CONCLUSION

Law Enforcement of Notaries can be done by means of preventive and repressive. In law enforcement efforts the Law of Notary Position can be carried out preventively by acting in accordance with the provisions of the Act, as well as supervising the Notary to ensure legal certainty. Preventive or supervisory measures contained in the Law of Notary Position, it is said that in practice supervision of the notary is overseen by a body called the Notary Supervisory Board. Repressively it can be done by imposing sanctions. In this case the imposition of sanctions against Notaries is regulated in article 85 of the UUJNP. Notary in carrying out its authority, namely making authentic deeds for parties must refer to article 16 paragraph 1 (one) letter a of the UUJN-P, it is said that the Notary is obliged to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions. The notary must prioritize accuracy, honesty, impartiality and always be open to all information relating to his duties as a form of service to the community. The form of legal protection for Notaries in this case is carried out by the Notary Supervisory Council (MPN) and the Notary Honorary Council (MKN). MPN and MKN have the duty to oversee the practice of the position of notary to act accordingly (right on the track) with the provisions of UUJN and UUJNP. MKN is authorized to give permission or not to investigators related to the summons and examination of Notaries. Notaries who have acted in accordance with UUJN and UUJNP will justify the notary and get protection if the notary is called by an investigator. Notaries, who act not in

accordance with the provisions of UUJN and UUJNP, will not get protection from MPN and MKN, and sanctions will be imposed.

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