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## Legal Protection of Notary Officials according to Indonesian positive law

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**Abstract.** Notary public in carrying out their profession to provide services and legal services to the community need to get protection and guarantees in order to achieve legal certainty. Guarantee of protection and guarantee of legal certainty on the implementation of notary duties and functions has been stipulated in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notarial Positions. This change in the legal basis is intended to further affirm and strengthen the duties, functions, and authority of notary public officials as well as synchronize with other laws. The role of the Notary Department in Indonesia as well as in Pekanbaru City is very important for the community in solving various legal problems faced by the community, one of which is in issuing authentic deed. The professional rights of notary positions, especially regarding civil rights, ideally should get legal protection in carrying out their profession, but in fact Notaries in carrying out their duties often do not get legal protection as they should, as a result notary are faced with civil or criminal legal proceedings.

**Keywords.** Legal Protection, Notary Department, Authentic deed

### 1. Introduction

Notaries as public officials who carry out the profession in providing legal services and services to the community need to get protection and guarantees in order to achieve legal certainty. The guarantee of protection and guarantee of achieving legal certainty for the implementation of the duties and functions of a Notary has been regulated in Law Number 30 of 2004 concerning the Position of a Notary which has been amended based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter abbreviated as UUJN). This change in the legal basis is intended to further emphasize and strengthen the duties, functions, and authorities of Notaries as officials who carry out public services, as well as synchronization with other laws. (Widyatmoko:2014)

Notaries are part of legal institutions that are recognized in Indonesia with their respective duties, authorities, and obligations. Role of Position Notaries are very important in solving legal problems, one of which is in issuing authentic deeds. For people who need the services of a notary in issuing authentic deeds, of course this is the

only profession that can issue them. Soertardjo Soemoatmodjo is of the view that professional rights, especially regarding their civil rights, should ideally receive legal protection in carrying out their profession. It can be interpreted that these rights are regarding all activities that are required in the legislation of the profession as legal action. The role and function of the Notary Position seen from the aspect of service or service provision is an official who is given the task and authority by the state as a public servant in the civil sector, especially regarding the making/issuing of authentic deeds. As stated in Article 1 Paragraph 1, "Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.

Authentic deeds issued by a notary are deeds that have authentic nature and then have a very perfect basis of proof. When defined about the meaning of "authentic deed" as explained in Article 1868 of the Civil Code it is: "Authentic deed is a deed in the form determined by law, made by or before public officials in power for that at the place where the deed was made".

Not all letters are referred to as authentic deeds, because an authentic deed has 3 (three) essential elements that must be fulfilled, namely:

1. In the form prescribed by law;
2. Made by and before a public official (Notary);
3. Deed made by or in the presence of an authorized public official (Notary) for that purpose and at the place where the deed was made. ( Irwan Soerodjo: 2003)

The contents of the authentic deed are considered true, as long as the untruth cannot be proven. Authentic deeds are perfect evidence for both parties, their heirs, and/or people who have rights thereof. Basically, an authentic deed has 3 (three) forms of evidentiary power, namely:

The power of formal evidence. That is, proving the certainty and truth of an event as well as the fact that the fact in the deed is truly valid has been carried out by a Notary and or has been explained by the parties who have appeared in the deed that is appropriate and then valid based on the procedures established in the making of the deed by the Notary. The authentic deed guarantees the truth as meant is regarding:

- a. The date the deed was made;
- b. All signatures contained in the deed;
- c. Identity of the person who appears before the Notary;
- d. All parties who signed the deed acknowledged what was described in the deed;

and

e. The place where the deed was made. The strength of material evidence. That is, to prove between the parties that the events mentioned in the deed have actually occurred;

1. The power of outward proof. That is, the ability of the deed itself to prove itself as an authentic deed, furthermore this ability according to Article 1875 of the Civil Code cannot be granted to a deed made under the hand. Furthermore, through an authentic deed, it does not require acknowledgment from the party concerned in order to have perfect evidentiary power, because the authentic

deed is in accordance with the provisions in Article 1868 of the Civil Code and has also been made by the authorized official, namely the Notary.

Regarding the authentic deed as described above, the form can be explained, namely based on Article 38 Paragraphs 1 to 4 of the UUJN it is stated: "Each Deed consists of: a. the beginning of the deed or the head of the deed; b. deed body; and c. end or closing of the deed". Paragraph 2: "The beginning of the deed or the head of the deed contains: a. title of deed; b. deed number; c. hour, day, date, month, and year; and D. Full name and domicile of Notary".

Furthermore, in Paragraph 3 it is stated: “The body of the deed contains: a. full name, place and date of birth, nationality, occupation, position, position, residence of the appearers and/or the person they represent; b. information regarding the position of acting against; c. the contents of the deed which is the will and desire of the interested party; and D. full name, place and date of birth, as well as occupation, position, position, and residence of each identifying witness”.

Paragraph 4 reads: “The end or closing of the deed contains: a. a description of the reading of the deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7); b. a description of the signing and the place of signing or translation of the deed, if any; c. full name, place and date of birth, occupation, position, position, and residence of each witness to the deed; and D. a description of the absence of changes that occurred in the making of the deed or a description of the changes that could be in the form of additions, deletions, or replacements as well as the amount of the changes”.

The philosophical basis for the existence of the UUJN is none other than, for the sake of the realization of guarantees of legal certainty, order and legal protection based on truth and justice based on the certificates issued. On this basis too, Notaries are obliged by law to provide legal certainty to the public as clients who take advantage of the services of a Notary Position. (Habieb Adjie,: 2009)

The position of a notary is a position of trust (*vertrouwenamt*), meaning that the law gives great trust to a notary who is appointed as a public official to give authentic power to every deed issued by a notary. Independently, honest, impartial, with a sense of responsibility, and professional. ( C.S.T Kansil : 1996) Regarding the professional ability of a Notary, means talking about the quality of a Notary's legal services to clients. Fulfillment of requirements such as systematic issuance of authentic deed from the beginning and end of the deed issued by a Notary official, reflects the actual situation at the time of making the deed.( Salim : 2006)

A Notary official who is present based on strict laws and regulations, in his duties and functions issues a deed to be authentic when he fulfills the conditions determined by law, the Notary concerned in carrying out his duties and functions is obliged to carry out his duties with full discipline, professionalism , and have high moral integrity and no doubt.( Than Tong Kie: 2000)

However, if a Notary in carrying out his position already has high professional abilities, experience, and mastery of knowledge, but at the time of entrusting his Notary position it is not based on moral integrity, nobility of dignity, and professional ethics, then the Notary will not only harm the interests of the client, but also will damage the good name

of the Indonesian Notary Association as the parent organization of the Notary profession.

Of course, there are many responsibilities of a Notary, including keeping the minutes of the deed properly. As is known, the minutes of the deed are the originals of the notary deed, which in the minutes of this deed consist of (attached) the personal data of the appearers and other documents required for the making of the deed. Therefore, every month, the minutes of the deed are bound into one book containing no more than 50 (fifty) deeds. ( Sahat : 2009)

Functions and responsibilities of a Notary as a Public Official, it is not uncommon for a Notary to deal with legal processes, whether criminal or civil, regarding the contents of the deed he made. In the end, from this issue, so that ethical and legal values that should be upheld by a Notary can run in accordance with the the applicable laws and regulations, it is very necessary to have supervision and legal protection for Notaries. ( Tan Thong Kie : 2007)

## 2. Results and Discussion

The role and function of the Notary Position as a Public Official.

Based on the mandate of the UUJN, through an authentic deed it will provide guarantees of certainty, order and legal protection for people who carry out legal actions in the field of civil law. This is in line with the Consideration of the UUJN Considering letter which reads:

*“That to guarantee certainty, order and legal protection, authentic written evidence is needed regarding legal acts, agreements, stipulations and events made before or by an authorized official.*

In general, a Notary is a special profession that was born based on expertise. According to the job classification, a profession is a job in a special sense, namely a job that has the following criteria: ( Bachrudin : 2019 )

1. Specific field of work (specialization);
2. Based on special expertise and skills;
3. Fixed and continuous;
4. Prioritizing services over rewards (income);
5. There is accountability to oneself and to the community;
6. There is recognition from the community;
7. The existence of professional organizations or associations;
8. The existence of a professional code of ethics. ( Abdul ghofur anshori: 2009)

Based on the description above, a Notary has the following positions and roles:

1. The position of a Notary is as a representative of the state (public official) in civil matters relating to the making of an authentic deed, so that the position of a Notary is as an abatan. The position of a Notary is confirmed in the UUJN in the Considering section letter c which reads: "that a notary as a public official who carries out his profession in providing legal services to the public";

2. The function of a notary is to act (in his position) in making authentic deeds related to legal actions in the field of civil law. This function of a notary is confirmed in UUJN Article 1 number 1 which reads: *“Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws.”;*

The role of a notary is to provide assurance of certainty, order and legal protection for people who carry out legal actions in the field of civil law through authentic deeds made by or before a notary. The role of the Notary is emphasized in the UUJN in the section Considering letter b which reads: "that to ensure certainty, order and legal protection, authentic written evidence is needed regarding acts, agreements, stipulations and legal events made before or by authorized officials..”

Notary is a job, profession, business or position, in fact it can be traced from the sound of Article 1868 of the Civil Code and Article 1 number 1 UUJN, namely: Article 1868

Civil Code:

*“An authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made.”*

*“Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws.”*



Based on the sound of the two articles above, it is clearly stated that a Notary is a public official. In his capacity as a public official, a notary is given the authority by law to make authentic deeds and other authorities, both based on rules and other laws.

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary in essence regulates the establishment of a Notary Position by the state as well as the granting of authority over the position. With regard to notaries, authority is something that is attached to the position established by the state through Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, not attached to the official or person. The person is a legal subject who is selected or appointed to carry out the position of a notary and is referred to as an official. In this case public officials. The position of a notary is carried out through his official or office holder, and in that capacity, a notary official carries out the rights and obligations of the notary position.

In accordance with the principle of legality, there is the legal basis for the birth of the Notary Position and the authority of the position. The element of "authority" granted by law to the position of Notary by the state as the state representative in civil affairs, namely the authority in terms of making authentic deeds.

Authority is a tool or "onderdel" or a certain part of authority or other words within the authority there are powers (rechsbe voegdheden). (Nuryanto: 2014)

This is in accordance with Gabrielle Ferrazi's definition of authority, namely the right to carry out one or more management functions, which include regulation (regulation and standardization), management (administration) and supervision (supervision) of a particular business.

#### Legal Protection for Notary Positions in Pekanbaru According to Positive Law

The opinions of other experts also explained about 'legal protection', one of which was conveyed by Satjipto Raharjo. According to him, 'legal protection' is the provision of protection for human rights (HAM) who feel harmed by others, as a result, legal protection is given to the community so that they can enjoy the legal rights granted. In other words, legal protection is legal efforts that must be provided by law enforcers in order to create a sense of mental and physical security from various disturbances and threats from any party. (Satjipto raharjo: 2000)

Meanwhile, Philipus M. Hadjon's interpretation of 'legal protection' is the protection of the dignity, dignity, and recognition of human rights owned by every legal subject based on the applicable provisions as a collection of regulations that can protect one thing from other causes. (Philipus: 1987)

For Setiono, legal protection is defined as an action to protect the community from arbitrary actions by the authorities that are contrary to applicable legal provisions so that an orderly and peaceful life is born and that people can feel their dignity as human beings. Another thing stated by Muchsin, legal protection is a series of policies to protect every individual in society, which is linked to values and rules in attitudes and actions in order to create order in life between humans. (Muchsin : 2003)

Associated with the recognition and protection of human rights, the recognition and protection of human rights has the main place and can be linked to the objectives of a rule of law. Regarding the principle of legal protection against government actions, it comes from the concept of protection and recognition of human rights. Underlying the legal protection of government policies is the principle of the rule of law itself. (Philipus: 1987)

When it is associated with the profession of a notary, essentially he carries two sides of rights and obligations in him. In addition to carrying out the rights and obligations as a public official, namely the representative of the state in civil matters, outwardly an individual Notary

is also a human whose nature is a creation of Allah SWT who has human nature called human rights, including the right to live properly, the right to obtain justice and obtain legal protection.

The essence of the position of a notary is a continuous position, meaning that an individual citizen who is appointed as a notary is expected to carry out his position continuously until retirement. Based on its essence, the existence or existence of a Notary in himself carries out two functions and positions at the same time and cannot be separated, namely the function and position as an office and as an individual citizen.

The rules make Notaries as public officials, so that the legal consequences in the Notary deed get an authentic position and have an executorial nature. The strength of the authenticity of a notarial deed is not because the process of making the deed is based on a form that has been determined by law, and made by or in the presence of an authorized official.

Based on the Law on the Position of a Notary, actually from this legal basis, the position of a Notary has felt protected if in carrying out his profession based on the provisions, applicable laws, and adhered to the principles adopted in the Notary Office. The principles relating to the duties and positions of the Notary, especially in making authentic deeds are divided into two principles, which are formal or procedural and material principles.

Formal principles in carrying out the Notary Position involve principles relating to procedures that must be met in every decision or decision (making authentic deed) or principles related to procedures for carrying out the duties of the Notary Office, especially in Pekanbaru City which includes the principles relating to the process of preparation and the process of making decisions, and principles relating to considerations and decision making. This formal principle includes: ( Luthfi Hadi: 2003)

#### **1. Principle of trust**

The position of a notary is a position of trust that must be in line with those who carry out the duties of a notary position as a trusted person. Notary as a position of trust does not mean anything if it turns out that they are carrying out their duties as a Notary are people who cannot. ( Habieb Adji : 2009) The principle of trust is a principle which states that the position of a notary is based on a relationship of trust between a notary and his client.

The people's desire to make an authentic deed to a Notary is solely based on trust. The principle of trust is also called legal expectations, the expectations generated (promises, statements, policy rules and plans) must be fulfilled as much as possible. The form of the Notary Position as a position of trust as contained in Article 16 (1) letter (a) UUJN which states, "in carrying out his position, the notary is obliged to act trustworthy, honest".

#### **2. The principle of prudence**

In carrying out a legal action, a Notary must always act carefully so that the Notary, before making a decision, examines all relevant facts in his consideration based on the applicable laws and regulations. Examining all the completeness and validity of the evidence or documents shown to the Notary, as well as hearing the statements or statements of the appearers must be carried out as a basis for consideration to be included in the deed. If the Notary is not careful in checking important facts, it means that the Notary is acting carelessly. This precautionary principle is an application of Article 16 paragraph 1 letter a which states, "In carrying out his position a notary is obliged to act carefully.."

The precautionary principle is a principle which states that a Notary in carrying out his functions and positions is obliged to apply the precautionary principle in order to protect the

interests of the people entrusted to him. The purpose of implementing the precautionary principle is none other than so that the notary is always on the right signs. With the implementation of the precautionary

principle, it is hoped that public trust in the Notary will remain high, so that the public is willing and does not hesitate to use the services of a Notary.

## 2. The principle of giving reasons

Every deed made before or by a notary must have reasons and facts that support the deed in question or there are legal considerations that must be explained to the parties/appearers. Every deed or act of a Notary in formulating an authentic deed must provide reasons, there must be a solid factual basis and the reasons must be supported. The fact that becomes the starting point as a basis for consideration in making an authentic deed must be true. If it turns out that the main facts are different from what was stated or accepted by the notary, then the solid fact basis of the reasons

**2.no reason.** In this case there is a flaw in prudence. This principle is closely related to the precautionary principle *Asas proporsionalitas*

Justice demands proportional action, meaning that it is appropriate, balanced and in harmony with the rights and obligations of each person. Therefore, every notary in carrying out his actions must always pay attention to this aspect of justice. Meanwhile, fairness emphasizes that the Notary Office pays attention to the values prevailing in society, religion, public order, and other values. This principle prioritizes the balance between rights and obligations.

This principle of proportionality is an application of Article 16 paragraph 1 letter (a), which states, "that, in carrying out its duties, a notary must be impartial and protect the interests of the parties involved in legal actions. On the other hand, the Notary is also obliged to prioritize the balance between the rights and obligations of the appearers before pouring it into an authentic deed. *Asas profesionalitas*

The principle of professionalism is the principle that prioritizes expertise based on a code of ethics and the provisions of the Notary Position Act that apply in carrying out the duties and position of a Notary. The application of this principle of professionalism is contained in Article 16 paragraph 1 letter (d) which states that "a notary can provide services in accordance with the provisions of the UUJN, unless there is a reason to refuse it.." This principle prioritizes the expertise (scientific) and skills of Notaries in carrying out their positions by upholding a code of ethics and based on the Law on Notary Positions.

## The principle of limited confidentiality

The principle of limited confidentiality is also a right of denial for Notaries in carrying out their positions (*verchoningsplicht*). The principle of limited secrecy as contained in Article 16 (1) letter (f) of the Notary Position Act, which requires a notary to keep everything about the deed he made and all information obtained for making the deed in accordance with the oath/promise of office, except the law. *decide otherwise.*

**3.** Furthermore, if a Notary discloses a secret that should be kept, then the Notary has also violated the criminal law by revealing a secret that should not have been disclosed to other parties. Whereas when viewed from the side of his position, the Notary can also be categorized as tired of committing criminal acts regarding abusing his authority or position. In connection with the confidential issue of the Notary Position, in



the discussion regarding Article 17 and 40 of the Law on Notary Positions, which essentially contains the obligation of a Notary to keep the contents of the deed secret.

#### 4. The principle of equality

In providing services to the community without discriminating from one another based on socio-economic conditions or other reasons. Reasons like this are not justified by a Notary in serving the community, only legal reasons that may be used as a basis, that a Notary cannot provide services to those who appear. Even in certain circumstances, notaries are obliged to provide legal services in the notarial field for free to the poor as stated in Article 37 of the UUJN.

In the framework of this principle of equality, all discriminatory attitudes and actions in all their forms and manifestations are recognized as prohibited attitudes and actions, except for special and temporary actions called 'affirmative actions' to encourage and accelerate certain community groups or groups of citizens. to pursue progress so as to achieve the same and equal level of development as the general population who are already much more advanced ( Jimly Assiddiqie: 2021)

Certain community groups that can be given special treatment through 'affirmative actions' that do not include the definition of discrimination are, for example, isolated tribal groups or certain indigenous groups whose conditions are backward. While certain groups of citizens who can be given special treatment that is not discriminatory. ( Habib Adjiie: 2021)

#### 4 The principle of legal certainty

The principle of legal certainty is a principle in a state of law that prioritizes the basis of legislation, propriety and justice which must be obeyed by a Notary in carrying out his duties and positions related to all his actions in making authentic deeds. From the principle of legal certainty, it brings with it that the authentic deed that has been made must provide interpretation/legal certainty in accordance with the rights and obligations of the parties.

Based on Article 16 paragraph 1 of the UUJN it is stated that in carrying out his office, "a notary is obliged to act honestly, thoroughly, independently, impartially, and to protect the interests of the parties involved" in legal actions so that the deed he makes must provide legal certainty. as well as the Notary Code of Ethics, Notaries are required to act honestly, thoroughly, independently, and impartially.

4. maybe the Notary can protect the interests of the parties involved. For this reason, Notaries are required to act in a neutral and professional manner.

The principle of the prohibition of acting arbitrarily and abuse of authority In general, a Notary's authority includes three things, namely the authority in terms of material (as contained in Article 15 of the UUJN), authority in terms of territory/jurisdiction (Article 18 of the Notary Position Law) and authority in terms of time . A government official has the authority that has been determined in the laws and regulations both in terms of material, area and time.

5. A Notary who commits an act that exceeds his authority, the Notary's action can be classified as an act of abuse of authority. So that parties who suffer losses due to abuse of authority can ask for accountability to the Notary. Asas praduga sah

This principle is that every government action (public official) is always considered to have the principle of presumption (rechmatig) until there is a cancellation or better known as *presumptio iustae causa*, which means that state administrative decisions must be considered

valid as long as they have not been proven otherwise, so in principle they must always be able to immediately implemented. ( Paulus : 1993)

In general, in Riau Province, based on data from the Regional Notary Supervisory Council (MPWN) of Riau Province, from 2015 to 2020 there were 517 Notary Officers. Furthermore, based on the recapitulation of the handling of complaints/public reports on alleged violations of behavior and the implementation of the Notary Position submitted to the MPWN of Riau Province, from 2015 to 2020 there were six public complaints. Of the six complaints/reports to the MPWN of Riau Province, four complaints/reports are copies to the MPWN of Riau Province and the two complaints/reports are proposed to be dishonorably dismissed from their Notary positions.

It can be explained, based on the six complaints/reports to the MPWN of Riau Province which are also reports in the form of copies, especially the Notary Position in Pekanbaru City, there were three complaints/reports in 2017 submitted by 3 (three) Pekanbaru City residents for alleged wrongdoing. Notaries in Pekanbaru, one of whom is accused of issuing a power of attorney to sell. Then, two more reports/complaints to the MPWN of Riau Province were proposed to be dishonorably dismissed from their Notary Positions, namely on complaints/reports from two different Pekanbaru City residents against two different Notaries in the Pekanbaru City working area in 2017.

### **Conclusion**

Based on his position, the Notary profession in Pekanbaru City is obliged to act honestly, thoroughly, independently, impartially, and to protect the interests of the parties involved in carrying out legal activities so that the deed issued must provide legal certainty. If the position of a notary does not act honestly in carrying out his duties and functions as an official making the deed, then the deed issued cannot provide legal certainty to the parties carrying out the legal activity. Furthermore, when the Notary's attitude is not careful, then the issued deed can cause potential conflicts because the deed cannot provide legal certainty to the parties facing it. Likewise, if the Notary in carrying out his position is not independent, simply the Notary will side with one of the facing parties.

If the position of a Notary in Pekanbaru City in carrying out his profession is not based on the provisions of the Notary Code of Ethics, it is contrary to applicable law berlaku, serta tidak melekat asas-asas yang dianut dalam Jabatan Notaris, secara otomatis tidak akan bisa menjaga kepentingan hukum para pihak yang terkait. Bukannya kepastian The law that will be obtained by the parties, on the contrary, will cause the parties or one of the parties to lose their rights due to the absence of legal certainty.

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