THE RIGHTS AND OBLIGATIONS OF NOTARIES ACCORDING TO INDONESIAN LAW CONCERNING NOTARY POSITION

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ABSTRACT
This paper attempts to describe the notary definition based on Law Number 30 of 2004 concerning Notary Position, the rights and obligations of notaries, as well as the duties and authorities of notaries. The research was carried out with a qualitative descriptive approach with library research techniques. Data is obtained from laws and various regulations related to the position of notary, as well as functions related to this position. The results showed that the notary rights stipulated in the Law on Notary Position are related to the right of renunciation. In terms of duties and authorities, notaries act as public servants because they are appointed by the government to serve the public's need for legal legal documents. In carrying out the day-to-day tasks, notaries are officials who act passively in the sense that they wait for the community to come to them. The authority related to the position of a notary is given based on the prevailing laws and regulations which specifically regulate the position of a notary.

Keywords: notary, rights and obligations, duties and authority, Law on Notary Position


1. INTRODUCTION

The position of a notary as a functionary in the community is considered as an official where someone can get advice that can be relied upon. Notary is considered as a strong document maker in a legal process. The notary also provides advice and explanations regarding the law to the parties concerned. The appointment and dismissal of a Notary carried out by the government in this case the Minister whose duties and responsibilities cover the notary area, then the requirements of the General Officer is a person appointed by the government with the task of authority to provide public services in certain fields, fulfilled by the Notary Position. Thus, the relationship between Notary service users and Notary is not due to an agreement,
but its role and function is to serve the public / public in terms of their job obligations regulated by law, morals and professional ethics to guarantee legal protection for the community as Notary services users.

Notary is a general official, especially (the only) who is authorized to make authentic deeds concerning all actions, agreements, and decisions required by general legislation to be desired by those concerned that it is stated in an authentic letter, guaranteeing the date, storing the deeds and issuing grosse, copies (derivatives) and quotations, all of them when making such deeds or devoted them or devoted to other officials or people.

For the sake of the Notary and to serve the interests of the Indonesian people, the government on 6 October 2004 ratified the Notary Position Regulation which was referred to as Law Number 30 of 2004 concerning Notary Position. Based on history, a notary is a State official / general official who can be appointed by the State to carry out State duties in legal services to the community in order to achieve legal certainty as officials make authentic deeds in matters of civilization. Definition of Notary is contained in the provisions of the Act of Notary Position Chapter I Article 1 paragraph (1) that is, the Notary is a public official authorized and represents the general power to make authentic deeds and other authorities as referred to in this Act, for the purpose of proof or as evidence. This paper attempts to describe the notary definition based on the law on notaries, the rights and obligations of notaries, as well as the duties and authorities of notaries.

2. DEFINITION OF NOTARY

The term notary basically comes from the word "notarius" (Latin), which is the name given to the Romans where the task was to carry out the work of writing or the people who made notes at that time. For more than a century, the existence of a notary in holding his position was based on the Reglement of Het Notary provisions of Ambt In Nederlandsch No. 1860: 3 which came into force July 1, 1860. During that period, the Notary Position Regulation was amended several times. At this time, the Notary has a separate Law with the birth of Law Number 2 of 2014 concerning Notary Position (hereinafter referred to as the Notary Position Law). Definition of Notary in the Civil Law system which is regulated in Article 1 Ord, stbl. 1860 Number 3 concerning Notary Position in Indonesia entered into force on July 1, 1860 which was later translated by R. Soegondo (in Kie, 2000). Notary is a general official, especially (the only) who is authorized to make authentic deeds concerning all actions, agreements, and decisions required by general legislation to be desired by those concerned that it is stated in an authentic letter, guaranteeing the date, storing the deeds and issuing grosse, copies (derivatives) and quotations, all of them when making such deeds or devoted them or devoted to other officials or people.

Based on history, a Notary is a State official / general official who can be appointed by the State to carry out State duties in legal services to the community in order to achieve legal certainty as officials make authentic deeds in matters of civilization. Notary as one of the law enforcers because the notary makes written evidence that has the power of proof. The legal experts are of the opinion that the notary deed can be accepted in court as absolute proof of its contents, but even so there can be denial with the opposite evidence by witnesses, who can prove that what is explained by the notary in the deed is true (Tedjosaputro, 1991).

G.H.S. Lumban Tobing (1999) gives an understanding of notaries is a general official who is the only authorized to make authentic deeds regarding all deeds, agreements and stipulations required by a general regulation or by those who wish to be stated in an authentic deed, guarantee the certainty of the date, save the deed and give grosse, copies and quotations, all along the way the deed is not also assigned or excluded to officials or others. The notary is
obliged to keep everything entrusted to him confidential and not to submit copies of the deeds to unauthorized persons.

According to Habib Adjie (2008), a notary is a public office that has the characteristics of being a position. Law on Notary Position is a unification in the field of notary position regulation, meaning that the only rule of law in the form of a law regulating the position of a notary in Indonesia so that all matters relating to the notary position in Indonesia must refer to the Law on Notary Position. Notary position is an institution created by the State. Placing a notary as a general official is a field of work or assignment that is deliberately made by the rule of law for certain needs functions and authorities and is continuous as a permanent work environment.

Article 1 point 1 of Act Number 2 of 2014 concerning Notary Position (hereinafter referred to as Law on Notary Position), states the notion of a Notary is a general official authorized to make authentic deeds and have other authority as referred to in this Law or based on other laws.

Noting the description of Article 1 of the Notary Position Law, it can be explained that the Notary is:

a. general official
b. authorized to make a deed
c. authentic
d. determined by law

For the sake of the Notary and to serve the interests of the Indonesian people, the government attempted on October 6, 2004 to have passed the Notary Position Regulation, i.e. Law No. 30 of 2004 concerning Notary Position. Based on history, a Notary is a State official/general official who can be appointed by the State to carry out State duties in legal services to the community in order to achieve legal certainty as officials make authentic deeds in matters of civilization. Definition of Notary is contained in the provisions of the Act of Notary Position Chapter I Article 1 paragraph (1) that is, the Notary is a public official authorized and represents the general power to make authentic deeds and other authorities as referred to in this Act, for the purpose of proof or as evidence.

3. RIGHTS AND OBLIGATIONS OF NOTARIES

As a consequence of the principle of rule of law adopted by the Republic of Indonesia, every citizen has rights and obligations (Prayogo, 2018; Wicaksono, 2018). Rights can in principle be prosecuted if obligations have been carried out (Wirawan, 2018; Mulyawan, 2018). Likewise, the notary has the rights and obligations in carrying out duties in his field.

In connection with the rights and obligations of notaries, Satjipto Rahardjo (1982) stated that these rights and obligations were based on the law. The legal presence in the community and the state is among others to integrate and coordinate interests that can collide with each other, where the law is integrated in such a way that it can be minimized. Organizing these interests is done by limiting and protecting these rights and obligations (Susilowati, 2018; Arif, 2018).

The notary rights stipulated in the Law on Notary Position are related to the right of renunciation. The term denial rights is a translation from verschonningsrecht, which means that it is the right to be freed from giving information as a witness in a civil or criminal case. This right is an exception to the general principle that every person who is called as a witness is obliged to give that testimony.
The notary is obliged to keep confidential, not only to the matters stated in the deed (the contents of the deed), but also to all those notified or submitted to him as a Notary or known because of his position, even though it is not included in the deed. Based on the right of denial, the Notary can use his right to resign as a witness by demanding the use of the Right to Warrants.

According to Van Bemmelen (1936), the basis for being able to demand the use of, denial rights, namely: the existence of a close family relationship and the danger of being subject to criminal penalties.

While the obligation of the notary, basically the notary is an official who must provide services / carry out obligations as well as possible to the public who need authentic evidence. In carrying out his position has an obligation, which is specified in Article 16 paragraph (1) letter f of the Law on Notary Position. The notary has to keep everything confidential regarding the deed he made and all information obtained for the making of the Deed in accordance with the oath / appointment of office, unless the law stipulates otherwise (Anshori, 2009). One of the obligations of a notary that is regulated in this law, is related to an oath / promise from a notary which contains that the notary will keep the contents of the deed confidential and information obtained in the execution of the notary's office. In general, the notary is obliged to keep the contents of the deed and information confidential in the making of the notarial deed, unless ordered by law that the notary is not obliged to keep secret and provide the necessary information relating to the deed. Thus, only the law can order notaries to disclose the contents of the deed and information / statements that are notified by the notary relating to the making of the deed.

4. DUTIES AND AUTHORITY OF NOTARIES

Notaries act as public servants because they are appointed by the government to serve the public's need for legal legal documents. In carrying out the day-to-day tasks, notaries are officials who act passively in the sense that they wait for the community to come to them. The authority related to the position of a notary is given based on the prevailing laws and regulations which specifically regulate the position of a notary. The authority obtained from a position has several sources, namely (Andasasmita, 1981):

a. Attribution, namely giving authority to a position based on a law.
b. Delegation is a transfer or transfer of authority based on laws and regulations.
c. Mandate, is a temporary transfer because the person is absent.

The general authority of a notary is limited to the private law field for recapitulation of the terrain. The deeds which are also made by other officials or by law are excluded from the making of notaries, among others (Sjaifurrachman, 2011):

b. Deed of Minutes concerning negligence of mortgage storage officials (Article 1227 of the Civil Code).
c. Deed of minutes regarding the offer of cash payments and consignment (Article 1405 paragraph (7) and Article 1406 paragraph (3) of the Civil Code).
d. Deed of money orders and checks (Article 143 paragraph (1), Article 218b and Article 218c of the Commercial Code).
e. Deed of civil registration (Article 4 of the Civil Code).

For the making of the deeds referred to above in numbers 1 through number 4, it is the authority of other officials; the notary is still authorized to make the deeds, meaning that both the notary and other officials who are not notaries share the authority to make authentic deeds.
Those, however, those who are not notaries are only for those acts, which are expressly stipulated in the law. For the deed referred to in number 5, the notary is not authorized to make it, only the civil registry office is authorized to make the deeds.

Notary in carrying out his duties as a general official has the main characteristics, namely in her or his position that is impartial and independent, even explicitly said "not as one of the parties", notary as a general official in carrying out his functions providing services to concerning, among other things, in the manufacture of an authentic deed not at all from the party concerned. Notary, even though he is a legal apparatus not as a "law enforcer", the notary is truly neutral not taking sides with one of those concerned. As an illustration of the scope of the duties and authorities of the notary in making an authentic deed, it can be understood through the quote below:

a. Whereas the notary authority makes an authentic deed only if it is requested or desired by the parties concerned or in other words, the deed is proof of the legal act of the party, not the notary who committed the legal act in question.

b. That the notary authority makes an authentic deed determined and is very dependent on the willingness or will of the parties who will carry out the legal act, without the parties having a legal action it is impossible for the notary to realize an authentic deed.

c. The Notary may not make an authentic deed of his own accord without any parties, nor is he authorized to make his own decision to declare making or canceling the deed itself, meaning that the notary is not permitted and is not authorized to perform legal acts in office (ambtshalve).

d. The notary is not authorized to make a deed in the field of public law (publiek rechtelijke acten), his authority is limited to the making of deeds in the field of civil law alone. Likewise, the notary is not authorized to make or issue or issue a "decree" (beschiking) because it is the authority of the State Administration Officer.

Based on the description above, it can be concluded that the notary as a general official obtains attribution authority. This authority is given directly by the Law on Notary Position directly. The authority of a notary related to his position is regulated in Article 15 of the Law on Notary Position. This rule confirms that:

1. The notary has the authority to make authentic deeds regarding all actions, agreements, and provisions required by legislation and / or desired by the interested parties to be stated in an authentic deed, guaranteeing certainty of the date of making the deed, saving the deed, giving grosse, copies and a certificate of deed, all of that as long as the deeds are not also assigned or excluded from other officials or other persons stipulated by law.

2. Notaries are also authorized to:
   a. ratify the signature and determine the certainty of the date of the letter under hand by registering in a special book;
   b. book under hand letters by registering in special books;
   c. make coffee from the original letters under the hand in the form of a copy containing the description as written and described in the letter concerned;
   d. ratify the suitability of the photocopy with the original letter;
   e. provide legal counsel in connection with the making of a deed;
   f. make a deed relating to land; or g. make the deed of the auction minutes.
The Rights and Obligations of Notaries According to Indonesian Law Concerning Notary Position

The notary authority regulated in Article 15 of the Law on Notary Position can be divided into several authorities. As it is known that the authority of a notary is an attribution authority, then the authority is strictly regulated by the legislation. The authorities specified in these laws and regulations are the basis for carrying out the duties and positions of a notary. This authority, if concluded, becomes several authorities, namely:

a. Notary General Authority based on Article 15 paragraph (1) Law on Notary Position stipulates that the authority of a notary is to make a deed in general, but with restrictions, like that is (1) not excluded from other officials stipulated by the law; (2) acts, agreements and provisions related to the making of the deed must be based on the law and the will of the parties; (3) Related legal subjects with an interest in the deed must be based on the will of the parties.

b. Notary Special Authority Related to the authority of a notary in making a deed related to certain legal actions. This is based on Article 15 paragraph (2) of the Law on Notary Position as previously mentioned.

c. Other authorities that will be determined later based on the laws and regulations with restrictions. This is based on Article 15 paragraph (3) of the UUJN which confirms other authorities (other than paragraphs (1) and (2)) which will be determined later based on the legislation.

5. CONCLUSION

Public trust in the notary is a public trust in the deed she or he made, which is why the position of notary is often referred to as the position of trust. Government trust as an institution that appoints and stops Notary as well as public trust as a notary service user. This concludes that notary is a profession of trust. The profession of public trust in notaries, as well as other professions that the notary has an obligation to keep the information obtained by the client confidential. The obligation to keep the authentic and confidential deed by the notary is the entire contents of the deed and documents attached to the deed. Obligation to maintain the confidentiality of the deed, make the notary can only provide, show, or notify the contents of the deed, grosse deed, copy of deed or deed quote, to the person with direct interest in the deed, heirs, or the person who obtains the rights, unless otherwise stipulated by the legislation. The notary also has to keep the contents of the deed and information both oral and written confidential in order to make the deed, making it a secret of the position of notary. Notary as a public official, which means that she or he is given and equipped with the authority or general authority concerning the public (openbaar gezag). It means that that a deed has the strength of authentic evidence, then there must be authority from the General Officer, in this case the notary, to make an authentic deed originating from the law.

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