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The Role of Notary Public Honorary Council in The Enforcement of the Notary Code of Ethics in Indonesia

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Abstract. The guidance of a Notary Public shall be conducted by the Honorary Board which is inaugurated by the Minister as stipulated in the Position of Notary Law. After the enactment of Law No. 2 of 2014 on Amendment to Law No. 30 of 2004 on the position of Notary, there are some changes to the provisions that regulate the supervision and guidance done by the Honorary Board. The guidance of a Notary who was previously also the authority of the Honorary Board is now the authority of the Notary Publicity Council. The Honorary Assembly should be more proactive and not only waiting for reports from the public but if there is an indication of a notary committing a direct violation of the investigation and the Code of Ethics formulated by the notary organization itself. It should be obeyed by them, the professions who make it. The institutional independence of the Notary Publicity Council is reflected in the collectivity of its membership which consists of government, notary and academic/expert elements so that there is no domination by one element to other elements in bringing its interests. Membership of this kind is not a partisanship but the Honorary Council should not change its function as the party that protects the notary naughty.

Keywords: Notary Public Honorary Council, Violation, Notary Code of Ethics

1. Introduction

Notary Institution entered into Indonesia at the beginning of XVII century with the existence of Vereenigde Oost Ind. Compagnie (VOC). The needs of the residents and traders in Jakarta against the need for the legal force of the treaty and legal certainty in trade transactions, a Notary Public, who was called Notarium Publicum, dated 27 August 1620, appointed Melchior Kerchem. Notary has been known in our homeland since the Dutch colonized Indonesia because notary is an institution that has been known in their life in their own homeland. The existence of Notary in Indonesia is always associated with the existence of the Faculty of Law. This can be seen from the fact that the institution that produces Notary in all law faculties with specialization Notary Specialist Education Program or now the Master Program Notary. According to Article 1 of Law No. 2 of 2014, a notary is a public official authority that issues authentic deeds and other powers referred to in this law or under any other law. From this Article, it can be seen that the condition is contrary to the early days of Notary in Indonesia. The notary is no longer a government employee but an independent public official who has authority in making authentic deeds as long as the certificate is not excluded to other officials.

Legal needs in the community can be seen from the increasing number of agreements as set forth in a Notary Act, where Notary is one of the general officials authorized to make authentic deeds and other authorities as intended in law. Along with the importance of Notary in public life especially in making authentic deed which is used as evidence, Notary has the position as the public official authorized to make authentic deed and also an extension of government's hand.



The presence of Notary institutions in Indonesia needs to be supervised by the government. As for the purpose of oversight so that when the Notary carrying out his duties fulfill all the requirements relating to the implementation of the duties of the Notary, in order to safeguard the public interest, since the Notary is appointed by the government, not for the self-interest of the Notary itself but for the benefit of the community it serves. In carrying out its functions and responsibilities as a general official, not infrequently the Notary deals with the legal process. In this legal process, the Notary must provide information and testimony regarding the contents of the deed he made. With legal and ethical responsibilities laid down by the Notary, the frequent mistake of Notary is due largely to the negligence of the Notary since it ignores the rule of law and ethical values.

Logical Consequences in line with the responsibility of Notary to the public must be guaranteed the supervision and continuous guidance so that the Notary is always in accordance with the rules of law underlying authority and can be protected from abuse of authority or trust given. In order that the ethical and legal values that should be upheld by the Notary can run according to the existing law, it is necessary to have supervision. Supervision of Notary covers Notary Position and Notary's behavior as well. The supervision of a Notary is conducted by the Regional Supervisory Board which² is inaugurated by the Minister as stipulated in the Notary Position Law. After the enforcement of Law No. 2 of 2014 on Amendment to Law no. 30 of 2014 on the position of Notary, there are some changes to the provisions that regulate the supervision and guidance done by the Regional Supervisory Board. Supervision of the Notary is conducted by the Regional Supervisory Board, while the previous guidance also the authority of the Regional Supervisory Board is now the authority of the Notary Public Honor Council.

The Honorary Board of Notary conducts a hearing before the law enforcers invite the Notary. The Role of the Notary Publicity Council is to give approval to law enforcers regarding the violation of criminal law conducted by Notary. Based on the theory of effectiveness by Soerjono Soekanto, the role of the Notary Public Honor in Giving approval to law enforcement can be seen from 5 elements, namely:

- a) The legal factor itself (the law);
- b) Law enforcement factors, namely the parties that makeup and apply the law;
- c) Facilities or facilities that support law enforcement;
- d) Community factor, i.e. the environment in which the law is applicable or applied;
- e) Cultural factors, namely as a work, creativity, and common sense that is based on the human initiative in the social life.

2. Methodology

The approach method used in this research is socio-legal that is performed by doing reciprocal research on the law by examining the workings of empirical/social law in reviewing the rules of law applicable in society. This study is descriptive analytical meaning. The results of this study trying to provide a comprehensive overview of a condition or symptoms. Data analysis used in this study is a qualitative data analysis.

3. Findings

There is a change in the Law No. 2 of 2014 on Amendment to Law No. 30 of 2004 on the position of a Notary.² It provides some of the authority of the Regional Supervisory Board in which the authority becomes an authority of the new institution, namely the Honorary Board of Notary. Another change is Article 66 Chapter VIII of the law. It stipulates that the Honorary Board of Notary has authority to take a copy of the deed and notary deeds, which previously contained only the minutes of the deed and the notary call. The notary cannot submit the deed (original deed) to any other persons except the parties signed in the deed because it will be contrary to the authority and oath of Notary's position.

In case of the need for a trial process, a copy of the deed minute can be submitted. Article 66 amendment is the result of the decision of the Constitutional Court Number: 49 / PUUX / 2012 dated March 23, 2013, after a petition for judicial review of Article 66 (paragraph (1) of Law No.30 of 2004 on Notary Position filed by Kant Kamal. The decision of the Constitutional Court essentially canceled the phrase with the approval of the Regional Supervisory Board (MPD) in the article being tested. Thus the examination of legal proceedings involving a notary does not require the approval of the MPD anymore and the phrase is considered contrary to the 1945 Constitution and has no binding legal force. This decision is final and binding and must be obeyed. Before the Constitutional Court Decision, the Notary can't directly go to the judicial process, to the investigator, the public prosecutor or the judge without the approval of the Regional Supervisory Board. The Constitutional Court's verdict was enough to stamp the world of Notary who currently feels the protection of the phrase. Law enforcers, especially the police, should not be immediately in the process of criminal justice taking documents in the Notary's depository and calling a Notary to be present in an examination in contact with the documents it makes, without the approval of the MPD.

Article 66 of Law No. 30 of 2004 is considered violating the principle of equality before the law stipulated in Article 28 paragraph (1) of the 1945 Constitution and Article 26 ICCPR (International Covenant on Civil and Political Rights) 1966 which has already been ratified by Indonesia by Law No.12 of 2005. Here it is affirmed that equality of all persons before the law and the right of all persons to equal protection without discrimination. According to the Constitutional Court, there is a principle of democracy and rule of law that can be injured with the above phrase, namely the independence of the judiciary, which must make up by the Constitutional Court and Supreme Court (MA). MPD interference is also considered to lead to justice delayed and justice denied. While delaying justice also violates human rights.

The implication of the Constitutional Court decision for the Notary is that the calling of a Notary in the context of law enforcement related to the deeds he made. Therefore, the law enforcers (Police, Prosecutors, and Judges) no longer have the permission from the Regional Supervisory Board, where the Notary can be directly summoned by the law enforcer relating to the accountability of the deeds it makes. Concerning Article 66 Paragraphs (3) and (4) of the new law and Article 66 the old law regarding the authority and the Establishment of the Notary Publicity Council, the Notary Public Honor Council and the Notary Supervisory Council, although both under the Ministry of Justice and Human Rights, are very different from their duties and authorities, because Article 66 of the new law and Article 66 of the old law have differences.

Exceptions are, of course, possible with regard to Notary's standing insofar as the Notary's Code of Ethics is in contact with the attitude, conduct and morality and dignity of Notary, not in law enforcement, in particular, the criminal justice system. Disturbance to an independent and universal judicial power can lead to injustice (criminal justice system). According to Jimly Ashiddiqie, the new arrangement can be judged better because it relates it to the professional ethics system that needs to be strengthened. If professional ethics system goes well, certainly the need to criminalize the profession like a notary can be minimized.

The authority to give the approval of the Notary's invitation can no longer be done by the Regional Supervisory Board because of the Constitutional Court's Decision. 49 / PUU-X / 2012, after the Act No. 2 of 2014 was approved the phrase of obtaining the approval re-appear in Article 66 with different agencies, namely the Honorary Council of Notaries. Based on the amendment of Article 66, where the authority of the Regional Supervisory Board in giving approval to the Notary's examination by law enforcement is no longer valid and becomes the authority of the Notary Publicity Council pursuant to Article 66 of Law No. 2 of 2014, then between Article 66 and Article 67 is inserted 1 (one) article, namely Article 66A which regulates the Honorary Council of Notary.

Article 66A deals specifically with a new institution i.e. the Notary Public Honor Council. The Honorary Board of Notary is a coaching institution of Notary which previously existed in the Regional Supervisory Board. The number of Notary members is 3 (three) persons, government 2 (two) persons, and experts or academicians of 2 (two) persons. In this guidance, the notary element is more than the elements of government and experts or academics, because in the process of coaching the notary more know the profession.

Disturbance to the free and independent judiciary of the judiciary will cause injustice (criminal justice system) that will certainly harm the sense of justice in society, which is a negative impact of the supervision of the notary by the Supervisory Board. On the one hand, the supervision is the mandate of the law, but on the other hand, it will threaten the sense of justice of the community as a user or party that requires a Notary to ensure legal certainty of his civil relationship.

4. Conclusion

Each member of the Notary's Honorary Council is essentially charged not only with the laws and regulations of the Notary's office but also having to control the various provisions of procedural law and material law related to the request for approval, so that the ruling is expected to be rational, qualified, objective and correct, so that it can take an active role in law enforcement especially related to criminal acts involving/associated with authentic deed made by the notary. The paradigm shift from notary public as the General Officer making the authentic deed to strengthening the protection of notary law as General Official formulating the constituents in the form of the authentic deed so that the notary cannot be involved in the testimony of Police / Prosecutor / Court against the deed he made. The notary must not be the witness in the criminal case against the authentic deed he made, this refers to the legal system adopted by the Indonesian Positive Law of the Civil Law System.

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