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The Implementation Of The Notary...(Uyunun Nafisa)

The Implementation Of The Notary Careful Principle In Implementing The Position As A Public Official

Uyunun Nafisa^{*)} and Setyawati^{**)}

^{*)} Student of Master of Notary Program, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, email: uyununnafisa123@gmail.com

^{**)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang

Abstract. The purpose of this study are: 1) To Know and Analyze the Application of the Principle of Notary Precautions in Carrying Out His Position As a Public Official. 2) To find out and analyze the legal consequences of an authentic notarial deed that does not apply the precautionary principle in carrying out his position as a public official. This research uses the Sociological Juridical Approach Method. The data used in this study are primary, secondary and tertiary data which can support the assessment, which are then analyzed using the Descriptive Analysis and Qualitative Analysis methods. Based on the results of data analysis, it can be concluded that: 1) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 Of 2017 Regarding the Application of the Principle of Recognizing Service Users for Notaries, requires the Notary to be careful in recognizing Service Users and must submit suspicious Transaction Reports to the Reporting Center Financial Transaction Analysis (PPATK) to avoid Notaries as a Means in Money Laundering Activities and provide legal protection to Notaries. 2) The position of an authentic deed which is proven later as money laundering is the responsibility of the tappers because in the Material Aspect (*materiele bewijskracht*) The information set forth in the official deed (official report) submitted before the Notary (party deed) must be assessed correctly.

Keywords: *Notary; Money Laundering; PPATK; Careful Principles.*

1. Introduction

The formation of a Notary is to assist the public in providing reliable information, with signatures and stamps that can provide guarantees and strong evidence, and moreover, which is Independent or does not favor one of the parties in the Deed. Notary is given the authority by the Government and not a few Legal Actions must be carried out using the services of a Notary Public to validate or be said with an Authentic Deed.¹

According to Sudikmo Mertokusumo Deed is a signed letter containing the event which is the basis of a right or engagement, which was made intentionally from the beginning for proof.²

The notary in carrying out a legal action must always act carefully so that the notary before making a deed must examine all relevant facts in his considerations based on

¹ Adjie, Habib. (2008). *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik, first edition*. Bandung: Refika Aditama. p. 32.

² Mertokusumo, Sudikno. (2009). *Hukum Acara Perdata Indonesia*. Yogyakarta:Liberty. p. 151.

the applicable legislation. Examining all the completeness and validity of the Evidence or Documents shown to the Notary Public, as well as Hearing the Information or Statement of the Confronters must be done as a Basis of Consideration to be stated in the Deed. If the Notary is not careful in examining important facts, it means that the Notary is acting inadvertently.³

Notary Profession is one of the Professions which demands a balance of the three forms of Human Intelligence (Intellectual, Emotional and Spiritual). A notary as a legal advice giver to the public may not be able to carry out their duties if they do not have strong legal knowledge (intellectual intelligence).⁴

Notary in carrying out his position must also recognize the Service Users in accordance with the provisions of Article 39 of Act No. 2 of 2014 concerning Amendment of Act No. 30 of 2004 concerning Notary Position, which was subsequently written down in UUJN-P. Because, it does not rule out the existence of parties whose intentions are not good, parties who come before a Notary Public have bad intentions and purposes such as using a Fake Identity, using Fake Documents or Letters, providing False Information and Suspicious Transactions (Money Laundering) which is conducted. This can result in the involvement of a Notary Public in Legal Matters. Even though the Notary only helps pour the will of the parties into an Authentic Deed.

Notaries in carrying out their duties and positions are very important to implement the Careful Principles in the Process of Making Authentic Deed, in the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 9 of 2017 Concerning the Application of the Principles of Recognizing Service Users for Notaries. As referred to in Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Notary Money Laundering Act shall be required to apply the principle of recognizing service users.

In Article 2 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 Of 2017 Regarding the Application of the Principle of Recognizing Service Users for Notaries, obliges the Notary to be careful in recognizing Service Users or Parties and must submit suspicious Transaction Reports to the Financial Transaction Analysis Reporting Center (PPATK). This regulation is to avoid a Notary Public as a Means in Money Laundering Activities.

Based on the description, the author is interested in taking the Research Title as follows: " The Implementation Of The Notary Careful Principle In Implementing The Position As A Public Official". Based on the description above, the formulation of the problem can be proposed. How is the Application of the Principle of Notary Prudence in Implementing His Position as a Public Official?; What are the legal

³ Darus, M. Luthfan Hadi. (2017). *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, first printing, Yogyakarta: UII Press. p. 38-39.

⁴ Executive Board of the Indonesian Notary Association. (2009). *100 Tahun Ikatan Notaris Indonesia Jati Diri Notaris Indonesia Dulu, Sekarang, dan Di Masa Datang, second edition*, Jakarta: Gramedia Pustaka, p. 143.

consequences of an authentic notarial deed that does not apply the precautionary principle in carrying out his position as a public official?

2. Research methods

In this study using the Sociological Juridical Approach Method. The Sociological Juridical Approach is to identify and conceptualize Law as a Real and Functional Social Institution in real life.⁵ Research that uses the Sociological Juridical Method views the Law from the Outside as a Social Symptom and enforces it with social problems, in Legal Research, what is examined is the Intrinsic Legal Condition, namely Law as a Value System and Law as a Social Norm. In this study the author uses the method of Sociological Juridical approach which aims to examine the Application of the Principle of Notary Prudence in Implementing His Position as a Public Official.

3. Results and Discussion

3.1. The Established Notary Careful Principle In Carrying Out His Position As A Public Official

The precautionary principle must always be instilled in every notary in carrying out their duties and authority so that as a notary can carry out their duties safely.⁶

Careful Notary Principles in recognizing service users are regulated in Minister of Law and Human Rights Regulation No. 9 of 2017 concerning Application of the Principle of Recognizing Service Users for Notaries. In this regulation the emphasis is on recognizing service users and the transactions made whether transactions are the result of Money Laundering.

Article 2 of the Minister of Law and Human Rights Regulation No. 9 of 2017 regulates the Principles Obligations to Recognize Service Users, namely:

Paragraph (1) The notary is obliged to apply the principle of recognizing service users.

Paragraph (2) The principle of recognizing Service Users as referred to in paragraph (1) shall at least contain:

a. Service User Identification.

The notary makes identification through the collection of Service User information. Information gathering regarding Service Users is carried out on individuals, Corporations; and other agreements (legal arrangements).

b. Service User Verification.

⁵ Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*, Jakarta: Publisher of the University of Indonesia Press. p. 51.

⁶ The results of the interview with Notary Nur Chasanah, November 13, 2019 at the Notary Office and PPAT Jalan Kenanga Raya No. 320, Perum Wiku II, Demak.

Notaries are required to verify information and documents. In this case the Notary Public may request information from the Service User to find out the formality of the documents and if there is any doubt as to the formality of the documents, the Notary may request other supporting documents. By paying attention to the risks of money laundering and financing of terrorism the Notary has implemented risk management procedures.

c. Service User Transaction Monitoring.

The notary shall monitor the fairness of the Service User Transaction. Transaction recording and information system regarding the identification, monitoring and provision of reports on transactions conducted by service users. namely with the best notes.⁷

Paragraph (3) Application of the Principle of Recognizing Service Users as referred to in paragraph (2) applies to Notaries in providing services in the form of preparing and conducting transactions for the benefit of or for and on behalf of the Service Users, regarding:

- a. Property purchase and sale;
- b. Management of money, securities and / or other financial service products;
- c. Management of current accounts, savings accounts, deposit accounts and / or securities accounts;
- d. Operation and management of the company; and / or;
- e. Establishment, purchase and sale of legal entities.

Paragraph (4) The obligation to apply the principle of recognizing Service Users as referred to in paragraph (1) and paragraph (2) is carried out when:

- a. Conducting Business Relationships with Service Users;
- b. There is a Financial Transaction with rupiah currency and / or foreign currency with a value of at least or equal to Rp 100,000,000.00 (one hundred million rupiah);
- c. There are Suspicious Financial Transactions related to Money Laundering and Terrorism financing Crimes; or
- d. The notary public doubts the accuracy of the information reported by the User.

Notary who conducts Business Relationship as referred to in Article 2 paragraph (4) letter a, must understand the profile, purpose and objectives of the business relationship, as well as Transactions conducted by Service Users and Beneficial Owners through Identification and Verification. In accordance with Article 3 of the Regulation of the Minister of Law and Human Rights Number 9 Of 2017 Concerning the Application of the Principle of Recognizing Service Users for Notaries.

Applying the Principle of Notary Precautions in Getting to Know the Notary Services User in conducting Identification and Verification of legality identity and Monitoring

⁷ Results of interview with Notary Nur Chasanah, November 13, 2019 at the Notary Office and PPAT Jalan Kenanga Raya No. 320, Perum Wiku II, Demak.

of Transactions of Source of Funds of service users used in connection with making the deed. namely by:⁸

- a. "Must understand the profile, purpose and objectives of the business relationship, as well as transactions conducted by service users";
- b. Check the evidence of the letter relating to the wishes or wishes of the parties;
- c. Include a sentence of self-protection for the Notary, "as shown to me, Notary". That all letters / documents shown by the parties facing the notary and the contents contained in this deed are true letters / documents, if one day is proven to be the responsibility of the parties facing completely and freeing the Notary from legal and civil and criminal consequences;
- d. Reporting to the Financial Transaction Analysis Reporting Center (PPATK). through the GRIPS (Gathering Report Information Processing System) application system.

Gathering Reports & Information Processing System (GRIPS) is a system developed by the Financial Transaction Reporting and Analysis Center (PPATK) to avoid and supervise Money Laundering Acts that may be carried out through transactions using notaries by hiding or disguising identity or origins assets obtained illegally so that these assets appear to come from legitimate sources.⁹

Notaries must also be able to apply the principle of recognizing service users who emphasize Notaries as the frontline in recognizing suspicious transactions and is obliged to report suspicious transactions through GRIPS applications at the Financial Transaction Reports and Analysis Center (PPATK).¹⁰

The Notary Liability Reporting as referred to above, aside from the Prevention and Eradication of TPPU (Money Laundering) Act, is also intended to provide legal protection to the Notary Public if there is a Suspicious Financial Transaction (TKM).¹¹

3.2. Legal Consequences of Notary Authentic Deed Not Implementing the Precautionary Principle in Implementing its Position as a Public Official.

As a public official (*openbaar ambtenaar*) the notary is authorized to make an authentic deed. In connection with this authority, a notary may be liable for his actions or work in making an authentic deed. These responsibilities include:

- a. Civil / private liability for the deed he made, in this case the responsibility for the material truth of the notary deed and responsibility within the scope of tax law, for the authority given erred by tax law;

⁸ The results of the interview with Notary Nur Chasanah, November 13, 2019 at the Notary Office and PPAT Jalan Kenanga Raya No. 320, Perum Wiku II, Demak.

⁹ The results of the interview with Notary Nur Chasanah, November 13, 2019 at the Notary Office and PPAT Jalan Kenanga Raya No. 320, Perum Wiku II, Demak.

¹⁰ <https://www.merdeka.com/peristiwa/kemenkumham-latih-notaris-sisir-transaction-finance-aneh-to-reported-to-ppatk.html>, accessed on 28 November 2019, 21.40 WIB.

¹¹ Ibid.

- b. Criminal responsibility for the material truth in the deed he made, in his capacity as a public official for the elements of criminal acts which dedication from the deed he made;
- c. The notary responsibility is based on the notary position law, namely Act No. 2 of 2014, namely responsibility morally and ethically notary public to carry out positions based on notary code of ethics and notary oath of office.¹²

A notary public can only be said to be free from legal liability if the authentic deed he has made and / or made before him has fulfilled formal requirements.¹³

The position of an Authentic Deed which turns out to be a money laundering tool or proven to be money laundering is the responsibility of the parties because in the Material Aspect (*materiele bewijskracht*) Information or statement set forth in the official deed (official report) or the statement of the parties submitted before the Notary (material) party's deed) and the parties must be judged to be true to what was said then poured / contained in the deed acting as true or every person who came in then the statement is poured or contained in the deed must be judged to have been correctly said. If it turns out that the statements or statements of the parties are untrue, then it is the responsibility of the parties themselves.¹⁴

If there are violations of certain articles in the UUJN, then the deed resulting from these articles will have the power of evidence under the hand. These violations include:

- a. Formality of notary deed (article 38 UUJN);
- b. The terms of notary address (article 39 UUJN);
- c. Notary witness requirements (article 40 UUJN);
- d. Terms for reading a notarial deed (article 44 UUJN);
- e. Conditions for amendment / rectification of the contents of the deed (article 48.49.50 UUJN).

With the fulfillment of physical, formal and material requirements, an Authentic Deed has certainty as an actual fact, becoming valid evidence (having perfect proof power) among the parties. The three aspects mentioned above are requirements for the perfection of an Authentic Deed, if it can be proven in a trial that one or all of the aspects are incorrect, then the deed concerned only has the power of proof as a deed under the hand.¹⁵

4. Closing

Based on the results of the study conclusions can be drawn as follows: Obligation of Notary Reporting as referred to in Article 2 of the Minister of Law and Human Rights

¹² The results of the interview with Notary Nur Chasanah, November 13, 2019 at the Notary Office and PPAT Jalan Kenanga Raya No. 320, Perum Wiku II, Demak.

¹³ Ibid.

¹⁴ The results of the interview with Notary Nur Chasanah, November 13, 2019 at the Notary Office and PPAT Jalan Kenanga Raya No. 320, Perum Wiku II, Demak.

¹⁵ Ibid.

Regulation Number 9 Of 2017 Regarding the Application of the Principle of Recognizing Service Users for Notaries, namely: Paragraph (1) Notaries are required to apply the principle of recognizing service users. as referred to in paragraph (1) at least contains the Identification of Service Users, Verification of Service Users, Monitoring of Transactions of Service Users. Application of Notary Careful Principle in Knowing Notary Services Users, namely by understanding the profile, purpose and objectives of the business relationship, as well as transactions conducted by service users, Check the evidence of the letter relating to the desires or wishes of the parties, Include a sentence of self-protection for the Notary, "as shown to me, Notary". That all letters / documents shown by the parties facing the notary and the contents contained in this deed are true letters / documents, if one day is proven to be the responsibility of the parties facing completely and freeing the Notary from legal and civil and criminal consequences, and Reporting to the Financial Transaction Analysis Reporting Center (PPATK). Through the GRIPS (Gathering Report Information Processing System) application system. Because, it does not rule out the existence of parties whose intentions are not good, those who come before the Notary Public have a Purpose and Purpose that is not good. The position of an Authentic Deed which turns out to be a money laundering tool or proven to be money laundering is the responsibility of the parties because in the Material Aspect (*materiele bewijskracht*) Information or statement set forth in the official deed (News Act) or the statements of the parties submitted before the Notary (Material *Materiele bewijskracht*) Deed of Party) and the parties must be assessed correctly for what was said then poured / contained in the deed acts as true or every person who comes later the statement is poured or contained in the deed must be assessed as having said correctly. If it turns out that the statements or statements of the parties are untrue, then it is the responsibility of the parties themselves.

Notary Public Must understand the Profile, Purpose and Objectives of Business Relations, and Transactions conducted by Service Users, Reporting to the Financial Transaction Analysis Reporting Center (PPATK) is recommended if there is a suspicion of a money laundering scheme, Fulfill all administrative techniques for making a notarial deed in accordance with Act No. 2 of 2014 concerning Notary Position and Notary Ethics Code.

5. References

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- [6] [http://portal.ahu.go.id/en/detail/40-peng-Announcement-penting/2186-announcements together](http://portal.ahu.go.id/en/detail/40-peng-Announcement-penting/2186-announcements-together), accessed on 28 November 2019, 19.15 WIB.
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