

## NOTARY RESPONSIBILITY AFTER DISHONORABLE DISMISSAL OF HIS POSITION BY THE MINISTER AGAINST PREVIOUS DEEDS MAD

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### ABSTRACT

*Notaries as public officials have a high responsibility towards society, particularly regarding the deeds made. Notaries' inaccuracy in making a deed can led to violations, both law and UUJN (Notary Service Law) violations. A notary who commits a violation depends on the type of violation committed because the violation is adjusted to legal sanctions and UUJN. One of the violations which resulted in the dishonorable dismissal of a notary was violating the provisions of article 12 and article 13 of the UUJN. The research method used juridical empirical approach with the specification of descriptive analytical, and the data sources were primary and secondary data. The data collection techniques were by interviews and literature study, and the data analysis was conducted by qualitative descriptive. The results show that: 1) the notaries who were in the process of disrespectful dismissal were still authorized to carry out their duties and positions to make deeds 2) The form of notary responsibility can be divided into four matters; civil, criminal, based on UUJN, and based on the notary's code of ethics. The notary who is dishonorably dismissed is legally responsible for the criminal and civil law for the deeds previously made. 3) The deadline for the notary who has been dishonorably dismissed for the responsibility for the deeds previously drawn up must be based on the provisions of the expiration.*

**Keywords:** Notary, Position, Responsibility, Dishonorable Dismissal

### A. INTRODUCTION

Nowadays, notary institutions are increasingly recognized by the public and are needed in making an authentic written evidence of a legal act committed by the community. The need for a notary institution in daily legal practice cannot be separated from the increasing level of the economy and public legal awareness. The strength of an authentic deed made by a notary has very strong legal force considering that authentic deeds are perfect evidence. So it is not uncommon for various laws and regulations to require certain legal actions to be made in authentic deeds, such as the establishment of limited liability companies, cooperatives, fiduciary guarantee deeds and so on. Besides, these deeds are made at the request of the parties.

Notaries and their act products can be interpreted as state efforts to create legal certainty and protection for members of the public. Given that in the private / civil jurisdiction, the state places a Notary as a public official who has the authority to make authentic deeds, for the purposes of proof / evidence.

Positive Law in Indonesia has regulated the position of a Notary in a special law, namely Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, hereinafter abbreviated as UUJN. Article 1 of the UUJN defines a Notary, namely:

"Public officials who are authorized to make authentic deeds and have other powers as required by this Law or based on other Laws."

A general official is a person who carries out some of the public functions of the state, especially in the field of civil law. The definition given by the UUJN refers to the duties and authorities carried out by the Notary Public as a public official and has the authority to make authentic deeds and other powers regulated by the UUJN<sup>1</sup>.

The authority of a Notary is contained in Article 15 UUJN, the authority of the Notary is as follows:

"Notary is authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and / or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the making of the Deed, deposit of the deed, granting of grosse, copy and excerpt of the Deed, all that as long as the making of the Deed is not assigned or excluded to other Officials or other people stipulated by law. "

The authority of a notary is also regulated in Article 51 of the UUJN, namely correcting typographical errors and / or typographical errors contained in the signed deed, by making an official report and providing a note about it in the original deed stating the date and number of the corrected minutes, and copies are sent to the parties.

An authentic deed is a deed whose form is determined by law, made by or in front of public officials who have the power to do so at the place where the deed was made. Notary Deed as an authentic deed is made according to the form and procedure stipulated by UUJN.<sup>2</sup>

The UUJN also regulates in detail the duties of a Notary, so it is hoped that an authentic deed as a Notary's product, whether made by or before a Notary, is able to guarantee certainty, order and legal protection. The Notary Deed as an authentic deed is the strongest and most fulfilled written evidence, so the Notary cannot arbitrarily make the authentic deed. All must refer to the prevailing laws and regulations. Not only because it is required by laws and regulations, but also because it is desired by

<sup>1</sup> Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia (Indonesian Notary Institute)*, UII Press, Yogyakarta, p. 13

<sup>2</sup> Abdul Ghofur Anshori, *Ibid.*, p. 16

interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for interested parties as well as for society as a whole.

In carrying out his / her duties, a notary must have the principle of prudence and accuracy in making deeds, so that the deeds they write are not legally flawed because they must be accountable to the general public and also not harm others. This caution and care is required in the deed-making process. This has been stipulated in UUJN and the Notary Code of Ethics in carrying out their duties.

According to the Notary's Code of Ethics, in carrying out their duties, they are required to live up to the overall dignity of their position and with the skills to carry out their profession which is always oriented to the interests of the community, provisions of laws, ethics, public order, good Indonesian language. If these matters are required by the Notary Code of Ethics to play a role in every Notary Public, then it can be found that professional behavior and moral integrity are very dominant.<sup>3</sup>

In carrying out his duties as a Notary Public, there are several actions that are prohibited from being carried out. Prohibitions for Notaries are contained in Article 17 of the UUJN, namely:

1. Performing office outside the area of office; Leaving the area of office for more than 7 (seven) consecutive working days without valid reason;
2. Concurrently as a civil servant; state officials; advocate; leaders or employees of state-owned enterprises, region-owned enterprises, or private enterprises;
3. Concurrently serving as a Land Deed Making Officer outside the office area of a Notary Public / or Class II Auction official outside the Notary's position; Become a substitute notary;
4. Doing other work that is contrary to religious, moral, or proper norms which may affect the honor and dignity of the notary's office.

In addition to UUJN, Article 4 of the Notary Code of Ethics also regulates the prohibition of Notaries, namely:

Notaries and other people who hold and carry out a notary office are prohibited from:

1. Having more than 1 (one) office, either branch offices or representative offices; Install a nameplate and / or writing that reads "Notary Public / Notary Office" outside the office environment; Doing self-publication or promotion;
2. Cooperating with service bureaus / persons / legal entities which essentially act as intermediaries to seek or obtain clients;
3. Signing a deed whose mineral preparation process has been prepared by another party; Send the Minuta Deed to the client to be signed;
4. Taking other Notary clients in any way;
5. Conducting competition against fellow Notaries in any way including determining the fee that must be paid by clients is lower than that determined by the association;
6. Deliberately employ a person who is still an employee of another Notary's office without prior approval from the Notary concerned;
7. Forming an exclusive group of peers with the aim of serving the interests of an agency or institution, let alone closing the possibility for other Notaries to participate;

Notaries have a high responsibility towards the community, especially regarding the deeds made. Notary's incomplete care in making a deed can lead to violations, both violations of law and violations of UUJN. A notary who commits a violation depends on the type of violation committed, because the violation will be adjusted to the sanctions in the UUJN. One of the violations resulting in the dishonorable dismissal of a notary is a violation of the provisions of article 12 and article 13 of the UUJN.

Article 12 of the UUJN states that:

A notary is dishonorably dismissed from his position by the minister at the suggestion of the central supervisory board if: Is

1. declared bankrupt based on a court decision that has obtained permanent legal force;
2. Being under interdiction continuously for more than 3 (three) years;
3. Committing acts that undermine the honor and dignity of the notary's office; or
4. Committing serious violations of obligations and prohibitions of office.

Article 13 of the UUJN states that:

"A notary is dishonorably discharged by the Minister because he is sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more."

The application of sanctions according to the Notary Code of Ethics administratively contained in article 6 of the Indonesian Notary Association's Code of Ethics is subject to warning, *schorsing* (temporary dismissal) *onzzetting* (dismissal) from association membership. In fact, a Notary who has been proven to have violated the Code of Ethics, and has been sanctioned by dismissal from an association member, the Notary can still make deeds and exercise other powers, the only sanction received is the sanction of dismissal from the membership of the Indonesian Notary Association (INI).<sup>4</sup>

The sanction of disrespectful dismissal from his position for a Notary who violates the provisions of the UUJN certainly creates an obligation for the Notary concerned to submit the Notary's protocol as regulated in Article 62 letter h of the UUJN, namely:

<sup>3</sup> Supriadi, 2010, *Etika dan Tanggung Jawab Profesi Hukum di Indonesia (Ethics and Responsibilities of the Legal Profession in Indonesia)*, Sinar Grafika, Jakarta, p. 108.

<sup>4</sup> <http://eprints.undip.ac.id/18400/1/Sulistiyono.pdf> accessed on 5 June 2017 at 20.30.

Submission of the Notary protocol is carried out in the case of a Notary:

"Dismissed with respect."

Regarding the procedure for submitting the Notary Protocol, it has also been regulated in Article 63 paragraph 4 of the UUJN, namely:

"In the event that it is transposed in paragraph 62 letter b, letter b, letter c, letter d, letter f, or letter h, the Notary Protocol submission is carried out by Notary to another Notary appointed by the Minister upon the recommendation of the Regional Supervisory Council."

After the submission of the Notary protocol, the Notary who is dishonorably discharged cannot be separated from the responsibility for the protocol he has, especially the deed he made during his tenure as a Notary as regulated in article 65 of the UUJN, namely:

"Notary, Substitute Notary, and Official Meanwhile, the Notary is responsible for any deeds he makes even though the Notary Protocol has been submitted or transferred to the depositary of the Notary Protocol."

Notary who is dishonorably dismissed by the Minister at the suggestion of the Central Supervisory Council, does not cause the deed that was made while serving as a Notary to be null and void, because the Notary deed is an authentic deed that has physical evidentiary power, namely the ability of the deed itself to prove itself as a deed. authentic, in the event that anyone denies the authenticity of the Notary deed, he must prove that the deed is not an authentic deed by filing a lawsuit against the deed at the District Court.

Dismissal Notary by the disrespect of his title does not make a Notary separated from the responsibility for the material truth of the deed that he had made. Regarding the responsibility of Notary as a public official dealing with the material truth, it can be divided into four points:<sup>5</sup>

1. Notary's civil case responsibility against the material truth of the deed he made;
2. The notary's responsibility is criminally against the material truth in the deed he makes;
3. The responsibility of a notary based on the position regulations of a notary (UUJN) regarding the material truth in the deed he makes;
4. The notary's responsibility in carrying out his / her job duties is based on the Notary's code of ethics.

## B. RESEARCH RESULTS AND DISCUSSION

### 1. The Authority of Notaries Who Are in The Process of Disrespect Dismissal

Notary is a legal profession which is very important in the legal system, considering that a Notary is a public official who has the authority to make an authentic deed. Thus, it can be said that the notary is one of the pillars of law enforcement in Indonesia. According to GHS Lumban Tobing, in essence, a notary only "constricts" or "records" in writing the legal actions of the parties concerned.<sup>6</sup>

The purpose of making a Notary deed by interested parties is so that the legal actions they take can be stated in an authentic deed which is strong and perfect evidence.

The deed made by a notary, of course, can be used as evidence in the deed so that the writing must be clear and firm. which is perfect, namely that the contents of the deed are correct, have executorial power if the debtor does not fulfill the agreed contents as contained in the notary deed. this means that if the notarial deed is not perfect evidence, it does not have special consequences regarding the truth, the strength of proof, of course the deed is not made in accordance with the procedures stipulated in the statutory regulations or contradicts the law, public order. as well as morality which is used as the basis for making a Notary deed.

Notary, who is in the process of disrespectful dismissal, still has the authority as the deed maker as long as there is no decision letter from the Central Supervisory Council stating that the Notary has been dishonorably dismissed.<sup>7</sup>

As for the deed made by a Notary which is in the process of dishonorable discharge remains an authentic deed where the authentic deed must be made by an authorized official, the Notary's powers include 4 (four) things, namely:<sup>8</sup>

1. The notary must be authorized to the extent that the deed that must be drawn up is:

The authority of a notary in making authentic deeds as long as other parties or officials are not excluded. Article 15 UUJN has determined the authority of the Notary. This authority is a limitation, that the Notary may not take an action beyond that authority. Notary's actions outside the predetermined authority can be categorized as actions outside the authority of the Notary. If it causes problems for the parties that cause material or immaterial losses, a lawsuit can be submitted to the district court.

2. The notary must be authorized as long as it concerns the person (s) for whose purpose the deed was made.

The notary must be authorized as long as it concerns the person (s) for whose purpose the deed was made. Although Notaries can make deeds for everyone, in order to maintain the neutrality (impartiality) of Notaries in making deeds, there is a limitation that according to Article 52 UUJN Notaries are not allowed to make deeds for themselves, themselves, their wives / husbands or other people who have family relations with Notary, either by marriage or by blood in a straight line down and /

<sup>5</sup> Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia (Indonesian Notary Institute)*, UII Press, Yogyakarta, p. 34.

<sup>6</sup> GHS. Lumban Tobing, *Peraturan Jabatan Notaris (Notary Position Regulations)*, Erlangga, Jakarta, 1983.p. 38

<sup>7</sup> Hirman, Interview, member of MPD of Madiun, on 14 August 2017

<sup>8</sup> Damayanti Rosita, Interview, Notary in Madiun, on 14 August 2017

or upward without limitation of degree, as well as in a lateral line up to the third degree, as well as being a party to himself, or in a position or through power of attorney.

3. The notary must be authorized as far as the place where the deed was made.

The notary must be authorized as far as the place where the deed was made. Article 18 paragraph (1) UUJN stipulates that a Notary must be domiciled in a regency or city. According to his wishes, every Notary has a domicile and has an office in a regency or city (Article 19 paragraph (1) UUJN). Notary has an office area covering the entire province from the place of his domicile (Article 19 paragraph (2) UUJN). The meaning of these articles is that a Notary in carrying out his / her job duties does not only have to be in his / her place of domicile, because the Notary has an office area of the entire province, for example, a Notary who is domiciled in the City of Surabaya, then he can make deeds in other regencies or cities within the Java Province, regency or other cities within the province of East Java.

4. The notary must be authorized as long as the deed is drawn up.

In carrying out his / her duties, a notary must be in an active condition, meaning that he is not on leave or has been suspended temporarily.

Notary can lose his authority as deed-making official if the Notary has stopped permanently, stopped disrespectfully, and temporarily stopped, during the leave period as regulated in UUJN.<sup>9</sup>

- a. Permanent as mentioned in article 8 of the UUJN is passed

A notary resigns or is terminated or honorably dismissed from his position because:

- 1) Passed away
- 2) reaching the age of 65 (sixty-five) years;
- 3) Own request
- 4) Not able to be spiritually and / or physically unable to carry out the duties of a Notary public continuously for more than 3 (three) years; or
- 5) concurrent positions as referred to in article 3 letter g.

- b. Disrespectful dismissal

A notary is dismissed dishonorably by the minister at the suggestion of the central supervisory board if:

- 1) declared bankrupt based on a court decision that has permanent legal force;
- 2) is under interdiction continuously for more than 3 (three) years;
- 3) committing an act degrading the honor, dignity and position of the Notary; and / or
- 4) committing serious violations of the obligations and prohibitions of the notary office.
- 5) Temporarily suspended for the reasons as stated in Article 9 paragraph 1 UUJN:

Notary has been temporarily suspended from his position due to

- a) bankruptcy or postponement of debt payment obligations;
- b) Being under interdiction
- c) Committing a disgraceful act.
- d) the power of Violating the obligations and prohibitions of office and the notary code of ethics; or
- e) Currently serving a period of detention.

The notary has been temporarily suspended from his position on the grounds that he is currently in custody and needs to be given more explanation. this is because in the Criminal Procedure Law Kitab (KUHAP) there are several types of detention, then whether the detention experienced by the Notary is because it has something to do with the implementation of the duties of a Notary Public or criminal acts in general.

Article 21 point 21 of the Criminal Procedure Code states that detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or a judge by ruling in matters and according to methods regulated in this law.

Article 22 of the Criminal Procedure Code states that there are 3 (three) types of detention, namely:

1. Types of detention can be:
  - a. Detention of a state detention center;
  - b. House detention;
  - c. City
2. Detention Home detention is carried out at the residence or residence of the suspect or defendant by supervising him in order to avoid anything that could cause difficulties in the investigation, prosecution or examination in court.
3. City detention is carried out in the city of residence or residence of the suspect or defendant, with the obligation for the suspect or defendant to report himself at the specified time.<sup>10</sup>

The notary is in the process of disrespectfully dismissed by the Notary Supervisory Council and the Notary is in custody, so it must be seen where the Notary is detained.<sup>11</sup>

<sup>9</sup> Hirman, interview, member of MPD ex karesidenan Madiun, 14 August 2017

<sup>10</sup> Habib Adjie, 2015, *penafsiran tematik Hukum Notaris Indonesia (thematic interpretation of Indonesian Notary Law)*, Refika Aditama, Bandung, p. 41

<sup>11</sup> Sarjiyat, Interview, member of MPD ex karesidenan Madiun, on 14 August 2017

When a notary is hit by an accident that results in detention, if he is in a state detention center he cannot carry out his / her job duties even though he is not temporarily dismissed from his position, because he is physically unable to do anything. Even though they still have the authority to carry out their duties, it is unethical for a Notary to carry out his duties from a state detention center.

In the practice of a Notary, there are also Notaries whose notary offices are concurrently with their house or the house of the notary office. If the definition of house arrest or house detention is carried out at the suspect's or the defendant's own house, then a Notary who is subject to a period of house detention (and concurrently with an office or office concurrently at home) can still carry out his duties because the detention is done at his own home.

However, it is another thing if the notary and his house are separated (office and house with different addresses). If the house arrest is carried out in his own house, it means that he cannot carry out his / her job duties because he has to leave the house to go to his office. Detention like this (offices and houses in different locations) creates difficulties for the notary.

Likewise, for city prisoners. Now it is common that the office (the notary's domicile) and the residence (house) are not in the same city / regency. It can be imagined if the notary was subject to house arrest while his office was located in another city. Even though he is not being temporarily suspended from his position, he is still unable to carry out his position in a different city from where he lives.

## 2. Forms of Responsibility of Notaries Who Have Dismissed Disrespectfully Against Deeds Made Previously.

Notary as a public official (*openbaar ambtenaar*) who is authorized to make an authentic deed can be held responsible for his actions in connection with his work in making the deed. The notary's scope of responsibility includes the material correctness of the deeds he has made. Regarding the responsibility of a notary as a public official relating to material truth, it can be divided into four points, namely:<sup>12</sup>

- a. Civil accountability of the notary regarding the material correctness of the deed he makes;

Wirjono Prodjodikor said that responsibility for a person's actions usually means nothing if that person commits actions that are not allowed by law and most of these acts are actions which are called in the Civil Code, an act against the law.<sup>13</sup>

The juridical construction used in civil liability for material correctness of deeds made by notaries is the construction of acts against the law (article 1365 of the Civil Code). What is called an act against the law has an active or passive nature. Active in the sense of committing an act that causes harm to the other party, so deliberately making a movement, thus an act against the law is an active act. Passive in the sense of not committing an act but in fact the act is an obligation for him or by not committing a certain act - something that is a must - then the other party can suffer a loss. The elements of this act against the law include the existence of an act against the law, the existence of an error and the loss caused.

- b. The notary's responsibility is criminally against the material truth in the deed he makes;

A criminal act is an act that is prohibited by a rule of law, if it violates the prohibition it will be followed by a sanction in the form of acriminal certain. In carrying out his position as a Notary, the intended punishment is a crime committed by a Notary in his capacity as a public official who is authorized to make an authentic deed mandated by UUJN, not a personal or individual capacity of the Notary as a legal subject.<sup>14</sup>

- c. The responsibility of a notary based on the position regulations of a notary (UUJN) regarding the material truth in the deed he makes;

Based on article 91 UUJN which is the closing article expressly revokes and states that the previous regulations regarding the position of notary public are not valid, so that the compass in the implementation of the current notary office is UUJN. The responsibility of a Notary in UUJN is explicitly stated in article 65 of the UUJN which states that a Notary (substitute Notary, special replacement Notary and temporary Notary Public) is responsible for any deeds he makes, even though the Notary protocol has been submitted or transferred to the Notary protocol depositor.<sup>15</sup>

- d. The notary's responsibility in carrying out his / her job duties is based on the Notary's code of ethics.

There is a very strong correlation between the UUJN and the professional code of ethics. The professional code of ethics regulates Notary internally and UUJN externally. According to Muhammad, as quoted by Nico, and Abdul Ghofur Anshori, Notary in carrying out their duties:<sup>16</sup>

Notaries are required to make deeds properly and correctly. This means that the deed made fulfills the legal will and requests of interested parties because of their position.

Liability claims against Notaries have arisen since the occurrence of disputes relating to deeds that have been made by fulfilling the elements in an illegal act including human actions that meet the formulation of laws and regulations, meaning that the legality principle applies, *nulum delictum nulla poena sine praevia lege poenali* (no actions are prohibited and threatened with a criminal offense if this is not or has not been stated in the law), and the act is an act against the law. The concept of responsibility, if it is related to the Notary profession, then the Notary can be held accountable for his mistakes and negligence in carrying out his duties and positions.

<sup>12</sup> Abdul Ghofur, 2009, *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika (Indonesian Notary Institute: Legal and Ethical Perspectives)*, UII Press, Yogyakarta, p. 34.

<sup>13</sup> Notodisoerjo, Raden Soegondo 1993, *Hukum Notariat di Indonesia suatu Penjelasan (Notary Law in Indonesia: an explanation)*, second printing, Jakarta: RAJA Grafindo Persada, p.229

<sup>14</sup> <http://> accessed on Friday 18 June 2017 at 20.20 WIB.

*Ibid* ://wardanirizki.blogspot.wardanirizki.blogspot.co.id/ accessed on Friday 18 June 2017 at 20.20 WIB

<sup>15</sup> *Ibid* ://wardanirizki.blogspot.co.id/

<sup>16</sup> *Ibid*, Abdul Ghofur Anshori, p 49



A notary who has been dishonorably discharged, the responsibility of the notary only remains criminal and civil liability if the deed made during his tenure has problems or harms one of the parties because the administrative penalty has been received, namely dismissal.<sup>17</sup>

If the deed becomes disputed, the notary who has been dishonorably discharged is liable to be held liable in the form of civil liability and criminal responsibility.<sup>18</sup>

1. Civil Liability;

A form of civil liability to a Notary who has been dishonorably discharged from the deed previously made in the event of a problem is civil sanction, where civil sanctions are sanctions imposed for errors that occur due to default, or violating the law. This sanction in the form of fee, compensation and interest is the result that will be received by the Notary from the lawsuit of the parties if the deed only becomes a deed under deed or is null and void.<sup>19</sup>

2. Criminal Responsibility

The UUJN stipulates that when a Notary in carrying out his duties and positions is proven to have committed a violation, the Notary can be subjected to or subject to sanctions in the form of civil sanctions, administrative sanctions, and these sanctions have been regulated in such a way both previously in the Notary Position Regulation and now UUJN and code Notary ethics, however the UUJN does not regulate criminal sanctions against Notaries. Because UUJN does not regulate criminal sanctions, if there is a criminal violation against a Notary Public, the criminal sanctions contained in the KUHP may be imposed.

According to Hirman, the punishment against a Notary can be carried out with restrictions, namely:<sup>20</sup>

- a. There is legal action from the Notary against the physical, formal and material aspects of the deed which is deliberate, full of awareness and conviction, and it is planned that the deed will be drawn up before the Notary or jointly (agreed) the parties are used as the basis for committing a criminal act.
- b. There are legal actions from the Notary in making deeds before or by the Notary which if measured based on UUJN are not in accordance with UUJN.
- c. The notary's actions are also inappropriate according to the authorized institution to judge the actions of a notary, in this case the Notary Supervisory Council.

The imposition of criminal sanctions against Notaries can be carried out as long as the limits as mentioned are violated, meaning that in addition to fulfilling the formulation of violations as stated in the UUJN, the Notary Code of Ethics must also comply with the formulation in the Criminal Code. In practice, it is found that a legal action or violation committed by a notary can actually be subject to administrative or civil sanctions or a notary's code of ethics, but then it is withdrawn or qualifies as a criminal act committed by a notary.<sup>21</sup>

The qualification relates to aspects such as:

- a. certainty of the day, date, month, year and hour before it;
- b. any party (anyone) facing the Notary;
- c. facing signature;
- d. a copy of the deed does not match the minimum deed;
- e. a copy of the deed exists, without making a minimum deed; and the
- f. minimum deed is not signed completely, but the minuta deed is issued.

The limitations which are used as the basis for criminalizing the Notary are formal aspects of the Notary deed, and should be based on UUJN. If the Notary is proven to have committed a violation from a formal aspect, then civil or administrative sanctions may be imposed depending on the type of violation or sanction of the notary's code of ethics.

Criminalizing a Notary based on these aspects without conducting in-depth research or evidence by looking for elements of error or deliberate action from the Notary Public is an act without legal basis that cannot be justified. For example: A<sup>22</sup>

- a) notary is accused with the qualification of making falsely or falsifying a letter that looks as if the letter is an original letter and has not been falsified (Article 263 paragraph [1] of the Criminal Code), forged letters, and the forgery has been carried out in authentic deeds (Article 264 paragraph [1] number 1 of the Criminal Code) includes a false statement in an authentic deed (Article 266 paragraph [1] KUHP).
- b) Information or statements and wishes of the parties expressed before the Notary Public are the basic materials for the Notary to make deeds according to the wishes of the parties before the Notary. Without information or statements and wishes from the parties, it is impossible for the Notary to make a deed. Even if there is a statement or statement that is suspected of being false, it is included in the authentic deed, it does not cause the deed to be fake. For example, an authentic deed includes a statement based on the marriage certificate shown to the Notary or the National Identity Card (KTP) from the original physical observation. If it is proven that the marriage certificate or KTP is fake, it does not mean that the Notary has entered or included false information in the Notary's deed (Article 264 paragraph (1) number 1 KUHP) and Article 266 paragraph (1) KUHP). Material falsehood on this matter is the responsibility of the parties concerned.

<sup>17</sup> Hirman, Interview with MPD members from the former Madiun residency, on August 14, 2017

<sup>18</sup> Sarjiyat, Interview with MPD members from the former Madiun residency, on August 14, 2017

<sup>19</sup> Hirman, Interview with MPD members from the former Madiun residency, on August 14, 2017

<sup>20</sup> Hirman, Interview with MPD members from the former Madiun residency, on August 14, 2017

<sup>21</sup> Habieb Adjie, 2008, *Sanksi Perdata & Administratif Terhadap Notaris Sebagai Pejabat Publik (Civil & Administrative Sanctions Against Notaries As Public Officials)*, PT. Refika Aditama, Bandung, p. 120.

<sup>22</sup> Habieb Adjie, *ibid*, p. 122.

### 1. Deadline for Notary Accountability after Disrespectfully Dismissed of the Deed previously drawn up.

Basically, the law imposes a burden of responsibility for the actions he has committed; however, it does not mean that any loss to third parties is entirely the responsibility and responsibility of the Notary Public.

Civil liability if a notary makes a mistake due to broken promises as stipulated in the provisions of Article 1243 of the Civil Law Law or an illegal act as stipulated in the provisions of Article 1365 of the civil law law. The notary is asked for civil liability if the error has caused losses to the client or other party.

Meanwhile, the criminal responsibility if the notary has committed a legal act prohibited by law or committed an error / act against the law either on purpose or negligence which has caused losses to other parties.

The role of the morality factor for the Notary Public is to make the Notary Public not abuse his / her authority. so that it is not detrimental to the parties and not detrimental to the Notary itself. The parties may suffer losses because the deed that is not made in accordance with the stipulated provisions can result in the deed becoming a deed under hand, legally flawed, so as to make matters stated in the deed null and void by law. Meanwhile, the Notary can also be harmed because the Notary Public is required to be responsible for the losses suffered by the parties by paying the losses, interest and penalties arising from the Notary's mistake.

Article 65 of the UUJN states:

"Notary, Substitute Notary Public, and Temporary Officials are responsible for any deeds they make even though the Notary Protocol has been submitted or transferred to the protocol depositor".

Reading through Article 65 UUJN, especially clauses even though the Notary protocol has been submitted or transferred to the protocol depositor, has caused problems and also questions as to what is the time limit for the accountability of the Notary, Substitute Notary Public, Special Substitute Notary, and Temporary Notary Officer for each deed made before him or by him? The temporary answer to this question is until the notary dies. Is that what the time limit for his accountability is based on Article 65 of the UUJN because that article is not clear so that an interpretation is necessary.<sup>23</sup>

According to article 65, the Notary is responsible for the deed he has made until the Notary dies, but the clear provisions regarding the time limit for the Notary to be responsible for the deed in the event of a dispute are not clear, so it returns to the existing regulations, namely the Criminal Code (KUHP) and the Civil Code which regulate the expiration time limit. one can be led.<sup>24</sup>

The notary is responsible for the deed that he makes attached until the Notary dies, as well as a person who has been dishonorably dismissed, is still responsible for the deeds made during his tenure as a Notary, but if there are problems in the future and are prosecuted civil or criminal, then the prosecution process must be in accordance with the applicable law where the Criminal Code and the Criminal Code recognize expiration.<sup>25</sup>

If there is a problematic Notary deed where the Notary is no longer a Notary due to dishonorable dismissal, the MPD is no longer authorized to summon the former Notary, MPD is only authorized to provide a copy of the deed that is in the protocol keeper if a copy of the deed is required, Provisions regarding the Notary's deadline can be sued in court for parties who have suffered losses due to a violation in making authentic deeds must be based on expired provisions.<sup>26</sup>

In article 1967 of civil law, civil law expires in thirty years and article 78 in conjunction with 79 KUHP in criminal law, namely twelve years. The parties can hold the Notary accountable for his deformed juridically until the deadline or expiration date even though the Notary concerned has retired or resigned from his position as a Notary. However, after its expiration date, the parties can no longer hold the Notary accountable. The expiration period is calculated from the date the deed was made.<sup>27</sup>

According to Djoko Wahono, the occurrence of a legal incident between the Notary and the parties was when the deed was drawn up, so that the calculation of the Notary could be guided both civil and criminally, the expiration of the deed was calculated, of which 12 years were for criminal prosecution and 30 years for civil prosecution. If the deed was drawn up in 1980 and it turned out that in 2011 the deed was problematic, the Notary could no longer be prosecuted civil or criminal because it had passed its expiration period, both criminal and civil.<sup>28</sup>

## C. CLOSING

### 1. Conclusion

From the results of the research and discussion as described in the previous chapters to answer the problems in this paper, the following conclusions can be stated:

- a. Notaries who are in the process of disrespectful dismissal still have the authority to make deeds, but it must be seen during the dismissal process whether the Notary is present. in detention or not. In Indonesia there are three types of detention, namely state detention, house detention and city / regency detention. If the Notary in the process of dishonorable discharge is in a state detention center, the Notary loses his authority to draw up the deed. and if the notary's office is in the same place as his house and is under house arrest, the notary can still carry out his position. However, if the office and house do not become one, a Notary cannot carry out his position. Likewise, with city / regency detainees, if the house and office are in one city / district the Notary can still carry out his position.
- b. The notary's scope of responsibility includes the material correctness of the deeds he has made. Regarding the responsibility

<sup>23</sup> Suwindarsih, [www.google.com](http://www.google.com) *Controversial Article of UUJN*, taken on 17 August 2017.

<sup>24</sup> Hirman, Interview, member of MPD of the ex-residency of Madiun, August 14 2017

<sup>25</sup> Djoko Wahono, Interview, Notary Madiun, August 14 2017

<sup>26</sup> Hirman, Interview, MPD ex-residency member of Madiun, August 14 2017

<sup>27</sup> Hirman, Interview, MPD member ex-residency Madiun, August 14 2017

<sup>28</sup> Djoko Wahono, Interview, Notary Madiun, August 14 2017

of a notary as a public official relating to material truth, it can be divided into four points, namely:

- 1) Civil accountability of the notary regarding the material correctness of the deed he makes;
- 2) The notary's responsibility is criminally against the material truth in the deed he makes;
- 3) The notary's responsibility is based on the notary's position regulation (UUJN) regarding the material truth in the deed which is made.
- 4) The Notary's responsibility in carrying out his / her job duties is based on the Notary's code of ethics.

A Notary who has been dishonorably discharged still has responsibility for the deed previously made, Liability claims against the Notary arise since the dispute related to deeds that have been made by fulfilling the elements in the act against the law includes human actions that comply with the formulation of laws and regulations. -invitation.

In the case of a Notary who has been dishonorably discharged, the Notary's responsibility only remains the criminal and civil liability if the deed made during his tenure has problems or harms one of the parties because the administrative penalty has been received, namely dismissal.

- c. The former notary is still responsible for the deed made before his death, but the provisions regarding the deadline for notaries can be litigated in court for parties who are harmed due to violations in making authentic deeds must be based on the expired provisions in Article 1967 of the Civil Code to expire in civil law, namely as long as thirty years and Article 78 in conjunction with 79 KUHP in criminal law which is twelve years. The parties can hold the Notary accountable for his deformed juridically before the deadline or expiration date even though the Notary concerned has been dismissed from his position as a Notary. But after its expiration date, the parties can no longer hold them accountable.

## 2. Suggestion

- a. Providing training to Notaries regularly so as not to make fatal mistakes in making deeds and a clear scope of accountability is needed for Notaries, especially Notaries whose term of office has ended.
- b. Providing a clear interpretation in the prevailing laws and regulations as the basis for the notary's guidance in carrying out his / her duties towards the limit of accountability of the Notary after the end of his term of office and the compilation of the decisions of the Central Examining Council to be recorded in the form of notations for materials and guidance especially for Notaries as guidelines in carrying out duties and authorities.
- c. Making public announcements if there is a Notary who has a problem so that it becomes a lesson for other Notaries, and if there is a notary's dismissal, it must be announced so that the public knows and the MPD must remove the Notary's name board who has been dismissed with disrespect and respect. This is done so that notaries who have not served as office keep making deeds that will harm the public.

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