

The Urgency of Competency Test for Unscrupulous Notaryin Behavior and Implementation of Position

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Abstract : Notary position is an occupation that is inherent in notaries themselves, and it is extremely difficult to separate between the behavior of the notary oneself and notary behavior while served as notary on duty position whom notary is required to behave well for his own personal as well as in office, hence the notary nominee before be appointed as a notary must make a bold statement stating he will oblige to conduct competency test if conduct violations related to behavior and notary position implementation which has set forth in Notary Ethic Code, UUJN, and related legislation.

Keywords : *the urgency, competency test, unscrupulous notary*

I. INTRODUCTION

Notary is a public official authorized to make an authentic deed of all acts, agreements, and stipulation required by legislation and / or desired by concerned stakeholders to be declared in the authentic deed. Notary behavior in running the his position as provided in the Notary Ethic Code and the Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary Occupation in conjunction with the Law of the Republic of Indonesia Number 2 Year 2014 concerning the Amendment to Law Number 30 Year 2004 concerning Notary Occupation, next called UUJN, must act trustworthy, honest, thorough, independent, impartial, and preserve the interests of the parties involved in a legal act, providing services in accordance with the provisions in the legislation, provides legal counseling in connection with a certificate making progress, conceal anything related the certificate he has made and all information obtained according to vows / pledge of position.

In accordance to behavior and position implementation, notary who is appointed and dismissed by the Minister of Justice and Human Rights, nurtured and monitored by notary institutions as Notary Supervisor Assembly, Honorary Council of Notaries, and Association of Indonesian Notary, hereinafter referred to as INI with the equipment of the organization namely Board of INI or Notary Honorary Council. Although the guidance and supervision has been carried out, it is still found any complaints / reports from the public or complaints related to the alleged violations committed by the notary, either stipulated in Notary Ethic Code, UUJN and other legislation, which cause the government's efforts in this regard the Ministry of Justice and Human Rights of the Republic of Indonesia, hereinafter referred as KemenHumHam, to test the competence of the notary, as submitted by Yasonna H. Laoly, Minister of Justice and Human Rights of the Republic of Indonesia, in his opening address to the Association of Indonesian Notary Congress-XXII, on May 19, 2016, in the city of Palembang. Based on the explanation above, the authors feel the need to study the problems concerning what should notary behave in notary occupation? And how far the urgency of implementing competency test for notary?

II. RESEARCH METHODS

II.1. Type of Research

The type of research in this paper is a socio-juridical, using a philosophical, statute, and conceptual approach (Peter Mahmud Marzuki, 2010:96)[1].

II.2. Data Collection Technique

Data collection techniques were through documentation and interviews.

II.3. Data Analysis

All data collected then analyzed qualitatively later in descriptive (Soerjono Soekanto, 2012:9)[2] hence the problems in this article can be answered.

III. RESULT AND DISCUSSION

III.1. Behavior and Notary Position Implementation

In building, creating and giving birth to a notary, required strong Notary Supervisor Assembly, Honorary Council of Notaries, Association of Indonesian Notary (INI), which surely form a notary nominee starting from the embryo, birth, grow and develop, thus become a solid notary in fulfilling society needs in the field of notaries with satisfactorily and professionally. Therefore, if someone wants to be a notary, since he began the notary education hence the guidance of Organization of INI started, either by himself or in cooperation with notaries program implementers study in government college / private sector which has obtained a license from the Ministry of Research and Technology of Higher Education, hereinafter referred Kemenristekdikti, KemenHumHam, and other relevant institutions. Those development activities are carried out as part of either the curriculum or exclude the curriculum course, but must be followed by students / notary nominee for his notary prospective in which it can enhance the understanding, or deepening and expanding the horizons of science and knowledge, especially areas related to the field of notaries. The results of coaching that has been given during the study will be tested and judged by the assessor in-charge to students / notary nominee. After graduated and earned a Master of Notary (is one of the programmed master's degree at several universities in Indonesia (in Indonesia called: Magister Kenotariatan / M.Kn.), notary candidate must:

1. Be outstanding member of the Organization of INI Association, who have rights and obligations as stipulated in the *articles of association* and *bylaws* of the association. As an outstanding member of the INI, the outstanding notary must be able to engage, actively participate and be present in the activities carried out by INI, such as regular meetings, seminars, discussions, debriefing and refreshment of knowledge.
2. Through the stages of internship for two years in the office of the notary appointed by INI or desired by the notary nominee. Many aspects obtained by notary nominee in this internship stage, where they learn by seeing or directly involved in the practice carried out by a notary in his host. During the internship the notary nominee learn directly on how a notary reflect and enforce the understanding that has been gained and tested during the training, into practice.
3. Follow debriefing and pass the exam notary ethic code organized by INI.

Once appointed as a notary, in the conduct and implementation of its position implementation, the notary was bound by the Notary Ethic Code, UUJN, and other legislation. However, a notary in running his position even though he has sufficient legal skills, but not based on responsibility and without any appreciation of nobleness and dignity of his occupation and the norms and the ethics value, will not be able to run his position as demanded by law and public interest (GHS. Lumban Tobing, 1983:301)[3].

Either the nature of the notary occupation itself or the nobility and dignity of the position require responsibility and personality as well as high legal ethics (GHS. Lumban Tobing, 1983:302)[4]. The position held by notary is credence (*vetrouwensambt*) and it is precisely because someone is willing to entrust something to him, who also carries a heavy responsibility for him. A notary is not responsible and does not uphold the ethics of law and the dignity and nobility his position is harmful to society and the communities he serves (GHS. Lumban Tobing, 1983:302)[5]. Notary is an occupation with specialized skills that require extensive knowledge, as well as a heavy responsibility to serve the public interest and the core task of the notary is set in writing authentic and legal relations between the parties who unanimously request notary services (Liliana Tedjosaputro, 2003:93)[6].

Creating an authentic deed is the main occupation and authority of notary (Abdul Ghofur Anshori, 2009:17)[7]. Creating an authentic deed is not only relying on deed examples without knowing the basic law and why using the phrases, sentences, and specific wording in the deed establishment (Herlin Budiono, 2013:2)[8]. A deed is a paper that has been deliberately created to be used as evidence of an event and signed (Subekti, 2008:25)[9]. Thus, the elements that most important of deed is a deliberate intention to create a written proof and a signatory (Subekti, 2008:25)[10]. The superiority of notarial deed as authentic evidence is if it is denied by the opposing party, the opposing party shall prove it, and as long as there is no evidence to the contrary (opposite), all matters contained in the deed shall be considered correct (Hari Sasangka, 2005:54)[11]. The notarial deed that includes writing desired by the parties, and made by / before the notary, as long as not contradict to morality, public order and legislation in force, therefore the parties themselves must carry out and be responsible the matters that agreed upon in a notarial deed, not any action the parties try to involve and the blame notary in regards who has carrying out his duties and functions in accordance with the laws and legislation in force. Notary position (as long as not proven otherwise), should have immune to claims of the parties in a notarial deed, because by existence and the presence of a notary deed was only there because of the will of the parties, not the notary, therefore in regards with problems relating to the notary deed, then it should still be guided by the notarial deed as a foothold to resolve problems. The notarial deed must be firstly considered right, and unrighteousness merely be proven before the court, as stipulated in the UUJN Commentary. Likewise the position of a judge is invulnerable to the demands of what was decided in the

verdict, hence the problems or dissatisfaction with the court's verdict, therefore the problem is the decision of the trial, neither judge nor judges panel. Position or occupation of notary is responsible credence, either legally, morally and ethics to the state / government, the society, the parties concerned (the client) and organization of profession, therefore the quality of a notary must be improved through education, knowledge, understanding, and steeped upon knowledge and the code of ethic (Liliana Tedjosaputro, 2003:95)[12]. Notary position is a occupation that is semi-public. Notary position is a public occupation, yet the work field is still under private law submission (Shidarta, 2009:102)[13]. Notary as the public servant to ply half of the State's assignment hence it was very substantial for the notary in performing their occupation to provide services to society and the public interest (Herlien Budiono, 2015:48)[14]. Therefore, according to the author, a notary as a public official, appointed and dismissed by the Government, to represent the State to serve the community to meet its needs in the matter of private law, in particular in the performing the authentic deed, should be professional in charge for his position. Professional means behavior and execution in his position shall respect and uphold the Notary Ethic Code, UUJN and other legislation, has the expertise and skills as well as broad-minded.

Notary is a position, not a profession such as the medical profession, advocate, and consultant. According to the author, notary is a public officer (position) is not a profession but in doing his position shall be professional. Notaries are public officials appointed by the government, but not the civil servants apparatus of the State, and is not bound by the provisions of Law No. 5 Year 2014 concerning the State Civil Apparatus. Notaries do not receive a salary and annuity (pension) from the government. Notaries in the implementation of the position should be independent, likewise in financial problems must also be independent. Notaries must be able to support themselves, family, office and employees, maintains and provides storage protocol of the notary with fees and costs incurred and borne of notary themselves, and for the notary running the position, only entitled to receive honorarium for providing legal services in accordance with the authority, which is the amount grounded on corresponding to the economic value or sociological aspect of any deed they made [Article 36 subsection (1), (2) UUJN stated that: (1) Notary reserve the right to receive honorarium upon his legal services in regards with his authority (2) The amount of honorarium received by Notary in accordance to the economic value and sociological aspect of any deed he made].

Behavior and implementation of the notary position cannot be separated from the personal self of notary, as stated by Eddy Muljanto, that the boundaries of notary behavior, in this case the behavior of the notary on duty or in his running position is already set in the Notary Ethic Code, UUJN and its implemented regulations [Authors interview result with Eddy Muljanto (Notary), Jakarta, May 2016]. The institutions which have the authority and obligation to coach training and supervision on the conduct and implementation of the notary position are:

1. Board of INI and / or the Honorary Board of the Notary, who has the authority and obligation to uphold the Notary Ethic Code;
2. Notary Supervisory Council, which has the authority and obligation to enforce UUJN and other legislation;
3. Notary Honorary Council, which has the authority and obligation to uphold the honor of the notary position, relating to the re-calling notary and notary deed, in the context of judicial proceedings.

Indeed, the task of implementing guidance or supervision of a notary, have understood the duties and functions of a notary, and regulations that govern it, that if someone wants to do work inspection of others, the examiner must know the duties, rights and obligations of the person examined. Hence in terms of a notary examining, the examiner should know the work of a notary and must learn Notary Position Regulations (now UUJN) and other laws relating to UUJN (Tan Thong Kie, 2007:530)[15]. Therefore, according to Isyana W. Sarjarwo [Author interview result with Isyana W.Sarjarwo (Notary, Vice Chairman of Center Notary Supervisory Council , dan Member of Center Notary Honorary Council), Jakarta, May 2016], proper guidance and to achieve goals, then to the executive coaching duties in-charge should first be given a briefing and knowledge in the field of notaries, and then tested and rigorously selected. For example, a member of Notary Supervisor Assembly implement guidance and supervision, but he did not know the substance of UUJN, this will result in the implementation of the guidance and supervision of accomplishments to be not optimal (not professional)

III.2. Urgency of Implementation of Competency Test

Minister of Justice and Human Rights of the Republic of Indonesia, as the minister who appoints and dismisses notary, through his ministry, has received a lot of complaints relating to irresponsible conduct of notary, and reports of notaries who do not adhere to the principles of existing law, Notary Ethic Code, propriety, decency, and others. Hence the government in this case KemenHumHam feel very concerned to be able to change the behavior and the implementation of the notary position to better direction by implementing competency test for notaries. Competency test in regards, aimed at delivering quality of notary, dedicated, virtuous, responsible and dignified in accordance with his position as a public official. Through the competency test, it will be screening aback, and of course for notary with many records of transgression would not able to continue running the notary position anymore. It is true for negative actions of one or a group of

people may disgrace the image of another person or group. However, it is not appropriate and very unfair if the fault committed by someone must be entitled to someone else or others who are members of the group that did not participate to make those mistakes committed by the person or those group of people. There is no sin that a person must bear and bear by others, but someone who was committing it himself must bear and be responsible for all the sins he had done. As stated in the Qur'an, Surah Al-Israa, Juz 15, subsection (15) (Al-Qur'an and translation, 2009:557)[16] "yahtadii linafsih Manihtadaa innamaa fa, fa wa dalla man innamaa yadillu 'alayhaa wa laa taziru waaziratuw wizra ukhraa, wa maa kunnaa mu'azzibiina hatta nab'asa rasuulaa "(whoever act in accordance with the instructions of [God], then indeed it [safety] himself, and whoever lost verily [loss] for himself. Sinner cannot bear the sins of others, but We will not torture until We sent a Messenger). Through this verse Allah has commanded human to do justice, therefore, according to the authors, if there is unscrupulous notary then return the responsibility to unscrupulous notary itself, provide a distinct and appropriate action against unscrupulous notary. Board of INI, the Honorary Board of the Notary, the Notary Supervisory Council in accordance with the obligations and their respective authorities should impose appropriate penalties against unscrupulous notary, so that unscrupulous notary is deterrent and does not commit offenses again.

Associations with executive duties and the INI board or Honorary Board of Notaries can impose sanctions against the notary who violates the code of conduct notaries (with mild sanctions is "warning" and the hardest part is "dishonorable discharge from the membership of INI association), and Notary Supervisor Assembly can impose sanctions against the notary who violates UUJN and regulations or other laws (with mild sanctions is "warning" and the hardest part is "dishonorable discharge from his post as a notary). While Honorary Council of Notaries only authorized to conduct training in order to meet the request of investigators, prosecutors or judges relating to the calling of the notary and notary deed in the interests of judicial proceedings under Article 66, 66A UUJN, and Regulation Menhukham No. 7 Year 2016 on the Honorary Council of Notaries.

Based on the above reasons, and recalled the journey of notary nominee since the period of education in the field of notaries to be appointed as a notary and carry out the position of notary, the efforts of the coaching that has been given by the Government, Notary Organizations and institutions in the field of notary is quite sufficient, it's just that all of it is returned to notary's moral. Morality is a quality in human actions which show that the act is right over wrong, good or bad. Morality includes notions of good and bad acts of man (W. Poespoprodjo, 1999:118)[17]. Notary moral must be true and good, that is to perceive in the conduct and implementation of position, the notary must show true and good actions. According to the authors competency test to the notary who has been running the position, do not need to be conducted again, yet the institutions in the field of notaries synergistically, only requires the implementation of competency test for unscrupulous notaries, notary who becomes incapacitated in running his position intended to return to the office, the notary after running suspension because detention period of the legal process he underwent, notary public after a period of suspension for the *Decision of the Minister* of the temporary dismissal from office, or other notary who has caused actions in which based on the consideration of the authorities should carry out a competency test. Likewise to notary nominee who is not entitled upon competency test, but can be referred as one of the requirements to obtain a letter of appointment in KemenHumHam, notary nominee pertinently should make a bold statement stating he will oblige to conduct competency test if violating behavior and the implementation of notary position set forth in Notary Ethic Code, UUJN, and the regulation of other legislation, in which the results of the competency test is a requirement that is essential for the notary to be or not be able to carry back his post as a notary, or revoked the decree of appointment by the Minister .

The process of professionalization through guidance to notary is continued and given equally to every notary before and after as well as during his position as notary. The result of comprehension and its application in practice supposedly to be the same, but apparently different. Those all aspects were returned to difference ethics and morals from each notary, even though ethics and morals and behaviors related to the implementation of the notary position should be established and be born thus evolve through education. Therefore the Government in this regard Kemenristekdikti should reevaluate both the education system and curriculum to be appropriate and rigorous, to trigger every college that implement Public Notary Study to not grant easily the number of uncontrollable graduates, and not qualified graduates, which the outcome may be detrimental to society and the State. Besides, the coordination and harmonization between Kemenristek and KemenHumHam in regulation and implementation of the tasks related to the field of notaries, has very big advantage and role, in bringing qualified notaries, that is notary who does his work in professional manner.

The test execution competence without discrimination is extremely unfair. Competency test does not discriminate notary, the good notary with unscrupulous notary, is not appropriate. Competency test required before any notary, is misdirected, because at the time of the notary officers carry out competency tests, they never feel that they are the cause of all the unscrupulous notary that must be tested. According to the authors, that it is important to be able to minimize the number of problematic unscrupulous notary besides coordination and harmonization between Kemenristekdikti and Kemenhumham as explained above, by strengthening institutional capacities in the field of notaries on the functioning and implementation of their respective duties

with respect to roles and responsibilities for building, form, birth, nurture, develop and maintain the honor, the dignity of notary position, as a glorious position. Organization of INI, the Honorary Board of Notary, the Supervisory Council of Notary, and the Notary Honorary Council, should be a strong institution, dignified, respectable and respected. Strengthening the institutions is very crucial, because through these institutions the conduct of unscrupulous notary, which does not comply with the principles of the law, morals, order, Notary Ethic Code, UUJN and other legislation shall and must be minimized even eliminated.

IV. CONCLUSION

1. Essentially, notary position is occupation attached to notaries themselves, and it is extremely difficult to differentiate notary in individual behavior and while served as notary on duty (because since the notary has been appointed and sworn in automatically every behavior will affect the implementation of office). Therefore every notary is required to behave well for themselves and when served as notary on duty who must uphold the dignity, the prestige and nobility as notary.
2. If there is unscrupulous notary, thus return the responsibility to unscrupulous notary himself, to do a competency test against him and issue resolute action and reward him a deterrent effect. The execution of competency test without discrimination against any notary shall not be executed, in order apart from unfair, improper, and misplaced regulation. Kemenristekdikti and KemenHumHam should coordinate and work together in evaluating and making arrangements as well as the execution of assignment as right and tight, especially with regard to the implementation of the education program of notary studies, the number of uncontrollable graduates and the quality of graduates are far from expectations. Henceforth Organization of INI, the Honorary Board of Notary, the Supervisory Council of Notary, and the Notary Honorary Council, shall remain to be strong, dignified, respectable and respected. Strengthening these institutions are very crucial, because through these institutions notary irresponsible conduct, must be minimized even eliminated.

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