

Legal Responsibility of Notaries Who Commit Fraud in Competing with Notaries

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Abstract

This research uses a normative juridical and sociological approach as well as explanatory research. The data sources obtained are primary data, secondary data and tertiary data. Primary data collection techniques are carried out by interviewing various respondents who understand and are involved in it. Data collection techniques involve observing the environment in the field and also in the literature. The research method uses descriptive qualitative data analysis. The research results show that: (1). Notaries who engage in unfair competition by not paying the pembayaran determined by the union violate the Notary's code of ethics and are subject to responsibility, in the form of established ethical sanctions. and regulated in the regulations of the Indonesian Notary Association. (2). Juridical implications for Notaries who commit fraud and ask for the minimum pembayaran stipulated by the Notary, can be sued for breach of contract by the Indonesian Notary Association, by issuing a warning or summons to the Notary concerned.

Keywords: Accountability, Notary Law, Unfair Competition

A. Introduction

Notary is a form of legal consultant profession, whose position is very important in law enforcement through a professional position as a public official who has the authority to make a legal product, namely a notarial deed, an authentic deed that has the power of perfect proof to help create legal stability. In the Notary community, they must prevent legal problems from occurring in the future, regarding legal acts, namely authentic deeds which are used as perfect evidence in court.

A deed will be authentic if it is made by a Notary who is perfect evidence. Because it has three strengths of proof, including the power of formal proof and the power of material proof. Current developments have also influenced and increased people's needs for the use of notaries. This is the reason that the Notary profession is becoming increasingly popular, so that the need for Notary services is very necessary and their needs are always met. The Notary profession is an honorable profession that is very attached to ethics and the Notary profession serves the interests of society, especially in the field of civil law. With ethics, Notaries eliminate mechanical robots that work without a soul in them.

Implementing the Notary Code of Ethics, which prohibits actions that give rise to fraudulent competition among the Notary profession. As regulated in Article 4 number 9 concerning Changes to the Code of Ethics for the Notary Profession. In the Extraordinary Congress of the Indonesian Notary Association in Banten, namely "Notary or other person". In assuming the professional position of Notary. It is prohibited to make efforts, either directly or indirectly, that give rise to unhealthy competition among Notaries.

Determination of the pembayaran so that it can be controlled and supervised by the Indonesian Notary Association. In the Code of Ethics, the notary profession has established an Honorary Council, which is useful for supervising the implementation of the Notary Code of Ethics. Notary profession practitioners are expected to be able to carry out their professional duties in accordance with applicable legal regulations, so that Notaries in carrying out their professional duties remain on the right track and do not deviate from the rules and code of ethics.

Based on the description above, to raise the problem above, because there has been unhealthy competition and cheating among the Notary profession, it can be interpreted as a problem where a Notary profession in the Banten City and Regency area commits an act in the form of determining an Pembayaran below the standard determined by the Notary Association. can trigger other Notaries to take similar actions, to get lots of clients, thereby going outside the legal regulations that have been regulated in the Notary Law and Position and the Notary Code of Ethics.

B. Research Methods

Legal research is a process of finding laws that regulate activities in society. Research is to examine the problems faced by the perpetrator through an accurate and perfect investigation of an existing problem, so that the right solution to the problem is obtained. According to: Soerjono, Soekanto, the research method is as follows:

- a. A type of thought result used in judgments and conclusions
- b. A common technique in knowledge
- c. A certain way obtained to carry out research procedures.

1. Data Collection Techniques

Pengumpulan data yang diperoleh dalam penelitian melalui dua tahap, antara lain sebagai berikut:

- a. Surveys at research locations to obtain primary data and information are carried out by coming directly to the place where the research is conducted, with a focus research group, by conducting in-depth interviews with respondents, with valid sources and as core sources, with standard interview instruments and guidelines , with questions that are appropriate to the research focus. Interviews are the main tool for obtaining accurate and valid data and information. The results of the interviews are analyzed, compiled, and then stored on display.
- b. Research in the literature has been carried out by obtaining information and data, through several existing literature, such as important archives, records of official daily meetings, books on legal theory regarding notaries, journals and articles relevant to notarization in the research object..

2. Data Analysis Techniques

Data that has been collected both from library research and from field research is then analyzed qualitatively and compiled using descriptive methods. The descriptive method is an analysis method by selecting data that describes the actual reality in the field, while the qualitative method is a data analysis method by selecting and grouping data obtained from the field according to its qualifications and truth.

Then it is arranged systematically and then connected to the theories obtained from the results of the literature study so that more detailed results are obtained regarding the symptoms, phenomena, or legal events that are the object of research.

C. Results and Discussion

1. Legal Responsibility of Notaries Who Commit Fraudulent Competition by Notaries

Determining payment services for Notaries at below standard rates can give rise to unhealthy competition among fellow Notaries which of course gives rise to existing problems, not only for the Notary concerned but also for other notaries. The impact will create a gap between fellow Notaries in the rates for certain services, which can lead to disharmony between colleagues in the profession who should help and respect each other. Things like this can lower the dignity of the profession as a Notary. Everyone should look after each other as notaries who carry out their profession. Do not violate the code of ethics, rules and regulations as well as the oath of office as a Notary to act honestly, and maintain the code of ethics and honor, dignity and responsibility as a Notary profession.

With the existence of regulations and conditions for minimum payments for Notary services, which means the Indonesian Notary Association, we want to create a conducive notary environment, uniform standard rates for payment of services to Notaries. Determination of standards in terms of payment for services to Notaries, which are regulated and binding. Aims to prevent the emergence of unhealthy competition between the Notary profession, namely regarding payment for services provided to Notaries. With intense competition, many Notaries ignore this code of ethics. So payment standards must be determined as follows:

- a. The legal responsibility of the Indonesian Notary Association is to be able to impose sanctions on Notaries who commit violations and provide awareness to the violating party that the actions taken are not in accordance with the code of ethics and applicable legal regulations. Must make the violators aware so that they behave in accordance with applicable legal regulations. In carrying out legal regulations and sanctions imposed on Notaries, the Notary must be aware of not violating the legal provisions that have been made.
- b. Responsibility refers to the regulations and code of ethics of notaries, and legal responsibility due to mistakes made by notary officials as a legal subject, while the term responsibility can refer to responsibility to the government.
- c. According to Hans Kelsen's theory, in the legal responsibility of notaries it can be stated that perpetrators who violate can be legally responsible for certain actions and attitudes and can be subject to sanctions against the notary, if a violation occurs.

In the provisions of Article 3 concerning Changes to the Notary Code of Ethics. In accordance with the results of the Extraordinary Congress of the Indonesian Notary Association which was held in Banten Province in May 2015, a code of ethics and regulations regarding the rights and obligations of Notaries have been regulated, which include the following:

- a. Have noble morals, an honest personality and attitude
- b. Respect and uphold the honor and dignity of the Notary professional position
- c. Maintain and uphold the honor of the Union and the integrity of the notary profession
- d. Behave politely, honestly, fairly, impartially, trustworthy, thorough and responsible, based on the code of ethics, statutory regulations and oath of office as a Notary
- e. Improve unlimited professional abilities, skills and knowledge about law and notary
- f. Prioritize excellent service towards the interests of the general public and the State
- g. Providing deed issuance services as an authority for the underprivileged and poor without charging fees
- h. Determine the domicile, office with a clear and real position, as the office of the Notary concerned, in carrying out his notarial duties
- i. Can install a nameplate in front of the office with a predetermined size, namely 100 cm x 40 cm, 150 cm x 60 cm, or 200 cm x 80 cm, which says: (1). Full name and official title of the notary concerned (2). Appointment Decree, Number, date as Notary (3). Place and position (4). Address, office telephone/fax number.

2. Juridical Implications in Competition Fraud Committed by Notary Officials

In every organization there are regulations that must be understood by its members, which are binding, things like this apply to every organization. Because it is faithful to the provisions in an organization which are regulated in regulation Number 64. And also the regulations regarding organizations listed in Book 3 Chapter ix of the Civil Code. Therefore, the Indonesian Notary Association, because all the provisions that become regulations can bind the performance of Notaries and all its members.

The Indonesian Notary Association is an association consisting of Notary officials, which was founded on July 1 1908, which was recognized as a Legal Entity based on Government Decree, September 5 1908 with Number 9, as a unifying forum for all Notaries. and every person who holds and carries out the duties of a position as a Public Official in Indonesia. Because this has been ratified and approved by the Government, in accordance with the Articles of Association and bylaws. Indonesian Notary Association, which was ratified by the Minister of Justice on 4 December 1958 with Number J.A.5/117/6 which was announced in the State Gazette on 6 March 1959 with Number 19, in the Supplement to the State Gazette with Number 6, and in amendments to its Articles of Association and the latest bylaws have been approved by the Minister of Law and Human Rights in accordance with the decision on January 12 2009, with Number AHU-03.AH.01.07. In 2009.

The Congress as the highest forum for Indonesian Notary members has agreed that there should be no unhealthy fraudulent competition between members of the Indonesian Notary Association Organization. By implementing payment services that are lower than the standard rates set by the organization mentioned above.

- a. The Notary finds out that the deed made by his partner turns out to contain errors, endangering his client, then the Notary is obliged to notify the person concerned of the error in a way that does not cause harm, to prevent undesirable things for the person concerned.
- b. Not carrying out obligations as intended in the Code of Ethics, and by using electronic media, and not limited to the internet and social media
- c. Forming an exclusive partnership for the benefit of the agency, especially preventing other Notaries from participating
- d. Using a theme that is not in accordance with the rules and regulations that have been implemented and making a deed that exceeds the limits and reasonableness determined by the Notary's Honorary Council
- e. Participate in auctions to get work and make deeds.
- f. Provisions and regulations for not carrying out fraudulent and unhealthy competition and providing payment rates below those determined by the organization, as a mutual agreement with the Notary members which is determined as a binding agreement. member of the Indonesian Notary Association..
- g. Provisions and provisions regarding unfair competition, payments below the minimum and followed up by the Regional Management. It has set minimum standards for payment for Notary services to create harmony among Notaries.

he management structure of the Indonesian Notary Association, from central level to regional level, is regulated in article 11 paragraph (2) of the articles of association of the Notary Association as its management structure consists of the following:

- a. The management of the Central Leadership Council is located in the National Capital of the Republic of Indonesia;
- b. Management of the Regional Leadership Council located in the Provincial Capital;
- c. Regional Council Management located in the City or Regency.

D. Conclusions and recommendations

1. Conclusion

Based on the findings and discussions obtained, conclusions can be drawn, including the following:

- a. Notaries who compete through unhealthy fraud with payment rates below the standards set by the organization, are a violation of the Notary's code of ethics and regulations. Notaries who commit violations can be subject to ethical sanctions as determined in the regulations of the Indonesian Notary Association, which is the parent organization of Notaries, according to the Notary Position Law. Because ethical sanctions do not provide a deterrent effect for perpetrators, and there is no threat of termination of office as a Notary who violates them, it would be better if the Law regulated administrative sanctions. In violation of the Notary's code of ethics. This is because the violation is a violation of the Notary's oath of office, which is regulated in the provisions and provisions of Article 4 paragraph (2) of the Notary's Office Law, especially those relating to violations of the Notary's code of ethics.
- b. The juridical implication for Notaries who engage in competition through fraud and unfair means is that they provide payment rates below the standard set by the Notary Association, then the Notary is the one who violates the agreement regarding the implementation of substandard payments, as a congressional mandate that must be upheld. Through the association's approval, the organization can file a lawsuit for default with the Notary Association by first giving a warning in the form of a summons to the Notary concerned, and the financing rate is below the minimum payment limit set by the Association.

2. Suggestion

Based on the results and conclusions, suggestions can be made, including the following:

- a. To Notaries to maintain their attitude and not commit fraud and unhealthy things, by providing payment service rates below standard, in accordance with the minimum payment services set by the Indonesian Notary Association. Because it can damage the harmony of the Notary. So such a Notary will be subject to sanctions from the notary's code of ethics, because his actions are against the law and violate the Notary's Code of Ethics. So civil sanctions can be given, in the form of a lawsuit for breach of contract by the Indonesian Notary Association
- b. The Management of the Indonesian Notary Association, and through the Notary's Honorary Council, can process firmly if a Notary carries out fraudulent or unhealthy business competition in the form of providing payment rates below the payment standards that have been jointly determined by the association. so that the unity of the members of the organization can be established. Maintain the honor and dignity of the profession of Notary officials. Can file a lawsuit for breach of contract against a Notary who cheats if he has been given a warning and sanction, but still repeats the act.

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