

**LAW ENFORCEMENT AGAINST THE CRIMINAL ACT OF FORGERY  
OF DOCUMENTS BY A NOTARY IN THE PERSPECTIVE OF LAW NO.  
30 OF 2004 CONCERNING THE IMPLEMENTATION OF  
ADMINISTRATIVE SANCTIONS OR THE NOTARY'S CODE OF  
ETHICS**

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**KEYWORDS**

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**ABSTRACT**

The existence of a notary as a witness or even as a suspect, if it is related to the existence of his position in the legal field which is intended to support the smooth running of a law enforcement process, including the judicial process, would not be a problem, in other words, it is only natural for a notary to act as a witness or even as a suspect in a judicial process. This type of research is Normative research. This research resulted in the findings of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notaries which regulates that when a Notary in carrying out his official duties has committed a violation that causes a deviation from the law, the Notary can be subject to sanctions in the form of sanctions. Civil, Administrative, Code of Ethics for Notary Positions. These sanctions have been regulated in such a way both previously and now in the Law on the Position of Notaries regarding the Code of Ethics for the Notary Position profession where there is no description of criminal sanctions but rather the organization of the Notary Supervisory Council which has the authority to impose punishments on notaries. Notaries in carrying out their official duties do not close the possibility of being in contact with legal issues, even though carrying out the duties has been done carefully and by statutory provisions

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## 1. Introduction

Regulations regarding the position of Notary have begun to be regulated by the *Reglement op Het Notarisin Nederlands Indie* in 2004 when Law Number 30 of 2004 concerning the Position of Notary was promulgated (Mahreza, 2021). The regulation of the position of Notary is further refined by the existence of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Amendment to UUJN), which was ratified on January 17 2014 by the House of Representatives of the Republic of Indonesia (DPR-RI). A notary is a public official who has the authority to make authentic deeds and has other authorities as referred to in Law Number 2 of 2014, Amendment to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN). Apart from that, an organizational forum was also formed for Notaries in Indonesia, namely the Indonesian Notary Association (INI), which also has its code of ethics, namely the Notary Code of Ethics, which was issued by the Indonesian Notary Association (INI), which is an association and organization of Notaries throughout Indonesia ( hereinafter referred to as the Code of Ethics). Apart from having to comply with the UUJN, notaries must also comply with the Code of Ethics(Purwaningsih, 2022).

The position of Notary is a position of trust, therefore a Notary must have good behavior which is guaranteed by law, while the law has mandated associations to establish a Code of Ethics (Yanri, 2019). Good Notary behavior is based on the Code of Ethics that regulates things that are adhered to by a Notary in carrying out inside and outside of his office self-promotion, both individually and collectively by including their name and position, using print and/or electronic media in the form of advertisements, congratulations, condolences, thanks, marketing activities, sponsorship activities in the social, religious and sport." Apart from that, Article 40 of Law Number 19 of 2016 Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions also explains that the government only facilitates the use of information technology and electronic transactions by the provisions of the law and the government is obliged to prevent the dissemination of information technology. and electronic transactions that do not comply with statutory provisions(Laksana Arum, 2010).

In carrying it out, notaries are required to be completely professional, this can be seen in carrying out their duties as notaries who do not benefit one party, apart from that notaries are different from the profession of advocates, notaries are neutral because notaries represent 2 (two) parties in carrying out legal actions. This is different from an advocate who only represents one party in a legal matter. In other words, a Notary must demonstrate his neutrality towards the parties even though he is asked for legal assistance by one party, so a Notary is a profession that in carrying out its duties must be based on the provisions of the law and the code of ethics which are its internal regulations (Priono et al., 2017). Self-regulation of the profession concerned is an embodiment of essential moral values that cannot be imposed from outside, so it only applies effectively if it is imbued with the ideals and values that live within the professional environment itself so that it is a formulation of moral norms for humans who carry out the profession and becomes a benchmark for actions of the members of professional groups and is an effort to prevent unethical behavior for its fellows. From the explanation above, it can be emphasized that a profession is said to be a profession if it contains internal regulations, namely a code of ethics(Suhardini, 2018). In this case, the Notary has a code of ethics so that in carrying out his duties the Notary remains within the corridors of applicable law. Apart from that, to be considered a Notary, a person must reach the age of 27 years, complete notarial education, do an internship pass a notary test, and wait for permission from the Minister of Law and Human Rights.

In practice, notaries often receive unfair treatment for this right of denial. If a notary is summoned to be questioned or as a witness about an agreement made by deed before the notary concerned, often certain parties, whether intentionally or because they are not aware of the existence of a statutory regulation regarding that matter, seem to assume that there is no secret to the position

of a notary, nor is there any right of recusal from a notary, besides that, in reality, there are some among the notaries themselves who do not or do not understand the use of this right of recusal and only later find out after using it in court (Hasrul et al., 2022).

The notary is obliged to keep confidential everything he knows regarding the preparation of the deed, which is requested by the parties, as well as other matters related to the preparation of the deed. The position of notary is a position of trust which itself creates an obligation to keep confidential everything that is entrusted to him by parties. This obligation ends if there is a specific and strict legal regulation that states that the notary must or is required to provide clear information regarding the particulars of the deed made before him (Nurjannah, 2018). In notarial practice, notaries are often involved and involved in civil or criminal disputes caused by mistakes of the parties who made the deed in front of them, and the dispute is reported to the police investigator or prosecutor, the police investigator or prosecutor also often immediately summons the notary based on the calling letter.

## **2. Materials and Methods**

This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively (Moleong, 2021). Concluding is carried out using a deductive method from general to specific, especially those related to the research topic, namely law enforcement against the crime of document falsification by notaries in the perspective of Law no. 30 of 2004. Qualitative data analysis is carried out if the empirical data obtained is in the form of a collection of words and not a series of numbers and cannot be arranged into categories. Data can be collected in various ways (interview observations, document instances, and recording tapes), and it is usually processed first before being used in qualitative research, including the results of interview transcripts, data reduction, analysis, data interpretation, and triangulation. (Amirudin, 2010).

## **3. Result and Discussion**

### **Review of Law Enforcement of Document Falsification by Notaries in the Perspective of Law No. 30 of 2004**

The existence of a notary as a witness or even as a suspect, if it is related to the existence of his position in the legal field which is intended to support the smooth running of a law enforcement process, including the judicial process, would not be a problem, in other words, it is only natural for a notary to act as a witness or even as a suspect in a judicial process. On the other hand, a notary in carrying out his position as a public official, apart from being related to a position regulation, is also related to the oath of office which he takes when appointed as a notary where the notary is obliged to keep the contents of the deed and information he obtains confidential as regulated in Article 4 Paragraph (2) Law Number 30 of 2004 concerning the Position of Notary which states that, I will keep the contents of deeds and information obtained in the performance of my office confidential.

Furthermore, Article 54 Paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public explains that a notary can only provide, show, or notify the contents of the deed, the grosses of the deed, a copy of the deed or Excerpt from the deed, to persons who have a direct interest in the deed, heirs, or persons who obtain rights, unless otherwise determined by statutory regulations. The exercise of the right to keep information about one's position confidential is also governed by criminal procedural law, civil law, and the Criminal Code. (Jalal, 2018). Article 170 Paragraph (1) of the Criminal Procedure Code states that those who because of their work, dignity, or status are required to keep secrets, can ask to be released from exercising their right to provide information as a witness, namely about matters entrusted to them.

In terms of supervision, the Regional Honorary Council can look for facts of violations on its initiative or after receiving written complaints from members of the association with convincing

evidence that there has been a violation of the code of ethics, after finding facts of violations of ethics code or after receiving complaints, is obliged to summon the member concerned to ascertain whether a violation has occurred and to allow him to provide an explanation and defense. It is done because the Regional Honorary Council interacts directly with Notaries and parties who know about cases of code of ethics violations for the first time (Rahmad Hendra, 2016).

Notaries who commit criminal acts can be dismissed by the Minister because the notary has been proven guilty and is subject to the threat of imprisonment, as regulated in the 2003 Ministerial Decree concerning Notaries Article 21 paragraph (2) sub b, namely that the Notary is proven guilty which is directly related to his position or other criminal offenses with a penalty of 5 (five) years in prison. In imposing civil, administrative, and even criminal sanctions, the targets, nature, and procedures are different. Administrative Sanctions and Civil Sanctions with targets namely the actions carried out by the person concerned and criminal sanctions with targets namely the perpetrator (person) who carried out the legal action. The provisions of Law Number 2 of 2014 concerning the Position of a Notary state that: "The contents of the deed may not be changed or added to, whether in the form of overwriting, inserting, crossing out, or deleting and replacing it with something else."

Article 1 point (1) of the UUJN Amendment Law states that a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. The position of Notary is a position of trust, so the nobility and dignity of the Notary's position must be maintained, both when carrying out the duties of the office and the behavior of the Notary's life as a human being which directly or indirectly affects the dignity of the Notary's position. The position of a Notary as a public official, in the sense that the authority vested in the Notary is never given to other officials, as long as this authority does not become the authority of other officials in making authentic deeds and other authorities, then that authority becomes the authority of the Notary (Radjsa, 2001).

#### **Practical Implications of Implementing Law Enforcement on Document Falsification by Notaries in the Perspective of Law No. 30 of 2004**

The rules contained in the Code of Ethics are sometimes not respected. Compliance with the Notary Code of Ethics is always due to the negative influence of being an individual in society and working relationships within professional organizations. Being internally confident that the individual Notary himself may also be due to his human nature, for example, the nature of consumerism or the values he obtains in carrying out his profession as a Notary. Meanwhile, external factors may be due to the cultural environment surrounding the Notary. The application of sanctions is very important to realize professionalism, therefore, when existing sanctions have not made a major contribution to increasing the professionalism of Notaries' work, then there should be additional sanctions imposed which of course must first be agreed upon by fellow Notaries, namely sanctions in the form of fines, because fines of course also have a direct effect when a Notary commits a violation related to the Notary Code of Ethics.

However, many people don't know for sure about the advantages of notaries, so there are still many people who do not use the services of a notary to make legal acts that must be made authentic so that problems do not arise. Even if anyone knows, there are still many who think that notaries are only for the elite, so in reality, there are still many in remote areas who don't understand and are even afraid of dealing with notaries (Purwaningsih, 2022). Some people understand that they think that a Notary is someone who only wants to know about the affairs of elite people with money because there are still some Notaries whose attitude gives a picture that is not easy to understand. Apart from that, the Notary when making a deed does not investigate the truth of the documents submitted. by the party who made the deed.

Criminal liability for a notary if it is proven that the notary has committed the crime of falsifying documents, the notary is personally responsible for his duties and authority. About criminal liability,

a notary can be subject to criminal charges in Article 263, jo 55, and Article 56 points (1) and (2) of the Criminal Code, due to his negligence in falsifying documents carried out by notary workers, with a maximum penalty of 5 years. The government should provide special training to notaries regularly so that they do not make fatal mistakes that have a negative impact that can harm both certain parties and themselves in making authentic deeds and take firm action against the actions of notaries who are suspected of violating the professional ethic codes of a notary who can be qualified as a criminal suspect.

Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notaries regulates that when a Notary in carrying out his official duties has committed a violation that causes a deviation from the law, the Notary can be subject to sanctions, namely in the form of Civil, Administrative Sanctions / Code of Ethics for the Position of Notary. These sanctions have been regulated in such a way both previously and now in the Notary Position Law regarding the Code of Ethics for the Notary Position profession where there is no description of criminal sanctions but rather the organization of the Notary Supervisory Council which has the authority to impose punishments on notaries (Jalal, 2018). Thus, it is concluded that although the Notary Public Law (UUJN) does not mention the application of criminal sanctions, legal action against violations committed by the Notary invites elements of falsification due to deliberate/negligence in making authentic letters/deeds whose contents are false. After being imposed with administrative sanctions/professional code of ethics for the position of notary and civil sanctions, they can then be withdrawn and qualified as a criminal act committed by a Notary who proves that there is evidence of deliberate involvement in committing the crime of forgery of an authentic deed.

In the scope of the Notary, we know the adage that "Everyone who comes before a Notary has said the truth. So saying the right thing is directly proportional to saying the truth." If saying the truth is not directly proportional to saying the truth, which means lying or giving false information, then this is the responsibility of the person concerned. If something like that happens, the Notary is often reported to the authorities, in this case, the Police. During the examination, the Notary was questioned with various questions, the essence of which was that the Notary was identified as the party who made the false statement. The imposition of criminal sanctions against notaries can be carried out as long as the limitations mentioned above are violated, meaning that apart from fulfilling the formulation of violations stated in the Law on Notary Positions (UU Amendment to UUJN) and the Professional Code of Ethics for Notary Positions, they must also fulfill the formulation in the Code of Law. Criminal Law (KUHP) (Syahrul, 2019).

If, after providing information regarding an incident that is requested by entering it into an authentic deed to the official who made it, because the deed has not yet been completed or information about the incident has not been added to the action, the crime has not yet been completed, but simply an attempted crime has occurred. The object of this crime is false information, meaning information that is contrary to the truth, which is information about something/event. Not all things/events apply here, only those that must be confirmed by an authentic deed. As with the object of a letter which is intended to prove something from Article 263 of the Criminal Code, the elements of something from this article have the same meaning as something from Article 266 of the Criminal Code. The thing or event that is intended is something that is the main content of the authentic deed that is made (Mukhtar, 2015).

#### **4. Conclusion**

The position of Notary is a position of trust, therefore a Notary must have good behavior which is guaranteed by law, while the law has mandated associations to establish a Code of Ethics. Good Notary behavior is based on the Code of Ethics, thus the Code of Ethics regulates the things that a Notary must comply with in carrying out his office and also outside his office.

Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notaries regulates that when a Notary in carrying out his official duties has committed a violation that causes a deviation from the law, the Notary can be subject to sanctions in the form of Civil, Administrative Sanctions / Code of Ethics Notary Position. These sanctions have been regulated in such a way both previously and now in the Notary Position Law regarding the Code of Professional Ethics for the Notary position where there is no description of criminal sanctions but rather the organization of the Notary Supervisory Council which has the authority to impose punishments on notaries.

A notary in carrying out his official duties does not rule out the possibility of coming into contact with legal issues, even though he is careful in carrying out his official duties and by statutory provisions. This is because a Notary is still an ordinary human being who is not free from mistakes. Notaries must be prepared to face if at any time they become parties involved in cases in the fields of Civil Law or Criminal Law, resulting from the legal products they create



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