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## POSITION, TENURE AND RESPONSIBILITY OF THE NOTARY IN CARRYING OUT THE POSITION OF NOTARY

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### Abstract:

Notary, as authentic deed-makers, has a vital role in people's lives. It is because society needs someone whose information is reliable and trustworthy, whose signature and seal (stamp) can provide solid guarantees and evidence, an impartial expert and an adviser who has no defects, who shuts up and makes an agreement that can protect in the days to come. The position of the notary must provide legal certainty services in the form of doing authentic deeds and making land deeds; in their duties, two main functions, namely the first notary has legal certainty responsibility to the public for any ratification of legal bindings, and the second is that the notary has the authority granted by law as a state official to provide legal reinforcement for legal bindings, which in the end gives peace and a sense of security to the community. The notary's responsibility is determined by the nature of the violation, the legal consequences it causes, and the potential mandatory risks. Therefore, Notaries, in carrying out their positions, doing authentic deeds, and others, apparently made mistakes, so what is used beeps fout is a unique term addressed to errors made by professionals with particular positions, such as Notaries whose mistakes are made carrying out the job.

**Keywords:** Notary, Position, Responsibility, Tenure.

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## INTRODUCTION

As is known, Indonesia is a state of law based on Pancasila and the 1945 Constitution, which aims to ensure certainty, order, and legal protection. This goal is in line with the philosophical foundation of the birth of notarial institutions, namely, creating authentic evidence (authentic deeds) that are intrinsic to truth and justice. The authentic deed in question is defined in Article 1868 of the Civil Code as a deed made in the form prescribed by law by or in the presence of a general officer authorized to do so at the place where the act was completed (Kalvodová & Žatecká, 2014).

This community needs the existence of a Notary because the community needs someone whose information is reliable, whose signature and seal (stamp) can provide solid guarantees and evidence, an impartial expert and an adviser who has no defects, who shuts up and makes an agreement that can protect the days to come (Kartika, 2017). If an advocate defends one's rights when a difficulty arises, then a Notary must try to prevent problems from occurring (Kie, 2007). Notaries, as authentic deed-makers, have an essential role in people's lives. Many economic sectors of the community require the participation of a Notary, even some provisions that need to be made





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with a Notarial Deed which means that if it is not made with a Notarial Deed, the transaction or activity has no legal force (Hutabarat, 2006).

Based on this, the State created a Notary Institution to implement the state providing services to the people, especially in creating authentic deeds recognized by the State. Furthermore, if it can be interpreted as a notary position, it is a public position because a notary is appointed and dismissed by the government (Sara et al., 2020). The notary performs state duties, and the deed he draws up, the minuta (original act), is a state document. In Indonesia, notaries are referred to as General Officers because they are appointed and dismissed by the general power (government) and are given the authority and obligation to serve the public on some issues and therefore, participate in exercising the control of the government (Soesanto, 1982).

The position notary must provide legal certainty services by doing authentic deeds and making land deeds in their duties. The first notary has legal certainty and responsibility to the public for any ratifying legal bindings (Saputra et al., 2019). The second is that the notary has the authority granted by law as a state official to provide legal reinforcement for legal bindings (Ekayani et al., 2020). Which ultimately provides peace and a sense of security to the community (Darusman, 2016). Liability means the obligation to provide answers which are calculations of all things that occur, and the commitment to provide recovery for losses that may be incurred (Istanto, 1994).

## METHODS

The type of research used is normative research, which studies regulations that apply to a legal problem. It is called doctrinal research because it is carried out on statutory documents and library materials (Soerjono & Abdurahman, 2003). This research uses several approaches to obtain a complete result, including a statutory approach and a concept analysis approach. Research materials are collected using literature study techniques, inventoried, identified, classified, and recorded systematically by research objectives and needs. This documentation technique finds conceptions, theories, opinions, and discoveries that correlate with the problems raised (Baro, 2016). The collected legal materials are analyzed with descriptive analysis techniques, then processed using qualitative methods, and decomposed and connected to form a legal study.

## RESULT AND DISCUSSION

**Notary Position.** The Notary's position as a "General Officer" who is appointed and dismissed by the general power (government). The definition of available power (government) in question is the President, which in its implementation, is carried out by Ministers/Institutions whose field of duties and responsibilities are in the area of law (Yousaf et al., 2016). However, placing the notary position under the executive, namely the Ministry of Law and Human Rights, in terms of appointment, dismissal, coaching, and supervision of the Notary, makes the Notary within the environment of executive power. It is considered to have degraded notary values and has no longer caused the Notary Office to be an independent position (Desmaryani, 2017).

Theoretically referring to the Triassic theory of politics, the choice of Notary position under the Supreme Court is more suitable, including those related to the appointment, dismissal, and supervision of notaries. It can neutralize the Notary Position more than if placed in an executive institution. Placing the notary position under the Supreme Court based on the trial's political theory is inappropriate because Indonesia does not adhere to the separation of powers as intended in the teachings of the Trias Politica. The Notary is not a judicial position but rather executive/governmental. In addition, empirically, the judicial institution (Supreme Court) has too many job desks, which has been one of the problems in the Supreme Court, namely the





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accumulation of cases (Cruz et al., 2020). Thus let the Supreme Court remain focused on its functions and duties as provided for in the legislation in the field of judicial power (Rahmani, 2018).

The position of a Notary should be independent by not being positioned under the executive, judicial or legislative institutions (Junita & Abdullah, 2017). However, this opinion is also considered inappropriate because the Notary, whose duties and functions serve the community as part of administering the government and cannot be separated independently related to its duties, roles, and responsibilities, represents the government in affairs in the field of its authority (Rauci & Tarquinio, 2020). Based on the description above, the position of a notary based on the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary is strategic and has authority. Therefore, a notary is a general official appointed by the government or the state (which is carried out by the ministry of law and human rights).

**Position Tenure Notary.** The term General Officer is a translation of the time Openbare Ambttenaren contained in Article 1 of Staatsblad 1860 No. 3 of the Notary Office Regulations and Article 1868 of the Civil Code and included in the September 16, 1931 Ordinance concerning notary honorariums. The identifier of the notary's qualifications as a General Officer is related to Article 15, paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary. A notary is authorized to do authentic deeds as long as the making of these deeds is not assigned or excluded from other officials or persons (Aczel et al., 2018).

When a notary as a General Officer is included in civil law, his legal consequences are within the realm of civil law, which is part of private law. If the notary's position is in the domain of civil law, then if the notary makes a mistake, the legal consequences are within the realm of civil law. Thus, the results of mistakes made by notaries are not within the realm of criminal law unless the notary's mistakes indicate an element of a criminal act. Meanwhile, if the notary is an "Administrative Officer or TUN Officer," then the legal implications of the notary are in the realm of state administrative law, which includes public law. It is not possible because in its history, from the birth of the Republic of Indonesia until now, notaries have yet to be part of public law. To answer the question of what is the position of the notary, it will be described as follows: notary to carry out some of the duties of the government serving the public, legitimized by the use of the State Emblem and in the space surrounding it is written the name, position, and place of residence of the notary, then the notary is referred to as a General Officer who is appointed and dismissed by the general power (government) and is given the authority and obligation to serve the public in some issues, and therefore, participating in carrying out government authority (R. Soesanto, 1982); the notary, as the state, authorizes a "General Officer" to declare the occurrence of a legal relationship between the parties to a deed that directly records the clauses of the agreement of the promised parties. The promises that have been stated in the act are a reflection of the sincere will of the parties (A.R. Putri, 2011); based on Article 2 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary has the meaning of a person appointed and dismissed by the government whose implementation is carried out by the Minister of Law and Human Rights through the Directorate General of General Law. Notaries are given the authority (authority) and obligation to perform services to the community within the scope of civil service in the territory of their office. Therefore, notaries should have power (R. Soegondo Notodisoerjono, 1993); a notary is a position assigned by the general authority to make written evidence with authentic power because the law requires it to be so or desired by the community (Tobing, 1992). It is one basis for mentioning notaries who have general officials' positions. This available power begins with the Minister's appointment of a notary, as affirmed in Article 2 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary. However, the notary is different from the



State Civil Apparatus as referred to in the Law of the Republic of Indonesia Number 5 of 2014 concerning the State Civil Apparatus and its implementing regulations.

A notary can be said to be a professional, considering that "a notary is a person who holds a certain profession" so that it can be called a "professional" who has a Professional Position, namely someone who gets permission from the state to perform a specific action, in this case, a notary has obtained consent with a Decree of Appointment as a Notary from the authorized Ministry (Koehn, 2000). Finally, normatively a notary is a general officer as referred to in Article 1 number 1 jo Article 15 paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary, which reads: "A notary is a general officer authorized to do authentic deeds and other powers referred to in this Act all so long as the making of such deeds is not assigned or excluded to any other officer or person established by law."

Apart from being a general official, in various references, it is said that a Notary is a specific position that carries out a profession (professional job) as a professional to provide services to the broader community. According to the Big Dictionary of Indonesian: A career is a field of work based on the education of specific skills (skills, honesty, et cetera.) (Department of Education and Culture, 1999). Professions are different from jobs in general because professions are specialized in people who have special skills and can apply these skills better than other people (Gede Wiranata, 2005). Lili Rasyidi's opinion emphasizes this: "Profession is a permanent job in the form of service (service occupation). Its implementation is carried out by applying scientific knowledge in certain fields, being lived as a vocation in life, and bound to general ethics and special ethics (Professional ethics) which comes from the spirit of devotion to fellow human beings" (Wiranata, 2005).

**Notary Responsibilities.** The position of a notary other than as a General Officer and professional who carries out a Professional Position has a liability responsibility aimed at legal liability, namely liability due to mistakes made by legal subjects (notaries). Meanwhile, the term responsibility is aimed at political accountability. It means that it can be accounted for as an obligation and includes judgments, skills, abilities, and abilities, including also the responsibility to be responsible for the laws implemented (Ridwan, 2006). Meanwhile, the position of a notary as a professional position arises when providing services to the community (Romli, 2013). It is responsible to oneself by working because of moral, intellectual, and professional integrity as part of his life. Notary as a professional position has a moral responsibility to professional organizations, namely the Indonesian Notary Association and its Code of Ethics (Rahmina & Agoes, 2014).

The responsibility of the Notary is determined by the nature of the violation, the legal consequences it causes, and the potential mandatory risks. Therefore, Notaries, in carrying out their positions, doing authentic deeds, and others, turned out to have made mistakes, so what is used beeps fout is a unique term aimed at mistakes made by professionals with particular positions, such as Notaries whose mistakes were made in carrying out a job (Sjaifuracchman, 2011). Juridically normative, the responsibility of a notary is regulated in Article 65 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary, namely: "The Notary, the Substitute Notary, and the Notary Temporary Officer are responsible for any deed he or she makes even if the notarial protocol has been submitted or transferred to the notary protocol depositor."

The responsibility of the Notary in the perspective of administrative sanctions that can be imposed on the Notary if it violates the provisions contained in Article 7 paragraph (1), Article 16, Article 17, Article 19, Article 32, Article 37, Article 54, Article 58 and Article 59 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary. Types of administrative sanctions that can be imposed against a notary include:



**Written Warning.** Notaries may be subject to a mild sanction by the Supervisory Panel in the form of a written warning. The boycott of reprimand is a warning given in writing to a Notary from the Supervisory Panel. If the written warning sanction is not implemented or fulfilled, it is followed up with a temporary dismissal sanction.

**Temporary Suspension.** Based on Article 9 paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary, the Notary is temporarily dismissed from his position because: bankruptcy proceedings or postponement of debt repayment obligations; be under guardianship; committing despicable acts; violate the obligations and prohibitions of office and the Notary's code of ethics; or is serving a period of detention. The position of the sanction of temporary dismissal from the work of a Notary or suspension is a period of waiting for the implementation of coercive government sanctions. The sanction of temporary dismissal of the Notary from his position is intended so that the Notary does not carry out his duties and work for the time being before sanctions in the form of respectful dismissal or disrespectful dismissal are imposed on the Notary. The sanction of this temporary dismissal ends as a remedy to the Notary to carry out his duties and position again or is followed up with the sanction of dismissal with respect or disrespect.

**Respectful Dismissal.** The provisions in Article 8 paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary regulate the reasons for the honorable dismissal of a Notary, namely quitting or being dismissed from his position respectfully because: deceased; has been 65 (sixty-five) years old; own requests; not being able spiritually and/or physically to carry out the duties of the Notary office continuously for more than 3 (three) years; or concurrently in office.

**Disrespectful Dismissal.** The provision of administrative sanctions in the form of disrespectful dismissal is the last stage of following up on the previous 3 (three) steps. The reason why a Notary can be dismissed disrespectfully from his position based on Article 12 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary: declared bankrupt on the basis of a court decision that has acquired permanent legal force; be under continuous guardianship for more than 3 (three) years; acts that degrade the honor and dignity of the notary's office; or commit gross violations of the obligations and prohibitions of office.

Meanwhile, the imposition of administrative sanctions based on Article 13 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary, which states that the Notary is dismissed with disrespect by the Minister because he is sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal act that is threatened with imprisonment of 5 (five) years or more.

The mechanism for imposing administrative sanctions is carried out directly by the agency authorized to impose sanctions, the Supervisory Panel. The process of imposing sanctions is carried out in a tiered manner by taking into account the severity of violations committed by the Notary to be subject to these administrative sanctions. The imposition of administrative sanctions on Notaries by the Supervisory Panel is a preventive measure to impose compliance and apply repressive sanctions to implement these sanctions.

Meanwhile, the responsibility of notaries in the perspective of civil sanctions against Notaries who violate the articles on obligations and prohibitions in the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary is: Article 16 paragraph (1) letter m, Article 41 by referring to Article 38, Article 39 and Article 40, Article 48, Article 49, Article 50 and Article 51. Before the Notary is sentenced to civil sanctions in the form of reimbursement of costs, compensation, and interest, it is first proven that the elements of the unlawful act as regulated in Article 1365 of the Civil Code, namely: the presence of losses incurred; there is a causal



or causal relationship between the onset of losses and acts that violate the norms committed by the parties; and the existence of violations (acts) or omissions is caused by errors that can be accounted for to the notary concerned.

The procedure for imposing civil sanctions is carried out by proof through the process of a civil lawsuit in the general court filed by the parties named in the deed and suffered losses as a result of the act. The plaintiff must prove the outward, formal, and material aspects violated by the Notary. If it is proven that a notary committed an unlawful act in the making of an authentic deed, it may be subject to civil sanctions by the judge. Civil sanctions are based on a court decision with permanent power whose judgment punishes a notary for paying costs, damages, and interest to the plaintiff (Fitzpatrick et al., 2008).

The types of civil sanctions that can be imposed against a notary, including reimbursement of costs, damages, and interest, are the consequences that the Notary will receive from the plaintiffs' lawsuit if the deed in question only has the power of proof as a deed under hand (Tang, 2018). Thus, claims for reimbursement of costs, damages, and interest against a Notary are not based on the judgment or position of a piece of evidence that has changed because it violates specific provisions but can only be found in the existing legal relationship or that occurs between the Notary and the confronts (Romli, 2013).

The responsibility of a notary in the perspective of criminal sanctions is not regulated in the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary. However, when committing violations of the law in carrying out their office, they can be subject to criminal penalties. For example, a notary has committed forgery of a deed that can be qualified as a criminal offense regulated in Article 263, Article 264, and Article 266 of the Criminal Code.

Notaries can be said to have committed unlawful acts in the context of criminal law while also violating the code of ethics and Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary so that the requirements for punishment become stronger. Suppose this is not accompanied by a violation of the code of ethics or even justified by the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary. In that case, this could eliminate the unlawful nature of an act for a justifying reason. The conviction of a notary is carried out with the following restrictions: there is legal action from the Notary against the aspects of birth, formal and material deeds that are deliberate, full of awareness and conversion and planned, deeds made before the Notary or by the Notary together (agreed) the interceptors to be used as a basis for committing a criminal act; there is a legal action from a notary in doing a deed before or by a notary as measured based on Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary contrary to Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary; and the Notary's actions are not by the Notary Supervisory Panel, which is authorized to assess the Notary's acts.

The imposition of criminal sanctions on notaries can be carried out to the extent that the restrictions, as described above, are violated. It means that in addition to fulfilling the formulation of violations in the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary and the code of ethics for the position of Notary, it must also meet the formulation contained in the Criminal Code. If an act of violation or unlawful act committed by a Notary meets the criminal formulation, but if it turns out that, according to the judgment of the Notary Supervisory Panel, it is not an offense. The Notary cannot be sentenced to criminal penalties. It is because the size of assessing a deed must be based on the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary and the code of ethics for the position of Notary (Fitzpatrick et al., 2008).



The procedure for imposing criminal sanctions is that the aggrieved parties can file a report/complaint with the police regarding law violations by a notary. If proven, then the Notary can be subject to criminal sanctions based on a court decision that has permanent legal force whose decision sentences the Notary to serve a particular sentence (Fitzpatrick et al., 2008; Romli, 2013). If the Notary harms the parties mentioned in the deed. One of the parties or the other party, based on preliminary evidence of the Notary, is suspected of participating in committing or assisting in committing a criminal act related to the authority of the Notary, then based on Article 15 of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary who does authentic deeds with elements of criminal acts such as: Article 55 of the Criminal Code (participating in criminal acts); Article 231 of the Criminal Code (assisting the offender in committing a crime); Article 263 of the Criminal Code (making forged letters); Article 266 of the Criminal Code (providing false information in an authentic deed); Article 372 of the Criminal Code (embezzlement); Article 378 of the Criminal Code (fraud); and/or Article 385 of the Penal Code (selling, exchanging or encumbering with credietverband/dependent rights) on land that has not been certified.

## CONCLUSION

The position of a notary based on the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary is in the executive branch (under the ministry of law and human rights); the position of a notary based on the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of a Notary as a public official and professional positions regulated in the Code of Ethics of the Notary Association; and responsibilities of a notary based on Law of the Republic of Indonesia Number 30 of 2004 concerning the Office of a Notary include the responsibilities of a notary in administrative law and civil law. Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary Public does not regulate criminal responsibility.

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