

Legal Consequences For Notaries Who Corruption Criminal Acts

Catur Wulan Muharti

Master's Degree Program in Law 17 August 1945 University Semarang, Indonesia

* Corresponding author:

Email: ulandjustin@gmail.com

Abstract.

A notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in paragraph (1) Invite-Law Number 30 of 2004 concerning the Position of a Notary (UUJN) as amended by Law Number 2 of 2014. The purpose of this study is to identify and analyze the legal consequences for a notary who commits a criminal act of corruption. In the Criminal Code, it is known that there are additional types of criminal acts, namely the additional criminal revocation of certain rights, although not all crimes committed by a Notary can be added to an additional penalty. However, it is different from the provisions in the Corruption Crime Act which stipulates that state administrators who commit criminal acts of corruption can have their rights revoked.

Keywords: Notary; Corruption and UUJN.

I. INTRODUCTION

Based on Invite-Law Number 30 of 2004 concerning Notary Positions (UUJN)¹ as amended by Law Number 2 of 2014², Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in the law or based on other laws. The intended authentic deed refers to all acts, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, as long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law. -law. The authority of a Notary is detailed in Article 15 of the Law on Notary Positions. Notaries are appointed and dismissed by the government for the public interest. The authority of the Notary is given by law for the public interest, not for the Notary's own interest, so that the Notary's obligations are position obligations (ambtsplicht).³ The role of a notary in providing legal services to the community in the study of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, is that the important or fundamental role carried out by a notary is bound by laws and regulations to carry out norms Legal norms related to, among others, duties, obligations, authorities, prohibitions, and others, so that among these roles, notaries are required to be responsible for them, especially in relation to law enforcement. The role of carrying out juridical norms in terms of duties, obligations, authorities, prohibitions, and so on is to determine the operation of the law in providing legal services to the community, so that what he does has juridical consequences in relation to the interests of law enforcement.

There are community rights that are also harmed when legal norms are not implemented properly.⁴ We can conclude from the description above that notaries are obliged to comply with juridical norms and moral norms to protect the interests of the state and also protect the rights of the people they serve. As a public official who receives a delegation of authority from the state to record and determine as well as raise awareness of the law to the public, it would be very ironic if there were notaries who violated the laws and regulations (juridical norms) and the code of ethics of the notary profession (normal morals). A notary who commits a violation, whether due to negligence or intentional elements, will certainly receive sanctions as a legal consequence for his actions. The following is an example of a case where a Notary & PPAT DS committed a criminal act of corruption until he was sentenced by the Semarang Corruption Court with Decision Number 156/Pid.Sus-TPK/2015/PN.Smg. Notary & PPAT DS found guilty of violating Article 3 in

conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Law)⁵as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption⁶Jo Article 55 paragraph (1) to 1 of the Criminal Code.From the case of Notary & PPAT DS, we can know that although the laws and regulations (das sollen) have regulated in such a way regarding the signs that must be maintained by a notary in carrying out his profession, in practice (das sein) there are still notaries. who commit crimes and abuse of authority. The gap between das sollen and das sein can be seen in the framework of thought as we present it in the following table:

Sollen watershed	SEIN WATERSHED
<p>Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption: Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of a position or position that can harm the state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).</p>	<p>Notary DS has taken the BPHTB and Final PPh tax money that the client entrusted to him. to benefit himself. Notary DS abuses the authority, opportunity or facilities available to him because of his position or position that can harm state finances or the state economy.</p>
<p>Article 55 (1) to 1 of the Criminal Code: Can be convicted as perpetrators of criminal acts: (1) those who commit, who ordered to do, and who participated in committing the act; (2) those who by giving or promising something, by abusing their power or dignity, by force, threats or misdirection, or by providing opportunities, means or information, intentionally encourage others to take action.</p>	<p>Notary DS abused his power by ordering people to falsify proof of payment of BPHTB and Final PPh taxes by promising to pay a salary of Rp. 70 million. In this case, SYT and KE have participated in committing crimes.</p>
<p>Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Customs for Acquisition of Land and Building Rights. Article 24 paragraph (1): PPAT/Notary can only sign the Deed of Transfer of Rights to Land and/or Building after the taxpayer submits the Tax Payment Proof.</p>	<p>The Notary should only receive the Tax Payment Proof from the client as a condition for the Notary to sign the Deed of Transfer of Land and/or Building Rights. However, DS Notary actually offers services to pay clients' taxes, where the tax money is used for his own interests.</p>
<p>Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings and their Amendments: Article 3 (1) private person or an entity that receives or earns income from the transfer of rights to land and/or buildings as referred to in Article 1 paragraph (1) letter a, is obliged to pay the Income Tax payable as referred to in Article 2 paragraph (1) letter a and letter b to the bank/post of perception before the deed, decision, agreement, or minutes of auction on the transfer of land and/or building rights are signed by the authorized official. (5) The authorized official only signs the deed, decision, agreement, or minutes of auction on the transfer of rights to land and/or buildings if it is proven to him by an individual. or the entity in question that the obligations as referred to in paragraph (1) have been fulfilled by submitting a photocopy of the Tax Payment Letter or the printout of other administrative facilities which is equivalent to the relevant Tax Payment Letter which has been examined by the Tax Service Office. (7) The authorized official as referred to in paragraph (5) and paragraph (6) includes Land Titles Registrar, auction officials, or other officials who are authorized in accordance with the provisions of the legislation.</p>	<p>Notary DS has committed acts beyond his authority because he has done tax matters. The person who is obliged to pay taxes is the taxpayer, namely the person who earns income from the transfer of rights to land and/or buildings, in this case the seller of land for Final Income Tax, and the buyer of land for BPHTB. Meanwhile, a notary or PPAT is only authorized to sign a deed, decision, agreement, or minutes of auction on the transfer of land and/or building rights if the taxpayer has submitted proof of tax payment.</p>

<p>Law Number 30 of 2004 concerning the Position of a Notary Article 16 paragraph (1): In carrying out his/her position, the Notary is obliged to: a. act honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions;</p>	<p>Notary DS cheats for his own benefit and does not protect the interests of clients and the interests of the state.</p>
--	---

II. METHODS

1. Approach Method

This research is a legal research that uses an Empirical Juridical approach or commonly referred to as Sociological Jurisdiction. This research is based on normative legal science (laws and regulations), but does not examine the system of norms in laws and regulations, but observes how the reactions and interactions occur when the norm system works in society.⁷ The empirical juridical approach (sociological juridical) in this thesis is used to analyze qualitatively the legal consequences for a notary who commits a criminal act of corruption.

2. Research Specification

In the preparation and writing of this proposal, one of the research specifications will be used, namely analytical descriptive. Analytical descriptive in nature because this research is intended to provide a detailed, systematic and comprehensive description of all things, both legislation and legal theories.⁸

Data source

In general, the data sources needed in a legal research are focused on primary and secondary data research⁹.

Types and sources of research data from this writing are:

a. Primary data.

b. Primary data is data obtained from the field directly through interviews or interviews, while library research is only as supporting data.¹⁰

The type of interview conducted is a guided free interview, namely an interview that is adapted to existing conditions but is guided by questions that have been prepared and it is still possible to have variations of questions that are adapted to the situation when the interview is conducted. Guided free interviews are intended to obtain answers about a broader picture of the problem under study.

c. Secondary Data.

Secondary data is data obtained through library research. Literature research aims to study, research, and trace secondary data including primary materials, namely binding legal materials, secondary materials, namely providing explanations of primary legal materials, and tertiary legal materials, namely materials that provide instructions and explanations of primary legal materials. and secondary legal materials.¹¹

Secondary legal materials are non-binding legal materials or legal materials that support primary legal materials. The data sources are the results of scientific meetings, seminar results, research results, books and scientific journals.

d. Tertiary Law Material¹²

Tertiary legal materials are legal materials that provide an explanation of primary legal materials and secondary legal materials, including:

a) Legal Dictionary;

b) Indonesian dictionary;

c) English dictionary;

d) *Encyclopedia*.

III. RESULTS AND DISCUSSION

Onyear2010 Notary and PPAT DS received work to transfer land rights from: 1) RA to HE; and from 2) HE to MKS. In the process of transferring land rights, there is an obligation to pay Customs for the Acquisition of Land and Building Rights (BPHTB) for the buyer and Final Income Tax for the seller. Both parties (seller and buyer) in each of these AJBs as taxpayers for the DS offer. HE has submitted/entrusted his tax payment money to DS as the PPAT who handles the process of transferring rights. Total tax payments submitted / deposited through DS as a Notary and PPAT DS. of Rp. 823,536,000.00 with the following description:

- 1) for Final Income Tax of Rp. 412,768,000.00 (Rp. 206,384,000.00 x 2); and
- 2) for BPHTB Rp. 410.768.000,00 (Rp. 205.384,000.00 x 2).

Both of them entrusted money for the payment of the two types of taxes above to be deposited into the state treasury. However, the deposit money for tax payments was not paid by the Notary & PPAT DS, instead it was used for his personal interests by providing proof of false tax payments. For this purpose, DS ordered SYT (a fraudulent broker and transfer of rights at the Land Office) to make an invalid tax payment validation for transfer of name (tax deposit slip from the Perception Bank and validation of SSB and SSP forms) by promising a fee for SYT of Rp. IDR 70,000,000.00. SYT then uses the services of KE (the falsifier of tax payment validation) by giving money amounting to Rp. 1,000,000.00 to KE as a reward for the service of falsifying the validation of the tax payment. The blank proof of payment of the fake BPHTB and Final PPh is then used as an attachment to fulfill the requirements in processing the transfer of rights to the land being traded. The process of transferring rights has been completed and the certificate has changed its name: a) from RA to HE; and from b) HE to MKS.

The description of the investigator's case as explained by the expert is as follows:

- a. It is true that there has been a state financial loss;
- b. There are state revenues that do not come in, covered with false evidence;
- c. The state financial loss is equal to the value of BPHTB and the value of Final PPh which is not received by the State is Rp. 823,536,000.00, namely the amount of forged evidence that should have been deposited into the state treasury.

The method in calculating state financial losses is to ensure that the state does not receive/receive the income money that should have been received. The certainty of the non-receipt of state revenue is fulfilled based on the results of the investigation by the Directorate of Criminal Investigation at the Central Java Police, namely:

- a. Land rights transfer transactions occur, which means the emergence of rights for the state;
- b. The parties who are obliged to deposit state revenue money have implemented that is to have submitted the money to be deposited into the state treasury;
- c. The state has carried out its obligations, namely the issuance of a certificate of transfer of land rights;
- d. The money that has been submitted by the parties is not included in the state treasury.

The key points of the above case are:

1. Notary & PPAT DS have committed acts against the law by collecting taxes which are not a legal obligation of DS as PPAT/Notary.

This act is contrary to the provisions of Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights in Article 24 paragraph (1): PPAT/Notary can only sign the Deed of Transfer of Land Rights and or Building after the taxpayer submits the Tax Payment Proof.

And also contrary to Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and the Binding Agreement on Sale and Purchase of Land and/or Buildings and their Amendments:

- Article 3 paragraph (1) : Individuals or entities that receive or earn income from the transfer of rights to land and/or buildings as referred to in Article 1 paragraph (1) letter a, are obliged to pay their own Income Tax payable as referred to in Article 2 paragraph (1). (1) letters a and b to the bank/post of

perception before the deed, decision, agreement, or minutes of auction on the transfer of land and/or building rights are signed by the authorized official.

- Article 3 paragraph (5): The authorized official only signs the deed, decision, agreement, or minutes of auction on the transfer of land and/or building rights if it is proven to him by the said individual or entity that the obligations as referred to in paragraph (1) have been fulfilled. by submitting a photocopy of the Tax Payment Letter or printout of other administrative facilities which are equal to the relevant Tax Payment Letter which has been examined by the Tax Service Office.

- Article 3 paragraph (7) : The authorized official as referred to in paragraph (5) and paragraph (6) includes the official making the land deed, auction official, or other official who is authorized in accordance with the provisions of the legislation.

2. Notary & PPAT DS have harmed the state finances and their actions are criminal acts.

DS consciously carried out the process of transferring rights to land and buildings as well as offering to pay BPHTB and PPh (Final) payment services for the transfer of rights. However, DS did not pay the BPHTB and PPh (Final) fees, instead using incorrect/false proof of deposit/payment of BPHTB and PPh (Final) to control the tax deposit money (BPHTB and Final PPh) amounting to Rp.823,536,000.00 which constitutes State money or is included in the definition of State finances as referred to in Article 1 number 1 of Law no. 17 of 2003 concerning State Finance.

DS together with SYT and KE have enriched themselves or others or a corporation, namely DS. DS amounting to Rp.823.536.000,00.00. Whereas as a result of the actions of DS together with SYT and KE, it has resulted in state losses amounting to Rp.823,536,000.00. DS's act is a criminal act that violates Article 3 in conjunction with Article 18 of Law of the Republic of Indonesia Number 31 of 1999 as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code which fulfills the following elements of a crime:

- a. each person's element;
- b. elements with the aim of benefiting oneself or another person or a corporation;
- c. the element of abusing the authority, opportunity or facilities available to him because of his position or position;
- d. elements can harm state finances or the state economy; and
- e. elements that do or participate in doing.

The provisions in these articles are as follows:

Law Number 31 of 1999 concerning Corruption Crimes:

Article 3

Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of a position or position that can harm the state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).

Article 18

(1) In addition to additional penalties as referred to in the Criminal Code, additional penalties are:

- a. confiscation of tangible or intangible movable property or immovable property used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from the goods that replace the goods;*
- b. payment of replacement money in the maximum amount equal to the property obtained from the criminal act of corruption;*
- c. closure of all or part of the company for a maximum period of 1 (one) year; d. revocation of all or part of certain rights or the abolition of all or part of certain benefits, which have been or may be granted by the Government to the convict.*

(2) *If the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court's decision that has obtained permanent legal force, then his assets can be confiscated by the prosecutor and auctioned off to cover the replacement money. the.*

(3) *In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then he shall be sentenced to imprisonment for a length of time not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of time. The crime has been determined in a court decision.*

Criminal Code:

Article 55

(1) *Can be convicted as perpetrators of criminal acts: (1) those who commit, who ordered to do, and who participated in committing the act; (2) those who by giving or promising something, by abusing their power or dignity, by force, threats or misdirection, or by providing opportunities, means or information, intentionally encourage others to take action.*

Against the indictment with the evidence available on DS, the Judge of the Semarang Corruption Court handed down a decision in a trial open to the public on Wednesday, February 24, 2016. The essence of the verdict, namely:

- To declare DS legally and convincingly proven guilty of committing a crime, namely violating Article 3 in conjunction with Article 18 of the Law of the Republic of Indonesia Number 31 of 1999 as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.
- Sentencing DS with imprisonment for 1 (one) year and a fine of Rp. 50,000,000.00 (fifty million rupiahs) and if the fine is not paid, it is replaced with imprisonment for 2 (two) months.

The imposition of sanctions on Notaries & PPAT DS fulfills several conditions, namely 1) fulfilling the formulation of the act prohibited by law; 2) there is a loss resulting from the act; and 3) the act must be against the law, both formal and material. Formal in the sense that it has fulfilled the formulation in the law, material has met the test with the code of ethics and the Law on Notary Positions. Whereas the "unlawfully" element contained in the provisions of Article 3 of the Corruption Crime Act, is basically a "Bestanddeel Delict" or "core offense" of a criminal act regulated in the provisions of Article 3 of the Corruption Crime Act, meaning that it is an element of offense that determines whether or not an act can be punished. Whereas in the provisions of Article 3 of the Corruption Law, it also contains the element of "abusing the authority, opportunity or facilities available to him because of his position or position" where this element is also a "Bestanddeel Delict" or "core offense" of a criminal act regulated in the provisions Article 3 of the Corruption Law, which means that it is also an element of offense that determines whether or not an act can be punished.

Law No. 31 of 1999 requires that in the event that a person commits an unlawful act that is carried out in a certain position or position as the basis for granting the authority or opportunity or means available to him (lex specialist), the perpetrator commits a specific unlawful act, namely: Apart from the criminal aspect as explained above, the actions of a Notary & PPAT DS have violated Article 16 paragraph (1) of Law Number 30 of 2004 concerning the Position of a Notary (UUJN) which reads, "In carrying out his position, a Notary is obliged to: a. act honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions," which may be subject to sanctions in the form of: a. verbal warning; b. written warning; c. temporary suspension; d. honorable dismissal; or e. dishonorable dismissal (Article 85 UUJN) according to the decision of the Central Supervisory Council.

IV. CONCLUSION AND SUGGESTION

Conclusion

Notaries as public officials who have the authority to make authentic deeds must comply with juridical norms and moral norms in carrying out their professions to protect the interests of the state and also protect the rights of the people they serve. Violation of the laws and/or code of professional ethics will result

in the notary receiving legal consequences for his actions. Notaries who commit acts against the law and/or commit criminal acts of corruption can be prosecuted before the Corruption Court. Notaries who are found guilty of committing a criminal act of corruption can be punished according to the provisions of the article that was violated as stated in the Criminal Code and/or the Corruption Crime Act.

The forms of criminal sanctions also vary, such as the death penalty, life imprisonment, imprisonment, confinement, and a fine which is the main crime, as well as punishment in the form of revocation of certain rights, confiscation of certain goods and announcement of the judge's decision in its entirety. is an additional penalty. The imposition of sanctions is the authority of the judge to decide. Meanwhile, in terms of professional code of ethics, a Notary who commits a criminal act of corruption can be given sanctions in the form of: a. verbal warning; b. written warning; c. temporary suspension; d. honorable dismissal; or e. dishonorable dismissal (Article 85 of the Law on Notary Positions) in accordance with the decision of the Central Supervisory Council.

Suggestion

a. Notaries must always comply with the laws and regulations and the code of ethics of the notary profession in carrying out their profession. Notaries must increase their faith and piety to God Almighty so that they feel afraid when they are about to commit a crime.

b. The Notary Supervisory Council to be more strict in supervising the work of a notary in its working area. By conducting regular supervision, it is expected to minimize the occurrence of unlawful acts and violations committed by a notary.

REFERENCES

- [1] State of the Republic of Indonesia, Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, State Gazette of the Republic of Indonesia of 1999 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 3874.
- [2] Republic of Indonesia, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, State Gazette of the Republic of Indonesia Number 134 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 4150.
- [3] The Republic of Indonesia, Law Number 30 of 2004 concerning the Position of Notary, State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432.
- [4] State of the Republic of Indonesia, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491.
- [5] EY Kanter, 2001, *Ethics of the Legal Profession: A Socio-Religious Approach*, Jakarta, Stora Graphica, p. 304.
- [6] Mukti Fajar ND and Yulianto Achmad, 2010. *Dualism of Normative & Empirical Legal Research*, Yogyakarta: Pustaka Pelajar, page 47
- [7] Ronny Hanitijo Soemitro, 1990. *Legal and Jurimetric Research Methods*, Jakarta: Gpagenia Indonesia, page 10
- [8] Soerjono Soekanto, 1982. *Introduction to Legal Research*, Jakarta: UI-Pres, page 52
- [9] Marsya Afiatul Aisy, *Journal of the Islamic University of Malang*, The Role of Notaries in Providing Legal Services to the Community (Review of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions), <https://core.ac.uk/download/pdf/327266018.pdf>.