

Research article

Notary Violation in Sidoarjo, Indonesia

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Abstract.

This study explores the different forms of violation of the notary profession in Sidoarjo Regency, Indonesia. The method used is sociological jurisprudence where the approach is to identify and consider law as a social fact and a functional social institution. Data were collected through direct interview with the chairperson of the Notary Regional Supervisory Council of Sidoarjo Regency, as well as by classifying the violation types into different categories. Additionally, secondary data were collected through a review of law and legal journals related to the topic. Several factors were found to cause the violation of the notary profession, however, the notary's noncompliance with the code of ethics and law while carrying out their duties was the commonest one. The authors conclude that several forms of notary violations – both the violation of the code of ethics and that of the law – exist in Sidoarjo Regency and must be rectified, such as installing a nameplate that does not comply with existing regulations and fraud and/or embezzlement of tax deposits.

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1. Introduction

Notary institutions have long been known long before Indonesia's independence, the existence of notaries in Indonesia originated from the needs of Europeans for needs in the field of trade so that notaries carry out their duties. With the development of the times, Notary institutions are increasingly recognized by the public and are needed for the purposes of making authentic evidence in legal actions carried out by interested parties. Seeing the increasing level of the economy, public awareness is also increasing regarding the importance of the notary institution in legal practice that occurs in society. This is due to the strength of the authentic deed made by the notary institution because this authentic deed is perfect evidence. [1] So that many laws and regulations make it mandatory for certain legal actions to be stated in an authentic deed. Such as establishing a company, cooperative, fiduciary guarantee, deed of sale and purchase, mortgage and so on based on the request of the parties. For this reason, notaries and their legal products can be interpreted as state efforts to provide legal certainty and

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protection for the community. [2] It can be seen in the applicable positive law, namely in Law no. 30 of 2004 concerning the Position of a Notary, which defines a notary as a public official who is authorized to make authentic deeds and other authorities, so that in his position a notary is obliged to comply with and understand all the provisions contained in the regulations governing the position of a notary, especially in terms of the professional code of ethics for the office. Notary Public. [3]

The existence of a notary professional code of ethics established by the Indonesian Notary Association (INI) as a notary professional organization that has passed a judicial review at the constitutional court. Which functions as a guide, guidance and supervision in the practice of the notary profession. So that in practice notaries must see the rules in the code of professional ethics. As contained in Article 1 number (2) of the code of ethics of the notary profession, the Indonesian Notary Association (INI), which reads:

”The notary code of ethics is a moral code determined by the Indonesian Notary Association association, hereinafter referred to as ”Association: based on the decision of the association’s congress and/or which is determined by and regulated in the laws and regulations governing this matter and which applies to and must be obeyed.” by each and all members of the association and all people who carry out their duties as a notary, including temporary notary officials, substitute notaries when carrying out their positions” [4]

With the contents of the article, it can be interpreted that the code of ethics of the notary profession acts as a moral code for the attitude of a notary in carrying out his profession, the Notary Code of Ethics of the Indonesian Notary Association (INI) which was established in Bandung, on January 28, 2005 which makes obligations, prohibitions and exceptions for a notary in the exercise of his position. If in practice the notary is proven to have violated the code of ethics, the notary can be subject to sanctions that have been set such as warnings, warnings, temporary dismissals, respectful dismissals, [5] and dishonorable dismissals. the purpose of the existence of a professional code of ethics so that notaries can be professionally motivated and oriented to intellectual skills and can argue rationally and critically uphold values and morals. So that it is important to implement a code of ethics in the notary profession, the notary honorary board is responsible for supervising the implementation of the code of ethics, the notary serving in his position. [6]

Based on research conducted by Endang Purwaningsih, with a study of the Forms of Violation of the Notary Law in the Banten Province and Law Enforcement, it can be seen that there are several violations committed by the Notary such as not reading the deed, allowing the appearers to sign the deed in front of his assistant, the notary

does not are in their working area, open an office more than stipulated, change address but do not report the transfer to the supervisor and there is a copy of the deed that is not in accordance with the minutes made. And enforcement efforts carried out by MPW are by giving punishments/sanctions as a form of repressive enforcement efforts, and as an effort to prevent MPW Banten enforcement, namely by providing good guidance, supervision, coordination and cooperation, as well as the establishment of an independent institution to conduct assessment and supervision. on the performance of the Notary. [7]

The importance of this research for the author is to find out what violations were committed by the notary profession in Sidoarjo Regency which resulted in a decrease in the value of public trust and also potential users of the services of these public officials. With evidence of violations of the notary profession, one of which occurred in Sidoarjo district, according to online news reported via m.liputan6.com there are notaries who commit fraud and embezzlement of money in the Sidoarjo area, [8] in addition there are also violations of the notary profession currently This still happens a lot, namely signing of deeds outside the work area so that with this, the author is interested in writing a thesis that focuses on the study of Forms of Violation of the Notary Profession in Sidoarjo Regency.

2. Research Methods

The type of research used in this study is based on Socio-Legal research. Socio-legal research, is research that examines the science of law by including social factors while remaining within the limits of legal writing. Socio legal is an umbrella concept, which covers all approaches to law, legal processes and legal systems and a sociological juridical approach where this approach is to identify and conceptualize law as a real and functional social institution in a real life. The author also uses the inductive method of research, namely data that is specific to the public, specific data is data obtained from interviews from the informant, while general data is data from document studies and then analyzed to answer the problem formulation. The primary data source used by the author is in the form of data from interviews and observations at the Notary Regional Supervisory Council office in Sidoarjo Regency. And secondary data sources used in this study include the following:

1. Law No. 30 of 2004 concerning the Position of Notary

2. Minister of Law and Human Rights Regulation No. 02.PR.08.10 of 2004 concerning Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures and Procedures for Examination of the Notary Supervisory Board 2015 Notary Code of Ethics
3. Minister of Law and Human Rights Regulation No. 61 of 2016 concerning Procedures for Imposing Administrative Sanctions against Notaries.
4. Minister of Law and Human Rights Regulation No. 62 of 2016 concerning Regulation of the Minister of Law and Human Rights No. 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Dismissal, and Extension of the Office of a Notary

3. Results and Discussion

3.1. Forms of Violations of the Notary Profession in Sidoarjo Regency

In a profession of course there are professional violations that are carried out intentionally or unintentionally by a certain person, as for the forms of violations of the Notary profession in Sidoarjo Regency, namely as can be seen in table 1.

From the data above, it can be seen that in 2017 the violation of the Notary profession that occurred in Sidoarjo Regency was a law violation in which the notary's trustworthiness in carrying out his duties did not adhere to ethics, morals and did not prioritize the quality of service and trust given by service users. . In addition to violations of the law, there are also several violations of the Code of Ethics where there is a deed whose signature is not carried out before the Notary but is signed by himself by sending minutes to interested parties according to their existence and also the installation of a nameplate in front of the office which size exceeds the provisions that have been stated. regulated in the Law on Notary Positions.[9]

Notary professional violations recorded at the Regional Supervisory Council office in 2018 are violations of the law and violations of the Code of Ethics which for some reason are not resolved and tax deposits and other administration are deposited by the Notary as a service. As well as the signing without having read the contents of the deed made before the parties, and not issuing a copy of the deed by a notary that has been made based on the agreement of the parties.

For violations of the Notary profession in 2019, based on report data recorded at the Regional Supervisory Council office, the most cases were deed falsification in which

TABLE 1: Forms of Violation of the Notary Profession in Sidoarjo Regency.

Violation Forms	Violation	2017	2018	2019	2020	2021
<i>Penipuan</i>	<i>Pelanggaran Hukum</i>	1				
<i>Tanda Tangan Akta tidak dihadapan Notaris</i>	<i>Pelanggaran Kode Etik</i>	1				
<i>Mengirim Minuta untuk kepada client untuk ditandatangani</i>	<i>Pelanggaran Kode Etik</i>	2				
<i>Pemalsuan Akta dan Tandatangannya</i>	<i>Pelanggaran Hukum</i>	2				3
<i>Pemasangan Papan Nama tidak sesuai Undang-Undang</i>	<i>Pelanggaran Kode Etik</i>	1				
<i>Tidak menyelesaikan proses pemecahan sertipikat, Balik Nama dan pemasangan Hak Tanggungan</i>	<i>Pelanggaran Kode Etik</i>		1			
<i>Tidak Menyelesaikan proses Balik Nama serta tidak membayarkan titipan uang pajak baik PBB dan BPHTB</i>	<i>Pelanggaran Kode Etik</i>		1			
<i>Tidak menyerahkan salinan akta kepada para pihak</i>	<i>Pelanggaran Kode Etik</i>		1			
<i>Pemalsuan dokumen dan Tandatangannya</i>	<i>Pelanggaran Hukum</i>		1			
<i>Tidak membacakan akta serta tidak mengeluarkan salinan akta</i>	<i>Pelanggaran Kode Etik</i>		1			
<i>Pemalsuan akta</i>	<i>Pelanggaran Hukum</i>			6		
<i>Penipuan atau penggelapan uang</i>	<i>Pelanggaran Hukum</i>			1	5	
<i>Salah penulisan dalam pembuatan akta</i>	<i>Pelanggaran Kode Etik</i>			2		1
<i>Tanda Tangan Akta tidak dihadiri oleh kedua belah pihak dan terbitnya akta yang berbeda</i>	<i>Pelanggaran Kode Etik</i>				1	
<i>Pemalsuan akta dan juga penggelapan uang</i>	<i>Pelanggaran Hukum</i>				1	
<i>Tidak menyerahkan Salinan</i>	<i>Pelanggaran Kode Etik</i>					1
<i>Tidak menyelesaikan proses balik nama dengan baik</i>	<i>Pelanggaran Kode Etik</i>					1
<i>Publikasi atau promosi diri di media social</i>	<i>Pelanggaran Kode Etik</i>					1

there were a lot of reports that the owner of the object being transacted had never felt transferred or became the object of the transaction, but a deed appeared stating that the rights of the object have been transferred, both in the event of a sale and purchase or as collateral for a debt at a financing institution. And there are those who don't feel like signing the deed but a copy of the deed can be issued.

Violations of the Notary profession in Sidoarjo Regency that occurred in 2020 the most reports came in with fraud or embezzlement of money where a lot of people who used the services of a Notary as a service did not carry out their duties in a trustworthy manner, namely not depositing tax money as well as depositing money which was guarantee of certificates of land rights but not as the owner but the certificate also belongs to the client who uses the services of the notary to carry out the process, either transfer of name or otherwise, it is used as collateral to obtain financing. [10]

Bentuk-Bentuk Pelanggaran Profesi Notaris di Kabupaten Sidoarjo

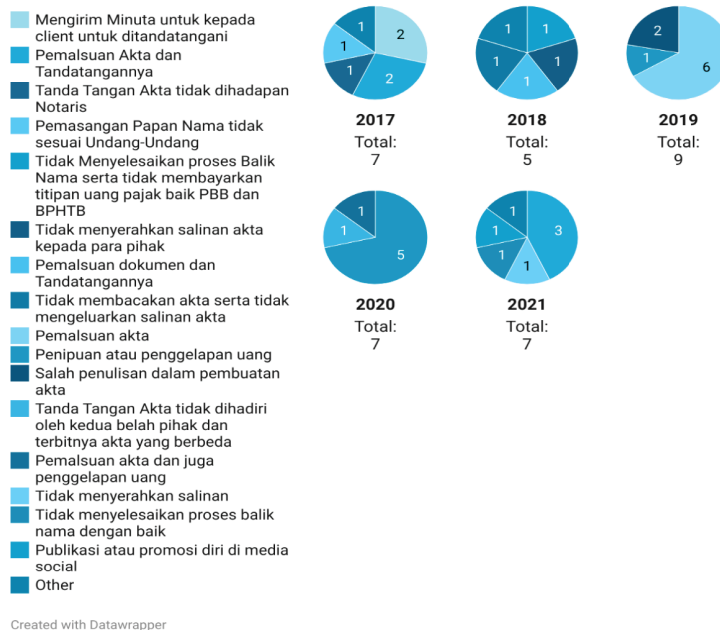


Figure 1: Forms of Violation of the Notary Profession in Sidoarjo Regency.

Based on the diagram above, it can be seen that the most violations of the Notary profession that occurred in Sidoarjo Regency were in 2019 and also the increase in violations that occurred were violations of the law. From all the data obtained based on the Report, there are many violations committed by the Notary profession in Sidoarjo Regency in carrying out their duties. However, in practice there are still many violations that are not reached by the Regional Supervisory Council because there are still violations that occur due to the absence of reports or complaints.

Reports of violations of the Notary profession in carrying out the duties of this position that have been taken action are those based on complaints and reports from the public as the aggrieved party. And based on this report, action will be taken so that it can determine the imposition of sanctions in accordance with the violations committed. If

there is a violation without a report, then it is considered that there is no need for action and does not have a detrimental impact on the related parties.

4. Conclusion

In accordance with the explanation above, it can be taken from the results of this research in Sidoarjo Regency that there were several violations of the Notary profession that occurred and this was also known by the Notary Regional Supervisory Council. Which violations of the Notary profession are:

1. The existence of a deed that is not in accordance with the Law on Notary Positions.
2. Not signing before a Notary, but instead sending minutes to where the client is.
3. The existence of publications and also self-promotion through electronic media.
4. Installation of a nameplate that exceeds the specified size.
5. Forgery of deeds, documents and signatures.
6. Not completing the work properly and in a time period that is more than a reasonable limit.
7. Not submitting a copy of the Deed to the Parties.
8. Writing errors in making the deed. There is fraud or embezzlement of money which is due to the non-payment of deposit money for tax payments and also money for processing files received by the Notary.

The sanctions imposed by the Notary Regional Supervisory Council who commit violations in Sidoarjo Regency are:

1. Reprimand
2. Warning
3. Up to schorzing or temporary dismissal for 3-6 months according to the violation that has been committed. Which can be categorized as a serious violation.

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