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Code Of Ethics For The Application Of Notary Law To Lease Agreements And Its Legal Implications For Shop Rentals

Dahris Siregar^{1✉}, Arifin Putra Seiman Daeli², Desman Fa'ahakho Dodo Waruwu³

Aperius Laia⁴, Arnak Pius Zebua⁵, Irwan Buulolo⁶

Universitas Tjut Nyak Dhien, Medan

Email: dahrissiregar1977@gmail.com^{1✉}

Abstrak

Satu-satunya pejabat umum yang memiliki otoritas untuk membuat akta asli sebagai bukti lengkap adalah notaris. Dalam melaksanakan sebagian tanggung jawab negara dibidang hukum perdata, notaris berfungsi sebagai perwakilan negara, untuk melindungi warga negara dalam bidang hukum privat, negara sudah memberikan notaris wewenang untuk membuat akta otentik. Untuk menjamin operasional yang efektif dan tidak mengganggu wewenang jabatan lainnya, setiap tanggung jawab yang diberikan kepada jabatan harus dilandasi oleh undang-undang yang berlaku dan dibatasi olehnya. Berbagai hal yang terkait dengan tugas dan kewenangan notaris dalam menjalankan profesi dan jabatannya sebagai pejabat publik diatur kode etik notaris ini. Kode etik notaris ini mencakup aturan, larangan, dan hukuman bagi notaris yang melanggarnya. Penelitian ini menggunakan yuridis normatif. Pendekatan yuridis, di mana hukum dianggap sebagai standar, disebut *das sollen*, karena penelitian ini menggunakan sumber hukum tertulis, yaitu perundang-undangan. Metode normatif yang menggunakan bahan hukum dan data sekunder (data yang dikumpulkan melalui penyelidikan dokumen) seperti putusan dan beberapa jurnal karya ilmiah) untuk menganalisis masalah bertujuan untuk mengevaluasi penggunaan kode etik notaris dalam perjanjian sewa ruko dan konsekuensi hukumnya. Menurut undang-undang dan peraturan lain, diberikan kepada notaris yang diduga melanggar kode etik notaris.

Kata Kunci : *Kode Etik, Notaris, Sanksi*

Abstract

The notary is the only member of the public with the power to create the original deed as complete evidence. In carrying out some of the responsibilities state's authority in the area of civil law, notaries function as representatives of the state. To protect citizens in the field of private law, the state has given notaries the authority to make authentic deeds. To ensure effective operations and not interfere with the authority of other positions, any responsibility given to the position must be based on applicable laws and limited by it. This notary code of ethics governs a variety of issues pertaining to the responsibilities and powers that notaries have in the course of their work as public officials. Rules are outlined in this notary code of ethics, prohibitions, and penalties for notaries who violate them. This study used normative juridical. The Juridical approach, in which law is considered as the standard, is called *das sollen*, because this study uses written legal sources, namely legislation. A normative method that uses legal materials and secondary data (data collected through document investigations such as rulings and some scientific paper journals) to analyze issues aims to evaluate the use of notary codes of ethics in shop rental agreements and their legal consequences. According to other laws and regulations, it is given to despite their suspicions, notaries who may have broken the notary code of ethics.

Keyword: *Code of Conduct, Notary Public, Sanctions*

INTRODUCTION

The government through the Law assigns and entrusts these responsibilities to notaries in certain fields and vice versa In addition, the public must believe that the notarial deed made provides legal security to its citizens, in accordance with the first paragraph of The Notary Office Number 30 of 2004 Legislation, Article 15 (Kementrian Hukum dan Ham, 2004). "Every legislation, agreement, and deed needed to comply with laws and regulations is produced by authorized notaries as authentic deeds and/or items that In order to ascertain the date the deed was created, the interested party needs to be indicated in the authentic deed, keeping it safe, and supplying grosse, copies, and quotes from the deed as it was being made. It is not handed to any other authority or person designated by the Act to do so during the deed's creation".

In addition to the authenticity of a deed, that is, its power to be proven, the legal certainty, in other words, outwardly, formally and materially, the ethics of a notary are also included in carrying out their duties (Septianingsih, Budiarta, & Dewi, 2020). Notaries perform many important social functions in addition to performing duties required by law. In other words, since they are responsible for maintaining the trust of the people they

serve, the notary public's code of ethics must be followed by notaries.

Article 4 of Law Number 30 of 2004 Concerning Notary Position, stipulates that before starting their work as a notary, notaries must swear that they will perform their work with trust, honesty, maintaining their attitude, behavior, and actions in compliance with the professional code of ethics, their duties as notaries, and with honour and dignity (Vigo, Studi Magister Kenotariatan, & Prihatini, 2021).

As an effort to help the community, notary services must develop in accordance with the progress of society (Putri, Anwary, & Haiti, 2022). Notary expertise, speed, and accuracy, not only depend on a formalistic point of view, but must be based on a professional attitude so that efforts to raise the standard of notary public services are truly beneficial to the community.

In this regard, notary positions are governed by Law Number 30 of 2004; this has produced an institution responsible for carrying out notary guidance and supervision, by creating a supervisory board that is made up of the board of regional supervisors, the supervisory board central and the supervisory board regional.

Ensure the public's interests are safeguarded and the notary profession is used as defined by the law and the public, therefore, the law legally regulating the supervision of notary work is very appropriate, because in carrying out its duties (Lidia Margaret Sinaga, Madiasa Ablizar, 2021). A notary not only performs the duties provided by the law, not only that, but also acts as a legal servant, covering a very wide field. The existence of a code of ethics strengthens public trust and guarantees the interests of the community.

Based on what was described earlier, utilising a code of ethics for notaries on the shophouse rental agreement and its legal consequences to learn how the shophouse rental agreement is implemented between the tenant and the shop owner. In addition, the application of law is discussed, responsibility and legal legitimacy in the shophouse rental agreement made by deed of agreement.

RESEARCH METHODS

A normative juridical research approach is used in this work. The principles of law and rules pertaining to notaries public and store leasing agreements are examined in this research. The study will study the duties and obligations of the notary in a shophouse leasing agreement and how it is applied in law, and the legal consequences of such approved agreements. Secondary data were employed in this investigation. Information not directly gleaned from books or other sources, research results, official documents, and reports are called secondary data. Legal resources classified as primary, secondary, or

tertiary are included in the secondary data set. The primary source of law employed is civil law and laws relating to notary work and rental shop to determine appropriate written regulations regarding the role of the notary's obligations and moral standards in drafting a retail leasing agreement, as well as the legal ramifications of the deed.

Analysis of this research data is carried out qualitatively, namely by providing readily readable and comprehensible explanations and phrase descriptions so that they can be interpreted and conclusions drawn to answer the research problem (Fadli, 2021). In the process of data analysis, a qualitative descriptive approach is used to convey research findings in the shape of explanations additionally explanations of sentences which are simple to read, easy to interact, as well draw conclusions. Conclusions are drawn by the inductive method., which is to draw conclusions based on specific things and then draw conclusions in general and from these various conclusions can be submitted recommendations, and it is presented systematically in order to provide a clear understanding and representation of the topic so that notaries can come to the conclusion that this is the problem that notaries face when they make the deed of agreement.

RESULTS AND DISCUSSION

Notaris Position in Rental Act Making

One of the very important legal professions in the legal system is a notary. Considering that a notary public is a regular person with the power to create deeds (Yustica, Ngadino, & Maharani Sukma, 2019). Therefore, notaries are one of the pillars of law enforcement in Indonesia. Notaries are required to abide by the notary position law and the notary code of ethics, while holding a position of public office. The duty of the notary and power is to create valid deeds for all deeds, according Law Number 30 of 2004 regarding The Position of Notary, Article 15, agreements as well as legally mandated clauses. In addition, notaries also provide parties that approach them throughout the deed-making process legal counsel and clarifications of applicable laws and regulations.

The Civil Code defines what a letter of agreement is in Article 1548 (Oki yunice, Andreas Andrie Djatmiko, & Ajar Dirgantoro, 2023). In it, a letter of agreement is defined as: " In a lease, one party agrees to pay a fee that is later paid by the first party to provide the other party access to the product for a certain amount of time".

The agreement letter is a crucial document, because not always the sale and purchase or lease transaction goes as decided by both parties. There is always the possibility that unwanted things will interfere with the transaction process, one of which is the risk that one of the related parties will not do what they have to do (Endro Martono, SH. & Sigit

Sapto Nugroho, S.H., 2016).

"All legally binding agreements are binding on their parties and constitute law," says Article 1338 the Civil Code. In order to comply with the legal prerequisites for drafting a lease, namely: (Guntoro, 2012)

1. Between the lessee and the renter, there is an agreement;
2. Ability to write a letter of agreement;
3. The existence of a subject matter that is used as a basis for making a letter of agreement;
4. Reasons that do not violate the law.

Notary deed, legalization, and waarmeking are some of the services rendered by notaries known to the public among their many duties as notaries (Alvanso & Prasetyo, 2023).

1. Notary Deed: It is within the power of notaries to create genuine deeds for every act, requirements and agreements that must be legally expressed in genuine deeds. According to The Civil Code's Article 1868, a law established according to the form given by the law, the definition of an original deed, is created beforehand or by a public official who has been granted permission to do so there.
2. Legalization. The UUJN (Law on Notary Positions) has paragraph (2) letter an in article 15, stipulates that notaries have the authority to verify signatures and the date on the letter by signing up in a dedicated book (legalization).
3. Waarmeking. The UUJN (The Notary Law) has paragraph (2) letter b in article 15, states that notaries have the authority to register in a book and book letters beneath their hands called waarmeking; Notaries can only register on deeds that have been signed by the parties not drawn up or signed in front of a notary.

The role of the notary in the creation of the rental agreement is as follows:

1. In the case of a legal deed of a lease agreement, the notary is responsible for issuing a genuine act;
2. When referring to a lease. The actions of the notary as a third party responsible for creating an authentic deed;
3. About the rights and responsibilities of each party to the lease, the notary assists both the lessee and the recipient of the lease;
4. In the case of a lease agreement. As a representative of the public, the notary is in charge : attaching the parties' signatures, seals, and writing the agreement in a particular book in order to authenticate it as a genuine deed.

Legal Effects Caused by Notary Error in Following Notary Code of Ethics

As a perfect, strong, and complete evidentiary tool, the notary deed can also guarantee legal certainty. In addition, the notarial deed can prevent disputes. However, in real life, doubts often arise due to the presence of a notary (Hoesin, 2019). As a result of his notary actions, even criminal cases involving notaries became suspects. It is sad if there is a notarial deed whose content is disputed and its credibility is doubtful, considered contrary to law and justice, and considered detrimental to its clients due to inadvertence or inability to carry out their responsibilities as well as contrary to the ethical standards set for the notary profession. If notaries make truthful actions that violate the legislation or are done unlawfully, they may be liable (Suhardini, Imanudin, & Sukarmi, 2018).

In the event of a violation, as a public official, depending on the kind of infraction and the legal code it violates, a notary public may be held liable. Notaries are usually responsible for criminal, administrative, and civil matters. This is the result of a violation or negligence of the notary during the process of carrying out a genuine act.

To draft a deed of lease that violates the law, the notary must fulfill several elements of unlawful acts, namely: (Nieuwenhuis, Agustina, Suharnoko, Nieuwenhuis, & Hijma, 1985)

1. The existence of deeds
2. Presence of violations
3. Error presence
4. Presence of losses

In making a lease agreement deed, the purpose of each with evidence of unlawful acts committed by a notary is as follows: (Prahardika & Kawuryan, 2018)

1. The act of notary violating the law means an act that violates or opposes the law, either in writing or orally.
2. A notary must make a mistake if he knows that his actions will harm others.
3. The lease agreement must result in losses to the other party if the notary commits illegal acts.
4. There is a casual relationship between the notary's illegal behaviour in creating a lease agreement and the other party's loss as a result to illegal actions committed by the notary when making a lease agreement deed.

Sanctions are a means of coercion, not only for not complying with regulations or agreements, but also for not complying with them. Sanctions can also be used as a tool of coercion if a person does not follow the agreement (Waluyo, 2022). At the conclusion of the Notary Position Law, or UUJN, penalties against notaries are regulated. In other words, there are two categories in UUJN Article 84 (Notary Position Law), namely: (Mubarak,

Sukirno, & Irawati, 2020)

1. According to Article 84 the UUJN (Law on Notary Positions), should the notary transgress (or does not perform) the requirements mentioned paragraph (1) of Article 16 and its letters I, K, 41, 44, 48, 49, 50, and 51. The aforementioned deed must be shown to be authentic or else it will be declared invalid, if the conditions as mentioned above are not fulfilled. In addition, the parties listed in the deed who suffered losses can sue the notary public to pay costs, damages, and interest. The notary will be liable for the parties' claims against it involving the payment of fees, damages, and interest. If the law concerned only functions either as a dishonest legislation or ends up being invalid. Sanctions stipulated within UUJN Article 84 (Law on Notary Positions) to provide compensation, costs, and interest can be considered as civil sanctions.
2. According to UUJN Law on Notary Positions, Article 85, The Notary shall breach Articles 7, 16, paragraph (1) letters a through k, 17, 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63. The sanction for the notary will resemble:
 - a. Written response
 - b. Provisional verdict
 - c. Stop politely
 - d. Inconsiderate termination

CONCLUSION

Based on the analysis that has been described, we can come to the following conclusions: If the procedure or stages are properly understood and have been agreed in compliance with Civil Code Article 1320, the contract can be executed by both parties, tenants and tenants of shophouses. The party renting the shophouse's rights and liabilities and the tenant of the shophouse can be seen in the rental agreement to rent a shophouse. If the tenant does not do what they are required to do, the tenant can sue for performance of the agreement or indemnity. They can also ask for both, namely execution and damages. As specified by Notary Positions Law Number 2 of 2014, general officials are responsible. Notaries must not do anything that will harm the facing parties. Notaries can sue the aggrieved party for making a notarial act as mentioned in the Civil Code's Article 1365 as legal protection of parties aggrieved for significant mistakes were made in the agreement's deed, the notary will be subject to civil sanctions if his actions harm others.

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