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Consequences of Breaching Notary Public Law in Notarial Practice Regarding Corruption

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Abstract

This research examines the ramifications of breaches of the Notary Position Act (UUJN) in notarial practice, specifically concerning the stipulations in the UUJN that require honesty and legal adherence in the execution of notarial responsibilities and roles. Nevertheless, there remain notaries who contravene these regulations, which may result in corrupt practices. This research aims to ascertain if breaches of the Notary Position Act (UUJN) by notaries resulting in corruption are prosecutable under the Anti-Corruption Law (UU Tipikor), and to identify the sanctions applicable to notaries who contravene the UUJN in a manner that suggests corruption. The employed methodology is normative juridical, utilising a qualitative approach and case studies. The research findings indicate that breaches of the UUJN are closely associated with the misuse of authority that facilitates or satisfies the components of corruption offences, which can be prosecuted under the Anti-Corruption Law. The enforcement of sanctions against notaries implicated in corruption is essential for preserving the integrity of the profession and public confidence in Indonesia's legal system. Consistency in law enforcement and collaboration between law enforcement agencies and notary professional organisations are essential for the proper resolution of any infringement.

Keywords: Consequences, Violations, Notary Office Law, Notarial Practice, Notary, Corruption Crime

Introduction

In the concept of normative law, a notary, as a public official, is responsible for carrying out their duties by the mandate of the UUJN and other regulations. Notaries are required to maintain integrity, professionalism, and public trust in the authentic deeds they create. However, in practice, there are quite a few violations of the UUJN committed by notaries, whether intentionally or due to negligence. These violations not only impact civil aspects but can also lead to criminal consequences, including those related to corruption offenses. When a notary involves themselves or assists in corrupt practices, their originally neutral and legal position transforms into an instrument of crime. This indicates the urgency to further examine the relationship between violations of the UUJN and their contribution to corruption crimes.

As a public official, a notary is required to act independently and impartially in providing legal services to the parties in need. However, in reality, there are still instances of abuse of authority, such as the creation of fictitious deeds, misuse of party identities, or the creation of deeds without the presence of the parties as required by the UUJN. These practices are often exploited by corrupt individuals as a means to disguise or legitimize illegal transactions. The role of the notary in this case becomes crucial because the deeds they create have legal force and are often used as justification in audit processes or court proceedings [1]. Therefore, violations of formal provisions in the UUJN can serve as an entry point for covert corrupt practices. As a result, the integrity of the notarial profession is also tarnished by the unethical behavior of a few individuals.

The UUJN is essentially designed to provide legal certainty and protection to the public in conducting transactions legally and safely. The provisions in this law detail the procedures for the creation of deeds, the formal requirements, and the moral and legal obligations of notaries in carrying out their duties. However, if these provisions are violated, the legal protection function that should be carried out by the notary is lost or even turns against the public. Moreover, when these violations are exploited to support practices of disguising assets from corruption, the role of the notary not only violates civil law but also participates in criminal acts of corruption. Therefore, violations of the UUJN cannot be viewed merely as administrative violations, but

must be understood within the broader context of criminal law. The legal implications become complex and require a multidisciplinary approach to assess them comprehensively.

This phenomenon shows that notarial practice cannot be separated from the dynamics of criminal law enforcement, especially in the context of anti-corruption efforts. Corruption, as an extraordinary crime, has an increasingly complex modus operandi and involves various professions, including notaries. In several major corruption cases, it was revealed that notaries became facilitators in transferring, hiding, or securing assets from corruption through the creation of legal documents that appeared formally legitimate [2].

Previous research by Andriani (2008) reviewed the role of notaries in corruption cases through the establishment of fictitious legal entities. Meanwhile, the study by Prasetyo (2021) examines the ethical aspects of the notary profession regarding gratuities and abuse of power. However, neither of them has thoroughly discussed the direct legal implications of violating the UUJN through the Anti-Corruption Law. This research focuses on the aspect of the implications of violating the UUJN in notarial practice concerning corruption crimes. By examining normative rules and comparing them with the implementation of the law in real cases, this research provides a more comprehensive picture. The main objective of this research is to answer whether violations of the UUJN by notaries can be prosecuted under the Anti-Corruption Law (UU Tipikor). and what form of legal sanctions should be applied to notaries who are proven to have committed violations that implicate corruption?

Research Method

This research uses a normative legal research method with a legislative and conceptual approach, relying on secondary data as the main source. The secondary data used includes primary legal materials such as the UUJN, the Corruption Crime Act, and the Criminal Code (KUHP), as well as secondary legal materials such as literature, scientific journals, court decisions, and official documents related to notarial cases with implications for corruption crimes. The data collection technique was conducted through library research by examining relevant and up-to-date legal sources. The data obtained is then analyzed qualitatively by interpreting the relevant legal norms and concepts to gain a comprehensive understanding of the relationship between violations of the UUJN and their connection to corruption offenses.

Results and Discussions

A. Violations of the UUJN can be prosecuted under the Anti-Corruption Law
B. A notary is a public official who has the authority to create authentic deeds and perform other duties mandated by the Notary Public Office Law (UUJN). This position places notaries as part of the legal system that must uphold integrity and professionalism in carrying out their duties. Violations of the UUJN provisions can have serious implications, including the potential for corruption charges if the violations are related to the abuse of authority or the misuse of office for personal or third-party gain in an unlawful manner [3].

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN) has detailed the duties, authorities, and obligations of notaries. In Article 16, paragraph (1) of the Notary Public Law (UUJN), it is emphasized that notaries must act honestly, independently, impartially, and uphold the honor and dignity of their position [4]. Violations of these provisions are not only ethical and administrative violations but can also lead to criminal law violations, including corruption offenses if certain elements are met. Law Number 31 of 1999, jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Anti-Corruption Law) provides coverage for acts that fall into the category of corruption crimes. One of the acts that can be prosecuted is the abuse of authority, opportunity, or means available to them due to their position or status [5]. This opens the door to applying the provisions of the Anti-Corruption Law to notaries if the violation of the Notary Law is done with the intent to benefit oneself or others unlawfully.

In practice, there are several cases where notaries are suspected or proven to be involved in corruption through the issuance of fake deeds, fictitious cover notes, or other actions that abuse their authority to facilitate the corrupt acts of others, such as entrepreneurs or public officials. One example is the case of Notary E, who is suspected of issuing documents used to facilitate fictitious loans from the bank [6].

The law enforcement theory by Soerjono Soekanto states that the effectiveness of law enforcement is determined by three main elements, namely the law itself, law enforcement officers, and the legal awareness of the community [7]. In the context of notaries, when law enforcement officers find that violations of the UUJN have been committed, it can serve as a form of accountability for violations that have financial implications for the state or involve gratuities. Abuse of authority by a notary in the form of creating deeds that contradict the facts or do not follow the procedures specified in the UUJN can fulfill the elements of Article 3 of the Anti-Corruption Law, which states, "any person who to benefit oneself or another person or a corporation, abuses authority, opportunity, or means due to their position or status and harms the state or the economy of the state [7]." This shows the connection between administrative/professional violations and the potential for criminal corruption violations.

The combination of violations of the Notary Public Law (UUJN) and involvement in corruption reflects a duality of offenses, both ethical/administrative law violations and criminal offenses. Judicial practices also show that law enforcement officers have used the provisions of the Anti-Corruption Law to ensnare notaries in several cases, if there is evidence that the notaries were actively involved in corruption schemes. Whether through the issuance of fictitious deeds, collaboration with private parties/public officials, or receiving gratification related to their positions [8].

From the perspective of the legal system in Indonesia, the function of a notary as an extension of the state in the creation of legal documents carries a high level of responsibility. Because deviations in carrying out that position, especially if related to embezzlement of gratuities or state losses, constitute a violation of public office integrity. In addition, therefore. Violations of the UUJN committed by notaries can and must be prosecuted under the Anti-Corruption Law if the violations meet the elements of

corruption as stipulated in the Anti-Corruption Law, particularly related to abuse of authority, state financial losses, or the giving/receiving of gratuities [9].

Although the UUJN does not specifically regulate cover notes that imply corruption, this case shows that notaries can still be prosecuted under the Anti-Corruption Law. This underscores the importance of synergy between notary regulations and criminal law to prevent and address the abuse of authority by notaries.

C. Legal sanctions will be imposed on notaries proven to have committed violations that implicate corruption crimes.

Notaries, as public officials granted state authority to create authentic deeds, have a significant responsibility in ensuring the validity and authenticity of a legal act. If a notary abuses that authority for personal or third-party interests in violation of the law, the sanctions imposed should not be limited to criminal aspects alone, but must also include administrative and ethical sanctions as a form of layered accountability [10]. UUJN places more emphasis on the ethical and administrative dimensions of the notary profession, as reflected in the Articles regarding prohibitions, obligations, and administrative sanctions. On the other hand, the Anti-Corruption Law includes substantive provisions that can be applied to any citizen, including notaries, if proven to have committed acts that meet the elements of corruption, such as gratuities, bribery, or abuse of authority that harm state finances. In the case of Notary E in Medan, who was found guilty of issuing cover notes and fictitious deeds used to facilitate loan transactions at a bank, resulting in state losses. However, in the verdict of the Corruption Court at the Medan District Court, the notary was only sentenced to 1 year and 6 months in prison without any revocation of the right to practice the profession, nor any administrative sanctions from the Notary Supervisory Council. The decision has drawn criticism because it reflects the weak application of administrative and ethical accountability towards the notary profession, even though the actions violated the principles of honesty, responsibility, and independence as stipulated in Article 16, paragraph (1) letter a of the Notary Public Law [11]. In other words, criminal sanctions are not sufficient to provide a deterrent effect and prevent the recurrence of similar actions. According to Hans Kelsen's theory of legal responsibility, every violation of legal norms must be followed by the imposition of sanctions appropriate to the type of norm violated. Because the notary violated criminal, administrative, and ethical norms, the sanctions must reflect all three areas. In this case, the revocation of the practice license is an administrative sanction imposed.

From a criminal aspect, violations by a notary can be charged under Article 3 of the Anti-Corruption Law for abusing the authority granted by their position to enrich themselves or others, causing financial losses to the state. In the case of Notary E, the creation of fictitious deeds was used as a means to disburse credit that was never actually realized, thus fulfilling the elements of unlawful acts and financial loss to the state [12]. On the other hand, the administrative and ethical aspects have not been enforced optimally based on Article 85 of the UUJN, where the Notary Supervisory Council has the authority to impose sanctions in the form of warnings, reprimands, temporary dismissals, and permanent dismissals. In the case of Notary E, no official data indicates that the Central Supervisory Council imposed ethical sanctions, even though the violations committed were classified as serious.

In the context of criminal sanctions, in addition to imprisonment and fines, prosecutors should also seek an additional penalty in the form of revocation of the right to hold the position of notary under Article 18 paragraph (1) letter d of the Corruption Eradication Law [13], sanctions are important to prevent the perpetrator from repeating the act and to protect the public from the abuse of power by public officials. The administrative sanction that should be imposed on the notary is dismissal from their position as a notary without honor.

If there are no administrative sanctions, there will be a void in supervision and enforcement of ethics in the notarial profession. This can create a bad precedent that serious violations by notaries can be "fully paid off" with only light criminal sanctions, thereby damaging public trust in the legal system and the legal profession [14]. Therefore, the ideal form of sanctions applied to notaries like Notary E should include imprisonment according to the weight of the state's losses, fines adjusted to the losses incurred, additional penalties, dismissal with dishonor, and permanent removal from the notary list by the Central Supervisory Council.

From this discussion, it is emphasized that the form of legal sanctions against notaries proven to have committed violations implicating corruption must be integrative, criminal, administrative, and ethical. Criminal sanctions alone are not sufficient if they are not accompanied by the revocation of positions and removal from the professional registry, because only through a layered sanction mechanism can the integrity of the notarial profession be restored and protected [15].

This research emphasizes that strict law enforcement against notaries who violate the UUJN and are involved in corruption is crucial to maintaining the integrity of the notary profession, preventing the recurrence of similar violations, and restoring public trust in the legal system in Indonesia. The application of sanctions commensurate with the level of harm caused and the optimal prevention goals will ensure that acts of corruption involving public officials, including notaries, receive appropriate penalties.

Conclusion

In conclusion, infractions of the Notary Office Law (UUJN) by a notary may result in corruption if there is an abuse of power that leads to financial detriment to the state. The abuse of authority factor in Article 3 of the Corruption Eradication Law is satisfied if a notary deliberately fabricates false deeds, issues or disseminates cover notes, or exceeds their designated authority. The lack of administrative and ethical penalties from the Supervisory Council indicates the inadequate implementation of the legal framework governing the notary profession in Indonesia. Legal punishments for notaries should be cumulative, encompassing criminal, administrative, and ethical dimensions, to have a deterrent impact and uphold the integrity of the role. A revision of the Notary Office Law is essential to expressly incorporate criminal provisions for notarial conduct that may result in state losses or pertain to corruption offences, therefore addressing normative gaps and ensuring legal certainty. Moreover, judges adjudicating criminal cases involving notaries must contemplate the imposition of supplementary penalties, such as the revocation of the right to hold office, and enhance the consistency of law enforcement to ensure that the sanctions

imposed effectively deter and prevent future acts of corruption.

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