



## Position of Notary as Party Manager and Its Implications Viewed in a Legal Perspective

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### **Abstract**

The purpose of this study is to examine and analyze the legal position of the notary as party manager and to study and analyze the implications in terms of legal perspective. The type of research used is Normative Law research, which is a study that primarily examines positive legal provisions, legal principles, legal principles and legal doctrine to answer the legal issues at hand.

The results of the research show that legislative members (leave notaries) can easily direct regional companies, regional government organizations (OPDs) and regional financial institutions to become partners in their successor's notary office. The dual prohibition on the position of Notary as a State official also aims to prevent conflict of interest and that the Notary remains independent and neutral, which if we analyze the implication is the internal organization of the Indonesian Notary Association (INI) if the Notary is active in party management Politics, Notaries who hold concurrent positions as active members in Political Parties can use the power of their Political Parties as an effort to launch privacy interests that benefit themselves and groups of Political Parties which clearly have political power. In its capacity as an organizer of the Regional Government, the Legislative Member can interpret the deed clause made by a substitute Notary. The legal consequences of the deed made by a Notary who concurrently serves as a state official, namely the deed made will lose its authenticity, and the deed only has the power as a deed made under the hand when signed by the parties concerned.

**Keywords:** Notary; Party Manager; Legal Perspective

### **Introduction**

The State of the Republic of Indonesia is a Law State<sup>1</sup> based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law guarantees certainty, order and protection of the law for every citizen whose core is truth and justice. To ensure certainty, order and protection of the law requires the existence of authentic written evidence of acts, agreements, legal

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<sup>1</sup> Article 1 Paragraph 2 of the 1945 Constitution of the Republic of Indonesia

provisions and events and clearly determine how the rights and obligations of a person subject to law in society.

Apart from being a rule of law, Indonesia also has a Democratic State, this is related to the recognition of people's sovereignty as stated in Article 1 paragraph 2 of the 1945 Constitution which states:

“Sovereignty is in the hands of the people and carried out according to the Constitution”

As a Democratic State, carrying out a Democratic party called the Legislative Election to elect People's Representatives who sit in the institution of the House of Representatives, namely (MPR, DPR, DPD, Provincial DPRD / Regency DPRD / city) it is done every five (5) once a year. Elections are an important instrument in a Democratic State that adheres to a system of representation.<sup>2</sup>

Those chosen are considered as people or groups who have the ability or obligation to speak and act on behalf of a larger group through Political Parties. In principle, those who will advance to represent a political party must have an interest in themselves and their groups. So, Elections are a way to elect people's representatives who will sit in a Parliamentary Institution.

One group that is interested in sitting as a Board Member in the parliament is the Notary profession. besides fighting for the interests of the Party, the Notaries who sit on Parliament also have an interest in the profession.

In Indonesia, Notaries act as public servants. This is because Notaries are officials appointed by the government to serve the needs of the community for legal documents. Despite the status of a Notary as a public servant, do not think that the Notary uses simple clothes. On the contrary, Notaries wear formal and exclusive clothing to show their professionalism and seriousness.

Regarding the General Election mentioned above by the author. Often elections to elect people's representatives in the DPR, Provincial DPRD Regency/City DPRD and government leaders, termed the Party of Democracy by the people as it means, namely people's parties, then everyone has an interest and has the right to celebrate the “party”. However, because this is related to the State system, rights and obligations arise.<sup>3</sup>

All elements of society certainly have the same obligations and rights, in the eyes of State Law. In principle, those who will represent certain elements of society, must be bound by the provisions of the applicable laws in Indonesia, for example, a Notary, as a citizen, of course he has the same rights and obligations, but as a Notary position he is bound by the provisions of legislation, namely Law Number 30 of 2004 concerning changes to Law Number 2 of 2014 concerning Notary Position (UUJN).

The notary in exercising his right to be able to sit on behalf of the community as a Board Member, is also regulated in Law Number 7 of 2017 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council (hereinafter abbreviated as Election Law) paragraph (1) letter l, said, they must make a statement willing to not practice as a Notary and Acting Land Acting Officer (hereinafter abbreviated as PPAT). Also mentioned, do not provide goods and services related to State Finance and other work that can create a conflict of interest with duties, authority and rights as members of the DPR, Provincial DPRD and Regency / City DPRD.

In addition to the Election Law, as a Notary, of course they are also bound by statutory provisions that regulate the position of Notary Law Number 30 of 2004 concerning changes to Law Number 2 of 2014 concerning Notary Position (UUJN).

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<sup>2</sup> Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, (Jakarta: Pusat Studi Hukum Tata Negara Fak. Hukum UI, 1983), p. 328.

<sup>3</sup> RENVOI. edisi tujuh puluh dua. *Jurnal Renvoi Mediatama*. 2009. p. 20

Article 17 letter d states that “Notaries are prohibited from concurrently acting as State Officials”. In the provisions of the Notary Position Law (UUJN), if a Notary elected as a Board Member is required to take leave.<sup>4</sup>

This is what will become a guideline and handle for everyone who works as a Notary, where in carrying out their duties and obligations they must not conflict with what has been regulated in such a way. not only regulating how the Notary should carry out his office duties, but also regulating the behavior of the Notary regarding, how the Notary should behave and act, not only against the viewers or clients or parties who use his services, but also how to behave towards fellow professional colleagues, or other Notaries and society in general.

The Notary Code of Ethics as a supporter of Law Number 30 of 2004 concerning changes to Law Number 2 of 2014 concerning Notary Position (UUJN), is also a guideline for Notaries in carrying out their positions. The Notary Code of Ethics formulated by the Indonesian Notary Association (I.N.I) is a rule made to regulate the behavior of each Notary and must also be obeyed by every Notary both inside and outside his position. The Notary Code of Ethics generally contains notions related to the Notary Code of Ethics, the scope of the Notary Code of Ethics, the mandate and prohibition of Notaries, as well as exceptions, sanctions, procedures for enforcing the Notary Code of Ethics, temporary dismissal, obligations of I.N.I management and so on. The Code of Ethics has established an Honorary Council to oversee the implementation of the Notary Code of Ethics.

Supervision conducted by the Notary Supervisory Board based on Law Number 30 of 2004 concerning changes to Law Number 2 of 2014 concerning Notary Position (UUJN), can be said to be preventive and repressive, because it already has clear rules, which also aim to maintain so that the Notary in carrying out his profession, does not ignore the dignity of his dignity or job duties, does not violate the applicable regulations, does not violate the oath of office, and does not violate the Professional Code of Ethics. Supervision activities are not only preventive, but also repressive, by providing repression for violations committed by the Notary. Although the work of a Notary is supervised by the Notary Supervisory Board, in essence the work of a Notary is a work that is independent, individual work, without boss, trust work and requires strong moral because there are very few kinds of legislation, in its implementation it is very vulnerable to various violations one of which is concurrent position.

## ***Research methods***

### ***1. Types of research***

The type of research used is Normative Law research, which is a study that primarily examines positive legal provisions, legal principles, legal principles and legal doctrine to answer the legal issues at hand.

### ***2. Research Approach***

In this study, the author uses the statutory approach and the conceptual approach. The statute approach is carried out by looking at the applicable aspects of legislation. While the conceptual approach is carried out by looking at the theoretical aspects of the experts.

### ***3. Source of Legal Material***

To support the problem approach and the type of research above, the sources of legal material are chosen to be used, namely:

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<sup>4</sup> *Ibid*, p. 21

#### *a. Primary Law Material*

Primary legal material, this legal material is obtained through library research or research. Library research or literature is needed to explore legal theories and is done by examining laws, literary books or the writings of legal experts and legal documents as well as studying legislation relating to the existence of customary judicial institutions in the system National Courts include:

1. Law Number 2 Year 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.
2. Law Number 7 of 2017 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regency / City Regional Representative Council (hereinafter abbreviated as Election Law).
3. Law Number 02 of 2008 concerning Political Parties.
4. Law Number 5 Year 2014 concerning State Civil Apparatus (hereinafter abbreviated as ASN Law)
5. Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the House of Representatives, the Regional People's Representative Council, and the Regional People's Representative Council (MD3).

#### *b. Secondary Legal Material*

Namely material that provides an explanation of primary legal materials, such as the draft law, the results of research, or the opinion of legal experts.<sup>5</sup>

#### *c. Tertiary legal material*

That is a legal material that provides instructions and explanations for primary legal materials and secondary legal materials such as dictionaries (law), encyclopedia.

### **4. Legal Material Collection Techniques**

Primary legal materials are books, tertiary regulations, and literature books, tertiary legal materials are collected by collecting various dictionaries, encyclopedias, and internet access networks to obtain clues about problems that are not understood.

### **5. Analysis Technique**

Legal materials were analyzed systematically and sequentially on unclear provisions (vague norms) contained in legal issues raised in this study. Then it will be analyzed using descriptive analysis method, which is an analysis that provides descriptions (descriptions) with words for the findings, and therefore he emphasizes quality / quality so that answers to the problems are the focus of the discussion of this thesis. so that it can facilitate the author to draw conclusions.

## **Result and Discussion**

### **1. What is the Notary's Legal Position as Party Management**

Notaries as public officials have a central role in upholding the law in Indonesia, because in addition to the quantity of Notaries that are so large, Notaries are known to belong to the elite in

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<sup>5</sup> Mukti Fajar ND dan Yulianto Ahmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2013, p. 157-158

Indonesia. A person who serves as a Notary is strictly forbidden to side with one party, in other words a Notary is required in a neutral position and seeks the best solution for his client.

The position of Notary is an institution created by the State. An institution created or created by the State, whether its authority or material content is not based on legislation, delegation or mandate. Rather, it is based on the authority arising from *ermessen freis* which is attached to the State administration to realize a goal justified by law (*Beleidsregel*).<sup>6</sup> General officials are positions held or given to those who are authorized by the rule of law in making authentic certificates, and Notaries as public officials are given the authority to make authentic certificates. Therefore the Notary is certainly a public official, but public officials are not necessarily Notaries, because public officials can also be carried by land deed-making officials (PPAT) or auction officials.

The development of the world of notary institutions in Indonesia is growing very rapidly, where a Notary is not only or just records, legalizes and makes deeds for those who need it. A notary who is currently regulated in the UUJN since 2004, has interests from the continuation of his position as a public official. To make a Notary nominate himself to become a Party Executive and Member of the Council (legislative) to fight for the interests of his position as a public official.

The debate is quite long about duplicate positions as the writer mentioned above is about the dual position of the Notary who becomes the Party Management and State Officials. In general there is no debate regarding the prohibition of multiple Notary positions as Party Managers and State Officials when viewed from UUJN only, which based on UUJN in Article 17 letter d juncto Article 11 paragraph (1) concerning the prohibition of Notaries who hold concurrent positions as State officials and if the Notary elected to be a State official, the Notary must take time off while serving as the state official.

The issue of debate arises after the Election Law Number 7 of 2017, which in Article 240 paragraph (1) letter l, says that:

Willing to not practice as a public accountant, advocate, notary, official deed of land deed, or not “undertaking the work of providing goods and services related to state finances and other work which may create a conflict of interest with duties, authority and rights as members of the DPR, Provincial DPRD, and district / city DPRD in accordance with the provisions of legislation;

Likewise, the Number Law. 17 years 2104 MD3 in article 236 letter a, b concerning prohibition on concurrent positions:

Members of Parliament are prohibited from concurrently holding positions as:

- a. Other state officials;
- b. Judge at the judicial body; or civil servants, members of the Indonesian Armed Forces / Republic of Indonesia National Police, employees of state-owned enterprises, regionally owned enterprises, or other entities whose budgets are sourced from the APBN / APBD. Members of Parliament are prohibited from doing work as structural officials in private educational institutions public accountants, consultants, advocates or lawyers, notaries, and other work that has to do with the authority and duties of the DPR and the rights as members of the DPR.

Regarding the prohibition against Notaries, more precisely regarding the dual prohibition of positions referred to by the author is a Notary prohibited from concurrently serving as a state official. As contained in Article 17 letter d UUJN. If the Notary is elected to be a state official, then the Notary is required to submit leave (Article 11 paragraph (1) UUJN) to MPP in accordance with Article 27 paragraph (2) letter c UUJN. That is regarding the Notary leave application for a period of more than 1 (one) year. Since the term of office of a state official is 5 (five) years.

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<sup>6</sup> Bagir Manan, *Hukum Positif Indonesia*, (Yogyakarta: UII Press, 2004), p. 15

In the rule of law, determining those who become leaders or high members of the State / highest state as mentioned above are qualified as State Officials. This definition refers to the person (subject) of the Law who is the leader or member of the highest / highest State. Position as a State official can not only be filled or shared by those who have a career in government (as civil servants), this position can also be filled by those who struggle through the means of Political Parties or also those who do not start careers as Civil Servants or through Political Parties , but through other means, for example in the appointment of Supreme Judges conducted by the Judicial Commission (KY), besides accepting candidates from career judges, also accepting those who are not from career judges. Such a position can be called a Political Position. Referred to as Political Position not only from how to achieve it, but as a strategic position in making policies or decisions in the life of the nation and state. State officials referred to in the writings here are members of Parliament, the author does not mention State Officials referred to by more terms general, such as Board Members or legislative members because the legislative body is an institution that makes regulations both at the regional and central level. Examples of DPRD (Regional People's Representative Council) institutions, DPRD institutions are not included in State officials because in addition they are not included in Article 11 paragraph (1) of the Civil Service Act, concerning institutions including State officials. DPRD According to Law Number 22 of 2003 concerning the MPR, DPR, DPD and DPRD Subdistricts, in carrying out their duties and authorities, the City DPRD has the right to request City level officials, local government officials, legal entities, or citizens to provide information. The DPRD includes the legislature, but the DPRD is not a state official. Then the Notary who concurrently serves as the state official referred to in this paper is the DPR.

In Indonesia, there is one source of all existing regulations, also known as Ground norm. The source of the regulation is used as a reference to the legislation below. The source of the regulation meant after Pancasila, namely the 1945 Constitution.

The 1945 Constitution is flexible, why the underlying ones are not flexible. In other words, the law used in addressing multiple positions does not have to be made a long and complicated problem, as long as it does not deviate from the 1945 Constitution itself becomes dilemma, when having opinions according to conscience and reality on the ground is contrary to the system or regulation apply

Regarding the Notary must stop from his position if elected as a DPR also revealed by Notary Habib Adji whose position is working in the city of Surabaya. Habib Adji said that the legal rules governing the position of the Notary who were members of the DPR were substantially different. Based on Article 11 paragraph (1) and (2) UUJN, Notaries must appoint a substitute notary who will accept the protocol, and after no longer holding office as a state official, the Notary may resume his position as a Notary (Article 11 paragraph (3) juncto (6) UUJN), while according to the Election Law Number 7 of 2017, where in Article 240 paragraph (1) letter 1, the notary is prohibited from practicing or is prohibited from carrying out his position as a Notary.

If according to Article 11 paragraph (1) and (2) UUJN, Notaries must appoint a substitute notary who will accept the protocol, and after no longer holding office as a state official, the notary may resume his position as a Notary (Article 11 paragraph (3) jo (6) UUJN) it can be categorized that the notary concerned is still practicing, even though his position and name are used by a substitute notary, meaning that the signboard as a notary remains (installed) or not revealed.

Based on Election Law Number 7 of 2017, where in Article 240 paragraph (1) letter 1, a Notary is prohibited from practicing or is prohibited from carrying out his duty as a notary at all, meaning that the Notary who is a legislative member using substitute Notary is still categorized as practicing or carrying out duties his position, is prohibited from practicing, in other words the concerned Notary must no longer leave, but must resign or stop remaining as a Notary and submit the protocol to another notary and lower his signboard and close his office. Because of his resignation, then with legal consequences, if after carrying out his duties as a member of the legislature, he will practice again as a Notary, then he will be categorized as a new Notary who must take appointment procedures as a new Notary, for example others do not need any privilege to him or special treatment to those concerned. Normatively the two rules as described above are not in line, namely according to Article 11 paragraph (1) and (2) in conjunction with paragraphs (3) and (6) of UUJN) sufficient leave, and after completion of leave to take back the Decree (SK ) to take up office duties as a Notary, while according to the Election Law Number 7 of 2017, where

in Article 240 paragraph (1) letter 1, a Notary is prohibited from practicing. By using the Legal Preference Principle, in this case Article 240 letter 1 paragraph (1) letter 1 of the Election Law must be placed as a special legal rule (*lex specialist*), which specifically regulates the requirements as a legislative member, then the Notary chosen as legislative members must stop permanently or resign as Notary.

Winanto Wiryomartani, deputy chairman of the Central Supervisory Board also said the same thing with the Notaries above. That the Notary who nominates himself to become a member of the legislature must stop. In the UUJN the matter of concurrent position is regulated. If the Notary concludes another position, this is regulated in the mechanism regarding leave. It was said that leave was given by three institutions. If the leave is up to 6 (six) months, that will be the authority of the MPD. For a period of 6 months to 1 year, MPW's authority, and over one year, becomes the authority of the MPPN.

Every problem always has pros and cons. Regarding the issue of concurrent position by the Notary, it is different in Lumassia's opinion. A Notary whose position of work in Central Jakarta has a different perspective from those of the notary above. According to him, the real polemic is only about the meaning of the word "not to practice", which is interpreted as a stop or leave.

Based on the general principle, for example Article 1 paragraph (2) of the Civil Code, if there are two regulations, one of which is favorable, that is chosen. The purpose is to benefit the notary in question. If there is a member of the Notary who becomes a Board Member, it is certainly very good. Because the Board Member must weigh. In terms of education, the Notary has supported. Bambang Poernomo agreed, the important thing is that later it can be returned automatically or processed again as a Notary. So, it is not permanently dismissed. If after becoming a member of the Board, you will continue to run away, right? That is not a good law, he said.

After reviewing and paying attention to the opinions of experts, the author argues for the above problems. That a Notary who is elected as a member of the DPR does not have to stop based on the Election Law. Because the position of Notary is a position appointed by the government based on UUJN. So, a Notary in carrying out his position is subject to the UUJN. The question of multiple positions is also very clearly stipulated in the UUJN, namely Article 17 letter d in conjunction with Article 11 paragraph (1), (2), and (3). Regarding the prohibition of the Notary to concurrently hold a position as a state official and is obliged to appoint a substitute Notary who will accept the protocol, after no longer holding office as a state official, the Notary may resume his position as a Notary. This is to maintain the continuity of the position of the notary. So UUJN is a *lex specialist*, while *lex generali* Election Law.

Of the four Notaries who commented in personal opinion above, only one disagreed about the continuity of fellow notary colleagues who were elected to the DPR. In fact, currently the Notary sitting in Senayan submitted to the UUJN, meaning only filing leave. The actions taken by the Notary do not violate the law, nor is it very possible for a notary to risk his position which has been obtained because he is not a permanent member of the DPR.

The task of the Notary as a public official is to serve the community concerned. As a servant, it is certainly very noble a task borne by a Notary. By referring to the UUJN, which in fact is a regulation that regulates his position, according to the author, it is not against the law if it overrides the election law concerning concurrent positions. And also it is not possible for the aggrieved party if the notary who is a member of the House applies for leave, in other words it does not stop.

The author also intends to offend the legislature, both those in Senayan and in the Region. In connection with the theory put forward by Prof. Satjipto Rahardjo regarding the rule of law which makes the people happy, so it is fitting for the legislature as a state organ whose function is to make legislations happy for the people. In other words, in order not to make regulations that can create new problems, such as the problem of concurrent positions with the notary public regulated in the UUJN and Election Law, it is contrary to the contents.

## 2. *Implications of Notary Position Law as Party Managers Viewed from a Legal Perspective*

### a. *Legal Implications of Notary Neutrality as Administrators of Political Parties*

Notaries who are members of the House of Representatives cannot refuse to be examined either by the supervisory board or by investigators in relation to the deeds that they make causing legal consequences on the grounds that they have immunity or the right to immunity. The definition of the right of immunity which is owned by the DPR itself in the Indonesian language is also called immunity rights, the existence of which is constitutionally regulated in Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that in addition to the rights stipulated in article- In another article of this Constitution, the DPR has the right to ask questions, convey proposals and opinions, and the right to immunity.

That the Election Law Number 7 of 2017, in which Article 240 paragraph (1) letter 1, is prohibited from practicing. By using the Legal Preference Principle, in this case Article 240 letter paragraph (1) letter 1 of the Election Law must be placed as a special legal rule (*lex specialist*), which specifically regulates the requirements as a legislative member, then the notary elected as a Member The legislature is obliged to stop permanently or resign as a Notary. If it turns out that there is a Notary selected as a member of the legislature, he does not resign as a Notary, but instead appoints a substitute Notary, then the Notary's action is categorized as an act or deed that has no authority, so the deeds made by or before him are not has the power of being legally binding and not as an authentic deed.

The dual prohibition on the position of Notary as a state official also aims to prevent conflict of interest and that the Notary remains independent and neutral, which if we analyze the implication is the internal organization of the Indonesian Notary Association (INI) if the Notary is active in the management of Political Parties , Notaries who hold concurrent positions as active members in Political Parties can use the power of their Political Parties as an effort to launch privacy interests that benefit themselves and groups of political parties that clearly have political power, which is why the neutrality of Notary Position, rules the legal regulations that limit these matters have not been found, meaning that there is a vacuum of norms governing the position of notaries who are active members in political parties.

### b. *Legal Implications of Deeds Made by Notaries with Multiple Positions as administrators of Political Parties*

In Article 84 of the UUJN it is determined that there are 2 (two) types of civil sanctions, if the Notary conducts violations of certain articles and also sanctions of the same type spread in other articles, namely:

- 1) Notary deed that has the power of proof as a deed under the hand.
- 2) Notary deeds become null and void by law.

As a result of such a Notary deed, then this can be a reason for those who suffer losses to demand reimbursement, compensation, and interest to the Notary. Notary deeds that have the power of proof as a deed under the hand and notary deed become null and void by law are two different terms. Article 84 of the UUJN does not specify (divide) the provisions (articles) categorized as such.

Article 84 of the UUJN confuses or does not limit the two sanctions, and to determine them to be alternative with words or on sentences “... resulting in a deed having only the power of proof as an underhanded deed or a deed being null and void ... .. “ Because the two terms have different legal meanings and consequences, it is necessary to determine which provisions (articles) are categorized as violations of the Notary deed sanction having the power of proof as an underhanded deed or deed null and void. Then it also needs to be stressed, whether the sanctions against the Notary both of these things as a



direct result of the Notary deed have the power of proof as an underhanded deed or the deed becomes null and void.<sup>7</sup>

To determine the Notary deed that has the power of proof as a deed under the hand can be seen and determined from:

- 1) The contents (in) certain articles which confirm directly if Notarism violates, then the deed concerned includes a deed that has the evidentiary power as a deed under the hand.
- 2) If it is not explicitly stated in the relevant article as a deed that has the power of proof as an underhanded deed, then the other articles are categorized as violating according to Article 84 UUJN. included in the deed null and void.<sup>8</sup>

Thus, it can be concluded that the Notary deed that has the power of proof as an underhanded deed, if stated explicitly in the relevant article, and which is not explicitly mentioned in the relevant article including as a deed becomes null and void.

Article 1869 BW determines the limit of a notary deed that has the power of proof as a deed under the hand can occur if it does not meet the provisions because:

- 1) No authority of the relevant public official, or
- 2) The incapability of public officials concerned, or
- 3) Deformity in its form. Nevertheless, such a deed still has the power of proof as a deed under the hand if the deed is signed by the parties.

An agreement that does not meet the objective requirements, namely the object is not certain and the cause is prohibited, then the agreement is null and void. Regarding the agreement must have a certain object confirmed in Article 1333 BW, namely an agreement must have as the subject of an item that is at least determined by the type which in the future the amount (item) can be determined or calculated.

Article 1335 BW affirms that an agreement without cause or has been made for something that is false or forbidden, then the agreement does not have power, this proves that each agreement must have halal causes, but according to Article 1336 BW, if it is not stated something causes, but there is something that is lawful or if there is something other than what is stated in the agreement but it is legal.

A reason is prohibited, if prohibited by law, or if it is contrary to morality or public order (Article 1337 BW). Thus, an agreement is null and void, if: It does not have a certain object that can be determined; and has a cause that is prohibited by law or contrary to morality or public order.

The provisions if violated the Notary deed has the power of proof as a subordinate deed explicitly stated in certain articles in the relevant UUJN as mentioned above, it can be interpreted that the provisions not explicitly stated in the Notary deed have the power of proof as under the deed of hand, then other than that included in the deed of a Notary that is null and void by law, namely:

- a) Violating the obligations as referred to in Article 16 paragraph (1) letter i, namely not making a list of wills and sending them to the List of Testament Centers within 5 (five) days on the first week of each month (including notifying when there is nil).

<sup>7</sup> Habib Adjie, *Sekilas Dunia Notaris&PPAT Indonesia (Kumpulan Tulisan)*, Mandar maju, Bandung, 2009 (selanjutnya disingkat Habib Adjie I), p. 100.

<sup>8</sup> *Ibid.*

- b) Violates the obligation as referred to in Article 15 paragraph (1) letter k, which does not have a stamp / stamp containing the symbol of the State of the Republic of Indonesia and in the space surrounding it is written the name, position and place of domicile.
- c) Violating the provisions of Article 44, namely at the end of the deed not stated or expressly stated regarding the mention of the deed read for deeds not made in Indonesian or other languages used in the deed, using official translation, explanation of signing of deed before the viewer, Notary and translator official.
- d) Violating the provisions of Article 48, namely not giving initials or giving no other sign of ratification by the viewer, witnesses and notaries, for changes or additions in the form of overlapping, insertion, deletion, or deletion and replacing them with others by adding, replacing or deleting.
- e) Violating the provisions of Article 49, namely not mentioning the amendment to the deed made not on the left side of the deed, but for changes made at the end of the deed before, closing the deed, by designating the changed part or by inserting an additional sheet. Changes made without pointing to the changed part result in the change being canceled.
- f) Violating the provisions of Article 50, namely not doing write-offs, initializing and for changes in the form of deletion of words, letters, or numbers, this is done so that it can still be read in accordance with what was originally stated, and the number of words, letters or numbers crossed stated on the side of the deed, also not stated at the end of the deed regarding the number of changes, deletions and additions.
- g) Violating the provisions of Article 51, which is not correcting written errors and / or typographical errors contained in the Minutes of Deed that have been signed, also does not make an official report about these corrections and does not submit the minutes of the correction to the party in the deed.<sup>9</sup>

*c. Limitation of Position of State Officials that are Not Occupied in a Position by Notary*

Thus, immediately a Notary is prohibited from concurrently serving as a State Official. If the Notary violates these provisions (meaning not taking leave) an Administrative Sanction as stipulated in Article 85 of the UUJN will be imposed. The same thing is also regulated in Article 30 of the Head of BPN Regulation Number 1/2006 concerning Provisions on the Implementation of Government Regulation Number 37 of 1998 concerning Position Regulations for Officials of Land Deeds, in paragraph (1) letter c: other positions that are prohibited by legislation.”

The Notary / PPAT provisions that are members of the legislature are more assertive if reviewed or associated with the Election Law Number 7 of 2017, where in Article 240 paragraph (1) letter 1, it is stated that:

“Willing not to practice as a public accountant, advocate / lawyer, notary, official land deed maker (PPAT), and do not carry out the work of the goods provider related to state finances and other jobs that can cause conflicts of interest with duties, authority the right as a DPD member in accordance with the laws and regulations.”

The legal provisions governing the position of the Notary / PPAT who are members of the legislature are substantially different. Based on Article 11 paragraph (1) and (2) UUJN, for Notaries must appoint a Substitute Notary who will accept the protocol, and after no longer holding office as a State official, then the Notary may resume his position as a Notary (Article 11 paragraph (3) - (6) UUJN), and for PPAT based on Article 30 paragraph (1), (2) and (3) BPN Head Regulation Number 1/2006 PPAT, that the concerned party must stop, and if the term of office ends it can reapply according to the rules

<sup>9</sup>*Ibid.*, p. 104-105.

applicable law, whereas according to Article 12 letter 1 and 50 paragraph (1) letter 1 of the Republic of Indonesia Law Number 10 of 2008, Notaries / PPAT are prohibited from practicing or are prohibited from carrying out their duties as Notary / PPAT.<sup>10</sup>

If it turns out that there is a Notary selected as a member of the legislature, he does not resign as a Notary/PPAT, but instead appoints a Notary / PPAT substitute, then the Notary/PPAT action is categorized as an act or deed that has no authority, so that the act deeds made by or before him do not have the power to be legally binding and no longer an authentic deed. If this happens, the people will be harmed, and INI/IPPAT will be considered as an organization that is unable to enforce the legal rules for its members. And furthermore, thus automatically organizing (INI/IPPAT), no longer as an Ordinary Member, but degraded to become an Extraordinary Member.

Professions and jobs specifically prohibited from being held by a Notary based on UUJN and clearly stated in the Act may not be concurrently held by a Notary:

- 1) Civil Servants (Article 3 letter g, and Article 17 paragraph [1] letter c UUJN);
- 2) State Officials (Article 17 paragraph [1] letter d UUJN);
- 3) Advocate (Article 17 paragraph [1] letter e UUJN);
- 4) Leaders or employees of state-owned enterprises (Article 17 paragraph [1] letter f UUJN);
- 5) Leader or employee of a privately-owned business entity (Article 17 paragraph [1] letter f UUJN).

In addition to the professions mentioned explicitly prohibited from being doubled, there are a number of professions which are not explicitly prohibited, namely: Doctors, legal consultants who open legal practices but do not practice (not advocates), and other jobs which are not prohibited from being concurrent in Act Among other things, for example: land brokers and entrepreneurs. There are still many professions and other jobs that are not mentioned in the Act as an example mentioned above are entrepreneurs or can also be shop owners. Is the work prohibited to be held by a Notary.

*d. Relevance of Prohibition for Notaries Concurrently Position as State Official in the Implementation of Duties and Authority of Notaries*

Article 15 paragraph (1) of UUJN affirms that one of the notary authorities, namely making a deed in general, with limitations as long as:

1. Not excluded from other officials determined by the Act.
2. Concerning the deed that must be made or making an authentic deed regarding all deeds, agreements, and provisions required by the rule of law or desired by the concerned.
3. Regarding the legal subject (person or legal entity) for the interests of whom the deed is made or desired by those concerned.
4. Authorization regarding the place, where the deed was made, this is in accordance with the place of residence and area of office of the Notary.

<sup>10</sup> Habib Adjie, Bernas-bernas Pemikiran di Bidang Notaris dan PPAT, Mandar maju, Bandung, 2012 (then abbreviated Habib Adjie II), p 4.

5. Regarding the time to make a deed, in this case the Notary must guarantee the time facing the viewers listed in the deed.

Deed made in the presence or by a Notary domiciled as an authentic deed according to the form and procedure stipulated in the UUJN, that the authentic deed requirements, namely: (1) In the form determined by the Act (standard form), and (2) Made by and in the presence of Public officials.

It was also stated by Irawan Soerodjo, that there are 3 (three) essence elements to fulfill the formal requirements of an authentic deed, namely:

1. In the form specified by the Act,
2. Made by and in the presence of Public officials.
3. Deed made by or in the presence of the authorized official for that and in the place where the deed was made.<sup>11</sup>

According to Habib Adjie, Article 1868 BW is a source for the authenticity of the Notary deed is also the basis of the legality of the existence of the Notary deed; with the following conditions:

1. The deed must be made by (door) or before (ten overstaan) a Public official.
2. The deed must be made in the form determined by the Act.
3. The General Officer by - or in the presence of whom the deed is made, must have the authority to make this agreement.<sup>12</sup>

A notary is a person appointed by the State to take an oath, explain the contents of a document, authorize the authenticity of a signature and run; another official job determined in the commercial field. Notaries can carry out their duties freely, without being influenced by the executive and other bodies, the freedom here to carry out their positions is acting neutral and independent.

The conditions for being appointed as a Notary are regulated in Article 3 of UUJN and Article 16 paragraph (1) concerning the obligations and prohibitions of Notaries, and prohibitions for Notaries contained in Article 17 paragraph (1) of UUJN. One of the prohibitions for Notaries is a Notary is prohibited from concurrently holding a position as a state official as stipulated in Article 17 paragraph (1) letter d of the UUJN: "concurrently serving as a state official". And relating to Article 3 letter g UUJN, namely: "not having the status of a civil servant, a state official, an advocate, or not holding another position which is prohibited by the Act from being held by a Notary."

Regarding the misuse of the legal profession as referred to in number 2 above, Sumaryono states, abuse can occur due to competition from legal professionals, or because there is no self-discipline. In the legal profession, there can be seen two things that often contradict each other, namely on the one hand the ideals of Ethics are far too high, and on the other hand the practice of grazing the law which is far below the ideals of professions that are too high and therefore provide services who tend to be selfish. Many legal professionals use their professional status to create money or for political purposes.<sup>13</sup>

Law enforcement was used as a venue for brutal legal harassment business. On the one hand, law enforcers have shifted their direction from justice to income, and on the other hand the client has become

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<sup>11</sup> Irawan soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia*, Arkola, Surabaya, 2003, p.148.

<sup>12</sup> Habib Adjie I, *op.cit.*, p. 43-44

<sup>13</sup> *Ibid.*, p. 70.

a subversive of legal authority and the principal law enforcer has won. All of that can happen if legal professionals do not return to the Legal Professional Ethics.

In Article 17 paragraph (1) letter d of the UUJN it has been stated clearly that a Notary is prohibited from concurrently holding a position as a state official. The administrative sanctions that can be given for this dual position violation are regulated in Article 17 paragraph (2) of the UUJN which states:

Notaries who violate the provisions referred to in paragraph (1) may be subject to sanctions in the form of:

- 1) Written warning;
- 2) Temporary stop;
- 3) Respectful dismissal; or
- 4) Disrespectful dismissal.

In addition to the UUJN sanctions against Notaries who hold concurrent positions are also regulated in Article 38 letter e Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Termination and Extension of Term of Office of Notaries, which further explains the provisions about a Notary who can be dismissed respectfully from his position, if he holds a position as a civil servant, a state official, an advocate, or is holding another position which is prohibited by the Act from being a Notary. Notary position is an honorable position (*Officium Nobile*) because a Notary as General Officer is a position of trust (*VertrouwensAmbt*) and personally a Notary is a person who is trusted by the community in making evidence in the form of authentic deeds. In carrying out his position a Notary is required to have:

- 1) Moral, morals and good personality.
- 2) Respect and uphold the position and dignity of the Notary.
- 3) Act honestly, independently and impartially and full of responsibility based on legislation and the contents of the oath of office notary.
- 4) Increasing knowledge that has been owned is not limited to law and notary.
- 5) Prioritizing service to the interests of the community.

## **Conclusion**

From the discussion above, the writer can draw some conclusions in response to the formulation of the problem in the chapter above, as follows:

1. Legislative members (leave notaries) can easily direct regional companies, regional government organizations (OPDs) and regional financial institutions to become partners in their successor's notary office. The dual prohibition on the position of Notary as a State official also aims to prevent conflict of interest and that the Notary remains independent and neutral, which if we analyze the implication is the internal organization of the Indonesian Notary Association (INI) if the Notary is active in party management Politics, Notaries who hold concurrent positions as active members in Political Parties can use the power of their Political Parties as an effort to launch privacy interests that benefit themselves and groups of Political Parties which clearly have political power.

2. In its capacity as an element of regional government administrators, Legislative Members can interpret the deed clauses made by a substitute Notary. The legal consequences of the deed made by a Notary who concurrently serves as a state official, namely the deed made will lose its authenticity, and the deed only has the power as a deed made under the hand when signed by the parties concerned.

### **Recommendation**

For the Government, it can be used as a guideline in establishing or issuing a Regulation and a Judicial Review of Law Number 2 of 2014 concerning changes to Law Number 30 of 2004 concerning Notary Position (UUJN). The State Gazette which deals with the limits of Notary in concurrently a position and provides a guideline and standard related to the application of witnesses to Notaries who hold concurrent positions, and the relevance of prohibitions for Notaries to concurrently hold positions as state officials. And Management of Political Parties. sanctions regarding Notaries that double the position are emphasized, clarified and aggravated, because sanctions for violations of multiple positions of Notary are only generally unspecified. The Notary that you want is a prospective eager who wants to make a Deed first to know the Notary, so that he understands that the Notary that will be entrusted to make the Deed is not concurrent as a State Official. The regulation of laws and regulations concerning the criteria or limits on the double position of a notary position should be further extended so as not to raise questions about any work that is prohibited to be held by a notary official.

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