



Investigation of Crime Committed by a Notary with the Approval of the Honorary Board of Notaries

Wirman; Elwi Danil; Azmi Fendri

Faculty of Law, Andalas University, Padang, Indonesia

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Abstract

Proof of indication of crime from an authentic deed made by a notary requires the presence of a notary in the examination of criminal cases starting from the level of investigation, prosecution by the prosecutor, until proof through examination at the trial. The presence of a notary who is indicated to commit crime is very determined from the formal and material aspects. This study employs an empirical juridical approach which means looking at the implementation of the provisions and theories that become references to the discussion using primary and secondary data. Based on the results of the study, the descriptive data shows that the concept of regulation in the investigation of crime carried out by notary is closely related to the regulation of the duties and authorities of the notary as determined by Law on Notary Position through an audit approval process by the Honorary Board of Notaries which is technically specified in the Ministry Regulation Law and Human Rights No. 7 of 2016. It means that approval is fundamental after the request from the investigator. Furthermore, it is processed in accordance with the procedures specified in the provisions of the Ministry of Law and Human Rights. On the contrary, the provisions of the criminal procedure are still guided by the Criminal Procedure Code. Meanwhile, the form of a notary liability on the deed that he/she has made is a notary liability to the extent of the authority he/she has in carrying out the profession as a deed-making official; unless the notary makes a mistake or negligence so that the deed is detrimental to the appearers. The liability of a notary can be in the form of civil, administrative and criminal liability.

Keywords: Crime; Honorary Board; Notary

Introduction

A notary is an honorable position given by the state through a law to a person who is trusted and qualifies for it as a general official making a deed. It means that the existence of a notary is desired by the rule of law with the aim of serving and helping people who need authentic written evidence. In this regard, in Article 1868 the Civil Code affirms that an authentic deed is a deed made in the form determined by the Law and made by or before the authorized public official at the place where the deed was made.¹

¹ Yuanitasari, Deviana, 2017. "The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers." *Sriwijaya Law Review* 1,179-190.

Authentic certificates made by a notary may be disputed by one party or another in the future.² This situation is considered detrimental to the interests of one of the parties from the denial of the contents of the deed, signature and presence of the party before the notary. There are allegations that the authentic deed is not in accordance with the actual facts or contains false information. According to Sjaifurracman, a notary act that is suspected of including false information on a deed can be subject to criminal sanctions. This might have happened since there were many types of authentic deeds that the notary could make in carrying out his/her position as general deed maker.³

Authentic deed, as the strongest and most complete evidence, has an important role in every legal relationship in people's lives in various business relationships, banking activities, land, social activities, and others.⁴ The need for written proof in the form of authentic deed in various economic and social relations clearly determines the rights and obligations that guarantee legal certainty while minimizing the occurrence of disputes. It is because the authentic deed was made before and/or by a notary as a general deed maker. Since the existence of a notary is very important for legal traffic in community life, in carrying out the functions of his authority, the notary has the potential to commit misuse that may cause harm to the community.

Notary carries out social functions that are very important, covering a wider field of office which is actually mandated to him/her based on Article 15 paragraph (1) of Law No. 2 of 2014 concerning Notary Position (hereinafter referred to as Law on Notary Position No. 2 of 2014). In connection with notary obligations as specified above, Article 17 Law on Notary Position No. 2 of 2014, also confirms the prohibition for notaries. Provisions governing supervision for Notaries are regulated in Law on Notary Position No. 2 of 2014. This provision is an effort to anticipate weaknesses and shortcomings in the system of supervision of notaries. So that, in carrying out his/her profession, the notary is expected to further improve the quality of service to the community.⁵

Notaries are very prone to legal entanglement which is not only caused by internal factors originating from within themselves; for example, carelessness, not complying with procedures, not carrying out professional ethics and so forth. However, that is also due to external factors such as public morale where the notary is faced with false documents which even have legal consequences for the owner.⁶

The government has a concern and trust in the world of academics and hopes that they can exercise control over the position and behavior of the notary. To do this, it requires facilities and infrastructure such as educational facilities, upgrading and / or refreshing the Supervisory Board structure from academics and the government so that they can go hand in hand in applying the knowledge they have regarding the notary's position.

Administrative tasks can be studied and learned quickly. The Supervisory Board is basically an element of a notary organization that understands and knows notary practices. It is because they come from a notary group who has good care and personality. They are also people and friends with the same profession who have high integrity and dedication. The Notary Law contains many innovations that deal with regulations that used to exist as a form of reform.⁷

In fact, as a strong evidence, authentic certificates are widely used as evidence in legal matters. As evidence, the use of authentic deeds requires proof of authenticity so that the examination of authentic deeds is required as evidence. For this purpose, an examination of a notary, as the party making an

² Hartanto, J. Andy, 2018. "Legal Aspects of Land Purchase/Sale Disputes in Indonesia." *Environmental Policy and Law* 48.1, 79-82.

³ Sjaifurracman, 2011, *Liability Aspect of Notary in Making Deed*, Mandar Maju, Bandung, page 11.

⁴ Yaqin, Khusnul, and Endang Prasetyawati, 2019. "Disharmoni Certification in the Authenticity Perspective of the Deed of Establishment of Cooperative by Notaries." *JL Pol'y & Globalization* 83, 11.

⁵ Suryahartati, Dwi, 2018. *Journal of Advances in Social Science and Humanities* 4.12, 442-452.

⁶ Executive Board of the Indonesian Notary Association, 2008, *The Identity of Indonesian Notary in the Past, Present and Future*, Gramedia Pustaka Utama, Jakarta, page 226.

⁷ *Ibid.*, page 25.

authentic deed, is also required. Proof of authentication of authentic and notary deeds as subjects who make authentic deeds cannot be carried out carelessly because the authentic or original deed deeds made by the notary are confidential. For this reason, the examination of authentic certificates and notaries must be carried out in accordance with the provisions of the Law.⁸

In connection with that, since the enactment of the Regulation of the Minister of Law and Human Rights No. 7 of 2016 concerning the Honorary Board of Notaries (hereinafter referred to as HBN), approval is made by Regional HBN. Article 1 No. 1 defines HBN as “an institution that has the authority to carry out notary training and is obliged to give approval or rejection for the interests of investigation and judicial process for taking the copies of the original deed and summoning notaries to attend examinations relating to notary deeds or protocols in notary’s storage”.

Provisions of Article 1 No. 1 Regulation of the Minister of Law and Human Rights No. 7 of 2016 concerning the Honorary Board of Notaries above is further strengthened by the affirmation of the provisions of Article 18 paragraph (1) letter b stating: “Regional HBN gives approval or rejection of requests for approval to call notaries to be present in investigations, prosecutions and judicial proceedings.” The provision also explains the requirements for summons to a notary that is confirmed in Article 27 of the Regulation of the Minister of Law and Human Rights.

This includes the provisions of Article 66 (1) of Law No. 30 of 2004 concerning Notary Position jo. Law No. 2 of 2014 concerning changes to the Law on Notary Position. The process of examination of a notary public related to a deed suspected of containing crime must be approved by the HBN. It means that without the approval of the HBN, the investigator cannot conduct an examination of the notary in relation to the deed he made. In this regard, it is further elaborated in Article 66 A of Law No. 2 of 2014 concerning Notary Position.

Examination of a notary public regarding the alleged conduct of crime was listed before the enactment of Law on Notary Position No. 2 of 2014 concerning Amendments to Law on Notary Position No. 30 of 2004. Examination of a notary public regarding alleged crime violations must be approved by the Regional Supervisory Board. This is confirmed in Article 66 paragraph (1) Law on Notary Position No. 30 of 2004 which states that investigators, public prosecutors or judges need to be approved by the Regional Supervisory Board in the judicial process. This has also been explained in the provisions of Article 66 paragraph (1) Law on Notary Position 30 of 2004 jo. Law on Notary Position No. 2 of 2014.

Research Method

This is a type of descriptive analytical research; a form of research that is expected to be able to provide a detailed, systematic and comprehensive description of all matters relating to the enforcement of witnesses for violations of the notary profession’s code of ethics. This research analyzes only limited to the level of description by analyzing and presenting facts systematically so that they can be understood and concluded more easily.⁹ Research with descriptive analytical explanation specifications is intended to provide data as accurately as possible about a situation or other symptoms.¹⁰ A descriptive study is intended to provide data as accurately as possible about the handling of criminal cases related to the Honorary Board of Notaries’ authority in granting permission to conduct examination of a notary public.

This study uses an empirical juridical approach; a study that looks at the legal aspects normatively and also looks at the application or practice in the field.¹¹ However, it is related to the title of

⁸ Pricilia Yuliana Kambey, 2013, Role of a Notary in the Criminal Justice Process, *Lex et Societatis*, Vol. I/No.2/Apr-Jun/2013, page 33.

⁹ Irawan Soehartono, 1999, *Social Research Methods: A Research Technique in Other Social Welfare Fields*, Remaja Rosda Karya, Bandung, page 63.

¹⁰ Soerjono Soekanto, *Op. Cit.*, page 10.

¹¹ *Ibid.*, page 52.

handling crime cases related to the Honorary Board of Notaries' authority in granting permission to conduct examination of notaries.

This research data was obtained from the field mainly through interviews with Honorary Board of Notaries members in the Ministry of Law and Human Rights of the West Sumatra Region in Padang. Interview is a way to obtain information by asking directly to the parties to be interviewed, especially those who are authorized, aware of, and related to handling crime cases in the field related to the Honorary Board of Notaries' authority in granting approval to conduct examination of notaries. The data collection applies two techniques which include: 1) literature study to study, examine, and trace secondary data, namely materials that have a close relationship with primary legal materials and can help analyze and understand primary legal materials such as books relating to the object of research, research results, seminar results, scientific work of scholars, journals, and other writings related to the subject matter, 2) field research, namely the author collects data through free interviews by conducting question and answer directly to the source persons and respondents without structuring a list of questions to obtain the necessary information. The parties who become source persons are parties who provide data based on their knowledge; for instance, interviews with members of the Honorary Board of Notaries.

Before conducting an analysis that produces sentence descriptions, the data that has been obtained, secondary or primary, is first processed by editing. So, it will sort data that is really needed and which is not; for instance, by deleting certain sentences, adding or even erasing data that is not needed at all.

After data processing is carried out as intended above, then the data is analyzed using qualitative analysis. It is because the data is still in the form of critical sentence descriptions and not in the form of numbers. Then, the results of the analysis obtain descriptions of scientific sentences that can be accounted for in terms of methodology and the validity of the data that has been obtained as an effort to develop knowledge, especially in the field of notary.

Research Results and Discussion

1. The Concept of Arranging Crime Investigation Against a Notary with the Authority of Honorary Board of Notaries in Granting Approval

Completion of a case, related to crime by law enforcement officers, is directed towards verification. So, the suspect can be prosecuted and convicted. For this reason, before the investigation begins, the offense must be estimated about what and where the offense is. This is important so that the investigation is really directed towards the actual situation in accordance with the formulation of offenses.

Regarding the stipulation of Law No. 2 of 2014 concerning changes to Law No. 30 of 2004 concerning Notary Position, provision of Article 66 of Law No. 30 of 2004 has been amended as follows: for the benefit of judicial processes, investigators, public prosecutors, or judges through HBN approval are authorized to:

- a. take original deed copies and/or letters attached in the original deed or notary protocol in the notary's storage.
- b. summon a notary to attend the examination relating to the notary deed or protocol that is in the notary's storage.
- c. take original deed copies or letters related to submission reports.
- d. within a maximum of 30 (thirty) working days after the letter of approval is received, HBN must provide an answer whether to accept or reject the request for approval.
- e. if HBN does not provide an answer within that time period, HBN is deemed to have received a request for approval.

Based on amendments, Law on Notary Position No. 2 of 2014 states that in the implementation of guidance, the ministry forms HBN. Meanwhile, the provisions concerning duties and functions, terms and procedures for appointment and dismissal, organizational structure, work procedures and HBN budget are regulated in a Ministerial Regulation to implement the provisions of Article 66 Paragraph (3) of Law No. 30 of 2004 which has been amended by Law No. 2 of 2014 above. Then, it stipulates Regulation of the Minister of Law and Human Rights No. 7 of 2016 concerning Honorary Board of Notaries.

The authority attached to HBN in approving police actions against a notary is considered to be the authority of the mandate. It means that the authority comes from the process or delegation from higher officials or institutions to lower officials or institutions. This is the delegation of authority from the Minister of Law and Human Rights to HBN to carry out the task of giving or not giving approval to the investigator to examine the notary in the judicial process. This authority is the authority possessed by the Regional Supervisory Board before the issuance of the Constitutional Court Decision No. 49/PUU-X/2012.

The granting of authority to HBN is associated with the Decision of the Constitutional Court No. 49/PUU-X/2012. It explained that Law on Notary Position gave HBN two authorities based on Article 66 Law on Notary Position. In conducting notarial training, HBN has the obligation to give approval or rejection for the purposes of investigation and criminal justice processes, take original deed copies, and summon notaries to attend the examination relating to notary deeds or protocols that are in the notary's storage.¹²

Before the Judicial Review to the Constitutional Court, in Law No. 30 of 2004 concerning Notary Position, Article 66 paragraph (1) states that summoning a notary for judicial proceedings by investigators, public prosecutors or judges must be approved by the Regional Supervisory Board. However, in Law No. 2 of 2014 concerning Law on Notary Position, Article 66 paragraph 1 stipulates that it must be approved by the Honorary Board of Notaries. In this case, the old Law (Law No. 30 of 2004) and Law No. 2 of 2014 raises an understanding that notary public examination by the police, public prosecutors and judges must obtain approval from a notary organization that is authorized by the Law.

The Honorary Board of Notaries's authority to give approval to the police, public prosecutors and judges to examine notaries was only formed in 2016. The enactment of Indonesian Ministerial Regulation No. 7 of 2016 concerning the HBN regulates the Honorary Board of Notaries who has the competence to give approval to the notary.

The contents of the regulation of the Minister of Law and Human Rights regulate the position, organizational structure and authority of the Honorary Board of Notaries. At present, the newly formed Honorary Board of Notaries is at the central level. Meanwhile, the Regulation of the Minister of Law and Human Rights Article 2 mandates that the Honorary Board of Notaries should be established at the central and regional levels. The regulation of the Minister of Law and Human Rights is an implementing rule mandated by Article 66A by Law No. 2 of 2014 to establish the Honorary Board of Notaries. Based on Law No. 2 of 2014, it does not regulate the definition of Honorary Board of Notaries. In addition, it does not regulate where the Honorary Board of Notaries is. Article 91B of Law No. 2 of 2014 mandates that the implementing regulations of the Law be established no later than 1 (one) year after Law No. 2 of 2014 is stipulated.

The Minister of Law and Human Rights Regulation should be issued no later than one year after Law No. 2 of 2014 is stipulated. The late stipulation of the Regulation of the Minister of Law and Human Rights makes a notary public get no legal protection and certainty when they are summoned by law enforcers. This is based on who gives approval to law enforcement when a notary is called or examined by law enforcement.

¹² Desrizal Idrus Hakimi, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 18, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

The legal basis of the Honorary Board of Notaries, which was originally guided by the provisions of Article 66 Law on Notary Position No. 30 of 2004, stipulates that for the benefit of judicial proceedings, investigators, public prosecutors, or judges with the approval of Regional Supervisory Board, they are authorized to:

- a. take original deed copies and/or letters attached to the original deed or notary protocol in the notary's storage;
- b. summon a notary to attend the examination relating to the notary deed or protocol that he/she made that is in the notary's storage.

Then, Article 66 Law on Notary Position No. 30 of 2004 has undergone several changes. Based on the decision of the Constitutional Court No. 49/PUU-X/2012 dated May 28, 2013, it was decided that Article 66 Paragraph (1) of Law No. 30 of 2004 concerning the phrase "with the approval of the Regional Supervisory Board" is stated not to have binding legal force. The consideration of the constitutional court judge is as follows:

- a. As referred to in Article 66 Paragraph (1) Law on Notary Position, different treatment can be justified as long as the treatment is related to actions within the scope of the code of ethics relating to attitudes, behavior and notary actions in carrying out tasks and relating to morality. According to the Constitutional Court, the different treatment of the position of the notary is regulated and given protection in the notary code of ethics. Meanwhile, in the law enforcement process, as citizens, notaries are applied equally at all legal stages as intended and guaranteed by the Law. Therefore, the Regional Supervisory Board's agreement must be contrary to the principle of independence in the judicial process and is contrary to the obligation of a notary as a citizen who has equal standing before the law. In addition, it will also ignore the existence of Article 27 Paragraph (1) and Article 28D Paragraph (3) of the 1945 Constitution. Prolonged judicial processes will hamper efforts to uphold justice, which in turn will lead to denial of the justice itself. Justice that is delayed is justice that is denied;
- b. On the other hand, that the Constitutional Court also understands the importance of maintaining the authority of a notary as a public official whose honor must be maintained. Thus, special treatment is needed in order to maintain the dignity of the notary in the judicial process. In addition to the precautionary attitude of law enforcers, it is necessary to take legal action against the notary. However, this treatment must not conflict with the principles of the rule of law, which among others are equality before the law and principles of judicial independence.

In this regard, in Article 19 of the Regulation of the Ministry of Law and Human Rights No. 7 of 2016 stipulates that members of the Central HBN are formed by ministers and are domiciled in the Capital of the Republic of Indonesia which consists of elements: 1) government, 2) notaries and 3) experts or academics. Central HBN consists of 7 (seven) people consisting of: 1) 1 (one) chairperson, 2) 1 (one) vice chairperson, and 3) 5 (five) members.

The chairperson and vice chairperson of the Central HBN must come from different elements and be elected from and by the Central HBN members in deliberation. If the election by deliberation does not reach consensus, the election of the chairperson and vice chairperson of the Central HBN is conducted by voting. Central HBN has the task of guiding the Regional HBN which is related to its duties. In addition,

in carrying out this task, Central HBN has a function to supervise Regional HBN. The execution of the duties and functions is based on the approval of the Central Honorary Board's chairperson.¹³

According to Syafril, the Regional Honorary Board of Notaries members consist of government elements, notaries and experts or academics. The HBN Regional consists of 7 (seven) people consisting of 1 (one) chairperson, 1 (one) vice chairperson, and 5 (five) members. The chairperson and vice chairperson of the Regional HBN must come from different elements and be elected from and by HBN Regional members who are conducted by deliberation. If the election by deliberation does not reach consensus, the election of the chairperson and vice chairperson of the Regional HBN is conducted by means of voting.¹⁴ In this case, the Regional HBN has the duty to:

- a. conduct examination of requests submitted by investigators, public prosecutors and judges.
- b. give approval to summon a notary to be present in investigations, prosecutions and judicial processes.

In carrying out its duties, Regional HBN has the function of conducting guidance in the terms of:

- a. maintain the dignity and honor of the notary in carrying out the profession of office.
- b. provide protection to the notary public related to the notary's obligation to keep the contents of the deed confidential.¹⁵

2. *Liability of a Notary Against the Deed He/ She Made Regarding Crime Investigation Process Conducted by Investigators*

Essentially, all actions carried out by individuals intentionally or unintentionally must ultimately be liable. In actions related to position or profession, liability is a principle of professionalism which is a manifestation of the commitment that must be held by the notary public against the implementation of the position as stipulated in Law on Notary Position.

In carrying out its duties as a public official, a Notary has the authority as determined in Article 15 paragraph (1) and paragraph (2). The authority of the notary as stated above means that the notary has considerable authority over the deed he/ she made. Article 17 of Law No.2 of 2014 concerning Notary Position also confirms the prohibition on notaries.

In carrying out its authority, the provisions of Article 17 also state that the existence of a notary in which a notary is prohibited from concurrently holding a position since it can interfere with his/ her activities as a public official. Meanwhile, the Conveyancer position can be held by a notary because the duties and authority and a Conveyancer are also the duties and authority of public officials who are closely related to the tasks of the notary.

It means that a deed basically has authentic power if it meets the requirements as stated in Article 1868 of the Civil Code. With the existence of authority, obligations and several restrictions on the implementation of notary duties, the core of the notary's duty is basically to regulate the legal relationship

¹³ Syafril, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 25, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

¹⁴ Desrizal Idrus Hakimi, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 18, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

¹⁵ Desrizal Idrus Hakimi, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 18, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

between the parties who see him/ her in an authentic deed. Basically, it is the same as the duty of the judge to give a decision on justice between the parties to the dispute in court.¹⁶

Liability as intended above can be seen from several things, including: 1) civil liability, 2) administrative liability, 3) criminal liability. Liability notary occurs in the implementation of duties and obligations charged to the notary based on the authority granted by law. Liability notary arises because of an error made by the notary in carrying out his/ her office duties. Thus, these errors cause harm to those who request notary services.

3. Legal Protection of Notaries in the Crime Investigation Process in the Legal Territory of the Ministry of Law and Human Rights of West Sumatra Province in Padang

In carrying out their professional duties, a notary is supervised and fostered by a notary organization. The notary organization is incorporated in an institution called the Indonesian Notary Association (INI). Carrying out notary duties as a public official must be in accordance with the legal rules contained in Law on Notary Position and the Code of Ethics contained in the Notary Organization. Based on the duty and liability of a notary, it is a profession of public officials making authentic deeds.

Legal protection against notaries who are still serving both as witnesses, suspects and defendants are specifically regulated in Article 66 Law on Notary Position No. 2 of 2014. The article expressly states that for the benefit of the judicial process, investigators, public prosecutors and judges who need original deed copies and/ or letters attached to original deed or notary protocols that are in the notary's storage, must first get approval from the Honorary Board of Notaries.

The provisions of the article do not apply to notaries who are no longer serving or retiring. In this case, it means that there is no legal protection for a retired notary even though he/ she still holds a liability for the deed he/ she has ever made. Retired notaries do not get distributive justice; i.e. justice that is related to equal rights because they have lost their rights in legal protection. In fact, he/ she still had a liability for the deed he/ she had made when the deed is in dispute.

In this regard, as a public official who runs his/ her profession in the field of legal services to the public, the notary is covered by the Law, namely Law No. 2 of 2014 concerning Notary Position. A notary is a certain position that runs the profession in legal services to the community needs to get protection and guarantees, in order to achieve legal certainty.

The making of authentic deeds must be based on legislation to create certainty, order and legal protection. In addition, authentic deeds made by or before a notary not only are required but also desired by parties concerned to ensure rights and obligations for certainty, order and legal protection for interested parties as well as for the community as a whole.

The state provides such an important role to the notary which as a notary public official is required to be liable for the deed that he/ she made. Therefore, the notary must submit to the applicable regulations, i.e. Law on Notary Position and obey the code of ethics of the legal profession. The code of ethics refers here is the Notary Code of Ethics. If the deed turns out to contain a dispute in the future, then it should be questioned whether or not this deed is a notary's mistake intentionally to benefit one of the appearers or the fault of the parties who did not provide the actual document. If the deed of a notary public contains a legal defect due to a notary's fault, due to negligence or because of the intent of the notary him/herself, the notary must provide his/ her liability morally and legally. However, of course this must first be proven.

Therefore, if the notary is proven to have committed a personal error or concerning professionalism in the making of a deed containing an element of violating the law, there are several

¹⁶ Syafril, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 25, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

stages of the procedure that can be carried out in the field. First is the calling of a notary as a witness. Then, it was continued with the determination of the status of the defendant in the civil court concerning the liability of the deed to be used as evidence. Prior to the tolerance of the Notary Supervisory Board, it was followed up with punishment. Notaries can be witnesses and suspects in criminal cases until the confiscation of original deed bundles that are kept by a notary.

Law on Notary Position has provided a special procedure for law enforcement against notaries. Legal protection against a notary is stated in Article 66 Law on Notary Position which stipulates that for judicial proceedings, investigators, public prosecutors, or judges are authorized to take the original deed copies and/ or letters attached to the original deed or protocol in notary's storage with agreement from Regional Supervisory Board. Then, the Regional Supervisory Board carries out a plenary meeting and the investigator can use the results of the meeting as a basis for summoning the notary.

The procedures for carrying out the tasks from the HBN have not been clearly regulated. Thus, a way or step to resolve a case or problem must be handled through HBN, i.e. by using a comparison of authority with the Regional Supervisory Board institution which basically is an institution that has the same role or authority as the HBN.¹⁷

There are several steps that must be obeyed for investigators and HBN to ensure legal certainty and protection for related parties as follows:

- a. For the benefit of the judicial process, investigators, public prosecutors, and judges can take original deed copies and/ or letters attached to the original deed or notary protocol in the notary's storage by submitting a written application to HBN. The application is also submitted to the notary concerned;
- b. HBN has the authority to conduct examination of notaries who are reported to have committed crime in the process of making a deed.
- c. HBN can give approval to investigators, public prosecutors and judges if the notary is proven to have committed a crime in the process of making a deed.
- d. If HBN does not find any evidence of violations related to the alleged crime committed by the Notary, in this case, HBN cannot give approval to the investigator who wants to summon the notary.
- e. The period of time for HBN to approve or not give written approval to the investigator is 30 days after the letter of application from the investigator is received (Article 66 paragraph (3) 149 Law on Notary Position Amendment). If within that period HBN does not provide an answer, HBN is deemed to have given approval for the investigator (Article 66 paragraph (4) Law on Notary Position Amendment).¹⁸

Based on data obtained in the Regional Office of Law and Human Rights of the Province of West Sumatra in the last three years (2017, 2018 and 2019), there were 11 applications that were submitted regarding the application submitted by the investigator in the crime case process for 2017. Out of the eleven applications, there were 8 cases granted and three cases rejected. Meanwhile, there were 6 cases of the request in 2018, four requests were granted and two were rejected by HBN. Meanwhile, for 2019, there has been no application for examination submitted by the investigator.

¹⁷ Syafril, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 25, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang

¹⁸ Desrizal Idrus Hakimi, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 18, 2019, at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

It means that the investigator cannot immediately carry out an investigation process against the notary who committed the crime. They must first submit an application to HBN for approval of the examination. HBN is very selective in carrying out internal processes in giving approval because not all examination requests submitted by investigators will be granted by HBN. In other words, HBN can reject the application.

In this case, the form of legal protection can be in the form of preventive by implementing various regulations and outreach and efforts to guide and supervise the performance of the notary in carrying out his/ her profession because of the Law or Professional Code of Ethics. In addition, the law enforcement process is carried out in the presence of the authority of the HBN in giving the notary approval of the examination as an official making the deed.

Conclusions

Based on the above description, mainly based on the formulation of the problem and the results of the study, there are several things that can be summarized as follows:

1. Regarding the concept of arranging a crime investigation against a notary with the Honorary Board of Notaries authority in granting approval, the investigation process is basically guided by the provisions contained in Law No. 8 of 1981 concerning the Criminal Procedure Code. Then, in addition to these provisions, investigators from the police are also guided by Law No. 2 of 2002 concerning the Police of the Republic of Indonesia. Meanwhile, crime in this matter is more directed to crime as stipulated in the Criminal Code. So, it administratively refers to Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2006 concerning the Law on Notary Position. However, technically the investigator cannot immediately carry out the investigation process because they must submit an application and obtain prior approval from the Honorary Board of Notaries (HBN) as stipulated in the Minister of Law and Human Rights Regulation No. 7 of 2016 concerning the Regional Notary Supervisory Board.
2. Regarding the form of notary liability on the deed that he/ she made with the existence of a crime investigation process, the notary is basically liable on the deed that he/ she made. It means if deviations or acts that contradict the law occur, the notary can be asked for liability in civil, administrative and criminal law provisions. In this case, the liability is in accordance with the type, level of error or negligence that has been carried out by the notary as a deed maker. However, it must first carry out the process in accordance with the applicable procedures or conditions.
3. Legal protection against notaries, in the crime investigation process in the Legal Territory of the Ministry of Law and Human Rights of West Sumatra Province in Padang, is carried out through guidance and supervision of notaries as deed-making officials as well as professionals. It means that the investigator cannot immediately carry out an investigation process against the notary who committed crime. They must first submit an application to HBN for approval of the examination. HBN is very selective in carrying out internal processes in giving approval since HBN does not grant all examination requests submitted by investigators. In other words, HBN can reject the submitted application. Thus, the form of legal protection can be preventive by implementing various regulations and outreach and making efforts to guide and supervise the performance of the notary in carrying out a profession in accordance with the Law and the professional code of ethics.

Suggestions

There are several things that can be suggested for this paper, among others:

1. The notary honor council is expected to immediately function the institutions in the professional association that enforce the law for professional members or notaries who violate the code of ethics.

However, up to date, it is still carried out by the Regional Notary Supervisory Board which actually functions as a supervisory institution;

2. Notaries are also expected to carry out all their obligations properly as citizens, especially in paying income tax and transparency in buying and selling land in accordance with applicable regulations. So, it is expected to increase revenue for the State through the transactions.
3. Notaries should also provide legal counseling on matters relating to the making of the deeds they are working on and not just obligations mandated in the Law on Notary Position and the Professional Code of Ethics for Notaries.

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Interview

Desrizal Idrus Hakimi, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 18. (2019). at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

Syafril, Member of the Honorary Board of Notaries, interview was conducted on Monday, February 25. (2019). at the Regional Office of the Ministry of Law and Human Rights, West Sumatra Padang.

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