



Confidentiality of the notary deed in the freedom of the academic pulpit

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Abstract

Many academic community members abuse the academic pulpit's freedom for inappropriate purposes. The purpose of this paper is to analyze the conflict or conflict of norms in the Article related to the obligation of a Notary to keep everything regarding the Deed he made and the explanation of the Article associated with the freedom of the academic pulpit (Article 8 Paragraph (1), Law of the Republic of Indonesia Number 12 the Year 2012), in the Republic of Indonesia. On the one hand, a notary must keep everything about the deed he made secret; on the other hand, a notary who is a teaching staff or lecturer must carry out his duties as an academic civitas. This writing uses a normative juridical method with a statute and conceptual approach. The results obtained are that the position of a notary is higher than the position of a notary as a lecturer; therefore, the notary's limitations regarding the academic pulpit are to the position of a notary as a public official, whereas a public official a notary is obliged to keep everything related to the deed he made, which means that he has been ordered to a notary. Not to give, show or notify the act's contents except those with a direct interest. Therefore, regulators should study further if there is a conflict of norms in the Articles related to the Notary's obligation to keep everything confidential regarding the Deed he made.

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1. Introduction

The Civil Code (KUHPerdata) is a requirement for the authenticity of a deed which states that an authentic deed is a deed made in the form determined by law, made by or "in front of" a public official authorized for that at the place where the act was done. (Pramudyo, 2021) The position of the authentic deed is significant for the community as written evidence when conducting business transactions in the land sector, banking, and so on. (Putri, 2021) Public officials are given to notaries, so the essentials remain obedient and fulfill all the articles relating to the authenticity of the deed. (Rachmawati, 2021) The notary profession is honorable because its duties and positions serve the community's interests, especially infinite. Public officials have the authority, obligations, and prohibitions that must be obeyed by the notary based on the provisions of the applicable laws and regulations in the notary's position. (Manik, 2021)

Everyone who holds the position of a notary will be bound and must comply with a set of regulations governing the position of a Notary, namely Law Number 30 of 2004 concerning the Position of a Notary as amended by Law of the Republic of Indonesia Number 2 of 2014 Amendments to the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of a Notary (herein from now need to as UUJN) and the Notary Code of Ethics. (Putra, 2020) It is a guideline for everyone who works as a notary; if I carry out his duties and obligations, they do not conflict with what is regulated by the regulation.

Not only regulates how a notary performs his duties but also regulates the behavior of a notary in terms of how a notary should behave and behave, not only with clients or parties who use his services but also by dealing with colleagues or other notaries and society in general. On the other hand, a Notary, in carrying out his position as a General Officer in addition to being bound by a

Position Regulation, is also bound by an oath of office pronounced at the time he is appointed as a Notary, in which the Notary is obliged to keep the contents of the Deed and statements regulated in the Article secret. 4 paragraph (2) UUJN, Article 16 paragraph (1) letter f UUJN and Article 54 paragraph (1) UUJN.

Article 4 of the Law on the Position of a Notary Public more broadly, this obligation of secrecy also includes information or information obtained by a Notary in exercising his position. In this case, the scope is more comprehensive because the position comprehensively by a Notary is a position of trust. Precisely because of that, someone willing to give confidence to the confidence lecturer profession is a professional educator and scientist whose main task is to transform, develop and disseminate science, technology, and art through education, research, and community service. Based on reality, many Notaries teach staff in educational institutions such as schools and universities. One, a teacher who teaches one subject at school or become a lecturer who teaches at the Faculty of Law or other Faculties of Social Sciences in universities.

Notary as a Lecturer at the Notary Magistrate is something that e a notarial professional education environment in a professional academic world. Contributions expected e by lecturers who are also practitioners of the legal profession include, among others, the existence of a balanced approach and understanding between the world of legal science and the world of legal practice, in fact, between *das sollen* and *das sin*. Students are expected to understand, among others, experience, what are the rules of law and legal realities, how the law is realitiesied to a specific conditspecificw law enforcement and law enforcers implement the law, and how societsponds to the law, and so on.

The fact that a Notary carries out his duties and powers as a lecturer like this can raise questions from a legal point of view and pecres-

pectiveiving from the regulations, Article 16 paragraph (1) letter F of the Law on Notary Positions states that: In carrying out his position, the Notary is obliged to keep everything regarding the Deed he made and all information obtained to make a secret, according to the law. The law dictates otherwise. This means that in carrying out his position, the Notary must keep mustering the deed he made and all information obtained for doing the act in accdoingce with the office unless the law stipulates otherwise. This is contrary to Law No. 12 of 2012 concerning Higher Education, especially Article 8 Paragraph (1), or what is known as the existence of the freedom of the academic pulpit.

Unfortunately, many members of the ACA demic community are abusing the freedom of the academic pulpit for purposes that are not as they should be. For example, from the academic pulpit, members of the academic community freely express their opinions and only freely express their views without considviewsem. According to the author, in this case, there is a conflict or, con, conflict of norms in the Article related to the Notary's obligation to keep everything regarding the deed he made (Article 16 paragraph (1) letter f of the UUJN), and the explanation of Article 8 regarding the pulpit, Law Number 12 of 20 concerning Higher Education), on the one hand, a notary is required to keep everything confidential regarding the deed he made, a notary or lecture mother needed to carry out his duties as academics.

Based on the results of writing written by Sri Rahmayani, Sani, and Teuku Abdurrahman in the IUS Journal of Legal and Justice Studies (Rahmayani, 2020), the results obtained are: Notaries are public officials authorized to do authentic deeds. The position of a notary is also honorable because the role of a notary is likened to a place of personal trust.

Errors caused by a notary at the time of changing the deed should be done by replacing,

adding, crossing out, or inserting words and may only be done on the contents of the act, and changes to the show are considered valid if they have been given initials or other signs of ratification by the appearers, witnesses, and notaries. But what happened in the field wa, not to existing regulations. Where the copy of the notary deed should have a position as perfect evidence, on the contrary, it becomes insufficient evidence because the tcompositionopy of the act does not sound the same as the minutes of the action causing the copy of the show to be unable to meet the formal and material requirements in the process of doing the deed. Therefore, this study explicitly describes the conflict or comms in the Article related to the obligation of a Notary to keep everything confidential regarding the Deed he made.

2. Methods

This research belongs to the normative research studied using the statute and conceptual approaches. The types of legal materials used are primary, secondary, and tertiary. As the method of analysis, this research uses a perspective analysis technique.

3. Result and Discussion

3.1 Limitation of the obligation to keep the contents of the notary deed confidential and its relation to the freedom of the academic pulpit

Notaries are public officials authorized to make authentic deeds and other authorities as referred to in this Law or based on different laws. (Abida, 2021) Notaries are public officials regulated by the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notaries (UUJN). (Adyana, 2022) An authentic deed is a crucial evi-

dence; what is meant by binding is that the judge must trust something written in the act; that is, it must be considered valid as long as the untruth can be proven. (Kusbiyanto, 2020)

A notary who is predicated as a public official, based on the term from the Dutch language, has the meaning of the word *Openbare Ambtenaren* as stipulated in Article 1 of the Regulation of the Notary Position (*Reglement op Het Notaris Ambt In Indonesia, Stb.1860:3*) which explains that a notary is defined as one the only public official who has the authority to draw up or make an authentic deed relating to the whole agreement, stipulation, and action that must be contained in general regulations or by a party who has an interest that he wishes to be mentioned or stated in a certain authentic deed, guaranteeing the certainty of the date, carry out deed storage and also provide quotations, grosses, and also copies, the whole of the making of this deed is based on general regulations that are not excluded or assigned to officials or other parties. (Adjie, 2022)

Observing the limitations of the notary's understanding and authority as stated in the Law on the position of a Notary, one can say that the main task is to do an authentic deed. His principal obligation is to provide services for people who need evidence in the form of an original deed regarding a specific legal act. The Law on Notary Positions, whether it's Law No. 30 of 2004 or Law No. 2 of 2014, does not mention that the duties of a Notary include increasing public knowledge. (Adnyana, 2022)

UUJN does not explicitly mention the role of Notaries in education or increasing public legal understanding. Still, one paragraph in UUJN talks about how Notaries can participate in education or increase general legal knowledge, namely in Article 15, Paragraph (2) of the UUJN. It is stated that a Notary has the central authority to do an authentic deed. The notary deed serves as proof in the event of a dispute. (Ferdiana, 2021) In addition

to doing an original act, a notary is also authorized to provide legal counseling regarding doing a deed.

The provisions of the paragraph are brief and do not mention how and what kind of counseling is meant. Still, the paragraph can be used as a door for Notaries to take part in efforts to educate the nation, primarily by increasing the legal knowledge of the community. This provides flexibility and freedom for the Notary to be creative in finding the most appropriate way. This paragraph does not impose responsibilities or require Notaries to be actively involved in community legal education because this paragraph only gives authority, which means that Notaries can take part in legal education for the community through counseling.

We cannot find Notaries' obligation to participate in community legal education in the UUJN. Still, if we use a different point of view, we will find a correlation between Notary obligations and public legal knowledge by freeing ourselves from the precise legal framework. There are two points of view; firstly, looking back at the opening of the 1945 Constitution of the Republic of Indonesia, which aspires to an intelligent nation's life, it would be naive if Notaries were not required to take part in this intellectual endeavor. Notaries have the authority because they are given by the UUJN, while the UUJN itself, like other laws and regulations, was made with the spirit of realizing the mandate of the 1945 Constitution.

Indirectly, we can say that the source of all legal authority in the life of the nation is the 1945 Constitution, including the power of Notaries, so it seems impossible if Notaries do not play a role in realizing the ideals of the 1945 Constitution when they have the ability and strategic position for that.

A country's constitution is a monument, an anthropological document that expresses the nation's cosmology and embodies the ideals, hopes,

and dreams guiding where a nation should be directed. (Rahardjo, 2007) That is how the 1945 Constitution should be viewed, not only as a document or written regulation but as a set of national ideals that contain the spirit to make it happen. The purposes of the 1945 Constitution regarding the intellectual life of the nation must be agreed upon by the entire Indonesian country, both by the government and all elements of society, all of whom must do something (work) based on their respective expertise with the spirit to realize the ideals of the nation, including notaries. Thus, even though a Notary has no legal obligation, he is morally obligated to participate in learning these ideas, in this case, increasing the legal knowledge of the community. Ignoring the community in a state of legal blindness is the same as making omissions related to violations of constitutional ideals.

The requirements to become a Notary are pretty heavy. Someone who wants to become a Notary must meet the needs of a law degree and a Master of Notary Law. The transition of Notary education, which was previously in the form of a skill school to a master's degree adds to the percentage of literary elements in a Notary. The amount of educational value is balanced again with the skill education obtained by prospective Notaries through internships for 2 (two) years. The addition of the academic portion makes the Notary qualified to become a lecturer, and the addition of internship time will further hone the Notary's expertise in applying his knowledge. The existence of these two elements makes a Notary can be called a practitioner and an intellectual, so it is not wrong to make an analogy between a Notary and a lecturer in terms of the use of their resources.

Lecturers are subjugated as social forces. Sociologically, lecturers are the nation's assets in the midst of many people who have not received sufficient education. Positioning the lecturer as a teacher in the class is a social waste. Must maxi-

mize the potential of lecturers to solve problems, provide solutions, and encourage progress. (Rahardjo, 2009) That hope is not wrong if it is also pinned on a Notary. Notary qualifications, which are not much different from lecturers, should also be maximized. Assigning a Notary only as a deed maker with all the academic potential it has, the author feels, is also a social waste.

The description above reveals another side of the Notary Profession. In a legal profession, a notary must have a spirit of devotion, uphold human values, and consider his career's spirituality. In other words, he is more concerned with the afterlife than the world. (Lubis, 2012) The spirit of devotion and all its moral content is expected to be able to encourage Notaries not only to carry out their legal obligations but also their ethical obligations in fighting for the ideals of the constitution by providing legal education for the community.

Concerning the notary's limitations about the academic pulpit, the rules for a notary who doubles as a lecturer are the same as the obligations of a notary as a public official. It is not enough for a Notary to only have legal expertise but must also be based on his responsibility and appreciation of the nobility of his dignity and position. The position of a Notary is a position of trust. As a trusted person, a Notary should uphold the confidentiality of a Notary's role, which is to keep everything that is notified to him regarding making a deed a secret. This is by the oath (*promise*) (Lubis, 2012), which a Notary must pronounce.

Based on the provisions of Article 16 paragraph (1) letter f of the UUJN, it is emphasized that in carrying out his position, a Notary must keep everything about the deed he made and all information or information obtained for making a deed based on an oath or appointment a secret, except the law. Determine something else. In addition, Article 54 of the UUJN explains that a Notary can only give, pay attention to, or notify the

contents of the deed, Grosse Deed, Copies of the Deed, or deed Quotes to people who have a direct interest in the act, heirs, or people who have rights, except for laws and regulations. The invitation dictates something else.

Regarding the confidentiality of the position of a Notary, which contains the Notary's obligation to keep the contents of the deed confidential and the information obtained in the making of a Notary deed, GHSL Tobing argues as follows: first, Notaries are obliged to keep secret, not only what is stated in their acts, but also everything that is notified or conveyed to them in their position as a Notary, even if it is not stated in the deeds; second, the right of denial of the Notaries is not only a right (*verschoningsrecht*) but also an obligation (*verschoningsplicht*), the Notary is obliged not to speak. This is not based on Article 1909 of the Civil Code, which only gives him the right to resign as a witness, but is based on Article 17 and Article 40 of the UUJN; third, in determining the extent to which the notaries' right of denial should be found on the obligation for notaries not to talk about the contents of their deeds, both about what is stated in the acts or what was notified or submitted to him in his position as a notary. , even before a court of law, except in cases where there is a higher interest or where the Notary is for this purpose by a statutory regulation in force freeing him expressly from his oath of office.

This means that the notary, about the freedom of the academic pulpit and transferring his knowledge to students in connection with the Lecturer profession, is limited to general knowledge, for example, about what is called a deed, how to make it, what are the elements of a deed, what is meant by guarantee, what is meant by with the deed of imposition of Mortgage, what is meant by Fiduciary Guarantee and so on, a notary may not disclose the identity of his clients and disclose all information or information obtained in the making of the deed.

Based on UUJN, Notaries as General Officials get the authority by attribution because the power is created and granted by UUJN itself. So, the officer obtained by a Notary does not come from other institutions, such as the Department of Law and Human Rights. (Adjie, 2014) The position of a notary is more important than the position of a notary profession as a lecturer; therefore, the notary's limitations related to the academic pulpit are to the position of a notary as a public official, whereas an official public notary is obliged to keep everything related to the deed he made, meaning that he has been ordered not to be a notary. Give, show or notify the act's contents except those with a direct interest. So what may be given by a notary related to the academic pulpit are general things that have nothing to do with doing a deed.

3.2. The notary's responsibility for violating the confidentiality of the notary's position related to the freedom of the academic pulpit

A profession in carrying out its work must be based on morals, ethics, and responsibility and does not depend on the goals or results achieved. A notary is a public official whose job is to provide services to the community with certain limited powers granted by law. Notaries have the right to leave during their working period and are replaced by substitute notaries (Putri, 2020). The position held by a Notary is a position of trust where someone is willing to give confidence in him. As a trusted person, a notary has the right to keep everything that is notified to him as a notary a secret, even though some are not stated in the deed. A Notary who cannot limit himself will face the consequences of losing public trust and no longer being considered a trusted person.

In the oath of office, the notary promises to keep the contents of the deed and the information

or information obtained confidential. Article 16 paragraph (1) letter f also states that in carrying out his office, a Notary must keep the deed he made and all information obtained in the making of the deed secret based on an oath/promise of office unless the law provides otherwise. In the explanation of the article, it is stated that the obligation to keep everything related to the deed and other documents confidential is to protect the interests of all parties related to the act. Article 322 paragraph (1) of the Criminal Code also states that, whoever deliberately discloses a secret that he is obliged to keep because of his position or occupation, both now and in the past, is sentenced to a maximum imprisonment of 9 (nine) months or a maximum fine of Rp. 600, - (six hundred rupiahs).

Regarding the obligation to keep the deed secret and all information obtained for the making of the deed, it is related to the provisions of Article 322 of the Criminal Code (KUHP), which states that "Whoever deliberately discloses a secret that must be kept because of his position or search, whether currently or the former, shall be punished by a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs.

Based on the provisions of Article 322 of the Criminal Code above, it is necessary to ask who must keep secret (the deed); this is contained in the provisions of Article 16 paragraph (1) letter f of the Law on Notary Positions (UUJN), that "In carrying out his position, the Notary is obliged to keep the everything regarding the deed he made and all information obtained for doing the deed by the oath/promise of office, unless the law stipulates otherwise," which means that the one who must keep the deed he made and all information obtained for the making of the act is a notary.

The deed made before a notary or authentic deed includes essential and confidential documents, the Notary as referred to in Article 16 paragraph (1) letter f of the Notary Position Act (UUJN), must keep the deed he made secret, the notary, based on his position obliged to keep it

and the action that should only be for the benefit of the appeared or his family or examination in a criminal case, but deviates from this. Article 322 of the Criminal Code contains the secret of positions in whatever form is entrusted to people, for this a Notary, because of his job or work, whether he is holding now, or previously, or now that has been abandoned. This act is done intentionally, and if it is about a particular person, it can be prosecuted based on the complaint of the person who has been harmed.

Article 322 of the Criminal Code does not explicitly mention a particular job, but in this case, Article 322 also includes work for a Notary. (Prodjodikoro, 2003) Specifically, regarding Article 322 of the Criminal Code, it is closely related to several articles in the Notary Position Act, namely related to the oath of office (Article 4 of the Notary Position Law) and the confidentiality of the notary with the client (Article 16 paragraph (1) letter f of the Notary Position Act). In the editorial of the oath of office, there is an editor who states: that I will keep the contents of the deed and information obtained in the exercise of my office confidential. Meanwhile, Article 16 paragraph (1) letter f of the Law on Notary Positions explains that the notary is obliged to keep everything about the deed he made and all information obtained for the act by the oath/promise of office unless stipulated otherwise by law.

The obligation to keep everything related to the deed and other documents confidential is to protect the interests of all parties related to the deed. The position of the Notary Position Act in the context of the confidentiality of the relationship between the Notary and his client is a reinforcement and confirmation that the relationship between the client and the Notary has a point of view that is not open and known to the general public.

Based on the Law on Notary Positions in carrying out their duties and their positions proved to have been violated, the Notary may be subject to administrative, civil sanctions, and a code of

ethics. In practice, it is sometimes found that a legal act or violation committed by a Notary can be subject to civil, administrative, and ethical sanctions but is qualified or withdrawn as a crime committed by a Notary based on the Notary having falsified or made a fake letter or leaked mandatory secrets. They are Stored. (Putri, 2011)

However, even though it has been regulated in the Law on the Position of a Notary as regulated in Article 16 paragraph (1) letter F, which reads: "In carrying out his office a Notary is obliged to keep everything concerning the Deed he made and all information obtained for the making of the deed by the oath/ Appointment of Position Unless the Law provides otherwise." In carrying out his position, a Notary must carry out his duties with full responsibility. A notary, as a state representative, is fully responsible to the government and for his profession as a notary. Duties of a Notary include 1). Moral Responsibility; 2). Responsibility for the code of ethics.

So, in line with what was stated above, we can mean that a Notary in carrying out his duties is not free from mistakes, either intentionally or unintentionally, so if a Notary is careless in carrying out the duties and functions of his position as a Public Official who does an authentic deed which must keep everything confidential regarding the act he made by what is given by law. So he must be legally, morally, and ethically accountable to the community; the mistakes made by the Notary can allow the Notary to deal with legal liability either administratively, civilly, or criminally. As a result of his negligence or his carelessness, it causes legal violations/legal consequences and sanctions as stipulated in the provisions of the legislation.

3.2. Sanctions or legal consequences according to the Notary Position Act.

Keeping everything confidential about the deed made and all information obtained for the making of the act is one of the obligations of the

Notary. However, opening the show he made, which should be kept secret, except for examination in a criminal case or at the request of the appeared or his family, he may be subject to administrative sanctions by Article 16 paragraph (11) of the UUJN.

Administrative responsibility is the responsibility of employees who cannot fulfill their obligations in their duties. An official is placed under the discipline of office. Violation of office discipline can result in punishment, even dismissal from office. Disciplinary rules are regulations that include obligations, prohibitions, and sanctions if duties are not fulfilled or are violated. Based on Article 16 paragraph (11), a Notary who violates the provisions as referred to in paragraph (1) letters a to letter l may be subject to sanctions in the form of a) —written warning; b). Temporary Dismissal; c). Disrespectful Dismissal; or d). Disrespectful Dismissal.

It is related to the provisions in Article 16 paragraph (12) of the Law on Notary Positions (UUJN) that, in addition to being subject to sanctions as stated in paragraph (11), violations of the provisions in Article 16 paragraph (1) letter j of the Law on Notary Positions (UUJN) can be used as one of the reasons for the parties who suffer losses to be used as a claim for reimbursement of costs, compensation, and interest to a notary. (Kusbianto, Safnul, Yasid, & Suparman, 2020) Article 16 paragraph (1) letter j of the Law on Notary Positions (UUJN) states that a notary is obliged to send a list of deeds based on the letter i or a list of nil relating to wills to the will registration center at the ministry that carries out government affairs in the legal field within a period. Five (5) days in the first week of each subsequent month. And if the claim for compensation against a notary is only if the notary does not carry out his obligations as stipulated in Article 16 paragraph (1) letter j of the Notary Position Act, which means that the notary does not carry out the responsibil-

ity to keep everything confidential regarding the deed he made and all information obtained to for the making of the Deed by the oath of office, unless the law provides otherwise, it is not responsible for making compensation for the injured party.

A. Sanctions or legal consequences according to those stipulated in criminal law

Criminal responsibility is primarily regulated in the Criminal Code (KUHP), namely in book II Title XXVIII Articles 413-437 regarding office crimes and book III Title XX VII Article 552-559 regarding office violations. Violation of this position does not mean violating the rules of the office but various criminal acts listed in the Criminal Code (KUHP).

If a notary discloses the secret of the position assigned to him, then the notary will be threatened with a criminal sentence based on Article 322 of the Criminal Code. To be prosecuted for violating Article 322 of the Criminal Code, the following elements must be proven: 1). What is disclosed (opened) must be something secret; 2). That person knows he is obliged to keep the secret; 3). The obligation to keep the secret is due to the current or former position or occupation; 4). The act of revealing the mystery was done intentionally. (Sugandhi, 2002)

B. Sanctions or legal consequences according to those stipulated in the Civil Code

Civil liability is the responsibility for losses that can be valued in money caused by it; whether the loss is to the government itself or a third party, if as a result of the disclosure of someone's secret by a notary or a notary employee, so that it can be known by the public and result in If there is a loss for the related party, the notary can be sued civilly by Article 1365 of the Civil Code which states that every act that violates the law, which causes harm to another person, obliges the person who, because of his fault, published the loss, compensates the loss.

4. Conclusion

The position of a notary is higher than the position of a notary as a lecturer; therefore, the limitations of a notary related to the academic pulpit are by the position of a notary as a public official, whereas an official public notary is obliged to keep everything related to the deed he made, meaning that he has been ordered not to give, show or notify the contents of the act except to those with a direct interest. So what a notary can provide related to the academic pulpit are general things that have nothing to do with doing a deed. The consequences of his negligence can lead to legal violations/legal matters and legal sanctions as stipulated in the provisions of the legislation. Sanctions, according to UUJN, are in the form of written warnings, temporary dismissals, respectful dismissals, and dishonorable dismissals. Sanctions regulated in the Criminal Law if a Notary discloses the secrets of the position mandated to him may be subject to criminal sanctions by Article 322 paragraph (1) letter a of the Criminal Code, while the sanctions regulated in civil law if as a result of the disclosure of a person's secret by a notary or notary employee so that it can be known to the public and results in losses for the parties concerned, the notary can be sued civilly by Article 1365.

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