

Construction of Legal Responsibility Arrangements for Notaries and Notary Employees If Notary Employees Commit Unlawful Acts

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Abstract: When viewed through an empirical/sociological approach, several issues occur within the scope of the notarial profession. Notaries generally have a good (close) relationship with their employees. However, not a few notary employees commit fraud behind the notary desk, either directly or indirectly. From the notary's side, it is also possible that the notary covers up various mistakes of his employees on the basis of maintaining credibility and so on. Such unlawful acts will be followed up both in terms of the law and the Notary Code of Ethics. It can be seen that notary employees have a legal relationship with the notary on the basis of the work performed by the notary. There is a need for legal construction from upstream to downstream regarding the legal status/relationship and legal responsibilities of each notary and notary employee. This is intended so that each party has a legal reference to what extent legal actions can be said to violate or not. The legal vacuum in regulating the relationship between notaries and notary employees when committing illegal acts makes the possibility of legal violations increase. The research method used is normative legal research because it examines legal issues on legal norms and principles. "Normative legal research, which is also referred to as library research or document study, because it is mostly done on secondary data in the library. In the final conclusion resulting from this research in the form of legal liability arrangements between Notaries and Notary employees if Notary employees commit unlawful acts so that it is necessary to make proposals for legal construction in the regulation of legal

liability between Notaries and Notary employees if Notary employees commit unlawful acts.

Keywords: *Unlawful Acts, Legal Responsibility of Notary, Notary.*

INTRODUCTION

Land is an increasing human need because people's lives continue to grow and multiply every day. Notaries play an important role in the legal system to provide legal certainty through their duties in making authentic deeds. The authentic deed is generally used by the public at large as strong evidence in court. The position of notary is desired by law in assisting and serving the public in making authentic written evidence of circumstances, events, and legal acts.¹ Without the public, the office of notary is meaningless. This means that the position of notary occurs due to the needs of the community. Therefore, notaries are required to have dedication and integrity in carrying out their duties, both in terms of morals and morals.²

In general, notaries are responsible for all deeds that have been issued, as stipulated in Law Number 30 of 2004 concerning the Notary Position as amended by Law Number 2 of 2014 (hereinafter: UU Jabatan Notaris/UUJN). The responsibilities of a notary in general include accuracy, validity, and honesty in making deeds. Article 16 paragraph (1) point a of the UUJN states that a notary, in carrying out his/her position, is obliged to "act honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal acts."³ In this case, a notary has full authority in carrying out his duties as a maker of authentic deeds both in "... deeds, agreements, and provisions required by laws and regulations and / or desired by those concerned to be stated in an authentic deed, ensuring certainty of the date of

¹ Habib Adjie, *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*, Cet. 1 (Bandung: Refika Aditama, 2008), 14.

² Hatta Isnaini Wahyu Utomo and Imam Safi'i, "Tanggung Jawab Mantan Karyawan Notaris Sebagai Saksi Akta Terhadap Kerahasiaan Akta," *Res Judicata* 2, no. 1 (July 31, 2019): 213, <https://doi.org/10.29406/rj.v2i1.1444>.

³ Republik Indonesia, *Pasal 16 Ayat (1) Huruf a Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris Mengatur Kewajiban Notaris Untuk Membaca Akta*, 2014.



making the deed, keeping the deed, providing a grosse, copy and quotation of the deed."⁴

In carrying out their duties, notaries are often assisted by notary employees. When referring to Article 17 of the UUJN regarding the prohibition of notaries, there is no mention of the prohibition of having notary employees. The use of the term notary 'employee' instead of notary 'staff' or 'employee' is based on the definition of the term employee, which is a person who works for an institution (office, company, etc.) by receiving a salary (wage). The term for employee is clerk or worker.⁵ Meanwhile, staff means a group of people who work together in assisting superiors in managing something.⁶ In UUJN itself, the term 'employee' has been used as in Article 3 point f and Article 33 paragraph (1) of UUJN. The existence or existence of notary employees plays a role in helping notaries carry out their duties and responsibilities. Thus, notaries and notary staff have a relationship that according to labor law is nothing but an employment relationship. Article 50 of Law Number 13 Year 2003 on Manpower (hereinafter: Manpower Law/UUK) states that "employment relationship occurs due to a work agreement between an employer and a worker/laborer."⁷ Employers (notaries) are defined as "individuals, partnerships, or legal entities that run a company owned by themselves", or a company not owned by them, or a company located in Indonesia representing the two types of companies.⁸ Meanwhile, worker/labor (notary employee) is defined as "every person who works by receiving wages or other forms of compensation."⁹ In addition, notary employees are also equated to labor, which is "everyone who is capable of

⁴ Republik Indonesia, *Pasal 15 Ayat (1) UUJN (Undang-Undang Jabatan Notaris) Menyatakan Bahwa Notaris Berwenang Membuat Akta Otentik Mengenai Semua Perbuatan, Perjanjian, Dan Penetapan.*, 2014.

⁵ kbbi.kemendikbud.go.id, "Penggunaan Istilah 'Karyawan' Menurut KBBI," 2016, <https://kbbi.kemendikbud.go.id/entri/karyawan>.

⁶ kbbi.kemendikbud.go.id, "Penggunaan Istilah 'Staf' Menurut KBBI," 2016, <https://kbbi.kemendikbud.go.id/entri/staf>.

⁷ Republik Indonesia, *Pasal 50 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Mengatur Bahwa Hubungan Kerja Terjadi Karena Perjanjian Kerja Antara Pengusaha Dengan Pekerja/Buruh.*, 2003.

⁸ Republik Indonesia, *Pasal 1 Ayat 5 Poin a, b Dan c Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*, 2003.

⁹ Republik Indonesia, *Pasal 1 Ayat 3 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*, 2003.



doing work in order to produce goods and/or services both to meet their own needs and those of the community."¹⁰

The relationship between notaries and notary employees is a legal relationship that has the fulfillment of each other's needs. Or in other words, the relationship is a relationship that needs each other.¹¹ Notary employees assist the notary in carrying out the duties of his office so that it runs effectively and efficiently, both in time and energy. One of the tasks of notary employees is to take care of the administration of the notary office. Notaries and notary employees have a structural working relationship, with notaries as superiors and notary employees as subordinates. Most of the notary's work regarding the management of making deeds is handed over to his notary employees, which are then materially checked by the notary. In addition, notary employees play an important role, not only as witnesses in every deed made by and or in front of a notary, but also helping notaries prepare deeds, registering and validating letters or deeds made under the hand. Without notary employees, what has been prepared to be done or done by the notary will certainly not be carried out as desired. Therefore, the presence of employees must be considered in order to carry out the orders of the notary properly.

The relationship is not just a relationship, but becomes a legal relationship, which basically gives rise to rights and obligations in terms of employment, not just a relationship between one legal subject and another. Legal relations are defined as relations between legal subjects (or between legal subjects and legal objects), which are regulated by law and give rise to legal consequences, namely rights and obligations. The legal relationship between a notary as an employer and a worker is an employment relationship. Broadly speaking, an employment relationship is a relationship that includes rights and obligations between workers and employers, occurring after an agreement is made by the worker and the employer (work agreement).

¹⁰ Republik Indonesia, *Pasal 1 Angka 2 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*, 2003.

¹¹ Diah Aju Wisnuwardhani, "Implementasi Hak Pekerja Dalam Hal Upah Di Kantor Notaris," *Jurnal Cakrawala Hukum* 8, no. 1 (April 6, 2018): 34, <https://doi.org/10.26905/idjch.v8i1.1728>.



A work agreement is the basis for an employment relationship. It contains the rights and obligations of the employee and the employer.¹² "The employment agreement made by the notary and signed by both parties, in this case the notary staff and the notary, becomes the basis of industrial relations between the notary and the notary staff."¹³ In the position of notary staff and notary in working act for and on behalf of the notary. This means that everything (anything) done by the notary employee in the framework of the working relationship with the notary, then by the public will be assessed as the actions of the notary. In the event of an error or unlawful act by a notary employee, the notary as the immediate superior still holds legal responsibility.

When examined in more depth, there are weaknesses in the existing legal norms related to the norms on the responsibilities of notary employees to notaries in the UUJN, namely the absence of regulation on the obligations and legal responsibilities of notary employees to notaries. In the UUK, there is also no regulation of the working relationship between notaries and notary employees. Thus, it can be explained that the two legal regulations are considered to have no clear legal rules, which can ultimately lead to confusion in legal references in regulating the legal acts of notary employees. In practice, the complexity of the responsibilities of notaries and notary employees arises when there are unlawful acts by both notaries and notary employees.

Coupled with the modern era as it is today, the rapid population growth rate tends to be unable to be anticipated by the carrying capacity of the central and regional governments as a whole. The demographic bonus that occurs in Indonesia shows the growth of the population at a young and mature age with economic problems. One of the economic problems that occurs is the urgent economic needs, which in turn leads to various professions being carried out not in accordance with applicable norms and ethics or hiding behind obscurity or the absence of a legal regulation governing this matter. Finally, some professional actors commit unlawful acts. When viewed through an empirical/sociological approach, several issues occur within the scope of the notarial profession. Notaries generally have a good (close) relationship with their employees. However, not a few notary employees commit fraud

¹² Zaenal Efendi and Weppy Susetiyo, "Analisis Kontrak Kerja Di Kantor Notaris: Tinjauan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Supremasi* 8, no. 2 (November 2, 2018): 63, <https://doi.org/10.35457/supremasi.v8i2.487>.

¹³ Juli Maria, "Hubungan Hukum Antara Notaris Dengan Karyawan Notaris," *Modeling: Jurnal Program Studi PGMI* 4, no. 1 (March 2, 2017): 122, <https://doi.org/10.69896/modeling.v4i1.107>.



behind the notary desk, either directly or indirectly. From the notary's side, it is also possible that the notary covers up various mistakes of his employees on the basis of maintaining credibility and so on. Such unlawful acts will be followed up both in terms of the law and the Notary Code of Ethics. Through several observations and interviews conducted by the author, it can be seen that the mistakes of notary employees are ultimately addressed to the notary. The following is the opinion of Mr. Muhammad Zainul Arief, S. H., M. Kn., as a member of the Regional Supervisory Council (MPD), as follows:

*"Notary employees are assistants to the performance of notaries in carrying out notarial duties. As a member of MPD, I have never received a report regarding a problematic notary employee, because it is not the authority and responsibility of MPD. However, as a fellow notary, I do not deny that there are some cases caused by notary employees. For example, embezzlement of client tax money, notary employees who act as the notary in the reading of the deed (representing the notary) even though in UUJN it is not allowed and the Ministry of Law and Human Rights gives SK to the person/party of the Notary, not the employee. And the most frequent is opening the confidentiality of the contents of the client's deed to other parties. In this case, the responsible party will be the notary and his office, not the notary's employees."*¹⁴

In addition, Mr. Yudi Ansyah, S.H., as chairman of the MPD, and the Regional Honor Council (DKD), mentioned that in addition to the above, there were also cases of ethical violations, namely piracy of notary employees and advertising.¹⁵ Notaries have responsibilities in terms of civil, administrative, and criminal law, as well as notary employees, if there are professional actions that are not carried out in accordance with applicable norms and ethics. In this case, if a notary employee commits an unlawful act, the notary is liable in civil, administrative, and criminal law. Civilly, notaries can be sued for losses arising from unlawful acts by their employees. This is based on the principle of vicarious liability which explains that the employer (notary) has full responsibility for the actions of its employees. For example, if a notary employee forges a signature in a deed, the injured party can sue for damages.

Administratively, notaries can be subject to administrative sanctions in the form of warnings, suspensions, and dismissals. Criminally, notaries can be subject to criminal liability if there is evidence of unlawful acts by their employees. On the other hand, although notary employees are not public

¹⁴ Muhammad Zainul Arief, Hasil wawancara dengan Bapak Muhammad Zainul Arief, S. H., M. Kn., selaku anggota Majelis Pengawas Daerah (MPD), 2024.

¹⁵ Yudi Ansyah, Hasil wawancara dengan Notaris-PPAT Bapak Yudi Ansyah, S.H., selaku ketua MPD, dan Dewan Kehormatan Daerah (DKD), 2024.



officials such as notaries, notary employees can be subject to similar civil (compensation), administrative (disciplinary action), and criminal liability (for example, article 263 of the Criminal Code which regulates document forgery).

By looking at these matters, it can be seen that notary employees have a legal relationship with notaries on the basis of work performed by notaries. There needs to be a legal construction from upstream to downstream regarding the legal status/relationship and legal responsibilities of each notary and notary employee. This is intended so that each party has a legal reference to what extent legal actions can be said to violate or not. The legal vacuum in regulating the relationship between notaries and notary employees when committing illegal acts makes the possibility of legal violations increase.

THEORETICAL BASIS

Legal construction is a way or method in filling the void of legislation with legal principles and joints. Legal construction consists of 3 (three) forms, namely Analogy (Abstraction), Determination (Legal Refinement), and Argumentum A Contrario, which are as follows:¹⁶

Analogy (Abstraction)

Analogy is the application of a legal provision to a situation that is basically the same as the situation explicitly regulated in the legal provision. However, its appearance or form of realization becomes another legal form.

Determination (Law Smoothing)

Determination is a form of construction by not applying or applying the law differently than the existing written law provisions or treating the law in such a way (subtly) that it seems as if no party is to blame.

Argumentum A Contrario

For example, if marriage law stipulates that a woman who has been divorced from her husband cannot marry another man until 100 days have passed, then the waiting period does not apply to a man.¹⁷ In carrying out a legal construction, legal policy advocacy is needed, which is an effort/process in influencing government policy. Advocacy becomes a policymaking strategy

¹⁶ Yudha Bhakti Ardhiwisastro, *Penafsiran Dan Konstruksi Hukum*, Ed. 1., cet. 1 (Bandung: Alumni, 2000), 53.

¹⁷ Enju Juanda, "Penalaran Hukum (Legal Reasoning)," *Jurnal Ilmiah Galuh Justisi* 5, no. 1 (June 6, 2017): 160, <https://doi.org/10.25157/jigj.v5i1.316>.



when policymakers design laws and regulations. Thus, the purpose of advocacy is to create, reform, guarantee, and implement a policy.¹⁸

RESEARCH METHODS

This type of research is normative legal research because it examines legal issues on legal norms and principles. "Normative legal research, which is also referred to as library research or document study, because it is mostly done on secondary data."¹⁹ Normative legal research also refers to legal rules, legal norms contained both in statutory provisions and in court decisions. The approach taken in this research is a conceptual approach, a conceptual approach is taken when researchers do not depart from existing legal rules. This is done because there is no legal rule for the problem at hand where the approach to the problem is carried out by examining various legal aspects.²⁰ The statute approach is used by looking at the governing legislation, so that it will be known legally about the construction of legal relations between notary employees and notaries if they commit unlawful acts.

RESULT AND DISCUSSION

Forms of Legal Liability of Notaries according to UUJN, Code of Ethics of Notaries, Civil Code, and Criminal Code

Notaries are public officials who are appointed and dismissed by the Minister of Law and Human Rights in assisting the public regarding legal issues. The main task of a notary is to provide services for making written evidence, especially authentic deeds in civil law.²¹ The authority to make an authentic deed regarding a legal act becomes an implementation of the law of evidence in court.²² In carrying out their duties and functions, notaries need to ensure the certainty of the date of the authentic deed made, to store and provide a grosse of the deed, as well as copies and excerpts of the deed. The

¹⁸ Intan Fitri Meutia, *Analisis Kebijakan Publik* (Bandar Lampung: AURA (CV. Anugrah Utama Raharja), 2017), 142.

¹⁹ Ediwarman Ediwarman, *Monograf Metodologi Penelitian Hukum Panduan Penulisan Skripsi, Tesis, Dan Disertasi* (Medan: Sofmedia, 2015), 137.

²⁰ Peter Mahmud Marzuki, *Penelitian hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2005), 137.

²¹ Hartanti Sulihandari and Nisya Rifiani, *Prinsip-Prinsip Dasar Profesi Notaris (Berdasarkan Peraturan Perundang-Undangan Terbaru)* (Jakarta: Dunia Cerdas, 2013), 5.

²² Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan (Buku 2)* (Bandung: PT. Citra Aditya Bakti, 2013), 220.



notary needs to ensure that the deed is in accordance with the applicable provisions and is not made by another official or person.

In carrying out their duties and functions, notaries need to ensure the certainty of the date of the authentic deed made, to store and provide a grosse of the deed, as well as copies and excerpts of the deed. The notary needs to ensure that the deed is in accordance with the applicable provisions and is not made by another official or person.²³ The legal responsibility of notaries as public officials has been explained in the UUJN and the Notary Code of Ethics. Article 4 paragraph (2) of the UUJN describes the oath or promise of a notary in carrying out his/her duties and functions, which is as follows:²⁴

"I swear: that I will obey and be loyal to the State of the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on Notary Position and other laws and regulations. That I will carry out my office with trustworthiness, honesty, thoroughness, independence, and impartiality. that I will maintain my attitude, behavior, and will carry out my obligations in accordance with the professional code of ethics, honor, dignity, and my responsibilities as a Notary. that I will keep the contents of deeds and information obtained in the performance of my office confidential. That in order to be appointed to this position, I have not, directly or indirectly, under any name or pretext, given or promised anything to any person."

The article explains the oath or promise of notaries in carrying out their duties and functions through five (5) promises contained in each paragraph. First, the notary as a public official of the state must comply with the state foundation, namely Pancasila and the 1945 Constitution, UUJN, and other laws. Notaries carry out their duties and functions with full responsibility to the Republic of Indonesia and the 1945 Constitution; respect judges; carry out their positions honestly, thoroughly, and impartially; keep their work carefully with all existing regulations; keep the contents of the deed confidential in accordance with statutory regulations, and so on in their responsibility to the community.²⁵

²³ Adjie, *Hukum Notaris Indonesia*, 23.

²⁴ Republik Indonesia, *Pasal 4 Ayat (2) Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris (UUJN-P)*, 2004.

²⁵ G.H.S Lumban Tobing, *Peraturan Jabatan Notaris* (Jakarta: Erlangga, 1999), 237.



Second, notaries must perform their duties properly through the values of trustworthiness, honesty, thoroughness, independence, and impartiality. In this case, the behavior and obligations of notaries are regulated by considering the professional code of ethics. This means that notaries perform their work professionally with a good personality and uphold the dignity of being obliged to respect colleagues, mutually maintaining the honor of the good name of the notary organization.²⁶ Third, notaries must maintain the confidentiality of the contents of deeds and the like, which are as follows:²⁷

- 1) Notaries are required to make good and correct deeds, meaning that the deed made fulfills the elements or legal will and wishes of the interested party because of their position.
- 2) Notaries are required to make high-quality deeds, which means that the deeds they make must be in accordance with the benefits or legal rules that the parties want in the real sense, there is no engineering in making the deed.
- 3) Positive impact means that anyone who will recognize a notarial deed has valid and perfect evidentiary power.

Fourth, notaries are not allowed to promise something to other parties. In addition to the UUJN, the responsibilities of notaries have also been explained according to the Civil Code, which are as follows:²⁸

- 1) Article 1365 of the Civil Code, as liability with the element of fault or with the existence of intent and negligence, namely that:
"Every unlawful act that causes damage to another person requires the person who caused the damage to compensate for the damage".
- 2) Article 1366 of the Civil Code as liability with an element of fault, specifically negligence, namely that "every person is liable not only for losses caused by his negligence and lack of care".
- 3) Article 1367 of the Civil Code, as absolute or no-fault liability. In a limited context, the article explains that a person is not only responsible for losses caused by his own actions, but is held liable for

²⁶ Ignatius Ridwan Widyadharma, *Hukum Profesi Tentang Profesi Hukum* (Semarang: Ananta, 1994), 133.

²⁷ Abdul Kadir Muhammad, *Etika Profesi Hukum* (Bandung: Citra Aditya Bakti, 2006), 93.

²⁸ Munir Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*, Cet. 1 (Bandung: Citra Aditya Bakti, 2002), 3.



losses caused by those for whom he is responsible or caused by those under his supervision.

In addition, in the Criminal Code, the position of Notary with the responsibility to keep confidential anything related to the deed made, in accordance with Article 16 paragraph (1) point e, is regulated in Article 263 paragraph (1) of the Criminal Code, which is as follows:

"Any person who forges or falsifies a document which may give rise to a right, an obligation or a release from debt, or which is intended as evidence of a fact, with intent to use or to cause others to use said document as if the contents were true and unfalsified, shall, if from said use an injury may result, being guilty of forgery of documents, be punished by a maximum imprisonment of six years."

Article 322 paragraph (1) of the Criminal Code also states that no one has the right to intentionally disclose secrets. Notaries are *required* to exercise their authority honestly in accordance with Article 16 paragraph (1) of the UUJN and Article 3 paragraph (4) of the Notary Code of Ethics. Article 266 paragraph (1) of the Criminal Code also regulates this matter, namely the prohibition of submitting false information into an authentic deed. Similarly, Article 452 paragraph (1) of the Criminal Code also describes false information in a deed. Article 528 paragraph (1) of the Criminal Code also regulates the offense of making a copy of a state official letter or its instruments that must be kept secret, unless it is done on the basis of official or public interests (Article 528 paragraph (2) of the Criminal Code).

Compliance with the law from the notary's side is complying with applicable regulations and laws, and accepting legal consequences for violations committed. Notaries have responsibilities in terms of civil, administrative, and criminal law, as well as notary employees, if there are professional actions that are not carried out in accordance with applicable norms and ethics. In this case, if a notary employee commits an unlawful act, the notary is legally responsible civilly, administratively, and criminally. Civilly, notaries can be sued for losses arising from unlawful acts by their employees. This is based on the principle of vicarious liability which explains that the employer (notary) has full responsibility for the actions of its employees. For example, if a notary employee forges a signature in a deed, the injured party can sue for damages.



Administratively, notaries can be subject to administrative sanctions in the form of warnings, suspensions, and dismissals. Criminally, notaries may be subject to criminal liability if there is evidence of unlawful acts by their employees. On the other hand, although notary employees are not public officials such as notaries, notary employees can be subject to similar civil (compensation), administrative (disciplinary action), and criminal liability (for example, article 263 of the Criminal Code which regulates document forgery).

Forms of Legal Responsibility of Notary Employees according to UUK

A notary employee is someone who has a working relationship with a notary as an employer based on a work agreement. Article 1 paragraph (15) of the Labor Law defines employment as "a relationship between an employer and a worker/laborer based on a work agreement, which has the elements of work, wages, and orders". Meanwhile, Article 1 paragraph (14) of the UUK defines a work agreement as "an agreement between a worker/laborer and an entrepreneur or employer that contains working conditions, rights, and obligations of the parties". Notary employees assist notaries in carrying out their duties effectively and efficiently, both in terms of time and energy. In the context of regulations or legal forms in Indonesia, the legal rights and obligations of notary employees still do not have rules that can explain normatively in the context of the UUJN. The absence of such regulation also refers to the form of responsibility of notary employees as notary workers, which then makes a legal vacuum (leemten van normen).

Contractual legal responsibility from the side of notary employees is to fulfill the obligations stated in the contract or agreement that has been agreed with the notary. UUJN does not regulate the obligation of notary staff as deed witnesses to keep the contents of the deed and information obtained in making Notarial deeds confidential. However, if notary staff as deed witnesses disclose the contents of the deed and information obtained in the making of the Notarial deed, so that the actions of notary staff as deed witnesses can endanger or harm the parties in the deed, it can be said that the deed witnesses have committed unlawful acts. Nevertheless, the existence of notary employees is important with an important role that is not only a witness in every deed made by and or in front of a notary, but also helps the notary prepare deeds, register and certify letters or deeds made under the hand. Without notary employees, what has been prepared to be done or done by the notary will certainly not be carried out as desired.



In general, notaries and notary employees have a structural working relationship, with notaries as superiors and notary employees as subordinates. Most of the notary's work regarding the management of making deeds is handed over to his notary employees, which are then materially checked by the notary. One of the duties of notary employees is to take care of the administration of the notary office. Notary employees have a role in helping notaries carry out their duties and responsibilities. Thus, notaries and notary employees have a relationship that according to labor law is nothing but an employment relationship. Article 50 of the UUK states that "an employment relationship occurs due to a work agreement between an employer and a worker/laborer."²⁹ The relationship between notaries and notary employees is a legal relationship that has the fulfillment of each other's needs. Or in other words, the relationship is a relationship that needs each other.³⁰

The relationship is not just a relationship, but becomes a legal relationship, which basically gives rise to rights and obligations in terms of employment, not just a relationship between one legal subject and another. Legal relationship is defined as a relationship between legal subjects (or between legal subjects and legal objects), which is regulated by law and gives rise to legal consequences, namely rights and obligations. This relationship also makes notaries and notary employees have industrial relations that not only carry out their public law authority, but also civil law (*privaatrechtelijke handeling*).³¹ Notary employees have an obligation to carry out their work in assisting notaries in carrying out their work, which is regulated in Article 16 of the UUJN. Every document created and legalized by a notary is a state document that must be kept confidential. The activities of notary employees can involve the notary as an employer in legal matters.³² This happens due to several things, as follows:³³

²⁹ Republik Indonesia, *Pasal 50 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Mengatur Bahwa Hubungan Kerja Terjadi Karena Perjanjian Kerja Antara Pengusaha Dengan Pekerja/Buruh*.

³⁰ Wisnuwardhani, "Implementasi Hak Pekerja Dalam Hal Upah Di Kantor Notaris," 34.

³¹ Maria, "Hubungan Hukum Antara Notaris Dengan Karyawan Notaris," 122.

³² Achmad Arif Kurniawan, "Pertanggungjawaban Pidana Notaris Dalam Hal Pekerja Notaris Melakukan Tindak Pidana Pemalsuan Surat," *Brawijaya Law Student Journal*, November 11, 2016, 4, <https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/2098>.

³³ Chrisya Nadine Immanuella and Siti Hajati Hoesin, "Akibat Hukum Terhadap Notaris/PPAT Terkait Perbuatan Melawan Hukum Oleh Pegawai Notaris/PPAT (Studi 878



- 1) There is a relationship between superiors (Notary) and subordinates (Notary employees).
- 2) Legal liability is based on unlawful acts committed by subordinates.
- 3) Unlawful acts and misconduct of subordinates

By knowing this, it can be explained that Notary employees work for and on behalf of the Notary. This means that everything done by the Notary's employees becomes the public's assessment of the Notary's own actions.³⁴ If a Notary employee makes a mistake, it will become the responsibility of the Notary, not just the responsibility of the Notary employee himself.³⁵ Article 1367 of the Civil Code, as absolute liability or without fault explains that: "A person is not only liable for damages for his or her own unlawful acts, but also for those of his or her dependents."

That way, the notary has responsibility even if the offense is committed by the Notary's employees. This is often referred to as vicarious liability, which means a form of responsibility by looking for who should be responsible or receive compensation claims for existing illegal acts. In other words, the responsibility of the Notary's employees then becomes the responsibility of the Notary. Related to the responsibility for unlawful acts committed by others, there are three (3) forms of responsibility, namely 1) the responsibility of superiors (*respondet superior*), 2) the responsibility of substitutes who are not from superiors for people in their dependents, and 3) the responsibility of substitutes for goods under their dependents.³⁶ Notary employees are fully responsible for their work and if, for example, a notary employee makes a mistake, the employee must be held personally liable. Although, the notary is also responsible for the mistakes made by his employees.³⁷

Kasus Putusan Pengadilan Negeri Blitar Nomor 10/Pdt.G/2020/PN Blt)," *PALAR (Pakuan Law Review)* 8, no. 1 (January 1, 2022): 7, <https://doi.org/10.33751/palar.v8i1.4584>.

³⁴ Immanuella and Hoesin, "Legal Consequences for Notary/PPAT Related to Unlawful Acts", 10.

³⁵ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia : Perspektif Hukum Dan Etika* (Yogyakarta: UII Press, 2009), 17.

³⁶ Krisnadi Nasution, "Penerapan Prinsip Tanggung Jawab Pengangkut Terhadap Penumpang Bus Umum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 1 (June 25, 2014): 59, <https://doi.org/10.22146/jmh.16054>.

³⁷ M. Luthfan Hadi Darus, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris* (Yogyakarta: Uii Press, 2017), 25.



Liability of Notary and Notary Employee if the Notary Employee Commits an Unlawful Act

In accordance with some of the responsibilities of Notary and Notary's employees based on the UUJN, Notary Code of Ethics, Civil Code, and Criminal Code above, if the notary's employees commit unlawful acts, the Notary is responsible for the actions of his employees based on the rules of Article 1367 of the Civil Code. The article makes the Notary responsible for the actions of his employees as subordinates. That way, the Notary is responsible in accordance with the Criminal Code, namely Article 263 paragraph (1) related to data falsification, Article 264 paragraph (1) related to falsification of authentic deeds, Article 266 paragraph (1) related to ordering the falsification of authentic deeds, Article 322 paragraph (1) related to opening secrets, Article 452 paragraph (1) related to false information, and Article 528 paragraph (1) related to making copies and disseminating confidential documents. This means that the Notary becomes responsible for unlawful acts committed by his employees.

On the other hand, Notary employees also have personal liability which is expressed in Article 1365 and Article 1366 of the Civil Code. The two articles explain that responsibility is suspended on a person based on fault either through intent or negligence to compensate for the losses caused. That way, not only the Notary can be that person, but the Notary's employees can also be someone who works negligently or makes mistakes. Therefore, the rules in the Criminal Code above can also be imposed on Notary employees, when referring to Article 1365 and Article 1366 of the Civil Code. The legal vacuum occurs because the law does not apply harmoniously when viewed through the legal principle of *lex posterior derogate legi priori* (legal principle that overrides old regulations from new regulations).³⁸ The Civil Code and Criminal Code are old regulations compared to the UUJN which should have specifically regulated in such a way the working relationship and liability of Notaries and their employees if employees commit unlawful acts. However, in fact, this can only be explained by the Civil Code and Criminal Code, not the UUJN.

UUJN and Notary Code of Ethics Do Not Regulate the Liability of Notary Employees If Notary Employees Commit Unlawful Acts

Notaries are public officials who have the authority to make authentic deeds and have an important role in the Indonesian legal system. The

³⁸ Sitti Mawar, "Metode Penemuan Hukum (Interpretasi Dan Konstruksi) Dalam Rangka Harmonisasi Hukum," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 1, no. 1 (July 8, 2020): 7, <https://doi.org/10.22373/justisia.v1i1.2558>.



authority and responsibilities of notaries are specifically regulated in Law Number 30/2004 on the Office of Notary, which was later amended by Law Number 2/2014. However, this law does not explicitly regulate the responsibilities of notary employees, both in the general context and when the employees commit unlawful acts. The Law on the Office of Notary (UUJN) primarily focuses on regulating the duties, authorities, and responsibilities of notaries as public officials. The articles in the UUJN elaborate in detail on the obligations of notaries in carrying out their duties, the requirements to become a notary, as well as the sanctions that can be imposed on notaries who violate the regulations. The first policy analysis process that needs to be done is to define existing policy problems. In UUJN, there is no article that specifically regulates the responsibilities of notary employees. Notary employees, who often assist in administrative and technical tasks in the notary office, do not have their roles explicitly regulated in this law. This creates a legal vacuum regarding the roles and responsibilities of notary employees, which should be regulated to ensure that all parties involved in the notarization process understand their rights and obligations.

In the context of regulations or legal forms in Indonesia, the legal rights and obligations of notary employees still do not have rules that can explain normatively in the context of the UUJN. The absence of such regulation also refers to the form of responsibility of notary employees as notary workers, which then makes a legal vacuum (*leemten van normen*). The regulatory vacuum regarding the responsibilities of notary employees can have several negative impacts, such as the absence of clear responsibilities. Notary employees may not fully understand what they are responsible for, resulting in negligence or errors in carrying out their duties. Unlawful acts committed by notary employees, such as document forgery, fraud, or misuse of information, can have a serious impact on the integrity of documents produced and public trust in the notary institution. However, neither the UUJN nor the Notary Code of Ethics provide a clear legal framework on how to handle unlawful acts committed by notary employees. In the absence of clear provisions, it is difficult to establish appropriate sanctions for notary employees who commit unlawful acts.

In addition, with the legal vacuum, there is a potential for abuse of authority. Without a clear regulation, potential abuse of authority by Notary employees may harm clients and damage the reputation of the notary office. In addition, notary employees may not receive adequate legal protection in the



performance of their duties, which may negatively impact their well-being. This may hinder the fair and consistent enforcement of the law. Notaries may be faced with the situation of having to bear responsibility for unlawful acts committed by their employees, even though they were not directly involved in the act. The lack of clarity on how to deal with unlawful acts by notary employees may undermine public confidence in the institution of notaries and the legal system as a whole.

In the absence of legal regulations regarding the responsibilities of Notary employees, it becomes a problem in itself. That way, this policy problem identification process aims to explore issues or problems that exist in society. After that, the focus of policy analysis or legal construction can be formulated. The determination of the above problems is based on various things such as the existence of actual problems that are of concern to the community; important and urgent; relevant to the needs and aspirations of the community; has a broad and positive impact; or in accordance with the transformation of society or in other words, efforts / efforts in following the development and needs of society.³⁹ Through several observations and interviews conducted by the author, it can be seen that the mistakes of notary employees are ultimately directed at the notary. This is in accordance with the statement of Mr. Muhammad Zainul Arief, S. H., M. Kn., as a member of the Regional Supervisory Council (MPD), as follows:

*"Notary employees are assistants to the performance of notaries in carrying out notarial duties. As a member of MPD, I have never received a report regarding a problematic notary employee, because it is not the authority and responsibility of MPD. However, as a fellow notary, I do not deny that there are some cases caused by notary employees. For example, embezzlement of client tax money, notary employees who act as the notary in the reading of the deed (representing the notary) even though in UUJN it is not allowed and the Ministry of Law and Human Rights gives SK to the person/party of the Notary, not the employee. And the most frequent is opening the confidentiality of the contents of the client's deed to other parties. In this case, the responsible party will be the notary and his office, not the notary's employees."*⁴⁰

³⁹ Edi Suharto, *Analisis kebijakan publik: Panduan praktis mengkaji masalah dan kebijakan sosial*, Cetakan Ke 5 (Bandung: Alfabeta, 2010), 102.

⁴⁰ Arief, Hasil wawancara dengan Bapak Muhammad Zainul Arief, S. H., M. Kn., selaku anggota Majelis Pengawas Daerah (MPD).



This is quite detrimental to the Notary. In the absence of regulations on the responsibility of Notary employees, mistakes made by Notary employees become the responsibility of the Notary, even though the Notary did not make the mistake directly. Therefore, it is necessary to have a legal construction that regulates this matter so *that* the Notary and / or Notary employees do not suffer losses and have legal protection. In addition, Mr. NOTARIS-PPAT Yudi Ansyah, S.H., as the chairman of the MPD, and the Regional Honor Council (DKD), mentioned that in addition to the above, there were also cases of ethical violations, namely piracy of notary employees and advertising.⁴¹ Some of these violations occur due to the absence of regulations that bind notary employees, especially the UUJN and the Notary Code of Ethics. A legal construction can reduce and/or even eliminate the cause of the problem. The UUJN and the Notary Code of Ethics currently do not specifically regulate the liability of notary employees, either in a general context or when the employee commits a tort. The legal issue can only be seen if the Notary employee becomes a *legal* subject as an employee according to UUK.

According to the UUK, a notary employee can be said to be someone who has an employment relationship with a Notary as an employer based on a work agreement. Article 1 paragraph (14) of the UUK defines a work agreement as "an agreement between a worker/laborer and an employer that contains the terms of employment, rights, and obligations of the parties". Evaluation of existing policies is carried out to determine what consequences will be caused by describing their impact. In addition, the purpose of evaluating existing policies is to see the level of success and/or failure of an existing policy based on criteria set by the government. Policy evaluation needs to look at the policy program along with the impact and the extent to which policy objectives have been achieved.⁴²

In general, notaries and notary employees have a structural working relationship, with notaries as superiors and notary employees as subordinates. Most of the notary's work regarding the management of making deeds is handed over to his notary employees, which are then materially checked by the notary. One of the duties of notary employees is to take care of the administration of the notary office. Notary employees have a role in helping notaries carry out their duties and responsibilities. Thus, notaries and notary

⁴¹ Ansyah, Hasil wawancara dengan Notaris-PPAT Bapak Yudi Ansyah, S.H., selaku ketua MPD, dan Dewan Kehormatan Daerah (DKD).

⁴² Suharto, *Analisis kebijakan publik*, 103.



employees have a relationship that according to labor law is nothing but an employment relationship. Article 50 of the UUK states that "an employment relationship occurs due to a work agreement between an employer and a worker/laborer."⁴³ The relationship between notaries and notary employees is a legal relationship that has the fulfillment of each other's needs. Or in other words, the relationship is a relationship that needs each other.⁴⁴

The relationship is not just a relationship, but becomes a legal relationship, which basically gives rise to rights and obligations in terms of employment, not just a relationship between one legal subject and another. Legal relationship is defined as a relationship between legal subjects (or between legal subjects and legal objects), which is regulated by law and gives rise to legal consequences, namely rights and obligations. This relationship also makes notaries and notary employees have industrial relations that not only carry out their public legal authority, but also civil legal acts (*privaatrechtelijke handeling*).⁴⁵

By knowing this, it can be explained that Notary employees work for and on behalf of the Notary. This means that everything done by the Notary's employees becomes the public's assessment of the Notary's own actions.⁴⁶ If a Notary employee makes a mistake, it will become the responsibility of the Notary, not just the responsibility of the Notary employee himself.⁴⁷ Article 1367 of the Civil Code, as absolute liability or without fault explains that: "A person is not only liable for damages for his or her own unlawful acts, but also for those of his or her dependents."

That way, the notary has responsibility even if the offense is committed by the Notary's employees. This is often referred to as vicarious liability, which means a form of responsibility by looking for who should be responsible or receive compensation claims for existing illegal acts. In other words, the responsibility of the Notary's employees then becomes the responsibility of the Notary. Regarding the responsibility for unlawful acts committed by others, there are three (3) forms of responsibility, namely 1) the

⁴³ Republik Indonesia, *Pasal 50 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Mengatur Bahwa Hubungan Kerja Terjadi Karena Perjanjian Kerja Antara Pengusaha Dengan Pekerja/Buruh.*

⁴⁴ Wisnuwardhani, "Implementasi Hak Pekerja Dalam Hal Upah Di Kantor Notaris," 34.

⁴⁵ Maria, "Hubungan Hukum Antara Notaris Dengan Karyawan Notaris," 121.

⁴⁶ Maria, "Legal Relationship Between Notary and Notary Employee", 124.

⁴⁷ Anshori, *Lembaga Kenotariatan Indonesia : Perspektif Hukum Dan Etika*, 18.



responsibility of the superior (*respondeat superior*), 2) the responsibility of a substitute who is not from the superior for the people in his dependents, and 3) the substitute responsibility of the goods under his dependents.⁴⁸ Notary employees are fully responsible for their work and if, for example, a notary employee makes a mistake, the employee must be held personally liable. Although, the notary is partly responsible for the mistakes made by his employees.⁴⁹ This legal vacuum can lead to various problems, including unclear responsibilities, potential abuse of authority, and lack of legal protection for notary employees. Therefore, additional regulations are needed that comprehensively govern the roles and responsibilities of notary employees to ensure fairness and legal certainty for all parties involved.

Legal Consequences for Notary and Notary's Employees if Notary's Employees Commit Unlawful Acts

The position of notary is a position of trust for the benefit of society. Therefore, someone is willing to entrust something to him. As someone who is trusted, the notary is obliged to keep confidential anything that is notified during the deed-making process. Therefore, holding secrets related to the making of an authentic deed becomes a public law. UUJN does not regulate the obligation of notary employees as deed witnesses to keep the contents of the deed and information obtained in the making of Notarial deeds confidential. However, if a notary employee as a deed witness discloses the contents of the deed and information obtained in the making of a Notarial deed, so that the actions of the notary employee as a deed witness can endanger or harm the party in the deed, it can be said that the deed witness has committed a tort.

The act of a notary employee as a witness to a deed who discloses the secret of the deed is contrary to the legal obligations of the perpetrator. Acting or neglecting contrary to the legal obligations of the perpetrator is an act that is contrary to the provisions of the law. An act becomes unlawful if the act is contrary to the legal obligation (*rectsplicht*) of the perpetrator. Article 1365 of the Civil Code, as liability with the element of fault or with the existence of intent and negligence, namely that: "*Every unlawful act that causes damage to another person requires the person who caused the damage to compensate for the damage*". Article 1366 of the Civil Code as liability with an element of fault, especially negligence, namely that "every person is liable not only for losses caused by his negligence

⁴⁸ Nasution, "Penerapan Prinsip Tanggung Jawab Pengangkut Terhadap Penumpang Bus Umum," 60.

⁴⁹ Darus, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris*, 26.



and lack of care". Article 1367 of the Civil Code, as absolute liability or without fault. In a limited context, the article explains that a person is not only liable for losses caused by his own actions, but is held liable for losses caused by those for whom he is responsible or caused by those under his supervision. In addition, in the Criminal Code, the position of Notary with the responsibility to keep confidential anything related to the deed made, in accordance with Article 16 *paragraph* (1) point e, is regulated in Article 263 *paragraph* (1) of the Criminal Code, which is as follows:

"Any person who forges or falsifies a document which may give rise to a right, an obligation or a release from debt, or which is intended as evidence of a fact, with intent to use or to cause others to use said document as if the contents were true and unfalsified, shall, if from said use an injury may result, being guilty of forgery of documents, be punished by a maximum imprisonment of six years."

Violation of this matter is punishable by imprisonment for a maximum of eight (8) years in accordance with Article 264 *paragraph* (1) of the Criminal Code. In addition, Article 322 *paragraph* (1) of the Criminal Code also states that anyone who intentionally discloses a secret is liable to imprisonment for a maximum of nine (9) months or a maximum fine of nine hundred rupiahs. Notaries are required to exercise their authority honestly in accordance with Article 16 *paragraph* (1) of the UUJN and Article 3 *paragraph* (4) of the Notary Code of Ethics. If the Notary and employees of the Notary do not act honestly, then the legal consequences as a consequence can be subject to imprisonment for a maximum of seven (7) years in accordance with Article 266 *paragraph* (1) of the Criminal Code and imprisonment for a maximum of eight (8) years in accordance with Article 452 of the Criminal Code.

The provisions in the two articles of the Criminal Code regulate the writing of false statements on deeds or documents. Article 528 *paragraph* (1) of the Criminal Code also imposes a maximum imprisonment of two (2) months or a maximum fine of *four* thousand five hundred rupiahs in the event of a violation of making a copy of a state official letter or its instruments that must be kept secret, unless it is done on the basis of official or public interest (Article 528 *paragraph* (2) of the Criminal Code).

Construction of Notary Legal Responsibility Arrangement if Notary Employees Commit Unlawful Acts

Based on Law No. 12/2011 on the Formation of Laws and Regulations, the preamble of the Law as well as Provincial Regulations,



Regency / City Regulations, has the main ideas of both philosophical, sociological, and juridical elements in the consideration and reasons for the formation of legal rules. Philosophically, regulations are formed in consideration of the worldview, awareness, and ideals of law based on the Preamble of the 1945 Constitution. Sociologically, legal regulations are formed in meeting the needs of society in various aspects. Meanwhile, juridically, legal regulations are formed in overcoming legal problems or filling legal gaps with various considerations of existing rules, which will be amended, or which will be revoked. This is done to ensure legal certainty and a sense of justice.

In this case, the legal responsibility of notaries and notary employees has not been regulated in Indonesian legal regulations if notary employees commit illegal acts. So far, there is still a legal regulation that regulates the position of notary, namely Law Number 30 of 2004 concerning the Position of Notary, while related to notary employees does not yet exist. However, in this case, there is Law Number 13 of 2003 concerning Manpower which is used in regulating employees. The juridical foundation concerns legal issues related to the substance or material being regulated so that new laws and regulations need to be formed. Of the various legal issues, legal regulations have been left behind, or, regulations are not harmonious / overlapping, weak enforceability, regulations already exist but are inadequate, or even regulations do not exist at all.⁵⁰

The main source of law in Indonesian positive law is legislation as written law. However, this often feels left behind by the development of society. That way, there are legal events that occur but there is no regulation in written law, which is often referred to as a legal vacuum. In addition to legal vacuum, there are also cases that occur, namely written law is available, but sometimes the law is unclear, so that the law becomes vague, even the law can become a legal conflict if the regulation has contradictions between sub-regulations. Law discovery is the process of law formation by judges or other legal officers who have the task of implementing the law on concrete legal events. This is done on the basis of the absence or incompleteness of the law against a clear interpretation. That way, judges look for the law and find the law or often referred to as legal discovery or *rechtsvinding*. The discovery of

⁵⁰ Republik Indonesia, *Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan*, 2011.



the law can then answer questions regarding the interpretation or legal interpretation of the law.⁵¹

As a party to the judicial power, judges are authorized to enforce the law and are prohibited from rejecting a case, so they have an obligation to fulfill the legal vacuum in the formal legal system. This is explained in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (hereinafter: Judicial Power Law), namely: "*Courts are prohibited from refusing to examine, hear and decide a case submitted on the pretext that the law does not exist or is unclear, but are obliged to examine and hear it.*"

Legal discovery is different from the application of law because legal discovery finds a new form of law. Legal discovery can be done through interpretation, analogy, or legal refinement. Judges are required to find new laws and not only decide a case based on existing rights and obligations.⁵² Legal discovery is the concretization, crystallization, or individualization of *das sollen* (legal regulations) to concrete events (*das sein*). *Das sein* must be connected to legal regulations in order to be covered by the legal regulations themselves. Conversely, *das sollen* must be adapted to concrete events in order to be applied.⁵³ Related to this, a judge uses his logical reasoning in filling the legal vacuum through further development of a statutory text. This means that the judge no longer adheres to the text of the law, although the judge still has to use the principles of law as a system.⁵⁴ Legal construction is generally carried out when the following occurs:

- 1) No statutory provision can be found that can be applied to the concrete events that occurred
- 2) Not in the legal regulations
- 3) There is a legal vacuum (*recht vacuum*)
- 4) There is a legal vacuum (*wet vacuum*)

⁵¹ Muwahid, "Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim: (Sebuah Upaya Untuk Mewujudkan Hukum Yang Responsif)," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 7, no. 1 (June 21, 2017): 225, <https://doi.org/10.15642/al-hukama.2017.7.1.224-248>.

⁵² Siti Malikhatun Badriyah, "Penemuan Hukum (Rechtsvinding) Dan Penciptaan Hukum (Rechtsschepping) Oleh Hakim Untuk Mewujudkan Keadilan," *Masalah-Masalah Hukum* 40, no. 3 (July 19, 2011): 338, <https://doi.org/10.14710/mmh.40.3.2011.384-392>.

⁵³ Muwahid, "Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim," 227.

⁵⁴ Muwahid, 226.



After identifying existing policy problems, collecting evidence related to problems, examining the causes of problems, and evaluating existing policies, the proposed construction of legal arrangements related to legal responsibility for Notaries and Notary employees if Notary employees commit illegal acts is carried out by developing alternative policies and determining the best policy from previous policy alternatives. The development of alternative policies is carried out to solve community problems. The selection of the best policy is seen through the visibility and effectiveness of the new policy.⁵⁵ In this case, the author proposes a legal construction related to legal responsibility for Notaries and Notary employees if Notary employees commit unlawful acts:

Legal Construction Procedure

The Monitoring Procedure consists of 2 stages of parts:

a. Description of Legal Issues

The absence of policy provisions or legal rules regarding legal responsibility for Notaries and Notary employees if Notary employees commit illegal acts becomes a legal problem/issue in terms of notarization in Indonesia. Philosophically, regulations are formed in consideration of the worldview, awareness, and ideals of law based on the Preamble of the 1945 Constitution. Sociologically, legal regulations are formed to meet the needs of society in various aspects. Juridically, legal regulations are formed in overcoming legal problems or filling legal gaps with various considerations of existing rules, which will be amended, or which will be revoked. This is done to ensure legal certainty and a sense of justice. In fact, in Indonesia there is no legal regulation that philosophically, sociologically, and juridically, regulates the legal responsibility for Notaries and Notary employees if Notary employees commit illegal acts.

Juridically, notarization in Indonesia is regulated by Law Number 30/2004 on the Office of Notary as amended by Law Number 2/2014 (hereinafter: UU Jabatan Notaris/UUJN) and the Code of Ethics for Notaries (hereinafter: KEN). The UUJN only regulates the authority, obligations, prohibitions, responsibilities, roles, and other matters of the Notary position. Meanwhile, Notary employees are not regulated at all. Sociologically, in carrying out their duties, Notaries are assisted by Notary employees. It does not rule out the possibility that Notary employees commit

⁵⁵ Solichin Abdul Wahab, *Analisis Kebijakan: Dari Formulasi ke Penyusunan Model-Model Implementasi Kebijakan Publik* (Jakarta: Bumi Aksara, 2021), 126.



unlawful acts. In this case, empirically, it is the Notary who bears responsibility for the mistakes made by Notary employees. Although, in Articles 1365 and 1366 of the Civil Code, Notary employees are entitled to bear responsibility for their mistakes, the UUJN and KEN do not regulate these matters.

When examined through the legal principle of *Lex superior derogate legi inferior* (laws and regulations that have a lower degree must not conflict with higher regulations), the conformity between the Articles in the Civil Code and UUJN-KEN is not the same. When viewed from the principle of *lex specialis derogate legi generalis* (the principle of legal interpretation that special law overrides general law), UUJN and KEN do not even have a special law that regulates the legal responsibility for Notaries and Notary employees if Notary employees commit illegal acts which eventually become legal issues in terms of notarial matters in Indonesia.

b. Description of the Problem Situation

In the context of regulations or legal forms in Indonesia, the legal rights and obligations of notary employees still do not have rules that can explain normatively in the context of the UUJN. The absence of such regulation also refers to the form of responsibility of notary employees as notary workers, which then makes a legal vacuum (*leemten van normen*). The regulatory vacuum regarding the responsibilities of notary employees can have several negative impacts, such as the absence of clear responsibilities. Notary employees may not fully understand what they are responsible for, resulting in negligence or errors in carrying out their duties. Unlawful acts committed by notary employees, such as document forgery, fraud, or misuse of information, can have a serious impact on the integrity of the documents produced and public trust in the notary institution. However, neither the UUJN nor KEN provides a clear legal framework on how to deal with unlawful acts committed by notary employees. In the absence of clear provisions, it is difficult to establish appropriate sanctions for notary employees who commit unlawful acts.

In addition, with the legal vacuum, there is a potential for abuse of authority. Without a clear regulation, potential abuse of authority by Notary employees may harm clients and damage the reputation of the notary office. In addition, notary employees may not receive adequate legal protection in the performance of their duties, which may negatively impact their well-being. This may hinder the fair and consistent enforcement of the law. Notaries are faced with the situation of having to bear responsibility for unlawful acts committed by their employees, even though they were not



directly involved in the act. The lack of clarity on how to handle unlawful acts by notary employees can reduce public trust in the notary institution and the legal system as a whole.

CONCLUSION

The legal responsibility arrangements between Notaries and Notary employees, particularly when Notary employees commit unlawful acts, are governed by various regulations. In the UUJN, the legal responsibility of Notaries is outlined in Article 4 paragraph (2) and Article 16 paragraphs (1) to (9), while the KEN addresses it in Article 3. Additionally, the Civil Code regulates the legal responsibility of Notary employees in Articles 1365, 1366, and 1367, and the Criminal Code covers both Notaries and Notary employees in Articles 263(1), 264(1), 322(1), 266(1), 452, and 528. The construction of legal responsibility between Notaries and their employees when unlawful acts occur involves several steps, including defining policy issues, collecting evidence, assessing causes, evaluating current policies, developing alternatives, and selecting the best policy. To ensure legal certainty, these processes must be integrated into the framework of legal responsibility arrangements for Notaries and their employees.

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