

Improper Responsibility of Notary Candidates

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ABSTRACT

This study uses normative juridical legal research by examining laws and regulations. One of the requirements to be fulfilled by a Notary Candidate to be appointed as a Notary is to perform an apprenticeship for 24 (twenty four) months at the Notary's office, as referred to in Article 3 letter f UUJN. This research resulted in formulation of problem why Notary Candidate is required to conduct apprenticeship activities at Notary Office and Notary Candidate's responsibility in improper apprenticeship activities at Notary's office. Notary candidates are required to conduct internship activities based on 2 (two) points in accordance with laws and regulations governing Notary Position and to improve the skills of Notary Candidates. Notary candidates who do not perform apprenticeship activities properly in Notary office cannot be sanctioned by the UUJN Because the UUJN only regulates the Notary Position. Instead, Notary recipient of an internship can be subject to criminal sanctions for counterfeiting a letter in accordance with article 55 paragraph (1) juncto Article 263 of the Criminal Code if it is later proven to issue an Internship Certificate as one of the requirements to be appointed as a Notary which is not in accordance with reality.

Keywords: *Responsibilities, Notary Candidates, Internships*

1. INTRODUCTION

Legal certainty is needed to create justice for the people of Indonesia. This need can be in the form of legislation and professional law enforcement officers. The need for law enforcement professionals especially in the field of civil law has an important role in the life of the state. One of law enforcement professionals in the field of civil law is Notary. According to the Law of the Republic of Indonesia Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning Notary Position hereinafter referred to as UUJN, Article 1 number 1 states that "Notary is a general official authorized to make authentic deeds and have other authorities as referred to in This Act or based on other laws. Thus, a Notary is a general official authorized to make authentic deeds regarding all actions, agreements, or provisions required by a general regulation or what the interested parties want to be stated in an authentic deed. The existence of a Notary deed in a legal state, especially Indonesia, has a crucial function. Notary Deed as a deed that has perfect verification power makes the position of the Notary deed a first and foremost evidence in the law of civil proof, Therefore, its existence needs to be regulated so that the power of proof of the notarial deed does not become a bomerang for the parties who create it.¹

One of the requirements to be appointed as a Notary is an apprenticeship activity for 24 (twenty four) months in Notary Office as required in Article 3 letter f of the UUJN, stating

¹ Mokhamad Dafirul Fajar Rahman.(2014).Kewenangan, KewajibanNotaris dan Calon Notaris dalam Membuat Akta Autentik. *Online Journal of Law Faculty Students, Brawijaya University*.

"..having undergone an internship or obviously has worked as a Notary employee in the shortest time 24 (twenty-four) consecutive months at the Office of the Notary on its own initiative or on the recommendation of the Notary Organization after passing the strata two notary." Thus, to become a Notary, theoretical abilities obtained during studying in should be followed by work practices, adding experience to balance between science and work practices.

The problem arises because there is no similarity among Notaries in treating the prospective Notary Candidate, both in the form of unwritten written and oral regulations. Notary candidates conducting apprenticeship are still handed over to the Notary recipient of the internship. With the absence of the same rules regarding apprenticeship activities in a notary's office, there are differences regarding Notary's treatment of prospective Notaries who are apprenticed in their place, for example the obligation of prospective notary at the place of internship, responsibilities, rights, and any knowledge given or how to deal with clients. This can happen because the Notary is a profession that works independently which means it is not dependent on the boss or anyone in carrying out their duties and positions. (Susilo & Roesli, 2018). For example, there is a Notary who cooperates with the banking sector; some do not cooperate with banking sector that Notary Candidates who are undergoing apprenticeship activities are do not evenly receive material or knowledge to be studied.

The obligation of a Notary Candidate who conducts apprenticeship activities is regulated in Article 16 A UUJN includes:

(1) A Notary Candidate who is conducting an internship must implement the provisions referred to in Article 16 paragraph (1) letter a.

(2) In addition to the obligations as referred to in paragraph (1), the prospective Notary is also obliged to keep everything confidential regarding the Deed he made and all information obtained for the making of Deed.

The obligation of a Notary Candidate according to Article 16 paragraph (1) letter a states "... acting honestly, thoroughly, independently, does not take sides and safeguard the interests of the parties involved in legal actions".

The obligation of the Notary Candidate is clearly regulated in the UUJN. However, there is a violation of the obligations in practice carried out by the prospective Notary Candidate. The Notary Candidate undertaking apprenticeship activities yet does not fulfill 24 (twenty four) months. Notary candidates rarely visit and study in the Notary's office but are registered as apprentices in the Notary's office and after 24 (twenty four) months obtain an Internship Certificate which is one of the requirements documents for the appointment of a Notary, this can impact their skills in becoming a Notary (Roesli, Heri, & Rahayu, 2017). This certainly violates the provisions of Article 16 A paragraph (1) of the UUJN because the Notary Candidate in carrying out his obligations is not honest in carrying out apprenticeship activities. UUJN does not regulate the

granting of strict sanctions against Notary Candidates who cannot carry out his obligations so that there is a legal vacuum².

2. RESEARCH METHOD

This type of research is a normative research by examining the laws and regulations that apply or are applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is the legislation document and library material³. The type of approach used in this study is Statute Approach (approach to the Law) and Conceptual Approach⁴. Statute Approach (law approach) is legal research by examining all laws and regulations related to legal issues handled. Statute Approach is performed by studying the laws and regulations related to legal issues that handled. Conceptual approach is a legal research approach that departs from the views and doctrines that develop in legal science. This provides ideas of clear legal notions, legal concepts, and legal principles relevant to the issue at hand.

3. FINDING AND DISCUSSION

3.1. Obligation of Internship for Notary Candidates

Notaries, as general officials who carry out the profession in providing legal services to the community, need to receive protection and guarantees to achieve legal certainty⁵. The guarantee of protection and guarantee of the attainment of legal certainty on the implementation of the duties of a Notary has been regulated in Law Number 02 of 2014 concerning Amendments to Law Number 30 of 2014 concerning Notary Position or hereinafter referred to as UUJN. UUJN Article 1 number 1 states that a Notary is a general official authorized to make authentic deeds and have other authority as referred to in this Law or based on other laws. According to Soegondo Notodisojo, the General Officer was someone who was appointed and dismissed by the government and was given the authority and obligation to serve the public in certain matters because he participated in carrying out a power that originated from the authority of the government⁶.

Authentic Deed, According to Article 1868 Burgerlijk Wetboek or the Civil Code, hereinafter referred to as BW states, "Authentic Deed is a deed made in a form determined by the Act by or in the presence of an authorized public official". According to Article 1 number 7 of the

² Shofy Nabila. (2015). Implikasi Yuridis Calon Notaris Magang yang Tidak Melaksanakan Kewajibannya Sebagaimana Diatur dalam Pasal 16A Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris. *Online Journal of Law Faculty Students, Brawijaya University*.

³ Soejono dan Abdurahman. (2003). *Metode Penelitian Hukum*, Rineka Cipta, Jakarta, p. 56.

⁴ Peter Mahmud Marzuki. (2005). *Penelitian Hukum*, Prenadamedia Grup, Jakarta, p. 93.

⁵ I Komang Suardana. (2014). Makna Akta Yang Dibuat oleh Calon Notaris Magang Pasal 16 A Ayat (2) Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris. *Online Journal of Law Faculty Students Brawijaya University*.

⁶ Soegondo Notodisojo. (1993). *Hukum Notariat di Indonesia Suatu Penjelasan*, Raja Grafindo Persada, Jakarta, p. 44.

UUJN, Notarial Deed is an authentic deed made by or before a Notary, according to the form and procedure stipulated in the UUJN. In general, authentic deed is interpreted as a proof document containing statements, acknowledgments, decisions, etc. about legal events that are made according to applicable regulations, witnessed and authorized by official officials.

The requirements to be appointed as a Notary can be seen in Article 3 of the UUJN, including:

- a. Indonesian citizens;
- b. Fear God Almighty;
- c. Aged at least 27 (twenty seven) years;
- d. Physically and mentally healthy as stated by a health certificate from a doctor and psychiatrist;
- e. Graduated with a law degree and a degree notary degree;
- f. Has undergone an internship or obviously has worked as a Notary employee in the shortest time 24 (twenty four) consecutive months at the Notary's office or its own initiative or on the recommendation of the Notary Organization after passing the strata two notary;
- g. Not having the status of a civil servant, a State official, an advocate, or not holding other positions which are legally prohibited from being held concurrently with the position of Notary;
- h. Never been sentenced to imprisonment based on a court decision that has obtained permanent legal force because of a criminal offense that is threatened with imprisonment of 5 (five) years or more.

From this article it can be concluded that the requirement to become a Notary is to study in the notary field and undergo an internship to hone knowledge and skills to become a Notary.

Based on the definition of apprenticeship in Law Number 13 of 2003 on Manpower, apprenticeship is part of a job training system held in an integrated manner between training in training institutions by working directly under the guidance and supervision of instructors or workers or more workers experienced, in the process of producing goods and or services in the company, in order to master certain skills or expertise. Apprenticeship is carried out on the basis of an apprenticeship agreement between the apprentice and the employer or recipient of an apprenticeship made in writing which contains the rights and obligations of the apprentice and the employer or recipient of the internship and the period of apprenticeship. Apprenticeship without apprenticeship agreement is considered invalid and the status of the apprentice is changed to a worker or laborer in the place where he is an apprentice.

In Indonesia, there are several forms of apprenticeship, namely apprenticeship in the context of job training, apprenticeship for academic purposes, and apprenticeship to fulfill the curriculum or requirements of a particular profession. In this case apprenticeship activities carried out by a prospective Notary are a type of internship carried out to fulfill the Professional requirements. Basically, apprenticeship activities are very important to be carried out by Notary

Candidates. As explained, one of the requirements of a Notary Candidates to be appointed as a Notary is to have an internship or obviously has worked as a Notary employee within 24 (twenty four) consecutive months at the Notary's office on his own initiative or on the recommendation of the Organization Notary after graduating from strata two notary; and in the elucidation of the article it is affirmed that what is meant by "own initiative" is that the Candidate of Notary can choose himself in the desired office by still obtaining a recommendation from the Notary Position Organization⁷.

In addition, Article 16 paragraph (1) letter n also states that one of the obligations of a Notary is to receive a Notary Candidate internship. The article clearly states that in carrying out his position, a notary must accept a prospective notary internship, meaning that a notary who has practiced may not refuse an internship submitted by a prospective intern notary⁸.

The requirement to follow an apprenticeship other than regulated in article 3 letter f of the UUNJ is also regulated in other laws and regulations, including:

- a. Article 2 paragraph (1) letter f Regulation of the Minister of Law and Human Rights Number 25 of 2014 on Terms and Procedure for Appointment, Transfer, Dismissal, and Extension of Term of Office of Notaries states that "... have been apprenticed or have obviously worked as a Notary employee within a period of at least 24 (twenty four) consecutive months at the Notary's office on his own initiative or on the recommendation of the Notary Organization after passing the stratum two notary."
- b. cArticle 2 paragraph (1) letter f Regulation of the Minister of Law and Human Rights Number 62 Year 2016 on Amendment to the Regulation of the Minister of Law and Human Rights Number 25 of 2014 on Terms and Procedure for Appointment, Transfer, Dismissal, and Extension of the Notary's Term of Office reads "having undergone an apprenticeship or obviously having worked as a Notary employee in the shortest time 24 (twenty four) consecutive months at the Notary's office on his own initiative or on the recommendation of the Notary Organization after passing the second notary degree".
- c. Article 10 paragraph (1) letter c Regulation of the Minister of Law and Human Rights Number 25 of 2017 on Notary Appointment Test states "...has carried out an internship program in a Notary office for at least 2 (two) years in the Notary's office that has the shortest work period 5 (five) years and have issued at least 100 (one hundred) deeds.

⁷ Habib adjie. (2007). *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Cet. IV, Refika Aditama, Bandung (selanjutnya disingkat Habib Adjie I), p. 64.

⁸ Subhan Rolly Sahrial.(2014).Efektifitas Pasal 16 Ayat (1) Huruf N Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris Mengenai Kewajiban Magang Guna Meningkatkan Kompetensi Calon Notaris (Studi Kota Batu). *Online Journal of Law Faculty Students, Brawijaya University*.

- d. Regulation of the Indonesian Notary Association Association Number: 06/ PERKUM /INI / 2017 on Internships.

The internship requirement for prospective Notary is imperative, meaning that it must be taken and there must be proof of it. The proof is in the form of an Internship Certificate that will be issued by a Notary who receives an internship if the Notary Candidate has taken an apprenticeship activity for 24 (twenty four) months. In addition to legislation, this apprenticeship activity is highly important for Notary Candidates, to balance the notional knowledge gained in college with Notary work practices such as experience, expertise and how to deal with clients. Notary Candidates undergo internships with the aim of preparing a Notary Candidate to be able become a professional Notary⁹.

3.2. Responsibilities of Notary Candidates in Internship Activities

A Notary Candidate is someone who has graduated from a notarial strata two study program and has an internship at a notary's office, of course by first registering his/her identity as an Extraordinary Member of the Notary organization¹⁰. After graduating from strata two notaries, Notary Magister who wants to become a Notary is obliged to join the association organization of the Indonesian Notary Association as a unifying forum for all Notaries in the territory of Indonesia. Currently the Notary Candidates who will perform apprenticeship must register first to become an outside member (ALB) of the Indonesian Notary Association (INI) hereinafter referred to as ALB INI. ALB is every person who has graduated from an education notary registered as a member of the association. Currently Notary Candidate is not only undergoing an internship at the Notary Office, but is also obliged to take part in a joint apprenticeship program organized by the board of the Indonesian Notary Association. Based on the Regulation of the Indonesian Notary Association Association Number: 06/PERKUM/ INI /2017 on Internship Article 6 number 1 states that the Notary Candidate who will take part in the internship must fulfill the following conditions:

1. Graduated from Secondary Notary or Postgraduate Specialist I Education; Graduated from pre-internship held by the Association;
2. Extraordinary Members of the Indonesian Notary Association;
3. Submitting a request for recommendation in writing to the Regional Management at the Notary's place of residence for the internship to be:
 - Appoint a certain Notary considered eligible to receive an internship, or
 - Approve the choice of applicant for an internship at a particular Notary Office (for Notari Candidates who perform apprentice on their own initiative);

⁹ Triyanto Setyo Prabowo.(2017).Tanggung Jawab Calon Notaris yang Sedang Magang Terhadap Kerahasiaan Akta. *Jurnal Repertorium*. 4 (2). 70-78

¹⁰ Rani Yuliani.(2018). Tanggung Jawab Hukum Calon Notaris yang Sedang Magang Terhadap Kerahasiaan Akta. *Jatiswara Law Journal*. 33(2)

1. State the ability to comply with the laws and regulations governing Notary Position, Notary Ethics Code, and Indonesian Notary Association Association Regulation;
2. Has an "Internship Activity Report Book" issued by the Indonesian Notary Association to record daily apprenticeship activities, which must be completed by the relevant Notary Candidate and initialed by the Notary recipient of the internship.
3. Comply with the laws and regulations regarding Notary Position, including but not limited to the obligation to keep the deed confidential.

The Notary Candidate who conducts apprenticeship activities both at the Notary's office and joint internship organized by the Regional Management of the Indonesian Notary Association has an obligation that must be carried out and obtaining his rights include:

Obligations of Notary Candidates

1. In UUJN, the obligation of a Notary candidate is regulated in article 16A, stating that Candidate of Notary must implement the provisions referred to in Article 16 paragraph (1) letter a stating "act trustworthily, honestly, thoroughly, independently, impartially, and safeguard the interests of the parties concerned in a legal act". Letter b which states "Candidate of Notary is also obliged to keep everything confidential regarding the deed he made and all information obtained in order to make the deed":

1. Participate and has his/her name listed in at least 20 (twenty) deeds in accordance with article 10 paragraph (1) letter d of the Regulation of the Minister of Law and Human Rights Number 25 of 2017 concerning Notary Appointment Appointment.

2. Have an internship report book

3. Be good, polite, discipline and maintain ethics to Notary recipients of internships and other Notary employees.

4. Notary Candidates who are Extraordinary Members of the Indonesian Notary Association are required to take part in the association activities by collecting 30 (thirty) points.

5. Participating in a joint internship organized by the Management of the Indonesian Notary Association.

1. Obtain guidance, knowledge and practice about the notary world to Notaries

2. recipients of apprenticeship, apprenticeship employees and resource persons during joint internships are in accordance with the Rules of the Association as Notary Candidates who will become Notaries.

3. Can move the internship place for at least 6 (six) months from the old Notary's place to the new internship place if needed.

4. Obtain Internship Certificate from Notary recipient of internship.

5. Entitled to participate in the process of making a deed, either as a witness or a Substitute Notary if possible in accordance with the laws and regulations.

6. Obtain a joint Internship Certificate from the Management of the Indonesian Notary Association Area

7. Obtain an internship certificate

While the laws and regulations have explained the terms and conditions of apprenticeship for Notary Candidates, many Notary Candidates do not carry out apprenticeships as they should. They cannot always attend the Notary office who receives an internship due to work and not being able to leave the job so that they cannot be routinely present at the Notary's office. Notary recipients of internships also give permission for Notary Candidates to not take part in an internship for a long period of time due to family relations with a Notary Candidate thereby reducing objectivity. After 24 (twenty four) months from the time of the internship, the prospective notary receives an Internship Certificate which is one of the requirements for completing the document for the appointment of a Notary, even though the Notary Candidate does an apprenticeship not as it should.

The Notary Candidate above acts dishonestly and violates the provisions of article 16 A paragraph (1) of the UUJN which states "Notary Candidates conducting an internship must implement the provisions referred to in article 16 paragraph (1) letter a of UUJN" by acting trustworthily, honestly, thoroughly, independently, impartially, and safeguarding the interests of the parties involved in legal actions". In addition, they should prevent Notary Candidates from becoming low skilled and not professional. This will certainly make a loss to the Notary Candidate himself or the Notary recipient of the internship. In addition, the Notary who receives the internship also violates Article 16 paragraph (1) letter a of the UUJN above, because the Notary recipient of the internship is also responsible and has a great role to educate Candidates Notary to be more professional, skilled and have morality according to article 16 paragraph (1) letter n UUJN stating that Notary is obliged to receive an Notary Candidate internship.

Both UUJN and Notary Code of Ethics do not regulate the provisions concerning sanctions for Notary Candidates who violate Article 3 letter f of the UUJN and Article 16 A UUJN, therefore the sanctions cannot be applied to candidates for an intern who is not apprenticed, because the Notary Candidate has not yet submitted to the rules in the UUJN and there are no rules that specifically regulate sanctions for violating Notary Candidates. While Notary Candidate has not been subject to the rules in the UUJN, Candidate of Notary should continue to run an apprenticeship with the aim as a requirement for an application to be appointed as a Notary.

While not subject to sanctions in the UUJN, but the Notary Candidate can be subject to criminal sanctions in terms of assisting or ordering Notary recipients of an internship to issue an Internship Certificate which is not in accordance with the actual circumstances and use it as one of the requirements for completing the document for appointment of Notaries in accordance with

article 55 paragraph (1) juncto Article 263 of the Criminal Code, hereinafter referred to as the Criminal Code.

Article 55 paragraph (1) states "... convicted as a criminal act:

1. Those who conduct, ask to conduct and participate to conduct;
2. Those who give or promise something, by abusing their power or dignity, by violence, threats or misdirection, or by giving opportunity, means or information, deliberately encouraging others to do their deeds "

Article 263 states:

(1) Whosoever makes a fake letter or falsifies a letter that can give rise to a right, engagement or debt relief, or which is intended as evidence of something with a view to using or to order another person to use the letter as if it were true and not forged , threatened if the use can cause losses, because of falsification of the letter, with a maximum imprisonment of six years.

(2) threatened with the same criminal, whoever deliberately uses fake or counterfeit letters as if they were true, if the use of the letter can cause harm. "

Besides, that the Prospective Notary will also be subjected to moral sanctions from the public for sooner or later the actions taken by the Notary Candidate will certainly be known in the future and make the public do not trust the Candidate Notary and Notary recipient of the internship, so that the public is reluctant to use the services related to the agreement to Notary recipient office. This certainly makes its own loss to the Notary recipient of the internship.

The action taken by the Notary Candidate in requesting the Notary to receive an internship to issue an Internship Certificate while the Notary Candidate has not carried out apprenticeship activities also violate moral ethics. In the big Indonesian dictionary, ethics is the knowledge of what is good and what is bad and about moral rights and obligations. Ethics comes from ancient Greek *ethos* in a single form, which means customs, customs, good morals. In its development Ethics is divided into two, ethics and moral ethics. Ethical ethics are customs or habits that describe human behavior in community life in certain areas, at certain times. Ethical ethics are recognized and applied because they are agreed upon by the community based on the results of behavioral assessment. Moral ethics relate to the habits of good and right behavior based on human nature. If this moral ethic is violated, evil arises, resulted in good and not right action. This habit comes from human nature called moral.

The position of a Notary as a functionary in society is respected. A Notary is usually regarded as an official where someone can get advice that can be relied upon¹¹. Notary position as a profession in providing services (services) to the community requires the importance of

¹¹ Tan Thong Kie.(2007). *Studi Notariat dan Serba Serbi Praktek Notaris*, Cet. II, Ichtiar Baru van Hoeve, Jakarta, h. 444.

determining a norm or standardization in the implementation of duties, authorities and obligations. Notary is required to remain maintain behavior, dignity and honor as general officials considering the importance of the role and position of the Notary in the community. In the era of legal development, the role of this Notary places the Notary as part of the components of the legal profession and also law enforcement, in accordance with the authority and obligations given to him in carrying out his profession¹². If a Notary violates the provisions in the UUJN, the society will no longer trust the Notary. For this reason, sanctions which regulate the provisions of the duties of a Notary are needed. Sanctions are a means of coercion, in addition to punishment, also to comply with the provisions stipulated in regulations or agreements¹³. Sanctions are also interpreted as a means of coercion as a punishment if you do not obey the agreement. UUJN regulates sanctions for Notaries that violate the civil sanctions and administrative sanctions stipulated in articles 84 and 85 of the UUJN. Civil Sanction in the form of reimbursement of costs, compensation, and interest is a consequence that will be received by the Notary on the demands of the complainants if the deed concerned only has the power of proof as a deed under hand or the deed becomes null and void.¹⁴ Administrative Sanctions in the form of Oral Reprimands, Written Reprimands, Temporary Dismissals, Dismissal with Respect and Disrespectful Dismissal. According to the Views of H.DanVan Wijk and Willem Konijnenbelt, Administrative sanctions are a tool of public legal power used by the authorities as a reaction to non-compliance with administrative law norms¹⁵. Sanctions for Notaries also include Criminal Sanctions and sanctions for Notary Ethics. Criminal sanctions can be imposed if the Notary in carrying out his position meets certain elements of the offense of a criminal offense under the Criminal Code, and the Code of Conduct sanction can be imposed if it violates various provisions stated in the Code of Conduct of Notary Position. In the event that a Notary issues a Certificate of Apprenticeship for a Notary Candidate who does an improper apprenticeship so that it violates the same Criminal Code as a Notary Candidate, namely article 55 paragraph (1) juncto Article 263 paragraph (1) of the Criminal Code, hereinafter referred to as the Criminal Code.

Article 55 paragraph (1) states: "Sentenced as a criminal offense:

1. Those who perform, who ask to perform and participate;

¹² Krisdianto R.Maradesa.(2014). Kewenangan Serta Tanggung Jawab Hukum Atas Pembuatan Akta Otentik oleh Notaris Berdasarkan Undang-Undang tentang Jabatan Notaris. *Lex Privatum*. 2(3)

¹³ Habib Adjie.(2008). *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, Cet. IV, Refika Aditama, Bandung (selanjutnya disingkat Habib Adjie II), h. 89, dikutip dari N.E.Algra dan H.R.W. Gokkel, *Fockema Andrae's Rechtsgeleerd Handwoordenboek*, H.D.Tjeenk Willink-Alphen aan den Rijn, 1981, h. 496.

¹⁴ *Ibid.*, h. 91

¹⁵ Habib Adjie I, dikutip dari H.D.Van Wijk dan Willem Konijnenbelt, *Hoofdstukken van Administratiefrecht*, Uitgeverij Lemma B.V. Utrecht, 1990,p.327.

2. Those who give or promise something, by abusing their power or dignity, by violence, threats or misdirection, or by giving opportunity, means or information, deliberately encouraging others to do their deeds "

Article 263 paragraph (1) states:

"Anyone who makes a fake letter or falsifies a letter that can cause a right, engagement or debt relief, or which is intended as evidence rather than something with a view to using or telling someone else to use the letter as if it is true and not falsified, threatened if the usage can cause losses, because of falsification of the letter, with a maximum imprisonment of six years ".

The Notary recipient of the internship allows the Prospective Notary not to be present at the Notary's office for a long period of time and issues an Internship Certificate, whereas the Notary Candidate is rarely present at the Notari's office and can be appointed a Notary because it meets the required conditions, according to regulations legislation. However, the prospective Notary does not get the skills and sufficient knowledge about notarial practices and will be subject to moral sanctions from the community because one day it will surely be known if the Notary Candidate rarely does an internship and can be reported to the Regional Oversight Council.

Notary recipient of an internship is the party responsible if there is a report related to the Certificate of Internship to a Notary Candidate who does not conduct apprenticeship properly. According to Hans Kelsen in his theory of legal responsibility, a person is legally responsible for a particular act or that he has legal responsibility, meaning that he is responsible for a sanction in the event of a contradictory act. Hans Kelsen then divided the responsibilities into 4 (four) sections consisting of:

- a. Individual accountability, an individual is responsible for his own violations;
- b. Collective accountability, an individual is responsible for a violation committed by another person;
- c. Accountability based on an error, an individual is responsible for the violation committed because it is intentional and expected to cause harm;
- d. Absolute liability, n individual is responsible for the violations committed due to accidental and unexpected event¹⁶.

According to the responsibility theory of Hans Kelsen, the act of Notary recipient of an apprenticeship is a type of collective responsibility which means that an individual is responsible for a violation committed by another person and an error-based responsibility which means that an individual is responsible for the violations committed intentionally and estimated to cause losses. Notary recipients of apprenticeship can be subjected to administrative sanctions, because they have acted dishonestly in accordance with article 16 paragraph (1) letter a, namely acting honestly,

¹⁶ Hans Kelsen.(2006). *Teori Hukum Murni*, (terjemahan Raisul Mutaqien), Nusamedia, Bandung, p. 140.

trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of the parties involved in legal actions, but in the practice can be withdrawn or qualified as a crime committed by a Notary according to article 55 paragraph (1) in conjunction with Article 263 paragraph (1) of the Criminal Code.

In carrying out their positions, notaries always receive supervision from the government¹⁷. In UUJN, the party authorized to oversee actions carried out by a Notary is the Minister who forms the Supervisory Board. In article 67 paragraph (3) the Supervisory Board consists of:

1. 3 (three) persons from government
2. 3 (three) Notary organizations
3. 3 (three) experts or academics

And the supervisory board formed to oversee the Notary consists of

- a. Regional Oversight Council;
- b. Regional Authority Council;

4. KESIMPULAN

One of the authority of the Regional Supervisory Board in accordance with article 70 letter g of UUJN is to receive reports from the public regarding the alleged violation of the Notary Code of Ethics or violation of the UUJN. Regional Supervisory Council is obliged to examine public reports against Notaries and submit the results of the inspection to the Regional Oversight Council within 30 (thirty) days with copies to the party reporting the Notary concerned, the Central Supervisory Board, and the Notary Organization in accordance with article 71 letter e UUJN. Furthermore, the Regional Oversight Council has the authority to call the Notary Reported to be examined according to Article 73 paragraph (1) letter b of the UUJN and hold a session to examine and make decisions on public reports according to reports from the Regional Supervisory Board in accordance with Article 73 paragraph (1) letter a and can provide sanctions both oral and written warnings in accordance with article 73 paragraph (1) letter e.

The responsibility of the Notary Candidate to conduct an improper apprenticeship is not as appropriate and obtain an Apprenticeship Certificate causing the Notary Candidate to still be appointed a Notary because it has fulfilled the requirements in accordance with legislation and is not subject to sanctions in accordance with UUJN regulations because the Notary Candidate has not been subject to the statutory regulations that govern concerning Notary, but can be subject to moral sanctions and criminal provisions Article 55 paragraph (1) juncto article 263 of the Criminal Code on the Inclusion of Letter Counterfeit Crimes. Instead, Notary recipient of an internship can be subject to sanctions in the form of administrative sanctions in the UUJN and the criminal

¹⁷ La Ode Munawir. (2015). Peran Staf Administrasi Kantor Notaris dalam Menjaga Kerahasiaan Akta. *Portal Garuda Mahasiswa Fakultas Hukum Universitas Brawijaya*. p. 15

provisions of article 55 paragraph (1) junto article 263 paragraph (1) of the Criminal Code on Counterfeiting of Letters.

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Kode Etik Notaris.

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