



Notary's Position as a Mediator in Resolving Disputes

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ABSTRACT

A Notary is bound by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (Notary Law). According to the Notary Law, a notary cannot have a profession that interferes with his performance, including being a mediator. In reality, notaries are often found mediating parties faced with civil disputes. The problem that will be analyzed in this research is the position of a Notary as a Mediator for the parties regarding the Deed they make without violating the PJN code of ethics and how to implement mediation by the Notary for the parties. The type of research used is an empirical legal research method because it directly examines several notaries in Malang City. The results of this research state that a notary can act as a mediator in resolving ongoing disputes for the parties regarding the Deed they have made. Notaries can mediate disputes without violating the code of ethics for notary office regulations, as stated in Chapter II, article 2 of the Notary Code of Ethics. A notary who carries out the function of a mediator can occur if the condition of the dispute or the parties have not found a mutual agreement. In the legal relationship regarding a legal act that they want to carry out, it is necessary to have a third party who helps to find a solution and find agreement jointly representing the interests of the parties so that they can be resolved together.

Keywords: Deed, Mediator, Notary.

1. BACKGROUND

Resolving civil disputes is essential in law to ensure justice for the parties, and mediation is an alternative for resolving cases (Darusman & Handoko, 2022). The mediation process is increasingly gaining attention because it can avoid litigation, which takes time and costs money. The concept of mediation, according to Law Number 30 of 1999, concerning Arbitration and Alternative Mediation Settlement, is also providing a service, whether in the form of input or suggestions for resolving disputes between parties by an expert or several experts appointed by the parties as Mediator (Hikmah, 2011). A Notary is bound by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (Notary Law). According to the Notary Law, a notary must not have a profession that interferes with his performance and is also prohibited from having a side job that could cause a conflict of interest. Meanwhile, in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, Article 1 number 2 only regulates and explains that the mediator is a judge and another party. However, this discussion does, who the other parties are not need to explain. The other position of a Notary is no exception. They can be used as a Mediator (Agustianto, 2023).

A Notary is subject to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) as well as the Notary's Code of Ethics, especially in Article 15 Number 1 which explains that a Notary who has the authority to carry out authentic Deeds regarding all actions, agreements and stipulations which are required by statutory regulations and which are desired by interested parties to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to other officials or other people as determined by law (Imanda, 2020). A Notary is bound by the rules of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Notary Law). According to the Notary Law, a notary may not have a profession interfering with his performance. According to Article 17, it is stated that Notaries are prohibited; from carrying out office outside the area of office, second leaving his/or her area of

office for more than 7 (seven) consecutive working days without a valid reason, concurrently serving as a civil servant, fourth; concurrently serving as a state official, fifth; concurrent position as advocate, sixth; holding concurrent positions as leader or employee of a state-owned enterprise, regional-owned enterprise or private enterprise, sixth; concurrently serving as an official who makes land deeds outside the area of notary office, seventh; become a substitute and eighth Notary; carrying out other work that is contrary to religious norms, decency or propriety which could affect the honor and dignity of the Notary's position (. et al., 2017). In reality, notaries are often found mediating parties faced with civil disputes. Remembering the rules regarding the authority of a notary is to make an authentic numerator. Based on the description above, this article examines the position of a notary as a mediator for the parties regarding the Deed he or she makes without violating the PJJ code of ethics and how to implement mediation by a notary for the parties.

2. METHOD

The type of research used is an empirical legal research method because it directly examines several notaries in Malang City regarding the position of notaries as mediators in resolving disputes between parties regarding the deeds they make. Meanwhile, the type of approach used is the Law and Sociological approach.

3. RESULTS AND DISCUSSION

3.1 The Position of the Notary as a Mediator in Dispute Resolution

The position of a notary as a mediator in resolving disputes is a development in the dispute resolution process. A notary who acts as a mediator does not violate the provisions of the law on the position of Notary because it is an idea that is not only focused on legal rules alone but can be seen from the perspective of the people who need it, a notary should be able to act as a mediator even though he is not certified as a mediator and also has not attended mediator education or training, because notaries are people whom the public can trust because they are considered to have the ability and expertise in this field, especially in doing authentic deeds (Amalia, 2022).

There are several requirements to become a mediator, including the following: being Capable of taking legal action; Having good skills and knowledge in their field; Understanding the laws and regulations according to their field of expertise; Having a good reputation in the community; and Able to build trust with a neutral and impartial position (Nurhalisah & Lewa, 2021). These requirements are not entirely standard and still depend on needs because no specific regulations regarding mediators exist in any legislation. By paying attention to the rules regarding prohibitions on notaries as regulated in article 17 of the law on notary positions, there is no prohibition on a notary becoming a mediator because mediators are not state officials, are not high state institutions, and do not carry out state administration.

A mediator does not have to be bound by specific rules and requirements to help the community resolve their disputes by achieving peace by the mandate contained in the fourth principle of Pancasila and the 1945 Constitution of the Republic of Indonesia, which is the philosophy of the Indonesian nation in prioritizing a sense of family, consensus and deliberation in the process and making a good decision (Nopliardy et al., 2020). So that in its implementation, a notary who acts as a mediator remains subject to and obeys the rules regarding prohibitions as a notary prohibits, just as a notary is prohibited from carrying out his position outside of the office, therefore a question arises when a notary becomes a mediator whether he still has to comply and comply with the prohibition? The answer is that in this case, the Notary is no longer subject to this prohibition because when carrying out his duties as a mediator even outside his area of office, a notary cannot be said to be violating his position as a notary because the prohibition is only binding when the Notary carries out his position as a notary, therefore to act as a notary mediator you do not need to follow these provisions. However, the Notary must comply with the provisions of the mediator regulations, so if in the future the Notary returns to his actual profession as a notary. He will still follow the provisions regarding these prohibitions.

So far in the research process, there is no prohibition on notaries holding concurrent positions as mediators in resolving disputes, because the Notary Position Law (UUJN) and its Code of Ethics do not mention this prohibition. His job as a mediator is only to resolve disputes regarding issues disputed by the parties without taking sides and having a win-win solution (-, 2018). When compared with a notary who in the context of carrying out his position as a

notary also does not take sides or formulate the wishes of the parties in making an authentic deed by the provisions applicable to the law to avoid disputes in the future, this incident is the same as carrying out his position as a land deed-making official (PPAT) in the process of doing deeds related to land, one of which is the land sale and purchase deed and other deeds which have become the authority of the PPAT, because in carrying out his position as PPAT must comply with the provisions regarding land that apply in Indonesia (Intansari & Ratna, 2022).

Therefore, a notary subject to his position only interferes with the Notary's performance as long as he can divide his time well. Moreover, the Notary can give a mandate to his office staff so that his performance as a notary can still run well even when he also has to act as a mediator at the same time. The Notary's position as a mediator does not require a long time and is only temporary. That is, when the mediation process is complete, his or her duties as a mediator are also completed so that it does not interfere with the Notary's position and profession because the Notary's performance and mechanisms in managing the implementation of his or her position are primarily determined by proper time management. Good.

From the application of the legal facts above, including those regulated in the Minister of Law and Human Rights Regulation Number 19 of 2019 concerning Requirements and Procedures for Appointment, Leave, Transfer, Dismissal and Extension of the Notary's Term of Office, the author analyzes using the principle of trust in upholding moral values towards society. Trust is the hope a person or group holds when words, promises, and verbal or written statements from another individual or group can be realized (Firmansyah & Adjie, 2018).

A Notary is a position of trust that must be in line with those who carry out the duties of the Notary as a person who can be trusted. One form of Notary is a position of trust, namely that the Notary must keep confidential everything regarding the Deed he makes and all information obtained in order to do the Deed by his oath/promise of office unless the law determines otherwise (Article 16 paragraph (1) letter UUJN) (Article 4 paragraph (2) UUJN). Notary, a position of trust does not mean anything if it turns out that they carry out their duties as a Notary as someone who cannot be trusted, so the position of Notary and the official (who carries out the duties of the Notary) must be in line like two sides of a coin that cannot be separated. One form of Notary is a position of trust; the Notary must keep confidential everything regarding the Deed he or she makes and all information obtained in order to do the Deed by the oath/promise of office unless the law determines otherwise. Regarding this matter, the Notary's completeness in carrying out his duties in his position is an obligation to deny (Verschoningsplicht). Implementing the position of a Notary as a position of trust begins when the prospective Notary is sworn in or makes an oath (based on their respective religion) as a Notary. The oath or promise as a Notary contains a profound meaning that must be carried out and is binding while carrying out the duties of the office of a Notary.

The provisions of Article 1867 of the Civil Code state, "An authentic deeds deed is made in a form determined by law, made by or in the presence of public officials who have authority for that purpose in the place where the deed is done." A deed made by a notary must be made appropriately regarding the form, content and method of making the Notarial Deed. Therefore, Article 1, paragraph 1 of Law Number 2 of 2014 concerning amendments to the Law Number 30 of 2004 states that "A notary is a public official who has the authority to make authentic deeds and other authorities as intended by this Law or based on other Laws" (Soebagyo & Gunarto, 2017).

The data collected by researchers in reviewing more in-depth information regarding the role of Notaries as mediators in resolving disputes between the parties and the process used shows that interview from 30 with Notaries, also called Heads of Notary Offices based in Malang City, consisting of 13 women and 17 men. Of the 30 people who gave statements that a notary can act as a mediator only for interested parties and indeed those parties need the services of a notary, apart from that the Notary appointed as the mediator or intermediary can only help find solutions and peace, no more than This is because currently, notaries are still subject to and obedient to the law on notary positions as outlined. This was reported by 21 respondents who agreed with this, then seven other people said they could not conclude anything about the process so far, and 2 people said they disagreed. In this case, the Notary's position is only as a neutral third party and helps disputing parties resolve legal problems. The selection of a notary as a mediator is the desire of the parties who request the services of a notary as a party to assist in the mediation, and this is due to the trust given by the parties to the dispute. This is because a mediator only helps the disputing parties to resolve their problems, not the party who makes decisions (Nugroho & Silviana, 2022).

A notary can become a mediator as long as he has the skills and criteria that can help the mediation process, including being able to understand and master the problems that occur and not get lost in these problems, Able to establish and build communication and trust between parties; Have the skills and tactics to explore and formulate what the parties want; Have patience and be able to manage emotions to maintain positive and dynamic momentum; Able to be a good listener during the mediation process; Remain obedient and orderly with the mediator's norms and code of ethics (Haryati, 2018). In this way, resolving civil disputes that are pursued through legal mediation by involving a notary as a mediator does not become a conflict or problem, especially as the Notary also understands the technicalities of carrying out mediation and understands the authentic Deed made by the parties so that he has a good understanding. is good and meets the criteria above, then mediation dispute resolution with the help of a notary as a mediator is one of the legal efforts that can be taken and can help reduce the buildup of problems and legal disputes in court.

A notary can act as a mediator only for interested parties and indeed those parties need the services of a notary, apart from that, the Notary who is appointed as a mediator or intermediary can only help find solutions and peace, nothing more than that because currently the Notary still submissive and obedient to the law on the position of Notary as outlined. Based on Article 4 of Law Number 2 of 2014 concerning the Position of Notaries, Notaries are required to swear or promise that they will carry out their position in a trustworthy, honest, thorough, independent and impartial manner. Moreover, will carry out these obligations according to the professional code of ethics, honour, dignity and responsibility as a Notary (Muhammad & Santoso, 2022). So the theory of professional responsibility is deemed appropriate to answer problems regarding the role of Notaries in their positions and professions related to the role of Notaries as mediators in resolving disputes between parties. Responsibility theory: In carrying out their position, Notaries must be professional and have professional behaviour, such as "having high moral integrity, carrying out office duties by local wisdom values, upholding religious values and speaking good and polite words, being honest with oneself. Himself and others, does not prioritize personal gain, prioritizes service supported by expertise, knowledge and experience, does not discriminate between clients who come to him, and always upholds the code of ethics established by the Notary Association.

In this way, resolving civil disputes that are pursued through legal mediation by involving a notary as a mediator does not become a conflict or problem, especially as the Notary also understands the technicalities of carrying out mediation and understands the authentic Deed made by the parties so that he has a good understanding. is good and meets the criteria above, then mediation dispute resolution with the help of a notary as a mediator is one of the legal efforts that can be taken and can help reduce the buildup of problems and legal disputes in court. Thus, several suggestions can be given as follows: Although there are no regulations for a notary to double up or act as a mediator, according to the law, the position of Notary is stated, a notary is still needed to resolve a case between the parties who have trusted him. to perform a deed. So, in this case, there is a need for permanent and definite legal rules to expand for a notary to be able and provide further education to the public without fear of violating the UUJN Code of Ethics as intended. The suggestions that can be given are as follows: To Notaries in Malang City, it is hoped that when carrying out the mediation process between the parties, they must be professional and not compare one of the parties. However, notaries should refrain from diving too deeply into this matter because it could have fatal consequences for their profession, related to the notary code of ethics regulated in Article 3 of the Notary Code of Ethics.

4. CONCLUSION

Based on the description in the Discussion chapter, it can be concluded that in line with his profession or position as a notary who is a public official, the Notary, in this case, can act as a mediator in resolving ongoing disputes for the parties regarding the Deed he has made. A mediator should indeed be someone who has attended education or training and has a certificate of accreditation by the Supreme Court of the Republic of Indonesia as a mediator in resolving disputes between interested parties. However, so far, there have been several people or interested parties who have come to meet the Notary, who was previously the official who did the Deed for the parties and asked him to help resolve the dispute that is currently occurring due to misunderstandings and acts of default by one of the parties. So that the Notary is ready and able to help the parties resolve their dispute without violating the code of ethics for notary office regulations as stated in Chapter II, article 2 of the Notary Code of Ethics.

A notary who carries out the function of a mediator can occur if the condition of the dispute or the parties have not found mutual agreement. In a legal relationship regarding a legal act that they want to carry out, it is necessary to have a third party who helps to find a solution and find a mutual agreement that represents the interests of the parties. So they can be solved together. Of course, the presence of a notary who doubles as a mediator does not conflict with the provisions of the laws and regulations regarding the position of a notary or regulations regarding the Notary's code of ethics. A notary is required to work professionally by having high moral integrity upholding moral values prioritizing service supported by expertise, knowledge and experience, and resolving a dispute which is carried out non-litigation by involving the Notary as a mediator in settlement of the Deed that has been made, of course, in this case, it is not the authentic Deed made by the Notary that is at issue. However, the problem lies with one of the parties who have an interest or one of the parties who has committed a default where the Notary only plays a role in resolving the dispute between the parties because the Notary is a public official who is given the authority to make agreements and form authentic deeds. In this way, the Notary can act as a mediator by proposing peace to both parties to resolve this problem amicably without taking legal action in court.

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