

THE EXISTENCE OF NOTARY COOPERATION WITH ONLINE SERVICE BUREAUS IN THE MAKING OF DEEDS OF ESTABLISHMENT OF LIMITED LIABILITY COMPANIES

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Abstract

Notaries are authorized to mold all actions, agreements, and determinations desired by the parties who come to them to confirm them and pour into an authentic deed, aiming for the deed to have complete evidential power and validity. Therefore, notaries are obliged to fulfill all the provisions of their positions and other regulations and are responsible for the deeds they have prepared. In practice, especially at Covid-19 there are still notaries who cooperate with online service bureaus. The type of study is empirical juridical, which in other words is a type of sociological legal research, also known as field research, which examines the applicable legal provisions and what happens in reality in the community. From the research results obtained from decision No.36/PID.SUS/TPK/2014/PN.JKT.PST in conjunction with Cassation Court Decision No. 980 K/Pid.Sus/2015, that a notary does not check documents (the ID Card) in the creation of a company, and they aren't to meet directly before the Notary, but with a service bureau. In this case, it is related to the validity of the company establishment deed that has been made by a notary in collaboration with an online service bureau, where the appearer does not appear before the notary because the one who appears before the notary is the service bureau. One of the main advantages of notary cooperation with online service bureaus is of course that it is not bound by working time. That the cooperation between the notaries does not have a written work bond but only in the form of verbal, however, such actions still violate the UUJN and the Notary Code of Ethics, and there have been lacunae in the law to regulate cooperation between notary and online service bureau. In the case that the author raises, notary cooperation with service bureaus is prone to criminal acts (corruption or fraud), therefore the company's deed of establishment becomes null and void. Second, the responsibility of the Notary Professional Organization, towards the Notary who cooperates with the online service bureau, which violates the provisions of the UUJN and the Code of Ethics, then based on Article 4 number 4 of the Notary Code of Ethics, it is said that the act of cooperating with an online service bureau is categorized as a violation of the notary code of ethics, which is accompanied by sanctions in the form of: Reprimand; Warning; Temporary dismissal from Association membership; Honorable dismissal from Association membership; and Dishonorable dismissal from Association membership. The INI's responsibility as a notary professional organization is as a form of

1. INTRODUCTION

The history of the Notary profession in Indonesia began at the beginning of the 17th century, on August 27, 1620. Melchior Kerchem was appointed as the first Notary in Indonesia. During the Dutch administration, the Notary institution was formed to accommodate all matters relating to the field of civil law, especially the need for proof, and regulate the issue of Notary quota formation in an area with the aim that Notaries can live a decent life. The era of globalization and free trade in the 21st century is experiencing rapid progress in all fields of life, including economic, financial, socio-cultural, political, legal, and environmental fields. For Indonesia, free trade encourages advanced and significant development, especially in the business world.

A notary, in its actual profession, is an institution that with its deeds creates written evidentiary instruments with authentic properties. The definition of Notary itself is contained in the provisions of Article 1 paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position Regulations (hereinafter referred to as UUJN), stating that a Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law. The Notary profession is a public official whose position is indispensable to the community in legal acts, from and therefore the position of Notary is becoming increasingly important in society.

The existence of a Notary as a public official authorized to make authentic deeds has actually been confirmed in Article 1868 of the Civil Code, stating that an authentic deed is a deed in the form prescribed by law, made by or before public officials authorized to do so in the place where the deed is made. Notarial deeds, apart from being a law for those who make them in accordance with the provisions of Article 1337 jo Article 1338 of the Civil Code, are also one of the written evidence as stated in Article 1886 of the Civil Code which states that evidence consists of written evidence, evidence by witnesses, presumptions, confessions, oaths.¹

The notary also plays a role in reserving the name of the Limited Liability Company and as the proxy of the founders in terms of obtaining the status of a legal entity from the deed of establishment of the Limited Liability Company until the announcement of the Company in the State Gazette of the Republic of Indonesia. This is strengthened by the existence of a legal basis, namely based on Article 2 paragraph 1 of Ministerial Regulation No.M.01-HT.01-10/2007 Concerning Procedures for Filing Applications for Legal Entities and Approval of Amendments to the Articles of Association and Amendments to Company Data (hereinafter referred to as Ministerial Regulation No.M.01-HT.01-10/2007), that those who have the right to submit applications, the founders authorize a notary, so that the formally valid person to submit the application is a notary "in the quality and capacity as a proxy" of the founders. Article 2 paragraph 1 of the regulation reads "the submission of an application for the ratification of the Company's legal entity shall be made by a Notary as the proxy of the founders".²

Notaries are also authorized to pour all actions, agreements, and stipulations desired by the parties who come to them to confirm them and poured into an authentic deed, aiming for the deed to have complete evidential power and validity. The notary also plays a role in

¹ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Pembimbing Masa, 2003), 161.

² Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2009), 175.

assessing whether what is desired by the appearer to be stated in the deed does not conflict with the applicable laws and regulations. However, in the current rapid development of Information and Technology, it is possible that the legal actions of Notaries in terms of making deeds can be carried out online and/or through third parties called service bureaus.³ Even in a website, it is clearly written the advantages of creating a company through a service bureau that has collaborated with a notary.⁴ Based on the foregoing background description, the problems that arise are as follows: How is the validity of the Notarial Deed of the Limited Liability Company Establishment Deed made in cooperation with an online service bureau?; and how is the responsibility of the Notary Professional Organization of the Indonesian Notary Association (INI) towards Notaries who cooperate with an online service bureau?

2. METHOD

The method used in this research is empirical juridical, with primary data and secondary data. Primary data were obtained by conducting interviews with 2 (two) Notaries and State Civil Apparatus in the DKI Jakarta Provincial Government, with 1 (one) District Court Decision that has permanent legal force. The purpose of this research is to solve legal problems, in this case, the responsibility of a Notary towards the deed made on the basis of cooperation with an online service bureau.

3. RESULTS AND DISCUSSION

3.1 The Phenomenon of Online Service Bureau for Notarial Deed Making

The practice of online service bureaus in the administration of notarial deeds is no longer new in Indonesia. After the pandemic hit the world, especially in Indonesia, all activities were carried out using internet network facilities. All aspects of life, whether education, trade, or other services, can only be done online. Pandemic 19 was the spread of the SARS-CoV-2 virus by air media, so restrictions on activities to meet each other, especially in a closed room became an unavoidable effort.

Currently, all activities are carried out using the internet network. Notary services in making deeds are no exception. Various offers to obtain notarial deeds are made through the internet or social media. Various promotions are carried out by the service bureau, either directly or openly offering to make notarial deeds or secretly by listing or hiding the Notary who collaborates with the service bureau. In this study, before explaining the phenomenon of online notarial deed service bureaus, we first outlined a case that has permanent legal force with Notary inaccuracies in terms of deeds made in cooperation with an online service bureau.

This case is a corruption case, where the founders of a limited liability company who should have appeared at the time of signing the deed did not appear directly to the notary, and it turned out that those who appeared were brokers or bureaus that doubled as freelance employees of the notary. Similarly, the original ID card that should have been asked to be matched with the photocopied ID card data was not done by the Notary, as well

³ "Jasa Pengurusan Dan Pendirian PT," Mitra Jasa Legalitas, <https://mitrajasalegalitas.com/jasa-pengurusan-dan-pendirian-pt>.

⁴ "Biro Jasa Pembuatan PT, Simak 5 Alasan Memilihnya Bagi Pemilik Bisnis," Office Now, <https://www.officenow.co.id/ biro-jasa-pembuatan-pt>.

as other identity documents of the appearer, were not shown before the Notary. This case began when the convict Hendra Saputra, an office boy of PT IM, was asked by the head of PT IM named Reifan Avrian as the President Director, whose sole purpose was to issue this Company to obtain a project tender at the Ministry of Cooperatives and SMEs.⁵

The falsified identity on the ID card was a change in the employment column which should have been written as a laborer but the photocopy of the ID card submitted for the PT establishment application process changed the job to private. From the Notary's testimony in the case, in the making of the deed of PT IM, the appearer did not appear directly before the Notary, nor was the submission of the ID card photocopy data ever included with the original. Furthermore, it was stated that the appearer did not appear before him because he met another person, namely a service bureau/broker who doubled as an employee at the Notary's office. According to the testimony of the witness, an employee of the notary's office, it was stated that the witness's duties at the notary's office were as a freelance employee, i.e., if there was a company that was going to establish a deed of establishment, the witness would make the deed at the Notary, so the witness acted like a service bureau.

In addition to the case that has permanent legal force, currently there are also online service bureau practices in collaboration with several Notaries, which are systematically organized with the division of tasks and authority of notaries in one company called "Hive Five". The Hive Five company, as quoted on the hivefive.co.id website, is a one-stop solution company for all your Business Establishment Business Consultant needs. The organization of this service bureau is openly referred to as a professional team to facilitate the management of business legality.⁶ However, in the Hive Five service, there are advertisements/advertising images of several Notary offices, even though these notaries will assist or prepare the deeds needed by Hive Five consumers.

3.2 Validity of Notarial Deed of Deed of Establishment of Limited Liability Company Made in Cooperation with Online Service Bureau

Notaries in carrying out their duties and responsibilities are required to act honestly in making deeds because the notary's authentic deed will later become valid evidence in accordance with applicable laws and regulations. An authentic deed is perfect proof that is attached in addition to the binding force. In an authentic deed, the proof is seen from the material completeness of the appearer and is seen to be carried out formally in accordance with the applicable law. The subjective elements in the agreement are the consent of those who bind themselves and the ability to make an agreement, while the objective elements in the agreement are something definite and a lawful cause.

In the sub-chapter on the phenomenon of online service bureaus in making notarial deeds above, notaries who cooperate with service bureaus in making deeds of establishment of limited liability companies, have carried out the procedures for making deeds of establishment of limited liability companies in a non-standard manner. In this case, the appearer did not appear before the notary because the one who appeared before the notary was the service bureau. In addition, it applied a standard agreement in the notarial deed, meaning that the notary had made a deed of establishment of a limited liability company and printed it in blank form with standard conditions that must be fulfilled by the appearer. The cooperation between the notary and the service bureau is indeed unwritten because

⁵ *Putusan Pengadilan Negeri Jakarta Pusat Nomor 36/PID.SUS/TPK/2014/PN.JKT.PST jo. Putusan Pengadilan Tingkat Kasasi Nomor 980 K/Pid.Sus/2015.*

⁶ "Tentang Kami," Hive Five, <https://hivefive.co.id/tentang-kami>.

notaries are not allowed in the Notary Code of Ethics to cooperate with the service bureau. This is also a form of business activity of notaries that leads to unhealthy competition with fellow notaries.

In the event that several people agree with each other to establish a company, of course it is based on a consensus. A consensus in an agreement is a legal act carried out by two or more parties based on the same will to bind themselves to each other. One of the main points of this understanding is binding each other. The agreement must be carried out on the basis of mutual action by the parties who make it. Therefore, the phrase mutually bind themselves shows that the parties making the agreement are indeed interconnected whose purpose is to bind themselves, so a legal relationship is formed that results in rights and obligations or obligations only.

If it is associated with the formation of a legal relationship that produces rights and obligations or only obligations, it can only occur because it is in accordance with Article 1320 of the Civil Code because the legal requirements of capacity and agreement are conditional conditions where the agreement still has a legal relationship even though the conditions of capacity and agreement are violated and not canceled. The basis of the above statement is very logical because the implication of the agreement is to create a legal relationship between several parties, and when the agreement is made, the agreement is considered to be an agreement that has legal consequences or not so that the parties who bind themselves must carry out their rights and obligations in accordance with what is agreed upon.

Certainly, one of the main advantages of notary cooperation with online bureaus is that it is not bound by working time. The notary cooperation that is established does not have a written work bond but only in the form of oral form. Notaries who cooperate with online bureaus are generally notaries who are flexible and not rigid in working, and there is no agreement other than the sharing of proceeds. According to the informants in this study, it was explained that the client asked for a signature, and the contract was not made before the notary, but through an intermediary service, namely a service bureau that came to the client to sign and then went to the notary to ask for a signature and notary seal. This contradicts the UUJN, which states that legal counseling related to the deed is the authority of the notary.⁷

Collaboration with other parties may actually slightly disturb the independence of notaries, but due to competition among notaries and notaries are public officials who are not state officials known as public officials (*openbaar ambtenaar*) who are not paid, either by the state, ministries, or any party in accordance with Law Number 30 of 2004 concerning the Notary Position which was revised into Law Number 2 of 2014. Notary's income is obtained from honoraria provided by clients in accordance with the rules in Article 36 of the UUJN. This is the reason why notaries choose to cooperate with other parties. This will usually be practiced by new notaries because they need a relationship, where actually submitting a request for cooperation and cooperation is not allowed in the Notary Code of Ethics.

As conveyed by our informant, one of the Notaries in the city of Depok, clarifying that cooperation with service bureaus is allowed because of the absence of rules that do not allow cooperation with service bureaus. However, the use of the service bureau is more about the character of the Notary who violates the code of ethics. The factor that causes a Notary not to adhere to the code of ethics is that every time there is an action that contradicts and/or deviates from the code of ethics and a warning has been made, but it is always ignored. The

⁷ Notaris wilayah kerja Depok, Jawa Barat, interview by author, May 22, 2023.

factors behind the Notary in collaborating with other parties arise from outside which is the state of the surrounding environment that makes a person have to do something that is contrary to the applicable rules, besides other factors also arise from within, namely from the nature of the Notary itself.⁸

It differs between the cooperation of Notary with online service bureaus and property companies that have long used Notary services. For example, the making of a Notarial deed by the property company Raywhite, which in practice uses a standard form of agreement. The use of standard agreements in the property business is not new, aside from making it easier for property companies as the agreement is standardized in substance, it also makes it easier for Notaries to make the deed. Moreover, in terms of creating a new company, some companies choose to use standardized forms in their forms and agreements.

To determine or assess the validity of the deed of establishment of a limited liability company as outlined in the standard agreement, it must be studied how contract law regulates the terms of validity of the contract. Article 1320 of the Civil Code determines the existence of 4 (four) conditions for the validity of an agreement, namely: the existence of an agreement for those who bind themselves; the capacity of the parties to make an agreement; there must be a certain thing; and there must be a lawful cause (*causa*). The aforementioned requirements pertain to both the subject and object of the agreement.

The first and second requirements concern the subject of the agreement. The third and fourth requirements concern the object of the agreement. The distinction between the two requirements is also related to the issue of the nullity (*nietig*, null and void, *void ab initio*) and voidability (*vernietigbaar*, voidable) of an agreement. An agreement that is null and void is an agreement that is void from the beginning, and the law considers the agreement never existed. A voidable agreement is as long as the agreement has not been or is not canceled by the court, then the agreement concerned continues to apply. Indonesian legal experts generally argue that if the subjective requirements of the agreement (agreement and capacity to perform the obligation) are not fulfilled, it does not result in the cancellation of the agreement, but can only be canceled through a court decision. If the requirements relating to the object of the agreement (a certain thing and the existence of a lawful legal *causa*) are not fulfilled, then the agreement is null and void.

The word "agree" in the agreement is basically a meeting or conformity of will between the parties to the agreement. A person is said to give consent or agreement (*toestemming*) if he really wants what is agreed upon. Mariam Darus Badruzaman illustrates the notion of agreement as a requirement of the agreed will (*overeenstemende wilsverklaring*) between the parties. The offering party's statement is called an offer (*offerte*). The statement of the party accepting the offer is called acceptance (*acceptatie*).⁹ Considering the absence of a definition of an offer, Rutten defines an offer as a proposal to conclude an agreement addressed to the counterparty, which proposal has been formulated in such a way that acceptance of the proposal immediately gives rise to an agreement.¹⁰

Accordingly, in addition to fulfilling the elements of Article 1320 of the Civil Code above, the agreement between the Notary and the online service bureau must also pay attention to the fulfillment of Articles 1322–1328 of the Civil Code regarding threats, errors, and fraud, which are more commonly referred to as Defects of Will. There is another element, which must be fulfilled by the parties and this is not regulated in the Civil Code, namely the existence of abuse of circumstances (*misbruik van omstandigheden*). Abuse of will

⁸ *Ibid.*

⁹ Mariam Darus Badruzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 1994), 24.

¹⁰ J. Satrio, *Perikatan yang Lahir dari Perjanjian* (Bandung: Aditya Bakti, 1995), 164.

as one of the requirements for defect of will developed due to the development of several legal events in agreement law. The types of defects of will include the following matters:¹¹

1. Misrepresentation is a certain statement that is not true before the agreement is closed, which is conveyed by one party to the other party that affects the closing of the agreement. In the Indonesian system, this misrepresentation can be compared with the misrepresentation in Article 1322 of the Civil Code, which is a misrepresentation that comes from internal factors to the properties and conditions of the object.
2. Fraud is a deliberate untrue statement made before the closing of an agreement by one party to the other party in order to induce the other party to close the agreement. In an agreement that occurs because of fraud or is obtained through a mistake of fact that is considered legally not a real agreement, however, such an agreement can invalidate an agreement. In the Indonesian system, fraud can be equated with fraud in Article 1328 of the Civil Code, but there is no need for the requirement of deceit. If there is a defect of will in the agreement in the form of fraud, it can basically be canceled.
3. Duress is when one party threatens the other party or his/her family, in violation of the law, with the aim of forcing the other party to conclude the agreement. There are 4 categories of duress, namely: violence or threats to use violence; imprisonment or threats to imprison; unlawfully taking or controlling the goods of the other party, or threats to do so; and threats to violate contracts or to perform legal acts. In the Indonesian system, duress can be equated to coercion in Article 1323 of the Civil Code.
4. Undue Influence is a person under great psychological influence from another party (e.g. social status, relationship between doctor and patient, lawyer and client, etc.) or influence under emergency circumstances (e.g. immediate need for money). Undue Influence in the Indonesian system can be legalized by abuse of circumstances which is based on the Court's Jurisprudence Number 343K/Pdt/1985 dated March 4, 1987 with a case known as the pension book case.
5. Mistake is another form of misrepresentation. When compared to misrepresentation, mistake is misrepresentation that is not true. There is actual misrepresentation when a person intends something, but the statement is not what he intends. For example, a drunk person, or delivering a wrong message by a proxy. Examples of actual misrepresentation are buying a fake painting that is thought to be genuine, or buying a lamp that is thought to be an antique when it is new.
6. Unconscionability or abuse of circumstances includes unconscionability and adhesion contracts or standard agreements. This standard agreement or book agreement contains many terms that have been recorded which are not negotiated and compiled by one of the parties and are printed small, the terms are complicated and unclear, and are very profitable for the party who compiled it. Conversely, the ugliness or negative aspect is that the interested party cannot do anything except "forced" to accept the terms presented with the appendage "take it or leave it".

If it is related to the legal defects that exist in the example of a notary's decision to cooperate with service bureau, there are several elements of legal defects in it. The notary makes misrepresentation, where the notary should provide legal counseling that it is not allowed if the signature or contract to make a deed of establishment of a limited liability

¹¹ I Ketut Widia and I Nyoman Putu Budiarta, "Cacat Kehendak Sebagai Dasar Batalnya Perjanjian," *Kertha Wicaksana* 16, no. 1 (2022): 3-4, <https://doi.org/10.22225/kw.16.1.2022.1-6>.

company is not before a notary and only witnessed by the bureau, even in more extreme cases, the bureau also makes a deed of establishment of a limited liability company and comes to the client to ask for a notary's signature and comes to the notary where the notary does not read the deed that has been made by the bureau and immediately signs and gives a notary stamp on the deed.

Accordingly, from all of the aforementioned matters, the author sees that the deed made by the notary who cooperates with the online service bureau is only referring to the deed as a burden of proof only. In this case, a notarial deed is needed to make a deed of establishment of a limited liability company, so the limited liability company run by the entrepreneur is legal in the eyes of the law. There is no other official other than a Notary appointed by the government to make a deed of establishment of a limited liability company. Deeds made by notaries have definite legal force. Notary also helps the process of the birth of a Limited Liability Company.

This external evidentiary power means the ability of the deed itself to prove itself as an authentic deed. That it proves not only between the parties concerned, but also against third parties. That on the date mentioned in the deed, both parties have appeared before a public official (Notary) and explained what was written in the deed. According to Sudikno Mertokusumo, the principle of *acta publica probant seseipsa* applies, which means that a deed that at birth appears to be an authentic deed and fulfills the conditions that have been determined, then the deed is valid or can be considered as an authentic deed until proven otherwise.¹²

With this formal evidentiary power by the authentic deed, it is proven that the official concerned has stated in the writing, as stated in the deed and apart from that the truth of what the official describes in the deed as what he did and witnessed in carrying out his office. About the formal evidentiary power of an authentic deed that proves to the parties, that they have explained what is written in the deed (formal evidentiary power). In the formal sense the authentic deed proves the truth of what the official saw, heard, and did. In this case, what is certain is about the date and place of the deed and the authenticity of the signature.

If the deed of establishment of a Limited Liability Company is not drawn up by a Notary or is drawn up by a Notary but does not use the Indonesian language, the consequence is that the deed of establishment of the Limited Liability Company is not ratified or is refused ratification by the Minister of Law and Human Rights. With such a deed, the establishment of the Limited Liability Company is invalid. This means that the position of the Notarial deed here is an absolute requirement for the occurrence of a company, in addition to being evidence that a Limited Liability Company has been established.

Otherwise, if in the case of making the deed of establishment of a limited liability company, it turns out that it contains elements of fraud as stipulated in Article 378 of the Criminal Code. Fraud as reads:

Any person who, with intent to unlawfully benefit himself or another, by means of a false name or false dignity (*hoednigheid*), deceit or a series of falsehoods, induces another person to deliver any property to him, or to give a debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years.

¹² Kayla Raissafitri and Taipiqqurahman, "Keabsahan Akta Pendirian Perseroan Terbatas dengan Saham Harta Bersama Suami Istri ditinjau dari Asas Acta Publica Proband Sese Ipsa," *Kertha Patrika* 45, no. 1 (April 2023), <https://ojs.unud.ac.id/index.php/kerthapatrika/article/view/97306>.

R. Sugandhi¹³ suggests the definition of fraud that "Fraud is the act of a person with the deception of a series of lies, false names and false conditions with the intention of benefiting himself without rights. A series of lies is a series of false sentences arranged in such a way that it is a story of something that seems to be true." It can be concluded that the definition of fraud according to the opinion mentioned above, it seems clear that what is meant by fraud is a trick or a series of false words so that someone feels deceived because of what seems to be true.

Based on Article 378 of the Criminal Code above, it is known that juridically fraud must fulfil the main elements in the form of:

1. With intent to benefit oneself or others unlawfully. In simple terms, the explanation of this element is that the proximate goal of the perpetrator means that the perpetrator wants to benefit. The profit is the main purpose of the perpetrator by unlawful means, if the perpetrator still needs other actions, then the intention has not been fulfilled. Thus, the intent is intended to be profitable and unlawful, so the perpetrator must know that the profit that is the goal must be unlawful.
2. By using one or more of the instrumentalities of fraud (false name, false dignity/false state, deceit, and a series of lies). This means that the nature of fraud as a criminal offense is determined by the means by which the perpetrator induces another person to hand over goods.
3. Moving another person to deliver goods, or to give a debt, or to cancel a debt. In the act of inducing another person to deliver goods, a causal relationship between the inducing instrument and the delivery of goods is required.

In fact, this criminal act of fraud was not directly committed by the Notary, but by the online service bureau. However, the presumption against the Notary can be imposed with Article 55 of the Criminal Code, namely participation in the criminal act of fraud. The notary in making the deed of establishment of a limited liability company due to intentionally committing a criminal act of fraud can be held liable because based on the responsibility of the notary in Article 56 of the UUJN which explains that the notary is responsible for the deed he has made.

The element of resisting or violating the law in the criminal category, then the basis for the element of unlawful acts for notaries who commit criminal acts can be dismissed by the Minister on the grounds that the Notary has been proven guilty and is subject to imprisonment, which is regulated in the 2003 Ministerial Decree on Notarial Affairs Article 21 paragraph (2) sub b, namely notaries found guilty of being directly related to their position or other criminal acts with a penalty of 5 (five) years imprisonment. UUJN does not mention the application of criminal sanctions, but a legal action against the offense committed by the notary contains elements of falsification of intent or negligence in the making of an authentic deed whose content information is false, the notary can be subject to criminalization.

The imposition of criminal sanctions against notaries can be carried out as long as the limitations as mentioned above are violated, meaning that in addition to fulfilling the formulation of violations mentioned in the UUJN and the Code of Ethics for the Notary Office Profession, which must also fulfil the formulation in the Criminal Code (KUHP).

The legal consequences of a notarial authentic deed that is legally defective in its making are that the deed loses its authenticity or loses its validity as authentic evidence,

¹³ R. Sugandhi, *Kitab Undang-Undang Hukum Pidana (KUHP) dan Penjelasannya* (Jakarta: Usaha Nasional, 1981), 33-34.

and this is made possible by the existence of a permanent legal force decision from the examining court, and the parties must comply with the decision. The settlement of such a case is by looking at and punishing the party that caused the deed to be legally defective and lose its authenticity, if it is due to the actions of the notary, then the losses suffered by the parties can claim compensation against the notary concerned, but if it is caused by interested parties, then the parties are charged with responsibility for the losses suffered.

3.3 Responsibility of the Notary Professional Organization of the Indonesian Notary Association (INI) towards Notaries who Cooperate with Online Service Bureaus

With regard to the responsibility of the professional organization of the Indonesian Notary Association (INI) towards Notaries who are suspected of violating the provisions of the UJN and Code of Ethics, some Notaries who are members of the "Hive Five" group, and then make advertisements for their notary services as this is a violation. Responding to the Hive Five phenomenon mentioned above, the Indonesian Notary Association (INI), through letter No. 19/2-XII/DKP-INI/2022 dated December 26, 2022, regarding the Appeal for Prohibition of Cooperation with service bureaus/persons/legal entities. The appeal is addressed to the Regional Honor Council, Regional Honor Council of INI throughout Indonesia, which in essence, the contents of the letter state that:

1. Notaries must obey the law, the oath of office, the Notary Code of Ethics and must maintain the dignity of the office of Notary. Therefore, Article 4 point 4 of the Notary Code of Ethics stipulates that Notaries are prohibited from cooperating with service bureaus, both individuals and legal entities, which essentially act as intermediaries to find or obtain clients;
2. That the problem of this management service bureau has existed for a long time, and the offer by the service bureau in question is carried out in various ways, from manual methods to through online media, as has happened recently;
3. That Notary members of INI who cooperate with service bureaus as referred to in Article 4 number 4 of the Notary Code of Ethics, can be categorized as violations of the Notary Code of Ethics, with sanctions imposed on members who violate the Code of Ethics in the form of: Reprimand; Warning; Temporary dismissal from membership of the Association; Honorable dismissal from membership of the Association; Dishonorable dismissal from membership of the Association (Article 6 paragraph 1 Notary Code of Ethics).
4. That pointing to point (1) above, the Notary Position Law has regulated the obligation of Notaries to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal acts, with sanctions for violating Article 16 paragraph 1 letter a are: Written warning; Temporary dismissal; Honorable dismissal; or Dishonorable dismissal.

In addition to making an appeal letter to all Notaries in Indonesia, INI's responsibility to maintain the dignity of the Notary Position, in responding to the Hive Five phenomenon, the DPP INI, which has coordinated with the Regional Executive Board (*Pengurus Wilayah*) INI DKI Jakarta, through letter No. 103/PENGWIL INI DKI JAKARTA/XI/2022, dated November 23, 2022, requested clarification of Hive Five addressed in PT Lima Sekawan Indonesia (Hive Five), regarding: the full name, address, and cellphone number of the Notary who cooperates with the Hive Five company, so the Regional Executive Board can provide guidance to the Notary in question; convey the contents of this letter to the cooperating Notary; and request take-down, delete or stop service offers related to the

Notarial Deed on Social Media, within a period of no later than 7 (seven) days from the receipt of this letter.

Basically, as a professional organization that prioritizes the professionalism of its members, a forum or association is needed to maintain and enforce norms among its members, as we have also stated in Chapter II page 27 above. Notary as a legal professional position has an official and recognized legal notary organization, namely the Indonesian Notary Association (INI). Apart from the Notary Position Law, in carrying out his/her position it is also necessary to pay attention to and implement the Notary Code of Ethics. The Notary Code of Ethics is a moral rule determined by the INI Association based on the congressional decision of the association and/or determined by and regulated in the laws and regulations governing it and which applies to and must be obeyed by each and all members of the association and all persons who carry out the duties of the office as a notary, including temporary notary officials, substitute notaries when carrying out their positions.

The organization that gathers the profession of Notary officials is the Indonesian Notary Association or abbreviated as INI which is an association or organization for Notaries, established on July 1, 1908 in Batavia, as a continuation of *De Nederlandsch-Indische Notarieele Vereeniging*. Recognized as a Legal Entity (*rechtspersoon*) based on *Gouvernements Besluit* (Government Stipulation) dated September 5, 1908 Number 9, is the only unifying forum for all and every person who holds and carries out the duties of office as a public official in Indonesia, as it has been recognized and approved by the Government based on the Articles of Association of the Notary Association which has obtained the Stipulation of the Minister of Justice dated December 4, 1958 Number J.A.5 /117/6 and announced in the State Gazette of the Republic of Indonesia dated March 6, 1959 Number 19, Supplement to the State Gazette of the Republic of Indonesia Number 6, and the last amendment to the articles of association has been approved by the Minister of Law and Human Rights of the Republic of Indonesia based on a Decree dated January 12, 2009 Number AHU-03.AH.01.07.Tahun 2009, therefore as and constitute a Notary organization as referred to in the Notary Position Law.

Based on Article 1 (number 5) of the Notary Position Law, it states that: "Notary Organization is a professional organization for the office of Notary in the form of a legal entity association". Notaries with their professional organizations describe the professional ethics into the Notary Code of Ethics. The Notary Code of Ethics according to the professional organization of the office of Notary resulted from the Extraordinary Congress of the Indonesian Notary Association (INI) on January 28, 2005, which was last amended by the Extraordinary Congress in Banten in 2015. In Article 1 point 2, "The Notary Code of Ethics, hereinafter referred to as the Code of Ethics, is the entire moral code determined by the Indonesian Notary Association, hereinafter referred to as the "Association" based on the decision of the Association Congress and/or determined by and regulated in the laws and regulations governing it and which apply to and must be obeyed by each and all members of the association and all persons carrying out the duties of office as a Notary, including Temporary Notary Officers, Substitute Notaries and Special Substitute Notaries".

The Notary Position Law also mandates the Association to establish and enforce a Code of Ethics, as stipulated in Article 83 paragraph (1) of UUJN, which reads: "The Notary Organization establishes and enforces the Notary Code of Ethics" In conjunction with Article 89 of the UUJN, which states: "When this Law comes into effect, the existing Code of Ethics for Notaries shall remain in effect until a new Code of Ethics is established based on this Law". Article 83 paragraph (1) of the UUJN above not only orders the Indonesian Notary Association organization to establish a Code of Ethics but also to enforce the Code

of Ethics. From the order of the Law, the Indonesian Notary Association then established an Honor Council to enforce the Code of Ethics of the Indonesian Notary Association.

The UUJN's order to the Notary organization to uphold the Code of Ethics is then followed up through the Articles of Association of the Indonesian Notary Association. The Articles of Association of the Indonesian Notary Association Organization have also previously been mentioned in Article 82 paragraph (4) of the UUJN. In carrying out the duties of his/her office, a Notary must adhere to the Code of Ethics of the office of Notary. A code of ethics is direction, guidance, moral guidelines or decency for a particular profession or is a list of obligations in carrying out a profession that is compiled by members of the profession itself and binds them in practicing their work. Therefore, the Notary Code of Ethics is guidance, moral guidelines or decency of Notaries both as individuals and public officials appointed by the government in order to provide services to the general public, especially in the field of making deeds.

In Article 1 number 7 (the result of the amendment of the 2015 Banten Extraordinary Congress), it is stated that the Association's Objectives are: the establishment of truth and justice and the preservation of the dignity of the office of Notary as a qualified public official in the context of his service to God Almighty, the Nation and the State in order to realize legal certainty and the fostering of unity and integrity and the welfare of its members.

Therefore, if there is a violation committed by a Notary member, through the coordination of the central board with the local board, the notary professional organization is responsible for providing guidance, supervision, and examination of alleged violations of the Code of Ethics, by clarifying the relevant parties. However, INI's duties and authority in terms of guidance, supervision, and protection of notaries is a problem in itself. Supervision of notaries must also be followed by guidance and protection because without this trilogy, the process will not be optimal. The functions of guidance, protection, and internal supervision are more likely to be carried out by INI, while the external supervision function is carried out by the Minister of Law and Human Rights by forming the Supervisory Council.¹⁴

Regarding the validity of the deed made by a notary in cooperation with an online service bureau, the notary is not responsible for the contents of the deed made before him because the contents of the deed are based on the agreement and will desired by the parties. Therefore, the notary, in this case, is only responsible for the formal form of the authentic deed, as stipulated in the law. A Notary can be held civilly liable based on claims of unlawful acts.¹⁵ With the Consensual principle, the agreement has occurred since the moment of agreement between the parties. In fact, this agreement is an important pillar in efforts to make contracts in Indonesian treaty law. Consensual principle is also a universal principle that applies as a general principle in various countries in the world.¹⁶

Notaries in carrying out their official duties can make mistakes, errors, and violations. If the Notary in carrying out the duties of his office to make an authentic deed, there are errors or mistakes either due to an unprofessional attitude or partiality to one of the parties,

¹⁴ Pengurus Pusat Ikatan Notaris Indonesia, *100 Tahun Ikatan Notaris Indonesia: Jati Diri Notaris Indonesia, Dulu, Sekarang dan di Masa Datang* (Jakarta: PT Gramedia Pustaka, 2013), 37.

¹⁵ Eudea Adeli Arsy, Hanif Nur Widhiyanti, and Patricia Audrey Ruslijanto, "Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris," *Jurnal Bina Mulia Hukum* 6, no. 1 (September 2021): 135, <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/324>.

¹⁶ N. Ike Kusmiati, "Undue Influence Sebagai Faktor Penyebab Cacat Kehendak Diluar KUHPperdata, Dalam Upaya Mengisi Kekosongan Hukum," *Jurnal Litigasi* 17, no. 1 (September 2016): 3260, <http://dx.doi.org/10.23969/litigasi.v17i1.97>.

so problems or violations occur in the deed. Additionally, if a notary is proven to have violated the obligations or prohibitions as stipulated in UUJN Article 16 and Article 17, he/she may be subject to sanctions, namely code of ethics, civil, administrative, and even more so criminal sanctions. Violation of the obligations of Notary Article 3 number 15 of the Notary Code of Ethics related to the making of the deed becomes a question mark whether the authenticity of the deed made through notary services can be influenced, considering that what is a legal product of a notary is a notarial deed which has been agreed upon and desired by all the faces as perfect evidence which can later provide legal protection for the makers. It is mandatory to know in advance what are the conditions for a deed to be said to have authenticity to become an authentic deed in order to understand if violating the provisions of the article can affect the authenticity of the deed or not.¹⁷

The efforts of the professional organization (INI) in imposing sanctions on members who commit violations, as given to notaries who work with the Hive Five company, is an action that should be taken and is the responsibility of the professional organization. The imposition of sanctions is an effort to foster and protect other notary members, as well as a norm that has been mutually agreed upon in the INI organization's articles of association.

Certainty is a condition, provision, or determination that is certain. In essence, the law must be certain and fair. It must be certain as a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Law can carry out its function because it is fair and implemented with certainty. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear means that it does not cause doubts or multiple interpretations and is logical. Certainty and justice are not just moral demands, but factually characterize the law. A law that is uncertain and unfair is not just a bad law.

The responsibility of professional organizations (INI) in upholding a set of rules contained in the articles of association (self-regulation's), is to carry out functions to obtain legal certainty, advance and develop legal science in general and science and knowledge in the field of notaries, as well as maintain the dignity and improve the quality of notaries as public officials, and realize the unity and welfare of all its members. By law, INI is a national Notary organization and has a position in regulating its members. So that INI in such a position, legally is a single national forum, which can be referred to as a single operator in carrying out UUJN orders, so the decisions that have been issued by INI are binding inward, especially for its members and functionally binding outward.

Thus, in the Amendment to the Bylaws of the Indonesian Notary Association as a result of the Expanded Central Board Plenary Meeting in Balikpapan, January 12, 2017, the Member Obligations (Article 7, paragraph (1)) reads: "Each member is obliged to uphold the dignity of the office of Notary and obey all laws and regulations applicable in general and laws and regulations applicable to Notaries in particular, the Articles of Association, Bylaws and Notary Code of Ethics, Congress Decisions, regulations and provisions stipulated by the Association and maintain and defend the good name of the Association".

4. CONCLUSION

Based on the discussion above, and to provide answers to the formulation of the problems we raised, as follows:

¹⁷ Ni Komang Sri Intan Amilia and I Gede Yusa, "Akibat Hukum Pelanggaran Kewajiban Notaris Terhadap Ketentuan Pasal 3 Angka 15 Kode Etik Notaris," *Acta Comitatus Jurnal Hukum Kenotariatan* 6, no. 3 (December 2021): 516-517, <https://ojs.unud.ac.id/index.php/ActaComitatus/article/view/72692>.

1. The notary in cooperation with a service bureau in making a deed does not carry out the provisions in the UUJN, Article 40 and neglects the authority of legal counseling related to deeds by notaries. The legal consequence of a Notary's authentic deed that violates Article 40 of the UUJN is that the deed is relegated to an underhand deed as stipulated in Article 41 of the UUJN. In relation to a deed that is born due to a legal defect in the making of the deed, the deed will lose its authenticity, and this is made possible by the existence of a decision with permanent legal force from the examining court, and the parties must comply with the decision. A deed that contains legal defects in the example of a notary's decision to cooperate with a service bureau has several elements of legal defects in it. The notary makes misrepresentation, where the notary should provide legal counseling that it is not allowed if the signature or contract to make a deed of establishment of a limited liability company is not before a notary and is only witnessed by the service bureau, even in more extreme cases the service bureau also makes a deed of establishment of a limited liability company and comes to the client to ask for a notary's signature and comes to the notary where the notary does not read the deed that has been made by the service bureau and immediately signs and gives a notary seal on the deed.
2. Regarding the responsibility of the notary professional organization, the Indonesian Notary Association (INI) towards notaries who cooperate with online service bureaus, several things can be done by the INI professional organization, as follows:
 - a. The INI Central Executive Board coordinates with the Regional Coordinator of Notaries or the Local Coordinator of Notaries, for complaints or reports from other notary members or from the public who are aware of notaries who cooperate with online service bureaus;
 - b. Clarifying service bureau companies, collecting evidence related to violations committed by notaries as members of professional organizations;
 - c. Giving reminder by submitting an appeal letter to all regional and local coordinators of notaries, that every member of the notary organization (INI), in carrying out the notary profession, must obey the law, the oath of office, the Notary Code of Ethics and must maintain the dignity of the office of notary;
 - d. Notaries who cooperate with service bureaus can be categorized as violating the code of ethics. Likewise, Notary is obliged to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of related parties in legal actions, with sanctions for violating Article 16 paragraph 1 letter a are: Written warning; Temporary dismissal; Honorable dismissal; or Dishonorable dismissal.

INI's responsibility as a notary professional organization is as a form of providing duties and authority in providing guidance, supervision and protection to notaries.

From the conclusion of the two problem formulations above, the author needs to convey several suggestions on the problem of notaries who cooperate with online service bureaus, namely: first, that the decrease in the level of authenticity of a notarial deed to an underhand deed is a provision that has been regulated in the UUJN, so it has become a strict sanction that has been outlined in the normative provisions of the UUJN. However, it should also be added, that when notaries are carrying out their profession and it turns out that there are as many as 3 (three) civil lawsuits that result in the deed being relegated to an underhand deed, then this can be categorized as the same as a notary committing

negligence, the threat of which can be in the form of dismissal from carrying out their duties for a certain period of time. Second, the examination and imposition of sanctions by the Honorary Council (internal) and or by the Notary Honorary Council (external) must be carried out with the principle of prudence by prioritizing transparency and accountability, so as to maintain the principles of certainty and justice for the examined notary.

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