Professional and moral responsibilities of notaries in supporting development in Medan City

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Abstract. Medan is the third largest city in Indonesia, which has a fast growing city with massive property development such as flats and apartments. In addition to making the development by the prevailing laws and regulations. It must also consider spatial planning and the environmental aspect. Notaries, as public officials authorized to do the authentic deeds, are required to take both legal and moral responsibility for deeds they make. This normative legal research aims at describing the role of the notary as an official in doing authentic deeds associated with the construction of residential apartments in Medan. The results show that there are several problematic apartment buildings in Medan. These exist even though the notary involved from the process of doing a deed to ensure the ownership of the land and building permit to the availability of infrastructure, facilities, and public utilities. As a general official deed maker, a notary must be able to be legally and morally responsible and ready to accept any criminal consequences. Therefore, through the Indonesian Notary Association (INA), notaries must be coached gradually by the notary supervisory board with knowledge and skill in doing authentic deeds and must also be optimally monitored in carrying out their duties and responsibilities as public officials.

1. Introduction

The high population growth has resulted in increased housing needs. This increase is not proportional to the amount of available land, especially in large cities such as Medan. It makes the land price is getting higher and higher. Therefore, as an alternative solution to the problems of housing and settlements, more and more housing designs in dense or urban areas are made vertically or multilevel structures which are known as flats, condominiums or apartments. With this vertical construction, land use can be reduced to provide more space as open areas, and this design can also be used to reorganize or rejuvenate slum areas.

The rapid vertical construction must also take into account the urban spatial planning. The best urban spatial planning, residents can make the city a comfortable and pleasant place to live. Unmanaged growth is not efficient and encourages criminal activities which usually come from improper urban spatial planning.

Medan currently deserves the title of unmanaged city. The spatial structure of judging, this city is no longer a dream city as intended at the beginning of its establishment. This city cannot even reorganize as a city of hope. The messy layout of Medan shows the improper land use of the city that does not fit the designation. The effort to be done at this time is how the city government can reduce the negative impact of the city layout destruction [1].
Intensive construction of infrastructure and property in Medan cannot separate it from the role of the notary. Starting from the making of deeds relating to land ownership, licensing, to buying and selling property, the need for notary legal services is the largest. Notaries can meet these needs because they can make and provide authentic deeds as strong evidence for the legal protection of the holders, as well as those involved in the deed. Today, some properties in Medan such as Podomoro, Manhattan, Wiraland, and Permata Property require the developers to deal with notaries for property agreements and document management relating to the construction of the property. Therefore, the notary must follow the developments of Medan, especially the city spatial layout and the environment.

It is a challenge for the notary as well as providing an opportunity to obtain a better income. Therefore, notaries must have proper knowledge in legal matters of doing authentic deeds to avoid wrongdoing. Furthermore, the notary should also have moral and professional responsibilities to society. When dealing with a development program that has the potential to ignore the rights of citizens and environmental violations, the notary must be brave enough to prioritize public interests. It describes the moral responsibilities of notaries to the property development in Medan.

2. Method
This study uses the doctrinal legal research (normative legal research) method, namely research on a law that is conceptualized and developed, which based on certain doctrines [2]. In normative legal study, literature materials based on the data classified as secondary data. This study employs a type of normative juridical research, which includes research on legal principles [3].

3. Results and discussion
Building apartments in Medan is rapidly growing in recent years. It indicates a large number of recent apartment projects and increasing demand for housing and settlements. However, not all building constructions in Medan are free from obstacles. The findings show several problematic apartment buildings, some even taken to court. In the table below, we can see about:

| No. | Building Name                  | Problem                        | Information                     |
|-----|--------------------------------|--------------------------------|---------------------------------|
| 1.  | Center Point Apartment         | Building Rights and Permits (BRP), Environmental Impact Analysis (EIA) | Lawsuits by Non-Governmental Organizations. |
| 2.  | Podomoro City Apartment        | BRP, EIA                        | Environmental Lawsuits          |
| 3.  | De’Glass Residence Apartment   | BRP, EIA                        | Rejection by Citizens           |
| 4.  | Central Business District (CBD) Polonia | Spatial Planning, BRP          | Currently Operating             |

Apartments in the above table are still problematic. However, some have resumed the construction. The most common problems are the BRP and EIA issues. The findings reveal of these properties can run without obtaining BRP and EIA, and can even violate the spatial layout of Medan because it does not fit the spatial designation. It has happened though the notary was involved from the deed making process to ensure the ownership status of the land, BRP application, availability of infrastructure, facilities, and public utilities.
One of the objectives of the law is legal certainty. Notaries in their positions are an institution which with its deeds raises authentic (strength) properties. Thus the proofing tool can legally and strongly prove a legal event so that it will lead to a higher legal certainty (rechtszekerheid) [5].

Every property buying and selling process requires a notary or a Land Titles Registrar (LTR) legal service. The service facilitates the transaction process for land title certificates and also guarantees their security because they have a fixed strong legal basis. A notary is the only official authorized to do authentic deeds regarding all activities, agreements, and provisions that must be carried out by a general regulation or desired by those involved to state in Notaries’ authentic deed. It includes ensuring the certainty of the date, securing of the deed, and providing a copy and quotation [6].

Practically, developers have conducted marketing activities before the properties construct completely. If selling has done before the complete construction, the buying and selling process is carried out through a sale and purchase agreement (SPA). SPA is an agreement of two parties to carry out their respective responsibilities, namely the implementation of sale and purchase in the presence of Land Titles Registrar (LTR) has completely constructed, certified, and perfectly livable of the building [7]. Furthermore, Article 43 paragraph (1) and (2) of Law Number 20 of 2011 concerning Flats has firmly stated that when making a SPA before a notary, the developer must previously meet the requirements regarding a certainty over land ownership status; BRP; availability of infrastructure, facilities, and public utilities; at least 20% of the construction progress; and other matters agreed to in the contract.

Article 1 paragraph (1) juncto Article 15 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary confirms that the notary refers as a public official who is authorized to make authentic deeds in almost all legal acts carried out by the parties facing the notary. Therefore, notaries should have broad legal knowledge to carry out their duties and responsibilities. It includes providing legal advice to those seeking their services in doing authentic deeds so that the authentic deed products made by the notary are by the provisions of the applicable legislation and have legality and legal strength as evidence for parties involved.

The responsibility of notaries, as public officials towards the deeds made and signed by the parties, is providing a proof power. The contents of the deeds are the wills of the parties to be stated. Therefore, a notary can be the arbiter and provide legal input to the parties regarding the wills by the prevailing laws and regulations. However, a notary usually withdraws as a party who participates in carrying out or helping to commit a criminal act, namely by fabricating or providing false information to the deed. A notary may be sentenced to a criminal case if proven in court that a notary intentionally or unintentionally together with the parties to do a deed with the intent and purpose to benefit the party or to harm other parties. If this proves in the trial, the notary gets the punishing.

Notaries have legal responsibilities. As professionals, they have legal status and a legal profession as well as legal rights. Notaries must comply with the regulations. If they do the violations, they can get the punishing. The position/profession of a notary can categorize as a position held by someone who is a legal expert in the field of doing an authentic deed, in terms of providing legal certainty for legal actions carried out by parties requiring notary services. The purpose is to explain the elements of legal certainty for legal actions carried out by said parties [8].

The quality of law determines as the highest of moral quality; the law must measure of the moral norms. On the contrary, moral requires to increase the social impact and morality. The profession of a notary bases on moral. Therefore, the job must base on obligations; there must be goodwill in oneself to be not dependent on the goals or results achieved.

Besides legal responsibilities, notaries also have the moral. Regarding this, the principle of alternate possibilities applies, which states that a person is morally responsible for the actions has done differently. It means that the person is held only if there still ways to act the differently, meaning the person is not forced in acting [9]. On the contrary, Harry G. Frankfurt argues that a person is not morally responsible for the actions he has done if he does so only because he cannot
act otherwise. It means that the person does not hold the responsible if there is no other reason except that he is forced to do, and there is no reason other than being forced to do so [10].

In carrying out their profession, notaries regulate the code of ethics. The code of ethics is understood as norms and rules, both written and unwritten declared by professional organizations with the function of reminding the members of the professional organization to behave accordingly. It is only a dynamic "reminder fence" following the development of the environment and stakeholders. INA (Indonesian Notary Association) has established a professional code of ethics named the INA code of ethics. Although regulated in the Notary Law and code of ethics, external pressure from the environment as well as a weak mental fortitude are the reasons why some notaries today easily fall into non-ideal notarial practices that reduce their nobility and dignity as public officials.

In the case of property development in Medan, which will then sell it to consumers, a notary must have detailed information regarding the legal status of the property. The information should cover whether the developers have fulfilled the requirements for spatial allocation, the certainty of land rights, the certainty of ownership status, licensing, and collateral for the construction from guarantor institutions [11]. This information is very useful in supporting notaries and the public to decide involving in the agreement or not. There always becomes the possibility of doing an improper deed by notaries causing moral damage to the society, such as damaging the environment or the spatial layout of the city.

4. Conclusions
The Government of Medan is responsible for the welfare and justice to its citizens through equitable distribution of urban development. Development issues are the rights of every citizen, and the duty of the city government realizes them. However, development without considering spatial planning of Medan City will hurt the spatial layout of the city. Property development currently prevalent in Medan requires notary services, from the making of deeds relating to land ownership, licensing, to buying and selling the property.

Notaries in carrying out their profession and providing services to the community should behave according to the applicable rules. It is important because notaries carrying out their duties do not work only for personal interest but also the interests of the community. They should be more sensitive, honest, fair, and transparent in doing authentic deeds because they to guarantee the truth. Notaries must cling to their code of ethics because without dignity and professionalism; they will no longer trust of the public. Furthermore, notaries must have high moral values. The high moral values will prevent them from abusing their authority. Thus, they will be able to maintain their position as public officials in providing services by applicable rules and will not destroy the best image of their profession.

Notaries are not responsible for the contents of the deed made before them; they are only responsible for the formal form of the authentic agreement to be made by the law. Nevertheless, they cannot simply ignore the content of a deed if it harms the community, the environment, and urban spatial planning.

A notary is a respectable and ethical profession. As a public official, a notary must perform their duties with full responsibility and integrity. The Honorary Assembly assisted by the regional supervisory board of the Indonesian Notary Association (INA) must conduct regular supervision and control to the notaries in their working areas. In addition to providing the association should regularly hold seminars and conferences to improve the skill, knowledge, and moral of its members.

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