

Implementation of the Notary Code of Ethics in an Effort to Uphold the Position of Notary in Grobogan Regency

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Abstract. *A Notary is not free from sanctions if he violates the applicable laws and regulations. When a Notary in carrying out his duties and positions is proven to have committed a violation, the Notary can be subject to or sentenced to sanctions in the form of civil sanctions, administrative sanctions, and the Notary's code of ethics and even criminal sanctions. The purpose of this study is to determine and analyze the role of the notary code of ethics in an effort to uphold the position of notary in Grobogan Regency and to determine and analyze what obstacles and solutions are faced by notaries in implementing the notary code of ethics in Grobogan Regency. The type of research used is empirical law. The approach method used in this legal research is the Statute Approach. The type of data uses primary data obtained from literature studies. The data analysis method used in this study is descriptive analytical. The problems of this study are examined using Role Theory, Legal Certainty Theory, and Legal Effectiveness Theory. Based on the conclusion of the research results, the role of the notary code of ethics in an effort to uphold the position of notary in Grobogan Regency is that the role of the notary profession is very important in legal traffic, especially in the field of civil law, along with the development of the era that requires anyone including notaries to develop themselves by being creative and innovative by utilizing existing technology. Government policy in terms of integrated service processes is something that needs to be fully supported by the notary profession, in order to create a simple, fast, easy and cheap business process. The obstacles and solutions faced by notaries in implementing the notary code of ethics in Grobogan Regency are in the process of resolving violations of the notary code of ethics in Grobogan Regency, namely the very large number of notaries, with a wide working area, the lack of awareness of notaries to comply with the code of ethics, and the provisions obtained by notaries are not sufficient during education, and there is still overlapping of the provisions of the code of ethics supervision between the Honorary Council and the Notary Supervisory Board.*

Meanwhile, for the Supervisory Board, namely the unavailability of a representative secretariat, lack of budget funds to carry out optimal supervision and coaching, lack of government attention/concern, and weak morals/behavior of notaries in implementing the UUJN and the Notary Code of Ethics.

Keywords : Code; Notary; Role.

1. Introduction

Indonesia is a state of law (rechstaat) as regulated in Article 3 of the 1945 Constitution. The principle of the State of Law refers to the principle of legality in which the limitation of citizen's freedom must be determined based on the Law which is a general regulation. The Law has an obligation to provide guarantees in the form of certainty, order and legal protection requiring evidence that clearly determines the rights and obligations of people or legal entities as legal subjects in society. In terms of fulfilling certainty, order and legal protection in Article 1866 of the Civil Code states that there is evidence that can be used as proof including, written evidence, evidence with witnesses, allegations, confessions, and oaths. Written evidence is carried out with authentic deeds or with private deeds.

The definition of a deed itself is a writing that is deliberately made to be used as evidence if an event occurs and is signed.¹According to Veegens-Oppenheim-Polak Dl. III 1934 p. 459 which was translated by Tan Thong Kie, it is stated that the meaning of the deed is "a writing that is signed and made to be used as evidence".²A deed can be called an authentic deed (authentieke akte) if it meets 3 (three) elements in it which according to article 1868 of the Civil Code states that a deed made in the form determined by law, made by/or before a public official, the public official must be authorized to do so at the place where the deed was made. In principle, what must be fulfilled in an authentic deed is that it must be made in the form determined by law, especially UUJN. In its making, 2 (two) important functions of the deed are listed in it, namely the formal function (formalitas causa) and the function of evidence (probatonis causa). What is meant here is a deed that is deliberately made as evidence, regarding legal acts in the civil field made by a Notary. An authentic deed is a perfect and complete evidence that has an important role in every legal relationship in the life of society. The need for perfect proof in the form of an authentic deed is increasing in line with the growing demand for legal certainty.

Regarding the power of execution of notarial deeds, it is not found in the Old Dutch legal legislation (Oud Neterlands) until the enactment of the French law

¹R. Subekti, 2001, Law of Evidence, Pradinya Paramita, Jakarta, p. 48

²Tan Thong Kie, 2011, Notary Studies and All About Notary Practice, PT ICHTIAR BARU VN HOVE, Jakarta, p. 441

called Ventose Wet (Law Number 25 Ventose an XI) which was around 1803 which regulated the Loi Organique du Notariat. Ventose Wet was then enforced in countries that were French colonies including the Netherlands. With the mandate (decree) of the King dated November 8, 1810, Ventose Wet which contained regulations on notaries in France was enforced in the Netherlands. This provision became the legal basis for the implementation of French law on notaries in the Netherlands. As is well known, the Netherlands then colonized the archipelago, thus the arrival of notary law in Indonesia.

In relation to this Notary Code of Ethics, the Indonesian Notary Association (INI) as an association of organizations for Notaries has a very important role in enforcing and implementing the code of professional ethics for Notaries, through the Honorary Council whose main task is to supervise and provide guidance on the implementation of this Notary Code of Ethics. This is necessary so that Notaries can carry out their profession and position as public officials properly without violating the regulations and code of ethics that have been set.

Grobogan Regency is currently experiencing very rapid development in the fields of economy, education, tourism and so on. With this development, of course, it cannot be separated from the legal aspect. Legal problems that arise as a result of this development will of course also be increasingly complex. This is where the role and existence of a Notary will be very necessary. The existence of a Notary as a public official who is authorized to make authentic deeds has an important role in anticipating developments that occur in the community. Notaries have a very important role in legal traffic, especially in the field of civil law because Notaries are positioned as public officials who have the authority to make authentic deeds and other authorities.³ However, in practice, violations of the Notary Code of Ethics are still often found in carrying out their duties, although the existence of Notaries is very necessary in the movement and development of society, but in carrying out their duties and positions, Notaries must continue to adhere to the applicable laws and regulations and Code of Ethics. This is important so that violations do not occur and in carrying out their profession and position as public officials. For this reason, the role of a supervisory institution is absolutely necessary so that Notaries can carry out their duties and authorities according to the established corridor.

Based on the background above, the author is interested in writing a thesis entitled "IMPLEMENTATION OF THE NOTARY CODE OF ETHICS IN AN EFFORT TO UPHOLD THE POSITION OF A NOTARY IN GROBOGAN REGENCY".

2. Research Methods

The type of research used is empirical law. The approach method used in this legal research is the Statute Approach, which is a qualitative approach. Qualitative approach is a research strategy and technique used to

³Salim, HS, 2015, Deed Making Techniques: A Theoretical Concept, Notary Authority. *Form and Minutes of the Deed*, PT Rajagrafindo Persada, Jakarta, page 33.

understand society, problems or symptoms in society by collecting as many in-depth facts as possible, data is presented in verbal form, not in numerical form.⁴The type of data used is primary data obtained from literature studies sourced from primary legal materials, secondary legal materials, and tertiary legal materials. The data analysis method used in this study is descriptive analytical.

3. Results And Discussion

3.1. The Role of the Notary Code of Ethics in Upholding the Position of Notary in Grobogan Regency

The role of Notaries in both UUJN and UUJNP does not explicitly mention the term "role" of Notaries in public service. However, the role of Notaries in providing public service is evident from the authorities of Notaries as regulated in UUJN and UUJNP. According to HD Stoud, authority is: "All the rules relating to the acquisition and use of government authority by public law subjects in public law".⁵

According to the author, studied using the role theory, the role of the notary code of ethics to improve the professionalism of the notary profession is to ensure that Notaries carry out their duties by upholding professionalism based on quality intellectual abilities, rational thinking, and being able to conduct critical evaluations and paying attention to moral values. The notary code of ethics is a moral rule made by the Indonesian notary association, which is based on the decision of the association's congress and applicable laws and regulations. This rule must be obeyed by all members of the association and people who carry out duties as notaries, including temporary notary officials, substitute notaries, and special substitute notaries. Notaries have the duty to check the truth of the deeds they make, and must act honestly and fairly towards all parties, not only for personal interests but also for the interests of the community. Therefore, in carrying out their duties, Notaries must be under the supervision of a neutral and independent organization. The duty of a Notary is to uphold legal requirements and ethical standards in order to protect the interests of the community. The Notary Code of Ethics was formed to uphold the honor and dignity of his position.

According to the author, it is studied using the theory of legal certainty, namely In the context of making authentic deeds, a notary is required to refer to the laws and regulations and the underlying principles. One of the important principles is professionalism. In the study of Dworkin's thoughts, regarding legal integrity, there are actually three main substances in a principle, especially professionalism. This can be explained as follows: First, the substance of justice emphasizes the quality of public decisions that must

⁴Suharsimi Arikunto, *Research Procedures: A Practical Approach*, Rev. Ed., 14th Edition (Jakarta: Rineka Cipta, 2010), p. 20

⁵Ridwan HR, *State Administrative Law*, Raja Grafindo Persada, Jakarta, 2008, p. 110

pay attention to individual rights in a way that is considered the most moral and acceptable, The duties and authorities of a notary must be in accordance with the Notary Law and the Code of Ethics, where the obligation is regulated in Article 16 paragraph 1 letter A to act honestly, objectively, independently, impartially, and pay attention to the interests of all parties involved in legal transactions. Article 16 paragraph 1 letter E emphasizes that a notary must keep confidential all information regarding the deeds he makes and all information obtained in the process of making the deed, unless the law determines otherwise. Article 16 paragraph 1 letter I stipulates that a notary must read the deed in front of the person appearing with at least two witnesses and signed by all related parties at that time. Meanwhile, Article 17 Letter A prohibits a notary from carrying out his/her duties outside his/her area of work, and Article 17 letter H prohibits a notary from becoming a substitute notary or carrying out other work that is contrary to religious norms, morality, or propriety that can damage the honor and dignity of the notary's office. Second, the Substance of Fairness refers to the principles that recognize and respect individual rights in the making of laws by law enforcement officers. The obligations of a Notary are regulated in Article 16, including carrying out duties honestly, fairly, independently, and impartially and paying attention to the interests of the parties involved in the legal act. Article 17 prohibits a Notary from carrying out duties outside his/her area of work or holding concurrent positions as a state official. In the code of ethics, the value of fairness includes the obligation to create a work environment that is mutually respectful, helpful, and communicates well between colleagues, as well as the prohibition on setting an honorarium that is lower than that set by the association.

Third, Procedural Due Process refers to the obligation to follow the rules and regulations that exist in the creation and application of laws, both in the context of creating new laws and in dealing with special cases. This value is related to the principle of legal certainty. Article 16 letter D emphasizes the obligation to provide services in accordance with applicable legal provisions. Meanwhile, Article 17 letter I prohibits notaries from carrying out work that violates religious, moral, or polite norms that can affect the dignity and honor of the notary's position.

According to the author, studied using the theory of legal effectiveness is the substance of the Principle of Professionalism in Making Authentic Notary Deeds In the process of making a deed, it cannot be done carelessly without a clear basis and must follow the applicable legal provisions related to the procedure for making a deed by a notary, which is regulated in the Notary Law and the code of ethics. Notaries have broad authority to make deeds related to all types of agreements and determinations that are required by regulations or desired by the parties involved to be stated in the form of an authentic deed. This shows that the authority of a notary is a general rule, while the authority of other officials is only permitted if clearly regulated in

the law. Because of the importance of authentic deeds in providing certainty and legal protection for legal acts, a notary must be able to fulfill the goals and interests of the community and the state entrusted to him. Notaries hold a position that is equal to state officials because notaries are given the task by the state to make authentic deeds in order to provide certainty, order, and legal protection based on truth and justice for the community.

Therefore, notaries are authorized to use official stamps with the national symbol Garuda Pancasila, in accordance with Article 54 Paragraph 1 Letter J of the Notary Law. As part of his/her responsibilities, notaries must provide an explanation to all parties involved in making the deed regarding the truth of the contents and procedures used in making the deed.

This has a positive impact because all parties will acknowledge that the deed made by a notary has strong evidentiary power and is legally acceptable. Notaries often become defendants or defendants in court due to errors in making deeds that violate the law and harm other parties, so that the deed loses its evidentiary power. Therefore, notaries must always comply with applicable laws and regulations and be responsible for the deeds they make. If a notary does not comply with professional ethics in carrying out his duties, then this is a violation of the code of ethics and also the norms of professional ethics that have been set in writing and are binding on notaries.

The violation can be subject to sanctions for those who violate the provisions. The code of ethics is a guide for notaries in carrying out their duties, so it is important for notaries to obey it. If a notary violates the code of ethics according to laws and regulations, then legal action will be taken in accordance with applicable regulations.

This is important to maintain legal certainty in the notary profession. Imposing sanctions is very important in improving the professionalism of notaries. If existing sanctions do not have a significant impact on improving the professionalism of notaries, then notaries should agree to impose additional sanctions in the form of fines.

Fines are more effective in providing a direct deterrent effect on notaries who violate the Notary Code of Ethics. In order to avoid risks such as sanctions or cancellation of authentic deeds, Notaries and parties are required to uphold the principle of professionalism by making authentic deeds carefully, having good faith, and complying with applicable legal and moral provisions. Notaries must have high knowledge and integrity in carrying out their duties.

The knowledge possessed must cover everything the client wants and must understand the relevant legal concepts. If the notary does not understand the legal requirements requested by the client, then the notary will not be able to carry out his duties properly. The notary's ability to understand legal requirements can help reduce the risk of disputes or losses that may occur to the client or even to the notary himself.

It is known that if there is a case that the Court's decision against the notary results in the notary having to improve his professionalism in working more technically. The notary is no longer passive and must be active in ensuring the truth in the field, even though it is not as complete as possible. This is a demand in practice and also as a form of security for the notary in the eyes of the public. Because in the end, it is the public who judges the professionalism of the notary.

3.2. Obstacles and Solutions Faced by Notaries in Implementing the Notary Code of Ethics in Grobogan Regency

According to Mulyono as the Regional Supervisory Council in enforcing the notary code of ethics, there are several obstacles faced by the Grobogan Regency Regional Supervisory Council, namely, the number of Notaries which is currently increasing, there are approximately 55 Notaries in Grobogan, while in Grobogan alone with an area of 2,013.86 km² 19 sub-districts although not all sub-districts have notaries, only 11 sub-districts have Notaries, namely Purwodadi Sub-district, Grobogan Sub-district, Geyer Sub-district, Wirosari Sub-district, Godong Sub-district, Gubug Sub-district, Tegowanu Sub-district, Kedung Jati Sub-district, Karangrayung Sub-district, PuloKulon Sub-district, Toroh Sub-district. Meanwhile, the Regional Supervisory Council in Grobogan only consists of 9 (nine) members consisting of 3 elements of government, 3 Academic Elements, 3 Elements from Notaries and is collective, so that if someone is prevented from attending due to being busy or other obstacles, the Regional Supervisory Council cannot carry out its duties and authorities optimally. And there are some Notaries who are to be examined who have been notified but are not in the Office without any clear reason. With the large number of notaries and a fairly wide work area, it is difficult for the Regional Supervisory Council to properly supervise and develop the code of ethics for all Notaries as desired in the code of ethics.

According to Ira Koesoemawati and Yunirman Rijan, regarding the weak enforcement of the Notary Code of Ethics by the Regional Supervisory Council, they stated that the code of ethics was made firmly and clearly and the Regional Supervisory Council was formed, but in the field there are still many violations. Starting from violations that occur because the Notary is unaware of the code of ethics to violations that occur because they pretend not to know, or there are also those who do not care about the existence of the notary code of ethics. The violations that occur can arise due to various factors, for example, the supervision factor carried out internally by the Supervisory Council is not effective. This happens because the notaries are supervised by fellow notaries themselves, so that it does not create an authority effect among notaries, even though the members of the Honorary Council are senior notaries. Another factor is the reluctance that arises in the Supervisory Council to act more firmly if the person who violates the code of

ethics is a notary who is as senior as the members of the Regional Supervisory Council.

Regarding the role of the Regional Supervisory Council in enforcing the code of ethics in terms of supervision, coaching and imposing sanctions according to Febya Chaerunisa, SH., M.Kn there are obstacles in its implementation, namely the lack of funding to carry out supervision and review of the Notary's office and to carry out correspondence. Moreover, currently it does not have its own secretariat office so it is difficult to store files and other office stationery. Enforcement of the Notary Code of Ethics by the Supervisory Council in carrying out supervision and coaching has not been running optimally because there are several factors that hinder the Supervisory Council in carrying out its duties. These factors include the imposition of sanctions that are not firm enough so that Notaries who violate the code of ethics are not deterred, psychological, the quality of the imposition of sanctions and the time and scope of the area which are considered too broad. The Solution of the Regional Supervisory Council in Enforcing the Notary Code of Ethics Coaching and supervision in enforcing the code of ethics against Notaries in Grobogan Regency, the solution carried out by the Regional Supervisory Council is to implement preventive and curative supervision, namely preventing violations of the Notary's position and providing coaching for the Notary himself. The supervisory function carried out by the Supervisory Council in making efforts to prevent and reduce violations of the code of ethics, then the efforts made by the Regional Supervisory Council are in the form of preventive and curative supervision. According to Mr. Mulyono, preventive and curative supervision include:

1. Preventive supervision and coaching carried out by the Regional Supervisory Council is in the form of counseling and coaching that can be done during the examination of Notaries. The counseling and coaching are not only related to the technical and ethical aspects in carrying out their profession but can also be other things. The Supervisory Council can also provide legal advice and legal views as well as improvements to the applicable code of ethics regulations so that Notaries in carrying out their duties and positions do not deviate from these regulations.
2. The curative form of the Supervisory Council is to provide sanctions according to the quantity and quality of violations committed by the Notary.

Table 1
Obstacles and Solutions

No	Constraint	Solution
1.	The idealism contained in the code of professional ethics	The weak enforcement of the Notary Code of Ethics

	<p>is not in line with the facts that occur around professionals, so that expectations are very far from reality.</p>	<p>by the Regional Supervisory Council states that the code of ethics was made firmly and clearly and formed by the Supervisory Council, but in the field there are still many violations. Starting from violations that occur due to the Notary's ignorance of the code of ethics to violations that occur because they pretend not to know, or there are also those who do not care about the existence of the notary code of ethics.</p>
2.	<p>A professional code of ethics is a collection of moral norms that are not accompanied by harsh sanctions because their validity is solely based on professional awareness.</p>	<p>The violations that occur can arise due to various factors, for example the supervision factor carried out internally by the Regional Supervisory Council is not effective. This happens because those who supervise the notaries are fellow notaries themselves, so that it does not create an effect of authority among notaries, even though the members of the Supervisory Council are senior notaries.</p>
3.	<p>In carrying out his</p>	<p>The feeling of</p>

	<p>professional duties, a notary must have solid moral integrity. In this case, all moral considerations must underlie the implementation of his professional duties.</p>	<p>reluctance that arises in the Supervisory Council to act more firmly if the person who violates the code of ethics is a notary who is of the same seniority as a member of the regional Supervisory Council.</p>
4.	<p>Notaries must be honest, not only to their clients, but also to themselves. Notaries must know the limits of their abilities, not make promises just to please their clients or so that clients will continue to use their services.</p>	<p>These factors include the imposition of sanctions which are not firm enough, therefore notaries who violate the code of ethics are not deterred, psychological factors, the quality of the imposition of sanctions and the time and scope of the area which is considered too broad.</p>
5.	<p>Even though a notary's expertise can be used as a straightforward means of earning money, in carrying out his professional duties he is not solely driven by monetary considerations.</p>	<p>Solution of the Regional Supervisory Council in Enforcing the Notary Code of Ethics Guidance and supervision in enforcing the code of ethics for Notaries in Grobogan Regency, the solution carried out by the Regional Supervisory Council is to implement preventive and curative supervision, namely preventing violations of the Notary's position and</p>

		providing guidance to the Notary himself.
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Based on these constraints and solutions, it can be concluded based on the role theory that basically what can be applied to the notary profession related to existing professional ethics is that they must be responsible and not violate the rights of others or other parties. The role of ethics becomes more important in order to perfect humans and life. Notaries who pay attention to ethics will immediately comply with applicable regulations, but on the contrary, if notaries only pay attention to and comply with laws and regulations, it is possible that notaries will violate professional ethics that violate other rights.

Based on these constraints and solutions, it can be concluded based on the theory of legal certainty, according to Peter Mahmud Marzuki, legal certainty contains 2 (two) meanings, namely: first, the existence of general rules that make individuals know what actions are allowed or not allowed to be done, and second in the form of legal security for individuals from government arbitrariness because with the existence of general legal rules, individuals can know what the State may charge or do to individuals. Legal certainty is not only in the form of Articles in the law but also the consistency in the Judge's decision between the decisions of one Judge and the decisions of another Judge for similar cases that have been decided. Society not only needs regulations that guarantee legal certainty in their relationships with each other, but also needs justice. Good law should fulfill the elements of justice and certainty simultaneously. Like a coin, if there is only one side then it cannot be a means of exchange or like humans, if there is a physical body without a soul then it is called a corpse. The soul can be analogized as justice and the physical body can be analogized as legal certainty. In addition, the law is also required to serve the interests of society in order to provide benefits.

Measuring the effectiveness of the implementation of the Notary Law, the author uses Soerjorno Soekanto's theory in measuring the level of effectiveness of law enforcement. It can be seen that the effectiveness of law enforcement against Notaries in Grobogan Regency by the Regional Supervisory Council (MPD) based on Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Notary position has not been implemented effectively because there are still many Notaries who commit violations.

4. Conclusion

The role of the notary code of ethics in an effort to uphold the position of notary in Grobogan Regency is the role of the notary profession is very important in legal traffic, especially in the field of civil law, along with the

development of the era that requires anyone including notaries to develop themselves by being creative and innovative by utilizing existing technology. Government policy in terms of integrated service processes is something that needs to be fully supported by the notary profession, in order to create a simple, fast, easy and cheap business process.

The obstacles and solutions faced by notaries in implementing the notary code of ethics in Grobogan Regency are in the process of resolving violations of the notary code of ethics in Grobogan Regency, namely the very large number of notaries, with a wide working area, the lack of awareness of notaries to comply with the code of ethics, and the provisions obtained by notaries are not sufficient during education, and there is still overlapping of the provisions of the code of ethics supervision between the Honorary Council and the Notary Supervisory Board. Meanwhile, for the Supervisory Board, namely the unavailability of a representative secretariat, lack of budget funds to carry out optimal supervision and coaching, lack of government attention/concern, and weak morals/behavior of notaries in implementing the UUJN and the Notary Code of Ethics.

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