

PROFESSIONAL ETHICS AND LEGAL PROTECTION FOR NOTARY

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Notary Public

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Abstract

Notary is a profession that is authorized to make authentic deeds about all deeds, agreements and stipulations required by a general regulation or by the interested parties to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and give the grosse, copies and quotations. Basing on the moral and ethical values of the Notary, carrying out the position of the Notary Public is a service to the community (client) independently and not taking sides in the field of notary, whose service is lived as a vocation based on the spirit of devotion to fellow human beings for the public interest and rooted in respect for dignity humans in general and notary dignity in general. In exercising its authority as a Public Official who makes an authentic deed, the Notary Public must uphold the Notary Ethics Code and be protected by Act Number 2 of 2014 amending the Law Number 30 of 2004 concerning the Position of Notary.

Keywords: *Notary, Legal Protection, Professional Ethics.*

A. INTRODUCTION

Pancasila is the main basic values which is as crystallization of various values that live in society. It is the soul of the nation (*volksgeist*) in society and nation of Indonesia which is the guiding star (*leidstar*) in the life of society, nation and state of Indonesia.¹ Notary Public is an official who is authorized to make an authentic deed and other authorities based on the Notary Position Law and other laws. The position of a Notary is obtained through the granting of attribution authority by the state through Law

Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Position of Notary.²

Birth of a notary can not be separated from the needs of every society who needs a person (figure) whose information is reliable, can be trusted whose signature and seal (the seal) provide guarantees and as strong evidence. An impartial and unimpeachable legal counselor who shuts up in making agreements that can protect in the coming days. This is different from the role of an advocate, where the advocate profession places more emphasis on defending one's rights when difficulties arise, while the

1 Anis Mashdurohatun, Hayyan Ul Haq, Sony Zulhuda, SOCIAL FUNCTION RECONSTRUCTION OF INTELLECTUAL PROPERTY RIGHTS (IPR) BASED ON JUSTICE VALUES, *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017, P.141-160.

2 Bachrudin, JABATAN NOTARIS DI INDONESIA DALAM JERAT LIBERALISASI, *Jurnal Pembaharuan Hukum*, Volume II No. 2 Mei - Agustus 2015, P.185-196.

Notary profession must play a role to prevent difficulties as possible in the future.³

In carrying out its activities, Notary Deed, hereinafter referred to as Deed, is regulated in Article 1 number 7 of Act Number 2 of 2014 concerning Amendment to Act Number 30 of 2004 concerning Notary Position, is an authentic deed drawn up by or before a Notary Public in accordance with the form and procedure regulated in this Law.⁴ The Notary does not receive a salary or pension from the person who raised it. Even though the notary is appointed and dismissed by the government, he does not receive salary or pension from the government. Notaries only receive honoraria from the communities they have served or can provide free services to those who cannot afford it.⁵ The requirements to become a notary according to Article 3 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position which states that the requirements to be appointed as Notary Public as referred to in Article 2 are:

1. Indonesian citizens
2. Piety to God Almighty
3. At least 27 (twenty seven) years old

4. Physically and mentally healthy stated by a health certificate from doctors and psychiatrists
5. Graduated with a law degree and a notary degree level
6. Has undergone an apprenticeship or has clearly worked as a Notary employee for a minimum of 24 (twenty four) consecutive months at the Notary's Office on his own initiative or on the recommendation of the Notary Organization after passing the notary strata two
7. Not a status as a civil servant, state official, advocate, or not holding another position which by law is prohibited from being concurrently appointed as a Notary Public
8. Never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing an offense threatened with imprisonment of 5 (five) years or more.

In exercising its authority, the Notary is approved to be subject to sanctions in the form of:⁶

1. Written warning
2. Temporary stop
3. Dismissal with respect
4. Dismissal with disrespect.

A notary public has been bound by a code of ethics and he immediately takes an oath of office and his authority as a notary in accordance with the mandate of the Act. Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary

3 Tan Thong Kie, *Buku I (Studi Notariat-Beberapa Mata Pelajaran dan Serba-Serbi Praktek Notaris*, Ichiar Baru Van Hoeve, Jakarta, 2000, P.102

4 Sudiharto, KEOTENTIKAN AKTA JAMINAN FIDUSIA YANG TIDAK DITANDATANGANI DI HADAPAN NOTARIS, *Jurnal Pembaharuan Hukum*, Volume II No.3 September - Desember 2015, P.412-418

5 Habib Adjie, *hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris*, Refika Aditama, Bandung, 2008, P. 35

6 Act of Number 2 tahun 2014 concerning amendments to Act of Number 30 of 2004 concerning Notary Position

Position in article 1 paragraph 1 states that Notaries are public officials who are authorized to make authentic deeds and have other authorities as referred to in this Law or based on other laws.

The existence of a Notary Position is desired by the rule of law with the intention to help serve the public who need authentic written evidence about the circumstances, events or legal actions desired by the parties to be set forth in the form of an authentic deed to be used as evidence based on statutory regulations that certain legal actions must be made in the form of authentic deeds. Provisions governing Notaries in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of Notary Public, include:

1. Strengthening the requirements to be appointed as Notary, among others, the existence of a health certificate from doctors and psychiatrists as well as an extension of the period of apprenticeship from 12 (twelve) months to 24 (twenty four) months.
2. Addition of obligations, prohibition of concurrent positions, and reasons for temporary dismissal of the Notary.
3. Imposition of obligations to prospective Notaries who are doing an internship.
4. Formation of a notary honorary assembly.
5. Strengthening and affirming the notary organization.
6. Strengthening the functions, authority and position of the supervisory panel.

Even though there is a code of ethics that regulates it, but in carrying

out its authority the Notary may encounter problems, such as being sued or reported to law enforcement by the parties or by the public in general. With this problem, the Notary Public needs legal protection from the State in the form of a law.

1. Based on the description above, the formulation of the problem in this paper is how is the ethics of the Notary's profession in carrying out his duties, and how is the legal protection of the Law to the notary when carrying out his duties and positions?

B. DISCUSSION

1. Notary Code of Ethics

Professional ethics is a notary code of ethics to carry out their duties and profession. In providing freedom of authority, Act No. 2 of 2014 amendment to Law No. 30 of 2004 concerning the Position of Notary has outlined the role and function of a State official, a notary public also has ethics in carrying out his responsibilities. Almost every professional organization we find has a code of ethics. The code of ethics is a form that underlies how an individual carries out his duties and responsibilities not only based on written instructions / laws, but is the result of the formation of ethical norms that are often not found in applicable legislation.

As a general official, notaries in carrying out their duties must act on ethics. Ethics guides a person to be able to distinguish between good and bad so that he always prioritizes honesty and truth in carrying out his position. Ethics can be defined as a

set of moral principles that distinguish good from bad. The word "ethics" is etymologically derived from the Greek word "ethos". In the literal sense "ethics" is interpreted as "custom", "character," or "human behavior". Of course as a term that is quite widely used everyday, the word "ethics" has a meaning that is broader than just the meaning etymological literal.⁷

In everyday use, at least three different meanings of the word "ethics" can be distinguished, namely: First, as a "value system", meaning moral values and norms that guide human behavior. Second, ethics is a "code of ethics", that is, a set of norms and moral values that must be considered by holders of certain professions. And third, ethics is the science that carries out critical and systematic reflection on morality.⁸

Article 83 paragraph (1) of Law Number 30 Year 2004 concerning the Position of Notary states that the Notary organization establishes and enforces the Notary Ethics Code. These provisions are followed up with the provisions of Article 13 paragraph (1) of the Articles of Association of the Indonesian Notary Public which states that in order to maintain the dignity and dignity of the position of Notary, the association has a Notary Ethics Code established by Congress and is a moral code that must be

obeyed by every member of the Association. The Notary Code of Ethics is based on the fact that a Notary as one of the legal profession bearers is a person who has expertise and knowledge in the notarial field, so that it is able to meet the needs of the people who need services in the notary field.

The Spirit of Notary Ethics is respect for human dignity in general and notary dignity in particular, so that the profession of Notary Public has independent and impartial characteristics, does not refer to strings attached, rationality in the sense of referring to objective truth, functional specificity and solidarity among fellow professionals. The Notary Position Oath is the basis for the notary code of ethics which must be upheld by the notary in order to carry out his position. Notary ethics is one part of community ethics and between professional ethics must not conflict with generally accepted community ethics because Notary Public is a sub-system in society as a whole.

The implementation of the Notary Position must be controlled by the Notary Code of Ethics, juridical considerations that we must pay attention to, including:

- a. Notary is a public official whose duty is to carry out public office.
- b. Notaries in carrying out their duties must not defame the good corps of the legal profession.
- c. Notaries in carrying out their duties must not defame the good name of a notary institution.

7 Refik Isa Beekum, *Etika Profesi Notaris*, Pustaka Pelajar, Yogyakarta, 2004, P.3

8 *Ibid*, P. 4

- d. Because the notary works by applying the law in the products produced, this Code of Ethics is expected to always increase its position to always uphold the dignity of the dignity and duties of its position, as well as carrying out duties by fulfilling the requirements specified by legislation.⁹

Besides, things or other forms that must be prioritized by a notary are elements in professional behavior that must be emphasized which include:

- a. Have a strong moral integrity.
- b. Must be honest with clients and yourself.
- c. Be aware of the limits of his authority.
- d. Not solely based on money considerations.

Every Professional Code of Ethics is always written in an orderly, neat, complete, flawless way, in good language, so that it attracts the attention and pleases the reader. The reasons why the Professional Code of Ethics needs to be formulated in writing, namely:

- a. As a means of social control.
- b. As a deterrent to interference from other parties.
- c. As a prevention of misunderstanding and conflict.

The Notary Code of Ethics was first drafted in 1972, at the Indonesian Notary Association (INI) Congress held in Surabaya which underwent changes at the THIS XIII

Congress in Bandung in 1987, and was refined again at the THIS XVII Congress in Jakarta in 1999. Over time, in 2005 at the Extraordinary Congress in Bandung, the Notary Ethics Code was refined again and adjusted to UUJN as the basis for the new Notary Law.

In the Notary Code of Ethics includes the notary personality, the obligation to carry out their duties independently, honestly and impartially, the prohibition to use promotional mass media, bearing in mind their position as public officials, Notary relations with clients, Notary relations with fellow Notary colleagues and oversight by the honorary council formed by THIS. The Notary Code of Ethics is a moral code determined by the Indonesian Notary Public Association based on the Decree of the Association Congress and / or determined and regulated in legislation governing it and which applies to and must be obeyed by each and all members of the association and all people who carry out their duties and positions as Notaries.

In this Notary Code of Ethics the above matters are clearly regulated in each chapter which includes:

- a. Chapter I regarding General Provisions, consisting of 1 (one) Article which contains general notions relating to the Code of Ethics.
- b. Chapter II concerning the Scope of the Code of Ethics, consisting of 1 (one) Article which regulates the extent and to

9 Frans Henda Winata, *Persepsi Masyarakat Terhadap Profesi Hukum di Indonesia*, Renvoi, Jakarta, 2005, P. 12

- whom the Code of Ethics can be applied.
- c. Chapter III concerning Obligations, Prohibitions and Exceptions, which consists of 3 (three) Articles which regulate the obligations of Notary Public, restrictions imposed on Notaries and their exclusions.
 - d. Chapter IV concerning Sanctions, consists of 1 (one) Article which regulates sanctions that may be imposed on members who violate the Code of Ethics.
 - e. Chapter V concerning Procedures for Enforcement of the Code of Ethics, which consists of 6 (six) Articles, which regulates how the procedures for the enforcement of the Code of Conduct are carried out which includes equipment, supervision processes, inspection processes, and the process of imposing sanctions at the first level, appeal to the last level.
 - f. Chapter VI concerning Provisional Dismissal, consists of 1 (one) Article, which regulates the temporary dismissal of membership of associations to members of associations who have violated the Act of Notary Position accompanied by a proposal to Congress that members of the association be dismissed from membership of the association.
 - g. Chapter VII concerning Obligations of the Central Management, consisting of 1 (one) Article, contains the Obligations of the Central Management towards the

Minister of Law and Human Rights of the Republic of Indonesia in connection with the imposition of member sanctions for violations as referred to in Article 13 of the Notary Ethics Code.

- h. Chapter VIII of Closing Provisions, consists of 2 (two) Articles, which regulates the obligations of members to adjust their practices and behavior in carrying out their positions with the provisions contained in the Code of Ethics and regulates who has the right to provide information to the public regarding Code of Ethics of Notaries and the Board.

2. Legal Protection for Notaries

The notary profession in Indonesia is strongly influenced by the traditions of the civil law system. In this tradition, the notary profession includes public officials who are given the delegation of authority to make a deed that has the power of formal evidence and power of execution. The authority of a notary in making the Deed one of its provisions is contained in Article 15 paragraph (1) of the Notary Position Law (UUJN) that the Notary has the authority to make the deed, and the terms and conditions of the notary deed are based on the provisions of Article 38 of the UUJN. The position of the notary deed as an authentic deed or notary deed authenticity, because:

- a. Deed is made by (door) or in the presence (ten overstaan) of a Public Official.

- b. Deed is made in the form and procedure (procedure) and conditions determined by law,
- c. Public officials by or in front of whom the deed was made, must have the authority to make the deed.

In the case of making the deed, namely the signing above, it is reaffirmed in Article 44 of the UUJN that:

- a. Immediately after the deed is read, the deed is signed by every customer, witness and notary unless there are those who cannot sign his name stating the reason;
- b. The reasons referred to in paragraph (1) are stated expressly in the deed;
- c. Deed as referred to in Article 43 paragraph (3) is signed by the registrar, notary and witnesses and translators;
- d. Reading, translation or explanation and matching as referred to in paragraph (1) and paragraph (3) and Article 43 paragraph (2), paragraph (3) and paragraph (5) are stated expressly at the end of the deed.

The notary's authority over a deed becomes a notarial deed as an authentic deed having the following evidentiary strength:¹⁰

- a. Outwardly (*uitwendige bewijskracht*)

The notary deed's physical ability is the ability of the deed itself to prove its validity as an authentic deed

(*acta publica probant sese ipsa*). If viewed from the outside (birth) as an authentic deed and in accordance with the rules of law that have been determined regarding the terms of an authentic deed, then the deed acts as an authentic deed, until proven otherwise, meaning that until someone proves that the deed is not outwardly authentic deed. In this case the burden of proof lies with those who deny the authenticity of the notarial deed.

- b. Formal (*Formele Bewijskracht*)

Notarial Deed must provide certainty that an event and facts mentioned in the deed are actually carried out by the Notary or explained by the parties facing at the time stated in the deed in accordance with the procedures specified in the making of the notary deed. Formally to prove the truth and certainty about the day, date, month, year, time (time) facing, and the parties facing, initials and signatures of the parties/parties, witnesses and notaries, as well as prove what was seen, witnessed, heard by a Notary (on the official deed/minutes), and record the statement or statement of the parties/parties (on the party deed).

If the formal aspect is disputed by the parties, then it must be proven and the formality of the deed, that is, it must be able to prove the untruth of the day, date, month,

10 Habib Adjie, *Hukum Notaris Indonesia*, Refika Aditama, Bandung, 2014, P. 24

year, and time of facing, prove the untruth of those who face, prove the untruth what is seen, witnessed and heard by the Notary, must also be able to prove the untruth of statements or statements of the parties given/delivered before a Notary, and the untruth of the signatures of the parties, witnesses, and Notaries or there is a procedure for making a deed that is not done. In other words, the party in question on the deed must carry out reverse proof to deny the formal aspects of the notarial deed. If it is unable to prove the untruth, then the deed must be accepted by anyone.

c. Materil (*Materiele Bewijskracht*)

It is certainty about the material of a deed, that what is stated in the deed is a valid proof of the parties making the deed or those who get rights and apply to the public, unless there is evidence to the contrary (*tegenbewijs*). The statement or statement stated/contained in the official deed (or minutes), or the statement or parties given/delivered before the Notary (party deed) and the parties must be judged to be correct said that then poured/contained in the deed acts as true or every person who comes before a Notary who then/his statement is poured/contained in the deed must be judged to have been correctly said.

Provisions on the authority of the notary, of course there are also rights which in this case are part of legal protection for the notary. The rights to legal protection for the notary are based on the foundation that Indonesia as a rule of law protects every citizen. Legal protection for every citizen is a universal concept for a state that adheres to the rule of law system. Each country has its own way and mechanism on how to realize the legal protection and also to what extent the legal protection is given.¹¹

The realization of legal protection in a country cannot be separated from the concept of *rechtsstaat* from Fredrich Julius Stahl which was inspired by Immanuel Kahn. Indonesia is a country that applies the *rechstaat* concept (Continental Europe) where as a public legal entity and a collection of positions (*complex van ambten*) or the work environment still obtain legal protection.¹² Among the rights in question is the protection of the notary profession. The notary who must deal with the law, either as a witness or a suspect, needs to understand the authority of the notary public in the event of an

11 Paulus Effendie Lotulung, *Beberapa Sistem tentang Kontrol Segi Hukum Terhadap Pemerintah*, Citra Aditya Bakti, Bandung, 2003, P.123

12 Ridwan HR, *Hukum Administrasi Negara*, Rajagrafindo, Jakarta, 2006, P. 1

amendment to the deed. It is hoped that by discussing the problem of rectification of the deed in advance, we can distinguish between the problem of irregularities carried out by a notary, the rectification of the deed and the protection of a notary who are all certainly different.

In connection with notary relations related to legal issues, whether notary or notary in practice are often confronted in court proceedings or dealing with the authorities because of the acts of the parties who made the deeds before them, and such disputes are reported to the investigator/police or prosecutor/prosecutor, and the investigator/police or prosecutor/prosecutor.

Article 13 of Law No. 30/2004 states that the Notary is dishonorably dismissed by the Minister because he was sentenced to imprisonment based on a court decision that has obtained permanent legal force (*Incracht van gewijsde*) for committing an offense threatened with a 5 (five) year prison sentence. or more. From the statement stated in Article 13 of LawJN Number 30/2004 above, it can be concluded that the new Notary may be dishonorably dismissed from his position by the minister at the proposal of the Central Supervisory Council if the decision on a criminal sentence received for 5 (five) years or

more has been obtain permanent legal force. Thus the legal status of the Notary has changed from the defendant to the convicted person.

In practice, a notary is often asked to testify in cases such as forgery, which is a criminal act. In legal science, the act of counterfeiting is divided into:

- a. Falsification of material law, for example the signature or writing in a notary deed is falsified after the deed was made by a notary.
- b. Falsification of intellectual law, for example the information contained in a notarial deed is an incorrect statement.¹³

In carrying out the functions of investigation and investigation, the Law grants privileges or privileges to the Police to summon, examine, arrest, detain, search, confiscate suspects and goods deemed related to criminal acts. However, in carrying out these special rights and authorities must obey and abide by the principle of the right of due process (Upholding the rights of suspects in the law enforcement process). Each suspect has the right to be investigated and investigated on the basis of compliance with applicable criminal procedural law, namely Law Number 8 of 1981. The concept of due process is associated with the foundation of upholding the rule of law in dealing with criminal acts. No one is located and puts himself above the law (*Law fair maneuver*),

13 Afandi, *Hukum Waris Hukum Keluarga Hukum Pembuktian*, Rineka Cipta, Jakarta, 2004, P.200.

and the law must be applied to anyone based on the principle of treatment and in a fair manner (fair maneuver) The essence of due process is that every enforcement and application of criminal law must be in accordance with constitutional requirements and must obey the law. Therefore due process does not allow violations of one part of the general provisions under the pretext of enforcing another part of the law.

Before the ruling 49 / PUU-X / 2012, Article 66 UUJN is a protection for the notary profession, with the existence of this article, the notary cannot arbitrarily be summoned in the judicial process by investigators, public prosecutors or judges, must first obtain approval from the MPD. However, if the MPD gives a notary for checking the notary, then as a protection against him, the notary can use his denial. In the case of calling a Notary Public a suspect, then before the approval of the examination is given, the MPD Notary will first hear the statement of the concerned Notary, the investigator and request the opinion of the Honorary Board if necessary as stipulated in Article 1 Number 8 letter d of the Notary Ethics Code. In the case of taking a photocopy of the minutes of deed and in the event that the Notary is called as a witness, then before the approval of the collection and / or examination is given, the MPD must first hear the statement of the Notary concerned, as regulated in Article 1 of 8 of the Notary's Ethics Code.

Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number: 49 / PUU-X / 2012 decides to have nullified or terminated the authority of the Regional Supervisory Council (MPD) listed in Article 66 paragraph (1) of the UUJN. The decision was as if there were no legal protections for the Notary in carrying out the duties of his position.

Decision of the Constitutional Court of the Republic of Indonesia on Article 66 paragraph (1) of the UUJN as follows:

- a. Granting the applicant's application for all:
 - 1) Declaring the phrase "with the approval of the Regional Supervisory Council" in Article 66 paragraph (1) of Law Number 30 Year 2004 Concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) contrary to the Constitution Republic of Indonesia in 1945.
 - 2) Stating the phrase "with the approval of the Regional Supervisory Council" in Article 66 paragraph (1) of Law Number 30 of 2004 Concerning Notary Position (State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia

Number 4432) has no legal force binding;

- b. To order the proper promulgation of this Decision in the Official Gazette of the Republic of Indonesia.

Matters that become important points of the existence of the Constitutional Court's decision on the review of Article 66 are:

- a. For the benefit of the judicial process, investigators, public prosecutors, or authorized judges.
 - 1) Take a photocopy of the minutes of the deed and / or the documents attached to the minutes of the deed or notary protocol in the depository.
 - 2) Call the notary public to attend the examination relating to the deed he made or the notary protocol that is in the notary's depository.
- b. Taking a photocopy of the minutes of deed or letters as referred to in paragraph (1) letter a, the minutes of submission are made.

The decision of the Constitutional Court above was responded to with the latest UUJN decision, namely in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Regarding the Position of Notary, there are changes that must be considered, namely in Chapter VIII Taking Photographs of the Minutes of Deed and Notary Calling Provisions paragraph (1) in article 66 of law number 2 of 2014 amendments to

law number 30 of 2014 concerning the position of notary amended and added 2 (two) paragraphs, namely paragraph (3) and paragraph (4) so that article 66 reads as follows :

- a. For the benefit of the judicial process, the investigator, the public prosecutor, or the judge with the approval of the authorized notary honorary assembly:
 - 1) Take a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or Notary Protocol in Notary Deposit.
 - 2) Call the Notary to attend the examination relating to the Deed/Notary Protocol which is in the Notary's depository.
- b. Taking a photocopy of the Minutes of Deed or letters as referred to in paragraph (1) letter a, the minutes of submission are made.
- c. Notary honorary assembly within 30 (thirty) working days from the receipt of the request for approval as referred to in paragraph (1) shall provide an answer to accept or reject the request for approval.
- d. In the event that the notary honorary assembly does not provide an answer within the period referred to in paragraph (3), the notary honorary assembly shall be deemed to have accepted the approval request

C. CONCLUSION

In carrying out their duties and positions, the Notary must hold the

Notary code of ethics. Notary code of ethics or professional ethics is notary ethics to carry out his profession so that it truly reflects professional work, moral, motivated and oriented to intellectual skills with rational and critical argumentation. The purpose of notary protection contained in the philosophical foundation stated in Law

Number 2 of 2014 concerning amendment 30 of 2004 concerning the position of Notary Public is the realization of guaranteed legal certainty, order and legal protection with core truth and justice through the deed he made, the Notary must be able to provide certainty legal to the community of Notary service users.

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