

Comparative Roles and Notary Responsibilities in Indonesia and Timor Leste

Carolina Da Cruz¹, Arif Rachman Wahyu Wicaksono² and Akhmad Khisni³

Abstract. The purpose of this study were 1) To explain the role of the notary and responsibilities similarity in Indonesia and Timor Leste, 2) To explain the different roles and responsibilities of notaries in Indonesia and Timor Leste. The approach I use in the preparation of the writing of this legal research is a normative legal research, as in the study of law conceived as normative regulations and as written norms created and promulgated by an agency or by the competent state authorities. This research is descriptive research that aims to paint a picture of the state of things on certain areas and at certain times. Based on the results of this study were 1) Equation notary's role and responsibilities in Indonesia and Timor Leste. In Indonesia since 2004 has passed a law concerning Notary. But in Timor Leste began in 2009 Decree-Act No. 24/2009, dated August 26, set political guidelines for Timor-Leste's notary system and assigning to the Government the responsibility to set political guidelines specified in this legal diploma. 2) The different roles and responsibilities of notaries in Indonesia and Timor Leste. On the side of this difference can describe that, it is a rule that is very effective to help the public in understanding the roles and responsibilities of notaries in force in the country, especially in Indonesia is quite effective in establishing the truth related to his profession.

Keywords: Comparison; Roles; Responsibilities; Notary.

1. Introduction

Indonesia as a country that is laying down the law as the supreme power based on Pancasila and the Constitution 1945 has provided a guarantee for all citizens to obtain certainty, order, and legal protection that core truth and justice. Certainty, order, and the legal protection that would require concrete efforts closely held as a form of state responsibility for the welfare of all the people of Indonesia.

According to Komar Andasmita, "so that every Notary have sufficient knowledge breadth and depth as well as good skills in designing, composing, creating a variety of authentic deeds, the structure of language, technical, juridical neat, good and true, as well as the expertise needed anyway honesty, sincerity and properties or views in accordance with the actual situation."⁴

Professional responsibility is responsibility to themselves and society. Accountable to yourself means serorang professionals working for moral integrity, intellectual, and professional as a part of his life. Accountable to the community means a willingness to provide services as possible in accordance with the profession.⁵

In Indonesia, one of the professions that professionals are required in their profession is a Notary. Notary is a public official authorized to make an authentic deed as far as

¹ Lecture of Universitas Oriental Timor Lorosa'e (UNITAL) e-mail: linacruz101181@gmail.com

² Students of Master of Law, Faculty Of Law, Universitas Islam Sultan Agung email arif.rachman6293@gmail.com

³ Faculty of Law, Universitas Islam Sultan Agung

⁴ Komar Andasmita, 1981, *Notaris Dengan Sejarah, Peranan, Tugas Kewajiban, Rahasia Jabatannya*, Sumur, Bandung, p.14

⁵ Abdul Ghofur, 2009, *Lembaga kenotariatan Indonesia; Prespektif Hukum dan Etika*, Yogyakarta : UII Press, p.29.

the manufacture of certain authentic deed is not reserved for other public officials.⁶ Notary as a public official (*openbaar ambtenaar*) authorized to make the authentic act can be burdened with the responsibility for perbuatannya in connection with his work in making the deed. The scope of the notary includes the material truth, can be divided into four points:

1. Responsibilities of the Notary civilly against the material truth of the deed he made
2. Responsibilities of the Notary criminally against the material truth of the deed he made
3. Responsibilities of the Notary Public Notary Regulations based on the material truth in deed he made
4. Responsibility Notaries in duty office by a Notary Code.⁷

Notary very important role in helping to create certainty and legal protection for the community, because the Notary as a public official authorized to make an authentic deed, as far as the manufacture of authentic deeds are not reserved for other public officials. Certainty and legal protection it looked through authentic deed he made as perfect evidence in court. Evidence is perfect for an authentic deed has three power outward evidence that the strength of evidence (*uitwendige bewijskracht*), the power of formal proof (*formele bewijskracht*) and the strength of evidence material (*materiele bewijskracht*)⁸, According to Tan Thong Kie the Notary: can not be separated from the needs of people who need someone (figure) whose testimony is reliable, trustworthy, whose signature and seal guarantees and compelling evidence, an impartial and advisors without blemish (*onkreukbaar*) or (*unimpeachhable*), which shut up and make a deal to protect in the days to come. If an advocate defending the rights of someone when arises a difficulty, then a Notary should try to prevent these difficulties⁹

Given that the Notary considered a respectable profession for a duty to serve the general public. Position respectable burdens and responsibilities for each of the Notary to maintain the dignity and honor of the Notary profession. Notary profession prestige and honor in performing their duties as a public official positions must be maintained, because it required the rules that regulate, restrict and guidance for Notaries in carrying out the office and behave are:

1. Act No. 30 Of 2004 on Notary. Notary Act is the only law governing the Notary office in Indonesia, replacement Gazette of 1860 No. 3 On Rules Notary. This law is expected to provide general guidance for Notaries and in it there is also firm sanctions for any Notary who violate the Act. Notary Act consists of thirteen chapters, which are the general conditions that contain notions contained in the Law on Notary; appointment and dismissal of the Notary; authority, obligations and prohibitions; domicile, formation and Notary office area; Notary and Notary leave replacements; honorarium; Notarial Deed; minuta retrieval and retrieval Notary deed; supervision; Notary organizations; sanctions provisions; Transitional Provisions; and closing provisions. Notary Act authorizes the Supervisory Council to supervise the enforcement of the implementation of this Act.
2. Notary Code. Notary as a profession has a bevy namely Indonesian Notary Association (INI), which is a continuation of "de Nederlandsch-Indische Vereeniging

⁶ Supriadi, 2006, *Profesi Hukum di Indonesia*, Jakarta: Sinar Grafika, p.29.

⁷ See Nico, *Tanggungjawab Notaris Selaku Pejabat Umum*, Yogyakarta: Center for documentation and studies of business law, dikutip dari: Abdul Ghofur A., op.cit, p.34.

⁸ G. H. S. *Lumban Tobing, Peraturan Jabatan Notaris*, cet. V, (Jakarta: Gelora Aksara Pratama, 1999), p. 55-59.

⁹ Tan Thong Kie, *Studi Notariat & Serba-Serbi Praktek Notaris*, cet. I, (Jakarta: Ichtiar Baru Van Hoeve, 2007), p. 449

Notarieele" was established in Batavia on July 1, 1908. Congress of Indonesian Notary Association dated January 27, 2005 set a new Notary Code. Notary Professional Code of Conduct governing the conduct of notaries who must be obeyed by every Notaries in running the office and also outside run position. However, the sanctions provided for violations Notary Code only apply internal disciplinary sanctions within the organization. Notary Code consists of eight chapters, which are common provisions that contain notions contained in the Notary Code; scope of the Notary Code; obligations, restrictions and exclusions; sanctions; ordinance enforcement Notary Code; temporary dismissal; obligations of the central committee; and closing provisions. To ensure the implementation of the Notary Code, there shall be established the Honorary Board.

3. Statutes and Bylaws of Indonesian Notary Association made by the Indonesian Notaries Association. The provisions in the Articles of Association of Indonesian Notary Association shall be obeyed by the Notary. Provisions of the Articles of Association also related to Notary Code, Article 12, which regulates the Honor Council and Article 13 of the Notary Code and its enforcement. Different from the previous provisions of these Articles of Association do not have sanctions. Bylaws of the Indonesian Notary Association is pejabaran above description or Notary Code and Articles of Association of Indonesian Notary Association. Although the Statutes and Bylaws of Indonesian Notary Association did not give sanctions to the Notary but they remain a guideline for the Notary in the running position.

Competition in the era of globalization, has implications for the crushing of idealism that grow in the life of society. Notary as part of the community was facing similar challenges. Notaries are weighted by the materialism of life that leads to moral decline. As a result, there are some unscrupulous notaries who practice the trade philosophy of the running role as a public official. They are pro-active client come down to the market, offering services, negotiating salary and committed themselves like pembisnis in general.¹⁰

The rule of law in Timor Leste notary accordance with Article 4 of Ministerial Decree No. 24/2009, dated August 26, Decree No. 3/2004 dated February 4 Notary Code Agreement is an important instrument in support of the Legislative Building Timor Leste, which is related to economic activity.

Regime of Notary Law, approved by Decree Act No. 3/2004 dated February 4, and amended by Decree-Act No. 24/2009, dated August 26, set political guidelines for Timor-Leste's notary system and assigned to the Government responsibility to set political guidelines stipulated in the regulations of this law.

Regulation granted and ordered by the legal system intended to Timor-Leste, and the legislation already in force in the country and complementarity, namely the Code of Civil Procedure, Company Commercial and Registration of Commercial, Nonprofit Law regime and the draft Civil Law.

Decree Act No. 2/2012 dated February 15 of the Statute of the Conservative and Notary. In this Act establishes specialized career notary and conservative, defining entry system career, assignment, development and promotion, legislation appropriate remuneration and also establishes a set of rights and a special duty and the right system of mismatches and barriers are correlated with the nature of the function and activities that should be their responsibility to make sure.

¹⁰ Central Board Indonesian Notary Association, 2008, *Jati Diri Notaris Indonesia : Dulu, Sekarang dan Di Masa Akan Datang*, Jakarta: Gramedia Pustaka, p. 94.

Based on the background of the problems that have been raised the problem in this research is formulated as follows:

1. What similarities notary role and responsibilities in Indonesia and Timor Leste?
2. What are the different roles and responsibilities of notaries in Indonesia and Timor Leste?

Research methods

The approach I use in the preparation of the writing of this legal research is a normative legal research, as in the study of law conceived as regulations are normative and as the norms of writing created and promulgated by an agency or by officials of the state authorities, the law is seen as, an autonomous institution, regardless of other -lembaga agencies in the community. Therefore, the assessment is done, only "limited" in the legislation (written).

This research is descriptive research that aims to paint a picture of the state of things on certain areas and at certain times. This research by its nature is an analytical descriptive study aimed at presenting the results of research are detailed as possible about the above issues, as well as the obstacles encountered and what legal action can be taken to resolve the problem.

2. Discussion

2.1. The similarity of roles and responsibilities of notaries in Indonesia and in Timor Leste

Equation roles and responsibilities of a notary between the two countries seen in the attestation or legalization for any document in the public conducted by a notary public / public Notary is also a form of affirmation of the rule of law, while the responsibility is very clear in Timor Leste that is responsible for the professional world has and adhere to the code of ethics in the profession in question on its work in accordance with the guidance of professional devotion. To see equation Roles and Responsibilities Notary in Indonesia and in Timor Leste under the Act 30 of 2004 concerning Notary in Indonesia and Decree No. 3 of 2004 on the Rule of Law Notary in Timor Leste are presented in the following table:

Indicator	Equation
	Indonesia - Timor Leste
The role of the Notary	a) Make a copy of the original letter in the form of a copy taken a hand that contains the description as written and illustrated in the letter in question. b) Approve their compatibility with the photocopy of the original letter (legalized). c) Providing legal counseling with respect to the deed. d) A deed relating to land.
Responsible	1) Responsible for its professional world and obey the code of ethics in the profession in question 2) Responsible for the work he did in accordance with the guidance of professional dedication 3) Responsible for the implementation of the results of

	the profession
--	----------------

2.2. Differences roles and responsibilities of notaries in Indonesia and in Timor Leste

In contrast the role of the notary and responsibilities in Indonesia and Timor Leste in the following table indicate that very much difference between the roles and responsibilities of notaries in Indonesia and Timor Leste, the different roles and responsibilities of notaries in Timor Leste is only visible on the rule of law Notary Act No. 24 In 2009, that where a public notary is authorized by the State to develop and certify under his signature all acts and contracts must be concluded by intervans, between individuals or groups and all types of legal entities.

Indicator	Difference	
	Indonesia	Timor Leste
The role of the Notary	<ol style="list-style-type: none"> 1) Letters posted under the hand by enrolling in a special book (waarmeking). 2) Make a copy of the original letter in the form of a copy taken a hand that contains the description as written and illustrated in the letter in question. 3) Approve their compatibility with the photocopy of the original letter (legalized). 4) Providing legal counseling with respect to the deed. 5) A deed relating to land. 6) Creating a treatise deed auction. 7) To correct clerical errors and / or typographical errors contained in the minutes of the deed which has been in the signature, by making the minutes (BA) and notes that the minutes of the deed of the original stating the date and number BA rectification, and a copy is sent to the the parties (article 51 UUJN). 	<ol style="list-style-type: none"> 1) to write a will the public; 2) make other public instruments; 3) the minutes of the writing; 4) to issue authentication provisions in certain documents, or just to acknowledge authorship of the letter to him written documents or signature attached thereto; 5) graduation certificate life and identity, as well as the performance of public office, management or administration of legal entities and companies; 6) graduation certificate other facts that have been verified; 7) authorize, or endorse, translation of documents written in a foreign language; 8) to hand over the first copy of the public instrument and other archived documents; 9) to make photocopies of instruments and other documents, or to check with each copy originals are extracted by an interested party; 10) authenticate photocopies extracted; 11) send by fax, in the form of certified, the contents of a public instrument, registers and other documents found in the registry, all other public services should be authenticated and receive that was sent to them by the services

		<p>in the conditions;</p> <p>12) intervene in any legal action outside the law, where the parties would like to give a special guarantee certainty or authenticity;</p> <p>13) to store documents that by law must be kept in the archives of the notary and entrusted to them for this purpose.</p>
Responsible	<ol style="list-style-type: none"> 1) Responsible for its professional world and obey the code of ethics in the profession in question 2) Responsible for the work he did in accordance with the guidance of professional dedication 3) Responsible for the implementation of the results of the profession 4) Responsible for myself, to society and to God Almighty 5) Under no circumstances may dare to take risks to establish the truth relating to the profession, is responsible he should dare say, to act and dare to propose something that fits the demands of the profession who believed in the truth 6) Consciously always berusaha to improve the quality associated with the demands of the profession, according to the dynamics and demands of the times and the state's growing in every moment. 7) In certain circumstances, when necessary should be willing to provide accountability reports to any party of any kind ever carried out in accordance with the profession.¹¹ 	<ol style="list-style-type: none"> 1) Name of the action or actions that will be created; 2) Full name of the notary in charge of the action, the mention of the quality and the name of the notary office into its place; 3) If a substitute intervention, because of constraints or lack of a notary public, an indication of the reasons of replacement and substitute names; 4) Full name, state and places of habitual residence of the person who gives as a representative or deklarant deed notarized authorization or justification; 5) An indication of the number of taxpayers from the grantor and intervention, as well as representatives and represented, if the tax law stipulates so; 6) in the case of non-profit legal entity, the name, registered office, the registered capital, taxpayer identification number or other identification required by the parties concerned; 7) In addition to the elements mentioned in the previous figure, in an act associated with commercial enterprises, the notary must mention the registration number in the distribution of each of the commercial register and the share capital, also said the number of paid-in capital;

¹¹ *Ibid*

		<p>8) How notary has verified the identity, that is, with the knowledge or intervention witness by showing identification documents;</p> <p>9) The mention of the power of attorney or other document confirming the capacity of a lawyer or representative, as well as the adequacy of the authority to intervene in such actions;</p> <p>10) Full name, state, and places of habitual residence as the person who intervened unintentional interference and the reason for their intervention;</p> <p>11) Reference to honor commitments oath or, as the case, of unintentional interference, when they exist, on the grounds that determines their intervention;</p> <p>12) The mention of all documents filed with reference to this situation, along with an indication of the nature, and, in addition, in the case of a declaration of compliance with fiscal obligations, each number, the date and distribution of the issuer;</p> <p>13) The mention of the document is only displayed, showing the nature, date of delivery and distribution of the issuer;</p> <p>14) Indication of the parties that did not sign and a statement that they do not because they do not know or can do so;</p> <p>15) The mention has been read aloud the reading and explanation of the contents of the action, in the presence of the perpetrators of simultaneous interventions, with the caveat that they be allowed to proceed to the second reading the document for themselves if they so wish;</p> <p>16) Signature or fingerprint of funders and other interventions, following the signature of the notary and the context, which is the last of</p>
--	--	---

		the instrument.
--	--	-----------------

3. Closing

- Conclusion
 - Equation notary's role and responsibilities in Indonesia and Timor Leste. In Indonesia since 2004 has passed a law concerning Notary. But in Timor Leste began in 2009 Decree-Act No. 24/2009, dated August 26, set political guidelines for Timor-Leste's notary system and assigning to the Government the responsibility to set political guidelines specified in this legal diploma.
 - Difference notary's role and responsibilities in Indonesia and Timor Leste. On the side of this difference can describe that, it is a rule that is very effective to help the public in understanding the roles and responsibilities of notaries in force in the country, especially in Indonesia is quite effective in establish the truth related to his profession.
- Suggestion
 - Notaries need to be more careful when it heard the statements of the parties and be more careful in the statements of the parties included in the authentic deed and guarantee for sure about the truth of the signature of the parties are facing. It is intended that the formal evidentiary requirements in deed fulfilled so that when the issues related to the authentic act is made, the notary can avoid prosecution.
 - Notaries need to enhance its capabilities in the field of law, because now the notary has authority to improve foreign language skills to face global challenges.

4. Bibliography

- [1] Abdul Ghofur, 2009, *Lembaga kenotariatan Indonesia*; Prespektif Hukum dan Etika, Yogyakarta : UII Press
- [2] G. H. S. Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, cet. V, Jakarta: Gelora Aksara Pratama
- [3] Komar Andasasmita, 1981, *Notaris Dengan Sejarah, Peranan, Tugas Kewajiban, Rahasia Jabatannya*, Sumur, Bandung
- [4] Lihat Nico, 2003, *Tanggungjawab Notaris Selaku Pejabat Umum*, Yogyakarta: Center for documentation and studies of business law, in : Abdul Ghofur A.
- [5] Pengurus Pusat Ikatan Notaris Indonesia, 2008, *Jati Diri Notaris Indonesia : Dulu, Sekarang dan Di Masa Akan Datang*, Jakarta: Gramedia Pustaka
- [6] Supriadi, 2006, *Profesi Hukum di Indonesia*, Jakarta: Sinar Grafika
- [7] Tan Thong Kie, 2007, *Studi Notariat & Serba-Serbi Praktek Notaris*, cet. I, Jakarta: Ichtiar Baru Van Hoeve