

## Effectiveness of the Implementation of the Notary Code of Ethics Regarding the Prohibition of Cooperating with Service Bureaus in Finding Clients in Kendari City

Muh. Nurul Ikhsan <sup>1)</sup> & Nanang Sri Darmadi <sup>2)</sup>

<sup>1)</sup>Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [muhnikhsan5@gmail.com](mailto:muhnikhsan5@gmail.com)

<sup>2)</sup>Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [nanang@unissula.ac.id](mailto:nanang@unissula.ac.id)

**Abstract.** *As a professional position that provides services to the community, Notaries are required to comply with all aspects regulated in the UUJN and the Notary Code of Ethics. The increasingly rapid dynamics of globalization have led to the proliferation of service bureaus that focus on assisting in the preparation of notarial deeds, aggressively offering their services to the community. This certainly has the potential to create a cooperative relationship between Notaries and service bureaus in finding clients, which is prohibited by the Indonesian Notary Association through the norms contained in the Notary Code of Ethics. Violations and non-compliance by notaries can be tested based on the effectiveness of the role and function of the notary code of ethics, obstacles and constraints, and enforcement and sanctions for notaries who violate the provisions prohibiting cooperation with service bureaus in finding clients. This study uses empirical legal research with a structural approach and Analysis of Law. The study was conducted using a data collection method through interviews with the Chairperson of the Regional Board of the Indonesian Notary Association of Kendari City, the Regional Honorary Council of the Indonesian Notary Association of Kendari City, and notaries in Kendari City. Data analysis was conducted prescriptively, to provide arguments for the research results that have been achieved. The results of the research and interviews stated that the role and function of the code of ethics for notaries regarding the prohibition of collaborating with service bureaus in finding clients, namely; maintaining integrity and professionalism; protecting the interests of related parties; ensuring quality of service; overcoming conflicts of interest; regulating relations with fellow notaries and preventing abuse of office. From the results of the interviews and the approach to the study of the theory of the effectiveness of law enforcement, it can be concluded that the obstacles and constraints in enforcing the code of ethics; the passive role of the Regional Honorary*

*Council, the need for observation and supervision of service bureaus by the Indonesian Notary Association, solidarity and emotional closeness in taking action and enforcement, limited and weak sanctions and lack of understanding and awareness of the code of ethics. Enforcement and sanctions given to notaries who are proven to have violated the code of ethics by collaborating with service bureaus can be subject to sanctions in the form of reprimands and warnings according to the quality and quantity of violations committed.*

**Keywords:** Notary Code of Ethics; Service Bureau; Violations.

## 1. Introduction

A notary is a public official who is authorized by law to make authentic deeds and other authorities as referred to in the law. It is explicitly stated in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. As one of the officials appointed by the state, a Notary in its description is a form of profession where in carrying out its main duties and functions it strongly supports the enforcement and certainty of law. In its implementation, a Notary is authorized to make a legal product, namely an authentic deed that has perfect evidentiary power to help create legal certainty for the community. Authentic deeds are mostly made before a Notary, as long as this authority is not given to other officials, so it can be concluded that the position of a Notary is very important because the product it produces is the strongest evidence in court<sup>1</sup>.

There is an understanding of the professional aspect, ethical aspect and legal aspect that will make a Notary professional, who is able to follow legal developments in order to answer actual problems that occur in society. While in the ethical aspect, a Notary must be able to understand all ethical values contained in the Indonesian Notary Code of Ethics, as well as those contained in the Notary Job Regulations. There are several principles that must be used as a basis or guideline in carrying out job duties, namely the principles of legal certainty, trust, equality, caution, professionalism in order to carry out tasks with substance and understanding for the benefit of the Notary<sup>2</sup>.

In the current rapid development of digitalization, social media has become one of the means often used by many Notaries in getting clients. Often people who

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<sup>1</sup>Central Board of the Indonesian Notary Association, 2008, 100 Years of the Indonesian Notary Association, The Identity of Indonesian Notaries, Past, Present and Future, Gramedia Pustaka, Jakarta, p. 71

<sup>2</sup>Betty Ivana Prasetyawati, Paramita Prananingtyas, 2022, "The Role of the Notary Code of Ethics in Building Notary Integrity in the 4.0 Era." Notarius Journal, Faculty of Law, Diponegoro University, Volume 15 Number 1.

need Notary services try to access the internet media to find a Notary who is experienced enough or who is representative in carrying out their daily duties.

The use of social media has also been exploited by several service bureaus in finding clients who need Notary services for their needs in making authentic deeds. Often these service bureaus promote to various social media timelines such as Instagram, Facebook, Twitter/X, even TikTok, to attract clients whose algorithms are in need of Notary services. Then the problem is when these service bureaus in recruiting clients then act as brokers or intermediaries between clients and Notaries. Often several of these service bureaus collaborate with Notaries in various regions in Indonesia, so that the partnership network formed by the service bureau has a wider reach. Service bureaus today have their own branding in society with various conveniences and prices that are quite cheap compared to the normal prices that must be paid.

The problem that will be discussed is regarding the cooperation between service bureaus as brokers and several notaries. Judging from the Notary Code of Ethics issued by the Indonesian Notary Association, Article 4 states that:

"Notaries and other people (as long as they are carrying out the position of Notary) are prohibited from:

(4) Cooperate with service bureaus/people/legal entities who essentially act as intermediaries to find or obtain clients."

The existence of this cooperation should make a Notary lose his independence, which according to Article 16 number (1) letter (a), states that a Notary in carrying out his position must act independently. Acting independently means that in carrying out his main duties and functions, a Notary does not depend on anyone in finding clients or more precisely does not depend on brokers in finding clients in the community.

Even though a notary's position is as a public official appointed by the government, in carrying out his position he does not receive a salary from the government, but rather an honorarium which he receives from each of his clients.<sup>3</sup>.

Based on the legal issues above, the Author is interested in conducting legal research on the above problems where the result of cooperation between Notaries and service bureaus is contrary to the values of UUJN and specifically those stated in the existing Notary Code of Ethics, and has the potential to cause unhealthy competition between fellow Notaries, competition for honorariums that are not in accordance with the agreement, the potential for degradation of

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<sup>3</sup>Freddy Harris and Leny Helena, 2017, Indonesian Notary, Lintas Cetak Djaja, Jakarta, p. 95.

deeds to be underhand and various other potentials that can lead to other civil law aspects.

In its correlation, the code of ethics is expected to be a regulation that functions as a tool to prohibit and punish according to the level of violation committed by Notaries who cooperate with the service bureau. Therefore, the Author raised the title of the study regarding "THE EFFECTIVENESS OF THE IMPLEMENTATION OF THE CODE OF ETHICS OF NOTARIES ON THE PROHIBITION OF COOPERATION WITH SERVICE BUREAUS IN SEARCHING FOR CLIENTS IN KENDARI CITY".

## **2. Research Methods**

This study uses the type of empirical legal research. The type of empirical legal research provides a more comprehensive understanding of the law, both in the context of norms and in its application in society.<sup>4</sup> The approach in this study uses a structural approach and Analysis of Law. The study was conducted using a data collection method through interviews with the Chairperson of the Regional Board of the Indonesian Notary Association of Kendari City, the Regional Honorary Council of the Indonesian Notary Association of Kendari City, and notaries in Kendari City. Data analysis was carried out prescriptively, to provide arguments for the research results that have been achieved

## **3. Results and Discussion**

### **3.1. The Role and Function of the Notary Code of Ethics in the Aspect of Prohibition on Cooperation with Service Bureaus.**

The increasing number of Notaries certainly creates a domino effect that often leads to competition in the profession. The increasing number of Notaries can be interpreted as the potential for getting clients decreasing because of the many choices of Notaries and the services provided. Competition in providing Notary services often causes Notaries to violate the Notary code of ethics which should be a reference in carrying out their profession. The violations committed can also be observed based on minor violations to serious violations.

As in the scope of the research issue raised by the researcher, there are certain Notaries who work with service bureaus that provide assistance in helping clients to take care of the establishment of Limited Liability Companies (PT), CVs, Firms, Foundations or Cooperatives, managing SIUPs, to managing Notarial Deeds and other letters.

In fact, if examined through the aspect of prohibitions contained in the Notary's code of ethics, in the Prohibitions chapter in Article 4 number (4) it states that Notaries and other people (as long as the person concerned is carrying out the

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<sup>4</sup>Mukti Fajar and Yulianto Ahmad, 2010, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, p. 156.

position of Notary) are prohibited from collaborating with service bureaus/people/legal entities who in essence act as intermediaries to seek or obtain clients.

The results of several interviews with sources, namely the Chairman of the Regional Management of the Indonesian Notary Association of Kendari City, the Regional Honorary Council of Notaries of Kendari City and Notaries in Kendari, the Author concludes that the main role and function of the Notary code of ethics are as follows:

#### *Maintaining Integrity and Professionalism*

The Notary Code of Ethics ensures that a Notary carries out his/her duties honestly, fairly, and in accordance with professional standards. This is important to maintain public trust in Notaries as legitimate public officials. Maintaining integrity and professionalism is an effort to always act honestly, transparently, and consistently in accordance with applicable ethical values and standards in every action and decision taken, both in the context of work and personal life. Integrity refers to a person's sincerity and honesty, where he/she will not do things that can harm others or violate moral principles, even in difficult circumstances. Meanwhile, professionalism includes a responsible attitude, respecting the time and rights of others, and committing to continuously developing skills and knowledge in a particular field.

#### *Protecting the Interests of Related Parties*

The code of ethics regulates how a Notary must be objective and impartial in serving the parties involved in making a deed. This helps prevent abuse of authority that can harm one of the parties. means ensuring that the rights and obligations of each party involved in a transaction or agreement are respected and protected so that no party is harmed or neglected. In a legal context, this means providing assurance that all actions taken are in accordance with applicable legal provisions, as well as ensuring that all parties understand and agree with the contents of the agreement or transaction carried out.

#### *Ensuring Quality of Service*

The code of ethics provides guidelines for maintaining the quality of service provided by Notaries to clients, so that every deed made meets legal provisions and is valid in the eyes of the law. Simply put, it means ensuring that the form of notarial deed service provided meets the established standards and can meet the expectations or needs of the service recipient. This includes all aspects related to the service, from the process, services, to the interaction between the client and the Notary, which must be carried out properly, efficiently, and satisfactorily.

#### *Addressing Conflicts of Interest*

The code of ethics emphasizes the importance of Notaries to avoid conflicts of interest that can affect objectivity and fairness in carrying out their duties. This is to ensure that Notaries act responsibly. In addition, it ensures that decisions or actions taken by Notaries are not influenced by personal interests or certain parties that can harm other parties or damage objectivity. Conflicts of interest can occur when someone is involved in a situation where their personal or professional interest conflict with their greater obligations or responsibilities.

#### *Managing Relationships with Fellow Notaries*

The code of ethics also regulates how Notaries must interact with fellow Notary colleagues, including maintaining mutual respect and not taking actions that are detrimental to the profession. The above also avoids practices that are detrimental or unfair among notaries in carrying out their profession. Healthy competition is based on quality of service, professionalism, and meeting high standards. However, unhealthy competition can occur if notaries carry out practices that violate ethics, such as charging unreasonable rates, bringing each other down, or offering services in a way that is detrimental to colleagues or clients.

#### Prevent Abuse of Position

The code of ethics serves as internal supervision to prevent abuse of office by Notaries, such as using their position for personal gain or certain interests that are not in accordance with legal principles. The above efforts are to ensure that a notary carries out his duties and obligations in accordance with applicable regulations, without using his position for personal gain or other parties that are contrary to the law or professional ethics. Abuse of office by notaries can damage the integrity of the profession and reduce public trust in legal institutions as a whole.

### **3.2. Obstacles and Constraints in Enforcing the Notary Code of Ethics Regarding the Prohibition on Cooperating with Service Bureaus**

Enforcement of the Notary's code of ethics against the prohibition of cooperation with service bureaus can face various obstacles and constraints, both internally and externally. Regarding the obstacles and constraints in enforcing the code of ethics against notaries who are indicated and proven to violate cooperation with service bureaus, starting from the role of the Regional Honorary Council which according to him is passive in carrying out tracking efforts, because action can only be taken if there is a report, and because of its internal nature of the association, the report can only be carried out by fellow notaries. the need for the role of the elements of the Indonesian Notary Association both at the Central and Regional levels to observe and supervise service bureaus that often promote themselves on social media. This is important because in carrying out its business activities, such as making a company deed of establishment for example, there is

a role for a Notary to make the deed which of course must be reviewed the mechanism for making the deed, the signing process, and other aspects that must not conflict with the normative rules in the UUJN and the Notary's code of ethics. Because there is a potential for violations if the service bureau asks for the minutes of the deed to be signed not in front of a Notary or deposited. Another obstacle is the solidarity factor among fellow notaries. This solidarity certainly weakens the element of action if it is not adjusted in its place, where due to the relationship factor and emotional closeness, the violations committed are only seen as the business of each notary without further action.

According to observations and direct interviews with the Chairman of the Regional Management of the Indonesian Notary Association of Kendari City, the Regional Honorary Council of the Indonesian Notary Association of Kendari City and senior notaries, the following will describe several obstacles to the enforcement of the Notary code of ethics which are substantially related to the prohibition on collaborating with service bureaus using the framework of effective law enforcement, namely:

#### a. Legal Structure

This structure includes all entities that have the power to create, change, and enforce laws. It also includes procedural and administrative rules that govern how laws are implemented and enforced in a society. The relationship with the obstacles to enforcing the Notary's code of ethics is:

1) Lack of supervision, where in its mechanism, supervision of Notary practices may not always be effective, so that some Notaries who violate the code of ethics are not detected. Weak supervision provides a gap for practices that are not in accordance with norms and codes of ethics. The role of the Honorary Council is limited only when there is a report from the internal Notary or the Supervisory Board if the violation is from the UUJN side.

2) Limitations of Sanctions: In some cases, sanctions for violations of the code of ethics are not firm enough or effective enough to prevent further violations. If the sanctions given are too light or inconsistent, Notaries may feel that violating the rules will not have serious consequences. Violations of cooperation with service bureaus are considered minor violations because they do not cause harm to the general public. The violations in question are only violations of the independence and independence of Notaries in carrying out their duties.

#### b. Legal Substance

The legal substance in terms of the correlation of the enforcement of the Notary code of ethics will certainly refer to the normative rules, namely Law Number 30 of 2004 in conjunction with Law Number 2 of 2014, its implementing regulations, including the Articles of Association, Bylaws and Code of Ethics of the Indonesian



Notary Association. Substantially, the obstacles to the enforcement of the code of ethics include;

1) Lack of understanding and awareness of the Code of Ethics; where not all Notaries have a deep or consistent understanding of the applicable code of ethics, including the prohibition on collaborating with service bureaus. This can lead to violations without realizing it. The majority of Notaries only refer to the norms contained in the Notary Law, whereas there are also professional norms regulated in the Notary Code of Ethics which should be interpreted as professional rules that must also be obeyed.

2) Duality of Notary Code of Ethics Enforcement; where often there are differences of opinion between the Regional Honorary Council and the Regional Supervisory Council regarding the enforcement of the code of ethics. In fact, in terms of implementation, the Honorary Council is limited to handling internal matters, while the Supervisory Council enforces externally. The Honorary Council, which consists of Notaries, is considered to be able to be intervened because there are no external elements such as those in the Supervisory Council which are filled by elements from the Ministry of Law and Human Rights and Academics. The Honorary Council is considered to be able to provide the least sanctions due to emotional ties and fellow professions which can result in lowering the standard of enforcement in violations of the code of ethics, especially cooperation with the service bureau.

#### c. Legal Culture

It cannot be denied that legal culture is highly correlated with the social atmosphere of thought and social power regarding how the law is implemented, avoided or misused. Legal culture is also closely related to the legal awareness of society, which in this study can be studied as obstacles in enforcing the Notary's code of ethics, including:

1) Lack of Socialization and Education: Lack of socialization and education regarding the importance of the code of ethics and the consequences of violating the code of ethics can reduce the awareness of Notaries of their role in maintaining the integrity of the profession. The lack of participation of Notaries in seminars and knowledge sharing activities is one of the obstacles for many Notaries to violate the code of ethics.

Stronger enforcement of codes of ethics, tighter oversight, and increased education and outreach about the importance of codes of ethics can help overcome these barriers.



### **3.3. Enforcement and Sanctions Against Notaries Who Violate the Prohibition on Cooperating with Service Bureaus.**

If the Regional Honorary Council of the Indonesian Notary Association can prove the involvement of a Notary who works with a service bureau in seeking clients, of course, in accordance with the mechanisms regulated in the code of ethics, it can impose sanctions according to the level of violation that has been committed.

In the process of enforcing the code of ethics and imposing sanctions, there are mechanisms regulated in Article 9 of the Notary Code of Ethics, namely:

(1) The Regional Honorary Council/Regional Honorary Council/Central Honorary Council after finding facts of alleged Violation of the Code of Ethics as referred to in Article 8 above, no later than within 14 (fourteen) working days, the Honorary Council that is examining must summon the member concerned in writing to ensure the occurrence of Violation of the Code of Ethics by the member of the association and provide the opportunity for the person concerned to provide an explanation and defense. The summons is sent no later than 14 (fourteen) working days before the date of the examination.

(2) If the summoned member is not present on the appointed date, the Honorary Council conducting the examination will summon him/her again a second time no later than 14 (fourteen) working days after the first summons.

(3) If the member who was summoned does not attend the second summons, the Honorary Council conducting the examination will summon him/her again for a third time no later than 14 (fourteen) working days after the second summons.

(4) If after the third summons the person still does not attend, the Honorary Council that is conducting the investigation will still hold a meeting and determine a decision and/or impose sanctions as regulated in Article 6 of the Code of Ethics.

(5) Based on the results of the examination, a report of the examination is made which is signed by the member concerned and the Honorary Council that is conducting the examination. In the event that the member concerned is unwilling to sign the report of the examination, then the report of the examination is sufficient to be signed by the Honorary Council that is conducting the examination.

(6) The Honorary Council conducting the examination, no later than 30 (thirty) working days after the date of the last hearing, is required to make a decision on the results of the examination and determine sanctions against the violators if there is evidence of a violation as regulated in the provisions of Article 6 of the Code of Ethics which is stated in the Decree.

(7) If the member in question is not proven to have committed a violation, then the member's name will be restored by a Decree of the Honorary Council that is investigating.

(8) The Honorary Council conducting the examination is obliged to send the Decision Letter to the member being examined by registered mail and a copy to the Central Management, Central Honorary Council, Regional Management, Regional Honorary Council, Regional Management and Regional Honorary Council.

In implementing sanctions, Article 6 paragraph (1) of the Notary Code of Ethics explains:

"Sanctions imposed on members who violate the Code of Ethics may include:

- a) Reprimand;
- b) Warning;
- c) Temporary suspension from membership of the Association;
- d) Honorable dismissal from membership of the Association;
- e) Dishonorable dismissal from membership of the Association."

Then number (2) reads:

"The imposition of sanctions as outlined above against members who violate the Code of Ethics is adjusted to the quantity and quality of violations committed by the member."

The author examines the two rules above, where there is systematic enforcement, namely the sanctions given must be in accordance with the quantity and quality of the Notary's violations. Examination and imposition of sanctions for the Notary's code of ethics in Indonesia must be based on Law Number 30 of 2004 concerning the Notary's Position which has been amended by Law Number 2 of 2014. which in the rules of the Notary's professional code of ethics is strictly regulated, including the obligation to maintain the code of ethics that has been established by the professional organization, namely the Indonesian Notary Association (INI).

In the findings, there are certain Notaries who are proven to have violated the code of ethics in terms of collaborating with service bureaus in finding clients, then the violation can be categorized as a minor violation. The category of minor violations is usually in the form of negligence or minor errors that do not have a significant impact on the credibility or integrity of the notary profession. Minor violations that occur due to cooperation between certain Notaries and service bureaus in the realm of finding clients, the initial sanctions that can be imposed

are of course sanctions in the form of reprimands and warnings after reviewing the quality of the violations committed and the impact on the community and fellow colleagues under the auspices of the association.

The mechanism for imposing heavier sanctions can be given if the Notary still continues his cooperation even though he has received a warning and reprimand from the Regional Honorary Council. The indication of disobedience to the norms regulated in the Notary's code of ethics should be considered to decide on imposing heavier sanctions such as temporary suspension from the Indonesian Notary Association as well as suspension to provide guidance to the Notary.

Furthermore, the results of the decision to impose sanctions are submitted to the Central Management of the Indonesian Notary Association to be recorded in the register of members of the Association for each decision of the Regional Honorary Council/Regional Honorary Council/Central Honorary Council/Congress that has permanent legal force.

#### **4. Conclusion**

1. The Notary Code of Ethics is a set of guidelines or rules that regulate the behavior, attitudes, and actions of Notaries in carrying out their profession which has a very important role and function in maintaining the dignity of the Notary profession. The Notary Code of Ethics in Indonesia is regulated by the Indonesian Notary Association (INI) and is based on Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the Position of Notaries, as well as other related regulations. The role and function of the code of ethics for Notaries regarding the prohibition of notaries from cooperating with service bureaus in finding clients, include: a) Maintaining Integrity and Professionalism; b) Protecting the Interests of Related Parties; c) Ensuring Quality of Service; d) Addressing Conflicts of Interest; e) Managing Relationships with Fellow Notaries; f) Prevent Abuse of Position; Enforcement of the Notary's code of ethics regarding the prohibition on cooperation with service bureaus can face various obstacles and constraints, both internally and externally. From the results of interviews and studies using the legal enforcement effectiveness framework postulated by Lawrence M. Friedman, several factors of obstacles and constraints can be identified.<sup>5</sup>, among others: a) The Passive Role of the Regional Honorary Council b) The need for monitoring and supervision of service bureaus by the Indonesian Notary Association c) Solidarity and Emotional Closeness among fellow Notary professions in law enforcement and enforcement. d) Limitations and Weaknesses of Code of Ethics Sanctions e) Lack of Understanding and Awareness of the Code of Ethics. The honorary council in the Indonesian Notary Association is tasked with providing guidance, supervision, and improvement to members in upholding

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<sup>5</sup>Lawrence M. Friedman, 2013, *The Legal System A Social Science Perspective*, Nusa Media, Jakarta, p. 21.

the code of ethics, examining and making decisions on alleged violations of internal code of ethics provisions. In the realm of violations of the code of ethics against Notaries who cooperate with service bureaus, sanctions can be imposed based on considerations of the quantity and quality of violations committed by the member, and based on the results of interviews and in-depth investigation of the violations, this is categorized as a minor violation, which the Regional Honorary Council can impose sanctions in the form of reprimands to warnings.

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