

August 29th 2018

THE 4th INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study
The Role of Indigenous and Global Community in Constructing National Law

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

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THE 4th INTERNATIONAL AND CALL FOR PAPERS

"Legal Construction and Development In Comparative Study"
The Role of Indigenous and Global Community in Constructing National Law

29-30 August 2018

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

INVITED SPEAKERS :

- 1. Prof. Henning Glaser
Thammasat University, Thailand
- 2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
- 3. Prof. Shimada Yuzuru
Nagoya University, Japan
- 4. Prof. Dr. Topo Santoso, S.H., M.H.
Indonesia University (UI), Indonesia
- 5. Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum
Sultan Agung Islamic University, Indonesia

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This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

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Faculty of Law, Sultan Agung Islamic University

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584

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“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fifth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, August 31th 2018

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29th 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, August 31th 2018

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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THE ROLE OF THE CODE OF CONDUCT TO IMPROVE THE PROFESSIONALITY OF THE NOTARY

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ABSTRACT

Notary is a public official who has the authority to make authentic deeds. As an official who is appointed by the government, a notary has a duty to provide good service to the community. In their duties and powers, a Notary is regulated by several laws and regulations, especially the Law on the Position of Notary Public and the Notary Code of Ethics.

The Notary Code of Ethics is all moral principles determined by the Indonesian Notary Association, hereinafter referred to as the "Association" based on the decision of the Association Congress which is determined and regulated in the laws and regulations concerning this matter and which apply to and must be obeyed by each and all members. Associations and all people who carry out their duties as a Notary. Notaries in their duties must always obey the Notary Code of Ethics, because Notaries must maintain the dignity and dignity of the Association.

Until now, the implementation of the Notary Code of Ethics in Indonesia is still not optimal. We still often hear about violations of the Notary Code of Ethics committed by Notaries. Imposing sanctions that are deemed less firm cannot provide a deterrent effect for Notaries who commit violations. So that the application of the Notary Code of Ethics must be improved, so that the Notary can carry out his / her job duties properly.

Keywords: Notary Code of Ethics, Implementation of Notary Code of Ethics

A. INTRODUCTION

Notary is a public official who has the authority to make authentic deeds as long as the making of certain authentic deeds is not specific to other public officials. The making of authentic deeds is required by statutory regulations in order to create legal certainty, order and protection. In addition to authentic deeds made by or before a Notary, not only because it is required by laws and regulations, but also because it is desired by the parties concerned to ensure the rights and obligations of the parties for certainty, order and legal protection for the parties concerned as well as for society as a whole.

Notaries in their profession act as public servants as officials appointed by the government. In his service, the Notary is bound by the Position Regulations and the professional code of ethics as a notary.

The important position of a notary in human life makes the process of someone who wants to become an expert notary public important. Therefore, in notarial education, notary ethics should also be considered. So in this case it is emphasized that a professional education without education on responsibility and professional ethics is incomplete. In the field of law, technical skills that ignore the aspects related to the responsibilities entrusted to them and the profession in general, as well as ethical values and standards that must serve as guidelines in carrying out their profession, will only become skilled craftsmen in the field of law and their profession.¹

Notaries in their profession who provide services to the community should act according to the applicable rules. Notaries have an obligation to ensure the correctness of the deeds they make, therefore the notary must be more sensitive, honest and fair in making a deed.

¹ Darji Darmodiharjo dan Shidarta, 2004, *Pokok-pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, PT Gramedia Pustaka Utama, Jakarta, p. 265.

As is well known, some of the Notary's duties, one of which is to arrange in writing and authentically the legal relations between the parties who have consensus asked for the notary's services.²

Notaries are also required to have high moral values, because with high morals, the Notary will not abuse the authority that is at him, so that the Notary will be able to maintain his dignity as a public official who provides services in accordance with applicable regulations and does not damage the Notary's image. itself. As the hope of all of us or the nation, so that every Notary has sufficiently broad and deep knowledge and skills so that it is the mainstay of the community in designing, compiling and making various authentic deeds, so that the language structure, juridical techniques are neat, good and correct, because besides this expertise is needed. also honesty or sincerity and an objective nature or outlook.³

As we know, notary institutions have been recognized by the public and are needed in making authentic written evidence from a legal act committed by the community. The need for a notary institution in daily legal practice cannot be separated from the increasing level of the economy and the legal awareness of the community.

Based on the background that has been described above, the authors are interested in researching, discussing and studying the problems mentioned above in the form of a thesis entitled: "The Role of the Notary Code of Ethics to Increase Professional Professionalism in Upholding the Position of Notary Public "

Based on the description and background of the problem above, the authors are interested in discussing the problem further by focusing on the formulation of the problem:

1. What is the role of the notary code of ethics in improving the professionalism of the notary profession?
2. What are the obstacles faced by the Notary in implementing the notary code of ethics?
3. What is the solution in overcoming the obstacles faced by Notaries in implementing the notary code of ethics?

B. DISCUSSION

1. The Role of the Notary Code of Ethics to Improve the Professionalism of the Notary Public

As a public official, a notary must always refer to the provisions of the laws and regulations, namely the Law No. 30 of 2004 in conjunction with the Law on Notary Position Number 2 of 2014 and the Notary's Professional Code of Ethics.

Regarding the notary's opinion Dr. Widhi Handoko, SH., Sp.N. The notary code of ethics has an important role for someone who holds a notary position, namely as a basis, benchmarks, reference and guidelines / benchmarks in every act, attitude and behavior in the notary's job. The provisions contained in the notary code of ethics contain the obligations and prohibitions for the notary's office which contain ethical or moral values, because it is very important and influential for the continuity of the notary's office and performance, for that, notaries are obliged to be responsible for the existence of a notary code of ethics, namely by always obeying and implementing the notary code of ethics.⁴

2. Constraints faced by Notaries in Implementing the Notary Code of Ethics

Sometimes there are several notaries who do not comply with the rules contained in a code of ethics. There are several forms of violation by the notary profession against the Code of Ethics, such as the notary not reading the deed, the reduced rate, where the client does not sign before the notary, carries out tasks outside the work area, and so on.

² Supriadi, 2008, *Etika Dan Tanggung Jawab Profesi Hukum Di Indonesia*, Sinar Grafika, Jakarta, p. 50.

³ Komar Andasmita, 1981, *Notaris Dengan Sejarah, Peranan, Tugas Kewajiban, Rahasia Jabatannya*, Sumur, Bandung, p. 14.

⁴ Widhi Handoko, Notary Interview, Semarang

Examples of cases that have been experienced by Notary Muhammad Turman, SH as PPAT regarding the making of a sale and purchase deed: In carrying out its duties the Notary has done it correctly, the Notary has recorded a legal act committed by the parties / penghadap into the deed by only worrying about what happened, what was seen, and what was experienced by the parties / the parties concerned, according to the formal requirements in making an authentic deed. However, without the knowledge of the notary, he discovered that the certificate as the basis for the sale and purchase deed was duplicated and it was discovered after the making of the sale and purchase deed that the deed made by the notary should be null and void by law. Meanwhile, steps to cancel the deed that have been made by the notary are by means of a court decision, where the Notary is summoned as a witness in accordance with the procedures in the Notary Code of Ethics. As stated by Notary Muhammad Turman, SH, in this case the Notary cannot be made a suspect, but will only be a witness.⁵

For this reason, it is advisable for the notary to clearly provide important legal information and it should be known by the client as long as it is dealing with legal issues. And also explained that there are other things that must also be considered by the Notary, namely relating to the legal protection of the Notary itself.

As according to Dr. Widhi Handoko, SH., Sp.N, regarding the obstacles faced by Notaries while carrying out their duties in carrying out the code of ethics, namely:⁶

- a. The code of ethics for a notary should every congress have an update or update regarding the code of ethics. Because the ideal rule with existence is not the same between ideal and existence, so it becomes a constraint. For example, the code of ethics is not in harmony with the rules for public services. For example Law No. 25 of 2009 concerning public services that should be known by the general public, while the code of ethics should not be advertisements, even for boards.
- b. The code of ethics is difficult for notaries to enforce, because the sanctions contained in the code of conduct are deemed less strict. So that there are still many violations of the Notary Code of Ethics committed by notaries, and
- c. The rules of the code of conduct are like speed bump rules which are like only to scare the unpowered. Due to the lack of supervision and control, the application of less strict sanctions cannot provide a deterrent effect for notaries.

3. Solutions in Overcoming Constraints Faced by Notaries in Implementing the Notary Code of Ethics

From some of the problems that the author raises above regarding the role of the Notary code of ethics to improve the professionalism of Notaries where the obstacles have been mentioned, namely:

1. The first solution in dealing with the obstacles faced by notaries, namely, the first is that the code of ethics must conform to the Public Service Law, meaning that all norms and regulations contained in the regulations of the Notary Code of Ethics should be in accordance with existing laws and be harmonious.
2. The second solution is from the Notary Honorary Council which is expected to be firm in imposing sanctions on notaries who violate the notary code of ethics. Strictly speaking here means mmpu provides the best solution in providing guidance to Notaries who violate the Notary's code of ethics.
3. The third solution regarding improvements in supervision and control that must be improved, including how the examination of notaries also needs to be improved. INI should coordinate in order to supervise / supervise the application of the Notary Code of Ethics to Notaries and provide guidance in accordance with the procedures for Notaries who violate the Notary's Code of Ethics correctly, clearly, and firmly.

⁵ Muhammad Turman, Notary Interview, Semarang

⁶ Widhi Handoko, Notary Interview, Semarang

C. CLOSING

1. Conclusion

- a. The role of the notary code of ethics is to improve the professionalism of the notary profession, in the application of the Notary Code of Ethics regarding the responsibilities that a Notary has while carrying out his / her duties. Because the responsibility of a notary is related to dignity and dignity. With regard to the rules applied by the Notary Code of Ethics to regulate Notaries from violating mutually agreed rules.
- b. The obstacles faced by the Notary in implementing the notary code of ethics regarding the imbalance of the Notary Code of Ethics regulations with the law of public services make Notaries in providing services to the public are limited, so that the regulations in the Notary Code of Ethics with the regulations of public services are not harmonious. And also the weak sanctions from the Notary Code of Ethics make Notaries heed the rules in the Notary Code of Conduct regulations themselves, because the lack of strict regulations in the Notary Code of Ethics does not give a deterrent effect on Notaries, so that their effectiveness is felt to be less than optimal.
- c. Solutions in overcoming obstacles faced by Notaries in implementing the Notary Code of Ethics, namely the Code of Ethics must be in line with other regulations relating to the Notary Code of Ethics, and also in imposing sanctions that must be strict in order to provide a deterrent effect for Notaries, as well as increase control and supervision of how the examination of notaries.

2. Suggestion

- a. The rules of the Notary Code of Ethics should be in line with the regulations of public servants so that the Notary is more flexible in carrying out his profession of office in providing services to the public, in accordance with applicable regulations.
- b. The Indonesian Notary Association should enforce the Code of Ethics more firmly so that the Notary is always responsible for maintaining his / her job duties.
- c. The enforcement of sanctions against Notaries should be firm and have a deterrent effect, so that they are able to suppress violations of the Notary's Code of Ethics committed by Notaries.

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