

## The Notary's Responsibility for Violations of the Notary's Ethics in Mimika District

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**Abstract.** *A notary is a public official who has the authority to make authentic deeds and other authorities as referred to in Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary Public. There are authorities, obligations and prohibitions that must be obeyed, which will give rise to responsibilities that coincide with the ethical provisions in carrying out his official duties, this research aims to determine and analyze the responsibility of Notaries regarding violations of the Notary's code of ethics as well as the handling of Notaries who are suspected of violating the Notary's code of ethics. The problem formulation in this research was analyzed using the Theory of Responsibility and the Theory of Legal Certainty. This research uses empirical legal research using the approach used in this research is an interdisciplinary method. The results of this research conclude that the author has interviewed 2 (two) notaries and 7 (seven) notary service users in Mimika Regency. So the first result was obtained, there were several violations of the code of ethics, namely the absence of a Notary in his office during the process of making the deed, determining the honorarium which was not in accordance with what had been determined, inappropriate use of social media for an official who was authorized by law and are bound by the oath of office. Second, a notary who is proven to have violated the Notary Code of Ethics can be given ethical sanctions from the Head of the Organization in the form of a warning and as a consequence the responsibility of the official concerned is to cooperatively accept it and not repeat similar violations so that it does not reach the Regional Supervisory Council or the Regional or even Central Government.*

**Keywords:** Code; Ethics; Responsibility; Violation.

### 1. Introduction

Law is an inseparable part of the life of human society so that in society there is always a legal system, in every society there are legal norms (*ubi societas ibi ius*). This was meant by Cicero that the legal system must refer to respect and protection for the nobility of human dignity. The law seeks to maintain and regulate the balance between egoistic individual interests or desires and common interests so that conflict does not occur. The quality of law is largely

determined by its moral quality, therefore law must be measured by moral norms. On the other hand, morals require laws that can increase the social impact of morality. Moral norms are a benchmark for determining the rightness and wrongness of human actions in terms of the good and bad aspects of being human.

A profession consists of a limited group, people who have special skills and armed with these skills they can function in society better than other members of society in general. Or, in another sense, a profession is a title or position where the person who holds it has special knowledge obtained through 'training' or other experience, even through both, so that the person holding the profession can guide or give advice, as well as serve other people. in his own field.

Based on the facts, the Unitary State of the Republic of Indonesia has legislation in the field of Notary Affairs, namely "Regulations on the Position of Notaries" which were later changed to "Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notaries, as a replacement for Law Number 30 of 2004 Concerning Notary Positions. The Unitary State of the Republic of Indonesia as a State of Law based on Pancasila and the 1945 Constitution guarantees certainty, order and legal protection for every citizen, that to guarantee certainty, order and legal protection, authentic written evidence regarding acts, agreements, statements, and legal events made before or by authorized officials.<sup>1</sup>

The dynamic development of society today has triggered the importance of legal protection for citizens. The success of national development has resulted in an increasing level of community welfare. In line with developments in the level of community welfare, the function and role of notary services is needed as part of the development process to meet one of the community's needs.<sup>2</sup>

A notary is a public official who has the authority to make authentic deeds and other authorities as intended in this Law.<sup>3</sup>A notary is a public official appointed by the government to assist the general public in making agreements that exist or arise in society. The need for these written agreements to be made before a Notary is to guarantee legal certainty for the parties entering into the agreement.

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<sup>1</sup>Wibby Yuda Prakoso, "Responsibilities and Legal Consequences of Deeds Made by Substitute Notaries After the Term of Office is Completed", "Deeds Journal", Vol.4.No.4/December/2017.hal.774

<sup>2</sup> Habib Adjie, 2008,"Civil and Administrative Sanctions Against Notaries as Public Officials", PT.Refika Aditama, Bandung, p.56

<sup>3</sup>Article 1 paragraph 1 of Law Number 30 of 2004 concerning Notary Positions

Notaries in their profession act as public servants as officials appointed by the government. In their services, Notaries are bound by the Position Regulations and professional code of ethics as a notary. Notary is a legal profession and thus the notary profession is a noble profession (*nobile officium*). It is called a *nobile officium* because the notary profession is very closely related to humanity. A deed made by a notary can be a legal basis for the status of a person's property, things and obligations.<sup>4</sup>

Legal protection for Notaries in carrying out their duties and authority for the implementation of service functions and achieving legal certainty in providing services to the public, has been regulated and stated in a separate law, namely Law Number 30 of 2004 concerning the Position of Notaries, which law has been underwent changes with the promulgation of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004.<sup>5</sup>

The regulations that have been regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary, which will hereinafter be called UUJN-P, cover all matters related to what is the authority, obligation and must comply with what is prohibited or not permitted to be done by a person. Notary office.

With regard to the Notary code of ethics which is regulated in several regulations such as in the UUJN itself, as well as several codes of ethics regulated in the Notary Code of Ethics of the Indonesian Notary Association which was formed through the Extraordinary Congress of the Indonesian Notary Association which is a forum for Notary associations regulated in the UUJN.

Article 1 of the Notary's Code of Ethics, which includes several things regarding the personality of the Notary in carrying out his duties, the Notary is obliged to maintain attitudes, behavior, deeds or actions in order to safeguard and maintain the image and authority of the notary institution and uphold the honor and dignity of the Notary's position. Meanwhile, something that is prohibited in this Notary's Code of Ethics is an attitude, behavior and action or any action that must not be carried out in carrying out the office of a Notary that could reduce the image and authority of the Notary Institution or the honor and dignity of the Notary's position. Notaries as public officials in carrying out their duties must be imbued with Pancasila, be aware of and obey the law, have a good personality and uphold the dignity and honor of Notaries.

Furthermore, according to the provisions of Article 2 of the Notary Code of Ethics, it is stated that "Notaries in carrying out their official duties are aware of

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<sup>4</sup> [http://repository.unissula.ac.id/9597/4/BAB%20I\\_1.pdf](http://repository.unissula.ac.id/9597/4/BAB%20I_1.pdf) accessed on March 10, 2023, at 10 p.m. 14.02 WIT

<sup>5</sup>Tiara Hasfarevy, "The Role of the Regional Honorary Council in Resolving Violations of the Notary Code of Ethics in Pekanbaru City." *Recital Review* Vol.3/No.1/2021 p. 40

their obligations to work alone, honestly and impartially, with a full sense of responsibility, not holding branch offices, nor using intermediaries and using promotional mass media. . Providing services to people who need their services as best as possible, providing legal counseling and providing services to underprivileged people free of charge.

Article 3 of the Notary Code of Ethics states that Notaries and other Notaries must be respectful and avoid unhealthy competition and Notaries must maintain the Notary Corps. Notary ethical responsibilities relate to moral norms which are a measure for Notaries to determine the rightness or wrongness or good and bad of actions carried out in carrying out their profession. This responsibility includes 3 (three) things. First, if the action is carried out in a state where the mental capacity is functioning normally. Second, in the event that the Notary commits a violation with free will. Third, there was deliberate intent with malicious intent by the Notary and the result was loss.<sup>6</sup>

Practices that occur in the field today have emerged to the public, namely that there are still several Notaries who, in carrying out their official duties, are suspected of violating the professional code of ethics, for example, in the process of making a notarial deed the person concerned is not in the office where they are located and also the determination of the honorarium is often a complaint from users. Notary services.

Therefore, it is very important for Notaries to be able to better understand the extent to which this action can be said to be a violation of the Code of Ethics for the Position of Notary Public, especially in Mimika Regency where violations of the Code of Ethics often occur which in terms of efforts to resolve them we can look at as a reference to the extent of their effectiveness. organization/association of the Indonesian Notary Association in providing guidance to Notaries so that things that are detrimental to Notaries and the community they serve do not happen.

## **2. Research Methods**

The research method used in this thesis is an empirical juridical research method. The approach method used is an interdisciplinary method. Interdisciplinary methods in research are an approach to solving a problem using an integrated review of various relevant scientific viewpoints. From a social science perspective or socio-legal research perspective, an interdisciplinary approach aims to research a topic/issue, where communication, collaboration and integration occur, starting from definition, objectives, process, data collection to analysis and conclusions.<sup>7</sup>Data collection methods include

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<sup>6</sup>Sri Yuniati, "Mechanism for Imposing Sanctions on Notaries Who Violate the Notary's Code of Ethics", Journal of Deeds. Vol.4/No.4/Dec/2017, 586-587.

<sup>7</sup>Prof. Dr. Irwansyah, SH., MH, 2021, Legal Research, Mira Buana Media, Yogyakarta, pp. 208-209.

interviews and library materials. The data analysis method used is qualitative analysis.

### 3. Results and Discussion

#### 3.1. Notary's responsibility for violations of the Notary's code of ethics

Notaries as public officials really need their presence to play a role in the development and progress of Mimika Regency which influences several sectors, including economic, social, cultural, legal and industrial.

Notary is a legal profession and thus the notary profession is a noble profession (nobile officium). It is called a nobile officium because the notary profession is closely related to humanity. A deed made by a notary can be a legal basis for the status of a person's property, rights and obligations. Mistakes in a notarial deed can result in someone's rights being revoked or someone being burdened with an obligation.<sup>8</sup>

A Notary can be professionally responsible for his profession if he can apply ethical, moral and religious rules. As an ethical norm, a Notary can be held professionally responsible for his profession.

The purpose or function of the Notary Code of Ethics itself is: seeks to regulate the behavior of Notaries normatively, namely providing norms (rules/rules) for Notary behavior so that Notaries can determine what is good and what is bad, what should be done and what should not be done in carrying out their position and behaving.<sup>9</sup>

In accordance with the results of this research, namely interviews from 9 (nine) respondents who are also users of the services of Notary . In fact, he thought the staff was Notary X

This is not in accordance with article 16 letter m UUJN-P, namely "reading the Deed in front of the presenters in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making the Deed of Will under the hand, and signed on at that time by the presenter, witness and Notary."

Among the 7 (seven) respondents, five people were of the opinion that "it doesn't matter what is important is that my deed is done". 1 (one) person said

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<sup>8</sup>Abdul Ghofur Anshori, Indonesian Notary Institute, Legal and Ethical Perspective, (Yogyakarta : UII Press, 2009), p. 7

<sup>9</sup>Quoted from <https://mkn.unissula.ac.id/perlunya-penguatan-kode-istik-notaris-dalam-pelaksanaan-anggaran/#:~:text=Funsi%20Kode%20Etik%20Notaris%20endeavor,in%20running%20kerjaan%20and%20behave>. Accessed on September 15, 2023 at 10 p.m. 11.45 WIT

"lazy about things like that, it's complicated (bother)" 1 (one) person said that "they are just ordinary people who don't know where they are going to report it" continued Yudith, that "regarding this, it goes back to the individual Notary each, because responsibility returns to the individual."<sup>10</sup>

If a dispute occurs, the Notarial Deed is proven not to have elements that have perfect evidentiary power, then the Deed in question is invalid and does not have binding legal force. In Article 41 UUJN-P it is emphasized that violations of the provisions as intended in Article 38, Article 39 and Article 40 result in the Deed only having evidentiary force as a private deed. In this case, if there has been a violation of the formal requirements in making a Notarial deed, namely violating the provisions of Article 38 UUJN-P which causes the Notarial deed to be degraded in its evidentiary value to become like a private deed, overall the Notarial deed does not have the evidentiary power of a Notarial deed.<sup>11</sup>

"There is also one Notary who uses personal social media by uploading photos of his personal activities which do not reflect modesty, but it turns out that many people know and some have commented by mentioning his profession."<sup>12</sup>

The behavior in the case of this position is clearly contrary to Article 4 UUJN concerning the Oath of Office, where the official who is sworn in promises to maintain his attitude, behavior and will carry out his obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a Notary. It is also contrary to Article 17 letter i UUJN which states that carrying out work does not conflict with religious norms, decency or propriety which can affect the honor and dignity of the Notary's position. Apart from that, Article 3 paragraph 1 and paragraph 2 of the Notary Code of Ethics stipulates that officials who hold the office of notary must have good morals and personality and respect and uphold the honor and dignity of the position of notary, and this is contrary to the prohibitory provisions regulated in Article 4 paragraph 13 of the Notary Code of Ethics.

According to Emmy, "because we as State Officials who are appointed by the Oath of Law must be trustworthy and obey all the rules, both in relation to our relationships with clients and our relationships with other people or fellow citizens in our personal lives outside of work."

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<sup>10</sup>Interview with Yudith S Baga, SH., M.Kn as Notary and PPAT in Mimika Regency on 28 August 2023

<sup>11</sup>Dr. Habib Adjie, SH, M.Hum., AllArb. 2022, Across Time: : Opinions and Thoughts on Indonesian Notarial Law. (np): CV. Star Universe Media. Matter. 578 [https://www.google.co.id/books/edition/Lintas\\_Time/tFatEAAAQBAJ?hl=en&gbpv=1&dq=akta%20terbesar&pg=PA578&printsec=frontcover](https://www.google.co.id/books/edition/Lintas_Time/tFatEAAAQBAJ?hl=en&gbpv=1&dq=akta%20terbesar&pg=PA578&printsec=frontcover) Accessed on September 15, 2023 at 10 p.m. 20.12 WIT

<sup>12</sup>Interview with Emmy Saragih, SH., M.Kn as Notary and PPAT in Mimika Regency and Chair of INI Mimika Regency on September 5 2023

Based on Emmy's statement, regarding violations of the code of ethics committed by several Notaries, all of them as Notary holders are very responsible for their mistakes, apologized and did not repeat them until now no more violations have occurred.

The application of Hans Kelsen's theory of responsibility regarding the case of the position above is that:

- a. The individual responsibility of the notary official must be responsible for his or her own violations.
- b. The responsibility of the Notary official is based on error and is obliged to be responsible for violations committed intentionally and with the aim of causing losses, both material and moral.
- c. Absolute liability means that a Notary official is obliged to be responsible for violations committed because they were unintentional and unforeseen, especially those which could cause defamation of the official and at the same time the Association, in this case the Organization (Indonesian Notary Association).

### **3.2. Handling of Notaries who are suspected of violating the Notary's code of ethics**

When a violation of the Code of Ethics occurs, supervision over the implementation of the Code of Ethics is carried out by:

- a. At the district/city level by the Regional Management of the Indonesian Notary Association and the Regional Honorary Council.
- b. At the Provincial Level by the Regional Management of the Indonesian Notary Association and the Regional Honorary Council.
- c. At the National level by the Central Management of the Indonesian Notary Association and the Central Honorary Council.

In enforcing the Notary Code of Ethics, there is an Honorary Council whose duties include supervising the upholding of the code of ethics. Examining and making decisions on suspected violations of the provisions of the code of ethics that are internal or that are not directly related to the interests of society. As well as providing suggestions and opinions to the supervisory panel regarding alleged violations of the Notary's Code of Ethics and Position.<sup>13</sup>

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<sup>13</sup>Johannes Ibrahim Kosasih, 2021. Notary Legal Cases in the Banking Credit Sector, Indonesia: Sinar Graphic.  
P.6[https://www.google.co.id/books/edition/Kasus\\_Hukum\\_Notaris\\_di\\_Bidang\\_Kredit\\_Per/O-](https://www.google.co.id/books/edition/Kasus_Hukum_Notaris_di_Bidang_Kredit_Per/O-)

The position of the Honorary Council is very strategic because on its shoulders is the mandate to ensure that Notaries understand and implement the code of ethics consistently well and correctly. The Honorary Council also contributes to the existence, honor and nobility of the Notary profession in society. If the Honorary Council cannot enforce the code of ethics in accordance with the orders mandated by the organization, its credibility as an institution enforcing the code of ethics will be undermined by outside parties. For example, in certain cases, the integrity and firmness of the Honorary Board can help protect the Notary profession from interference from outside parties.

This is because logically, if notaries consistently implement the code of ethics, there is little chance that notaries will be involved in cases that are detrimental to society. Thus, if the role of the Honorary Council has reached the ideal level then the quality of notaries in general will increase. Therefore, INI has built a tiered system within the Honorary Council organization. Honorary Councils are established at the district/city, provincial and central levels.<sup>14</sup>

The authority of the Honorary Council is for violations of the organization's code of ethics whose impact is not directly related to society or there are no people who are harmed by violations of the code of ethics committed by the organization, or in other words, the authority of the Notary Honorary Council is only internal to the organization.<sup>15</sup>

Emmy added that she is the Chair of the Notary Association Indonesia, Mimika Regency, that as long as there is a violation of the code of ethics, in terms of efforts to resolve it, it can only be resolved up to the association/organization, not up to the Regional, Regional or Central Notary Honorary Council, because when rumors spread we immediately immediately clarify this matter, and the Notary concerned responded sportingly.

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely; First, that positive law means that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easily changed.

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<sup>14</sup>Central Management of the Notary Association, 2013, Identity of Indonesian Notaries. (np): Gramedia Pustaka Utama. [https://www.google.co.id/books/edition/Jati\\_Diri\\_Notaris\\_Indonesia](https://www.google.co.id/books/edition/Jati_Diri_Notaris_Indonesia). Accessed on September 9, 2023 at 10 p.m. 12.30 WIT

<sup>15</sup>Laurensius Arliman S, 2015, Notaries and Law Enforcement by Judges. (np): Deepublish. p.48. [https://www.google.co.id/books/edition/Notaris\\_Dan\\_Penegakan\\_Hukum\\_Oleh\\_Hakim/yEjRDwAAQBAJ?hl=en&gbpv=1&dq=penunjuangan%20sanksi%20notaris&pg=PA48&printsec=frontcover](https://www.google.co.id/books/edition/Notaris_Dan_Penegakan_Hukum_Oleh_Hakim/yEjRDwAAQBAJ?hl=en&gbpv=1&dq=penunjuangan%20sanksi%20notaris&pg=PA48&printsec=frontcover) accessed on 30 September 2023. Pkl. 19.04 WIT

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically legislation. Based on this opinion, according to Gustav Radbruch, positive law which regulates human interests in society must always be obeyed even though positive law is not fair.<sup>16</sup>

In the implementation of Legal Certainty based on cases involving violations of the Code of Ethics that occurred in Mimika Regency, as a Notary official who is a role model and benchmark for the community, everything that is done by a Notary Office holder must be in line with the UUJN and the Code of Ethics. regulate so that they receive legal certainty in resolving all problems they face and obtain justice both for the Notary concerned and for the community. If Notaries carry out their duties in full compliance with the rules, benefits will be created for all parties.

#### 4. Conclusion

Notary's responsibility for violations of the notary's code of ethics that occurred in Mimika Regency, in dealing with the mistakes of Notary officials who have violated the notary's code of ethics, as state officials, the person concerned is able to face their mistakes with a sense of responsibility, sportsmanship and grace. So up to now there has been no reoccurrence or recurrence of similar violations. Handling of Notaries who violate the Notary's EITK code, which occurred in Mimika Regency where the organization or association took steps by summoning and directly delivering a verbal warning to the Notary concerned, so that the matter does not reach a higher level. The notary concerned also acted in a cooperative manner in accepting the reprimand. In this way, association organizations in Mimika Regency are able to wisely and judiciously handle problems that arise as a result of violations of the Notary's code of ethics committed by local Notary officials.

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<sup>16</sup>Dr. M. Sulaeman Jajuli, MEI 2015, *Legal Certainty of Land Pawning in Islam*. (np): Deepublish. [https://www.google.co.id/books/edition/Kepastian\\_Hukum\\_Gadai\\_Tanah\\_dalam\\_Islam/NZb4CQAAQBAJ?hl=en&gbpv=1&dq=gustav%20radbruch%20keastian%20law&pg=PA51&printsec=frontcover](https://www.google.co.id/books/edition/Kepastian_Hukum_Gadai_Tanah_dalam_Islam/NZb4CQAAQBAJ?hl=en&gbpv=1&dq=gustav%20radbruch%20keastian%20law&pg=PA51&printsec=frontcover) accessed on 25 September 2023, 10 p.m. . 12.45 WIT

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