

Legal Analysis of Unfair Competition Between Notaries in The Perspective of The Code of Ethics of The Indonesian Notaries Association

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Abstract. *This study aims to determine and analyze the regulation of the notary's code of ethics, to determine and analyze the legal analysis of unfair competition of notaries in the perspective of the Indonesian Notary Association's code of ethics. The approach method in this study is the statute approach. This type of research is normative research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is perspective. The results of the study indicate that the regulation of the notary's code of ethics in Indonesia has a crucial role in maintaining the integrity and credibility of the notary profession as a public official who prepares authentic deeds. This code of ethics aims to ensure that every notary's action is based on the principles of professionalism, objectivity, and the interests of society and the state. Although there are regulations governing the code of ethics in the Notary Law and Government Regulations, its implementation still faces challenges, especially related to ethical violations in the field. Therefore, supervision and enforcement of the code of ethics require an active role from external institutions such as the Notary Supervisory Board, in addition to the internal mechanisms of the notary professional organization. The importance of an effective code of ethics also contributes to the creation of more transparent, accountable, and trustworthy public services. This will strengthen the legal position of notarial deeds in the Indonesian legal system. Referring to existing provisions, especially regarding the minimum honorarium for notaries set by the Indonesian Notary Association (INI) for the Southeast Sulawesi Region, regional administrators have the authority to file a lawsuit for breach of contract against notaries who charge an honorarium below the agreed standard. Based on Article 1655 of the Civil Code, administrators can act in court as either plaintiffs or defendants.*

Keywords: Code of Ethics; Unfair Competition; Notary

1. Introduction

There are still many violations of professional ethics that have not been resolved and appear to be ignored. As a result, the study material for legal professional ethics in Indonesia is more in the form of abstract normative provisions without real case examples. In addition, the existence of various professional organizations with their respective codes of ethics has reduced the perception of the importance of studying legal professional ethics.¹

Enforcing legal professional ethics for Indonesian legal officials, especially notaries, is a task that needs to be given careful attention.²The notary profession is responsible for providing services to the community by making authentic deeds as evidence, and it is important for notaries to be impartial and fair to all parties involved.³

The core of the notary's function is to regulate authentic and written legal relations between parties who use the notary's services.⁴This profession is based on trust and contains legal, moral, and ethical responsibilities to the state or government, society, the parties involved, and professional organizations. Therefore, the quality of notaries must continue to be improved through education, understanding, and deepening of knowledge and codes of ethics.⁵

According to Bertens, the notary code of ethics establishes norms accepted by a professional group, provides guidelines to its members on behavior while guaranteeing the moral integrity of notaries in the eyes of the public. Any defamation of a member will affect the entire professional group and must be handled according to its own authority.⁶

A professional code of ethics is the result of applied ethics, because this code of ethics is developed through the application of ethical principles to a particular profession.⁷This code of ethics is designed to evolve with advances in science and technology to ensure that members of a professional group stay abreast of

¹Haryati Felisa, 2018. Violation of the Notary Code of Ethics Regarding Unhealthy Competition Among Fellow Notaries Reviewed from the Regulations of the Code of Ethics of the Indonesian Notary Association (INI), *Volkgeist Law Journal*, Vol 3 No 1, page 2.

²Yustica Anugrah, 2020. The Role of Notary Professional Ethics as an Effort to Enforce the Law. *Notarius*, Vol 13 No 1, page 6.

³Ayuningtyas, P, 2020. Sanctions Against Notaries Who Violate the Code of Ethics, *Revista De Patologia Tropical*, Vol 9 No 2, page 9.

⁴Sjaifurrachman, 2011, *Aspects of Notary Responsibility in Making Deeds*, 1st edition, Mandar Maju, Bandung, p.7.

⁵Ibid, p. 9.

⁶Raden Hamengku Aji Dewondaru and Umar Ma'ruf, 2017, *Legal Study on the Obligation for Notaries and PPATs Who Hold Concurrent Positions to be Domiciled in One Region or Work Area*, *Jurnal Akta* Vol. 4 No. 2, p. 5.

⁷Nadia Fauziah Anugrah and Suwari Akhmaddhian, 2020, *Code of Ethics Sanctions for Notaries Who Do Not Carry Out Their Official Obligations*, *Journal of Multidisciplinary Studies*, Vol. 11 Number 02, Page 11.

developments.⁸A professional code of ethics functions as a formulation of moral standards for individuals who practice the profession and acts as a benchmark for the behavior of members of the professional group, which aims to prevent unethical behavior.⁹

The relationship between the regulations governing the notary profession and the notary code of ethics can be seen from the alignment of ethical provisions with the Notary Position Regulations (PJM), as well as the enforcement of sanctions against violators of both regulations.¹⁰In addition, fellow notaries are obliged not to be involved in any form of competition that could harm their colleagues, either morally or materially.¹¹

The Notary Code of Ethics strictly prohibits actions that can cause unfair competition among fellow Notaries, as stated in Article 4 number 9 of the Amendment to the Notary Code of Ethics at the Extraordinary Congress of the Indonesian Notary Association Banten, May 29-30, 2015. The article states that Notaries and other parties who carry out Notary duties are prohibited from carrying out actions that can directly or indirectly cause unfair competition with fellow Notaries. The determination of honorarium is expected to be supervised and controlled by the Indonesian Notary Association as an organization that regulates its members. In addition, the Code of Ethics has also formed an Honorary Council to ensure the implementation of the Code of Ethics. Seeing the developments that have occurred, it is apparent that the ethical norms that regulate relations between notaries are no longer upheld. Many notaries do not heed the UUJN and the notary code of ethics by engaging in detrimental competition, such as lowering the agreed service rates. Seeing these conditions, the author is interested in conducting research with the title: "Legidial Analysis of Unfair Competition Between Notaries in The Perspective of The Code of Ethics of The Indonesian Notaries Association".

2. Research Methods

The approach methods in this study include the statute approach and the conceptual approach. The statutory approach is used on the basis of analyzing all relevant laws and regulations with the legal issues being studied.¹²This approach aims to understand the existing legal basis. In addition, a conceptual approach is applied to analyze legal materials in order to understand the meaning contained in legal terms.¹³This approach aims to identify new meanings or test legal terms

⁸Ibid, p. 12.

⁹Muhammad Nuh, 2011. Ethics of the Legal Profession, Pustaka Setia, Bandung, page 143.

¹⁰Purwaningsih, 2015. Forms of Notary Law Violations in Banten Province and Their Law Enforcement, *Mimbar Hukum*, Vol 27 No 1, page 15.

¹¹Budiono Herlien, 2013. Collection of Civil Law Writings in the Notary Sector, Citra Aditya Bakti, Bandung, page 19.

¹² Mukti Fajar and Yulianto Achmad, 2015, Dualism of Normative and Empirical Legal Research, 3rd Edition, Pustaka Pelajar, Yogyakarta, page 185.

¹³Ibid, p.186

in theory and practice.¹⁴In this study, analysis was conducted. The type and source of data in this study are secondary data. Secondary data refers to information obtained from the literature which is the result of previous research. In this study, the method used is the literature technique (study document). In this study, the analysis was conducted prescriptively, namely to provide arguments for the research results that have been achieved.

3. Results and Discussion

3.1. Regulation of the Code of Ethics for the Notary Position

The profession of a Notary requires special skills and knowledge, and bears great responsibility in providing civil legal services to the community. As a state servant in the field of civil law. Notaries have a heavy burden in fulfilling the interests of the community, and the services provided cannot be equated with conventional business services. The services of a Notary must be in accordance with the provisions contained in the Notary Law (UUJN) and the Notary Code of Ethics. This is because Notaries work in a professional environment that highly prioritizes ethics.¹⁵Actions that do not comply with professional ethical standards or that violate the code of ethics can harm the dignity of the Notary profession and reduce the quality of services provided.¹⁶

In legal practice, Notaries play a very important role, because they have the authority and responsibility to make authentic deeds. Deeds made by Notaries in writing are their responsibility for all legal consequences arising from the deed. Therefore, Notaries must always be guided by the Notary Code of Ethics and the Notary Law when carrying out their duties. Enforcement of the Notary Code of Ethics serves to protect the interests of individuals and legal entities. If a person's interests are disturbed by the actions of a Notary in carrying out his/her position, then enforcement of the Code of Ethics is required.

In legal science, there are the concepts of *das sollen* and *das sein* explained by Sudikno Mertokusumo. *Das sollen* refers to general legal regulations that are written normatively or theoretically, while *das sein* focuses on legal facts or what is actually practiced.¹⁷In terms of enforcing the Notary Code of Ethics, *das sollen* includes the regulations contained in the Notary Law, related laws and regulations, as well as the Notary Code of Ethics stipulated by the Indonesian Notary Association. Meanwhile, *das sein* reflects real practices in enforcing the

¹⁴Hajar M, 2015, Models of Approach in Legal and Fiqh Research, UIN Suska Riau, Pekanbaru, p. 41

¹⁵Gitayani, L, 2018. "Implementation of Professional Ethics by Notaries in Providing Services to Clients." *Acta Comitatus: Journal of Notary Law*, Vol. 3, page 8.

¹⁶Ibid page 10

¹⁷Monica Sriulina Tobing, Yosephine, 2021. "Guidance, Supervision and Enforcement of Notary Code of Ethics Norms for Violations of the Code of Ethics by Notaries in Medan City and Deli Serdang Regency", *Juristic Universitas Audi Indonesia*, Vol. 1, No. 1, page 21.

Notary Code of Ethics, both those carried out by the Supervisory Board and the Notary Honorary Council.

Enforcement of the Notary Code of Ethics can be understood as a process to validate facts or complaints with established ethical norms. In this case, it is important to clearly understand the flow of enforcement of the Notary Code of Ethics both normatively and in practice. Based on the concept of *das sollen* and *das sein*, the following will explain the flow of enforcement of the Notary Code of Ethics normatively (*das sollen*), which will then be continued with a discussion of its application in practice (*das sein*).

Based on the Notary Law, there are two institutions that have the authority to enforce the Notary Code of Ethics, namely the Notary Supervisory Board and the Indonesian Notary Association. Article 70 of the Notary Law states that the Notary Regional Supervisory Board has the right to receive reports from the public regarding alleged violations of the Notary Code of Ethics. In addition, Article 70 also gives the Regional Supervisory Board the authority to hold hearings to examine the alleged violations.

On the other hand, Article 83 of the Notary Law mandates the Indonesian Notary Association to establish and enforce the Notary Code of Ethics. The Notary Code of Ethics was last established by the Indonesian Notary Association through an Extraordinary Congress held in Banten on May 29-30, 2015.

Based on this context, the author will explain the flow of enforcement of the Notary Code of Ethics by both the Notary Supervisory Board and the Indonesian Notary Association as follows:

a. Notary Supervisory Board

According to the provisions of Article 68 of the Notary Law, the Notary Supervisory Board consists of the Regional Supervisory Board, the Regional Supervisory Board, and the Central Supervisory Board. Article 70 then confirms the authority of the Regional Supervisory Board, which includes, among other things, receiving reports from the public regarding alleged violations of the Notary code of ethics or violations of the provisions of the Notary Law. The Regional Supervisory Board also has the right to hold a hearing to examine alleged violations of the code of ethics or violations in the implementation of the Notary's position; conduct routine examinations of notary protocols at least once a year or whenever deemed necessary; make minutes of the examination and submit them to the local Regional Supervisory Board with copies to the Central Supervisory Board, the Notary organization, and the Notary concerned; and examine public reports about Notaries and submit the results of the examination to the Regional Supervisory Board within 30 days, with copies to the Central Supervisory Board, the Notary organization, the Notary concerned, and the reporting party.

In general, the Notary Law has regulated the mechanism and working procedures of the Notary Supervisory Board. However, Article 81 of the Law provides a mandate for further regulation regarding the procedures for appointing and dismissing members, the organizational structure and working procedures, and

the examination procedures of the Notary Supervisory Board, which are regulated in the Ministerial Regulation. As an implementation of Article 81, the Minister of Law and Human Rights has issued Regulation of the Minister of Law and Human Rights Number 16 of 2021 which regulates the organizational structure and working procedures, procedures for appointment and dismissal, and the budget of the Notary Supervisory Board.

Based on the provisions of Article 3 of the Regulation of the Minister of Law and Human Rights Number 16 of 2021, the Supervisory Board is tasked with providing guidance and supervision to Notaries on behalf of the Minister. The term of office of the members of the Notary Supervisory Board is three years and can be reappointed. Meanwhile, Article 7 of the Ministerial Regulation stipulates that the number of members of the Supervisory Board consists of nine people, involving elements of the government, Notary organizations, and experts or academics.

As a follow-up to Article 81 of the Notary Law, the Ministry of Law and Human Rights has stipulated Regulation of the Minister of Law and Human Rights Number 15 of 2020 which regulates the Procedures for Examination by the Supervisory Board of Notaries. Article 2 of the regulation reaffirms the authority of the Supervisory Board to provide guidance and supervision to Notaries and to conduct examinations related to alleged violations of the behavior and implementation of the Notary's office. Furthermore, Article 4 states that in conducting examinations of alleged violations, the Supervisory Board forms an Examination Board consisting of three members, namely elements of the Government, Notaries, and academics, who are also assisted by one secretary.

Article 5 of the Regulation of the Minister of Law and Human Rights stipulates restrictions related to kinship relations between the Examination Panel and the Notary being examined. The Examination Panel is required to refuse to examine a Notary who has a marriage relationship or blood relationship in a straight line upwards or downwards without degree limitations, as well as a straight line sideways up to the third degree with the Notary being examined.

The Audit Board shall be formed no later than 14 (fourteen) days from the date of:¹⁸

- 1) Reporting public complaints to the Regional Supervisory Board;
- 2) the results of the Regional Supervisory Board's inspection recommendations to the Regional Supervisory Board; or
- 3) an appeal against the decision of the Regional Supervisory Board to the Central Supervisory Board is accepted and registered.

Reports can be filed by the injured party regarding alleged violations of the behavior and implementation of the Notary's office (Article 7). In addition, reports can also come from the Supervisory Board at each level. Reports

¹⁸Purwaningsih, 2015. Forms of Notary Law Violations in Banten Province and Their Law Enforcement, *Mimbar Hukum*, Vol. 27, No. 1, page 19.

originating from the implementation of the Supervisory Board's authority are obtained from:

- 1) periodic inspection results;
- 2) legal process from the investigation level to the trial level; and/or
- 3) other legal facts (Article 8).

Reports from the injured party are received and recorded by the secretary of the Supervisory Board in the Supervisory Board Incoming Letter. Recording of Reports includes:

- 1) identity of the Reporter and the Reported Party;
- 2) Report letter submitted to the Chairman of the Notary Supervisory Board; and
- 3) legal evidence/facts and document attachments (Article 10).

The Secretary of the Notary Supervisory Board then administers the Report by recording it in the case register book which contains:

- 1) case registration number and date;
- 2) number and date of the Report letter;
- 3) name of the Reporter;
- 4) name of the reported party;
- 5) Attachment of evidence or other information deemed necessary to be recorded; and
- 6) the name of the chairman, members, and secretary of the Audit Board that has been formed and determined by the Supervisory Board. The administration of the Report in question is collected in 1 (one) case file. The case file in question is then submitted by the secretary of the Supervisory Board to the Audit Board (Article 11).

Before the examination hearing is carried out, the Chairperson of the Notary Supervisory Board holds a case conference attended by members of the Supervisory Board. The purpose of the case conference is to listen to the main issues and provide legal opinions through deliberation. After the case conference is completed, the Supervisory Board determines the day and date for the examination hearing of the Reporter and the Reported Party (Article 13).

The Secretary of the Supervisory Board then sends a summons letter to the Reporter and the Reported Party. This summons is carried out by registered mail by the Secretary of the Supervisory Board no later than 5 (five) days before the examination hearing. The summons can be carried out by facsimile, electronic mail, or registered summons. If the Reported Party and/or Reporter are not present after being summoned in a legal and appropriate manner, a second summons will be carried out. If the Reported Party is not present after being summoned a second time in a legal and appropriate manner, the examination will continue and the decision will be pronounced without the Reported Party being present. Meanwhile, if the Reporter is not present after being summoned twice legally and appropriately, the Examination Panel will state that the Report is considered to have lapsed and cannot be resubmitted (Article 15).

The examination conducted by the Regional Examination Board is closed to the public. The examination shall commence no later than 7 (seven) days after the

Examination Board is appointed. The Regional Examination Board is required to complete and submit the results of the examination no later than 30 (thirty) days since the Report is registered in the case register book (Article 17).

The results of the examination are recorded in the Examination Minutes and recommendations for the results of the examination (Article 20), which are then signed by the Chairperson and Secretary of the Examination Panel (Article 23 paragraph (1)). The results of the examination are submitted to the Chairperson of the Regional Supervisory Panel along with the following attachments:

- 1) Public Complaints Report;
- 2) Minutes of the Regional Audit Board's Examination; and
- 3) recommendations based on the results of the Regional Audit Board's inspection (Article 23 paragraph (3)).

The report on the results of the examination must be submitted to the Regional Supervisory Board together with a cover letter, copies of which must also be submitted to the Reporter, the Reported Party, the Central Supervisory Board, and the Regional Management of the Indonesian Notary Association, no later than thirty working days after the report is recorded in the case register book.

As a follow-up to the audit report, the Regional Supervisory Board forms a Regional Audit Board. The Regional Audit Board then summons the Reporter and the Reported to provide information that will be recorded in the audit report. The Regional Audit Board examines and makes a decision on the results of the Regional Supervisory Board's examination no later than thirty working days after being recorded in the case register book (Article 24).

After examining the statements from the Reporter and the Reported, the Regional Examination Panel will make legal considerations. If the examination states that the report cannot be proven, then the Regional Examination Panel will decide to reject the report. However, if the report is proven, then the Reported Party will be subject to sanctions according to the level of violation committed (Article 25).

The decision of the Regional Supervisory Board is read out in a session open to the public. The decision is signed by the Chairperson, Members, and Secretary of the Regional Audit Board. Furthermore, the decision is delivered to the Reporter, the Reported Party, the Regional Supervisory Board, the Central Supervisory Board, and the Central Management of the Indonesian Notary Association (Article 27).

The Regional Examination Panel based on the provisions of Article 26 can issue a decision in the form of:

- 1) Sanctions in the form of verbal warnings or written warnings. Sanctions in the form of verbal warnings or written warnings are final and cannot be appealed; or
- 2) proposal for imposing sanctions on the Central Supervisory Board in the form of: temporary dismissal of three months to six months; honorable dismissal; or dishonorable dismissal.

The Reporter or Reported Party who objects to the Decision of the Regional Supervisory Board may file an appeal to the Central Supervisory Board. The

appeal is submitted through the Regional Supervisory Board secretariat. The appeal must be submitted no later than seven days after the decision is read or after the decision is received, which is then stated in a written appeal statement (Article 28 and Article 29).

The Regional Supervisory Board submits the appeal case files to the Central Supervisory Board by attaching:

- 1) public complaint report;
- 2) minutes of the Regional Audit Board's examination;
- 3) recommendations on the results of the Regional Audit Board's inspection;
- 4) minutes of the Regional Audit Board's examination;
- 5) decision of the Regional Audit Board;
- 6) statement of appeal stated in writing;
- 7) comparative memory;
- 8) counter appeal memory if any; and
- 9) accountable evidence (Article 30)

In response to an appeal submitted through the Regional Supervisory Board, the Central Supervisory Board will form a Central Audit Board. The Central Audit Board then summons the Appellant and the Respondent to provide information that will be recorded in the examination report. The Central Audit Board is required to examine and provide a decision on the results of the Regional Supervisory Board's examination no later than thirty working days after being recorded in the register (Article 34).

The Central Audit Board has the authority to examine and decide:

- 1) Appeal request against objections to the decision of the Regional Supervisory Board;
- 2) proposal for the imposition of sanctions by the Regional Supervisory Board; or
- 3) legal facts regarding violations of the behavior and implementation of the notary's office (Article 31 paragraph (1)).

If the arguments submitted by the Appellant in the Appeal Memo are considered to have no strong basis by the Central Auditing Board, then the decision of the Regional Supervisory Board will remain upheld. However, if the arguments submitted by the Appellant in the Appeal Memo are considered to be sufficiently justified, the Central Auditing Board may cancel the decision of the Regional Supervisory Board or make its own decision based on considerations and a sense of justice (Article 32 and Article 33).

If a Notary is proven to have committed a violation of behavior and performance of office, the Examination Panel will impose sanctions in the form of:

- 1) verbal warning;
- 2) written warning;
- 3) temporary suspension;
- 4) proposal for an honorable dismissal; or
- 5) proposal for dishonorable dismissal (Article 36)

The decision regarding the imposition of sanctions in the form of temporary dismissal and the proposal for the imposition of honorable or dishonorable

dismissal sanctions shall be submitted by the Central Supervisory Board to the Minister no later than fourteen working days after the decision is read. The Minister will then follow up by issuing a decision letter on the imposition of sanctions within thirty working days after receiving the proposal (Article 37).

In the implementation of the temporary suspension sanction, the Minister issues a decision regarding the temporary suspension and appointment of the notary protocol holder and temporary blocking of the notary account (Article 49). After completing the temporary suspension sanction, the Notary is required to report to the Regional Supervisory Board to obtain information that the sanction has been completed and to hand over the protocol from the Notary holding the protocol to the Notary concerned (Article 52 paragraph (1)). Furthermore, the Regional Supervisory Board will submit a proposal to the Central Supervisory Board to unblock the Notary account (Article 52 paragraph (2)).

In the case of imposing sanctions of honorable or dishonorable dismissal, the Minister shall issue a decision regarding honorable or dishonorable dismissal, permanent blocking of the notary's account, and determination of the notary protocol holder (Article 50).

b. Indonesian Notary Association

Notaries are members of a professional organization regulated by Law 30 of 2004 juncto Law Number 2 of 2014, known as the Indonesian Notary Association. The Indonesian Notary Association is the only independent and autonomous Notary organization, which was formed to improve the quality of the Notary profession.

In accordance with the provisions of Article 83 paragraph (1) of Law 30 of 2004, the Indonesian Notary Association is given the responsibility to compile and enforce the Notary Code of Ethics. Based on the mandate of Article 83 paragraph (1), the Indonesian Notary Association through the Extraordinary Congress in 2005 has compiled the Code of Ethics of the Indonesian Notary Association, which was signed by the Code of Ethics Commission led by Adrian Djuani, SH and secretary Irwan Santosa, SH. Over time, the Code of Ethics of the Indonesian Notary Association has undergone changes which were determined through the Extraordinary Congress of the Indonesian Notary Association in 2015 in Banten.

The procedures for enforcing the Code of Ethics are regulated in Chapter V of the Code of Ethics of the Indonesian Notary Association. Supervision of the implementation of the Code of Ethics is carried out by: Regional Management and Regional Honorary Council at the Regency/City level; Regional Management and Regional Honorary Council at the Provincial level; and Central Management and Central Honorary Council at the National level. In addition, it is also regulated that violations or complaints that have been examined by one Honorary Council may not be examined again by another Honorary Council.

Facts regarding alleged violations of the Code of Ethics may come from reports of complaints from members of the association or the community, or may also come from the initiative of the Honorary Council itself. The Honorary Council is required to summon in writing members suspected of violating the Code of

Ethics no later than 14 (fourteen) working days after discovering the facts of the violation. The purpose of the summons is to ensure that the violation has occurred and to provide an opportunity for the member concerned to provide an explanation and defense. If the member who is summoned is not present, then the summons will be carried out two more times, up to the third summons. If at the third summons the member who is summoned is still not present, the Honorary Council will continue the session to make a decision and/or impose sanctions.

The Honorary Council that examines must make a decision and determine sanctions against members who violate, no later than 30 days after the last examination. If no violations are found, the name of the member concerned will be restored through a decision letter from the Honorary Council that examines.

The examination hearing of the notary being examined is carried out in private, while the reading of the decision is carried out openly. In the examination process, the Honorary Council in charge must:¹⁹

- 1) continue to respect and uphold the dignity of the Notary concerned;
- 2) always maintain a family atmosphere; And
- 3) keep confidential everything found during the inspection process.

Each member of the Honorary Council who examines has one vote. Examination by the Honorary Council is considered valid if attended by more than half of the members of the Honorary Council as a quorum requirement. If at the opening of the session the quorum is not achieved, the session will be postponed for a maximum of thirty minutes. However, if after the postponement the quorum is still not achieved, the session will continue and be considered valid.

The Honorary Council conducting the examination is required to send a decision letter on the results of the examination to the Notary being examined, along with copies to the Central Management, Central Honorary Council, Regional Management, Regional Honorary Council, Regional Management, and Regional Honorary Council. If the Notary being examined is not satisfied with the Decision of the Regional/Territorial Honorary Council, he/she may file an appeal to the Central Honorary Council. The appeal must be filed no later than thirty working days after receiving the decision letter imposing sanctions. The Honorary Council whose decision is being appealed is required to send all copies of the examination files to the Central Honorary Council within fourteen days after receiving the appeal request.

Appeals may also be filed to the Congress. If an appeal is filed to the Congress, the appeal application must be filed by the Notary concerned no later than thirty days before the Congress is held. The appeal application is submitted to the Congress Presidium through the Central Board Secretariat and copies are submitted to the Central Board, Central Honorary Council, Regional Board, Regional Honorary Council, Regional Board, and Regional Honorary Council.

¹⁹Latifah Amir, et al, 2014. "The Existence of the Decision of the Notary Supervisory Board According to the State Administrative Court Law", Journal of Legal Studies, page 14

3.2. Legal Analysis of Unfair Competition between Notaries in the Perspective of the Code of Ethics of the Indonesian Notary Association

Determining the notary's service fee below standard can trigger unhealthy competition among fellow notaries, which can cause various problems. The impact is not only felt among fellow notaries, but also by the notary concerned. In addition to creating a gap between fellow notaries in a certain area that has the potential to damage harmonious relationships, this can also degrade the dignity of the notary profession which should be respected. This action violates the law on office as well as the code of ethics and oath of office which requires every notary to be honest, maintain the honor, dignity, and responsibility of his profession.

The determination of notary fees or rates is increasingly difficult to implement, because even though there are provisions regarding the amount of fees, there are still notaries who set rates below these provisions. This is due to the increasing number of notaries in various regions, which triggers increasingly tight competition between notaries. The tighter this competition, the more notaries are forced to take inappropriate actions. These actions have the potential to create legal liability for notaries. One of the issues that arises is related to the responsibility of notaries for unfair competition practices carried out by fellow notaries.

In Kendari City, for example, unfair competition practices related to notary fees are still found. The author revealed this based on the results of an interview with one of the notaries in Kendari City, who explained that in determining the notary fees in Kendari City, which is included in Region Classification B, an incident occurred. At one time, when a notary made a deed whose fee had been determined by the regional administrator, one of the notaries actually set a lower price for making the deed. As a result, several clients began to compare prices and chose to switch to a notary who offered a cheaper rate.

The provisions regarding notarial deed honorariums are also regulated in several articles in the Notary Code of Ethics. This Code of Ethics regulates the prohibition for notaries to set honorariums below the standards determined by the association. This can be clearly found in Article 3 paragraph (13) of the Notary Code of Ethics, which states, "Notaries and other parties who serve and carry out duties as notaries are required to implement and comply with all provisions regarding honorariums determined by the association." Thus, the association has established rules governing notarial honorariums.

With the regulation regarding the minimum honorarium for notary services, the Indonesian Notary Association (INI) aims to create uniformity in the standard price of notary service honorariums. The determination of honorarium standards by this association aims to prevent unhealthy competition among notaries regarding free pricing. However, despite this, the increasing competition has actually caused many notaries to ignore the established honorarium standards. Legal accountability for notaries involved in unfair competition by imposing sanctions aims to make the violating party aware that their actions are contrary

to applicable law. In addition, the sanctions also aim to restore the notary's behavior to be in accordance with existing regulations and to ensure that the rule of law can run in balance. The imposition of these sanctions serves as a form of awareness so that notaries do not violate applicable legal regulations.

Kelsen formulated absolute liability in modern law which is generally applied in omission crimes. He also stated that in modern law there are other forms of errors besides those done intentionally or planned, namely negligence.²⁰Based on the theory of legal responsibility put forward by Hans Kelsen, if applied to legal issues related to unfair competition among notaries, especially in the context of determining the amount of honorarium that has been determined by the Indonesian Notary Association, it can be concluded that a notary is legally responsible if in carrying out his position he violates the provisions of the law that have been determined.

The provisions in Chapter III Article 3 of the amendment to the Notary Code of Ethics ratified at the Extraordinary Congress of the Indonesian Notary Association in Banten on May 29-30, 2015 regulate the obligations that must be complied with by notaries. Furthermore, in the provisions of Chapter III Article 4 of the amendment to the Notary Code of Ethics ratified at the Extraordinary Congress of the Indonesian Notary Association in Banten on May 29-30, 2015, prohibitions for notaries are regulated.

Based on the two provisions of the article, it can be concluded that related to the "game" of honorarium carried out by notaries, this has been clearly and firmly regulated in Article 3 concerning the obligations of notaries and Article 4 concerning the prohibition in carrying out the office of notary. Therefore, if a notary violates the minimum honorarium limit set by the association, then it can be ascertained that the notary has committed the following violations:

- a) Committing a violation of the provisions of Article 3 number 13, namely the obligation of a Notary to respect, comply with and implement the Regulations and decisions of the Association;
- b) Committing a violation of the provisions of Article 3 number 16, namely the obligation of Notaries to implement and comply with all provisions regarding honorariums set by the Association;
- c) Committing a violation of the provisions of Article 4 number 7, namely the Prohibition on Notaries who try or attempt by any means, so that someone moves from another Notary to him, whether the attempt is directed directly at the client concerned or through the intermediary of another person;
- d) Committing a violation of the provisions of Article 4 number 9, namely the Prohibition on Notaries from carrying out business, either directly or indirectly, which leads to the emergence of unhealthy competition with fellow Notaries;
- e) Committing a violation of the provisions of Article 4 number 11, namely the Prohibition on Notaries from determining the honorarium to be paid by clients in

²⁰Ria Trisnomurt, et al, 2017. "Duties and Functions of the Regional Supervisory Board in Organizing Supervision, Examination, and Imposing Sanctions on Notaries", Jurnal Notariil, Vol. 2, No. 2, page 7.

an amount lower than the honorarium that has been determined by the Association.

The existing provisions are violated by notaries if they intentionally "play" with the minimum honorarium limit set by the Regulations of the Indonesian Notary Association. This action is clearly a form of unfair competition in notarial practice, so the notary concerned must be held accountable for his actions. The ethical responsibility of a notary is related to the moral norms that serve as a reference for notaries to assess whether the actions taken in carrying out their profession are right or wrong, good or bad. This responsibility includes three things: first, if the action is carried out in a condition of normal functioning reason; second, if the notary violates it with free will; and third, if there is deliberate action with bad intentions that cause losses.

If a notary violates the Code of Ethics, then according to the provisions of Article 8 and Article 9 of the Notary Code of Ethics, the party authorized to conduct the examination is the Honorary Council. The Honorary Council, based on these provisions, is a body within the association and has the authority to examine violations of the Code of Ethics and impose sanctions on violators according to their respective authorities.

Notaries who violate the Notary Code of Ethics may be subject to sanctions in accordance with the provisions of Article 6 of the Amendment to the Notary Code of Ethics, namely:²¹

- 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.

The procedures for imposing sanctions carried out by the Honorary Council consist of:

- a) Examination and imposition of sanctions at the first level

If a member is suspected of violating the code of ethics, either based on the knowledge of the Regional Honorary Council itself or a report from the Regional Management or other parties, then within a maximum of 7 (seven) working days, the Regional Honorary Council must immediately hold a hearing to examine the alleged violation. If evidence of a violation of the code of ethics is found in the hearing, the hearing will immediately decide on sanctions for the violation that occurred. The decision of the Regional Honorary Council hearing must be sent to the violating member, with copies to the Branch Management, Regional Management, Central Management, and Central Honorary Council, no later than 7 (seven) working days after the decision is made by the Regional Honorary Council hearing.

- b) Examination and imposition of sanctions at the appeal level

Examination and imposition of sanctions at the appeal level are carried out by

²¹See Article 6 of the Notary Code of Ethics

the Regional Honorary Council. Decisions imposing sanctions in the form of temporary dismissal (schorsing) or dismissal (onzetting) from association membership can be appealed to the Regional Honorary Council within 30 (thirty) working days after the date of receipt of the letter from the Regional Honorary Council, with copies to the Central Honorary Council, Central Management, Regional Management, and Regional Management. If the examination and imposition of sanctions at the first level are carried out by the Regional Honorary Council because the Regional Honorary Council has not been formed at the relevant regional management level, then the decision of the Regional Honorary Council is considered an appeal level decision.

c) Examination and imposition of sanctions at the final level

Decisions imposing sanctions in the form of temporary dismissal (schorsing) or dismissal (onzetting) from membership of the association given by the Regional Honorary Council can be submitted for examination at the final level to the Central Honorary Council. The application must be made within 30 (thirty) working days after the date of receipt of the letter of imposition of sanctions from the Regional Honorary Council, with copies to the Regional Honorary Council, Central Management, Regional Management, and Regional Management. The Central Honorary Council is required to provide a decision through a hearing at the final level of examination.

Decisions made by the Regional Honorary Council, Regional Honorary Council, and Central Honorary Council must be implemented by the Regional Management. The Regional Management must record every decision made by the Regional Honorary Council, Regional Honorary Council, and/or Central Honorary Council in the association's membership book held by the Regional Management, along with the name of the member concerned.

According to the author, administrative sanctions as additional sanctions for notaries who violate the code of ethics set by the Indonesian Notary Association and have been sanctioned by the Notary Honorary Council need to be regulated in the Notary Law. This is because the notary code of ethics prepared by the Indonesian Notary Association is an inseparable part of the Notary Law. Article 4 paragraph (1) and paragraph (2) of the Notary Law has regulated that notaries are required to take an oath before carrying out their office, which clearly states the notary's obligation to comply with the code of ethics set by the Indonesian Notary Association. Therefore, it is important to regulate and determine in the Notary Law regarding the legal consequences of non-compliance or violation of the notary's oath of office related to the code of ethics.

4. Conclusion

The regulation of the notary code of ethics in Indonesia plays a very important role in maintaining the integrity and credibility of the notary profession as a public official who functions to prepare authentic deeds. The code of ethics aims to ensure that every action taken by a notary is based on the principles of professionalism, objectivity, and the interests of the community and the state.

Although there are clear regulations regarding the notary code of ethics, both in the Notary Law and Government Regulations, there are still challenges in its implementation, especially related to ethical violations that arise in the field. The importance of supervision and enforcement of this code of ethics does not only rely on internal mechanisms carried out by notary professional organizations, but also requires external supervision from authorized institutions, such as the Notary Supervisory Board. Thus, strengthening and affirming the regulation of the notary code of ethics in Indonesia is very necessary, in order to reduce the potential for ethical violations and increase the level of public trust in the notary profession as an integral part of the legal system in Indonesia. Referring to the existing provisions, especially regarding the minimum honorarium for Notaries that has been set by the Southeast Sulawesi Regional Management of the Indonesian Notary Association, the regional management has the authority to file a lawsuit for breach of contract against Notaries who charge an honorarium below the agreed standard. Legally, Notaries who are involved in unfair business competition and charge an honorarium below the standard set by the association have violated the agreement made in the congress forum as an agreement of the association's members. Therefore, a lawsuit for breach of contract can be filed by the Indonesian Notary Association, by first giving a warning or summons to the Notary concerned for violating the honorarium that has been charged under the applicable provisions.

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Etc:

Notary Code of Ethics