

Notary's Liability for Unauthorized Collection of Fees for Waqf Land Certificates

Wiwit Setiabekti

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
inashumam@gmail.com

Abstract. *As public officials, notaries have the authority to create authentic deeds and provide legal certainty in various legal acts, including those related to waqf land. In exercising their authority, notaries are required to uphold the provisions of laws and regulations and the Notary Code of Ethics to ensure professional, transparent, and high-integrity legal services. However, in practice, irregularities in the form of unauthorized fees in processing waqf land certificates are still found, which have the potential to harm the parties and undermine public trust in the notary profession. This situation provides an important basis for examining the ethical and legal accountability of notaries for such actions. This study aims to analyze ethical and legal accountability of notaries against the act of collecting unauthorized fees in the manufacture of waqf land certificate, as revealed in Audit Finding Number: 001/LHP/RSIB-KAPLAM/II/2023 between RSI Banjarnegara and Notary DN. This case is interesting to study because notaries, as public officials appointed by the state, have a moral and legal responsibility to act honestly, independently, and impartially in carrying out their duties. The research method used is normative juridical legal research with the approach statute approach and conceptual approach. The data sources consist of primary legal materials in the form of laws and regulations related to notary positions and endowments, secondary legal materials in the form of literature and scientific journals, and tertiary legal materials as supporting materials. Data analysis was conducted systematically. Qualitative descriptive by interpreting applicable legal norms and theories of responsibility, professional ethics, authority and justice. The results of the study show that the act of collecting unauthorized fees by notaries in making waqf land certificates is a form of violation of the Notary Code of Ethics and abuse of office authority. From an ethical aspect, this action is contrary to the principles of integrity, honesty and professional responsibility as regulated in Code of Ethics of the Indonesian Notaries Association (INI). From a legal aspect, a notary can be asked administrative accountability (sanctions from the Notary Honorary Council), civil (Article 1365 of the Civil Code), as well as criminal (Article 372 and Article 378 of the Criminal Code) if proven to have committed an unlawful act that is detrimental to another party. The*

conclusion of this study confirms that Notaries are required to maintain the integrity of their profession by complying with all legal provisions and professional ethics. Unlawful fee collection not only undermines public trust in the notary profession but can also result in serious legal consequences for those who do so. Therefore, oversight of the performance of notary duties must be strengthened through audit mechanisms, guidance, and enforcement of professional discipline.

Keywords: *Certificates; Legal; Liability; Notary; Unauthorized.*

1. Introduction

A notary is a public official authorized by the state to issue authentic deeds and exercise other powers as stipulated in laws and regulations. This position places notaries in a profession entrusted with a public trust, ensuring that every action they take reflects legal certainty, fairness, professionalism, and integrity. Therefore, the performance of a notary's office is measured not only by positive legal provisions but also by ethical norms governing the conduct of the notary profession.¹

In practice, the implementation of the notary office still faces various ethical and legal issues. One issue that frequently comes to the fore is the abuse of authority through the collection of fees that violate legal provisions. This practice has the potential to cause harm to the public and undermine public trust in the notary profession. In fact, the notary office is essentially a position of trust (*officium nobile*) that demands moral, ethical, and legal responsibility in all public services.²

The problem becomes even more important when the fees are collected in the issuance of waqf land certificates.³ Waqf land is characterized as property intended for religious purposes and public welfare, so its management must uphold the principles of utility, sincerity, and legal certainty. In this context, notaries and Waqf Deed Officials (PPAIW) are responsible for providing legal services in accordance with statutory provisions without using the waqf process as a means of obtaining unlawful profits.⁴

The research results show the practice of collecting unauthorized fees in the process of making waqf land certificates with a value reaching IDR

¹ Habib Adjie, 2018, Indonesian Notary Law (Thematic Interpretation of the Notary Law). Bandung: Refika Aditama, p. 15.

² Abdul Ghofur Anshori, 2019 Indonesian Notary Institution: Legal and Ethical Perspectives. Yogyakarta: UII Press, p. 42.

³ Lathifah Hanim., & Noorman. 2020. "The Role of the Notary Supervisory Board in Enforcing the Notary Code of Ethics". Jurnal Akta, Vol. 7 No. 4, pp. 515–528.

⁴ Law Number 41 of 2004 concerning Waqf.

872,400,000.00.⁵This action is considered to be contrary to the legal provisions of the notary office and the Notary Code of Ethics because services for legal acts of a social and religious nature should be carried out based on the principle of propriety and should not be used as a means of obtaining improper benefits.⁶

Normatively (*das sollen*), a notary is obliged to carry out his/her duties honestly, independently, impartially, and to protect the interests of the parties in accordance with the provisions of laws and regulations and the Notary Code of Ethics.⁷On the other hand, empirically (*das sein*), irregularities in the form of fee collection without legal basis are still found, raising questions about the ethical and legal accountability that can be imposed on notaries. This gap between ideal conditions and reality demonstrates the importance of strengthening oversight of the implementation of notary duties.⁸

Previous studies have focused primarily on notaries' responsibilities for authentic deeds, ethical code violations, and abuse of authority in notarial services. However, research specifically examining notaries' ethical and legal responsibilities for illegally collecting fees for waqf land certificates is relatively limited. Therefore, this study offers novelty in analyzing the relationship between professional ethical violations and the legal consequences arising from such practices.

Based on the description, the identification of the problem in this study lies in the gap between legal norms that require notaries to carry out their duties professionally and the practice of collecting illegal fees in making waqf land certificates which has the potential to give rise to ethical and legal liability. This study aims to analyze the ethical and legal responsibilities of notaries for the collection of unauthorized fees in the issuance of waqf land certificates.

2. Research Methods

This research uses a normative juridical approach method by examining the provisions of laws and regulations, legal principles, doctrines, as well as decisions and legal materials related to the ethical and legal responsibility of notaries for the collection of illegal fees in making waqf land certificates. The research specifications used are descriptive analytical, namely research that aims to systematically describe legal problems regarding notary liability, then analyzed based on positive legal provisions, the Notary Code of Ethics, and relevant legal

⁵ Based on the author's research results processed from audit documents and thesis research data regarding the alleged collection of unauthorized fees in the issuance of waqf land certificates amounting to IDR 872,400,000.00.

⁶ Habib Adjie. 2018, Indonesian Notary Law (Thematic Interpretation of the Notary Law). Bandung: Refika Aditama, p. 121.

⁷ Kastury, Andi Hamniza., & Abdul Munsharif Chalim. (2020). "Distribution Of Inheritance To Non Muslim Heirs In Notary Deed From Islamic Inheritance Law Perspective". Deed Journal, Vol. 7 No. 2, p. 120. <http://jurnal.unissula.ac.id/index.php/akta/article/view/7669> (accessed July 21, 2026).

⁸ Peter Mahmud Marzuki, 2021, Legal Research. Revised Edition. Jakarta: Kencana, p. 89.

theories. The data collection method is carried out through library research by collecting and reviewing legal materials consisting of primary legal materials, namely laws and regulations related to the research; secondary legal materials, namely books, scientific journals, research results, expert opinions, and other scientific works; and tertiary legal materials, namely legal dictionaries, legal encyclopedias, and other materials that provide guidance or explanations for primary legal materials and secondary legal materials. The data analysis method used is qualitative analysis, namely by inventorying, classifying, connecting, and interpreting all legal materials obtained to then be arranged systematically so that conclusions are obtained regarding the ethical and legal responsibility of notaries for the collection of illegal fees in making waqf land certificates.

3. Results and Discussion

3.1. Notary's Ethical Responsibility for Unlawful Collection of Fees in Making DeedsnWaqf Land Certificate

A notary is a public official who is authorized by the state to create authentic deeds and exercise other powers as stipulated in statutory regulations. This position makes notaries a profession with a distinctive character. *noble office* or a noble position, because in carrying out their duties they are required not only to possess technical legal skills, but also to possess moral integrity, honesty, independence, and responsibility to the public. As public officials, notaries serve as an extension of the state, providing legal certainty for every legal act undertaken by the public. Therefore, every notary's actions must reflect the values of justice, legal certainty, expediency, and professionalism to maintain public trust in notarial institutions.⁹

The concept of "officium nobile" implies that the office of notary is not merely a profession oriented towards economic gain, but rather a profession that prioritizes legal services to the public. The trust bestowed by the state on notaries is a mandate that must be carried out based on the principles of prudence, objectivity, and responsibility. In this context, a notary is required to avoid any form of abuse of authority that could harm the parties or harm the dignity of the profession. Therefore, any deviation committed by a notary not only has implications for the notary personally but can also undermine the authority of the notary profession as an institution that guarantees legal certainty for the public.¹⁰

The position of a notary as a public official and a dignified profession requires that all exercise of their authority be based on the provisions of the Notary Law. In carrying out their duties, notaries are required to act honestly, independently, impartially, and with integrity, while safeguarding the interests of all parties

⁹ Lathifah Hanim., & Noorman. (2020). "The Role of the Notary Supervisory Board in Enforcing the Notary Code of Ethics." *Jurnal Akta*, Vol. 7, No. 4, pp. 515–528.

¹⁰ Kastury, Andi Hamniza., & Abdul Munsharif Chalim. (2020). "Distribution of Inheritance to Non-Muslim Heirs in Notary Deed from Islamic Inheritance Law Perspective." *Deed Journal*, Vol. 7, no. 2, p. 120–129.

involved in legal acts. Furthermore, notaries are obligated to provide legal services in accordance with statutory provisions without discriminating against the parties' social, economic, or background status. This obligation embodies the principle of equality before the law, a fundamental principle of a state based on the rule of law.¹¹

The fulfillment of a notary's obligations relates not only to the administrative aspects of creating authentic deeds, but also includes a moral responsibility to provide accurate legal information to the public. Notaries are required to explain the legal consequences of every legal action taken by the parties, ensure that all formal and material requirements are met, and refuse to engage in any act that violates the law or professional ethics. Therefore, notaries cannot hide behind the excuse that they are merely conveying the wishes of the parties if such actions clearly violate applicable law.¹²

In addition to the obligations stipulated in the Notary Law, every notary is also bound by the Indonesian Notaries Association's Code of Ethics as a guideline for professional conduct. This code of ethics establishes moral standards that must be adhered to by all members of the organization, both in carrying out their duties and in their professional lives. Adherence to the code of ethics is one indicator of notary professionalism, as the notary profession is judged not only by the ability to produce authentic deeds, but also by the integrity and morality of the official who carries out the position. Therefore, any action that violates the code of ethics constitutes a violation of the honor of the profession and may be subject to ethical sanctions by the professional organization.¹³

The Indonesian Notaries Association's Code of Ethics affirms that notaries are obligated to uphold the honor and dignity of their office, avoid unfair competition, refrain from abusing their official authority, and refrain from engaging in actions that could harm the public or fellow notaries. In the context of public service, the code of ethics also requires notaries to provide professional services by upholding the principles of propriety and fairness in determining service fees. Setting fees without a legal basis, particularly for services related to social and religious interests such as the issuance of waqf land certificates, constitutes a violation of the ethical values of the profession that every notary must uphold.¹⁴

Based on the research results, it was discovered that there was a practice of collecting unauthorized fees in the process of issuing waqf land certificates with a

¹¹ Hanim, Lathifah, & Noorman (2020). "The Role of the Notary Supervisory Board in Enforcing the Notary Code of Ethics." *Jurnal Akta*, Vol. 7, No. 4, pp. 515–528.

¹² Lathifah Hanim & Noorman. 2020, "The Role of the Notary Supervisory Board in Enforcing the Notary Code of Ethics." *Jurnal Akta*, Vol. 7 No. 4, pp. 515–528.

¹³ Code of Ethics of the Indonesian Notaries Association

¹⁴ Amin Purnawan & Siti Ummu Adillah. 2014, "Justice-Based Regional Tax Policy to Encourage the Growth of Small and Medium Enterprises (SMEs) in Central Java." *Journal of Legal Reform*, Vol. 1 No. 3.

total value of Rp872,400,000.00. This amount indicates that the actions taken were not merely administrative errors, but reflected the abuse of official authority to obtain improper benefits. This practice is contrary to the principle of *officium nobile* because the notary's position, which should be used to provide legal services to the public, was instead used as a means of obtaining benefits that were not based on legal provisions. From a professional ethics perspective, this action has injured the values of honesty, propriety, integrity, and public trust in the notary profession.¹⁵

3.2. Legal Responsibility of Notaries for Unlawful Fee Collection in Making Waqf Land Certificates

Legal responsibility is a legal consequence that must be borne by every legal subject for every action that is contrary to the provisions of statutory regulations. In the context of the notary position, legal responsibility is not only related to the validity of the authentic deeds he makes, but also to all actions carried out in carrying out the authority of the position. As a public official who is given authority by the state, a notary is obliged to carry out his duties honestly, independently, impartially, carefully, and prioritize the interests of the parties in accordance with the provisions of Article 16 paragraph (1) of Law Number 2 of 2014 concerning the Notary Position.¹⁶ The implementation of this authority must be based on the principles of professionalism, legal certainty, and integrity so that any deviation can give rise to legal and ethical accountability.¹⁷

This study uncovered the practice of collecting unauthorized fees in the process of obtaining waqf land certificates, totaling IDR 872,400,000.00. Based on the audit results and the facts obtained during the study, these fees were collected outside of the applicable provisions, resulting in losses for interested parties. Such actions not only violate the principles of public service but also violate the principle of propriety that a notary must uphold as a public official.¹⁸

The first form of legal liability that can be imposed is administrative liability. The UUJN stipulates that notaries must carry out their duties in accordance with legal provisions and comply with all obligations stipulated in Article 16 of the UUJN. Violations of these obligations may result in administrative sanctions in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal, depending on the severity of the violation.¹⁹ Supervision of

¹⁵The author's primary research data was processed from documents and thesis research results regarding the collection of unauthorized fees in the issuance of waqf land certificates in 2023.

¹⁶ Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 16 paragraph (1).

¹⁷ Hanim, Lathifah, & Noorman. (2020). "The Role of the Notary Supervisory Board in Enforcing the Notary Code of Ethics." *Jurnal Akta*, Vol. 7, No. 4, pp. 515–528.

¹⁸Audit Result Report Number 001/LHP/RSIB-KAPLAM/II/2023 concerning the Management of the RSI Banjarnegara Waqf Land Certificate.

¹⁹Law Number 2 of 2014 concerning the Position of Notary, Article 16 paragraph (11).

the performance of notary duties is carried out by the Notary Supervisory Board, which has the authority to investigate allegations of misconduct and administrative violations. Therefore, if it is proven that fees have been collected without legal basis, the Supervisory Board may impose administrative sanctions in accordance with statutory provisions.²⁰

In addition to administrative liability, such actions also have the potential to give rise to civil liability. Under Article 1365 of the Civil Code (KUHPerdata), any unlawful act that results in harm to another person requires the perpetrator to compensate for that loss.²¹ The elements of an unlawful act include the existence of an unlawful act, the existence of an error, the occurrence of a loss, and a causal relationship between the act and the loss suffered by the victim. In this case, the collection of fees without legal basis can be classified as an unlawful act if it is proven to be carried out in violation of legal provisions and causes financial loss to the party who provided the funds. Therefore, the injured party has the right to file a lawsuit for compensation through the courts as a form of legal protection for their rights.²²

Furthermore, if the evidence reveals that the collection of fees was carried out through deception, abuse of trust, or control of funds that were not theirs, then such actions can also give rise to criminal liability. The Criminal Code (KUHP) regulates the crime of embezzlement under Article 372 and the crime of fraud under Article 378.²³ However, the application of criminal provisions to notaries cannot be done solely because of ethical violations, but must be based on the fulfillment of all elements of a criminal act as stipulated in the legislation. Therefore, not every violation of a notary's office automatically constitutes a crime; rather, there must be evidence of intent and resulting legal consequences.²⁴

From a waqf legal perspective, the practice of collecting unauthorized fees also contradicts the spirit of Law Number 41 of 2004 concerning Waqf. Waqf is a legal act intended for the benefit of worship and public welfare, so its entire management process must be conducted in a trustworthy, transparent manner, and provide benefits to the community.²⁵ Therefore, any action that makes the waqf land certification process a means of personal gain contradicts the values underlying the waqf system itself. Notaries and Waqf Deed Officials (PPAIW) are

²⁰Habib Adjie, 2017, *Civil and Administrative Sanctions against Notaries as Public Officials*, Bandung: Refika Aditama, p. 118.

²¹Civil Code, Article 1365.

²²Herlien Budiono, *Collection of Civil Law Writings in the Notary Sector*, Bandung: Citra Aditya Bakti, 2016, p. 86.

²³Criminal Code, Article 372 and Article 378.

²⁴Abdul Ghofur Anshori, *Indonesian Notary Institution: Legal and Ethical Perspective*, Yogyakarta: UII Press, 2019, p. 153.

²⁵Law Number 41 of 2004 concerning Waqf, Article 5 and Article 22.

fundamentally obligated to provide professional legal services without charging unlawful fees.

Upon further analysis, ethical violations committed by notaries are closely related to legal accountability. The Notary Code of Ethics requires every notary to carry out their duties honestly, independently, responsibly, and without abusing their authority.²⁶ Violations of the code of ethics essentially result in ethical sanctions through the Honorary Council of the Indonesian Notaries Association. However, if the ethical violation simultaneously fulfills the elements of a legal violation, the notary can still be held simultaneously accountable for administrative, civil, and criminal liability. Therefore, ethical sanctions do not eliminate the possibility of legal sanctions if there is a legal basis for them.

In the author's opinion, the practice of collecting unauthorized fees in the processing of waqf land certificates indicates a deviation from the principle of the nobile principle inherent in the notary's office. The notary office is not merely a profession oriented towards economic gain, but rather a position of trust that carries moral, ethical, and legal responsibilities. Therefore, any form of abuse of authority must be dealt with proportionally through oversight mechanisms, enforcement of codes of ethics, and law enforcement to ensure the notary's purpose as a public servant remains intact. Strengthening the function of the Notary Supervisory Board, the Honorary Council of the Indonesian Notaries Association, and coordination with law enforcement officials are important steps in realizing legal certainty and legal protection for the public, particularly in the field of waqf.

Notary Legal Responsibility Table

Type of Liability answer	Legal basis	Form of Sanction
Ethics	2015 Code of Ethics for Notaries of the Indonesian Notaries Association	Reprimand, warning, temporary suspension from membership, dismissal from membership of the organization according to the level of violation.
Administrative	Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Article 16 paragraph (11) and related provisions)	Verbal warning, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.
Civil	Article 1365 of the Civil Code	A lawsuit for damages, restoration of rights, or other forms of civil liability based on a court decision.
Criminal	Criminal Code (including Article 372 and/or Article 378 if the elements of a criminal act are fulfilled)	Imprisonment and/or fines in accordance with statutory provisions.

Source: Processed by the author based on the Notary Law, Civil Code, Criminal Code, Notary Code of Ethics, and Law Number 41 of 2004 concerning Waqf (2026).

²⁶Indonesian Notaries Association, Notary Code of Ethics, Results of the Extraordinary Congress of the Indonesian Notaries Association, Banten, 29–30 May 2015.

4. Conclusion

Based on the research results, it can be concluded that the collection of unauthorized fees in the issuance of waqf land certificates by notaries is an act that is contrary to legal provisions and the Notary Code of Ethics. From an ethical aspect, this action is not in line with the principles of integrity, professionalism, propriety, and moral responsibility inherent in the notary's position as *officium nobile*. Notaries have an obligation to provide legal services honestly, independently, impartially, and prioritize the interests of the community in accordance with the provisions of laws and regulations and the Code of Ethics of the Indonesian Notaries Association. The collection of unauthorized fees in the issuance of waqf land certificates can result in the notary being subject to ethical sanctions by professional organizations as well as administrative, civil, or criminal sanctions if they meet the elements of a legal violation. Therefore, notaries must be accountable for every action taken in carrying out their duties in order to maintain public trust and ensure legal certainty in notarial services. Based on these conclusions, it is recommended that the Notary Supervisory Board and the Honorary Council of the Indonesian Notaries Association (IDI) conduct more effective and continuous supervision of the implementation of notarial duties to prevent abuse of authority in the provision of notarial services. Furthermore, it is necessary to improve notaries' understanding and compliance with statutory provisions, the Notary Code of Ethics, and the values of professionalism in carrying out their duties. The public also needs to be educated about their rights and obligations in obtaining notarial services so that any actions that violate the law can be identified and reported in accordance with applicable mechanisms.

5. References

Journals:

- Hanim, Lathifah., & Noorman. (2020). "Peran Majelis Pengawas Notaris dalam Penegakan Kode Etik Notaris." *Jurnal Akta*, Vol. 7, No. 4, hlm. 515–528.
- Kastury, Andi Hamniza., & Chalim, Abdul Munsharif. (2020). "Distribution of Inheritance to Non Moslems Heirs in Notary Deed from Islamic Inheritance Law Perspective." *Jurnal Akta*, Vol. 7, No. 2, hlm. 120–129.
- Purnawan, Amin., & Adillah, Siti Ummu. (2014). "Kebijakan Pajak Daerah Berbasis Keadilan untuk Mendorong Pertumbuhan Usaha Kecil Menengah (UKM) di Jawa Tengah." *Jurnal Pembaharuan Hukum*, Vol. 1, No. 3.

Books:

- Adjie, Habib. (2017). *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*. Bandung: Refika Aditama.
- Adjie, Habib. (2018). *Hukum Notaris Indonesia (Tafsir Tematik terhadap Undang-Undang Jabatan Notaris)*. Bandung: Refika Aditama.
- Anshori, Abdul Ghofur. (2019). *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*. Yogyakarta: UII Press.

Budiono, Herlien. (2016). *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*. Bandung: Citra Aditya Bakti.

Marzuki, Peter Mahmud. (2021). *Penelitian Hukum*. Edisi Revisi. Jakarta: Kencana.

Regulation:

Indonesian Notary Association. (2015). **Code of Ethics for Notaries**. Outcome of the Extraordinary Congress of the Indonesian Notary Association, Banten, May 29–30, 2015.

Civil Code (**Kitab Undang-Undang Hukum Perdata**).

Criminal Code (**Kitab Undang-Undang Hukum Pidana**).

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary.

Law Number 41 of 2004 concerning **Waqf** (Islamic Religious Endowment).

Documents:

The author's primary research data, processed from documents and thesis research findings regarding the collection of unauthorized fees in the issuance of **waqf** land certificates (2023).

Audit Report Number 001/LHP.