

The Urgency of Indonesian Notary Association (INI) in Development And Supervision of Notary

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ABSTRACT

Notary is a job or position that requires ethics in carrying out its authority. The code of ethics is used as a guideline for member behavior, accompanied by clear and strict sanctions for violators of the code of ethics. The notary's code of ethics aims to ensure that the notary profession operates professionally with motivation and orientation towards intellectual abilities and opinions rationally and critically and upholding moral values. This article's research type is normative juridical, with a statutory regulatory approach and a conceptual approach. Discussions on enforcement and supervision of the implementation of the Notary's professional code of ethics are carried out through the Notary's Honorary Council. Notaries feel the need for supervision to prevent possible irregularities in carrying out their positions which are not in accordance with the legal corridors and professional code of ethics as well as abuse of authority or trust given to Notaries. Conclusion Based on the description above, it can be concluded that the urgency of the Indonesian Notary Association in providing guidance and supervision aims to prevent its members from committing acts that violate the law. commit violations and comply with existing codes of ethics as an effort to maintain their honor and dignity as public officials. So the efforts carried out by INI are in several steps, namely: Guidance by related agencies, coordination and cooperation between Notaries and INI, and ongoing supervision. Law enforcement efforts are not only carried out by INI alone, but Notaries need to pay attention to what is called professional behavior which has the following elements: Have strong moral integrity, must be honest with clients and themselves (intellectual honesty), be alert regarding the limits of their authority, not solely based on monetary considerations.

KEYWORDS: Urgency, Notary Association, Guidance and Supervision



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I. INTRODUCTION

The notary profession has long been known in Indonesia, even long before Indonesia's independence, namely during the Dutch colonial administration. In the beginning, the existence of a notary was a necessity for Europeans in Indonesia in an effort to create authentic deeds, especially in the field of trade.¹ The notary is an extension of the government, in this

¹ H. Sulihandari, *Prinsip-Prinsip Dasar Profesi Notaris.*, (Jakarta Timur : Dunia Cerdas, 2013), p. 123.

case the state, where the state has entrusted the notary to carry out some of the affairs or duties of the state, especially in the field of civil law, so that those who have assumed the position of notary will have the responsibility to always maintain the dignity and notary profession honor.

Notary is a public official who has the authority to make authentic deeds and other authorities based on the Law on Notary Office and other laws. The position of Notary is obtained through the granting of attribution authority by the state through Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN). Based on this authority, in essence a Notary is a representative of the state, namely the representative of the state in civil matters.²

Civil affairs are matters between one or more people or legal entities and one or more other people or legal entities. Given the complexity of civil affairs involving all Indonesian people; which cannot be served by the state alone; then the state gives a position with all the authority attribution to individual citizens who are elected, namely as a public official with the name: Position of Notary.

The position of Notary is established and granted by the state in order to establish order in legal relations among the people of Indonesia. This regularity is important for achieving state objectives as mandated in the Preamble to the 1945 Constitution (1945 Constitution) regarding state objectives, namely:

"...to protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice..."

Due to the importance of the position of notaries in society, the notaries formed the Indonesian Notary Association, abbreviated INI, is an Association for notaries, which was established on July 1, 1908, and recognized as a legal entity (rechtspersoon) based on Gouvernements Besluit (Government Decree) dated September 5, 1908 Number 9, which states that it is the only unifying forum for all and everyone who assumes and carries out their duties as public officials in Indonesia.

And has received approval from the Government based on the Statutes of the Notary Association and obtained the Decree of the Minister of Justice dated December 4, 1958 Number J.A.5/117/6 which was announced in the State Gazette of the Republic of Indonesia dated March 6, 1959 Number 19, Supplement to the State Gazette of the Republic of Indonesia Number 6.

The latest amendment to the articles of association has received approval from the Minister of Law and Human Rights based on the Decision Letter of January 12, 2009 Number AHU-03.AH.01.07.Tahun 2009. The juridical basis is the basis for Notary Organization as referred to in Law Number 30 of 2009. 2004 concerning the Position of Notary as amended by Law

² S. Dewi, *Panduan Teori Dan Praktik Notaris*. (Yogyakarta: Pustaka Yustisia, 2011), p. 34.

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

The Indonesian Notary Association organization has a code of ethics, namely the notary's code of ethics. The function of the code of ethics is dual, namely:

1. Control the behavior of members of the profession so that abuse does not occur knowledge/advantage of the profession in question.
2. The code of ethics functions to maintain the dignity of the profession.³

Considering that the role and authority of a notary is very important for people's lives, the behavior and actions of a notary in carrying out his professional position are vulnerable to abuse which can be detrimental to society, so that the notary's guidance and supervision of the notary's code of ethics need to be streamlined so that the notary is expected to be able to carry out his professional position by always improving the quality professionalism and legal protection to the public.

In carrying out his position, a notary needs to receive supervision and guidance, while the supervision carried out includes the behavior of the notary and the implementation of the notary's position. While supervision of the notary is the implementation of the coaching function.⁴ Referring to the main task of supervision is that all rights and authorities as well as obligations given to a notary in carrying out their duties based on applicable laws and regulations, are always carried out properly and carefully but not only through legal channels but on the basis of professional morals and ethics in order to ensure protection law and legal certainty for the community.

In addition to the authority referred to in the provisions above, a notary has other authorities as regulated in laws and regulations.⁵ Supervision and guidance of notaries because notaries in carrying out their positions must have the following elements:⁶

1. Have solid integrity;
2. must be honest with the appearer as well as with oneself;
3. aware of the limits of his authority;
4. not solely based on monetary considerations; and
5. have expertise supported by knowledge and high experience.

A Notary in carrying out his duties is subject to and bound by laws and regulations that apply in general in Indonesia, especially the regulations of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of Notary. The performance

³ Yovita A. Mangesti dan Bernard L. Tanya, *Moralitas Hukum*, (Yogyakarta: Genta Publishing, 2014), p. 104.

⁴ Heni Kartikosari and Rusdianto Sesung, *Pembatasan Jumlah Pembuatan Akta Notaris Oleh Dewan Kehormatan Pusat Ikatan Notaris Indonesia*, *Jurnal Panorama Hukum*, vol. 2, no. 2, (2017), p. 6.

⁵ Fajar Widodo, *Analisis Yuridis Ratio Decidendi Putusan Mahkamah Konstitusi Terhadap Penyelesaian Sengketa Perbankan Syariah*, *Yuridika*, vol. 30, no. 3, (2015), p. 267.

⁶ Rihan Saputra and Gunawan Djajaputra, *Penegakan Hukum Terhadap Notaris Yang Mempromosikan Diri Melalui Media Sosial*, *Jurnal Hukum Adigama*, vol 1, no. 1, (2018), p. 1332.

of the notary itself is limited by the applicable regulations, especially the Notary's Office Law and the Notary's Code of Ethics.⁷

In addition, the Notary in carrying out his position is internally supervised by the Honorary Council and externally by the Notary Supervisory Board and internally supervised by the Notary Honorary Council.⁸ Internal control referred to in this case is supervision within the organizational scope of the Indonesian Notary Association which in general emphasizes oversight of Notary ethics through the Code of Ethics that has been stipulated by the Indonesian Notary Association.

As the oldest profession, notaries in Indonesia already have a code of ethics and are under the auspices of the Indonesian Notary Association (I.N.I), a notary code of ethics was created. That the Notary's code of ethics is a set of moral principles that must be obeyed by all members of the association and all people who carry out their duties as a Notary Public, including Temporary Notary Officials, Substitute Notaries and Special Substitute Notaries. The function of the code of ethics is dual, namely:⁹ Controlling the behavior of members, and The code of ethics functions to maintain the dignity of a notary.

Considering that the role and authority of a notary is very important for people's lives, the behavior and actions of a notary in carrying out his position are vulnerable to abuse which can be detrimental to society, so that the notary's guidance and supervision of the notary's code of ethics need to be made effective so that the notary is expected to be able to carry out his position by always improving the quality of professionalism and legal protection to the public.¹⁰ In carrying out his position, a notary needs to receive supervision and guidance, while the supervision carried out includes the behavior of the notary and the implementation of the notary's position. Supervision of the notary is the implementation of the coaching function.¹¹

The position of the Code of Ethics for Notaries, firstly because of the nature and nature of the Notary's work which is highly oriented towards legalization, so that it can become the main legal basis regarding the status of property, rights and obligations of an Appearer who uses the Notary's services. Second, so that injustice does not occur as a result of the granting of property status, rights and obligations that are not in accordance with the rules and principles of law and justice, so that it can disrupt public order and also disrupt the personal rights of people seeking justice, then for the world Notaries really need a good and modern Code of Professional Ethics.

⁷ Kelik Pramudya and Ananto Widiatmoko, *Pedoman Etika Profesi Aparat Hukum* (Yogyakarta: Pustaka Yustisia, 2010), p. 56.

⁸ Habib Adjie, *Majelis Pengawas Notaris Sebagai Pejabat Tata Usaha Negara* (Bandung: Refika Aditama, 2011). p. 75.

⁹ Deva Apriza, "Limitasi Kewenangan Majelis Pengawas Notaris Daerah Kota Palembang Dalam Penangan Pelanggaran Kode Etik Yang Dilakukan Notaris," *Jurnal Repertorium* vol. 7, no. 1, (2018), p. 31–42.

¹⁰ Nisaul Hasanah, Azmi Fendri, and Neneng Oktarina, *Pengawasan Pengurus Ikatan Notaris Indonesia Kota Padang Terhadap Pelaku Pelanggaran Kode Etik*, *Jurnal Cita Hukum*, vol. 53, no. 9, (2019), p. 1693.

¹¹ Napitupulu, *Peranan Ikatan Notaris Indonesia Dalam Pembinaan Notaris Dan Pengawasan Kode Etik Di Wilayah Sumatera Utara*, *Premise Law Journal*, vol. 2, (2017), p. 10.

Another objective of supervising notaries is to ensure the safeguarding of the public interest against notaries who carry out their positions irresponsibly and do not heed ethical values and standards and neglect the nobility of the dignity and duties of their position.¹² Based on the background information above, the following research questions will be used to develop the formulation of the problem in the preparation of this article, wishing to examine in depth the role of the Indonesian Notary Association (I.N.I) in carrying out the function of guidance and supervision of notaries, the authors define two interesting legal issues to be studied in depth are: What is the urgency of the Indonesian Notary Association in fostering and supervising notaries? And what are the obstacles faced in the development and supervision of notaries by the Indonesian Notary Association?

II. METHODOLOGY

Writing this article uses a type of empirical juridical research method which consists of research on legal identification and research on legal effectiveness.¹³ In this study using library data collection methods or library research. Sources of data in this study were obtained through secondary data, namely data collected through document studies of library materials consisting of: a. Primary legal materials; b. Secondary legal materials and c. Tertiary legal materials. Data analysis was carried out to answer the research questions previously stated. The data collected both from library research was then analyzed qualitatively. Thus a description of the Urgency of the Indonesian Notary Association in the Development and Supervision of Notaries will be obtained.

III. URGENCY OF THE INDONESIAN NOTARY ASSOCIATION IN THE DEVELOPMENT AND SUPERVISION OF THE NOTARY

Role is defined as a device of behavior that is expected to be possessed by people who are domiciled in society. Position in this case is expected as a certain position in society which may be high. Moderate or low. Position is a container whose contents are certain rights and obligations. Meanwhile, rights and these obligations can be said to be roles. Therefore, someone who has a certain position can be said to be a role holder (role occupant).

A right is actually an authority to do or not to do, while an obligation is a burden or duty.¹⁴ Role according to terminology is a set of behaviors that are expected to be possessed by those who are domiciled in society. In English, a role is called a "role" whose definition is "a person's task or duty in undertaking."

The urgency of the Indonesian Notary Association (INI) is included in the ideal role, namely the role carried out by an institution based on ideal values or which should be carried out according to its position in a notary organizational system. Notaries in carrying out their

¹² Munir Fuady, *Profesi Mulia (Etika Profesi Hukum Bagi Hakim, Jaksa, Advokat, Notaris, Kurator Dan Pengurus)*, (Bandung: Citra Aditya Bakti, 2005), p. 78.

¹³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta, UI Press, 2007), p. 3.

¹⁴ R. Sutyo Bakir, *Kamus Lengkap Bahasa Indonesia* (Tangerang: Kharisma Publishing Group, 2009), p. 24.

functions and authorities cannot be separated from ethics. Ethics is a system of values and moral norms that guide individuals or a group in regulating their behavior.¹⁵

Ethics aims to make people live with good morals and personality, in accordance with the moral ethics adhered to by the unit or their environment. This moral ethics gives rise to ethical norms which include a value theory about the nature of good and bad and a theory about behavior about which actions are good and the bad. While the term legal professional ethics relates to the science of decency, regarding good and bad, what a person should or should not do in his position as a law enforcer, including here is a notary.¹⁶

The position of a notary as a legal profession is one of the many existing professions, for example the medical profession, accounting profession, engineering profession and others. The legal profession is in direct contact with human interests or people who are commonly called "clients".¹⁷ The legal profession is a complex term. It is called that because the word "law" attached to it has a complex, multidimensional and multifaceted meaning.¹⁸

So the urgency of the Indonesian Notary Association in conducting guidance and supervision cannot be separated from the ethics and behavior of its members, therefore the INI management has a responsibility in this regard. Due to the increasing number of members, the competition between fellow notaries is increasingly leading to unfair business competition between fellow notaries themselves. They go to the market to visit clients, offer services, negotiate honorariums and enter into agreements like businessmen in general. This triggers unhealthy competition among other Notary colleagues because there are some Notaries who still adhere to the provisions of the Law and the Notary Code of Ethics.

Often what is present on the surface is related to the determination of below standard notary rates carried out by several unscrupulous notaries due to several reasons, including:¹⁹

1. The notary thinks that if the work is not taken it will be taken by another party because there are still many notaries who are willing to do it;
2. The job had to be taken because it required costs for office operations;
3. Efforts to maintain self-dignity as a notary and there is a psychological burden, namely the shame of not having a client.

Some of the things mentioned above are some of the violations that violate the Law and Notary Code of Ethics, besides that there are many other things done by unscrupulous Notaries which can be categorized as unfair business competition among Notary colleagues.

Prohibitions regarding competition which can lead to unfair competition between notaries are of course clearly regulated in the Law on Notary Positions and the Notary Code of Ethics. In

¹⁵ Salim H.S, *Teknik Pembuatan Akta Satu Konsep Teoritis, Kewenangan Notaris, Bentuk Dan Minuta Akta* (Jakarta: PT Rajagrafindo Persada, 2015). p. 67.

¹⁶ Supriyanta, *Kajian Filosofis Terhadap Standar Perilaku Etis Notaris*, Yustisia Jurnal Hukum, vol 2, no. 3, (2013), p. 137-144.

¹⁷ Supriadi, *Etika Dan Tanggung Jawab Profesi Hukum Di Indonesia* (Jakarta: Sinar Grafika, 2010). p. 56.

¹⁸ Shidarta, *Moralitas Profesi Hukum Suatu Kerangka Berfikir* (Bandung: Refika Aditama, 2006). p. 34.

¹⁹ Nindy Putri, *Paramita Prananingtyas, Peran Ikatan Notaris Indonesia (Ini) Dalam Penetapan Tarif Diantara Notaris Kota Balikpapan*, Jurnal Notarius, vol 12 no 1, (2019), p. 137.

the end it depends on how the mentality of each individual holder of the Notary profession is to enforce the rules. The role of the Indonesian Notary Association (INI) as the only organization that oversees notaries in Indonesia, of course, has a very important role and function to prevent law violations and/or all kinds of unfair competition committed by several unscrupulous notaries.

In addition, the Indonesian Notary Association apart from providing guidance and supervision, as an organization also has the authority to:²⁰

1. Improving the quality of science.

The aim of the Indonesian Notary Association to improve the quality of science is so that notaries can follow legal developments from year to year. Science continues to develop along with the times, there must be new knowledge that notary officials need to know in order to improve the quality of science.

2. Improving knowledge related to notary

Increasing new knowledge is very necessary which aims as new input, tips, and strategies in carrying out their profession for notary officials so that they carry out their duties in accordance with the code of ethics and the Notary Office Law.

3. Dissemination of new regulations relating to the Indonesian Notary Association (INI) organization.

The purpose of holding socialization aims to provide new information on new regulations or knowledge related to notary. The Indonesian Notary Association (INI) does not have the authority to socialize related to violations of the code of ethics.

In addition, the function of the Indonesian Notary Association (INI) is as an organization that has the authority to remind its members if there is a violation. However, in reality the method provided by the Indonesian Notary Association (INI) is ineffective, some notaries still get credit for committing violations, and the Indonesian Notary Association (INI) cannot do anything because the Indonesian Notary Association (INI) does not only have the authority to remind when an offense occurred. Because of this, the function of the Indonesian Notary Association (INI) is very, very weak, so there needs to be a revitalization so that the Indonesian Notary Association (INI) functions properly and effectively.

IV. OBSTACLES FACED IN THE DEVELOPMENT AND SUPERVISION OF NOTARIES BY THE INDONESIAN NOTARY ASSOCIATION

Notaries as a legal profession must carry out their positions in accordance with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and Notary Code of Ethics. Along with the intense competition among Notaries, it encourages Notaries to do everything in order to get clients instantly by violating the

²⁰ Nabila Syafitri Ritonga, Mohamad Fajri Mekka Putra, *Penegakan Kode Etik Dengan Revitalisasi Pada Peran Dan Fungsi Ikatan Notaris Indonesia*, *Justicia Sains: Jurnal Ilmu Hukum*, vol. 07 no. 02, (2022). p. 208.

provisions of the Law and the Code of Ethics which results in the emergence of unfair competition among Notaries.

Efforts made by the Indonesian Notary Association (I.N.I) to prevent unhealthy competition between Notaries through setting rates can be carried out in several steps, namely: Guidance by related institutions, Coordination and cooperation between Notaries and the Indonesian Notary Association (I.N.I), and supervision sustainable. Enforcement efforts are not only carried out by the Indonesian Notary Association (I.N.I), but Notaries need to pay attention to what is referred to as professional behavior which has the following elements: Have solid moral integrity, must be honest with clients and oneself (intellectual honesty), be aware regarding the limits of his authority, not solely based on monetary considerations.

In carrying out his work, a Notary must follow the signs so as not to deviate and result in violations of the Notary Office Law. Control from the government over the Notary profession is carried out by the Notary Supervisory Board which is at the provincial and central district levels. a supervisory mechanism is urgently needed so that the implementation of the legal norms and code of ethics of the notary profession goes as expected, while the supervision of the implementation of the notary's code of ethics is carried out by the Notary Honorary Council which is under the Indonesian Notary Association.²¹

Supervision of a notary public leads to the enforcement of legal rules that limit the scope of a notary's position.²² The purpose of supervising notaries is to ensure that notaries comply as much as possible with the requirements stipulated by the Law and the Notary Code of Ethics for the benefit of the general public they serve. Oversight mechanisms for the Notary profession are ideally regulated in laws and regulations and become an inseparable part of the social reality of the legal community that is directly related to this profession. Supervision is one aspect of law enforcement that must always be considered and carried out within the law enforcement environment, including supervision of notaries.

Supervision of notaries is not only carried out by the Regional Supervisory Board but also part of the authority of the Indonesian Notary Association to supervise not only regarding the implementation of the Notary's duties and positions so that they comply with UUJN provisions, but also the Notary's Code of Ethics and Notary's actions and notary's life behavior which can harm nobility. the dignity of the position of Notary.²³ Position is a field of work or tasks carried out by a person to do his work and the position is regulated in a regulation concerning that field of work.²⁴

²¹ Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, (Bandung : Mandar Maju, 2011), p. 67.

²² Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*, (Yogyakarta : UI Press, 2009), p. 57.

²³ Majalah Renvoi, *Majalah berita Bulanan Notaris, PPAT & Hukum*, " *Notaris Kemplang Notaris*", Nomor 9.57.V, Februari 2008

²⁴ Habib Adjie, *Sekilas Dunia Notaris & PPAT Indonesia (Kumpulan Tulisan)*, (Bandung: Mandar Maju, 2009), p. 2.

In principle, the Notary Code of Ethics is a moral code that must be obeyed by Notaries in Indonesia. Notaries who have good personality, are honest, trustworthy, independent and professional can certainly implement the spirit of the Notary Code of Ethics by making it a guideline and reference in carrying out their profession as a Notary.²⁵ Such an attitude must be applied and internalized by Notaries continuously, whether someone is watching or not.

The difficulty in implementing the professional code of ethics by members of the profession is unfortunate, because basically the profession is run by professionals who have the ability, knowledge, and competence who are competent in their fields. There are several weaknesses in the professional code of ethics, including:²⁶

1. The idealism contained in the professional code of ethics is not in line with the facts that occur around professionals, so expectations are very far from reality. This is enough to intrigue professionals to turn to reality and ignore the ideals of a professional code of ethics. A professional code of ethics is nothing more than a framed display of writing.
2. A professional code of ethics is a set of moral norms that are not accompanied by harsh sanctions because their enforcement is solely based on professional awareness. It seems that this deficiency gives opportunity to professionals who are weak in faith to deviate from their professional code of ethics.

There are obstacles in its implementation, namely the lack of funding to supervise and review the offices of Notaries and conduct correspondence. Especially now that they don't have their own secretariat office, so it's difficult to store files and other office stationery.

Enforcement of the Notary Code of Ethics by the Indonesian Notary Association in carrying out supervision and guidance has not run optimally because there are several factors that hinder the Indonesian Notary Association in carrying out their duties. These factors include the imposition of sanctions that are less strict, therefore notaries who commit violations of the code of ethics are not deterrent, psychological, the quality of the imposition of sanctions and the time and scope of the area which are considered too broad.

V. CONCLUSION

Based on the description above, it can be concluded that the urgency of the Indonesian Notary Association in conducting guidance and supervision is aimed at preventing members from committing violations and complying with the existing code of ethics as an effort to maintain their dignity as public officials. So the efforts made by the Indonesian Notary Association (I.N.I) are in several steps, namely: Guidance by related institutions, Coordination and cooperation between Notaries and the Indonesian Notary Association (I.N.I), and ongoing supervision. Enforcement efforts are not only carried out by the Indonesian Notary Association (I.N.I), but Notaries need to pay attention to what is referred to as professional

²⁵ Endang Purwaningsih, "Bentuk Pelanggaran Hukum Notaris di Wilayah Provinsi Banten dan Penegakan Hukumnya", *Mimbar Hukum*, vol 27, no 1, (2015), p. 15.

²⁶ Abdulkadir Muhammad, *Etika Profesi Hukum*, (Bandung : Citra Aditya Bakti, 2006), p. 121.

behavior which has the following elements: Have solid moral integrity, must be honest with clients and oneself (intellectual honesty), be aware regarding the limits of his authority, not solely based on monetary considerations.

Supervision from the Indonesian Notary Association (I.N.I) on the behavior and actions of the Notary is at the first level by the Regional Management of the Indonesian Notary Association and the Regional Honorary Council; At the appeal level by the Regional Management of the Indonesian Notary Association and the Regional Honor Council; At the final level by the Central Management of the Indonesian Notary Association and the Central Honorary Council. Notary Supervision is distinguished between the behavior and actions taken by a Notary in carrying out his position by the Supervisory Board, while the behavior and actions carried out by a Notary outside of carrying out his position are overseen by the Notary Honorary Council. Supervision is basically a form of legal protection for the Notary himself because with an oversight, every Notary in his behavior and actions both in carrying out his position and outside his position is always in the corridor of law.

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