

IMPLEMENTATION OF THE NOTARY POSITION PROFESSIONAL CODE OF ETHICS IN COOPERATION WITH BANKS

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Abstract

The purpose of this research is to find out the implementation of the code of ethics of the notary profession in cooperation with the Bank. The notary profession has the main task of making authentic deeds that serve as written evidence to resolve legal disputes in the future. This is relevant to maintaining the integrity, fairness, and compliance of notaries with the code of ethics in cooperation with banks. The researcher used a qualitative method. The data collection techniques are sourced from journals, books, the internet. The results of his research state that cooperation between notaries and banks continues to occur or maybe notaries become bank subscriptions, several aspects need to be considered. The concept of independence remains valid as long as there is no written provision that regulates otherwise in the cooperation agreement. The independence of a Notary in carrying out his duties lies in the function of notarization or recording in writing and authentically in accordance with the wishes of the confronters. Notaries are not dependent on any party and may not be directed by any party, and must remain neutral towards the parties.

Keyword: Code of Ethics, Notary Profession, Responsibility

1. INTRODUCTION

The notary profession was created to serve the needs of the community it serves after it indirectly arises from the interaction between them. (Adjie, 2009) The notary's job is to create an authentic document that has full evidentiary value as written evidence, which can actually help resolve disputes if they occur in the future. This is done as a precaution to avoid legal problems. These evidences have differences from each other, namely evidence that is oral, documentary, or material. Oral evidence means words spoken by someone in a trial, while documentary evidence, namely letters or written evidence, and material evidence is evidence of goods other than documents. (Prodjodikoro, 2003)

A general official is a person who has a position of power, is elected and dismissed by the state, and has the responsibility to represent the interests of the general public in matters of civil law. Therefore, a Notary Public is a state official who is authorized to make a valid deed by the state through the provisions of the Notary Position Law. (Notodisoerjo, 1993)

A deed made before the public as prescribed by the law is an authentic deed. According to the Civil Code, an authentic deed is a form of written proof which is a recognized evidentiary tool. In addition to other deeds made at the request of the parties, it is not uncommon for laws and regulations to mandate that certain legal activities, including the creation of Limited Liability Companies, Cooperatives, Foundations, and so on, must be made by authentic deeds. However, the

notary must state that the parties' intentions have been understood and everything in the deed is in accordance with their will. (Nico, 2003)

The notary position is not a job that is deliberately developed and then socialized to the general public, but is born because the public needs it. (Saputra, 2008) Notaries are legally protected in carrying out their duties as public officials. The Notary Office Regulation (PJM), which is a relic of the Dutch Colonial era, is the applicable law and becomes the basis for notaries. (Wiratmodja & Romlan, 2022)

Notaries are required to follow their professional ethics in addition to adhering to the Notary Position Law. Even the implementation of the duties of the notary office is the implementation of the duties of an esoteric position, which is a profession that requires special education and adequate ability to carry it out. The notary profession as a skill can only be carried out if the person concerned is through special education. A professional code of ethics is a set of moral principles or rules that are specific to a particular career. (Musdiyanti et al., 2022)

In practice, cooperation agreements between banks and notaries often violate the Notary Position Law and the Notary Code of Ethics, so that notaries become independent and side with banks. (Anshori, 2009) The Notary function is very important in binding collateral in the bank, if the credit disbursed goes according to plan and the return is received on schedule, then the bank will be protected from risk, otherwise the bank will be exposed to the risk of bad loans. In managing bad debts, the settlement procedure can be challenging, and one of the reasons is because the Notary Public may have done the collateral binding incorrectly, thus causing the Bank to incur losses. (Sulistiani & Hafidz, 2017)

This implementation is important to maintain trust in the notary position and ensure that notaries act honestly, thoroughly, independently, impartially, and safeguard the interests of all parties involved in legal actions. (Ancient, 2020) In addition, this implementation also emphasizes the importance of notary independence in carrying out their duties, namely being in a neutral and impartial position, and safeguarding the interests of the community. (Agnia, 2021) Departing from the above problems, the author is interesting to need to comply with the Notary Office Professional Code of Ethics and carry out their duties in accordance with the law and professional ethics. In cooperation with banks, notaries must avoid violations of the code of ethics, maintain neutrality, and put the interests of all parties involved first.

2. IMPLEMENTATION METHODS

This method uses qualitative methods. Data collection techniques are sourced from journals, books, the internet. This type of legal research uses empirical juridical research, which means this research is sociological legal research, and can also be called field research, and examines legal provisions that have been in force and occur in the life of society. In other words, a study is conducted to investigate the actual situation or actual situation that has occurred in the community, with the aim of identifying and collecting the necessary facts and data.

3. RESULTS AND DISCUSSION

3.1. Code

Term *Notary*, which refers to people who wrote in ancient Rome, is the origin of the word notary. In the end of the term *Notary* means the person who takes a short note, very similar to *stenograaf* Present. (Sari, 2022) Notary in the Big Dictionary Indonesian defined as a person appointed by the government to certify and witness agreements, wills, deeds, and so on. As a public official who has the authority to produce documents, notaries are very important in legal transactions, especially those involving civil law. (Salim, 2015)

The only official allowed to provide original documents as proof of perfection is a notary. Notaries perform various state duties in the field of civil law. The government wants notaries as civil servants, with authority and duty to serve the public, and appointed and dismissed by the government. Government regulations supervise notaries, and although they are not paid by the state, they are compensated in the form of fees and commissions from their clients. (Anshori, 2009)

In carrying out their duties, notaries must always comply with the laws and regulations in force in Indonesia. In addition, notaries are also required to carry out their duties in accordance with the mutually agreed code of ethics. Notaries adhere to the code of ethics governing their conduct in the performance of their duties and responsibilities, and do not act arbitrarily. (Prabawa, 2017)

Ethics comes from Greek *Ethos* which means moral. Ethics is a set of guidelines about how people should behave within norms or about right and wrong behavior. In a special sense, a code of ethics refers to practical regulations both written and unwritten regarding ethics that have been established and enforced independently by notary professional organizations. These norms and regulations refer to attitudes and decisions regarding the basic values and standards of behavior of a person who is considered good or bad in carrying out his profession. The Notary Code of Ethics is a moral rule set by the Indonesian Notary Association based on the decision of the association conference. This applies to all members who exercise notary offices (Ma'arif, 2011).

To maintain public trust in the notary profession, notaries must have strong professional qualifications and adhere to legal norms based on moral integrity, dignity, and professional ethics. It should be that the public expects and demands that the notary profession is always developed and practiced in accordance with the provisions of law and professional ethics. These demands are essential to maintaining the reputation as a public official. A truly law-abiding notary will not hesitate to deal with legal issues related to his work as part of his professional work. To maintain integrity as a notary, one must also maintain professional ethics as a public servant (Jamil, 2018).

3.2. Notarial Deed

The term "deed" comes from Dutch, i.e. "*Birth certificate*". There are two interpretations in explaining the meaning of this deed. The first interpretation refers to a written document, while the second interprets it as a legal act. (Subekti, 2008) A signed document that is specifically drawn up as evidence of an event is called a deed. Therefore, providing proof and signing documents is an important part of such documents.

According to the Law Dictionary, deeds are defined as deeds. Meanwhile, authentic is defined as something made in accordance with the provisions of the law and issued by an authorized official. The presence of a notarial deed is considered very crucial for the community in meeting their needs (Gitayani, 2018) Therefore, a notary should be able to guarantee the legal certainty that can be given to the public regarding the making of authentic deeds as evidence documents that have maximum evidentiary power (Rahma, 2018).

3.3. Notary's Responsibility in Respecting the Principle of Notary Independence in the Process of Making Authentic Deeds

The concept of responsibility related to legal obligations is a theory that is closely related to the concept of *liability* in a legal context. In the legal dictionary, there are two terms that refer to liability, namely *responsibility* and *liability*. In practical terms, the term *liability* rather refers to legal liability or legal consequences as a result of wrongful acts committed by legal subjects. Meanwhile, the term *responsibility* More emphasis on political liability or legal obligations in

general. (Ridwan, 2016) In carrying out their duties, notaries must comply with the requirements stipulated in the Notary Position Law and the Notary Code of Ethics. The Notary Code of Ethics discusses how notaries should act when exercising their authority. Because notaries are public officials who gain the trust of the public and the law, notaries are obliged to maintain integrity, nobleness, and ethics in carrying out the duties of their office at all times. Failure to do so can be fatal to the communities it serves

However, since notaries are protected as civil servants under Article 66 of the UUJN, notaries cannot always attend criminal case investigations. The local supervisory board in the area may grant permission to conduct an interview with a notary on the grounds that the notary is involved in a criminal offence if the relevant documents have been produced and there is no valid preliminary evidence showing that the notary is involved in a criminal offence or giving false information in the exercise of his office. (Mahmud, 2013)

This obligation does not only exist during the process from the creation of the document to the realization of the original deed, but also when the deed has been formed. In this case, the problem arises if there is an invalidity of the deed. The legal consequences if a notary violates the provisions stipulated by the Notary Office Law regarding independence in carrying out their duties, are as follows: Civil Sanctions, Administrative Sanctions, Criminal Sanctions As an official. Officials have a limited period of time, during which they remain officials. Notaries are restricted in their posts and duties depending on their age, and they also have deadlines for completing their official duties.

According to the theory described above, when related to accountability, the responsibility carried out by the notary is the result of the implementation of his duties and position. Therefore, liability according to the UUJN (Notary Office Law) is based on negligence. Notaries can be held criminally responsible for their actions because they are intentional and cause harm to the party concerned.

3.4. Implementation of the Notary Position Professional Code of Ethics in Cooperation with Banks

The implementation of the Notary Professional Code of Ethics in cooperation with banks is the application of moral or moral guidelines that must be followed by notaries in carrying out their duties when cooperating with banks. This implementation aims to maintain the integrity, fairness, and compliance of notaries with the code of ethics in the cooperation. As a Notary profession that is exclusive to all Notaries throughout Indonesia, Notaries have a professional organization, namely the Indonesian Notary Association (INI), a registered organization that strives to maintain and promote the dignity and dignity of the Notary profession. (Saputra, 2008)

The cooperation agreement between the notary and the bank greatly damages the credibility of the notary. According to the author's research, when notaries agree with banks, notaries become less independent and tend to side with banks. In reality, notaries must act impartially, protect the interests of all parties involved, and put the interests of the public first. There are concerns that cooperation agreements between notaries and banks may deviate from the values, norms, and guidelines stipulated in the Notary Position Law and Notary Position Regulations. Such agreements can also cause the notary to lose its independence and objectivity towards the client.

Based on the previous explanation, Notaries should be outside the interests of the parties involved, both banks and customers. However, in practice, the implementation of cooperation agreements between Notaries and Banks tends to affect the independence and neutrality of Notaries. In general, the non-independence and impartial attitude of Notaries is seen through dependence on the rules imposed by the Bank through various provisions in the cooperation agreement. Notaries tend to show partiality to the Bank through a number of interventions that ultimately benefit the Bank but harm the customer.

4. CONCLUSION

From the explanation described above, the author concludes that although cooperation between Notaries and Banks still occurs or Notaries may become Bank subscriptions, several aspects need to be considered. The legal relationship between the Notary and the Bank is not a contractual relationship, and if the cooperation is not stipulated in a written agreement, it does not violate the provisions of Article 4 point 3 of the Notary Code of Ethics. The independence of a Notary in carrying out his duties lies in the function of the constitution or recording in writing and authentically in accordance with the wishes of the facers. Notaries are not dependent on any party and must not be directed by any party, and must remain neutral towards the parties. The Notary Public is responsible for every deed he makes, even if the Notary protocol has been handed over and transferred to the Notary protocol depository. Therefore, the Notary Public can still be held accountable for every deed he makes.

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