

Type: Research Article

Protecting Notaries: Ethical and Legal Perspectives on Professional Practice

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ABSTRACT

Notaries have protection from ethical aspects through the notary code of ethics and law when carrying out their positions. This study examines the ethical and legal protection of notaries in carrying out their profession. The research method used in this journal is normative research. The result of the research is the form of ethical protection of notaries as the presence of a notary code of ethics and supervision by the Notary Supervisory Council and in terms of law, Notaries in carrying out their profession are the existence of the Notary Supervisory Council and the Notary Authority Council under Article 66 A paragraph (1) of the Notary Law (*UU Jabatan Notaris "UUJN"*). On the other hand, legal protection for Notaries based on the principle of Based Fault Liability is that if an element of fault occurs among the confronters, as long as a Notary exercises his authority by what is stated in the Law, the Notary concerned cannot be held liable because the Notary only records all the information he gets from the confronters.

KEYWORDS

Notary; Legal Protection; Ethical Protection



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INTRODUCTION

Every individual, group, and community, whether large like a society or smaller like a family, has ethical values that they uphold. These values are expected to help these groups organize their lives well, both in personal and collective contexts. Ethics refers to a set of norms that distinguish between actions that are considered good and bad in carrying out activities or work. In ethics, some principles and aspirations guide individuals to act and behave positively. Fundamentally, ethics provides examples of behaviors that are considered good. Morality, on the other hand, is the assessment of actions that have been taken, based on the ethical values adopted. This means that an ethical individual models good behavior, while a moral individual is one who consistently applies positive attitudes and actions.¹

Ethics is a conception of the good or bad character or behavior of a person. Meanwhile, morals are the good or bad behavior of a person. Ethics are ideas and ideals about the goodness of human actions or behavior. Ethics always provides good examples, while morals always evaluate the implementation of the examples given by ethics. Therefore, an ethical person sets an example of exemplary behavior, while a moral person acts on that example.²

One of the aspects highlighted by ethics and morals regarding the behavior of a person's actions is in the field of work expertise called a profession. Due to the profession as a job about theoretical and technical expertise, which relies on honesty, the dependence and expectations of people who need help are very large to implement a system of justice, so the bearers of a profession are required certain prerequisites in carrying out and carrying out the duties and functions of their profession, to work professionally in their field as stated in the professional code of ethics as a written form of professional ethics itself. The public spotlight becomes sharper when the behavior of some members of the profession violates what is contained in the professional code of ethics. One of them is the notary profession.³

The existence of the notary profession in the rule of law system is indispensable as the frontline in law enforcement in addition to other legal professions. In a rule-of-law system such as Indonesia, notaries have long been recognized in the country, which is a profession tasked with making deed documents among the community as a basis for legal obedience for the community in living in a state of law. Based on this, it is certain that the existence of notaries is currently a pillar of law enforcement for the community in terms of making agreements between communities (civil law) before the state domain takes legal action as a result of products made by notaries as they should.⁴

There is an understanding of the professional aspects, ethical aspects, and juridical aspects that will make a professional notary, who can keep up with legal

¹ Dede Al Mustaqim, Yunistika Samsiah & Siti Rifela Nurfatiha, "Peran Etika Profesi Hukum dalam Meningkatkan Profesionalisme Hukum di Indonesia" (2023) 1:2 LEX LAGUENS J Kaji Huk dan Keadilan 80-91.

² Heriyono Tardjono, "Urgensi Etika Profesi Hukum sebagai Upaya Penegakan Hukum yang Berkeadilan di Indonesia" (2021) 3:2 J Kepastian Huk dan Keadilan 51-64.

³ Bintang Audy Syahputra & Ahmad Yubaidi Yubaidi, "Peran Kode Etik Profesi Hukum dalam Upaya Penegakan Hukum di Indonesia" (2023) 4:1 Salimiya J Stud Ilmu Keagamaan Islam 12-21.

⁴ Irwan Saleh Indrapradja, "Problematisasi Peran dan Fungsi Majelis Pengawas Daerah Notaris" (2018) 19:2 LITIGASI.



developments to answer actual problems that occur in society. Meanwhile, in the ethical aspect, a notary must be able to understand all the ethical values contained in the Indonesian Notary Code of Ethics, as well as those contained in the Notary Position Regulations. Several principles must be used as a basis or guideline in carrying out the duties of the office, namely the principles of legal certainty, trust, equality, prudence, and professionalism to carry out tasks with substance and understanding for the benefit of notaries.⁵

As with other professions, the notary profession has a code of ethics that has been designed in such a way by a notary professional organization, called the Indonesian Notary Association commonly abbreviated as INI. In its implementation and enforcement, some sanctions apply and are imposed on notaries who violate it. The regulation is stated in Article 1 paragraph (2) of the Amendment to the Code of Ethics of Notaries of the Extraordinary Congress of the Indonesian Notary Association, in Banten on May 29-30, 2015.⁶

The affirmation of moral responsibility is one of the important things in the implementation of the duties and responsibilities of a Notary. Article 16 Paragraph 1 letter (a) of the UUJN, namely Article 1 letter (a) in carrying out his/her position, the Notary must: "act honestly, independently, carefully, impartially, and safeguard the interests of the parties involved in legal acts." According to the explanation, being responsible to the community is: the willingness of the Notary, or substitute Notary to serve the community without discrimination, whether paying or not paying to realize dignified and quality services in the field of notarial affairs. A Notary does not only seek profit, the most important thing is also to serve and serve the community as fellow human beings.⁷

On the other hand, due to the importance of the existence and function of a Notary in providing services in the field of law to the public, it is necessary to provide legal protection to a Notary, to achieve legal certainty. In carrying out the duties of his position, sometimes a Notary faces legal problems, even though he has been careful and by the laws and regulations. *UUJN* has placed a Notary as a public official who carries out the legal profession, therefore it is necessary to get legal protection as a Notary as a profession, not a Notary as a person. Legal protection in this case must be interpreted as protection by using legal means or protection provided by law. Legal protection is given to Notaries, because Notaries as public officials, actually carry out some of the duties and obligations of the government in making evidence to create legal certainty, order, and legal protection to the community in the field of civil law.⁸

⁵ Betty Ivana Prasetyawati & Paramita Prananingtyas, "Peran Kode Etik Notaris dalam Membangun Integritas Notaris di Era 4.0" (2022) 15:1 Notarius 310-323.

⁶ *Ibid.*

⁷ Wiwin Musdiyanti et al, "Etika dan Pertanggungjawaban Moral Profesi Notaris (Kajian Undang-Undang No. 2 Tahun 2014 dan Kode Etik Notaris Tahun 2015)" (2022) 4:1 J Huk Kenotariatan Otentik's 12-28.

⁸ Firman Floranta Adonara, "Implementasi Prinsip Negara Hukum dalam Memberikan Perlindungan Hukum terhadap Notaris" (2016) 21:1 Perspektif 48-59.



METHOD

This research is normative legal research or library legal, namely legal research conducted by examining library materials or secondary data.⁹ The approach method used is a statute approach because what will be studied are various rules of law that are the focus and central theme of the research.¹⁰ In addition to the statutory approach, the approach used is conceptual, namely an approach that departs from the views and doctrines that have developed in law, especially those relating to the issues discussed in this study.

The sources of legal materials in this research are primary legal materials in the form of legislation products, secondary legal materials in the form of legal literature books, legal scientific magazines, legal journals, and various papers and other forms of legal scientific writing, tertiary legal materials in the form of legal dictionaries, encyclopedias and others that can explain primary and secondary legal materials.¹¹ The technique of collecting legal materials is carried out by inventorying various laws and regulations, and various literatures by conducting intensive discussions. The collection of research materials is also carried out through the Internet to obtain various research materials to complement the materials that have been obtained from laws regulations and literature.

Processing and analyzing legal materials is done by classifying legal materials that have been collected, looking for their relationship with each other by using deductive and inductive reasoning to produce propositions, and legal concepts regarding supervision. The analysis used is descriptive-analytic which is carried out by describing, examining, systematizing, interpreting, and evaluating positive law.¹² In addition, analysis of the legal materials obtained is also carried out using qualitative analysis. Qualitative analysis means describing quality data in the form of sentences that are organized, sequential, logical, non-overlapping, and effective, to facilitate data interpretation and understanding of the results of the analysis.¹³

RESULT & DISCUSSION

I. The Role of Ethics in Protecting Notaries in Their Professional Practice

Ethics is the conception of good and bad behavior or behavior of a person. Meanwhile, morals are a person's good or bad behavior. Ethics are ideas and ideals about the desirability of good human actions or behavior. Ethics always provides a good example, while morals always provide an assessment of the implementation of the example provided by ethics. Therefore, an ethical person sets an example of exemplary behavior, while a moral person performs that exemplary behavior.¹⁴

Professional ethics is an ethical attitude as an integral part of the attitude of life in living life as a professional bearer. Only the bearer of the profession concerned

⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Rajawali Pers, Jakarta, 2015).

¹⁰ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

¹¹ *Ibid.*

¹² Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Liberty, 2006).

¹³ Abdulkadir Muhamad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004).

¹⁴ Aisyah Putri Syam, Melza Mutiara Putri Mahrus & Teti Marlina Tarigan, "Peran Etika Profesi Hukum sebagai Upaya Penegakan Hukum" (2023) 5:2 As-Syar'i J Bimbing Konseling Kel 462–470.



himself can or knows best whether his behavior in carrying out his profession meets the demands of professional ethics or not. Because they do not have technical competence, lay people cannot judge it. This means that compliance with professional ethics will depend heavily on the morals of the person in charge of the profession concerned. In addition, professional development is often faced with situations that pose complex problems in determining what behavior meets the ethical demands of the profession. Meanwhile, the behavior in carrying out the profession can have a broad (negative) impact on justice seekers. The above facts show that the professional community itself needs more concrete objective guidelines for their professional behavior. Therefore, from within the professional community itself, a set of Codes of Conduct emerged as a guideline that must be obeyed in carrying out their profession. This set of rules is called a professional code of conduct (code of ethics), which may be written or unwritten. Currently, codes of ethics are generally written and formally established by the relevant professional organization. The code of ethics aims to, on the one hand, protect the dignity of the profession concerned, and on the other hand, protect justice seekers (the public) from abuse of professional expertise and/or authority. A code of ethics includes a set of positive moral rules.¹⁵

The legal profession is one of the professions that demands the fulfillment of moral values from its bearers. Moral values are the forces that direct and underlie noble actions. Every legal professional is required to have strong moral values. Franz Magnis Suseno suggests five criteria for strong moral values that underlie the personality of legal professionals. A notary is an office that carries out some of the public functions of the state in the field of private law and carries out the role of making authentic deeds that have perfect evidentiary power. The legal basis for carrying out his/her position, the notary must be bound by the provisions of the position stipulated in the Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position (*UUJN*) as amended by Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (*UUJNP*). The position of a Notary is a position of trust, therefore a Notary must have good behavior based on the notary position law, code of ethics, and laws and regulations that are in contact with other notary positions.¹⁶

For the notary profession, to maintain professional standards of service to the public, it is formulated and compiled into a notary code of ethics, the contents of which regulate the supervision, enforcement, and defense of a Notary. The Notary Code of Ethics is a moral rule determined by the Indonesian Notary Association based on the Decree of the Congress of the Association and/or which is determined and regulated in the laws and regulations governing it and which applies to and must be obeyed by every member of the association and all persons who carry out the duties and positions as Notaries.¹⁷

The code of ethics established in Banten, on May 29-30, 2015 which previously applied the Notary Code of Ethics established at the congress (Members Meeting) of INI in Bandung on January 28, 2005, contains obligations, prohibitions, and

¹⁵ *Ibid.*

¹⁶ M Jamil, "Sanksi Pelanggaran Kode Etik Notaris Oleh Majelis Pengawas Daerah" (2018) 7:2 *Supremasi Huk J Kaji Ilmu Huk.*

¹⁷ *Ibid.*



exceptions for notaries in the performance of their duties. Notaries may be subject to sanctions if proven to have violated the provisions contained in the Notary Code of Ethics. The relationship between the Notary profession and the Notary organization is regulated by the Notary code of ethics, where the existence of the Notary code of ethics is a consequence of a job related to violations of the behavior of Notaries which only reaches moral sanctions. This Notary code of ethics contains elements of obligations, prohibitions, exceptions, and sanctions that will be imposed if it is proven that the Notary violates the code of ethics.¹⁸

In carrying out the position of a notary, a notary must comply with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. The regulation is binding as long as a person still serves as a notary before being declared honorably terminated and or retired. Notaries are authorized to make deeds, deeds made by notaries have the power inherent in authentic deeds, namely perfect (*volledig bewijskracht*) and binding (*bindende bewijskracht*), which means that if the authentic deed evidence submitted meets the formal and material requirements and the opposing evidence presented by the defendant does not reduce its existence, on him at the same time attached perfect and binding evidentiary power (*volledig en bindende bewijskracht*), thus the truth of the contents and statements contained therein becomes perfect and binding to the parties regarding what is mentioned in the deed. Perfect and binding to the judge so that the judge must make it the basis of perfect and sufficient facts to decide on the settlement of the disputed case.¹⁹

Notaries in the performance of their duties are controlled by a notary code of ethics. In this case, several juridical considerations must be considered, including:

- a. A notary is a public official whose duty is to provide services to the public.
- b. Notaries in carrying out their duties must not defame the professional association.
- c. Notaries in carrying out their duties do not defame the good name of the notary organization.
- d. Notaries work by the rule of law in the products they produce, so this code of ethics is expected to always be able to uphold the nobility of the duties and dignity of their position, and carry out their duties by fulfilling the requirements specified by the laws and regulations.²⁰

In carrying out the profession must pay attention to the main rules: in the form of professional ethics, namely: First, the profession must be seen (and lived) as a service, therefore the decisive consideration in decision-making is the interests of clients and the public interest, defeating their interests. Second, professional services in prioritizing the importance of clients refer to the interests or noble values that motivate the attitude of action. Third, professional bearers must always be oriented towards society as a whole. Fourth, for competition in services to take place healthily to ensure the quality and improvement of the quality of professional

¹⁸ Pratiwi Ayuningtyas, "Sanksi terhadap notaris dalam melanggar kode etik" (2020) 9:2 Repert J Ilm Huk Kenotariatan 95-104.

¹⁹ *Ibid.*

²⁰ Indriet Pratiwi Wiranita Wiratmodja & Romlan, "Implementasi Kode Etik Notaris dalam Aktivitas Notaris sebagai Pejabat Umum" (2022) 11:2 Justicia J 99-119.



bearers, professional development must be characterized by solidarity between fellow professionals.

Compliance with the ethics of the notary profession is highly dependent on the morals and mentality of the notary concerned, if the morals and mentality of a notary are bad then no matter how good the regulations and the application of the code of ethics have little effect on the enforcement of the rules themselves. Notaries need more concrete objective guidelines for their professional behavior. Therefore, from within the environment of the notaries themselves, a set of rules of conduct has emerged as a guideline that must be obeyed in carrying out the notary profession. To be able to minimize violations of the code of ethics, socialization, and supervision are needed which are carried out continuously and continuously by the Indonesian Notary Association.²¹

II. Legal Protection of Notaries in the Practice of Their Profession

Notary in his position as a public official and at the same time as a profession is tasked with making written evidence in the form of authentic deeds that can realize strong and perfect legal proof. For this reason, Notaries in carrying out the secrets of the office need to be given legal protection, to maintain the nobility, dignity, and honor of the Notary position including when giving testimony and proceeding in the examination in court, keeping the contents of the deed and all information obtained for the making of the deed confidential, and keeping the minutes or letters attached to the Deed Minute or Notary Protocol which are in the Notary's storage.²²

The responsibility held by the Notary adheres to the principle of liability based on fault, in the making of an authentic deed, the Notary must be responsible if the deed he makes contains errors or intentional violations by the Notary. Conversely, if the element of error or violation occurs from the confronting parties, then as long as the Notary exercises his authority by the regulations. The Notary concerned cannot be held liable, because the Notary only records what is conveyed by the parties to be poured into the deed. False information submitted by the parties is the responsibility of the parties.²³

The importance of legal protection for a Notary is to: First, maintain the dignity of his/her office, including when giving testimony and proceeding in the examination and trial; Second, to keep the deed information confidential to protect the interests of the parties involved in the deed; Third, to maintain the minutes or letters attached to the deed minutes, as well as the Notary protocol in its storage.²⁴

Notaries in carrying out their positions are supervised by the Notary Supervisory Council. The definition of the Notary Supervisory Council according to Article 1 point 6 of Law Number 4 of 2014 concerning Notary Position Regulations which provides the definition of the Notary Supervisory Council, hereinafter referred to as the Supervisory Council, is a body that has the authority and obligation to carry out guidance and supervision of Notaries. The supervisory panel is formed

²¹ *Ibid.*

²² Aman, "Perlindungan Hukum Notaris Dalam Melaksanakan Rahasia Jabatan: notaris, rahasia jabatan" (2019) 1:2 Recital Rev 59-71.

²³ Kunni Afifah, "Tanggung jawab dan Perlindungan Hukum bagi Notaris secara Perdata terhadap Akta yang dibuatnya" (2017) 2:1 Lex Renaiss.

²⁴ *Ibid.*



by the Minister, which is regulated in Article 67 paragraph (2) of the *UUJN*. Based on Article 68 of the *UUJN*, the Supervisory Assembly consists of the Regional Supervisory Assembly, the Regional Supervisory Assembly, and the Central Supervisory Assembly. The *MPN* is appointed by the Minister of Law and Human Rights under Article 67 of Law Number 30 of 2004 establishing the *MPN*. The supervision of the Minister of Law and Human Rights is delegated to the *MPN*. The Notary Supervisory Council has the authority to hold a hearing to examine alleged violations of the Notary Code of Ethics or violations of the implementation of the Notary position.²⁵

In addition to the supervisory board related to the legal protection of the Notary itself against the Notary Honor Council which can be abbreviated as *MKN*, which is one of the organs of *INI* equipment consisting of members who have been elected from *INI* members and notary *werda*, who are highly dedicated and loyal to the association, have a good personality, are wise and wise, so that they can become role models for members and are appointed by the congress for the same term of office as the term of office in the management.²⁶

The legal protection given to the Office of Notary is regulated in Article 66 of the *UUJNP*. Article 66 of *UUJNP* regulates the establishment of the Notary Honor Council (hereinafter referred to as *MKN*) consisting of representatives of Notaries, government, and academics, which functions as a legal protection institution for the Notary Position related to the deeds made by or before him. The existence of *MKN* is expected to provide an optimal legal contribution to the Notary institution in carrying out its duties as a legal protection institution. Regarding the regulation of the position and form of legal protection of *MKN*, it has not been expressly regulated in the *UUJN* or other forms of legislation.²⁷

The existence of the provisions as mentioned above is a form of legal protection for Notaries. The implementation of the office of a Notary is generally equipped with a form of legal immunity given to the obligation to refuse to provide information concerning the secrets of his/her office, which are protected by law and other regulations. This immunity is realized by the right to deny or withdraw as a witness insofar as such information is concerned.²⁸

Legal protection for Notaries by law has been provided as follows:

- a. Regarding the procedure for taking the minutes of deeds and summoning a Notary, according to Article 66 of *UUJN*.
- b. The Right of Ingkar Notary as stipulated in: 1) Article 170 of the Criminal Procedure Code; 2) Article 1901 number 3 of Civil Code; 3) Article 146 paragraph (1) number 3 HIR; 4) Article 277 HIR; 5) Article 4 of *UUJN* and Article 16 paragraph (1) letter e of *UUJN*.
- c. Supreme Court Decision Number. 702K/SIP/1973, Jurisprudence that can be used as a basis for consideration of several cases related to criminal acts

²⁵ Felenvi Olivia Umbas & Budi Santoso, "Perlindungan Hukum Terhadap Notaris dan PPAT Dalam Menjalankan Profesinya" (2022) 15:2 Notarius 883–892.

²⁶ *Ibid.*

²⁷ Afifah, *supra* note 23.

²⁸ Vitto Odie Prananda & Ghansham Anand, "Perlindungan Hukum Terhadap Notaris Atas Pembuatan Akta Oleh Penghadap Yang Memberikan Keterangan Palsu" (2018) 2:2 J Huk Bisnis 1–17.



faced by notaries, which in this case states that a notary functions only to record/write down what is desired and stated by the parties facing the notary.²⁹

Legal protection for Notaries in carrying out their duties should be provided in a fair, balanced, and maximized manner, given their position both as citizens and as public officials. To achieve this, an active role is required from the state as the holder of the power to update the regulations governing the implementation of the office of a Notary.³⁰

The legal protection provided to Notaries should only be related to their duties as public officials. It is not appropriate to confuse legal protection as an individual (citizen) with legal protection in his/her capacity as a Notary, as both have different obligations, authorities, and risks. This legal protection should be designed based on the basic rights inherent to Notaries in carrying out their professional duties.

CONCLUSION

Based on the discussion above related to the form of legal protection for Notaries and *PPAT* in carrying out their profession, Notaries in carrying out their profession get legal protection in the form of supervision from the Notary Supervisory Council and Notary Honor Council by Article 66IA paragraph (1) of the *UUJN* which states that for the benefit of the judicial process, namely investigators, public prosecutors or judges, who will summon a notary must obtain prior approval from *MKN*.

The legal protection provided to Notaries should fulfill the basic rights inherent in Notaries in the performance of their duties and then also adhere to the principle of balance that takes into account the position of Notaries on two sides as individuals (private) as citizens and as public officials (Notaries) whose legal protection rights must be maximally fulfilled so that the implementation of the Notary position is maximized and also does not interfere with the position as individuals (private) as citizens and of course with the application of fair legal protection. The need for legal protection provided for a balanced and fair Notary needs to be taken from the state as the holder of power who makes laws and regulations related to Notaries to pay attention to and contain this legal protection because it is part of the rights of Notaries in the implementation of their positions.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

²⁹ Khoirotul Ummah Andriana & Anang Dony Irawan, "Perlindungan Hukum Bagi Notaris Dalam Pembuatan Akte Berdasarkan Keterangan Palsu Dari Para Pihak" (2022) 1:1 Acad J Huk dan Tatanan Sos.

³⁰ Khairunnisa Noor Asufie & Ali Impron, "Perlindungan Hukum Terhadap Notaris Dalam Pelaksanaan Jabatan Notaris Berdasarkan Teori Keseimbangan Berbasis Keadilan" (2021) 9:2 J Law, Soc Islam Civiliz 86–103.



ACKNOWLEDGMENT

None.

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