

## The Legal Protection for the Public for Legal Certainty of Notary Authentic Deeds against Deeds that Are Not Read and Explained to the Parties

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**Abstract.** *This research is motivated by the large number of notaries who are submitted to court due to errors in making a notary deed - the notary ignores the code of ethics which is contrary to the moral values of UUJN which is used as the basis for the professionalism of a notary who is simply ignored in order to get clients who take less ethical ways to get their wishes. The role of the notary in carrying out his duties and positions based on the code of ethics to provide legal protection. The community is expected to be able to provide confidence that the deed made is in accordance with the UUJN and the notary code of ethics. The purpose of this study is to find out the legal certainty of the authentic notary deed of the deed that is not read and explained to the parties and how to apply legal protection to the community and the obstacles and solutions to the implementation of legal protection to the community. The method in this study uses sociological juridical, meaning that research is carried out on the real situation of the application of law to society with the intent and purpose of finding facts (fact-finding), which then leads to problem identification and then leads to problem solving. . The theory used is the theory of legal protection and the theory of legal certainty. The results of the research are very multi-faceted, showing that the role of a notary as a public official appointed by the Government who has the right to make a deed if the making of the deed is not in accordance with the UUJN and the code of ethics of the deed will be problematic*

*in the future. The task of a notary is very noble because it contains and carries the mandate of the community and the state as well as providing legal counseling because of the position of trust. The position of a notary is very essential, impartial and independent, but in making a deed at the request of the parties listed in the deed. Notaries must be professional, meaning they are firm, fast, responsive, thorough, observant, and impartial according to the UUJN and the code of ethics.*

*Keywords: Community; Legal; Protection.*

## **1. Introduction**

The Republic of Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every citizen. To ensure order and legal protection, authentic written evidence is needed regarding acts, agreements, stipulations and legal events made before or by an authorized official.

The emergence of the notary institution is based on the need for a binding evidence other than witness evidence. The existence of other binding evidence, considering that witness evidence is no longer sufficient because in accordance with community developments, the agreements executed by community members are increasingly complicated and complex. The term notary basically comes from the word "notaries" (Latin), namely the names given to Roman people whose job was to carry out writing jobs or people who took notes in the past.

For almost 100 centuries, the existence of this notary institution in Indonesia originated in the Netherlands, which was brought in by Dutch businessmen at the beginning of the 17th century to be precise on August 27, 1620, Governor General Jan Piflerzoon Coon appointed Meichior Kuchein as the first Notary in Indonesia domiciled in Batavia<sup>1</sup>. This appointment is related to the development and improvement of the business of a joint venture with the Netherlands that conducts trading activities in Indonesia, known as the VOC (*Vereniging Oost Indische Compagnie*).

In accordance with its development, related to the field of notary, a statutory regulation has been established, namely the "Notary Position Regulation" (Notaris Reglement Stb. 1860-3), which is now approximately 120 years old, as a

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<sup>1</sup>Notary and Indonesian Wikipedia <https://id.wikipedia.org/wiki/notaris>

substitute for "Insiructie Voor Notarissen in Indonesia". (Stb. 1822-11), and has been renewed with the promulgation of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary. In the current era of globalization, it is necessary to consolidate the arrangement of Notary positions, not only in the form of legislation but also in the form of a professional code of ethics.

A notary is appointed by the state for the benefit of the general public, therefore a notary must have and control a broad law in order to put the rights and obligations of the interested parties proportionally so that each party obtains its rights and obligations and no one feels aggrieved by each other. In addition, the Notary is also an official who is obliged to uphold justice towards harmony, harmony and balance.

The Notary profession plays an important role in making the deed desired by the appearer so that the Notary must really understand and know the contents of the Notary Position Act so that the deed made is not problematic in the future and provides legal protection for the community. A Notary must have strong principles do not let it be against the wishes of the deed made if the rules are not in accordance with the notary code of ethics and the Notary Position Act. Because the power of the notary lies in his responsibility only in making the deed. Therefore accuracy, caution in the manufacture must be considered.

Lately, many notaries have been brought to court due to errors in the making of a notary deed because they ignore the code of ethics that is contrary to the moral and ethical values that are used as a measure of the validity of the notary's professional ethics. The code of ethics that should be the basis of a Notary's professionalism is simply ignored in order to get clients so that he takes an unethical way to carry out his profession as a notary.

Codes of ethics are important, as a means of social control. 3 The Code provides some kind of criteria for new recruits and helps to maintain the views of old members on the principles of professionalism that have been outlined. The complexity and specialization of modern society has made it more or less difficult to determine whether a member of a professional group can carry out its obligations or not. In the event of a conflict of interest, for example, occurs between two members or between members of a profession and the general public, whichever is preferred. Each form of profession has its own coaching problems.

A notary is a public official who is authorized to make an authentic deed, as long as the making of an authentic deed is certainly not reserved for other public officials. This Notary position is not placed in the Judicial, Executive, or

Legislative Institutions. Notaries are expected to have a neutral position, so that if they are placed in one of the three state bodies, the Notary can no longer be considered neutral. With this neutral position, the Notary is expected to provide legal counseling for and for legal actions taken by a Notary at the request of his client. In terms of taking legal action for his client, a Notary must also not side with his client, because the Notary's job is to prevent legal disputes with his clients, the parties said.

With the legislation and code of ethics, it is hoped that a notary can improve the quality of his services to people who need his services. The quality of service is not only judged by the compliance of the Notary to obey and enforce the applicable rules and code of ethics, but the most important thing here is the professional ability possessed by a Notary.

Notary codes of ethics are factually the norms or provisions that are set and accepted by all members of a profession.<sup>2</sup>Franz Magnis-Suseno et al., in "Social Ethics" stated that every profession holder is required to have two types of "musts", namely: the obligation to carry out his profession responsibly; and the obligation not to violate the rights of others.

The basic demands of running a profession have two main directions, namely:

- We are expected to be responsible for the work and its results, meaning: with work, we are required to produce everything of quality, and
- We are required to take responsibility for the impact our work has on the lives of others.

The position of a Notary is a position of trust, namely a Notary must have special skills based on extensive legal knowledge, a high sense of responsibility and the results of his work that are formulated in a deed which will later be dedicated to the people who need his services.<sup>3</sup> The existence of the Notary has received recognition from the community. The trust given by the community to the Notary carries a heavy responsibility for the Notary because the legal products produced by the Notary are very highly relevant from the legal aspect.

The principle of the rule of law guarantees certainty, order, and legal protection with the core of truth and justice. Certainty, order and legal protection demand, among other things, that legal traffic in people's lives requires evidence that clearly determines a person's rights and obligations with aspects of legal

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<sup>2</sup>Frans Magnis et al, *Social Ethics*, PT. Gramedia: Jakarta, 1987, page 14

<sup>3</sup>Civil Code, Sinar Sindo Utama.

protection for the parties as legal subjects in society.

A notary is a public official who is authorized to make an authentic deed as long as the making of a certain authentic deed is not reserved for other public officials. Making authentic deeds is required by laws and regulations in order to create certainty, order and legal protection. In addition to authentic deeds made by or before a Notary, not only because it is required by laws and regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection.

In addition to an authentic deed made by or before a Notary, not only because it is required by laws and regulations, but also because it is required by laws and regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and security. The legal protection for interested parties as well as for society as a whole. Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in society.

Given that it is very important and the role of legal products in the form of deeds and notaries, the way a Notary works is strongly limited by the threat of sanctions in the Notary Position Act, namely the Notary Position Regulation, which is mainly to maintain the discipline of the Notary in carrying out his position. Coupled with the moral values and code of ethics of a Notary which is a guideline and must be adhered to so that a Notary inside and outside his profession does not demean his own position.

The role of the Notary must be proactive in carrying out his duties and authorities with firmness and be able to explain in detail, in detail with broad insight and views for the good of others based on truth. The position of a Notary is very essential, namely impartiality and independence.<sup>4</sup>

The legal consequences and actions of a Notary related to the deed he made are very severe, so the Notary is required to really have a solid ability, in the sense that a Notary in carrying out his duties must really master the law and have high dedication in his attachment to the Act. Law on the position of a notary, besides that, a careful and careful attitude is needed for a notary. Here is also very concerned about the attitude of professionalism that must be able to prioritize the satisfaction of the community in this case the client compared to their personal interests.

If in carrying out his/her duties, the Notary violates the law, the provisions of the Notary Position Act and the moral values in the Notary's code of ethics, the

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<sup>4</sup>Collection of 2017 Unisula Mkn Lecture Training and Education.

Notary concerned may be subject to sanctions. But in reality, currently the settlement of legal violations by Notaries has not been fully completed and makes Notaries deterrent. This is because the settlement of these cases is still based on the Notary Position Regulations and the disciplinary court of professional organizations, as we know the actual sanctions imposed are hard, firm and definite, namely in the form of very small fines and only moral sanctions for Notaries violating the code of professional ethics.

Basically, the actions of a Notary who are said to have violated the law, the provisions in the Act of Position as well as the moral values in the Notary's code of ethics will harm the Notary himself. The sanctions that have been fined so far in the Law on Notary Positions are, for example, reprimands, temporary dismissal, fines, loss of authenticity and even cancellation of deeds that have been made.<sup>5</sup> If this is felt, it must be very embarrassing and demeaning the image of the Notary in the eyes of the public. But this goes back to the personality of each Notary, how the Notary must be responsible for himself as a religious creature of God as well as a social being who works and of course must be responsible for his profession.

Moreover, in the "Code of Ethics of Indonesian Notaries and Personality of Notaries, article 2 paragraph 1 states as follows: Notaries in carrying out their duties and positions are aware of their obligations, work alone, are honest, impartial and full of responsibility. Whereas in article 3 paragraph 1 it is stated that "Notaries in carrying out their duties and positions provide legal services to people who need their services as well as possible; and paragraph 3 states that notaries provide services to underprivileged members of the community free of charge.

## **2. Research Methods**

The approach method used in answering this research problem is sociological juridical, meaning that research is carried out on the real situation of the application of law to society with the intent and purpose of finding facts (fact-finding), which then leads to problem identification and then leads to resolution. This research is descriptive in nature, namely research that aims to describe the state of things in a certain area and at a certain time. This research by its nature is a descriptive analytical research that aims to describe the results of the research in as much detail as possible about the problems above, as well as the obstacles faced and what legal remedies can be taken to resolve the problem.

## **3. Results and Discussion**

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<sup>5</sup>Budi Sentosa, dkk. (1999). *Nilai-nilai Etik & Kekuasaan Utopic, Kanisios*, Jogjakarta

### **3.1. Why is the Legal Protection of the Society for Legal Certainty Authentic notarial deeds against deeds that are not read out and explained to the parties are very necessary?**

A notary is a public official who is authorized to make an authentic deed, so far the making of an authentic deed is reserved for other public officials. Notary positions are not placed in the judicial, executive or legislative institutions.

Notaries are expected to have a neutral position, so that if they are placed in one and the three state institutions, the Notary is not considered a neutral position. With this neutral position, the Notary is expected to be able to provide legal counseling for and at the request of his client.

In terms of taking legal action for his client, the Notary must also not side with his client, because the Notary's job is to prevent problems from occurring in the future. In carrying out their duties and positions,

- Always uphold the laws and principles of the state and act in accordance with the oath of office; and
- Prioritizing his service to the interests of society and the state

Notary in making his position must be in accordance with UUJN and must be free from anyone's influence, including executive power.very heavy, especially in terms of duties, obligations and responsibilities. The duty of a notary is very noble because it contains and carries the mandate of the community and the state. The function of the existence of a Notary in providing its services is at the same time so that it does not conflict or violate the law even though it was decided by the Dutch Supreme Court in a minor URD case. Notary positions are positions of trust, there are 4 strong elements that serve as guidelines and are not commercial, namely:

- *Siddiq;*
- *Trust;*
- *Tablighi;*
- *Fatah*

### **3.2. Application of Legal Protection to the Community for Legal Certainty of authentic notary deed against deed that is not read out and explained to the parties**

The role of the Notary must be active in carrying out his duties and authorities with firmness and be able to explain in detail, now with broad insight and views for the good of others based on wonder. The position of a Notary is very essential, namely impartiality and independence. There is an assumption in practice that the deed of the parties made at the request of the parties is correct, because the Notary cannot arbitrarily on his own inspiration without the request of anyone to make a Deed, but this does not mean that the Notary is free from responsibility for the contents of the deed or by pretext of the will of the parties to be included in the deed

Notaries are not clerks for their clients and notaries need to examine whether what clients ask for does not violate, contradicts the laws and regulations of morality, public order, and must have thoughts using legal logic. Proof of ownership and documents provided as supporting data in the process of making the deed must be carefully checked for authenticity and it is not enough just to show a photocopy, let alone contain a statement from the audience. In the deed, it is necessary to pay attention to all the procedures needed to make the deed, the notary must play an active and more thorough role.

In practice in the community if a Notary in carrying out his duties and positions if it is not in accordance with the Notary Position Act in the future, the deed there will be a legal dispute. As a public official, notary services, both in terms of quality and notary behavior, are expected to be able to meet the needs of the community both cross-ethnic and inter-religious without violating the law or ethics, the quality of notary lessons and notary behavior can be seen indirectly from the results of the deed product and behavior -behavior and problems caused by both management and protocol management.

In the current era, many Notary product deeds are problematic and disputed, this happens because of the incomprehension of law enforcement officials in addition to the formal education system that previously focused on practice is now focused on theory. The formation of the character of the soul of a Notary includes mental toughness, morals, faith, character through appreciation, observation of professional ethics and mastery of legal material, ethics, optimal mastery in making Deeds. Becoming a Notary actually has a noble purpose in living his professional position, not for the purpose of his personal interests. The assumption of a promising Notary profession must be removed, because the Notary profession is relied on by the government to assist law enforcement that is devoted and soulsocial. A Notary in carrying out his profession must be really good because his carelessness, carelessness, negligence and mistakes can



cause harm not only to the parties who appear but the heirs of the parties from generation to generation have also become victims of such carelessness and negligence in carrying out their profession as public officials or notaries' mistakes. The actions of a Notary who are wrong or incorrect due to not being careful, negligent, even worse, are intentionally or imposing the will of the party or parties. Carrying out the professional position of a Notary must be professional, meaning that in practice he is required to be firm, fast, responsive and thorough, observant, all-round must or prudence, impartiality, in accordance with the actual legislation in force.

### **3.3. Obstacles and Solutions in the implementation of legal protection for the community on legal certainty notary authentic deeds against deeds that are not read out and explained to the parties**

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Notaries in Indonesia have experts as officials who in suggesting their positions are required to be professional in their fields, namely making statements or making deeds as written evidence that has the task and function of providing legal protection for the community. In terms of making an Authentic Deed recognized by law, a Notary means having a very noble position and position, having a very high and honorable value and dignity because this position is a position of trust given by the Government on behalf of the state to meet the needs of the community in the field of civil law.

Trust from the community means that the community has the right to choose a Notary freely not directed by anyone but based on the agreement of the parties. Notaries are required to carry out their duties and positions because they are professional and have the right and good attitude and daily behavior because a Notary has a heavy moral burden must be able to responsible for the nation and society. It must be remembered and kept in mind, a notary is an official provided by the state to meet the needs of the community, public property and neutral. Independent to achieve the benefit of the community or every person has the right to make agreements according to his heart according to the principle of independence including choosing a Notary is a profession of trust that examines the wishes of the parties/clients and is neutral, impartial.

The neutrality/impartiality of the Notary must be accounted for in the absence of agreement from the parties who made the Deed as stated in the Deed of

Guarantee. These deeds seem to benefit the company and burden other parties. If the Deeds are made in a notarial deed, it means that the Notary is impartial and neutral, because the Deeds are deeds that have been carried out by the Company/Company and other parties in the Deed can meet and approve the entire contents of the deed which has been standardized by the Company. The notary only follows the deed that has been standardized but does not participate in drafting the deed.

It is true that a Notary is to serve the community but the service is not excessive and must be in accordance with the corridors of law, legislation and professional ethics so that the desired deed does not lose its value. The solution to the role of the Notary in carrying out his duties and positions to provide legal protection for the community is to carry out his duties in this case the Notary makes a deed that must be in accordance with the Law on Notary Positions and the Notary code of ethics because a Notary will be dragged by the court if the making of the deed is not in accordance with the UUJN and the code of Notary. To provide legal protection to the public relating to the role of the Notary in relation to his duties and positions, in this case the public / clients who come to the Notary to make a deed of protection for the community to prevent problems in the future, especially regarding the making of the deed. In this case the client/consumer/community legal protection Act No. 8 of 1999.

Consumers according to Article 1 point 2 of Act No. 8 of 1999 and Article 1 point 2 of the Decree of the Minister of Industry and Trade (Kepmenperindag) No. 3SO/MPP/Kep/i 2/2001 are:

"Every person who uses goods and/or services available in the community, both for the benefit of himself, his family, other people, and other living creatures and not for trade."

It turns out that the understanding of consumers in the Consumer Protection Act is not only individual consumers, it also includes the use of goods for the benefit of other living creatures, such as pets, but is not extended to third party individuals (bystanders) who are harmed or become victims due to the use or utilization of a product or services. What needs to be explained in this consumer sense is the condition "not to be traded which shows as "end consumers" and at the same time distinguishes from intermediate consumers (intermediate consumers). consumer, because the motive to obtain certain benefits in the form of money from/or which can be equated with money is not included in the category of goods and/or services as intended in the Law on Consumer Protection. In his position as an intermediate consumer, the person concerned cannot sue business actors based on this law.

What needs to be criticized is that in fact what can be qualified as consumers are not only limited to legal subjects called "people", but there are other legal subjects who are also final consumers, namely "legal entities" who consume goods and/or services and do not to be traded, such as Foundations and Limited Liability Companies (PT) as consumers, but the Consumer Protection Law does not acknowledge the existence of this "Legal Entity" which does not appear to have been included in the definition of "user" in the Consumer Protection Law.

#### 4. Conclusion

Legal protection for the community for legal certainty of notary authentic deeds against deeds that are not read out and explained to the parties is very necessary for Notaries in carrying out the Code of Ethics to carry out their duties and positions in providing Community Protection must be based on Truth – the deed must be made by the will of the parties. Supporting evidence in the manufacturing process must be carefully checked for authenticity, not only showing a photocopy. As a public official, notary services in terms of quality and behavior are expected to be good and can meet the needs of the community. The deed made must be based on Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary and the Code of Ethics so that the deed is not problematic in the future. Notaries have noble goals. The assumption of a promising Notary process must be discarded because a Notary in the Government is expected because the process helps in the Making of Deeds, Law Enforcement, which is of service and social spirit.

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