

## What The Effects Of Notary Code Violations?

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*Abstract. This study to determine the legal consequences in case of violations of the code of conduct by notary and notary determine responsibility in the event of violation of professional ethics. The method used is a qualitative method and empirical juridical approach. Specifications research in writing this research is a descriptive analytical research. Methods of data collection for primary data obtained through interviews guided free. Based on research conducted can be concluded that 1) Due law violation in case of code violations by the notary is a Notary Public who breach the code of conduct as defined in the legislation then the solution is based on provisions itself, so that the legal certainty of the notarial profession is guaranteed. Notary who commits an offense against ethics, decency or moral solution not only according to the code of ethics alone, but can also be based on legislation. Everything that is not done by the notary clearly and expressly set forth in the form of legislation; 2) The notary public responsibilities in the codes violation is when notary did violation to the code of Indonesian Notary Association (INI) or another people who has notary position in the duties or daily activity.*

*Keywords: Due Legal; Codes Notaries; Notary.*

### 1. Introduction

One of the factors causing the Mafia is getting lost, even meaningless no longer a code of ethics of the legal profession, which should serve as guidelines in the profession that demands moral accountability to God, self and society. Bertens said the code of professional conduct is the norm established and accepted by professional groups, directing or instructing members how it should be done and guaranteeing the quality of the profession moral community.<sup>2</sup>

The function code of professional conduct, namely as a means of social control, as a preventive intervention by other parties, and as a deterrent to misunderstandings and conflict. Based on the notion and function, it is clear that the code of professional conduct is a guideline for practicing a profession in order to maintain the moral quality of the profession itself, as well as to maintain the quality and independence as well as the public's view of the profession, as well as to the legal profession.

The legal profession include police, prosecutors, judges, advocates, notaries and others, all of which run the activity of the law and be the object of which was considered by the public about the merits of law enforcement efforts, although the actual public legal awareness factor is also crucial in the effort.

Notary, as one of the legal profession also has a code of ethics in their profession, because notaries also participate in national development, especially in the field of law. In his code stipulated that a notary public in performing his respective duties realize its obligations, work independently, honestly, impartially and with full responsibility.

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<sup>2</sup>K. Bertens, *Etika*, (Jakarta : PT. Gramedia Pustaka Utama, 1992), p. 4

Notary in their profession to provide public services should behave according to the rules. This is important because the Notary duties of office is not solely for personal interests, but also for the benefit of society, as well as an obligation to ensure the correctness of the deed he had done, because it is a Notary demanded more sensitive, honest, fair and transparent in making a deed in order to ensure that all parties directly involved in the manufacture of an authentic deed. In carrying out his duties of a Notary must cling to the Notary office code of ethics, because without it, the dignity of professionalism will be lost and no longer has the confidence of the public.

Notaries are also required to have high moral values, because with the high moral then notary will not abuse the authority that belongs to him, so that Notaries will be able to maintain his dignity as a public official who provide services in accordance with applicable rules and do not damage the image of the Notary itself. As expectations Komar Andasmita, so that every Notary have sufficient knowledge breadth and depth as well as skills that are the mainstay of the community to design, develop and create a variety of authentic deeds, so that the structure of language, technical, juridical neat, good and true, as well as the expertise needed anyway honesty or the sincerity and nature or objective view.<sup>3</sup>

Basically, the code of conduct notary it aims to preserve the dignity of the profession on the one hand is concerned, and on the other hand to protect clients (citizens) of misuse of expertise and / or professional authority. Notary should live and behave well in carrying out his post on the basis of values, morals and ethics notary. basing on values, morals and ethics notary public, notary office profession pengembangan essence is service to the public (client) independently and impartially.

Based on the above description, the authors wanted to further investigate the problem of research entitled: "Law Violation Effects Of Codes Conduct By Notary".

## **2. Research methods**

The method used is empirical juridical approach. Juridical research has done by researching library materials is a secondary data and also referred to the research literature. Empirical legal research was done by examining the field which is the primary data.<sup>4</sup>

The method used is a qualitative method. Specifications research in writing this research is a descriptive analytical research. The data in this study included primary data and secondary data. Primary data obtained through interviews guided free. The respondents of this study is the Regional Supervisory Council of Notaries (MPDN) and Regional Board of Indonesian Notary Association (INI) and the Honorary Board of the Regional Territory including the Honorary Board of Indonesian Notary Association (INI). As for the secondary data obtained from the library.

## **3. Results and Discussion**

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<sup>3</sup>Komar Andasmita, 1981, *Notaris Dengan Sejarah, Peranan, Tugas Kewajiban, Rahasia Jabatannya*, Sumur, Bandung, p. 14.

<sup>4</sup>Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, ( Jakarta : Ghalia Indonesia, 1990 ), p. 9

### **3.1 Violation Occurs When Any Law Violation Effects Of Codes Conducted By Notary**

There are a variety of possible abuses by the notary to the code of conduct. Fitriki Utami in her dissertation at the University of Hasanuddin find some forms of violations of notary profession among others, include the client is not signed before a notary, the lowering of tariffs, do not read the deed, wrong in giving legal action, running errands outside the working area, use the services of intermediaries and do mocking to notary fellow.<sup>5</sup>

Violation of professional ethics notary also occurs in multiple roles undertaken by a notary public. This means that the notary also become parties to the deed he made his own.<sup>6</sup>

According to Abdulkadir Muhammad, there are four basic reasons why professionals, including notaries, ignore the code of conduct. The reasons are include: the effect of familial trait; the influence of the position; the influence of consumerism; and because of a weak faith.<sup>7</sup>

Based on the results of research in the field note that the Code violations that occur often only become an issue because of the sanctions against the violation is only a moral sanction although it is set firmly in the Notary Code, so that data on violations in the application of the Code only slightly.

Code violations that occur, but only into these issues, among others: there is a Notary in a deed, do not read and witness the signing of the deed in front of a Notary Public is concerned, but in front of the Notary office employees. Violations happens frequently in the case of a Notary Public who cooperate with the Bank in making the deed of credit agreement. Notaries are thus usually offer services at much below the standard honorarium.

The sanctions provided by the Honorary Board of the Regional Notary Semarang, against ethical violation committed by a Notary, not only verbally reprimand in writing. Action ever undertaken by the Honorary Board of the Notary merely questioned the matter to the concerned Notary and giving verbal reprimand.

In the Congress of Indonesian Notary Association (INI), in January 2005 in Bandung, set Notary Code which is based on Notary law, so that there are clear sanctions in case of violation of the Code are as follows: 1) Reprimand; 2) Warning; 3) Schorsing (temporary dismissal) of the Association membership; 4) Onzetting (dismissal) of the membership of the Association; and 5) Termination disrespectfully of Society membership.

Sanctions in the form of verbal reprimand is intended to provide guidance to the process of Notaries, Notary concerned so as not to repeat violations of the code of conduct in

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<sup>5</sup> *Teliti Pelanggaran Profesi Notaris*, in Fajar online, January 3rd, 2019.

<sup>6</sup> See "Jika Notaris Merangkap Jadi Makelar Tanah Kasus Bapeten", in [www.hukumonline.com](http://www.hukumonline.com), 5 January 2019.

<sup>7</sup> Abdulkadir Muhammad, *Etika Profesi Hukum*, (Bandung: PT Citra Aditya Bakti, 1997), p.82-85.

the future. In cases of violation of the code of conduct of the Honorary Board of Semarang Regional Notary does not necessarily give a sanction in the form of a written warning or dismissal schorsing disrespectfully of Society membership.

For example, there is a Notary let minuta of deeds taken by the client to be signed before a Notary is not in question and it turns out later disputes. Action Notary is already clear violation of legal provisions in force since the signing of the deed of Notary to be in front, if there are parties who could not face / present then it should authorize a party designated by penghadap could not face / the present or the Notary come to the place that has been determined by the parties as long as the work area concerned Notary. So with in this case is to be called by a Notary Honorary Council (MKN) in respect of their permit application calling the concerned Notary of the investigating authorities.

Sanctions given by the Supervisory Council of Notaries is based on the provisions contained in Notary law in the form of a reprimand (oral or written) and layoffs (3 months to 6 months) and dishonorable discharge.

Based on the results of research in the field, before the Notary Regional Supervisory Council (MPDN) makes the decision to the Notary in question, the possibility of interference from the organization in this regard Regional Indonesian Notary Association (Pengda INI), to beg forgiveness on Notary concerned. It is certainly reasonable as a form of protection against the organization's members, while it is within reasonable limits.

The most fundamental problem is the ethics and morals of a Notary, who incidentally is a public official. When it comes to ethics and morals, it is difficult to set in form of regulations, even at the level of the Code of Conduct as well as the level of the General Rules notwithstanding. It was really a personal concerns Notary concerned. The impact of these cases the Notary has misused his task and take jobs outside their authority.

Implementation of sanctions for violations of the code of conduct by the Notary in running the office by the Regional Honorary Notary, according to the authors has a weakness, and therefore does not affect the status of the Notary in carrying out his duties. The highest sanction given for a violation, is a dishonorable discharge from the association.

These sanctions do not affect the Notary, due to be dismissed by the association, then he does not have rights and obligations of the Indonesian Notary Association (INI), but they can still practice Notaries, notary practice because the license has not been revoked. This is in contrast to the professions, such as doctors, when doctors violating the Code of Professional Ethics, the practice permit will be considered, even if the offense is too heavy, it is possible to revoke a license to practice.

Once this condition can be applied to the Notary, the Code will function well and truly become a "fence" for the Notary to behave professionally, so the existence of the Code is no longer ambivalent but clear and exists, has the power to overshadow in Notary. To overcome this problem according to the author of any violation of the Code committed by a notary must be given strict sanctions by the Regional Ethics Council and there must be a good monitoring mechanism of the implementation of the sanctions. For the

violation, code of ethics also can be categorized as a violation of the notary office of the Honorary Council of Regions Notary should forward such cases to the Tribunal Regional Supervising Notary.

According to the provisions of Notary law stated, that the monitoring of Notary conducted by the Ministry of Law and Human Rights by establishing a Council of Trustees. These include behavioral surveillance and execution Notary Public Notary. Thus, the Supervisory Council, using the Code of Conduct that has been made by the Indonesian Notary Association (INI), as an oversight of the Notary. Supervisory Council will take action if there were complaints from the public about a Notary deviant behavior.

Spirit notary code of ethics is respect for human dignity in general and dignity of notaries in particular. With that core services “imbued respect for human dignity in general and in particular” notary dignity, the bearers of the notary profession has characteristics independently and impartially; does not refer strings attached; rationality in the sense refers to the objective truth; Functional specificity and solidarity among fellow peers.

The cornerstone of the code of conduct notary at least guided by a moral foundation, practical and has a spirit. Notary profession as carrier is a person who has expertise in the field of knowledgeable notaries, so as to meet the needs of people who require services in the field. Notary personally responsible for the quality of services that it provides. Between notary as caretaker profession and its clients occurs personal relationships among subjects, formally-juridical same position.

The substance of the relationship between the notary with clients are socio-psychological imbalance. This is because essentially the client has no other choice but to give credence to the hope that the Notary profession carrier would provide services for their professional quality and dignity.

Compliance with the ethics of the notary profession relies heavily on the character of the notary. The notary itself requires the existence of objective more concrete guidelines on professional conduct. Therefore, from the environment of the notary itself raised a set of rules of behavior as a guideline to be followed in carrying out the profession of notary.

To be minimize violation of the code of conduct according to the authors for socialization and supervision are carried out continuously and sustainably by Indonesian Notary Association. In addition to the required setting strict in the implementation of the procedure for the appointment of a notary public, in particular on the implementation of the formation of a notary, so as not to cause an increase in the number of notaries in a region that does not suit your needs, it is according to the author is very influential in reducing the occurrence of violations of the code of conduct, especially competition unhealthy among notaries.

### **3.2 Notary Responsibilities When Happened Violations In Professional Ethics**

Notaries are legal profession and thus the notary profession is a noble profession (*nobile officium*). Known as *nobile officium* because the notary profession is closely related to human life. Deed made by notary can be a legal pad on the status of property, rights and obligations of a person. Misconception on the notarial deed can lead to dispossession of one's rights someone of an obligation.<sup>8</sup>

Notary as a public official (*openbaar ambtenaar*) authorized to make the authentic act can be held accountable for his actions in connection with his work in making the deed. The scope of responsibility includes the material truth above notary deed made.

Regarding the responsibilities of notaries as public officials related to the material truth, can be divided into four points namely:<sup>9</sup>

- a. Notary civilly liable to the material truth of the deed he had made;
- b. Notary criminally liable towards the material truth in deed he had made;
- c. Notary responsibilities pursuant to Rule Notary of the material truth in deed he had made;
- d. Notary responsibility in performing their duties notary office by the code of conduct.

Regarding the responsibilities of notaries as public officials in this research will be focused on the responsibility of the notary in the line of duty notary office by the code of conduct.

Notary profession relationship with the community and the state has set in following UUJN other legislation. While the notary profession relationships with professional organizations governed by a code of ethics notary.

There is a relationship between the code of conduct with UUJN. The first relationship contained in Article 4 of the oath of office. Notary through sworn promise to maintain the attitude, behavior and will carry out its obligations in accordance with the code of ethics, honor, dignity and responsibilities as a notary. Notary professional code of ethics be established and enforced by notary organizations.

Violations of the code of conduct notary is an act or acts committed by members of the association organization Indonesian Notary Association and others who assume and execute a notary public office who violate the provisions of the code of conduct and / or organizational discipline.

The scope of the code of conduct applies to all member associations Indonesian Notary Association organizations and others who assume and execute a notary office either in the office or in the execution of daily life.

Related to sanctions as a form of enforcement of the code of conduct for violations of the code of conduct notary is defined as a punishment intended as a means, efforts and means of coercion obedience and discipline notaries. The sanctions in the code of conduct notary set forth in Article 6, which states that the witness levied against members who

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<sup>8</sup>Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, (Yogyakarta : UII Press, 2009), p. 7

<sup>9</sup> Nico, *Tanggungjawab Notaris Selaku Pejabat Umum*, (Yogyakarta: Center for Documentation and Studies of Business Law, 2003), p. 250

breach the code of conduct may include reprimand, warning, schorsing (dismissal temporary) membership association, *onzetting* (dismissal) of the membership associations and dishonorable discharge from association membership.

For that we need a reform that starts from within, institutions and organizations who raised the Notary itself. In this case the role of the organization is needed so that the issue does not drag on because it would harm the Notary itself, which ultimately would be detrimental to the public, so as to resolve these problems need the commitment of all the competent authorities in this regard.

According to the authors, many cases involving Notaries must be a lesson in order to keep the ethics of the profession and duties in accordance with applicable regulations. In addition, the lifting mechanism Notary in Indonesia should be transparent and consistent with existing provisions. If there is a deviation must be resolved legally, one of which is to conduct surveillance and instill law to the Notary.

Thus the legal protection granted by the Supervisory Council of Notaries but not to the person to the Notary office itself, if a legal issue on Notary concerned is not related to the position it is not the authority of the Supervisory Council.

Accountability across the organization applies when a notary violation of professional ethics as a guide made by professional organizations.

The code of ethics is a guide, guidance or morals or decency guidelines for a particular profession or a list of obligations in running a profession which was prepared by the members of the profession itself and bind them in practice. Thus the code of conduct notary is guidance or moral guidance or notary public decency, both as personal and public officials who are appointed government in the provision of public services, especially in the field of deed.

Code in the sense of a material is the norm or regulation practically written or unwritten ethics with regard to the attitude decision making on the fundamentals of the values and standards of behavior of people who judged good or bad in their profession are independently formulated, assigned, and enforced by professional organizations.<sup>10</sup> Thus, a notary is a profession that has a tough task because the need to put public service above everything. In addition to the notary profession is also an expertise. Therefore, a sense of responsibility both individual and social, especially adherence to the norms of positive law and a willingness to abide by the code of professional conduct, is a mandatory thing that will strengthen the positive legal norms that already exist.<sup>11</sup>

So people can conduct their profession in accordance with the demands of the profession etika, the notary must have three moral characteristics, namely:<sup>12</sup>

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<sup>10</sup>Abdul Ghofur Anshori, Op. Cit, p. 196

<sup>11</sup> Liliansa Tedjosaputro, *Etika Profesi Notaris, Dalam Penegakan Hukum Pidana*, (Yogyakarta : BIGRAF Publishing, 1995), p.13

<sup>12</sup>Franz Magni Suseno, dkk, *Etika Sosial*, (Jakarta : Gramedia Pustaka Utama, 1989), p. 69

- a. Must be a person who is not diverted from its determination by all kinds of feelings of fear, lazy, shy, emotional, and so forth. That means he must have a strong moral personality;
- b. Should be aware that maintaining the demands of professional ethics is a serious obligation;
- c. Must have enough idealism.

Notary Code currently in force is a moral code that is defined by the association of Indonesian Notary Association based on the decision of Congress Association and / or prescribed and regulated in the legislation governing it and that applies to and must be obeyed by each and all members of the association and all those who perform the duties and position as a notary.

Spirit of Notary Code is respect for human dignity in general and dignity of notaries in particular. Imbued with the core services "respect for human dignity in general and the dignity of the Notary in particular", the bearers of the notary profession has characteristics independently and impartially; does not refer strings attached; rationality in the sense refers to the objective truth; Functional specificity and solidarity among fellow peers.<sup>13</sup>

Furthermore, because the notary is a profession that runs most of the state authority in the field of private law and has an important role dalam create authentic act that has the strength of evidence is perfect and therefore notary office is a trust office, the notary must have good behavior. Good behavior can accepted by notary on the basis Notary Code. Thus, the Notary Code regulates the matters that must be adhered to by a notary in running the office and outside the office.

In current practice, many parties who argued that the notary was no longer an independent authority because there is still reliance on certain parties. This occurs because of an error yang systems have an impact on the original notary deed is a legal product, now only a mere administrative products so that when an error occurs in a deed in question, the notary can be easily exposed offense cases.<sup>14</sup>

This system error is also indicated by the presence of a notary appointment which was originally performed by the Head of State, is now carried out by the Ministry of Justice. Later in the realm of monitoring the performance of a notary who was originally in the district court or the Supreme Court, now under the authority of the Regional Stewardship Council (MPD), based on the description above according to the authors basically notary ethical accountability throughout the organization.

## **4. Closing**

### **4.1. Conclusion**

Based on the results of research and discussion no previous chapter, it can be concluded that:

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<sup>13</sup>Abdul Ghofur Anshori, Op. Cit, p. 197

<sup>14</sup>Doddy Radjasa, *Pergeseran Habitat Notaris Akibat Kesalahan Sistem*, Article in Revoi Magazine Edition 9. V February 2008



- a. Law violation effects in case of code violations by the notary is as follows: When is based on propriety, morally and according to the word of religious and conscience, should not be done by a notary who holds and the roles of first honored as a mandate holder. The violations committed by the notary to the ethics of the profession may be subject to the following sanctions: 1) Reprimand; 2) Warning; 3) Schorsing (temporary dismissal) of the Association membership; 4) *Onzetting* (dismissal) of the membership of the Association; and 5) Termination disrespectfully of Society membership. Sanctions in the form of verbal reprimand is intended to provide guidance to the process of Notaries, Notary concerned so as not to repeat violations of the code of conduct in the future.
- b. The responsibility of the notary in case of violation of code of ethics is when the notary violation of professional ethics as a guide created by a professional organization that apply to all members of society organization Indonesian Notary Association and others who assume and execute the post of notary in both the implementation of the office as well as in everyday life. Then the responsibility of the notary as a public official should be responsible civilly against the material truth of the deed he had done, responsibility notary criminally against the material truth in deed he had done, responsibilities of a notary pursuant to Rule Notary of the material truth in deed he had done, responsibility notary in performing their duties notary office by the code of conduct.

#### 4.2. Suggestion

- a. For notary order could profession in accordance with the demands of the professional ethics, the notary must have three moral characteristics, namely: Must be a person who is not diverted from its determination by all kinds of feelings of fear, lazy, shy, emotional, and so forth. That means he must have a strong moral personality; Should radar that mepertaliankan demands of professional ethics is a serious obligation; Must have enough idealism.
- b. Notary expected in a running position as a public official in charge of the manufacture of authentic deeds, understand and implement the provisions of Regulation Notary and Act No. 2 of 2014 concerning Notary as guidance in implementing the Notary profession.
- c. Should the Supervisory Council which oversees the Notary in performing their duties and positions are supervisors who have the knowledge and understanding of the notaries in particular in the manufacture of an authentic deed and also have high moral integrity.
- d. Any legal protection enforceable against a Notary, should be able to become a professional public official in his position, especially in the deed that is both authentic and carry out his duties and really pay attention to the noble values, dignity and ethics and comply with laws and regulations in force.

- e. This organization committee should be more intensive in meetings involving elements of the MPD to discuss the issues surrounding the implementation of the notary office, especially with regard to the code of ethics and the law, so that the notary better understand and know about his duties with regard to the code of ethics and enactment Act. In addition, to strengthen the relationship between the members of a notary.

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