

## Implementation of Notary Code in Profession & Notary Positions as Public Officers

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**Abstract.** *The Notary Code of Ethics is the entire moral code determined by the Indonesian Notary Association which applies to all members of the association as well as other people who hold and carry out the position of a Notary, both in the exercise of office and in daily life. This Notary Code of Ethics contains various matters related to the duties and authorities of a Notary in carrying out his profession and position as a public official. The material elements contained in this Notary Code of Ethics include obligations, exclusions and sanctions that will be imposed on Notaries who violate this Code of Ethics. The Supervisory Council and the Honorary Council are the equipment of associations that are authorized to supervise and examine violations of the Code of Ethics and impose sanctions in accordance with the provisions and regulations that have been set. The formulation of the problem in this thesis is how to implement the Notary Code of Ethics in carrying out the profession and position of a Notary as a public official and how to carry out the supervision of a Notary in carrying out his profession and position as a public official and how to implement the sanctions imposed by the Honorary Council and the Notary Supervisory Council against Notaries who violate the Code. Ethics in Magelang City. The research method used in this thesis research uses an empirical juridical approach. The juridical approach is used to analyze various laws and regulations related to the implementation of the Notary's code of ethics in carrying out the profession and position of a Notary as a public official, while the empirical approach is used to analyze the law which is seen as patterned community behavior in people's lives who always interact and relate in various aspects. The conclusion of the study is that the implementation of the Notary Code of Ethics in carrying out the profession and position of a Notary as a public official in the city of Magelang is currently running well, as evidenced by the absence of cases of violations of the Notary Code of Ethics that occurred in the city of Magelang. Procedures and implementation of sanctions against Notaries who are suspected of violating the*

*Notary Code of Ethics are still carried out with reference to the laws and regulations and other regulations that have been stipulated.*

*Keywords: Code; Ethics; Implementation; Notary.*

## **1. Introduction**

Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws.<sup>1</sup> Notaries are authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated in authentic Deeds, guarantee certainty of the date of making the Deed, save the Deed, provide grosse, copies and quotations of the Deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.

In carrying out his duties and authorities, a Notary is also burdened with responsibilities related to the Deeds he has made. A Notary in carrying out his duties and positions is also required to act honestly and fairly towards all parties, not only for personal interests, but also for the interests of all parties. Besides that, a notary also has an obligation to guarantee the truth of the deeds he made. In order that there are no deviations in carrying out the duties of a Notary in carrying out his profession and position as a public official, it is absolutely necessary to have a neutral, independent and independent institution to oversee the duties of a Notary. The position of a notary is a position of trust given by law and society. Therefore, a Notary must be responsible for carrying out the trust given to him. If this trust is violated by the Notary, it will cause harm to the Notary himself or to other people in general. Thus, the existence of a supervisory agency is absolutely necessary so that there are no deviations or violations in the implementation of the duties and functions of a Notary in carrying out his profession and position as a public official. The purpose of supervision of Notaries is that Notaries truly fulfill the requirements and carry out their duties in accordance with the provisions and applicable laws and regulations and the Notary Code of Ethics for the sake of safeguarding the interests of the general public<sup>2</sup>.

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<sup>1</sup> See Article 1 point 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary.

<sup>2</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

The Code of Ethics has a very important position for a Notary in carrying out his profession and position as a public official, namely first because the nature and nature of the work of a Notary is very oriented towards legalization, so that it becomes the main legal foundation regarding the status of property, rights and obligations of an appearer who uses the services of the Notary. Second, so that injustice does not occur as a result of granting property status, rights and obligations that are not in accordance with the rules and principles of law and justice, so that it can harm the justice-seeking community.

The Indonesian Notary Association (INI) as an organizational association for Notaries has a very important role in the enforcement and implementation of the professional code of ethics for Notaries, through the Honorary Council which has the main task of supervising and fostering the implementation of this Notary Code of Ethics. This is necessary so that the Notary can carry out his profession and position as a public official correctly without violating the rules and code of ethics that have been set.

Magelang City is currently experiencing very rapid development in the fields of economy, education, tourism and so on. With these developments, of course, it cannot be separated from the legal aspect. Legal problems that arise as a result of this development will of course also be more complex. This is where the role and presence of a Notary will be very necessary. The existence of a Notary as a public official authorized to make an authentic deed has an important role in anticipating developments that occur in the community. However, even though the existence of a Notary is very necessary in the movement of steps and developments in the community, in carrying out his duties and positions the Notary must adhere to the laws and regulations and the applicable Code of Ethics. This is important so that there are no violations and frictions in carrying out their profession and position as public officials. For this reason, the role of the supervisory agency is absolutely necessary so that the Notary can carry out his duties and authorities according to the established corridor.

The research that has been carried out and poured into this paper aims to find out and analyze the implementation of the Notary Code of Ethics in carrying out the profession and position of a Notary as a public official in the city of Magelang who violates the Notary Code of Ethics in the city of Magelang. While the benefits obtained from this research and writing are theoretical benefits, namely the results of this research are expected to be used as input and development of knowledge in the field of law in general and notary law in particular related to the implementation of the Notary Code of Ethics in carrying out the profession and position of a Notary as a public official. Practical benefits are expected to provide input and contributions for various parties related to the implementation and application of the Notary Code of Ethics in carrying out the

profession and position of a Notary as a public official. Notaries are expected to provide benefits and become valuable inputs for self-introspection and avoid various mistakes in carrying out their profession and position as public officials so that they can carry out their profession and position as well as possible, while for Notary organizations it is expected to be input for professional organizations. Notaries, in this case the Indonesian Notary Association (INI) in carrying out enforcement and application of the Notary Code of Ethics so that it can be implemented as well as possible. Lastly, for the general public.

## **2. Research Methods**

The research conducted in this thesis is empirical juridical, namely a legal research method that functions to see the law in a real sense and examines how the law works in the community. This research prioritizes research in the field to obtain primary data, then to complement and support the primary data. Normative juridical research was also carried out, namely by conducting library research to obtain secondary data. This research was conducted using an empirical juridical approach. A juridical approach is used to analyze various laws and regulations related to the implementation of the Notary's code of ethics in carrying out the profession and position of a Notary. While the empirical approach is used to analyze the law which is seen as patterned community behavior in people's lives who always interact and relate to social aspects. The research specification in writing this thesis is descriptive analysis research. This descriptive research is limited to an attempt to reveal a problem, situation or event as it is. The results of the study are emphasized on providing an objective picture of the actual state of the object under investigation. While the term analysis contains the meaning of classifying, connecting, comparing the data obtained in terms of theory and practice. The data sources in this study can be classified into 2 sources, namely primary data, namely data directly obtained in the field by means of in-depth interviews, and secondary data, namely data needed to complete primary data. While the data collection technique is an effort to collect data by using certain data collection tools using data collection techniques in the form of literature and interviews. The data analysis method used is a qualitative analysis method, namely the data obtained through field research and library research and then arranged systematically, and then analyzed qualitatively to achieve clarity of the problems to be discussed. The data is then analyzed interpretively using theory and positive law that has been outlined and then deductively drawn conclusions to answer the existing problems.

### 3. Results and Discussion

#### 3.1. Implementation, Implementation and Supervision of the Notary Code of Ethics in the City of Magelang

Notary Code of Ethics which is a moral code that must be obeyed by each and all members of the association and all people who carry out their duties and positions as a notary. However, in practice, it turns out that not all members can carry it out well, especially in big cities with a high level of competition and complexity of problems. This cannot be separated from the supervision carried out by the supervisory agency in this case the Supervisory Council and the Notary Honorary Council. In big cities with a very high level of competition, violations of the Notary Code of Ethics still occur. Meanwhile, even in small areas or cities there are violations of this Notary Code of Ethics.

As a Public Official, a Notary also has a social function to make an Authentic Deed based on a request from an attorney or the public who need his services. In carrying out his duties and authorities, a Notary is also burdened with responsibilities related to the Deeds he has made. A Notary in carrying out his duties and positions is also required to act honestly and fairly towards all parties, not only for personal interests, but also for the interests of all parties. Besides that, a notary also has an obligation to guarantee the truth of the deeds he made. So that there are no deviations in carrying out the duties of a Notary in carrying out his profession and position as a public official, it is absolutely necessary to have a neutral institution, independent and independent to oversee the duties of the Notary. The position of a notary is a position of trust given by law and society, therefore a notary must be responsible for carrying out the trust given to him. If this trust is violated by a Notary, it will cause harm to the Notary himself or to other people in general. Thus, the existence of a supervisory agency is absolutely necessary so that there are no deviations or violations in the implementation of the duties and functions of a Notary in carrying out his profession and position as a public official. The purpose of supervision of Notaries is that Notaries truly fulfill the requirements and carry out their duties in accordance with the provisions and applicable laws and regulations and the Notary Code of Ethics for the sake of safeguarding the interests of the general public. Another purpose of this supervision is also to protect the public interest from notaries who carry out their profession and positions as public officials irresponsibly and do not heed ethical values and neglect the nobility of the dignity and duties of their positions.

Article 1 paragraph (1) of the Minister of Law and Human Rights Number 16 of 2021 concerning Organizational Structure and Work Procedures, Procedures for

Appointment and Dismissal, and Budget of the Notary Supervisory Council states that the Notary Supervisory Council is a body that has the authority and obligation to carry out guidance and supervision of Notaries. In carrying out its duties, the Supervisory Council applies the principles of coordination, integration and synchronization both within the Supervisory Council and other agencies outside the Supervisory Council in accordance with their respective main duties and functions.

The Notary Supervisory Board has the authority to provide guidance and supervision to Notaries as well as to conduct examinations on alleged violations of the behavior and implementation of the Notary's position. Besides that, it is also authorized to administer and also. Perform routine checks.

The supervisory mechanism carried out by the Notary Supervisory Council on the implementation of the Notary's duties is preventive and repressive. Preventive supervision is supervision carried out before implementation which means supervision of something that is still in nature to prevent violations of the Notary Code of Ethics and other regulations. Routine inspections carried out by the Notary Supervisory Council of Magelang city once a year are a preventive supervision effort to avoid and prevent violations of the Notary Code of Ethics in Magelang city.

Meanwhile, repressive supervision is more in the nature of supervision of violations committed by Notaries. The purpose of the duties and authorities of the Supervisory Council is to provide direction and guidance for the Notary Supervisory Council in carrying out their duties so that they can provide guidance and supervision to Notaries in carrying out their professions and positions as public officials in order to continuously improve their professionalism and quality of work so as to provide certainty and protection law for notary service recipients and also for the notary himself.

The Notary Honorary Council is an organ of the Indonesian Notary Association (INI). This Notary Honorary Council has the authority to conduct examinations for violations of the Notary Code of Ethics and at the same time impose sanctions for Notaries who commit violations in accordance with their authority. In addition, the Notary Honorary Council is tasked with providing guidance, guidance, supervision and improvement of members in upholding the Notary Code of Ethics. Examine and make decisions on alleged violations of the Code of Ethics that are internal or that involve direct relationships with the community. And also provide suggestions and opinions to the Supervisory Board on alleged violations of the Notary Code of Ethics. The Supervisory Council and the Notary Honorary Council have very important duties and functions in carrying out the guidance.

Violations of the Notary Code of Ethics take various forms, including: Making a deed that is not in accordance with the provisions of the Notary Position Act, dropping one Notary to another, using intermediary services in finding clients, publishing or promoting through the media mass media or social media by including their name and position, such as sending a bouquet of flowers at a certain event or event, unfair tariff competition by setting a lower rate than another Notary Public, persuading a client to make a deed or persuading someone to move to another Notary Public.

From the results found in the research that has been carried out so far there have been no violations committed by INI members in the city of Magelang. The absence of violations of the Code of Ethics in the city of Magelang cannot be separated from awareness and compliance with laws and regulations as well as the Code of Ethics that applies to all THIS members. This is also inseparable from the supervision and guidance carried out by the DKD and MPD in the city of Magelang. However, in order for this supervision and development to run properly and sustainably, it turns out that there are still some obstacles that must be addressed immediately.

### 3.2. Factors Inhibiting the Supervision and Implementation of the Notary Code of Ethics to Notaries in Running the Notary Profession and Position in Magelang City

The Supervisory Council has the authority to provide guidance and supervision to Notaries both on the behavior and implementation of the Notary Position. In order for this supervision to run optimally, it is necessary to have software and hardware to support and support such supervision and guidance. These include human resources and office administration equipment as well as adequate and adequate funding. Although there have been Ministerial Regulations and Ministerial Decrees that provide guidelines on the procedures for the Supervisory Council to carry out supervision, in its implementation there are still several obstacles that need attention.

Although in general, violations of the Notary Code of Ethics in the city of Magelang have so far never occurred, but to be able to ensure that violations of the Code of Ethics do not occur, it is necessary to carry out various prevention, supervision and guidance efforts that must be carried out continuously and continuously. In order for these efforts to run well, it is necessary to eliminate various obstacles or factors that can hinder these efforts.

The obstacles faced by the Supervisory Council and also the Regional Notary Honorary Council of Magelang City, among others, are: the available funds for the Supervisory Council and the Regional Honorary Council are not sufficient, this causes supervision and the guidance for notaries in the city of Magelang cannot be carried out optimally. Another obstacle is that they do not have a special

office/room for the Supervisory Council and the Notary Honorary Council to carry out activities related to the duties and functions of the Notary MPD and DKD in the city of Magelang. Besides that, there are also obstacles the limited time of the members of the Supervisory Council and the Regional Honorary Council due to the busyness of their respective jobs as notaries, lecturers and so on.

To overcome the various obstacles that occur, the steps that can be taken by the Supervisory Council and the Regional Honorary Council of Magelang City so that the supervision and guidance of Notary members in the city of Magelang are to optimize and utilize the available funds even though they are limited as well as possible to support implementation of supervision and development of all members of the Notary Public in the city of Magelang. Furthermore, by optimizing and utilizing existing facilities and infrastructure, even though they are limited, so that they can be used to support the implementation of supervision and guidance for all members of the Notary Public in the city of Magelang.

### 3.3. Procedure and Implementation of Sanctions Imposed by the Honorary Council and the Notary Supervisory Board Against Notaries Who Violate the Notary Code of Ethics In Magelang City

The Honorary Council and the Notary Supervisory Board in implementing and imposing sanctions on Notaries who violate the Notary code of ethics are still guided by the applicable laws and regulations, in this case the Notary Position Act and the Notary Code of Ethics. The same is true in the city of Magelang.

The supervision and implementation of the Notary Code of Ethics carried out by the Regional Honorary Council is carried out in the following ways:

At the first level, the Regional Management Association has a Regional Honorary Council. The Regional Honorary Council consists of 3 (three) members, namely the Chairperson, Deputy Chairperson and Secretary. Those who can be appointed as members of the Regional Honorary Council are ordinary members who have served as Notaries for at least 5 (five) years and extraordinary members (former Notaries), who always obey the association's regulations and applicable laws and regulations, are highly dedicated, meritorious and loyal and have a high sense of caring. The term of office of the Regional Honorary Council is the same as the term of office of the Regional Executive.

The Regional Honorary Council has the authority to provide and submit proposals and suggestions related to the Notary Code of Ethics and foster a sense of professional togetherness (*corpsgeest*) to the Regional Management, provide warnings, both in writing and orally directly to members in their respective regions who violates or commits acts that are not in accordance with



the Code of Ethics or contrary to the sense of togetherness of the profession notify about the violation to the Regional Management, Regional Management, Regional Honorary Council, Central Executive and Central Honorary Council; Then propose to the Central Executive through the Regional Honorary Council and the Central Honorary Council for the suspension of association members who violate the Code of Ethics<sup>3</sup>.

In resolving the violation of the Code of Ethics, the Regional Honorary Council may seek facts on its own initiative or after obtaining a written report or complaint from a member of the association or another person with sufficient and convincing evidence that a violation of the Code of Ethics has occurred. After receiving the complaint, the Regional Honorary Council is obliged to summon the person concerned to ascertain whether a violation has occurred and to provide an opportunity to provide an explanation and submit a defense. From these findings, a treatise is then made which is signed by the member concerned and the chairman and a member of the Regional Honorary Council. Within 30 days after the complaint is filed, the Regional Honorary Council is obliged to give a decision.

An appeal can be filed against the decision of the Honorary Council. After the application for an appeal is received within seven working days, the Regional Honorary Council shall summon the members who are appealed, to have their statements heard and given the opportunity to defend themselves in the session of the Regional Honorary Council. And within thirty working days, the Regional Honorary Council will issue a decision at the appeal level through its trial. Within seven working days after the session of the Regional Honorary Council has rendered its decision, the member requesting an appeal is entitled to accept the decision and the Regional Honorary Council is obliged to send a copy to the Regional Honorary Council, Regional Management, Regional Management and Central Executive of the Indonesian Notary Association.

Furthermore, against the decision of the Regional Honorary Council, if there is an objection to this decision, a request for examination at the final level by the member concerned can be submitted within thirty working days to the Central Honorary Council, a copy of which must be addressed to the Regional Honorary Council, the Central Executive, the Regional Manager and the Executive Board. Area.

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<sup>3</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

If the decision of the Regional Honorary Council is rejected by the Regional Honorary Council either partially or completely, the Regional Honorary Council must implement the decision of the Regional Honorary Council and notify the member concerned and to the Regional Management, Regional Manager and Central Honorary Council.

After receiving the application for the final examination within thirty working days, after the date of receipt of the decision on the imposition of sanctions from the Regional Honorary Council. The Central Honorary Council summons the members who submitted the examination to be asked for their statements and are given the opportunity to defend themselves in a session of the Central Honorary Council and within thirty working days through its session the Central Honorary Council gives a decision in the final examination and a copy thereof to the Regional Honorary Council, Regional Management and the Central Executive within seven working days after the Central Honorary Council makes a decision on the final examination, with or without the presence of the member requesting the examination.

In handling and resolving a case of violation of the Code of Ethics, the Regional Honorary Council must: continue to respect and uphold the dignity of the person concerned, always maintain a family atmosphere and also maintain confidentiality about everything that is found. Furthermore, regarding the sanctions that can be imposed on members of the Indonesian Notary Association in accordance with the Notary Code of Ethics as a result of the Extraordinary Commggress of the Indonesian Notary Association which will be held in Banten on 29-30 May 2015, it can be in the form of: reprimand, warning, temporary suspension from membership of the association, dismissal with respect from the association; and finally dishonorable dismissal from the association; The imposition of the above-mentioned sanctions against members who violate the Notary Code of Ethics is adjusted to the quantity and quality of the violations committed by the member.

The sanction of temporary dismissal of members of the Indonesian Notary Association who violates the Notary Code of Ethics of the Indonesian Notary Association can be imposed if the person concerned commits one or more acts such as committing acts that constitute a serious violation of the provisions of the Articles of Association, Bylaws, Code of Ethics and legal decisions of the association, commit acts that defame, harm, or demean the good name of the association and lastly, misuse the name of the association for personal gain.

A member who is temporarily dismissed can be permanently dismissed from the Association's membership if based on a congressional decision is found guilty. Based on the decision of the Congress, the Central Executive makes a decision on the dismissal of the member and the decision is reported by the Central

Executive to the Minister in charge of the Notary position in this case the Minister of Law and Human Rights, the Central Supervisory Council, Regional Supervisory Council and Regional Supervisory Council and other agencies that in the opinion of the Central Board, it is necessary to obtain a report.

The sanction of dismissal imposed on a Notary who violates the Code of Ethics is not in the form of dismissal as a Notary but dismissal from the membership of the Indonesian Notary Association, so that even though the Notary concerned has been proven to have violated the Code of Ethics, the Notary can still carry out his duties and authorities as a Notary. Thus, the sanction in the form of dismissal from the membership of the Association will certainly not have an impact on the Notary concerned. The imposition of such sanctions does not immediately terminate the position of the Notary concerned because the only one authorized to dismiss and fire a Notary from his position is the Minister who appoints him in this case is the Minister of Law and Human Rights after receiving a report from the Supervisory Council.

#### **4. Conclusion**

The implementation of the Notary Code of Ethics in carrying out the profession and position of a Notary as a public official in the city of Magelang is currently running well, as evidenced by the absence of cases of violations of the Notary Code of Ethics that occurred in the city of Magelang. Implementation of the supervision of a Notary in carrying out the profession and position of a Notary as a public official in the city of Magelang has been going well, however, in order to carry out the supervision, it turns out that there are still obstacles that need to be overcome, namely limited funds to carry out supervision, the absence of facilities and infrastructure. adequate infrastructure to support the implementation of supervision, and the limited time of the management and members of the Supervisory Council and the Notary Regional Honorary Council due to busy duties and main work as a Notary and other jobs. To overcome these obstacles, it is necessary to take steps, namely by utilizing and optimizing the limited funds as well as possible. Procedures and implementation of sanctions against Notaries who are suspected of violating the Notary Code of Ethics are still carried out by referring to the laws and regulations and other regulations that have been stipulated. The implementation of the sanction is not carried out immediately but through a predetermined procedure both at the time of summons and examination. The call is made to listen information, explanation or defense of the person concerned. The member concerned can also appeal against the decision that has been determined, after submitting an appeal the decision is final, but if the person concerned does not appeal within the allotted time, the decision is considered final.

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