

## The Implementation of the Notary Code of Conduct in Realizing Quality Notary Services

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**Abstract.** *Notary is a public official who is authorized in making authentic deeds. As an official appointed by the government, a notary has the duty to provide good service to the community. In the duties of a Notary, it is regulated by several laws and regulations, especially the Law on Notary Positions and the Notary Code of Ethics. The method used in the preparation of this thesis is a sociological juridical method, namely research conducted by observation, collecting data from both the literature and interviews. The results of the study stated that 1) The implementation of the Notary Code of Ethics in realizing the quality of quality Notary services in the City of Rembang is as a basis, benchmark, reference and guideline / benchmark in every act, attitude and behavior in the duties of a notary position. The provisions contained in the notary code of ethics contain obligations and prohibitions for notary positions to regulate so that notaries do not violate mutually agreed rules. 2) Barriers & solutions to the implementation of the Notary Code of Ethics in realizing quality Notary services in the City of Rembang is the less than optimal role of Notaries, Regional Honorary Councils and the Community in Rembang City in realizing quality Notary services. The solution to the three obstacle factors is to work together in carrying out the roles of each individual/group in accordance with the applicable law so as to realize quality Notary services in the City of Rembang. solutions to the implementation of the Notary Code of Ethics in realizing the quality of Notary services in the City of Rembang is the less than optimal role of Notaries, Regional Honorary Councils and the Community in Rembang City in realizing the quality of Notary services. The solution to the three obstacle factors is to work together in carrying out the roles of each individual/group in accordance with the applicable law so as to realize quality Notary services in the City of Rembang. solutions to the implementation of the Notary Code of Ethics in realizing the quality of Notary services in the City of Rembang is the less than optimal role of Notaries, Regional Honorary Councils and the Community in Rembang City in realizing the quality of Notary services. The solution to the three obstacle factors is to work together in carrying out the roles of each individual/group in accordance with the applicable law so as to realize quality Notary services in the City of Rembang.*

Keywords: Code; Ethics; Notary.

## 1. Introduction

Indonesia is a state of law. This is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads "Indonesia is a state based on law". This affirmation of the constitution means that all aspects of life in society, statehood and government must always be based on law. Indonesia as a rule of law guarantees certainty, order and legal protection for every citizen. The existence of authentic written evidence is a form of providing legal certainty in matters regarding acts, agreements, stipulations, and legal events made or by authorized officials, in this case by a notary.

A notary is an official who makes authentic deeds as stated in Act No. 2 of 2014 regarding amendments to Act No. 30 of 2004 concerning the Position of Notary. The duties and authorities of a notary as a maker of authentic deeds have a very big role in realizing legal certainty and public protection. This is because an authentic deed is a perfect proof of an act and or a certain legal event.<sup>1</sup>

The notary's task is to regulate in writing and authentically the legal relationship between the parties who have entered into a consensus agreement using the services of a notary, which in essence provides legal certainty for the agreements that have been agreed upon. Here it is clear that a notary is a position that is free from the influence of any pressure, but has strong legal certainty, because of that in every grosse deed, a certain deed always includes the sentence "For the sake of Justice Based on Belief in the One and Only God".

The urgent position of a Notary in human life makes the process of someone who wants to become an expert Notary become important. Therefore, in notary education, notary ethics are also considered. So in this case it is emphasized that a professional education without education regarding professional responsibility and ethics is not complete. In the field of law, technical skills that ignore aspects related to the responsibilities entrusted to them and their profession in general, as well as ethical values and standards that should guide them in carrying out their profession, will only become skilled workers in the field of law and their profession.<sup>2</sup>

Notary as a Public Official, according to Article 1 point 1 Act No. 30 of 2004 jo. Act No. 2 of 2014 states that the main task of a Notary is to make authentic deeds. Meanwhile, an authentic deed according to Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) is a deed in the form determined by

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<sup>1</sup>Tan Thong Kie, 2000, Book I Notary Study All-Purpose of Notary Practice, cet. 2, Van Hoeve's New Ihtiar, Jakarta, p. 157

<sup>2</sup>Darji Darmodiharjo and shidarta, 2004, Fundamentals of Legal Philosophy, What and How Indonesian Legal Philosophy, Jakarta: PT Gramedia Pustaka Utama, p.265.

law, made by or in the presence of public officials in charge for that at the place where the deed is made. This gives the understanding that the Notary because of the law is given the authority to create an absolute means of proof, in the sense that what is stated in the authentic deed is basically considered true.<sup>3</sup>

Notaries are also required to have high moral values, because with high morals the Notary will not abuse the authority that is in him, so that the Notary will be able to maintain his dignity as a public official who provides services in accordance with applicable rules and does not damage the Notary's image itself. As is the hope of all of us or the nation, that every Notary has sufficiently broad and in-depth knowledge and skills so that they are the mainstay of the community in designing, compiling and making various authentic deeds, so that the arrangement of language, technical juridical is neat, good and correct, because in addition to this expertise is needed as well as honesty or sincerity and objective characteristics or views.<sup>4</sup>

The profession of a notary is a public official who, in carrying out his duties, is bound by statutory regulations and a professional code of ethics. The notary's code of ethics is a moral principle determined by the Indonesian Notary Association (INI) based on a congress decision of the association and/or determined and regulated in laws and regulations governing the code of ethics of the notary profession, must be obeyed by every member who is bound by the association.

The Notary's Code of Ethics is under the regulation of the Minister of Law and Human Rights Number 62 of 2016 concerning Regulation of the Minister of Law and Human Rights Number 25 of 2014 concerning Requirements and Procedures for Appointment and Termination and Extension of Notary Office. The Notary Code of Ethics is a moral principle determined by the Indonesian Notary Association (INI) based on a congressional decision of the association and or determined and regulated in laws and regulations governing the code of ethics of the notary profession, must be obeyed by every member who is bound by the association.

Notaries in their profession who provide services to the public should behave according to applicable regulations. Notaries have an obligation to guarantee the truth of the deeds they make, therefore notaries must be more sensitive, honest and fair in making a deed.

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<sup>3</sup>R. Soegondo Notodisoerjo. 1993, Notary Law in Indonesia An Explanation, PT. Raja Grafindo Persada, Jakarta, p.8.

<sup>4</sup>Komar Andasasmita, 1981, Notary With History, Role, Duties, Secrets of His Position, Well, Bandung, p14.

With the existence of laws and regulations and the Code of Ethics, it is hoped that Notaries in the city of Rembang can implement the Notary Code of Ethics in order to improve the quality of their services to people who need their services. The quality of service is not only assessed from obedience to a Notary to comply with and at the same time enforce the applicable rules and code of ethics, but what is most important here is the professional skills possessed by a Notary as follows:<sup>5</sup>

- a. Must refer to expertise supported by high knowledge and experience
- b. Have moral integrity, in the sense that all moral considerations must underlie professional duties.
- c. Pointing to honesty and not only to a second or third party, but also to himself;
- d. In carrying out his duties and positions, a Notary may not be solely motivated by considerations of money, may not be discriminatory. Professional notaries must uphold the professional code of ethics. harmonized with societal values, the values of courtesy and religion that grow in society

## **2. Research Methods**

Method, is a process of principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a symptom to increase human knowledge, the research method can be interpreted as a process of principles and procedures for solving problems encountered in conducting research. The research method in every legal research is to describe the procedures for how a research must be carried out. Here the researcher determines what method will be applied, the source and type of data used, how the data collection will be carried out and the analysis used. A researcher before conducting research is required to master and be able to apply good legal research methods.

## **3. Results and Discussion**

### **3.1. Implementation of the Notary's Code of Ethics in Creating Quality Notary Services in the City of Rembang**

Notary is a profession that is created indirectly from the results of interactions between communities which then develops in meeting the needs of the community itself. Notary as a public official who is authorized to carry out some state duties, he does not only work for his own interests, but he is also required to be responsible for meeting the need for services and services to the public

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<sup>5</sup>E. Sumaryono, *Ethics of the Legal Profession*, Kanisius: Yogyakarta, 1995, p.35.

guided by the Code of Ethics. Thus, a notary in carrying out his duties and positions is required to be independent, not dependent on anyone, impartial in view of social status or degree of a person and have freedom because he stands alone (unpartiality and independence).<sup>6</sup>

Notary behavior must be based on the Notary Code of Ethics. The Notary Code of Ethics regulates the provisions that must be obeyed and complied with by a notary, both in terms of carrying out his position and in matters outside of carrying out his position. Enforcement of the code of ethics in terms of the application of professional ethics by a notary, the main reference is the integrity and commitment of a notary, in order to maintain and maintain the image of the notary profession itself.

Ethics is an indication of how humans should behave or behave in both their personal and social lives. These ethics include regulations regarding religion, decency, local laws and customs. Professional ethics is an attitude of life in carrying out their duties and positions as a professional carrier, namely in this case the notary profession. Notaries must have good morals to carry out their work in accordance with professional ethics, because the public cannot know and judge anything and how a notary should behave in carrying out his profession. Therefore, notaries need objective guidelines for good attitudes and behavior, which are embodied in a set of rules or norms that must be obeyed both in writing and in writing.

The existence of a relationship between the code of ethics and the Law on Notary Position gives meaning to the notary profession itself. The Notary Position Law and the notary code of ethics require that a notary in carrying out his duties as a public official, in addition to having to comply with the Notary Position Law, must also comply with the professional code of ethics and be responsible to the community he serves, professional organizations, namely the Notary Association. Indonesia and against the country. With this relationship, a notary who ignores the dignity of his position, apart from being subject to moral sanctions, being reprimanded or dismissed from his professional membership, can also be dismissed from his position as a notary.<sup>7</sup>

Examples of cases found by the Regional Ethics Council of the City of Rembang regarding violations committed by a notary include:

1. There is a greeting on the Flower Board addressed to the Bank and agencies, stating the position of notary. After the Regional Ethics Council conducted an examination, several of the notaries referred to admitted that the Bunga Boards were not from a notary, but from the Bank itself or another agency.
2. As a result of competition between notaries in order to compete for clients, this notary lowered the honorarium for the deed to below the fair price. With

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<sup>6</sup>Herlien Budiono, 2007, Collection of Civil Law Writings in the Notary Field. Bandung: PT Citra Aditya Bakti. p. 22.

<sup>7</sup>Based on an interview with p. Mochamad Al Hilal, SH., M.kn on Monday 13 December 2021

the flood of offers of cooperation, the service user lowers the honorarium standard for the deed. They said that other notaries offered lower fees.<sup>8</sup>

If elaborated more thoroughly through a code of ethics, the following benefits can be achieved:<sup>9</sup>

1. Avoiding elements of unfair competition among members of the profession. The Code of Ethics contains professional morality, limits on permissibility and prohibitions for members and possible choices that must be made in the event of a dilemma in the implementation of their profession.
2. Ensure solidarity and collegiality among members to respect each other. This attitude of solidarity will create a life of brotherhood among members of the profession. By having a pattern of collegiality, it can be ensured that the profession and its members are able to avoid interference from third parties or other parties in practicing their profession.
3. Obligation to prioritize the interests of service to the general public/public. The existence of demands for optimal service in the code of ethics must implicitly encourage honesty and personal self-skills for members of the profession to continue to add skills in their fields. This obligation guarantees the material satisfaction of the bearer of his profession.
4. The professional code of ethics requires its members to work openly and transparently in practicing their professional expertise. Professional moral responsibility is carried out in addition to one's own conscience and morality, also to the wider community. With this meaning, a profession in carrying out professional expertise is avoided from discourse of deception and lies to the public. However, regarding personal secrets that must be upheld by a professional because the position determined by law is obligatory not to be published.

Service procedures are things that must be known and understood by the community so that the implementation of services can be carried out properly and smoothly. From the results of interviews that the author has conducted in the field regarding Service Quality at the Notary-PPAT Office in Rembang City, it can be said that the entire procedure is easy to understand and not complicated. There are several that explain what is needed and what requirements must be brought and in accordance with predetermined procedures so that applicants get what they want.<sup>10</sup>

To see the Quality of Service at the Notary Office of H. Mochamad Al Hilal, SH., M.kn in Rembang City the authors use service quality indicators including:

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<sup>8</sup>Based on an interview with the Chairperson of the Regional Honor Council for the City of Rembang, Emy Suryanti, SH., M.Kn on Tuesday, December 14, 2021.

<sup>9</sup>I Gede AB Wiranata, 2005, *Fundamentals of Ethics and Morality (Introduction to the Study of Legal Profession Ethics)*, Bandung: Citra Aditya Bakti, p. 254-255.

<sup>10</sup>Based on an interview with p. Mochamad Al Hilal, SH., M.kn on Monday 13 December 2021

1. Adjustment of service standards
2. Adjustment of understanding standards
3. Understand the client's wishes
4. Appropriate and relevant services

In this case the service is able to meet the profession, expectations and needs of individuals or society. Who can try to listen to and understand the needs of the community, observe people's behavior, and devote their full attention to the community.<sup>11</sup>This is also included in the service objectives, including the following:

1. To provide high quality service to clients.
2. To create trust and satisfaction to clients.
3. To keep clients feeling cared for and satisfied with clients.

As quoted by Barnes (2003:64). Richard Oliv argues that quality is the customer's response to a special form of an item or service, providing a level of comfort associated with fulfilling a need, including fulfilling below or exceeding customer expectations.

In providing services to clients or parties who come before him, a notary must behave ethically based on his professional ethics. Notaries must work professionally, be independent, be impartial and depend on anyone, and be independent. A notary is required to be able to maintain the dignity of the notary profession in accordance with conscience in providing services to the public.

The notary's code of ethics has a very important role for a notary, namely as a basis, benchmark, reference and guide/benchmark in every action, attitude and behavior in the duties of a notary's position. The provisions contained in the notary's code of ethics which contain obligations and prohibitions for the position of a notary that contains ethical or moral values, because it is very important and influential for the continuity of the position and performance of a notary, for this reason the notary must be responsible for the existence of a notary's code of ethics, namely by always obeying and applying the code of ethics in the sense of carrying out its obligations and avoiding the restrictions in the duties of a notary.<sup>12</sup>

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<sup>11</sup>*ibid.*

<sup>12</sup>*ibid.*

Based on the Authority Theory, for Notaries who violate the Code of Ethics, the Regional Ethics Council can impose sanctions on the violator, in the form of: Reprimand, Warning, Schorzing (temporary dismissal), and dismissal from association members, in my opinion, is good.

Reviewed with the theory of the legal system which is divided into legal structures, namely the handling of violations of the Notary's Code of Ethics at the Regional/City level in Rembang is delegated to the Regional Honorary Council which is deemed appropriate. Legal Substance, that is, a Notary who violates the Code of Ethics will be subject to sanctions by the Regional Ethics Council as appropriate. Legal Culture, namely the Community in taking the role as a reporter if there is a violation of the Notary's Code of Ethics is considered good. Reviewing the Theory of Justice, namely the handling process for violations of the Notary Code of Ethics does not differentiate Notary status as junior or senior, in my opinion this is fair enough.

### **3.2. Obstacles & Solutions to Implementing the Notary's Code of Ethics in Realizing Quality Notary Services in Rembang City**

The area of Rembang Regency is 101,408 ha or 1014.08 km<sup>2</sup>, is an area that has a population of 633,584 people, with the formation of 17 notaries.<sup>13</sup> The increasing number from year to year can lead to competition among Notaries in getting clients, so it is possible that there will be frictions and violations that lead to violations of the Notary's code of ethics. This number is also one of the factors in the guidance and supervision of Notaries in the City of Rembang, which are not running smoothly.

The code of ethics is the values and moral norms that legal professionals must pay attention to and carry out. In order for the professional code of ethics to function properly, its implementation is continuously monitored.<sup>14</sup> For this reason, the role of the Regional Honor Council at the City or Regency level is in charge of coaching, guiding, supervising the improvement of notary members in alleged violations of the provisions of the Notary Code of Ethics.

Based on an interview with the Chairperson of the Regional Ethics Council for the City of Rembang, Mrs. Emy Suryanti, SH, M.Kn, stated that there were violations of the Notary Code of Ethics that came from reports by fellow Notaries, reports from the public and based on findings from the Regional Honorary Council.<sup>15</sup>

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<sup>13</sup> <https://www.inijateng.org/pengda-34> accessed Tuesday 30-11-2021 at 18.30

<sup>14</sup> *Ibid*, p. 73.

<sup>15</sup> Based on an interview with the Chairperson of the Rembang City Regional Honor Council, Emy Suryanti, SH., M.Kn on Tuesday, December 14, 2021.



Sanctions that will be imposed for violations of the code of ethics are reprimands, warnings, schorsing (temporary dismissal) from association membership, onzeting (dismissal) from association membership, and dishonorable discharge from association membership. Furthermore, the Chairperson of the Regional Honorary Council of the city of Rembang, explained that before imposing sanctions, the Regional Honorary Council will conduct an examination regarding violations of the Code of Ethics by a Notary, namely:<sup>16</sup>

1. Examining and analyzing reports of violations of the Code of Ethics
2. Gathered Members of the Regional Honorary Council of the City of Rembang
3. Deciding whether or not to summon the reported party
4. Making Minutes

The handling process if a report is found about a Notary who does not carry out his duties & position thereby violating the Notary Code of Ethics:

Based on an interview with the Chairperson of the Regional Honorary Council for the city of Rembang, Mrs. Emy Suryanti, SH, M.Kn stated that the application of sanctions for notaries for violating the Code of Ethics is:<sup>17</sup>

1. If the violation is not too serious then through a warning letter
2. It is classified whether the violation is civil or criminal
3. If it is civil, it is resolved through court
4. If it is a crime, it is first delegated to be examined by the Notary Honorary Council

If the violation involves members of the notary public, efforts are made to resolve it by consensus and peace.

The code of ethics is difficult for notaries to enforce, because the sanctions contained in the code of ethics are felt to be less stringent. So many violationsviolations of the Notary Code of Ethics committed by notaries, and the rules of the code of ethics are like speed bump rules which are like only to frighten those who have no power. Due to the lack of supervision and control,

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<sup>16</sup>*ibid.*

<sup>17</sup>Based on an interview with the Chairperson of the Rembang City Regional Honor Council, Emy Suryanti, SH., M.Kn on Tuesday, December 14, 2021.

the application of sanctions that are less strict cannot provide a deterrent effect for notaries.

**Obstacles to the Implementation of the Notary Code of Ethics in Realizing Quality Notary Services in Rembang City, namely:**

- a) The first obstacle is that the Notary in Rembang City, in carrying out his Duties & Positions, is not guided by the Law on Notary Position and the Notary Code of Ethics, so that during his term of office he often violates the Notary Code of Ethics.
- b) The second obstacle is that the Regional Honorary Council in Rembang City as the supervisor and executor of sanctions to Notaries who violate the Notary's Code of Ethics is still in the form of "Reprimands" considered to be less firm in imposing sanctions/punishments.
- c) The third obstacle is that the community in Rembang City has a less role in supervising Notaries who violate the Notary's Code of Ethics. For example, when on the street you see/find a billboard that says the real name & address of a notary's office that is not located at the notary's office, being indifferent/silent and not reporting the matter to the person concerned (Regional Honorary Council) in Rembang.

**3.3. The Solution to the Implementation of the Notary's Code of Ethics in Creating Quality Notary Services in the City of Rembang**

Solutions to the Implementation of the Notary Code of Ethics in Realizing Quality Notary Services in the City of Rembang, namely:

1. The first solution is that a Notary in Rembang City in carrying out his duties & positions must be guided by:
  - a. Act No. 2 of 2014 concerning changes to Act No. 30 of 2004 concerning the Position of Notary
  - b. Regulation of the Minister of Law and Human Rights Number 62 of 2016 concerning Requirements and Procedures for Appointment, Dismissal and Extension of Notary Office with full responsibility and trust.The Notary's Code of Ethics regulates that Notaries do not violate the mutually agreed rules so that there is no violation of the Notary's Code of Ethics.
2. The second solution is that the Regional Honor Council in Rembang City is expected to be firm in imposing sanctions on notaries who violate the notary's code of ethics. Firm here means being able to provide the best solution in providing guidance to Notaries who violate the Notary's code of ethics. So far, the weak sanctions against Notaries who violate the Notary's Code of Ethics have made enforcement of the Notary's code of ethics not maximal, as evidenced by the many violations against the Notary's Code of Ethics in Rembang.

3. The third solution is that the role of the community is needed to monitor and always report the actions of a notary who is carrying out his duties to the local

regional honorary council. With a report like this, it can eliminate the actions of a notary that is not in accordance with the legal provisions of the implementation of the duties of a notary.

**Related to the results of the research above according to the author studiedwith:**

Examined by the Authority Theory, namely the Regional Ethics Council in Rembang City has the authority to supervise and impose sanctions/punishments on Notaries who violate the Notary Code of Ethics, in my opinion it is appropriate.

Reviewed with the Theory of the Legal System which is divided into Legal Structures, namely the Notary Honorary Council in Rembang City in imposing sanctions/punishments against Notaries who violate the Notary Code of Ethics in the form of "Reprimands" in my opinion, they are not strict in imposing sanctions. The legal substance, namely the Notary in Rembang City, in carrying out his duties & position, is guided by the Law on Notary Position and the Notary Code of Ethics, in my opinion, is appropriate. Legal Culture, namely Community Participation in Rembang City in supervising Notaries who commit violations, in my opinion, is still lacking.

Reviewing the Theory of Justice, namely the handling process for violations of the Notary Code of Ethics does not differentiate Notary status as junior or senior, in my opinion this is fair enough.

**4. Conclusion**

The implementation of the Notary's Code of Ethics in realizing the quality of quality Notary services in Rembang City is as a basis, benchmark, reference and guideline/standard in every action, attitude and behavior in the duties of a notary's position. The provisions contained in the notary's code of ethics which contain obligations and prohibitions for the position of a notary to regulate that notaries do not violate the mutually agreed rules. Obstacles & solutions to the Implementation of the Notary Code of Ethics in realizing quality Notary services in Rembang City are the less than optimal roles of Notaries, Regional Honor Councils and the Community in Rembang City in realizing quality Notary services. The solution to these three inhibiting factors is to work together in carrying out the roles of each individual/group in accordance with applicable laws so as to realize quality Notary services in Rembang City.

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