

Repositioning the Notary Code of Ethics as a Fair Legal Instrument

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Abstract: This study aims to examine and find out the nature of the notary code of ethics as an equitable legal instrument, to review, find and explain the realization of ideal ethical norms, to review and offer the formulation of ideal Notary Ethics Codes. This type of research is normative juridical. The approach used is approach to legislation approach, conceptual approach, and comparative approach. The results of the study indicate that the nature of the Notary Code of Ethics is a moral principle so that the notary in carrying out his position is prevented from all forms of deviation. The notary code of ethics serves as a guideline to remain professional in carrying out their duties as a public official. With the notary code of ethics it will be well directed and will continue to improve so that in making authentic deeds really guarantees the community in terms of obtaining legal certainty

Keywords : Notary code of ethics, Legal instruments

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I. INTRODUCTION

A notary is a public official authorized to make authentic deeds insofar as the making of an authentic deed is not specific to other public officials. The making of authentic deeds is required by law in order to create certainty, order and legal protection. In addition to the deed made by or before a notary, not only because it is required by legislation, but also because it is desired by interested parties at once, for the community as a whole. Authentic deeds in essence contain formal truth in accordance with what the parties notified the Notary, but the Notary has the obligation to include that what is contained in the Notary Deed is truly understood and in accordance with the wishes of the parties by reading it so that the contents of the Notary deed becomes clear.

We can see the basis of its authority in Article 1 of the Notary Position Regulation, Ordinance of the Statute of the Republic of Indonesia 1860 Number 3 which came into force on 1 July 1860 as follows:

“A notary is a public official whose sole authority is to make authentic deeds regarding all acts, agreements, and stipulations required by a general regulation or interested parties to be stated in an authentic deed, guarantee the date, save the deed and give a grosse, copies, and quotations, all as long as the deed is made by a general rule not also assigned or excluded to officials or other people”

The implementation of the duties and positions of the Notary must always be based on a high integrity and honesty from the Notary himself because the results of his work in the form of deeds and maintenance of protocols are very important in the application of evidentiary law, namely as authentic evidence that can concern search interests justice both for personal interests and the interests of a business, the implementation of duties and positions of Notaries must be supported by a moral intention that can be accounted for. As a logical consequence, along with the notary's responsibility to the community, there must be guaranteed continuous supervision and guidance so that the task of the Notary is always in accordance with the legal principles that underlie his authority and can avoid misuse of authority or trust given.

In order to improve the quality of the notary profession, the Indonesian Notary Association as the only notary organization can establish and enforce the notary code of ethics, this can be seen in Article 83 of the UUNJ.

The Indonesian Notary Association in establishing and enforcing the Notary Code of Ethics has compiled and stipulated a Notary Code of Ethics that has been determined by the Association. As for the scope of the notary code of ethics applies to all members of the Association and other people who hold and carry out Notary positions both in carrying out their positions and daily.

In the Notary Code of Ethics regulating obligations, prohibitions, and exceptions in addition to regulating these matters, it is also regulated regarding sanctions and procedures for enforcing notary codes of

ethics¹. To enforce the notary code of ethics of the Honorary Board of Notaries as a means of assembling equipment as an entity or institution that is independent and free from partisanship in the Association which is responsible for:

- a. Conduct coaching, guidance, supervision, improvement, members in upholding the code of ethics;
- b. Examine and make decisions on allegations of violations of the provisions of the Code of Ethics that are internal or that have no connection with the interests of the community directly;
- c. Provide advice and opinions to the Supervisory Board for alleged violations of the code of ethics and the position of the notary.

Based on the description above, it can be explained that the Honorary Board of Notaries as a means of association can take a decision on the alleged violation of the internal code of ethics. But the violation of the internal code of ethics is not clearly explained so that between the two institutions that have the same authority in order to enforce the notary code of ethics will give rise to uncertainty in the community to obtain perfect evidence.

Therefore looking at the current conditions, the large number of violations of the notary code of ethics will certainly give birth to distrust of the public in using the services of a notary so that it will allow the existence of a notary as public officials to no longer be used by the public.

Based on this background the need for a new concept in the Notary Code of Ethics so that a common ideal was born to create a professional notary. Based on the above, this is what the writer will reveal in this study related to the contribution of a notary code of ethics as a fundamental norm to adhere to by a notary.

II. STATEMENT OF THE PROBLEM

1. What is the nature of the Notary Code of Ethics as a just legal instrument?
2. Have the Notary Code of Ethics Norms made the ideal norm?
3. What is the ideal formulation of the Notary Ethics Code?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. State Law Theory

The concept of the Rule Of Law state is the concept of the state that is most considered ideal at this time, even though the concept is carried out with different perceptions. The term Rule Of Law in Indonesian is often also translated as “rule of law” or “government based on law”. Besides that the term legal state is also the term used for it.²

Ann Van Wynen Thomas states that the views of legal philosophers on the rule of law can be grouped into three categories:³

1. The view that law is nothing but the arrangement of the authorities to resolve legal relations, which are carried out in accordance with the will and power of the authorities. Therefore, the concept of the rule of law in this sense has never had a mission to limit activities, power, and sovereignty state officials.
2. The view that the rule of law is not only an arrangement of the authorities to resolve legal relations, but also accepts regulation and restrictions on the duties of authority.
3. A view that views the rule of law as a consensus from the community for order according to moral principles and justice.

2. Legal Purpose Theory

According to its function, the rule of law can be divided into two:

- a. Material law (*materieel recht*) is a rule - a rule of law that regulates legal relations between people who determine rights and obligations, orders and prohibits various acts to the mastermind in the community.
- b. Formal law (*formeel recht*) is a rule of law that regulates how to maintain the material legal rules. Maintaining or implementing material law in the State of law is a certain way, the legal way is by law.⁴

The purpose of the law is to maintain and guarantee order (certainty) and order. Without order and orderliness of a reasonable human life is indeed impossible, one cannot develop his talents without certainty and order. Viewing the law abstractly or formally is indeed true.⁵ Based on the description above, the purpose of law is a means created by an authorized official (legislative) to make regulations that provide benefits, justice and legal certainty for the community.

¹ See Notary Code of Ethics Article 3, Article 4, Article 5, Article 6, Article 7.

² Munir Fuady, SH., MH., LL.M., *Modern Theory of State Law (Rechstaat)*, Bandung: PT. Rheika Aditama, 2011, p. 1.

³ *Ibid.*, p. 5.

⁴ Hartono Hadisoeparto, *Introduction to Indonesian Law*, Liberty, 2015, p. 35.

⁵ Mochtar Kumaatmadja, *Introduction to Law*, Bandung: Alumni, 2000, p. 49.

3. Ethical Theory

According to Hook, ethics is related to human moral choices. Ethical conditions are the choice between good and bad; sometimes there is also a choice between vices. In the process of making a decision to choose that lies an ethical situation.⁶

Ethics is a branch of philosophy that speaks of moral values and norms that determine human behavior in his life. As a branch of ethical philosophy, it strongly emphasizes a critical approach in seeing and emulating these moral values and norms as well as problems that arise in relation to moral values and norms. Ethics is a critical and rational reflection on moral values and norms that determine and manifest in attitudes and patterns of behavior in human life, both personally and as a group.⁷

Ethics emphasizes his discussion on the constitution about the good and bad of human behavior. Man can be called good, wise and wise when there are normative provisions that formulate that it is contrary to ethical messages. Likewise, a person can be called violating ethics when previously in the ethical rules do mention that.

4. Justice Theory

There are many views of legal experts regarding the notion of justice, both domestic and foreign experts as follows:

- 1) Understanding of justice according to Aristotle who argues that justice is an action that lies between giving too much and also a little that can be interpreted is to give something to everyone according to the member what is his right.
- 2) The definition of justice according to Frans Magnis Suseno who expressed his opinion regarding the notion of justice is the situation between people who are treated equally, in accordance with their respective rights and obligations.
- 3) Understanding justice according to Thomas Hubbes who argues that the notion of justice is something that is said to be fair if it has been based on an agreement that has been agreed upon.
- 4) The definition of justice according to Plato stated that the notion of justice is beyond the capabilities of ordinary people, where justice exists only in a law and also legislation that is carried out by experts.
- 5) Understanding of justice according to W.J.S Poerwadarminto who argues that the notion of justice is not biased which means balanced and should not be arbitrary.
- 6) Understanding of justice according to Notonegoro who argues that justice is a condition that is said to be fair if in accordance with applicable legal provisions.

The theory of legal justice is defined as operational theory, the rationale for which refers to the task of judges who receive, examine, hear and decide a matter must be in accordance with applicable legal provisions with an analysis of priority legal objectives to be realized. Or as opposed to the teachings of justice without law, such as street justice (street justice), which is practiced in the story of the famous judge Bao from mainland China or the executors of the streets who move on orders from those who pay.

John Rawls emphasizes that freedom and equality should not be sacrificed for social or economic benefits, however great the benefits can be obtained from that point of view. One equal treatment for all members of the community accommodated in regulative justice, actually contains an acknowledgment of freedom and equality for all. This recognition shows that there is a fundamental social awareness that freedom and equality are values that cannot be sacrificed. The justice theory of John Rawls which is essentially crystallized in two formulations of justice which he calls the first principles of justice actually stems from a more general concept of justice formulated as follows.

The term norm originating from Latin, in Arabic is called a rule, and in Indonesian it is often referred to as a guideline, benchmark, or rule. The initial meaning is interpreted by a right angle, that is, a perpendicular line that becomes a measure or benchmark to form a desired angle or line. In its development, norms are interpreted as a measure or benchmark for someone to act or behave in society. So, the core of a norm is all rules that must be obeyed. Until now, both the norms and norms were used simultaneously by Indonesian scholars.⁸

According to A. Hamid S. Attamimi⁹ norms are rules, patterns, or standards that need to be specified. Norms are guidelines for life which are guidelines, benchmarks, or measures for behaving appropriately in the association of life with the community.

⁶ Abdul Aziz, *Building Bureaucratic Ethics*, *Jurna Buana Unisma*, 2005.

⁷ Burhanuddin Salam, *Social Ethics Moral Principle in Human Life*, Jakarta: Rineka Cipta, 1997, pp. 13-14.

⁸ Mariah Farida Indrati, *Legislative Science 1 (Types, Functions, and Content Materials)*, Yogyakarta: Kanisius Publishers, 2007, p. 18.

⁹ Ni'matul Huda & R. Nazriah, *Theory and Testing of Legislation*, Bandung: Nusa Media Publishers, 2011, p. 32.

In addition, values are also related to expectations, aspirations and everything through internal (inner) human considerations. For these values to be more useful in guiding human attitudes and behavior, it needs to be more concrete and formulated to be more objective so that it makes it easier for humans to describe it in a concrete manner. Then a more concrete form of that value is a norm.¹⁰

5. Supervision Theory

Surveillance term according to W. Van Hove¹¹ in Dutch “Controle” which means inspection. The controlling function has 2 (two) equivalents namely supervision and control. Supervision here is supervision in a narrow sense as all efforts, or activities to find out and assess the actual reality about the implementation of tasks, or the work of the understanding is more “Forceful” than supervision, namely as any effort or activity to know, and assess the actual reality regarding implementation task or activity, is it appropriate or not. The control of a business or activity to guarantee and direct the implementation of tasks or work to run accordingly.¹²

Theoretically, the understanding of supervision can be distinguished namely “Control as Command,” “Control as Influence” and “Check” (ex ante, dumque and ex post).¹³ Harjono Sumosudiro, (et al). Interpreting supervision as an effort to maintain that a work can be carried out in accordance with a predetermined plan, and with supervision can minimize the emergence of obstacles, while the obstacles that have occurred can be immediately known which can then be carried out actions- action corrections.¹⁴

Bohari¹⁵ defines supervision as an activity to obtain certainty whether an implementation of work / activities is carried out in accordance with the plans, rules and objectives that have been set.

Supervision is intended solely to prevent irregularities in carrying out notary duties, so supervision is expected to be effective, (1) stopping or eliminating errors, irregularities, fraud, waste, obstacles, and injustices; (2) preventing the recurrence of mistakes, irregularities, fraud, waste, obstacles, and injustice; (3) get better ways to achieve goals in carrying out their main tasks and functions effectively.

When connected with the supervision of a Notary, both in the implementation of the position and the ethics and behavior of the notary, it can be seen that the general understanding of supervision is still relevant, the first reason: the general supervision target of the notary public is the notary public authority to produce authentic certificates legal certainty products. Second, that the Act of Notary Position and Notary Ethics Code are norms to limit every notary to not making irregularities so as to provide benefits to people’s welfare. Third, there is a match between the actions and benchmarks that have been set, fourth, if there are signs that there will be a deviation from the benchmark, preventive measures can be taken.

Furthermore, supervision can be carried out in the form of preventive and repressive supervision. Preventive supervision is supervision carried out before an action in supervision is carried out before an action in the implementation of an activity is carried out. If in preventive supervision it is known that an action to be taken turns out to deviate from the provisions, then such action should not be carried out. So the existence of preventive supervision is intended to prevent irregularities in the implementation of activities. Preventive supervision is generally not carried out by predetermined supervision units. Preventive supervision is usually in the form of procedures that must be taken in carrying out activities. By taking the procedures that are supposed to, and which have been determined means preventive supervision has been carried out.

Besides that, according to Harjono Sumosudirjo in Laode Husen¹⁶ can also be referred to as preventive supervision are provisions that aim:

- a. Prevent the occurrence of actions that deviate from the basis that have been tested
- b. Providing guidance for the implementation of effective and efficient activities
- c. Determine the goals or objectives to be achieved, and
- d. Determine the authority and responsibility of various agencies in relation to the tasks that must be carried out.

Based on the description above, the supervision carried out by the Notary Supervisory Board in violating the notary’s office is internal. The supervision carried out by the Notary Honorary Board on ethics and behavior of notaries is external in nature that aims to maintain and uphold honor. The nobility, dignity and

¹⁰ Ida Bagus Putu Kumara Adi Adnyana, Relationship between Value, Principle, Law and Legal Norms in Formation and Legislation, (*Paper*) access on 28 August 2017.

¹¹ W, Van Hove, *Dictionary of the Dutch Language*, Jakarta: Ichtiar Baru, 1999, p.73.

¹² Sujatmo, *Several Definitions in the Field of Supervision*, Jakarta: Ghalia Indonesia, 1983, p. 17.

¹³ Carla M. Zoethout, et.al., *Control In Constitutional Law*, pp. 132-135.

¹⁴ Harjono Sumosudirdjo, et al., *Treasurer Guidelines for Administrative Staff and Financial Supervision*, Jakarta: Kurnia Esa, 1983, p. 215.

¹⁵ Bohari, *State Financial Supervision*, Jakarta: Rajawali Press, 1992, p. 4.

¹⁶ Laode Husen, *Relationship between DPR Supervision Function and BPK in Indonesian State Administration System*, Bandung: CV. Utomo, 2005, p. 243.

behavior of the notary to uphold the law, truth, integrity, code of ethics, and justice in exercising their authority and duties as determined by the laws and regulations. Although in the Act of Notary Position the Supervisory Board was also given the authority to enforce the code of ethics.

6. Sanction Theory

The tendency to commit deviant actions is driven by human nature which tends to be selfish. In a pluralistic society, deviations made by someone will become a habit for others. Facing this reality, it is necessary to have social control in the sense of controlling the behavior of the citizens of the community in order to always remain confused with the norm's necessity. This business is always carried out with sanctions.¹⁷

Sanctions are a tool of coercion other than punishment, also to obey the provisions specified in the regulations or agreements. Sanctions are also interpreted as a means of coercion as a punishment if disobeying the agreement.¹⁸

Van Wijk / Konijnenbelt in Hadjon¹⁹ giving the meaning of sanctions as a means of public power used by the authorities in reaction to non-compliance with administrative legal norms, thus witnessing elements namely:

- a. As a tool of power
- b. Public law
- c. Used by the authorities
- d. As a reaction to non-compliance

Ten Berge in Habib Adjie²⁰ outlines three administrative types of sanctions, namely:

1. Reparative sanctions

This sanction is intended for repairs to violations of legal rules, can be in the form of termination of prohibited acts, obligation to change attitudes / actions so that the original condition is determined, the act of correcting something contrary to the rules for example to do something for the government and forced payment as punishments;

2. Punitive Sanctions

Penal sanctions are an additional burden of punitive sanctions classified as retaliation and preventive measures that cause fears to the same offender or perhaps to other offenders. For example payment of fines to the government and strong reprimand;

3. Regressive Sanctions

Sanctions as a reaction to a disobedience, revoked the right to something decided according to law, as if returned to the actual legal situation before the decision was taken. Examples of revocation, change or suspension of a decision.

Notary code of ethics as part of the law created by a notary group in order to realize a dignified notary. So that to be able to give birth to a notary who has integrity who is a public official, the ethical norms formulated by notary associations should not only be used as mere formality. The notary code of ethics as a behavioral norm is expected to provide guidelines for notaries in order to carry out their positions as public officials so as to reflect the Indonesian state as a legal state.

Furthermore, the notary code of ethics which is the norm compiled by a notary association as a guideline for a notary in carrying out his position as a public official. Both the notary and the right to carry out their positions are referred to in the code of ethics. In line with this in the view of ethics which is a science, the categories of notary behavior can be formulated in a norm using an ethical approach. Ethics is the study of human behavior, which is not solely finding the truth but more than that is tracking the value of humanity ie behavior that can be classified as bringing benefits or losses.

Notary code of ethics norms that have been formulated in such a way as to implement it are required by supervisory institutions to be able to enforce the norms set out in the notary code of ethics. The oversight institution is the leading gateway in order to enforce the notary code of ethics.

In addition to supervision as a front gate, in the notary code of conduct norms, sanctions are needed which are a means of coercion other than punishment, as well as obeying the provisions stipulated in regulations or agreements. Therefore to achieve so that members or notaries adhere to the code of ethics, sanctions are

¹⁷ Soetandyo Wingnyosoebroto, *From Colonial Law to National Law: The Dynamics of Socio-Politics in the Development of Law in Indonesia*, Cet Second, Jakarta: Rajawali Pers, 1980, p. 49.

¹⁸ Habib Adjie, *Civil Sanctions and Administrative Sanctions Against Notaries as Public Officials*, Bandung: Rafika Aditama, 2007, p. 89.

¹⁹ Hadjon, *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gadjah Mada University Press, 1995, p. 1.

²⁰ Habib Adjie, *Op.Cit.*, pp. 106-107.

needed which can be interpreted as a means to protect the interests of members against any violation of the notary code of ethics.

In the context of that principle, then the position of the code of ethics can be able to realize legal objectives with the dimension of justice. The dignity of a notary needs to be upheld because the position of a notary is a position of trust given by the state.

B. General Review of Norma

1. The Term Norm

According to A. Hamid S. Attamimi²¹, norms are rules, patterns, or standards that need to be specified. Norms are guidelines for life which are guidelines, benchmarks, or measures to behave appropriately in social relationships with the community.

Jimly Asshidiqie²² stated that when viewed in terms of its etymology, the word norm itself comes from Latin, while the rule or method comes from the Arabic language, *qo'idah*, which means measure or value of measurement. Ahmad Ruslan²³ argued that norms or rules constitute institutionalization of good and bad values in the form of a rule that contains permits, recommendations, or orders.

Hans Kelsen²⁴ describes that a "norm" is a rule that states the fact that a person must act in a certain way, without implying that someone really "wants" or "wants" that person to act according to that method. Norma is a statement about the thought that something must happen, especially that an individual must act in a certain way.

2. Norm Type

The types of norms that are currently known in life, especially in Indonesia, and their fundamental norms consist of:

1. Religious norms (rules of belief) with their fundamental norms (*grundnorm*) are "Humans must be sure and serve the power of God Almighty".
2. The norm of decency (morality rules) with its fundamental norm (*grundnorm*) is "people must have a clean conscience".
3. Social norms (rules of courtesy) with its fundamentals (*grundnorm*) are "people must maintain the happiness of living together".
4. Legal norms (legal rules) with their fundamental norms (*grundnorm*) are "people must behave in such a manner, as determined by the constitution / state / constitution".

3. Norm System

Hans Kelsen²⁵ suggested the existence of two norm systems, namely static norm systems (*nomostatics*) and dynamic norm systems (*nomodynamics*).

The static norm system is a system that looks at the 'contents' norm. According to the static norm system, a general norm can be drawn into special norms, or special norms can be drawn from a general norm. The withdrawal of special norms from a general norm means that, from the general norms they are specified to be special norms in terms of the 'contents'.

A dynamic norm system is a norm system that looks at the validity of a norm or from the 'formation' or 'elimination' method. According to Hans Kelsen, norms are tiered and multi-layered in a hierarchical arrangement, norms below apply, sourced and based on higher norms, and so on until finally 'regressus' stops at the highest norm called with the basic norm (*grundnorm*) that cannot be traced again who formed it or where it came from. These basic norms, often referred to as 'grundnorm', 'basic norms', or 'fundamental norms', are the highest norms that are not sourced and are not based on higher norms, but are presupposed, ie predetermined by the community.

4. Norms of Religion, Ethics, and Law

a. Norms of Religion

In the system of religious norms, all five rules apply in whole and simultaneously. There are rules that are arbitrary, some are prohibitions and permits as in legal norms. However, besides that, there are also recommended rules for doing (*sunnah*) and recommendations not to do something (*makruh*) as in the system of

²¹ Ni'matul Huda & R. Nazriah, *Op.Cit.*, p. 32.

²² Jimly Asshidiqie, *Regarding the Law*, Jakarta: Rajawali Press Publisher, 2010, p. 1.

²³ Ahmad Ruslan, *Theory and Practice Guidelines for Establishing Legislation in Indonesia*, Yogyakarta: Rangka Education, 2013, p. 37.

²⁴ Hans Kelsen, *General Theory of Law and State* (translated by Raisul Muttaqien), Bandung: Nusamedia and Nuansa, p. 48.

²⁵ Mariah Faridah Indrati, *Law Science*, Yogyakarta: Kanisius, p. 21.

ethical norms which is only associated with the conception of merit and heaven which is believed to exist in all religions.

b. Norms of Law

Legal objectives according to the philosophers of law include the objectives of justice, certainty, and purpose of expediency. Therefore, legal norms must contain definite justice and fair certainty, which as a whole provides benefits and solutions for citizens in facing the dynamics of shared life. Therefore, the rule of law in addition to being useful and just, must also be definite, formal, clear, and should not be grayed out, and all that is only in the mandatory, unlawful and permissible rules. According to liberal teachings, at its origin, all things are permissible, except by strict law expressed as a prohibition or obligation. If the prohibition is violated and obligations are not carried out properly, legal norms provide a strict system of sanctions.

c. Norms of Ethic

In the system of ethical norms there are recommendations that are in part in the substance of legal norms that contain value principles that guide and guide (guiding principles) or direct (directive principles). Therefore, its function is mainly related to the sanctions system, which is more preventive in nature, as well as enforcement. For that reason, the usual sanctions are determined in the form of reprimanded or multiple-level warnings, ranging from verbal reprimand, written reprimand, or mild reprimand and rebuke. Even sometimes it is also determined that the reprimand can be dropped in stages or in stages, for example, the first reprimand, the second warning, and the last level of reprimand.

C. General Views on Ethics, Profession and Notary Code of Ethics

1. Ethics and Professionals

In relation to law enforcement, Tedjosaputro²⁶ also stated that in today's life, the enforcement of both criminal law, civil law and administrative law is often closely related and supported by values and rules contained in professional ethics.

According to Ridwan A Halim²⁷, ethics have benefits or usability basically as follows:

- a. As an accurate measure that gives the values of a general view of moral aspects for everyone who wants to test themselves and the intricacies of his life through introspection and retrospect;
- b. To measure the nobility of moral values and the levels of moral virtue that are in each of us before we judge the moral of others;
- c. To be able to just know the approximate moral state in a person or certain people who for some reason is considered necessary to be considered or analyzed;
- d. To be able to measure the ideals and moral values of a group or organization / institution or a society or nation or a certain group of nations and so on;
- e. To deepen philosophical studies, especially cultural philosophy and other social sciences;
- f. the results will be very valuable for scientists, expedition teams, social / cultural / economic analysts, social observers and especially and those clergy.
- g. Ethics is needed because the physical body possessed by humans in the life of a community group needs harmony between the members of the group in question.
- h. In support of the above opinion, Suhrawardi K Lubis²⁸ argues that if ethical words are compared in a wider usage, they are seen as broader and moral words, because sometimes the term moral senag is used only to explain the outward attitude of a person who is usually valued and manifestation of behavior or just the act. While ethics is seen in addition to showing one's outward attitude also includes the rules and motives of someone.

The term profession in general there are those that equate with the notion of work. But in fact beum scholars have an agreement on what actually becomes the definition of the profession, because there is no standard (which has been agreed upon) the task of work that is said with the profession.

According to Rueshemeyer²⁹ in Vitheim Aubert (1964: 267) the dominant and profession functionalist theories emphasize two characteristics as a strategy to provide an explanation and position and function in society, namely:

“The professions are conceived of as service occupation that (1) apply a systematic body of knowledge to problems which (2) are highly relevant to the central value of the society”.

Profession is work in a special sense, namely certain fields of work, prioritizing physical and intellectual, are permanent, with the aim of gaining income. Furthermore, it can be said that the criteria are as follows:

²⁶ Liliana Tedjosaputro, *Professional Ethics and Legal Profession*, Yogyakarta: Bayu Indra Grafika, 1995, p. 63.

²⁷ A. Ridwan Halim, *Civil Law in Question and Answer*, 4th Printing, Jakarta: PT. Intermedia, 1990, p. 3.

²⁸ Suhrawardi K Lubis, *Legal Professional Ethics*, Jakarta: Sinar Grafika, 1994, p. 1.

²⁹ Vilhelm Aubert, *Sociology Of Law*. Great Britain: C Nicholas & Company Ltd, 1969.

- a. Covers only certain fields (specialization);
- b. based on special skills and skills;
- c. permanent or continuous;
- d. prioritizing services rather than rewards (income);
- e. responsible for yourself and the community.
- f. grouped in an organization.

Based on these criteria, the profession is formulated as a permanent job in a certain field based on special expertise carried out responsibly with the aim of earning income.

2. Ethics and Legal Profession

Professional ethics is an attitude of living willingness to provide professional services in the field of law to the community with full expertise as a service for the implementation of duties in the form of obligations to the people who need legal services. Kleser in Suhrawardi K. Lubis³⁰ states that there are several basic principles of professional ethics, namely: "First the profession must be seen (and internalized) as a service because of that, then the nature of selflessness (disinterestedness) becomes a characteristic in developing the profession". What is meant by "selflessness" here is that the decisive consideration in decision making is the interests of the patient or client and the public interest, and not their own interests (professional development). If the selfless nature is ignored, then professional development will lead to utilization (which can lead to abuse) of fellow human beings who are experiencing difficulties or difficulties. Second, professional service in prioritizing the interests of patients or clients refers to the interests or noble values as the norm of criticism that motivates attitudes and actions. Third, profession professors must always be oriented towards society as a whole. Fourth, in order for competition in the service to take place in a healthy manner so that it can guarantee the quality and quality improvement and improve the quality of profession, the professional development must be passionate about solidarity among fellow colleagues.

Professional ethics is an ethical attitude as an internal part and life cycle in living his life as a carrier of a profession. Exploring a professional code of ethics can be understood by looking at the function of the professional code of ethics in question.

3. Ethics and Notary

Notary is a profession, then the work foundation of a notary's person must be a fair work base and driven by the ethical ideals of society, namely professional ethics based on morals. Therefore, a notary must understand ethics related to his profession.

Some aspects of the notary professional ethics are given a definite legal form as contained in the Notary Position

Act, so that a notary is required to carry out professional ethics as contained in the regulation. If the notary violates these regulations, he must be sanctioned in the form of reprimand, fines, compensation, suspension or even dismissal from his position. Other aspects of notary professional ethics are also regulated in the Notary Code of Ethics, for example about relationships between notaries, determining the amount of tariffs, notary activities in finding clients and others.

4. Notary Code of Ethics

The code of ethics for notaries is very important, not only because a notary is a profession so it needs to be regulated by an ethical code, but also because of the nature and nature of notary work that is very oriented towards legalization, so that it can become the main legal foundation regarding the status of property, rights, and the obligation of a client who uses the services of the notary.³¹

The need for a professional code of ethics in general can be said as follows:

- a. As a means of social control.
- b. Prevent both supervision and interference and outside of the internal behavior of members of the professional group because of ethical values.
- c. To develop a high standard of will and members of the professional group namely to increase the level of professionalism in order to improve the quality of good and quality services to the general public who need their services.

There are many cases of violations of the code of ethics among notaries due to not signing the deed before a notary whereas those present are other people who falsified the identities of others, or other problems caused by careful inaccuracy or inaccuracies in all letters or documents and many more cases. Violation of the notary code of ethics even leads to violations of the law.

³⁰ Suhrawadi K Lubis, *Op.Cit.*, p. 7.

³¹ Munir Fuady, *Bankruptcy Law, In Theory and Practice*, Bandung: PT. Citra Aditya Bakti, 2005, p. 133.

The independence of professional institutions or organizations must always be juxtaposed with the issue of the making and enforcement of professional codes of ethics in addition to increasing the credibility of the profession in the eyes of ordinary people who are consumers of their services, as well as maintaining the dignity of the legal profession. Thus the community gets a guarantee and protection that their trust in the professionalism of the profession of the profession will not be misused. The Supervisory Agency that oversees the implementation of the code of ethics for notaries is the Honorary Board and the Supervisory Board. In general the duties of the Honorary Board are:

1. conduct guidance, guidance, supervision, revamping members in upholding the code of ethics;
2. examine and make decisions on allegations of violations of the provisions of the code of ethics that are internal or that have no relation to the interests of the community directly;
3. provide advice and opinions to the Supervisory Board for alleged violations of the code of ethics and position of the notary.

The articles in the Notary Code of Ethics that are closely related to malpractice actions that can be carried out by a notary include:

Article 3 of the Notary Code of Ethics and other people who hold and hold a notary office must:

1. have good morals, morals and personality;
2. respect and uphold the dignity of the notary;
3. Acting honestly, independently, impartially, full of responsibility based on laws and regulations and contents of the oath of notary office;
4. Establish an office in the place of domicile and the office is the only office for the notary concerned in carrying out daily office duties;
5. Carry out and comply with all provisions regarding the honorarium set by the association;
6. Running a notary position especially in making, reading and signing deeds carried out in his office, except for legitimate reasons;
7. Perform actions that are generally referred to as obligations to be obeyed and carried out, among others, but not limited to the provisions stated in;
8. Law Number 30 of 2004 concerning Notary Position;
9. Explanation of Article 19 paragraph 2 of Act Number 30 of 2004 concerning Notary Position;
10. contents of notary oath;
11. Articles of Association and Bylaws of the Indonesian Notary Association.

Some provisions in Article 4 of the Notary Code of Ethics concerning prohibitions and provisions in Chapter IV Article 6 Notary Code of Ethics concerning imposition of sanctions on notaries, Chapter V recognizes the procedures for enforcing a code of ethics which includes supervision of Article 7 of the Notary Code of Ethics, inspection and imposition of sanctions on Article 8 of the Notary Code of Ethics, then Article 9 of the Notary Code of Ethics, Article 10 Notary Ethics Code, Article 11 Notary Ethics Code, Article 12 Notary Ethics Code, BabVI Article 13 Notary Code of Ethics, respectively concerning examination and imposition of sanctions on first level, examination and imposition of sanctions on the level of appeal examination and imposition of sanctions at the final level, execution of sanctions in violation of the code of ethics and temporary dismissal.

5. Professional Abuse

Abuse of the profession can occur due to competition that engulfs legal professionals or because there is no self discipline. In the legal profession there can be seen two things that appear to contrast with each other, namely ethical ideals that are too high on the one hand and the implementation of legal entities that are far below these ideals on the other side. Even though there is not a Muslim community who wants his journey to meet obstacles because of the entanglement of high professional aspirations and avoiding far-reaching services and selfish zeal, sometimes there are those who use their professional status to create money and other purposes. Although there are many factors and in fact each factor is mutually influential, the decline of professional morality, especially among the legal profession, is partly due to:³²

1. Professional abuse;
2. The profession becomes a business activity;
3. Lack of awareness and social care;
4. Continuation of the justice system;
5. Influence of position;
6. Consumerism lifestyle;
7. Factor of faith;
8. Influence of family nature.

³² I Gede A.B Wiranata, *Op.Cit.*, p. 261.

6. Notary Profession

Article 1 and Article 15 of the Act of Notary Position stipulates that a Notary is the only official authorized to make an authentic deed of a general regulation or interested person to be stated in an authentic deed, guarantee the date, keep the account and give a grosse, copies and quotations, all as long as the deed is made by a general regulation not also assigned or excluded to officials or other people.

Notaries are not civil servants, this is explained by G.H.Lumban Tobing³³, namely:

“It is a necessity to make a notary public a “public official”, relating to the authentic definitions and deeds given by article 1868 BW. However, this does not mean that a notary is a civil servant, that is, an employee who is a part and a structured employee corps, with a hierarchical working relationship, which is paid by the government. The position of a notary is not a paid position, the notary does not receive his salary and the government, as is the case with civil servants, but from those who ask for his services. A notary is a government employee without a government salary, a notary is retired by the government without a pension and the government”.

According to Sidharta³⁴ Notary profession is a semi-public profession. Notary positions are public positions but the scope of work is in the context of private law construction. Notary is a provider of legal services that works for the benefit of the client. Notary profession is an open profession, in a sense. Everyone can survive or leave the profession at any time.

In carrying out its duties, the notary must adhere to the Notary Code of Ethics, because without it the dignity of the notary professionalism will be lost. The position of a notary, aside from being a position that deals with technical legal issues, must also actively participate in the development of national law. Therefore, the notary must always live the ideals of the nation’s struggle as a whole, especially in the context of improving service to the community. The notary must always keep abreast of the national laws which ultimately the notary is able to carry out his profession professionally.

7. Notary as a Profession and Official

Notary is a job with special expertise that requires extensive knowledge and heavy responsibility to serve the public interest and the core task of the notary is to regulate in writing and authentic legal relations between parties who consensus request the services of a notary.

According to Ismail Saleh³⁵ the notary needs to pay attention to what is called professional behavior which has elements as:

1. has strong moral integrity;
2. must be honest with the client and his own (intellectual honesty);
3. aware of the limits of his authority.
4. not solely based on money considerations.

8. Position of Notary

The core and task of a notary is to regulate authentically legal relations between parties who consensus request notary services. The other main feature is that the notary is impartial, but is independent and not as one of the parties, he does not side with those who are interested. That is why in carrying out his position as a public official there are provisions that are so strict, for certain people, not permitted as witnesses or as interested parties on the deed made before him.

The notary in carrying out his position as a public official must always appreciate and remember his oath of office (Article 4 of the Notary Position Law), which among others reads: I swear / promise I will carry out my position with trust, accuracy, thoroughness and impartiality. The Narcotics also carry out its function as an illuminator or legal counselor for the community which is his duty of duty. This is to prevent the mistake of the community in implementing the law, including the requirements that must be met for the validity of a legal act.

9. Implementation of Notary Tasks in Practice

The denial of the notary is an exception to give testimony before the court as long as it concerns the contents of the deeds as stipulated in Article 1909 B.W. and Articles 146 and 227 HIR. Mr. C. Asser in G.H.S. Lumban Tobing³⁶ said that to those referred to in Article 1909 sub-3 B.W. the right to deny them by the law is not for their own benefit but for the benefit of the general public. Even if the last interest is in the hands of the judge, certain freedoms must be given, because they are the first to determine whether they will keep it a

³³G.H.S. Lumban Tobing, *Notary Position Regulations*, Jakarta: Erlangga, 1988, p. 36.

³⁴Sidharta, *Morality of Legal profession “An Offer of Thinking Framework”*. Bandung: PT. Rheika Aditama, 2006, p. 127.

³⁵Ismail Saleh, *Building a Professional Image of Indonesian Notaries*. Public Speaking / Lectures of the Minister of Justice of the Republic of Indonesia at Upgrading / Refresing Course Notary in Indonesia, *Journal of RENVOI*, 2007, p. 19.

³⁶G.H.S. Lumban Tobing, *Op. Cit.*, p. 107.

secret or tell them what they know. It is not without reason that the denying rights by law are referred to as rights. Determination of its boundaries freely must be given specifically to them if the person who informs the matter of the problem frees them and the obligation to keep it confidential.

Furthermore, regarding the obligations of the notary public, it is regulated in Article 16 of the Notary Position Law. It is stated that in carrying out his position the notary is obliged to:

- a. act honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions;
- b. make a deed in the form of a Minuta deed and keep it as part and notary protocol;
- c. issued a grosse deed, copy of deed, or quote deed based on the Minuta deed;
- d. provide services in accordance with the provisions of UUJN unless there is a reason to reject them;
- e. keep everything about the deed made and all information obtained in order to make an agreement in accordance with the oath of appointment, unless the law stipulates otherwise;
- f. binding the deed made in 1 (one) month to become a book with no more than 50 (fifty) deeds, and if the number of deeds cannot be loaded in one book, the deed can be bound to more than one book, and record the number of minuta deeds, months and years of manufacture on the cover of each book;
- g. make a list and process deed against no payment or receipt of securities;
- h. make a list of deeds that are pleasing to the will according to the order in which the deed is made every month;
- i. send a list of deeds as referred to in letter or zero list which is pleasing to the will to the List of Testament Centers;
- j. record in the repertorium the date of delivery of the will list at the end of each month;
- k. has a stamp / stamp containing the symbol of the Republic of Indonesia and in the circular space written in the name, position and place of residence concerned;
- l. read the deed in front of the viewer in the presence of at least 2 (two) witnesses and was signed at that time by the viewers, witnesses and notaries;
- m. accept prospective notary internships.

10. Responsibilities of the Notary

The notary is responsible for the stakeholders (clients) in connection with the deed made by G.H.S.Lumban Tobing³⁷, namely:

- a. in matters strictly stated by the UUJN;
- b. If a deed because it does not meet the requirements to recognize the following, is canceled before the court or only applies as a deed made under the hand;
- c. in all matters according to the provisions in Articles 1365, 1366 and 1367 BW there is an obligation to pay compensation.

Civil liability in the case of a notary concerned does not fulfill the formal requirements relating to the deed he made, as shown in Article 84 of the UUJN. In such case, the deed is canceled by the court or only applies as a deed under the hand. The notary concerned can be prosecuted for paying reimbursement, compensation and interest for having the person requesting his services.

The notary in making a deed is based on the request of the parties. The person who requests this is (the parties) that is meant by the person who ordered to enter false information. For the completion of the act of asking to enter in the sense that the completion of the crime is perfect, it is not enough to complete the act of giving information about something that the incident has clearly contained in the authentic deed intended. If the deed has not been made or information about the incident has not been included in the deed, then the crime has not happened perfectly, but only a crime trial has occurred. The element of error in crime in Article 266 of the Criminal Code paragraph (1) is with the intention to use a deed that contains such a false event as if the information in the deed is in accordance with the truth. The element of error in paragraph 2 of Article 266 of the Criminal Code is: (1) the act is to use, (2) intentionally, (3) the use of the deed can cause a loss.³⁸

With the enactment of Law Number 30 of 2004 concerning Notary Position, the authority to supervise notaries is now the responsibility of the Supervisory Board (hereinafter referred to as MP). Until now, the Supervisory Board that was formed under the order of the law has not been perfect because it was only formed since the enactment of the new UUJN. Establishment of the Supervisory Board, both the Regional Supervisory Board and the Regional Supervisory Board each differ according to the formation of each region or province. The Supervisory Board consists of 9 people consisting of 3 people and government elements, 3 notary elements and 3 academics.

³⁷ G.H.S.Lumban Tobing, *Op.Cit.*, p. 325.

³⁸ Admi Chazawi, *Criminal Law Lesson 1*, Jakarta: PT. Raja Grafindo Persada, 2002, pp. 112-115.

The Duties of the Notary Supervisory Board are also regulated in the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.39-PW.07.f G of 2004. In this regulation, the assignments are stated respectively and each chairperson of the Regional Supervisory Board, Chair of the Regional Supervisory Board and Chair of the Central Supervisory Board, namely:

Duties of the Chair of the Regional Supervisory Board:

1. Authorities to act for and on behalf of and represent the Regional Supervisory Council inside and outside the court;
2. Establish a Regional Examination Council;
3. Form an Examination Team;
4. Submit a report to the Regional Supervisory Board periodically every 6 (six) months in July and January;
5. Sign the book list of deeds, and list of letters;
6. Submit a response to the Regional Supervisory Board for the notary's objection relating to the refusal of leave of leave.

The task of the Chairperson of the Supervisory Board is:

1. Authorities act for and on behalf of and represent the Regional Oversight Board inside and outside the court;
2. Establish a Regional Examination Council;
3. Submitting a report to the Central Supervisory Board periodically every 6 (six) months in August and February;
4. Conveying a response to the Central Supervisory Board for the courage of the notary regarding the refusal of leave permission.

The Task of the Chair of the Central Supervisory Board:

1. Authorities act for and on behalf of and represent the Central Supervisory Board inside and outside the court;
2. Establish a central legislative assembly;
3. Receiving reports from the Regional Supervisory Board in every 6 (six) months in August and February.

IV. DISCUSSION

A. The Nature of the Notary Code of Ethics as a Fair Legal Instrument

1. Legal Perspective

A notary is obliged to act honestly, thoroughly, and impartially. Honesty is important because if a notary acts with dishonesty will also reduce the level of public trust which results in degrading notary institutions. Carefully in the sense that a notary may not act carelessly.

A notary must be able to maintain confidentiality regarding the making of a deed. The narrator is prohibited from selling information about the client without any agreement from the client. This confidentiality is also the mandate of the notary oath. By keeping the notary client's secret also acting neutral.

Article 17 Letter I explains that a Notary is prohibited from carrying out other work that is contrary to religious norms, decency or propriety that can affect the honor and dignity of the Notary.

Regarding the authority, obligations and prohibitions as described above, the author can describe that the position of a notary is a very strategic position because every product he makes can provide legal certainty and smooth civil law for all business people. So that the notary must have good morals.

2. Professional Perspective

In determining the nature of the notary code of ethics the author elaborates on the two approaches so that it can be explained that the notary code of ethics which is a moral rule obtains legitimacy in the UUJN. For this reason, the Notary Code of Ethics is related to moral rules as a guideline for attitudes and decision making on fundamental matters of the values and standards of behavior of people who are considered good or bad in carrying out their profession which are independently formulated and established by professional organizations. What was stated by one of the law's state theorists, Lon Fuller in his book *Morality of Law*, describes the legal system in a legal state mentioning eight criteria which one of the criteria is the rule of law must be clearly written so that it can be known and applied correctly.

Then it was corroborated in Austin's view that the law classified 2 categories, namely Positive Law and Positive Morality.

B. Embodiment of the ideal notary code of ethics

In order to realize the norms of an ideal notary code of ethics, the authors make a statutory approach and conceptual approach by looking at the substantive material of the norm's objectives. So that to be a guideline

that needs to be considered in terms of harmonizing substantial material from the two norms must be in harmony with each other. Therefore, the following discussion will refer to the guidelines above.

Law Number 30 of 2004 concerning Notary Position was ratified on October 6, 2004. Whereas the existence of this Act to guarantee, certainty and protect the law required authentic written evidence concerning legal circumstances, events or actions carried out through notary positions. In addition, the notary is a certain position that runs the profession in legal services to the public, needs to get protection and guarantees in order to achieve legal certainty.

In this shrimp law there are 3 points that are very important to see the relation of ethical norms:

1. That this Law provides guidance for every notary in carrying out his position as a public official
2. That this Law establishes a supervisory institution
3. That this Law confirms that INI is the only organization that is tasked with establishing and enforcing a notary code of ethics.

Considering the first point of several provisions in the Act no longer in line with the development of the law and the needs of the community so that changes were made namely Law number 2 of 2014 concerning the Position of Notary.

C. Ideal Notary Ethics Code Formulation

Formulation of the notary code of ethics is done by looking at the material aspects of the enforcement of the code of ethics. The material of enforcement of the code of ethics in question is Supervision and sanction by referring to the notary code of ethics that applies in the State of Japan and the Netherlands with the consideration of the Dutch writer as a reference basis in establishing a legal system that represents the Contextual European legal system, while Japan as the Asian representative a member of the Lantijnse Notariat which is compiled in the International Union Of Latin Notaries (UINL). One measure to be able to see to what extent the enforcement of the notary code of ethics can run well.

The Indonesian Notary Association as a professional organization is required to always improve quality, both quality of science and moral quality and always uphold the nobility of Notaries, so that in providing services to the community always refers to the professional code of ethics and based on the Act on Notary Position, namely Act- Law Number 30 Year 2004 as amended by Law Number 2 Year 2014. The realization of a solid notary organization is expected to be able to bring and keep its members professional in carrying out their positions. As the nature of a professional organization that is always inherent and its main identity is to always improve its capabilities through improving quality, good quality of science, and moral integrity, and always upholding the dignity of its dignity based on professional code of ethics.

The notary code of ethics is a moral rule determined by the Indonesian Notary Association Association based on a congressional decision. Moral rules are guidelines for human behavior that are adhered to because awareness is based on a conscience that aims to achieve happiness. The notary code of ethics is based on the fact that a notary as a professional developer is a person who has expertise and knowledge in the field of notary, so as to be able to meet the needs of people who need services in the field of notary.

V. CONCLUSION

1. The nature of the Notary Code of Ethics is a moral principle so that the notary in carrying out a position is prevented from all forms of irregularities. The notary code of conduct is a guideline for remaining professional in carrying out their duties as a public official. With the notary code of ethics, it will be well directed and will continue to improve so that in making authentic certificates it really guarantees the community in terms of obtaining legal certainty.
2. To realize the ideal formulation of ethical code norms, the norms contained in the code of ethics should be in line with the norms contained in the UUJN. So that in its enforcement there are no more restrictions between violations of position and violations of the code of ethics.
3. That in order to be able to enforce the code of ethics, ideally the Supervision in the enforcement of the code of ethics is sufficiently fully given by the Notary's Oversight Board as an extension of the minister as stipulated in Article 67 UUJN. In addition to the supervision, the formulation of sanctions in the notary code of ethics must give more special effects in the disclosure of membership of the association which in fact the notary can still make other deeds and authorities granted by law.

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