



## Implication of notary obligations in providing services to the public as an official with integrity

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### Abstract

This study was based on Article 16 paragraph (1) letter e of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, which states that a Notary is required to provide services based on the provisions of this Law unless there is a reason for rejecting it. The problem will arise if the appearers as a client ask to make a deed that actually violates legal provisions. However, in making deeds, the Notary ignores legal procedures such as dishonesty, does not provide legal counselling, does not check documents before the deed is drawn up, resulting in a legal consequence, and does not reflect that the Notary has integrity a public official. This study was normative legal research and employed a statute approach and theoretical approach. The results of this study showed that Notary was a position required to provide the best service to people in need in terms of Notary and may not have personal or individual interests and integrity. The obligation of a notary in providing services must pay attention to the importance of legal counselling concerning the deed to be made and apply the precautionary principle so that legal problems did not arise in the future which may result in the validity of the deed, the appearers, and the Notary itself. Thus, if there was a reason to refuse the wishes of the appearers where the reason was due to legal irregularities, the Notary may refuse the wishes of the appearers.

**Keywords:** notary position, notary obligation, integrity

### Introduction

Legislation products is a product whose essence carries a mission related to the protection of human rights. Artidjo Alkostar stated that the construction (building) of the rule of law demands that the pillars be upheld, respect for human rights, and the administration of justice for all people in a free trial. This means that one of the essences of the rule of law is determined by legal provisions that protect human rights. Respect for human rights is the essence of making a law that reflects the rule of law. Nevertheless, there are still many citizens who already understand the law whose behaviour does not reflect the law. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public is one of the juridical norms produced by the State. This juridical norm is made to regulate the notary profession in exercising its authority. This authority needs to be regulated because it can have implications for many aspects related to the community's interests. This arrangement is important for notaries and the public because society or humans are legal subjects related to notaries, which comes from the construction of this relationship giving rise to obligations and rights. Nevertheless, there are still problems with problems arising between the Authority of notaries concerning the interests of the community (appearers).

Article 1 Number 1 of Law Number 2 of 2014 states that a Notary is a public official authorized to make authentic deeds and has other powers as referred to in this law or based on other laws. Then Article 1 point 7 stipulates that a notary deed hereinafter referred to as deed, is an authentic

deed made by or before a notary according to the form and procedure stipulated in this law.

Based on their authority, the notary in making authentic deeds must be based on requests from the appearers. The notary is required to listen to the statements of the parties without taking sides with either party. Then the statement is poured into the notarial deed, which is the wish of the parties. After the deed is read out in front of the parties and approved by the parties, the parties sign the deed before a notary public, and the deed must be in accordance with Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary. However, in Article 16 paragraph (1) letter e Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states that Notary is required to provide services based on the provisions of this Law unless there is a reason for rejecting it. The problem will arise if the appearers as a client ask to make a deed that actually violates legal provisions. However, the Notary does not carry out procedures in making deeds; for example, does not provide legal counselling and does not check documents before the deed drawn up. This results in the emergence of a legal consequence so that the Notary is considered negligent in carrying out the duties based on the provisions of the Law on the Position of Notary. In this case, the Notary still fulfils the wishes of the appearers to make a deed and ignores these matters. For example, the case that occurred in the Decision of the Supreme Court of the Republic of Indonesia Number 2750 K/PDT/2018, namely the Notary EM violated the

provisions of Article 16 paragraph (1) of the UUJN because the Notary EM was not careful and also violated the obligation to deliver legal counselling related to important matters in making lease deed and EM notary's alignments with the parties in the deed of the lease agreement, namely ER, SH, and FIT which are detrimental to OC. Moreover, the case in the Decision of the Regional Notary Supervisory Council of West Java Province Number: 04/PTS-MPWN West Java Province/V/2019 regarding the sale and purchase binding agreement where after the sale and purchase agreement was made, the previous Notary did not check the authenticity of the land and building certificate. When signing the sale and purchase agreement deed, the Notary did not see the original certificate, which should have been the basis of his/her authority in making the sale and purchase agreement deed. In the future, after the deed is drawn up, the buyer knows that the certificate is currently in dispute and blocked. The buyer has made a large enough payment to process the land sale and purchase, which in the end, the land sale and purchase object has actually been sold to another party. Notary's behaviour in these cases does not reflect that the Notary has integrity in providing services to the community. Based on the problem above, the researcher is interested in conducting a study entitled "Implication of Notary Obligations in Providing Services to the Public as an Official with Integrity". Based on the title, the researcher examines and analyzes one research question: What are the implications of Notary obligations in providing services based on the provisions of the Law on the Position of Notary Public?

### Research Methods

This study was normative legal research. Legal research is a process to find legal rules and legal doctrines in order to answer legal issues at hand<sup>[1]</sup>. This study employed a statute approach and a theoretical approach. Legal materials used in this study were primary and secondary legal materials. Primary legal materials, namely binding legal materials, including Law on the Position of Notary Public. Secondary legal materials were used as support in this study, including textbooks written by legal experts, articles, and other sources related to this study. The data collection technique used in this study was a literature study. It was collected by reading laws and regulations, official documents and literature closely related to the issues discussed based on secondary data. These data then analyzed and formulated as supporting data in this study.

### Results and Discussion

It has been explained in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public that the Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in this Law or based on other laws.

The era of the Government of the independent Republic of Indonesia is divided into 2 (two) periods based on the enactment of the Law on Notaries, namely:

- a. PjN (Regulation of Notary Position), since independence until the enactment of UUJN (Old Order, New Order, Reformation before June 2004);
- b. Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning the Position of Notary, which is promulgated on October 6, 2004.

The Law on Notary Position is a legal regulation in the field of notary regulation. A notary as a position is required to act professionally in carrying out his/her position in accordance with the standard of office stipulated in the Notary Position Law, namely to provide the best possible service to the public. The duties carried out by a notary include making authentic deeds. The deed itself is an authentic deed made by or before a notary in the form and procedure stipulated in this law<sup>[2]</sup>. With regard to the forms of authentic deeds made is under the authority of a notary which can be seen in Article 15 of Law Number 30 of 2004 concerning the Position of Notary explain that: a) The notary is authorized to make authentic deeds regarding all actions, agreements, and provisions required by laws and regulations and/or those interested in being stated in the authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving grosse, copies and excerpts of the deed, as long as the making of the deeds is not assigned or excluded to the official others stipulated by law; b) The notary is also authorized to ratify signatures and determine the certainty of the date of the underhand letter by registering in a special book and recording the documents under hand by registering in a special book. Notary's authority concerning legal actions that will be contained in the deed plan made, the Notary needs to provide legal counselling as stated in Article 15 paragraph (2) letter e of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Regarding the Position of a Notary Public that the Notary is authorized to provide legal education in connection with making deeds. The role of a notary in providing legal counselling is carried out in order to increase community service as well as provide an explanation to the parties that in making an authentic deed, a notary must act according to legal corridors so that later the deed does not cause problems. The advice given by a notary must be based on the fields of knowledge he/she is good at. Legal expertise in their field must be in accordance with the prevailing laws and regulations. Law issuance by a notary public can influence the client in determining the choice to determine his/her legal action. In fact, many notaries do not carry out their function to provide legal counselling to their clients, thus affecting the deeds they have made, which have the impact of causing legal problems. Personal integrity and professional skills are the attitudes that notaries must consider in carrying out their duties. Personal integrity means always upholding the professional standards of an impartial and honest notary, while professional skills in the sense of being responsive to legal and community developments, upholding the public interest, and translating and serving the needs of the community as clients in accordance with applicable legal provisions. A notary is expected to have integrity, intellectual capacity, have high knowledge (experts in their field), have the will to do service and earn a living is not used as a goal in carrying out his position.

In carrying out his/her duties, a notary is required to act honestly and fairly for all parties, not only for personal interests but also for the community's interests, and must ensure the correctness of the deeds he/she makes. Therefore, in carrying out their duties, a notary must be under the supervision of a neutral and independent institution. The purpose of supervision of notaries is to make notaries really

fulfil the requirements and carry out their duties according to the provisions of the prevailing laws and regulations and the Notary's Code of Ethics for safeguarding the interests of the general public. The purpose of making the Code of Ethics is to maintain the honour and dignity of the notary position.

The position of the Code of Ethics for Notaries includes; first because the nature and essence of the work of a Notary are very oriented towards legalization so that it can become the main legal foundation regarding the status of property, rights and obligations of an Appearer who uses the Notary's services. Second, to avoid injustice as a result of granting the status of property, rights and obligations not in accordance with the rules and principles of law and justice to disrupt public order and disrupt the private rights of the justice-seeking community. Thus, in the world of Notaries, a good and modern Professional Code of Ethics is also needed. According to Abdulkadir Muhammad, there are four basic reasons why professionals, including notaries, ignore the code of ethics. These reasons include kinship, the effect of position, the effect of consumerism, and weak faith. One of the requirements to be a professional is piety to God Almighty, namely carrying out orders and staying away from His prohibitions. Piety is the basis of human morality. With piety to God Almighty, professionals have a strong moral fortress, are not easily tempted, and tempted by various forms of material around them. With strong faith, needs will be met naturally, and it is happiness. A notary must have professional behavior. The elements of professional behavior are as follows:

- a. Have a professional behavior;
- b. Participate in national development in the field of law;
- c. Uphold honor and dignity;
- d. Skills, which is supported by high knowledge and experience;
- e. Moral integrity means avoiding something not good even though the reward for services is high, the implementation of professional duties is aligned with social values, courtesy and religion;
- f. Be honest, not only to the second or third parties but also to yourself;
- g. Not solely considering money, also running devotion, not distinguishing between people who can or cannot;
- h. Stick to the professional code of ethics because it includes all the rules that a notary must have, including in perfect Indonesian.

The position of a notary is a trust position that must be in line with those who carry out the duties of a notary as a trusted person. Notary as a position of trust means nothing if it turns out that those who carry out their duties as a notary are people who cannot be trusted. In this case, the position of the notary public and the official (who carries out the duties of the notary office) must be in line like two inseparable sides of the currency.

Based on Article 16 paragraph (1), in carrying out his/her position, a Notary is obliged or required to:

- a. Act trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of parties involved in legal actions;
- b. Make deeds in the form of Minuta Deed and keep them as part of the Notary Protocol;
- c. Affix letters and documents as well as fingerprints on the Minuta Deed;

- d. Issue Grosse Deed, Deed Copy, or Deeds Quotes based on Minuta Deed;
- e. Provide services in accordance with the provisions of this Law, unless there is a reason to refuse it;
- f. Keep everything concerning the Deed that he/she has made and all information obtained for the making of the Deed in accordance with the oath/promise of office, unless the law stipulates otherwise;
- g. Bind the Deeds that he/she makes in 1 (one) month into a book containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds can be bound into more than one book, and record the Minuta Deed, month, and year of making the cover of each book;
- h. Make a list of deeds of protest against non-payment or non-receipt of securities;
- i. Make a list of deeds relating to wills according to the timeline of making deeds every month;
- j. Send the list of Deeds as referred to in letter i or the nil list relating to the central will of the testament to the ministry that administers governmental affairs in the field of law within 5 (five) days in the first week of each following month;
- k. Record in the repertorium the date of delivery of wills at the end of each month;
- l. Have a stamp bearing the symbol of the Republic of Indonesia and the name, position and domicile of the person concerned are written on the circle;
- m. Read out the Deed in front of the audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for the making of the will underhand, and signed on the spot by the appearers, witnesses, notary; and

n. Receive apprenticeship for prospective Notaries.

of these several obligations, apart from having to act trustworthy, honestly, thoroughly, independently, without taking sides, and safeguarding the interests of the parties involved in legal actions, what a notary public needs to pay attention to before making an authentic deed is to pay attention to the provisions of Article 16 paragraph (1) letter e. The Law on Notary Position, in carrying out his/her position, a notary is obliged to provide services in accordance with the provisions of this law, unless there is a reason to refuse it.

Based on the article's explanation, what is meant by "reasons for refusing" is the reasons that result in the notary being impartial, such as a blood relationship or marriage with the notary himself or his/her husband/wife. One of the parties does not have the authority to act to do any act or other things that are not permitted by law. In practice, a Notary often neglects the meaning of the Article, which cannot be denied and often happens is a Notary who still accepts to make deeds even though the class submitted by the party against the law.

If an appearer asks a notary for a deed, the notary must find out whether the request from the appearers can be realized or not. As a notary public who is a legal profession who should provide legal protection and guarantees for the attainment of legal certainty in society, it must not fulfil the wishes of an appearer that is not in accordance with the provisions of the legislation. In this case, the precautionary principle needs to be applied by a notary public. The forms of the prudence principle that should be carried out by a

notary in the deed-making process, namely, identifying the identity of the complainant, verifying the data of the subject and object of the observer carefully, giving grace in working on the deed, acting carefully, conscientiously and be thorough in the deed work process, fulfilling all technical requirements for deed creation and reporting if there is an indication of money laundering in a notary transaction. These forms of precautionary principles should be implemented by a notary public so that the notary can prevent legal problems arising against authentic deed that he/she made in the future. Referring to Article 16 paragraph (1) letter e, the Notary is required to provide services in accordance with the provisions of this Law, unless there is a reason to refuse it. If there is a reason to refuse the party's wishes where the reason is due to legal irregularities, the Notary may refuse the wishes of the applicant. The legal consequences that arise because the Notary neglects legal principles for personal gain, in addition to affecting the Notary itself, it also results in the authenticity of a deed it also affects other parties.

1. To the notary
2. To the deed
3. To the appearer

*To the notary*, the notary will be caught in legal problems and may be subject to sanctions because the deed he/she has made violates the law. *To the deed*, the authenticity of the deed is lost because it is made inconsistent with the provisions of the law. *To the appearer*, it can be subject to legal sanctions and compensation.

The legal remedies that can be taken by the party who is aggrieved due to the notary's carelessness are as follows:

1. If a party feels aggrieved due to the Notary's carelessness in carrying out his/her position. In that case, the party can sue for compensation, fees, and interest by filing a lawsuit to the district court
2. Another legal measure is to report to the Regional Supervisory Council so that the relevant Notary is subject to sanctions.

It is also explained in Article 16 paragraph (11) that a Notary who violates the provisions referred to in paragraph (1) letter a to letter l may be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary suspension;
- c. Honorific dismissal; or
- d. Disrespectful dismissal.

#### 4. Conclusions

A notary as a position is required to act professionally in carrying out his/her position in accordance with the standard of position stipulated in the Law on Notary Position, namely to provide the best possible service to the public. Personal integrity and professional skills are the attitudes that notaries must consider in carrying out their duties. The role of a notary in providing legal counseling is carried out in order to increase community service as well as provide an explanation to the parties that in making an authentic deed, a notary must act according to legal corridors so that later the deed does not cause problems. Referring to Article 16 paragraph (1) letter e, the Notary is required to provide services in accordance with the provisions of this Law, unless there is a reason to refuse it. If there is a reason to

refuse the wishes of the appearers where the reason is due to legal irregularities, the Notary may refuse the wishes of the appearers. The importance of the Notary applying Article 16 paragraph (1) letter e before a deed can prevent legal issues arising from the authentic deed that he/she makes in the future. The legal consequences that arise because the Notary neglects legal principles for personal gain and affects the Notary itself also results in the authenticity of a deed; it also affects other parties. This study suggests that:

1. As a Public Officer, a Notary must have personal integrity and professional skills in carrying out his/her job duties.
2. In providing services to the community related to a notary, the Notary needs to provide legal counselling related to the deed he/she will make.
3. In order not to take any actions that may result in legal consequences or losses to other parties in connection with making authentic deeds.

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