

# Dive Into the Challenges of Law Enforcement of The Notary Code of Conduct in the Digital Age

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## ABSTRACT

The purpose of this study is to analyze the problems faced by notaries in implementing the code of ethics in the digital era and what are the problems of law enforcement of the notary code of ethics in the digital era. This research is normative juridical research using statutory, conceptual, and case approaches and analyzed descriptively qualitatively. The results of the analysis show that the digitalization era which is dominated by social media platforms can be an opportunity for Notaries to simplify their performance, but on the other hand it also opens up new potential for Notaries to take actions that violate the Notary's code of ethics. That is why the existence of the Notary Supervisory Council is very necessary to really carry out supervision and action against notaries who violate the code of ethics. The problem that has been experienced in the context of law enforcement of the notary code of ethics is that so far MPM seems to work half-heartedly, so that many notaries do not heed the warnings or sanctions given when they are found to have violated the Notary Code of Ethics.

## ABSTRAK

Tujuan penelitian ini yakni untuk menganalisis apa saja problem yang dihadapi notaris dalam menerapkan kode etik di era digital dan apa saja yang menjadi problematika penegakan hukum kode etik notaris di era digital. Penelitian ini merupakan penelitian yuridis normatif dengan menggunakan pendekatan perundang-undangan, konseptual, dan kasus serta dianalisis secara deskriptif kualitatif. Hasil analisis menunjukkan bahwa Era digitalisasi yang didominasi dengan platform media sosial dapat menjadi peluang bagi Notaris untuk mempermudah kinerjanya, namun disisi yang lain hal tersebut juga membuka potensi baru bagi notaris untuk melakukan tindakan-tindakan yang melanggar kode etik notaris. Karena itulah keberadaan Majelis Pengawas Notaris sangat diperlukan untuk benar-benar melakukan pengawasan dan penindakan terhadap notaris yang melanggar kode etik. Problem yang selama ini dialami dalam konteks penegakan hukum kode etik notaris adalah karena selama ini MPM terkesan bekerja setengah hati, sehingga banyak notaris yang tidak mengindahkan teguran-teguran ataupun sanksi-sanksi yang diberikan ketika kedatangan melanggar Kode Etik Notaris.

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## I. INTRODUCTION

The profession in the field of law is an honorable noble profession or noble profession (*nobile officium*) and is very influential in the state order. One of the professions in the field of law is Notary which is the main pillar in enforcing the rule of law to carry out national legal development strategies. The high professionalism and integrity of each law enforcement officer is absolutely

necessary in accordance with the main duties, functions and authorities that have been regulated in the Law.

Notaries as one of the pillars of national law enforcement, in carrying out their profession, in addition to being based on the law, must also uphold the ethical values of the profession. Notary is a legal profession and thus the notary profession is a noble profession (*nobile officium*), this is because the notary profession is very closely related to humanity. Because a deed made by a notary can be a legal basis for the status of property, rights and obligations of a person. Errors in a Notary deed can lead to the deprivation of a person's rights or the burden of a person to an obligation, (Anshori, 2009). In addition, violations committed by notaries can lead to a loss of integrity and noble values of their profession as state officials. That's why notaries must stick to professional ethics in carrying out their duties and authorities.

Furthermore, in carrying out their duties and authorities, Notaries are covered by laws that regulate every behavior in carrying out their duties, namely in the form of Law of the Republic of Indonesia No. 30 of 2004 concerning the Position of Notary (hereinafter referred to as Law No. 30/2004). Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as Law No. 2/2014), with the intention of replacing the *provisions of the Reglement of Het Notary Ambt in Indonesia* (S.1860 No. 3) concerning the Regulation of the Position of Notary (hereinafter referred to as PjN) which is no longer in accordance with legal developments and community needs. Law No. 30/2004. Law No. 2/2014 is expected to provide legal protection, both to the public and to the notary itself and is also expected to be better than the laws and regulations it replaces. In Law No. 30/2004 and Law No. 2/2014, provisions have been regulated relating to the right to deny notaries and supervision of the implementation of the position of notary (Prabawa, 2017). In addition to the Law, Notaries are also supervised by the Notary Code of Ethics (hereinafter referred to as KEN) issued by the Indonesian Notary Association community (hereinafter referred to as INI) which has been recognized by the state. So that in carrying out their profession, notaries are required to comply with Law No. 2/2014 and the KEN.

Ethics is a conception of the good or bad of a person's temperament or behavior. While moral is the good or bad behavior of a person. Ethics are ideas-, ideals about the desire for goodness of human deeds or behavior. Ethics always gives good examples, while morals always give an assessment of the implementation of the examples given by ethics. Therefore, an ethical person is a person who gives an example of exemplary behavior, while the moral person is the one who acts as an example (Sufirman, 2014)

Ethics and morals include aspects of human life in a broad sense, especially in the interactive relationship of man with fellow human beings in his social environment, among others in relation to the relationship of work and or profession. As is the case of the plaintiff with the judge, the advocate with his client, the prosecutor with the defendant, and the notary with his notarial services. The profession is authorized under the law. Legal professionals are general officials in their respective fields. Therefore, the main task of the profession is to provide public services to the public without discriminatory based on the provisions of the applicable law. For legal professionals in carrying out their professional functions, they are equipped with signs in a broad sense, namely legal signs (statutory law) in a broad sense, and professional ethics and moral signs (professional code of ethics), so that professional responsibilities in professional implementation include legal responsibility and moral responsibility (Tardjono, 2021).

However, in today's digital era, where technological intelligence is increasingly sophisticated and is often used as one of the supports for the notary profession, it can be a breakthrough that helps the work of notaries. Technological advances for the notary profession can indeed have a positive impact in facilitating their duties and obligations, but on the other hand, it can also be a medium

that makes their professional performance despicable. Because lately, many notaries have been caught violating the notary code of ethics on social media which is an important part of the digital world.

The development of the digital world has changed various aspects of human life which directly led to the birth of legal changes. This change will certainly have an impact on the performance of notaries in making authentic deeds in the era of information and technology that is so sophisticated. So it is possible that notaries will be trapped in new phenomena that can entangle them into legal problems in the future. Some of the problems that may and will be faced by Notaries in the current era of information technology development such as doing advertisements on social media, looking for clients on social media, and so on.

Habib Adjie researched the concept of mayantara notaries facing the challenges of competition in the global era, which explained how the concept of mayantara notaries in facing global challenges where mayantara notaries or *cyber notaries* want to carry out their duties and authorities based on information technology. Where the interceptors, witnesses and notaries will only need to use signatures, seals and stamps digitally as well as digital fingerprints. Regarding the concept or implementation of notaries in the face of competition, no fundamental changes have been made to Law No. 2/2014 which is the basis for Indonesian notaries and other laws and regulations (Adjie, 2018).

A notary is a public official who has a role in carrying out legal acts in accordance with the Law. Notaries in carrying out the profession are required to adjust and keep up with the times, the goal is to be able to face the challenges of Global Competition. In this digital era, with the advancement of information technology that is developing quite rapidly, it can backfire as well as a challenge for the existence and existence of notaries and prospective notaries who will be appointed next. Because the transactions that are happening now are electronicsystems or online, and are increasingly experiencing developments and are integrated with each other (Sugianto, 2020). This kind of thing, of course, will also open up the potential vulnerability of notaries to carry out actions that violate their professional code of ethics.

Supervision and guidance on the actions and behavior of the notary's office is very necessary considering that his professional duties are very vulnerable to moral issues and ethical values, in line with this, in terms of law and the notary profession, it can be said that independence or independence is essentially bound and limited by certain signs, because it is said in the *International Conference Commition of Jurist* that: "*Independence does not mean that the judge is entitled to act in arbitrary manner*"(Kamil, 2012). As for the signs that must be remembered and observed in the implementation of such notary freedom are the rules of law itself. Based on the explanation above, the researcher wants to examine what are the problems faced by notaries in implementing the code of ethics in the digital era, then what are the problems with law enforcement of the notary code of ethics in the digital era?

## II. RESEARCH METHODS

This research is a normative juridical research using a statutory, conceptual, and case approach. Legal materials are collected through literature studies and analyzed using qualitative analysis. The results of the study concluded that the analysis used was descriptive analysis with an inductive approach.

### III. RESULTS OF THE DISCUSSION

#### **Notary Code of Ethics**

In Hook's view, ethics does have general principles, but it requires specificity and should be detailed. Therefore, a special code of ethics for professions that depends on the functions and responsibilities of the professional holder is needed and there can be a code of ethics for one of the professions contained regulations that do not apply to other professional codes of ethics. Although it requires specificity and must be detailed, Koehn cautions, ethics that are legal in nature cannot mechanically detail to the extent that it is as small as possible exactly what a professional should do, but must give a general handle and put limits on professional behavior (Ahmadi, et al, 2010).

Notary Code of Ethics Chapter I Article (2) General Provisions explains that the Code of Ethics is all moral rules determined by the Association of Indonesian Notary Associations which will hereinafter be called "Perkumpulan" based on the decision of the Association Congress and/or which are determined by and regulated in the laws and regulations governing it and which apply to and must be obeyed by each and all members of the Association and all persons who carry out their duties as Notaries, including Temporary Notary Officers, Substitute Notaries, and Special Substitute Notaries (Prabawa, 2017).

In the amendment to the Notary Code of Ethics of the Extraordinary Congress of the Indonesian Notary Association, which was held in Banten in May 2015, several provisions related to KEN were explained which included Obligations, Prohibitions, Exceptions and Sanctions. In Article 3 of the KEN, it is explained that Notaries are required to:

- a) Have good morals, morals and personality
- b) Respect and uphold the dignity and dignity of the notary position
- c) Maintaining and defending the honor of the association
- d) Behave honestly, independently, impartially, trust, others, full of a sense of responsibility based on laws and regulations and the content of the notary's oath of office
- e) Improving the science and professional expertise that has been possessed is not limited to legal and notarial science.
- f) Prioritizing service to the interests of the community and the state
- g) Providing deed making services and other authorities for the poor without collecting honorarium
- h) Establish one office in the place of domicile and the office is the only office for the notary concerned in carrying out the daily duties of the position
- i) Install 1 (one) nameplate in front of / in its office environment with a size of 100 cm x 40 cm, 150 cm x 60 cm or 200 cm x 80 cm which contains:
  - 1) Full name and valid title;
  - 2) The date and number of the last decree of appointment as a notary;
  - 3) Seating place;
  - 4) Office address and telephone/fax number;
  - 5) The base of the nameplate is white with letters in black and the writing on the signboard should be clear and young to read. Except in such office environments it is not possible to install the nameplate in question
- j) Attend, participate and actively participate in activities organized by the association
- k) Respect, comply with, implement the rules and decisions of the association
- l) Paying association dues in an orderly manner
- m) Pay money to assist the heirs of a deceased colleague
- n) Implement and comply with all provisions on honorarium established by the association
- o) Carrying out the position of notary in his office, unless there are certain reasons

- p) Creating an atmosphere of family and togetherness in carrying out the duties of office and daily activities and treating each other's colleagues well, respecting each other, helping each other and always trying to establish communication and silaturrahmi ropes
- q) Treat any client who arrives well and does not distinguish between his or her economic status and/or social status
- r) Make a deed within the limited amount of reasonableness to carry out laws and regulations, especially the Law on the position of notary and the code of ethics.

In addition to the above obligations, in Article 4 KEN it is explained that Notaries are prohibited from:

- a) Have more than 1 office, either a branch office or a representative office
- b) Install a nameplate and/or inscription that reads "Notary/Notary Office" outside the office environment
- c) Carrying out publication or self-promotion, either alone or jointly, by stating his name and position, using print and / or electronic media means in the form of: a) Advertisement; b) Congratulations; c) Condolences; d) Acknowledgments; e) Marketing activities; f) Sponsorship activities, both in the social, religious and sports fields
- d) Cooperate with service bureaus / persons / legal entities that essentially act as intermediaries to find or obtain clients
- e) Sign a deed whose manufacturing process has been prepared by the other party
- f) Sending minuta to the client for signature
- g) Attempt or attempt in any way for a person to transfer from another notary to him, whether the effort is directed directly to the client concerned or through the intercession of another person
- h) Coercing the client by withholding the documents that have been submitted and/or carrying out psychological pressure with the intention that the client will continue to make a deed to him
- i) Make efforts both directly and indirectly that lead to the emergence of unfair competition with fellow notary partners
- j) Establish the honorarium payable by the client in an amount lower than the honorarium that the association has set
- k) Intentionally employing a person who is still an employee of another notary office without the prior consent of the notary concerned, including accepting work from another notary office employee
- l) Vilifying and/or disputing a notary partner or deed made by him. In the event that a notary confronts and/or finds a deed made by a colleague in which it turns out that there are serious errors and/or endanger the client, then the notary must notify the colleague concerned of the mistakes he made in a way that is not patronizing, but to prevent unwanted things from arising to the client concerned or the colleague
- m) Not performing obligations and violating prohibitions as referred to in the Code of Ethics by using electronic media, including but not limited to using the internet and social media
- n) Establishing an exclusive group of peers with the aim of serving the interests of an agency or institution, let alone closing the possibility for other Notaries to participate
- o) Use and list titles that are not in accordance with applicable laws and regulations
- p) Making a deed exceeding the reasonableness limit whose amount limit is determined by the honorary council
- q) Participating in the auction to get a job/deed making.

Basically, what can be applied to the notary profession related to existing professional ethics is that it must be responsible and not violate the rights of others or other parties. The role of ethics is becoming more important in order to perfect people and life. Notaries who pay attention to ethics will immediately comply with applicable regulations, but on the contrary it will happen if the notary

only pays attention to and obeys laws and regulations, it may be that the notary will violate professional ethics that violate other rights (Prasetyawati & Prananingtyas, 2022).

The fundamental difference between the notary code of ethics and other professional codes of ethics lies in the preparation of its laws and regulations. The notary code of ethics prepared by INI and also regulated in Law No. 2/2014. Meanwhile, other professional codes of ethics are regulated and determined by the organization concerned. The difference lies in the implementation and enforcement of the sanctions imposed, where in the notary professional code of ethics regulates sanctions in the regulations of the notary position and is applied to notaries who violate them.

The spirit used by the notary code of ethics is a respect for human dignity in general, and the dignity of notaries in particular. Based on this, it can be concluded that the notary profession must have the following characteristics: independent, impartial, selfless, rationality, and refers to objective truth, upholding solidarity with fellow notaries (Sulihandari & Rifiani, 2013).

### **Problems in implementing the Notary Code of Ethics in the Digital Era**

A code of ethics is a moral principle inherent in a profession and systematically drawn up. The code of professional ethics is a norm established and accepted by professional groups, which directs or instructs their members how to do and at the same time ensures the moral quality of the profession in the eyes of the public. The general principles formulated in a profession will vary from one another. The code of ethics serves: As a means of social control, a deterrent to the interference of other parties, a prevention of misunderstandings and conflicts, as a control of whether the members of the professional group have fulfilled obligations. The objectives: Uphold the dignity of the profession, maintain and maintain the welfare of members, improve the service of members, improve the quality of professions and organizations, improve services, strengthen organizations, avoid unfair competition, establish close relationships with members, and determine standards.

Notaries are obliged to obey the norms that are important in law enforcement, namely: humanity, justice, propriety, honesty and implement the code of ethics as appropriate. However, in its implementation, sometimes it does not go well and even causes problems. In its application, it sometimes experiences obstacles or obstacles, especially in today's digital era. Where opportunities and opportunities to violate notary ethics are increasingly wide open, especially on social media platforms.

In Chapter I Article 3 of the Notary Code of Ethics explains that "organizational discipline is the compliance of members with the Rules and decisions of the association", the importance of a Notary's discipline in carrying out his duties to always comply with the regulations of the Notary Code of Ethics and Law No. 2/2014. The Notary Code of Ethics is all moral rules determined by the Indonesian Notary Association of Organizations (hereinafter referred to as INI), which applies and must be obeyed by all members of the association and other people who hold the position of Notary both in the implementation of office and in daily life. Notaries really need to know and understand the code of ethics, where regulating any acts can be said to be a violation of the code of ethics and sanctions imposed if they violate the code of ethics. The existence of a Notary code of ethics is a logical consequence of a notary profession job. Every Notary has basically been bound by an oath to obey and obey the Act. This is stated in Article 4 paragraph (2) of Law No. 30/2004 concerning the Position of Notary whose content is "The oath /promise as referred to in paragraph (1) reads as follows I swear / promise: that I will obey and be loyal to the State of the Republic of Indonesia, Pancasila and the Constitution of the Republic of Indonesia of 1945, the Law on the Position of Notary and other laws and regulations. That I will exercise my office with a mandate, honesty, thoroughness, independence, and impartiality. That I will maintain my attitude, conduct, and will carry out my obligations in accordance with the code of professional ethics, honor, dignity, and responsibility as a Notary. That I will keep secret the contents of the deed and the particulars

obtained in the exercise of my office. That I am to be appointed to this office, either directly or indirectly, under any name or pretext, never and will not give or promise."

The implied message of the Article is that the Notary must uphold the regulations that have been determined by the Indonesian Notary Association organization (hereinafter referred to as INI) and carry out all the regulations that have been attached since a person was appointed and sworn to become a Notary, therefore a Notary must protect himself from applicable regulations. So even if there is a violation, it is the ethical responsibility of the notary relating to moral norms which is a measure for the notary (Fahri, et al, 2015).

Notaries who have long been active in the professional world carry full responsibility for the ethics of the notary profession that they have known and agreed to. But in the vortex of millennials and digitization is eroding critical of the profession's sense of ethical accountability. In implementing the notary profession against the Indonesian state, it is not easy, if the implementation of ethics is not carried out according to the rules, the ethics and professionalism of the notary will be questioned by the public.

This is where the challenge for notary professional actors to be more aware of and balance between *skills, knowledge, and attitudes*. Realizing that the 21st century is a dimension where it is full of digitization, the absorption of socialization by the public must be fully assisted by the notary profession so that the ethics of the notary profession run properly, do not cause doubts by the public, foster the foundation of trust between the notary profession and the public is an important point as a provision for the smooth implementation of notary professional ethics in the era of the industrial revolution 4.0 today.

As well as on social media, there are several pages that can be used by notaries, such as *Osialisa, Blogspot, Kaskus, Wordpress Scribd, Multiply, Yahoo, Facebook, Twitter, Instagram* and others. Many of us find notaries who have blogs and other social networking pages and they also include their names and positions to attract the attention of the public. For example, in kaskus, kaskus is the largest discussion and buying and selling forum in Indonesia. In kaskus they can publish advertisements, journals, publication media and even they also provide a space for discussion and consultation that will be responded to directly. This is done in order to attract the attention of the public and more people who can see the information provided by the kaskus. Not a few notaries also use kaskus as a place to promote themselves. This kind of thing clearly violates the law of the notary code of ethics, namely that notaries are prohibited from promoting themselves both in print and electronic media. As stipulated in Article 4 Paragraph (3) of this Code of Ethics which contains Notaries, it is prohibited to carry out publications or self-promotion, either alone or jointly, by including their names and positions, using print and/or electronic media, in the form of: advertisements, congratulations, condolences, thanksgiving, marketing activities, sponsorship activities, both in the social, religious, as well as sports.

Violations of the code of ethics committed by notaries basically occur due to several factors, namely: a) Economic factors, the presence of urgent economic needs; b) Factors of incomprehension, the presence of different misinterpretations of the code of ethics; c) Competition factors, the quality of notary profession meetings in the same close area, causing unfair competition and client struggles; d) Moral factors, low moralization; e) Family factors, the emergence of family problems should be separated from professional problems, because it is hoped that the notary profession can carry out its duties without involving regional or family relationships (Sulihandari & Rifani, 2013)

### **Problems of Law Enforcement of the Notary Code of Ethics in the Digital Era**

The digital world is currently experiencing rapid development, even the majority of the Indonesian population currently has social media accounts both active and not. With this social media,

everyone can interact with other people in various places around the world, whether they know or are unknown in the real world.

Each social media account owner usually lists some of his identity so that he can be recognized by others, this identity can involve many things such as name, address, occupation, job title, and so on. So that thus every social media account owner will be very easy to be recognized by others. Likewise, with Notaries who have social media accounts, they will include these identities in their respective accounts. So that indirectly social media becomes a place for notary promotion. Even though the notary profession code of ethics, they are prohibited from making advertisements other than in front of their offices.

The relationship between ethics and the legal profession, that professional ethics is as an attitude to life, in the form of a willingness to provide professional services in the field of law to the community with full involvement and expertise as a service in order to carry out duties in the form of obligations to the community that requires legal services accompanied by careful reflection. Therefore, in carrying out the profession, there are basic rules in the form of professional ethics, namely as follows (Tardjono, 2021):

- a. The profession should be viewed as a service and therefore a "selfless" nature is characteristic in developing the profession;
- b. Professional service in putting the interests of justice seekers first refers to noble values.
- c. Professional development must always be oriented towards society as a whole. Competition in services takes place in a healthy manner so as to ensure the quality and improvement of the quality of professional development.

In order to monitor and implement this Code of Conduct, an HONORARY COUNCIL was established to examine and Decide on allegations of violations of this Code of Conduct Internal or unrelated to the interests of the immediate community. Supervision is the process of observing the implementation of all organizational activities to ensure that all work that is being carried out runs in accordance with a predetermined plan. The organizational apparatus that regulates / deals with law enforcement issues and supervises the notary profession that carries out these duties is the Honor Council is an institution formed by the INI organization in carrying out supervision within the scope of the Notary Code of Ethics. Meanwhile, the Honorary Council cooperates and coordinates with the Supervisory Panel to carry out efforts to enforce the code of ethics based on the scope of Law No. 2/2014 and the Notary Code of Ethics as mandated in Article 67 paragraph (2) and paragraph (3) of Law No. 2/2014 (Fahri, et al, 2015).

The Notary Supervision Council and the Notary Honorary Council as enforcers of the Notary Code of Ethics also have a fairly heavy task, namely having a mandate to ensure that these Notaries understand and implement the Code of Ethics consistently. In addition, it also contributes to the existence, honor and nobleness of the notary position profession in society. If the Board of Trustees and the Honor Board are unable to enforce the Code of Conduct in accordance with the order mandated by the organization, its credibility as an enforcement agency of the Code of Conduct will be underestimated by outsiders.

The problem of law enforcement regarding violations of the notary code of ethics in the digital world basically with the existence of a form of supervision of existing notaries has actually helped a lot of the value of chastity in the profession, but the supervision and functions that have been given to supervisors are not perfect, it still needs a lot of improvement or we can call supervision that is not yet strong, The weak supervision is also due to the constraints that occur within the scope of supervision and also the Notary itself (Saputra & Djajaputra, 2018).

On the other hand, the existence of a Notary Supervisory Panel (MPN) is very important to supervise and foster notaries. Meanwhile, the duties of the Notary Supervisory Panel itself, as stated in Law No. 2/2014, among others, are to supervise the implementation of the notary position, including

conducting examinations, hearings and imposing sanctions for notaries who commit violations. However, there are still some weaknesses in the existence of the Notary Supervisory Panel (MPN) of Notaries, including (Indrapraja, 2018):

- a. Lack of socialization to parties related to the notary profession to the public, academics, the National Police and notaries within their authority.
- b. The lack of supervision process, which is possible, there are limitations in the adequate operational budget to conduct reviews and guidance on notaries within their authority.
- c. There is a limited time for each MPN member, due to their respective activities both as academics, notaries and ASNs in related agencies.
- d. Lack of strong coordination of members of the Notary Supervisory Board

Thus the enforcement of the notarial code of ethics which is intended as a supervisory tool for the implementation of the values of the code of ethics. The code of ethics becomes a self-regulation supervised by the Honorary Council at the regional, regional and central levels. So that an effort to increase honesty, the integrity of a notary is very necessary in order to support a policy from the government to integrate licensing services. electronically or online single submission (OSS) (Prasetyawati & Prananingtyas, 2022).

#### IV. CONCLUSION

The era of digitalization, which is dominated by social media platforms, can be an opportunity for Notaries to facilitate their performance, but on the other hand, it also opens up new potential for notaries to take actions that violate the notary code of ethics. That's why the existence of the Notary Supervisory Majelis is very necessary to really carry out supervision and enforcement against notaries who violate the code of ethics. The problem that has been experienced in the context of law enforcement of the notary code of ethics is because so far MPM seems to work half-heartedly, so many notaries do not heed the reprimands or sanctions given when caught violating the Notary Code of Ethics.

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