

## Ethics of the Notary Profession and Challenges in the Digital Era

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### Abstract

*Notaries in carrying out their positions, notaries must comply with the Notary Code of Ethics. However, the rapid development of digital technology has led to legal changes, which have an impact on problems in the implementation of notary professional ethics. It is possible that Notaries will be trapped in new phenomena that can ensnare them into legal problems in the future. This research raises the issue of the form of implementing notary professional ethics and its challenges in the digital era. This research is a normative juridical research using a statutory, conceptual, and case approach. Legal materials were collected through literature study and analyzed using qualitative analysis. The results of the study conclude that the challenge for notary professions in the digital era, in implementing Notary ethics, is that a Notary must have skills (skills), knowledge (insight or knowledge), and attitude (attitude or behavior) to understand digital technology. Because, if the Notary does not understand the characteristics and intricacies of digital technology, it will slip into a deviation from Notary ethics. Notaries will find it difficult to sort out which ones are prohibited and allowed to promote on social media or on digital media. Notaries must master digital technology as a provision for the implementation of notary professional ethics in the digital era.*

### Keywords

digital era; ethics; notary profession and challenges



## I. Introduction

Technological intelligence is indeed one of the supports for the notary profession at this time, but back again on the basis that the notary profession is able to survive and develop its wings in the future, it still requires a good attitude, qualified skills, and insight that is constantly *updated* as a the basis for starting the community's belief that this is where they can express their aspirations and the problems they are going through.

Technology can be a breakthrough that helps a notary work, but it cannot replace a notary. During the current pandemic, for example. Many people expect meetings to be held *online*, but facing it must be done *offline*, because there are some things that cannot be replaced in an era of fully automated digitalization, not a few people consider *artificial intelligence* to be able to replace many professions. However, just like Taufik, he is optimistic that notaries will not be displaced because notaries are human beings or legal subjects who have IQ, EQ, and are qualified in science and technology and *imtaq*. All like systemic robots. Notaries must be able to overcome or control this era by increasing their capacity and infrastructure properly.

Notary is a legal profession that is needed in making authentic deeds. An authentic deed is a strong piece of evidence and if a case or dispute occurs in court, the Notary deed and PPAT provide a perfect proof as stated in Article 1870 of the Civil Code. The deed made by a notary can be the legal basis for the status of one's property, rights and

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obligations. For this reason, in carrying out their duties and obligations, notaries are limited by various types of rules, including the rules governing the professional ethics of notaries.

Ethics and the profession of a notary have a close relationship. Ethics is an attitude of life in the form of a willingness to provide professional services in the field of notary to the community with full involvement and expertise as a service in the context of carrying out tasks in the form of obligations to the community who need authentic deed services accompanied by careful reflection and therefore the basic rules in the form of Professional ethics are required.

Ethics is a system of values and moral norms that serve as guidelines for individuals or groups in regulating their behavior. The Notary Profession in carrying out his position notary must comply with the Notary Code of Ethics. The purpose of the Code of Ethics is that notaries carry out their positions with morals or dignity, motivation and orientation to intellectual skills and can argue rationally and critically and uphold norm values.

Notaries must have behavior and actions that are in line with the code of ethics of the notary profession. The existence of a notary professional code of ethics is regulated by a notary professional organization in this case the Indonesian Notary Association (INI) as the sole vehicle for the gathering of Indonesian Notaries. The appointment of INI as the only forum for the Indonesian notary professional organization is enshrined in the UUJN. This condition is not the same as the conditions before the enactment of the UUJN which provided the opportunity or possibility for notaries to gather in various notary organizations, which would later result in the existence of various codes of ethics that apply to each member of the notary organization. INI's existence as the sole organization of the notary profession has become more solid after going through *a judicial review* at the Constitutional Court.

The existence of a notary code of ethics has the aim that a notary profession can be carried out professionally, positively motivated and oriented to *skills* as well as using rational and critical argumentation and holding strongly a number of moral values. The Indonesian Notary Association (INI) as the organizational association for notaries has a major role in enforcing the implementation of the professional code of ethics for Notaries, through the Honorary Council which has the main task of supervising the implementation of the code of ethics. Efforts to supervise Notaries are urgently needed, related to notaries who do not heed the noble values and dignity or duties of their positions, or who violate general regulations or make mistakes or other mistakes when carrying out their duties as a notary.

However, the rapid development of information technology today has brought various very significant impacts on human life. Various conveniences offered by the development of telecommunications have enabled human relations to take place quickly and easily without taking into account the aspects of space and time. On the other hand, a notary as a public official in charge of serving the community is expected not to be left behind in responding to these developments.

In addition, the development of information technology also greatly affects people's lives, which has prompted the government to issue Law Number 11 of 2008 concerning Information and Electronic Transactions, State Gazette Number 58, Supplement to State Gazette Number 4843 (hereinafter referred to as UU ITE). The enactment of the ITE Law is expected to guarantee technological progress to increase effectiveness and efficiency in public services.

This technological development will of course also have certain impacts and effects for notaries in carrying out their obligations and duties as government officials. Especially in the aspect of implementing professional ethics which is regulated in such a way that the

performance of the notary is guaranteed to be professional. That's why in the context of this research, the author tries to describe what challenges will be faced by notaries in this digital era related to the existence of professional ethics that they will face.

## II. Research Method

This research is a normative juridical research using statutory, conceptual, and case approaches. The research will reveal the challenges that will be faced by Notaries in the technology era by examining the position of a Notary Based on the Law on Notary Positions and Professional Ethics of Notaries. The data is associated with cases faced by Notaries in the field.

Legal materials were collected through literature study. Data was collected using several literatures related to the Notary profession, Notary Ethics, and Notary Challenges in the Digital Age. Furthermore, the collected data will be analyzed using qualitative analysis. The analysis used is descriptive analysis with an inductive approach, which reveals general things to specific things. Describe the position of a Notary and Professional Ethics of a Notary in general to be associated with challenges in the digital era.

## III. Results and Discussion

### 3.1 Definition of Notary

In terms of notary arrangements, Indonesian law has provided rules for the position of a notary in a special law, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, confirms the notion of a notary, namely a public official who has authority in preparing authentic deeds and has other authorities as intended in the Law on Notary Positions.

A notary is the only public official who has the right to make an authentic deed for perfect evidence or proof. A notary is an extension of the state, a notary carries out some of the state's duties in the field of civil law. The state in an effort to provide legal protection in the field of private law to citizens who have delegated part of their authority to a notary in making an authentic deed. Thus, when carrying out duties, a Notary must be seated as a public official who holds or carries out his duties.

Article 1868 of the Civil Code (KUHPPerdata). Article 1 of the Notary Position Regulations explains that: Notaries are public officials who only have the authority to make authentic deeds regarding all acts, agreements and determinations required by a general regulation or by those who have an interest in wanting to be included in an authentic deed, providing guarantees certainty of date, keep the deed and provide grosse, copies and quotations, all while making the deed by a general regulation is not assigned or excluded to officials or other people.

The task of the Notary is to make the legal relationship between the parties in a written form as well as a certain format constant, therefore it is an authentic deed. A notary is a strong document maker in a legal process.

Therefore, *Openbare Ambtenaren* is an official who has duties related to the interests of the community, therefore it is appropriate if *Openbare Ambtenaren* is defined as a public official. Especially with regard to *Openbare Ambtenaren* whose translation results are Public Officials, which means as officials who are given the task of making authentic deeds that provide services for the benefit of the community, and such qualifications are submitted to a Notary.

A notary is an institution that exists in the community and appears or was born due to the needs or needs of the community members who carry out or carry out a legal act, who wants written evidence in the event of a dispute or problem, so that it can be used as the strongest evidence in court. For that reason, citizens need a notary to make an authentic deed.

### 3.2 Notary Ethics

In the amendment of the Notary Code of Ethics for the Extraordinary Congress of the Indonesian Notary Association, which was held in Banten in May 2015. Several provisions related to the Notary Code of Ethics were explained which include Obligations, Prohibitions, Exceptions and Sanctions. In the code of ethics, in article 3 Notaries are required to:

- a. Have good morals, character and personality
- b. Respect and uphold the dignity and dignity of a notary position
- c. Maintain and defend the honor of the association
- d. Be honest, independent, impartial, trustworthy, fellow, full of responsibility based on statutory regulations and the contents of the oath of office of a notary
- e. . Improving the knowledge and professional expertise already possessed is not limited to legal and notarial knowledge.
- f. Prioritizing service to the interests of the community and the state
- g. Providing services for making deeds and other authorities for the poor without collecting an honorarium
- h. Establishing an office at the domicile and the office being the only office for the notary concerned in carrying out his daily duties
- i. Installing 1 ( one) nameplate in front of/in the office environment with a size of 100 cm x 40 cm, 150 cm x 60 cm or 200 cm x 80 cm containing:
  1. Full name and legal title
  2. Date and number of the last appointment letter as notary
  3. Place of domicile
  4. Office address and telephone/fax number

The basis of the white nameplate with black letters and the writing on the nameplate must be clear and easy to read. Except in the office environment, 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. Pay association fees in an orderly manner.
- m. Pay dukan money to help the heirs of friends a colleague who dies
- n. Implements and complies with all provisions regarding the honorarium set by the association Carry out the
- o. position of a notary in his office, unless there are certain reasons
- p. Creating an atmosphere of kinship and togetherness in carrying out office duties and daily activities as well as treating colleagues well, respecting each other , respect each other, help each other and always try to establish communication and cordial relations
- q. Treat every client who comes well and does not distinguish economic status and/or social status
- r. Make a deed in the number of mandatory limits recommendations for implementing the laws and regulations, in particular the Law on the position of a notary and the code of ethics.

In article 4, a Notary is prohibited

1. from having more than 1 office, either a branch office or a representative office
2. Placing a name board and/or writing that reads “Notary/Notary Office” outside the office
3. Conducting publications or self-promotion, either alone or collectively. the same, by stating the name and position, using print and/or electronic media in the form of:
  - a) Advertisement
  - b) Congratulations
  - c) Condolences
  - d) Acknowledgments
  - e) Marketing
  - f) activities Sponsor activities, both in the social, religious and sports fields
4. Cooperating with service bureaus/persons/legal entities which essentially acts as an intermediary to find or obtain a client
5. Sign a deed whose preparation process has been prepared by another party
6. Send a minute to the client to be signed
7. Try or try in any way to get someone to move from another notary to him, whether the effort is directed directly to the client concerned or through intermediaries other people
8. Perform coercion on the client by withholding the documents that have been submitted and/or applying psychological pressure with the intention that the client continues to make a deed to him
9. Carry out efforts, either directly or indirectly, that lead to the emergence of unfair competition with fellow notary partners
10. the honorarium to be paid by the client in an amount that is lower than the honorarium that has been determined by the association
11. Determine and/or dispute the notary partner or the deed made by him. In the event that a notary encounters and/or finds a deed made by a colleague which turns out to contain serious errors and/or endangers the client, the notary must notify the relevant colleague of the error he made in a way that is not patronizing, but rather to prevent unwanted things from happening to the client in question or the colleague.
12. Not performing obligations and violating the prohibition as referred to in the Code of Ethics by using electronic media, including but not limited to using the internet and social media
13. An exclusive group of peers with the aim of serving the interests of an agency or institution, moreover closing the possibility for other Notaries to participate
14. Using and listing titles that are not in accordance with the applicable laws and regulations
15. Make a deed that exceeds the reasonable limit whose amount limit is determined by the honorary board.
16. Participate in an auction to get a job/deed.

### **3.3 Challenges of Notaries in the Digital Era**

Notaries are wanted by the rule of law with the aim of supporting and providing public services that require written evidence that has an authentic nature about the circumstances, events or legal actions desired by the parties to be included in the form of an authentic deed to be used as a tool. Evidence in accordance with the laws and regulations that certain legal actions must be made in the form of an authentic deed.

However, the rapid development of information and electronic technology 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 the Notary 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 ensnare 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 are as follows:

#### **a. Cyber Notary**

Cyber Notary itself is a concept that utilizes technological advances for notaries to make authentic deeds in cyberspace and carry out their duties every day. For example: electronic deed signing and the General Meeting of Shareholders by teleconference.

Actually a cyber notary has appeared since 1995, but it was hampered because there was no related legal basis. However, since the promulgation of Law No. 11 of 2008 concerning Electronic Information and Transactions, the cyber notary discourse has been rolling again. Cyber Notary is intended to facilitate or accelerate the implementation of the duties and authority of a Notary in making an authentic deed regarding all acts or agreements or provisions required by law or what interested parties want to be stated in an authentic deed.

The implementation of a notary's cyber notary authority supported by laws and regulations is to certify electronic transactions as regulated in the explanation of Article 15 paragraph (3) of the UUJN-P and make a release deed at the General Meeting of Shareholders of a Limited Liability Company which is held through teleconference media or in-person meetings. Based on electronics, video conferences or various other electronic media facilities as regulated in Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies. Of course, this development does not stop here. In the future, there are several possibilities for a second amendment to the UUJN or the establishment of a new law that facilitates Notaries to save minutes of deeds in digital form or various advances that make the work of Notaries more efficient and practical.

However, the problem is that digital storage will certainly experience many challenges and problems, such as the security system for these data and documents from hacker attacks, viruses, and break-ins by irresponsible parties, so that it can damage documents, or the leaking of the client's secrets to the public, where the data is the full responsibility of the notaries.

#### **b. Digital Signature**

So far, the process of affixing a signature is usually done manually in order to maintain its originality. However, the rapid development of technology makes the signature process not have to be done manually, but can also be done digitally. The validity of this digital signature has actually been regulated by Article 11 of the ITE Law which requires:

1. Data for making digital signatures are only related to the signing.
2. Any changes to the digital signature that occur after signing can be noticed;
3. Any changes to the electronic information related to the digital signature can be noticed;
4. There must be a way to identify the signer;
5. There must be a way to prove that the signer has agreed to the electronic information associated with the digital signature.”

This shows that the ITE Law explicitly recognizes that digital signatures have legal standing and legal force equivalent to conventional signatures as long as the conditions stipulated in Article 11 of the ITE Law are fulfilled. PP PSTE supports further explanations of the ITE Law, furthermore, it only requires further regulation regarding cyber notary regarding the digitization of the deed so that it can synergize with PP PSTE.

However, although the rules regarding this digital signature have been regulated in such a way, concerns about the security of the signature are worth paying attention to. Because the digitization of signatures will be very vulnerable to forgery which can harm the public. This means that this vulnerability should be watched out by notaries so as not to cause mistakes in the future.

### **c. Advertising through Social Media Accounts and the Internet**

Social media is currently experiencing rapid development, even the majority of the population of the State of Indonesia currently has a social account, whether active or not. With this social media, everyone can interact with other people in various places around the world, whether they know or don't know in the real world. Social media is an example of a relatively recent development of information technology (Marbun *et al*, 2020).

Each owner of a social media account usually includes several identities so that they can be recognized by others, this identity can involve many things such as name, address, occupation, position, and so on. So that every social media account owner will be very easily 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 promotional event for notaries. Even though the code of ethics of the notary profession is prohibited, they are prohibited from making advertisements other than in front of their office.

In a study conducted by Riyan Saputra & Gunawan Djajaputra with the title "Law Enforcement Against Notaries Who Promote Himself through Social Media". In this case, it can be concluded that in this matter that basically with the existence of a form of supervision of the existing Notary, it has actually helped a lot with the value of holiness in the profession, but the supervision and functions that have been given to the supervisor have not been perfect need 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.

Anita Putri Herawati, in her research entitled "The Prohibition of Notaries from Promoting Himself through the Internet Based on the Law on Notary Positions and the Code of Ethics", found that there are many kinds of prohibitions on the promotion of Notaries using electronic media, including the following:

1. Promoting through electronic media or the internet;
2. Using blogs as a means of advertising or self-promotion;
3. Through the internet to promote legal services in the notary field;
4. Through advertisements, it can be easily found at <http://jasantaris.blogdetik.com/>

Notary promotions or advertisements through the website have violated 2 (two) regulations, namely the Law on Notary Positions and the Notary Code of Ethics. Regulations that violate the Law on Notary Positions are contained in Article 1 point (1), Article 2, Article 9 paragraph (1), Article 12 letter c, Article 7 paragraph (2). It is also contained in the Notary Code of Ethics, namely Article 4 number 3, Article 4 number 4, Article 4 number 15 letter a.

## IV. Conclusion

Technological intelligence that develops in the form of digital technology on the one hand can support the activities of the notary profession, but on the other hand poses its own challenges for the implementation of notary professional ethics. Notaries are faced with new problems with the emergence of digital technology. The behavior of a Notary is tested for its commitment to upholding its professional ethics. The existence of digital notary technology has become wide open to covert promotions on social media or in digital media. Through digital media, Notaries can also be more open to connecting with prospective clients and clients via *teleconference*, so that it will tempt Notaries to get around the making of a Notary deed without having to present or confront the parties in making a Notary deed.

The challenge for notary professionals in the digital era, in implementing Notary ethics, is that a Notary must have the skills (skills), knowledge (insight or knowledge), and attitude (attitude or behavior) to understand digital technology. Because, if the Notary does not understand the characteristics and intricacies of digital technology, it will slip into a deviation from Notary ethics. Notaries will find it difficult to sort out which ones are prohibited and allowed to promote on social media or on digital media. Notaries must master digital technology as a provision for the implementation of notary professional ethics in the digital era.

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