

Notaries That Run Business As the Land Broker

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Abstract

This thesis discusses about a notary who acts as a land broker and manage it. Whether that act can be categorized as a violation of his ethic professional code (Notary Code provisions in Indonesian Notary Association (INA)). The research method used in this research is using the type of normative juridical research with statutory approach and conceptual approach. The result of the research concludes that a notary who in his position acts as a land broker and performs its management has violated the principle of impartiality as contained among others in the provision of Article 4 paragraph (1) jo. Article 16 paragraph (1) letter a jo. Article 17 letter i UUJN, as well as the provision of Article 3 paragraph (4) jo. Article 4 paragraph (7) Notary Code of Ethics INA

Key Words: Code of Ethics, Notary, Realtor

1. BACKGROUND OF STUDY

Generally, people want a public service which is fast and efficient, without concern to bureaucracy and administration. It is described from the tendency of people who prefer to use the services realtor in the processing of documents, rather than do it self. The meaning of the realtor or broker itself is a trade broker (between buyer and seller); people who sell goods or find buyers.

Although the use of such broker services must incur extra costs, excluding the official tariffs set by the government, realtor is reputed to know more about the bureaucracy and administration in the public service institution. In addition, the use of realtor services is also considered a guarantee of time efficiency. Arrangements can be completed in accordance with the specified time limit or even faster than when the user services to manage their own.

Notary as a public official has the authority to make authentic deeds and other authorities in performing his / her position. It can not be denied, along with the development of the times, notaries increasingly have an important role in every legal relationship in the life of the community which includes various business relationships, activities in the field of banking, land, social activities and so forth.

As a public official, notary has to: (a) Pancasila's spirit; (b) obedient to law, oath of office, Notary Code of Ethics; (c) good Indonesian language. So that all the notary behavior both inside and outside of its position should always take into account the prevailing laws and regulations, and not least the Code of Ethics of Notary.

Over time, the notary profession became a profession that increasingly sought for some people. This is caused of the efforts and roles of the notary who has served in advance to maintain the nobility of the profession he carries. In addition, the role of the notary profession organization in this case also cannot be ruled out. Interest from the public to pursue the world of notary profession also received a welcome from the government with more and more open notary study programs in various state universities. Several hundred candidates of notaries are produced annually from various universities of the country. But unfortunately, it is not coincided with the distribution of notary placement. So that not often found in some big cities, the number of notaries exceeds the level of public needs, while in small towns and remote areas, the number of notaries is very minimal so that the public needs for services and notaries cannot be fulfilled.

The growing number of notaries in big cities, making the competition between notaries to get clients is getting tighter. Therefore, many notaries who start trying to do other business activities in addition to performing the duties of his position, one of them by becoming a provider of document management and other administrative products. The field is in great demand by the notary, because they already know the ins and outs of the arrangement. In addition, there is also a notary who became a broker in the process of buying and selling land. This may be the background of the notary's knowledge in the field of land, because in general a notary also serves as the Land Deed Officer. Whether by providing document management services, or by becoming a broker in the process of buying and selling land, the main orientation for a notary who runs it is to earn a profit

or additional income. Moreover from the sideline business is sometimes higher profits earned than making a deed.

It is a reason for a notary who based in Bali which acts as a broker for a land procurement project and carries out the sale and purchase of the land, which includes the making of deeds of sale, the processing of the taxes, up to the receipt of a sum of payment of the land price. Notaries argue that it is the will of the power of attorney, because perhaps they trust the notary. While the owner of the land as an authorizer claimed the layman of the sale of land and just want to take it wrong, so he accepted the offer of a notary, who offered himself as a broker and make the sale and purchase of land.

Basically, Enactment Number 2 Year 2014 about Notary which becomes the legal protection as well as signs for the notary in performing their duties, does not prohibit notary in addition to performing their duties, also conduct any business or entrepreneurship, other than those with strictly prohibited in the provisions of Article 17 of Notary public law and the Notary Code provisions in Indonesian Notary Association (INA).

Nevertheless, from the case that has been described before, it can be seen that a notary who do his position also tries to conduct other business activities, if he is not careful in doing both may "slip" to violate the provisions of legislation about his position as well as code ethics of his profession, or even be ensnared into a criminal act In analyzing the issue of the Notary Code of Ethics for a Notary who runs a business as a land broker, the theory used is:

1.1 Accountability Theory

Based on the Indonesian Dictionary, accountability implies a state of obligation to bear everything if there is something may be prosecuted, blamed, incurred, and so forth. In the legal dictionary there are 2 (two) terms that refer to accountability, namely liability and responsibility, liability is a specific form of responsibility. The definition of accountability refers to the position of a person or legal entity who is deemed to have paid a form of compensation / compensation after a legal event or legal action (Marzuki 2009).

According to dictionary 'accountable' usually uses words such as "responsibility" or "accountability" and "liability", and "obligation", Responsibility occurs due to several things namely first, decisions taken by one party harm by the other; Second, that is because of negligence. Negligence in this case means failing to perform duties, do not perform the task in accordance with the applicable rules standards, and when doing lever position but not in accordance with the rules.

1.2 Theory Authority

Theory is a basis for simplifying the understanding of a thing which is a series of explanations that can be used to solve common problems. Philipus M. Hadjon states that authority is defined as the rule of law. So, in the concept of public law, authority is concerned with power (Philipus 1997). So the theory of authority relates to the rule of law and the ability to act based on laws and regulations that can have legal consequences (Efendi and Kustina 2000).

Authority according to Philipus M. Hadjon (1997) by law can be obtained through:

1. Attribution, is the inherent authority of a position. This is based on the authority of the Notary Public which is directly granted by law which in this case is UUJN and UUJN of Change which specifically regulates the position of notary public.
2. A mandate is an authority that originates from a process or procedure of transferring from a higher official or body to a lower official.
3. Delegation is the authority granted by a governmental organ to another governmental organ, and all responsibilities that follow such authority are based on legislation.

According to Prajudi Atmosudirjo, authority is what is called formal power, power derived from legislative power (granted by law) or from executive / administrative power. Authority is a power over a certain group of people or power over a particular sphere of government. While the authority is only about a certain auto parts only. Within authority there are powers. Authority is the power to do something public legal act (Atmosudirdjo 1981).

2. THE ACT OF A NOTARY WHO RUN A BUSINESS AS A LAND BROKER CAN BE CATEGORIZED AS A VIOLATION OF THE PROFESSIONAL CODE OF ETHICS

The definition of ethics that has been formulated in the Indonesian Language Dictionary published by the Department of Education and Culture in 1998, Kanter formulated the definition of ethics, as following:

1. Moral values and norms are held by a person or group of people in society to govern their behavior.
2. Ethics also means a set of principles or moral values.
3. Ethics can also be understood as a science of good and bad.

Ethics is a critical, methodical and systematic reflection on human behavior insofar as it relates to human norms or behavior from good and bad angles. Bertens in his book explains, Ethics comes from the ancient Greek *ethos* in the singular form which means customs, customs, good morals. The plural of *ethos* is *ta etha* means custom. From this plural form is formed the term Ethics which by the Greek philosopher Aristotle (384-322 BC) has been used to show moral philosophy. Based on the origin of this word, Ethics means the science of what is commonly done or the science of customs.

According to Bertens the three meanings of Ethics can be formulated as follows:

1. Ethics is used in the sense: moral values and norms that become the guidance for a person or a group in regulating its behavior. This meaning is also referred to as a "value system" in individual human life or community life. For example Ethics of the Javanese, Ethical Buddhism.
2. Ethics is used in the sense of: the set of principles or moral values. What is meant here is the code of conduct, for example the Indonesian Advocate Code of Conduct, the Notary Code of Ethics of Indonesia.
3. Ethics is used in the sense of: the science of the good or the bad. The meaning of Ethics here is the same as moral philosophy.

Based on the context of Ethics of the Legal Profession, Ethics in the first and second sense is relevant because both meanings relate to the behavior of a person or group of legal professions (Abdulkadir 2006). For instance, a notary is immoral, meaning that the notary act violates the values and moral norms prevailing in the notary profession group. Associated with the second meaning, the Legal Profession Ethic means the Code of Professional Law Profession.

For the world of education, the function of ethics is very important. Mochtar Kusumaatmadja even asserted that a professional education without education on responsibility and professional ethics is incomplete. He gives an example in the field of law, that technical skills in the field of law that ignore the aspect of a person's responsibility to the person entrusted to him and his profession in general, as well as the values and ethical measures that should be guidelines in carrying out his profession, -the skilled craftsman in the field of law and his profession.

Ethics seeks to awaken people to responsibility as social beings who not only prioritize personal interests but also uphold the values and respect for others. Value system is an important part in human life because with human values have a foundation, reason or motivation in behaving and behaving, then values and norms are closely related to morals and ethics.

Ethics and morals are always associated with freedom and responsibility that only burden it with moral obligations so that its application can not be imposed. Therefore, organizations or associations of professions impose sanctions for violations of ethics or professional codes of ethics so that every profession always upholds the code of ethics profession in carrying out his position.

A professional who loves his profession as a noble office always carries out his office with full responsibility and devotion to the common good, which is rooted in respect for human dignity and always obeys the professional code of ethics. So that he is trusted and respected not because of his intellectual ability alone but also because of his own integrity and moral commitment to his position.

In Indonesian Dictionary explained that the profession is a field of work based on certain skills education (skills, vocational, etc). Professional is something that is concerned with the profession, something that requires special intelligence to run it. While professionalism is defined as quality, quality, and behavior that is characteristic of a profession or a professional person.

There is a noble profession, namely the profession which is essentially a service to humans or society. It is true that the person who practices the noble profession also earns a living from his work, but that is not the main motivation. The main motivation is the willingness to serve others (Kansil dan Christine 2006).

Legal profession is one of the professions that demand the fulfillment of the moral values of its bearers. The moral value is the force that directs and underlies the noble deeds. Every legal professional is required to have strong moral values. Franz Magnis Suseno in his book put forward five criteria of a strong moral value underlying the legal professional personality, one of them is honesty (Suseno 1975):

Honesty is the main foundation. Without honesty the legal professional denies his professional mission, so he becomes hypocritical, cunning, deceitful. Two attitudes contained in honesty, namely:

- Open attitude. This concerns the client's service, willingness to serve for a fee or for free.
- Reasonable attitude. It deals with acts that are not excessive, not authoritarian, not pretentious, not rude, not oppressive, not blackmail.

Authentic means to live and show itself in accordance with its authenticity, real personality. Authentic personal legal professionals include:

- not misusing authority;
- does not commit degrading behavior (disgraceful deeds);
- prioritizing the client's interests;
- dare to initiate and act on their own wisely, not merely awaiting orders from superiors;
- do not isolate themselves from social interaction.

In doing its duties, legal professionals shall be responsible. It means:

- willingness to do the best possible tasks that fall within the scope of the profession;
- acting proportionally, without distinction of paid and free (prodeo) cases;
- willingness to report responsibility for the implementation of its obligations.

Moral independence means not easily influenced or not easy to follow the moral views that occur around it, but form a judgment and have a stand alone. Mandiri is morally meaning it can not be bought by majority opinion, unaffected by consideration of profit and loss, adapt to the value of decency and religion. Moral courage is a loyalty to conscience who expresses willingness to assume the risk of conflict, Courage include:

- reject all forms of corruption, collusion, bribery, extortion;
- rejecting a peace offer in place over a speeding ticket for a road traffic violation;
- reject any form of settlement through unauthorized backroads.

Professional ethics are the norms, terms and conditions that must be met by a group of people called professionals. "Profession" is generally interpreted as bentk of a job or the whole group in a particular job. Professions may also be interpreted as work but to carry out community functions whose implementation is carried out independently with high commitment and expertise in a particular field. In the profession there is also a spirit of devotion to humanity and in the public interest and rooted in respect for human dignity (Kanter 2001).

Professional ethics is part of social ethics, that is philosophy or rational critical thinking about human obligations and responsibilities as human beings. Broadly speaking, professional ethics emerges for two reasons. First, professional ethics serves as a mechanism by which the organization can control the actions of its members and then to correct them if the actions of the members are deemed less ethical. Second, professional ethics serves as an alignment of relationships between colleagues in the profession. The first ethic is called punishment, and the second is called consolidated.

A punishable ethic is an ethic that wants everything to run flawlessly as a consequence of an approach that is more inclined to defend external interests, that is to consider more general merit than the welfare of members of the profession. Ethics with a punishment style tend to deplete its resources to monitor members. They see that professionals should be suspected of potentially misusing their expertise for their own interests that will ultimately undermine the noble image of the profession.

The ethics of the legal profession is the science of decency, of what is good and what is bad, which a person deserves to do in his position as the executive of the law of the applicable law within a state. Which is the law

applicable in a country (positive law) include among others public law (material and formal criminal law), state administration law, and civil law (civil law material and formal (Kansil dan Christine 2006)).

The code of ethics is the values and moral norms that must be observed and run by legal professionals. The existence of code of ethics aims for a profession can be run professionally, with motivation and orientation on intellectual skills, argue rationally and critically and uphold the value -moral values.

Code of ethics of the legal profession is a form of legal ethical realization that must be obeyed by every legal professional concerned. The professional code of ethics is an applied ethics product because it is produced based on the application of ethical thinking to a profession. Professional codes of ethics may change and be changed along with the development of science and technology, so members of the professional group will not be out of date. The professional code of ethics is the result of the professional self-regulation, and this is the realization of an essential moral value, which is not imposed from the outside. Professional codes of ethics are only effective when imbued with ideals and values that live within the profession itself. Professional code of ethics is a formulation of human moral norms that carry the profession. The professional code of ethics becomes the benchmark for the actions of members of the professional group. Professional code of conduct is an unethical preventive measure for its members.

Professional code of ethics is the criteria of professional principles that have been outlined, so it can be known with certainty the professional obligations of old members, new, or prospective members of the professional group. Thus, it is possible to avoid any conflict of interest between members of the professional group, or between members of the professional and community groups, and vice versa may be useful as a reflection of the good name of the profession. Members of professional groups or members of the community can exercise control through the formulation of a professional code of ethics, whether members of the professional group have fulfilled their professional obligations in accordance with the professional code of ethics.

In order for a professional code of ethics to function properly, there should be at least two conditions that must be met. First, the code of conduct must be made by the profession itself. The code of ethics will not be effective, if it is taken for granted from above, from government agencies or other agencies, because it will not be imbued with the ideals and values that live within the profession itself. Second, for the code of ethics to function properly is that its implementation is monitored continuously (Bertens 994).

A notary is not enough to have only legal expertise but also must be based on the responsibility and appreciation of the dignity of ethics and dignity. The role and authority of a notary is very important for the legal traffic in the community. Therefore, a notary must be able to run his profession in a professional, dedicated and always uphold his dignity and dignity by upholding the Notary's Code of Conduct.

Furthermore, since a notary is a professional who carries out some state power in private law and has an important role in making an authentic deed which has perfect proof of power, and since a notary is a position of trust, a notary must have good behavior. Good notary behavior can be obtained based on the Notary Code of Conduct. Accordingly, the Notary's Code of Conduct provides for things that a notary must observe in the performance of his or her position and also outside his / her position.

Notary Code of Conduct acts like a traffic beacon directing the attitudes and behavior of the notary to stay in the right corridor. The commitment of notaries to uphold the Notary's Code of Ethics in everyday life and when running an automated office has kept the notary person from defamation of nobility and professional dignity.

The code of ethics for a notary is made to safeguard the honor and dignity of the Notary's Office, which contains the moral rules which must be obeyed by each member of the association, as set forth in Article 89 of the Notary Law, along with the sanctions granted in the event of violations. The code of conduct applies to all members of the association as well as others who hold and run notary positions either in the conduct of office or in life or in everyday life.

Article 83 Paragraph (1) of the Notary Law is followed up by the provisions of Article 13 paragraph (1) of the Articles of Association of Indonesian Notaries, which reads: "To maintain the honor and dignity of the notary's office, the Association has a Notary Code of Conduct stipulated by the congress and is a moral rule that must be obeyed by every member of the Society".

Article 83 Paragraph (1) of the Notary Law is followed up by the provisions of Article 13 paragraph (1) of the Articles of Association of Indonesian Notaries, which reads:

1. To maintain the honor and dignity of the position of Notary Public, the Association has a Code of Ethics stipulated by the Congress and is a moral rule that must be obeyed by every member of the association.
2. The Council of Honor makes efforts to enforce the code of ethics.
3. The Board of Trustees and / or the Honorary Board shall cooperate and coordinate with the Supervisory Council to carry out the enforcement of the code of ethics.

The current and accepted code of ethics is the Notary Code of Notary of Indonesia (INI). The Code of Ethics upheld by the Indonesian Notary Association is the result of the Extraordinary Congress of Indonesian Notaries Association held in Bandung, January 27, 2005. This Code of Ethics is a refinement of the previous Notary Code of Conduct. Notary Code of Conduct for the first time was decided in THIS Congress in Surabaya in 1974.

Code of ethics comes from the Latin *codex* which means collection, and *ethos* which means customs, customs, character, feelings, attitudes and ways of thinking. So the code of ethics is understood as the norms and rules of ethics, both written and unwritten from a profession expressed by professional organizations. It functions as a reminder to behave for members of the professional organization. The code of ethics is merely as a fence of which reminders are allowed and should not be dynamic following the development of the environment and the interested parties. The Indonesian Notary's Code of Conduct for notary public only comes to the moral and administrative sanctions grounds¹.

According to formal definition, the Indonesian Notary Association (INA) declared the code of ethics is the entire moral rules determined by the Association of Indonesian Notary Bonds applicable to all members of the Association and others who hold and run notary positions both in the implementation of office and in everyday life. The Notary Code of Ethics contains material elements about the obligations, prohibitions, exclusions and sanctions to be imposed if a notary is found to have violated the code of ethics. In addition, the Code of Conduct is also regulated on the codes of ethics, temporary dismissal of members of INA².

Article 1 The Notary's Code of Ethics affirms that the notary as a public official is a devoted Indonesian citizen to God Almighty, and in performing his duty is always imbued Pancasila, conscious and obedient to the law, the rule of notary, oath of office, code of notary ethics and Indonesian language the good one. All the requirements are still added, namely in doing its duty, the notary must participate in the national development, especially the development in the field of law. Good personality and always uphold the dignity and honor of this notary must be reflected, both inside and outside the duties of his position. In this article is contained at least the values of obedience to the law, skills (officer), and a good personality.

In carrying out its duties, the notary must be aware of its obligations, work independently, honestly, impartially, and full of responsibility. Notary in performing his duties using an office which has been established in accordance with the law and does not hold branch offices, representative offices, and does not use intermediaries. Notary in performing his / her duties does not use promotional mass media (Article 2). The values that can be drawn from this article include the value of independence (independence), honesty, fairness (objectivity).

Notary in performing the duty of his position to provide services to the public who need his services as well as possible. The notary also provides legal counseling to its clients to achieve high legal awareness in order for the public to recognize and live up to its rights and obligations as citizens and members of the community. Notary is also obliged to give his services to the society who are less able for free (Article 3). In providing legal consultations to his clients, a notary is prohibited to collect fees as legal consultants do. These provisions contain the value of service by prioritizing the interests of the client.

The essence of a notary's office is that a notary is an official assigned to make an authentic deed which has perfect proof of power, which is reliable and trustworthy statements, speeches and statements, whose signatures and seals provide assurance and strong evidence. In addition, the notary is an impartial expert and a counselor with no defects.

A position held by a notary is a position of trust mandated by law and society (the client), for that a notary must be responsible for carrying out the trust given to him by always upholding the ethics of law and the dignity and nobility of his position. Because if it is ignored by a notary it will be dangerous for the general public it serves.

¹ Pengurus Pusat Ikatan Notaris Indonesia, *Jati Diri Notaris Indonesia : Dulu, Sekarang, dan Di Masa Datang, cet. 1*, Gramedia Pustaka, Jakarta, 2008, page 99.

² *Ibid.*, page 194.

In carrying out his office the notary must comply with all moral values that have been lived and developed in society, apart from the responsibility and professional ethics, the existence of good integrity and morale is an important requirement that must be owned by a notary.

It is very much different from the background and work of a broker. Everyone can run a job as a broker. To run this job is not required or required a special educational background. Nor does it require a special appointment or an obligation to be sworn in before performing a job as a broker. A broker works only on the trust of a client who uses his services. There is no single legislation that regulates the work of this realtor. He is in charge of connecting one party to another according to their needs, and then earning commission in return for his services.

Thus if a notary in running his position also runs a job as a broker, this is nothing but an act that tarnished the image of a notary's office. The act of notary as though by making the honor and dignity of a notary's office is of no value. Not only that, the act of a notary may result in the judgment as if the notary's position is merely a field of work in general, and thus makes no difference or has the same status as a broker's job.

The ethical obligation of a notary as stipulated in the Notary Code of Notary of the Republic of Indonesia (INI), namely in Article 3 number 2 and 3 is that notary and other persons holding office and notary public are obliged to respect and uphold the dignity and dignity of the notarial position and to defend and defend honor of the Society. In addition, the notary and other persons holding the office of notary are also obliged to act honestly, independently, impartially, full of responsibility based on the laws and the contents of the oath of office of Notary (number 4).

When associated with the provision of Article 4 paragraph (1) jo. Article 16 paragraph (1) letter a jo. Article 17 letter i of the Notary Position Law and the provisions in Article 3 number 2, 3 and 4 jo. Article 4 paragraph 7 of the Code of Notary INI, it can be concluded that a notary who in carrying out his duties also does another job as a land broker and does his deal-making and follows his deed of transfer of rights, constitutes a violation of law and code ethics. Because the act violates the principle of impartiality and propriety that may affect the honor and dignity of the notary's office and the honor of the Association.

Unlike the case when the notary just to provide information and advice to parties in need, in relation to information in the field of land. Notary who only gives information or advice according to the needs of the parties who come to him, can not be categorized as a realtor, because the act is only done incidentally, not continuity like a broker's job.

Therefore, the sanctions may be imposed on a notary as a result of violation of Article 3 number 2, 3 and 4 jo. Article 4 sub-article 15 letter a and c of Notary Code I.N.I., according to the provision of Article 6 item 1 of the code of ethics, may be:

1. reprimands;
2. warning;
3. temporary dismissal of the membership of the association
4. dismissal with respect of the membership of the association
5. disrespect dismissal of the membership of the association

Conclusion

A notary's office is a noble office that is specifically regulated in a law. To be appointed a notary, education and knowledge are required in the field of law especially kenotariatan, meet the various requirements for appointment and are required to mengucap oath of office at the time of appointment, It is very much different from the background and work of a broker. Everyone can run a job as a broker. To run this job is not required or required a special educational background. Thus if a notary in running his position also runs a job as a broker, this is nothing but an act that tarnished the image of a notary's office. The act of notary as though by making the honor and dignity of a notary's office is of no value.

The principle of impartiality is also contained in the provisions of article 3, paragraph (4) jo. Article 4 paragraph (7) of Notary Code of Notary of Indonesia (INA), so that the act of notary also violate the code of ethics of his profession, namely the code of ethics of Notary INA so that such a notary also may be subject to sanctions in accordance with the provisions of Article 6 paragraph (1) of the Notary Code of Ethics INA.

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