



LEGAL BASIS OF DUTIES AND FUNCTIONS OF NOTARY IN PERFORMING TASKS

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ABSTRACT

A notary is a person entrusted by law to produce authentic written evidence. Notary is a position that was born on the basis of the needs of the legal community for a legal certainty which is maintained and will not change its own recording because someone guarantees the existence of a good record. In Indonesia itself there are many things where the need for a notary is a necessity which is not recognized by the public, so many problems can actually be solved if there is a notary at the event. Researchers feel there is a need to explore the law that underlies the functions and duties of a notary. Researchers in this writing use the method of literature study by using laws, books, and journals as the main data. For secondary data researchers use other relevant data. A notary has a very strong and renewed legal basis so that in carrying out his position he can function properly. Initially, a notary had a legal basis under Law No. 30 of 2004 to carry out his duties, then the law was updated with Law No. 2 of 2014. In addition, in carrying out his position, a notary is also regulated by the Notary's Code of Ethics.

Kata Kunci: Law, Notary, Duties, Legal, Notary law

INTRODUCTION

Notary is a profession that people may rarely know, but it is a profession which has become a necessity for society without many people realizing it (Borman, 2019; Haryati, 2018). In the beginning, a notary was someone who was able to provide legal certainty that would not vanish in the past and into the future. At the beginning of its emergence, the notary profession emerged when the emergence of a legal state where everything in it was regulated by applicable law (Afifah, 2017; Noer & Fajriyah, 2021). In the daily life of legal society there is a new need which becomes a crucial point, namely the administration of legal transactions which are directly related to the economy, trade, and ownership rights to an object (Kosasih & Haykal, 2021; Nurwulan, 2018; Yusup, 2015).

The Conference of Notaries Public in the European Union in 1995 produced a Code of Notary Law which provides a universal definition of what a notary is (Rafiqi & Marsella, 2020). At the conference it was stated that a notary is a profession that is free (which means not responsible to anyone except the public) to compile public documents and is also responsible for ensuring that these documents are maintained and maintained so that they still have the evidentiary value and enforceability of their own. the document (Suarantalla dkk., 2021). The notary profession itself at present has a long history and various processes of change which are very long and long. Notaries are appointed as record holders by the highest authorities to prevent possible violations of law in civil law transactions conducted between individuals. At first, the services of a notary as an administrative matter were looked down upon by various groups, from free slaves to clergymen and civil servants. Although the notary of the Notary stems from the Roman legal tradition, its more serious foundations are linked to medieval law and the continued ideas of the Bologna Law School, the Napoleonic Code, and the innovative legal solutions of the coastal cities of the Adriatic. This makes the Latin model of Notaries in Europe the most widespread form of organization today and the work of Notaries with special services exclusivity as the function with the most authorizations (Dauti, 2020).



The meaning of the Notary's services changed so that in certain periods the Notary was challenged, abolished and then renewed depending on the political climate and social circumstances, but always surpassed their criticism and is presently present in the legal systems of many countries which more or less fully accept the Latin model of Notary (Makarim, 2011). The development of the Notary in the form as we know it today began in the Middle Ages in northern Italy, when notarized documents were recognized as public documents, thanks to the Bologna Law School and the work of Italian Notaries (Aprodette dkk., 2019). It is therefore not surprising that the first Notaries in the coastal cities of Croatia and the coast of Montenegro with prominent legal particularism were foreigners, namely fellow Notaries from Italy. Another and very important advantage is the character of a secular or lay notary, which contributes to the abandonment of the previous practice of notary priests, which later proves to be completely unnatural given the character of its function (Harty, 2002). The Notary Service marked its revival with the emergence of the Napoleonic Ventosa law, which is currently considered the modern Notary code worldwide (Jacobson, 2002). For the first time, a Notary is legally defined as a state trustee with a share of the general power of attorney and its own state seal. This law has undergone a radical transformation and many of its remedies have been replicated in different legal systems, modified and adapted to their specifications.

Law is a product based on human needs for borders that protect and limit the freedom of all parties involved (Taufiqurrahman, 2019). The purpose of law can be interpreted as a universal interest in protecting safety, order, welfare, freedom, and the needs of all those affected by the law and each individual to maintain social life (Iriani, 2011). Therefore, we need an institution that regulates all kinds of life processes that occur in social life. The laws that apply in the country regulate how people carry out activities in various social, spiritual, economic, and other aspects (Diab, 2014). An ever-evolving society requires further legal development, especially in today's era. When discussing law in Indonesia, it is obligatory to first look at the initial law which has become fundamental to all the making of laws in Indonesia, namely the 1945 Basic Law (Hrp & Thalib, 2019; Ruslina, 2016). In that cause there is the spirit of all the laws implemented in the Indonesian government. This law is the basis for Indonesia becoming a country of laws. This is stated in the 1945 Constitution article 1, part 3, where it is stated that Indonesia is a country of law, which means that everything in Indonesia is a legal point. So that everyone who lives above Indonesian nature becomes a person who is bound and required to obey every existing law (Khairunnisa, 2018).

From the time of struggle to independence itself, Indonesia has aspired to be a country that is independent and based on law. The 1945 Constitution itself has devoted Indonesia as a legal state (Armawan, 2016; Feryna, 2017; Hidayat, 2017). Article 1 paragraph 3 of the 1945 Constitution states that "Indonesia is a state based on law." This means that Indonesia, which identifies itself as a legal state, will provide a bond that will bind everything that exists on Indonesia's earth to the law (Hadi, 2017). This bond means that everything that exists above or below Indonesia's earth will be governed by applicable laws that have been established and recognized by the Republic of Indonesia (Khairandy, 2011; Maulidi, 2017). The binding law will of course affect all aspects of human life in Indonesia. This influence will have an influence starting from the way how humans can find their basic needs in Indonesia to how they can behave to the ownership of an object (Hadiyanti dkk., 2017).

The law that provides these rules will of course make the need for a record which is properly maintained and recorded. This becomes an urgency because in a legal society a legal data collection is very important, it even becomes something that can be said to be a pillar of law. Good data collection and recording becomes a legal aid as evidence or explanation of an event whose certainty can be guaranteed so that it can become authentic evidence that can be recognized by all parties for its value and truth.



In 2020, the people of Indonesia were shocked by a problem that could be considered odd and no one thought something like this could happen. A mother who recently lost her husband. The husband apparently left an inheritance in the form of land of 4000 square meters. It turned out that the inheritance was sold by the mother's only child. From the proceeds of the sale, money worth 240 million was obtained which was unknown and asked permission from the mother. The child also only gives the motorbike to the mother and that is only usufructuary rights, not ownership. Feeling aggrieved, the mother reports the child and the child reports the mother. This makes the Indonesian people confused until the question arises whether the nation's morals have fallen to the point that mothers and children will fight over each other's assets(CNN Indonesia, 2020)(Pratama, 2020).

In another case, it was discovered that a siri wife (without a marriage book) tried to take over the inheritance left by her husband for a child from her husband's first marriage. It is known that the husband has three children which are the result of his first marriage. While taking care of the inheritance that was left behind, the wife of Siri, without the knowledge of the child, forged a letter. The serial wife takes out the husband's three children from the family tree so that it is made as if the wife is the sole heir. Feeling aggrieved, the children reported the mother to the Satreskrim Polresta Mataram. After an investigation, it was discovered that besides his wife forging letters, he also borrowed 100 million in bank money in which the husband's inheritance was used as collateral. The police also explained that "The certificate was then used by the suspect to be used as collateral for a bank loan. The loan is IDR 100 million. The money is used for business capital. He sells groceries at the Mandalika Market." He was further informed that his wife would be charged with Article 263 paragraphs 1 and 2 of the Criminal Code regarding forgery of letters which carries a maximum prison sentence of 6 years (Suara NTB, 2021).

The two cases illustrate what constitutes a legality and data collection problem that can be resolved if a notary is involved before the problem occurs. A notary who has the authority to make a deed of information which is capable of being authentic evidence and will continue to be guarded by data collection and storage of these documents can provide direction and explanation of events in accordance with events and objectives. These two cases illustrate the problems that often occur in today's legal society, moreover this is prone to occur because the issue of property is a sensitive matter, which makes humans indiscriminate. The biological relationship between the child and the mother alone cannot prevent the struggle for inheritance, let alone the relationship between siblings. Many families were divided, even to the point of hostilities in front of the court. For this reason, it is very necessary to hold a socialization of the usefulness of a notary. A notary can provide certainty to someone that when he dies, the assets left behind will be distributed according to his wishes. So when he dies it will not leave problems for his family.

Notaries with all their uses for the community, in the end are not well understood by the public and are not used for legal certainty. For this reason, researchers feel the need to deepen the duties and functions of a notary and the legal basis for carrying out these tasks. In this study, researchers used the literature study method, which uses applicable law, books, and journals as primary data sources. As secondary data, researchers use other relevant data such as news, survey results, and other relevant data.

DISCUSSION

Indonesia, which is a developing country, needs to see its identity and develop with the times. All countries, which are products of human needs, need to continue to develop in various aspects so that they can meet their needs. Indonesia, which is clearly a legal state, must be able to make and develop laws so that people's needs can be regulated and met. Seeing that there will be a great deal of need for administrative clarification and data collection, the law governing notaries is



clearly a necessity. This is because the position of a notary is a basic necessity in the legal community so that authentic written evidence can be procured.

In this case the Indonesian government issued a law which provides regulation and protection for notaries. In 2004 the Indonesian government issued Law No.30 of 2004 concerning notaries. The law explains the position of the notary and its definition so that these positions will not be exchanged in the discussion.

Definition of Notary based on Law no. 30 of 2004 Republic of Indonesia	
Notary Public	"public officials authorized to make authentic deeds and other authorities as referred to in this Law."
Acting Notary Public	"A person who temporarily serves as a Notary to carry out the position of a Notary who has died, been dismissed, or temporarily dismissed."
Substitute Notary	"A person who is temporarily appointed as a Notary to replace a Notary who is on leave, sick, or temporarily unable to carry out his position as a Notary."
Special Alternate Notary	"A person who is appointed as a special Notary to draw up certain deeds as stated in the letter of determination as a Notary because in one district or city there is only one Notary, while the Notary concerned according to the provisions of this Law may not make the said deed."

Source: (Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 Tentang Jabatan Notaris, 2004).

The new law issued by the Indonesian government in 2014 pays more attention to the notary's position. In this case, the Indonesian government issued an amendment to Law No. 30 of 2004. This new law provides a new definition change and eliminates the position of Special Alternate Notary.

Definition of Notary based on Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary	
Notary Public	"Public officials authorized to make authentic deeds and have other authorities as referred to in this law or based on other laws."
Acting Notary Public	"A person who temporarily serves as a Notary to carry out the position of a Notary who died."
Substitute Notary	"A person who is temporarily appointed as a Notary to replace a Notary who is on leave, sick, or temporarily unable to carry out his position as a Notary."
Special Alternate Notary	This position is removed

Source:(Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, 2014)

It is explained in the article that a notary is a public official. The things described as public officials can be explained in the concept of Equality Before The Law. The concept of a public

official is an official who has the power to prove before the law. In this case the proof is the making of a deed made by a notary. It can also be said that the position of a notary is a position which has a foundation of office from a sense of trust given by applicable law to an individual to make authentic evidence to explain an event. For this reason, a notary is a person who has a responsibility and needs to apply the precautionary principle in carrying out his duties (Edwar dkk., 2019; Manuaba dkk., 2018).

It is explained further about the obligations held by a notary who has been legalized by the Indonesian government in accordance with the applicable punishment. In this case the regulation in question is Law No. 30 of 2004 Article 15.

Obligations of a Notary		
Article paragraph 1	15	"In carrying out his position, a Notary is obliged to: a. act honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions; b. make a deed in the form of Minutes of Deed and save it as part of the Notary Protocol; c. issue a grosse deed, a copy of the deed, or a quotation of the deed based on the minutes of the deed; d. provide services in accordance with the provisions of this Law, unless there is reason to refuse it; e. keep everything about the deed made secret and all information obtained in order to draw up the deed in accordance with the oath/pledge of office, unless the law determines otherwise; f. bind the deed made in 1 (one) month into a book containing no more than 50 (fifty) deed, and if the number of deed cannot be contained in one book, the deed can be bound into more than one book, and record the number of minutes of deed , month, and year of manufacture on the cover of each book; g. make a list of deed of protest against non-payment or non-receipt of securities; h. make a list of deeds pertaining to the will according to the order in which the deed was drawn up every month; i. send the list of deeds referred to in letter h or the list of nil relating to wills to the Central List of Probates of the Ministry whose duties and responsibilities are in the notary sector within 5 (five) days in the first week of each month thereafter; j. record in the repertorium the date of sending the testament list at the end of each month; k. has a seal/stamp bearing the state symbol of the Republic of Indonesia and in the space surrounding it is written the name, position and domicile of the person concerned; l. read the deed before the appearers attended by at least 2 (two) witnesses and signed at the same time by the appearers, witnesses and Notary; a. m. accept the apprenticeship of prospective Notaries."
Article paragraph 2	15	"Keeping the Minutes of the Deed as referred to in paragraph (1) letter b is not valid, in the event that the Notary issues the deed in the original form."
Article paragraph 3	15	"Original deed as referred to in paragraph (2) is a deed: a. payment of rent, interest, and pensions; b. cash payment offers; c. protest against non-payment or non-receipt of securities; d. power of attorney; e. ownership statement; or f. other deeds based on statutory regulations."
Article paragraph 4	15	"The original deed as referred to in paragraph (2) can be made in more than 1 (one) copy, signed at the same time, form and content, provided that in each deed the words "applies as one and one applies to all"

Article paragraph 5	15	"Original deed containing power of attorney that has not been filled in with the name of the attorney can only be made in 1 (one) copy."
Article paragraph 6	15	"The shape and size of the stamp/stamp as referred to in paragraph (1) letter k shall be stipulated by a Ministerial Regulation."
Article paragraph 7	15	"The reading of the deed as referred to in paragraph (1) letter l is not required, if the appearer wants the deed not to be read out because the appearer has read it himself, knows and understands its contents, provided that this is stated in the cover of the deed and on each page of the deed Minutes initialed by the appearers, witnesses, and notaries."
Article paragraph 8	15	"If one of the conditions referred to in paragraph (1) letter l and paragraph (7) is not met, the deed concerned only has the power of proof as a deed under the hand."
Article paragraph 9	15	"The provisions referred to in paragraph (8) do not apply to the making of a will."

Source:(Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 Tentang Jabatan Notaris, 2004).

In terms of the obligation to change regulations issued by the government in Law No. 2 of 2014 so that the obligations of a notary can still refer to Law No. 30 of 2004. In this case there is an amendment to Article 15 paragraphs 1 and 2.

In Article 15 paragraph 1 it reads, "The Notary has the authority to make authentic Deeds regarding all actions, agreements and stipulations required by laws and regulations and/or what is desired by interested parties to be stated in authentic Deeds, guarantees the certainty of the date of making the Deed, saves the Deed , providing grosse, copies and quotations of the Deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.

In Article 15 paragraph 2 reads as follows.

"In addition to the authority referred to in paragraph (1), the Notary also has the authority to:

- a. legalize the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
- b. record private letters by registering in a special book;
- c. make a copy of the original letter privately in the form of a copy containing the description as written and described in the letter concerned;
- d. verify the compatibility of the photocopy with the original document;
- e. provide legal counseling in connection with the making of the Deed;
- f. make Deeds related to land; or
- g. make a deed of minutes of auction."

From the law above, it can also be briefly explained that a notary has the following obligations.

- A notary needs to reflect a valued behavior Honest, objective, careful, and safeguarding the interests of each party.
- A notary must always maintain the secrecy of all matters relating to the deed.
- Make and maintain deed according to notary protocol
- Accepting apprenticeships for new notary candidates in order to maintain the sustainability of notaries in the country.
- Dissemination of existing laws, especially the function of the position as a notary

It is explained in more depth the obligations of a notary in the Notary Code of Ethics, that a person in the context of a notary's position needs to:

1. possession of good moral values, character, and personality
2. Upholding and respecting the dignity of a notary



3. Maintain and defend the honor of the notary association
4. "behave honestly, independently, impartially, trustworthy, thorough, full of sense of responsibility, based on statutory regulations and the contents of the notary's oath of office;"
5. Always try your professional knowledge and expertise, not only limited to legal and notary knowledge
6. Always prioritize service to the interests of the general public and the state
7. "Providing services for making deeds and other authorities for people who can't afford it without charging an honorarium."


CONCLUSION

A notary is a position which was born on the basis of the needs of the community and not a profession which was created and then popularized in society. So you could say that this profession is a profession that is needed by society, whether people themselves are aware of it or not. Therefore, a notary needs to be someone who has a high sense of dedication to the community and not to the government itself because this position is a public official which means that a notary will have objectivity values in carrying out his obligations.

A notary in carrying out his obligations, gets authority, protection, and rights which were initially based on Law No. 30 of 2004. Then in 2014 it was revised to make it more appropriate and comprehensive so that a new legal basis was issued for a notary to carry out his position, namely the Law No.2 of 2014. Of course, in carrying out their duties, a notary also has a code of ethics, in this case the code of ethics in question is the Notary's Code of Ethics which explains more deeply how the behavior of a notary should be in order to maintain the dignity of the profession so that the sense of the trust that has been placed by law in a notary is maintained and safely maintained.

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