

Law Enforcement Against Unfair Competition Among Notaries According to Notary Ethics Code

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ABSTRACT

Notary is a public office who is authorized to make authentic deeds which have perfect verification power. In performing their profession and/or duties, notaries must obey and be attached and oriented to the existed rules, they are Constitution No 30 Year 2004 About Notary Office, Constitution No 2 Year 2014 About Amendment of Constitution No 30 Year 2004 About Notary Office (which is then called UUJN) and Notary Ethics Code. This research aimed to find out how law enforcement against unfair competition among notaries according to Notary Ethics Code is and what the legal effects to Notaries who are involved in an unfair competition are. This research was done by applying descriptive qualitative method sourced from literature review and previous studies. From this research, it was found that the law enforcement against unfair competition among notaries which is included in Notary ethics code violation is contained in the Notary Ethics Code. In a case of a Notary involved in an unfair competition is definitely violate the existed ethics code and can raise a legal effect which is given a sanction.

ABSTRAK

Notaris adalah pejabat umum yang berwenang membuat akta otentik yang mempunyai kekuatan pembuktian yang sempurna. Dalam menjalankan profesi dan/atau tugasnya, Notaris harus taat dan terikat serta berorientasi pada aturan yang ada, yaitu UU No 30 Tahun 2004 Tentang Jabatan Notaris, UU No 2 Tahun 2014 Tentang Perubahan UU No 30 Tahun 2004 Tentang Jabatan Notaris (yang kemudian disebut UUJN) dan Kode Etik Notaris. Penelitian ini bertujuan untuk mengetahui bagaimana penegakan hukum terhadap persaingan tidak sehat antar Notaris menurut Kode Etik Notaris dan apa akibat hukumnya terhadap Notaris yang terlibat dalam persaingan tidak sehat. Penelitian ini dilakukan dengan menerapkan metode deskriptif kualitatif yang bersumber dari studi pustaka dan penelitian-penelitian sebelumnya. Dari penelitian ini ditemukan bahwa penegakan hukum terhadap persaingan tidak sehat antar notaris yang termasuk dalam pelanggaran kode etik Notaris terdapat dalam Kode Etik Notaris. Dalam hal Notaris terlibat dalam persaingan tidak sehat sudah pasti melanggar kode etik yang ada dan dapat menimbulkan akibat hukum yang diberi sanksi.

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I. INTRODUCTION

Notary is a public office who is authorized to make authentic deeds which have perfect verification power. The existence of Notarial institution in our country is to realize legal certainty

and protection for society. In the case of civil law (private), country put Notary as a public office that is authorized in making authentic deeds for verification necessity or real evidence (Simbolon, 2015:1).

Notary profession has been existed from community interaction and developed and created by the community (Adjie, 2011:8). Therefore, the Notary profession exists among society in order to give legal service especially in civil sector. In doing their profession and/or duties, Notaries must obey and are attached, and are oriented to the existed rules; they are Constitution No 30 Year 2004 About Notary Office, Constitution No 2 Year 2014 About Amendment of Constitution No 30 Year 2004 About Notary Office (which is then called UUJN) and Notary Ethics Code. By the existence of the rules, Notaries are expected to perform their profession and/or duties well and appropriately and can maintain their dignity as a Notary.

UUJN is the only constitution which regulates Notaries' duties and the content can be the guidance for Notaries in performing their profession and/or duties. Besides of describing guideline in performing profession and/or duty, responsibilities, and prohibition for Notaries, in UUJN also stated strict sanctions if Notaries violate the regulations for which the sanctions can be a preventive way for Notaries to not violate the regulations.

In an attempt to support UUJN to be applied and run effectively for Notaries in performing their profession and/or duties, Ikatan Notaris Indonesia (INI) association formulated and arranged a profession ethics code which is Notary Ethics Code. The Notary Ethics Code recently applied as a guideline is the Amendment of Notary Ethics Code of Remarkable Congress of Indonesia Notary Association Banten, 29-30th May 2015 (which is then called Notary Ethics Code).

Profession ethics code is applied ethics product since it is resulted based on ethical mindset application by a profession. Profession ethics code can change and be changed along the science and technology development therefore the profession community members are not outdated. Profession Ethics Code is applied effectively only if it is inspired by ambition and values which are alive in the profession environment itself. Profession ethics code is human moral norm arrangement who is involved in the profession community. The ethics code becomes a benchmark of the profession community members' action. The code is a preventive way to avoid unethical behavior of its members (Hayati, 2018:7).

Every person who take and perform an office as Notary must definitely have high integrity and professional. There are three personal characteristics which have special attention to build characters in performing the office are: honest to themselves; kind and genuine; and professional (Prajitno, 2010:92).

In a practice, there surely are some ethics code violations done by Notaries whereas those ethics codes are very essential in social control medium (Sumaryono, 1995:159). One of ethics code violations done is an unfair competition among Notaries as regulated in Article 4 Section (9) Notary Ethics Code. Unfair competition is a competition done by someone with others in a dishonest way and breaking the law. In order to have a client, Notaries sometimes do things that they should not do, such as trying in any way to make someone moves from another Notary to them, either the effort is directly done to the client or through other people (contained in Article 4 Section (7) Notary Ethics Code).

This article discusses how to enforce the law against unfair competition between Notaries according to the Notary Code of Ethics, and the legal consequences for Notaries who are involved in unfair competition.

II. RESEARCH METHODS

This research was conducted by applying descriptive qualitative research method. Qualitative research is research involving non-numeric data collection and analysis to understand a concept, opinion, or experience. It can be used to collect some deep insight about a problem or to create new

ideas for research. In this research, the researcher used literature review and previous studies as materials to search the results of the stated problems in this article.

III. DISCUSSION RESULTS

Law Enforcement against Unfair Competition among Notaries According to Notary Ethics Code

Notaries as human, in performing their duties, can do mistakes or violation. Notaries are proven doing violation towards Notaries' responsibility and prohibition as regulated in Constitutions (Mardiyah et al., 2017:111). In order to resolve or overcome a violation, a rule is needed to be a guideline for solving a case which becomes the initial way for law enforcement.

Law enforcement is a process of the legal norms to be functioned in reality as behavior guidance in traffic or legal relationship in social and state life (Arief, 2007:21). Law Enforcement can be done preventively or repressively. Preventively can be done with regulation in order to guarantee legal certainty and monitoring, meanwhile repressively is done by giving punishment (Sidharta, 2002:7). Law enforcement against unfair competition among Notaries which is included in Notary ethics code is contained in Notary Ethics Code. This following chart is a law enforcement procedure if there is a Notary Ethics Code violation

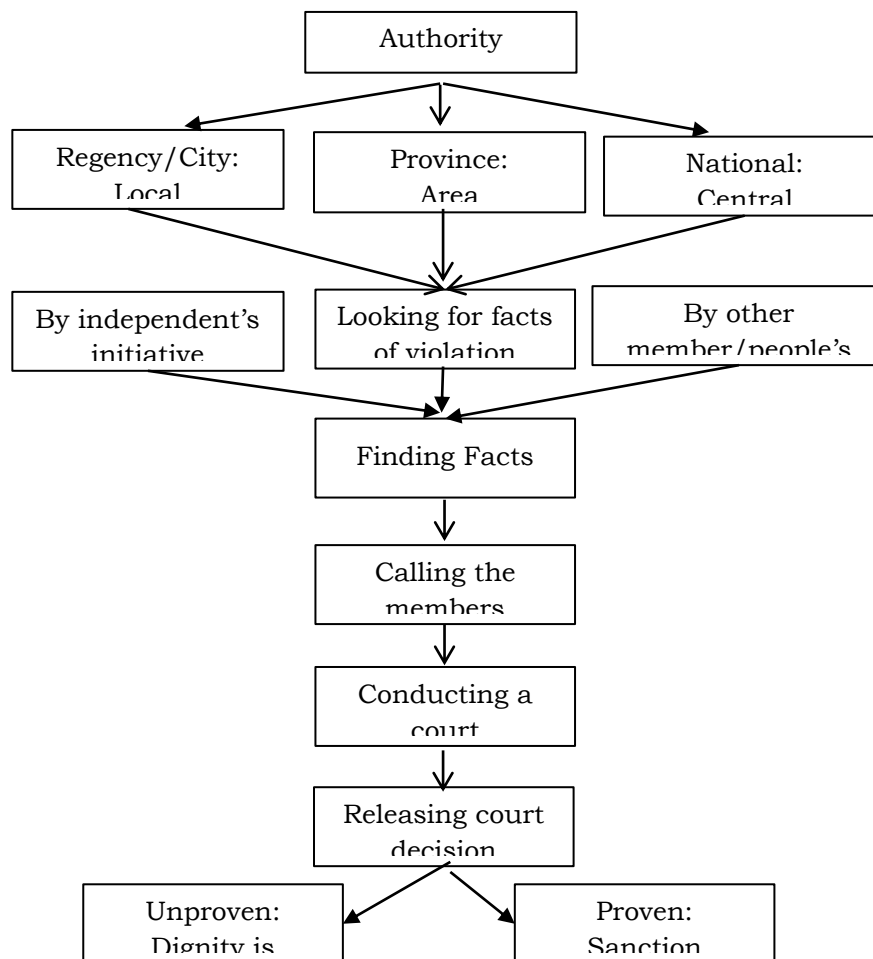


Figure 1 Investigation and Imposition of Sanction in First Stage

Law enforcement procedure against ethics code violation by Notaries in the case of investigation and imposition of sanction in first stage is contained in Article 9 Notary Ethics Code. Shortly, it has

been explained on the above chart about the procedure, it will be described in details in this following explanation:

- a. Local Honorary Council/Area Honorary Council/Central Honorary Council after finding the facts of Ethics Code Violation allegation, in maximum of 14 (fourteen) working days, summons the members concerned in a written form to make sure the Ethics Code Violation by the community members and gives chance to the person concerned to give explanation and defensive statement. The summoning is sent in maximum of 14 (fourteen) working days before investigation date.
- b. If the members summoned are not present on the determined date, the Honorary Council who is investigation will re-summon them for the second time in the maximum of 14 (fourteen) days after the first summon.
- c. If the members summoned are not present for the second summon, the Honorary Council will re-summon for the third time in the maximum of 14 (fourteen) days after the second summon.
- d. If the members are still not present for the third summon, the Honorary Council keeps conducting the court and take decision and/or impose a sanction as regulated in Article 6 Ethics Code.
- e. According to the investigation results, an investigation report is made which is assigned by the members concerned and the Honorary Council investigating. If the members concerned are not willing to assign the investigation report, the report is only assigned by the Honorary Council investigating.
- f. The Honorary Council investigating, in the maximum of 30 (thirty) working days after the last trial, must take decision of the investigation results and determine the sanction for the violators if they are proven to have violation as regulated in Article 6 Ethics Code contained in the Decree.
- g. If the members concerned are not proven to have violation, the members' dignity will be restored through a Decree by investigating Honorary Council.
- h. The investigating Honorary Council must send the Decree to the investigated members with a noted letter and its copy to the Central Administrator, Central Honorary Council, Area Administrator, Area Honorary Council, Local Administrator, and Local Honorary Council.
- i. In the case of Sanction decided by and in a Congress, it must be informed by the Congress to the investigated members with a noted letter and its copy to the Central Administrator, Central Honorary Council, Area Administrator, Area Honorary Council, Local Administrator, and Local Honorary Council.
- j. In the investigation and the trial court, the investigating Honorary Council must:
 - a) Always respect and uphold the concerned members' dignity
 - b) Always maintain family atmosphere
 - c) Keep all findings for a secret
- k. The investigation court is done privately meanwhile the decision reading is done openly.
- l. The investigating Honorary Council court is legitimate if it is attended by more than $\frac{1}{2}$ (one second) of the members. If in the court opening, the number of quorum is not achieved, the court is delayed for 30 (thirty) minutes, If after the delay time, the quorum is still not achieved, the court is considered as legitimate and can take some legitimate decisions.
- m. Every Honorary Council members who investigate have rights to give a vote.
- n. If in the Local administration level, a Local Honorary Council is not formed yet, the Local Honorary Council's duties and authorities are delegated to the Area Honorary Council.

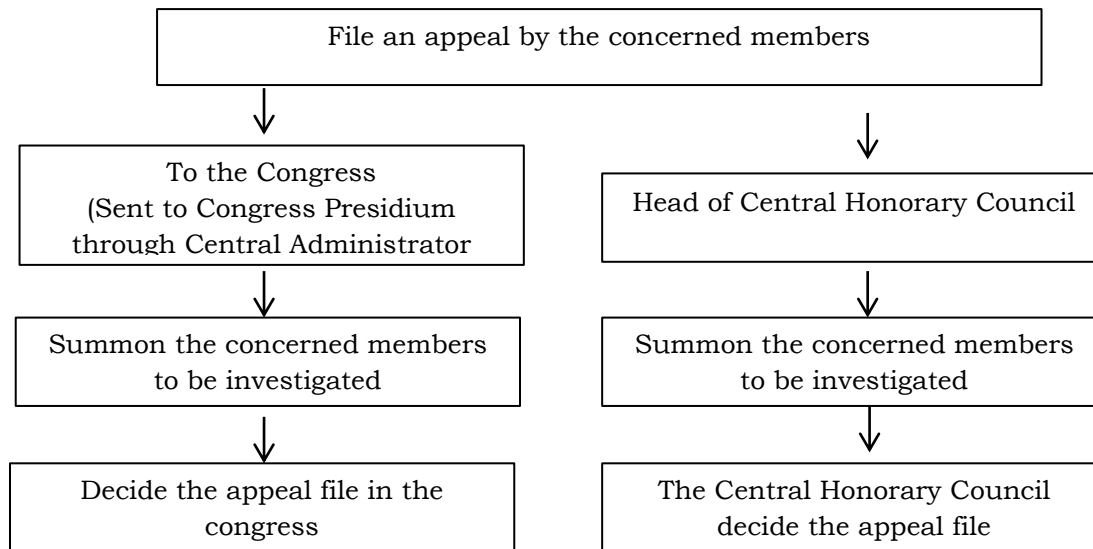


Figure 2 Investigation and Sanction Imposition in the Appeal Stage

Investigation and imposition sanction in the appeal stage is regulated in Article 10 Notary Ethics Code. These are the detail explanation:

- a. The appeal file is done by the concerned members in 30 (thirty) working days after the Decree of sanction imposition accepted from Local Honorary Council/ Area Honorary Council.
- b. The appeal file is sent with noted letter or directly sent by the concerned members to the Central Honorary Council and its copy to the Central Administrator, Central Honorary Council, Area Administrator, Area Honorary Council, Local Administrator, and Local Honorary Council.
- c. The imposing sanction Honorary Council in the maximum of 14 (fourteen) working days after receiving appeal file copy letter must send all copies/ photocopy of investigation files to the Central Honorary Council.
- d. After receiving the appeal files, the Central Honorary Council must summon the members who file the appeal in the maximum of 14 (fourteen) working days after receiving the file to give chances for them to be listened and to give defensive statements in the court of Central Honorary Council.
- e. The Central Honorary Council must decide the appeal file in the maximum of 30 (thirty) working days after the members concerned are investigated in the last court.
- f. If the members summoned are not present, the Central Honorary Council will take decision at the determined time as the section (5) above.
- g. The Central Honorary Council must sent the Decree to the investigated members with a noted letter and its copy to the Central Administrator, Central Honorary Council, Area Administrator, Area Honorary Council, Local Administrator, and Local Honorary Council in the maximum of 14 (fourteen) working days after the Decree date.
- h. In the case of the appeal is filed to the Congress, the appeal filing is conducted by the concerned members in 30 (thirty) days before the Congress will be conducted.
- i. The appeal file is sent with noted letter or directly sent to the concerned members to the Congress presidium through the Central Administrator Secretariat and its copy to the Central Administrator, Central Honorary Council, Area Administrator, Area Honorary Council, Local Administrator, and Local Honorary Council.

- j. The Honorary Council who imposes sanction in the maximum of 14 (fourteen) working days after receiving the appeal file copy must send all copies/ photocopy of investigation files to the Congress presidium through the Central Administrator Secretariat.
- k. The congress must schedule the investigation of the members who file the appeal to be listened and to give defensive statement in the Congress.
- l. The congress must take decision of appeal file in the Congress.
- m. If the members who file the appeal are not present in the Congress, the Congress still decide the appeal.

According to the explanation above about the procedures of law enforcement against ethics code violation done by a Notary, the writer thinks that the existed rules have contained all things about how the procedures are, who the report or appeal is filed to, who decides the appeal, what the sanctions are, and other related provisions if a Notary violates the ethics code. How the implementation in a practice is should be noticed whether it is well done or there are still weaknesses in the rules.

This Notary ethics code rule is expected to be a reminder for Notaries to not mistakenly perform their profession and/or duties. According to Ismail Saleh, to make ethics code obeyed by Notaries, the Notaries' personal awareness is needed to keep their attitude and behavior, to keep their authority, and the Notaries' organization must have moral integrity in performing their task and duties. In this case, all moral consideration must underlie the task and duty implementation (Ansari, 2009:32-22).

Legal Effect towards Notaries Involved in Unfair Competition

Legal effect is a consequence of a legal action done by a legal subject which in this case is Notary. Notary office is an office of trust so that a Notary has to have good attitude guaranteed by the constitution, meanwhile the constitution has mandated on the community to determine the Ethics Code. Good Notary's attitude is based on the Ethics Code therefore Ethics Code regulates things to be obeyed by a Notary in performing their duty as well as out of their duty (Suryani, 2016:19).

Profession of Notary increases every year, this can be one of factors for Notaries to do inappropriate action to have a client. Notaries can do some unfair actions such as do office promotion in social media, determine the deed fee rate under standard, and insult other Notaries in front of clients so that they do not want to use other Notaries' service, and so on. Those are parts of unfair competition.

In the case of a Notary who involved in unfair competition definitely violates the existence of ethics code and causes legal effects. Sanction is given to them who do violation and crime. Sudikno Mertokusumo (2011:42) stated that sanction is social norms violation reaction, impact, or consequences. By that definition, it can be seen that sanction contains the elements of: 1) Sanction is social norms violation reaction, impacts, or consequences (either legal norms or non-legal norms) and 2) Sanction is a power to compel the observance of certain social norms.

The aims of the sanction are as an effort to make someone obey rules, to give punishment and deterrent effect for the violator, and to give certainty of law enforcement. Violation of unfair competition among Notaries is only regulated in Notary Ethics Code. Although it is not stated explicitly about legal effect of unfair competition but according to Chapter IV Article 6 section (1) Notary Ethics Code mentions:

Sanctions for the members who violate Ethics Code are in the form of:

- a. Warning;
- b. Reminder;
- c. Temporary discharge from association;
- d. Respectful discharge from association;
- e. Disrespectful discharge from association.

In Article 9 section (1) d UUJN states that a Notary is temporary discharged from the position due to violation towards responsibility and duty prohibition and Notary ethics code. This can also

be a legal foundation to give sanction to the Notary who does violation of unfair competition among Notaries.

CONCLUSION

In order to solve or overcome a violation, a rule is needed to become a guideline to solve a case which is used for law enforcement implementation. Law enforcement against unfair competition among Notaries which is included in Notaries ethics code violation is contained in Notary Ethics Code. There are two efforts in resolving the ethics code violation, they are Investigation and imposition of sanction in first stage (contained in Article 9 Notary Ethics Code) and Investigation and imposition of sanction in appeal stage (contained in Article 10 Notary Ethics Code). Legal effect is a consequence of a legal action done by a legal subject which in this case is Notary. In the case of a Notary involved in unfair competition definitely violates the existed ethics code and creates a legal effect which is sanction imposition. The types of sanction received by a Notary who violates the ethics code are contained in Article 6 Notary Ethics Code.

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