

THE EFFECTIVENESS OF THE PROHIBITION OF THE CODE OF ETHICS ON SELF-PROMOTION OF NOTARIES AND ITS IMPACT ON NOTARY PRACTICE IN INDONESIA

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Abstract

The Code of Ethics for Notaries in Indonesia strictly prohibits notaries from conducting self-promotion in any form, as regulated in the Notary Position Law and the Code of Ethics for Notaries of the Indonesian Notary Association (INI). This prohibition aims to maintain professionalism, neutrality, and integrity in notarial practice. However, in this digital era, the prohibition is a challenge, especially for novice notaries who have difficulty getting clients. This study analyzes the effectiveness of the prohibition of self-promotion against Notaries, the factors that influence it, and how it impacts notary practice in Indonesia. The research method used in this study is a normative legal research method conducted using a legal material collection approach through library research techniques. The results of this study show that although basically self-promotion of Notary is necessary for a Notary in supporting his profession, he must still pay attention to the professional ethics of the position he holds in order to maintain professionalism, neutrality, and integrity in accordance with the provisions in the Notary Position Law and the Notary Code of Ethics so that he is prohibited from conducting publication or self-promotion, either alone or together, by stating his name and position.

Keywords: Prohibition of Promotion, Code of Ethics, Notary Profession

INTRODUCTION

Notary is a public official who is authorized to make authentic deeds and has other authorities based on the Notary Position Law. Other powers of a notary other than making deeds are to certify signatures and determine the certainty of the date of letters under the hand by registering in a special book, book letters under the hand by registering in a special book, make copies of original letters under the hand in the form of copies containing descriptions as written and described in the letter concerned, certify the suitability of photocopies with the original letter, provide legal counseling in connection with the making of deeds, make deeds related to land, and/or make deeds of auction minutes. To maintain integrity and professionalism in carrying out their duties, notaries are bound by the Notary Position Law (UUJN) and the Notary Code of Ethics established by the Indonesian Notary Association (INI). These authorities are regulated in Article 15 paragraph (2) of Law No. 2 of 2014. Notaries in carrying out the powers as intended certainly require clients to carry out their profession. One of the ways to obtain clients is primarily through the relationships owned by the Notary. In addition, self-promotion is also one way to obtain clients. However, the Code of Ethics for Notaries in Indonesia stipulates that Notaries are not allowed to conduct self-promotion in any form.

The Code of Ethics for Notaries in Indonesia is a professional guideline that aims to maintain integrity, honesty, and professionalism in the performance of notarial duties. One of the important provisions in this code of ethics is the prohibition for notaries to promote themselves, both through print and electronic media, including social media. This prohibition is stipulated in Article 4 paragraph (3) of the Code of Ethics of the Indonesian Notary Association (INI), which prohibits any form of publication or self-promotion by stating the name and position of a notary. This prohibition aims to prevent unfair competition between notaries and maintain the dignity and honor of the profession. With this prohibition, it is expected that notaries can carry out their duties objectively, without utilizing their position for personal gain or attracting the attention of prospective clients through promotion. In addition, this prohibition also instills the value of mutual respect among fellow notaries and ensures that services to the public are carried out professionally without involving excessive marketing activities.

The prohibition of promotion for notaries has several forms as regulated in the UUJN such as including the name and position of the notary, through print and/or electronic media, promotion in the form of advertisements; promotion in the form of congratulations; condolences; or thanks, and promotion in marketing activities as well as sponsorship. In practice, many notaries unintentionally use several social media pages such as Instagram, Blogspot, Wordpress, Scribd, Yahoo, Facebook, Twitter, and others to conduct promotions by including their names and positions to attract public attention. In addition, many notaries also indirectly include their names and positions through bouquets of flowers, which is basically a form of promotion that is not allowed.

In general, prohibited promotions include any act done for the purpose of introducing a business to be known by the public, offering goods and/or services, attracting prospective clients, and to maximize income. The act of publication and self-promotion by Notaries is considered a form of unfair competition between notaries. This creates unfairness in professional practice, where notaries who prioritize service quality and integrity can be eroded by more aggressive promotional practices from their colleagues. Therefore, it is important to evaluate the effectiveness of the prohibition contained in the Code of Ethics of the Notary Profession regarding self-promotion, as well as understand the impact it has on the quality and sustainability of notary practice in Indonesia.

RESEARCH METHOD

The research method used in this research is normative legal research conducted by doctrinal research. The approach used in this research is a statutory approach (statute approach) which is carried out by reviewing laws and regulations related to the legal issues being studied and with a conceptual approach (conceptual approach) which is carried out by exploring the views and doctrines that exist and develop in legal science. In addition, this research uses a legal material collection approach through library research techniques.

RESULTS AND DISCUSSION

The effectiveness of the implementation of the prohibition of self-promotion by notaries based on the code of ethics of the notary profession in Indonesia

Referring to the provisions of Article 4 paragraph (3) of the Notary Code of Ethics, it is stated that: "Notaries and other parties who hold the position of Notary are prohibited from publishing or promoting themselves, either individually or jointly, by including their names and positions, using print and/or electronic media, in the form of: a. Advertisements; b. Congratulatory messages; c. Condolence messages; d. Expressions of gratitude; e. Marketing activities; "Sponsorship activities, whether in the social, religious, or sports fields." As public officials, notaries should thoroughly understand the

provisions set forth in the Notary Law and the Notary Code of Ethics. For example, Article 4(3) of the UUJN states that notaries are not permitted to promote or publicize themselves through print or electronic media. This means that notaries are not permitted to publicize themselves, including merely listing their position as a notary on social media. Such actions by notaries constitute a violation of the Notary Code of Ethics, and they are therefore required to be held accountable for their actions through the enforcement of strict sanctions by the Regional Supervisory Board and the Regional Honorary Council. Generally, the types of accountability typically imposed on notaries include criminal, administrative, civil, and accountability related to their code of ethics and position. There is a connection between the Code of Ethics and the Notary Law (UUJN), as explained in Article 4 of the UUJN regarding the oath of office. Through their oath, notaries pledge to maintain proper conduct and behavior and fulfill their duties in accordance with the professional code of ethics, honor, dignity, and responsibility as notaries. The professional code of ethics for notaries is established and enforced by the notary organization. Given this relationship, a notary who disregards the dignity and honor of their position may face moral sanctions, reprimands, or dismissal from their professional membership and notary position.

In the Notary Law, sanctions are regulated in Article 7 paragraph (2) of Law Number 2 of 2014 concerning Notaries, which states that notaries who violate the law will be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary dismissal;
- c. Honorable dismissal; or
- d. Dismissal without honor.

Meanwhile, in the Notary Code of Ethics, sanctions are regulated in Article 6, points 1 and 2 of the Notary Code of Ethics, namely:

- a) Sanctions that may be imposed on members who violate the code of ethics include:
 - 1) Reprimand;
 - 2) Warning;
 - 3) Suspension (temporary dismissal) from membership of the association;
 - 4) Dismissal from membership of the association;
 - 5) Dismissal without honor from membership of the association.
- b) The imposition of sanctions as outlined above on members who violate the code of ethics is adjusted according to the quantity and quality of the violations committed by the member. If a member who has been temporarily dismissed based on a congress decision is found guilty, the member in question may be permanently dismissed from membership in the association.

The supervision carried out by the Regional Supervisory Council has been ongoing but has not been optimal. This is due to the moral integrity of notary members and the supervisory role of supervisory institutions and notary associations, both internal and external supervision of ethical code violations committed by notary members. This is due to the weak implementation of supervision by notary organizations, honorary councils, and supervisory boards regarding the improvement of the quality of performance, duties, and responsibilities of notaries. Additionally, the moral integrity and responsibility of notaries remain low, and there is a lack of mastery and understanding of the meaning, content, and function of the code of ethics, including legal knowledge and applicable regulations related to the practice of the profession.

Factors affecting the implementation of the prohibition of self-promotion by notaries in their professional practice

The implementation of the prohibition on self-promotion for notaries is affected by various factors. The first factor is understanding and awareness of professional ethics. This means that there are still some notaries who do not fully understand or are unaware of the ethical boundaries related to self-promotion, as stipulated in the Notary Code of Ethics and the Notary Position Law (UUJN). In practice, it is not unusual for some notaries to disregard ethical codes that conflict with moral and ethical values, even though the enforcement of good professional ethics plays an important role as a form of social control.

The second factor is enforcement and supervision. Law enforcement can be carried out preventively or repressively. Preventively, it can be done through regulations to provide legal certainty and supervision, while repressively, it can be done by imposing penalties and sanctions. In relation to law enforcement, the Supervisory Council often faces problems in taking action against violations due to complicated bureaucracy or a lack of reports from the public. In addition, weak or inconsistent sanctions mean that prohibitions are often violated because there are no clear consequences for violators, as the UUJN does not explicitly specify sanctions for violations committed by notaries.

Violations not listed in the UUJN are regulated in Article 6 of the Notary Code of Ethics, which stipulates the sanctions that can be imposed on association members who violate the code of ethics, namely: a) reprimand; b) warning; c) suspension or temporary dismissal from membership of the association; d) expulsion or dismissal from membership of the association; e) dishonorable dismissal from membership of the association.

The third factor is competition among notaries and economic pressure. Notaries naturally compete for clients. Due to intense competition, especially in large cities such as Jakarta, Surabaya, and Bandung, notaries feel the need to promote themselves. However, due to legal restrictions on promotion, many notaries resort to illegal means to attract clients. Additionally, as the number of notaries continues to increase year after year, many unethical notaries go to great lengths to secure as many clients as possible. These unethical notaries will strive to secure as many clients as possible in a short period of time.

The fourth factor is social media and digitalization. It is often found that many notaries use social media to "provide education," but they promote their services implicitly, which is essentially still a legal issue due to the lack of regulations specifically governing promotion on digital media. In addition, platforms such as Instagram, YouTube, TikTok, and LinkedIn provide opportunities for notaries to engage in implicit or explicit promotion. The prohibition on notaries promoting themselves logically poses a risk to the notary's position as a public official. Therefore, they are not permitted to publish or promote their activities as notaries.

The next factor is the legal culture in society. In social life, violations of professional ethics are considered normal or insignificant due to low levels of legal compliance. The situation can also be worsened by a lack of criticism from the public or clients regarding notaries' self-promotion. These circumstances cause some notaries to tend to ignore the code of ethics that should be upheld in order to fulfill their desire to obtain clients more easily through self-promotion.

The impact and obstacles of the prohibition of self-promotion on the behavior and practices of notaries in Indonesia

The prohibition of self-promotion for notaries in Indonesia is strictly regulated in the Notary Code of Ethics and the Notary Profession Law with the main objective of maintaining the integrity and honor of the profession. These regulations are intended to prevent practices that damage the image of the notary profession, curb unhealthy competition, and maintain public trust in the role of notaries as neutral, independent, and professional public officials. However, the implementation of this ban in practice presents complex impacts and a number of challenges that influence the behavior and practices of notaries in the field.

One positive impact of the implementation of the self-promotion ban is the creation of an image of professionalism and neutrality among notaries. By prohibiting commercial promotion or advertising, notaries are not caught up in market competition that prioritizes the quantity of clients over the quality of service. In this context, notaries can focus more on providing services in accordance with applicable legal provisions, without being influenced by efforts to attract as many clients as possible. This maintains public trust, as the role of a notary is not viewed as that of an ordinary business entity, but rather as a public official tasked with providing legal certainty in civil transactions.

However, the prohibition on self-promotion also has several negative impacts, especially in the digital age and increasingly competitive global market. With the development of information technology and social media, people are increasingly relying on digital platforms to find professional services, including notary services. One of the main impacts is a change in the behavior patterns of notaries in seeking clients. Due to the prohibition on direct self-promotion, many notaries have shifted to using covert promotional strategies through social media or educational content of an informative nature, such as creating legal awareness videos on digital platforms. However, this often raises ethical dilemmas as the line between education and promotion becomes blurred. On the other hand, intense competition among notaries, especially in urban areas, drives some notaries to violate the prohibition in order to retain or acquire clients. Additionally, the prohibition on self-promotion has the potential to fuel unhealthy competition within the notary profession. Some notaries choose alternative methods, such as building covert referral networks with lawyers, property developers, or other third parties to acquire clients. Unhealthy business competition occurs when notaries degrade each other's dignity and integrity in order to obtain clients, such as by promoting and publicizing themselves as the only reliable notary, or by boasting about themselves in a way that degrades other notaries. Such practices contradict the principles of independence and neutrality of the notary profession, thereby potentially damaging the profession's overall image.

In practice, there are a number of obstacles to enforcing this prohibition, especially in today's digital age.

1. Unclear boundaries of promotion

The Notary Code of Ethics prohibits self-promotion through print and electronic media, but does not provide a clear definition of what constitutes "self-promotion".

As a result, actions such as listing names, positions, and office addresses on social media can be considered violations, even if the intention is only to provide information to the public. This creates legal uncertainty for notaries in using digital media.

2. Lack of Enforcement and Supervision

The Regional Honorary Council (DKD) and the Regional Supervisory Council (MPD) have a role in overseeing the implementation of the Notary Code of Ethics. However, in practice, supervision of violations of self-promotion through social media has not been effective. Some of the contributing factors include the limited number of supervisory members, lack of resources, and a sense of reluctance among fellow notaries that hinders the enforcement of sanctions.

3. Technological Advancements and Social Media

Advancements in technology and the popularity of social media platforms like Instagram and TikTok have encouraged notaries to utilize these platforms to introduce themselves and their services. However, the use of social media by notaries is often considered a violation of the ban on self-promotion, even if the intention is for educational or informational purposes. This highlights the need to adapt regulations to keep pace with technological advancements.

4. Comparison with Practices in Other Countries

In countries like the Netherlands, notaries are permitted to provide general information about their services through digital media, as long as it does not constitute excessive promotion or undermine the profession. This approach allows notaries to adapt to technological advancements without compromising professional ethics.

The prohibition on self-promotion for notaries in Indonesia faces challenges in its implementation, particularly due to unclear rules, inadequate enforcement, and technological advancements. To address these challenges, revisions to the Notary Code of Ethics are needed to align with modern developments, along with enhanced capacity and independence of supervisory bodies in enforcing the rules.

CONCLUSION

The prohibition of self-promotion for notaries in Indonesia as stated in the Notary Code of Ethics and the Notary Office Law (UUJN) is primarily intended to maintain integrity, professionalism, and neutrality in the performance of notarial duties. However, in practice, the effectiveness of this prohibition still faces various challenges. Many notaries, especially those who are just starting their careers, have difficulty getting clients without promotion, so they tend to look for loopholes through covert promotion on social media or cooperation with third parties. Enforcement of this prohibition has not been optimal due to weak supervision from relevant institutions and the absence of strict and consistent sanctions. Factors affecting the implementation of this prohibition include a low understanding of professional ethics, competitive and economic pressures, technological developments, and a permissive legal culture. The positive impact of this prohibition is the creation of an image of professionalism and public trust in notaries as public officials. However, the negative impacts include the potential for injustice, unfair competition, and ethical dilemmas arising from covert promotion. Therefore, it is necessary to strengthen the Notary Code of Ethics to adapt to the current digital era, as well as strengthen the capacity of supervisory institutions to enforce the rules fairly and effectively.

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