
**ANALYSIS OF VIOLATIONS OF THE OFFICE OF A NOTARY AS AN
ADVOCATE BASED ON A SHARIA PERSPECTIVE**

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Keywords

*Notary; Multiple
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Abstract

A notary is a public official who has the authority to make authentic deeds. In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, article 17 paragraph (1) states that Notaries are prohibited from holding the same position as Advocates. However, there are also cases of notaries who hold the same position as advocates. This research examines further the violations against Notaries who hold concurrent positions as advocates based on a sharia perspective. This research uses normative juridical research methods. The data used in this research is secondary data. Secondary data includes primary legal materials and secondary legal materials. In this research, the author uses qualitative data analysis to produce descriptive data. Based on the research results, Notaries may not violate the code of ethics that has been established in their position. Because, if a Notary violates the professional code of ethics, it means that the Notary has violated the oath which in Islam is called the karate oath. Violations of the Code of Ethics for Notaries with Multiple Positions are prohibited in the view of Islamic law to avoid conflicts of interest or conflicts of interest. In Islam it is also said that every profession must be carried out diligently (Putin). The prohibition on holding multiple positions for Notaries is also in line with independence (al-istiqlaliyah) in the legal field. This independence can only be realized in other professions within the notary environment.

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INTRODUCTION

The Republic of Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order, and legal protection for every citizen (Harisman, 2021)

. To guarantee legal certainty, order, and protection, authentic written evidence is needed regarding actions, agreements, stipulations, and legal events made in the presence of or by authorized officials (Darus & Luthfan, 2017). Article 1 number 1 in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Services (from now on referred to as UUJN) states that a Notary is an official who has the authority to make authentic deeds and has other authorities as intended in the law—this law or based on other laws (KP Putri, 2016).

The notary profession is a noble profession because the notary profession is very closely related to social or humanitarian functions (Prbawa, 2017). Authentic deeds, which are the main product of a notary, can be a source of legal force for material status, as well as a person's rights and obligations (Qasthari et al., 2019). Therefore, in carrying out the professional position of a Notary, you must comply with the applicable provisions (NM et al., 2021).

The Notary Code of Ethics as a supporter of UUJN must be adhered to by all members of the Indonesian Notary Association who carry out their duties and positions as Notaries. The Notary Code of Ethics contains matters related to the notary profession, obligations,

prohibitions, sanctions, and so on. To carry out supervision is carried out by the Notary Supervisory Committee (Mardiyah et al., 2017).

In carrying out their duties, the position of the code of ethics for Notaries is very important, not only because Notaries are a profession, so they need to be regulated by a code of ethics, but also because the nature and essence of Notaries' work is very legalization-oriented so that it can become the main legal foundation regarding status, property, rights and obligations of a client who uses the services of the Notary (Sagala, 2016).

In practice, as time goes by and technological developments become increasingly rapid, opportunities open up for Notaries to compete to get as many clients as possible (Ardiansyah & Kurniawan, 2023). This creates an opportunity for several Notaries to be willing to hold concurrent positions as Advocates. Even though this violates Article 17 paragraph (1) letter e UUJN, which states that Notaries are prohibited from holding the same position as Advocates (Judge, 2022). The case of having multiple positions was carried out by a notary in Lampung with the initials CA, who was later found guilty through the Decision of the Central Supervisory Council of Notaries of the Republic of Indonesia No. 06/B/MPPN/X/2018 dated November 9, 2018.

Therefore, based on this background, the author conducted research with the title Analysis of Violations in Notary's Office Case Study of the Decision of the Central Notary Supervisory Council Number: 06/B/Mppn/X/2018 Date November 9, 2018 Based on Perfective Sharia, where this research is to find out how the view of Islamic law on the ethics of notary office, as well as the Islamic view on violations of the notary code of ethics in decision Number: 06/B/MPPN/X/2018.

RESEARCH METHODS

In this writing, the author uses a normative juridical research method. This type of research is also known as literature study, which refers to legal norms and statutory regulations. The type of data used in this research is secondary data. Secondary data includes primary legal materials and secondary legal materials. The primary material used is statutory regulations, while the secondary material used is literature related to this research. In writing this research, the author used qualitative data analysis, which produces descriptive data.

RESULTS AND DISCUSSION

1. Notary Public Ethics from a Sharia Perspective

A notary is a person who is trusted by the public; therefore, his position must be upheld. In carrying out his office, a Notary must comply with all moral rules that have lived and developed in society. Apart from the responsibilities of professional ethics, integrity and good morals are important requirements that a Notary must have (Wibowo et al., 2022).

The Notary Code of Ethics is all the moral rules determined by the Indonesian Notary Association based on the decision of the association's congress and determined by and regulated in the laws and regulations governing this matter, which apply to and must be obeyed by each and all members of the association and all people who carry out their official duties as Notaries, including Temporary Notary Officials, Substitute Notaries, and Special Substitute Notaries. This Notary's Code of Ethics has a very important role/function for notaries, namely as a basis, benchmark, reference, and guideline in every action, attitude, and behavior in carrying out their duties and position as a Notary (Ardiansyah & Kurniawan, 2023).

Based on Article 15 UUJN, the authority of a Notary that must be exercised in carrying out his/her office is outlined, namely: The Notary has the authority to make authentic deeds regarding all deeds, agreements, and provisions that are required by statutory regulations and that are desired by interested parties to be stated in authentic deeds, guaranteeing certainty of Date. Making deeds, keeping deeds, providing grosses, copies, and quotations of deeds, all of this as long as the making of the deeds is not also

assigned or excluded to other officials or other people as determined by law (Ma'ruf & Wijaya, 2015).

Notarial obligations are something that the Notary must carry out; if not carried out or violated, sanctions will be imposed on the Notary. Notary obligations are stated in Article 16 paragraph (1) letters a to k of the Notary Position Law, which, if violated, will be subject to sanctions as stated in Article 84 (Rizqiyah, 2021).

Many notary ethics codes in Islam align with Islamic teachings (Pradiptasari, 2017). In Surah Al-Baqarah, it is told about the study of the basics, benefits, and importance of recording and recording in every financial transaction (especially regarding debts and receivables) (Abidin, 2020). There is a relationship between the contents of Al Baqarah Verse 282 and the notary profession. There are similarities between the Notary and the writing in Surah Al Baqarah Verse 282 (Aldiano et al., 2021). In Surah Al Baqarah verse 282, it is written that in carrying out his work, the writer is bound by the procedures and ethics that have been determined by Allah, namely that they must be honest, impartial and not harm the parties, so also with the notary profession which is bound by the notary position law and the notary code of ethics (Ardiansyah & Kurniawan, 2023).

Actions prohibited for a writer in Surah Al Baqarah Verse 282 include being prohibited from writing unfairly and impartially and writing that does not comply with the rules of writing (Sifdiatul, 2023). The author should be willing to write it as Allah taught him. Let him not reduce the debt in the slightest; Let not the witnesses be reluctant (to give testimony) when they are summoned; Do not get tired of writing down debts, whether small or large, until the deadline for paying them; Do not make things difficult for the writer and the witness; and Do not you (witnesses) conceal your testimony. In fact, from this description, most of the contents of Surah Al Baqarah are contained in the Indonesian Notary Code of Ethics (Ardiansyah & Kurniawan, 2023).

Furthermore, the role of a notary from an Islamic law perspective is to carry out the authority in his position; he must be fair and honest. As in the Al-Qur'an surah an-Nisa verse 59, which means:

" O you who believe, obey Allah and obey His Messenger, and the ulil amri among you. Then, if you have different opinions about something, then return it to Allah (the Qur'an) and the Messenger (sunnah) if you truly believe in Allah and the Last Day. That is more important (for you) and the consequences are better. "

The verse above contains meanings, among others:

- 1) The command to obey Allah means the command to carry out the laws contained in the Koran
- 2) The command to obey the apostle means the order to practice what the apostle said in his sunnah
- 3) The order to obey until amri means the order to practice the law found based on ijma
- 4) The command to return something permitted by law to Allah and the Messenger. This means the order to practice the law found through qiyas, which is the result of ijma (ijtihad ulama).

In Islam, in carrying out his position, a Notary is not permitted to violate the established code of ethics (Ardiansyah & Kurniawan, 2023). This is because, according to the Islamic religion, if a notary violates the professional code of ethics, it means that the Notary is violating an oath, which in the Islamic religion is called a karat oath.

According to the rules and law, it has been stated clearly and firmly that there are several professions where notaries are not permitted to carry out these professions simultaneously while serving as a notary profession. The prohibited professions are:

- a) Concurrently, as a civil servant,
- b) Concurrently serving as a State official;
- c) Concurrently serving as an advocate;
- d) Holding a position as leader or employee of a State-owned enterprise, regional-owned enterprise, or private enterprise;
- e) Concurrently serving as a land deed official and class II auction official outside the Notary's place of residence;

- f) Become a substitute notary or
- g) We are carrying out other work contrary to religious norms, morality, or propriety, which could affect the honor and dignity of the Notary's position.

Based on UUJN Article 17 Paragraph (2), Notaries who are proven to have violated these rules will be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary suspension
- c. Dismissal with respect; or
- d. Dishonorable discharge.

2. Views on violations of the Notary Code of Ethics in decision Number: 06/B/MPPN/X/2018

The position is an entrustment and gift from God to certain people. The position is close to importance, leadership, power, fame, honor, and wealth. Therefore, it is unsurprising that most people compete for the desired position. They can compete in many ways and justify any means (Ardiansyah & Kurniawan, 2023).

A position that is similar to leadership is a very noble task. The position (leadership) serves as a substitute for prophethood in protecting religion and regulating the welfare of life. The intima of the ulama has agreed that the law must appoint someone who has credibility in carrying out leadership duties (positions) among Muslims (Ardiansyah & Kurniawan, 2023). The position can also be considered a test because, with this position, you will be asked to take responsibility in this world and the afterlife. As stated in the hadith of the Prophet Muhammad SAW, which means:

" From Abdullah, Rasulullah SAW, said: Know that each of you is a leader, and each of you will be held accountable for those he leads. The ruler who leads the people will be held accountable for those he leads. The head of the family is the leader of his household and he is held accountable for his family. The wife is the leader of her husband's home as well as her children, and she will be held accountable to them. And the servant is the leader in matters of his master's property and will be held accountable for his duties. Know that each of you is a leader and each of you will be held accountable for what he leads. "

Responsibility as a leader takes work. The higher a person's position, the greater their responsibility. The more people he leads, the greater the responsibility he has to bear. All details regarding his leadership will be asked (Voegtlin, 2016). Therefore, positions will be based on their responsibilities. However, this high risk encourages certain people to hold that position. They will do everything possible to make their wishes come true.

In this case it is known that the case started from a land dispute between PTPN VII and PT Bumi Madu Mandiri (BMM) in 2012. Chairman of SPPN VII Muhammad Baasith said that when the case was being processed legally, Chairul Anom acted as PT BMM's attorney. Due to this incident, SPPN VII filed a multi-level lawsuit against the Notary Regional Supervisory Council (MPDN) of Bandar Lampung City. The long process up to the Central Notary Supervisory Council (MPNN) is supervised by SPPN VII. SPPN VII sees that the alleged violations committed by Chairul Anom have tarnished the honor of the noble profession of Notary (official mobile) for actions, not by the provisions of Article 15, Article 16, and Article 17 of the Notary Position Law. "Based on the SPPN VII report, the examination has been followed up in stages by the Regional Supervisory Council of Notaries (MPDN) of Bandar Lampung City, the Regional Supervisory Council of Notaries (MPWN) of Lampung Province, and the Central Supervisory Council of Notaries (MPPN).

It is known that Chairul Anom has worked as Legal Counsel for PT Bumi Madu Mandiri in civil cases but, at the same time, is still registered as a Notary. This is very clearly contrary to Article 15, Article 16, and Article 17 of the Notary Position Law. This indicates that there is partiality and the working relationship in question with PT Bumi Madu Mandiri, Chairul Anom is an active notary domiciled in Bandar Lampung City based on the Decree of the Minister of Justice of the Republic of Indonesia Number: C-

175.HT.03.01 TH.1998 dated September 8 1998, p. This can be seen on the website of the Lampung Province Regional Office of the Ministry of Law and Human Rights.

The Central Supervisory Council of Notaries of the Republic of Indonesia decided that Choirul Anom, the notary attorney for PT Bumi Madu Mandiri (BMM), was proven guilty. The decision followed reports of alleged Law on Notary Positions violations reported by the Nusantara Plantation Workers Union VII (SPPN VII). This came to the fore in the Decision of the Central Supervisory Council of Notaries of the Republic of Indonesia No. 06/B/MPPN/X/2018 dated November 9, 2018.

In the dictum of the Decree on the Temporary Dismissal of Chairul Anom, SH, he also decided to block the account on the online Directorate General of AHU system (www.ahu.go.id) and hand over the protocol to Notary DR. Tjempaka, SH, MH, MKn., as Protocol Holder for Notary Chairul Anom, SH, while undergoing the temporary dismissal sanction.

Based on the facts above, it is clear that the authority of the Regional Supervisory Council in implementing sanctions is real and not only at the normative level of legislation but has been implemented in order to guide notaries who violate to maintain the dignity of the notarial profession (Ardiansyah & Kurniawan, 2023). The logical consequence is that the Regional Supervisory Council, in carrying out one of its authorities, including examining violations of the dual position of a notary, can be carried out independently, professionally, and impartially and have real consequences in imposing sanctions, thereby fulfilling the public's expectations and trust in the performance of the supervisory council (Almuslimah et al., 2021).

Article 17, paragraph 1, letter e, states that Notaries are prohibited from holding the same position as advocates (Kusuma, 2019). This is in line with the view of Islamic law. According to Islamic law, the prohibition on holding multiple positions is carried out to avoid the following things: firstly, so that there is no conflict of interest. Then, in the Islamic religion, it is also said that every profession must be carried out diligently (Putin). Then, in the view of Islamic law, it is also prohibited to do things that reduce a client's rights, including not providing services due to leaving the office. The prohibition on holding multiple positions for notaries also aligns with independence (*al-istiqlaliyah*) in the legal field. One form of independence is not serving in other professions outside of Notary. Apart from that, this is also in line with the principle of professionalism, which in the Sharia concept is called *al-qowiy* (Ardiansyah & Kurniawan, 2023).

CONCLUSION

In overcoming the problems identified in the case study, concrete steps need to be taken to strengthen the integrity and ethics of the notary profession. First, strengthening professional ethics training is needed which includes an in-depth understanding of applicable ethical codes, especially in the context of Islamic law. This training program can involve religious authorities to provide specific direction and emphasize the prohibition of holding several positions simultaneously in the perspective of *kifarat* oath and *al-Cowley* principles. In addition, the implementation of strict internal monitoring mechanisms, including regular audits by authorized institutions, needs to be implemented to monitor notaries' compliance with ethical and legal standards.

Second, strict enforcement of sanctions needs to be implemented as a preventive and corrective measure. Sanctions appropriate to ethical violations, such as temporary or permanent suspension of notarial practice, must be applied consistently. Transparency in enforcing sanctions is also very important to set an example for other notaries and encourage compliance with the code of ethics. In addition, the establishment of an independent institution or ethics committee consisting of legal experts and religious experts can provide an objective view in assessing complex cases and provide advice on appropriate resolution steps. With this approach, it is hoped that we can build a strong foundation to prevent violations of notary ethics and maintain the integrity of the profession in the future.

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