

Legal Review of Cooperation Links Between Notary and Banks with the Provisions of Article 16 Paragraph (1) Letter (A) of Law Number 2 of 2014 Concerning Amendment to Law Number 30 of 2004 Concerning the Position of Notary

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ABSTRACT: The role of the Notary is very important in helping to create legal certainty and protection for the community, because the Notary as a public official has the authority to make authentic deeds, as long as the making of the authentic deed is not specific to other public officials. Legal certainty and protection can be seen through the authentic deed he made as perfect evidence in court. Perfect evidence because an authentic deed has three evidentiary powers, namely outward evidentiary strength (uitwendige bewijskracht), formal evidentiary power (formele bewijskracht) and material evidentiary power (materiele bewijskracht). (G. H. S. Lumban Tobing, 1999: 55-59) However, over time, competition among Notaries has encouraged several Notaries to practice the philosophy of picking up the ball, such as actively visiting Prospective appearers, offering services, negotiating honorariums and engaging in business-like agreements, including cooperation agreements between Banks and Notaries required in making deeds in the field of credit. Referring to the provisions of the Law on Notary Position and the Notary Code of Ethics, it does not explicitly prohibit a Notary from entering into an agreement with any party, but in practice the implementation of a cooperation agreement between a Bank and a Notary is not in line with the Law on Notary Office and the Notary Code of Ethics. As a result, the Notary becomes independent and sided with the Bank. Whereas in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) Article 16 paragraph (1) letter (a) it is stated that "In carrying out his position, the Notary is obliged to: act honestly, thoroughly, independent, impartial and protect the interests of parties involved in legal actions. In line with these rules, in the provisions of the Amendment to the Notary Code of Ethics at the Extraordinary Congress of the Banten Indonesian Notary Association, May 29-30 2015, namely in Article 3 paragraph (4) which states "Notaries and other persons who assume and carry out the position of Notary are obliged to: act honestly, independent, impartial, full of responsibility, based on laws and regulations and the contents of the Notary's oath of office. (Perubahan Kode Etik Notaris Kongres Luar Biasa Ikatan Notaris Indonesia. Banten, 29-30 Mei 2015)

KEYWORDS: Notary, bank, cooperation

INTRODUCTION

A Notary is a profession in the field of law that provides legal services to the public in the form of authentic written documents, known as notarial deeds, concerning acts, agreements, determinations, and legal events required by applicable laws and regulations. Thus, it can be concluded that the Notary Code of Ethics is a guide or moral and ethical principles for notaries, both as individuals and public officials appointed by the government to provide public services, especially in the field of document drafting. (Abdul Ghofur Anshori, 2009: 51) . Notaries must be well acquainted with and understand the code of ethics, which outlines what actions can be considered violations and the sanctions imposed for breaching the code. The existence of a notary's code of ethics is a logical consequence of their professional work. (Riyan Saputra dan Gunawan Djajaputra, 2018: 3) As public officials, notaries are bound by laws and regulations and the ethical principles of their profession. The code of ethics is determined by the Indonesian Notary Association (INI) based on the decisions of the association's congress and/or regulations governing the notarial profession's code of ethics, and it must be adhered to by all members associated with the organization. Article 83, paragraph (1) of Law No. 2 of 2014 on Amendment to Law No. 30 of 2004 on Notary Position states that "The notary organization establishes and enforces the notary code of ethics." Furthermore, in Article 13, paragraph (1) of the Amended Bylaws of the Indonesian Notary Association, established by the Extraordinary Congress of the Indonesian Notary Association in Banten on May 29-30, 2015, it is stated: "To maintain the

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honor and dignity of the notary profession, the association has a notary code of ethics established by the congress and constitutes a moral code that must be obeyed by every member of the association.

In the execution of their duties, a Notary is subject to and bound by the prevailing laws and regulations in Indonesia, particularly the provisions of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Position of Notary. The performance of a Notary is constrained by the applicable regulations, notably the Notary Law and the Notary Code of Ethics. As a public official, a notary is closely associated with moral and legal principles that are inseparable from their profession. (Suci Rachmawati, Moh. Fadli, 2019: 1) Thus, it can be concluded that the Notary Code of Ethics serves as guidance or moral and ethical guidelines for notaries, both as individuals and as public officials appointed by the government to provide public services, especially in the field of document drafting. (Abdul Ghofur Anshori, 2009: 51) Notaries need to be well-informed about and understand the code of ethics, which outlines what actions can be considered violations and the sanctions imposed for breaching the code. The existence of the Notary Code of Ethics is a logical consequence of their profession. (Riyan Saputra dan Gunawan Djajaputra, 2018: 3) The notarial profession is a public office that operates under the constraints of laws and regulations and the ethical principles of their profession. The notarial code of ethics is a set of moral principles determined by the Indonesian Notary Association (INI) based on the decisions of the association's congress and/or regulations governing the notarial profession's code of ethics, and it must be adhered to by every member associated with the organization. According to Article 1, paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Position of Notary, it is stated that: "A Notary is a public official authorized to draw up authentic deeds and other authorities as referred to in this Law or based on other laws." Based on this article, it can be understood that a notary is a public official (*openbaar ambtenaar*). (Abdul Ghofur Anshori, 2009: 101) The role of a Notary is crucial in helping to create legal certainty and protection for the public, as a public official, a Notary is authorized to create authentic deeds, as long as the creation of such authentic deeds is not specifically assigned to other public officials. The legal certainty and protection are evident through the authentic deeds created by the Notary, which serve as perfect evidence in court. Authentic deeds have three evidentiary powers: external evidentiary power (*uitwendige bewijskracht*), formal evidentiary power (*formele bewijskracht*), and material evidentiary power (*materiele bewijskracht*). (G. H. S. Lumban Tobing, 1999: 55-59) According to Article 1868 of the Civil Code (KUH Perdata), an authentic deed is a deed made in the form determined by the law, created by or before public officials who are authorized to do so in the place where the deed is made. This means that the Notary, by law, is given the authority to create absolute evidence, in the sense that what is stated in the authentic deed is essentially considered true. (R. Soegondo Notodisoerjo, 1993: 8) In addition to Article 1, paragraph (1) of UUJN, the Notary also has authorities as stipulated in Article 15, paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Position of Notary (UUJN). This article states that: "A Notary is authorized to draw up authentic deeds concerning all acts, agreements, and determinations required by laws and/or desired by the parties to be declared in an authentic deed, guarantee the certainty of the date of the deed, preserve the deed, provide originals, copies, and excerpts of the deed, as long as the creation of the deed is not assigned or excepted to other officials or individuals designated by the law.

As a Public Official, according to Article 1 point (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Position of Notary, it is stated that: "A Notary is a public official authorized to draw up authentic deeds and other authorities as referred to in this Law or based on other laws." An authentic deed, as defined in Article 1868 of the Civil Code (KUH Perdata), is a deed made in the form determined by the law, created by or before public officials who are authorized to do so in the place where the deed is made. This means that the Notary is empowered by law to create absolute evidence, in the sense that what is stated in the authentic deed is essentially considered true. (R. Soegondo Notodisoerjo, 1993: 9) In addition to being regulated in Article 1 point (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, the Notary also has authorities as stipulated in Article 15, paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Position of Notary. This article states that: "A Notary is authorized to draw up authentic deeds concerning all acts, agreements, and determinations required by laws and/or desired by the parties to be declared in an authentic deed, guarantee the certainty of the date of the deed, preserve the deed, provide originals, copies, and excerpts of the deed, as long as the creation of the deed is not assigned or excepted to other officials or individuals designated by the law.

The cooperation agreement between the Bank and the Notary arises due to the essential role of the Notary in the creation of deeds in the field of credit. The tasks entrusted by the Bank to the Notary include the legalization of credit agreements, the preparation of debt acknowledgment deeds, power of attorney to sell, the creation of deeds of encumbrance, and other deeds deemed necessary by the Bank. The acts of the agreement that are legalized or authenticated by the Notary are not merely for the purpose of confirming the agreement but also aimed at preventing legal issues that may arise in the future. This practice can be observed when a customer enters into an agreement with the Bank, where the agreement is in the form of authentic deeds, legalization, and authentication. Naturally, these agreements must use the services of a Notary appointed by the respective Bank. Before the appointment, a cooperation agreement between the Bank and the Notary in question regarding the provision of Notarial services must be made. In

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the practice of bank credit transactions, the draft agreement is prepared by the Notary, but all terms and conditions are set by the bank. The process of creating a credit agreement begins with the Bank appointing the Notary, following the approval letter for credit provision. (Gatut Hendro Tri Widodo, 2022: 528) The document for credit provision approval includes details such as the amount of credit, purpose, interest rate system, term, collateral clause, and repayment procedure. The cooperation agreement between the Bank and the Notary has raised controversy among Notaries concerning the independence and impartiality of the Notary in providing legal services to clients.

RESEARCH METHODS

In this research, the nature of the study used is normative juridical, which includes the study of legal principles, legal systematics, the level of legal synchronization, legal history, and legal comparison. (Soerjono Soekanto, 2007: 51) Normative juridical research, which is the primary research method used in this study, is a legal library research. The research material consists of primary data categorized as secondary data, such as legislation, court decisions, legal theories, and opinions of prominent scholars. The analysis used in this study is qualitative normative analysis.

The approach used in this legal research is the statutory approach, which means that the research mainly focuses on examining various legal rules that are the central theme of the study. Normative research naturally requires the statutory approach, as it investigates various legal provisions that are the focus and central theme of the research. The data sources in this study are primary legal materials and secondary legal materials, which include:

Primary Legal Materials: Primary legal materials consist of legislation whose arrangement follows the Procedures for the Formation of Legislation in force. In this study, primary legal materials include: a. Civil Code

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position

Changes in the Notary Code of Ethics at the Extraordinary Congress of the Indonesian

Notary Association in Banten, May 29-30, 2015

Bylaws of the Indonesian Notary Association, established based on the Extraordinary

Congress of the Indonesian Notary Association in Banten, May 29-30, 2015

Secondary Legal Materials: Secondary legal materials include legal facts, doctrines, legal principles, and legal opinions found in literature, journals, research results, documents, newspapers, the internet, and scientific magazines.

The data collection in this research uses literature study, which involves reading, studying, and taking notes from relevant books and legislation related to the main issues. Since this research uses a statutory approach, the focus is on finding legislation related to the issues under discussion.

The analysis of normative legal research data is done descriptively and qualitatively, which means analyzing non-quantifiable data. The legal materials obtained are then discussed, examined, and grouped into specific parts to be processed into informational data. The results of the legal material analysis will be interpreted using grammatical interpretation methods and systematic interpretation methods. Grammatical interpretation means interpreting the law according to the meaning of words (terms). There is a close relationship between language and law. Language is the only tool used by legislators to express their intentions, but sometimes legislators may not be able to articulate words accurately. Systematic interpretation means interpreting the law by linking one article to another within a legislation or with other laws. (Yudha Bhakti Ardhiwisastra, 2012: 9-11)

RESEARCH RESULTS AND DISCUSSION

A. Violations in the Cooperation Agreement Between Notaries and Banks in Connection with Article 16 Paragraph (1) Letter (a) of Law Number 2 of 2014 Regarding Amendments to Law Number 30 of 2004 Regarding Notary Positions.

Notaries, in their behavior and duties, must adhere to the Law on Notary Positions and the Notary Code of Ethics. Both regulations have detailed provisions on the authority, obligations, and prohibitions for Notaries. Authority is a legal action that is regulated and granted to a position based on the applicable laws governing that position. Juridically, the authority given by the Law to Notaries is to create authentic deeds, as mentioned in Article

1, number 1 of Law Number 2 of 2014 Regarding Amendments to Law Number 30 of 2004 Regarding Notary Positions. The position of a Notary is that of a public official, meaning the authority vested in a Notary is not given to other officials.

A Notary, in carrying out their duties in creating authentic deeds related to civil matters, has attributive authority, which is inherent to the position they hold and is granted by law (in this case, the Law on Notary Positions) to perform certain public functions of the State and work for the interests and service of the general public, particularly in civil law. Article 15 paragraph (1) of Law Number 2 of 2014 Regarding Amendments to Law Number 30 of 2004 Regarding Notary Positions, states that one of the authorities of a Notary is to create deeds in general. This is referred to as the General Notary Authority, with the following limitations:

a. Not excluding other officials designated by the Law.

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b. Relating to deeds that must be made or authorized to create authentic deeds regarding all acts, agreements, and resolutions required by law or desired by interested parties.

c. Concerning legal subjects (individuals or legal entities) for whom the deed is made or desired by interested parties.

Article 15 paragraph (2) regulates the special authority of a Notary to take certain legal actions, such as:

- a. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
- b. Book private documents by registering them in a special book;
- c. Make copies of the original private documents in the form of a copy containing the description as written and described in the relevant letter;
- d. Verify the compatibility of the photocopy with the original document;
- e. Providing legal counseling in connection with making deeds;
- f. Making ajta related to land affairs, or;
- g. Make a deed of minutes of auction.

Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary, according to Habib Adjie is the authority of a notary which will be determined later based on other legal regulations that will come or appear in the future or in the future (*ius constituendum*) based on statutory regulations. For example, the authority to make a deed of establishment of a limited liability company is regulated in Article 7 of Law Number 40 of 2007 concerning Limited Liability Companies or as stated in Article 11 paragraph (2) of Law Number 28 of 2004 concerning Foundations, regarding the authority to make deed of foundation establishment. . With regard to the authority of a Notary, there are three main things that are important in the implementation of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary, namely regarding certainty, order and legal protection which are the philosophical basis for the establishment of the UUJN. The need for certainty, order and legal protection today is increasing in line with the demands for the development of economic and social relations, both at the national, regional and global levels.

Notaries in carrying out their duties and authorities must comply with all obligations they have. The notary's obligation is something that must be done by a notary. If this obligation is not carried out or violated, the notary will be subject to sanctions for the violation he has committed. In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Article 16 paragraph (1) letter a it is stated that "In carrying out his position, the Notary is obliged to: act honestly, thoroughly, independently, not taking sides and safeguarding the interests of parties involved in legal actions. In line with these rules, in the provisions of the Notary Code of Ethics, namely in Article 3 paragraph (4) which states "Notaries and other people who assume and carry out the position of a Notary are obliged to: act honestly, independently, impartially, full of responsibility, based on laws and regulations and the contents of the Notary's oath of office. (Perubahan Kode Etik Notaris Kongres Luar Biasa Ikatan Notaris Indonesia Banten, 29-30 Mei 2015.)

In practice, it is often found that if there is a notarial deed that is disputed by the parties or other third parties, then the notary is often withdrawn as a party that participates in committing or assisting in committing a crime, namely deliberately providing opportunities or means in criminal acts of fraud. In this case, the Notary intentionally or unintentionally together with parties or appearers to draw up a deed with the intent and purpose to benefit only certain parties or appearers or harm other appearers must be proven in court. Notaries can be held legally responsible and morally responsible for the deeds they make, therefore the precautionary principle really needs to be applied by notaries in making deed. (Syahid Prakoso, Supanto, Rehnalemken Ginting, 2022: 11) Notarial deed made according to the wishes of the interested parties to ensure or guarantee the rights and obligations of the parties, certainty, order and legal protection of the parties. In essence, the notarial deed contains formal truths in accordance with what the parties have notified to the public official (notary). The notary is obliged to include in the deed what has really been understood according to the will of the parties and read to the parties about the contents of the deed. The statement or statement of the parties by the Notary is stated in the Notary deed. (Habib Adjie, 2008: 45)

B. Effect of Cooperation Agreement Between Notary and Bank When Associated with Notary's Obligations to Carry Out His Position Independently and Not Take Sideways

The Notary Office Law and the Notary Code of Ethics want a Notary to act independently and impartially as stated in Article 16 paragraph 1 letter a of the Notary Office Law. It is very important to act independently and impartially for Notaries in carrying out their positions. This obligation must not only be fulfilled for Notaries who carry out their positions individually, but also for Notaries who form civil partnerships. Article 20 paragraph 1 states "Notaries can carry out their positions in the form of civil unions while still paying attention to independence and impartiality in carrying out their positions. (Undang-Undang No. 10 Tahun 1998 tentang Perbankan, LN No. 182, TLN No. 3790, Pasal 20 ayat (1))

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The independent and impartial nature of a Notary is reflected in the form of a Notary's oath of office which reads "I swear/promise: that I will carry out my position in a trustful, honest, thorough, independent and impartial manner". (Undang-Undang No. 10 Tahun 1998 tentang Perbankan, LN No. 182, TLN No. 3790, Pasal 4 ayat (2)) In fact, the Notary Office Law wants every Notary not only to have an independent and impartial attitude, but also to have an honest, thorough attitude and protect the interests of related parties as emphasized in Article 16 paragraph 1 letter (a) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices, "In carrying out his position, a Notary is obliged to: act honestly, thoroughly, independently, impartially and protect the interests of parties involved in legal actions. (Undang-Undang No. 10 Tahun 1998 tentang Perbankan, LN No. 182, TLN No. 3790, Pasal 16 ayat (1)) The attitude of non-independence and impartiality is reflected in the attitude of the Notary as an official who is appointed by the Minister of Law and Human Rights subject to the rules of the Bank through the points of the cooperation agreement entered into by the Bank and the Notary. The notary's partiality towards the bank is seen through a series of interventions given to the notary which ultimately benefit the interests of the bank and on the other hand are detrimental to the interests of the customer. This condition is exacerbated by the attitude of the Notary who does not provide a legal explanation regarding the deed he made to the customer.

So that the customer does not know the risks that will be faced by the customer after signing the deed. The Notary should be able to provide clear and complete explanations and information, both regarding the rights and obligations as well as legal risks of the parties regarding the signed deed, so that the parties know the advantages and disadvantages that will arise from the making of the agreement and get the same rights in making the deed. In essence, the agreement will be binding on the parties who make it, by making a written agreement in the form of a cooperation agreement it means that the Notary partner of the Bank submits to the Bank or is bound by the provisions and orders of the Bank. If you have submitted to the Bank, of course the Notary sided with the Bank, especially in making authentic deeds. If you have sided with the Bank, the Notary will automatically no longer be independent in making deeds at the Bank

CONCLUSION

Actions taken by the Bank and a Notary to enter into a cooperation agreement for the provision of Notary services have violated the provisions of the Notary's Code of Ethics. Because basically a Notary as a public official, serves the interests of anyone who comes to him without prior engagement. So there is no need for such a thing as a cooperation agreement let alone made in writing. In fact, with the existence of the cooperation agreement, it is feared that the Notary will comply with the Bank's orders. Indeed, neither the Notary Code of Ethics nor the Notary Office Law explicitly stipulates that a Notary may not enter into a cooperation agreement with any party, but we can see from the intent of the agreement and the implications for implementing the agreement. In essence, the agreement will be binding on the parties who make it, by making a written agreement in the form of a cooperation agreement it means that the Notary partner of the Bank submits to the Bank or is bound by the provisions and orders of the Bank. If you have submitted to the Bank, of course the Notary sided with the Bank, especially in making authentic deeds. If you have sided with the Bank, the Notary will automatically no longer be independent in making deeds at the Bank.

It is better if the Bank, which also acts as an opponent for the Notary, does not need to enter into a cooperation agreement regarding the provision of Notary services, because basically the presence of a Notary is to meet the needs of the public who need strong evidence. Therefore services to the community must be prioritized and can be requested at any time without having to enter into an agreement both verbally and in writing, as it turns out in Article 16 paragraph 1 letter (d) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public that "in carrying out his position, a Notary is obliged to: provide services in accordance with the provisions of this Law, unless there is reason to refuse it" Notaries need to intervene to protect the customer by making a credit agreement deed that not only protects the interests of the bank, but also protects the interests of the debtor customer.

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