

Juridical Analysis of Law of Notary Position and The Notary Code of Conduct Related to Agreements Cooperation Between Banks and Notaries

Dany Rimawan¹, Faisal Santiago²
{danyrimawan@gmail.com}

Universitas Borobudur, Jakarta, Indonesia¹²

Abstract. This study aims to study and find out the validity of the cooperation agreement between a bank and a notary and examine and find out the legal consequences for a notary who enters into a cooperation agreement with a bank. The results of the study show that the cooperation agreement between a notary and a bank makes a notary not independent and tends to side with the bank, and harms the customer as another party whose interests must also be protected by the notary, because in carrying out his position the notary must be impartial, independent, and protect the interests of every person. The side was facing him. The Notary Position Act and the Notary Code of Ethics affect the validity of the cooperation agreement, resulting in a null and void of the cooperation agreement. This has legal consequences for the notary who enters into the cooperation agreement. According to the Law, administrative sanctions can be given in verbal warnings, written warnings, respectful dismissal, and even dishonorable discharge for a notary.

Keywords: Cooperation Agreement; Bank; Notary

1 Introduction

Humans are born, live and develop and die in society. Humans as monodualistic creatures, namely humans, apart from being individual beings (individuals), have a solitary soul life, but humans and social beings cannot be separated from society. According to Aristotle, humans are Zoon Politicon, meaning that humans as creatures basically always want to hang out and gather with other humans. In other words, humans are creatures who like to socialize. And because of their nature like to get along with each other, humans are called social creatures.[1]

This relationship with each other is based on the existence of interests. These interests are against each other or are opposite and do not rule out the possibility of chaos arising in it. This is where the role of the Law regulates these interests so that their respective interests are protected so that each knows their rights and obligations; in the end, with the existence of Law, the community will live safely, peacefully, justly, and prosperously.[2] This legal relationship also occurs between a notary and a banking institution entering a cooperation agreement. The notary offers its services to banking institutions to become a notary bank partner.

The notary profession is noble because the deed made by a notary has binding legal force and is authentic. This can be seen clearly with the increasing number of individuals or institutions making agreements using the services of a notary, the presence of a notary is to meet

the needs of the community who require authentic legal documents (deeds) in the field of civil law, so that notaries have the responsibility to serve the community.[3]

In this era of globalization, it must be protected by Law so that each individual who agrees genuinely feels that his interests are protected. Notaries, in making a document that is authentic for both parties to the agreement, there must be no partiality on one side; related to this, what happened is not a few notaries who entered into a cooperation agreement with an institution, in this case, a banking institution such as a cooperation agreement that carried out by several notaries in Central Sulawesi, who entered into cooperation agreements with banking institutions so that all bank engagement processes can be handled by the notaries concerned. Authentic deed.[4]

This cooperation agreement between a notary and a bank, like what happened in Central Java, certainly harms the credibility and independence of the notary profession as written in the Law on the Notary Position (UUJN) No. 30 of 2004 Article 16 paragraph 1 (a) namely in carrying out his position notary obliged to act honestly, thoroughly, independently, impartially, and to protect the interests of the parties involved in legal actions. If this Law is taken for granted, it must be considered that there is no problem with it because this is not a prohibition but an obligation of a notary. Still, if it is explored more deeply into a cooperation agreement between a bank and a notary, it injures the point of independence.

It does not take sides in this Law because by carrying out the agreement, The cooperation of the notary's independence is questioned and his partisanship will definitely be difficult for the bank because at the beginning it has entered into a cooperation agreement with the bank. Meanwhile, the code of ethics that is violated is Article 4 number 5 of the Notary Code of Ethics: signing a deed whose minutes have been prepared or determined by the bank through a series of interventions. Determine the honorarium to be paid by the bank in an amount lower than the honorarium that has been determined by the association (Article 4 point 10 of the Notary Code of Ethics), the notary cooperates with the bank as a legal entity which essentially acts as an intermediary to find or obtain clients, namely bank customers itself (Article 4 number 4 of the Notary Code of Ethics).

The cooperation agreement between the bank and the notary has violated the provisions of the Law on the position of a notary and the provisions of the notary code of ethics. This statement is based on the consideration that banks often ask notaries to make credit agreements under bank intervention. The clauses of the agreement are more determined by the bank, besides that a notary as a public official must of course serve the interests of the people who face him without any prior binding. In this regard, the authors feel compelled to raise the issue of a cooperation agreement between a bank and a notary.[5]

2 Research Methods

The type of research used to answer the problems in writing this thesis is empirical legal research or sociological juridical, meaning that the legal approach as Law in real life is portrayed as an exact social peculiarity. For this situation, Law isn't perceived as a texture of values, official choices, rules and standards, composed positive Law, yet can likewise be given significance as a showing framework reality, normal and consistent way of behaving, or Law in the feeling of an official.

The sort of exploration that will be completed is elucidating subjective, which is utilized to look at the state of normal items rather than trial. The scientist is the key instrument, the testing of information sources is done purposively. The assortment procedure is triangulation (joined), the information investigation is inductive/subjective, and the aftereffects of subjective

exploration underline meaning as opposed to speculation. This research is descriptive using qualitative methods. Whereas qualitative methodology is a research procedure that produces descriptive data in written or spoken words from people and observable behavior.

Based on the problems and objectives of this study, this study used a qualitative descriptive approach. Qualitative research intends to understand the phenomenon of what is experienced by the subject. Qualitative research such as behavior, perception, motivation, action, etc. holistically, and by way of description in the form of words and language, in a natural context and by utilizing various natural methods.

The author will use the approach method is the Socio-Legal Research approach, which is an alternative approach that examines doctrinal studies of Law. The word "Socio" in Socio-Legal Studies reflects the interrelationships between contexts in which the Law exists (An Interface With A Context Within Which Law Exists). That is why when a Socio-Legal writer uses social theory for analytical purposes to analyze problems that occur in society.

3 Results and Discussion

3.1 Juridical Analysis of the Legality of Cooperation Agreements Between Banks and Notaries Based on the Law on Notary Positions and the Notary Code of Ethics

The Notary Position Act and the Notary Code of Ethics are a reference for notaries in behaving, what notaries may and may not do, Article 1 of the Notary Position Law (UUJN) states that a notary is a public official authorized to make an authentic deed and other authorities as referred to in the Act, and in Article 16 paragraph 1 (a) of the UUJN it is written that in carrying out his office, a notary is obliged to act honestly, thoroughly, independently, impartially, and to protect the interests of the parties involved in legal actions.

Notary is a public official who is given by Law the authority to carry out part of the authority of the state or government in terms of civil Law. As a public official, a notary is also a profession that is subject to the rules specified in all applicable laws and regulations, other sources of Law, such as legal principles, including: the principle of morality, the principle of etiquette, and the principle of habit, as well as a code of ethics, The professional AD/ART, in which the rules have been mutually agreed upon, are attached to and bind all notaries, so that a notary has good behavior, respects fellow notaries, obeys the Law, continuously maintains the dignity, integrity of the notary, and the organization, so that the wheels of the organization become orderly, orderly and reasonable, service to the community, members, increase and be able to account for their leadership to the public, nation, state, and do not forget Allah SWT, God Almighty.[6]

A notary, namely: 1 must maintain some several principles or values. Honest, thorough, independent, impartial, and safeguarding the interests of all parties involved in legal actions; 2. Provide services to all following the Law, unless there is a reason to refuse it; 3. Keep everything about the deed confidential; 4. Another professional element is "good faith", obeying the truth (fidelity, fairness and integrity).

Notaries are also public officials who carry out some of the public functions of the state, especially in the field of civil Law. As a public official, a notary must: 1. Have a Pancasila spirit; 2. Obey the Law, oath of office, notary code of ethics; 3. Good Indonesian language As a professional notary: a) Have good notary behavior, and should be followed; (b) Participate in national development in the field of Law; (c) Uphold the honor and dignity as a notary public. Notaries discipline themselves under the functions, authorities and obligations as specified in the Law on the position of a notary. A notary is also a profession that exercises part of the state's power in private Law and has an essential role in making an authentic deed that has perfect evidentiary power. Because the position of a notary is a position of trust, not a political position,

a notary must have good behavior. abuse his position only for personal gain. Good notary behavior can be obtained based on all laws and regulations (true-false), Legal Principles (guiding notaries in the right direction), and the Notary Code of Ethics (regulating notaries to things that are good and not good/bad).[7]

The cooperation agreement between the bank and the notary is very disturbing the credibility of the notary itself. Based on the research conducted by the author, the agreement between the bank and the notary makes the notary not independent and tends to side with the bank where he entered into the cooperation agreement, even though the notary should be neutral and protect the interests of all parties involved and must prioritize the interests of the community without taking sides.

The notary regional supervisory board did not know if the notary made a written cooperation agreement with the bank, according to the author's interview with the member of the Notary Regional Supervisory Council Mr. indeed, this certainly needs to be studied more deeply if in carrying out the agreement there is a violation of the Notary Position Act and the Notary Code of Ethics and makes the notary not independent and partial, of course this violates the provisions that apply to the notary as an independent official ".

It should be noted that all notaries do not carry out the cooperation agreement as mentioned above. Some notaries do not make cooperation agreements as mentioned above, but banks still use their services to make authentic deeds or other notary services. Even for a notary who already has quality and trust, if the bank still provides such an agreement, the notary concerned will reject it. Worried that such an agreement may conflict with the Law on Notary Positions and the Notary Code of Ethics, and may affect the notary's partisanship in making an authentic deed. Based on information from a notary, the parties who appear before a notary are generally legally blind, so they do not know what deed to make and sometimes the wishes of the parties are not legally correct.

This prohibition arises because in practice there are several provisions stipulated in the cooperation agreement that deviate from the rules, values and rules in the provisions of the Notary Code of Ethics and the Notary Position Act, and can lead to an attitude of independence and eliminate the notary's impartiality towards one of the clients. Several provisions of the Notary Position Act and the Notary Code of Ethics that are violated in connection with the cooperation agreement occur in practice as follows: Article 4 point 5 of the Notary Code of Ethics states that notaries and other people who hold and carry out the position of a notary are prohibited from signing a deed whose minutes have been prepared. by the other party.

The intent contained in this rule is that a notary may not sign a deed whose preparation process has been prepared by another notary or a particular party as if the deed was done by himself. The purpose of this rule is that the notary, in the process of making the minutes of the deed, first pays attention to the legal provisions contained in the deed and fulfills the element of protection for the parties (impartiality). It can be seen whether the formulation of the deed is in accordance with the laws and regulations and checks whether an agreement made has complied with the correct agreement rules and has not harmed either party.

In fact, notaries are often asked by banks to make credit agreements under bank intervention. The intervention appears when the clauses contained in the agreement are more determined by the bank. The bank will ask the notary to make a deed of agreement, especially the credit agreement deed based on the credit agreement model of the bank concerned; sometimes, even the credit agreement deed has the overall similarity with the formulation of the credit agreement deed that the bank had previously held.

Several clauses are required to be included in the credit agreement, such as changes in interest rates which can change unilaterally at any time without prior notification to the debtor

customer. This shows that there is no guarantee of information security provided by the bank as a business actor in the use of services provided to debtor customers. This clause is indicated as an exoneration clause because there are efforts to protect banks as business actors to reduce or transfer risks that may arise in the future.

According to J. Satrio, "the exoneration clause is a clause in an agreement and is therefore agreed upon by the parties if there is an exemption or limitation from certain responsibilities, which normally according to law should be the responsibility." Furthermore, a clause in the form of general credit terms which states "to this debt acknowledgment agreement and all its consequences also applies the general terms of the guarantee agreement and bank credit which have been approved by and bind the creditor or the debtor and are an inseparable part of the agreement. this debt acknowledgment, even though the terms are attached or not attached to this debt acknowledgment agreement."

Based on Article 1320 paragraph 3 of the Civil Code, "there is a certain thing," which means that there must have been something that was agreed upon. The inclusion in a credit agreement with a clause that the debtor customer is subject to "conditions, whether attached or not attached to the debt acknowledgment agreement" is explicit that something that will be agreed upon cannot be known; therefore bank instructions and regulations will still be determined later by the bank. Meanwhile, if a specific thing turns out to be related to goods at a later date, then based on Article 1333 of the Civil Code, the type of goods must at least be known.

The impact of unfair competition has an impact on the decline in the dignity of the notary himself in the eyes of the public. Therefore, the determination of the honorarium submitted to the notary association, namely the Indonesian Notary Association, determines the amount of honorarium for its members. Referring to Article 36 of the Law on Notary Positions, regarding the honorarium it is stated that the honorarium received by a notary is based on the economic value and sociological value of each deed he makes. Furthermore, the economic value is determined from the value of the object of the deed with the provision that the greater the economic value of the object of the deed, the smaller the percentage of honorarium and vice versa, the smaller the economic value of the object of the deed, the greater the percentage of honorarium for making the deed.

3.2 Legal Consequences for Notaries Entering Cooperation Agreements with Banks

As a public official who is entrusted with carrying out some of the tasks of the State, a notary is different from other legal professions such as prosecutors, advocates (lawyers) and the police who are also appointed by the State. Although based on Article 2 of the Law on Notary Positions states "a notary is appointed and dismissed by the Minister", it does not make a notary under the intervention and control of the government. In fact, the notary in carrying out his position remains independent, impartial (neutral) and not easily influenced by following the views that occur around him, but forms an assessment and has his own stand.

Both the Law on Notary Positions and the Notary Code of Ethics want notaries to act independently and impartially as set forth in Article 16 paragraph (1) letter (a) of the Notary Position Law and Article 3 point 4 of the Notary Code of Ethics. It is imperative to act independently and impartially for a notary in carrying out his office, these obligations must not only be fulfilled for a notary who carries out his position individually, but also for a notary who forms a civil partnership. Article 20 paragraph (1) of the Law on Notary Positions states that "Notaries can carry out their positions in the form of civil unions while still taking into account independence and impartiality in carrying out their positions.

The independent and impartial nature of the notary is reflected in the notary's oath of office which reads "I swear/promise: that I will carry out my position in a trustworthy, honest,

thorough, independent and impartial manner. Even the Law on Notary Positions requires that every notary not only has an independent and impartial attitude, but is also required to have an honest, thorough attitude and protect the interests of related parties as affirmed in Article 16 paragraph (1) letter (a) of the Law on Notary Positions.

Based on the description that the author has conveyed above regarding the attitude of independence and impartiality, basically a notary is outside the interests of the parties, both the bank and the customer. According to Farid, Chairman of the Indonesian Notary Association (INI) in Central Java, notaries play an impartial and independent role in carrying out their positions.

However, after the author conducted further analysis of the substance and implementation of the cooperation agreement between the bank and the notary, it turned out that it affected the notary's independent and impartial attitude in carrying out his position. In summary, the attitude of not being independent and impartial is reflected in the attitude of the notary as the acting minister appointed by the Minister of Law and Human Rights to comply with bank regulations through points of cooperation agreements entered into by the bank with a notary. The notary's partiality to the bank is seen through a series of interventions given to the notary which ultimately benefits the interests of the bank and on the other hand harms the interests of customers.

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 the legal risks of the parties regarding the signed deed, so that the parties know the advantages and disadvantages that will arise with the making of the agreement and get the same rights in making the agreement. deed.

In the author's opinion, the bank which also acts as a notary public should 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 community 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 stipulated in Article 16 paragraph (1) letter (d) of the Law on Notary Positions that: "In carrying out his position, a notary is obliged: provide services in accordance with the provisions of this Law, unless there is a reason to refuse it".

Referring to the explanation of Article 16 paragraph (1) letter (d) of the Law on Notary Positions it is stated: "What is meant by the reason for refusing it is the reason that causes the notary to be impartial, such as blood or marriage relations with the notary himself or with his wife, either one party does not have the ability to act to do actions or other things that are not permitted by law".

According to the author, Article 16 paragraph (1) letter (d) of the Notary Position Act is limitative in determining the reason for the refusal of a notary to provide his services, namely if the service provided causes an attitude in favor of one of the parties, so that it can be understood together that the circumstances that led to the service - Notary services that cause partiality are not only limited to the parable above, but in the author's view include the provision of notary services based on a cooperation agreement between a bank and a notary.

Based on the description above, it is better for a notary to be able to refuse all forms of binding including cooperation agreements with banks regarding the provision of notary services. Because the cooperation agreement can direct the notary to violate his oath or commit acts that violate the Law. If the notary continues to carry out the cooperation agreement with

the bank, it will be subject to sanctions as referred to in the Law on Notary Positions and the Notary Code of Ethics.

As previously explained, the result of a cooperation agreement between a bank and a notary is that the notary becomes independent and in favor of the bank, thus the notary has violated the obligations of the notary as regulated in Article 16 paragraph (1) letter (a) of the Law on Notary Positions. Violation of Article 16 paragraph (1) letter (a) of the Notary Position Act, according to Article 85 of the Notary Position Act, may be subject to administrative sanctions in the form of: a. verbal reprimand; b. written warning; c. Temporary suspension; d. Dismissal with honor, or ; e. dishonorable dismissal.

The institution authorized to impose administrative sanctions is the Supervisory Council according to its authority. The Regional Supervisory Council based on the provisions of Article 70 of the Law on Notary Positions does not have the authority to impose sanctions on a notary, because the Regional Supervisory Council has the authority and obligation to make and submit reports to the Regional Supervisory Council. The Regional Supervisory Council has the authority to give sanctions in the form of verbal or written warnings that are final. Another authority possessed by the Regional Supervisory Council is to propose the imposition of sanctions against a notary to the Central Supervisory Council, in the form of temporary suspension of three months to six months or dismissal with disrespect.

The Central Supervisory Council based on Article 77 of the Law on Notary Positions is authorized to impose sanctions on notaries who violate both positions and the Notary Code of Ethics, namely they can impose sanctions on temporary dismissal and propose sanctions in the form of dishonorable dismissal to the Minister. Thus, sanctions in the form of verbal warnings, written warnings and temporary dismissal are the authority of the Supervisory Council, while sanctions for dishonorable dismissals are the authority of the Minister.

According to the Chairman of the Indonesian Notary Association (INI) Central Java, Farid stated that: "the practice of cooperation agreements between banks and notaries can be overcome and prevented if the Supervisory Board tightens supervision of every notary in Central Java, because so far there has been weak supervision from the Supervisory Council and the Honorary Council on this issue. In fact, there may not even be a case that is prosecuted against the practice of a cooperation agreement made by a notary with a bank".

In addition to the sanctions imposed by the Law on Notary Positions, bank partner notaries may be subject to disciplinary sanctions by the Organization, if they violate the notary's obligations as stipulated in Article 3 point 4 of the Notary Code of Ethics. According to Article 6 of the Notary Code of Ethics, sanctions will be imposed on members who violate the Code of Ethics.

The imposition of the above sanctions on members who violate the Code of Ethics is adjusted to the quantity and quality of the violations committed by the member. The institution authorized to impose disciplinary sanctions is the Honorary Council together with the Association Management according to the authority they have. The Regional Honorary Council based on the provisions of Article 9 of the Notary Code of Ethics has the authority to impose sanctions on notaries to the extent of imposing a warning and warning, while for schorsing and onzetting of association members, they must first consult with the Regional Association Management. The imposition of these sanctions is not final, so it is possible to make an appeal at the appeal level through the Regional Honorary Council and the final level through the Central Honor Council.

4 Conclusion

Juridical Analysis The cooperation agreement between a bank and a notary does not meet the legal requirements of an agreement based on Article 1320 of the Civil Code regarding a cause that is not prohibited, because based on a more in-depth analysis and research on the substance of the implementation of a cooperation agreement between a bank and a notary there is a violation of the Act. - Law on Notary Position and Notary Code of Ethics as the authors have discussed in this thesis, which resulted in this agreement being null and void. The legal consequence received by a notary who is not independent and takes sides in this case is entering into a cooperation agreement with a bank, which is the most severe with dishonorable discharge (Article 12 letters (c) and (d)) may also be subject to administrative sanctions as written in the Act. Article 85 of the Notary Position Act (UUJN) is in the form of: verbal warning, written warning, respectful dismissal or dishonorable dismissal.

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