



STRENGTHENING THE REGULATORY FRAMEWORK AND SUPERVISION CONCEPT OF NOTARIES BY THE NOTARY SUPERVISORY COUNCIL IN BANKING ACTIVITIES IN INDONESIA

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Abstract

Currently, the presence of a Notary is also required in the banking sector, where a Notary holds a central professional role by assisting both debtors and creditors in the preparation of principal agreements as well as collateral (accessory) agreements. Banks engaged in lending activities need the services of a Notary. The Notary profession is essential for institutions or companies acting as debtors in the process of obtaining bank credit. To fulfill their duties in the banking sector, Notaries must possess expertise and knowledge in the field of banking. Nowadays, Notaries are frequently found to be working in cooperation with banks or acting as bank partners, with such arrangements formalized in specific agreements. Notaries are often requested to draft credit agreements, in which most clauses are determined by the bank. The legal basis for the responsibilities carried out by a Notary is Article 16 paragraph (1) letter (a) of the Indonesian Law on Notary Office (UUJN), which requires a Notary to act with integrity, honesty, thoroughness, independence, impartiality, and to safeguard the interests of all parties involved in the legal act. A Notary's independence must align with the principle of legal legality, so that in carrying out their duties, they are not influenced by any party or provide legal document services that favor one party over another. A Notary must uphold the principle of transparency, conduct examinations in accordance with the Notary Law and the Code of Ethics of the profession, and maintain independence and accountability for all information they provide. A potential issue faced by Notaries in the banking sector is the risk of a conflict of interest: on one hand, they must remain independent in performing their functions for the bank, while on the other hand, they receive professional fees from their clients and are bound to fulfill their professional responsibilities. Although Notaries are required to comply with the professional code of ethics and standards established by their professional association—and these must not contradict the Banking Law or its implementing regulations—the role and position of Notaries in banking require supervision by the Notary Supervisory Council. This is to ensure accountability in the Notary's duties, as their actions may otherwise disadvantage the debtor or result in the preparation of incomplete or flawed deeds. Therefore, transparency in a Notary's performance has become a matter of concern.

Keywords: Regulation, Supervision, Notaries, and Banking

INTRODUCTION

The era of globalization has brought multi-faceted impacts, as it relates to the fields of economy, law, society, politics, and security. This condition has implications for the growth and development of society, particularly in meeting the needs of global, regional, and national communities, which are characterized by inclusiveness, sustainability, and shared responsibility.

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A complete Indonesian human being is one who embodies and upholds Indonesian law. This sense of "Indonesianness" demands that they act with kindness and integrity toward others as fellow human beings. It is this very principle that enables an Indonesian to fulfill their legal and moral identity as an Indonesian. All of this forms the foundation for behaving in ways that reflect humanity and uphold human dignity.

In carrying out the functions of governance, Indonesia, rooted in a people-based economic system, should ensure that economic activities for the people are guided by sound regulations. This is essential to create a sense of justice and equity for all Indonesian citizens. The legal framework in this context refers to how the government must proactively respond to the rapid developments in the economy, ensuring that economic growth proceeds in a clear and well-directed manner. This helps prevent disparities in economic activities. It is in this context that the government plays a crucial role in creating regulations as a form of check and balance, such as formulating policies that support and guide economic activities in a consistent and equitable direction.

Indonesia, as a state governed by law (*rechtstaat*), primarily adheres to the school of legal positivism. This is reflected in its written constitution—the 1945 Constitution (UUD 1945)—which serves as the foundation of the legal hierarchy, embodying the instrumental values of the constitution itself. In relation to written law, Indonesia grants authority to certain individuals to produce legal documents in written form. One such individual is the Notary, who is legally empowered by statute to draft authentic deeds that encapsulate various civil law matters. These deeds serve as official legal documents and carry full evidentiary weight under Indonesian law.

Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Notary Office states in Article 1 that a Notary is a public official authorized to draw up authentic deeds and other authorities as stipulated in this Law or in accordance with other laws. A Notary is authorized to draft authentic deeds concerning all actions, agreements, and stipulations required by statutory regulations and/or requested by the interested parties to be stated in an authentic deed. The Notary guarantees the certainty of the deed's date, stores the deed, and provides the *grosse* (original), copies, and excerpts of the deed, provided that the drafting of such deed is not assigned or excluded to other officials or persons designated by law.

As a public official, a Notary is required to carry out their duties and responsibilities with full accountability. One of these responsibilities is to maintain confidentiality in the preparation of the deeds they create.

A Notarial deed, as an authentic deed, serves as perfect evidence for the parties involved in a legal relationship. In various business dealings, banking activities, and others, the need for written proof in the form of authentic deeds has increasingly grown in line with the rising demands for legal certainty in various economic and social relationships at the national, regional, and global levels.

Through authentic deeds that clearly define rights and obligations, legal certainty is guaranteed, and disputes are expected to be avoided. Therefore, the drafting of official



contracts is usually carried out by officials with official authority, whose legitimacy is held by Notaries.

The position of the Notary as a public official, as well as the work they produce, must be regulated by law to ensure that the Notary, in performing their duties, guarantees that the deeds they create have status, weight, and characteristics as evidence with full legal force.

A Notary receives honoraria for their work; however, it is not uncommon for a Notary to assist those who are less fortunate by providing ease or concessions in the preparation of notarial deeds. This distinguishes the Notary profession from others, as Notaries bear full responsibility for the work they perform.

Therefore, as human beings, Notaries must uphold ethics in every task they undertake. In carrying out their duties and responsibilities, Notaries are expected to honor the dignity of their office and their skills in serving the public who seek their services. They must always adhere to statutory regulations, ethical standards, public order, and use the Indonesian language appropriately. Hence, the existence of a Notary Code of Ethics is necessary.

Currently, the presence of Notaries is also needed in the banking sector, where a Notary plays a primary professional role by assisting debtors and creditors in the process of principal agreements as well as collateral agreements (accessories).

In the business or corporate sector, legal relationships inevitably occur, meaning a relationship between legal subjects whose consequences are governed by law. In the business world, including banking, such legal relationships mostly arise from agreements. An agreement is a legal relationship between two or more parties, where the parties intentionally bind themselves or each other, in which one party holds rights (creditor), while the other has obligations (debtor), as stated in Article 1313 of the Burgerlijk Wetboek (hereinafter referred to as the Civil Code), translated by Subekti and Tjitrosudibio as the Indonesian Civil Code (hereinafter referred to as the Civil Code).

Within an agreement, each party has an obligation called "performance," which consists of: a. Giving something (e.g., money, goods, etc.); b. Doing something (e.g., constructing a building, delivering goods, transporting people, etc.); and c. Refraining from doing something (e.g., not blocking a road, etc.).

A bank is a financial institution that plays an important role in Indonesia's economy. According to the Banking Law, a bank is a financial intermediary institution tasked with collecting funds from the public in the form of credit and/or other forms to improve the welfare of the community.

There are two types of financial institutions: non-bank financial institutions and bank financial institutions. Essentially, financial institutions act as intermediaries between parties with surplus funds and those with a lack of funds. Therefore, the primary role of financial institutions is to serve as financial intermediaries for the public.

Non-bank financial institutions are entities engaged in financial activities such as collecting funds, providing credit, acting as intermediaries in obtaining financing sources, and undertaking capital investment activities. These activities are carried out either directly or indirectly by raising funds, especially through the issuance of securities. As such, non-bank financial institutions predominantly operate in the money and capital markets.



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Bank financial institutions, as one of the most important financial institutions in society, play a vital role. In carrying out their functions, banks act as financial institutions aimed at providing credit and other financial services. The provision of credit is conducted either with the bank's own capital, funds entrusted by third parties, or through the circulation of new payment instruments in the form of demand deposits.

Bank financial institutions include Commercial Banks and Rural Banks. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 on Banking (hereinafter referred to as the Banking Law), Article 1 point 2, states that: "A bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms in order to improve the welfare of the people."

Banking activities require the services of Notaries. The Notary profession is an institution or entity needed as a debtor in order to obtain bank credit.

Within the banking sector, many actors are involved. This makes supervision and guidance of all participants in the banking field a challenging task. One of the weaknesses in banking supervision, especially regarding oversight of Notaries operating within the banking sector, is the lack of coordination with Notary organizations or the Notary Supervisory Council.

When discussing supervision in banking, it cannot be separated from the law enforcement process itself. In banking, law enforcement is a crucial and unavoidable matter. Conversely, law enforcement is also difficult to implement effectively without proper supervision.

By consistently upholding the principles of independence and impartiality in accordance with the Notary's code of ethics and professional standards, supported by a professional attitude to continually follow and understand developments in banking, especially regulatory developments, it is expected that Notaries, as one of the banking professions, can increasingly demonstrate their role in advancing Indonesian banking.

The principle of independence in the professional conduct of Notaries in carrying out their duties is indeed paramount, as they bear the noble dignity of their office in the eyes of society. As Ulrik Huber stated in 1686, a Notary must be an honest person, meaning they must be able to reflect an independent attitude in carrying out their tasks, particularly within the scope of banking activities.

To effectively perform their duties in banking, Notaries must possess expertise and knowledge in banking. Furthermore, Notaries should become partners of banks in implementing the regulation and supervision of banking activities.

The consent or agreement in contracts from each banking actor must be explicitly stated-not silently agreed upon, let alone without appearing before a Notary.

By virtue of their authority, Notaries are empowered to draft credit agreements or guarantee agreements required by law to be formulated in confirmed documents. Notaries are also responsible for setting the date of the deed, storing it, and providing the valid grosse (original copy), certified copies, or excerpts of the act, provided that the making of



the deed is not assigned to other public officials and remains the exclusive duty of the Notary.

The granting of credit, as mentioned in Article 6 paragraph (2) of Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), is one of the activities of general banks. Banks typically first assess whether the credit applied for by customers is feasible.

Nowadays, Notaries are often found cooperating with banks or becoming bank partners, formalized through agreements. In such cooperation, Notaries are generally requested by banks to draft credit agreements whose clauses are mostly determined by the banks. This raises issues concerning the independence of the Notary in drafting deeds and violations of the Notary Code of Ethics Article 4 number 5, which clearly states that Notaries in their duties are prohibited from signing deeds whose processes and preparations were carried out by other parties. Moreover, cooperation with banks contradicts Article 17 paragraph (1) of the Notary Position Law (UUJN), where Notaries must sign credit agreements or guarantee agreements within their working areas, but in practice, they follow the bank's area instead. Furthermore, Article 4 number 4 of the Notary Code of Ethics prohibits Notaries from cooperating with agencies or service providers that essentially act as intermediaries to seek or obtain clients.

Discussing the Notary profession, the juridical basis for the duties borne by Notaries is Article 16 paragraph (1) letter (a) of the UUJN, where a Notary is expected to act faithfully, honestly, diligently, independently, impartially, and protect the interests of parties involved in legal acts. The independence of Notaries must comply with the prevailing legal principles so that in carrying out their duties, they are not influenced by other parties or provide legal document services that favor one party involved in the deed they create.

Accordingly, Notaries must uphold the Principle of Transparency; conduct examinations according to the Notary Position Law and the Professional Code of Ethics; act independently; and be responsible for all information conveyed to the Notary Supervisory Council.

A potential problem that may arise concerning the Notary profession in banking is the conflict of interest, where on one side, Notaries must remain independent in carrying out their functions in banking, while on the other side, they receive professional service fees from their clients and must fulfill their professional responsibilities. Although Notaries are obliged to comply with the code of ethics and professional standards set by their professional associations, they must also not conflict with Banking Laws or its implementing regulations.

Given the role and position of Notaries in banking as described above, supervision by the Notary Supervisory Council is necessary to monitor the performance, position, and responsibilities of Notaries, which if not properly managed, may harm debtors and result in imperfect deeds made by Notaries. Hence, transparency in performance becomes a critical issue.

The problem addressed in this study is: How is the Regulations on Supervision of Notaries by the Notary Supervisory Board in Banking in Indonesia? And what efforts can strengthen the supervision concept over Notaries by the Notary Supervisory Council in Indonesian banking?



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To answer these legal issues, the researcher focuses on the theory of authority and the theory of justice as the fundamental analytical tools for this study.

This research uses a normative legal method with a descriptive-analytical approach, including statutory and conceptual approaches. Data collection is conducted through literature studies, encompassing primary, secondary, and tertiary legal materials. The data are presented through descriptive and qualitative analysis, arranged systematically, logically, and effectively.

RESULT

Regulations on Supervision of Notaries by the Notary Supervisory Board in Banking in Indonesia

According to Article 16 paragraph (1) letter (a) of the UUJN (Law on the Position of Notary), a Notary is expected to act with trustworthiness, honesty, diligence, independence, impartiality, and to protect the interests of the parties involved in a legal act. The independence of the Notary must comply with the principle of legal certainty, so that in carrying out their duties, the Notary is not influenced by other parties or performs their duties by providing legal document services that favor one party involved in a deed they create.

In line with the above, every Notary should understand that independence or autonomy means that in carrying out their office, the Notary holds a neutral and impartial position, meaning they stand outside the parties involved in the legal relationship and are not one of the parties in that legal relationship. In this function, it can be said that a Notary is a legal officer, but not a law enforcement officer.

Therefore, a Notary must act independently and autonomously. The term “independent” in this context has many meanings, including: structural independence (institutional structural or institutional independence), functional independence, financial independence, and administrative independence. A Notary is said to be structurally independent if their office institutionally stands alone outside the organizational structure of the state or certain government bodies. For example, the extent to which the Notary’s office is within or outside the structure of the Ministry of Law and Human Rights of the Republic of Indonesia.

However, a Notary can also be considered functionally independent if, although institutionally under or within a government organization, in carrying out their functions they are free and autonomous and cannot be intervened with, even by related government officials.

Another element that can be used to measure independence is financial independence. To the extent that the Notary’s office can manage and control its own finances, it can also be considered independent. Likewise, in terms of administrative matters such as personnel management, if the office is completely independent of the government’s administrative system, including in hiring and firing employees, then the office is not influenced by the wishes of certain parties.



If a Notary meets these four characteristics of independence, then it can be said that the Notary is fully independent. Therefore, a Notary does not have the will (wilsvorming) to create deeds for others, and a Notary will not create any deed without a request or will from the parties involved. The Notary is not a party in the deed. The Authentic Deed, as the strongest and most complete evidence, plays an important role in every legal relationship within society.

The duties of a Notary in banking, besides assisting in making authentic deeds, also include providing legal consultation to the public, the actors, and those with interests in banking. Thus, it is important for the Notary to understand the provisions regulated by law so that the general public, who may be unaware or have limited understanding of legal rules, can comprehend correctly and avoid actions that contradict the law, especially regarding the procedural need for legal documents made by the Notary for banking purposes.

A Notary must uphold their duties and carry them out accurately and honestly, which means acting truthfully in accordance with the Notary's oath of office. In providing services, a Notary must maintain the noble ideals of the profession in line with the demands of conscience.

The position held by a Notary is a trust entrusted by law and society. Therefore, a Notary is responsible for carrying out the trust given to them by always upholding the Notary Code of Ethics.

In practice, the implementation of the duties and authorities of notaries in banking is similar to notarial practices in general or outside the banking scope. Parties involved in banking are free to appoint and use the services of notaries who practice there. In everyday practice, it is alleged that notaries in banking tend to prioritize the interests of the issuer as their client. Psychologically, this cannot be denied because the debtor appoints a specific notary to assist in preparing legal documents during banking transactions. For these legal services, the notary receives compensation for performing their duties, which can lead to violations of the principle of independence and tend to side with protecting the debtor's interests. This partiality will certainly create an unfavorable situation for the development of the banking sector expected in the country.

The aspect of supervision over notary activities, which is currently under the authority of the Notary Supervisory Council, actually has an unclear and somewhat ambiguous concept. As a result, its implementation has not been efficient or effective, allowing the issues mentioned above to occur.

Considering the existence of practices showing that notaries violate the principle of independence in carrying out their duties, this is an implication of the supervisory concept stipulated in the Notary Position Law (UUJN).

Conceptually and normatively, a notary engaged in banking activities, in exercising their authority to make authentic deeds, must be independent. In everyday terms, the term "independent" is often equated with "autonomous." In management concepts, the term autonomous means that the institution can stand on its own managerially without depending on its superior, but institutionally it remains dependent on its superior. Meanwhile, being independent means that both managerially and institutionally, it does not depend on its superior or any other party. Independence concerns the freedom of a Public



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Official from intervention or influence by other parties or being assigned tasks by other institutions.

Therefore, the concept of independence must be balanced with the concept of accountability. Accountability involves openness (transparency), accepting criticism with external supervision (controlled), and being responsible to external parties for the results of one's work or the execution of official duties. The independence of a notary in this context can be seen in two forms: Structural Independence and Financial Independence.

The independence of a notary is closely related to accountability, which are aspects of the implementation of the Notary Position Law (UUJN) and the Notary Code of Ethics (KEN) that comprehensively regulate the notary's position. With an understanding of independence and accountability as described above, it is expected that notaries will know where and how their duties and responsibilities as public officials should be carried out in performing their roles.

As public officials entrusted with carrying out part of the state's duties, notaries must perform their professional duties as well as possible in accordance with their religious laws as well as applicable laws and regulations. Therefore, if a notary violates the law, the sanctions imposed are not only legal sanctions but also moral sanctions from society and spiritual sanctions according to their religious law. As public officials entrusted with part of the state's duties, notaries cannot justify any means to achieve their professionalism.

In current practice, many parties argue that notaries are no longer independent officials due to ongoing dependence on certain parties. This situation arises because of systemic flaws that have caused notarial deeds, which were originally legal products, to become merely administrative products. As a result, when errors occur in the preparation of such deeds, notaries can easily become subject to legal charges.

This systemic flaw is also reflected in the appointment process of notaries, which was previously carried out by the Head of State but is now done by the Minister of Law and Human Rights. Furthermore, the supervision of notaries' performance, which was once under the jurisdiction of the District Court or the Supreme Court, has now become the authority of the Regional Supervisory Council (Majelis Pengawasan Daerah or MPD). The MPD often easily permits investigative officers to conduct examinations of notaries suspected of involvement in certain cases.

The responsibility of a Notary towards service users is closely related to the confidentiality inherent in the Notary profession. A Notary is obligated to keep strictly confidential all information given or entrusted by the client/service user to the Notary. In addition, in relation to their responsibility towards service users, the neutrality of the Notary plays a very important role. A Notary is a profession that must remain impartial or can be said to be independent. Towards service users, a Notary must not discriminate or side with only one party that might benefit the Notary.

The responsibility of a Notary towards the public is to strive as much as possible for the accuracy of the data contained in the Notarial deed, so that when such data is disseminated to the wider community, it will not cause losses in relation to third parties. Furthermore, a Notary must provide truthful, non-misleading information so as not to harm



third parties. In practice, for example, when registering a deed, the Notary must ensure that the deed is not used before the Minister's Statement of No Objection is obtained.

The theory of authority serves as the theoretical foundation in this research because the authority of a Notary cannot be separated from the theory of authority, which includes teachings about the types and sources of authority. The types of authority include bound authority and free authority. Meanwhile, the sources of authority include attribution, delegation, and mandate.

In the concept of Constitutional Law, authority or power is described as "rechtsmacht" (legal power). In public law, there is a slight distinction between authority (Authority, gezag), which refers to formal power granted by law or legislation, and competence (competence, bevoegdheid), which pertains only to a specific part ("onderdeel") of the authority. Authority in the field of judicial power or the power to adjudicate is commonly referred to as competence or jurisdiction.

The position of a notary as a public official in society is still respected to this day. A notary is usually regarded as an official where one can obtain reliable advice. Everything that is written and established by the notary (constated) is considered true; the notary is the maker of strong documents in a legal process.

Every society needs a figure whose statements can be trusted and relied upon, whose signature and seal provide guarantees and strong evidence, a neutral expert and an unimpeachable advisor who keeps confidentiality and drafts agreements that can protect parties in the future. While an advocate defends someone's rights when difficulties arise, a notary must strive to prevent such difficulties from occurring.

Thus, the author analyzes that a notary's work is not only limited to legal duties as stipulated in laws and regulations regarding the authority and role of notaries but also includes extralegal duties that essentially protect legal certainty. In relation to this discussion, it means protecting the legal certainty of independent shareholders whose interests must be safeguarded in transactions involving conflicts of interest. This is also in line with the notary's oath to carry out their duties with trustworthiness, honesty, thoroughness, independence, and impartiality. These five characteristics are the qualities a notary must firmly uphold in carrying out their profession, including banking notaries when drafting deeds related to transactions involving such conflicts of interest.

Due to the critical role of notaries in corporate actions conducted by banks, it is essential to ensure that a notary does not solely represent the interests of one particular party within the bank or any outside party. Such partiality could result in benefits for only one side or even personal gain for the notary.

It is necessary for a notary to genuinely perform their roles, authorities, and responsibilities properly and to avoid any conflicts of interest while executing their duties in corporate actions carried out by banks. This is to prevent harm to certain parties and also to avoid benefits being unfairly obtained by only specific parties.

Based on the author's research, the rationale behind imposing fines as sanctions on notaries who violate banking regulations also considers the interests of parties not involved in the violations but who may be adversely affected if the notary is subjected to harsher penalties such as license revocation or suspension, as this could disrupt banking operations.



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The fines paid by notaries will be recorded as state revenue under the category of Non-Tax State Revenue (PNBP). On the other hand, if a lawsuit for compensation is filed against a notary and the court grants the claim, the plaintiff is entitled to direct compensation from the defendant.

Until now, investors who feel aggrieved by actions taken by parties in the banking sector may file lawsuits directly. However, pursuing a lawsuit independently typically requires a longer, more complex process and considerable costs. Additionally, the investor must be able to gather sufficient evidence of the violation to support the claim.

With the presence of the Notary Supervisory Council, their role is not only supervisory but also to provide a complaint service for investors, consumers, and the public. All complaints submitted will first be reviewed by the Council, and if necessary, clarification will be sought from the party suspected of committing the violation.

Therefore, in the practical implementation of banking regulations, it is necessary to ensure fairness for notaries, so that their existence is not merely to fill the registered list of notaries. Instead, they should actively participate in the development of banking law. This can be achieved by revising the existing implementing regulations to ensure equal fairness for both fortunate and less fortunate notaries in obtaining positions.

The policy should grant the Debtor the authority to select notaries through the Notary Supervisory Council, which holds the authority to make such selections. This selection process should also consider the achievements and reputation of the notaries, in order to prevent future dissatisfaction or disappointment experienced by the debtors.

Efforts to Strengthen the Supervisory Concept of Notaries by the Notary Supervisory Council in the Banking Sector in Indonesia

The concept of authority within society is rarely explicitly defined in either the constitution or statutory laws of a country. Despite the absence of a clear definition, authority remains a longstanding and fundamental issue that continues to be widely debated. Particularly in the realm of economics, authority is indispensable and serves as a foundational principle underlying the state's organization and regulation of economic activities.

Without a proper basis of authority, the economy can become a realm of unchecked freedom for actors in the banking sector, resulting in hardships for business practitioners. For the public seeking access to banking services, it must be acknowledged that not all layers of society benefit equally from the existence of banks. This is especially the case for notaries as supporting institutions within banking, where many debtors have limited interaction with these entities.

Rochmat Soemitro holds a different view, arguing that regulations in the form of laws, as a collection of rules governing economic distribution, always serve authority, because law, like other legal norms, ultimately serves the interests of society. Whether something is just or not depends on subjective considerations, as well as the context of time and place. What one person deems unjust may be regarded as just by another. Likewise, what is considered just at one time may not be so at another. Similarly, what is



regarded as just in one location might be seen as unjust elsewhere. Therefore, it can be said that the content and measure of justice vary according to society and its era.

Justice is indeed an abstract concept that is invisible, which often leads to various opinions when attempting to define it. However, justice truly lives within the soul of every human being, which is why the term justice is frequently used. Justice in law, which is fundamentally universal and impartial, is easier said or written on paper than implemented in practice, because access to economic fairness must be genuinely felt as justice. Despite these circumstances, there must be a standard to serve as a reference in order to “measure” justice.

The development of the banking industry in Indonesia is expected to stimulate economic growth in other sectors, aligning efforts toward the realization of national development. Furthermore, the banking sector is anticipated to make a greater contribution to development so that the targets in the economic field can be achieved. As is commonly understood, the existence of banks aims to support the implementation of national development by promoting equity, growth, and economic stability towards improving the welfare of the people. To achieve these goals, the banking sector plays a strategic role as one of the primary sources of financing for the business world, including small and medium enterprises for their business development, while on the other hand, banks also serve as investment vehicles for the public, including small and medium investors.

In general, the profession of Notary has become an integral part of Indonesia’s legal development process. It serves to ensure legal certainty, order, and protection by providing authentic written evidence concerning facts, events, or legal acts. In line with the changes that accompany the development of the times, progress in the legal field, particularly in the notarial sector, must also keep pace. On this basis, notaries are required to further develop their professional capabilities in order to deliver more beneficial outcomes for the community that relies on their services.

The role of notaries in banking represents a crucial need to serve the investment community in fulfilling banking mechanisms. Notaries are public officials authorized to create authentic deeds and are registered with the banking sector. While most people associate notaries primarily with land deed preparation, their role is far broader since all civil law activities inevitably involve notarial functions. One of the most essential roles of notaries is within the banking sector.

On the other hand, as a supporting profession in the banking sector, a notary carries legal responsibility in exercising their authority to prepare the necessary documents and records that assist the public engaged in banking activities in complying with existing procedures and mechanisms.

The legal responsibility borne by the notary as a public official is stipulated under the Notary Position Law (Undang-Undang Jabatan Notaris). In this regard, as a public official entrusted with authority delegated by the state, the notary also assumes responsibility for their actions. This accountability is reinforced by sanctioning institutions outlined in the UUJN and the Notary Code of Ethics.

The notary’s professional responsibility arises from the obligations and authority granted to them, which lawfully come into effect once the notary takes the official oath of office. This oath serves as the fundamental control over all the notary’s By striving to perform their duties and exercise their authority in accordance with the applicable legal



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framework, notaries contribute to creating a conducive environment within the banking industry, ensuring its proper and healthy operation, thereby supporting the achievement of national economic development goals in the banking sector. It is widely acknowledged that the banking industry is one of the critical pillars of national economic development, expected to assist in creating a just and prosperous society as the ultimate goal of national development.

In carrying out their activities in the banking sector, notaries are prohibited from including any inaccurate statements regarding material facts or omitting truthful information necessary to prevent the prospectus from being misleading. Should a notary deliberately engage in such actions, they must be held accountable for any resulting losses suffered by the debtor. This clearly demonstrates that the notary has conducted their profession in violation of the Notary Code of Ethics, specifically breaching Article 3 of the Code.

A notary may be subjected to sanctions in accordance with Article 7 paragraph (2) of the Notary Code of Ethics. In this regard, the notary is responsible for the deeds they create. The accountability of the notary can be pursued through civil, criminal, and administrative channels.

Civil liability may arise from parties who suffer losses due to the downgrading of the notarial deed's evidentiary power to that of a private agreement. Besides civil sanctions, the notary can also face administrative sanctions, which include verbal warnings, written warnings, temporary suspension, honorable dismissal, and dishonorable dismissal.

In addition to civil and administrative sanctions, a banking notary may also be subject to criminal penalties. Criminal sanctions are imposed when a notary is found to have committed a criminal offense in the course of preparing a deed. If proven guilty of such offenses, the notary may receive criminal penalties as determined by the court's ruling. This underscores the legal protection provided for the notary profession.

Thus, in order to achieve fair regulation of notaries engaged in banking activities, the following principles should be considered in the regulatory framework :

1. **Transparency and Accountability:** Regulations focused on transparency and accountability of notaries in dealing with banking institutions can help ensure that they act fairly and in accordance with applicable regulations. This may involve clear disclosure of interests or relationships that could influence the notary's performance, as well as effective supervision and reporting mechanisms to ensure compliance with banking rules and regulations.
2. **Qualifications and Competence:** Establishing qualification and competency requirements for notaries operating in the banking sector can help ensure that they possess adequate knowledge, skills, and experience to perform their duties professionally. This may include certification, training, and strict oversight of notaries working in banking.
3. **Independence and Integrity:** Regulations promoting the independence and integrity of notaries in carrying out their duties can help prevent conflicts of interest and unethical practices. This may involve restrictions or controls on practices such as



gratuities, insider trading, or actions that could undermine the integrity of the banking sector.

4. **Protection of Debtors:** Regulations that protect debtors in the context of notarial activities within banking are also essential for achieving fairness. This may include requirements for clear disclosure to debtors regarding the risks and potential returns of financial instruments managed by notaries, as well as effective dispute resolution mechanisms to safeguard investors' rights in case of conflicts.
5. **Supervision and Law Enforcement:** Fair regulatory efforts must be supported by strict supervision and effective law enforcement to ensure notary compliance with banking rules and regulations. This may involve the establishment of independent supervisory bodies or authorities, along with clear and firm legal enforcement procedures to address violations.

CONCLUSION

The current implementation of existing regulations is ineffective in providing adequate supervision over notaries engaged in banking activities. The principle of independence or autonomy, which should be upheld by notaries in carrying out their duties and authorities in banking, is compromised by a lack of neutrality, tending to favor debtors who appoint and pay for their services. In such a position, there is concern that notaries only protect the legal interests of the debtors while neglecting the interests of other parties involved in banking activities. This situation could even undermine public trust in the banking industry, as the rights of these parties may be harmed or overlooked. The current supervisory concept has not been able to perform its functions efficiently and effectively with regard to the notarial profession within banking. To create an orderly environment and provide equal opportunities to all notaries, a special body free from external interference or intervention is needed, which holds the authority to appoint notaries. This would ensure that every notary in banking has an equal opportunity to carry out their duties. Banking actors requiring notarial services can submit requests to this special body. Consequently, notaries can execute their duties and authorities while upholding the principles of independence and impartiality. Conceptually and normatively, notaries operating in banking must be independent and impartial when exercising their authority to create authentic deeds. Therefore, this concept of independence must be balanced with accountability, which requires transparency, acceptance of external criticism and supervision (control), as well as responsibility to external parties for the results of their work or the execution of their official duties. The independence of notaries is closely linked to accountability, which is an aspect implemented through the Notary Position Law (UUJN) and the Notary Code of Ethics that comprehensively regulate the notary profession. With an understanding of independence and accountability as described above, it is expected that notaries will comprehend where and how their duties and responsibilities lie as public officials in performing their roles. As public officials entrusted with carrying out certain state functions, notaries must execute their professional duties in the best possible manner in accordance with their religious laws and the prevailing laws and regulations.

Efforts to regulate the position and authority of notaries as a supporting profession in banking highlight that, in carrying out their duties and authorities, notaries bear legal responsibility for all the legal documents they create to assist members of the public engaged in banking activities in complying with existing procedures and mechanisms. The



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legal responsibility borne by notaries as public officials is stipulated by the Notary Position Law (Undang-Undang Jabatan Notaris). In this regard, as public officials vested with authority delegated by the state, notaries simultaneously bear responsibility for their actions. This responsibility is supported by sanctioning mechanisms outlined in the Notary Position Law and the Notary Code of Ethics. The responsibilities of notaries as professionals arise from the obligations and authorities conferred upon them, which legally and bindingly take effect from the moment a notary takes the official oath of office. The oath sworn should govern all the notary's actions in performing their duties. Therefore, if a notary violates the law, the sanctions imposed are not only those of positive law but also moral sanctions from society and spiritual sanctions according to their religious law. As public officials entrusted with carrying out part of the state's duties, notaries cannot justify any means to achieve professional success. It is essential that notaries truly fulfill their roles, authorities, and responsibilities as required, and that a notary has no conflict of interest in exercising their powers and responsibilities in any corporate action.

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