



## A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act

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### **Abstract**

Article 4 paragraph (3) of the Notary Code of Ethics states that notaries and anyone who exercises or holds the office of a notary are prohibited from publishing or promoting themselves, either individually or jointly, by mentioning their name and position, by utilizing electronic media facilities and and/or print media, in the form of advertisements, thanks, congratulations, condolences, sponsorship activities, marketing activities, whether in the social, religious or sports fields. This paper aims to explain the violation of notary self-promotion as a public official and the application of sanctions for notaries who commit self-promotion violations. The forms of self-promotion violations include advertising activities, sales promotions, individual sales, public relations, direct marketing, word of mouth, and including publication through social media such as Instagram. and Facebook. However, until now there has not been found any notary who is subject to sanctions due to violations in the form of self-promotion.

**Keywords:** *Self Promotion; Public Official; Notary Ethical Code*

### **Introduction**

Notary is a public official who is given the authority to make authentic deeds as long as the making of authentic deeds is not given to other public officials.<sup>1</sup> An authentic deed drawn up before a notary or drawn up by a notary is intended so that interested parties can ensure their rights and obligations to obtain legal certainty, legal protection and order for interested parties as well as legal certainty for society in general.

The existence of a notary as a public official is important, especially in the case of an agreement to guarantee legal certainty to the public regarding legal actions carried out by certain legal subjects. Notaries in terms of carrying out their duties and obligations related to their profession as public officials are regulated in laws and regulations and the professional code of ethics. However, as a public official, a

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<sup>1</sup> Perpustakaan Pusat Mahkamah Agung Republik Indonesia, [https://perpustakaan.mahkamahagung.go.id/slims/pusat/index.php?p=show\\_detail&id=6207](https://perpustakaan.mahkamahagung.go.id/slims/pusat/index.php?p=show_detail&id=6207), [diakses, Rabu, 21/09/22, pukul 10.39 WIB].

notary is a public official who is conferred by law the authority to make authentic deeds, but in this case the intended public official is not a civil servant.<sup>2</sup>

Basically, the UUJN is not clearly regulated with regard to violations of obligations and prohibitions on positions as well as matters related to KEN, as referred to in Article 9 paragraph (1) letter d of Law Number 2 of 2014 concerning Amendments to the Law Number 30 of 2004 concerning UUJN (hereinafter abbreviated as UUJN-P). In terms of the latest UUJN changes, the KEN has also undergone changes, namely the Changes in the Notary Code of Ethics at the Extraordinary Congress of the Indonesian Notary Association, Banten, May 29-30 2015. One of the striking changes to the articles contained in the KEN is the prohibition on notaries in terms of self-promotion, but because the UUJN is not clearly regulated regarding the prohibition of self-promoting notaries, the rules regarding this prohibition can be seen in Article 4 paragraph (3) KEN.

Article 4 paragraph (3) KEN explains that notaries and anyone who runs or holds the office of a notary are prohibited from publishing or promoting themselves, either individually or jointly, by mentioning their name and position, by utilizing electronic media facilities and/or print media, in the form of advertisements, thank you notes, congratulations, condolences, sponsorship activities, marketing activities, both in the social and religious, as well as sports fields.

Furthermore, in Article 4 paragraph (13) of the KEN, it is explained that a notary who intentionally does not carry out his obligations as a notary and instead even violates the prohibition as referred to in the code of ethics by using electronic media, but not only by using the internet and other social media.

Regarding the prohibition rules contained in Article 4 paragraph (3) of the KEN above, there are also sanctions following the violation, which are regulated in Article 6 paragraph (1) of the KEN, it is explained that the sanctions imposed on a notary who violates the code of ethics can be in the form of a warning, warnings, temporary dismissal (schorsing) from the professional association (Indonesian Notary Association), dismissal (onzetting) from the position of notary, and dishonorably dismissed from the position of notary.

Furthermore, Article 6 paragraph (2) KEN, explained that the imposition of sanctions as stated above on members of the notary who violates the code of ethics will be adjusted to the quality and quantity of violations committed by these members. Then, Article 6 paragraph (4) KEN explains that including violations of the code of ethics committed by other people (who are currently serving as a notary), a warning and/or warning sanction may be imposed. In fact, until now there are still notaries who commit violations of the code of ethics themselves, such as self-publishing by including their name and position using flower boards in the form of congratulations, thanks, condolences, and others using print media, electronic media, like social media.

In Article 9 paragraph (1) letter d UUJN-P, it is clearly stated that a notary can be temporarily dismissed from his position for violating the obligations and prohibitions of office and KEN. It is clear that in the event of a KEN violation, legal sanctions may also be imposed.

In terms of this prohibition, KEN also regulates clearly regarding exceptions that do not include violations in self-promotion. Regarding this exception regulated in Article 5 paragraph (1) of the KEN, it is explained that in the case of giving congratulations, condolences by using greeting cards, letters, flower bouquets, or other media by not including the word 'notary', but only the name, not including KEN violations. Furthermore, other exceptions are regulated in Article 5 paragraph (2) KEN, which explains the loading of the name and address of the notary in the telephone, fax and telex number guidebook,

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<sup>2</sup> Mariana, Darmawan, Suhaimi, Pengawasan Terhadap Notaris Yang Tidak Membuka Kantor, *Kanun Jurnal Ilmu Hukum*, Vol. 21, No. 3 (Desember, 2019), pp., 473-486.

which is officially issued by PT. Telkom and/or other official agencies and/or institutions. Then other exceptions In Article 5 paragraph (3) KEN, it is explained that it is permissible to install 1 (one) road sign with a size not exceeding 20 cm x 50 cm, with a white base, black letters, without including the name of the notary, and installing within a maximum radius of 100 meters from the notary's office. Finally, exceptions such as being allowed to introduce oneself but not self-promotion as a notary, this is expressly stated in Article 5 paragraph (4) KEN.

Currently, notaries in carrying out their positions often ignore the ethics of their profession. This can be seen where there are still notaries who are not submissive and obedient in terms of morals, religion, and obey conscience where notaries should not do something that is prohibited by the code of ethics because a notary holds and carries out this honorable position, especially as a mandate holder.

Based on the results of the research conducted, there were four cases of violations of UUJN and KEN provisions. One of the 4 cases was a violation of congratulating success in a shooting competition held by Perbakad Kodam IM using flower boards as media, which included his name and position as a notary. Then, the other three cases were violations by clearly stating their name and position as well as their work area on social media bios, such as Facebook and Instagram. Notaries in terms of using social media to obtain information about the times, and also enter their own profession in the biodata of their social media accounts which makes their profession as a public official (notary) known to the public or other social media users.

Therefore, this research is considered important to examine considering that UUJN and KEN violations committed by notaries can be committed intentionally or unintentionally, when notaries carry out their profession. Based on the background above, the authors are interested in conducting further research and discussing it in more depth under the title "A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act".

## ***Research Methods***

In this study the method used is normative juridical method. The research approach used in normative juridical research is supported by field data, namely those that focus on law being identified as a regulatory or statutory norm and having material and formal legal sources, as well as field data as supporting factors in this normative legal research approach. Theories about law such as laws, government regulations, and evidence through articles or legal norms. In other words, the approaches in normative juridical research are supported by field data so that they include a conceptual approach, a statutory approach, and a legal sociology approach. For completeness of the data, interviews were also conducted with several informants who were relevant to this research.

## ***Result and Discussion***

### **1. Forms of Violation of Self-Promoting Notaries as Public Officials**

The Notary Office Law (UUJN) does not stipulate which forms of violation are included in the category of acts of self-promotion of a notary as a public official. The moral rules that specifically regulate the notary profession other than UUJN are the Notary Code of Ethics (KEN) in which the rules have been determined by the Indonesian Notary Association (INI), in KEN there are provisions regarding prohibitions for notaries, one of the articles that expressly state any actions of a notary which includes promoting or self-publishing a notary as a public official, as stated in Article 4 paragraph (3) KEN.

The act of self-promotion is an act that is not allowed in the position of a notary, because self-promotion is part of a violation of the code of ethics or KEN. However, the reality on the ground shows

that there are still notaries who until now have neglected the rule prohibiting self-promotion as public officials, especially notaries who are in the working area of Banda Aceh City by committing acts that should not have been done.

Promotional units or promotional tools that are widely known include advertising activities, sales promotion, personal selling, public relations, direct marketing, word of mouth, and also publications. Social media such as Instagram and Facebook are social media that can be used by anyone and at any time, these users can be children to adults, this is no exception for notaries. Apart from being able to display daily activities, photos and videos, social media can also be used to carry out buying and selling transactions via the internet. So this often pops up various promotional products and services offered. However, the qualifications for each upload on social media can become a problem if the social media is used by a notary as a means of self-promotion, either directly or indirectly, because self-promotion of a notary as a public official is an act of violating KEN.

In connection with this, a member of the Aceh Regional Notary Supervisory Council (MPWN Aceh) said that currently the number of notaries practicing their profession is increasing, as a result the competence or competition among notaries is increasing. So that efforts were made by notaries to promote themselves as notaries, whether done openly through print and electronic media as well as other social media, such as Facebook, Instagram, WhatsApp and so on. In order to promote himself, a notary tries to convince the public or prospective clients in various ways, either by offering services that are relatively cheap compared to other notaries or by stating that the person concerned can make various deeds needed by the community. Besides that, there are also those who send flower boards with their names on them to their friends, certain officials and certain people, both congratulating a wedding, opening a new business (grand opening), condolences, and so on. This is of course not in line with UUJN and KEN, even including actions that violate the Notary Office Act (UUJN) and Notary Code of Ethics (KEN).<sup>3</sup>

According to Riyan Sahputra and Gunawan Djayaputra: "There are several pages that can be used by notaries, such as Instagram, kaskus, wordpress, blogspot, scribd, yahoo, multiply, twitter, facebook, path and many more. We have encountered many notaries who have blogs or other social networking pages and they also include their names and positions in order to attract public attention. For example, in Kaskus, Kaskus is the biggest buying and selling forum in Indonesia. At Kaskus they can publish advertisements, journals, media publications and they even provide discussion and consultation rooms that will be responded to directly. This is done in order to attract the attention of the public and more people who can see the information provided by the Kaskus. Not a few notaries also use kaskus as a place to promote themselves. Things like this clearly violate the law on the notary's code of ethics, namely that notaries are prohibited from promoting themselves either through print or electronic media".<sup>4</sup>

In addition to social media tools, self-promotion of notaries as public officials is also found in practice by sharing information by word of mouth. Then other means that are still being found today are congratulations, condolences, and so on using a flower board by listing his position as a notary.

The act of a notary violating the KEN as mentioned above is an offense that can be supervised over the implementation of the position of a notary in Aceh, especially in the City of Banda Aceh, considering that a violation of this notary's position is a very risky thing for him, because a notary may not advertise himself, publication or any kind of self-promotion either in print media, electronic media or flower board media.

<sup>3</sup> Interview with Members of the Aceh Notary Regional Supervisory Board, November 8, 2022.

<sup>4</sup> Riyan Sahputra dan Gunawan Djayaputra, Penegakan Hukum Terhadap Notaris Yang Mempromosikan Diri Melalui Media Sosial, *Jurnal Hukum Adigama*, Vol. 1 No. 1, 2018, pp. 1-25.

## 2. Application of Sanctions for Notaries Who Commit Violations of Self-Promotion

Before going into the discussion of what sanctions are applied to notaries who commit self-promoting violations, it's best to first discuss the enforcement of the code of ethics. Enforcement of the code of ethics is an effort to carry out the code of ethics as it should, namely by supervising its implementation so that violations do not occur; and if a violation occurs, restore the violated code of ethics so that it can be re-enforced. The code of ethics itself is part of positive law, so the law enforcement norms also apply to the enforcement of the code of ethics.

Enforcement of the code of ethics in a narrow sense is to restore rights and obligations that have been violated, so that balance arises as before. The form of recovery can be in the form of prosecution for violators of the code of ethics. The enforcement has the following levels.<sup>5</sup>

1. Reprimand appeals to be able to stop violations, so that they do not commit violations again.
2. Isolate the violator from the professional group as a person who is not liked until the violator becomes aware of his actions; and
3. Imposing statutory legal action with harsh sanctions.

In the Big Indonesian Dictionary (KKBI) there is the term mechanism which is defined as the way in which an organization (group and so on) works in terms of influencing each other to work like a machine, if one moves, the other moves too.<sup>6</sup> Mechanisms in an organizational life is a process of carrying out tasks and functions as well as authority in an organizational institution according to the rules that have been standardized within the organization itself. If related to the notion of mechanism in this study, it is a process of carrying out the duties and functions and authority of the District Court in establishing every applicable rule regarding procedures/procedures, both within the scope of civil law and criminal law based on the current procedural law.

Regarding the prohibition on self-promotion for Notaries, as previously described, in practice there are still notaries who promote themselves through social media, both through print and electronic media. With the development of increasingly sophisticated science and technology, many pages can be used by notaries, such as Instagram, Kaskus, Multiply, Scribd, Yahoo, Facebook, Twitter and many more. These pages help the notary attract public attention by listing his name and title. For example, Kaskus is the main buying and selling forum in Indonesia. Many notaries also use this page to promote themselves. Kaskus provides publishing services, media publications and public consulting rooms. This helps them get more attention and increases the number of people who can see the content they provide. By doing this, they can more easily attract people to their content. Promoting yourself is against the law when it comes to the notary's code of ethics. This includes promoting yourself on kaskus, a popular site for this specific purpose.

Notaries verify the correctness of material, which makes them public officials with some responsibilities. Legal responsibilities of a Notary include confirming the material facts of each document he signs. The notary is legally responsible for the material facts contained in the deed. The duties of a Notary are based on laws that determine their position on material truth. Notaries must comply with their responsibilities in accordance with the applicable Notary Code of Ethics. Even so, in reality there are still notaries who promote themselves through social media and these notaries are rarely subject to sanctions.<sup>7</sup>

<sup>5</sup> Yanti Jacline Jennifer Tobing, "Pengawasan Majelis Pengawas Notaris Dalam Pelanggaran Jabatan dan Kode Etik Notaris (Studi Kasus: MPP Nomor:10/B/MJ.PPN/2009 jo. Putusan MPW Nomor:131/MPW-JABAR/2008)", *tesis*, Depok: Universitas Indonesia, hlm. 40, 2010.

<sup>6</sup> <https://kbbi.web.id/mekanisme>

<sup>7</sup> Riyan Sahputra dan Gunawan Djayaputra, *Op. Cit.*

Actually, notaries in carrying out their duties are under the supervision of the Ministry of Law and Human Rights (Kemenkumham), as stated in Article 67 paragraph (1) UUJN which stipulates that it is the minister who supervises notaries, in this case the Ministry of Law and Human Rights. Then the Ministry of Law and Human Rights in the implementation of supervision is carried out by the minister by forming a Supervisory Council (Article 67 paragraph (2) UUJN) which in its implementation is carried out by the Supervisory Council in stages or stages starting from Regency/City (MPDN), Province (MPWN) and Central (MPPN) in accordance with the provisions in UUJN Kemenkumham Regulations.

In this regard, Nurul Amriati stated that "the authority of the Supervisory Board is given to MPDN, MPWN and MPPN based on Law Number 30 of 2004 (UUJN), where in Article 1 Number 6 it is stated that the Supervisory Council is a body that has the authority and obligation to carry out development and supervision of Notaries. Based on the above article, it is the Supervisory Council that carries out supervisory duties on Notaries after the enactment of the Law on Notary Positions which is followed up with Permenkumham Number M.02.PR.08.10 Year 2004 concerning Procedures for Appointing Members, Dismissal of Members, Organizational Structure, Work Procedures and Procedures for Examination of the Notary Supervisory Board. Furthermore Article 1 Number 1, says the Supervisory Board is a body that has the authority and obligation to carry out supervision and guidance to Notaries.<sup>8</sup>

The supervisory mechanism for notaries is currently carried out in 2 (two) ways, namely:

#### 1. Internal Control

Internal supervision is supervision carried out by a notary organization against notaries which is carried out in stages regarding the implementation of the code of ethics that applies to notaries, this internal control is regulated in Article 7 KEN.

#### 2. External supervision

External supervision is carried out by the Ministry of Law and Human Rights, as mandated in Article 67 paragraph (1) and paragraph (2) UUJN, which states that the minister has the authority to supervise notaries, in which case the minister forms a Notary Supervisory Council (hereinafter abbreviated as MPN). Provisions for external supervision of this notary are regulated in UUJN, especially in Article 67 to Article 81.

Furthermore, the authority of a notary or in the case of a notary examination, this is regulated in Article 70 letter b of the UUJN and Article 16 paragraph (1) Regulation of the Minister of Law and Human Rights Number M.02.PR.08.10 of 2004, confirming that the MPDN has the authority to periodically examine notary protocols 1 (once) a year or any time deemed necessary. The assembly or team of examiners with this kind of task only exists in the MPD, which is a routine inspection task or whenever necessary and is carried out directly at the notary's office concerned. This inspection team is incidental in nature (for annual or occasional inspections), formed by the MPDN if necessary.

As for the factors that cause a Notary to violate the UUJN or KEN, because sometimes the Notary himself does not understand his own duties, functions and authorities, but there are also Notaries who truly understand and understand the duties, functions and powers of a notary but because of necessity material so that it can result in the Notary being trapped in it.<sup>9</sup> So that the notary concerned is willing and willing to do whatever the client wants, even though sometimes this violates applicable regulations. In addition, to get more material than others, the notary concerned tries to promote himself in order to attract

<sup>8</sup> Nurul Amriati, Penegakan Hukum Atas Kewenangan Majelis Pengawas Wilayah Notaris Yang Memberikan Teguran Tertulis Kepada Notaris (Studi Kasus Putusan No.190/G/2020/PTUN-JKT), *Jurnal Suara Hukum*, Vol.4 No. 1, Maret 2022., pp. 62-85.

<sup>9</sup> Irma Mulia Fitri, Ilyas Ismail, Suhaimi, Pengawasan dan Pembinaan Majelis Pengawas Daerah Terhadap Notaris Yang Melakukan Pelanggaran Di Kabupaten Aceh Timur, *Syiah Kuala Law Journal*, Vol. 3, No. 1, April 2019, pp. 53-62.

clients to use his services in making a deed. This is done through the mass media, both print and electronic.

As a result of a notary not knowing his duties, functions and authorities, the notary becomes involved or falls into actions that are contrary to UUJN and KEN. However, this cannot be used as an excuse that the notary does not know, because it is something that a notary must know. A person cannot be released from responsibility on the grounds that he is not aware of the existence of such responsibility. If there is a notary who does not know his duties, functions and authorities, it means that he is not ready to become a notary.

Thus, the MPDN should be more proactive in supervising and guiding notaries who commit violations, both violations in the form of self-promotion and violations in other forms. If the MPDN is not proactive, these violations will continue to occur, continue to be repeated and even increase both in terms of quantity and quality of the violations themselves. In terms of quantity, for example, the number of violations is increasing, while in terms of quality, the violations committed are increasingly serious. This is a normal thing, because previous violations have never been subject to any sanctions, so the offenders do not feel that this is a violation and what they do is considered to be things that are still within the normal range.

In connection with this, a notary in Banda Aceh Municipality said that the act of promoting oneself through social media (both print and electronic media) is normal and is not a violation of UUJN or KEN. This shows that the notary does not understand and does not understand the norms contained in UUJN and KEN. The notary does not know that he has committed a violation of UUJN or KEN.<sup>10</sup>

Thus, it can be seen that if the MPDN does not carry out supervision and guidance on notaries who commit violations of promoting themselves on social media, then these actions are considered normal, commonplace and not as a violation. Even though it is clear in UUJN and KEN that the act of self-promoting by notaries is included in an act that violates UUJN and KEN, and can be subject to sanctions against them.

In fact, if we review the applicable regulations relating to supervision of notaries, the Ministry of Law and Human Rights is the foremost institution in this matter, because notaries are appointed by the Ministry of Law and Human Rights. Therefore, notaries also in carrying out their daily duties in providing services to the public must be accountable for their work to the Ministry of Law and Human Rights, besides being responsible to God Almighty (as God's creature). Thus, it is appropriate if the Ministry of Law and Human Rights supervises notaries in carrying out their duties and positions, namely through the supervisory board (MPDN, MPWN and MPPN). The supervisory board itself is not only an element of the government (Kemenkumham), but consists of 3 (three) elements, namely:

- (1) Elements of the Government (from Kemenkumham).
- (2) Notary elements (from notary professional institutions, namely INI).
- (3) Elements of Academics (from Universities)

In practice, the Ministry of Law and Human Rights and INI institutions often cooperate in the context of supervising notaries, such as holding a Regional Supervisory Council Coordination Meeting and Regional Supervisory Council Period I in Aceh Province in order to Strengthen and Evaluate the Performance of Regional Supervisory Councils and Regional Notary Supervisory Councils of Aceh Province, which will be held from Monday to Wednesday, 28 to 30 March 2022 at the Mecca Hotel in Banda Aceh. Then Period II will be held from Wednesday to Thursday, 26 to 27 October 2022 at the Grand Nanggroe Hotel Banda Aceh.

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<sup>10</sup> Interview with Notary at Banda Aceh, November 2, 2022.

The activities of the Coordination Meeting are actually very good to be carried out in order to streamline supervision of notaries, including supervising and coaching notaries who are indicated to have committed violations in the form of promoting themselves. However, because each notary kept silent and never made an issue out of it, the MPDN finally kept silent, so this matter continued and spread in society. So, this is where the role of the notary supervisory institution, especially the MPDN, is really needed, where from the start, if a violation occurs, the MPDN must supervise and guide the notary, so that violations such as self-promotion do not happen again in society.

### **Conclusion**

Currently, it is found that there are notaries who promote themselves as notaries, whether done openly through print and electronic media as well as other social media, such as Facebook, Instagram, WhatsApp, blogspot, wordpress, scribd, multiply, yahoo, twitter, path and others. there are many others. We have encountered many notaries who have blogs or other social networking pages and they also include their names and positions in order to attract public attention. In this case the notary tries to convince the public in various ways, either by offering services that are relatively cheap compared to other notaries or by stating that the person concerned can make various deeds that are needed by the community. Besides that, there are also those who send flower boards with their names on them to their friends, certain officials and certain people, both congratulating a wedding, opening a new business (grand opening), condolences, and so on. This is of course not in line with UUJN and KEN, and even includes acts that violate UUJN and/or KEN.

Towards a notary who promotes himself so far the Notary Regional Supervisory Council (MPDN) has not taken any action against the notary, so that violations against the notary who promotes himself continue to occur and continue to be repeated. If a violation has never been subject to any sanction, so that the offenders do not feel that this is a violation and what they are doing is considered a normal thing.

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