

Efforts To Prevent Unfair Competition Bank Notary

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Abstract

In the world of banking several times encountered the problem of unfair competition for bank notaries. Banks only want to use the services of certain notaries, so that other notaries find it difficult and are not given the opportunity to provide their services. The purpose of this research is to find out the efforts made to prevent unhealthy competition from bank notaries. This research is a normative research using statutory and conceptual approaches. Data collection was carried out by means of a literature study. Data analysis was carried out using the deductive method. The results of the study stated that preventing unhealthy competition from notaries could be done by opening up opportunities and information for notaries to get clients who make agreements with banks. In addition, supervision is needed from the Indonesian Notary Association organization, as well as strict law enforcement regarding violations of notary ethics who are proven to have monopolized the service of making agreement deeds in the banking sector.



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1. Introduction

The legal basis of the notary profession in the Notary Office Law and its amendments, which explains the meaning of a notary as follows:

"Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws."

The role of a notary is very much needed by banks, this is related to legal risk of assets pledged as collateral by the debtor as credit collateral, if the credit provided becomes bad, the sale of collateral will not cause problems for the bank in the future. Therefore, notary services are needed in the banking world, because banking activities involve a lot of transactions with customers, where these transactions are made in an agreement/contract. To avoid unwanted things, for example denial, the bank does not want to take risks, for that, the agreement must be made in the form of an authentic deed (Adjie, 2015).

Notary services as a Public Official who makes authentic deeds are needed in banking business activities, one of which is in making banking credit agreement deeds involving the Customer and the Bank, in order to guarantee the truth of the contents set forth in the banking credit agreement, so that the truth is publicly no doubt. The role of a notary in carrying out banking functions is very strategic, especially in making authentic deeds in every agreement (Yanuarsi, n.d.). In fact, the role of a notary not only has the authority to authenticate the making of deeds, but also other agreements made between Islamic banks and customers or partners to get more guarantees of legal certainty.

However, the importance of the role of a notary in the banking world sometimes triggers unhealthy competition between notaries. Banks that require a notary tend to cooperate with certain notaries because they feel that there has been good or satisfactory cooperation before. The bank only uses the services of certain notaries, so that other notaries find it difficult and are not given the opportunity to provide their services. The bank may provide criteria as long as it does not rule out other notaries (Putri & Prananingtyas, 2019). For example, a notary can guarantee service performance, timeliness, or service fees. However, in practice, banks usually maintain document secrecy, so banks only appoint notaries who have good relations with the bank concerned (Soleh et al., 2022). So that it is difficult for other notaries to get access because they do not have connections with banks, including in the context of business competition. Therefore, researchers are trying to find solutions to prevent unhealthy competition from bank notaries (Nurlaela, 2020).

2. Materials and Methods

The type of research used in this research is a type of research that is in accordance with the character and characteristics of the science of law, namely normative juridical research through library research, namely research on legal materials related to existing problems. The approach to the problem in this study uses a conceptual approach and a statutory approach. The Conceptual Approach is a study of expert opinions and theories from legal experts in the literature as a supporting basis. The Statute Approach is carried out by reviewing and researching legal norms contained in statutory provisions related to the theme being discussed. Data collection is done by literature study. Data analysis using deductive method.

3. Results and Discussions

Bank Notary Competition Conditions

Currently there are many monopolistic practices of the notary profession. For example, for mortgage transactions at a bank, the bank usually determines which notary is used. In addition, if there is a notary who has a close relationship with officials, then he can complete difficult work quickly but of course at a high cost. The phenomenon of difficulty accessing a notary because they do not have a 'good relationship' or 'connection' with the bank is an incident that many other notaries have complained about (Annisaa & Nurdin, 2019). This phenomenon is included in the context of unfair business competition as stipulated in Law 5/1999, because there is an element of injustice or unfairness among notaries.

The provisions on unfair business competition in Law 5/1999 are further explained as follows:

"Unfair business competition is competition between business actors in carrying out production and or marketing activities of goods or services that are carried out in a dishonest or unlawful manner or impede business competition."

According to Article 1 point 5 of Law 5/1999, the business actors referred to in the above article are:

"Business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, both individually and jointly through agreements, carrying out various business activities in the economic sector."

Related to a bank that only wants to use the services of certain notaries so that other notaries find it difficult and are not given the opportunity to provide their services, it can be stated that there has been injustice or unfairness. The bank may provide criteria as long as it does not rule out other notaries. For example, a notary can guarantee service performance, timeliness, or service fees (BINTANG, 2021).

However, in practice, banks usually maintain the confidentiality of documents, so banks only appoint notaries who have a 'good relationship' with the bank concerned. So that it can be concluded, the difficulty of accessing a notary public because they do not have a connection with a bank is included in the context of business competition (Pandamdari, 2018). Regarding the phenomenon that many notaries complain about, it is recommended that banks have an open catalog system, where customers/clients can choose which notary will use their services. For example, customers can choose the closest notary office to their domicile, service fees, and other considerations.

It is possible that many notaries will enter as service providers for banks and their customers and this will result in supervision difficulties (Lestari, 2014). Banks must be able to answer this possibility, but for the sake of fair business competition this still needs to be done.

There is a tendency for banks to choose notaries for clients. The client is not given a position to choose a

notary himself. Notaries and banks establish mutually beneficial relationships and certain commitments. This condition ultimately makes it difficult for other notaries who do not have a special relationship to be used as parties to draw up the deed of agreement (Nisa, 2020).

In addition, related to the determination of the price of notary services. It is common knowledge, the first thing that comes to mind before dealing with a notary public is how much the notary costs to process a deed. Because, one of the things that can be taken into consideration for a cooperation between the bank and the notary is the price. Notaries may not offer higher prices or even commissions to banks or third parties to be entrusted with making a deed of agreement.

Role of Notaries in Bank Agreements

The strength of proving an authentic deed in this case is that there are 3 (three) aspects that must be considered when the deed is drawn up, these aspects relate to the value of the proof, namely: First, Outward Strength (uitwendige bewijskracht). The outward ability of a Notary deed is the ability of the deed itself to provide proof of validity as an authentic deed. If viewed from the outside (birth) as an authentic deed and based on the legal rules that have been stipulated regarding the requirements for an authentic deed, therefore the deed is an authentic deed, until proven otherwise, meaning that someone provides evidence that the deed is not an outwardly/outwardly authentic deed (Putriana, 2019). Second, Formil (formeel bewijskracht). Formally in order to provide proof of truth and certainty regarding the day, date, month, year, time of day facing, as well as the parties appearing, the initials and signatures of the parties/appearers, witnesses and Notaries, as well as providing evidence of what he saw, witnessed, and heard by the Notary (in the official deed/minutes), and recorded the statements or statements of the parties/appearers (in the parties' deed). Third, Material Strength (materiele bewijskracht). Certainty regarding the material of a deed is vital, that what is stated in the deed is valid proof of the parties making the deed or those who get the rights and apply to the public, unless there is evidence to the contrary (tegenbewijs). Information or statements included in the official deed (or minutes), or statements of the parties stated before the Notary and the parties must be considered correct (Batubara et al., 2022).

Honorary Notary

Currently, the amount of honorarium or notary fees is based on the economic value and sociological value of each deed made as stated in Article 36 paragraph (2) of the Notary Office Law.

Based on Article 36 paragraph (3) of the Notary Office Law, the economic value of the notary's honorarium is determined from the object of each deed as follows:

- a. up to IDR 100 million or the equivalent of a gram of gold at that time, the maximum honorarium received was 2.5%;
- b. above IDR 100 million up to IDR 1 billion, the maximum honorarium received is 1.5%; or
- c. above Rp. 1 billion honorarium received is based on an agreement between the Notary and the parties, but does not exceed 1% of the object for which the deed is made.

Then for the sociological value of notary fee determination is determined based on the social function of the object of each deed with the maximum honorarium received Rp. 5 million.

Factors that cause Unfair Competition

There are several factors that cause unfair competition between notaries in the banking world. One of the factors is the bank, which wants to be familiar with the notary, including knowing their competence, so that a monopoly occurs. There is a fact that when the parties change Notaries there will be a possibility that there will be different communications and results. So that the bank is safer with a Notary whose ability is clear and easy to communicate.

There is no space and opportunity for notaries to be introduced to bank clients, so some clients do not have an alternative notary to choose from. The client is in a position to accept and comply with recommendations or choices from the bank. The bank in this case has directed the client to go to a certain Notary to make a deed of agreement. Banks actually limit the choice of Notaries that can be chosen by clients. The bank does not want a change of Notary whose ability and communication with the bank are not guaranteed.

Another factor is, the Notary actively approaches the bank and binds him psychologically to always use his services in making a deed of agreement. In an effort to establish good relations, notaries can use relatively low rates compared to general rates or also provide commissions to bank employees

Efforts to Prevent Unfair Competition of Bank Notaries

Efforts are being made to prevent unhealthy competition from bank notaries, namely by opening the widest opportunity and information for notaries to get clients who enter into agreements with banks. Notaries may not be secretive and bind themselves with a special relationship with a bank which results in other notaries not having the opportunity to get clients from the bank.

The Indonesian Notary Association (I.N.I) can prevent competition between Notaries from becoming unhealthy through tariff setting which can be carried out in several steps, namely: Guidance by related institutions, Coordination and cooperation between Notaries and the Indonesian Notary Association (I.N.I), and ongoing supervision.

Enforcement efforts are not only carried out by the Indonesian Notary Association (I.N.I), but Notaries need to pay attention to what is called professional behavior which has the following elements: Have solid moral integrity, must be honest with clients and oneself (intellectual honesty), be aware regarding the limits of his authority, not solely based on monetary considerations.

In carrying out his work, a Notary must follow the signs so as not to deviate and result in violations of the Notary Office Law. Control from the government over the Notary profession is carried out by the Notary Supervisory Board which is at the provincial and central district levels. a supervisory mechanism is urgently needed so that the implementation of the legal norms and code of ethics of the notary profession goes as expected, while the supervision of the implementation of the notary's code of ethics is carried out by the Notary Honorary Council which is under the Indonesian Notary Association.

In Article 7 of the Notary Code of Ethics it is explained that Supervision of the implementation of the Code of Ethics is carried out in the following manner:

- a. At the first level by the Regional Management of the Indonesian Notary Association and the Regional Honor Council;
- b. At the appeal level by the Regional Management of the Indonesian Notary Association and the Regional Honor Council;
- c. At the final level by the Central Management of the Notary Association. Indonesia and the Central Honorary Council.

Supervision is an act or process of activity to find out the results of implementation, errors, failures to then be corrected and prevent the recurrence of these mistakes, as well as to ensure that the implementation does not differ from the established plan.

Supervision of a notary public leads to the enforcement of legal rules that limit the scope of a notary's position. The purpose of supervising notaries is to ensure that notaries comply as much as possible with the requirements stipulated by the Law and the Notary Code of Ethics for the benefit of the general public they serve.

Notary Supervision is distinguished between the behavior and actions taken by a Notary in carrying out his position by the Supervisory Board, while the behavior and actions carried out by a Notary outside of carrying out his position are overseen by the Notary Honorary Council. Supervision is basically a form of legal protection for the Notary himself because with an oversight, every Notary in his behavior and actions both in carrying out his position and outside his position is always in the corridor of law.

Oversight mechanisms for the Notary profession are ideally regulated in laws and regulations and become an inseparable part of the social reality of the legal community that is directly related to this profession. Supervision is one aspect of law enforcement that must always be considered and carried out within the law enforcement environment, including supervision of Notaries.

Law enforcement always involves humans in it, thereby involving human behavior too, therefore new laws can be implemented effectively if followed by strong supervision or control mechanisms from parties appointed based on statutory regulations, thus the legal profession which is carried out in the corridors of professional ethics and in accordance with the implementation of his position, so that public trust as users of Notary services will be maintained.

Supervision is intended as preventive and curative activities. Preventive in nature implies a coaching process, while curative implies imposing sanctions on a Notary in the exercise of his office if it is proven that he has violated Law Number 30 of 2004 concerning the Office of a Notary and Amendments to Law Number 2 of 2014 and violations of the Notary Code of Ethics . The scope of this supervision is wider than the scope of supervision of Notaries carried out by the Regional Supervisory Council as clearly and strictly regulated in the

Notary Office Law.

4. Conclusion

The results of the study stated that preventing unhealthy competition from notaries could be done by opening up opportunities and information for notaries to get clients who make agreements with banks. All Notaries must have the same opportunity to get clients from banks. In addition, it needs supervision from the Indonesian Notary Association organization, as well as strict law enforcement regarding violations of notary ethics who are proven to have monopolized the services of making agreement deeds in the banking sector.

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