

EFFORTS TO PREVENT UNFAIR COMPETITION AMONG BANK NOTARIES

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Abstract: In the world of banking several times, there has been unfair competition for bank notaries. Banks only want to use the services of certain notaries, so other notaries find it difficult and are not allowed to provide their services. This research aims to discover the efforts made to prevent unhealthy competition from bank notaries. This research is normative research using statutory and conceptual approaches. Data collection was carried out using 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.

Keywords: bank; notary; unfair competition.

INTRODUCTION

The legal basis of the notary profession in the Notary Position Law and its amendments, which explains the definition of the notary as follows:

"Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in this Law or under other laws."

The role of Notaries is needed by banks, this is related to legal risks on assets collateralized by debtors as credit collateral, if the credit provided becomes bad, the sale of the collateral does not cause problems for banks in the future. Therefore, notary services are needed in the banking world, because banking activities make many transactions with customers, where the transaction is made in an agreement/contract. To avoid the occurrence of unwanted things, such as denial, the bank does not want to take risks, for that, the agreement must be made in the form of an authentic deed (Aswan and Susi Yanuarsi, 2022).

Notary Services as General Officials who make authentic deeds are needed in banking business activities, one of which is in making bank credit agreement deeds involving Customers and Banks, to guarantee the truth of the contents stated in the banking credit agreement, so that the truth is publicly beyond doubt (Aswan and Susi Yanuarsi, 2022).

The role of notaries in carrying out banking functions is very strategic, especially in making deeds that are attentive to each agreement. The role of notaries is not only to have the authority to authenticate deed making but also other

agreements made between Islamic banks and customers or partners to better obtain legal certainty (Muhammad Soleh, 2021).

However, the importance of the role of notaries in the banking world sometimes triggers unhealthy competition between notaries. Banks that need 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 other notaries find it difficult and are not allowed to provide their services. The bank may provide criteria as long as it does not close the opportunity from other notaries. For example, notaries can guarantee service performance, punctuality, or service fees. But in practice, banks usually maintain the confidentiality of documents, so the bank only appoints notaries who already have a good relationship with the bank concerned. So that other notaries are difficult 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 unfair competition among bank notaries.

MATERIALS AND METHODS

The type of research used in this study is the type of research that is by the character and characteristics of legal science, namely normative juridical research through literature research, namely research on legal materials associated with existing problems. The problem approach in this study uses a concept approach (Conceptual Approach) and a Law approach (Statute Approach).

The conceptual Approach is the 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 examining the legal norms contained in the statutory provisions related to the theme being discussed. Data collection is carried out by a literature study. Data analysis using deductive methods.

RESULTS AND DISCUSSION

Notary Bank Competition Conditions

Today there are many monopolistic practices of the notary profession. For example, for mortgage transactions at banks, usually, the bank determines which notary to use. In addition, if there is a notary who has a close relationship with officials, then he can complete difficult work quickly but certainly at a high cost.

The phenomenon of difficult access to notaries, because they do not have a 'good relationship' or 'connection' with the bank, is an incident that many other notaries complain about. This phenomenon includes the context of unfair business competition as stipulated in [Law 5/1999](#), due to the element of unfairness among notaries.

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

"Unfair business competition is competition between business actors in carrying out production activities and/or marketing of goods or services carried out dishonestly or unlawfully or hindering business competition."

The business actors referred to in

the article mentioned above according to Article 1 number 5 of Law 5/1999 are:

"Business actor is any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities in the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements, carrying out various business activities in the economic sector."

Related to banks that only want to use the services of certain notaries so that other notaries find it difficult and are not allowed to provide their services, it can be declared that there is injustice or unfairness. The bank may provide criteria as long as it does not close the opportunity from other notaries. For example, notaries can guarantee service performance, punctuality, or service fees (Law Online, 2023).

But in practice, banks usually maintain the confidentiality of documents, so banks only appoint notaries who already have a 'good relationship' with the bank concerned. So it can be concluded, the difficulty of notary access because it does not have a connection with banks is included in the context of business competition. For this phenomenon that many notaries complain about, it is recommended that banks have an open catalog system, where customers/clients can choose which notary to use their services. For example, customers can choose the nearest notary office to their domicile, service fees, and other considerations.

There is a possibility that many notaries may enter as service providers for banks and their customers and cause supervisory difficulties. Banks must be able to answer this possibility, but for the sake of healthy business competition, this still needs to be done.

There is a tendency for banks to choose notaries for clients. The client is not given the position to choose a notary on his own. Notaries and banks establish mutual relationships, and certain commitments are mutually beneficial. This condition ultimately makes other notaries who do not have a special relationship will be difficult to be use as parties who will make the deed of agreement.

In addition, it is related to the determination of the price of notary services. It is common knowledge, the first thing that is in the minds of the public before dealing with notaries is how much notary costs need to be incurred to process a deed. Because one of the things that can be taken into consideration for cooperation between banks and notaries is the price. Notaries may not offer more prices or even commissions to banks or third parties to be entrusted with making the deed of agreement (Law Online, 2023).

The Role of Notaries in Bank Agreements

The evidentiary power of an authentic deed for this matter 3 (three) aspects must be considered when the deed is prepared, these aspects are related to the evidentiary value, namely: First, External Power (uitwendige bewijskracht). A Notary Deed's outward ability is the deed's ability to provide proof of validity as an authentic deed. If viewed from the outside (born) as an authentic deed and based on the legal

rules that have been established regarding the requirements of an authentic deed, the deed as an authentic deed, until proven otherwise, means until someone provides evidence that the deed is not authentic externally / outwardly. Secondly, Formil (formele bewijskracht). Formally to provide evidence of truth and certainty regarding the day, date, month, year, time (time) facing, as well as the parties facing, paragraphs and signatures of the parties/faces, witnesses, and Notaries, and provide evidence of what he saw, witnessed, and heard by the Notary (on the deed of official/minutes of procedure), and recorded the statements or statements of the parties/faces (on the deed of parties). Third, Material Power (materiele bewijskracht). Certainty about the material of a deed is very vital, what is mentioned in the deed is valid proof of the parties who made the deed or those who get rights and apply to the public, unless there is evidence to the contrary (tegenbewijs). Statements or statements entered in official deeds (or minutes), or statements of the parties stated before a Notary Public and the parties must be considered correct (Adjie, 2011).

Notary's fee

Currently, the honorarium or notary fee amount is based on the economic and sociological value of each deed it makes as per Article 36 paragraph (2) of the Notary Position Law.

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

- a. up to Rp100 million or equivalent grams of gold at that time, the
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highest honorarium received was 2.5%;

- b. above IDR 100 million to IDR 1 billion honoraria received at most 1.5%; or
- c. above IDR 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, the determination of notary fees is determined based on the social function of the object of each deed with an honorarium received of at most Rp. 5 million (Rully Desthian Pahlepi, 2022).

Factors that Lead to Unfair Competition

Several factors cause unfair competition between notaries in the banking world. One of them is the factor of banks, who want to be familiar with notaries, including knowing their competence so that there is a monopoly. There is the fact that when parties change Notaries there will be different communication as well as results. So that the bank is safer with a Notary who is capable and easy to cooperate with.

There is no room and opportunity for notaries to be introduced to bank clients, so there are clients who do not have notary alternatives to choose from. The Client is in a position to accept and comply with the recommendation or choice of the bank. The bank in this case has directed the client to a certain Notary to make a deed of agreement. The bank limits the choice of Notaries that can be chosen by clients. The bank does not want a change of Notary Public that has not guaranteed its ability and communication with the bank.

Another factor is that the Notary Public actively approaches the bank and binds him psychologically to always use his services in making the deed of agreement. To establish good relations, Notaries can use relatively low rates compared to the general rate or also provide commissions to bank employees.

Efforts to Prevent Unfair Competition of Notary Banks

Efforts made to prevent unhealthy competition among bank notaries are by opening the widest possible opportunity and information to notaries to get clients who make agreements with banks. Notaries must not be closed and bind themselves to a special relationship with the 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 unfair through tariff determination can be done with several steps, namely: Guidance by related institutions, coordination and cooperation between Notaries and the Indonesian Notary Association (I.N.I), and continuous supervision (Nindy Putri and Paramita Prananingtyas, 2019).

Enforcement efforts are not only carried out by the Indonesian Notary Association (I.N.I), but Notaries need to pay attention to what is referred to as professional behavior which has the following elements: Have steady moral integrity, must be honest with clients and oneself (intellectual honesty), aware of the limits of their authority, not solely based on money considerations (Nindy Putri and Paramita Prananingtyas, 2019).

In carrying out his work, a Notary

Public 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 Council located at the provincial and central levels. A supervisory mechanism is needed so that the implementation of legal norms and the notary professional code of ethics runs as expected, while supervision of the implementation of the Notary code of ethics is carried out by the Notary Honor Board 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 ways:

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

Supervision is an action or process of activities to find out the results of implementation, errors, and failures to then be corrected and prevent the recurrence of these mistakes, as well as keep the implementation no different, from the established plan.

Supervision of Notaries leads to the enforcement of legal rules that limit the scope of the office of a Notary. The purpose

of supervision of Notaries is so that Notaries as much as possible fulfill the requirements set by the Law and the Notary Code of Ethics for the benefit of the general public they serve (Nindy Putri and Paramita Prananingtyas, 2019).

Notary supervision is distinguished between behavior and actions carried out by Notaries in carrying out their positions by the Supervisory Panel, while behaviors and actions carried out by Notaries outside of carrying out their positions are supervised by the Notary Honor Council. This supervision is a form of legal protection for the Notary itself because, with supervision, every Notary in his behavior and actions both in carrying out his position and outside his position is always within the corridors of the law.

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

Law enforcement always involves humans in it, thus it will involve human behavior as well, therefore the law can only be implemented effectively if it is followed by supervision or a strong control mechanism from the party appointed based on laws and regulations, thus the legal profession that is carried out remains in the corridor of professional ethics and accordance with the implementation of its position so that public trust as users of Notary services will stay awake.

Supervision is a preventive and curative activity. Preventive means a coaching process, while curative means imposing sanctions on Notaries in the implementation of their positions if proven to have violated Law Number 30 of 2004 concerning Notary Positions and its Amendments to Law Number 2 of 2014 and violations of the Notary Code of Ethics. The scope of this supervision is broader than the scope of supervision to Notaries carried out by the Regional Supervisory Council as clearly and unequivocally stipulated in the Notary Position Law

CONCLUSIONS

The results of the study stated that to prevent unhealthy competition, notaries can be done by opening opportunities and information to notaries to get clients who make agreements with banks. All Notaries must have an equal opportunity to get clients from the bank. In addition, it needs supervision from the Indonesian Notary Association organization and strict law enforcement related to violations of notary ethics that are proven to have a monopoly on deed-making services in the banking sector.

REFERENCES

Adjie, H. (2011). *Indonesian Notary Law. Third printing.* . Refika Aditama.

Aswan and Susi Yanuarsi. (2022). "Notary Position Contribution in Bank Credit Agreement." *The Solution*, 20(3), 392-393.

Law Online. (2023). "*Issue of Unfair Business Competition Notary in Banks.*"

Muhammad Soleh, Z. Y. H. Y. (2021). Implementation of Sharia Compliance and Notary Position Regulations in Sharia Financial Institutions in Indonesia (Case Study on Sharia Banking in South Tangerang City). *Law*, 2(1).

Nindy Putri and Paramita Prananingtyas. (2019). The Role of the Indonesian Notary Association (INI) in Tariff Determination Among Balikpapan City Notary. *Notary*, 12(1), 143.

Rully Desthian Pahlepi. (2022). "*Notary is Duties, Examples, and Costs.*" West Java Seconds.



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