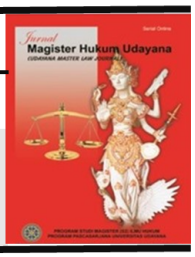
JURNAL MAGISTER HUKUM UDAYANA
(UDAYANA MASTER LAW JOURNAL)
Vol. 10 No. 4 December 2021
E-ISSN: 2502-3101 P-ISSN: 2302-528x
http: //ojs.unud.ac.id/index.php/jmhu



Obligations of Opening, Depositing, and Blocking Notary Accounts in the Implementation of Notary Positions in Banking Business

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Article Info

Received: 25th October 2020
Accepted: 28th December 2021
Published: 31st December 2021

Keywords:
Juridical Study; Deposits; Freezing Accounts; Office of Notary; Bank

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DOI:
10.24843/JMHU.2021.v10.i04.p02

Abstract

This study aims to identify and analyze the intent and purpose of the obligation to open, deposit, and freeze a Notary's account at the Bank as well as the conformity of these obligations with the cash collateral principles and the prevailing laws and regulations. This normative juridical research is descriptive with a statutory approach. This study uses secondary data which is supported by the results of interviewees. The data were analyzed qualitatively with the inductive method. In this study it was found that, firstly, there are differences in views between the Bank on the one hand and the Indonesian Notary Association (INI) and academics on the other hand on this obligation. The Bank stated this obligation for the smooth operation of the Notary's work and the principle of mutual benefit (reciprocity) of the Bank in collecting public funds. Meanwhile, the Notary sees that this obligation injures the Notary's dignity as a public official because it has the potential to eliminate the Notary's independence and professionalism, and academics see that this obligation also creates financial ties that have the potential to make the Notary take risks – including the risk of violating the law, ethics, and conscience – in addition to affecting the independence and professionalism of the Notary. Second, deposits with or without blocking a Notary's account at the Bank cannot be categorized as cash collateral because they do not meet the legality of collateral: Notaries are not bank debtors, but are general officials who assist the Bank in lending by making an authentic deed of guarantee loading. Third, deposits with or without blocking a Notary's account at the Bank are contrary to the laws and regulations governing the position of a Notary – as well as the Notary Code of Ethics – and the legal principles of guarantees.

I. Introduction

Notary comes from the word *Notarius*, which is the name in Roman times given to the people who carried out the work of writing. There is also an opinion that the name *Notarius* comes from the words "*nota literia*" which states a word.[1] In the Indonesian context, a Notary is always authentically defined as a public official who is authorized to make authentic deeds – in addition to other authorities – both in Law Number 30 of

[1] Koeswadji Nico, "Tanggung Jawab Notaris Selaku Pejabat Umum," *Center of Documentation and Studies of Bussines Law, Yogyakarta*, 2003. p. 31.

2004 concerning Notary Positions (UUJN) and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJNP). However, both UUJN and UUJNP contain inconsistencies regarding the mention of Notary institutions because they both use the terms "position" and "profession". The inconsistency starts from the consideration, The consideration considering point c of the UUJN states that a Notary is a certain position that carries out a profession in legal services to the public, while the consideration for point c of the JNP Law states that a Notary is a public official who carries out a profession in providing legal services to the public. so it has implications for several articles such as (1) Article 1 number 5 which defines the Notary Organization as a notary public professional organization; and (2) Article 4 paragraph (2) which states "*... code of professional ethics, ...*" in the sound of the oath/promise of a Notary.

The inconsistencies that occur at the legal level then have an impact on the level of practice; one of them is the assumption from the banking community that a Notary is a service bureau. For example, Letter Number B.192-KW-V/ADK/2020 dated February 12, 2020 regarding Deposit Requirements for Credit Partners at the BRI Jakarta I Regional Office – which was submitted by PT. Bank Rakyat Indonesia (Persero) Tbk. to Notaries and PPAT Partners at the Regional Office of BRI Jakarta I – explicitly categorizes Notaries as service bureaus and enforces the legality aspects stipulated in the provisions for service bureaus at BRI against Notaries. In the middle of the early months of 2020, the Banks of the members of HIMBARA (Association of State Banks) and several overseas banks even sent a letter to the Notaries/PPAT partners of the Banks or the Notaries of future "partners" of the Banks, requiring the Notaries to have deposits in the form of savings or current accounts with a minimum value of 250 million and must be blocked while being a partner – a legal requirement imposed by the Banks for service bureaus. This then caused a strong reaction from the Notary Public.

Habib Adjie argued that the definition of "commission" is different from "profession", and a Notary should simply referred to as an office.[2] Considering Notaries as a profession or service provider that is equated with the services of an advocate, appraisal (estimator), travel agency services, or other services, it is not the right thing considering the Notary as a public official who is appointed and dismissed by the state; in this case the Ministry of Law and Human Rights (Kemenkumham). Furthermore, Habib Adjie stated that Notary institution with the issuance of UUJN is a *Beleidsregel* of State. This means that the position of Notary is deliberately created by the State as an implementation of the State in providing services to the people, particularly in making authentic evidence recognized by the State.[3]

Other than the *blurring* between "position" and "profession", the other things that should be highlighted from this phenomenon are: (1) related to the cooperation between Notaries and Banks; and (2) related to the imposition of deposit obligations on the Notary which is accompanied by blocking by the Bank. Regarding the cooperation between a Notary and a Bank, a Notary must act honestly and independently in his work although it cannot be denied that the independence of a Notary is often tested.

[2] Habib Adjie, "Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No 30" (Bandung: Refika Aditama, 2018). p. 8.
[3] Ibid.

The prohibition for a Notary to cooperate with certain parties,[4] including Banks, often only ends with the prohibition. In fact, a Notary is competing to be able to establish cooperation with the Bank.[5] The words "Bank Notary", "Partner Notary", or "Bank Partner Notary" have become like a magnet. This practice continues until the issuance of the letter from the banks requiring the "partner notary" to open an account, to make deposits, and even to be accompanied by blocking. The imposition of this obligation should be pointed out as collateral, considering that in order to establish cooperation with the Bank, the service bureau of the Bank's partners – in this case including Notary "services" – requires financial capability (capital), This is stated in point 1 of Letter Number B.192-KW-V/ADK/2020 dated February 12, 2020 regarding Deposit Requirements for Credit Partners at the BRI Jakarta Regional Office I. which is then followed by a policy of blocking a Notary account while being a partner. This can be seen in point 3 of Letter Number B.192-KW-V/ADK/2020 dated February 12, 2020 regarding Deposit Requirements for Credit Partners at the BRI Jakarta I Regional Office which expressly states that deposits/savings must be blocked while being a partner.

This research responded to this phenomenon academically by conducting a search on three important things. First, why is a Notary required to open an account and to make a deposit followed by blocking the account in carrying out the work of a Notary in banking business? Second, can depositing and blocking a notary's account at a "partner" bank be categorized as a guarantee as *cash collateral* for the Notary's performance? Why is that? Third, does the obligation to deposit and freeze the account of the Notary of the bank's partner violate the applicable laws and regulations?

The implementation of Notary position in banking business is often a topic of discussion, particularly in terms of cooperation agreements that make the Notary a bank partner. An academic study conducted by Rahmat Muliadi regarding the Juridical Analysis of the Rights and Obligations of a Notary in a Bank Partner Cooperation Agreement, for example, questioned (1) the legal relationship between a Notary as a General Officer and a Bank; (2) the rights and obligations of Notary in the agreement; and (3) the implementation of the agreement in relation to the independence of Notary.[6] Despite having the same *standing position* – holding that a Notary is an official/position and highlighting the independence of a Notary with the presence of agreement – Rahmat Muliadi's study tends to be general without specifying certain rights or obligations. Then, this *paper* focuses on the presence of account opening and deposit obligations accompanied by blocking, in most cases, charged by various banks to notaries – as a fairly new phenomenon. The issue of deposit obligations was actually mentioned by Waode Fajriani in his study on the Enforcement of the Code of Ethics of Notaries Who Become Bank Partners regarding the Conditions Determined by Banking. However, the term of the obligation to deposit in the study is more related to the right of a Notary to refuse to formalize a deed in public services – with the reasons for refusal that have been criticized so that it can be

[4] Article 4 number 4 of the Notary Code of Ethics.

[5] Putu Devi Yustisia Utami, "Kerjasama Antara Notaris/Ppat Dengan Bank Yang Dituangkan Dalam Suatu Perjanjian Rekanan," *Jurnal Hukum Saraswati (JHS)* 1, no. 2 (2019): 222–36. p. 225

[6] Rahmat Muliadi, "Analisis Yuridis Hak Dan Kewajiban Notaris Dalam Perjanjian Kerjasama Rekanan Bank," *Premise Law Journal* 4 (2016): 14181.

expanded to include sharia matters relating to usury –[7] very different from this *paper* which has more focus on the analysis on the legal aspects of guarantees.

2. Research Methodology

The research method used in this research was descriptive juridical normative with the approach of *statutory approach*. The researcher focused on the use of the secondary data – primary, secondary, and tertiary legal materials – which were obtained through library research. This research was also supported by the primary data from interviews with resource persons from banking institutions, notary institutions, and academics. Furthermore, the secondary and primary data were analyzed qualitatively using inductive method.

3. Results and Discussion

3.1. Obligations for Bank "Partner" Notary to Open Accounts, to Make Deposits, and Followed by Blocking in the Implementation of Notary Work in Banking Business

Based on interview with Djunaidi, as the Banking resource persons (Department Head Accreditation and Support Department-Policy & Procedure). PT Bank Mandiri (Persero) Tbk., interviewed by Ninik Darmini on 26 July 2020. At one of the Banks which is the member of HIMBARA, before issuing a letter requiring account opening and depositing a certain amount of funds, in certain cases, the relationship between the bank and the Notary of the Bank "partner" had already been bound in a cooperation agreement. The agreement stipulates the rights and obligations of the Bank and the Notary as well as the period of the cooperation agreement. This agreement also regulates the integrity pact of a Notary as a partner of the Bank who must maintain professionalism, be objective, impartial and not cooperate with the customers to the detriment of the Bank. From the Bank's point of view, this collaboration has a good purpose to maintain the commitment of both parties. However, from the Notary's perspective, this is certainly a violation of the code of ethics. Article 4 point 4 of the Notary Code of Ethics stipulates that a Notary or other person – as long as the person concerned is carrying out the position of a Notary – is prohibited from cooperating with a service bureau/person/legal entity which essentially acts as an intermediary to seek or obtain clients. The emergence of the term "Bank partner Notary also actually violates Article 4 number 14 of the Notary Code of Ethics which regulates the prohibition of Notaries from forming exclusive peer groups with the aim of serving the interests of an agency or institution, particularly closing the possibility for other Notaries to participate. According to banking sources, all this time, "Bank partner Notary" is indeed required to open an account at partner bank but there is no obligation regarding the amount that must be deposited. There is an obligation to make a deposit in a certain amount – and for certain banks accompanied by blocking – starting around February 2020 with the issuance of a letter from the bank to a "partner

[7] Waode Fajriani, "Penegakan Kode Etik Notaris Yang Menjadi Rekanan Bank Terkait Syarat Yang Ditentukan Perbankan" (Universitas Islam Indonesia, 2019).://dspace.uii.ac.id/bitstream/handle/123456789/18096/17921078.pdf?sequence=11&isAllowed=y

notary" containing the obligation to open an account, to make a deposit in a certain amount, and – for banks certain – to have blocking.

From the Bank's point of view, one of the arguments for a Notary to open an account is for the smooth operation of the payment of *fees* – honorarium for the implementation of Notary work which is paid by the Bank through account transfer – and other costs that the Notary must pay in managing his work. In addition to operational convenience, the Bank also applies the principle of mutual benefit between the Bank and Notary. The obligation to open an account is absolute for operations and carried out by all banks that are members of HIMBARA. In other hand, depositing a certain amount in an account is reciprocal (*take and give*) because Notary has got a job at the Bank so that the Notary is expected to also use the Bank's products.

Based on interview with Taufik, as the Notary resource person (Chairman of the Organization for the Central Management of the Indonesian Notary Association) interviewed by Ninik Darmini on 27 June 2020. From the Notary's point of view, there is a rejection of the imposition of these obligations. Deposit liabilities and the blocking of accounts rated hurt the dignity of Notary as a public official who has been regulated and protected by legislation. Various requirements for a notary as a guarantee for the implementation of a notary's work are considered inappropriate because the duties, responsibilities and authorities of a notary have been regulated by the applicable laws and regulations. It can be seen on Letter Number 9/U/2-II/PP-INI/2020 dated February 3, 2020 regarding Obligations to Notaries Who Make Banking Deeds as submitted by the Central Management of the Indonesian Notary Association (PP INI) to PT. Bank CIMB Niaga Tbk. and Letter Number 10/U/03-II/PP-INI/2020 dated February 3, 2020 regarding Obligations to Notaries Who Make Banking Deeds as submitted by PP INI to PT. Bank Tabungan Negara (Persero) Tbk. also states that the powers, obligations, sanctions, and prohibitions for Notaries have been regulated in Articles 15, 16, and 17 of Law Number 30 of 2004 concerning Notary Positions as amended by Law Number 2 of 2014.

Based on Interview with Taufiq El Rahman, as the resource person Academics (Civil Law Expert, Faculty of Law, Gadjah Mada University) interviewed by Ninik Darmini on 7 August 2020. The presence of the obligation to open an account and to make a deposit followed by the blocking of a Notary's account while being a partner of the Bank – apart from operational convenience and reciprocity – is supposed to be intended to create financial bonds. When the Notary is subject to these obligations, it can be said that the Notary has not been free from peer pressure.[8] Based on interview with Taufiq El Rahman, as the resource person Academics (Civil Law Expert, Faculty of Law, Gadjah Mada University) interviewed by Ninik Darmini on 7 August 2020. Opening an account for operations is perfectly acceptable, but the performance of a Notary will be greatly affected when the obligation is followed by an obligation to deposit and block it. It will be difficult for a Notary to act in a trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties concerned in accordance with the provisions of Article 16 paragraph (1) UUJNP. Based on interview with Taufik, as the Notary resource person (Chairman of the Organization for the Central Management of the Indonesian Notary Association) It is worried that the financial attachment of the Notary to the Bank will lead to a pragmatic attitude that only focuses on short-term needs, in which the consequences will be felt by the Notary

[8] Narsuddin Udin, "Notaris Yang MERDEKA Itu Seperti Apa Sih?," 2021.

in the future.[9] From the perspective of *prospect theory,*[10] this concern is very reasonable because a retained deposit will cause the Notary to use a "*loss* mindset" in his relationship with the Bank. With a "*loss* mindset" people will usually be more reckless in their actions, including recklessness which has an impact on greater losses so that the Notary will be more daring to take risks including the risk of violating the law; ethics; and conscience.

In such conditions, the Bank as a Notary product user actually faces risks because an authentic deed can be degraded into a private deed when it does not meet the requirements as an authentic deed Meanwhile, the authenticity of the deed is required as a legal protection for the Bank's interests. For example, the Deed of Fiduciary Guarantee – or APHT made by PPAT Notary – which is proven not to be attended by the parties at the inauguration of the deed, or not reading the deed by a Notary (PPAT Notary for APHT) before the parties has violated the provisions of UUJNP (Notary Law). As a result, the position of the deed is down from an authentic deed to a private deed. The further consequence is that the Fiduciary Guarantee or Mortgage Guarantee becomes invalid so that the position of the Bank as the preferred creditor will decrease to become a concurrent creditor.

Apart from these risks, the bonds made by the Bank will actually mean nothing when the Notary does not feel bound to the Bank. The relationship between a Notary as a general officer and a Bank as a business is a strong working relationship and different from the working relationship in general. The relationship between an employer and employee is generally based on an employment agreement, but the occurrence of a working relationship between a Bank and Notary is due to statutory orders – not because of an agreement. Therefore, the relationship between Bank and Notary will always exist as long as the laws and regulations involving the position of a notary have not been changed.

Various provisions in the laws and regulations regarding specific material guarantees – including fiduciary guarantees, mortgage rights, and mortgages form a strong basis for a legal relationship between a Bank and a Notary without having to enter into an agreement or cooperation considering (1) the presence of a special material guarantee is crucial for the Bank in lending; and (2) there are various Notary legal products – who are also concurrently PPAT – in the banking business, such as the Fiduciary Guarantee Deed; SKMHT deed; APHT deed (made by a Notary in his position as PPAT); Mortgage Deed; and a deed of credit agreement or the imposition of other guarantees – such as *cash collateral*, share pawning, agreements – which due to the amount of the value by internal banking provisions must be made in an authentic deed. In other words, with or without the bond, the Bank will definitely look for a notary because there is already a law that regulates it. The assumption from the banking community that without an MoU or a cooperation agreement between a Notary and a Bank, a Bank cannot ask a notary who is not a "partner" of the Bank to make a deed. It is incorrect because a Bank can make a deed to a Notary even without an MoU or a cooperation agreement.

[9] Taufik, Interview with a Notary resource person (Chairman of the Organization for the Central Management of the Indonesian Notary Association).

[10] Jack S Levy, "An Introduction to Prospect Theory," *Political Psychology*, 1992, 171–86.

The special relationship between Bank and Notary regarding the making of deed can actually be a reason for the aggrieved party to sue for the cancellation of the deed. When the relationship can be proven to make the Notary not independent in carrying out his authority, the Judge can cancel the legal relationship arising from the notary deed. The problem is, in many areas, the absence of the unity of attitude among the Notaries. Unity of attitude only can be seen in certain areas, for example in Padang Pariaman, West Sumatra, where the relationship between a bank and a notary is not seen as a special relationship. The relationship between Bank and Notary remains the same as the relationship between Notary and other clients, and even the Notary does not have a special cooperation with the Bank. The Notaries in this area have a unified attitude and obedience under the guidance of their professional organizations so that both Banks and Notaries have the freedom: Banks are free to use any Notary and the Notary is free to choose to do work for any Bank.

3.2. The Obligation of Depositing and Blocking Notary Accounts at Partner Banks Seen from Collateral Law in Indonesia

When viewed from the legal principles of guarantees, depositing and blocking of Notary accounts at partner Banks as *cash collateral* for the Notary's performance does not meet the required elements. The collateral laws require that the object of the guarantee fulfills at least three main elements; (1) the presence of a Principal Agreement between the creditor and debtor; (2) the object has economic value; and (3) it can be used as protection by creditors when the debtor fails to fulfill obligations. In addition, the main and the guarantee agreements as an additional agreement must meet the legal requirements of the agreement referred to in Article 1320 of the Civil Code.

A certain nominal deposit at the Bank can be in the form of a savings account or other products such as time deposits. A Notary who has an account or deposit at a Bank has a bill against the Bank. In other words, the Notary has assets stored in the Bank and this means that the Notary has objects in the form of current assets (money, *cash*) in the Bank. From the legal point of view of the guarantee, this notary's wealth fulfills material elements that have economic value that can be used as creditor protection in the event that the debtor defaults. This is in accordance with the provisions of Article 499 of the Civil Code that objects *(zaken)* are every good *(goederen)* and every right *(rechten)* that can be the object of property rights. The second and third requirements that must be met by material as collateral for a Notary's account at a partner bank can therefore be said to be fulfilled. However, the first requirement – the presence of a basic agreement between the debtor and creditor – is not fulfilled at all due to the following two reasons.

First, it is in terms of the legal relationship between Bank and Notary. The Bank's main activity – collecting funds from and channeling them back to the public, one of which is in the form of credit, it is based on Article 1 number 2 of the Banking Law defines a bank as 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 funds or other forms in order to improve the people's standard of living. makes the bank a financial business that is very close to risks. Various aspects must be considered to achieve confidence that Bank will not lose in carrying out its main functions, one of which is by mitigating risks in the implementation of banking activities. The Bank's prudence in managing its assets is

the main thing, including in lending when Bank must pay attention to the *prudential banking principle* which is reflected in the principles of *The 5 C of Credit* (*Character, Capacity, Capital, Collateral* and *Condition of Economic*). *The 5 C of Credit* based on Article 8 paragraph (1) of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (Banking Law) and its explanation are intended for prospective Debtor Customers, namely the parties who will later be bound by Bank through a credit agreement so that the Bank's role as lender and borrower Client as a debtor must meet the requirements of collateral.

The involvement of Notary in this case is as an authentic deed maker with, according to the provisions of the legislation, the imposition of collateral that must be made in a notarial deed – for example, the Deed of Encumbrance of Fiduciary Collateral, Deed of Encumbrance of Mortgage Rights (APHT), Mortgage – so that the legal relationship that arises between Banks and Notaries are clearly different from the legal relationship that arises between Bank and Debtor Customer. The legal relationship between Bank and Debtor Customer is based on a credit agreement that is subject to the provisions of banking credit distribution, while the legal relationship between Bank and Notary is based on an agreement to carry out works that is subject to civil law and public law governing the position of Notary. In the credit agreement between Bank and Debtor Customer, Notary is the third party making the authentic deed, not the debtor. Bank is not positioned as a creditor of Notary and Notary is not a debtor of Bank. Thus, the provisions regarding Collateral and/or guarantee required for Debtor Customers cannot be imposed on Notary.

Second, it is in terms of the validity of agreement. The validity of the imposition of guarantees depends on the presence and validity of the main agreement as well as the validity of the guarantee containing the agreement, considering that all guarantee agreements are *accessoir* agreements – the agreements which is dependent on the main agreement - so it is impossible to exist without the existence of the main agreement. It is intended that the holding of Notary's account as a guarantee must comply with the legal principles of the agreement, namely the presence of a principal agreement and an agreement to impose a guarantee.

Based on Interview with Djunaidi, as the Banking Resource Person (Department Head Accreditation and Support Department-Policy & Procedure PT Bank Mandiri (Persero) Tbk.), There are internal Bank regulations that make the relationship between Bank and Notary Public need to be stated in a cooperation agreement that is administrative in nature as legality to cover the work that will be given by the Bank to the Notary. The cooperation agreement includes PKS for a period of time, rights and obligations of banks and notaries, obligations of a notary to make a work report, and others. The work will still be given to the Notary (not actually given yet). Then, when it is returned to the provisions of Article 1320 of the Civil Code, it will appear that it clearly does not fulfill one of the conditions for a valid agreement. It is the existence of certain things because certain things require that the object of the agreement must be clear and specific. The work given by Bank to Notary must be real in advance so that the rights and obligations of the parties can be formulated concretely. Therefore, they meet the rules as an agreement. Determining the rights and obligations of the parties to the work that has not yet been real clearly does not meet the requirements for the validity of the agreement so that the relationship between Bank and Notary, prior to the

provision of real work, does not meet the requirements for the existence of the main agreement.

In addition, in the field, there is also no free agreement between Bank and Notary in terms of nominal deposit with/or without blocking so that the Notary – through this Government Regulation – submits an objection letter to the existence of this obligation as one of the requirements to become a partner of the Bank. The imposition of cash collateral in accordance with applicable regulations in banking – namely the presence of a guarantee agreement, the presene of a blocking power and the power of disbursement of a Notary account by the Bank – is also not proven. Therefore, the deposit of a number of funds at the Partner Bank by a Notary cannot be considered as cash collateral. In cash collateral, there must be a guaranteed principal agreement such as a credit agreement.

3.3. Obligations for Depositing and Freezing Notary Accounts at Partner Banks Judging from the Applicable Legislative Provisions

From interview from Taufik as the Notary resource person (Head of the Organization for the Central Management of the Indonesian Notary Association). State the existence of an obligation to deposit and block a notary's account at a Bank makes the current condition of the Notary's relationship with the Bank even more alarming. The institutionalization of cooperation between the Notary and the Bank is in the form of an agreement or collective agreement. In a Notary environment, it is actually something that is not allowed. Notaries in carrying out their positions are required to act trustworthy, honest, thorough, independent, impartial, and to protect the interests of the parties involved in legal actions. It can be seen on Article 16 paragraph (1) point a of Law Number 30 of 2004 concerning the Position of a Notary as amended by Law Number 2 of 2014. The Notary Code of Ethics explicitly states that a Notary or other person – as long as the person concerned is carrying out the position of a Notary – is prohibited from cooperating with a service bureau/person/Legal Entity which essentially acts as an intermediary to find or obtain clients. The prohibition of collaborating with certain legal persons/institutions/materials is intended so that the Notary in carrying out his position is not affected by interests that will affect his objectivity and independence as a public official. Notary cooperation with any individual or institution is contrary to the law governing the position of a Notary and the Notary's code of ethics. Therefore, the emergence of an obligation for Notaries to make deposits accompanied by blocking is also contrary to the applicable laws and regulations mentioned above. Notary is an occupation with specialized skills that require extensive knowledge and a heavy responsibility to serve the public interest - in which the core task of the notary is set in writing and authentic legal relations between the parties unanimously requesting notary services[11] so that the restrictions above are present for the Notary to concentrate and focus on carrying out his responsibilities.

The government actually provides guarantees for the implementation of the notary's duties through sanctions that can be imposed for violations committed by notary. Various administrative sanctions can be imposed on a Notary who commits a violation such as written warning, temporary dismissal, honorable discharge or dishonorable

[11] Liliana Tedjosaputro, *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*, Cetakan 1 (Yogyakarta: PT Bayu Indra Grafika, 1995). p. 86.

discharge. This is based on Article 16 paragraph (11) and Article 91A of Law Number 30 of 2004 concerning the Position of a Notary as amended by Law Number 2 of 2014 jis Article 3 paragraphs (1), (2), and (3) Regulation of the Minister of Law and Human Rights Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions against Notaries. The imposition of sanctions against a Notary who commits a violation is carried out in stages – starting from a written warning, temporary dismissal, to a respectful discharge or dishonorable discharge – but in certain cases when the Notary commits a serious violation of obligations and office prohibitions, he can be immediately subject to administrative sanctions. without being carried out in stages. On Article 16 paragraph (12) of Law Number 30 of 2004 concerning the Position of a Notary as amended by Law Number 2 of 2014 stipulates that "In addition to being subject to sanctions as referred to in paragraph (11), violations of the provisions of Article 16 paragraph (1) point j can be a reason for parties who suffer losses to demand compensation for costs, losses and interest from a Notary." This provision is actually aimed specifically at the Notary's negligence in sending a will report to the Ministry of Law and Human Rights' Will List Center, but in practice, claims for compensation are also possible for the actions of other Notaries which due to their negligence have caused losses to the client. The other provisions that can also be used as a basis for the suffering party to demand reimbursement of costs, compensation, and interest from a Notary – especially in the case of the degradation of an authentic deed into a private deed due to the Notary's fault – are Article 44 paragraph (5); Article 48 paragraph (3); and Article 51 paragraph (4). This mean The notary from a civil point of view can also be held responsible for compensation when he makes a mistake that is materially detrimental to the parties in the deed he makes. In the event that the Notary's actions fulfill the elements of the alleged criminal offense – such as fraud; embezzlement; conspiracy; document falsification; and others – the Notary can also be held criminally responsible. However, there are weaknesses regarding the imposition of sanctions for violations committed by Notaries, both from INI and from the Supervisory Council, both of which are the institutions for supervision and/or guidance of Notaries who are authorized to impose sanctions. This is based on Article 67 paragraphs (1) and (2) of Law Number 30 of 2004 concerning the Position of a Notary as amended by Law Number 2 of 2014 stipulates that the supervision of a Notary is carried out by the Minister (Menkumham) and in its implementation a Supervisory Council is established - starting from the central level (MPP), regional (MPW), to district/city areas (MPD) – consisting of government elements; Notary organization; and experts or academics, and has various powers as regulated in Article 73 including giving oral and written warning sanctions (MPW) and Article 77 including imposing temporary suspension (MPP). Article 66A paragraphs (1) and (2) submit the guidance of a Notary to the Notary Honorary Council (MKN) which consists of the elements of Notary, Government, and experts or academics. Article 82 paragraph (4) mandates the determination of the authority of the Notary Organization in the Articles of Association and Bylaws of the Notary Organization, and then Article 12 of Articles of INI Association includes the imposition of sanctions in the enforcement of the Notary Code of Ethics as one of the authorities of the Honorary Council (representing the Association). Article 6 point 1 of the Notary Code of Ethics states that the sanctions that can be imposed are in the form of warnings, warnings, temporary dismissal from Association membership, respectful discharge from Association membership, and dishonorable discharge from Association membership.

With the institutionalization of cooperation between Notary and Bank in the agreement, it can be clearly concluded that the Notary has violated the code of ethics, and the lack of sanctions by the notary supervisor is disproductive to the prohibition alone. However, when the weakness in the provision of sanctions also occurs in connection with the performance of the Notary, this may also be the trigger for the imposition of deposit obligations accompanied by blocking by Bank to Notary to ensure the Notary's performance.

However, the obligation to make deposits – with or without blocking – has violated the principles of implementing the position of a Notary and is not in line with the principles of the law of guarantees. This obligation – which incidentally arises from the collaboration between a Notary and a Bank – has the potential to threaten the independence and impartiality of a Notary as regulated in Article 16 paragraph (1) point a of the UUJNP (Notary Law) – which is reaffirmed in Article 4 point 4 of the Notary Code of Ethics – given the tendency of Notaries to more *risk-taking* on holding their deposits in relation to banks, as *prospect theory* describes the people who use a "*loss*" mindset. In terms of collateral law – apart from not meeting the required elements to be considered *cash collateral* – the practice of depositing and blocking is also not in line with Article 8 paragraph (1) of the Banking Law and its explanations because guarantees should only be intended for Debtor Customers.

4. Conclusion

There are different views between the Bank's sources on the one hand and the Indonesian Notary Association (INI) and academics on the other hand in addressing the obligations of opening and depositing accounts by Notaries at partner banks. The sources from the Banks stated that the purpose and objective of opening and depositing accounts is for the reasons of smooth operations in carrying out works such as payment of notary fees and the application of mutual benefit principle (take and give) by the Banks in carrying out one of the main tasks of banking, namely collecting funds from the public, including in this case is Notary as the partner of Bank. Meanwhile, Notary sources viewed that the existence of a Notary obligation to open an account and deposit a certain amount injures the Notary's dignity as a public official, according to the provisions of Article 16 paragraph (1) letter a, that a Notary in carrying out his position must be independent and impartial and protect the interests of the parties involved in legal action. Academic sources viewed that Notary's financial attachment to partner banks will affect the independence and professionalism of the Notaries in carrying out their titles.

From the legal point of view of guarantees, there is no reason for the Bank to require a Notary to open and deposit a certain amount, or even freezing it, because the Notary in this case is not the Bank's debtor. The banking business and the position of a Notary are two jobs that need each other without having to be bound in a cooperation agreement. The banking business absolutely requires a Notary. When in practice the position of Notary becomes weak and does not have a strong bargaining position in the banking business, it cannot be separated from the problems faced by the Notary's internal.

The opening of a Notary account at a Partner Bank is intended to facilitate financial transactions such as payment of notary fee. When it is not followed by an obligation to

deposit a certain nominal amount and freezing, it does not conflict with the applicable provisions in banking and the position of Notary/PPAT. However, when the account opening is followed by the obligation to deposit a certain nominal amount with or without freezing, it will be contrary to the principles of guarantee law and the provisions governing the position of notary because it has the potential to lose the independence of Notary/PPAT as a public official who must maintain a balance of interests between the Bank and the Customer.

Banks should not require Notaries to deposit a certain amount of funds with or without account blocking as a condition for obtaining authentic deed making works. Furthermore, the Bank should not even institutionalize cooperation with Notaries so that the Bank can provide deed work to as many Notaries as possible. In that way, naturally there will be healthy competition among Notaries in terms of the quality of making deed.

Notaries should comply with laws and regulations and the Notary Code of Ethics so that they do not cooperate with banks and do not deposit certain funds with or without blocking because they have the potential to prevent Notaries from acting independently, impartially, and protecting the interests of both parties fairly. Notaries must also be more careful and control themselves so as not to act out of their authority, to violate the law, ethics, and conscience.

The government – in this case the Ministry of Law and Human Rights – must further enhance the supervision and guidance of Notaries through the Notary Supervisory Council and the Notary Honorary Council. The Notary Supervisory Council must be more assertive in providing sanctions for violations committed by Notaries.

This Government Regulation must continue to provide guidance and to remind the importance of Notaries maintaining the integrity and professionalism of their positions by not taking actions that can injure their dignity and self-esteem as a Notary, including being more firm and concrete in imposing sanctions on Notaries who violate the Code of Ethics of Notary Public.

Acknowledgment

With the completion of the research and writing of this scientific journal, the authors would like to thank the Faculty of Law, Universitas Gadjah Mada as the funder through the Research and Publication Unit; to the speakers: Mr. Djunaidi, Mr. Taufik, S.H., M.Kn., Mr. Dr. Taufiq El Rahman, S.H., M.Hum., the discussion partners: Mr. Rahmat Hidayat, S.Psi., M.Sc., Ph.D., Notary Ririn Frida Arini, S.H., M.Kn.; and the students: Ilham Adi Nurcahya, Pradana Ramadhani Ilham Mustaqim, Annisa Ayuningtyas

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