

# Notary in Indonesia: How Are State Fundamental Values Reflected in Law and Professional Ethics?

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## Abstract

*In recent times, the public has concerns addressed to the position of notary due to cases of violations of law and code of ethics by notaries. This situation leads to a question on the internalization of state values and ethical principles by a notary. This paper aims at elaborating on the position of a notary in the Indonesian legal system, and further, analyzing the reflection of Pancasila values in Law on Notary and the Code of Ethics of Notary. It is legal research that primarily analyzes the normative contents of applicable Indonesian law and regulations that regulate the issue of a notary, namely Articles of Association of the Indonesian Notary Association, Code of Ethics of Notary, as well as relevant court decisions. This article concludes that the Indonesian legal system granted notary a status as a public official with the authority to make authentic deeds and other authorities as intended in Indonesian Notary Law. In addition, the legal system also requires notary, as a legal profession, to become a member of Ikatan Notaris Indonesia (INI), the only legitimate notary association in Indonesia. Normatively, both Indonesian Notary Law and the Code of Ethics of Notary have adopted the values contained in the precepts of Pancasila which in general require a notary to have good moral integrity, character, and personality; to uphold professional ethics; to prioritize services for the interests of the community and the state; to have social concerns; and, to carry out tasks without merely focused on economic benefits.*

**Keywords:** Code of Ethics; Indonesia; Pancasila; Personal Integrity; Public Notary

## 1. INTRODUCTION

Violations of the notary's code of ethics are a reality that often occurs in practice. Intense competition along with the increasing number of notaries is seen as one of the main factors causing these violations.<sup>1</sup> One form of legal violations committed by a notary in making a deed is to change, subtract, and eliminate the contents of the original/minute deed,

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<sup>1</sup> Yogi Priyambodo and Gunarto Gunarto, "Tinjauan terhadap Pelanggaran Kode Etik Jabatan Notaris di Kabupaten Purbalingga," *Jurnal Akta* 4, no. 3 (2017): 334.

resulting in losses for other parties.<sup>2</sup> Against these violations, the notary can be subject to civil and administrative sanctions, and even further can be subject to criminal sanctions if the notary's actions meet the criminal elements.

A notary is a legal profession that is very important in the Indonesian legal system since they are public officials who are authorized to make authentic deeds. Therefore, the public has expectations that notaries should behave well in carrying out their positions based on values, morals, and ethics to ensure their integrity.

In the context of a nation's life, the concern for morality, ethics, and behavior of Indonesian citizens is generally linked to the state ideological values of the Republic of Indonesia, namely *Pancasila*. It can be argued that the legal professions in Indonesia, including notaries, adhere to *Pancasila* as the basic principle as well as a code of conduct.<sup>3</sup> Before carrying out the position, a notary is obliged to take an oath to be obedient and loyal to *Pancasila*.<sup>4</sup> Besides, the Articles of Association of the *Ikatan Notaris Indonesia* (Indonesian Notary Association/INI) stipulates that INI is based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia (Indonesian Constitution).<sup>5</sup> Further, the Bylaws of INI also determine that the procedure for registering a notary in INI membership requires, among others, a statement letter to obey the Articles of Association, Code of Ethics, and other regulations set by INI.<sup>6</sup> This can be interpreted that a notary who registers as a member of INI has realized that he/she must uphold *Pancasila* values as a basic principle of INI.

There has been previous research and studies that discuss the topic of ethical behavior of notaries. Betty Ivana Prasetyawati and Paramita Prananingtyas suggest notaries always practice the code of ethics and related laws and regulations through good morality in order to develop honesty and self-skills, as well as to increase skills in their field of work.<sup>7</sup> Ahmad Yani and Taupiq Qurrahman analyze the authority of INI's Honorary Council to impose sanctions for ethical violations by notaries in Indonesia.<sup>8</sup> With regards to the need for a notary to uphold *Pancasila*, Endang

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<sup>2</sup> Maria Magdalena Barus, "Pelanggaran Hukum Pidana yang Dilakukan oleh Notaris dalam Membuat Akta Otentik" (Master's Thesis, Notary Study Program, Faculty of Law University of North Sumatra, 2010), 5; See also the Decision of Pekanbaru Administrative Court No. 31/G/2018/PTUN.PBR concerning Falsification of Letter.

<sup>3</sup> See Niru Anita Sinaga, "Kode Etik Sebagai Pedoman Pelaksanaan Profesi Hukum Yang Baik," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020): 16-26.

<sup>4</sup> Law No. 30 of 2004 concerning Notary, Art. 4.

<sup>5</sup> The Articles of Association of the *Ikatan Notaris Indonesia* (Indonesian Notary Association/INI), lastly modified in 2015, Art. 4.

<sup>6</sup> Bylaws of the *Ikatan Notaris Indonesia* (Indonesian Notary Association/INI), lastly modified in 2018, Art.3 (3)(e).

<sup>7</sup> Betty Ivana Prasetyawati and Paramita Prananingtyas, "Peran Kode Etik Notaris Dalam Membangun Integritas Notaris Di Era 4.0," *Notarius* 15, no.1 (2022): 321.

<sup>8</sup> Ahmad Yani and Taupiq Qurrahman, "The Authority of the Honorary Council of the Indonesian Notary Association in Imposing Sanctions for Violation of the Notary's Code of Ethics," *Veteran Law Review* 4, no. 1 (2021): 4.

Purwaningsih conducted research that analyzes the enforcement of Indonesian Notary Law in the context of realizing a notary profession that reflects *Pancasila* values.<sup>9</sup>

While previous studies focus on the violation of the Code of Ethics of Notary and their sanctions, this paper aims to elaborate on a notary's position in the Indonesian legal system, and further, assess how *Pancasila* values and the Notary Ethics are reflected in the task of a notary. It reflects a legal research that primarily analyzes the normative contents of applicable Indonesian law and regulations that regulate the issue of the notary, as well as relevant court decisions. Besides, it also reads some relevant written documents, *i.e.* Articles of Association of INI and Code of Ethics of Notary. While those primary written sources are further analyzed by reading secondary legal resources in the form of law journal articles, an interview with a notary was also conducted in order to get a clear interpretation of the Code of Ethics of Notary.

## **2. RESULT AND ANALYSIS**

### **2.1. The Position of Notary in the Indonesian Legal System**

#### **2.1.1. Notary as Public Official and Member of Professional Organization**

From a historical perspective, the notary may be regarded as one of the oldest legal professions in Indonesia. In 1620, a *notarium publicum* was appointed as an official to make a deed, will, (testament), and other private documents.<sup>10</sup> There is no doubt to classify a notary as a public official. The Indonesian Regulation No. 30 in 2004 concerning The Position of Notary (Indonesian Notary Law) explicitly defines a notary as a public official with the authority to make authentic deeds and other authorities as intended in that law. Even The Constitutional Court clarified that a notary is a state organ in a broad sense, although not in the sense of an institution as is customary in daily conversations.<sup>11</sup> To implement his/her task, a notary has a stamp containing the state symbol of the Republic of Indonesia and in the space surrounding it; the name, the position, and the place of domicile as notary.<sup>12</sup>

A notary is obliged to be registered in a notary professional organization called INI.<sup>13</sup> INI is the only legitimate notary association in Indonesia.<sup>14</sup> In 2005, Persatuan Notaris Reformasi Indonesia (PERNORI) and Himpunan Notaris Indonesia (HNI), two other associations for a notary in

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<sup>9</sup> Endang Purwaningsih, "Penegakan Hukum Jabatan Notaris dalam Pembuatan Perjanjian Berdasarkan Pancasila dalam Rangka Kepastian Hukum," *Adil: Jurnal Hukum* 2, no. 3 (2011): 325.

<sup>10</sup> Rizki Nurmayanti and Akhmad Khisni, "Peran dan Tanggung Jawab Notaris dalam Pelaksanaan Pembuatan Akta Koperasi," *Jurnal Akta* 4, no. 4 (2017): 609-610.

<sup>11</sup> Decision of the Constitutional Court of the Republic of Indonesia No. 009-014/PUU-III/2005, 127.

<sup>12</sup> Law No. 30 of 2004 concerning Notary, Art.16(k).

<sup>13</sup> *Ibid.*, Art. 82 (1) and (2).

<sup>14</sup> *Ibid.*, Art. 82.

Indonesia expressed their disappointment with the recognition of INI as the only legitimate association in Indonesia.<sup>15</sup> They tried to submit a petition before the Constitutional Court by, among others, justifying their freedom of association, assembly, and expression as guaranteed by the Indonesian Constitution and Indonesian Human Rights Law.<sup>16</sup> The Court denied the petition and admitted that the state has an interest in the existence of a single forum for a notary organization, by considering the fact that notary is a state organ in a broad sense and that almost all countries in the world adhere to the existence of a single notary organization.<sup>17</sup> Therefore, there is no other option for a notary to apply for membership in a notary association other than through INI.

### **2.1.2. Notary Supervisory and Honorary Assemblies**

A notary can be classified as a general officer as they are appointed by the government and given the authority to make authentic deeds.<sup>18</sup> The law recognizes two notary assemblies. The first is *Majelis Pengawas Notaris* (Notary Supervisory Assembly), established by the Indonesian Notary Law in 2004 while the second is *Majelis Kehormatan Notaris* (Notary Honorary Assembly), later created by the amendment of the Indonesian Notary Law in 2014.

The Notary Supervisory Assembly has the authority and duty to carry out the guidance and supervision of notaries.<sup>19</sup> The hierarchical structure of this assembly is divided into three levels:<sup>20</sup>

1. Supervisory Assembly, established by the Minister of Law and Human Rights (Minister), and shall be domiciled in the capital city of the State of the Republic of Indonesia.<sup>21</sup>
2. Regional Supervisory Assembly (provincial level), established by the Director-General of Legal Administrative Affairs on behalf of the Minister and shall be domiciled in the capital city of the province.<sup>22</sup>
3. Local Supervisory Assembly (regency/municipality level), established by the Head of the Regional Office of the Ministry of Law and Human Rights on behalf of the Minister and shall be domiciled in the regency/municipality.<sup>23</sup>

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<sup>15</sup> Decision of the Constitutional Court of the Republic of Indonesia No: 009-014/PUU-III/2005, 1.

<sup>16</sup> *Ibid.*, 10.

<sup>17</sup> *Ibid.*, 127.

<sup>18</sup> Haingo Rabanirajona, "Role of Notary in Abroad and Indonesia," *Jurnal Akta* 7, no. 4 (2020): 350-351.

<sup>19</sup> Law No. 30 of 2004 concerning Notary, Art. 1 (6).

<sup>20</sup> Regulation of the Minister of Law and Human Rights No. 16 of 2021 concerning Organizational Structure and Working Procedures, Appointment and Termination Procedures, and Budget of The Notary Supervisory Assembly, Art. 3.

<sup>21</sup> *Ibid.*, Art. 6.

<sup>22</sup> *Ibid.*, Art. 5.

<sup>23</sup> *Ibid.*, Art. 4.

The Supervisory Assembly consists of persons who are affiliated to/with the government, notary organizations, and experts/academics. It consists of 9 (nine) persons with 1 (one) chairman concurrently member, 2 (two) deputy chairman concurrently member, and 6 members. The election of the chairman and deputy chairman is carried out by *musyawarah* (deliberation). If the election by deliberation does not reach an agreement, the election is carried out by voting.<sup>24</sup>

The decisions of the Notary Supervisory Assembly have several times been challenged before the Court. For instance, there was a case when a client of a notary submitted a case before the District Court of South Jakarta, challenging the decision of the National Notary Supervisory Assembly that strengthen the decision of the Regional Notary Supervisory Assembly of West Java. He was disappointed with the decision that only impose a temporary suspension for (3) three months to a notary who commit a dishonest act, and issue a copy of the deed not based on the minutes of the deed. The Court finally decided not to recognize the decision of the National Notary Supervisory Assembly.<sup>25</sup> The authority of the Notary Supervisory Assembly has been reduced after the Constitutional Court declared in Judgment No. 49/PUU-X/2012 that it no longer has the authority to permit in case of suspicion of committing a criminal act, summons by investigators, public prosecutors or judges.<sup>26</sup>

Differs from the abovementioned assembly, the Notary Honorary Assembly is a body that authoritatively carries out supervision of notary and must approve or disapprove investigation and judicial process, on the taking of photocopy of minutes of deed and summons of a notary for attending the examination related to the deed or Notary Protocol that is held by a notary.<sup>27</sup>

The Notary Honorary Assembly consists of national and regional assemblies. The National Notary Honorary Assembly was established by the Minister and shall be domiciled in the capital city of the State of the Republic of Indonesia while the Regional Honorary Assembly was established by the Director-General of Legal Administrative Affairs on behalf of the Minister and shall be domiciled in the capital city of the province.<sup>28</sup>

Similar to the previous assembly, the Notary Honorary Assembly consists of persons who are affiliated to/with the government, notary organizations; and experts/academics. However, it only consists of 7 (seven) persons with 1 (one) chairman concurrently member; 1 (one) deputy chairman concurrently member; and 5 members. The election of the chairman and deputy chairman is carried out by *musyawarah* (deliberation)

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<sup>24</sup> Law No. 30 of 2004 concerning Notary, Art. 7.

<sup>25</sup> See for example Decision of District Court of South Jakarta No. 20/Pdt.G/2017/PN JKT.SEL, dated 24 October 2017, 4.

<sup>26</sup> Dewa Nyoman Rai Asmara Putra and Sagung Putri M. E. Purwani, "Pengawasan Notaris Oleh Majelis Pengawas Notaris Daerah Pasca Putusan MK No. 49/PUU-X/2012," *Jurnal Magister Hukum Udayana* 5, no. 4 (2016): 801.

<sup>27</sup> Regulation of the Minister of Law and Human Rights No. 17 of 2021 Concerning Organizational Structure and Working Procedures, Appointment and Termination Procedures, and Budget of The Notary Honorary Assembly, Art. 1(1).

<sup>28</sup> *Ibid.*, Art. 3.

and in the event that the election by deliberation does not reach an agreement, the election is carried out by voting.<sup>29</sup>

## **2.2. Pancasila Values and Code of Ethics in Implementing the Task of Notary**

### **2.2.1. Rights and Obligations of the Notary**

Notary's position is intentionally formed by the state to carry out some of the state's authorities and duties in the field of law, especially civil law and the field of evidentiary law.<sup>30</sup> The term "notary" can be found in various norms or expert opinions.<sup>31</sup> Indonesian Notary Law defines notary as "a public official who is authorized to make an authentic deed and has another authority as referred to in this law or under other laws."<sup>32</sup>

As an authorized official to make an authentic deed, the notary has a moral burden, because an authentic deed is categorized as having perfect proving power. In consequence, a notary must have a good personality when compiling an authentic deed. According to the principle of *pacta sunt servanda* as stated in Article 1338 of the Indonesian Civil Code, the agreement made by the parties, including in the form of an authentic deed, applies as law to them. This also reflects the principle of freedom of contract. However, the phrase 'freedom' does not imply absolute freedom in the making of an agreement, precisely in that freedom, there are limits that should not be exceeded.<sup>33</sup> The existence of these limits implies that the notary needs to uphold personal integrity in authenticating the deed, even though the parties, or one of the parties, promise an economic benefit to the notary if the notary is willing to act beyond these limits. In that position, the intelligence of a notary is tested by always being guided by the laws and regulations and the code of ethics.

The INI's Code of Ethics of Notary sets obligations for notary, among others:<sup>34</sup>

1. Possession of good morals, character, and personality;
2. The ability to respect and uphold the dignity of the notary's position;
3. The ability to maintain and defend the honor of the association;

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<sup>29</sup> *Ibid.*, Art. 4.

<sup>30</sup> I Gusti Agung Ika Mahadewi and I Wayan Novy Purwanto, "Tanggung Jawab Notaris Pengganti yang Melakukan Perbuatan Melawan Hukum dalam Pembuatan Akta Autentik," *Acta Comitatus: Jurnal Hukum Kenotariatan* 6, no. 2 (2021): 451.

<sup>31</sup> M. Syahrul Borman, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris," *Jurnal Hukum dan Kenotariatan* 3, no.1 (2019): 76.

<sup>32</sup> Law No. 30 of 2004 concerning Notary, Art.1(1).

<sup>33</sup> Yohannes Gunawan. *Kajian Ilmu Hukum Tentang Kebebasan Berkontrak, dalam Butir-Butir Pemikiran dalam Hukum* (Bandung: Refika Aditama, 2008), 257.

<sup>34</sup> Code of Ethics of Notary, Art. 3. This Article stipulates 18 obligations, but for the relevance of this paper, authors only mention 11 out of those 18 obligations.

4. The ability to be honest, independent, impartial, trustworthy, thorough, and full of responsibility based on the laws and regulations and the contents of the notary's oath of office;
5. The ability to improve knowledge and professional expertise that has been owned, not limited to legal and notarial knowledge;
6. The willingness to prioritize the service of the community and state's interests;
7. The willingness to provide services (deeds making and other authorities) without collecting honorarium for those who cannot afford them;
8. Implementation and compliance with all provisions regarding the honorarium set by the association;
9. The ability to create an atmosphere of kinship and togetherness in carrying out official duties and daily activities, as well as good treatment towards colleagues, respect towards each other, appreciation towards each other, willingness to help each other, and the constant initiative to establish communication and friendship;
10. The willingness to treat every client well, regardless of their economic background and/or social status;
11. The ability to make a deed within a reasonable number of limits to carry out the laws and regulations, especially the law regarding the notary's position and code of ethics.

Notaries are entitled to receive an honorarium for legal services based on the economic and sociological value of each deed.<sup>35</sup> The economic value as referred to in paragraph (2) is determined by the object/value of each deed.

**Table 1**  
**Economic Value of Honorarium of Notary<sup>36</sup>**

<b>Deed Value (Gold Gram Equivalent)</b>	<b>Honorarium (%)</b>
Up to 100,000,000,00 IDR (one hundred million rupiah)	2,5% (Two-point five percent);
Over 100,000,000,00 IDR (one hundred million rupiah) up to 1,000,000,000,00 IDR (one billion rupiah)	1,5% (One-point five percent);
Over 1,000,000,000,00 IDR (one billion rupiah) the honorarium received is according to the agreement between the notary and the parties	Does not exceed 1% of the object for which the deed is made

<sup>35</sup> Law No. 30 of 2004 concerning Notary, Art. 36 (1) and (2).

<sup>36</sup> *Ibid.*, Art, 36 (3).

Table 1 shows that a notary can get a reward in the form of money for the services provided based on the economic value of a deed, classified into three levels. Differing from the standard applicable for economic value, the sociologic value of a notary service will be determined according to the social function of the object each deed with a maximum honorarium is 5,000,000,00 IDR (five million rupiah).<sup>37</sup> Whatsoever, the rules that determine the honorarium of notaries are based on the economic value and sociological value of each deed made and are not always considered unsatisfactory.<sup>38</sup>

### 2.2.2. *Pancasila* Values

The term “*Pancasila*” is sourced from Sanskrit words. *Panca* means five, *sila* means principles/precept that deals with good or important attitude.<sup>39</sup> It comprises five principles/precepts, namely: belief in One Supreme God; just and civilized humanity; Indonesian unity; democracy led by wisdom in deliberation/representative; and social justice for all Indonesian people.<sup>40</sup> These five precepts/principles are explicitly mentioned in the Preamble of the Indonesian Constitution.<sup>41</sup> Each of them is not independent and they create a causal relationship with the state, where the state takes part as a supporter of relations, while God, human, and people take part as the basis of relations.<sup>42</sup>

The principles of *Pancasila* were intended to be the lived values of humanity and became the founding moral and legal basis of the nation.<sup>43</sup> *Pancasila* is then officially admitted as the basis of the state, ideology, and philosophy of the nation of Indonesia.<sup>44</sup> Consequently, *Pancasila* can be considered as the basis for determining whether the law is valid or not, thus a violation of *Pancasila* may cause such law to be declared null and void.<sup>45</sup>

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<sup>37</sup> *Ibid.*, Art. 36 (4).

<sup>38</sup> See this discussion in I Ketut Adi Gunawan, I Nyoman Sumardika, Ida Ayu Putu Widiati, “Penetapan Honorarium Notaris dalam Praktik Pelaksanaan Jabatan Notaris,” *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 371.

<sup>39</sup> Machful Indra Kurniawan, “*Pancasila* as a Basis for Nation’s Character Education,” *Advances in Social Science, Education and Humanities Research* 125, (2018): 269.

<sup>40</sup> See Yuliana, “The Philosophy of *Pancasila* in the Religious Perspective in Indonesia During the Covid-19 Pandemic,” *Pancasila Jurnal Keindonesiaan* 1, no.2 (2021): 146.

<sup>41</sup> The 1945 Constitution of the Republic of Indonesia, Preamble, para. 4.

<sup>42</sup> Seno Wibowo Gumbira, Jamal Wiwoho, “The Implications of the *Pancasila*-Based Principles of Local Democracy in Indonesia,” *Padjajaran Jurnal Ilmu Hukum* 6, no. 2 (2019): 375.

<sup>43</sup> Althien J. Pesurnay, “*Pancasila* Ideology as A Field of Interpretation. In M. Amini, M. Yusuf, & V. I. Yulianto. (Eds.),” *Proceeding of the 2<sup>nd</sup> International Conference on South East Asia Studies- UGM Digital Press Social Sciences and Humanities* 1, (2018): 162.

<sup>44</sup> Milton Thorman Pardosi, Septiana Dwiputri Maharani, Misnal Munir, “The Core of the Essence of Humans of *Pancasila* According to Notonagoro: Autonomous and Responsible,” *Asian Journal of Social Science Studies* 4, no. 4 (2019): 134.

<sup>45</sup> David Tan, “Controversial Issues on the Making of Notarial Deed Containing Chained Promise (Beding Berantai) With the Freedom of Contract Principle,” *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 321.

*Pancasila* is the normative ideal of the administration of the nation and state. Therefore, the vision and direction in implementing the life of the nation and state must be in the context of realizing a divine, humane, united, democratic, and just life.<sup>46</sup>

### 2.2.3. Code of Ethics of Notary

Ethics are generally concerned with what is morally good and bad and morally right and wrong, while the code of ethics<sup>47</sup> of each profession is generally *sui generis*, which means that a code of ethics that applies to one profession cannot apply equally to other professions, even to the same legal profession.

The code of ethics for notaries is generally established in all countries in the world. As an example, in Montenegro, The Code of Notary Ethics prescribes the principles, rules, and procedure for determining the violation of notaries' professional and ethical conduct, with the aim of impeccable performance of notarial duties, as well as to preserve and improve the dignity of notaries as a service of the public.

In Indonesia, INI established a Notary Code of Ethics in 2005 which was later amended in 2015. This Code of Ethics was compiled as a moral code that must be applied by INI members who are expected to maintain the prestige of the position of a notary and the dignity of INI. The points of ethics contained are expected to be a guide for notaries to behave both in office and daily life in order to ensure the morality of the office and notary associations. This Code of Ethics, among others, comprises a set of obligations and prohibitions,<sup>48</sup> means of sanctions,<sup>49</sup> and enforcement mechanisms.<sup>50</sup>

Differs from the Notary Supervisory Assembly and Notary Honorary Assembly that are established by Indonesian Notary Law, as explained in Section 2.1.2, the internal association based-enforcement of the INI Code of Ethics is conducted by *Dewan Kehormatan* (INI Honorary Council). This Council is an independent and impartial body that is established and functions to enforce the code of ethics, dignity, and worth of notaries.<sup>51</sup> Whatsoever, the authority of the INI Honorary Council in imposing sanctions for ethical violations by notary was considered weak.<sup>52</sup>

The way people including notaries behave generally contains three dimensions; knowledge, skills, and desires.<sup>53</sup> Desires in the context of this

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<sup>46</sup> Agus Riyanto, "Hidupnya Nilai-Nilai Pancasila Dalam Pembentukan Perundang-Undangan," <https://business-law.binus.ac.id/2019/01/29/hidupnya-nilai-nilai-pancasila-dalam-pembentukan-perundang-undangan/>.

<sup>47</sup> Britannica.com, "Ethics", <https://www.britannica.com/topic/ethics-philosophy>.

<sup>48</sup> Code of Ethics of Notary, Chapter III.

<sup>49</sup> *Ibid.*, Chapter IV.

<sup>50</sup> *Ibid.*, Chapter V.

<sup>51</sup> *Ibid.*, Art. 1 (8).

<sup>52</sup> Ahmad Yani and Taupiqqurrahman, *op.cit.*, 11.

<sup>53</sup> See Herlin Budiono. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2015), 145.

code of ethics are the desire of a certain person who takes action without taking into account the responsibilities of a professional notary. Problems that may arise regarding violations of the code of ethics cannot be separated from the dynamics of various community interests, especially business interests whose main focus is profit. Therefore, a notary must adhere to the Indonesian Notary Law and the Notary Code of Ethics, so as not to be influenced by business interests and to obtain an authentic deed under the provisions of the legislation.

Pria Dharsana, a notary, explained that the behavior of a notary must be rooted in morals in the teachings of *Pancasila* values so that the ideology that is embedded and practiced daily includes carrying out the position of a notary under the belief in *Pancasila*.<sup>54</sup> In a number of cases,<sup>55</sup> notaries experience legal problems that stem from violations of the Notary's Code of Ethics due to a lack of knowledge and inability to properly interpret the contents of the code of ethics itself.

#### **2.2.4. Reflection**

Notaries in carrying out their work need to understand the political, economic, and social development, as well as the dynamics in business life in order to contribute to better changes for the community. The responsibilities and professional ethics of a notary are closely related to morals and integrity, thus if a notary does not have good integrity and morals, a notary cannot be said to have good professional responsibilities and ethics.<sup>56</sup>

Prior to carrying out the position, a notary is obliged to take oath in accordance with his/her religion before the Minister or appointed official,<sup>57</sup> which reads as follows:

“I swear/promise: that I will be obedient and loyal to the Republic of Indonesia, *Pancasila* and the 1945 Constitution of the Republic of Indonesia, the Notary Law, and other laws and regulations. That I will carry out my position with trust, honesty, thoroughness, independence, and impartiality. That I will maintain my attitude, behavior, and will carry out my obligations under the professional code of ethics, my honor, dignity and responsibility as a notary. That I will keep the contents of the deed and information confidential

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<sup>54</sup> I Made Pria Dharsana, “Kode Etik Notaris,” Interview by Agung Ika Laksmi, Denpasar, March 21, 2022.

<sup>55</sup> See for example, Desy Selviany, “Kasus Mafia Tanah Nirina Zubir Libatkan 2 PPAT Jakarta Barat dan 1 Notaris Tangerang,” <https://wartakota.tribunnews.com/2021/11/17/kasus-mafia-tanah-nirina-zubir-libatkan-2-ppat-jakarta-barat-dan-1-notaris-tangerang>.

<sup>56</sup> Eudea Adeli Arsy, Hanif Nur Widhiyanti, Patricia Audrey Ruslijanto, “Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum dan Tidak Sesuai dengan Ketentuan Pembuatan Akta dalam Undang-Undang Jabatan Notaris,” *Jurnal Bina Mulia Hukum* 6, no.1 (2021): 134.

<sup>57</sup> Law No. 30 of 2004 concerning Notary, Art. 4(1).

obtained in the exercise of my position. That I can be appointed to this position, both personally directly or indirectly, under what name or pretext ever, never and will not give or promise something to anyone.”

Within a period of no later than 60 (sixty) days from the date of taking the notarial oath/promise, a notary must carry out their positions according to what he/she has been oathed/promised. Besides, he/she has to submit minutes of notary oath/promise to the Minister, Notary Association, and the Regional Supervisory Assembly. In addition, he/she has to submit the office address, a sample of signature and initials, as well as the stamp or seal of the office of a notary in red color to the Minister and other officials responsible for agrarian affairs, the Notary Association, the Head of the District Court, the Regional Supervisory Assembly, and the Regent/Mayor where the notary is appointed.<sup>58</sup> Notaries who violate those provisions may be subject to sanctions in the form of a written warning; temporary suspension; honorable discharge; or dishonorable dismissal.<sup>59</sup> The Code of Ethics makes clear that honorable discharge or dishonorable dismissal against a notary by the Government of Indonesia entails a termination as a member of INI.<sup>60</sup>

The five precepts/principles of *Pancasila* as explained in Section 2.2.2 are implicitly enshrined in the obligation of a notary as described in Section 2.2.1. For example, a notary who has good morals, character, and personality, as well as honesty reflects the first precept, as the belief in God and religious values encourage human beings/religious fellows to implement those values. Next, an attitude of creating an atmosphere of kinship and togetherness; a well treatment, respect, and appreciation towards each other; as well as the initiative to establish communication and friendship can be considered as a reflection of the second precept, which is just and civilized humanity. Additionally, the notary’s act of prioritizing the service of the interests of the community and the state; providing services for making deeds and other authorities for people who cannot afford it without collecting honoraria; and the act of providing equal treatment to every client regardless of their economic status and/or social status reflects the fifth precept, namely social justice for all Indonesian people. Moreover, the use of *musyawarah* (deliberation) for the election of the chairman and deputy chairman of both the Notary Supervisory Assembly and Notary Honorary Assembly as discussed in Section 2.1.2 reflected the fourth precept of *Pancasila*.

Endang Purwaningsih suggested that a notary should carry out the notary profession to the extent of the authority in the Indonesian Notary Law consistently. Besides, she expects that a notary should uphold professional ethics, have solid moral integrity, honest and aware of the limits of their authority, have an essential sense of justice, not money-oriented, and not merely create formal evidence to pursue legal certainty but

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<sup>58</sup> *Ibid.*, Art. 7(1).

<sup>59</sup> *Ibid.*, Art. 7(2).

<sup>60</sup> Code of Ethics of Notary, Art. 13.

ignore a sense of justice.<sup>61</sup> The implementation of this notarial code of ethics certainly needs to be accompanied by good morality by the values of *Pancasila* so that injustice does not occur as a result of granting property status, rights, and obligations that are not following the rules and principles of law and justice, which results in destroying the public order and legal certainty.<sup>62</sup> The notary personality is characterized by the implementation of his/her duties which is inspired by *Pancasila*.<sup>63</sup>

Strict supervision and guidance on the work of a notary as indicated by the establishment of the Supervisory Assembly, Honorary Assembly, and Honorary Council as explained in Sections 2.1.2 and 2.2.3, is intended to protect notaries from possible ethical and legal violations. In this context, legal protection for notaries is also needed to maintain a balance against such strict supervision. The concept of legal protection for notaries cannot be separated from the concept of law in general, which must be interpreted as protection established by law. As a framework of thought based on *Pancasila*, the principle of Indonesian legal protection is the principle of recognizing and protecting human dignity which is based on the principle of a state of law based on *Pancasila*. The protection provided by the law is the protection of the legal rights that are owned which in its enforcement requires legal efforts, both judicial and non-judicial.<sup>64</sup>

In making an authentic deed, notaries need to pay attention to aspects of logic (right/wrong), ethics (good/bad), and aesthetics (proper/improper). On one hand, notaries generally use logical reasoning to determine whether an empirical fact put forward by the parties is substantively correct and can then be written into an authentic deed. On the other hand, if the empirical facts that are made into an authentic deed are a falsity, subsequently the substance contained in the deed cannot be accounted for. From the ethical aspect, notaries should pay attention to the good/bad aspects of making a deed. This is where the role of *Pancasila* is placed in strengthening the personality of a notary to carry out his/her profession that must reflect the values of truth and goodness. Therefore, the practice of making deeds in Indonesia needs to be adapted to the perspective and way of life of the state following the five precepts of *Pancasila*.

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<sup>61</sup> Endang Purwaningsih, *op.cit.*, 334.

<sup>62</sup> Eka Febriyanti, "Tanggung Jawab Moral Notaris Dalam Menjalankan Tugas Jabatan Sesuai Dengan Sumpah Jabatan" (Master's Thesis, Notary Study Program, Faculty of Law, Sriwijaya University, 2019), 11.

<sup>63</sup> See Jannatha Ramadhona, "Peran Dewan Kehormatan Daerah terhadap Pelanggaran Kode Etik dalam Pemasangan Papan Nama Notaris di Kabupaten Kampar" (Master's Thesis, Notary Study Program, Faculty of Law, Islamic University of Indonesia, 2021), 58.

<sup>64</sup> See the discussion in this paragraph in Intan Puspita Sari, "Budaya Hukum Notaris Dalam Implementasi Undang-Undang Jabatan Notaris Di Daerah Istimewa Yogyakarta" (Master's Thesis, Notary Study Program, Faculty of Law, Islamic University of Indonesia, 2018), 401-403.

### 3. CONCLUSION

Under the Indonesian legal system, a notary is given status as a public official who is specifically authorized to make authentic deeds and other authorities as intended in Indonesian Notary Law. Aside from that, the notary as a legal professional is also obliged to become a member of INI, the only legitimate notary association in Indonesia. This dual role entails that a notary has to obey the Indonesian law and regulations as well as commit to implementing the internal rules established by the association, including the code of ethics.

Similar to Indonesian citizens in general, as well as other legal professions, notaries are also obliged to implement the values of the state ideology, namely *Pancasila*. Normatively, both Indonesian Notary Law and the Code of Ethics of Notary have adopted the values contained in the precepts of *Pancasila* which in general require a notary to have good moral integrity, character, and personality; to uphold professional ethics; to treat clients humanely; to prioritize services for the interests of the community and the state; to have social concerns; and to carry out tasks without merely focused on economic benefits.

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