



The Authority Of Notaries In Making Prenuptial Agreement Deeds: A Study Of The Dimensions Of Professional Ethics

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Abstract: *A prenuptial agreement is an important legal instrument to protect property rights in marriage, the making of which requires an authentic deed by a Notary. This authority is regulated in UUJN and Marriage Law, and requires compliance with professional ethics. This study aims to examine the authority of Notary and the application of professional ethics in the making of the deed. Using normative legal research methods, this study highlights the role of Notary as not only a deed maker, but also a guardian of the principles of justice, free will and impartiality. It is found that the practice in the field often faces ethical challenges such as inequality of bargaining position and potential conflict of interest. Therefore, ethical capacity building, strict due diligence, and strong professional supervision are needed to maintain the legal and moral legitimacy of deeds.*

Abstrak: Perjanjian pranikah merupakan instrumen hukum penting untuk melindungi hak-hak harta dalam perkawinan, yang pembuatannya memerlukan akta otentik oleh Notaris. Kewenangan ini diatur dalam UUJN dan Undang-Undang Perkawinan, serta mensyaratkan kepatuhan terhadap etika profesi. Penelitian ini bertujuan untuk mengkaji kewenangan Notaris dan penerapan etika profesi dalam pembuatan akta tersebut. Dengan menggunakan metode penelitian hukum normatif, penelitian ini menyoroti peran Notaris tidak hanya sebagai pembuat akta, tetapi juga sebagai penjaga prinsip keadilan, kehendak bebas, dan ketidakberpihakan. Hasil penelitian menunjukkan bahwa praktik di lapangan sering menghadapi tantangan etis seperti ketidaksetaraan posisi tawar dan potensi konflik kepentingan. Oleh karena itu, diperlukan penguatan kapasitas etika, uji kelayakan yang ketat, serta pengawasan profesi yang kuat untuk menjaga legitimasi hukum dan moral dari akta yang dibuat

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A. Introduction

Marriage is a sacred bond that binds two individuals in a household, forming a family as the smallest unit in society. In the context of civil law in Indonesia, marriage is not only an emotional bond, but also has significant legal consequences, especially in relation to property brought or acquired during marriage. To anticipate potential disputes related to this financial aspect, modern marriage law provides space for prospective couples to make a *prenuptial agreement*. This agreement is an essential legal instrument in regulating the rights and obligations of each party, especially regarding the separation or mixing of assets before, during, and after marriage.

The existence of a prenuptial agreement not only serves as a legal protection tool for each party, but also reflects the principles of prudence and transparency in asset management. However, the effectiveness and legal force of a prenuptial agreement is highly dependent on the process of making it. In the Indonesian legal system, Notary plays a central role as a public official authorised to make authentic deeds, including prenuptial agreements. This authority is not merely an administrative task, but rather a mandate that demands integrity, professionalism, and adherence to high professional ethics¹. An authentic deed made by a Notary has perfect evidentiary power, so mistakes or irregularities in the process of making it can have a fatal impact on the rights of the parties and the credibility of the law itself.

Although the authority of Notary in making prenuptial agreement deeds has been clearly regulated in laws and regulations², the practice in the field is often faced with ethical dilemmas. Notary, as an independent and impartial party, must be able to ensure that the agreement is made on the basis of free agreement and without coercion from both parties.³ The challenge arises when the Notary is faced with a situation where one of the parties may not fully understand the legal implications of the agreement, or even when there are indications of an imbalance in bargaining position between the prospective husband and wife. In this context, the ethics of the Notary profession becomes a crucial moral foundation and behavioural guideline⁶. Notaries are not only

¹Habib Adjie, *Hukum Notaris Indonesia: Tafsir Tematik Hukum Notaris* (Jakarta: Sinar Grafika, 2017), p. 50.

²Herlien Budiono, *Dasar-Dasar Hukum Notariat dan Perjanjian Notaris* (Bandung: Citra Aditya Bakti, 2015), p. 75.

³G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris, Cet. II* (Jakarta: Erlangga, 1996), pp. 120.

bound by formal legal rules, but also by the noble values of the profession such as justice, honesty, objectivity, and alignment with material truth.

This research aims to examine in depth the authority of Notary in making a prenuptial agreement deed, with the main focus on the review of Notary professional ethics. The research questions to be answered include: How is the authority of Notary in making prenuptial agreement deed regulated according to the prevailing laws and regulations? How is the application of Notary professional ethics in the practice of making prenuptial agreement deed? Also, what are the ethical challenges that may be faced by Notaries in exercising their authority and how to mitigate them? Through normative analysis of laws and regulations, as well as literature study of legal doctrines and views of experts⁴, it is hoped that this research can provide a comprehensive understanding of the role of a Notary who is not only a deed maker, but also a guardian of justice and moral integrity in every legal product he produces. Ultimately, this research is expected to make theoretical and practical contributions to the development of Notarial law and the improvement of the quality of Notary services in Indonesia.

B. Research Method

This research will use the *normative legal research* method. This approach is chosen because the main focus of the research is to examine aspects of positive law, namely laws and regulations relating to the authority of Notaries and prenuptial agreements, as well as the ethical norms of the Notary profession. Normative legal research, also known as doctrinal research, is oriented towards the analysis and systematisation of legal norms that apply in a legal system⁸. This research will use the *normative legal research* method. This approach is chosen because the main focus of the research is to examine aspects of positive law, namely laws and regulations relating to the authority of Notaries and prenuptial agreements, as well as the ethical norms of the Notary profession. Normative legal research, also known as doctrinal research, is oriented towards the analysis and systematisation of legal norms that apply in a legal system.⁵

C. Discussion

1. Legal Basis of Notary Authority in Making Premarital Agreement Deed

Notary's authority as a public official in making authentic deeds is the main pillar in providing legal certainty in Indonesia. The legal basis for this authority is firmly established in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the

⁴Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Liberty, 1999), p. 45.

⁵Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2004), p. 13.

Office of Notary (UUJN). Article 15 paragraph (1) of the UUJN explicitly states that Notaries are authorised to make authentic deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, provide a grosse, copy, and quotation of the deed. A prenuptial agreement, as a form of civil agreement, inherently requires high evidentiary power to protect the rights of the parties and third parties, thus making it a very relevant object to be made in the form of an authentic deed by a Notary.⁶ The strength of this authentic deed, as explained by Herlien Budiono, lies in its ability as perfect evidence that is binding and has high legal certainty, until proven otherwise.⁷

In addition to the UUJN, the basis of Notary's authority in the context of prenuptial agreements is also inseparable from Law Number 1 Year 1974 on Marriage (Marriage Law) and its amendments. Prior to the Decision of the Constitutional Court (MK) Number 69/PUU-XIII/2015, Article 29 paragraph (1) of the Marriage Law expressly stipulated that a marriage agreement could only be made "at or before the time of marriage". This provision often creates practical problems, as many couples only realise the urgency of a prenuptial agreement after the marriage has taken place. Constitutional Court Decision Number 69/PUU-XIII/2015 then became a milestone that changed this paradigm. The Court expanded the interpretation of the phrase to "at the time, before, or during the marriage", opening the opportunity for couples to make a marriage agreement at any time during the marriage period, while still requiring the form of an authentic deed and its recording. This expansion significantly broadens the scope of Notary's work in facilitating the legal needs of the community regarding the regulation of marital property.

Furthermore, the authority of a Notary does not stop at making deeds. Article 29 paragraph (2) of the Marriage Law jo. The Constitutional Court Decision requires marriage agreements to be recorded in the marriage registration register. In practice, this recording obligation is generally carried out by a Notary as part of its services to ensure that the prenuptial agreement deed has legal force that binds third parties. Failure to record a prenuptial agreement may result in the deed only being valid between the parties and cannot be held liable to third parties, potentially leading to losses in the future. Thus, the authority of a Notary in making a prenuptial agreement deed is a holistic series of tasks, starting from drafting, signing, to registration, all of which aim to create legal certainty and protection for the parties.

⁶Herlien Budiono, *Op. Cit*, p. 75

⁷*Ibid.*, p. 18

2. Implementation of Notary Professional Ethics as a Guardian of Justice in Prenuptial Deed Making

Beyond the formal legal framework, the ethical dimension of the Notary profession is paramount, especially when dealing with sensitive issues such as prenuptial agreements. Notary professional ethics is not just a formal written rule, but also a moral foundation that guides every action and decision of a Notary in carrying out his/her official duties. The Code of Ethics of the Indonesian Notary Association (INI) explicitly outlines fundamental principles such as honesty, integrity, independence, impartiality, and confidentiality. These principles become particularly vital in the context of drafting a prenuptial agreement, where the potential for imbalance of information or bargaining power between parties is highly likely.

The principles of impartiality and impartiality require the Notary to act as a neutral and fair third party, not favouring one of the prospective husband or wife.⁸ In practice, the Notary must ensure that the prenuptial agreement deed is not drafted for one-sided benefits, but rather reflects a fair and balanced agreement for both parties. This means that the Notary does not only act as a registrar, but also as an advisor who provides a comprehensive legal explanation of all the implications of the agreement. The Notary is obliged to explain in detail each clause, including the legal consequences related to joint property, inherited property, debts, and how it will impact their lives, both during the marriage and in the event of divorce or death.⁹ If the Notary finds indications of pressure, coercion, or incomprehension from either party, the Notary has an ethical responsibility to refuse to make the deed, or at least advise the aggrieved party to seek independent legal advice.

In addition, the principle of confidentiality is an equally important ethical aspect. The personal and financial information disclosed by the parties to the Notary during the deed-making process is an official secret that must be strictly maintained. Violation of the principle of confidentiality can undermine public trust in the Notary profession and potentially cause harm to the parties. Notaries must also show great care and accuracy in every detail of the deed, ensuring that there are no writing errors or errors of interpretation that could lead to disputes in the future. The implementation of these ethics ensures that the resulting prenuptial agreement deed is not only formally-juridically valid, but also has moral legitimacy and reflects the free will and full understanding of all parties involved.

⁸Habib Adjie, *Hukum Notaris Indonesia: Tafsir Tematik Hukum Notaris* (Jakarta: Sinar Grafika, 2017), p. 150.

⁹G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Cet. II (Jakarta: Erlangga, 1996), p. 125.

3. Ethical Challenges and Mitigation Recommendations in the Practice of Making Prenuptial Agreement Deeds

Although the principles of Notary ethics have been clearly outlined, the practice of making prenuptial agreement deeds is not free from various complex ethical challenges. One of the biggest challenges is the imbalance of *bargaining power* between the husband and wife¹⁰. Often, one party has greater financial power, education, or influence, which can cause the other party to feel pressurised into signing the agreement without full understanding or even true consent. In situations like this, Notaries are at the forefront of ensuring the principle of *free will* is fulfilled. Without ethical intervention from the Notary, a prenuptial agreement that is supposed to be a protective tool can actually become an instrument of injustice.

Another ethical challenge arises when a Notary has a potential conflict of interest, for example due to personal closeness or business relationship with one of the parties. This condition can cloud the objectivity of the Notary and undermine the principle of impartiality. In addition, the lack of transparency or incomplete information from the parties regarding their assets or liabilities is also an obstacle. Notaries cannot draft a comprehensive and fair agreement without accurate data, and there is a risk that the deed does not reflect the actual conditions, despite the Notary performing his/her duties professionally.

To address these ethical challenges, several mitigation recommendations can be proposed:

1. Improving the Capacity and Competence of Notaries in Ethics and Family Law:

Notaries need to continuously pursue education and training that not only deepens their understanding of matrimonial and property law, but also hones their ethical sensibilities and communication skills to identify and address bargaining imbalances.¹¹ Case study training focusing on ethical dilemmas in prenuptial agreements would be particularly beneficial.

2. Stricter Implementation of *Due Diligence* Procedures: Notaries should adopt more proactive *due diligence* procedures, not just limited to identity verification. This includes conducting separate interviews with each party to ascertain their individual understanding and free will, as well as recommending that they seek legal advice from independent legal

¹⁰Mila Sari, "Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Pranikah Ditinjau Dari Aspek Etika" *Jurnal Notariil*, Vol. 7, No. 1 (2022): 52.

¹¹Budi Utama, "Peningkatan Profesionalisme Notaris Melalui Pendidikan Berkelanjutan," *Journal of Legal Science*, Vol. 12, No. 2 (2020): 87.

counsel before signing the deed.¹² Allowing sufficient time before signing is also important so that the parties have the opportunity to think and discuss.

3. Strengthening the Role of Professional Organisations and Notary Supervisory Council:

The Indonesian Notary Association (INI) and the Notary Supervisory Council have a central role in enforcing the Code of Ethics. Regular socialisation of the code of ethics, issuance of *best practices* guidelines for prenuptial agreement cases, and strict enforcement of sanctions against ethical violations will build better professional awareness and discipline. Easily accessible and transparent complaint mechanisms also need to be strengthened.

With the implementation of these mitigation measures, it is expected that Notaries can exercise their authority in making prenuptial agreement deeds not only in accordance with legal corridors, but also with high moral integrity and professionalism. This is crucial to maintain public trust in the Notary profession and ensure that the agreements made truly provide certainty and justice for all parties involved.

D. Conclusion

Based on the comprehensive discussion that has been conducted, several main conclusions can be drawn as follows:

1. The authority of a Notary in making a prenuptial agreement deed has a solid legal basis in the Indonesian positive legal system. The Notary Position Law (UUJN) provides legitimacy for Notaries to make authentic deeds that have perfect evidentiary power, including prenuptial agreements. The expansion of the interpretation of Article 29 of the Marriage Law by the Constitutional Court Decision Number 69/PUU-XIII/2015 has broadened the scope of time for making a marriage agreement, allowing the deed to be made "at, before, or during the marriage". This significantly increases the flexibility and accessibility of the public in organising their assets through Notary's authentic deeds, while expanding the scope of work of Notaries. The obligation to register the prenuptial agreement deed in the marriage registration register is also an integral part of the Notary's authority to ensure binding legal force against third parties.
2. The ethical dimension of the Notary profession plays a very important and *paramount* role in the practice of making prenuptial agreement deeds. Notaries are not only bound by formal

¹²Dewi Anggraini, "Perlindungan Hukum Bagi Pihak Dalam Perjanjian Pranikah," *Journal of Family Law*, Vol. 5, No. 2 (2020): 130.

legal norms, but also by noble ethical principles such as honesty, integrity, independence, impartiality, and confidentiality. In the making of sensitive prenuptial agreements, the implementation of these ethics requires the Notary to not only act as a mere registrar, but as a neutral legal advisor. The Notary is obliged to ensure the free will and full understanding of both parties regarding the entire contents and legal consequences of the agreement. Comprehensive explanations, objectivity in every clause, and maintaining the confidentiality of information are reflections of responsible ethical practices.

3. Despite being strictly regulated, the practice of making prenuptial agreement deeds still faces a variety of complex ethical challenges, particularly regarding the imbalance of bargaining power between the parties. Other challenges include the lack of legal understanding of one of the parties, potential conflicts of interest of the Notary, and pressure from third parties. To mitigate these challenges, continuous efforts are needed in the form of increasing Notary competence, implementing stricter *due diligence* procedures, as well as strengthening the role of professional organisations and the Notary Supervisory Council in enforcing the code of ethics and providing best practice guidelines.

Suggestions

Based on the above conclusions, the following are some suggestions:

1. For Notaries:

- a. **Improve Ethical Sensitivity and Communication Skills:** Notaries are advised to actively develop their ethical sensitivity and interpersonal communication skills, especially in recognising and handling indications of bargaining imbalance or pressure on either party. This includes allowing sufficient time for the parties to understand, consider, and even recommending consultation with independent legal counsel if needed.
- b. **Implement Proactive *Due Diligence* Procedures:** In addition to formal identity verification, Notaries are expected to conduct more in-depth substance verification, including separate brief interviews with each party to ensure free will and equal understanding.
- c. **Continuing Education:** Continue to update knowledge on the development of marriage law, property law, and the latest jurisprudence cases related to prenuptial agreements, as well as deepening professional ethics through seminars, workshops, and training organised by the Indonesian Notary Association (INI).

2. For the Indonesian Notary Association (INI) and the Notary Supervisory Council:

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- a. **Developing Detailed *Best Practices* Guidelines:** INI and the Supervisory Board are advised to develop more detailed best practice guidelines and concrete case studies related to the handling of ethical dilemmas in the preparation of prenuptial agreement deeds. This guideline can serve as a reference for Notaries throughout Indonesia.
 - b. **Strengthen the Socialisation and Enforcement of the Code of Ethics:** Periodically conduct intensive socialisation of the Notary Code of Ethics, especially Articles relating to impartiality, prudence, and confidentiality. Consistent and transparent enforcement of sanctions against ethical violations also needs to be strengthened to maintain the dignity of the profession.
 - c. **Building an Effective Complaint System:** Ensure that there is an easily accessible, transparent and responsive complaint mechanism for people who feel aggrieved or find indications of ethical violations in the preparation of prenuptial agreement deeds.

With the implementation of these suggestions, it is hoped that the Notary profession can continue to develop into the frontline in maintaining legal certainty and justice, especially in facilitating the public's need for a fair, transparent, and legally and ethically valid prenuptial agreement deed.

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