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The Duty of Notaries to Maintain Deed Confidentiality in the Perspective of Professional Ethics and Positive Law

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Abstract: The obligation of notaries to maintain the confidentiality of deeds is one of the core elements of their professional function as public officials. This duty derives not only from statutory provisions under the *Law on Notary Office (UUJN)* but also from professional ethics that protect the integrity of legal transactions and the privacy of the parties. However, in practice, notaries may face conflicting demands between safeguarding confidentiality and fulfilling legal obligations to provide information in judicial or administrative proceedings. This conflict creates a normative dilemma that requires further examination from the perspective of both positive law and professional ethics. This study employs a normative juridical method using statutory, conceptual, and case approaches. The statutory approach analyzes the provisions of the UUJN, the Notary Code of Ethics, and relevant laws governing confidentiality in legal services. The conceptual approach investigates the theories of legal responsibility, ethical accountability, and the principle of confidentiality as developed in professional legal doctrine. Meanwhile, the case approach examines judicial decisions in which notaries were required to disclose information or provide deed copies during litigation or law enforcement processes. These approaches aim to determine whether confidentiality is absolute or subject to lawful limitations. The research concludes that confidentiality is not an unrestricted right but a qualified duty bound by ethical standards and legal boundaries. A balance must therefore be struck between the protection of private interests and the fulfillment of justice in legal proceedings. To ensure legal certainty, a clearer regulatory mechanism is needed one that defines the scope of confidentiality, the proper procedures for request and disclosure, and the legal consequences for violations. Strengthening ethical awareness and regulatory clarity will reinforce the notary's role as both a guardian of trust and a servant of the legal system.

Keyword: Notary, Deed Confidentiality, Professional Ethics, Legal Responsibility, Positive Law.

INTRODUCTION

Notaries hold a strategic position in the legal system as public officials authorized to create authentic deeds with full evidentiary force. Their function is not merely administrative,

but also instrumental in protecting the privacy, trust, and legal certainty of the parties involved. One of the fundamental obligations attached to the office of notary is the duty to maintain the confidentiality of deed contents, which is essential in safeguarding the integrity of legal transactions. This obligation distinguishes notaries from other legal professionals, as it combines both public authority and private trust.

The duty of confidentiality is explicitly regulated in the *Law on Notary Office (UUJN)* and reinforced in the Notary Code of Ethics, which prohibits notaries from revealing information obtained in the course of their profession unless legally justified. The ethical nature of this obligation is grounded in the concepts of professionalism, integrity, and legal reliability. However, it does not operate in isolation. Notaries are sometimes legally required to disclose information in certain judicial or administrative procedures, particularly when requested by courts, investigators, or supervisory bodies.

This situation creates a normative conflict: notaries are ethically bound to preserve confidentiality, yet they are legally required to support judicial truth-seeking processes. When these duties collide, the notary faces a dilemma whether to uphold confidentiality or to comply with legal demands based on public interest. The challenge lies in determining whether the obligation of confidentiality is absolute or conditional, and to what extent it may be limited by higher legal principles, such as justice, transparency, and due process.

In many cases, confidentiality is tested in court proceedings, especially when a notarial deed becomes evidence in a civil or criminal dispute. Parties often request copies of deed minuta, testimonies, or notarial clarifications regarding the content or intent of the deed. While the UUJN permits notaries to provide certified copies to authorized parties, it also restricts disclosure when it may violate privacy or harm the legal interests of other parties. This inconsistent interpretation frequently leads to legal uncertainty.

From a theoretical perspective, the duty of confidentiality may be viewed as both an ethical obligation and a legal responsibility. As an ethical obligation, it is tied to the trust that parties place in the notary. As a legal responsibility, it stems from statutory mandates that bind the notary to perform their duties within the principles of prudence, accountability, and confidentiality. Therefore, analyzing confidentiality solely as a moral standard would be insufficient, as it also carries enforceable legal consequences, including administrative, civil, and even criminal liability.

The lack of clear procedural boundaries has resulted in uncertainty about when a notary must remain silent and when they must disclose information. Some judicial decisions allow notaries to testify or provide deed copies under court order, while others emphasize the sanctity of confidentiality. This inconsistency highlights the need for a more comprehensive legal framework that harmonizes privacy protection, professional ethics, and judicial necessity, ensuring that the role of the notary remains legally and ethically coherent.

Based on these considerations, this study aims to analyze the nature and limits of the notary's duty of confidentiality in the context of positive law and professional ethics. The objectives of this research are: (1) to identify the normative basis of notarial confidentiality; (2) to determine the legal implications when a notary discloses or refuses to disclose confidential information; and (3) to formulate solutions for balancing confidentiality, legal certainty, and public interest. This study ultimately seeks to strengthen the positioning of notaries as both protectors of privacy and servants of the legal order.

METHOD

This research employs a normative juridical approach, which examines legal norms through systematic interpretation of statutes, doctrines, and ethical principles rather than through empirical data. The focus of this method is to analyze the legal foundation of the notary's duty of confidentiality and its relation to professional ethics and judicial obligations.

By evaluating written legal norms, the study aims to construct a coherent legal argument concerning the scope and limits of confidentiality in notarial practice. Three analytical approaches are used in this research: statutory approach, conceptual approach, and case approach. The statutory approach is applied to examine provisions of the *Law on Notary Office (UUJN)*, the Notary Code of Ethics, and relevant legislation governing confidentiality in legal procedures. The conceptual approach analyzes legal theories related to responsibility, privacy, and ethical accountability as developed in the doctrine of professional legal ethics. Meanwhile, the case approach explores judicial decisions involving requests for disclosure of deed information, providing insight into how courts interpret the duty of confidentiality in practice. The legal materials utilized in this study consist of primary, secondary, and tertiary sources. Primary legal materials include statutory regulations and court decisions related to confidentiality and notarial duties. Secondary materials consist of textbooks, academic articles, scholarly commentary, and ethical guidelines. Tertiary materials include legal dictionaries and reference works supporting the analysis. All materials are examined using qualitative analysis with deductive reasoning, beginning with general legal and ethical principles and moving toward specific conclusions regarding notary liability and the scope of confidentiality under Indonesian law.

RESULTS AND DISCUSSION

The Normative Basis of Deed Confidentiality in Notarial Law

The duty of confidentiality forms one of the essential pillars of notarial authority. Within the framework of Indonesian law, this duty is grounded in the public character of the notary as a state-appointed official, and the private nature of the legal transactions entrusted to them. The *Law on Notary Office (UUJN)* assigns notaries a dual role: representing the state in ensuring legal certainty while simultaneously protecting the privacy and legitimate interests of the parties. This dual mandate establishes a normative foundation for confidentiality as both a legal obligation and a professional responsibility.

Article 16 of the UUJN explicitly requires notaries to maintain secrecy regarding the contents of deeds and any information obtained in the exercise of their office. This provision is reinforced by the Notary Code of Ethics, which classifies confidentiality as a core professional value and prohibits disclosure except under lawful circumstances. These legal and ethical constraints establish confidentiality as a mandatory duty rather than a discretionary practice. In this sense, confidentiality ensures the integrity of legal transactions by preserving the parties' legitimate expectations of privacy and reliability.

From a theoretical perspective, confidentiality aligns with the principle of fiduciary responsibility, a concept commonly invoked in the doctrine of legal ethics. The notary is entrusted with sensitive information, and this trust requires a heightened degree of professional integrity. As such, confidentiality is not only a procedural formality but also a form of legal protection for parties who rely on notaries to safeguard their legal interests. Without confidentiality, the authenticity of the deed would lose its credibility as a secure instrument of legal certainty.

The normative foundation of confidentiality also serves to uphold procedural justice. Legal transactions often involve delicate personal or economic information, and revealing such information without justification may harm the parties or compromise ongoing legal relationships. The confidentiality duty therefore performs a protective function within the legal system, ensuring that information disclosed in trust is not exploited or used against the interests of one or both parties. This protection contributes to maintaining public confidence in notarial institutions as guardians of law and privacy.

In conclusion, the duty of confidentiality is anchored in statutory mandates, ethical principles, and doctrinal foundations of legal trust and protection. The notary is not merely a

technical document drafter but a legal gatekeeper who ensures that sensitive information remains secure unless a lawful exception applies. By safeguarding confidentiality, the notary fulfills their role as a protector of legal certainty and professional ethics. Without this normative foundation, the credibility of notarial practice and the legal certainty it aims to uphold would be at significant risk.

Legal Conflicts: Confidentiality vs. Judicial and Administrative Demands

While confidentiality is a fundamental obligation in notarial practice, it is not absolute. Indonesian law recognizes certain circumstances where the notary may be legally required to disclose deed information, particularly when such disclosure supports judicial proceedings or serves the public interest. This creates a normative tension between the protection of private legal affairs and the pursuit of justice in legal processes. The conflict is sharpened when both obligations originate from binding legal norms one requiring silence, the other requiring cooperation with law enforcement or judicial authorities.

The UUJN does not provide clear procedural guidance on how notaries should respond when confidentiality conflicts with legal demands for disclosure. Article 16 paragraph (1) mandates confidentiality, while Article 66 allows judicial authorities to request deed copies through the Notary Supervisory Council. However, this procedural mechanism is often interpreted inconsistently some courts strictly follow it, while others bypass the supervisory process by summoning notaries directly as witnesses. These inconsistencies create legal uncertainty and expose notaries to potential disciplinary or legal liability.

The conflict becomes more complex in criminal investigations, especially in cases involving fraud, forgery, or money laundering where notarial deeds may serve as key evidence. Investigators often request notaries to submit minuta deeds and testify regarding client information. When notaries comply, they risk violating their duty of confidentiality; when they refuse, they risk obstructing justice. This dual liability dilemma reflects the lack of a clear legal hierarchy between confidentiality and law enforcement obligations.

From an ethical standpoint, disclosure in legal proceedings must be limited and justified. The principle of minimum disclosure requires that only essential information be provided, and only when there is a legal basis such as a court order. However, in practice, many notaries lack procedural guidance on how to safely and legally comply with disclosure requests while maintaining professional integrity. As a result, disclosure decisions often rely on personal judgment rather than clear legal norms, which increases the risk of inconsistent interpretation.

Jurisprudence reveals that courts tend to prioritize judicial truth-seeking in cases where confidentiality conflicts with procedural justice. Several court decisions interpret confidentiality as a qualified duty, which may be limited when disclosure is necessary to prevent fraud, protect the public interest, or resolve disputes. However, judicial reasoning is not uniform; some courts emphasize confidentiality as a form of legal protection that should not be breached without legal necessity, especially when third-party interests are involved.

This inconsistency highlights the need for a procedural balancing mechanism, one that harmonizes confidentiality with statutory obligations to cooperate with judicial authorities. Ideally, the disclosure process should involve the Notary Supervisory Council (*Majelis Pengawas Notaris*) as an intermediary, ensuring that disclosure is lawful, proportional, and ethically justified. Such a mechanism would prevent arbitrary disclosure while ensuring that notarial confidentiality does not obstruct justice.

Overall, the conflict between confidentiality and disclosure obligations demonstrates that notarial confidentiality is neither absolute nor purely discretionary. Instead, it is a conditional obligation valid except where overridden by higher legal principles such as justice, due process, and public interest. Recognizing confidentiality as a qualified duty allows for a

more balanced and context-sensitive implementation that protects both privacy and the integrity of legal proceedings.

Confidentiality as an Ethical and Professional Responsibility

Beyond statutory obligations, the duty of confidentiality represents a core ethical value in notarial practice. As entrusted public officials, notaries hold a position of fiduciary responsibility, where clients rely on their integrity to safeguard personal and legal information. This ethical dimension is strongly embedded in the Notary Code of Ethics, which treats confidentiality as an enduring obligation that survives even after the transaction is completed. Thus, confidentiality is not only a procedural duty but also a manifestation of professional honor and public trust.

The ethical obligation to maintain confidentiality is closely tied to the principle of professional integrity. A notary must act as a neutral and reliable intermediary, ensuring that no personal advantage or external pressure influences the accuracy or secrecy of legal documents. Ethical integrity requires that the notary refrain from disclosing or exploiting information gained during their official duties. Breaches of confidentiality may undermine not only the credibility of the individual notary but also the public confidence in the notarial institution as a whole.

In addition, confidentiality serves a preventive legal function. Even when disclosure is legally permissible, the notary must evaluate whether revealing certain information could harm the parties or jeopardize their legal interests. This ethical barrier ensures that the notary does not become an instrument of injustice or unfair advantage. The principle of “first, do no harm” commonly associated with professional ethics may be applied to notarial practice as a guiding standard for confidentiality and discretion.

Ethical responsibility also requires sound legal judgment. Notaries must carefully distinguish between situations in which confidentiality is mandatory and those in which disclosure is permitted or required by law. This judgment involves balancing statutory obligations, ethical considerations, and the preservation of legal certainty. To do so effectively, notaries must possess not only legal knowledge but also ethical awareness and practical discernment, enabling them to decide responsibly in complex situations.

Ultimately, confidentiality reflects the moral identity of the notary as a guardian of trust, privacy, and justice. Ethical duty gives substance to legal norms by ensuring that confidentiality is not merely a formal requirement but a lived commitment within professional practice. Without ethical adherence, statutory provisions are insufficient to guarantee the protection of legal interests. Therefore, confidentiality must be integrated into professional training, supervision mechanisms, and normative guidelines to ensure that the notary’s role remains ethically grounded and socially respected.

Toward a Balanced Legal Framework and Ethical Compliance

The conflict between confidentiality and judicial cooperation demonstrates the need for a more comprehensive regulatory framework that clearly defines the limits and procedures for disclosure. Legal norms should explicitly distinguish between cases where confidentiality is mandatory and where it may be lawfully overridden in the interest of justice. A structured mechanism involving the Notary Supervisory Council could ensure that disclosure is granted only under lawful, proportional, and ethically justified circumstances, thereby preventing arbitrary or excessive demands for information.

Institutional strengthening is essential to support ethical compliance. Regular training on confidentiality, professional judgment, and reporting standards should be integrated into notarial supervision. Additionally, improved coordination between the Ministry of Law and Human Rights and law enforcement authorities is necessary to create uniform procedures that

respect both privacy rights and judicial needs. The development of standardized forms, protocols, and digital verification systems could further minimize the risk of disclosure errors.

Ultimately, confidentiality must be viewed as a qualified duty one that is preserved unless a higher legal principle demands otherwise. The role of the notary is therefore to maintain a balance between safeguarding parties' privacy and fulfilling their obligation as a servant of the legal system. By reinforcing ethical standards and establishing clearer legal guidelines, Indonesia can uphold a notarial institution that is both legally reliable and ethically sound, thereby maintaining public trust and advancing the development of a responsible legal culture.

CONCLUSION

This study concludes that the duty of confidentiality in notarial practice is not merely an administrative formality but a fundamental legal and ethical obligation derived from both statutory provisions and professional norms. Confidentiality safeguards the integrity of legal transactions by protecting the privacy, autonomy, and legitimate interests of the parties. As a result, it represents a crucial foundation for legal certainty and public trust in the notarial institution.

However, confidentiality is not absolute. Judicial and administrative demands may require notaries to disclose deed-related information when necessary to uphold justice and due process. This situation creates a normative tension that must be resolved through clear legal guidelines and ethical standards. Confidentiality should therefore be recognized as a qualified duty valid unless restricted by a higher legal principle or lawful procedural requirement.

To ensure legal certainty and ethical accountability, a balanced framework is required. This includes clearer regulatory mechanisms, structured disclosure procedures, and ethical training for notaries. Strengthening supervisory institutions and harmonizing legal norms will help prevent arbitrary disclosure while ensuring that confidentiality does not obstruct access to justice. Through this balanced approach, the notary can fulfill their dual role as protector of privacy and servant of the legal order while maintaining public confidence and advancing a responsible legal culture in Indonesia.

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