

Notary social responsibility in making deeds for disordered communities

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ABSTRACT

This study aims to find out the legal provisions related to the determination of the notary's honorarium which has been regulated by law, the social responsibility of the notary in helping to make deeds for people who can't afford it, and the legal sanctions for a notary who refuses to provide services to people who can't afford it. This research is normative juridical research with a literature review approach to legislation which is analyzed qualitatively. The results of this study indicate that a notary is a state official who is authorized to provide notary services to the public in general so that he is not paid by the state, but he can collect honorarium from his client in the amount as stipulated by UUJN and also based on an agreement between the notary and his client; the notary is also obliged to provide free services to people who cannot afford to pay the honorarium because this is their obligation as stipulated in Article 37 UUJN; and a notary who refuses to provide free services to people who can't afford it, he will be subject to sanctions in the form of a written warning, temporary dismissal, honorable discharge, or dishonorable discharge.

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1. Introduction

A notary is a public official who is authorized to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties (people who want to use their services) to be stated in an authentic deed. The notary is also authorized to guarantee the certainty of the date of making the deed, keep the deed, and provide grosse, copies and quotations of the deed as stated in Article 1 jo. Article 15 of Law Number 30 of 2004 concerning the Position of Notary which has been amended by Law Number 2 of 2014 (hereinafter referred to as UUJN). Observing the limitations of the notary's understanding and authority as mentioned above, it can be said that the main task of a notary is to make authentic deeds, and his main obligation is to provide services to people who need evidence in the form of an authentic deed regarding a certain legal action (Budi, 2016).

The role of a notary is to accommodate civil law actions committed by the public. The position of a Notary is not in the executive, legislative and judicial institutions so that he can be trusted as an impartial expert in making authentic deeds. Deeds drawn up by authorized public officials which contain or describe authentically an action taken or a situation seen or witnessed by the public by the general official making the deed. Authentic deeds produced by a Notary can be accounted for and protect clients in carrying out legal actions. The strength of the authentic deed produced is perfect proof for the parties, so that if a party files an objection it can be proven at the court table. The position of a notary is very important for the community to assist in providing legal certainty and preventing legal problems from occurring in the future, through an authentic deed made as a perfect proof tool in court. The notary is an honorable profession that is always attached to ethics, and it is with ethics that notaries relate to work (Gunawan, et al, 2020).

In carrying out his profession, a Notary is allowed to ask for or receive an honorarium for services rendered to the public. The amount of notary honorarium has also been regulated in the 2004 Notary Office Law, so that in this context, a Notary may not ask or demand an arbitrary amount of honorarium, because this has been regulated in the Notary Position Law. Determination of the amount of the Notary's honorarium is based on the economic value and sociological value of each deed he makes, as stipulated in Article 36 of the Notary Office Law. Apart from being based on the provisions of Article 36 of the Law on Notary Office, the amount of honorarium is also based on the determination of the Association of Indonesian Notaries (hereinafter referred to as INI), as in the Notary Code of Ethics (hereinafter referred to as KEN) in Article 3 number (13) KEN, Notaries are required to carry out and comply with the provisions regarding the honorarium set by the association.

On the other hand, lately the community's need for the services of making authentic deeds made by a Notary has been increasing, both for this need for land rights, making sale and purchase agreements, and so on. Some groups of people can easily get notary services, while other groups are still very difficult to get notary services. One of the factors causing the community's difficulty in obtaining notary services is due to their inability to pay honorarium to notaries.

The inability of the community to provide honorarium due to economic factors has an impact on the Notary. On the one hand, the Notary must carry out his obligations regulated by law, while on the other hand, he must provide free services. In this context, a notary is not allowed to refuse the services of drafting a deed needed by the public, especially those who are unable to come to ask for their services (in the provisions of the Notary Office Law in the notary sector for people who are less able or unable) (Ningsih, 2019). If indeed the Notary wants to refuse to provide his services to those who need him, then the refusal must be a refusal in a legal sense, in the sense that there are clear and firm reasons or legal arguments so that the parties concerned can understand it (Gunawan, et al, 2020).

In fact, in dealing with people who are poor/not yet able to pay honorarium as stipulated by the Notary Office Law and KEN, Notaries still have another alternative, which is to minimize the honorarium that must be paid by clients who are less/not well off. However, this step still will not erase the gap between the Notary's obligation to comply with the provisions of the code of ethics for determining the honorarium for making a Notary deed which is below the minimum amount, on the other hand the Notary must provide free services for the poor. So that with this gap, the Notary certainly feels disadvantaged by the rule. For this reason, some Notaries still often refuse to provide services to clients who are less/have not been able to pay a Notary's honorarium. This refusal is certainly a violation committed by the Notary.

2. Method

2.1. Types of Research

This research uses normative juridical legal research, namely legal research that examines and examines the legal norms contained in the provisions of laws and regulations (Asyhadie, SH, & Rahmawati Kusuma, 2019; Indriati & Nugroho, 2022). The approach used in this study is the statutory and conceptual approach. The legal material used is the notary social responsibility in making deeds for disordered communities. Legal material processing techniques are carried out with library techniques (Indriati & Nugroho, 2022; Putra, Najwan, Rahmalia, & Daud, 2021). Library techniques are carried out by recording and understanding the contents of each information obtained from existing legal materials. The legal material analysis technique used in this study is a descriptive technique, namely a technique used to analyze a problem that must be used in a study.

3. Results and Discussion

3.1. Purpose of Determination of Notary Honorarium

Legal services in the notary sector are needed by every class of society. The use of notary services by people who can afford it can be done by paying an honorarium to a notary. This is the opposite with the poor community, that is, they cannot provide honorarium to the Notary. Differences in economic ability have an impact on the use of Notary services. Basically, notaries may not refuse any client who comes to carry out legal actions in the notary field in accordance with Article 37 paragraph (1) of the Notary Office Law "Notaries are obliged to provide legal services in the notary field free of charge to people who can't afford it".

Notaries as public officials appointed by the state, do not receive an honorarium from the state but receive an honorarium for the legal services provided in accordance with their authority. The amount of honorarium received by a Notary in the Notary Office Law is not regulated absolutely but is adjusted to the conditions of each region. It is possible that there is an agreement to determine the honorarium between the Notary and the client, so that there is no similarity in honorarium among Notaries. Notary honorarium arrangements in the case of making authentic deeds in Article 36 of the Notary Office Law stipulates that notaries are entitled to receive honorarium for legal services provided in accordance with their authority; the amount of honorarium received by a Notary is based on the economic value and sociological value of each deed he makes; the economic value referred to in paragraph (2) is determined from the object of each deed; up to Rp. 100,000,000.00 one hundred million rupiah or the equivalent of a gram of gold at that time, the maximum honorarium received was 2.5%; above with Rp. 100,000,000.00 one hundred million rupiah up to Rp. 1,000,000,000.00 one billion honorariums received at most 1.5%; above Rp. 1,000,000,000.00 one-billion-rupiah honorarium received is based on an agreement between the Notary and the parties but does not exceed 1% in accordance with the object for which the deed is made; and the sociological value is determined based on the social function of the object of each deed with a maximum honorarium of Rp. 5,000,000.00 five million rupiah.

If you look closely at Article 36 Paragraph (2) of the Notary Office Law, it reads, "The amount of honorarium received by a Notary is based on the economic and sociological value of each deed he makes. From a few percent the sociological and economic value needs to be determined. This is very difficult because the Notary determines the exact sociological value of making the deed. In fact, Article 36 paragraph 2 of the Notary Office Law is unsatisfactory. It can be said that the amount of honorarium made by public officials is based on the economic definite value and sociological definite value of all deeds made. the exact value of sociology, with this it will certainly be difficult for public officials to know for sure some economic values and the exact value of sociology to find certainty about the result. The honorarium that will be received by the maker of the deed is based on the exact magnitude of the economic and sociological results for which the deed was made.

Furthermore, in the explanation of Article 36 paragraph 4 that a deed has certainty in sociology and has social duties based on Article 36 of the Notary Office Law. For example, deed of establishment of a foundation, deed of establishment of a school and deed of construction of a hospital. In addition, Article 37 of the Notary Office Law states that a Notary is obliged to provide services free of charge to people who can't afford it. Law in the notary world must refer to the Notary Office Act and comply with the Notary's code of ethics, so that in carrying out this profession the Notary must

be good in the community so that he is not seen as arbitrary and must have strong dignity so that complaints do not occur. (Prasetyo, 2017).

The objective of the Honorarium is regulated in the Notary's position organization by setting a minimum tariff for Notary services so that equality for each Notary is achieved. Then a penalty is given in the form of a violation of the Notary's services. There are three causes for the obligations of the Notary Office Law concerning the provision of legal services to underprivileged people, namely: humanity, the candor of the client who meets him, the certainty of the Notary to the client who faces that the person is underprivileged (Gunawan, et al, 2020). In addition to setting the honorarium, this is also carried out so that notaries and the public can carry out transactions safely and comfortably, and as legal protection for both parties so that they do not harm each other in the future.

3.2. Social Responsibility of Notaries in Making Deeds for Poor Communities

Law is an inseparable part of the life of human society so that in society there is always a legal system, where there is society there are legal norms (*ubi societas ibi ius*). According to Cicero, the rule of law must refer to respect and protection for the nobility of human dignity. The law seeks to maintain and regulate the balance between selfish individual interests or desires and common interests so that conflicts do not occur. Presence of law wants to uphold the balance of treatment between individual rights and collective rights. Therefore, in essence the law must be certain and fair so that it functions as it should (Sagala, 2016).

This shows that in essence Notaries are defenders of truth and justice so that law enforcers must act in good faith and sincerely, so that the legal profession is an honorable and noble profession (*officium nobile*). Because they are noble and honorable, legal professionals should perceive this profession as their choice and at the same time their calling to serve others in the legal field. However, ironically the legal profession lacks social awareness and concern. This can be seen by legal experts as hired people who are paid handsomely by their clients, services are only given to people who have money.

In making legal actions, the form of the deed is regulated by law and in terms of making justice in the deed, the notary can help the parties make the deed in accordance with the function of law enforcement by adding several criteria if it does not conflict with other laws and regulations so that the parties get justice in the legal actions they make. So, it can be taken an assessment that the Notary has a very big role in creating justice from various kinds of legal actions in society because every deed has the force of law. According to Abdulkadir Muhammad, for a job to be called a profession there are several conditions that must be met, including the existence of job specialization, based on expertise and skills, it is fixed and continuous, prioritize service over rewards, have a high sense of responsibility, and grouped in professional organizations (Sagala, 2016).

If we look at the fourth point where a Notary should prioritize service over rewards, this shows that the Notary profession is basically more community service oriented. This means that people must get the best possible service, regardless of the strata of their economic life, both the rich and the poor must be served. Notary services to the public are part of their professional social responsibility as state officials. The notary's responsibility for the deed made is guided by several principles, including the following the principle of liability based on fault, the principle of presumption to always be legally responsible if there is an element of always being responsible (presumption of liability), the principle of absolute responsibility (strict liability), the principle of presumption of non-liability, and the principle of liability in limitations (limitation of liability). The notary must be responsible when there is an error in the deed made, whether intentionally or unintentionally made by the Notary (Yulianti & Anshori, 2021).

Article 37 paragraph (1) of the Notary Office Law also emphasizes that "Notaries are obliged to provide legal services in the notary field free of charge to people who can't afford it." The article shows that people who can't afford can be given notary services free of charge. The existence of article 37 paragraph (1) of the State Notary Office Law guarantees all the rights of its citizens without exception while in the territory of the Republic of Indonesia. This statement has been expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Even though the meaning contained in Article 37 (1) of the Notary Office Law needs to be clarified, even though it is clearly stated in the appendix "general explanation". Qualification standards for disabled people need clarification, so they can be implemented. Legal norms should contain normative

facts that should be carried out, so that they can be carried out without causing multiple perceptions in Article 37 paragraph (1) of the Notary Office Law, so that the need for legal services in the notary field can be provided to the public and does not recognize social status, both from able people or less fortunate people who need legal services must get the same service from a Notary (Abukasi, 2021).

On the other hand, the meaning contained in article 37 (1) of the Law on the Office of Notaries is experiencing a blurring of norms, this is because the article does not explain in detail the meaning of legal services in the notary sector, qualification standards for incapacitated persons and types of legal services. what kind of notary field must be given by a notary free of charge to people who can't afford it. The obscurity of this norm results in the law creating loopholes which can be exploited by parties who do not have good intentions and can injure the notary profession which is very dignified. Legal norms should contain normative facts that should be carried out, so that they can be implemented without causing multiple perceptions.

The use of notary services by people who can afford it can be done by giving an honorarium to a notary, but conversely if using notary services by people who can't afford it, the notary may not charge an honorarium. Differences in economic ability have an impact on the use of Notary services, basically a Notary may not refuse any client who is classified as incapacitated who comes in good faith to carry out a legal action in the notary sector in accordance with Article 37 paragraph (1). The article indicates that people who cannot afford notary services can be provided free of charge. It is difficult to distinguish which notaries provide honorarium services for free or do not charge fees to clients who are incapacitated, and vice versa, i.e. notaries cannot distinguish between incapacitated and capable persons, so it is likely that notaries who provide notary services are including making authentic deeds free of charge to people who can afford it because it is difficult to distinguish between people who can afford it and people who can't afford it so that Notaries often lead to unfair competition among Notary colleagues.

In Article 3, changes to the KEB at the Extraordinary Congress conducted by INI, which was held in Banten in May 2015. Several provisions related to the Notary Code of Ethics are explained which include several obligations, including have good morals, character and personality; respect and uphold the dignity of the Notary Office; maintain and defend the honor of the association; be honest, independent, impartial, trustworthy, fellow, full of responsibility based on laws and regulations and the contents of the Notary's oath of office; prioritizing service to the interests of society and the state; providing services for making deeds and other authorities for people who can't afford it without charging an honorarium; paying bereavement money to help the heirs of a deceased colleague; carry out and comply with all provisions regarding the honorarium set by the association; and treat every client who comes in kindly and does not differentiate between their economic status and/or social status.

The rules above are part of the code of ethics that must be obeyed by a Notary in exercising his authority. Ethics is a system of values and moral norms that guide individuals or a group in regulating their behavior (Supriyanta, 2013). Profession of Notary in carrying out his position Notary must comply with KEN. The purpose of the Code of Ethics is for Notaries to carry out their positions with morals or dignity, motivation, and orientation to intellectual skills and to be able to argue rationally and critically and uphold the values of norms (Prayojana, 2017).

The KEN made by the Notary association, namely INI, includes all the rules regarding morals that have been determined by the Association which is a member of the INI association based on the decision of the INI Congress and the statutory rules that determine the procedures for Notary work that apply to Notary members in INI and everyone who in charge of carrying out the position of Notary, besides that it also includes substitute Notaries who carry out their duties and work and officials who only temporarily serve as Notaries (Laytno & Seiabudhi, 2019).

KEN and the Notary Office Law bridge the meaning of the notary profession itself. The Law on Notary Position and the Notary Code of Ethics expects that a Notary in carrying out his duties, in addition to complying with the Law on the position of a Notary, must also obey and adhere to the code of ethics of the Notary profession and can also be responsible to the community he serves, the professional organization (INI) and country. Notaries must be able to account for all their actions as a deed maker (Farizal, et al, 2022).

3.3. Legal Sanctions for Notaries who Refuse to Make Deeds for Poor People

Notary is a legal profession that is needed in making authentic deeds. An authentic deed is strong evidence and if a case or dispute occurs in court, then the notary deed and PPAT provide a perfect proof as stated in Article 1870 of the Civil Code. Deeds made by a Notary can be a legal basis for the status of a person's property, rights, and obligations (Nurlete, 2020).

The state authorizes notaries to provide services to the community. The authority of a Notary based on Article 15 paragraph (1) of the Notary Office Law, namely the authority to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guarantees certainty date of making the deed, keeping the deed, providing grosse, copy and quote of the deed, as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law.

Notaries are bound and obedient to the regulations governing the position of a Notary, namely the Law on Notary Position. These laws and regulations serve as guidelines for Notaries in carrying out their duties and obligations, if they violate, they will receive sanctions. A notary who violates Article 37 paragraph (1) of the Notary Office Law will receive sanctions as stated in Article 37 paragraph (2) of the Notary Office Law, while the complete contents of the article are as follows Article 37 paragraph (1) of the 2014 Notary Office Law states that "Notaries are required to provide legal services in the notary sector free of charge to people who can't afford it". Article 37 paragraph (2) of the 2014 Notary Office Law states that "A notary who violates the provisions referred to in paragraph (1) may be subject to sanctions in the form of verbal warning; written warning; temporary stop; honorable discharge; or dishonorable discharge.

Observing the contents of Article 37 paragraph (1) and (2) of the 2014 Notary Office Law, it can be understood that a Notary who does not provide legal assistance in the notary sector free of charge to people who cannot afford it will be subject to sanctions. According to Sudikno Mertokusumo, sanctions are nothing but reactions, consequences, or consequences for violating social norms. Legal sanctions are interpreted to protect individual or corporate interests (independence, soul, property, animals, body) by threatening punishment as a sanction for violating the law (Tirtaamidjaya, 1995).

Sanctions are a form of government hope, so that Notaries carry out Article 37 paragraph (1) of the Notary Office Law in accordance with applicable provisions. Recognizing that the Notary profession is needed in development, Article 37 paragraph (1) of the Notary Office Law indicates that a Notary performs his profession in providing protection and guaranteeing the achievement of legal certainty to the public regardless of the economic capabilities of their clients. In Article 37 paragraph (2) of the Law on the Position of a Notary as a guardian of the implementation of the Notary's performance in the provision of legal services in the notary sector free of charge in the community.

In general, the Notary Office Law classifies four types of administrative sanctions imposed for violations of several articles which are mentioned in a limitative manner, namely in the form of written warnings, temporary dismissals, honorable discharges, and dishonorable discharges. Administrative sanctions are imposed only if it is proven to have violated the provisions of Article 7 paragraph (1), Article 16 paragraph (1) letters a to l, Article 16 paragraph (13), Article 17 paragraph (1), Article 19 paragraph (2), Article 32 paragraph (1, 2, and 3), Article 37 paragraph (1) and Article 54 paragraph (1) of the Notary Office Law (Abukasi, 2021).

Referring to Article 37 paragraph (2) of the Notary Office Law, a notary who does not / refuses to provide free assistance in the field of notary affairs to people who cannot afford it will be subject to 4 sanctions, but all these sanctions refer to administrative sanctions, not sanctions criminal. Sanctions in administrative law are tools of public law power that can be used by the government as a reaction to non-compliance with obligations contained in state administration norms (Ridwan, 2003). Administrative sanctions are government actions to end a situation that is prohibited by the rules of administrative law or to do what should be abandoned by members of the public because it is contrary to laws or other legal rules (Philipus, 1994).

Administrative law sanctions are sanctioning whose application is not through the mediation of a judge. The government has the authority to, if necessary, without having to mediate before a judge, act remotely in a real way. The target of administrative sanctions is an act that is contrary to laws and regulations, so that in principle it is different from the imposition of criminal sanctions or civil liability aimed at people (the perpetrators). Referring to the elaboration above, a notary who refuses to provide

free authentic deed making services can legally be subject to sanctions. These sanctions are given in accordance with the level of error committed by the Notary, while the sanctions for violations by the Notary range from written warnings, temporary dismissals, respectful discharges, to dishonorable discharges.

Sanctions for Notaries who violate the provisions regulated by law are also explained in Article 6 Amendments to the Notary Code of Ethics (KEN) made by the Indonesian Notary Association, although the contents of the Article are slightly different from those in the Law Notary Office. The sanctions contained in the KEN are as follows reprimand; warning; suspension from association membership; honorable discharge from association membership; and dishonorable discharge from association membership.

4. Conclusion

Notary is a state official authorized to provide notary services to the public in general. Even though as a state official, a Notary is not paid by the state, he can collect honorarium from his client in the amount as stipulated by the Law on the Position of a Notary and based on an agreement between the Notary and his client. However, a Notary is also obliged to provide free services to people who cannot afford to pay the honorarium, because this is their obligation as stipulated in Article 37 of the Notary Office Law. If the Notary refuses to provide free services to people who can't afford it, he will be subject to sanctions in the form of a written warning, temporary dismissal, honorable discharge, or dishonorable discharge.

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