

Provision of Notary Services in Making Preliminary Sale and Purchase Agreement Deeds for Low-Income Communities in Makassar City

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Abstract

This study aims to determine whether related to the authority of a Notary in providing free services in making of the sale and purchase agreement deed for low-income people and regarding of whether the imposition of sanctions had been realized or not. This research was empirical law and analyzed descriptively qualitative. From the results of the research conducted, it was determined that the provision of free legal services, especially in making of the sale and purchase agreement deed for low-income class in Makassar, had not been realized. Sanctions for notaries who provide free services had never been realized in Makassar. If in the future the public and other Notaries are reported that these obligations are not fulfilled, the Notary Supervisory Council may impose administrative sanctions on the Notary.

Penelitian ini bertujuan untuk mengetahui apakah kewenangan Notaris dalam memberikan jasa cuma-cuma khususnya dalam pembuatan akta Perjanjian Pendahuluan Jual Beli bagi masyarakat berpenghasilan rendah dan mengenai penjatuhan sanksi sudah terealisasi atau belum. Penelitian ini adalah hukum empiris dan dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa Pemberian jasa hukum secara cuma-cuma khususnya dalam pembuatan akta Perjanjian Pendahuluan Jual Beli bagi Masyarakat Berpenghasilan Rendah di Kota Makassar ternyata belum

direalisasikan. Pemberian sanksi bagi notaris yang memberikan jasa gratis juga belum pernah terealisasikan di Kota Makassar. Jika dikemudian hari masyarakat dan Notaris lainnya melaporkan bahwa kewajiban tersebut tidak dipenuhi, Majelis Pengawas Notaris dapat mengenakan sanksi administratif kepada Notaris.

Key words: *Legal Services; Notary; Sanctions.*

Introduction

Notaries have a social responsibility to be able to allocate time and also utilize resources in the form of energy, thoughts, facilities and infrastructure that they have for people who can't afford it is highly recommended in the article in the legislation. This is also in line with the enactment of the law on the position of a Notary, namely Law Number 30 of 2004 concerning Notary Positions (UUJN) and the amendment rules, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN-P), because the community needs it, not a position that is deliberately created and then socialized to the public.¹

The Notary obligations are something that must be done by a Notary which if it is not done or violated, then the violation will be subject to sanctions. In connection with the obligation and strength of proof of an authentic deed made by or before a Notary, Habib Adjie concludes 2 (two) things, namely (1) An important part of a notary's job is to ensure that all intentions and actions of the parties are stated in an authentic deed that complies with all relevant laws and regulations. (2) A Notary Deed as an authentic deed has perfect evidentiary power, so it does not need to be proven or supplemented with other evidence if there are people/parties who judge or state that the deed is not true, then the person/party who judges or declares that it is not true, is obliged to prove his assessment or statement in accordance with the applicable legal provisions.²

Notary is a public official who is authorized to make authentic deeds and other authorities as intended in this Law or based on other laws.³ However, a

¹Sigit Somadiyono, "Pelaksanaan Pemberian Bantuan Hukum di Bidang Kenotariatan Secara Cuma-cuma Terhadap Orang Yang Tidak Mampu", *Lex Specialis*, 2017, p. 99.

²Habib Adjie in Siska Harun Buko, "Analisis Yuridis Tentang Kewajiban Notaris Dalam Memberikan Jasanya Kepada Masyarakat Yang Tidak Mampu Berdasarkan UU No. 2 Tahun 2014", *Lex Privatum*, Volume V, No. 1, 2017, p. 90.

³Article 1 paragraph (1), Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of a Notary (State Gazette of the Republic of Indonesia of 2014 Number 3).

Notary appointed by the State and under the auspices of the Ministry of Law and Human Rights, does not receive an honorarium in the form of a salary from the Government. However, a Notary deed as a Notary product should receive an award as a form of Notary knowledge because every Notary deed in its manufacture requires special Notary skills. Thus, a Notary has the right to receive an honorarium for services rendered in accordance with his/her authority.⁴ This is given that the Notary must be able to account for the deed he will make.⁵

One of the powers of the Notary is the making of the Preliminary Sale and Purchase Agreement Deeds (PPJB). If the client who comes intending to have a PPJB deed is made is an underprivileged person or low income people, then the Notary is obliged to provide services free of charge, if it is not carried out, it will be subject to sanctions. As stated in Article 37 paragraphs (1) and (2) of UUJP-P which is linked to Article 1 points 10, 11, and 37 of Government Regulation Number 12 of 2021 (PP No. 12/2021) concerning Amendments to Government Regulation Number 14 2016 concerning the Implementation of Housing and Settlement Areas.

Furthermore, in number 37 it is determined that Low-Income communities, hereinafter referred to as low income people, are people who have limited purchasing power so that they need government support to obtain houses. In connection with the article above, it does not determine the extent to which the role of the Government will be responsible for and represent the low income people, whether it comes to the preparation of PPJB deed or not. The house as a place to live has been formulated as the right of everyone to occupy adequate and affordable housing, this is stated by the United Nation at the Conference on Human Settlements in Istanbul that "adequate shelter for all and sustainable human settlements development in an urbanizing world".⁶

However, there are Notaries who refuse to provide these services, because it is undeniable that Notaries have a materialistic life, not only for themselves but also for Notary employees whose rights must be fulfilled, and office facilities and infrastructure must be equipped, not a few must also be updated in order to support the performance of Notaries and their employees. On the other hand, it

⁴Article 36, Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of a Notary (State Gazette of the Republic of Indonesia of 2014 Number 117).

⁵Herlien Budiono, *Demikian Akta Ini*, (Bandung: Citra Aditya Bakti, 2018), p. 1.

⁶United Nations, "United Nations Conference on Human Settlements (Habitat II)", (Istanbul (Turkey): Reports, 1996). p. 7.

also requires the cost of making the deed, as well as other costs if the making of the deed has something to do with other agencies.⁷

Notary with the jurisdiction of Makassar City according to Andi Fachruddin as Secretary of the Notary Regional Supervisory Council (MPDN) in Makassar City in this case representing the Government said that currently Makassar City is a category A region as referred to in Article 9 paragraph (3) letter a and Article 10 letter j Regulation of the Minister of Law and Human Rights Number 19 of 2021 concerning the Formation of Notary Positions and Determination of Regional Categories. During the last three years of his term of office, there were Notaries who had made free deeds, namely the Foundation Establishment deeds, there were also Notaries who refused to provide free services. However, it is not immediately stated that the Notary has committed a violation, because the Notary has the right to fight it by providing information in the form of reasons for his refusal. Examination of administrative sanctions has never been carried out because there are no incoming reports either from the public or from a notary.

This study explores the implementation of providing legal services in the notarial field in the making of Preliminary Sale and Purchase Agreement deed for Low-Income Communities in Makassar City and the imposition of sanctions on Notaries who refuse to provide legal services in the notarial field in the Making of Preliminary Sale and Purchase Agreement Deeds for Low-Income Communities in Makassar City.

Method

The method used in this research is empirical law based on evidence obtained from observation or experience and analyzed descriptively-qualitatively. This research focuses its study by looking at law as a set of reality, action, and behavior.⁸ This study will discuss the implementation of the provision of legal services in the notarial field in making PPJB deeds for low-income people in Makassar City and the procedure for providing sanctions if the legal services are not carried out using a statutory, historical, conceptual and stratification approach.

The data obtained from library research, including primary legal materials, are legal materials that are authoritative.⁹ And secondary legal materials, which are all publications about law that are not official documents.¹⁰ Data collection is

⁷Helena Sheila Arkisanti Kristyanto and Fifiana Wisnaeni. (2018). "Pemberian Jasa Hukum Bidang Kenotariatan Berdasarkan Pasal 37 Undang-Undang Nomor 2 Tahun 2014 Jabatan Notaris (Studi Kasus Notaris Di Kota Semarang)", *Notarius*, No. 2, p. 267.

⁸Irwansyah, *Penelitian Hukum* (Yogyakarta: Mirra Buana Media, 2020), p. 21.

⁹Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021), p. 181.

¹⁰Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi* (Jakarta: Sinar Grafika, 2017), p. 24.

carried out through literature studies including the study of legal materials consisting of primary legal materials that are authoritative in the form of laws and regulations, secondary legal materials that support primary legal materials obtained from literature studies, literature books or legal journals that have a relationship with the problem in research. this. Then arranged systematically with the type of empirical legal research and analyzed descriptively-qualitatively. Analyzing social life from the informant's point of view scientifically, the researchers will later relate the formulation to existing laws and regulations so that conclusions can be drawn.

Discussion

Implementation of the Provision of Legal Services in the Notary Sector in Making the Preliminary Sale and Purchase Agreement Deed

Notaries in carrying out their duties, functions and roles, notaries have the right to honorarium. This means that people who need the services of a notary must pay the notary's honorarium, however, the notary is also obliged to help free of charge for those who are unable to provide the notary's honorarium.¹¹ According to Tobing in Widyadharma as follows:¹²

Efforts to increase the professionalism of Notaries are not only known about the duties and positions of Notaries but must also be known how the community wants to be served.

In terms of paying Notary wages, Respondent Hustam Husain gave his opinion that:¹³

Giving wages is a right for Notaries who carry out professional positions in serving the community, a Notary does not deny the existence of material/money as a reward after he provides services to the community, but this is not merely a Notary Priority.

Abdul Ghofur Ansori also added that a professional position is not carried out solely based on money, but a reward (honorarium) is absolutely necessary as an element of professionalism.¹⁴ This is also in line with what Ghansham Anand said that Notary as a profession has its own characteristics such as having special skills and skills, being permanent or continuously prioritizing service over compensation, earning income in the form of honorarium as a form of appreciation for the

¹¹Habib Adjie, *Hukum Notaris Indonesia, Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008), p. 108.

¹²Ignatius Ridwan Widyadharma, *Kenotariatan Indonesia* (Yogyakarta: UII Press, 2009), p. 106.

¹³Hustan Husai, Notary and Member of MPPN of Makassar City, *Interview*, 18 April 2022.

¹⁴Abdul Ghofur Ansori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika* (Yogyakarta: UII Press, 2009), p. 33.

obligation to keep information confidential from clients, grouped in an organization, the existence of a code of ethics and judicial code of ethics.¹⁵

Therefore, it can be understood that the existence of a Notary position was born in Indonesia to realize legal certainty and protection for people who need the figure of an authorized official in the civil (private) legal area, especially in terms of making authentic deeds, for the sake of proof or written evidence. As the characteristics of a Notary's position are that a Notary has the authority to make an authentic deed at the request of the parties, a Notary is given the authority to use the state symbol, there is an acknowledgment of the Notary protocol as a state document, as well as special procedures for taking minutes and summoning a Notary.¹⁶

According to the Chairman of the Makassar City MPDN, Mohammad Yani, the provision of free legal services is still regulated by the Law of Notary Positions (UUJN) as amended in UUJN-P Jo. Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid (UUBH), Government of the Republic of Indonesia Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Free Legal Aid Funds and a Notary Code of Ethics. He added that the legal services provided by a notary do not recognize social class and status in society, all are equal and have the right to receive notary services.¹⁷

The provision of legal services in the notarial field is regulated in Article 37 Paragraph (1) of UUJP-P which stipulates that "Notaries are required to provide legal services in the notarial field free of charge to people who cannot afford it". The provision of legal services is also regulated in Law no. 16 of 2016 concerning Legal Aid wherein Article 1 point 1 stipulates that "Legal Aid is Legal Services provided by Legal Aid Providers free of charge to Legal Aid Recipients." In number 2 it is determined that "Recipients of legal aid are poor people or groups of people."

Article 3 of Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Free Legal Aid Funds states that to obtain Legal Aid, recipients of legal aid must meet the following requirements; (1) Submit a written application that contains at least the identity of the applicant for legal aid and a brief description of the subject matter for which legal assistance is requested; (2) Submit documents related to the case; and (3) Attach a certificate of poverty from the

¹⁵Ghansham Anand, *Karakteristik Jabatan Notaris di Indonesia* (1st Print; Jakarta: Pranadamedia Group, 2018), p. 92.

¹⁶Ghansham Anand, *Karakteristik Jabatan Notaris...* p. 142.

¹⁷Mohammad Yan, Chairman of MPDN of Makassar City, *Interview*, 12 April 2022.

Village Head, or an official at the same level at the place of residence of the aid applicant.

Meanwhile, the procedure for providing legal aid according to Article 6 of Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Free Legal Aid Funds are:

1. Application for legal aid submit a written application for legal aid to the legal aid provider.
2. The application as referred to in paragraph (1) shall at least contain:
 - a. The identity of the legal aid applicant; and
 - b. A brief description of the subject matter for which legal assistance is requested.
3. The application for legal assistance as referred to in paragraph (1) must attach:
 - a. Certificate of poverty from the Village Head, or an official at the same level at the place of residence of the Legal Aid Applicant; and
 - b. Documents related to the case.

The identity of the applicant for legal aid as referred to in the article above is proven by an identity card and/or other documents issued by the authorized agency.

Notaries in providing legal services are not required to receive an honorarium in the form of wages for services provided as stipulated in the notarial laws and regulations, namely UUJN-P in Article 37 paragraph (1) which stipulates that "Notaries are required to provide legal services in the notarial field for free to people who cannot afford it" with regard to this PP 12/2021 Article 1 points 10, 11, and 37 also regulates the making of a PPJB deed made by a Notary for low income people who are classified as underprivileged. Providing free legal services in the notary field, Notaries participate in two forms of legal assistance, namely providing free legal services which are directly provided by Notaries to clients without any budgetary assistance from the Government (Pro Bono) and legal assistance organized by the Government cooperate with notary organizations where the client is not charged any fees, but the Notary receives an honorarium from the Government (Pro Deo).¹⁸

MBR can be interpreted as a low-income community who has limited purchasing power so that they need government support to get a house.¹⁹ In the

¹⁸Abdurrifai, Notary, *Interview*, Maros, 20 May 2022.

¹⁹Article 1 number 37, Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas.

event that low income people is classified as an underprivileged person, it can be interpreted that low income people is a person who has a salary or wage source of livelihood, who is only able to meet decent basic needs but is unable to pay contributions for himself and his family.²⁰ Researchers also provide their own definition of low income people, namely people with a monthly income below the average. For example, under the Regional Minimum Wage (UMR). The Makassar City Government has set the 2022 Makassar UMR salary of IDR 3,294,467.²¹

It is undeniable that low income people also wants to get a house. In this case, the Government has prepared subsidized housing for low income people. Information on the provision of subsidized housing from the Government is obtained through marketing at a relatively cheap price and the payment process is also not burdensome for low income people because the payment can be paid in installments. Article 22 paragraph 3 in PP 12/2021 stipulates that "Single houses, row houses, and/or flats that are still under construction may be marketed by development actors through PPJB System".

PPJB system is a series of agreement processes between each person and development actors in marketing activities as outlined in the Preliminary Sale and Purchase Agreement or Sale and Purchase Binding Agreement before the sale and purchase deed is signed.²² However, PPJB system can only be implemented after fulfilling the certainty requirements for: a. land ownership status; b. the thing that was agreed upon; c. PBG; d. availability of Public Infrastructure, Facilities, and Utilities; and e. development of at least 20% (twenty percent).²³

PPJB is used because the land and buildings that will become the object of sale and purchase cannot be transferred immediately. So that PPJB is not a necessity but can be done if the parties want a PPJB deed before the Sale and Purchase Deed (AJB) is made. The making of PPJB deed frames the legal relationship between the seller and the buyer in the Pre Project-Selling system prior to the actual implementation of the sale and purchase, thus establishing the rights and obligations between the seller and the buyer in accordance with the agreement contained in PPJB. However, as the parties to the agreement, it is necessary to

²⁰Article 1 number 5, Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 15 of 2018 concerning an Integrated Service and Referral System for Handling the Poor and Underprivileged People.

²¹Al Khoriah Etiek Nugraha, *Besaran Gaji UMR Makassar 2022 yang jadi Acuan Pemberian THR*, detik.com, 2022.

²²Article 1 number 10. PP 12/2021.

²³Article 22 paragraph (3) and (5).

always remember the nature of the contract. The essence of the contract is to realize a fair exchange of rights and obligations (fairness).²⁴

PPJB deed can be made with an authentic deed and/or a private deed. PPJB deed which is ratified before a Notary has undeniable authenticity. Facing the low income people category in making PPJB deed before a Notary should not be charged the cost of making the deed, because it is the Notary's obligation based on UUJP-P rules. However, the Notary has the right to determine whether the low income people is eligible or not to be assisted.

The number of poor people in Makassar City, based on data from the Makassar Central Statistics Agency (BPS), is 74,690 people in 2021. This number is an increase of 4,710 people from the total poor population in 2020 which reached 69,980 people.²⁵ Based on the data, the poverty level of the community is quite high, so that free legal services and notarial services are very helpful in reducing the burden on the community. For the Makassar City area, the number of Notaries reaches 143 Notaries. Researchers determined 18 Notaries to serve as informants in this study, but some of them took leave, had quite solid flight hours, and had died. So that will be used as informants amounted to 9 notaries.

According to respondent Brilliant Thioris, a Notary in Makassar City, while practicing in his work area, he has never met a client who wants to make a PPJB deed using a free service, if it is only in a form of consultation about PPJB system, many have come and of course it is free of charge. Clients who come usually prepare a fee for making the deed, so when the wages for making the deed have been determined the client will of course agree. Thus, the provision of free services and the making of PPJB deed were never realized. However, to ease the burden on clients and those who cannot afford it, this is done by deducting the cost of making the deed from the actual price.²⁶ Regarding existing regulations, the Government, in this case the Makassar City Government, when building subsidized houses intended for low income people, should pay attention to things other than land and building procurement, one of which is the making of PPJB deed which, if made before a Notary, must also take into account the cost of making it.

According to respondent Sahabuddin Nur, Makassar City Notary, he has never provided services in the form of services to clients for free. In contrast to the case, clients who come to make a PPJB deed and also ask to make an AJB when

²⁴Agus Yudha Hernoko, "Disertasi Asas Proporsionalitas sebagai Landasan Pertukaran hak dan Kewajiban Para Pihak dalam Kontrak Komersial", *Jurnal Hukum dan Peradilan*, Vol. 5, No. 3, November 2016, p. 455.

²⁵Nugroho Nafika, *Penduduk Miskin Makassar 74.690 Jiwa*, *Bisnis.com*, 2022.

²⁶Brilliant Thioris, Notary and member of MKNW, *Interview*, Makassar, 12 April 2022.

there is payment, usually do not charge a tariff in making a PPJB deed, then in making AJB the rate can be adjusted.²⁷

According to respondent Hustam Husain, Makassar City Notary, in practice, he has never found a client of the low income people category to come before him for a PPJB deed for free. Even though this rule does not exist, Notaries can waive fees for clients who come to make deeds because Notaries also have a high social spirit as long as the clients who come are eligible to be given assistance. Of course, it is not only for making PPJB deed for low income people, if the Notary wants to get to the establishment of a PT that has capital it will be possible not to be charged, but again he must pay attention to the position code of ethics. He added, this rule limits the space of a Notary who is also a Land Deed Making Officer in carrying out his authority, as it is known that the provision of free services is only regulated in UUJP-P while the PPAT Law does not stipulate that, because it is possible that the PPAT will not install rates in the making of AJB.²⁸

Especially for subsidized housing, known as the FLPP (House Financing Liquidity Facility) is the support for housing financing liquidity facilities to low income people whose management is carried out by the Ministry of Public Works and Public Housing.²⁹ The maximum selling value of subsidized housing cannot be more than Rp. 156.500.000,- minimum type 21 specifically for Sulawesi Island, Bangka Belitung, Mentawai Islands and Riau Islands (except Anambas Islands).³⁰ Public facilities in housing are the responsibility of the Government such as road construction, places of worship, etc. It is different in making PPJB deed for subsidized housing, the Government does not interfere at all because the Notary is independent, unless in this case it has been agreed.³¹

According to respondent Niny Savitry, a Notary with the working area of Makassar City, in practice she has never provided free services to clients for individual interests. However, in the case of the establishment of the Foundation as a social function and having a clear purpose, then in making the deed there is no need to pay a penny as long as the Foundation is non-profit. Of course, this is a challenge itself to convince her that the Foundation is a non-profit.³²

²⁷Sahabuddin Nur, Notary, *Interview*, Makassar, 18 April 2022.

²⁸Hustam Husain, Makassar, 18 April 2022

²⁹Article 1 point 16. Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 20/Prt/M/2019 concerning Ease and Assistance for Home Ownership for Low-Income Communities.

³⁰Appendix, Regulation of the Minister of Finance of the Republic of Indonesia Number 81/Pmk.010/2019 Concerning the Limits of Public Houses, Pondok Boro, Student and Student Dormitory, and Other Housing the Delivery of which is Exempted from the Imposition of Value Added Tax, p. 11.

³¹Hustam Husain, Makassar, 18 April 2022

³²Niny Savitry, Notary, *Interview*, Makassar, 19 April 2022.

The rules that determine the obligation of a Notary to provide free services to people who cannot afford it, then further explained that there are other regulations related to low income people who have the right to obtain subsidized houses that are not ready for habitation to be made a PPJB deed, such things cannot be immediately categorized that the low income people who wants to make PPJB deed must be free of fees. It was further explained that low income people who wished to own a subsidized house could not be said to be poor, because they had the ability to set aside their income every month to pay for the house.³³

One of the conditions for low income people that must be fulfilled is having a fixed or variable income that does not exceed the income limit.³⁴ The maximum income limit is based on the Decree of the Minister (Kepmen) of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020 concerning Income Limits for the Target Group of Subsidized Home Ownership Loans/Financing, Amount of Interest Rate/Margin of Subsidized Financing, Length of Subsidy Period and Term Time of Credit/Financing for Home Ownership, Limitation of the Selling Price of Treaded Public Houses and General Flats Units, Limits on Land Area and Floor Area of Treaded Public Houses, Floor Areas of Public Flats and the Amount of Subsidy for Housing Advances is Rp, 8,000,000,- . While the minimum income limit in this case is not specified in the Ministerial Decree.³⁵

According to respondent Syahrir Madeali, a Notary with the working area of Makassar City, in practice he has never provided free services to underprivileged clients including in the category of low income people and making PPJB documents. However, he has provided services for free in other forms in the form of a reduction in honorarium or wages for the services of a Notary in making PPJB deed.³⁶

According to respondent Endang Soelianty, a Notary with the working area of Makassar City, in practice she has never implemented Article 37 of UUJP-P. So far, clients who come to see her are clients who are ready from a financial perspective when they want to use the services of a Notary, and in making PPJB deed. The clients who come are also not in the category of low income people, all of whom have above-average incomes. If you just provide services in the form of consultation, of course it is free and it is often found.³⁷

It was further explained that once she came across a client who asked for a deed to be made free of charge, then she asked the client to explain the reason for

³³Niny Savitry, Makassar, 19 April 2022.

³⁴PUPR Ministerial Regulation, Article 11 paragraph (1) letter F.

³⁵Niny Savitry, Makassar, 19 April 2022.

³⁶Syahrir Madeali, Notary at Makassar City, *Interview*, Makassar, 19 April 2022.

³⁷Endang Soelianty, Notary at Makassar City, *Interview*, Makassar, 19 April 2022.

making a deed free of charge. The deed that the client wanted to make is AJB, a legal product of the Land Deed Maker Officer. Actually, this is against the rules, considering that free giving is not specified in UU-PPAT. However, from a humanitarian perspective, it can be seen that the client who came did need help because the house she wanted to sell was the only asset she had. Her status is a widow who has died and has no children, since her husband died the client has lived alone in Makassar City, so she intends to sell her assets to return to her hometown. For this reason, conscience then moved to provide free deed-making services without a poor certificate.³⁸

According to respondent Mestariany Habie, a Notary in Makassar City, in practice she said that previously there had been research like this but did not mention specifically what kind of deed was given free of charge. It was further explained that clients in the category of low income people had never been seen before for a deed to be made and asked not to be charged, which was often found to be only limited to providing services in the form of legal consultation on what a PPJB deed was and what the conditions were.³⁹

The implementation of Article 37 UUJN-P and related to Article 1 points 10, 11, and 37 of PP 12/21 can generally be done voluntarily, especially by Notaries who are considered to have quite a lot of clients and from a financial point of view they are quite well established. Meanwhile, for Notaries who are not financially established, it is not an obligation to provide free legal services to underprivileged communities in their working areas. This is intended so that the Notary is not burdened with substantial costs in carrying out these obligations.⁴⁰

According to respondent Muhammad Asyik Noor, Makassar City Notary, in practice he has provided free notarial services for low income people, but only limited to providing legal counseling, for example telling clients what files must be attached to make a PPJB deed. It is different in the case of making a deed, it has never been realized, because throughout the experience of being a Notary the client has never asked to be given free services in the form of making a PPJB deed.⁴¹

According to respondent Maria Josefina Grace Kawi Tandiar, Makassar City Notary, in practice she explained that she had provided free services for low income people, especially in making PPJB deeds. The supporting factor in its implementation is seen from the humanitarian point of view for the people who come to the Notary's office who really declare themselves unable to be proven by a

³⁸Endang Soelianty, Notary at Makassar City, *Interview*, Makassar, 19 April 2022.

³⁹Mestariany Habie, Notary at Makassar City, *Interview*, Makassar, 19 April 2022.

⁴⁰Mestariany Habie, Makassar, 19 April 2022.

⁴¹Muhammad Asyik Noor, Notary and Chairman of PENGDA INI of Makassar City, *Interview*, 20 April 2022.

poor certificate and other supporting documents. Meanwhile, the inhibiting factor is that sometimes people who are asked for a Certificate of Poor from the Village, they refuse. So that as a Notary, you must be able to see the condition of the person and determine what can be a reference that the person who comes is really not capable. The criteria for low income people are not explained in detail, but in this case she determined that low income people are people who for daily life are difficult to buy necessities of life and have limitations to buy something.⁴²

Notary obligations can be understood as a form of respect for human rights to obtain equal rights and standing before the law so that in carrying out their duties and obligations the Notary may not discriminate against clients who come to him, such as clients who are unable to receive the same services from the Notary.

The issuance of laws and regulations related to the authority of a Notary, further underlines the importance of the position of a Notary as a public servant who guarantees legal certainty through an authentic deed he adheres to. The philosophical basis for the birth of UUJP is the realization of guarantees of certainty, order and legal protection based on truth and justice. With the actions that has taken, the Notary must be able to provide legal certainty to the public who use the services of a Notary.

Imposition of Sanctions Against Notaries Who Refuse to Provide Legal Services in the Notary Sector

Prof. Syamsul Bachri stated that after UUJP was enacted, the judiciary no longer supervised, examined, and imposed Notary sanctions, this task was handed over to the Minister of Law and Human Rights by forming a Notary Supervisory Board. The change in the agency that supervises the Notary does not rule out violations. Because it is not easy to carry out such supervision. This is returned to the Notary himself with awareness and full responsibility in his duties following the applicable law.⁴³

Article 67 paragraph (1) UUJN stipulates that the Minister shall supervise the Notary. In carrying out this supervision, the Minister establishes a Supervisory Council (Article 67 paragraph [2] of UUJP). Article 67 paragraph (3) of UUJP determines that the Supervisory Council consists of 9 (nine) people, consisting of the following elements: a. Government as many as 3 (three) people; b. 3 (three) notary organizations; and c. Experts/academics as many as 3 (three) people. Based on Article 68 of UUJP, that the Notary Supervisory Council consists of: a. Regional

⁴²M. J. Grace Josefina Kawi Tandiar, Notary at Makassar City, *Interview*, Makassar, 18 April 2022.

⁴³Interview with Prof Syamsul Bachri.

Supervisory Council (MPD); b. Regional Supervisory Council (MPW); and c. Central Supervisory Council (MPP).

The implementation of the provisions of the obligations contained in UUJN-P Article 37 paragraph (1) regarding this PP 12/2021 Article 1 points 10, 11 and 37 also regulates the preparation of PPJB deed made by a Notary for low income people who are classified as people who cannot afford, so that it will increase the dignity of Notaries and increase public trust, especially those with low incomes, to Notaries regarding the provision of free legal services in the notary field.

If the obligations as stated in Article 37 paragraph (1) of UUJP-P are not carried out and are linked to Article 1 points 10, 11, and 37 of PP 12/2021, there will be strict sanctions stipulated in Article 37 paragraph (2) as already mentioned. previously. However, in certain circumstances a Notary may refuse to provide services on the grounds as regulated in Article 16 paragraph (1) of UUJP which determines that the reason that requires the Notary to refuse the provision of services is the reason that causes the Notary to be impartial, such as having a blood or marriage relationship with the Notary himself or with his/her husband/wife, one of the parties does not have the ability to act to take legal action, or other reasons that are not permitted by law.

Furthermore, Mohammad Yani explained, the notary world recognizes the existence of administrative sanctions. The definition of sanctions in State Administrative Law is a tool of power that is public law, used by the Government as a reaction to non-compliance with obligations that exist in the norms of State Administrative Law.⁴⁴ During his tenure as chairman of the MPDN, he has never received a report regarding the violation of a Notary who does not carry out his obligations in providing free services. However, the public can file a written complaint accompanied by evidence showing the refusal of the Notary to provide free legal services to the MPD.⁴⁵

Administrative sanctions imposed on a Notary in making a deed if he commits a violation are regulated and spread in several articles of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning Notary Positions, namely Article 7 paragraph 2, Article 9, Article 16 paragraph Article 11 and paragraph 13, Article 17 paragraph 2, Article 16 paragraph 11 and paragraph 13, Article 17 paragraph 2, Article 19 paragraph 4, Article 32 paragraph 4 and Article 37 paragraph 2, Article 54 paragraph 2 and Article 65A.

⁴⁴Luthfan Hadi Darus, *Hukum Notariat dan Tanggung Jawab Jabatan Notaris* (Yogyakarta: UII Press, 2017), p. 133.

⁴⁵Interview with Mohammad Yani.

The sanctions do not only apply to Notaries, but the sanctions imposed on Notaries also apply to substitute Notaries, special substitute Notaries, and temporary Notary officials, as well as their responsibilities. Based on the provisions of UUJP-P, the administrative sanctions that are spread in several articles are as follows: 1) verbal warning, 2) written warning, 3) temporary dismissal, 4) honorable dismissal and 5) dishonorable discharge. Further elaboration of these sanctions are in the form of:⁴⁶

1. Verbal warning

The verbal warning is the first warning given by the supervisory board to a Notary who violates the code of ethics or UUJN which is still in the category of minor violations. Minor violations, in this case, which do not harm the other party due to their actions and do not involve violations of substance in the making of an authentic deed.

2. Written warning

A written warning may take the form of a follow-up to a verbal warning if the Notary does not heed the warning. Even without an oral warning, a Notary can be immediately given a written warning if he commits a violation that is qualified as involving the substance of making an authentic deed. One qualification for giving a written warning to a Notary is that his actions have violated the mechanism in making an authentic deed. Although his actions do not cause harm to those who use the services of a Notary, it does not mean that the Notary cannot be given a written warning. Likewise, if his actions cause harm, then it is very appropriate if this written warning becomes the minimum limit imposed on Notaries who have violated UUJP.

3. Temporary dismissal

The sanction of temporary dismissal is imposed on the Notary if the nature of the violation is serious, but the action can still be considered or does not heed and does not respect the provisions of the professional code of ethics and UUJN or if after receiving sanctions in the form of a stern warning they still repeat violations of the professional code of ethics.

The sanction of temporary dismissal is given to the Notary, which is carried out by the Minister at the suggestion of the Central Supervisory Council. According to Article 9 of Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning the Position of a Notary, a Notary can be temporarily dismissed from his position because: a. in the process of bankruptcy or suspension of debt payment obligations; b. be

⁴⁶Luthfan Hadi Darus, *Op. Cit.*, p. 141-143.

under custody; c. committing a disgraceful act is committing an act that is contrary to religious norms, moral norms, and customary norms; d. commits a violation of the obligations and prohibitions of office; and e. is serving time in detention.

The provision of temporary dismissal is carried out on the basis of consideration of the severity of the violation committed and the consequences of the act. Before the temporary suspension is carried out, the Notary is given the opportunity to defend himself before the supervisory board in stages starting from the MPD, MPW to MPP to hear his defense, the purpose of the defense can be used as a basis for consideration to give a temporary suspension to the Notary.

Notaries who are in the process of bankruptcy or suspension of obligation to pay debts or are under guardianship can be temporarily dismissed from their positions until their condition has recovered as before and can be reappointed as a Notary by the Minister after their rights are restored.

Meanwhile, the temporary dismissal due to a disgraceful act or a violation of obligations and a ban on office is valid for a maximum of 3 (three) months to 6 (six) based on the provisions in Article 7 paragraph (1) of the Minister of Law and Human Rights Number 61/2016, the Notary who was imposed the sanction may be reappointed by the Minister after the temporary suspension ends.

4. Honorable dismissal

Notary resigns or is honorably dismissed from his position according to Article 8 of Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning Notary Positions because: a. die; b. has reached the age of 65 (sixty five) years and can be extended for another 2 (two) years considering the health of the person concerned; c. mentally and/or physically unable to carry out the duties of a Notary position continuously for more than 3 (three) years. Continuous spiritual and/or physical incapacity in this provision is proven by a certificate from an expert doctor; and e. holding concurrent positions with no status as a civil servant, state officials, advocates, or not holding other positions which are prohibited by law from concurrently holding the position of a Notary.

5. Dishonorable dismissal

Notaries are dishonorably dismissed from their positions by the Minister at the suggestion of the Central Supervisory Council if they violate the provisions of Articles 12 and 13. Law Number 30 of 2004 which has

been amended by Law Number 2 of 2014 concerning Notary Positions, namely:⁴⁷ a. declared bankrupt based on a court decision that has permanent legal force; b. being under continuous care for more than 3 (three) years; c. commit acts that demean the honor and dignity of the position of a Notary; d. commit a serious violation of the obligations and prohibition of office; and e. sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more.

The Notary Supervisory Council (Region and Central) may form a Notary Examining Council (Region and Center) with the authority to examine the receipt of reports received from the public or from fellow Notaries. In Article 31 paragraphs (1) and (2) of the Regulation of the Minister of Law and Human Rights (Permenkumham) of the Republic of Indonesia Number M.02.PR.08.10 of 2004, it is found that the Notary Examining Council formed by the Notary Supervisory Council when conducting an examination, it is proven that the Notary concerned violates the implementation of the Notary's duties and the Notary Code of Ethics, then the Regional or Central Examination Board may impose sanctions.⁴⁸

These sanctions apply in stages as stipulated in Article 3 paragraph (2) of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions Against Notaries that the imposition of administrative sanctions is carried out in stages starting from the lightest sanctions to the heaviest sanctions in accordance with the order as follows. referred to in paragraph (1) which has been mentioned in Article 37 paragraph (2) UUJN-P. Paragraph (3) stipulates that in certain cases a Notary who commits a serious violation of his obligations and prohibitions on office can be directly subject to administrative sanctions without being carried out in stages.

In principle, the Notary in providing free legal aid to low income people on a voluntary basis is not based on obligation, but the law will impose sanctions on the Notary if the provision of legal assistance is not implemented. In the event that a Notary is required to provide free services to underprivileged people in his working area by imposing sanctions on a Notary who does not carry out the provisions of Article 37 UUJN-P and Article 1 points 10, 11, and 37 of PP 12/21, it is considered a compulsion or pressure on the Notary to carry out such legal assistance.

⁴⁷Liliana Tedjosaputro, *Mal Praktek Notaris dalam Hukum Pidana* (Semarang: CV. Agung, 1991), p. 4.

⁴⁸Habib Adjie, *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik* (Bandung: Refika Aditama, 2017), p. 153.

This certainly violates the human rights of the Notary in carrying out his profession and earning a living based on the independence of the Notary who finances his duties and obligations at his own expense. Notaries who are required to provide free legal assistance to underprivileged communities by UUJN-P and PP 12/21 are deemed to have neglected their rights in terms of carrying out professional duties as well as in terms of earning a living guaranteed in the 1945 Constitution Article 27 paragraph (2) which stipulates that every Indonesian citizen has the right to work and a decent living for humanity. Therefore, the provisions of Article 37 of UUJP-P and Article 1 points 10, 11, and 37 of PP 12/21 are considered unfair for a Notary who seeks to carry out his profession as well as in terms of earning a living in meeting the needs of his life and his dependent family.

According to respondent Niny Savitry, she refuses to provide free services. Notaries who refuse to provide free legal services to people who cannot afford, in addition to violating the rights of the Notary, also violate the 1945 Constitution, and Article 28 D paragraph (3), which stipulates that everyone has the right to work and receive compensation and fair and proper treatment in employment relationships. The article implies that everyone has the right to work to support himself and to receive fair and proper reward and treatment.⁴⁹

The inclusion of sanctions contained in Article 37 of UUJP-P which is linked to Article 1 points 10, 11, and 37 of PP 12/21 is certainly very contrary to Article 28 D paragraph (3), because, how can someone who works to support himself and dependents must be punished on the grounds of not helping others in terms of making the deed which would require a lot of money. Thus, the provisions in Article 37 of UUJP-P and Article 1 points 10, 11, and 37 of PP 12/21 do not provide legal certainty for the public, especially for notaries.

Hustam Husain, who once served as a member of the MPWN and currently serves as a member of the MPPN, is of the opinion that he has never carried out a legal process in the form of imposing sanctions by a Notary who was reported by the MPDN, as well as received reports from the public which were rejected by the Notary. The obligation to provide free services in making PPJB deed for low income people should be balanced with the inclusion of compensation as the right of the Notary.⁵⁰

This right can be in the form of deduction of Notary Income Tax or the provision of subsidies from the Government in the form of assistance funds to carry out the obligations of the Notary. The legal considerations are because a Notary is a public official who carries out some of the Government's duties in carrying out the

⁴⁹Interview with Niny Savitry, *Op. Cit.*

⁵⁰Hustam Husain, Makassar, 19 April 2022

making of an authentic deed which is a state document. Notaries in carrying out their duties and obligations are also independent in opening offices. Buy office equipment and also provide salaries to employees using their own finances. If a Notary is obliged by law to provide free legal assistance to underprivileged communities in his working area, as a Notary's social responsibility, the Government also has an obligation to relieve the Notary's financial burden in carrying out his duties, which also include carrying out State duties.⁵¹

According to Mestariany Habie, if there is a Notary who refuses to provide legal assistance to low income people, then the refusal must be explained again to the community concerned. In general, Notaries refuse to carry out their work for several reasons, namely first, the absence of a clear identity from the client, and incomplete documents related to the need for making a deed; second, Notaries are aware that the actions requested by the client are not in accordance with the applicable legal provisions; and the third, Notaries do not have the capacity to do the work requested by the client or outside the authority of the Notary.⁵²

Basically, the Notary in carrying out his obligations and authorities is passive, passive here in the sense that the Notary only waits for clients who come to his office to carry out a legal action, ignorance and lack of understanding of the community in general are the causes of the non-optimal implementation of the provisions of Article 37 paragraph (1) UUJN- P and linked to Article 1 points 10, 11, and 37 of PP 12/2021, so that massive socialization is needed to all elements of society, especially those who are not capable of the existence of this Notary obligation so that they are aware of their rights and can obtain legal services in the field of notary.

Conclusion

The provision of free legal services, especially in the preparation of PPJB deed for low income people in Makassar City, has not yet been realized. One of the indicators that led to the non-fulfillment of this obligation was that the low income people category had never asked to be provided with free services in making PPJB. The Regional Board of the Indonesian Notary Association of Makassar City should be able to provide socialization to the public about the obligation of a notary to provide free assistance in the notarial field and provide information related to the procedure for receiving such assistance.

Sanctions for notaries who refuse to provide free services have never been implemented in Makassar City. If in the future the public and other Notaries report that these obligations are not fulfilled, the Notary Supervisory Council may impose administrative sanctions on the Notary. Notaries who disagree with the decision are

⁵¹Hustam Husain, Makassar, 19 April 2022

⁵²Mestariany Habie, Makassar 18 April 2022.

given the opportunity to file a defense at the State Administrative Court. The Notary Supervisory Council as a supervisory institution should not only supervise the performance of the notary, but also position itself as a coach who always provides guidance to the notaries to carry out their functions and work properly.

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