

## Legal Analysis of Legal Consequences for Notaries for Violation of Honorarium Provisions in Making Deeds

Ilham Dwi Jayanto

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: [ilhamdwijayanto99@gmail.com](mailto:ilhamdwijayanto99@gmail.com)

**Abstract.** *This study aims to determine the determination of the Notary's honorarium in making a Deed and to determine the legal consequences for Notaries who violate the provisions of the honorarium in making a Deed. The research approach method used in this thesis is the normative juridical legal research method. The approach used in this study is the Legislation (statute approach). The type of data used in this study is primary data which includes the 1945 Constitution; Civil Code; Law Number 30 of 2004 concerning amendments to Law Number 2 of 2014 concerning the Position of Notary; Notary Code of Ethics. The data analysis method used is secondary data that has been obtained, analyzed descriptively qualitatively. The results of the study indicate that the Determination of the Notary's honorarium in making a Deed is based on the Economic Value and/or Sociological Value of each Deed made. The Economic Value of each deed has been regulated in Article 36 paragraph (3) UUJN, and UUJN regulates the maximum limit of honorarium and the Code of Ethics regulates the minimum limit of honorarium, and in Article 37 UUJN Notaries are required to provide free legal services to people who are unable to afford it without charging an honorarium. Violations committed by Notaries due to charging an honorarium below the provisions stipulated in the Code of Ethics, then the sanctions that will be given based on the Code of Ethics are: a) Reprimand; b) Warning; c) Schorsing; (temporary dismissal) from membership of the Association; d) Onzetting (dismissal) from membership of the Association; e) Dishonorable dismissal from membership of the Association. Sanctions for violating the provisions of the honorarium according to UUJN, For the first sanction given is a verbal warning. When the verbal warning is not complied with by the Notary, the next tiered sanction that must be received by the Notary is a written warning.*

**Keywords:** Honorarium; Notary; Violation.

## 1. Introduction

The Republic of Indonesia is a country of law that protects the success of the legal system, especially in the realm of civil law.<sup>1</sup>To realize the legal needs of the Indonesian people, there is a Notary Official recognized by the State through the Notary Law. A notary is an institution that is given the authority to produce an Authentic Deed regarding proof of an event, condition or legal act. As a form of legal profession, a Notary helps realize legal certainty by carrying out his professional position as a Public Official, and this position is authorized to produce a legal product, namely the actual Akad.<sup>2</sup>

The legal product of a notary, namely an authentic deed, has perfect verification power because it has three verification powers, namely external verification power (*uitwendige bewijsmacht*), formal evidentiary power (*formele bewijsmacht*) and material verification power (*materiele bewijsmacht*).<sup>3</sup>Notary is a noble profession that is closely related to the rules so that notaries are guided by. Law on Notary Position Number 30 of 2004 concerning Notary Position as amended by Law Number 2 of 2014 (hereinafter referred to as UUJN) is the only Law that regulates Notary Position in Indonesia. In addition to the UUJN which regulates the application of Notary Position, there is also the Notary Code of Ethics which supports the Notary Position Law.

Notaries are guided by UUJN and the notary code of ethics in determining honorarium. Article 36 of UUJN regulates the maximum limit of honorarium that can be received by each notary.<sup>4</sup>Notaries when implementing honorariums, differ from one Notary to another. Some apply the amount of honorarium in accordance with the provisions of Article 36 UUJN, but there are several Notaries who collect honorariums below the minimum limit agreed upon by the Indonesian Notary Association (INI).<sup>5</sup>Collecting an honorarium below the minimum limit is done by some notaries to gain a name and popularity among the public.<sup>6</sup>

An example of a case in the implementation of the Notary's position is Notary Mustopa, SH, M.Kn, who is domiciled in Pandegelang with an office at Jl. Raya

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<sup>1</sup>Sanyoto, 2008, "Law Enforcement in Indonesia", *Journal of Legal Dynamics*, No. 3, Vol. VIII, p. 202.

<sup>2</sup>Prayitno, IS, 2019, "Legal Consequences of Violation of the Provisions on Notarial Deed Honorarium", *Res Judicata*, No. 1, Vol. II, p. 186.

<sup>3</sup>GHS Lumban Tobing, 1999, *Notary Position Regulations*, Gelora Aksara Pratama, Jakarta, p. 55-59.

<sup>4</sup>Hamry Theyer, 2013, "Analysis of Notary Legal Service Honorarium and Sanction Provisions of Law Number 30 of 2004 Concerning Notary Position", *Student Scientific Journal of Surabaya University*, No. 2, Vol. II, p. 7-8.

<sup>5</sup>Central Board of the Indonesian Notary Association, 2008, *The Identity of Indonesian Notaries: Past, Present and Future*, Gramedia Pustaka, Jakarta, p. 94.

<sup>6</sup>Manan, A., Tamrin, A. and Wibawa, MN, 2019, "Review of Law Number 2 of 2014 on the Practice of Implementing Notary Honorarium", *Journal Of Legal Research*, No. 1, Vol. I, p. 58.

Serang KM. 3 Kalahalang, Pandegelang Banten, in collaboration with the People's Credit Bank (BPR) Amal Bhakti Sejahtera.

<b>No.</b>	<b>Type of Management</b>	<b>In Practice</b>
	Borgtoch Act	
	Rp 0 – Rp 10 million	Rp. 200,000.00
	Rp 10.1 – Rp 20 million	Rp. 230,000.00
	Rp. 20 million and above	Rp. 350,000.00
	Notarial Credit Agreement Deed	Rp. 220,000.00
	Debt Transport Deed (additional Deed Point 2)	Rp. 220,000.00
	Debt Conveyance Deed (stand-alone)	Rp. 220,000.00
	SKHMT / FIDUSIA Deed	
	Rp 0 – Rp 10 million	Rp. 150,000.00
	Rp 10.1 – Rp 20 million	Rp. 200,000.00
	Rp. 20 million and above	Rp. 350,000.00
	Deed of Power of Attorney to Sell	Rp. 250,000.00
	Legalization / Warmeking	Rp. 50,000.00

The cooperation carried out by the Notary with the People's Credit Bank (BPR) Amal Bakti Sejahtera, between Notary Mustopa, SH, M.Kn and the People's Credit Bank (BPR) Amal Bakti Sejahtera regarding the list of honorarium determination for the preparation of Notarial Deeds, it is seen that the Notary's honorarium has been set that for each service provided by the Notary to the

People's Credit Bank (BPR) the average standard is set at no more than IDR 220,000.00 (two hundred and twenty thousand rupiah) per person, there are even rates below that price, and the lowest honorarium is set at IDR 50,000.00 (fifty thousand rupiah).<sup>7</sup>

The established honorarium seems unreasonable because the rate is a very low honorarium, when compared to the usual honorarium. Determining the honorarium for Notary services below standard can cause unhealthy business competition between fellow Notaries, of course causing their own feuds, not only between fellow Notaries but also against the Notary concerned himself. In addition to being able to create a gap between fellow Notaries in a certain area, causing disharmony in relations with fellow professionals.

## **2. Research Methods**

The method used is Normative Jurisprudence. Normative Legal Research is a library legal research conducted by examining library materials or secondary data alone.<sup>8</sup> The approach used in this study is the statute approach. This method was chosen because the focus of the study is related to the related legal regulations. Data sources come from primary, secondary, and tertiary data. Data collection methods include literature studies obtained through reading, understanding, evaluating, reviewing and compiling the data collection into a descriptive narrative so that this study can be easily analyzed. The data analysis method used is secondary data that has been obtained, analyzed using Descriptive Qualitative.

## **3. Results and Discussion**

### **3.1 Determination of Notary Service Fees in Making Deeds**

A notary is a public official who has the authority to make deeds related to actions, agreements and decisions which are required by general legislation or the parties concerned to be stated in an authentic letter.<sup>9</sup>In making authentic deeds, Notaries do not receive a salary like other officials, but receive an honorarium. The provisions for notary honorariums are regulated in Article 36 of the UUJN, which regulates the maximum limit that must be received by a notary, the amount of which is based on the Economic and Sociological value of each Deed he makes. The Economic Value of each deed has been regulated in Article 36 paragraph (3) of Law Number 30 of 2004 concerning the Position of

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<sup>7</sup>Abdul Manan, 2019, "Review of Law Number 2 of 2014 on the Practice of Implementing Notary Honorariums", Thesis, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta, page 3.

<sup>8</sup>Soerjono Soekanto and Sri Mahmudji, 2003, Normative Legal Research, A Brief Review, Raja Grafindo Persada, Jakarta, p. 13.

<sup>9</sup>Erina Permatasari & Lathifah Hanim, 2017, Role and Responsibility of Notaries in the Implementation of Registration of Limited Liability Companies Through Online Systems, Jurnal Akta, No. 3, Vol. 4, p. 401.

Notary.<sup>10</sup>First, every object of the deed that has an economic value of up to Rp. 100,000,000.00 (one hundred million rupiah) or the equivalent of grams of gold at that time, the honorarium is a maximum of 2.5%. Second, above Rp. 100,000,000.00 (one hundred million rupiah) to Rp. 1,000,000,000,000.00 (one billion rupiah) the honorarium is a maximum of 1.5%. Third, above Rp. 1,000,000,000.00 (one billion rupiah) the honorarium received is based on the notary's agreement with the parties, but does not exceed 1% of the object for which the deed is made.

Sociological Value is determined based on the social function of the object of each deed with the honorarium received at most Rp. 5,000,000.00 (five million rupiah). The article above is the only article in the Notary Law that has provisions on the honorarium that a Notary is entitled to receive for services in making a Deed.<sup>11</sup>Regulations regarding honorariums are also mentioned in several articles in the Notary Code of Ethics, which mentions a prohibition on determining rates below the standards set by the Association.

In addition to being guided by the UUJN and the Notary Code of Ethics in determining the maximum and minimum honorarium limits, Notaries are also required to provide legal services in the notary field free of charge to people who are unable to pay without charging an honorarium as stated in Article 37 of the UUJN.<sup>12</sup>

### **3.2 Legal Consequences for Notaries for Violation of Honorarium Provisions in Making Deeds**

For Notaries who have violated the provisions and dignity of the Notary profession, they will be subject to punishment as determined by law. The sanctions as referred to in Article 1 paragraph (12) of the Notary Code of Ethics which reads, "A punishment imposed by the Honorary Council which is intended as a means, effort and tool to enforce obedience and discipline among members of the association or other people who hold and carry out the position of Notary."<sup>13</sup>

This sanction can be imposed on a Notary who violates the provisions of the Notary's Code of Ethics and the sanction is imposed by the Notary's Honorary Council. Regarding temporary dismissal in the Code of Ethics, it is regulated in Article 13 which states that: "without prejudice to the provisions governing the procedures or methods or the imposition of sanctions; then against a member of the association who has violated Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary's Position and is subject to

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<sup>10</sup>Abdul Ghofur Anshori, 2009, Indonesian Notary Institution: Legal and Ethical Perspective, UII Press, Yogyakarta, p. 33.

<sup>11</sup>Fonni, & Sitorus, W., 2018, "Notary Civil Partnership Based on the Notary Law", Riau Law Journal, No. 1, Vol. 2, p. 43.

<sup>12</sup>Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning Notary Positions

<sup>13</sup>Article 1 paragraph (12) of the Notary Code of Ethics

honorable or dishonorable dismissal; as a notary by the authorized agency; then the member concerned's membership in the Association ends."

In this case, the Notary has violated the provisions of Article 13 paragraph (3) of the Notary Code of Ethics, that in practice the Notary has not implemented and complied with all provisions regarding the honorarium set by the Association. The Notary has also violated the provisions of Article 4 paragraph (9) of the Notary Code of Ethics, that the Notary has made efforts, both directly and indirectly, that lead to unhealthy competition with fellow Notaries. In practice, the Notary has also violated the provisions of Article 4 paragraph (10) of the Notary Code of Ethics, that in practice the Notary has determined the honorarium to be paid by the client in an amount lower than the honorarium set by the Association.<sup>14</sup>

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary as a regulation governing the implementation of the duties of the Notary position does not expressly regulate the existence of sanctions due to violations of the provisions concerning the honorarium of Notaries. Violations of the provisions concerning the honorarium of Notaries are only regulated in Article 6 of the Code of Ethics concerning sanctions, the sanctions given are as follows:

1. Sanctions imposed on members who violate the Code of Ethics may include:
  - a. Reprimand.
  - b. Warning.
  - c. Temporary suspension from membership of the Association.
  - d. Honorable dismissal from membership of the Association.
  - e. Dishonorable dismissal from membership of the Association.
2. The imposition of sanctions as outlined above against members who violate the Code of Ethics is adjusted to the quantity and quality of violations committed by the member.
3. The Central Honorary Council has the authority to decide and impose sanctions against violations committed by ordinary members (of active Notaries) of the Association, against violations of moral norms or behavior that degrades the dignity and honor of Notaries, or acts that can reduce public trust in Notaries.
4. Violations of the Code of Ethics committed by another person (who is currently holding the position of Notary) may result in sanctions in the form of reprimands and/or warnings.
5. The decision of the Honorary Council in the form of a reprimand or warning cannot be appealed.

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<sup>14</sup>Manan, A., Tamrin, A. and Wibawa, MN, 2019, "Review of Law Number 2 of 2014 on the Practice of Implementing Notary Honorarium, Journal of Legal Research, No. 1, Vol. I, p. 78.

6. The decision of the Regional Honorary Council/Provincial Honorary Council in the form of temporary suspension or honorable dismissal or dishonorable dismissal from association membership can be appealed to the Central Honorary Council.
7. The decision of the Central Honorary Council of the first level in the form of temporary suspension or honorable dismissal or dishonorable dismissal from membership of the Association may be appealed to the Congress.
8. The Central Honorary Council also has the authority to provide recommendations and proposals for dismissal as a Notary to the Minister of Law and Human Rights of the Republic of Indonesia.<sup>15</sup>

The imposition of sanctions in the form of temporary suspension or honorable dismissal from membership of the Association for violations as referred to in Article 6 above must be notified by the Central Management to the Regional Supervisory Board and a copy must be submitted to the Minister of Law and Human Rights of the Republic of Indonesia.<sup>16</sup>

Although the UUJN does not explicitly regulate sanctions for violations of the provisions on Notary honorariums, however, if we refer to the provisions of Article 9 paragraph (1) letter d of the UUJN which states that "Notaries are temporarily dismissed from their positions for violating the obligations and prohibitions of the position and the Notary Code of Ethics", it can be a legal basis for imposing sanctions on Notaries who violate the provisions on honorariums for making Deeds. These sanctions can be imposed by the Notary Supervisory Board considering that the provisions of Article 70 letter a of the UUJN stipulate that the Regional Supervisory Board has the authority to hold a hearing to examine alleged violations of the Notary Code of Ethics or violations of the Notary's performance. For examinations of alleged violations of the Notary Code of Ethics or violations of the Notary's performance, the Regional Supervisory Board will make a report of the examination and submit it to the Regional Supervisory Board.

The first sanction given is a verbal warning. If the verbal warning is not complied with by the Notary, then the next level of sanction that the Notary must receive is a written warning. The application of a written warning aims to ensure certainty and accuracy between the written warning and the violation committed based on applicable Laws and Regulations. Imposing sanctions in the form of verbal or written warnings to Notaries who commit violations is the authority of the Notary Supervisory Board. Meanwhile, the sanction of temporary dismissal is the authority of the Central Supervisory Board.

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<sup>15</sup>Article 6 of the Notary Code of Ethics

<sup>16</sup>Article 14 of the Notary Code of Ethics

#### **4. Conclusion**

The determination of the notary's honorarium is based on the UUJN which regulates the maximum limit in determining the honorarium in addition to being guided by the UUJN, Notaries must comply with the honorarium provisions that have been determined by the Code of Ethics to determine the minimum limit. The provision of witnesses for notaries who violate the honorarium provisions is based on their violations, if they violate the maximum limit, sanctions are given based on the UUJ and if they violate the minimum limit, witnesses are given based on the Notary's Code of Ethics.

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