

Obligations of Notaries in Providing Free Legal Services to People Who Are Poor

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Abstract. *This research aims to analyze: 1) Notaries' obligations to provide free legal services to people who cannot afford it. 2) Legal sanctions for notaries who refuse to provide free legal services to people who cannot afford it. The approach method used in this research is a qualitative approach. This type of research falls within the scope of sociological juridical research. The types and sources of data in this research are primary and secondary data obtained through interviews and literature study. The analysis in this research is descriptive qualitative. The results of the research concluded: 1) The obligation of a notary to provide free legal services to people who cannot afford it is contained in Article 37 paragraph (1) UUJN, that notaries are obliged to provide legal services in the field of notarial services free of charge to people who cannot afford it. This article shows that people who cannot afford it can be given free notary services. The obligation of notaries to provide free legal services to poor people in Article 37 paragraph (1) UUJN gives hope that poor people can still get services from notaries. However, this norm is vague and unclear, this is because there is no clear explanation of the meaning of this article, and there are no other regulations that explain this matter. Providing free legal services in the notarial field from the Notary is based on confidence because there is an assumption that initially arises based on the Notary's assessment regarding the appearance and legal services required by clients who come to him, so that from that assessment the Notary can make a decision to provide services free legal services. And the client's candor towards the Notary is due to the honesty conveyed by the client regarding his inability to pay the honorarium for the legal services he requires. 2)*

Legal sanctions for notaries who refuse to provide free legal services to people who cannot afford them include sanctions such as verbal warnings, written warnings, temporary suspension, respectful dismissal, dishonorable and respectful dismissal. Sanctions are a form of government action, so that Notaries carry out Article 37 (1) UUJN in accordance with applicable regulations.

Keywords: Free; Notary; Poor; Services.

1. Introduction

The public is required to increase their level of legal awareness so that they can better understand and be aware of their rights and obligations, if their rights feel violated. By having a high level of legal awareness, the possibility of a dispute occurring is relatively small and it is even said that there are no legal consequences that can cancel the transactions they make, because they are more careful in making any decisions that might cause harm to themselves. It is said this because high legal awareness can result in the parties complying with applicable legal provisions. Conversely, if the level of legal awareness is very low, then the degree of compliance with the law is not high.¹

Guarantees of protection, order and legal certainty in the community's need for authentic documents regarding events, circumstances and/or legal acts are very important. With an authentic deed that clearly stipulates rights and obligations, it guarantees legal certainty and is also expected to prevent disputes from occurring. Even though later the dispute will still occur or cannot be avoided, in the process of resolving the dispute, the authentic deed as the strongest and fullest form of written evidence will make a real contribution to resolving the dispute between the parties.²

A notary is a public official appointed by the State to carry out some of the authority of the State specifically to make written and authentic evidence in the field of civil law. The function and role of Notaries in today's increasingly complex national development movement is of course wider and more developed, because the smoothness and legal certainty carried out by all parties is

¹Soerjono Sukanto and Mustafa Abdullah, 1982, *Sociology in Society*, Rajawali Pers Jakarta, p.215

²Cut Era Fitriyeni, 2012, *Notary's Responsibility for Storing Deed Minutes*, *Kanun Journal of Legal Studies*, 391–404, p.1

increasingly numerous and extensive, and this of course cannot be separated from the legal services and products produced by Notaries. The government and the wider community certainly have the hope that the services provided by Notaries truly have value and weight that can be accounted for.³

The journey of notaries in Indonesia has developed in accordance with the development of the Indonesian state and nation. Contemporary Indonesian history records that in the reform era there were quite significant changes in notarial institutions. This change was marked by the success of the Reform Order government in promulgating Law Number 30 of 2004 concerning the Position of Notaries (UUJN), which was then updated with Law Number 2 of 2014.⁴

As the authority given to a Notary by the State is attribution authority, namely authority given directly by the Notary Position Law, the position of Notary is not a structural position in a government organization.⁵ SAs referred to in Law Number 2 of 2014 regarding amendments to Law Number 30 of 2004 concerning the Position of Notaries, in the explanation it is stated that a Notary is a public official who has the authority to make authentic deeds as long as the making of certain authentic deeds is not reserved for other public officials. The need for written agreements to be made before a notary is to guarantee legal certainty and to fulfill the law of strong evidence for the parties entering into the agreement.⁶

The strength of a Notary's deed as evidence lies in the unique character of its preparation, namely that the Notary is appointed by law as a Public Official who is authorized to make deeds.⁷ The authority to make authentic deeds is only exercised by the Notary as long as the making of certain authentic deeds is not reserved for other public officials. It can be concluded that the Notary is the only

³Dwiky and Umar Ma'ruf, 2018 The Role of the Regional Supervisory Council (MPD) in Supervising the Implementation of Notary Positions in Tegal Regency, *Journal of Deeds*, Volume 5 Number 1, p.180

⁴Rita Permanasari and Akhmad Khisni, 2018, Legal Immunity for Notaries Who Reveal Secrets, Position, *Journal of Deeds*, Volume 5 Number 2, p.26

⁵Achmad Sulchan, Sukarmi and Ari Widiyanto, 2017, *Notarial Deed Using Electronic Media*, SINT Publishing, Kendal, p. 3

⁶Abdul Jalal, Suwitno and Sri Endah Wahyuningsih, 2018, Involvement of Notary Officials in Acts Against the Law and Taking Part in Committing Crimes in Forgery of Documents, *Journal of Deeds*, Volume 5 Number 1, p.228

⁷Sjaifurrachman, 2011, *Aspects of Notary Responsibility in Making Deeds*, Mandar Maju, Bandung, p.5

public official who has the authority to do so. Knowing the importance of the duties and position of a Notary in society and the evidentiary power of the authentic deed he or she makes, it can be said that the position of Notary is a position of trust. This position of trust given by law and society requires a person who works as a Notary to be responsible for carrying out this trust as well as possible and upholding legal ethics, the dignity and nobility of his position.⁸

A notary's responsibilities are closely related to his duties and authority as well as morality both personally and as a public official.⁹ Notaries as public officials must be able to always follow legal developments in providing information to the public who need them and safeguard the deeds they make to always be able to provide clear legal certainty.¹⁰

Notary is a legal profession so the notary profession is a noble profession (nobile officium). Notaries are called noble officials because the notary profession is closely related to humanity. A deed made by a notary can be a legal basis for the status of a person's property, rights and obligations. Mistakes in a deed made by a notary can result in the deprivation of a person's rights or burden a person with an obligation, therefore a notary in carrying out his official duties must comply with various provisions stated in the Law on the Position of Notaries and the Notary's Code of Ethics.¹¹

Notaries in carrying out their duties provide services to people who need their services as well as possible. Notaries also provide legal counseling to their clients to achieve high legal awareness so that people are aware of and appreciate their rights and obligations as citizens and members of society.¹² Apart from that, Article 37 UUJN regulates the obligation of Notaries to provide legal services in the notarial field free of charge to people who cannot afford it.

⁸Habib Adjie, 2009, Indonesian Notary Law (Thematic Interpretation of Position Law Number 30 of 2004 concerning Notary Positions, Refika Aditama, Bandung. p. 40

⁹Sri Utami, 2015, Legal Protection of Notaries in the Criminal Justice Process According to Law Number 2 of 2014, concerning Amendments to Law Number 20 of 2004 concerning the Position of Notaries, Repertorium Journal, ISSN:2355-2646, p.89

¹⁰Dimas Agung and Ahmad Khisni, 2017, Legal Consequences of Private Deeds legalized by a Notary, Journal of Deeds, Volume 4 Number 4, p.728

¹¹Anugrah Yustica, Ngadino, and Novira Maharani Sukma, 2020, The Role of Notary Professional Ethics as a Law Enforcement Effort, Notarius Journal, Volume 13, Number 1, p.60.

¹²Ndaru Satrio, 2016, Juridical Analysis of the Crime of Providing False Information in an Authentic Deed as Meant in Article 266 Paragraph (1), LEX Certa Journal, Volume 1 Number 1, p.97

Based on Article 37 paragraph (1), UUJN does not provide an explanation that can be used as a reference for Notaries to measure whether and how people who come and ask for Legal Services in the Notarial Sector can be said to be incapable or not. Apart from that, Notaries can be subject to sanctions according to Article 37 paragraph (2) UUJN if they do not carry out the obligations ordered by this Law. Of course, the uncertainty in Article 37 can be detrimental to Notaries and the public who are classified as less well off. Apart from the uncertainty in determining the benchmarks for people who cannot afford it, there is also the sanctions that will be imposed by the Central Supervisory Council (MPP), Regional Supervisory Council (MPW), and Regional Supervisory Council (MPD) against Notaries who violate Article 37 of the UUJN.

Government Regulation (PP) of the Republic of Indonesia Number 101 of 2012 concerning Receipt of Health Insurance Contribution Assistance regulates the Definition of an Indigent Person. The definition of an incapacitated person in this PP is regulated in Article 1 Number (6) which reads: "Indigent person is a person who has a source of livelihood, salary or wages, who is only able to meet adequate basic needs but is unable to pay contributions for himself and his family." Meanwhile, according to paragraph 5, the Poor is defined as "a person who has absolutely no source of livelihood and/or has a source of livelihood but does not have the ability to fulfill basic needs that are adequate for the life of himself and/or his family."

This problem regarding the lack of clarity regarding Indigent People can threaten Notaries in carrying out their obligations throughout Indonesia. Notaries in Temanggung Regency are no exception. The Regional and Regional Supervisory Councils in Temanggung Regency will also be forced to enforce the UUJN and Notary Code of Ethics with the lack of clarity regarding the limitations and benchmarks regarding Indigent People as referred to in Article 37 of this UUJN. Therefore, further research and evaluation of notary policies in providing free legal services to underprivileged people in Temanggung Regency is very important to ensure that people's rights are protected, and access to justice is guaranteed for all Temanggung Regency residents, regardless of their economic condition.

2. Research Methods

The approach method used in this research is a qualitative approach. This type of research falls within the scope of sociological juridical research. The types and

sources of data in this research are primary and secondary data obtained through interviews and literature study. The analysis in this research is descriptive qualitative.

3. Results and Discussion

3.1. Obligations of Notaries in Providing Free Legal Services to People Who Are Poor

The existence of a Notary is very important and vital in order to guarantee legal certainty based on the authentic nature of deeds executed by a number of parties, which are made by the Notary as a form of legal certainty for a number of parties entering into transactions. Notaries in carrying out their duties and responsibilities to make authentic deeds aim to provide legal certainty in certain legal acts carried out by society. People often times carrying out various activities that give rise to legal actions, therefore society needs someone who can be trusted and can provide something solution in a legal action carried out by the community.¹³

As stated in UUJN Article 1 paragraph 1 states that a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. Regarding the authority of a Notary, Article 15 (1) UUJN generally stipulates that a Notary has the authority to make authentic deeds relating to all deeds, agreements and stipulations that are required by statutory regulations and/or desired by those who have an interest to be stated in the deed. , providing guarantees regarding the date of making the deed, storing the deed, providing grosses, copies or quotations of the deed, all of which during the making of the deed are not assigned or excluded to other officials or other people as determined by law.

Based on the theory of authority, the authority of a notary as a public official is an honorable position given by the state attributively through law to someone it trusts. Article 1 UUJN states that a Notary is a public official who has the authority to make authentic deeds and other authorities as intended in this Law. As a public official, a notary is appointed by the minister, based on Article 2 UUJN, by appointing a notary he can carry out his duties freely, without being

¹³Daniar Ramadhan, Ngadino, 2019,, Notary's Authority in Making Deeds Related to Land, Notarius Journal, Volume 12 Number 2, p.686

influenced by executive bodies and other bodies and can act neutrally and independently. The task of a notary is to carry out some of the public functions of the state and work to serve the public interest, especially in the field of civil law, even though the notary is not a civil servant who receives a salary from the state.¹⁴

A deed made by an official without authority and without the ability to make it or does not meet the requirements is not considered an authentic deed, but only has the force of a private deed if signed by the parties concerned.¹⁵ Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position Regulations determines the authority of a Notary, this authority is a limitation that the Notary may not carry out an action outside of that authority.¹⁶

To carry out the Notary profession, a Notary must be truly able to provide good notarial services to citizens. Legal services in the notary sector are needed by every group of society, both those who can afford it and those who cannot afford it. Differences in economic capabilities have an impact on the use of Notary services. A notary may not refuse any client who comes to carry out legal actions in the notarial field unless there is a reason to refuse. Notaries have an obligation to assist in providing free legal services in the notary sector for those who cannot afford it.¹⁷

Legal services in the notary sector are needed by every group of society. The use of notarial services by citizens who can afford it can be carried out by paying an honorarium to the Notary. This is the opposite for poor citizens, namely they cannot pay an honorarium to a Notary.

Providing free legal services in the notarial field from the Notary is based on confidence because there is an assumption that initially arises based on the Notary's assessment regarding the appearance and legal services required by

¹⁴Rizki Nurmayanti, Akhmad Khisni, Roles and Responsibilities of Notaries in the Implementation of Cooperative Deeds, *Deed Journal*, Vol. 4 No. 4 December 2017, p.611

¹⁵Sudikno Mertokusumo, 2014, *Legal Discovery An Introduction*, Revised Edition, Cahaya Atma Pustaka, Yogyakarta, p. 141

¹⁶Yuriz, 2016, *Legal Analysis of Differences in the Forms of Inheritance Statements Made in Notary Practice in Medan City*, *USU Journal*, Vol 13, p. 141

¹⁷Novia Eka, 2022, *Obligations of Notaries to Provide Free Legal Services to Poor People*, *Syntax Literate: Indonesian Scientific Journal*, Vol. 7, no. 12, p.5

clients who come to him, so that from that assessment the Notary can make a decision to provide services free legal services. And the client's candor towards the Notary is due to the honesty conveyed by the client regarding his inability to pay the honorarium for the legal services he requires.¹⁸

In general, a Notary may not refuse any client who comes to him carry out legal action in the notarial field in accordance with Article 37 paragraph (1) UUJN, which states that "Notaries are obliged to provide legal services in the notarial field free of charge to people who cannot afford it." This article shows that people who cannot afford it can be given free notary services. The obligation of notaries to provide free legal services to poor people in Article 37 paragraph (1) UUJN gives hope that poor people can still get services from notaries. However, this norm is vague and unclear, this is because there is no clear explanation of the meaning of this article, and there are no other regulations that explain this matter.

The definition of an incapacitated person is as stated in the provisions of Article 1 number 5 of the Republic of Indonesia Minister of Social Affairs Regulation No. 15 of 2018 concerning Integrated Service and Referral Systems for Handling the Poor and Disabled People, that underprivileged people are people who have sources of livelihood, salaries or wages that are only able to meet adequate basic needs but are unable to pay contributions for themselves and his family.

The existence of Article 37 paragraph (1) UUJN, confirms that the State guarantees all the rights of its citizens without exception while they are in the territory of the Republic of Indonesia. This statement is firmly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Indonesia as a constitutional state has unique characteristics. Article 37 paragraph (1) UUJN must be able to be carried out by a Notary to provide rights to poor people. Justice in Indonesia is described in Pancasila as the basis of the country, namely in the fifth principle which states social justice for all Indonesian people.

The provisions in Article 37 of the UUJN state that Notaries are obliged to provide legal services in the field of notarial matters free of charge to poor people, so that the implementation of this article to carry out their duties depends on the Notary concerned who is influenced by humanitarian factors, the client's candor and the Notary's confidence. Related exposure Several factors

¹⁸Ibid., p.6

behind the provision of free legal services, based on the author's view, are as follows.

1. Human factor. The provision of legal services in the field of notarial services free of charge by Notaries is based on humanitarian factors because there is a moral impulse on the part of the notary to provide assistance to fellow human beings in this case, clients from underprivileged groups of citizens who come to ask for help in making a deed without giving an honorarium. or compensation for the Notary, this condition illustrates the level of moral integrity of the Notary to carry out his obligations professionally.

2. The client's directness factor towards the Notary. The provision of legal services in the notarial sector free of charge by a Notary is based on the client's candor factor relating to the inability to pay wages or honorarium for a legal service that is required, so that this can inspire the Notary's social spirit to provide his or her services free of charge. only.

3. The notary's belief factor is that the clients who come to him are indeed disadvantaged people. The provision of legal services in the notarial field free of charge by a Notary is based on trust factors because there is an assumption that initially arises based on the notary's assessment regarding his appearance and the legal services he needs, so that from that assessment the Notary can make a decision to provide legal services for free. -only.

Based on the three factors that influence the provision of free legal services to underprivileged people, the practice carried out by Notary sources is based on humanitarian factors, because the compensation for services provided to underprivileged people is not in the form of wages or honorarium, but Notaries expect rewards for their services. it's from God.

Notaries in carrying out their profession providing services to the public must act in accordance with applicable regulations, this is important because Notaries carry out their duties not only for personal interests, but also for the interests of society, and have an obligation to guarantee the truth of the deeds they make, therefore a Notary is required more sensitive, honest, fair and transparent in making an authentic deed. In carrying out the duties of the office, a Notary must adhere strictly to the code of ethics of the Notary's position, because without this the honor and dignity of professionalism will be lost and no longer gain the trust of the public. Notaries are also required to have high moral values, because with high morals the notary will not abuse the authority he has, so that the Notary will be able to maintain his role as a public official who provides services

in accordance with applicable regulations and does not damage the image of the Notary. itself.¹⁹

3.2. Legal sanctions for notaries who refuse to provide free legal services to people who cannot afford them

Notary is a legal profession so the notary profession is a noble profession (*nobile officium*). Notaries are called noble officials because the notary profession is closely related to humanity. A deed made by a notary can be a legal basis for the status of a person's property, rights and obligations. Mistakes in a deed made by a notary can result in the deprivation of a person's rights or burden a person with an obligation, therefore a notary in carrying out his official duties must comply with various provisions stated in the Law on the Position of Notaries, namely Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.²⁰

Notaries as authorized public officials, in making authentic deeds are burdened with responsibility for the deeds they have made. Regarding the aspect of responsibility, the Notary can be held responsible for negligence, with types of sanctions including civil, criminal and administrative sanctions. Responsibility is the obligation to be responsible for the laws that are implemented and to correct the errors that arise. In relation to the responsibilities of a notary, in carrying out his position the notary is subject to UUJN, UUJNP and other regulations that regulate it, if there is an error that arises in the future due to what he has done and causes losses to the party facing him, the notary must provide compensation to the party concerned is in accordance with UUJN, UUJNP or other regulations that regulate it.

Notaries are bound and comply with the regulations that regulate the position of Notary, namely UUJN. These statutory regulations serve as guidelines for Notaries to carry out their duties and obligations, if they are violated they will receive sanctions. Notaries who violate Article 37 (1) UUJN will receive sanctions such as:

1. Verbal warning.

¹⁹Komar Andasasmita, 1981, *Notary with History, Role, Duties, Secrets of His Office*, Sumur, Bandung, p. 14

²⁰Abdul Ghofur Anshori, 2009, *Indonesian Notary Institute, Legal and Ethical Perspectives*, UII Press, Yogyakarta, p. 46.

2. Written warning.
3. Temporary suspension.
4. Dismissal with honor.
5. Dishonorable discharge.

Sanctions are a form of government action, so that Notaries carry out Article 37 (1) UUJN in accordance with applicable regulations. The meaning of Article 37 (1) UUJN as determining the qualifications for sanctions that will be given to Notaries. The contradiction between *das sollen* and *das sein* is caused by differences in views and principles of legal interest. The law requires the fulfillment of a number of rights of poor people, for Notaries this condition results in losses because the Notary's honorarium is obtained from the client. Referring to the provisions relating to Notary's honorarium, as has been regulated in the UUJN and relating to Notaries as economic creatures when dealing with Article 37 of the Notary's UUJN which states that if the party facing the party is a poor person, the notary is obliged to provide legal services free of charge. Notaries can be complained to the MPW (Notary Supervisory Council) if they are proven to have withdrawn honorarium from poor people.

Realizing that the Notary profession is needed in development, Article 37 (1) UUJN shows that Notaries carry out their profession to provide protection and guarantee the realization of legal certainty for citizens without considering the economic capabilities of their clients. Notaries have an ethical obligation to provide access to legal services to all individuals, including those who are financially disadvantaged. These sanctions may include a warning, fine, or revocation of a license to practice as a notary. In the provisions of Article 37 (2) UUJN as the guardian of the implementation of the Notary's performance in providing legal services in the notarial sector free of charge to the public.

4. Conclusion

The obligation of a notary to provide free legal services to people who cannot afford it is stated in Article 37 paragraph (1) UUJN, that Notaries are obliged to provide legal services in the field of notarial services free of charge to people who cannot afford it. This article shows that people who cannot afford it can be given free notary services. The obligation of notaries to provide free legal services to poor people in Article 37 paragraph (1) UUJN gives hope that poor

people can still get services from notaries. However, this norm is vague and unclear, this is because there is no clear explanation of the meaning of this article, and there are no other regulations that explain this matter. Providing free legal services in the notarial field from the Notary is based on confidence because there is an assumption that initially arises based on the Notary's assessment regarding the appearance and legal services required by clients who come to him, so that from that assessment the Notary can make a decision to provide services free legal services. And the client's candor towards the Notary is due to the honesty conveyed by the client regarding his inability to pay the honorarium for the legal services he requires. Legal sanctions for notaries who refuse to provide free legal services to people who cannot afford them include sanctions such as verbal warnings, written warnings, temporary suspension, respectful dismissal, dishonorable and respectful dismissal. Sanctions are a form of government action, so that Notaries carry out Article 37 (1) UUJN in accordance with applicable regulations. The contradiction between *das sollen* and *das sein* is caused by differences in views and principles of legal interest. The law requires the fulfillment of a number of rights of poor people, for Notaries this condition results in losses because the Notary's honorarium is obtained from the client. Referring to the provisions relating to Notary's honorarium, as has been regulated in the UUJN and relating to Notaries as economic creatures when dealing with Article 37 of the Notary's UUJN which states that if the party facing the party is a poor person, the notary is obliged to provide legal services free of charge. Notaries can be complained to the MPW (Notary Supervisory Council) if they are proven to have withdrawn honorarium from poor people.

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