

Effectiveness of Notary Deed Preparation Services for the Unfortunate Community Without Being Charged an Honorary Fee Based on the Notary Office Law

Widya Nur Salam

Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA)
Semarang, Indonesia, E-mail: widyanursalam.std@unissula.ac.id

Abstract. *Notary is a public official, a profession that is very important to help provide legal certainty to the community, a job that was born because it was needed by the community, not a job that was created intentionally and then known by the community. By definition, a notary is a public official, but he is not an employee according to the law or civil service regulations. Notaries do not receive a salary or pension from the government, but notaries only receive an honorarium as a tribute to their services or can provide free services to those who are unable. The author researched with the aim of knowing and analyzing the services of making notarial deeds for the poor without being charged an honorarium based on the UUJN and analyzing what sanctions are for notaries who violate the honorarium provisions that have been set by the UUJN. To find out the above objectives, the author uses Empirical legal research. The theories used in this study are the Theory of Dignified Justice and the Theory of the Working of Law. Data sources are obtained through several stages, namely field research (interviews) and literature. Data analysis is qualitative and presented descriptively, namely explaining, describing, and describing according to the problems that are closely related to this study. Based on the research results, it was concluded that, first, the provision of notarial deed making services without charging an honorarium based on Article 37 No. 2 of 2014 Amendment to Law No. 30 of 2004 concerning Notary Positions is very effective and very beneficial for the underprivileged. Second, sanctions for notaries who violate the provisions of the established honorarium can be in the form of civil sanctions, administrative sanctions in the form of verbal warnings, written warnings, dismissal, honorable dismissal and dishonorable dismissal. As well as moral sanctions and ethical code sanctions for those who refuse to provide free services to the underprivileged.*

Keywords: *Honorarium; Notary; Society.*

1. Introduction

Notary was originally a job that was born because it was needed by society, not a job that was created intentionally and then known by society. As explained in Article 28 C Paragraph 1 and Paragraph 2 of the 1945 Constitution of the Republic of Indonesia that: "everyone has the right to develop themselves through the fulfillment of their basic needs, the right to receive education and obtain benefits from science and technology, art and culture, in order to improve the quality of their lives and for the welfare of humanity. Everyone has the right to advance themselves in fighting for their rights collectively to build their society, nation and country."

Notary is a public official, a profession that is very important to help provide legal certainty to the community. stop legal problems in the future with the original deed used as a perfect means of proof in court. Notary, as a respected profession, is always associated with ethics, and ethics are what regulates their work. Notary is called a noble profession (*officium nobile*) because they have ethics, they are just mechanical robots without souls if they move without ethics.¹

Notary is a word from *notariat* which originally came from the name of its servant, namely "notarius". Notary itself is a group of people who are experts in doing writing work in a certain field. It is called notary because it originally came from the word "Nota Literia" which means a sign of writing or characters that are used to write or describe words. ²

Notaries as a form of legal profession should play a role in supporting law enforcement through the implementation of their profession as public officials who are authorized to make a legal product, namely an authentic deed that has perfect evidentiary power to help create legal certainty for the community. An authentic deed made by a Notary is a perfect evidence because it has three evidentiary powers, namely external evidentiary power (*uitwendige bewijskracht*), formal evidentiary power (*formele bewijskracht*) and material evidentiary power (*materiele bewijskracht*).³

Notary Law Number 30 of 2004 concerning Notary Law as amended by Law Number 2 of 2014 concerning Amendments to Notary Law Number 30 of 2004 concerning Notary Law (hereinafter referred to as UUJN) is the only law that regulates notary law in Indonesia. This law is expected to provide general

¹I Ketut Adi Gunawan et.al 2020, Determination of Notary Honorarium in the Practice of Notary Office Implementation, *Journal of Legal Construction*, Vol.1 No.2, P. 369-373

² Rusdianto Sesung, et.al, 2017, *Law & Legal Politics of Notary Position*, Da. Rozarie, Surabaya, p. 62.

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

guidelines for Notaries and also contains strict sanctions for Notaries who are proven to have violated the rules.⁴

In addition to the UUJN which regulates the implementation of the Notary's office, there is also the Notary Code of Ethics as a supporter of the Notary Law and is also a guideline for Notaries in carrying out their office. The Notary Code of Ethics formulated by the Indonesian Notary Association (INI) is a rule made to regulate the behavior of every Notary and must also be obeyed by every notary both inside and outside their office.

According to the provisions of Article 1 Paragraph (1) of the Notary Law (UUJN), it is stated that a notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this law. Article 15 Paragraph 1 of the Notary Law Regulations states that: "A notary is a public official who is authorized to make authentic deeds regarding all acts, agreements and determinations that are required by a general regulation or by an interested party to be stated in an authentic deed, guarantee the certainty of the date, store the deed and provide a grosse, copy and extract, all as long as the making of the deed by a general regulation is not also assigned or excluded to another official or person."

Article 1868 of the Civil Code (BW) states that: "an authentic deed is a deed made in a form determined by law by or before a public official authorized to do so at the place where the deed is made."

Then in Article 16 Paragraph 1 it is stated that notaries in carrying out their duties are required to act in a trustworthy, honest, thorough, independent, impartial manner and protect the interests of the parties involved in legal acts.

By definition, it is emphasized that a notary is a public official, but he is not an employee according to the law or civil service regulations. He does not receive a salary or pension from the government, but a notary only receives an honorarium as a tribute to his services or can provide free services to those who are unable.⁵The use of notary services by the community that is able can be done by giving an honorarium to the notary. However, the opposite is true for the community that is unable to provide an honorarium to the notary. Differences in economic capacity have an impact on the use of notary services.⁶ As written in Article 37 Paragraph (1) of the Notary Law (UUJN), notaries are required to provide legal services in the notary field free of charge to people who cannot afford it.

⁴Prayitno, Imam Suko. 2019, "Legal Consequences of Violation of the Provisions on Notarial Deed Honorarium." *Res Judicata* Vol. 2 No.1, p.186-199.

⁵Komar Andasasmita, 1981, *Notary I*, Sumur Bandung, p. 45.

⁶E. Rahmi, 2021, *Notary Supervisory Board and Notary Education Treasury*, Pentas Grafika, Jakarta, p. 10.

In this law, the limitation of poor people who can get legal services in the notary field for free/without being charged an honorarium has not been specifically regulated, but it can be seen in general that poor people who can get legal services in the notary field for free are people who are economically disadvantaged. Then it can be seen in Article 5 of Law No. 16 of 2011 concerning Legal Aid, that:

1. Recipients of legal aid include any person or group of poor people who are unable to fulfill their basic rights properly and independently.
2. The basic rights as referred to in paragraph (1) include the right to food, clothing, health services, education services, work and business and/or housing.

It can be concluded from the provisions above that people who can be said to be unable to obtain legal services in the notary field free of charge/without being charged an honorarium are people who cannot fulfill basic rights which include the right to food, clothing, health services, education services, work and business and/or housing properly and independently.

Based on the National Socio-Economic Survey (Susenas) in 2024, the poverty rate in Semarang Regency is 6.96%. Semarang Regency is ranked 7th for the smallest percentage of poor people in Central Java. This then becomes the government's responsibility to fix the existing poverty by fighting for and protecting the rights of every community with the existence of a legal aid law which is a means for the less fortunate to protect their rights, in that case it is also related to notary services providing easier access to legal services, it is expected to reduce social inequality and improve the quality of life of the poor. With the obligation to provide free services or without being charged an honorarium in providing services based on the UUJN.⁷

The problem with Notaries in Semarang City, which is included in the category of developing cities, is the doubt of people who cannot afford to visit a Notary. Especially if the office where the Notary practices looks luxurious, it makes people increasingly reluctant and afraid to visit the Notary's office in Semarang City.⁸

People from certain social classes may have different perceptions about notary fees. Those with lower economic levels tend to consider notary fees as a heavy burden. People also often lack clear and accurate information about notary fees, so they tend to make higher estimates.

⁷BPS "poverty in Semarang Regency"
<https://semarangkab.bps.go.id/id/pressrelease/2024/07/24/321/kemiskinan-kabupaten-semarang-maret-2024.html> Accessed on October 31, 2024, at 19.34 WIB

⁸Kristyanto, HSA, & Wisnaeni, F, 2018, Provision of Legal Services in the Notary Sector Based on Article 37 of Law Number 2 of 2014 concerning Notary Position (Case Study of Notaries in Semarang City). Notarius, Vol.11, No.2, P. 267

Based on what has been mentioned above, it would certainly be very interesting to learn more about the notary deed making service that is free of honorarium for the poor in the city of Semarang. Because basically a notary cannot refuse people who are unable to come to ask for his services, while for the poor who have not been able to provide honorarium because of the economy which will later have an impact on the notary, coupled with the perception of the community itself which considers notary fees to require large costs. And in determining the amount of the notary's honorarium, it must be based on the economic value and sociological value of each deed made, as regulated in Article 36 of the Notary Law.

2. Research Methods

The research method used by the author is empirical legal research, which is based on an understanding of legal science which is not viewed as "law as what it is in the books", but rather empirically, namely a legal research method that attempts to see the law in a real sense or can be said to see, research how the law works in society.⁹ Empirical research is a method that provides a framework of evidence to ensure the truth of something and functions to be able to see the law in a real sense and examine the process of how a law works in the community.¹⁰

The types and sources of data used in this study are of two types, namely primary data and secondary data. Primary data is data obtained or obtained directly from the source/field so that it is still raw data. Primary primary data in this study was generated through interviews. Primary data is data obtained directly from the original source or the place where the research object was conducted. While secondary data is data obtained not directly from the original source but through books, research results, journals or archives that are related to the research object. As for secondary data, legal materials consist of tertiary legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. Secondary legal materials in this study consist of books, journals, the great dictionary of the Indonesian language, encyclopedias, and other literature that have a close relationship to the problem being studied.

Data analysis in research using qualitative analysis presented descriptively, namely explaining, describing, and depicting according to the problems that are closely related to this research.

⁹Abdul Fattah Nasution, 2023, *Qualitative Research Methods*, Harga Creative, Bandung, p. 34

¹⁰Mukti Fajar ND and Yualianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, Pustaka Pelajar, Yogyakarta, p. 154.

3. Results And Discussion

3.1. Effectiveness of Notarial Deed Making Services for the Underprivileged Without Charging an Honorarium Based on the Notary Law.

The position of notary is held or its presence is required by law with the intention of helping and serving the community who need authentic written evidence regarding circumstances, events or legal acts. On this basis, those who are appointed as notaries must have the spirit to serve the community, and for this service, the community who has felt served by the notary in accordance with his duties, can provide an honorarium to the notary. Therefore, a notary means nothing if the community does not need him.

Notaries are entitled to receive honorarium for legal services provided in accordance with their authority. The amount of honorarium received by a notary is based on the economic and sociological value of each deed they make. The economic value has been regulated in Article 36 Paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, namely:

- a. up to IDR 100,000,000.00 (one hundred million rupiah) or the equivalent of grams of gold at that time, the largest honorarium received is 2.5% (two point five percent);
- b. above Rp. 100,000,000.00 (one hundred million rupiah) up to Rp. 1,000,000,000.00 (one billion rupiah) the honorarium received is a maximum of 1.5% (one point five percent); or
- c. above Rp. 1,000,000,000.00 (one billion rupiah) the honorarium received is based on an agreement between the Notary and the parties, but does not exceed 1% (one percent) of the object for which the deed is made.

In carrying out their duties, notary services are divided into two, namely general services and special services, general services in question are for people who are able, then an honorarium will be charged, while special services are directed at people who are unable, then the notary will provide free services or will not charge an honorarium in accordance with the Provisions of Article 37 Paragraph 1 No. 12 of 2014 Amendment to Law No. 30 of 2004 Concerning the Position of Notary "Notaries are required to provide legal services in the field of notary free of charge to people who are unable."

Providing free legal services or without charging an honorarium certainly creates an economic burden for notaries, considering the operational costs that must be borne. This then becomes a question, especially in practice, notaries require costs for staff salaries and office expenses and other things. Based on the results of an interview with one of the Notaries in Semarang, namely Mrs. Dr. Dahniarti

Hasana, SH, M.Kn said that: "Providing free services to the underprivileged is something that must be done by notaries based on Article 37 of the UUJN, because it is the right of the community to get a reduction in costs. In one day, notaries do not only receive one deed, so providing free services to the underprivileged will not affect the notary's income itself, but in this case there are several costs that cannot be borne by notaries such as PNBP (Non-Tax State Revenue). PNBP is all forms of revenue obtained by the state that do not come from taxes. This means that this is a fund obtained by the government from various sources other than taxes paid by citizens. Therefore, for the PNBP itself, we will inform and discuss it with the community so that they understand that in this case there are several costs that they must pay which are not the notary's obligation and which are free services or are not charged an honorarium by the notary, namely for the making of notarial deeds/notarial services."¹¹

In relation to the underprivileged community who then receive assistance, there are usually several things that indicate that the community is classified as underprivileged, such as including a certificate of poverty from the local regional administrator, Dr. Dahniarti Hasana, SH, M.Kn then explained that in relation to notary services, there is no requirement for the community to include a certificate or anything else, but when the community meets a notary as long as they want and ask the notary for a fee reduction, the notary himself understands and will provide the fee reduction.¹²

During her time as a notary, Dr. Dahniarti Hasana, SH, M.Kn has provided several services for making these deeds to the underprivileged, some of which are deeds of gift, sale and purchase agreements, deeds of sale and purchase, and deeds of inheritance certificates. The act of providing free services/without being charged an honorarium reflects humanitarian values such as empathy and solidarity. Notaries do not only see clients as legal objects, but also as fellow human beings who need help.

The author argues that the effectiveness of notarial deed making services for the underprivileged without being charged an honorarium based on the UUJN has been running as it should and is considered effective by following the existing rotation, namely in Article 37 Paragraph 1 of the UUJN, then it is a picture that the law does not differentiate between one community and another even though it concerns services and compensation. In accordance with Article 5 of Law No. 16 of 2011 concerning Legal Aid, it has been explained that the underprivileged are entitled to free legal services, this is a form of justice for every community that needs legal services. So that in providing notarial deed making services to the underprivileged based on the notary law, the position of notary is considered

¹¹Interview with Dr. Dahniarti Hasana, SH, M.Kn Notary in Semarang, October 14, 2024.

¹²Ibid

effective and very useful in practice because it is very helpful for the underprivileged.

3.2. Sanctions for Notaries Who Violate the Honorarium Provisions Established by the Notary Law.

The notary profession plays a very important role in the Indonesian legal system. Therefore, supervision of the implementation of notary duties is crucial to maintain the integrity and quality of services provided. Effective supervision of the notary profession is essential to maintain public trust in the legal system. With supervision, the public can feel safer and more protected when using notary services.

When a notary is later found to have committed a violation in carrying out his duties which results in the imposition of sanctions, then this must be implemented firmly and every legal regulation in force in Indonesia always has sanctions at the end of the legal regulation. Because sanctions are an important closing part of the law. Such a situation is often said, that in the tail there is poison or in cauda venenum. The existence of these sanctions is intended so that the notary can act correctly so that the notary's product is an authentic deed that can provide protection and certainty to the parties who need it.

Thus, sanctions are essentially legal instruments that are usually given when obligations or prohibitions contained in legal provisions have been violated, and behind the door of the provisions of orders and prohibitions (geen verboden) there are sanctions available to force compliance. Sanctions against notaries are regulated at the end of the UUJN, namely in Article 84 and Article 85 of the UUJN, there are 2 (two) types, namely:

1) Civil Sanctions

In Article 84 it is stated that there are 2 (two) types of civil sanctions, if a notary commits an act of violation against certain articles and also sanctions of the same type are spread across other articles, namely:

- a. Notarial deed which has the power of proof as a private deed; And
- b. The notarial deed becomes null and void by law

As a result of such a notarial deed, it can become a reason for the party who suffers a loss to demand reimbursement of costs, compensation and interest from the notary.

2) Administrative Sanctions

Article 85 of the UUJN stipulates that there are 5 (five) types of administrative sanctions, namely:

1. Verbal reprimand.
2. Written warning.
3. Temporary suspension.
4. Honorable discharge.
5. Dishonorable discharge.

Based on the results of the interview with Mrs. Dr. Dahniarti Hasana, SH, M.Kn regarding the provisions in Article 37 of the UUJN, so far there have been no violations of the provisions of Article 37, specifically in the city of Semarang, notaries voluntarily provide deed-making services without charging an honorarium to the underprivileged community because it is the authority of the notary himself, but if in the end there are those who violate it, it becomes a Moral Sanction for the notary and also a Code of Ethics Sanction.

Code of Ethics Sanctions are formal and written sanctions. These sanctions are regulated in the notary's code of ethics and can be imposed by professional organizations such as the Indonesian Notary Association (INI) or by the Notary Supervisory Board. The code of ethics sanctions that can be imposed based on article 6 of the notary's code of ethics include:

- 1) Sanctions imposed on members who violate the code of ethics may include:
 - a. Reprimand: A written warning for a violation committed.
 - b. Warning: A warning that is more serious than a reprimand.
 - c. Suspension of Membership: The notary is temporarily unable to carry out his duties as a notary.
 - d. Termination of Membership: The notary is removed from membership of the professional organization.
- 2) The imposition of sanctions as outlined above against members who violate the code of ethics is adjusted to the quantity and quality of the violations committed by the member.
- 3) The central honorary council has the authority to decide and impose sanctions against violations committed by ordinary members (active notaries) of the association, against acts that could reduce public trust in notaries.
- 4) Violations of the Code of Ethics committed by other people (who are 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.
- 6) The decision of the Regional Honorary Council/Provincial Honorary Council in the form of temporary suspension or honorable dismissal or dishonorable dismissal from membership of the Association may 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.

This code of ethics sanction has more serious consequences than moral sanctions because it can have a direct impact on the notary's ability to carry out his profession.

Mrs. Dr. Dahniarti Hasana, SH, M.Kn then explained that moral sanctions are non-formal and unwritten sanctions. This sanction is more about the public's assessment of a notary's actions. When a notary commits a violation, he will lose the trust of the public, colleagues, and clients. This can have an impact on Reputation: the notary's good name and reputation will be tarnished. Trust: Clients will hesitate to use the notary's services in the future. Social Status: The social position of a notary in society can decline. This moral sanction may not be measured quantitatively, but it has a very significant impact on the psychology and professionalism of a notary.¹³

The author argues that the existence of sanctions that are strictly regulated is a reference and reminder to notaries in carrying out their duties must be in accordance with the rules, because this also concerns the quality of the notary itself and where we can see the law working in the matter of implementing the law itself. Moral sanctions and ethical code sanctions are two types of sanctions that complement each other in maintaining the dignity of the notary profession. Both types of sanctions aim to ensure that notaries carry out their duties properly, honestly, and responsibly.

4. Conclusion

The effectiveness of notarial deed making services for the underprivileged without being charged an honorarium based on the notary law as stipulated in article 37 of the UUJN has been running effectively and is very beneficial,

¹³Ibid

because this is the authority of the notary and the right of the underprivileged who are entitled to legal assistance based on Law Number 16 of 2011 concerning Legal Aid, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004, the Notary Code of Ethics. The act of providing free services/without being charged an honorarium reflects humanitarian values such as empathy and solidarity. Notaries do not only see clients as legal objects, but also as fellow human beings who need help. Sanctions for notaries who violate the provisions of the honorarium stipulated by the notary law can be in the form of civil sanctions, administrative sanctions, in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal, dishonorable dismissal. Then, for notaries who refuse/violate the provisions of Article 37 UUN, there are moral sanctions and Code of Ethics sanctions, which will greatly affect the career image of the notary.

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