

## Implementation of the Law on Notary Positions Concerning the Obligations of Notaries in Providing Free Legal Services in Tangerang City

**Dewi Tjandraningsih**

Master of Law Postgraduate Islamic University Syekh Yusuf, Tangerang Indonesia

Email: dewatj.notaris@gmail.com

### Abstracts

This research wants to know the implementation of article 37 of the notary position law number 2 of 2014 concerning the provision of free legal services. Inhibiting factors and supporting factors. Types of sociological empirical research and field research. Examining normative legal provisions in society. Conclusion The implementation of providing free legal services to underprivileged communities in the city of Tangerang has gone well. Because in general clients come to the Notary with the need to transfer rights and obligations that have economic value, and the client's desire is only to reduce costs from those set by UUJN. The supporting factors are in UU-JN and the Notary Code of Ethics. In article 37 of UU-JN, it is mandatory and binding for Notaries to provide notarial legal services, namely providing them free of charge to underprivileged people. The inhibiting factor is the notary's need to earn a living and meet the operational needs of the office. In reality, there are no legal consequences for Notaries if they cannot provide free legal services. Requirements for determining the implementation of free services to underprivileged communities by Notaries in their work areas are not regulated in UUJN or the Notary Code of Ethics.

**Keywords:** Implementation, Notary Position, Legal Services.

### I. Introduction

A notary is a professional position that has an important role in legal actions carried out for society by current developments. This is in line with the position of a notary whose services are needed in society. A position needs to be socialized to the public which is then created by the general public. Notaries' position is not the same as the executive, legislative, and judicial institutions. Notaries are trusted as experts who do not side with anyone in making authentic deeds.

A deed made by an authorized official contains authentically an action carried out by the circumstances witnessed by the public official who made the deed. Authentic deeds produced by notaries can be held accountable for protecting their clients as legal acts.

The strength of the authentic deed produced is perfect proof for the parties if a party submits an objection that can be proven at a court hearing. Based on the provisions of Article 36 UUJNP no. 2 of 2014, the honorarium received by notaries, both economically and sociologically, is quite heavy in terms of payment for less fortunate people. So people are reluctant to come to a notary even if it is just for consultation regarding notary legal issues.

The honorarium set by a notary is generally burdensome to the public and can only be paid by middle-class and upper-class people who have an interest in the deed, which is stated

in an authentic deed. Therefore, notaries are also required to provide free notarial legal services to people who cannot afford them, as stipulated in Article 37 of UUJNP No. 2 of 2014.

Obligations specified in UU-JNP No. 2 of 2014, that notaries must carry out their obligations in terms of providing notarial legal services to people who cannot afford them for free. As for Article 37 Paragraph (1) and Paragraph (2) UU-JNP, it is stated that: (1). Notaries are obliged to provide free notarial legal services to people who cannot afford it. (2). Notaries who violate the provisions as intended in paragraph (1) may be subject to sanctions in the form of: a. verbal warning; b. written warning; c. temporary layoff for free.

Legal services for those who can pay a notary's honorarium or legal services provided free of charge by a notary, due to their disability, must be provided with the same legal services by a notary because the deed made by the notary concerned will not be any different for those who can pay the honorarium or for who cannot afford to pay.

This is a service that upholds the dignity of the profession as a notary. However, globalization has hit all countries in the global financial crisis which has become a world issue and can be felt by all professional institutions in Indonesia, especially the notary profession.

## **2. Research Methods**

This research uses a normative legal qualitative research approach, which includes the following:

- a. The type of research used is empirical juridical, namely a type of sociological research, then field research, with the provisions that apply in the community environment.
- b. The object of research carried out by notaries is to provide legal services to clients. The research object is through normative law as a guide for notaries, which is by article 37 UUJN concerning notaries who are required to provide legal assistance to people who cannot afford it.
- c. The research approach is sociolegal as an interdisciplinary approach to studying normative law that utilizes sociology.

### **2.1. Research Data Sources**

Source of descriptive qualitative legal material data. Through this type of descriptive research obtain a good, clear, and detailed picture of accurate data regarding the object being studied. So that it can describe the object of research carried out by notaries to be able to implement Article 37 of the 2014 Law on Notary Positions

- a. Primary data sources are data collected by the authors themselves. Data was recorded and compiled at the start of the research as primary data obtained by conducting in-depth interviews directly with respondents to obtain valid data related to the research focus.
- b. Secondary data sources were obtained through observations in the research field through existing legal materials, through literature studies, as well as official documents resulting from meeting notes relating to notary law.

### **2.2. Data collection technique**

Data collection methods as a way to obtain materials needed in research include the following:

- a. Interviews to obtain data were carried out with a series of in-depth questions and answers to respondents.

- b. Documentation Study as a complement to the data in this research in the form of meeting notes, in the form of pictures, videos, and other sources. Used to search for information and data as research objects.
- c. Literature study in collecting data obtained by analyzing, reading, taking notes, and understanding the contents of the literature related to this research, as an effort to obtain valid data in this research.

### **2.3. Data Analysis**

Data obtained in research, from interviews, documentation, and literature results, as well as field survey results, are processed and analyzed using qualitative descriptions, based on data obtained in the literature and in the field, both orally and in writing, then discussed in groups. discussion by providing explanations and provisions and then concluding.

## **3. Results and Discussion**

### **3.1. Sanski for Notaries Who Refuse to Provide Free Legal Assistance Judging from Law on Notary Positions Number 2 of 2014**

As an orderly law, notarization is needed as an objective interest in the community. With legal norms that are shown in concrete actions that occur and notarial legal actions. Legal acts are actions desired by society, intentionally by the subject, and intentional statements to give rise to legal consequences. People are punished for deliberately violating legal norms that apply in society, resulting in something bad and detrimental to other parties.

In terms of concrete events that become legal events, legal events are related to legal consequences. Related to the authority and obligations that must be applied through the Notary profession to people who cannot afford it. Implementation of the rules and regulations as well as obligations in Article 37 UU-JN Article 3 paragraph (7), concerning the notary's code of ethics, to be able to increase the honor and dignity of notaries, and increase public trust in the notary concerned. Because notary legal services are provided free of charge.

Administrative sanctions for those who violate the provisions, regulations, and laws include the following:

- a. The government has forced it through existing regulations. As a real action from the authorities with the aim of resolving all problems related to notary law.
- b. Drawing decisions and provisions that benefit both parties, permits, and payment of subsidies. The application of sanctions based on the withdrawal of the previous decision which is declared invalid, and issuing a new decision.
- c. Imposing administrative fines, imposed on notaries who violate the law with administrative sanctions of a sum of money in accordance with the regulations and legislation that have been ratified.
- d. Imposing monetary fines by force by the government in power.

For violators who are subject to the specified sanctions, apart from administrative fines, there are also financial sanctions imposed on the Notary. If you violate notary law, because it has been regulated and stipulated in Law Number 2 of 2014 concerning Amendments relating to Law Number 30 of 2014, namely concerning the Position of Notary, in accordance with Article 7 paragraph 2, Article 16 paragraph 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.

Based on the regulations and the Law concerning Amendments to the JN Law, several administrative sanctions have been included in several articles, regarding sanctions which include the following:

- a. Verbal warning
- b. Written warning
- c. Temporary suspension of the Notary's decision letter
- d. Respectful dismissal of the notary
- e. Disrespectful dismissal of a notary.

Sanctions will be applied in stages, through verbal warnings, written warnings, through light sanctions, up to heavy sanctions, honorable dismissal, and the most severe sanction, namely dishonorable dismissal. If it is not fulfilled and is not heeded by the notary, with a warning or in writing, the following sanctions can be imposed in stages.. The imposition of sanctions in the form of verbal warnings and written warnings as a prelude to imposing subsequent sanctions does not include administrative sanctions.

In administrative sanctions in the form of coercion by the government, before the sanctions are imposed, they must be preceded by a verbal warning and a written warning, this is an aspect of the procedure that is coercive and real. The implementation of verbal and written warnings aims to test the accuracy and thoroughness of verbal and written warnings for violations committed based on applicable legal regulations. The implementation of verbal warnings and written warnings gives those who are sanctioned the right to be able to defend themselves in administrative sanctions as a form of appeal or appeal.

Thus, the formulation of sanctions in the form of verbal warnings and written warnings is not appropriate to be included as a sanction but is only an initial stage in imposing real coercive sanctions, and henceforth, if proven to violate, other sanctions can be imposed.

### **3.2. Legal consequences if a notary refuses to provide free legal services to people who cannot afford it**

Article 28 D paragraph (3) states that every person has the right to get a job to support themselves and receive fair and decent rewards and treatment. Inclusion of sanctions by Article 37 UJN and the Notary Code of Ethics. This is very contrary to Article 28 D paragraph (3), because how can someone who works to support himself be punished for not helping other people by doing deeds that require a lot of money?

The provisions in Article 37 UJN do not provide legal certainty for the public, especially notaries. This article does not provide legal certainty for the public, especially notaries. Sanctions by Article 37 UJNP and the Notary Code of Ethics. Regarding notaries who refuse to provide free legal services to people who cannot afford it. Violating the rights of notaries also violates the 1945 Constitution, especially Article 28 D paragraph (3), which reads: "Every person has the right to work and receive fair and decent compensation and treatment in employment relationships."

The impact of legal consequences such as warnings and sanctions given to notaries for not providing free legal assistance. In this case, it is subjective, not objective. So that the provision of legal aid can occur haphazardly based on the wishes of the notary. Not based on clear assessment standards, the voluntary nature of notary legal assistance seems to give the widest possible freedom without regard to substance, in helping less fortunate people. So in principle, notaries can provide free legal assistance to people who cannot afford it voluntarily, not based on obligations according to the law which has sanctions against the notary.

If notaries are required to provide free legal assistance to underprivileged people in their work area by imposing sanctions on notaries who do not carry it out, then the provisions of

Article 37 UUJN P and Article 3 point 7 of the notary code of ethics are seen as coercion or pressure on notaries to assist. free law for people who cannot afford it, things like violating the human rights of notaries.

A notary is a profession that earns a living through independence, financing itself to carry out its duties and obligations. The sanctions contained in Article 37 UUJNP and the Notary Code of Ethics regarding notaries who refuse to provide free legal services to people who cannot afford it, apart from violating the rights of notaries, also violate the 1945 Constitution, especially Article 28 D paragraph (3), which reads: "Everyone has the right to work and receive fair and decent compensation and treatment in employment relations.

### **3.3. Supporting and Inhibiting Factors in Providing Free Legal Services to Underprivileged Communities**

The government has issued Regulation number 101 of 2012, concerning Receiving Health Insurance Contribution Assistance at the end of 2012. As an implementation of Law Number 40 of 2004 concerning the National Social Security System. In this regulation, health insurance is aimed at the poor and underprivileged people. According to Article 1 paragraph (5), the poor are defined as "people who have no source of livelihood and/or have a source of livelihood but cannot meet adequate basic needs for themselves and their families." Meanwhile, according to Article 1 paragraph (6), the underprivileged group of people are "people who have a source of livelihood, salary or wages, who are only able to fulfill basic needs but are unable to pay contributions for themselves and their families."

The party with the authority to determine the criteria for the poor and underprivileged is the Ministry of Social Affairs after coordinating with the Minister and/or heads of related institutions. These include the Ministry of Health, Ministry of Manpower and Transmigration, and Ministry of Home Affairs. The criteria set by the ministry are followed up by the Central Statistics Agency (BPS) by collecting data.

Meanwhile, Law Number 13 of 2011 concerning Handling the Poor Article 1 paragraph (1) defines the Poor as people who have no source of livelihood and/or have a source of livelihood but cannot fulfill basic needs that are adequate for life. himself and/or his family. Poverty can be caused by a scarcity of means of meeting basic needs or difficulty in accessing education and employment. The main understanding includes the following:

- a. Material shortages, and lack of daily food needs, clothing, housing, and health services. Poverty is a situation and condition of scarcity where basic goods and services are still lacking.
- b. Description of social needs, dependency, and inability to participate in society. Including education and social exclusion which is usually differentiated from poverty, because it includes social and economic problems.
- c. Lack of income and inadequate living needs. There are very different social and economic aspects of society. This can be overcome by finding an income that can meet all the living needs of the family.

### **3.4. Supporting Factors in Providing Free Legal Services to Underprivileged Communities**

Supporting factors in providing legal services to notaries. In the form of legal services without collecting an honorarium for economically disadvantaged people. Apart from that, notaries as public officials have the authority to carry out their duties, functions, and obligations given by the state through Law No. 2 of 2014 concerning Notary Positions. Article 37 UUJN mandates that Notaries are obliged to provide free notarial legal services to people who cannot

afford them. It is reaffirmed in article 3 point 7 of the Notary Code of Ethics which states that notaries are obliged to provide deed-making and notary services to people who cannot afford it without collecting an honorarium.

The initiator hopes that the inclusion of article 37 UUJN and article 3 point 7 in the Notary Code of Ethics above will be a form of notary social concern for the community as a form of dedication of the notary profession to the community, nation, and state. In the implementation of formal provisions, enforcement of human rights by notaries is still limited to regulations, not yet reaching the implementation of the values contained in these provisions. This is very concerning in law enforcement, from a normative perspective, but also in law enforcement from a sociological perspective.

The supporting factor in providing free legal services is that it depends on the goodness of the notary himself. If the notary thinks that the client who comes can be said to be an underprivileged person, the notary will waive the fee. Because notaries are required to provide legal services to people who cannot afford them.

## **4. Conclusions and Suggestions**

### **4.1. Conclusion**

Based on the results and discussion regarding notary legal services to underprivileged communities, several conclusions can be drawn, namely as follows:

- a. The implementation of providing free legal services to underprivileged communities in the city of Tangerang has been going well. If there are people who cannot afford to come to the Notary's office, the Notary fee will be waived without being charged an honorarium. This is done based on the client's sense of humanity and candor and the Notary's belief that the client is indeed among the poor.
- b. Supporting factors in providing free legal services to poor people include: (1). By UUJN Number 2 of 2014 Article 37, it is ordered that Notaries are obliged to provide free notarial legal services to people who cannot afford it. (2). By the Notary Code of Ethics in article 3 number 7, which states that notaries are obliged to provide deed-making and notary services for people who cannot afford it without collecting an honorarium.
- c. Inhibiting factors in providing free legal services to poor people include (1). The Notary needs to earn a living for himself and material constraints to meet the operational needs of the office. (2). The lack of legal education means that people think that going to a notary's office is expensive, so people are reluctant to come to take legal action.

### **4.2. Suggestion**

Based on the results and conclusions above, several recommendations can be put forward in the form of suggestions, namely as follows:

- a. For authorized agencies or institutions to be able to provide detailed and accurate information about the provision of legal services for free, without charging honoraria for people who cannot afford it, so that Article 37 UUJN Number 2 of 2014 can be implemented.
- b. For the central government and regional governments to carry out legal education activities to the community and distribute assistance through funds budgeted in the State and Regional Revenue and Expenditure Budgets as well as other legal funding sources. In providing funds to notaries which are intended to provide legal services in the form of making deeds to people who need them.

- c. For notaries who provide free legal services, notaries should not provide legal services for free, because they cannot be subject to sanctions. Because the notary office regulations and code of ethics require regulations or changes as well as provisions regarding sanctions and conditions it can be clearly said that a notary who refuses to provide free legal assistance is a violator. It is hoped that the government will issue a Government Regulation regarding the implementation of providing free legal services to people who cannot afford it, with criteria for those who can receive these legal services. Based on Article 37 UUJN does not specify in detail the classification and categories

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