

## THE OBLIGATIONS AND LIABILITIES OF NOTARIES IN PROVIDING SOCIAL SERVICES IN ACCORDANCE WITH THE IMPLEMENTATION OF THEIR POSITIONS

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### Abstract

Notary as a public official authorized to make authentic deeds is one of the practitioners in the field of law who is obliged to provide social services for the community, especially for the poor. The notary's obligation to provide social services can help provide legal certainty as a form of a rule of law because it can prevent disputes, especially in terms of land ownership, land control. In this research to ensure the implementation of an objective research and in accordance with applicable legal principles, this research uses normative juridical research methods with an approach through applicable laws and regulations or through a statute approach and general legal concepts or conceptual approach. This prevention can be done if people who are unable as legal subjects know clearly their rights and obligations and have access to legal services. However, in general, social services in the field of law are currently only in the form of free legal assistance for parties in litigation, while it is still rare to find social services in the form of consulting assistance or notary services which are still little known to the less fortunate. Result of this research is writing intended to examine the obligations and responsibilities of a notary in providing social services to the community, especially for people who can't afford it.

**Keywords:** Obligations and Responsibilities of a Notary, Social Services, Position of a Notary Font

## INTRODUCTION

Indonesia is a state of law where legal certainty is one of the objectives of the state of law so that in this case, a Notary who is a public official authorized to make an authentic deed as stated in Article 1868 of the Civil Code is a person who under certain conditions obtains authority from the state attributively to carry out part of the state's public functions, especially in the field of Civil Law to make authentic deeds that can be used as evidence which is a form of confirmation for legal certainty.

Legal certainty is a very important aspect related to the rule of law where in the affairs of the notary, the legal certainty provided can create administrative order and reduce the occurrence of disputes related to the notary.

The State of Indonesia is a state of law as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which means that in the life of the nation and state in Indonesia, it must be based on law and legal certainty in order to provide protection to the community to be able to defend what is their right. If it is related to the duties of a notary, not all people have a connection but are only limited to people who are interested in notary duties such as buying and selling land.

Notaries who are practitioners in the field of law also have an obligation to provide social services based on their duties as regulated in the Law in order to create legal certainty and protection for the community. Notaries providing social services are divided into 2 (two) types, namely:

- a. General services
- b. Specialized services

Services in general are services provided by notaries to the public in general where notary services used by the public provide notaries with a reward for services that have been provided while special services are the obligation of notaries to continue to provide similar services to certain people who in this case are incapable people. There is a close relationship between rights and obligations so that if it is related to the implementation of obligations by notaries then it is a right that can be demanded by the public. (R. Soegondo Notodisoerjo, 1982). The obligations of a notary are regulated in the Notary Position Law (UUJN) as well as the Notary Code of Ethics.

Regarding the obligation of notaries to provide services at no cost to the underprivileged is regulated in Article 37 paragraph (1) of the Notary Position Law which states that "Notaries are obliged to provide legal services in the field of notaries free of charge to people who cannot afford it." So that the Article emphasizes that people who are unable to receive notarial services by notaries free of charge. (Sidharta, 2006).

## RESEARCH METHOD

In this research to ensure the implementation of an objective research and in accordance with applicable legal principles, this research uses normative juridical research methods with an approach through applicable laws and regulations (positive law) or through a statute approach and general legal concepts or conceptual approach. In this research, secondary data is used as a type of data used in obtaining data and information. There are primary legal materials in the secondary data used, namely as follows:

1. Constitution of the Republic of Indonesia Year 1945;
2. Civil Code;
3. Notary Position Law Number 30 of 2004;
4. Law No. 2 of 2014 on the amendment of Law No. 30 of 2004 on Notary Position.

In addition to the primary legal materials mentioned above, the doctrines of experts, legal principles and legal theories that can be found in books and scientific works are also used.

## RESULTS AND DISCUSSION

### Legal Rules on the Obligations and Responsibilities of Notaries in Providing Social Services for the Community

Notaries have obligations that must be applied and must not be violated because violations committed will be given a sanction and the duty of notaries is to make and compile the wishes and actions of the parties in making authentic deeds by referring to applicable legal provisions so that in practice, the making of authentic deeds is perfect and can be used as absolute evidence. Then, notaries are obligated to keep the contents of the deed confidential and notaries are obliged to provide free assistance to underprivileged communities as stated in Article 37 of the Notary Public Office Law. However, the assistance provided by notaries must also refer to propriety. There are several things where notaries are obliged to refuse to provide assistance, such as making deeds whose contents are contrary to public order and decency and if the deed made has no witnesses or parties cannot be recognized by the notary. (Anshori, 2009).

Notary as an office holder which in this case, the position has a meaning as a task or function as well as a work area in the government where the notary is obliged to always be ready to serve the community in his work area. Notaries are obliged to provide social services in the form of legal services to people who need their services not only by making deeds or legalizing deeds but also including providing legal counseling or consultation to the wider community on matters relating to notaries so that the public has more knowledge related to the notary field such as providing education related to the requirements for making authentic deeds.

However, the legal services provided by notaries must also refer to and be based on the Notary Position Law and the notary code of ethics so that the implementation of the notary profession in the community continues to maintain the professionalism of notaries and does not reduce the dignity of the notary profession and also does not arise complaints related to the notary profession.

The services of the notary profession for the community must still refer to the Law on the office of notary and the notary code of ethics so that the services provided can provide satisfactory results for the community and with the aim of educating so that the notary profession is seen by the community as a profession that helps instead of causing complaints or lowering the dignity of notaries as public officials.

Based on the description above, it can provide an understanding of the position of a notary's profession as a public official who provides social services to the community free of charge, especially for underprivileged people. However, an explanation of the free services of a notary profession is not regulated in detail in the Notary Public Office Law.

In Article 37 of the Notary Position Law which explains the permanent obligation of notaries to provide legal services in the field of notaries for free to people who are unable by notaries in its application is based on the notary's belief factor, client openness and humanitarian factors. The provision of legal services by a notary is accompanied by a factor where the notary assumes that the client who faces him does need assistance free of charge so that from these assessments the notary can make the basis for making decisions to provide social services to the poor for free. (Adjie, 2008)

Based on several factors that convince notaries to provide free legal services to the poor in practice, it is based on humanitarian factors where the compensation provided is not in the form of honorarium or wages but the notary who provides legal services expects rewards for these services from the Almighty. (Soerjono Soekanto, 1986).

### **Sanctions Given to Notaries Who Do Not Carry Out Their Obligations**

Notaries have obligations that are specifically regulated in law so that if violated, there are sanctions that must be accepted by the notary. Notary sanctions are divided into several, namely:

- a. Notary Sanctions according to Law Number 2 Year 2014
- b. Notary Administrative Sanctions
- c. Sanctions in the Notary Code of Ethics

In the event that a Notary violates Law Number 2 of 2014, especially in this case Article 37 of Law Number 2 of 2014 concerning the position of Notary, which states the obligation of notaries to provide legal services in the field of notarial services free of charge to people who are unable, then as referred to in paragraph 2 (two) of the article, notaries can be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissal, respectful dismissal to dishonorable dismissal.

The provision of legal services free of charge is influenced by humanitarian factors based on the morality and integrity of a notary and knowledge of the provisions contained in the Notary Position Law, one of which is the obligation to provide legal services free of charge to the underprivileged because if the notary does not have knowledge of these provisions, the notary cannot apply one of these obligations in carrying out his profession. Notaries who carry out their duties and positions wholeheartedly and totally can increase the credibility of the notary so that the notary can gain prosperity and happiness in life. (Waluyo, 1996)

Regarding administrative sanctions known in the field of notary which these sanctions are recognized in the Law on amendments to the Notary Position Law, namely notaries, in addition to being subject to civil sanctions, can also be subject to administrative sanctions where sanctions in state administrative law are a tool of power that is public law and is used by the government as a result of non-compliance with obligations that exist in the norms of state administrative law. (Ridwan HR, 2006) Administrative Sanctions may include:

1. Government coercion
2. Withdrawal of decision
3. Imposition of administrative fines
4. Imposition of forced money by the government

The imposition of administrative sanctions on notaries is a good implementation because it can provide a deterrent effect on notaries who violate the provisions of the Notary Law and the Notary Code of Ethics.

Administrative sanctions imposed on notaries in terms of making deeds if they commit violations are regulated in several articles in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning Notary Offices, namely in Article 7 paragraph (2), Article 16 paragraph (11) and Article 16 paragraph (13), Article 17 paragraph (2), Article 19 paragraph (4), Article 32 paragraph (4), Article 37 paragraph (2), Article 54 paragraph (2) and Article 65A.

Based on the Law on amendments to the Notary Position Law which states that there are several administrative sanctions listed in several articles which sanctions include verbal warnings, written warnings, temporary dismissal, respectful dismissal to dishonorable dismissal which sanctions apply in a tiered manner starting from reprimand sanctions as a mild sanction and up to dishonorable dismissal as the heaviest sanction.

The imposition of administrative sanctions is carried out directly by the agency authorized to impose sanctions where the imposition of administrative sanctions is a supervisory effort carried out in this case through an examination of the notary protocol on a regular basis to look for possible violations in the implementation of the notary position and is also a repressive step, namely the imposition of sanctions if violations are found, which in this case the imposition of sanctions is carried out by the Regional Supervisory Panel for minor sanctions such as oral and written reprimands and making proposals to the Central Supervisory Panel to carry out temporary dismissals and then the Central Supervisory Panel which carries out the temporary dismissal and can also make proposals to the Minister in the form of respectful dismissal and dishonorable dismissal.

Over time, the dynamics of community life are accelerating so that the needs of the community, especially in terms of legal protection, are also increasing, thus creating a perception that social services, especially in the field of notaries in terms of making deeds, are needed for a better community life to have an impact on the country's economy.

Then, sanctions in the Notary Code of Ethics are listed in Article 6 of the Notary Code of Ethics Law which states that sanctions imposed on members who violate the code of ethics are sanctions of reprimand, warning, temporary dismissal from membership of the association, dismissal from membership of the association to dishonorable dismissal from membership of the association.

Sanctions against members who violate the notary code of ethics are carried out by the Honorary Council which is authorized to conduct examinations of violations of the code of ethics and impose sanctions on violators of the provisions of the code of ethics. (Tedjosaputro, 2003). The Honor Council is responsible for:

- a. Provide guidance, supervision and fix members in upholding the code of ethics.
- b. Examine and make decisions on alleged violations of the code of ethics that are internal in nature and do not have a direct interest in the community.
- c. Providing advice and opinions to the Supervisory Board on alleged violations of the code of ethics for alleged violations of the code of ethics that are internal in nature.

Sanctions at the first level are carried out by the Regional Honor Council which will determine the decision regarding whether or not the violation of the code of ethics is proven and the imposition of sanctions on violators of the code of ethics after hearing the defense of the violator. If in the decision of the regional honor council hearing it is proven that a violation of the code of ethics has occurred, then a hearing to determine the sanctions against the violator will be held.

For sanctions in the nature of warnings and warnings can be directly decided by the Regional Honor Council and do not need to be consulted with the Regional Management, but for sanctions of temporary dismissal until dismissal from membership must get permission and consultation from the Regional Management first.

In the case of sanctioning temporary dismissal and sanctioning dishonorable dismissal as a member of the association, it must be notified by the Central Board to the Regional Supervisory Board and a copy is submitted to the Minister of Law and Human Rights. However, the sanction of dismissal given to notaries who commit violations and illegal acts is not a dismissal from the position of notary but only limited to dismissal from membership of the Indonesian Notary Association so that the notary can still make deeds and exercise his authority as a notary so that the sanction of dismissal from membership of the association does not have an impact on the position of the notary itself.

## CONCLUSION

The provisions referred to in Article 37 of the Notarial Position Regulation Law regarding notaries' obligation to provide free social services must be carried out by notaries because it is regulated in the Law. Social services provided by Notaries are not only limited to providing notary

services in the field of deed making but also such as providing legal counseling to provide knowledge to the general public regarding the importance of notarial aspects in people's lives so that the general public can be more alert and understand the importance of an authentic deed. In addition, this knowledge can also be useful to reduce the occurrence of disputes related to deeds, especially related to the ownership of a right, which can be prevented through the making of an authentic deed that clearly states the owner of the right.

The obligation to provide social services free of charge can help and have a good impact on the country's economy and the welfare of the community because it can create people to better understand and make deeds of their rights so that this can create a more orderly administration and can help improve the country's economy.

Against the obligations that a notary has, if violated, there are sanctions that must be accepted. These sanctions are clearly regulated in the Notary Position Regulation Law, where the sanctions given vary from minor sanctions to severe sanctions.

Light sanctions given for violations committed by notaries can be in the form of verbal reprimands, written reprimands and severe sanctions can be in the form of temporary dismissal to respectful dismissal and dishonorable dismissal. The sanctions given to notaries are also divided into sanctions stipulated in the Notary Position Law, administrative sanctions and sanctions of the Notary Position code of ethics.

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