

Legal Certainty In The Provision of Free Notarial

Services For The Underprivileged

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ABSTRACT

This study aims to analyze the legal consequences of incomplete norms governing the obligation to provide free notarial services by notaries to the underprivileged as stipulated in Article 37 of the Notary Law (UUJN). This provision actually reflects the social function of the notary office in ensuring access to justice. However, Article 37 of the UUJN does not yet contain clear parameters regarding the criteria for the underprivileged, the types of notarial services that must be provided, or the financing mechanism. This study uses a normative legal research method with a statutory, comparative, and conceptual approach. The results show that the incomplete norms in Article 37 of the UUJN create legal uncertainty. Based on previous field research, there are differences in the implementation of the obligation to provide free notarial services among notaries for the underprivileged. A comparative study with Law Number 16 of 2011 concerning Legal Aid and Government Regulations related to its implementation shows that the legal aid system has a more comprehensive legal framework, including parameters for beneficiaries, types of services provided, and financing mechanisms from the state. Therefore, it is necessary to establish implementing regulations or technical guidelines that detail the obligation to provide free notarial services, as explained above. This normative reconstruction is crucial to ensuring legal certainty for notaries and the beneficiary community.

Keywords:Legal Certainty, Notary, Underprivileged Society.

1. INTRODUCTION

A notary is a highly influential and important profession, as they are responsible for handling various legal issues, particularly in the notarial field. Law Number 2 of 2014, which amended Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), defines a notary as a position related to authentic deeds and other duties based on applicable provisions. This definition affirms that the position of a notary has specific functions and authorities. Based on this understanding, it can be understood that the primary duties of a notary in office lie in their relationship with authentic deeds. Furthermore, the notary profession also falls within the realm of the legal profession, which has the responsibility to uphold truth and justice, the implementation of which requires good faith and sincerity from those who carry it out (Anshori, 2009).

In relation to this, there are regulations regarding the role of notaries in providing legal services, especially regarding the preparation of deeds for the less fortunate. Provisions regarding the provision of notarial services to people or communities that are unable to afford are regulated

in the notary code of ethics contained in Article 3 number (7) which emphasizes that the notary profession has an obligation to provide notarial services and carry out other tasks for the less fortunate without charging an honorarium as a form of implementing professional ethics in ensuring access to justice and equal legal services (Mirzajanovna, 2024).

The provisions regarding the obligation to provide free notarial services in the code of ethics can also be found in Article 37 of the UUJN, namely in Article (1), and are then reinforced by paragraph (2) which provides consequences in the form of administrative and ethical sanctions for notaries who ignore this obligation. However, the UUJN does not provide an explanation regarding the criteria for "indigent people" or the types of legal services that must be provided free of charge. This incompleteness gives rise to the potential for differences in interpretation in practice, which has an impact on the non-uniformity of the implementation of obligations and complicates the process of enforcing sanctions due to the lack of objective legal standards (Muhammad, 2004).

If we look at Article 15 (fifteen) of the UUJN which has been explained previously, there is an explanation regarding the authority of a notary in making deeds which can be said to always be related to legal actions, namely those related to obligations or agreements, or provisions that are required or requested by interested parties, as well as determining the date of the deed, keeping minutes, and issuing grosse, copies, or extracts, as long as it is not regulated otherwise by statutory regulations. However, if we relate it back to Article 37 of the UUJN with regulations related to free services, a question arises regarding the authority of a notary which is generally related to transactions of economic value, while Article 37 does not explain what forms of services should be provided free of charge or the criteria for people who are unable to afford them. The incompleteness of this norm creates the potential for different interpretations in the field and makes it difficult to enforce sanctions and can potentially lead to legal uncertainty.

Compared to the criminal sector, the provisions in Law Number 16 of 2011 concerning Legal Aid and its Implementing Regulations, namely Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning the Requirements and Procedures for Providing Legal Aid and Disbursing Legal Aid Funds, have established a comprehensive and structured legal framework (Risnawati et al., 2021). These provisions include a selection and verification system based on measurable economic criteria, as well as restrictions on the types of legal services that can be provided. In fact, the implementation of legal aid is funded by the government. This differs from the obligations of notaries in Article 37 of the UUJN, which requires the provision of free notarial services to the underprivileged, but without clear recipient parameters, a definite scope of

services, or financial support from the state. This raises important questions regarding the urgency and relevance of implementing Article 37 of the UUJN in practice.

2. RESEARCH METHODS

The research method used is normative legal research. The approach used in this study is carried out using the statutory approach method, a comparative approach, and a conceptual approach. Types and Sources of Legal Materials are primary legal materials, secondary legal materials, and tertiary legal materials. Sources of legal materials use primary legal materials and secondary legal materials. Data collection techniques are through literature studies and documentation studies by reviewing official documents, laws and regulations, judges' decisions that support this research, literature, printed media and all legal materials related to this research. After all legal materials are collected, they are then analyzed qualitatively, meaning describing the materials in a quality manner in the form of regular, coherent, logical, non-overlapping, and effective sentences, thus facilitating understanding and interpretation of the materials, thus the results of this research are analytical evaluative.

3. RESULTS AND DISCUSSION

Legal Consequences of Incomplete Norms in Regulating the Obligation to Provide Free Notary Services by Notaries to the Underprivileged in Indonesia

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as the Notary Position Law or UUJN) confirms that a notary is a public official authorized to make authentic deeds and has other authorities as regulated in statutory regulations. Authentic deeds made by or before a notary have perfect evidentiary power as referred to in Article 1868 of the Civil Code (KUHPdata). Thus, the existence of a notary has a very important role in creating legal certainty, order, and legal protection for the community in every civil legal relationship set out in the form of a deed.

The position of a notary as a public official is not only oriented towards commercial interests, but also contains a social dimension inherent in their position. This is emphasized in the Notary Code of Ethics, specifically Article 6 number 7, which requires notaries to provide notarial services without charging an honorarium to the poor. This social obligation is normatively reinforced in Article 37 of the UUJN, which states that notaries are required to provide legal services in the notarial field free of charge to the poor. This provision also emphasizes that the notary position is a form of devotion to the state and society in ensuring access to justice for all social levels.

Although Article 37 of the UUJN stipulates this obligation, the norm does not yet provide clarity on who is meant by "people who are incapacitated." The absence of definite legal parameters has led to doubts and differences in interpretation in practice, especially in determining whether a party is truly incapacitated. However, within the national legal system, these criteria should refer to more specific provisions as stipulated in Law Number 16 of 2011 concerning Legal Aid, which explicitly defines legal aid recipients as individuals or groups of poor people who are unable to fulfill their basic rights properly and independently.

In Law Number 16 of 2011 concerning Legal Aid, legal aid recipients are required to attach a poverty certificate from the village head or sub-district head as valid administrative proof. This provision is further clarified in Government Regulation Number 42 of 2013 concerning the Requirements and Procedures for Providing Legal Aid and Disbursing Legal Aid Funds. This regulation regulates in detail the parameters, mechanisms, and documents proving a person's economic status, including the recognition of substitute documents such as the Jamkesmas Card, BLT, or Raskin. Thus, Government Regulation 42 of 2013 provides concrete legal boundaries regarding who is entitled to free legal services.

In comparison, the provisions of the UUJN do not adopt similar principles as those stipulated in legal aid regulations. The UUJN does not stipulate verification mechanisms, parameters, or procedures for proving indigent status, so its application relies entirely on the subjective judgment of notaries. This situation has the potential to lead to unequal treatment between notaries and open up legal uncertainty in the implementation of the obligations of Article 37. Therefore, synchronization between the UUJN and legal aid regulations is necessary to ensure a uniform definition of "indigent person" within the national legal system.

The next problem lies in the incomplete list of notarial services that can be provided free of charge. The UUJN does not specify whether this obligation covers all authentic deeds prepared by a notary or only certain deeds of a simple nature and high social value. This ambiguity raises issues in the application of the norm, as not all deeds can be provided free of charge, given their complexity and economic value. Therefore, limiting the types of deeds included in free services is crucial to provide legal clarity and maintain the proportionality of notary responsibilities.

A comparison with legal aid regulations shows that Law No. 16 of 2011 and Government Regulation No. 42 of 2013 provide clear details regarding the types of legal aid, including litigation and non-litigation. In the non-litigation sector, activities such as consultation, mediation, counseling, and legal assistance are even detailed (Supriyanta, 2020). This clarity of regulation ensures legal certainty for the parties involved in providing legal aid. Meanwhile, the UUJN does

not provide similar clarification, so the implementation of notary obligations remains interpretative and potentially leads to disharmony in practice.

Another aspect not yet regulated in Article 37 of the UUJN is the financing mechanism for non-honorarium components, such as stamp duty, taxes, or other administrative fees. This lack of regulation raises questions about who is responsible for these costs—whether they are borne by the notary, the applicant, or should be borne by the state. This incompleteness reinforces the conclusion that the norm in Article 37 of the UUJN remains incomplete, creating legal uncertainty in its implementation.

In comparison, Law No. 16 of 2011 concerning Legal Aid and Government Regulation No. 42 of 2013 explicitly regulate funding. Legal aid for the poor is funded by the State Budget (APBN) and can also be allocated through the Regional Budget (APBD). Similar provisions are also found in Law No. 13 of 2011 concerning the Management of the Poor, which stipulates that financing poverty alleviation is the responsibility of the state through various legitimate funding sources. Thus, the principle of state responsibility for legal aid funding has a strong constitutional basis in the Indonesian legal system (Supriyanta, 2020).

Based on the above description, it is clear that Article 37 of the UUJN still leaves significant regulatory uncertainty, both regarding the parameters of the underprivileged community, the types of notarial services that can be provided free of charge, and the non-honorarium financing mechanism. Therefore, the establishment of implementing regulations or more detailed technical guidelines is necessary, so that the social obligations of notaries can be implemented proportionally, fairly, and with legal certainty. Reformulation of this regulation is important to maintain a balance between the social function of the notary office and legal certainty in notarial practice in Indonesia. Based on previous research related to the implementation of Article 37, as explained below:

1. Notaries' Obligation to Provide Free Legal Services to the Underprivileged in Pangkalpinang City

The results of empirical research in Pangkalpinang City indicate that the implementation of the Notary's obligation to provide free legal services as stipulated in Article 37 of the Notary Law (UUJN) is still subjective and lacks standard guidelines. In practice, Notaries use a case-by-case approach by directly assessing the condition of the person appearing. If the deed to be drawn up has economic value, such as a deed of sale or a credit agreement, Notaries generally assess that the person appearing does not fall into the category of low-income community and therefore is not entitled to free services (Irsan,

2021). This indicates that determining the category of low-income community is highly dependent on the Notary's personal perception without clear administrative parameters..

Interviews with the Regional Supervisory Council (MPD) and the Regional Supervisory Council (MPW) revealed that oversight of the implementation of Article 37 of the UUJN has not been specifically regulated and remains reactive, occurring upon public reports. However, the MPW can still impose administrative sanctions on notaries found to have violated the law, including verbal warnings, written warnings, temporary dismissal, honorable dismissal, and dishonorable dismissal. The MPW proposes more severe sanctions to the Central Supervisory Council (MPP) after an administrative review process.

Thus, it can be concluded that the implementation of Article 37 of the UUJN in Pangkalpinang City still faces various normative and practical obstacles. The absence of clear guidelines regarding the criteria for low-income communities and the types of notarial services that can be provided free of charge has led to differences in implementation among notaries. Therefore, derivative regulations or more detailed technical guidelines are needed to ensure that notaries' social obligations are implemented effectively, proportionally, and in line with the principle of legal certainty.

2. Implementation of the Notary's Obligation to Provide Free Legal Services in the Notary Sector to the Underprivileged in Mataram City

Research in Mataram City shows that the implementation of the notary's obligation to provide free notarial services as stipulated in Article 37 of the UUJN is still ineffective. Several types of services that should be included in the free service category include subsidized housing financing (KPR Bersubsidi) as stipulated in the Minister of PUPR Regulation Number 20/PRT/M/2019, People's Business Credit (KUR), and fiduciary guarantees as stipulated in Law Number 42 of 1999. However, in practice, beneficiaries such as low-income groups, MSMEs, or informal workers are still charged notary fees. This condition indicates a gap between legal norms and reality on the ground.

The main problems in the implementation of Article 37 of the UUJN in Mataram City are caused by two major factors: legal and non-legal factors. From a legal perspective, the absence of implementing regulations results in the lack of clear operational guidelines for Article 37 of the UUJN, regarding the criteria for the underprivileged, the application mechanism, and the types of services that must be provided free of charge. Meanwhile, from a non-legal perspective, some notaries in

Mataram do provide free services, but this is based on personal social awareness, not because of normative obligations. On the other hand, minimal socialization results in the public not being aware of their right to receive free notarial services (Djumardin & Risnain, 2023).

Obstacles to the implementation of Article 37 of the UUJN in Mataram City can be categorized into two types: legal and structural. Legal obstacles arise from unclear norms regarding the criteria for underprivileged communities, so that the determination is highly dependent on the subjectivity of each notary. Structural obstacles relate to the weak oversight function of the Regional Supervisory Council (MPD) regarding notaries who fail to fulfill these obligations. Therefore, regulatory reform and increased oversight are needed to ensure that the implementation of notaries' social obligations can proceed in accordance with the principles of legal certainty and social justice.

3. Implementation of Notary Legal Services Assistance to Underprivileged Communities in Situbondo

The research entitled “Implementation of the Provision of Notary Legal Services Assistance to the Underprivileged Community in Situbondo” shows that the implementation of Article 37 paragraph (1) of the Notary Law (UUJN) has not been running effectively. Based on the findings, this ineffectiveness is caused by several factors, including the lack of socialization to the community regarding the notary's obligation to provide free legal services, the notary's lack of readiness to set certain standards or conditions for recipients of these services, and the absence of a planned program that regulates the implementation of notary social obligations systematically. As a result, the implementation of the obligations as referred to in Article 37 of the UUJN still depends on the individual awareness of each notary without standard operational guidelines (Puspita, 2022).

Furthermore, this study identified several key obstacles that hamper the implementation of these provisions in Situbondo Regency. These obstacles include the suboptimal dissemination of the National Legal Aid System, the limited number of notaries willing to provide free legal services, and weak oversight from the Regional Supervisory Council (MPD), the Regional Supervisory Council (MPW), and the Central Supervisory Council (MPP). Furthermore, the lack of clear boundaries regarding the form and scope of legal assistance has led to diverse practices in the field. Therefore, strengthening regulations, oversight mechanisms, and institutional coordination is

necessary to ensure that notaries' social obligations are carried out in accordance with the mandate of Article 37 of the UUJN and the principle of justice for the underprivileged.

Based on the results of empirical research or previous field studies related to the implementation of Article 37 paragraph (1) of the Notary Law (UUJN), it shows that there is legal uncertainty due to incomplete norms that give rise to multiple interpretations. Notaries tend to use a subjective approach in determining the people who are entitled to receive free notarial services, while the majority of the people do not yet know their rights as guaranteed by law. Implementation obstacles arise from both legal factors, such as the absence of implementing regulations explaining the criteria for the poor, types of services, and implementation mechanisms, as well as non-legal factors such as low social awareness of notaries, limited number of notaries willing to provide free services, minimal socialization, and weak supervision from the Supervisory Board. This condition has the potential to cause injustice for the poor as well as a social burden for notaries.

After a comprehensive explanation, it can be concluded that the norms in Article 37 of the UUJN do not provide sufficient legal certainty because they are not accompanied by clear parameters and implementation mechanisms. Therefore, derivative regulations are needed in the form of government regulations or ministerial regulations that specifically regulate the criteria for service recipients, the types of notarial services that are included in the free category, as well as financing and reporting mechanisms. The regulatory models that have been implemented in Law Number 16 of 2011 concerning Legal Aid and Government Regulation Number 42 of 2013 concerning the Requirements and Procedures for Providing Legal Aid can be used as references because they are able to provide clarity of norms and ensure uniformity of implementation in the field. Thus, the formation of derivative regulations is important to ensure the effectiveness and legal certainty in the implementation of notaries' social obligations (Lenawati, 2019).

The incompleteness of Article 37 of the UUJN also has serious implications for the implementation of the social function of the notary office and the balance between the values of justice, legal certainty, and benefit (Harniyanti, 2024). Although this norm contains a moral spirit to expand access to justice for the underprivileged, the lack of parameters regarding who is meant to be underprivileged, the types of services that are considered free services, and the financing mechanism makes this normative objective difficult to realize. Consequently, the moral idealism in Article 37 of the UUJN loses its operational power due to the lack of an adequate legal framework. The incompleteness of Article 37 of the UUJN also has implications for the authority of notaries as public officials. Based on the theory of authority put forward by HD Stout and Bagir Manan, an authority must fulfill three elements: content (the material of the authority), subject (who is

authorized), and procedure (how it is implemented). In Article 37 of the UUJN, these three elements are not fully fulfilled. The content of the authority is not explained in detail, the beneficiary subject is not defined, and the implementation and financing procedures are not regulated. Consequently, this norm creates an implementation dilemma for notaries because there are no clear operational guidelines (Lenawati, 2019).

From the perspective of Aristotle's theory of justice, the principle of justice demands a balance (proportionality) between rights and obligations. The poor have the right to free legal services, but this burden must be regulated in such a way as to avoid inequality for notaries. When the state does not provide financial support, as in the advocate legal aid scheme, the state's social responsibility is shifted to individual notaries. This situation violates the principle of justice as proportional equality because the public burden is disproportionately placed on public officials without structural state support.

Meanwhile, according to John Rawls, justice must guarantee fair equality of opportunity, namely equal opportunity for all to access the legal system. The ambiguity of Article 37 of the UUJN creates unequal access because its implementation depends on the subjectivity of each notary. Meanwhile, according to Jeremy Bentham's theory of utility, the law should produce the greatest happiness for the greatest number of people. However, incomplete norms actually cause social harm (disutility): the public continues to have difficulty accessing notarial services, while notaries bear the burden without institutional support.

From the perspective of legal certainty, as outlined by Lon L. Fuller, the law must fulfill the principles of clarity, consistency, and the possibility of compliance. Article 37 of the UUJN does not fulfill these principles because the existing norms are difficult to implement practically. As a result, the principle of distributive justice and Rawls' difference principle are not realized because the most vulnerable groups in society continue to receive no real benefit from the social obligations of notaries. Thus, an analysis based on the theories of justice, utility, and authority shows that Article 37 of the UUJN requires normative reconstruction through the formation of comprehensive implementing regulations. This step is necessary to create legal certainty, guarantee justice for the less fortunate, and provide professional protection for notaries in carrying out their social functions as public officials.

4. CONCLUSION

Based on the above description, it can be concluded that the incompleteness of the norms in Article 37 of the UUJN has significant legal consequences, in the form of legal uncertainty and a

dilemma of authority for notaries. The article does not provide a clear definition of "indigent persons", the types of notarial services that must be provided free of charge, and the financing mechanism for non-honorarium fees, so that its implementation is highly dependent on the notary's subjective assessment and personal awareness. This is unlike Law No. 16 of 2011 concerning Legal Aid, and Government Regulation No. 42 of 2013, which are clear and complete in their regulations. As a result, the principles of justice, certainty of authority, and social benefit are not met.

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