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Free Legal Services Provided by Public Notaries in the Perspective of Indonesian Positive Law

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Abstract
The primary issue in this research pertains to Article 37 of the Notary Law, which mandates that notaries offer legal services pro bono to the needy, lacking explicit specifications for their nature and extent. This ambiguity results in legal confusion, varying interpretations, and a conflict between notaries' social responsibilities and their income entitlements as professionals. This study employs a normative legal methodology utilising legislative, conceptual, and philosophical methods, analysing legal texts through grammatical, systematic, and teleological interpretative procedures. This research aims to normatively elucidate the nature of this obligation within Indonesian positive law, evaluate its standing in relation to the principles of fairness, utility, and legal certainty, and investigate the legal ramifications for notaries who fail to comply. The research findings suggest that the mandate to offer pro bono legal services embodies the social duty of notaries and aligns with the principle of legal equality and the value of social justice. The vagueness of the language in the UUJN has resulted in discrepancies in practice and possible problems with the economic rights of notaries.

Keywords: Free Legal Services, Notary, Positive Law, Indonesia

Introduction

Notaries are one of the professions that play an important role in providing legal guarantees to the public. Based on Article 36 paragraph (2) of the Notary Law, notaries are appointed by the state but do not receive a salary from the government; instead, notaries receive fees from clients for their legal services. A notary can be viewed as a public official who exercises a portion of public authority in the field of civil law. Therefore, even tho notaries do not receive a salary from the state, they still have a social responsibility to the community as stipulated in Article 37 paragraph (1) of the Notary Law, which is the obligation to provide free legal services in the field of notarial affairs to those who are unable to pay.

The provision of Article 37 paragraph (1) of the UUJN is a manifestation of the principle of equality before the law as stated in Article 27 paragraph (1) of the 1945 Constitution. However, in practice, this obligation often poses a dilemma for notaries, considering that their fees are their main source of income [1]. In essence, a notary's honorarium is an economic right guaranteed by Article 9 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, which is the right to life and to maintain a decent standard of living. Thus, the obligation to provide free legal services can lead to a conflict between fulfilling social obligations and the economic rights of notaries.

If a notary fails to fulfill their social obligations, Article 37 paragraph (2) of the UUJN stipulates administrative sanctions ranging from verbal warnings, written warnings, temporary suspension, honorable dismissal, to dishonorable dismissal. This sanction demonstrates that the state is serious about enforcing the implementation of notaries' social responsibility. However, this provision still requires clearer interpretation to avoid legal uncertainty for notaries in carrying out their duties.

Thus, there appears to be a contradiction between das sollen (what should be according to the law) and das sein (what happens in practice) [2]. The law mandates that every citizen, including the poor, has free access to notary legal services, while from the notary's perspective, this obligation can be seen as a reduction of their economic rights. This dilemma raises important questions about how Indonesian positive law regulates and balances these two interests.

Research Method

This research uses a normative legal method, which focuses on the study of positive legal norms, legal principles, and expert doctrines related to the research problem [3]. This method is library research because all data is obtained through secondary legal materials, such as legislation, legal literature, scientific journals, and the results of previous research. Primary legal materials include the 1945 Constitution, Law Number 2 of 2014 concerning the Position of Notary, and Law Number 39 of 1999 concerning Human Rights. This research is prescriptive and applied, as it not only describes the applicable legal norms but also provides legal arguments regarding the implementation of notaries' legal obligations to provide legal services free of charge as stipulated in Article 37 of the Notary Law, which is analyzed based on the principles of justice, benefit, and legal certainty according to Gustav Radbruch's theory [4].

Results and Discussions

1. The Obligation of Notaries to Provide Legal Services Free of Charge in Indonesian Positive Law

The implementation of social obligations by notaries has a strong legal basis within the Indonesian legal system. These obligations are not only derived from Law Number 2 of 2014 concerning the Position of Notary, but are also related to the country's constitution, other laws and regulations, and the professional code of ethics for legal professionals. Normatively, the social responsibility of notaries reflects the implementation of the principle of a just rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "Indonesia is a state of law."

Positively, the social obligations of notaries are explicitly regulated in Article 37 paragraph (1) of the Notary Law, which states: "Notaries are obliged to provide free notarial legal services to those who are unable." This article is imperative (mandatory), not merely a moral appeal. 160 This means that any notary who neglects these social obligations can be subject to administrative sanctions as stipulated in Article 85 of the Notary Law, including reprimands, written warnings, temporary suspension, and permanent dismissal.

The legal obligations of a notary in Indonesian positive law are a manifestation of the public function of the notary's position as a public official authorized to create authentic deeds and provide legal services to the community [5]. This obligation is not only administrative but also a legal obligation with juridical, moral, and social dimensions, as stated in Article 37 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary, which states that "A notary is obliged to provide free legal services in the field of notarial affairs to those who are unable."

This article has an imperative (compulsory) character, not merely a moral appeal, so its implementation is an integral part of the notary's legal responsibility within the national notarial system [6]. Thus, the form of a notary's legal obligations in Indonesian positive law must be reviewed from various normative aspects, including (a) civil obligations, (b) public obligations, and (c) ethical-professional obligations.

The form of a notary's legal obligations in Indonesian positive law shows that the position of a notary is not merely a commercial profession, but a public legal instrument for realizing justice and legal protection for all levels of society. The Notary Law, the INI Code of Ethics, and Pancasila values together affirm that the social function of law cannot be separated from the notarial profession [7]. Thus, the legal obligations of a notary can be understood as the real implementation of the principle of officium nobile-a noble position that serves justice and humanity. Violations of social obligations not only break positive law but also damage the ethos of the legal profession and the very goals of the Pancasila state of law.

2. Position of Notaries' Social Obligations in the Indonesian Positive Legal System

The position of a notary's legal obligations within Indonesia's positive legal system is an important aspect in understanding the role and responsibilities of a notary as a public official (*openbaar ambtenaar*) who performs some of the state's functions in the field of civil law. Notaries not only perform the administrative function of drafting deeds but also have a constitutional and social role in ensuring legal certainty, justice, and benefit for society [8]. Normatively, the basis for the legal obligations of notaries is found in Law Number 2 of 2014 concerning the Position of Notary, which replaces Law Number 30 of 2004. This law places notaries as officials who exercise state power in the civil field with inherent professional and social responsibility.

The legal obligations of notaries, including social obligations as stipulated in Article 37 paragraph (1) of the Notary Law, are an integral part of the positive legal system that governs the relationship between legal officials and citizens. Within the framework of the Indonesian legal system, this obligation does not stand alone, but is part of the interconnected subsystems of administrative, civil, and professional ethics law [9]. In Indonesia's national legal system, the principles of justice, benefit, and legal certainty are the three main pillars that form the foundation of legal values that are alive and developing in society [10]. The three do not stand alone, but rather complement each other and form a single unit within the framework of the legal ideal (rechtsidee) of Pancasila [11]. The legal obligations of notaries as regulated in Article 37 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary are a concrete manifestation of these three principles, where the law not only aims to create certainty through norms, but also to guarantee substantive justice and social benefit for society. In the context of a notary's social obligation to provide free legal services to the indigent, these three principles serve as the basis for evaluating the legitimacy and validity of such legal norms within the Indonesian positive legal system [12].

These three principles must be understood in an integrated manner, as stated by Gustav Radbruch in Drei Grundwerte des Rechts, which posits that good law balances justice, utility, and certainty. When law only pursues certainty, it becomes rigid and loses its morality; when it only pursues justice, law becomes subjective; and when it only pursues utility, law loses its stability. Therefore, the ideal law balances these three values. Thus, the legal obligations of notaries in Indonesian positive law are a reflection of the legal ideals of Pancasila, where law is not only oriented toward normative texts, but also toward human values and social justice.

3. Legal Implications for Notaries Who Do Not Fulfill Their Obligation to Provide Free Legal Services in Indonesian Positive Law

The social obligations of a notary, as regulated in Article 37 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary, are positive legal norms that are imperative (compulsory law), not optional. Therefore, any notary who fails to fulfill their obligation to provide free legal services to the public is considered to be violating the positive legal order, which has legal implications in the form of administrative legal responsibility, professional ethics, and constitutional moral sanctions [13]. According to Hans Kelsen, every imperative legal norm has sanctions as a logical consequence of its validity [14]. This means that the validity of legal norms not only regulates the commanded behavior, but also regulates the legal consequences if that command is violated. Thus, the provision in Article 37 paragraph (1) of the Notary Law is not merely declarative, but is binding and has legal consequences for notaries who are negligent in carrying it out.

The social obligations of notaries are part of the concept of legal professional social responsibility. Violation of social obligations means disregarding the fundamental value of law as a means of achieving social justice. According to Satjipto Rahardjo, law must be implemented with a moral spirit, not merely textual compliance [15]. Therefore, a notary's violation of social obligations is not only a violation of legal norms, but also of the very spirit of the law. Utami & Riyanto's (2025) research confirms that the notary's social responsibility plays a crucial role in strengthening the legal function as a means of empowering society, not merely as a tool for legitimizing power [16]. Therefore, any violation of social norms of obligation must be viewed as a threat to social justice and the rule of law.

The notary's legal obligation to provide free legal services as stipulated in Article 37 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary (UUJN) is a direct implementation of the principles of justice, utility, and legal certainty. According to Gustav Radbruch, these three principles are the fundamental values of law (*grundwerte des rechts*) that must be kept in balance for the law to remain alive and function morally and rationally [17]. When a notary fails to fulfill their social obligations, an imbalance among these three principles will arise. Justice is neglected, the usefulness of law diminishes, and legal certainty loses its moral legitimacy. Therefore, a violation of a notary's social obligations is not just an administrative matter, but also a denial of the very essence of legal values.

In the Indonesian positive legal system, sanctions are the legal consequences arising from violations of applicable legal norms [18]. According to Hans Kelsen, every legal norm containing a command (*gebot*) must be accompanied by a sanction to have binding force. Without sanctions, norms become mere moral or ethical recommendations that are ineffective.

Similarly, the provision in Article 37 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary, which requires notaries to provide free legal services to the indigent, has legal sanction consequences if violated. These sanctions are not only administrative but can also impact ethical responsibility and even public legal liability. In the context of positive law, the notary's responsibilities encompass three main areas: administrative responsibility, professional ethical responsibility, and legal responsibility (both civil and criminal) if the violation committed has legal consequences [19].

Conclusion

The social obligations of notaries, as regulated in Article 37 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary, are legal commands that are imperative and contain humanistic values. The social obligations of a notary have deep legal significance because they are rooted in the three fundamental principles of law as stated by Gustav Radbruch: justice, utility, and legal certainty. Violations of this social obligation result in an imbalance of legal values: justice is neglected, the usefulness of law decreases, and legal certainty loses its moral legitimacy. Notaries who fail to fulfill their social obligations may be subject to administrative, ethical, or even civil and criminal sanctions if the violation has legal consequences. However, the effectiveness of implementing this norm is still weak because there are no implementing regulations or comprehensive monitoring mechanisms yet.

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