

Below Standard Notary Honorarium in the Perspective of Competition between Notaries



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ABSTRACT: The position of a Notary as one of the public officials representing the government to provide public services to the community is not given wages or salaries directly by the state but receives wages for the services it provides. However, legal problems often occur, especially in the context of violating the determination of below standard honorariums, causing unhealthy competition in the position of the Notary. So, the purpose of this research is to analyze whether notaries who charge substandard honorarium rates can lead to competition between notaries based on the Law on Notary Office and the Notary's Code of Ethics; and how is the authority of the Notary Supervisory Board regarding violations of the Notary's honorarium amount. The method used in this study uses normative research methods. So, the results of this study are first, the setting of substandard rates by a notary causes competition between fellow notaries and this violates the code of ethics for the position of a notary. The minimum standard of honorarium for a notary is agreed upon by the association at the regional or regional level of each region. Second, the authority of the Notary Supervisory Board is limited to supervising and coaching to prevent violations of the Notary's office. So, it would be better if the determination regarding the Notary's honorarium is regulated in the Notary's Organizational Regulations and the Notary's Supervisory Council should be given the authority to examine allegations of violations of the notary's code of ethics.

KEYWORDS: Honorarium, Notary, Competition between Notaries.

A. INTRODUCTION

The purpose of law was to maintain justice, order, and security. Its presence itself should be able to uphold balance, certainty, order, and protection of the law itself regarding the rights and obligations of a person as a legal subject in society. Based on this, legal professionals who are experts in their fields are needed to overcome legal problems and create justice. Notary as a form of legal profession, the main basis of a notary profession is trust and as a member of the community bears a heavy mandate for the trust imposed on him.¹ Because in a legal act involving at least two parties it is not impossible that in the future there may be conflicts or disputes concerning the legal act, in such case this is where the role of the authentic deed lies, namely to provide guarantees of legal protection, through an authentic deed made by the notary concerned.

The Notary Institution was formed to create legal certainty and legal protection for the public in the private law area. According to Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, article 1 number 1 states that a Notary is a public official who has the authority to make authentic deeds and other authorities as referred to in this law. Notary is a noble position. A notary is an honorable profession and is always related to morals and ethics when carrying out the duties of his position. When carrying out his duties and positions, a Notary adheres to and upholds the dignity of his profession as a position of trust and respect. Due to the attachment of ethics to the Notary profession, it is referred to as a noble profession (*officium nobile*).²

Notaries in carrying out their profession do not only carry out work that is only mandated by law but also cover a broader field than what is described in the law. Notaries carry out a very important social function, which covers a wider field than the position assigned to them. Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Office of a Notary regarding authorities, obligations and prohibitions states that a Notary has the authority to make authentic deeds regarding all acts of agreement and provisions required by laws and regulations and/or what is desired by interested parties to be stated in an authentic deed, guarantee certainty of the date of making the deed, save the deed, provide grosse copies and quotations of the deed, all of

¹ Abdul Ghofur Anshor, *Lembaga Kenotariatan, Prespektif Hukum dan Etika, Indonesia* (Yogyakarta: UII Press, 2009).

² Anshor.

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which as long as the making of the deed is not also assigned or excluded to other officials or other persons stipulated by law.³ The existence of the Notary Profession is very important in order to guarantee legal certainty and protection for every action committed by the community is related to law administration activities which are expected to achieve proper and orderly goals. This is needed to avoid all forms that can cause a legal relationship that is not good and can be detrimental to the legal subject itself in society, so that a Notary can provide certainty in the deed.⁴

Notaries must be able to carry out their profession in a professional, highly dedicated, and always uphold their dignity by upholding the Notary Code of Ethics. In carrying out his position, a Notary must comply with all moral principles that have lived and developed in society. Apart from the existence of professional responsibilities and ethics, integrity and good morals are important requirements that must be possessed by a Notary. As a Notary who carries out his position professionally, the Notary not only makes authentic deeds, but the Notary also provides legal counseling to appearers, in this case the Notary pays attention to various legal aspects and social norms that apply so that in making the deed does not cause legal problems in the future. When an appearer appears, the notary provides explanations based on applicable rules or provides legal counseling to the appearer regarding the deed or agreement desired by the appearer.

The Law on Notary Position which regulates the implementation of the position of Notary Public, there is also a Notary Code of Ethics as a supporter of the Law on Notary Position which is also a guideline for Notaries in carrying out their positions. Article 1 point 2 of the Notary Code of Ethics states that the Notary Code of Ethics is a moral principle determined by the Indonesian Notary Associations, hereinafter referred to as the "association". Based on the decision of the congress of the association and/or determined and regulated in the laws and regulations governing this matter and which apply to and must be obeyed by each and all members of the association and all people who carry out their duties as a Notary, including temporary Notary officials, Substitute Notaries when carrying out their duties.

The existence of a Notary as a state official authorized to make a legal product, namely an authentic deed does not receive a fee directly from the state. Therefore, a Notary has the right to receive an honorarium for legal services provided in accordance with their authority.⁵ The notary receives an honorarium from the public for services in making authentic deeds. The honorarium received by a Notary is based on the economic and sociological value of each deed he makes, regulated in Article 36 and Article 37 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. Economic Value as referred to in Article 36 of the Notary Office Law, i.e:

1. Up to IDR 100,000,000.00 (one hundred million rupiah) or the equivalent of a gram of gold at that time, the maximum honorarium received was 2.5% (two-point five percent);
2. Above IDR 100,000,000.00 (one hundred million rupiah) up to IDR 1,000,000,000.00 (one billion rupiah), the maximum honorarium received is 1.5% (one point five percent); or
3. Above IDR 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.

The Sociological Value referred to in Article 37, namely "is determined based on the social function of the object of each deed with the maximum honorarium received IDR 5,000,000.00 (five million rupiah)." In addition to the Notary Office Law, the rules regarding notary honorarium are further regulated in the Notary Code of Ethics, namely in Article 3 number 14 "Notaries are required to carry out and comply with all provisions regarding honorarium set by the association". Based on the provisions in the Notary Office Law, there is no regulation regarding the determination of the minimum honorarium of a Notary for the services provided. Article 36 of the Notary Office Law only regulates the maximum honorarium limit that can be determined by a notary. Whereas in the Notary Code of Ethics in Article 3 number 14 explains that a Notary can follow the provisions regarding honorarium set by the Indonesian Notary Association Association. Article 4 point 10 concerning Prohibition of Notaries states: "Determining the honorarium to be paid by the client in a lower amount than the honorarium set by the association", however, in practice there are still many areas that do not have written regulations explaining the minimum rates that can be accepted by a Notary.

Notaries have the right to collect fees for the services they have provided from the public who use them. The presence of unscrupulous Notaries who set below standard honorarium rates as mentioned above can be linked to competition because it clearly violates the rules regarding honorarium that have been stipulated in article 4 point 10 of the Notary Code of Ethics, namely regarding the prohibition of Notaries. The competition between fellow Notaries is increasingly leading to unhealthy competition. They proactively go to the market to visit clients, offer services, negotiate fees. With the increasingly uncontrollable number of notaries, especially in big cities, this condition allows clients to have more confidence in notaries they already know in making

³ E.Y. Kanter, *Etika Profesi Hukum: Sebuah Pendekatan Religius* (Jakarta: Stora Grafika, 2001).

⁴ Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta* (Bandung: Mandar Maju, 2011).

⁵ Salim HS., *Teknik Pembuatan Akta Satu (Konsep Teoritis, Kewenangan Notaris, Bentuk dan Minuta Akta)* (Jakarta: PT. Raja Grafindo Persada, 2015).

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deeds, thus causing other notaries who have less relations to become short of clients. This of course spurred an unfair competition in carrying out his position, which was solely to get the Notary client to slam the fee from what was reasonable.

Based on the above, clear rules regarding the minimum standard of notary honorarium must exist. In the absence of rules that regulate significantly regarding the minimum standard of notary honorarium, it can result in unhealthy competition among fellow notaries, it can also create a monopoly for a notary who cooperates with agencies so that because of this it can close opportunities for other notaries to participate. In this case to protect the public interest and guarantee the implementation of the Notary's Office which is trusted by the Law and the public, the regulation regarding supervision of the implementation of the Notary's office is very appropriate, with the existence of the Code of Ethics Law is to prevent unethical behavior and provide direction and guarantee the moral quality of its members. Professional holders are required to prioritize their profession responsibly.

Supervision and guidance on the behavior of a Notary is regulated in Law Number 2 of 2014 Amendment to Law 30 of 2004 concerning the Office of a Notary. Article 67 paragraph (1) The Minister forms a Notary Supervisory Council (MPN) in stages starting from the Regional Supervisory Council, Regional Supervisory Council, Central Supervisory Council. The Indonesian Notary Association as an organizational association for Notaries has a very important role for supervision, prosecution, and defense in upholding the implementation of the Notary Code of Ethics. The Notary Code of Ethics also forms a Notary Honorary Council which has the main task of supervising the implementation of the Code of Ethics for none other than the interests of the Notaries themselves, who have ties with the Law. However, it must be noted that the Honorary Council in carrying out its duties and authorities is inseparable from existing provisions, both related to the Indonesian Notary Association and the Notary Office Law.

So, the purpose of this research is to add material for analysis related to legal issues regarding substandard notary honorarium in the perspective of competition between notaries. What distinguishes this research from previous research is that no one has discussed more specifically related to unfair competition between notaries due to the ambiguity of the rules regarding the minimum amount of notary honorarium and what is the role of the Notary Supervisory Board in this regard. As in the thesis written by Sari, it discusses the minimum limit of honorarium for notary services in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary and how to supervise notaries in determining the minimum honorarium for notary services so as not to lead to unfair competition.⁶ Another thesis which also raises the same theme from Danardana which discusses the basis for regulatory considerations regarding the amount of Notary honorarium in the Law on Notary Office and the Notary Code of Ethics; how is the formulation of the notary's amount of honorarium; and what are the sanctions for Notaries who violate the rules on the minimum rate of Notary Honorarium.⁷ So the formulation of the problem in this study is whether a Notary who charges below standard honorarium rates can lead to competition between Notaries based on the Notary Office Law and Notary Code of Ethics; and how is the authority of the Notary Supervisory Board regarding violations of the Notary's honorarium amount.

B. METHOD

This research uses normative law research, which uses normative case studies in the form of legal behavior products.⁸ The type of research used is the conflict norm. The nature of this research is analytical prescriptive, namely studying the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms.⁹ The approach used is a statute approach and a conceptual approach.¹⁰ So this research is analyzed to find out how the notary's honorarium is below standard in the perspective of competition between notaries.

C. RESULT AND DISCUSSION

WITHDRAWAL OF UNDER STANDARD HONORS BY NOTARIES CAUSES COMPETITION AMONG NOTARIES

Consideration of Notary Honorarium Minimum Standards

Notary is a profession related to individuals, notary professional organizations, society in general and the state, because the notary profession is directly related to all of the above. Therefore, a notary in carrying out his duties and positions is required to be careful in every action. Wrong actions of a notary will not only harm the notary himself, but can also harm the notary's

⁶ Selly Wulan Sari, "Pengawasan Terhadap Penentuan Batas Minimal Honorarium Jasa Notaris." (Tesis, Banjarmasin, Universitas Lambung Mangkurat, 2018).

⁷ Widya Ishwara Danardana, "Penetapan Tarif Minimal Honorarium Notaris untuk Menghindari Perang Antar Notaris" (Tesis, Semarang, Universitas Islam Sultan Agung, 2021).

⁸ Mukti Fajar ND. dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

⁹ Dyah Octorina Susanti dan A'an Efendi, *Penelitian Hukum* (Jakarta: Sinar Grafika, 2014).

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).

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professional organization, society and the state. Notary profession was born because the community needed it, not a profession that was deliberately created and then socialized to the public. In carrying out their duties, one of which is making authentic deeds, the Notary has the authority not to provide his services and there are several reasons related to this, namely, if the notary is sick so he cannot provide his services, he is physically unable; if the notary is not available due to leave, then it is due to a valid reason; if the notary because of his busy work cannot serve other people; if the documents required to draw up a deed are not submitted to the notary; if the appearer or the instrumental witness submitted by the appearer is not known by the notary or cannot be introduced to him; if the interested party does not want to pay the required stamp duty; if due to the provision of these services, the notary violates his oath or commits an unlawful act; and if the parties wish that the notary make a deed in a language they do not speak in an unclear language, so that the notary does not understand what they want.¹¹

In order to provide legal certainty for people who need the services of a notary public, the Notary Office Law contains restrictions for notaries, which are contained in Article 17, namely that notaries are prohibited from holding positions outside their territory of office; leaving the area of office for more than 7 (seven) consecutive working days without any valid reasons; concurrently as a civil servant, concurrently as a state official, as an advocate, concurrently as a leader or employee of a State-Owned Enterprise, a Regional-Owned Enterprise, or a Private Business Entity, as a Land Deed Official outside his territory of office; become a substitute notary; or perform other work that is contrary to religious norms, decency, or propriety that may affect the honor and dignity of the position of a notary.

The Notary Office Law does not explicitly state that violations of the provisions regarding substandard notary honorarium rates will result in the emergence of unhealthy competition between Notary colleagues. The Notary Office Law also does not contain a single article that regulates unfair competition caused by violations of tariff provisions. However, it is different from the notary's Code of Ethics, although it does not explicitly regulate this matter, at least the Notary's Code of Ethics regulates the prohibition for Notaries to set rates for their services below standard, as stated in Article 3 paragraph 13, namely "Obligations of a Notary, namely a Notary is obliged to carry out and comply with all provisions regarding honorarium set by the association". Determination of rates or honorarium below the standards received by a notary for their services, in other words, lower than what should be. The determination of the notary's honorarium that has been set by the association can have an impact on the emergence of unfair competition between fellow notaries, because certain individuals may set rates that are very low compared to other notaries to attract clients to come to them.

As has happened before, there was a dispute between notary A and notary B in Banjarbaru City, the dispute was caused by a struggle for a client, in this case notary A set a far below standard than agreed upon, so that notary B's clients who knew about this moved to notary A because they felt they were getting the same results from notaries A and B, meaning the deed they got was the same even though at a different price. Then, Hj. Khairita as Chair of the Regional Management summoned and listened to each statement from both parties and tried to straighten it out so that the problem would not widen and resolve the dispute properly. If it is felt that the problem has not found a clear spot, then he also includes the Regional Honor Council, they hold a meeting with the parties to resolve and admonish. In the event of a breach of honorarium by a notary below the standard Hj. Khairita also stated that so far no one has ever received a sanction, but only a reprimand by the Notary Honorary Council. Because basically the notary concerned has been subject to moral sanctions indirectly.¹²

Notaries in providing services to the public do not discriminate one from another based on socio-economic conditions or other reasons. In fact, notaries are obliged to provide legal services in the notary field free of charge to people who can't afford it, which is regulated in Article 37 of the Notary Office Law. Only legal reasons may be used as a basis that a Notary cannot provide services to those who appear before the Notary. The notary's position must be independent or neutral, meaning that the notary is expected to provide legal counseling for and for legal actions taken by the notary at the request of his client. In terms of taking legal action for his client, the notary also may not take the side of his client, because the notary's job is to prevent problems from happening in the future. If the Notary wants to refuse to provide his services to the party who needs it, then the refusal must be a refusal in a legal sense, in the sense that there is a clear and firm legal reason or argument so that the party concerned can understand it.

In carrying out their duties, a Notary is not only guided by the Law on Notary Position but also by the Notary Code of Ethics. The existence of a relationship between the Code of Ethics and the Law on Notary Position gives meaning to the notary profession itself. The Law on Notary Position and the Notary Code of Ethics requires that a notary in carrying out his duties as a public official, in addition to being subject to the Law on Notary Position, must also comply with the Code of Professional Ethics and be responsible to the community he serves, the notary professional organization, and the State. With this relationship, a notary who ignores the nobility and dignity of his position as a notary, besides being known as a moral sanction, is reprimanded, or

¹¹ Habib Adjie, *Hukum Notaris Indonesia, Tapsir Tematik terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008).

¹² Hj. Khairita, Wawancara dengan Hj. Khairita, Ketua Pengurus Daerah di Kota Banjarbaru, diwawancara oleh Khairiani Rahmah, 24 Mei 2023.

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dismissed from his position as a notary. A notary while carrying out his duties, even though he is appointed and dismissed by the government, namely the Minister of Law and Human Rights of the Republic of Indonesia, does not receive a salary from the government or a pension from the government, so that the honorarium received by the notary is the personal income of the notary concerned while carrying out the notary's profession. Honorarium is the right of a notary, meaning that a person who has used the services of a notary is obliged to pay a notary's honorarium, although the notary is also obliged to help free of charge to those who cannot afford to pay an honorarium to a notary. The inability of the appearers must be given the same legal action by the Notary. The Notary may not provide service differences between appearers with high economic value and low economic value, because the deed made by the Notary concerned will not make any difference, whether those who are able to pay a Notary honorarium or those who are free of charge.¹³

A notary has the right to collect an honorarium in the form of money, the amount of which has been determined and stated in Article 36 of the Notary Office Law, namely that a Notary has the right to receive an honorarium for legal services provided in accordance with their authority. The amount of honorarium received by a notary is based on the economic value and sociological value of each deed he makes. The economic value referred to is determined from the object of each deed as follows:

- a. Up to IDR 100,000,000.00 (one hundred million rupiah) or the equivalent of a gram of gold at that time, the maximum honorarium received is 2.5% (two-point five percent).
- b. Above IDR 100,000,000.00 (one hundred million rupiah) up to Rp. 1,000,000,000.00 (one billion rupiah) honorarium received at most 1.5% (one point five percent) or.
- c. Above IDR 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.
- d. The sociological value is determined based on the social function of the object of each deed with a maximum honorarium of IDR 5,000,000.00 (five million rupiah).

Based on the provisions above, the Notary Office Law only determines the maximum limit of notary honorarium, without explicitly mentioning the minimum limit of notary honorarium. On the basis of this maximum limit, not all Notaries determine honorarium rates in accordance with the provisions contained in Article 36 of the Notary Office Law. This is caused by the subjective considerations of the Notary, some even consider that the provisions in the law are quite large, so that it is impossible to implement them directly. Furthermore, the determination of the minimum amount of honorarium and for complementary services for the deed of a Notary is guided by the Notary Code of Ethics, then the management of each region of the Indonesian Notary Association will enter into an agreement between all members so that results are in accordance with the mutual agreement.

The notary has the right to determine his own economic value based on his considerations if it does not exceed the maximum provisions of the Notary Office Law. Thus, the consideration of determining the amount of honorarium depends on the assessment of the economic and social value of a transaction. The provisions contained in the Notary Office Law simply cannot be put into practice without looking at other aspects. The custom that is carried out among notaries is that there is a negotiation to determine the tariff agreed upon by both parties. In addition to the economic provisions that are determined from 1% to 2.5%, the collection of honorariums is also based on the sociological value of a transaction. Because not all transactions served by a notary contain economic value. There are clients who manage companies and/or transactions that have greater sociological value, the Notary Office Law has set a maximum of IDR 5,000,000.00 (five million rupiah). As for the deed of making an orphanage or a deed regarding a place of worship and having benefits for the State, it is mitigating in nature.

Akhmad Murdani, Notary and PPAT in Kotabaru Regency, explained that what is meant by sociological value has a broad and gray meaning, because each notary can set a fee according to his or her own opinions and thoughts, for example giving more rates to people who are less fortunate, neighbors, good friends, and other considerations. According to him, he could not charge rates according to what has been regulated by the Law on Notary Office but not far from these provisions and did not aim to bring down other notaries or attract clients to come use his services.¹⁴

The determination of the honorarium standard is also to avoid monopoly which causes unhealthy competition between notaries. With later uniformity of notary fees, it is necessary to avoid views on junior and senior notaries, there is no gap. Determination of uniformity or standard rates is needed to maintain the identity of the notary himself. Thus, if there is a certain standard, the public will know and will not feel cheated by the rates given by one notary to another. There are two principles that influence the reward system. First, the principle of serving is limited to the wages received. Second, the principle of serving on demand. The Notary's position makes it possible to serve requests from appearers regarding work other than making authentic deeds by receiving an agreed honorarium. This is what is needed so that a notary in carrying out his position does not only rely on

¹³ Munir Fuady, *Etika Profesi Hukum Bagi Hakim, Jaksa, Advokat Notaris, Kurator dan Pengurus* (Bandung: PT. Citra Aditya Bakti, 2005).

¹⁴ Akhmad Murdani, Wawancara dengan Akhmad Murdani, Notaris dan PPAT di Kabupaten Kotabaru, diwawancara oleh Khairiani Rahmah, 27 April 2023.

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getting honorarium according to the Notary Office Law, but there is also an honorarium that is obtained from the public for legal services that are outside of his authority as stipulated in the Notary Office Law.

As a form of confirmation, Article 4 paragraph 10 of the Notary Code of Ethics regulates the prohibition of setting honorarium below standard, which explains that Notaries are prohibited from setting honorarium to be paid by clients in a lower (minimum) amount than the honorarium set by the association. Based on the provisions above the determination of the minimum honorarium is left to the association, namely the minimum standard of notary honorarium is determined based on the agreement of the notary association. Notaries may not charge very low fee rates or unusual rates to clients with the aim of attracting many clients, which can lead to competition among Notary colleagues. Associations, as stipulating minimum honorarium standards, may not violate the Law on Notary Office, associations are of course based on very strict considerations so as not to cause harm to all parties, including associations can determine this by looking at the level of regional income, inflation, population, and as appropriate so that the minimum honorarium standards cannot be equated to all regions. Determination of the minimum standard of honorarium in an area is very necessary as a reference for Notaries.

Likewise with Irina Rahmadiyahanti Lestari, Notary and PPAT in Banjar Regency, the establishment of a minimum standard of notary honorarium greatly facilitates notaries in determining honorarium rates for people who use their services. Because in practice there are some people who offer very low prices, the establishment of a minimum honorarium standard can provide certainty to the local community.¹⁵ From the results of interviews with the sources mentioned above, it can be concluded that basically a notary in carrying out his duties and positions really needs a reference to the minimum standard of honorarium, namely as stated in the results of the meeting of the Regional Board of the Indonesian Notary Association and the Association of Officials for Making Land Deeds and/or with the Regional Managers of the Indonesian Notary Association and the Association of Officials for Making Land Deeds. The Regional Management of South Kalimantan has set the minimum rates and fees for making notarial and Land Deed Official deeds dated January 31, 2020. The agreement on determining the amount of honorarium should prevent competition between notaries and avoid a tariff war between one notary and another. In addition, the standard setting is also to avoid monopoly which causes competition between Notaries.

Formulation of Ideal Minimum Amount of Honorarium for Notaries

Determination of a lower honorarium rate than the notary's agreement for the service of making an authentic deed certainly creates polemics for one Notary with another Notary and the public who need their services, which can lead to competition between Notaries. Determination of service rates or notary honorarium is carried out by unscrupulous notaries in various ways, both directly and independently, meaning notaries who set service rates below standard directly to clients who use their services directly or can also be by way of notaries carrying out various kinds of cooperation with other parties or certain agencies, such as cooperating with banks, developers, or with people's credit banks and other agencies.

The notary's cooperation with various parties occurs first on the cooperation offer submitted by the notary to the agency concerned by submitting a cooperation agreement offer letter regarding the services of a notary in making an authentic deed. The agreement determines what matters are the work of the notary, how long is the timeframe for completing the deed, and how much honor or fee will be received by a notary in each deed he makes for the benefit of the agency. Very tight competition among fellow Notaries will have implications for the erosion of idealistic values that exist in society and the Notary's own position. It can also affect disharmony between colleagues. This of course violates the Notary Code of Ethics. Therefore, to discipline and maintain the dignity of a notary, the association determines a standard minimum honorarium rate.

Violations of the Code of Ethics often occur because of the high demand for consumerism, which is part of a materialistic and consumptive life, for the sake of fulfilling life satisfaction. The profession is considered as a field to make money and ignores the service function attached to the profession. Although the rules regarding the honorarium are clear in the Law on Notary Office on the maximum amount of honorarium and further regulated in the Notary Code of Ethics on the minimum amount of Notary honorarium. However, regarding the minimum standard of honorarium set or agreed upon by the association, there are no strict sanctions. Therefore, there are still many notaries who charge only according to what the notary wants.

Article 36 of the Law on Notary Office is the only article in the Law on Notary Office which regulates the terms of honorarium that a notary is entitled to receive for the services he renders. Furthermore, in Article 36 paragraph (2) of the Notary Office law it should read that the amount of honorarium received by a notary is based on the economic value and/or sociological value of each deed he makes. If you use the word *dan*, you must consider the economic value and sociological value of each deed drawn up by a notary. Therefore, logically it is necessary to determine what percentage of sociological value and economic value. However, the determination of the sociological value of the deed he made. The formulation of Article 36 paragraph (2) according to the author is not quite right, because if the amount of honorarium received by a notary is formulated based on the economic value and sociological value of each deed he makes, it means that for each deed two values must be found, namely the economic

¹⁵ Irina Rahmadiyahanti Lestari, Wawancara dengan Irina Rahmadiyahanti Lestari, Notaris dan PPAT di Kabupaten Banjar, diwawancara oleh Khairiani Rahmah, 18 Mei 2023.

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value and the sociological value. Then in the explanation regarding Article 36 paragraph (4) that deeds that have sociological value or have a social function are foundation deed, school establishment deed, waqf land deed, house of worship establishment deed, or hospital establishment deed.

In connection with unfair competition between fellow notaries, the existence of a Code of Ethics aims to prevent unfair competition between notaries. Likewise, the Law on Notary Office and the Notary Code of Ethics also do not provide a clear definition or understanding of the intent of this dishonest competition. This is as described in Article 4 paragraph 9 of the Notary Code of Ethics which stipulates as follows, that "Notaries and other people who assume and carry out positions as notaries are prohibited from making efforts, both directly and indirectly, which lead to the emergence of unfair competition with fellow notaries."

So it is very important to make a strict rule regarding the determination of the minimum standard of the notary's honorarium rate to be used as a reference for each notary in setting the lowest rate, which can be set to his client in making a deed so that there is no significant difference in rates between one notary and another notary, so that the public will not compare each notary in terms of the determined honorarium, thereby avoiding competition between notaries. However, the determination of the minimum tariff is also accompanied by an exception for people who can't afford it, as required by laws and regulations so that all levels of society are treated equally before the law and can use the services of a notary. Presumably the stipulation regarding the honorarium needs to be regulated in a notary association regulation, not only based on the decision of the regional management meeting, where the enactment of the stipulation of the notary association regulation in each region determines what the minimum rate of notary services is, so that justice is created for the notary in receiving the notary honorarium rate. Then in the rules of the association, strict and clear sanctions are stipulated for violations of the provisions for setting minimum notary service tariff standards that apply in each region.

The following is a table regarding the list of agreed rates and minimum fees for the 2020 Honorarium for Making Notary Deeds and PPAT as determined by the Regional Management of the Indonesian Notary Association of South Kalimantan and the Association of Land Deed Making Officials with the Regional Management of the Indonesian Notary Association and the South Kalimantan Association of Land Deed Making Officials:

No.	Type of Deed	Minimum Tariff (Rupiah)
	Legalization	Min Rp 500.000,00
	Waarmeking	Min Rp 250.000,00
	Power of Attorney Providing Mortgage Rights	Min Rp 500.000,00
	Lease	Min Rp 1.000.000,00
	Cooperation Agreement	Min Rp 1.000.000,00
	Bequest Grant	Min Rp 1.000.000,00
	Share Purchase	Min Rp 1.000.000,00 (1/mill from Share Purchase)
	Buy-Sell Binding Agreement	Min Rp 1.000.000,00
	Buy-Sell Binding Agreement + Buy Back Guarantee + Addendum (subsidy)	Min Rp 750.000,00
	Buy-Sell Binding Agreement Underhand + Notary Power (subsidy)	Min Rp 1.500.000,00
	Opening of a Limited Partnership Branch	Min Rp 1.500.000,00
	Establishment of a Limited Partnership + Land Certificate	Min Rp 3.500.000,00
	Establishment of a Limited Partnership + Land Certificate + One Single Submission	Min Rp 5.000.000,00
	Limited Partnership Change	Min Rp 3.500.000,00
	Limited Partnership Dissolution	Min Rp 3.500.000,00
	Establishment of a Foundation + Cooperative + Association (social)	Rp 1.000.000,00
	Establishment of a Foundation + Certificate	Min Rp 5.000.000,00
	Establishment of a Foundation + Cooperative + Association	Min Rp 5.000.000,00
	Establishment of a Limited Liability Company + Certificate + One Single Submission Permit	Min Rp 12.500.000,00

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Establishment of a Limited Liability Company + Certificate	Min Rp 7.500.000,00
Amendments to the Articles of Association Articles 1-4	Min Rp 7.500.000,00
Data Change	Min Rp 5.000.000,00
Amendments to the Articles of Association Articles + Data	Rp 10.000.000,00
Limited Liability Company Dissolution (3 Deeds)	Min Rp 15.000.000,00
Opening of a Limited Liability Company Branch	Min Rp 3.500.000,00
Inheritance Certificate + Statement Letter (Complete)	Min Rp 3.500.000,00
Legalization (Banking)	Min Rp 150.000,00 – Rp 500.000,00
Credit Agreement	Min 0,1% atau Rp 750.000,00
Plafon >Rp 500.000.000 1M – 2M >25M	Min 0,1% Min 0,1% Min 0,1% atau Rp 25.000.000,00 (negotiable)
Addendum (Banking)	Min Rp 750.000,00
Yasa Griya Credit (Car Package)	Min 0,5% Max 1%
Fiduciary (Banking)	Min Rp 1.000.000,00 atau 0,1% dari nilai jaminan
Deed of Sale & Purchase (excluding Non-Tax Revenue) 0 – Rp 250.000.000,00 Rp 250.000.000,00 – 1M Di atas 5M-10M Di atas 10M	Min Rp 2.500.000,00 or Max 1% dari from transaction Min 1% Min 0,75% Min 0,5% Min 0,25%
Deed of Granting Mortgage Rights (excluding Non-Tax Revenue) 0 – 1M >1M – 10M >10M	0,5% of the value of the mortgage right 0,375% of the value of the mortgage right 0,25% of the value of the mortgage right

Source: Irina Rahmadiyah Lestari, Notary in Banjar District

AUTHORITIES OF THE NOTARY SUPERVISORY ASSEMBLY ON VIOLATIONS OF NOTARY HONORS

Duties and Authorities of the Notary Supervisory Board

Notaries in carrying out their duties are institutionally supervised by 3 (three) institutions, namely based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary through the Notary Supervisory Council, Notary Honorary Council and the Notary Code of Ethics through the Notary Honorary Council of the Indonesian Notary Association. The three institutions have different authorities as stated in the legal regulations that govern them. The Notary Supervisory Board is a body that has the authority and obligation to carry out the guidance and supervision of Notaries. The Minister establishes the Notary Supervisory Council as an institution authorized to supervise, examine, and impose sanctions on Notaries. The Notary Supervisory Council carries out supervision and guidance with activities that are preventive and curative in nature including coaching activities carried out by the Notary Supervisory Board towards Notaries.¹⁶

Article 27 Regulation of the Minister of Law and Human Rights Number 16 of 2021 concerning Organizational Structure and Work Procedures, Procedures for Appointment and Dismissal, as well as the Budget of the Notary Supervisory Council states that the Supervisory Council has the authority to supervise and supervise Notaries and conduct examinations of alleged violations of behavior and implementation of the Notary's position; administration which does not require the approval of the Supervisory Board meeting; administration which requires the approval of the Supervisory Council meeting; and routine checks. According to Article 68 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary, that the Notary Supervisory Council consists of the Regional Supervisory Council, Regional Supervisory Council, and Central Supervisory Council. There are 3 (three) Institutions that oversee notaries with different authorities on the implementation of their

¹⁶ S. Rijal Khalis, "Pembinaan Majelis Kehormatan Notaris Dan Majelis Pengawas Notaris Berdasarkan Undang-Undang Jabatan Notaris," *Lex Renaissance* 6, no. 1 (19 Oktober 2021): 179-92, <https://doi.org/10.20885/JLR.vol6.iss1.art13>.

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duties, with the intention that notaries are obliged to fulfill all provisions in carrying out their duties of office so that the deed made by and before a notary can maintain its authenticity as complete and perfect written evidence.

The Notary Honorary Council is a body that has the authority to carry out the guidance of a Notary and the obligation to give or refuse for the purposes of investigation and judicial process, for taking a photocopy of the Minutes of the Deed and summoning the Notary to attend the examination relating to the Deed or Notary Protocol which is in storage. Seeing from the explanation above regarding the authority of the Notary Supervisory Board and Notary Honorary Council both have the authority to provide guidance to Notaries, but there is no explanation as to what kind of guidance must be carried out by the Notary Supervisory Board and Notary Honorary Council. The Notary Supervisory Council, in this case the Regional Supervisory Council, carries out guidance and supervision related to the behavior of the Notary and the implementation of the duties of a Notary's position, while the Notary Honorary Council is only limited to coaching related to the implementation of the duties of the position. In Article 66A paragraph (1) of the Notary Office Law it is explained that "in carrying out coaching, the Minister forms a Notary Honorary Council."¹⁷ Rahmida Erliyani as an academic and the Notary Supervisory Council, explained that the Notary Supervisory Council has authority only in assistance and supervision, the efforts that can be made by the Notary Supervisory Council are only limited to submitting good reports from notaries who feel disadvantaged by the presence of notaries who set below standard rates to the Notary Honorary Council.¹⁸

Article 67 paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, it is emphasized that the supervision of a Notary is carried out by the Minister, the responsibility of the minister in carrying out this supervision is because the Notary is appointed by the minister, but in carrying out this supervision the minister forms a Supervisory Council, namely the Notary Supervisory Council. Another purpose of supervising notaries is that notaries are presented to serve the interests of the public who need evidence in the form of authentic deeds at the request of the community itself to the notary. However, this does not mean that by changing the agency that supervises the Notary there will be no violations committed by the Notary, because even though the supervision carried out by the Supervisory Board is quite strict, it is not easy to carry out such supervision, this is up to the Notary himself with awareness and full responsibility in carrying out his duties following or based on the legal regulations that apply to the local Notary Supervisory Board, with reports like this can eliminate actions by a notary that is not in accordance with the legal provisions of the implementation of the duties of a notary.¹⁹

Supervision of the behavior and performance of notaries has at least been maintained through Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, Notary Code of Ethics, and Notary Statutes/Bylaws, as well as Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning Organizational Structure, Work Procedures for Appointing Members, Dismissing Members, and Working Procedures of the Supervisory Council. However, the facts show that there are still many notaries who commit violations. The implementation of supervision carried out by the Notary Supervisory Council must be based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of Notary and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning the Organizational Structure, Work Procedures of the Appointment of Members, Dismissal of Members, and the Work Procedures of the Supervisory Council but in the process of supervision with a broad regional scope is a problem for the Supervisory Council considering the number of notaries to be supervised.

Then the duties and authorities of the Notary Supervisory Board are to provide guidance and supervision of the implementation of the Notary's duties and the behavior of a Notary who can influence the performance of the Notary's position. Meanwhile, the imposition of sanctions for violations of the code of ethics is the authority of the Notary Honorary Council. In this case, the Notary Supervisory Board does not have the authority to impose sanctions on a notary who sets below standard honorarium rates as agreed by the association.

Forms of Efforts of the Notary Supervisory Board in Preventing Competition between Notary Partners regarding Notary Honorarium

Notaries in carrying out their duties and positions must obey and comply with all the regulations outlined in UUJN, the Code of Ethics of the Indonesian Notary Association and other laws and regulations relating to the use of the duties of a Notary position. Supervision of Notaries is carried out by the Notary Supervisory Board in stages. This Notary Supervisory Council is an extension of the Minister of Law and Human Rights of the Republic of Indonesia. The purpose of this supervision is that the Notaries when carrying out their duties fulfill the requirements relating to the implementation of the duties of a Notary's position to safeguard the interests of the community, because the Notary is appointed by the government not for the benefit of the Notary himself but for

¹⁷ Khalis.

¹⁸ Rahmida Erliyani, Wawancara dengan Rahmida Erliyani, Akademisi dan Majelis Pengawas Notaris, diwawancara oleh Khairiani Rahmah, 23 Mei 2023.

¹⁹ Habib Adjie, *Memahami Majelis Pengawas dan Majelis Kehormatan Notaris* (Bandung: Refika Aditama, 2017).

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the benefit of the community he serves. A notary in carrying out his position as a public official authorized to make authentic deeds is supervised by the Notary Supervisory Board formed by the minister. Provisions regarding supervision of Notaries are regulated in UUJN Chapter IX concerning Supervision. Supervision is generally understood as activities carried out by supervisors in seeing, paying attention, observing, controlling, observing, and maintaining and giving wise direction.

Basically, the Minister of Law and Human Rights of the Republic of Indonesia who has the authority to supervise and examine a Notary Public, in whose implementation the Minister forms a Notary Supervisory Council. The Minister of Law and Human Rights has the task of assisting the president in carrying out some of the government's affairs in the field of law and human rights. Thus, the supervisory authority over Notaries rests with the government, so that it is related to how the government obtains such supervisory authority. The supervisory authority over a Notary is in the hands of the Minister of Law and Human Rights. However, in practice, the minister delegates this authority to the Notary Supervisory Council which he has formed. UUJN emphasizes that the minister supervises notaries and the minister's authority to carry out this supervision by UUJN is given in the form of delegation to the minister to form a Notary Supervisory Council, not to carry out the functions of the Notary Supervisory Council which has been explicitly assigned to be the authority of the Notary Supervisory Council.

Preventive supervision carried out by the Notary Supervisory Board in carrying out supervisory duties on Notaries in carrying out their positions is to prevent violations of authority committed by Notaries. The forms of implementation are, first, holding seminars on notary practice to increase knowledge and provide information about the world of Notaries and holding a joint meeting once a month attended by the Regional Supervisory Council which aims to provide direction so that the Notary implements UUJN and the Notary Code of Ethics, and the Regional Supervisory Council visits the Notary's office to check the writing of the Notary's protocol at least once a year. Second, the Notary Supervisory Board also conducts outreach to Notaries, the public and the police as well as academics. This socialization aims to make these parties aware and understand the existence of a notary supervisory institution. The purpose of socialization for the community is so that people know the rights and obligations of a Notary. If one day the public is harmed by a Notary, they can report to the Notary Supervisory Board as the institution authorized to conduct inspections and receive complaints. Notary Supervision is carried out as a sense of moral responsibility given by the Notary Supervisory Board to the public even though the law does not mention the form or method of preventive supervision carried out by the Notary Supervisory Board.

The imposition of sanctions is also adjusted to the severity of the violation. If a Notary commits a violation of both the code of ethics and UUJN which does not materially harm society, the Notary will be given a warning and guidance will be provided first. The Notary Honorary Council or the Notary Supervisory Board notify that the Notary concerned has committed a violation regulated in the laws and regulations and the code of ethics and is given an appropriate explanation and solution so as not to commit a violation in the future.

D. CONCLUSION

The setting of substandard rates by a notary public causes competition among notary colleagues because it has an impact on injustice for notaries who comply with the rules, in this case regarding the stipulation of a minimum standard notary honorarium agreement. The basis for consideration of the minimum amount of honorarium for a notary is not regulated in the Notary Office Law but is contained in the Notary's Code of Ethics. The Code of Ethics states the obligations and prohibitions of a notary regarding the minimum standard of notary honorarium. The minimum standard of honorarium for a notary is agreed upon by the association at the regional or regional level of each region.

The authority of the Notary Supervisory Board is limited to supervising and coaching to prevent violations of the Notary's office, the Notary Supervisory Board does not have the authority to set a Notary's honorarium standard because this is established and agreed upon by the association itself, the supervision that can be carried out by the Notary Supervisory Board to prevent violations of Notary's office is only passive supervision, which means that the supervision is only waiting for a report from the public or a notary and then submits the report to the Notary Honorary Council. So that it would be better if the notary's honorarium is determined in the Organizational Regulations for Notary Office and the Notary Supervisory Board should be given the authority to examine any alleged violation of the notary's code of ethics.

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