

PUBLISH JHK 286 HAL 46-54.pdf

by Seffianidwiazmi@gmail.com 1

Submission date: 06-Mar-2025 07:31PM (UTC+0300)

Submission ID: 2575992922

File name: PUBLISH_JHK_286_HAL_46-54.pdf (378.04K)

Word count: 4720

Character count: 25109

Practice of Determining Notary Honorarium Related to Authentic Deed Preparation Services

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Accepted : January 21, 2025
Revised : January 24, 2025
Accepted : February 23, 2025
Published : February 27, 2025

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Abstract: A notary is a public official authorized to create authentic deeds and exercise other authorities as outlined in the UUJN and other relevant laws. While the primary function of a notary is to draft authentic deeds, their authority extends beyond this role. This study aims to analyze how the UUJN regulates the honorarium for a notary's services beyond the creation of authentic deeds. The research adopts a normative juridical approach, focusing on legal principles and statutory regulations. It highlights that the minimum notary fee is not explicitly defined in the UUJN or other related laws. Although there are provisions regarding notary fees for drafting authentic deeds, there is a lack of clarity on fees for other notarial services. This ambiguity can lead to varied interpretations and practices in determining notarial fees, potentially affecting the standardization of notarial services. Given the importance of a notary's role in legal transactions, clearer regulations regarding fees for non-authentic deed-related services are necessary. Establishing a well-defined framework would enhance transparency, ensure fairness, and maintain professional standards. Therefore, further legal evaluation and potential amendments to the UUJN may be needed to address this issue effectively.

Keywords : Notary, Honorarium, Authentic Deed

INTRODUCTION

The notary institution is an institution that has long been known in Indonesia, long before Indonesia's independence or during the Dutch colonial government, notaries have carried out their duties.¹ As time goes by, the notary institution is becoming increasingly well-known to the public and is needed to create authentic written evidence of a legal act

carried out by the public.²The need for a notary institution in daily legal practice cannot be separated from the increasing level of economy and legal awareness of the community. The power of an authentic deed made by a notary has very strong legal force, considering that an authentic deed is a perfect evidence.

The notary's task is to establish the legal relationship between the parties in written form and in a specific format, so that it constitutes an authentic

¹Martalena, M. (2020). Urgensi Perlindungan Hukum Terhadap Notaris Oleh Majelis Kehormatan Notaris (Mkn) Dalam Dugaan Tindak Pidana Yang Dilakukan Oleh Notaris Pada Tingkat Penyidikan. *Unes Journal Of Swara Justisia*, 4(2), 160-168.

²² Afriana, A. (2020). Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Di Indonesia Terkait Akta Yang Dibuatnya. *Jurnal Poros Hukum Padjadjaran*, 1(2), 246-261.



deed.³Notarial deed is the strongest, perfect evidence in the field of civil law. Likewise with deeds made before a Notary.⁴This means that with the existence of the deed, no other evidence is needed to prove something else. In carrying out the duties and authorities of the Notary's position, there are times when the notary makes mistakes such as; mistakes regarding the notary's lack of authority in making authentic deeds, which results in the loss of the authenticity of the deed he made or the evidentiary power of the deed is no longer complete/perfect evidence between and for the interested parties, to unhealthy competition carried out by fellow Notaries.⁵

Positive law in Indonesia has regulated the position of notary in a special law, namely Law Number 2 of 2014 concerning the Position of Notary, hereinafter referred to as UUJN. Article 1 of UUJN defines a notary as a public official who is authorized to make authentic deeds and other authorities as referred to in the Law on the Position of Notary⁶

UUJN allows notaries to gather in various notary organizations, which of

course will have the consequence of various codes of ethics that apply to each of its members. The existence of INI as the only notary professional organization is increasingly solid after passing a judicial review at the Constitutional Court.⁷The notary's code of ethics is all the moral rules that serve as guidelines for carrying out the office of a notary. The scope of the notary's code of ethics based on Article 2 of the Notary's Code of Ethics of the Indonesian Notary Association (INI) applies to all members of the association and other people who hold and carry out the position of notary, both in the performance of their position and in daily life.⁸The Code of Ethics for Notaries of the Indonesian Notary Association (INI) which was established in Bandung on January 28 2005 contains obligations, prohibitions and exceptions for notaries in carrying out their duties.⁹Notaries may be subject to sanctions if they are proven to have violated the provisions contained in the notary code of ethics.

Supervision of Notaries is very necessary in cases where a notary neglects the nobility and dignity or duties of his/her position or violates the law on notarial positions or makes other mistakes in carrying out his/her position as a notary.¹⁰ There are several examples of violations of the code of ethics of the Notary position by

³Ardiansyah, E., Saleh, M., & Rachman, R. (2022). Batasan Tanggungjawab Notaris Terhadap Akta Autentik Yang Dibuatnya. *Recital Review*, 4(2), 432-451

⁴Taliwongso, C. A. A. (2022). Kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata Di Tinjau Dari Pasal 1870 Kuh Perdata (Studi Kasus Putusan Nomor 347/Pdt. G/2012/Pn. Mdn). *Lex Administratum*, 10(2).

⁵Rahadjie, P. I., & Buana, A. P. (2022). Efektivitas Hukum Terhadap Tanggung Jawab Ppat Dalam Pembuatan Akta Jual Beli Tanah Di Kabupaten Barru. *Journal Of Lex Generalis (Jlg)*, 3(10), 1670-1685.

⁶Merlyani, D., Yahanan, A., & Trisaka, A. (2020). Kewajiban Pembacaan Akta Otentik Oleh Notaris Di Hadapan Penghadap Dengan Konsep Cyber Notary. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 9(1), 36-47.

⁷Farah, D. N. (2024). Peran Dewan Kehormatan Ikatan Notaris Indonesia Dalam Pengawasan Pelaksanaan Kode Etik Profesi Notaris (Studi Pada Dewan Kehormatan Ikatan Notaris Indonesia Kota Bandar Lampung

⁸Ayuningtyas, P. (2020). Sanksi Terhadap Notaris Dalam Melanggar Kode Etik. *Unsri*, 9(2), 1-10.

⁹Wiratmodja, I. P. W., & Romlan, R. (2022). Implementasi Kode Etik Notaris Dalam Aktivitas Notaris Sebagai Pejabat Umum. *Justicia Journal*, 11(2), 99-119.

¹⁰Wibowo, W. S., Najwan, J., & Bakar, F. A. (2022). Integritas Notaris Sebagai Pejabat Pembuat Akta Autentik Dalam Undang-Undang Jabatan Notaris. *Recital Review*, 4(2), 323-352.



certain notaries in carrying out their position, namely:

1. The notary places his/her employees/assistants in a certain place, including: in the company office, the bank office which is the notary's client, to produce deeds which appear to be the same as and similar to deeds which fulfill formal requirements;
2. Notaries spend more time doing activities outside their own office, compared to what they do in their regional office.
3. Some notaries, in order to obtain the opportunity to have their services used by interested parties, including banking institutions and real estate companies, behave unethically or violate the dignity and honor of their position.

METHODOLOGY

This research is a normative legal research, namely by examining applicable laws and regulations to be used in solving a problem.¹¹ Using secondary data sources, which means they come from data that has been documented in the form of primary, secondary, and tertiary legal materials. The approach used is a legislative approach, including the Civil Code, UUJN, and the notary code of ethics. The data analysis method used is qualitative, namely describing and providing a specific description, then grouping and selecting, then connecting it with the theories obtained so that conclusions and answers can be drawn from the problems discussed.

RESULTS AND DISCUSSION

Notary honorarium is regulated in Article 36 of Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN). Notaries want the honorarium to provide welfare for

¹¹Zainuddin, M., & Karina, A. D. (2023). Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum. *Smart Law Journal*, 2(2), 114-123.

them.¹² However, in practice, some notaries compete to set lower honorariums than those stipulated so that Article 36 of the UUJN does not run effectively.¹³ In addition, Article 4 number 10 of the Code of Ethics stipulates that notaries are prohibited from setting an honorarium to be paid by a client at an amount lower than the honorarium set by the association. Setting a lower honorarium is considered to have carried out unfair competition which is carried out through the determination of the honorarium and this can result in the notary's position being manipulated.¹⁴

Cooperation between notaries and the various parties mentioned above is based first on an offer of cooperation submitted by the notary to the relevant agency by submitting a letter of offer of cooperation agreement regarding notary services in making an authentic deed.¹⁵ The agreement determines what the notary's work will be, how long the time period is for completing the deed, and how much honorarium or fee the notary will receive for each deed he makes for the benefit of the agency.¹⁶ The provisions regarding

¹²Christian, A. (2020). Konflik Norma Berkaitan Dengan Hak Ingkar Dalam Jabatan Notaris Ditinjau Dari Undang-Undang Jabatan Notaris Dan Kode Etik Notaris. *Jurnal Education And Development*, 8(1), 1-10.

¹³Sukri, S. (2022). *Pertanggungjawaban Hukum Notaris Yang Melakukan Persaingan Tidak Sehat Oleh Sesama Rekan Notaris* (Doctoral Dissertation, Universitas Islam Sultan Agung)

¹⁴Prihayuningtyas, A. K., & Silviana, A. (2023). Timbulnya Persaingan Tidak Sehat Antar Notaris Sebagai Dampak Dari Pelanggaran Kode Etik Notaris. *Lex Renaissance*, 8(1), 39-57.

¹⁵Setyawati, D. A. P. (2020). *Analisis Yuridis Undang-Undang Jabatan Notaris Dan Kode Etik Notaris Kaitan Perjanjian Kerjasama Antara Bank Dan Notaris* (Doctoral Dissertation, Universitas Pancasakti Tegal).

¹⁶Danardana, W. I. (2021). *Penetapan Tarif Minimal Honorarium Notaris Untuk Menghindari Perang Tarif Antar Notaris* (Master's Thesis, Universitas Islam Sultan Agung (Indonesia)).

honorarium or compensation for notary services in the making of an authentic deed are regulated in Article 36 of the UUJN, which stipulates that: 1. Notaries are entitled to receive honorarium for legal services provided in accordance with their authority. 2. The amount of honorarium received by a Notary is based on the economic value and sociological value of each deed they make. 3. The economic value as referred to in paragraph (2) is determined from the object of each deed as follows:

a. Up to Rp. 100,000,000,- (one hundred million rupiah) or the equivalent of grams of gold at that time, the largest honorarium received is 2.5%;

b. Above Rp. 100,000,000,- (one hundred million rupiah) up to Rp. 1,000,000,000,- (one billion rupiah) the honorarium received is a maximum of 1.5% or;

c. Above Rp.1,000,000,000,- (one billion rupiah) the honorarium received is based on the agreement between the Notary and the parties but does not exceed 1% of the object for which the deed is made. 4. Sociological value is determined based on the social function of the object of each deed with the honorarium received at most Rp.5,000,000,- (five million rupiah).¹⁷

In addition, Article 37 of the UUJN stipulates that "notaries are required to provide free services to people who cannot afford it." The regulation regarding honorariums in Article 36 of the UUJN only regulates the maximum notary service rate or honorarium that each notary is entitled to receive.¹⁸

¹⁷Gunawan, I. K. A., Sumardika, I. N., & Widiati, I. A. P. (2020). Penetapan Honorarium Notaris Dalam Praktik Pelaksanaan Jabatan Notaris. *Jurnal Konstruksi Hukum*, 1(2), 369-373.

¹⁸Gunawan, I. K. A., Sumardika, I. N., & Widiati, I. A. P. (2020). Penetapan Honorarium Notaris Dalam Praktik Pelaksanaan Jabatan Notaris. *Jurnal Konstruksi Hukum*, 1(2), 369-373.

Similar to the UUJN, the Notary Code of Ethics also does not provide a clear definition or understanding of the meaning of unfair competition between notaries, however the code of ethics regulates such unfair competition.¹⁹This is as described in Article 4 paragraph 9 of the Notary Code of Ethics which stipulates as follows, that: "Notaries and other persons who hold and carry out the office of notary are prohibited from carrying out efforts, either directly or indirectly, that lead to the emergence of unhealthy competition with fellow notaries." Then in Article 4 number 10 of the Notary Code of Ethics it is stipulated that: "Notaries and other persons who hold and carry out the office of notary are prohibited from setting the honorarium to be paid by the client in an amount lower than the honorarium that has been determined by the Association."²⁰

The determination of the Notary Organization, namely the Notary Code of Ethics regarding the minimum limit for notary service fees, is not a statutory regulation and is not included in the statutory hierarchy, but has legally binding force based on Article 1338 paragraph (1) of the Civil Code which stipulates: "all agreements made legally apply as laws for those who make them."²¹The power of an agreement is basically binding on the parties who make it as long as the parties agree on the form and content of the agreement which must be carried out in good faith. Thus, the binding of matters

¹⁹Sukri, S. (2022). *Pertanggungjawaban Hukum Notaris Yang Melakukan Persaingan Tidak Sehat Oleh Sesama Rekan Notaris* (Doctoral Dissertation, Universitas Islam Sultan Agung).

²⁰Faradina, F. (2024). Analisis Tentang Persaingan Tidak Sehat Antar Rekan Notaris Sebagai Dampak Dari Penetapan Tarif Jasa Notaris Dibawah Standar. *Jurnal Kajian Ilmu Hukum*, 3(2), 76-90.

²¹Amalia, M., & Ngadino, N. (2021). Implementasi Aturan-Aturan Etika Profesi Dalam Mengatasi Perbedaan Honorarium Notaris. *Notarius*, 14(1), 119-134.



not specifically regulated in the laws and regulations is regulated and agreed upon by the parties.²²

Regional Administrators are urged to set a lower limit for notarial deed honorariums adjusted to the conditions of each region. In Article 36 of Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Position of Notary, it has been determined that the maximum honorarium is 1%, 1.5% and 2.5% according to the economic value of the object of the deed. The urgency of this regulation is so that there is no unhealthy competition among notaries which can create a bad impression in the eyes of the public.

Article 84 of the UUJN stipulates: "Any act of violation committed by a notary against the provisions as referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, Article 52 which results in a deed only having evidentiary force as a private deed or a deed being null and void by law can be a reason for the party suffering the loss to demand reimbursement of costs, damages, and interest from the notary." The provisions of Article 84 of the UUJN are categorized as civil sanctions. The provisions in this article indicate that formally the notary is responsible for the validity of the authentic deed he made and if it turns out that there is a legal defect so that the deed loses its authenticity and is detrimental to the interested party, then the notary can be sued to replace the costs, damages, and interest. However, if we examine further the provisions regarding the obligations of notaries in Article 16 paragraph (1) letter i and Article 41 UUJN which are incorrect, if a notary violates these articles, it should

not be detrimental to the parties, resulting in the deed made by the parties only having the power of proof as a private deed.

Regarding the sanctions imposed on notaries as individuals, this is regulated in Article 85 of the UUJN which reads: Violations of the provisions as referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and/or Article 63, may be subject to sanctions in the form of:

- a. Verbal warning;
- b. Written warning;
- c. Temporary suspension;
- d. Honorable dismissal;
- e. Dishonorable discharge

The provisions of Article 84 of the UUJN do not regulate sanctions for violations of the determination of honorariums, so that if there is a violation of Article 36 of the UUJN, no civil sanctions will be imposed.

The provisions on sanctions in Articles 84 and 85 of the UUJN as mentioned above, if examined carefully, do not yet summarize all the sanctions contained in the UUJN. It turns out that there are still articles scattered in the UUJN that regulate sanctions, including: 1. Article 8 paragraph (1) letter e of the UUJN which is the provision of sanctions if Article 3 letter g of the UUJN is violated. 2. Article 16 paragraph (8) of the UUJN which is the sanction if Article 16 paragraph (1) letter i and paragraph (7) of the UUJN are violated. 3. Article 41 of the UUJN is an article that is the provision of sanctions if Articles 39 and 40 of the UUJN are

²²Telaumbanua, R. I. (2024). Tinjauan Yuridis Kekuatan Hukum Memorandum Of Understanding (Mou) Berdasarkan Hukum Perdata Indonesia.



violated. 4. Article 52 paragraph (3) of the UUJN is the provision of sanctions if Article 52 paragraph (1) of the UUJN is violated.

Then there are also provisions or articles of UUJN that do not regulate sanctions, including: Article 11 paragraph (1), Article 16 paragraph (1) letter m, Article 36, and Article 53 UUJN. Based on the description above, in my opinion the systematics of UUJN is not good, as proven by placing the provisions of sanctions in Chapter XI concerning Sanction Provisions, which apparently does not regulate all sanctions against violations of UUJN, as in the study above, there are still several sanctions spread outside Chapter XI concerning the Sanction Provisions.

Analysis of the legal certainty regarding the regulation of notary fees in addition to the notary's authority other than making deeds can be measured by 5 (five) indicators, namely:

1. There are clear, consistent and easy-to-understand legal arrangements because they consist of laws and regulations. UUJN, the main regulation of which is based on the needs of the community, aims to carry out the profession related to serving legal acts to the community which is intended to guarantee certainty, orderly legal protection for the community who need authentic written evidence of a situation, event/legal act. The regulations in Article 36 of the Notary Law do not yet provide clarity regarding the amount of honorarium that can be obtained by a notary for his/her authority other than making authentic deeds. 2. The authorities (government) determine legal regulations consistently and are subject to the provisions in laws and regulations. The related government agencies, represented by notaries as state officials who are guided by and adhere to the applicable regulations, namely UUJN. 3. The wider community aligns their behavior regarding

these regulations. Before UUJN, the previous regulations in force were Reglement Op Het Notaris Ambt In Indonesie (Stb. 1860:3) which regulated the Notary Office and Ordonantie 16 September 1931 Concerning Honorarium. Both regulations have been revoked and declared no longer valid because they are no longer in line with legal developments and the needs of society. UUJN is the latest regulation governing Notaries. The existence of these provisions is intended so that the entire community knows about the existence of these laws and regulations and in principle the community can implement these regulations. 4. Independent and impartial judges (courts) apply these legal rules continuously when the person concerned resolves a legal dispute. Article 3 of Law Number 48 of 2009 concerning Judicial Power stipulates that constitutional judges are required to maintain the independence of the judiciary. The regulations applied to resolve legal disputes are the Notary Law. This can be seen when connected with the provisions of Article 84 concerning the provisions of sanctions that notaries can be sued by parties who suffer losses to sue. The word sue in the article refers to prosecution in court. Judicial provisions are concretely implemented and treated well by all members of the judicial community or court decisions can be concretely treated well by the community, including in this case by the parties and the notary themselves.

The indicators that are not met based on the previous explanation are in the first point which basically the regulation does not regulate in detail and clearly so that it cannot provide legal certainty in its implementation. This can make the parties as the providers of honorariums unable to trust the law as a norm that regulates society, especially in this case causing them not to consider that what is regulated in the laws and

regulations regarding the obligation to provide honorariums is an obligation that they must fulfill

CONCLUSION

1. It is necessary to amend Article 36 of the UUJN so that it also mentions the determination of the minimum limit for honorariums determined by the professional organization of notaries, so that the determination of the professional organization of notaries has binding force based on the UUJN.

2. The systematics of UUJN are not good, among other things, placing the provisions of sanctions in Chapter XI concerning Sanction Provisions, but it does not regulate all sanctions against violations of UUJN, there are still several sanctions spread outside Chapter XI concerning the Sanction Provisions.

3. Based on the results and discussions that have been carried out above, it can be concluded that there is a legal vacuum regarding the determination of notary fees outside of the making of authentic deeds, which needs to be reconstructed by considering legal, economic and sociological aspects.

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P-ISSN : 0000-0000

Vol. 2, No. 2, February 2025

E-ISSN : 3031-6782

Available : <https://jurnalhafasy.com/index.php/jhk> DOI : <https://doi.org/10.61942/jhk.v2i2.286>

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