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# Legal Study regarding the Responsibilities of Notaries in Providing Social Services in Accordance with the Implementation of Their Position.

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**Habib Adjie**

Narotama University Surabaya, Indonesia

e-mail: [adjieku61@gmail.com](mailto:adjieku61@gmail.com)

## Abstract

Notaries have an important role in carrying out various legal transactions involving parties who have various legal interests. Apart from its main task as the party who issues authentic deeds, notaries are also expected to contribute to social services in society. This research aims to analyze the juridical aspects related to the responsibility of notaries in providing social services in line with the duties and functions of their position. This research was conducted using normative legal research methods which involve analysis of laws and regulations governing notaries, professional responsibilities and social services. Research results show that notaries in Indonesia have an important role in providing public services and ensuring legal certainty. They not only make official deeds, but also help the community with social services, especially for the less fortunate. Although this task is very meaningful, notaries also have legal responsibilities and risks. They must be careful not to make mistakes in the deed, because they could be held liable either civilly, administratively or criminally. However, notaries also have room to provide free services as a form of social responsibility. In carrying out their duties, notaries must follow legal and ethical rules in order to remain a pillar of public trust in legal matters.

Keywords: Notary, Social Services, Accountability,

## A. INTRODUCTION

Social life cannot be separated from the legal aspects and therefore, along with developments in society, demands for services from the legal aspect also increase (Saragih & Mulyadi, 2021). In this modern era, society has abandoned legal acts in the form of agreements based on trust between one another which they should have done in the past, every agreement they make in this day and age will definitely lead to validity that meets the appropriate formal requirements. with applicable regulations and laws (Pranoto, 2021). Notaries as public officials whose position is very much needed by society in legal acts, therefore the position of Notaries is becoming increasingly important in society (Adjie, 2021).

The profession of a notary is regarded as a prestigious and esteemed vocation, sometimes referred to as a "nobile officium" in legal circles. According to Murniaty (2010), the designation of noble official is bestowed upon notaries due to the inherent connection between notary activity and fundamental human values. Hence, it is incumbent upon notaries to adhere to the regulations stipulated in Law Number 2 of 2014, which pertains to amendments made to Law Number 30 of 2014 regarding the role and responsibilities of notaries (hence referred to as UUJN). Additionally, they are expected to abide by the Notary Code of Ethics as outlined by Adjie (2022).

A notary is a public officer whose primary responsibility is to provide official services to the public by overseeing the execution and authentication of various legal papers and deeds. According to Buko (2017), notaries are eligible to receive an honorarium in exchange for their services. Nevertheless, according to Article 37 of the Law on Notary Positions (UUJN), notaries are obligated to offer pro bono services to individuals who are economically disadvantaged. According to Kristyanto and Wisnaeni (2018), notaries, who serve as public officials, are appointed by the state. It is important to note that they do not receive an

honorarium from the state, but rather earn compensation for the legal services they give within the scope of their authority. The quantum of honorarium remunerated to Notaries as stipulated in UUJN NO 30 of 2004 Article 36 delineates the entitlement of notaries to receive compensation for legal services commensurate with their jurisdiction. According to Asuti (2016), the honorarium is determined and regulated in accordance with the economic and sociological significance of each action.

The primary jurisdiction of the notary pertains to matters within the domain of private law. Notaries are required to fulfill their responsibilities with integrity, accountability, diligence, autonomy, impartiality, and prioritize the interests of all parties engaged in legal transactions, as stipulated in Article 16 paragraph (1) letter an of the UUJN. In addition to the aforementioned considerations, it is imperative to emphasize the significance of exercising prudence, precision, and ethical conduct when fulfilling the responsibilities associated with the role of a notary (Mowoka, 2014; El Zuba, 2018).

The existence of obligations on the one hand reflects the existence of rights that can be requested from these obligations. Rights and obligations have a very close relationship. In the context of a notary's social obligations, the implementation of these duties by a notary is actually a right that can be requested by the public (clients). However, in practice, notaries often focus more on material aspects than social aspects (Abdillah, 2023; Purwaningsih, 2011)

Even though notaries are required by law to maintain their ideals as public officials, the reality on the ground often forces some notaries to prioritize material interests (Yulius et al, 2019). They are in a dilemma between adhering to their role as public officials who provide services to the community, and the pressures of a materialistic life that encourage some notaries to prioritize commercial principles over carrying out their role as public servants (Notaris, 2013). The notary profession is sometimes considered a field that makes a lot of money, and this is partly natural because notaries generally serve individuals who have sufficient financial resources (Ghansham, 2018).

In line with the demands of progress and diversity in society, the duties of a notary are no longer limited to legal formalities alone, but also involve social responsibility. Related to this, the obligations and responsibilities of notaries in providing social services in accordance with the implementation of their position are an important concern. Therefore, this research aims to analyze the concept and scope of notary obligations and responsibilities in providing social services in accordance with their position. In addition, this research also aims to analyze the impact of appropriate or inappropriate implementation of notary social service obligations on society and the legal transactions involved. With a deeper understanding of this aspect, it is hoped that this research will contribute to enriching discussions regarding the role of notaries in social services and their implications for society and the law.

## B. METHODS

This study employs a normative juridical methodology, which involves analyzing various legal documents such as statutory regulations, court judgments, legal theories, and scholarly opinions (Soekanto, 2017). The present study exemplifies a literature review that adopts a descriptive, qualitative, and law-centric methodology. The analysis technique employed in this study involves the integration of both primary and secondary information sources. The primary data and secondary data that researchers use are in the form of statutory regulations, journals, books, articles and others. This research starts from the idea that Notaries as public officials in carrying out their obligations and responsibilities do not pay enough attention to the provisions regulated in the UUJN and the Notary Code of Ethics, which will have an impact on the services provided to the public being less than optimal .

## C. RESULTS AND DISCUSSION

## 1. The role of Notaries in the context of public services in Indonesia

The Law on Notary Positions (UUJN) delineates the responsibilities and authorities assigned to notaries, thereby highlighting their role in the legal framework. The legal powers vested in a notary under the UUJN have been previously outlined in the Regulations on the Position of a Notary in Indonesia, which was enacted in 1860. According to this regulation, a notary is the sole public official authorized to create authentic deeds pertaining to various transactions, agreements, and provisions that are mandated by general regulations or requested by concerned parties to be documented in the form of an authentic deed (Shidqi, 2020).

The notary is responsible for verifying the accuracy of the deed's date, retaining a duplicate of the deed, and furnishing an authorized duplicate, copy, and excerpt of the deed. The notary assumes all of these tasks, unless there are specific provisions within the legislation that allow or exempt these functions to alternative officials or individuals. In the pertinent context, Article 1 paragraph (1) of the UUJN underscores that a notary is a public official vested with the power to create legitimate deeds and is also endowed with additional authorities as stipulated by this legislation or other applicable statutes (Tuwaidan, 2018).

In the realm of notarial public services, the concept of public services, as outlined in Law Number 25 of 2009 pertaining to Public Services, is explicated in Article 1. It delineates public services as a sequence of endeavors intended to fulfill the service requirements of citizens and residents, in accordance with legal stipulations. These services pertain to commodities, services, and administrative provisions furnished by providers of public services. According to Darusman (2016).

One form of public service provided by notaries in carrying out their duties is the creation of authentic deeds, in accordance with Article 1 which relates to Article 15 of the Law on the Position of Notaries. An authentic deed is a written document that is deliberately created as evidence of an event and signed (Tjukup et al, 2016). An authentic deed is made by or in the presence of a public employee, where the employee records a statement from the party who ordered the deed to be made. The public employees referred to here are those who legally have the authority to make authentic deeds, for example notaries (Purnayasa, 2018). In an effort to ensure that the contents of an authentic deed match the facts seen or heard by public officials, various conditions are applied. Therefore, the contents of an authentic deed are considered to have strong truth, unless it can be proven otherwise that what was recorded by a public employee does not correspond to reality (Ratag et al, 2022).

In the realm of public services, especially in the context of legal activities related to authentic deeds as previously described, the role of notaries as public officials who are appointed and dismissed based on the Law on the Position of Notaries (UUJN), with a process involving the state through the government, is very striking. . Notaries not only carry out routine duties, but are also executors of state office who have the responsibility to provide services to the community. The essential difference between notaries and other officials lies in the fact that notaries, in carrying out their duties, also participate in carrying out state authority and power (Djumardin & Risnain, 2023).

The significance of notaries as purveyors of public services is of utmost importance, particularly due to their distinct power in the authentication of legal documents. The authority to create legitimate deeds pertaining to various acts, agreements, and stipulations, as mandated by statutory laws or requested by interested parties, is outlined in Article 15 of the UUJN. Notaries are legally obligated to ensure the accuracy of the deed's date, securely keep the deed, and provide official copies, copies, and excerpts from the deed, unless specific responsibilities or exemptions are granted to other officials or individuals by law.

The appointment of notaries as public officers with the capacity to create authentic deeds is grounded in Article 1 of the Regulations on the Position of Notaries in Indonesia (Staatsblad of 1860 Number 3). The term "authorized" as used in Article 1 holds significance

in connection with the stipulations outlined in Article 1868 of the Civil Code. This particular article defines an authentic deed as a document that is created by or in the presence of a public official who possesses the requisite authority to do so, within the jurisdiction where the deed is executed.

In the present situation, the significance of notaries in ensuring legal certainty through the issuance of authentic deeds becomes progressively evident. Notaries, in their capacity as individuals vested with official authority and duly acknowledged by the state, fulfill a crucial function in furnishing robust and legally sound evidence pertaining to matters of law. According to Tedjosaputro (2021), the role of a notary extends beyond that of a mere impartial observer. Rather, a notary serves as a safeguard for legal certainty by virtue of the evidential robustness inherent in an authentic deed executed by an authorized official. This philosophical underpinning holds significant importance in the provision of services to the community within a legal framework.

The preceding discourse provides a comprehensive explanation of the significant role that the service process plays in achieving success in the field of notarial work. The function of a notary as a public official in providing social services within the domain of notarialism facilitates the provision of these services free of charge, specifically to clients who belong to the marginalized population. Nevertheless, the UUJN does not possess a detailed set of standards regarding the qualifications for obtaining pro gratis notary services.

As stipulated in Article 37 of the UUJN, notaries are obligated to provide pro bono legal assistance within the domain of notarial services to those who are unable to afford such services due to financial constraints. The implementation of the concepts discussed in this article within the realm of notary practice is subject to the judgment of the individual notary and is influenced by various factors such as the notary's personal beliefs, the demeanor of the client, and the level of openness exhibited by the client. The provision of pro bono legal services by a notary, driven by personal beliefs, may arise from the notary's assessment of the needs and situations of the clients who solicit their aid. Based on the aforementioned assessment, the notary may afterwards choose to provide legal services at no charge.

This observation indicates that in practical scenarios, notaries may choose to offer pro bono services due to ethical and professional factors, which are associated with the circumstances and legal requirements of the clients seeking their assistance. The ethical ideas and views held by notaries play a pivotal role in shaping their decision-making process when it comes to offering pro bono social services.

Within this particular context, it is important to note that notaries are not solely confined to the execution of formal obligations, but rather possess a substantial societal function in providing assistance to individuals seeking legal services. While the law does not provide specific regulations, the practice of offering free services to individuals in need is influenced by humanitarian values, social duty, and the personal convictions of notaries.

## **2. Legal Studies regarding the responsibility of Notaries in Providing Social Services According to the Implementation of Their Positions**

The emergence of the principal of accountability to a notary comes from the deeds they make. Therefore, notaries hold an important obligation to follow the provisions contained in UUJN in order to prevent the possibility of liability that can be sued against them. Errors or omissions that occur by a notary, whether intentional or not, do not eliminate the responsibility of the notary to be responsible for that action. For this reason, a notary may be subject to minimal or civil sanctions, especially in cases where the notary's actions have the intention or purpose to benefit certain parties or harm other parties, as proven in court (Arianto, 2021).

Referring to Article 16 paragraph (12) UUJN, it regulates the responsibility of notaries to provide reimbursement of costs, compensation and interest. In the context of civil law, this

is a form of responsibility. However, it is important to remember that a notary's responsibilities are not only limited to civil aspects. Notaries can also be held accountable in the criminal and administrative realm.

a) Administrative responsibility of notaries

From an administrative perspective, the notary's responsibilities in making authentic deeds can vary depending on the nature of the error or violation that occurred. If a notary deliberately makes a mistake or violation in making an authentic deed, then the notary will bear responsibility for that action.

However, if an error or violation occurs due to the actions of the parties involved in the deed, the notary's responsibility may not be that great. As long as the notary carries out his duties in accordance with the regulations and only records what is conveyed by the parties to then be recorded in the deed, responsibility for errors made by the parties usually cannot be fully attributed to the notary.

However, in cases where there is an element of fraud or deception involving a notary, the notary's administrative responsibility may still be involved. Notaries are expected to be careful and carry out careful examination of information provided by parties involved in legal transactions. If notaries fail to identify or overcome fraud or deception in the preparation of authentic deeds, they can be held administratively accountable. Forms of administrative responsibility for notaries include:

1. Administrative Sanctions: In cases of violations of ethical or other administrative rules, the administrative body that supervises the notary profession may impose administrative sanctions. These sanctions can take the form of written warnings, strong warnings, verbal warnings, administrative fines, or revocation of notary practice permits.
2. Suspension or Revocation of Practice Permit: If a notary seriously violates administrative regulations or commits actions that are detrimental to society or clients, the body that regulates the notary profession has the authority to suspend or revoke the notary's practice permit. This may result in the notary being unable to continue his or her notarial practice.
3. Ethics and Disciplinary Examinations: Administrative bodies that supervise notaries usually have ethical and disciplinary examination mechanisms. If there are complaints or reports regarding unethical behavior or actions of a notary, an examination will be carried out to determine whether there are violations of ethics or administrative rules.
4. Education and Training: In addition to tougher sanctions, administrative bodies can also order notaries to attend additional education or training programs as a form of improvement or further understanding of the administrative rules that must be followed.
5. Publication of Violations: In some cases, administrative bodies may decide to publicize violations or unethical acts committed by notaries. The aim is to provide information to the public about these violations and educate about the professional standards that notaries must follow.

Administrative accountability aims to maintain integrity, ethics and professionalism in notary practice and provide protection to the public. The administrative bodies that oversee the notarial profession have an important role in enforcing these standards and ensuring that notaries carry out their duties with appropriate responsibility.

b) Notary's civil liability

A very basic principle is that a deed cannot be directly cancelled, even if there are errors, omissions or errors in it. If there is an error, the way to correct it is through a legal process, such as by making a deed of improvement or rectification. This means that the erroneous deed must still be kept in the deed making protocol, and the way to correct it is to create the correct deed to correct the errors in it.

In this case, when an error occurs in the deed made by a notary, the erroneous deed will still be archived by the notary concerned. However, based on Article 84 UUJN, parties who experience losses can demand reimbursement of costs, compensation and interest from the notary. The notary, as the official who makes the authentic deed, will be responsible if an error occurs, whether intentional or due to negligence, resulting in losses to other parties related to the deed. Forms of notary civil liability include:

1. Compensation: If the actions or omissions of a notary result in a material loss to another party, the notary may be held liable for compensation. Compensation covers financial losses experienced by the affected party due to the notary's actions or negligence.
2. Costs and Expenses: The civil liability of a notary may also include costs and expenses incurred as a result of the notary's fault or negligence. This could include legal fees, deed repair fees, or other costs incurred as a result of a notary's actions or decisions.
3. Refund: If there is a financial transaction involved in a deed issued by a notary and an error or omission occurs which results in a loss to the other party, the notary may have to return the funds or make financial compensation to the affected party.
4. Contractual Obligations: If a notary violates his contractual obligations in carrying out his duties, such as violating certain agreements or guarantees in making a deed, the notary may be deemed to have breached the contract and must compensate for losses incurred as a result of the breach.
5. Liability for Deed Errors: If a deed made by a notary contains errors or omissions, and this results in losses to other parties involved in the deed, the notary can be held responsible for dealing with these losses.

It is important to note that notary civil liability does not always occur due to intentional actions, but can also arise due to negligence or shortcomings in carrying out their duties. In practice, notaries need to take appropriate precautions and ensure that they carry out their duties carefully and in accordance with regulations to prevent potentially detrimental civil liability.

#### c) Notary Criminal Liability

Provisions regarding the criminal responsibility of a notary related to the deed he made are not specifically regulated in the Amendment Law on UUJN. Notary criminal liability is applied only if the notary commits a criminal act. Notaries usually cannot be held accountable for the deeds they have made, because the role of the notary in this case is more limited to recording what was conveyed by the parties involved in the transaction to be enshrined in the deed. False information submitted by these parties should be the responsibility of these parties.

However, there are certain situations where a notary can be held criminally liable. One example is if the notary is involved in fraud or deception that originates from the notary himself. In this case, the notary not only records what is conveyed by the parties, but is also involved in presenting false or misleading information aimed at deceiving the parties involved in the transaction. In this case, criminal responsibility can be imposed on the notary because of his active role in the criminal act. Forms of notary criminal liability include:

1. Forgery of Documents: If notaries engage in forgery or misrepresentation of official documents, they may be considered to be in violation of the provisions of the criminal law regarding falsification of documents. For example, if a notary creates a fake deed or changes the contents of the deed intentionally to mislead the parties involved, they may be subject to criminal sanctions.
2. Fraud: If a notary commits an act of fraud, where they intentionally deceive or mislead another party to gain an advantage or harm another party, they may face criminal legal proceedings.
3. Money Laundering: If notaries are involved in money laundering or provide assistance in a money laundering process involving deeds or transactions they authorize or

facilitate, they may be deemed to have violated money laundering laws and face criminal liability.

4. Breach of Confidentiality: Notaries have an obligation to maintain the confidentiality of information obtained in notary practice. If a notary violates that secrecy and discloses confidential information without permission, they may be deemed to have violated criminal law.
5. Liability for Acts of Other Parties: Notaries can also be involved in criminal proceedings if they assist or participate in criminal acts committed by other parties, such as issuing false certificates to support certain criminal acts.

Notary criminal liability provides legal protection to the public and maintains the integrity of the notary profession. The criminal justice process is carried out to ensure that notaries who commit acts that violate criminal law are responsible for these acts and receive appropriate sanctions. It is important for notaries to comply with applicable legal and ethical provisions in carrying out their duties to avoid potential criminal liability.

In practice, notaries have broad responsibilities to ensure that their duties are carried out with integrity and accuracy. Violations of ethical standards or legal provisions can result in serious implications and various types of liability. Therefore, notaries need to carry out their duties with great care and compliance with the law in order to avoid potential legal problems in the future.

#### **D. CONCLUSION**

In the context of public services in Indonesia, the role of notaries has broad and important dimensions. Notaries are not only officials who produce authentic deeds, but also state officials who contribute to providing legal certainty to the public. With the unique authority to make authentic deeds, notaries have a great responsibility in maintaining integrity and professionalism in notarial practice. Its role as a guarantor of legal certainty is based on valid and strong proof of authentic deeds. Apart from that, notaries also have a significant social role, especially in providing social services such as free services to underprivileged people. However, a notary's responsibilities cannot be separated from the inherent legal obligations and risks. They need to carry out their duties carefully and in accordance with applicable regulations to prevent potential liability. Notary responsibilities cover various aspects, ranging from civil liability related to errors in deeds, to administrative liability if they violate ethics or administrative rules. In addition, notaries can also be involved in criminal liability if they are involved in criminal acts such as document falsification or fraud.

In carrying out their duties, notaries need to pay attention to ethical principles, social responsibility and personal beliefs. Although the law does not specifically regulate the provision of free services to underprivileged communities, humanitarian principles and personal beliefs of notaries can be factors that shape the practice of providing these social services. Thus, the role of notaries as officials who provide public services and provide guarantees of legal certainty has deep implications. They are at the forefront in creating legal certainty and justice in society, but must also carry out their duties carefully and comply with legal norms and professional ethics in order to maintain the integrity and trust of society.

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