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**NOTARY'S ROLE IN GIVING FREE LEGAL SERVICE TOWARD
UNAFFORDABLE PEOPLE IN JAMBI**

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Abstract

Based on Article 37 of Law Number 02 Year 2014 concerning The Amendment of Law Number 30 Year 2004 concerning Notary Position, Notary is obligate to give legal service in Notary Field by free of charge toward unaffordable people. The issues in this research are 1) how is the role of Notary in giving free legal service toward unaffordable people in Jambi City; 2) What are the obstacles that faced by Notary in giving free legal service toward unaffordable people in Jambi City. The conclusion obtained from this research are Notary play a role ranging from giving free legal counseling or consultation toward unaffordable people and giving free legal service in making the deed which is related to the need of unaffordable people, even though the definition of legal service in Notary field and the category of unaffordable people are not explained in the Law of Notary Position as well as the Notary Code of Ethics. The obstacles that faced by Notary are a Notary is public official which is not paid by the State instead the Notary earn his own income from honorarium for his services in making the deed related to legal action required by the public, sociologically, Notary is willing to give free legal service because in doing his profession, Notary feels socially responsible, but the lack of qualification in giving free legal service make it difficult for Notary to determine the type of legal actions that can be given by free without taking any fee.

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1. Introduction

The purpose of national development is realizing a fair and prosperous society evenly both in material and spiritual. The effort to realize the national goal, which is the construction of the real aspect of life is very important. Development that is currently being actively implemented brings significant changes and progress in various aspects of Indonesian's citizen's life. Citizen in Indonesian language is defined as a person or group of persons living in a State and legalized by law. A person's nationality is closely related to the law, it is due to become citizen that they must be legalized first by applicable law.

Society is derived from the Latin *socius* which mean friend. The term 'society' derives from the Arabic word *syaraka* which mean 'join and participate'. Society is a group of human who get along or interact with each other. According to Ralph Linton (Soekanto, Sosiologi: Suatu Pengantar, 2006) society is every group of human who has lived and worked together long enough, so they can organize themselves and regard themselves as one social unity with a clear boundaries.

In a state life, society is the most perfect standard for the common life among citizens. Society participation has been in an increasingly important position. This happens as a logical consequence of the opening of freedom of expression of society from reform process. The impact of that, society becomes more critical and open in assessing and criticizing existing policies, such as concerning poverty-related policies.

The Central Bureau of Statistics (BPS) for example uses an economic approach in poverty defining. According to BPS, it is unaffordable people who can not meet their minimum needs, both food and other needs. The classification of poverty is based on a certain standard by comparing the income level of the person or family with the income level required to fulfill minimum basic needs. Based on these criteria it is divide as absolute poverty and relative poverty.

- a) Absolute Poverty is those who are not able to meet the minimum basic needs;
- b) Relative Poverty is those who have the ability to meet the minimum basic needs but relatively they are still below the average income of the surrounding society. (Sulistiyani, 2004).

Efforts to alleviate poverty are still carried out by the government until now. One of the government's efforts is to provide assistance. The assistances are provided in the sector of economics, health, education as well as in the law sector. Law is a system consisting of regulations that designed to avoid power abuse in economics, politicals and everyday life. The law serves as a means of society renewal and protection, so the law needs to be built in a planned way so that the law can run in harmonious, balanced, and aligned.

The law must have its authority in upholding the supremacy of law so that society can respect it in the form of obedience to the law itself. Thus there is a need to nurture and increase legal awareness and legal obedience which essential to the rule of law. The law must be able to change society to become better, more orderly and trustworthy to fight for the rights and justice as well as create a sense of safety. (Hasibuan, 2013).

The Government in providing legal assistance to the society is set forth in Government Regulation Number 42 Year 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, which allows the provision of free legal aid for persons or groups who can't afford it,

because the cost is charged to the state budget. However, this Government Regulation is aimed more for advocates and legal aid agencies.

Notary is also one of the profession in the field of law. Notary according to the Law Number 2 Year 2014 concerning Amendment on Law Number 30 Year 2004 concerning Notary Position, hereinafter referred to as UUJN, is a public official authorized to make authentic deed and have other authority as stated in this provision or by other related provisions. Every society needs a person whose statement is reliable, trustworthy, his signature and his seal provide a strong guarantee and proof, an impartial expert and a law counselor who is not deficient (*onkreukbaar* or unimpeachable), as well as makes an agreement that can protect him at later on (Kie, 2007).

Notary's existence is very important in making authentic proof. Notary in performing his duties and positions shall be based on and in accordance with the provisions of the laws and regulations of Notary Position and code of ethic as well as those relating to the making of authentic deed. The provision is regulated in the Law of the Republic of Indonesia Number 02 Year 2014 concerning Amendment on Law Number 30 Year 2004 concerning Position of Notary (hereinafter referred as UUJN). (Wahyud, 2015).

Based on UUJN Article 15 Paragraph (1) it is stated that, "a Notary is authorized to make an authentic deed of all acts, agreements and stipulations required by legislation and/or desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of Deed, preserve the Deed, grant grosses, copies and quotations of the Deed, all of which during the making of the Deed are not also assigned or excluded to other officials or other persons as defined by law ". In Paragraph (2) it states that, " public Notary also:

- a) Approve signatures and specify the date of underhand letter by registering it in a particular book;
- b) Recording an underhand letter by registering it in a particular book;
- c) Making copies of the original underhand letter in the form of copy containing the description as written and illustrated in the corresponding letter;
- d) Conduct certification of photocopy suitability with the original letter;
- e) Provide legal counseling in connection with the making of the Deed;
- f) Make Deed relating to land; or
- g) Make Deed of auction."

2. Problem Statement

Legal services in the field of notary required by every society's class. The position of a Notary on its presence is desirable by the rule of law to assist and serve a society in need of authentic written proof on circumstances, events or legal acts. Notary is a trust based institution in carrying out its profession must uphold the value, ethics and morals so that the trust is maintained. On the basis of this, those who are appointed as Notaries must have the spirit to serve the community.

The usage of Notary's legal service can be done by giving honorarium to the notary. This is contrary to the people who can not afford, ie can not give honorarium to the notary. Differences in economic capability result in impact on the use of notary services. Fundamentaly, a notary must not reject

any client who has come to perform legal acts in the field of notarial pursuant to Article 37 paragraph (1) UUJN "Notary shall be obliged to provide legal services in the field of notarial for free to the less fortunate"

Recognizing that the notary profession is needed in the national's development, then section 37 paragraph (1) UUJN indicates that Notary carries the profession in providing protection and guarantee the achievement of legal certainty to society regardless of economic capability of client. Based on the above description, Notary as a public official also has a role in helping unaffordable society, which rarely seen implemented in the field, so that the authors feel interested to discuss it in the research concerning the role of notary in giving free legal service.

3. Research Questions

Based on the description in the background above, the authors take some formulation of the problem are as follows:

1. How is the role of Notary in giving free legal service toward unaffordable people in Jambi City?
2. What are the obstacles that faced by Notary in giving free legal service toward unaffordable people in Jambi City?
3. How are the efforts to resolve the obstacles that face by Notary in giving free legal service toward unaffordable people in Jambi City?

4. Purpose of the Study

This research aims:

- 1) To describe the role of Notary in giving free legal service toward unaffordable people in Jambi City
- 2) To understand and analyze the obstacles that faced by Notary in giving free legal service toward unaffordable people in Jambi City.
- 3) To describe the efforts to resolve the obstacles that face by Notary in giving free legal service toward unaffordable people in Jambi City.

5. Research Methods

Scientific works should be clearly and systematically arranged based on reliable facts from the data obtained, so before starting a writing it is necessary to research. Then the authors choose the appropriate method with the problem to be studied (al., 2005). A research is conducted by following certain methods or procedures. Etymologically the method is defined as the way of doing things, the method comes from the Greek "Methodos" which means "the way to", for the benefit of science, the method of embracing the starting point to the final propositions in a particular field of science (Soekanto, Pengantar Penelitian Hukum, 2007). The research method is a systematic and organized way and procedure to investigate a particular problem with the intention of getting information to be used as a solution to the problem, therefore the method is the whole scientific step used to find a solution to a problem (Silalahi, 2009). Research methods based on titles and problems are empirical. Empirical legal research are using empirical case studies law in the form of society legal behavior (Muhammad, 2004).

The subject of the research is the law conceptualized as actual behavior as an unwritten social phenomenon which is experienced by every person in social relations (Muhammad, 2004). The sources of empirical legal research data are not based on written positive law, but the result of observation in the research location. The approach to the problem by looking at and observing the applicable legal norms is related to the existing phenomena of the problems encountered in the study.

The research was conducted in several Notary Offices in Jambi City. The object of research is Notary in Jambi City as State Official. The data used in this research are grouped into two, namely Primary data which obtained directly through observation of the object of the researcher, in this research are some notaries in the Jambi City. Secondary data which obtained from books that related to the object of research. Data are gathered through interviews and discussions conducted by the author with notaries in research. Qualitative interviews are conducted when the researcher intends to acquire knowledge of subjective meanings that were understood by the individual, regarding the topic researched with the intent conducting exploration the issues.

6. Findings

6.1. Notary's role in providing legal free service for unaffordable people in Jambi City

The authority of Notary is defined as making authentic deeds, which are expanded with other authorities. The expansion of authority, based on good planning with reference to the reality of the society that is demand for Notary services assistance. In carrying out its duties, the Notary is obliged to act in a trustworthy, honest, thorough, independent manner, and to keep the interests of the parties in a legal act impartially. A detailed description of the obligations of a Notary is provided in this Law to provide assurance of certainty, order and legal protection for people who need Notary services.

The authority of Notary also included in making agreements or contracts, such as sale and purchase agreements, loan agreements, rent agreements, leasing, hire purchase agreements and others. Although such contracts have lived and developed in the community, but form of regulation which concerning this authority is still not exist. Whilst the one that exist is in the form of Ministry Regulation, which is only limited to regulation that regulate leasing. Whereas other contracts have not yet received specific regulation.

As a result of the lack of legal certainty about the contracts thus will cause some problems. In reality one of the party often makes contracts in standard form, while the other party will accept the contract because of their weak socioeconomic condition. (Salim, Hukum Kontrak Teori dan Teknik Penyusunan Kontrak, 2014) Therefore it require the role of a notary in providing legal assistance toward parties who need to make contracts/agreements in order to provide a balanced position to the parties in fulfilling their rights and obligations.

The need for legal services of notary can be given to the society and do not recognize the social status, whether for the people who can or can't afford it must get the best service from a notary. This is explained by Tobing, quoted by Widyadharma as follows: "The efforts in order to increase the professionalism of the notaries are not only known about the duties and notary positions but also must be known how desired by the society to be served" (Widyadharma, 1991) Tobing's opinion above, clarified

the role of a notary as a public official who is given the trust to carry the task of the state that must be able to meet the needs of the society.

The existence of Article 37 paragraph (1) UUJN State guarantees all the rights of its citizens without exception while in the NKRI Territory. The statement is explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Indonesia as a state law has its own characteristics. Everyone shall be respected, upheld and protected by the State, thus giving a sense of justice when a person commits a legal act. Notary is bound and obedient to the regulations governing the position of Notary i.e. UUJN. These laws and regulations shall serve as a guideline of a Notary in carrying out its duties and obligations, when it got violation there are sanctions.

Notary get honorarium from the general public. (Salim, Teknik Pembuatan Akta Satu (Konsep Teoretis, Kewenangan Notaris, Bentuk dan Minuta Akta), 2016) Notary during carrying out his/her position, although appointed and dismissed by the government, but not get a salary from the government or pension from the government. Thus it can be said that honorariums/fees received by a notary become personal income for the notary concerned. Nevertheless Notary is obliged to assist by free of charge to those who are unable to provide honorariums/fees to the notary.

Based on the results of the interview with the notary respondent, said that the price or notary honorarium reduction was given if the client is unable to pay the notary honorarium according to the type of deed that's made, the notary will ask how much the client is able to pay the honorarium. If not able to pay, a notary will help. The provision of free services by the notary was usually motivated by humanitarian factors, client honesty and notary belief that the client is not capable. The notary may ask the client to indicate a certificate of incapacity issued by the client's domicile official to be more convincing (Nirmaliana, 2017).

The results of interviews with respondents also mentioned that clients who come only for consultation are never charged for the services. When a notary performs his or her duties and authority, if legal services can be provided without requesting an honorarium, the notary is required to do so. However, if the legal services can not be given free of charge, the notary must explain the reason. Based on the interview result of the researcher with the respondent about the procedure of giving the free service first, the notary would request the client's identity and then asked the client to bring a certificate of incapacity issued by the client's domicile official, then Notary notified the local notary organization that he providing services free of charge to an unaffordable client, after obtaining oral or written consent from the organization, he may provide such services for free, for example in the case of making a certificate of inheritance. Respondents declared making deeds to clients who can not afford it free of charge based on their own wishes and come from their conscience (Santiliana, 2017).

Based on the interviews results with respondents, the definition of free of charge is the client is not burdened with the payment of honorarium related to the making of the deed toward the notary. The problems that proposed by the client must have a proper legal basis, which concerning the interests of the poor community both personal and public interests. The processes are:

- 1) Client who belong to the incapable community faced the notary and consult his/her problem;
- 2) This client prepares his/her identities such as identity card, and then prepares other supporting data;

- 3) Client must bring a certificate of incapability of money, by requesting a covering letter which stated that the client belongs to the incapable community from the head of the local neighborhood association where the client is living, which then the letter is taken to the *kelurahan* to be recorded and registered officially. After obtaining approval from the *kelurahan*, The certificate of incapability of money shall be submitted to the notary;
- 4) Then the notary provides solutions and makes legal documents such as authentic deeds required by the client who belong to the incapable community. (Nirmaliana, 2017).

Law Number 16 Year 2011 concerning Legal Aid explains that any person or group of poor people who cannot fulfill their basic and appropriate right can receive free legal assistance. This requirement is indicated by a letter of incapability of money or other documents as a substitute, such as a public health insurance card, cash transfers, poor rice cards, and so on. Therefore Notary as a public official who authorized to create an authentic deed when get clients of the incapable community, must provide assistance to them, one of them is by providing legal services with free of charge.

The provision of legal services free of charge by notaries is not limited to making legal documents only. Based on Article 15 paragraph (2) UUJN, one of the notary's authority is to conduct legal counseling. Legal counseling is part of the development of national law, while the development of national law is part of national development. Legal awareness activities are one of socialization to illustrate how it is justice. National law can not guarantee the realization of justice.

The function of legal counseling is preventive measures, corrective steps, maintenance steps and development functions.

- a) Counseling as a preventive measure, ie preventing the emergence of negative and desdructive rights that can cause harm to the community.
- b) Counseling as a corrective measure, which serves as a correction of things that already exist, so if there is something that violates the law, it can reduce the impact or eliminate it.
- c) Counseling as a preservative step, which provides encouragement to foster the spirit to participate in legal development in accordance with the ability and position respectively.
- d) Counseling as a function of development (developmental), which provides encouragement and to input something so people can be more independent and independent or rely on others.

The authority of a notary is to provide legal counseling related to the making of the deed. Legal counseling conducted by a notary in the making of deed is indispensable. The purpose of legal counseling by a notary is to provide a more understanding of authentic deed making. Currently there is still a lot of misunderstanding in the community in making authentic deed. Legal counseling can be done by providing a correct understanding of clients. The notary must explain the contents of the authentic deeds that have been made. Not everyone who aska notary to make an authentic deed can understand well the deed. Notary does not receive honorarium in providing legal counseling to clients.

Legal counseling given by the Notary is very useful both to the Notary and the constituents who will make the deed. Usefulness is in order to provide legal certainty in the making of deed, where the parties will understand the legal provisions that are mandatory in the fulfillment of the making of the deed, so that there is no violation of the law because it has been notarized by Notary through legal counseling. In addition, notarial deeds made must have evidentiary power.

Legal services in the world of Notary must keep referring and obedient to UUJN as well as Notary code of ethics with the goal that in carrying out the notary profession in society does not lower the dignity and get complaints.

6.2. Obstacles faced by Notary in the provision of legal services free of charge to people who can not afford in the Jambi City

Based on the results of interviews with notary respondents, basically the provision of legal services by notaries did not experience many obstacles and notaries would not complicate clients, as long as the clients has good intentions and had completed the required file. In notarial practice, important documents that are usually required for legal services of notary, namely:

- a) Identity self
- b) Identity of husband or wife (if already married)
- c) Documents of ownership of goods (if deeds are made concerning certain goods).

However, for the obstacles faced by a notary when providing free legal assistance, it is difficult to assess whether the the client is incapable of paying the notary if they don't bring such important documents to prove their incapability. Notary can not always judge from appearance only. Obstacles that must be faced by a Notary is the issue of operational expenses of the office. Some Notary legal services require a notary to incur expenses. Notary is a public official appointed and inaugurated by the State but not receiving honorarium from the State, but a Notary seeking his own income from honorarium for services make the deed needed by society. The notary honorarium provided is not only for private notaries, but most of the honorarium is used for operational expenses of notary offices. Operational costs such as:

- a) Employee salary costs as labor.
- b) The cost of electricity as electrical power of computers and other electronic devices that require electrical power to type deeds and other purposes related to the interests of the client.
- c) If there is in the making of deed dealing with other agencies such as the Land Official Government, the cost is paid from the notary's honorarium.

6.3. The efforts to resolve the obstacles that face by Notary in giving free legal service toward unaffordable people in Jambi City

Respondents explain about the efforts to resolve the obstacles encountered which is Notary Organization especially in Jambi City should be more actively in conducting counselling activities or in the form of seminars to educate Notaries to real problems experienced during their works. Afterward the Notary Organization should hold a regular meeting every month and invite all its members consisting of Notaries with one of the agenda of the activity that is finding a solution if the notary gets a client who cannot afford to give fees (Sari, 2017).

It is necessary to make agreement between Notaries through Notary Organization toward what kind of case that can be given free legal service, for example in case of making a certificate of inheritance for the community who cannot afford to pay it, the reason for making the certificate of inheritance is thing

that must be done by heir. If the heirs are categorized as incapable and they do not have the expenses to make a certificate of inheritance, the heirs will have difficulties with administrative records related to the estate of the heirs. Such matters would become a consideration for the notary in the provision of legal services free of charge (Christi, 2017).

It is better for Notary Organization in Jambi City to cooperate with legal aid agencies or non-governmental organizations in the use of notary services, Notary Organization appointed several scattered Notaries in the city to help LAA or NGOs in Jambi City. When there are people who cannot afford to pay come to LAA or NGOs and they need the services of a notary, then LAA and NGOs can appoint a notary who has been assigned to be their partners, because having a notary partners, thus the notary appointed can provide legal counsel in the field of notary and notary can give Legal services free of charge (Santiliana, 2017).

7. Conclusion

Notaries are obliged to provide legal assistance and legal counseling free of charge to those who wish to make deeds. The legal basis is Article 15 paragraph (2) and Article 37 paragraph (1) UUJN. Legal counseling will be very useful in proving a deed, so that the clients will understand the provisions of making the deed that does not violate the rules of applicable law. The purpose of legal counseling by a notary is to provide a correct understanding of the deed that has been made. Legal counseling can increase people's understanding into a law-conscious society.

Obstacles faced by notaries in the provision of legal services free of charge is First, to ensure the clients can not afford, notary can not only judge from the appearance of the client. Secondly, a Notary requires an honorarium because a notary must pay for office operational costs.

References

- al., S. M. (2005). *Metode Penelitian dan Penulisan Hukum*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Christi, S. (2017). Notary. (T. Rostarum, Interviewer)
- Hasibuan, Z. (2013). Kesadaran Hukum dan Ketaatan Hukum Masyarakat Dewasa Ini. *JURNAL JUSTITIA VOL 1* , 47.
- Kie, T. T. (2007). *Studi Notariat-Beberapa Mata Pelajaran dan Serba-Serbi Praktik Notaris*. Jakarta: PT Ichtiar Baru Van Hoeve.
- Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. Bandung: PT. Citra Aditya Bakti.
- Nirmaliana, E. H. (2017). Notary. (T. Rostarum, Interviewer)
- Salim. (2014). *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika.
- Salim. (2016). *Teknik Pembuatan Akta Satu (Konsep Teoretis, Kewenangan Notaris, Bentuk dan Minuta Akta)*. Jakarta: RajaGrafindo Persada.
- Santiliana, G. (2017). Notary. (T. Rostarum, Interviewer)
- Sari, S. A. (2017). Notary. (T. Rostarum, Interviewer)
- Silalahi, U. (2009). *Metode Penelitian Sosial*. Bandung: Refika Aditama.
- Soekanto, S. (2007). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- Soekanto, S. (2006). *Sosiologi: Suatu Pengantar*. Jakarta: Rajawali Press.
- Sulistiyani, A. T. (2004). *Kemitraan dan Model-Model Pemberdayaan*. Yogyakarta: Graha Ilmu.
- Wahyud, E. R. (2015). *Pertanggungjawaban Notaris Terhadap Akta Perjanjian Build, Operate, and Transfer (BOT) Yang Telah Melampaui Batas Waktu Menurut UUPA*. Bandung: Universitas Udayana.
- Widyadharma, I. R. (1991). *Hukum Profesi tentang Profesi Hukum*. Semarang: Wahyu Pratama.