

Notaries Ethics in Stipulating Honorarium Minimum in Indonesia



Melissa Liguna, Budi Santoso, FX. Joko Priyono

Abstract: *Notaries do not receive salary from Government, however, they have a right to charge fees to their service users. In fact, a Notary also has rules in stipulating the honorarium he can receive, both in the form of a law for a maximum honorarium and in the form of a Notary Code of Ethics for a minimum honorarium. Even though the regulation already exists, its implementation is not as expected, especially regarding the minimum honorarium. The violation of the minimum honorarium can occur because of the declining quality of ethics held by Notaries in Indonesia. This happens as if the personal ethics and ethics owned by the Notaries do not work well, then all the rules made by both the law and the Notary Organization will always have a gap so that they can be broken by the Notaries themselves.*

This study aims to obtain ideal conditions in terms of a Code of Ethics, supervision, sanctions, and ethics with the role of INI as the Notary Organization. The study uses social legal research methods which examine the problem in an interdisciplinary manner, especially with regard to ethical values in the notary professional code of ethics with the reality of Notaries' behavior in determining notary services in making a deed.

The result of this study reveals that the violation of the notary minimum honorarium that occurred so far is caused by not only the unclear notary Code of Ethics in determining arrangements regarding the Notaries' minimum honorarium, but there are things that further determine the violation of the Notaries' minimum honorarium, namely personal ethics owned by a Public Notary. Therefore, INI as the Notary Organization must have an active role in creating ideal conditions for the Notaries, so that the violation will not be repeated. This ideal condition can be realized by balancing the rules in the form of Notaries Code of Ethics, supervision, sanctions and personal ethics that can be developed by a Notary organization.

Keywords: *honorarium minimum, Notary, Notary Code of Ethics, Notary Organization, Personal Ethic.*

I. INTRODUCTION

In Indonesia, the notary definition based on Law Number 2 of 2014 Jo. Law Number 30 of 2004 concerning Notary Position (hereinafter referred to as the Notary Position Law)

is a Public Official authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. Nevertheless, in carrying out their duties and authorities, the Notaries do not receive salary from the Government, but they have a permission to charge an honorarium to their service users. Therefore, the Notaries can determine the honorarium according to the standards they desire. However, they also have provisions in determining the honorarium they can receive. This rule is in the Law of Notary Position and Notary Code of Ethics made by the Notary Organization, INI (Ikatan Notaris Indonesia). In the Law of Notary Position, the rules regarding honorarium regulate the maximum limit of honorariums that can be determined by a Public Notary. While the Notary Code of Ethics regulates the minimum limit of honorariums that can be determined by a notary public. The number of Notaries available at the moment makes them actually impose an honorarium under the fairness in their region. In fact, based on the Notary Code of Ethics, it is clearly stipulated that a Notary is prohibited from receiving an honorarium under the terms of INI. This provision is set by the Regional Management of each region, so that the provision regarding the minimum honorarium is actually determined based on the region concerned. This shows that the existing rules do not reveal a fact that they can be implemented well. Many things affect them, so that the implementation of these rules does not work well. I.N.I as a Notary organization acting as an internal supervisor to oversee the Notaries, with the forming of the Notary Honorary Council. But apparently, this supervision is not enough to prevent the occurrence of the tariff war. This happens because of the declining quality of ethics held by Notaries, especially in Indonesia. Practically, all the rules regarding honorarium are not needed as long as all Notaries have good personal ethics and are embedded in the Notaries themselves. As long as the personal ethics and ethics owned by the Notaries do not work well, then all the rules arranged by both the law and the Notary Organization will always have a gap that can be broken by the Notaries.

II. METHODOLOGY

This research is a qualitative research with both doctrinal and non-doctrinal research. Doctrinal research used secondary legal sources, both from primary legal materials such as laws and code of ethics, to secondary legal materials such as theories and experts' opinions. While for non-doctrinal research was done by interview and questionnaire to the Regional Management of INI,

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the Notary Honorary Council, to the members of INI chosen by sampling. The research method used in this study is social legal research which intends to examine problems in an interdisciplinary manner, especially regarding the ethical values in the Notary's profession code of ethics with the reality of Notary's behavior in determining notary services in making a deed.

III. RESULTS AND DISCUSSION

According to the Law of Notary Position, Notaries' obligations are regulated in Article 16, which contains the obligations of the Notaries to constantly act trustworthy, honest, thorough, independent, impartial and maintain the interests of the parties involved in legal actions as well as the obligations that must be carried out by a Notary in the deed he made.

The Notaries' significant authority and obligation in producing a legal product make the existence of ethics and morals a crucial role for a Notary to have. These ethics and morals need to be a limitation of a Notary in carrying out his duties and authorities, so that the Notary will continue to perform his authority within the prescribed limits.

The Oxford Dictionary defines ethics as moral principles and rules of behavior, in which morals focus on what is right and what is wrong. This definition shows that there is a firm relation between morals and ethics. However, several theories distinguish the concept between morals and ethics. Lewicki states that ethics usually apply social standards to a particular situation regarding what is right and what is wrong, in contrast to morals which are individual and personal beliefs about what is right and what is wrong.[1]

This personal ethics will determine whether or not a profession is successful in carrying out business activities and duties according to ethical code guideline. That is, with a basis of weak personal ethics, it will be vulnerable to the temptation to carry out activities violating the code of ethics, whereas with a strong basis of personal ethics, it will produce actions that are consistent with the professional code of ethics that has been used as a basis for guidelines in carrying out activities and duties in a certain profession.[2]

A notary as a professional who carries out his profession must have a personal ethics that refers to a basic principle. The basic principle is in the form of professional ethics which has the following views:[3]

- a. A profession must be seen as a service containing consideration to clients' interests as well as the public interests, it is not based on personal interests.
- b. Professional service is to prioritize the interests of clients by referring to the interests or noble values as a norm of criticism providing motivation for attitudes and actions.
- c. The bearer of the profession must have an orientation towards society as a whole.
- d. Competition in terms of services should continuously go on in a healthy manner, so that the service's quality can be guaranteed as well as improving the quality of professional development with solidarity among colleagues.

Ethics of the profession is an ethical attitude as an integral part of the attitude of life in living life as a profession bearer.

The behavior of the profession bearer must be maintained, therefore, a real objective guidance for the bearer of the profession is surely needed. The guideline is code of professional ethics. Professional code of ethics can be written or unwritten. However, this Professional Code of Ethics must be formally applied by the professional organization concerned and on the other side, it is also to protect clients from the misuse of the skills of the professional bearer and protect the interests within them. The existence of ethics makes the profession carry out its duties professionally in order to create respect for human dignity leading to justice in social life.[3]

The existence of the Notary Code of Ethics indeed has a good influence on its role as the basis for the Notaries' guidelines on ethics. However, the Notary Code of Ethics is not the only source for the Notaries to exercise their authority and obligations. Personal ethics is a rule that is more important for Notaries in carrying out all of their authority and obligations. But apparently in Indonesia itself, personal ethics is still something that is difficult to achieve by them.

This is proven by the problem of Notaries' honorarium in Indonesia. During this time, a problem with the Code of Ethics that is often considered ambiguous and unclear in their implementation by the Notaries is an honorarium. Honorarium is waged as compensation for services (given to authors, translators, doctors, lawyers, consultants, honorary staff) or wages outside of salary. Therefore, the Notaries are entitled to receive honorarium in accordance with the services provided to their clients. Although they can determine the honorarium freely, the Notaries' honorarium is stipulated in the Law and Notary Code of Ethics, with the aim of protecting service users and also avoiding an unhealthy atmosphere. This has caused the issue of honorarium to be so crucial for the Notaries because nowadays so many Notaries received unreasonable honorarium.[4] The Notaries' honorarium can be a chance for the unhealthy atmosphere among the Notaries to occur.

The problems that occur indicate that Notaries' personal ethics in Indonesia can be concluded to require a lot of improvement. Personal Notaries ethics can experience a decrease not only from the internal factors of the Notaries themselves, such as the values held by them personally, but also there are external factors that play an important role in influencing Notaries' personal ethics. External factors that cause the idealism defense of a Notary to be destroyed are:[5]

- a. Materialism culture, a value that symbolizes materialism as a measure of human success. Persistence on idealism, obedience and honesty cannot be admirable indicators from others.
- b. Instant cultured society, this culture wants everything to be achieved at lightning speed, including legal and notarial matters.
- c. The number of notaries that continues to grow. This has led to a quite strict situation among Notaries themselves. A fierce situation encourages each of them to adopt a 'ball pick up strategy' because if they only wait for clients to come to the office, they will be unable to compete with other aggressive Notaries 'working on the market'.

These factors have caused Notary personal ethics to decrease. Many Notaries consider that they must act aggressively by asking for the lowest possible honorarium, so that they get a job from their clients. This shows that their focus is no longer on the task and authority in making legal product that is deeds, but also has an economic goal, which is to attract as many clients as possible to get a job. This makes the location of ethics that should be an inseparable element in a notary become vague.

Though ethics and morals need to be a limitation of a Notary in carrying out his duties and authorities, so that he will continue to exercise his authority within the prescribed limits. This means that the Notaries need to have ethics and morals in carrying out all of their duties, authorities and responsibilities as Public Notaries. Therefore, Notaries need ethics in carrying out their duties and authorities, especially Deontology Ethics. Deontology ethics emphasizes the obligation for humans to act well. Based on Deontological Ethics, an action is considered good or not, is not judged and justified based on the results or good intentions of the action, but based on the action itself which is a good action on themselves.[6] The action has a moral value because the action was carried out based on obligations that must be carried out regardless of the goals or consequences of the action.[7]

An example of an action taken by Notaries performing their actions based on Deontological Ethics is like an action they take will be judged well by Deontological Ethics not because the action has good consequences for the actor, but because the action is in line with the perpetrator's obligation, for example, provide good consultation to all who need their services, provide services in accordance with the Code of Ethics and the Law of Notary Position, to collect their honorarium according to applicable regulations, both from the Notary Code of Ethics and the Notary Position Law. So the value of the action is not determined by the consequences or good intentions of the action.

The moral law that has been implanted in each human being's heart and therefore, it is surely universal. This moral law can be considered as an unconditional command (categorical imperative), which means that this moral law applies to all people in all situations and places. This moral law binds anyone from within himself. This is because moral law comes from within himself.

Notaries who have moral values from within themselves, will not have a desire to violate the moral values they have. Hopefully, all the duties and authorities of the Notaries can be realized properly if the moral values that come from within themselves have been held. However, it still needs to be remembered that the moral law that comes from within each person is different. Therefore, it is necessary for the Notaries to have a guide that can be a moral principle for all Notaries in Indonesia. In this case, these rules are the Notary Code of Ethics.

The ethics and morals that must be owned by the Notaries are finally set forth in the Notary Code of Ethics for the achievement of an agreement between all Notaries, in accordance with Normative Ethical Rules. Normative ethics is an ethics that seeks to determine the various attitudes and ideal behavior patterns that should be owned by a human

being in this life as something valuable. Normative ethics provides an assessment while providing norms as the basis and framework for action to be decided.[7]

The rules and norms that are approved and applicable in society in the field of Public Notaries are the Notary Code of Ethics. Although the Notary Code of Ethics cannot be referred to positive law in the Indonesian legal sphere, it is necessary to consider that the law and morals are two things that cannot be violated and need each other in the context of both "law making" and in legal decisions. Judging from its function, moral values can be made as a basis in deciding cases when a rule does not have legal certainty.[8]

The Notary Code of Ethics can still be seen as a reference, especially for Notaries throughout Indonesia. The Notary Code of Ethics regulates many rules and norms that have been agreed by all Notaries in Indonesia. In fact, the existence of the Notary Code of Ethics still has a significant role. Even though the role of the Notary Code of Ethics is significant, there are still many gaps that can be used by Notaries so that it causes violations to occur.

One of the provisions in the Code of Ethics that is most violated by Notaries is the minimum honorarium they can collect. The minimum honorarium they can collect has indeed been stipulated in the Notary Code of Ethics. Apparently, the Code of Ethics can be said to be less effective in preventing unhealthy atmosphere among Notaries. This is proven from the current conditions that are not ideal with the occurrence of lower honorariums.

The Notary Code of Ethics does not explicitly regulate the minimum honorarium of the Notaries. The arrangement of Notaries minimum honorarium is devolved to the Regional Management in their respective regions. In fact, not all of the INI's Regional Administrators have made arrangements for the Notaries' minimum honorarium. This causes many of them to finally ignore the minimum honorarium that they must put concern to and obey.

The rules concerning Notaries in Indonesia need to be compared with those in the Netherlands. This is because the legal system in Indonesia is inherited from the legal system in the Netherlands. Therefore, there are many similarities between law in Indonesia and law in the Netherlands. One of the similarities is the legal system in Indonesia and the legal system in the Netherlands adhering to the civil law system, so that in terms of Notaries, Indonesia and the Netherlands have similarities.

In Indonesia, the Notary Code of Ethics created by INI as a Notary Organization regulates the Notaries' minimum honorarium by submitting its arrangements to the INI's Regional Administrators in each region, while the Netherlands has a different honorarium arrangement compared to Indonesia.

The Netherlands has Biro Financieel Toezicht (Office of Financial Supervision). The Biro Financieel Toezicht Bureau (hereinafter abbreviated as BFT) is an integral regulator and will not only oversee financial sector, but also quality and integrity.

In the old law, this task was previously being controlled by nineteen supervisory assemblies. In carrying out this new role, BFT will use risk calculations to oversee all Notaries' offices. Therefore, BFT is an institution that oversees compliance[9] of a Notary.

In short, BFT is a supervisory board and it oversees compliance with laws and regulations committed by court officials and Notaries and is in accordance with the Money Laundering and Terrorism Funding (Prevention) Act (in Dutch: WWFT) by various professional groups.

Therefore, BFT contributes to legal certainty, protection of the collective financial interests of professional people, service users and the integrity of the financial system in the Netherlands.

BFT is the financial supervisor in which the court officer is concerned. BFT integrally oversees notarial matters (including WWFT). BFT is also on duty in overseeing compliance with WWFT, for instance, from tax advisors, registered accountants, accountants and administrative consultants, or other professions that carry out almost the same activities, such as administrative offices, tax advisors, and business advisors. So, BFT not only has the authority to supervise Notaries, but also the entire profession having the same activities and prone to violating honorarium law.[9]

This proves that with such strict rules and supervision as has been done in the Netherlands, there is still a chance of violations in terms of honorarium. Especially in Indonesia, the rules for Notaries' minimum honorarium are minimal and indecisive. In fact, the honorarium is the most basic thing for a profession to prove the ethics of the notary since the honorarium only concerns the interests of the Notaries' themselves and their colleagues.

This violations in terms of honorarium may eventually affect the quality of the deed made by the Notaries themselves, so that the interests of Notaries' service users can also be affected. Hence, the honorarium has a very significant and fundamental role for a Public Notary. All the rules and supervision carried out for the Notaries are important, but there is something more crucial to be implanted within Notaries' selves so that all violations of the honorarium no longer occur.

This honorarium phenomenon proves that the Notary Code of Ethics does have an important role to protect themselves and protect the interests of all Notaries. Apparently, the Code of Ethics as a written rule and applies to all Notaries in Indonesia is not even enough. Personal ethics as the most important factor to develop and be cultured in all Notaries in Indonesia has been forgotten.

The personal ethics has a very important role for Notaries as professional ethics will continue to experience dynamics, in accordance with the demands and developments of their era. Moral values believed by a society will determine the ethics and character of a person. Positive values will be a source in the development of professional ethics. Therefore, any act that is considered moral (ethical) or has ethical values, if it meets the benchmarks, then it will be an ethics that is recognized by the public[10], in this case is Notaries' honorarium.

Notary organizations as a forum that is supposed to protect Notaries are indeed obliged to make strict and non-floating

rules. Supervision that has been carried out so far should also be improved as violations of the minimum honorarium also do not have strict sanctions. The most severe sanction that can be received by the Notaries for violations of the minimum honorarium is only form a reprimand that does not have a deterrent effect for their concerns. In addition to making clear rules and strict sanctions for them, the Notary organization also has an equally important task. The task is to form a personal ethics that must be owned by a Notary.

Before a Notary is appointed, the Notary candidate has several stages, namely taking education at the bachelor level by taking a law degree, followed by education at master level by taking a Notarial master program. After obtaining master degree, then the Notary candidate must undergo an internship at the Notary's office for a minimum of 2 (two) years, then undergo the Notary Code of Ethics and Notary Quality Improvement examination. These stages show that it is not simple to become a Notary. Therefore, it is unfortunate if personal ethics that were previously owned are actually decreasing after becoming a Notary.

Basically, all these stages lead to good objectives, including to improve the qualifications of Notaries so that the Notaries in Indonesia can become qualified ones. The stages of the Notary Code of Ethics examination also actually aim to improve the Notaries' ethics. Unfortunately, the Notary Code of Ethics examination solely memorizes the contents of the Notary Code of Ethics, without actually instilling personal ethics in prospective Notaries.

Notary organization has an obligation to develop personal ethics owned by a Notary. Indeed, this personal ethics should have been formed before becoming a Notary and educational institutions should also be obliged to instill personal ethics to their students. However, after becoming a Notary, it is the duty of the organization to continue instilling and reminding the Notaries concerning personal ethics they must have.

This personal ethic can be formed by the organization by holding a lot of training and ethical instilling conducted by it. In addition, it would be more favorable if the existing Notary Code of Ethics examination is not only a test to memorize the applicable notary Code of Ethics, but also to test the ethics of all Notary candidates. This is expected to provide a better change for all Notaries in Indonesia, especially in terms of ethics by referring to the Deontology Ethics, where the deed is considered good because of the deed itself, not the purpose of the deed.

If this personal ethic has been well embedded, actually, even without strict rules and supervision, ethical violations can be minimized. Even so, it does not mean that the Code of Ethics is not needed, because it is the basis of ethics that must be owned by a Notary.

Thus, the existence of a Code of Ethics is indeed important, but instilling personal ethics for Notaries is far more important than the existing rules.

The Notary Code of Ethics may sanction a violation committed by a Notary.

These sanctions can be considered to have no deterrent effect or even have a deterrent effect, solely because sanctions of these rules affect the Notaries' selves externally, but the existence of personal ethics is more effective in preventing someone from committing an offense. This is because doing actions that are contrary to the ethics adopted actually have a more severe effect on themselves because it is contrary to their conscience and beliefs.

The ideal condition for a Notary in dealing with this ethical problem, especially in the case of a minimum honorarium, is to maximize the role of INI as a Notary Organization. INI's role can be maximized by formulating a more strict Notaries Code of Ethics to regulate the minimum honorarium imposed by a Notary, setting strict sanctions and have a deterrent effect to minimize violations and instilling personal ethics in both prospective Notaries and also the Notaries themselves based on Deontology Ethics.

IV. CONCLUSION

From the research conducted to the Regional Honorary Board, the INI's Regional Administrators, and INI members conducted by sampling by means of interviews and questionnaires showed that Notaries in Indonesia received honorarium below reasonable fee and it caused a chance for the unhealthy atmosphere among the Notaries to occur. As following results can be obtained, they are as follow:

- a. External factors such as materialism culture, the growing number of Notaries and instant culture entering the community are factors that cause a decrease in the quality of personal ethics owned by a Notary.
- b. The role of the Notary Code of Ethics can be said to be not optimal, clear and firm in regulating the Notary minimum honorarium.
- c. Sanctions for violations of the minimum honorarium in the Code of Ethics have not been clearly regulated, so the sanctions are considered not to have a deterrent effect for the Notaries.
- d. INI's role as a Notary Organization has not been optimal in conducting supervision on the minimum honorarium set by the Notaries.
- e. Personal Ethics has a very significant role for a notary in carrying out his authority and obligations. Practically, the instilling of personal ethics for a Notary is ignored so that the opportunity for ethical violations, especially in the case of minimum honorariums, is even greater.
- f. INI as a Notary Organization has not optimized its role, especially in terms of instilling Notary's personal ethics.

Notary factors in violating the Notary's minimum honorarium, are a sign that the existing rules are not effective in overcoming the problem. Therefore, Notaries need solutions so that the interests of Notaries can be protected, protection of Notaries' service users can be optimized and competition between Notaries can be minimized so that harmony between Notaries can also be more awake. The solution to overcome these minimum honorarium violations is the participation of INI as a Notary Organization, namely:

- a. Strictly regulate the minimum honorarium in the Notary Code of Ethics, so that the gap for violations of the Notaries' minimum honorarium can be minimized.
- b. Strictly regulate supervision and sanctions for violations of the minimum honorarium in the Notary Code of

Ethics, so that the Notaries get a deterrent effect if a violation of the Notary's minimum honorarium occurs.

- c. Instilling personal ethics by referring to Deontology Ethics, both to prospective Notaries and to Notaries who have carried out their authority and obligations by means of training or seminars held regularly.
- d. Changing the procedure for the Notary Code of Ethics examination for Notary Candidates, not merely memorizing the contents of the Notary Code of Ethics, but actually testing the personal ethics owned by the Notary Candidates.

The ideal condition for a Notary in dealing with ethical issues, especially in the case of minimum salaries is to get a balance in terms of rules and also personal ethics. The rules here are the Notary Code of Ethics that regulates the Notary honorarium strictly, strict supervision, sanctions having a deterrent effect and instilling personal ethics by referring to the Deontology Ethics for Notaries in Indonesia. If all of these elements can work well together, the Notaries are expected to no longer violate the Notary's minimum honorarium.

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