

The Implementation of Notary's Supervision on Tariff War in Semarang

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Abstract. Notary is a general official who is not paid by the Government, but get honorarium for services provided to his clients. Therefore, the government and the Indonesian Notary Association (INI), as a Notary organization, regulates the Notary's honorarium. Regulation from the government is done by the Notary Law which regulates the maximum limit of honorarium acceptable by the Notary. On the other hand, the rules of the INI are carried out with a Notary Code of Conduct stating that a Notary cannot assign a lower honorarium more than what has been set by the associations. Determination of honorarium by association consists of a letter signed by all members of the association within a region. Nevertheless, there are still many violations committed by Notaries in respect of the determination of honorarium by doing a tariff war. This study aims to find out the reason Notaries commit the tariff warfare violations, as well as provide an ideal implementation of INI's supervision so that tariff war does not occur among Notaries. The research method used is Juridical Empirical with qualitative research.

The results reveal the factors that encourage the Notary to engage in tariff war and violate the agreement determined by the association, in this case INI. These driving factors show that the current supervision from INI has not been able to prevent tariff warfare. Therefore, it is necessary to make changes in the supervision that are more appropriate and can be applied in the Notary circles.

Keyword: Notary; honorarium; tariff war; supervision

1. Introduction

Notary is a position entitled to receive honorarium from the public who get his services. Therefore, a Notary may determine the honorarium according to the standard desired by the Notary. Notary also has rules in terms of determining the honorarium that can be accepted by the Notary. The rules are in the Law of Notary and Notary Code of Conduct made by Notary Organization, namely INI (Ikatan Notaris Indonesia).

In the Notary's Code of Conduct, the rules concerning honorarium stipulate the maximum limit of honorarium that can be determined by a Notary. The Notary's Code of Ethics regulates the minimum amount of honorarium that can be determined by a Notary. But what is happening in society today is the happening of tariff war between notaries, especially the problem of slamming price that happened between them. This creates anxiety among the notaries themselves, as many of them feel disadvantaged by the existence of this tariff war.

This suggests that existing rules do not mean that they can be obeyed very well. There are many factors that affect so that the implementation of the rules does not work properly. I.N.I is a Notary organization acting as an internal supervisor to oversee Notaries, with the establishment of the Notaries' Board of Honor. However, this supervision is not enough to help preventing the tariff war. Therefore, a strict system is needed to break the chain of tariff war. Supervision that has been considered less assertive needs to find a way out. Strict rules and sanctions need to be considered and subjected to research so that the tariff war that has occurred can be stopped.

2. Methodology

This research uses qualitative method with doctrinal and non-doctrinal research. Doctrinal research uses secondary legal sources, both from primary legal materials such as laws and codes of ethics, to secondary law materials such as theories and opinions of experts. Meanwhile, the non-doctrinal research will be conducted in Semarang City, through interviews and questionnaires to the Regional Board of INI, Notary Board of Honor, and selected member of INI by sampling.

3. Findings

In Indonesia, a notary is a position paid by not the Government but a stand-alone Government Officer and awarded honorarium from those who request his services. Administratively, Notary has a relationship with the state in this case the Government, for example relating to the appointment and dismissal of Notary. Notary can also be called a noble profession (*nobile officium*).

It is called this way as the notary profession is truly closely related to humanity. A Deed made by a Notary may be the legal basis of a person's property, rights, and duties. The mistake of notarial deed may result in the abuse of rights of a person, or a person's liability of being burdened by some duties [1]. Therefore, moral values take a very crucial role in forming a Notary. Because of that, Notary needs a regulation. Nowadays, Notaries are regulated in legislation. But the rule of positive law does not extend to their technical work [2].

The importance of moral and ethic is said by Jacques Thiroux. Jacques Thiroux said that “Whenever a decision or a choice is to be made concerning behavior, the moral decision will be the one which works toward the creation of trust, confidence, and integrity in relationships. It should increase the capacity of individuals to cooperate, and enhance the sense of self-respect in the individual. Acts which create distrust, suspicion, and misunderstanding, which build barriers and destroy integrity are immoral. They decrease the individual’s sense of self-respect and rather than producing a capacity to work together they separate people and break down the capacity for communication”[3].

Ethics of Notary in performing their positions need to be regulated by something which can regulate and supervise Notary internally within the Notary itself. Therefore in the Law of Notary, position of Notary is regulated on the existence of Notary Organization. In the Law of Notary stated that the Notary Organization is a professional organization in the position of Notary in the form of associations of legal entities. In addition, the Notary Law also regulates Notary Organizations as stipulated in Article 82 of the Notary Law as follows:

- 1) Notary is gathered in one Notary Organization.
- 2) The Organization of Notary as referred before shall be the Association of Indonesian Notary or in Indonesia, it is called Ikatan Notaris Indonesia (INI).
- 3) Notary Organization shall be the only free and independent notary profession entity established with the intent and purpose to improve the quality of the Notary profession.
- 4) Regulation concerning objectives, duties, authorities, working procedures, and organizational structure are stipulated in the Articles of Association and Bylaws of Notary Organization.
- 5) The regulation concerning the determination, guidance and supervision of a Notary Organization shall be regulated by a Ministerial Regulation.

The existence of the Notary's Code of Conducts is also recognized in the Law of Notary. This matter can be seen based on the oath of Notary which states submission to Notary Code of Conducts as regulated in Article 4 and Article 83 of Notary's Law which is written as follows:

- 1) Notary Organization establishes and enforces the Notary Code of Conduct.
- 2) Notary Organization has a list of members and copies are submitted to the Minister and Supervisory Board.

So, that is the reason why the rules of Notary are also regulated in the Notary Code of Conduct made by INI. In carrying out duties and authorities, a notary must follow the rules set forth in the law that is Act Number 2 Year 2014 jo. Act Number 30 Year 2004 regarding Notary (hereinafter referred to as Law of Notary), which is the legal basis of Notary Public.

Meanwhile, the authority of a Notary is also regulated in Article 15 of the Notary's Law, stating that the Notary is authorized to make an authentic Deed of all the acts, treaties, and stipulations required by the legislation and / or desired by the interested parties to be stated in Authentic deeds, guaranteeing the exact date of the making of the Deed, saving the Deed, granting grosses, copies, and quotations of the Deed, all of which during the making of the Deed are not also assigned or excluded to other officers or other persons established by law. Thus, it can be seen that Notary is a semi-public profession, because the scope of their work is in the construction of private law. Notary is a legal services provider working for the client's interest.

In this context, the bureaucratic hierarchy does not support their work. Notaries are regulated in legislation. But the rule of positive law does not extend to their technical work [2]. That is the reason why the rules of Notary are also regulated in the Notary Code of Conduct made by INI.

INI's role is not merely on the guidance of profession members, but also up to the setting of profession qualification standards and the provision of licenses recommendation or prohibitions of practice [2]. Therefore, it is necessary to have both individual and social responsibilities, especially adherence to the norms of positive law and willingness to submit to the Professional Code of Ethics, as it is a mandatory matter that will reinforce existing positive legal norms [4].

Basically, Notary is a noble position. Its existence as a public official is to assist the community in the case of making authentic deeds so that the public gets legal certainty in the agreement they make before the Notary. But along with the development of the era and more and more universities that open the Master of Notary, there comes more Notary graduates.

There is an overload of Notary existence, which results in many Notaries competing to become the ones needed by society. Competition can be done in many ways, by improving the quality of the Notary itself, providing advice and solutions related with legal issues, and becoming a Notary who offers the lowest cost.

Competition among Notaries is actually already regulated by the Law of Notary and Notary Code of Conduct as a step to prevent unhealthy competition among Notary. One of them is about tariff. In the Law of Notary, honorarium is clearly stipulated in Article 36 which reads:

- a. Notary shall be entitled to receive honorarium for legal services provided in accordance with their authority.
- b. The amount of honorarium received by a Notary is based on the economic and sociological value of each deed made.
- c. The economic value as referred to in paragraph (2) shall be determined from the object of each deed as follows:
 - 1) Up to Rp 100,000,000.00 (one hundred million rupiahs) or gram equivalent of gold at that certain time, the highest honorarium received is 2.5% (two point five percent);
 - 2) Above Rp 100,000,000.00 (one hundred million rupiah) up to Rp 1,000,000,000.00 (one billion rupiah) honorarium received maximum 1.5% (one point five percent); or

- 3) Above Rp 1,000,000,000.00 (one billion rupiah) of honorarium received is based on an agreement between a Notary and the parties, but not exceeding 1% (one percent) of the object whose act is made.
- 4) The sociological value is determined based on the social function of the object of each deed with the honorarium received at most Rp 5,000,000.00 (five million rupiah).

Meanwhile, in the Notary's Code of Conduct, a Notary's honorarium is also regulated therein. It's just that the rule seems quite different, though it cannot be said to be contradictory. The rule is contained in Article 3 point 13, which is "Implement and comply with all provisions concerning honorarium set by association". In addition to Article 3 point 13, the rules of honorarium of a Notary are also stipulated in the Notary Code of Conduct Article 4 point 10, namely "Notary is prohibited to determine the honorarium to be paid by the client in the amount lower than the fee set by the Association".

Basically, both rules have the same objective, namely to prevent unhealthy competition that may be created among Notaries and generalize notary publication revenue, but the rules have different points of view. In Law of Notary, the maximum limit is set. It is also seen from the aspect of consumer protection so that consumers get clear restrictions and arrangements in paying Notary services so that the interests of consumers are also maintained.

Meanwhile, the arrangements in the Code of Ethics emphasize the minimum limit. The minimum threshold here is based on the provisions set by the association. So far, the way of setting the minimum limits is done based on the agreement made in their respective areas, in the form of agreements signed by all I.N.I members in that area.

When it is assessed further, per region determination as has been done so far is reasonable as there are differences in the number of Notaries, market differences, and differences in economic conditions in each region. Therefore, in order to prevent unhealthy competition occurring among Notaries, a minimum honorarium deal that can be drawn by the Notary to his client is made.

Practically, these rules are not enough, as there are many violations made by Notary in terms of minimum tariff provisions. This leads to tariff wars occurring between Notaries resulting in unhealthy competition within Notary's scope, especially in the case of tariffs.

From the results of research conducted, the background of the competition in terms of tariff is the factor of too many Notaries in a region. In Semarang itself, the total number of active Notary is 187 Notaries and this formation can still be filled by Notary who wants to move to Semarang City. If the Notary's formation is seen from the number of residents based on Permenkumham no. 26 of 2014 Article 5, paragraph 2, which states that the Stipulation of the formation of a Notary position based on the number of population, then it is determined as follows:

- 1) Every 15,000 (fifteen thousand) persons in the administrative city and administrative district, the Special Capital District of Jakarta shall be appointed 1 (one) Notary;
- 2) Every 17,500 (seventeen thousand five hundred) persons in the capital of the Province shall be appointed 1 (one) Notary;
- 3) Every 20,000 (twenty thousand) persons in the city area shall be appointed 1 (one) Notary;
- 4) Every 25,000 (twenty-five thousand) persons in the district shall be appointed 1 (one) Notary.

In the city of Semarang, according to the data from the Semarang City Statistics Agency, the population in Semarang City reaches 1.6 million people [5]. That means, the maximum amount of Notaries that should exist in the city of Semarang, when it is calculated based on the population, is only 92 Notaries.

The huge number of Notaries causes quite a lot of Notaries jobless. As a result, Notary will do various ways to remain known by the public and get the job, so the service will still be used by the community, and it continues to get a job. One of the ways used by the Notaries is to provide a much cheaper tariff than other Notaries.

Giving a tariff, which is cheaper than other notaries, is recognized by some notaries to be actually happened and this makes customers quite often comparing prices with other notaries. For Notaries who get little job demands, this will lead to competition in terms of tariff. For them, the most important thing is to obtain a project to work on so that their name gets known in the community, and another work demand comes again, so it can pay the staffs who work on them. As we already know, a Notary should have at least 2 (two) staffs as witnesses for the agreement that the Notary made. That is why Notaries cannot think just for their own expenses, but they should think about expenses for their staffs too.

As a result, Notaries who lost clients began to apply the same way of attracting customers by lowering the price of their services. Likewise with the new notary who saw the way it works, so they will follow their way to ask the honorarium below the honorarium that is set by the association. This repetitive way leads to a 'tariff war' between notaries.

Such tariff wars cannot be left alone. This causes unhealthy competition that occurs between Notaries. In effect, the Notary no longer cares about the quality of the Notary itself. This will cause the public perception to the Notary that the Notary who is 'selling and great' is a Notary who put the price of cheap services, regardless of the integrity and quality. In the end the Notary also feels better to put up a cheaper price than to take care about integrity and quality.

For senior Notaries who are busy in terms of work demands, it is not a problem, as they already have loyal clients. Although in fact, Notary also often in touch with the court in relation to the deed he or she made, so the honorarium obtained with long-term expenditure, may not be appropriate. This means, the protection of Notary in the case of this tariff becomes weak.

Such economic reasons are what cause the competition between Notaries, in the case of honorarium, into something that needs to be supervised more closely. Supervision should play an important role in notary organization, especially in terms of tariff. But in the implementation, that occurs, the supervision made to date, felt by many notaries has not been optimal. That is because the supervision can usually experience constraints caused by several factors, including:

- 1) Inadequate quality and integrity of supervisor
- 2) The process of inspecting discipline is not transparent
- 3) The absence of convenience for the disadvantaged communities to submit complaints, monitor processes and outcomes (lack of access)
- 4) The spirit of defending fellow corps that resulted in the imposition of punishment is not balanced with deeds. Any attempt to fix a bad condition will certainly get a reaction from a party who has been benefiting from the bad conditions
- 5) There is no strong will from the leader of law enforcement organization to follow up the results of supervision [6] .

In the case of the arrangement of Notary minimum honorarium, it should be done by the Regional Board. However, in Semarang itself, the arrangement has only been done 15 (fifteen) years ago, so it is not relevant anymore when used at this time. In fact, almost all Notaries no longer have the agreement. The Notary just felt that they do not need the agreement because it is not relevant and it cannot be used by the Notary anymore.

The Regional Board in the present is currently the newly appointed regional administrator, so they have not had time to make any rules about the tariff in the near future. The Regional Board considers that the Notary Act is the result of the work of each Notary so that the tariff desired by each Notary is the right of each Notary. But this does not justify the tariff war that occurs among Notaries because it can divide the harmony and cohesiveness of Notary itself. Rules that until now have not been made, making the supervision under the authority of the Regional Council of Honor could not work properly. In addition, many notaries who feel the rules in the case of sanctions against violations of tariff are also unclear or at most are only a reprimand. Sanctions that are felt less assertive of course makes the implementation does not work properly.

Based on the research, the minimum tariff problem will not be optimal, if the arrangement is based on professional organization alone. There is a need for a rule and supervision, which is coercive with more assertive sanctions. In modern society, the general rule as a place to pour the protection of interest is the Law. So far, the Notary's Law has made the regulation of maximum tariff that can be accepted by Notary, while minimum tariff acceptable to Notary is never regulated in the Law. In fact, the purpose of the law is to create peace in the life of society. Therefore, it is necessary to refer to the view of Ulpianus which states *iuris praecepta sunt haec honeste vivere, alterum non laedere, suum cuique tribuere*, which, when translated freely, means that the commandment of law is to live honestly, and does not harm a fellow human being, and everyone gets his share. [7]. In the life of society, general rules are truly needed. Every interest in society should be considered in general rules. This is because the interests are protected. In modern society, the rule is the law. The rule of law contains general rules that serve as guidelines for behavior in public life. This rule becomes a limitation for society in doing an action. The existence of these rules and their implementation give rise to legal certainty. Therefore, the certainty of law contains two meanings, which are the existence of a general rule that makes the individual understand something that can be done and cannot be done, and the second is the legal security for the individual from the abuse by the government. [7].

The issue of tariff war that has long arisen and quite unsettling among the notary itself, requires legal certainty in practice. Therefore, it is only natural that this minimum tariff issue is incorporated into law as a step towards the realization of legal certainty and also as a measure to protect the interests of each Notary. A more assertive rule is required with hope that competition between Notaries can be a healthy one to serve the community. In addition, by providing appropriate tariff and tariff war does not occur for the services of Notaries, a Notary will provide maximum service and can explain the deeds made better and not randomly doing the deed so that the rights and obligations of clients can be protected as well. In this case, consumer protection is also well protected. Do not let the community and stakeholders in it become disadvantaged as the Notaries do authority originally, considering the cheap honorarium received.

The enforcement of more strict rules by the amendment of the rules in the Code of Conducts into Law of Notary also changes the system of supervision of Notary regarding the minimum tariff that can be accepted by Notary from Regional Council of Honor becomes the Regional Supervisory Board of Notary. If the Regional Honor Board consists only of internal Notary parties, it is not the same case as the Regional Notaries' Supervisory Board. Notary Supervisor Assembly does not only consist of internal Notary, but also elements of government and academia. Therefore, it is expected that the supervision can be fairer and minimize the possibility of conflict of interest between Notaries so the 'chain of tariff war' can be broken. If the rules can be more assertive, the supervision becomes more assertive and neutral, and the sanctions applied will be expected to be more assertive and clear. The implementation is also expected to be better and obedient, so competition between Notaries can be minimized and there is no tariff war between Notaries. The effect is the welfare of Notaries can also be protected, as well as the protection of consumers can also be more protected. Therefore, if the rule is changed into law, all of the Notaries in Indonesia will have the same standard of the minimum tariff so it will be fairer to all of the Notaries in Indonesia.

The other expected effect is not only for the internal interest of Notary, but also for the benefit of the public who use the services of Notary in relation to the deed he made and the legal consequences of the deed to the parties concerned.

4. Conclusion

From research conducted to the Regional Honorary Board, INI Regional Board, and INI members conducted by way of sampling by interview and questionnaire, the following results can be obtained:

- a) The number of notaries in Semarang can be said overloaded, with the number of notaries reaching 187 people, while the population in Semarang reaches 1.6 million people.
- b) In Semarang, Notaries are often confronted with clients comparing tariffs between Notaries and sometimes, the tariffs offered by other Notaries have a huge difference with the tariff they offer.
- c) There has never been a report on the minimum tariff of Notary which deviated from the agreement.
- d) The minimum tariff rule in Semarang City was regulated 15 years ago, but for now there is no new regulation yet.
- e) In the existing rules, sanctions on minimum tariffs are not set clearly and assertively, so the Notary does not feel any benefit from the rules.
- f) The system of supervision of Notaries, especially in the case of Notaries' minimum rates in Semarang not running optimally.

Based on the findings of this research, researchers get some reason why Notaries do tariff war in Semarang, that is:

- 1) Number of Notaries which can be said overload in Semarang, causing competition between Notary and one of the tools used to compete is tariff.
- 2) Notary who is low on a job, while still have to pay staff working for them, making the Notary do tariff war.
- 3) The minimum tariff rules in Semarang are unclear, as they were regulated 15 years ago so they are irrelevant for use in the present.
- 4) Non-optimal supervision, especially in the field of minimum tariffs makes Notary feel free to determine the price, even though the rate is below the market price.
- 5) Sanctions that are deemed to be still unclear and unassertive, causing Notaries to feel unencumbered when doing tariff war.

The reasons for this Notaries' tariff war are a sign that the existing rules have not been effective in tackling the problem. Therefore, a Notary needs a solution so that the interests of Notaries can be protected, consumer protection can also be optimized, and competition between Notaries can be minimized so that harmony between Notaries can also be more protected. The solution is to change the rules of the minimum tariff of Notaries from the form of agreement by region, to be regulated in law. Changes from this rule into law will make Notaries feel doubtful because of the legal force and that rule will become more assertive, with more strict sanctions and controls so that tariff wars that have occurred can be overcome. If the rule is changed into a law, then the supervision will be changed to Regional Supervisory Board consisting of notaries themselves, academics, and government. Supervision is expected to be more neutral so conflict of interests and competition between Notaries can be minimized. Supervision can be more focused too because Regional Supervisory Board has definite duty.

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