



HARMONIZATION OF NOTARY HONORARIUM ARRANGEMENT RELATED TO THE NOTARIAL DEED AUTHORITY: TOWARD LEGAL CERTAINTY

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ABSTRACT

This research aims to examine and analyze the legal consequences caused by the degradation of the notary honorarium from the perspective of the principle of legal certainty. In addition, this research also focuses on identifying and formulating the basis for consideration to harmonize the regulation of notary honorarium. This research uses a normative research method, which analyzes laws and regulations related to the topic discussed. The research approach uses statutory, analytical, and conceptual approaches. Primary legal materials consist of rules and regulations relevant to the research issue and secondary legal materials consist of research results, literature, seminars, discussions, and information from internet sources. The technique of collecting legal materials was carried out through literature studies, and legal documents. The legal materials that have been collected are analyzed using a qualitative descriptive analysis method. The disharmony between the Law on Notary Position and the Notary Code of Ethics regarding honorariums creates legal confusion. The Law on Notary Position

only regulates the maximum honorarium without providing a minimum limit, while the Code of Ethics sets a minimum honorarium. This creates a dilemma for notaries, between complying with the Law on Notary Position or facing ethical sanctions. Weak supervision also exacerbates the problem and triggers unfair honorarium competition. Therefore, it needed legal harmonization between the Law of Notary and the Code of Notary Ethics toward legal certainty.

INTRODUCTION

The authority of a Notary as a public official to create authentic deeds and other authorities is expressly regulated in Article 1 point 1 of Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on Notary Position (hereinafter referred to as Amendment to Law on Notary Position). The authority of a Notary in making authentic deeds has an essential function, namely to ensure legal certainty, order, and legal protection through the existence of written evidence that is authentic regarding actions, agreements, stipulations, and legal events made before an authorized official. In this case, the authorized official is a notary. As a public official, Notary is not paid by the government but from the proceeds of making the deed of his client. As a public official who carries out a profession in providing legal services to the public, it is necessary to obtain protection and guarantees to achieve legal certainty, including legal certainty regarding the value of honorarium.

Based on Article 36 (1) of Law Number 30 of 2004 concerning the Position of Notary (Notary Position Law), a Notary is entitled to receive an honorarium for legal services provided by his/her authority. The determination of the amount of the Notary's honorarium is based on the economic and sociological value of each deed he/she makes as stipulated in Article 36 (2). In addition to being based on the provisions of Article 36 of the Notary Position Law, the amount of the honorarium is also based on the determination of the Indonesian Notary Association, as stipulated in Article 3 number 13 of the Notary Code of Ethics, "notaries are required to implement and comply with the provisions regarding the honorarium determined by the association".¹ On the other hand, it is also regulat-

ed in Article 37 of Law Number 2 of 2014 concerning the Amendment to Law on Notary Position which in essence stipulates that notaries are required to provide free legal services in the field of a notary to people who are unable to afford it. Notaries basically cannot refuse people who are unable to pay for their services due to a lack of economic income.²

The degradation of notary rights in obtaining honorarium, where currently there is often a determination of notary honorarium that is far below the specified threshold or does not reach the honorarium limit set in Article 36 of the Law on Notary Position, is interesting to be studied. This situation cannot be equated with the provision stated under Article 37 paragraph (1) of Law Number 2 of 2014, which stipulates that Notaries are obliged to provide legal services in the field of notarial services free of charge to underprivileged people. In the elucidation of the Law on Notary Position, the meaning contained in Article 37 paragraph (1) can be said to be unclear and needs to be clarified even though there is an appendix to the "general elucidation" and stated considering that the qualification standards of underprivileged people can be determined by various circumstances such as spiritual, economic, and sociological.³ Therefore,

(2020). Penetapan Honorarium Notaris Dalam Praktik Pelaksanaan Jabatan Notaris. *Jurnal Konstruksi Hukum*, 1(2), pp. 369-373. DOI: <https://doi.org/10.22225/jkh.1.2.2547.369-373>.

2 Veryanda, V., Poernomo, S. L. (2024). Efektivitas Hukum Terkait Besaran Honorarium Notaris Dalam Pembuatan Akta. *Journal of Lex Theory (JLT)*, 5(2), pp. 495-510. <https://www.pasca-umi.ac.id/index.php/jlt/article/view/1759>.

3 S Sari, D. A. P. (2016). Makna Pemberian Jasa Hukum Secara Cuma-cuma Oleh Notaris Pada Orang Tidak Mampu Terkait Sanksi Yang Diberikan Oleh Undang-undang Jika Tidak Dipenuhi (Analisis Pasal 37 Ayat (1) Dan (2) Undang-undang Jabatan Notaris No. 2 Tahun 2014). Doctoral dissertation, Brawijaya University.

1 Gunawan, I. K. A., Sumardika, I. N., Widiati, I. A. P.

the determination of a notarial honorarium that is far below the specified threshold cannot be equated with the provision of notarial legal services free of charge.

This research focuses on a legal problem rooted in Article 36 of the Law on Notary Position, which is the basis for determining the limit of notary honorarium. This article explicitly stipulates that the honorarium received by a notary must be determined by considering the economic and sociological value of the deed made and based on the agreement of the parties. This provision emphasizes the principle of balance between the appreciation of the notary profession and the economic capacity of the community as service users. However, in practice, irregularities often occur where the honorarium set is far below the proper threshold, potentially violating the principle of justice and creating legal uncertainty. This focus on Article 36 of the Law on Notary Position aims to highlight the need for consistent implementation and effective supervision of honorarium determination, to protect the rights of notaries as a profession that is expressly regulated in law. With this problem, the determination of honorarium that has been stipulated in the laws and regulations seems to be degraded and ignored. The problem occurs based on the will of the client who wants to get the lowest cost of the desired service fee, and the desire is fulfilled by the notary concerned, because in the field of notarial currently there seems to be competition between notaries in providing services specifically in making authentic deeds.

Based on the description above, the determination of a notary honorarium is regulated by 2 (two) legal provisions, namely in the Law on Notary Position and the Notary Code of Ethics. Article 36 of the Law on Notary Position regulates: (1) that Notaries receive an honorarium for legal services rendered in accordance with their authority; (2) the amount of honorarium received by a Notary is based on the economic value and sociological value of each deed he/she makes; (3) The economic value as referred to in paragraph (2) is determined from the object of each deed as follows: (a) up to Rp 100,000,000.00 (one hundred million Rupiah) or the equivalent of a gram of gold at that time, the honorarium received is at most 2.5% (two point five percent), (b) above Rp 100,000,000.00 (one

hundred million Rupiah) up to Rp 1,000,000,000.00 (one billion Rupiah), the honorarium received is at most 1.5% (one point five percent), or (c) above Rp 1,000,000,000.00 (one billion Rupiah) the honorarium received is based on an agreement between the Notary and the parties, but does not exceed 1% (one percent) of the object for which the deed is made; and (4) sociological value is determined based on the social function of the object of each deed with the honorarium received being at most Rp 5,000,000.00 (five million Rupiah). Meanwhile, in the Notary Code of Ethics, the provisions regarding honorarium are stipulated in Article 3 number 14 which stipulates that notaries must implement and comply with all provisions regarding honorarium set by members of the association. Furthermore, Article 4 number 10 of such Code Ethics also regulates the prohibition of notaries, namely determining the honorarium to be paid by the client in an amount lower than the honorarium set by the Association.

Based on the description of the above provisions, the Law on Notary Position seems to have a vacuum of norms or the absence of rules regarding legal consequences or sanctions if there are Notaries who do not obey the provisions regarding the determination of Notary honorarium in Article 36 of the Law on Notary Provision by setting the honorarium far below the specified maximum threshold or exceeding the provisions of the upper or maximum threshold limit. Thus, this condition will open up opportunities for each Notary to determine the honorarium at his own will, specifically far below the maximum threshold limit of the honorarium value of the provision. Furthermore, the phrase "Association" under Article 3 number 14, and Article 4 number 10 of the Notary Code of Ethics seems to override the Law on Notary Position as such law has regulated the honorarium under Article 36. Moreover, the Law on Notary Position has no rules that point to other regulations regarding the provisions for determining the notary honorarium.

Indeed, Indonesian law recognizes the legal theory of norms or what is also known as the theory of hierarchy of legal norms. This theory was proposed by an Austrian jurist named Hans Kelsen who developed the theory of Hans Kelsen's Hierarchy, which is the basic idea of contemporary positive

law. The Hierarchy of Legal Norms is also known as the *Stufenbau Theory*. In his view, legal norms are layered and tiered in a hierarchy (order), so that higher standards become the basis for lower norms, which in turn apply to lower norms. According to Hans Kelsen's Hierarchy Theory, the constitution is the highest rule. Every rule of law must be based on a higher rule, giving rise to a hierarchical legal pyramid.⁴ The implementation of the theory of hierarchy in Indonesia is implemented in Law Number 12 of 2011 on the Formation of Laws and Regulations as the lastly amended by Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations (Law on the Formation of Laws and Regulations). Article 7 paragraph (1) and paragraph (2) of such law stipulates that: (1) Types and hierarchy of laws and regulations consist of: (a) Constitution of the Republic of Indonesia of 1945, (b) Decree of the People's Consultative Assembly, (c) Law/Government Regulation in Lieu of Law, (d) Government Regulation, (e) Presidential Regulation; (f) Provincial Regional Regulations; and (g) Regency/City Regional Regulations; (2) the legal force of Laws and Regulations is in accordance with the hierarchy as referred to in (1)". Furthermore, in Law Formation of Laws and Regulations, the types of regulations other than those mentioned in Article 7 paragraph (1) are regulated in Article 8 paragraphs (1) and (2) which stipulate as follows: (1) Types of Legislation other than as referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or Government by order of Law, Provincial Regional Representatives Council, Governors, Regency / City Regional Representatives Council, Regents/Mayors, Village Heads or equivalent; (2) The Laws and Regulations as referred to in paragraph (1) are recognized and have binding legal force to the extent that they are ordered by "higher Laws and Regulations or formed based on authority".⁵

4 Atmadja, I. N. P. B., I. Budiarta. (2018). *Teori-Teori Hukum*, ed. Intrans Publishing Malang: Setara Press, p. 141.

5 Supryadi, A., Amalia, F. (2021). *Kedudukan Peraturan*

Based on the hierarchy of laws and regulations in Indonesia regulated under the Law on Formation of Laws and Regulations, the "Code of Ethics" is not mentioned. The definition of a code of ethics based on the Indonesian Language dictionary (*Kamus Besar Bahasa Indonesia*) is "norms and principles accepted by certain groups as a basis for behavior". Furthermore, Article 1 number 2 of the Notary Code of Ethics defines that "the Notary Code of Ethics and hereinafter will be called the Code of Ethics are moral rules determined by the Association of Indonesian Notary Association which hereinafter will be called 'Association' based on the decision of the Congress of the Association and/or determined by and regulated in the laws and regulations governing it and which apply to and must be obeyed by each and all members of the Association and all persons who carry out the duties of office as Notary, including Temporary Notary Officials, Substitute Notaries at the time of carrying out the office". Seeing the explanation of the limitations of the laws and regulations described above, the code of ethics cannot be categorized/included in laws and regulations because the code of ethics is a rule made for a particular group. Related to the legal issues discussed regarding the determination of notary honorarium, it can seem as if there is a conflict of norms between the honorarium provisions stipulated in the Law On Notary Position and the Notary Code of Ethics. The notary honorarium should be regulated in the Law, in this case, the Law on Notary Position, however, in reality, the Notary Code of Ethics also regulates it. In addition, the absence of a lower threshold limit on the honorarium value in the Law on Notary Position should be reconstructed to create clarity and balance between the content material of the Laws and Regulations based on one of the principles that must be contained in the Laws and Regulations, namely the principle of conformity between the type, hierarchy, and content material regulated in Article 5 letter c of Law on Formation of Laws and Regulations. Currently, the regulation regarding the lower threshold limit for determining the honorarium value follows the provisions made by

Menteri Ditinjau Dari Hierarki Peraturan Perundang Undangan Di Indonesia. *Unizar Law Review (ULR)*, 4(2), p. 6. <https://e-journal.unizar.ac.id/index.php/ulr/article/view/471>.

the Indonesian Notary Association Organization (*Ikatan Notaris Indonesia* or *INI*) as outlined in the Notary Code of Ethics.⁶ With these circumstances, the provisions regarding the minimum limit of notary honorarium become blurred or unclear and the provisions regarding notary honorarium seem to be shifted and degraded hierarchically in its regulation so that it does not reflect the harmonization and balance between the content material of the provisions or regulations that apply to notary honorarium.

Based on the above background, there are 2 (two) legal issues raised in this research, namely: (1) how are the legal consequences of the degradation of the determination of the amount of notary honorarium from the perspective of the principle of legal certainty?; and (2) how is the harmonization of regulatory provisions regarding the amount of notary honorarium based on the hierarchy of laws and regulations? Therefore, this research aims to examine, analyze, and provide an in-depth understanding of the legal consequences arising from the degradation of the determination of the amount of notary honorarium from the perspective of the principle of legal certainty. In addition, this research also aims to identify and formulate relevant considerations to harmonize the regulation of the amount of notary honorarium in accordance with the hierarchy of laws and regulations in Indonesia. The degradation of the determination of notary honorarium raises various significant legal consequences, especially in terms of violating the principle of legal certainty.

The lack of clarity in honorarium standards creates a mismatch between the regulation in Article 36 of the Law on Notary Position and the facts that occur, which are often influenced by the internal provisions of professional organizations. This has the potential to harm notaries as parties who should be protected by law, as well as reduce public trust in the notary profession due to non-uniform practices. This research underscores the importance of harmony between the Law on Notary Position, the Notary Code of Ethics, and other relevant regulations. Harmonization efforts

must consider the principle of hierarchy of laws and regulations as stipulated in Law on the Formation of Laws and Regulations, where laws have a higher position than internal provisions. The considerations of harmonization must also include the values of justice, professionalism, and social responsibility so that the determination of honorarium can reflect a balance between respect for the services of the notary profession and the economic capacity of the community. Thus, this study aims not only to provide practical recommendations for strengthening notary honorarium regulations but also to encourage the creation of a more consistent and fair legal system. The results of this study are expected to serve as a foundation for policy reforms that support legal certainty, protect the rights of notaries, and maintain the quality of services to the public.

This research is one of the developments and renewals of legal issues on previous research. The study of Anak Agung Ngurah Putra Satria Kusuma, and I Nyoman Bagiastra (2022) examined issues related to the regulation of honorarium in the applicable laws and regulations, with a focus on the juridical consequences for notaries who do not collect honorarium in making deeds for the parties.⁷ Maya Amalia and Ngadino (2021) examined issues related to the implementation of professional ethics rules in overcoming differences in notary honorarium and the urgency of having definite legal rules regarding the minimum limit of notary honorarium. The focus of their research was to understand the extent to which professional ethics rules are applied in the practice of determining honorarium, as well as how differences in honorarium between notaries can be overcome to prevent unfair competition and maintain professionalism.⁸ Unlike previous studies that only highlighted the lack of sanctions in the Law on Notary Position, this research uses Hans Kelsen's theory of hierarchy of norms to emphasize that the Code of Ethics,

6 Faradina, F. (2024). Analisis Tentang Persaingan Tidak Sehat Antar Rekan Notaris Sebagai Dampak Dari Penetapan Tarif Jasa Notaris Dibawah Standar. *Jurnal Kajian Ilmu Hukum*, 3(02), pp. 1-15. DOI: <https://doi.org/10.55583/jkih.v3i02.1013>.

7 Kusuma, A. A. N. P. S., Bagiastra, I. N. (2022). Akibat Hukum Bagi Notaris yang Tidak Memungut Honorarium pada Para Pihak. *Acta Comitatus Jurnal Hukum Kenotariatan* (7), 1, p. 12. DOI: <https://doi.org/10.24843/AC.2022.v07.i01.p03>.

8 Amalia, M., Ngadino, N. (2021). Implementasi Aturan-Aturan Etika Profesi Dalam Mengatasi Perbedaan Honorarium Notaris. *Notarius*, 14(1), pp. 119-134. DOI: <https://doi.org/10.14710/nts.v14i1.39129>.

which has no position in the formal legal hierarchy, should not have the same power as the Law on Notary Position. This study recommends the harmonization of honorarium provisions in the Law on Notary Position to comply with the principle of conformity of type, hierarchy, and content material in the legal system, as stipulated in Article 5 Letter C of Law on the Formation of Laws and Regulations. Therefore, it is important to do research on the Harmonization of Notary Honorarium Arrangement Related to the Notarial Deed Authority: Toward Legal Certainty.

METHODOLOGY

This research uses a normative research method, which focuses on analyzing laws and regulations related to the topic discussed. The research approach includes several methods, namely the statutory approach, analytical approach, and conceptual approach.⁹ The legal materials used are divided into two types. First, primary legal materials consist of laws and regulations relevant to the research issue, such as Law on Notary Position, Amendment to Law on Notary Position, and Law on the Formation of Laws and Regulations. Second, secondary legal materials to explain primary legal materials, which include research results, literature, seminars, discussions, and information from online sources and/or the internet. In this research, the technique of collecting legal materials was carried out through a literature study. The legal materials that have been collected were analyzed using a qualitative descriptive analysis method to provide an in-depth study and understanding of the research problem.

RESULTS AND DISCUSSION

Legal Consequences of the Degradation of the Notary Honorarium Determination from the Legal Certainty Perspective

The increase in the number of notaries triggers “tariff competition” among them, which can then

9 Diantha, I.M.P., Dharmawan, N.K.S., Artha, I.G. (2018). Metode Penelitian Hukum & Penulisan Disertasi. Denpasar: Swasta Nulus, p. 65.

create competition between notaries to attract clients. As a result, the honorarium received by notaries has become lower, even below the proper standard. This condition is often a source of complaint from notaries, given their weak bargaining position. This situation is different when notaries are dealing with the public who generally value notary services more and are willing to accept the rates set by notaries.¹⁰ Adrian Djuaini revealed that tariff competition in the notary profession has reached an alarming level. To attract clients, some notaries are “slamming prices” to unreasonable levels. These very low service fees, rationally speaking, are not even enough to cover the cost of producing deeds. The fees demanded are often likened to the price of one plate of rendang rice. Although they are aware that this practice violates ethics as stipulated in the provisions of Article 3 number 14 and Article 4 number 10 of the Notary Code of Ethics which prohibits notaries from setting honorariums lower than those determined by professional organizations.¹¹ Currently, the determination of honorarium is regulated in the regulations of the notary office organization, where the enactment of the notary organization’s regulations in each region determines the minimum rate of notary services. Then in the organizational regulation, there are sanctions for violations of the provisions on the determination of the honorarium for notary services that apply in each region.¹²

The determination of notary fees, as stipulated in Article 36 of the Law on Notary Position, is intended to reflect the balance between the economic value of the deed made and the sociological value that accompanies it. This is also reinforced by the obligation of notaries to comply with the honorarium provisions set by INI as stated in Article 3 number 13 of the Notary Code of Ethics. However, implementation in the field often encounters obstacles, especially when the honorarium received is not in accordance with the applicable

10 Candra, I. N. W., Asikin, Z., Suhartana, L. W. P. (2023). Ben-tuk Pelanggaran Hukum Dan Penegakan Hukum Notaris Di Wilayah Provinsi Nusa Tenggara Barat. Jurnal Risalah Kenotariatan, 4(1): 8. DOI: <<https://doi.org/10.29303/ri-salahkenotariatan.v4i1.100>>.

11 Ubaedillah, I. (2011). Efektifitas pembiayaan agribisnis bank Syariah dalam pemberdayaan petani. Studi Kasus Pada Pt. Bank Muamalat Indonesia Tbk, Pusat.

12 Faradina, F. Op. Cit. p. 10.

provisions. The phenomenon of degradation of notary rights in obtaining honorarium shows that often the agreed value is far below the predetermined threshold, and it is not uncommon for honorarium offers to be considered not commensurate with the workload and responsibilities carried out by notaries. This becomes an increasingly complex problem when faced with the notary's obligation to provide legal services free of charge to people who cannot afford it, as stipulated in Article 37 paragraph (1) of the Law on Notary Position.

Although Article 37 paragraph (1) of the Law on Notary Position requires notaries to provide *pro bono* services to underprivileged people, this provision still leaves ample room for interpretation. The explanation in the Law on Notary Position regarding the qualification standard of "underprivileged people" is often considered to be less specific, thus opening up the possibility of different perceptions among notaries. In this context, it should be underlined that the provision of services free of charge to the poor cannot be equated with the practice of setting honorariums below the minimum standard. The provision of free services is specific and relies on the social responsibility of the notary, while the setting of a low honorarium tends to illustrate the weak supervision of the implementation of Article 36 of the Law on Notary Position and the Notary Code of Ethics.

Therefore, this research emphasizes the urgency of clarifying and strengthening regulations regarding notary honorariums. It is important to ensure that every honorarium determination remains based on the principles of justice and takes into account the economic interests of the community without ignoring the professional rights of notaries. In this case, it is necessary to strengthen the supervisory role of INI and related authorities to avoid practices that are detrimental to notaries as a legal profession, which has a big responsibility in maintaining legal certainty and the integrity of deeds made. It is hoped that consistent and transparent implementation of Article 36 Law on Notary Position can create a better balance between respect for the notary profession and public access to quality legal services.

The degradation of honorarium regulations in the Law on Notary Position, which is then re-regulated by hierarchically lower regulations, such as

the Notary Code of Ethics, has given rise to several legal consequences. The law on Notary Position itself, as a regulation with a higher hierarchy, regulates the maximum limit of honorarium without mentioning the authority of the Code of Ethics to further regulate honorarium. As a result, discrepancies arise between the provisions in the Law on Notary Position and the Notary Code of Ethics. Legally, this disharmony creates confusion in the application of the principle of *lex superior derogat legi inferiori*, which places Law on the Notary Position as a rule that should override lower rules. When the Notary's Code of Ethics still regulates the minimum limit for honorarium, this is contrary to the Law on Notary Position's higher hierarchical position and also does not have a clear basis in the Law on Notary Position itself.¹³ As a result, notaries are in a dilemma situation, where compliance with the Law on Notary Position is considered valid based on the regulatory hierarchy, but they also face ethical sanctions if they do not comply with the Code of Ethics, which stipulates a minimum fee. In addition, weak supervision of honorarium violations further worsens this condition. As stated by Habib Adjie, because the nature of the honorarium provisions in the Law on Notary Position are only guidelines without strict supervision, violations tend to occur without strict sanctions, both for the minimum and maximum honorarium.¹⁴ Furthermore, Article 4 point 9 of the Notary Code of Ethics prohibits notaries from making direct or indirect efforts that have the potential to create unhealthy competition, which is very relevant in the context of this degradation of honorarium regulations. These provisions aim to prevent practices that could damage professional relationships between fellow notaries and maintain the dignity of the profession. However, in reality, the existence of minimum honorarium limits regulated by notary associations in each region can create an imbalance. These regulatory differences result in tariff disparities between regions, which can trigger unhealthy competition.¹⁵

13 Astuti, A.M. (2016). Honorarium Notaris Sebagai Upaya Untuk Melindungi Hak Notaris Guna Kepastian Dan Keadilan. Doctoral dissertation, Brawijaya University.

14 Putri, N., Prananingtyas, P. (2019). Peran Ikatan Notaris Indonesia (INI) dalam Penetapan Tarif diantara Notaris Kota Balikpapan. *Notarius*, 12(1), pp. 134-146. DOI: <https://doi.org/10.14710/nts.v12i1.23776>.

15 Faradina, F. Loc. Cit.

This disharmony also emphasizes the need for firmer and more uniform regulations in the Law on Notary Position regarding honorariums, including clear sanctions. If only the Code of Ethics, as the one that regulates it, without synchronization with the Law on Notary Position, which acts as a higher legal umbrella, notaries have the potential to violate ethics even though they comply with the Law on Notary Position. Therefore, the Law on Notary Position needs to adopt more comprehensive provisions regarding honorariums, which not only protect the bargaining position of notaries but also ensure alignment with the Code of Ethics, so that these regulations apply evenly throughout the region without triggering competition in rates between fellow notaries.

Based on the description above, it is necessary to construct and reconstruct the norms of Article 36 of the Law on Notary Position. Thus, hopefully, such a law will also state the determination of the minimum honorarium limit determined by the notary position organization, as well as contain provisions for sanctions so that these regulations have certainty, justice, and legal benefits. Therefore, determination by the notary organization will have binding power based on the Law on Notary Position.

Harmonization of Regulatory Provisions on Notary Honorarium Amounts Based on the Hierarchy of Laws and Regulations

Notaries do not receive honoraria from the state even though the state appoints notaries as public officials. However, notaries receive fees for authentic deeds drawn up and ratified by notaries from parties who have appeared before the notary for legal actions carried out as stated in Article 36 paragraph (2) of the Law on Notary Position.¹⁶ The authority of a notary has been determined by Article 15 of the Law on Notary Position, especially in making deeds, namely legal acts regulated by law or the parties themselves who appear before the notary and then express their wishes to have it written down in the form of a notarial deed.¹⁷

Article 36 of the Law on Notary Position states that a notary has the right to receive an honorarium after completing his duties in preparing authentic deeds and other activities within his authority. The amount of this honorarium is based on the economic and sociological value of each deed prepared and ratified by a notary. For transaction values up to Rp. 100,000,000.00 (one hundred million rupiah), the honorarium received does not exceed 2.5% of the value of the object in the deed. Meanwhile, for transactions between Rp. 100,000,000.00 to Rp. 1,000,000,000.00 (one billion rupiah), maximum honorarium is 1.5%. For transactions above Rp. 1,000,000,000.00, the amount of the honorarium is agreed between the parties concerned and the notary but cannot exceed 1% of the value of the object in the deed.¹⁸

The regulation of honorarium for notary services in the Law on Notary Position and the Notary Code of Ethics is considered to be inconsistent, causing confusion among notaries and the public. This condition shows the potential for overlap between the provisions in the Law on Notary Position and the Notary Code of Ethics regarding honorariums. This problem conflicts with several legal theories that apply in the Indonesian legal system, one of which is the Hierarchy of Legislative Regulations Theory. In Indonesia, this theory is implemented through the Law on Formation of Laws and Regulations, especially in Article 7 paragraphs (1) and (2) as well as Article 8 paragraphs (1) and (2). Those articles do not mention the Code of Ethics in the hierarchy of regulations. The Code of Ethics, according to the Indonesian Language Dictionary (*Kamus Besar Bahasa Indonesia*), is “norms and principles accepted by a particular group as a basis for behavior”. The Notary’s Code of Ethics is further explained in Article 1 point 2 of the Notary Code of Ethics that it is moral rules determined by the Indonesian Notary Association, which will hereinafter be called the “Association”, based on the decision of the Association’s Congress and/or as determined by and regulated in the laws and

16 Kristyanto, H.S.A., Wisnaeni, F. (2018). Pemberian Jasa Hukum Bidang Kenotariatan Berdasarkan Pasal 37 Undang-Undang Nomor 2 Tahun 2014 Jabatan Notaris. Studi Kasus Notaris Di Kota Semarang. *Notarius*, 11(2), pp. 266-282. DOI: <<https://doi.org/10.14710/nts.v11i2.31101>>.

17 Doly, D. (2016). Kewenangan Notaris Dalam Pembuatan

Akta Yang Berhubungan Dengan Tanah. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 2(2), pp. 269-286. DOI: <[10.22212/jnh.v2i2.217](https://doi.org/10.22212/jnh.v2i2.217)>.

18 Saputra, R., Fendri, A., Delfiyanti, D. (2023). Penetapan Honorarium Notaris dalam Pembuatan Akta di Kota Pariaman. *UNES Law Review*, 6(1), pp. 2905-2921. DOI: <<https://doi.org/10.31933/unesrev.v6i1.1088>>.

regulations which regulate this matter and which apply to and must be obeyed by each and all members of the Association and all persons carrying out official duties as Notaries, including Temporary Notary Officials, Substitute Notaries while carrying out their positions.

Law on Notary Position regulates the legal basis for the determination of notary honorariums. However, this matter is then regulated again under the Notary's Code of Ethics where the notary is obliged to comply with provisions as regulated in the Notary's Code of Ethics. It certainly seems to be hierarchically degraded. Degradation in a legal context means a decrease in the quality or position of a rule or document in the legal hierarchy or value. In relation to notary honorariums, degradation of honorarium regulations occurs when the position of honorarium determination—which should be regulated by law as a strong professional guideline and has legal certainty—is shifted by the internal provisions of the Notary Code of Ethics regulated by professional organizations.¹⁹

This degradation shows that there are problems with legal provisions that are hierarchical, such as laws, with provisions that are internal or autonomous in professional organizations such as the Notary Code of Ethics. On the one hand, Article 36 Law on Notary Position regulates honorariums based on the principles of the economic and sociological value of deeds, providing a strong basis for determining minimum limits and maintaining a balance of justice. However, on the other hand, the Notary Code of Ethics, through the internal provisions of professional organizations such as INI, often takes a dominant role in determining honorariums without considering the limits determined by law. As a result, there has been a decline in the position of Law on Notary Position in practice, so the value of the law, which should be firm, is compromised.

The implications of this degradation are very significant, not only for the right of notaries to receive proper recognition for their profession, but also for public trust in the notary profession. Ambiguity and inconsistency in determining honorariums create space for practices that are not in

accordance with the principles of justice and can have a negative impact on notary professionalism standards. Therefore, harmonization is needed between the Law on Notary Position and the Notary Code of Ethics, by emphasizing that internal provisions must not conflict with or weaken the position of the law. This harmonization must be accompanied by more effective supervision to ensure consistent enforcement of regulations and protect the interests of both notaries and the public who use the services.

In this case, the decline in the notary's honorarium occurred due to the duality of regulations between the Law on Notary Position and the Notary Code of Ethics. Law on Notary Position provides a strong legal basis for regulating honorariums, where notarial deeds as authentic evidence should maintain their value and authority. However, when the honorarium provisions in the Law on Notary Position are not accompanied by strict sanctions and minimum limits. The notary is free to determine a rate that is lower than it should be, following the provisions of professional organizations that regulate honorariums through the Code of Ethics. This provision causes ambiguity and a decline in honorarium standards, which reduces the status of these rules from a formal legal basis to simply an organizational guideline. As a result of this degradation, the position of the honorarium as part of a notary's professionalism and authority may become less strong in the eyes of the law. This lack of clarity can even lead to irregularities in the application of honorariums, which undermines the authenticity of deeds and affects legal protection for users of notary services.²⁰

The inconsistency between the Law on Notary Position, especially Article 36, and the Notary Code of Ethics, especially Article 3 point 14 and Article 4 point 10, shows the need for synchronization. This effort can be carried out through vertical research, which analyzes the relationship between rules with different hierarchical levels but related to the same substance. Considering that the Law on Notary Position is at a higher level in the hierarchy, therefore, the Notary Code of Ethics should com-

19 Putri, N.A. (2023). Degradasi Moral Hukum, Osfpreprints. <<https://osf.io/preprints/osf/bqcpd>> [Last seen: 10.11.2024].

20 Anjulika, A.P. (2023). Penegakan Kode Etik Notaris Oleh Dewan Kehormatan Terhadap Pelanggaran Besaran Honorarium Notaris Di Kabupaten Kutai Timur. Doctoral dissertation. Universitas Islam Indonesia.

plement and support the honorarium provisions as regulated in the Law on Notary Position, not shift or create ambiguity regarding these arrangements.

In the legal system, there are three preferential principles for resolving conflicts between laws and regulations. First, "*lex superior derogat legi inferiori, lex posterior derogat legi priori*", and "*lex specialis derogat legi generali*". The principle of "*lex superior derogat legi inferiori*" confirms that if there is a conflict between rules at different hierarchical levels, then the rules at the higher level override the lower ones. Second, the principle of "*lex posterior derogat legi priori*" states that if there is a conflict between old and new rules in the same field, the new rules apply, even though the old rules have not been explicitly revoked. Third, the principle of "*lex specialis derogat legi generali*" applies when there is a conflict between general and specific rules regarding the same material, then the special rules will apply overriding the general ones.²¹ In determining the applicable laws and regulations regarding the regulation of notary honorarium, the principle that can be applied is the principle of "*lex superior derogat legi inferiori*". This principle states that if there are legal rules that regulate the same normative material, there should be no contradiction between the higher regulations and the lower regulations. If there is a difference between the two, then the rules at the higher level will override the rules at the lower level.²²

Law on Notary Position is seen as a legal regulation that has a higher level than the Notary Code of Ethics. Law on Notary Position regulates the maximum limit of honorarium that a notary may charge to clients but does not set a minimum limit for service fees. Meanwhile, the Notary Code of Ethics regulates the minimum honorarium limit set by the association. Based on the principle of "*lex superior derogat legi inferiori*", the provisions that should take priority are the regulations in the Law

on Notary Position, namely the maximum limit on honorarium.

By placing the Law on Notary Position according to its hierarchy, the application of the principle of *lex superior derogat legi inferiori* is not enough to resolve the issue of regulating notary honorarium as a whole. The law on Notary Position does regulate the maximum limit for honorarium, but there is still a legal vacuum in terms of determining the lower threshold for honorarium. The construction of new legal norms is needed to overcome the uncertainty that arises due to unclear honorarium standards, especially in the face of unhealthy competition between notaries, which can impact the quality of notary services in society. The construction of new norms in the Law on Notary Position needs to include setting a minimum honorarium limit that takes into account people's ability to pay while supporting the continuity of notarial practice, especially for novice notaries. With minimum honorarium standards, disparities and competition in rates between notaries can be minimized. In addition, this regulation needs to be accompanied by clear sanctions to enforce discipline and maintain professional integrity, from administrative sanctions to revocation of practice permits for serious violations. This construction must also include control and supervision mechanisms by the relevant authorities and the Notary Supervisory Council to ensure that honorarium standards are applied consistently, thereby creating more comprehensive regulations, providing legal certainty, and supporting professionalism and healthy competition among notaries.²³

CONCLUSION

The disharmony between the Law on Notary Position and the Notary Code of Ethics related to honorarium creates legal confusion. Article 36 of the Law on Notary Position only regulates the maximum honorarium without setting a minimum honorarium standard. Meanwhile, the Notary Code of Ethics sets a minimum notary honorarium, which creates a di-

21 Ida Bagus Agung Putra Santika. (2017). Pergeseran Makna Hak Menguasai Tanah Oleh Negara Dalam Pemanfaatan/Penggunaan Tanah Untuk Investasi. 1st ed. Badung: Serat Ismaya, p. 37.

22 Wulan, H. R., Bakry, M. R., Hardian, F. (2023). Kemanfaatan Hukum Atas Putusan Mahkamah Agung Nomor 3/P/Hum/2022 Terhadap Proses Pengangkatan Notaris di Indonesia. Comserva: Jurnal Penelitian dan Pengabdian Masyarakat, 2(09), pp. 1856-1872. DOI: <https://doi.org/10.31933/unesrev.v6i1.1088>.

23 Putra, G. I., Hasanah, S., Jiwantara, F. A. (2023). Penguatan Kewenangan Majelis Pengawas Wilayah Notaris dalam Pembinaan dan Pengawasan Notaris. Indonesia Berdaya, 4(2), pp. 679-688. DOI: <https://doi.org/10.47679/ib.2023475>.

lemma for notaries, between complying with the Law on Notary Position or facing ethical sanctions. Weak supervision also exacerbates the problem and triggers unfair honorarium competition. This lack of lower honorarium thresholds creates uncertainty for notaries in setting rates that are in line with professional standards and healthy competitiveness. Apart from that, the Law on Notary Position does not provide clear sanctions for notaries who violate the provisions on honorarium limits, whether related to rates that are too low or high, so there are loopholes that can be misused and hurt the integrity of the profession. Therefore, new norms construction under the Law on Notary Position is needed. Those norms include the regulation on setting a

minimum honorarium limit that takes into account people's ability to pay while supporting the continuity of notarial practice, clear sanctions to enforce discipline, and maintaining professional integrity ranging from administrative sanctions to revocation of practice permits for serious violations, as well as control and supervision mechanisms by the relevant authorities and the Notary Supervisory Council to ensure that honorarium standards are applied consistently. All in all, this proposed harmonization, a new norm construction under the Law on Notary Position will hopefully provide legal certainty, professionalism, and healthy competition among notaries in Indonesia.

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