



**THE ESTABLISHMENT OF THE NOTARY OFFICE LAW ARTICLE 37
REVIEWED FROM THE POLITICAL PERSPECTIVE OF NATIONAL
LAW**

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ABSTRACT

The political notion of notarial law is urgently needed in the its affairs aspect, especially after the amendment of the UUJN, bearing in mind that there are regulations that came after the amendment of the law. Changes to the UUJN itself are legal politics in the notary because there are several articles in the UUJN which are still concise, even though generally and clearly stated “explanatory attachments” such as Article 37 of UUJN National legal politics as a basic guideline for all forms and processes of formulation, formation, and development of law in the country. If the national legal politics is the basic guideline for all forms and processes of formulating, forming, and developing laws in the country, it can be ensured that national legal politics must be formulated in a statutory regulation that is also fundamental, not in a technical statutory regulation.

Keywords: Establishment. Act. Politics of National Law

1. Introduction

Everyone has the right to get justice because it is part of the constitutional rights of citizens, so the state cannot prevent or limit someone from getting it. Justice is embodied in a statutory regulation as a guideline in writing and applies to everyone. The relationship between citizens and the state, relations between state institutions, and the performance of each element of power are in a system of rules that are agreed upon and upheld.

In practice, implementing justice as the goal of law is not easy where in realizing it, humans often compete in fulfilling their own needs so that there are many conflicts of interest between one another and triggering disputes. To resolve these disputes to achieve justice, the important role of juries or people who work in the field of legal services is needed, one of which is a Notary.

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Notaries have the authority to provide legal services related to making authentic deeds as regulated in Article 15 of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Notary Office Law (hereinafter referred to as UUIJN = Undang Undang Jabatan Notaris) Number 30 of 2004.

Looking at the philosophy of the Notary profession which holds an important role in the field of legal services, then according to J. Gijssels and Mark Van Hoecke that legal dogmatic is used in solving practical problems, therefore, someone who masters legal dogmatic as a practical legal science should have an arsenal of scientific skills in the field of law. The goal is to provide legal problem-solving for problems that exist in society. Thus, a Notary who has studied to become a jurist can play a role in providing legal assistance to the community free of charge.

However, in practice over time with the increasing number of people who are practicing the Notary profession, coupled with technological developments and the opportunity for some Notaries to get as many clients as possible in an instant and unusual way as well as conditions and needs that continue to increase, this makes some unscrupulous notaries tempted to deviate from the existing rules. Unwittingly, this has created increasingly-unhealthy competition among some notaries themselves. They proactively go to the market to visit clients, even those who are less able to offer services, negotiate honorariums and enter into agreements like businessmen in general.

Undoubtedly, this practice is contrary to UUIJN Article 36 which stipulates that:

- (1). Notaries are entitled to receive an honorarium for legal services provided 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 made.
- (3). The economic value referred to in paragraph (2) is determined from the object of each deed as follows:
 - a. Up to IDR 100,000,000.00 (one hundred million rupiahs) or the equivalent of a gram of gold at that time, the maximum honorarium received is 2.5% (two point five percent);

- b. Above Rp. 100,000,000.00 (one hundred million rupiahs) to Rp. 1,000,000,000.00 (one billion rupiah) the maximum honorarium received is 1.5% (one point five percent); or
 - c. Above IDR 1,000,000,000.00 (one billion rupiahs) the honorarium received is based on an agreement between the Notary and the other parties but does not exceed 1% (one percent) of the object for which the deed is made.
- (4). The sociological value is determined based on the social function of the object for each word with a maximum honorarium of IDR 5,000,000.00 (five million rupiah).

In addition to this article, in UUJN Article 37 paragraph (1) "Notaries are obliged to provide legal services in the notary field free of charge to people who can't afford it". The article indicates that people who cannot afford notary services can be provided free of charge.

Hikmahanto Juawana in Reform of Economic Laws and Its Effects on The Post-Crisis Indonesian Economy argues that what is meant by legal policy is the purpose and reasons for enacting certain laws. He said that the legal policy that determines the concept of the law can be separated into two dimensions. The first dimension is what is called the basic policy of certain laws. Basic policy refers to the basic purpose for enacting certain laws. Meanwhile, the second dimension of the policy is when the government decides to formulate policies related to certain laws.

Thus, if the above practices are viewed from the political-legal framework for establishing UUJN, by all means, this becomes an important issue, not only regarding how UUJN Article 37 is implemented as part of the responsibilities of a notary but also regarding whether the Article has been in accordance with the basic objectives of national legal politics.

2. Research Method

This type of research uses legal research with legal materials, this research uses primary legal materials, secondary and non-legal materials. As for primary legal material, it is legal material that is authoritative, meaning it has authority. Primary legal material consists of legislation, official records or

treatises in making laws and judges' decisions. For primary legal material that has the highest authority is the Constitution because all the regulations under it, both in content and soul, cannot conflict with the Constitution. In this research, the material for secondary law is in the form of books, articles, journals or other scientific works related to this research. Then for non-legal materials, in the form of language dictionaries, legal dictionaries, and other auxiliary materials to support research.

The analysis in this study uses deductive analysis, which is an analysis that uses reasoning or thought processes that depart from specific conclusions from more general premises. If the premise is true and the method of drawing the conclusion is valid, then the conclusion can be confirmed to be true. In reasoning, the proposition that is used as the basis for the conclusion is called the premise and the conclusion is called the conclusion.

3. Results and Discussion

The Establishment of Article 37 of the Notary Office Law reviewed from the Perspective of National Legal Politics

According to Moh. Mahfud MD, Legal politics is a legal or official line (policy) regarding law that will be enforced either by making new laws or replacing old laws to achieve state goals. Thus legal politics is a choice about the laws that will be enforced as well as a choice about the laws that will be repealed or not enforced, all of which are intended to achieve the goals of the state as stated in the opening of the 1945 Constitution.

According to Satjipto Rahardjo, several fundamental questions emerge in the study of legal politics, namely: (1) What goals are to be achieved with the existing legal system (2) Which methods are deemed most appropriate to be used to achieve these goals (3) When the law needs to be changed and in what way should it be done (4) Can a standard and well-established pattern be formulated that can help us decide on the process of choosing goals and the ways to achieve these goals properly.

National legal politics is a basic guideline for all forms and processes of formulation, Establishment, and development of law in the country. If national legal politics is the basic guideline for all forms and processes of formulating, forming, and developing laws in the country, it can be ensured that national legal politics must be formulated in a statutory regulation that is also fundamental, not in a technical statutory regulation.

The national legal system is a legal and statutory unit consisting of many interdependent components, which are built to achieve state objectives based on the foundations and ideals of state law contained in the Preamble and Articles of the 1945 Constitution.

The goals of national legal politics include two interrelated aspects:

- 3.1. As a tool or means and steps that can be used by the government to create the desired national legal system; and
- 3.2. With this national legal system, the aspirations of the larger Indonesia as a nation will be realized.

Therefore, it can be emphasized that the Preamble and the Articles of the 1945 Constitution are the sources of the entire Indonesian national legal politics. The affirmation of both as a political source of national law is based on two reasons, i.e.:

- 3.1. The Preamble and the Articles of the 1945 Constitution contain the objectives, basis, legal ideals, and basic norms of the Indonesian state which must be the goal and foothold of legal politics in Indonesia.
- 3.2. The Preamble and the Articles of the 1945 Constitution contain distinctive values originating from the views and culture of the Indonesian as a nation which were passed down from our ancestors.

In an effort to make the law a process of achieving the ideals and goals of the state, national legal politics must be based on the following basic framework:

- 3.1. National legal politics must always lead to the ideals of the nation, specifically a just and prosperous society based on Pancasila.
- 3.2. National legal politics must be aimed at achieving the goals of the state, namely, protecting the entire nation and all of Indonesia's bloodshed, promoting public welfare, educating the nation's life, and implementing world order based on freedom, eternal peace, and social justice.
- 3.3. National legal politics must be guided by the values of Pancasila as the foundation of the state, explicitly: based on religious morality, respecting and protecting human rights without discrimination, uniting all elements of the nation with all its primordial ties, placing power under the rule of the people, and building social justice.
- 3.4. National legal politics must be guided by the imperative to: protect all elements of the nation for the sake of integration or national integrity which includes ideology and territory, embody social justice in the economy and society, actualize democracy (people's sovereignty), and nomocracy (legal sovereignty), create tolerance of religious life based on civility and humanity.
- 3.5. The national legal system that must be built is the Pancasila legal system, namely a legal system that takes or combines various values of interests, social values, and the concept of justice into one prismatic legal bond by taking the good elements.

The political notion of notarial law is urgently needed in the notary world, especially after the amendment of the UUJN, bearing in mind that there are regulations that came after the amendment of the law. Changes to the UUJN itself are legal politics in the notary because several articles in the UUJN are still brief, even though the "explanatory attachments" are general and clearly stated as UUJN Article 37.

The meaning contained in UUJN article 37 (1) needs to be clarified due to the standard qualifications for incapacitated people require explanation so that it can be implemented and does not cause multiple interpretations.

UUJN Article 37 paragraph (1) shows that Notaries carry out their profession in providing protection and guarantees for achieving legal certainty to the community regardless of the economic capabilities of their clients. Moreover, UUJN Article 37 paragraph (2) is a guardian of the implementation of the notary's performance in the provision of legal services in the notary field free of charge in the community.

If viewed from the political perspective of national law contained in the 1945 Constitution, then UUJN Article 37 should contain the values of Pancasila as the basis of the state, namely: based on religious morality, respecting and protecting human rights without discrimination, uniting all elements of the nation with all its primordial ties, placing power under the rule of the people, and building social justice.

The point is that the Establishment of UUJN Article 37 must retain the understanding that the provision of services in the notary field is influenced by human factors which are based on the morality and integrity of a notary, and also supported by scientific factors regarding the provisions contained in UUJN, one of which concerns the obligation to provide free of charge legal services to underprivileged groups of people, because without sufficient knowledge about the provisions of one of their obligations, these obligations will not be applied in carrying out their profession in the community.

The achievement of the goal of establishing UUJN Article 37 in accordance with national legal politics will increase the dignity of notaries and increase public trust in notaries regarding the provision of legal services in the notary sector.

4. Conclusion

In the perspective of national legal politics, the construction of UUJN Article 37 should have been based on the basic framework of Pancasila values as the foundation of the state, namely: based on religious morality, respecting and protecting human rights without discrimination, uniting all elements of the nation with all their primordial ties, placing power under the rule of the people, and building social justice. In this context, the meaning is that the establishment of Article 37 of the UUJN Law has the understanding that the provision of services in the notary sector is influenced by human factors which are based on the morality and integrity of a notary in providing legal services free of charge to underprivileged groups of people.

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