

The Legal Liability of a Notary Who Conducts Unfair Competition by Notary Partners

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Abstract. *Unfair competition between Notaries and colleagues, setting honorarium below the standard set by the Association is still common in Notary practice and this can trigger other Notaries to take similar actions in order to get as many clients as possible so that they get out of the corridor of the rule of law stipulated in the Law on Notary Positions and the Notary Code of Ethics. This study aims to determine the responsibility of a notary who commits unfair competition and the juridical implications of the actions of a notary who commits unfair competition. This research was conducted using a Juridical Sociological approach and an Explanatory Research specification. The data sources used are primary, secondary and tertiary data. Primary data collection was carried out using population techniques and sampling techniques. Data collection techniques using field research and library research. The data analysis method uses qualitative and descriptive data analysis. Research results show that: First, A notary who has committed unfair competition by not complying with the amount of honorarium determined by the association is a violation of the Notary's code of ethics and can be burdened with responsibility in the form of imposing ethical sanctions as determined and regulated in the regulations of the Indonesian Notary Association. Second, The juridical implications for a Notary who engages in unfair competition and withdraws honorarium below the minimum honorarium set by the Association, then the Notary can file a default lawsuit by the Association in this case by the Indonesian Notary Association by first giving a warning or subpoena to the Notary who has charge an honorarium below the minimum honorarium set by the Association.*

Keywords: Association; Honorarium; Responsibility.

1. Introduction

Notary is a form of legal profession and legal consultant, as well as a very important position to support law enforcement through the implementation of his professional position as a public official who is authorized to make a legal product, namely an authentic deed that has perfect evidentiary power to help create legal certainty for the community.

The notary must prevent the occurrence of legal problems in the future regarding the legal action through an authentic deed that he made as a perfect means of proof in court. An authentic deed made by a notary is a perfect proof because it has three evidentiary powers, namely birth evidentiary powers (*uitwendigebewijsmacht*), formal evidentiary powers (*formelebewijsmacht*) and material evidentiary powers (*materielebewijsmacht*). Along with the development of the current era, it also affects the increase in the public's need for the use of notary services. Notary profession is an honorable profession that is always attached to ethics and it is with ethics that Notaries serve the interests of society, especially in the field of civil law. Without ethics, Notaries are just mechanical robots moving without a soul inside.¹

So that the party who has taken office as a Notary will have the responsibility to always maintain the dignity, dignity and honor of the Notary profession and comply with Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions and Changes to the Notary Code of Ethics Extraordinary Congress of the Indonesian Notary Association Banten, May 29-30 2015 made by the Notary Professional Organization where what is meant is the Indonesian Notary Association, hereinafter abbreviated as (INI).

The professional code of ethics is a product of applied ethics because it is produced based on the application of ethical thinking to a profession. The professional code of ethics can change and be changed along with the development of science and technology, so that members of professional groups will not be out of date. The professional code of ethics is only effective if it is imbued with the ideals and values that live within the profession itself. A professional code of ethics is a formulation of human moral norms that carry out that profession. The professional code of ethics is a benchmark for the

¹GHS Lumban Tobing, 1999, Notary Office Regulations, Cet. V, Primary Literacy Movement, Jakarta, p. 55-59.

actions of members of professional groups. The professional code of ethics is an effort to prevent unethical behavior by its members.

The Notary Code of Ethics directly prohibits acts that give rise to unfair competition between Notary colleagues as stipulated in Article 4 number 9 Amendments to the Notary Code of Ethics at the Extraordinary Congress of the Indonesian Notary Association Banten, 29-30 May 2015, namely "Notaries and other people (who during the concerned running the position of Notary) is prohibited from making efforts, both directly and indirectly, which lead to the emergence of unfair competition with fellow Notary colleagues. It is hoped that the determination of the honorarium can be controlled and supervised by the Association of Notaries, namely the Association of Indonesian Notaries for members of the Association. And the Code of Ethics has formed an Honorary Council to oversee the implementation of the Notary's Code of Ethics.

2. Research Methods

Legal Research is the process of discovering the laws that govern activities in human society. This is in accordance with what was stated by Morris L. Cohen that: "Legal Research is the process of finding the law that governs activities in human society".² Furthermore, Hillway as quoted by J. Suparno, explained that "research is nothing but a study method that is carried out by someone who goes through careful and perfect investigation of a problem, so that the right solution to the problem is obtained."³ The research conducted is explanatory research, namely research that aims to test a theory or hypothesis in order to strengthen or even reject a theory or hypothesis based on pre-existing research results.⁴

3. Results and Discussion

3.1. Legal Liability of Notaries Who Conduct Unfair Competition Conducted by Notaries

Of course, the determination of the honorarium for notary services is below standard which can lead to unhealthy competition between fellow notaries alone raises its own problems, not only limited to fellow notaries but also to the notary concerned himself. Apart from being able to create gaps between fellow notaries in a certain area so that it can cause disharmony in relations with colleagues in the profession who should actually be able to help and respect each other, this can also degrade the dignity of the notary profession which should always be

²Morris L. Cohen & Kent C. Olson, 1992, *Legal Research*, West Publishing Company, St Paul, Minn, p. 1.

³J. Suparno, 2003, *Legal and Statistical Research Methods*, PT Rineka Cipta, Jakarta, p. 1.

⁴David Nachmias and Chava Nachmias, 1987. *Research Methods in the Social Sciences*, Third Edition, New York: St. Martin's Press, p. 10-15.

guarded by anyone who carries out the profession and has violated the law of office as well as the code of ethics and oath of office which obliges every notary to always behave honestly, and maintain the honor and dignity and responsibilities of the notary profession.⁵

The determination of Honorarium or Notary Fees is increasingly not implemented. Because even though the amount of the notary's honorarium has been determined, there are still notaries who set the honorarium below the stipulated provisions. This is because there are more and more notaries in various regions, thus triggering increasingly fierce competition among fellow notaries. The more intense the competition, the more Notaries will commit bad deeds. This action creates legal liability for the notary. The thing that surfaced is the notary's responsibility for unfair competition committed by a notary.

Regarding the matters raised by the Central Board of the Indonesian Notary Association mentioned above, it is still happening and causing polemics, especially in the relationship between Notaries. In Kendari City, for example, the implementation of unfair competition in carrying out notary practice, especially with regard to notary fees, is still found, the author stated based on the results of the author's interview with a notary in Kendari city, which basically stated that the determination of the honorarium of a Notary in Kendari City as Classification of Region B had an incident,⁶

Provisions regarding notarial deed honorarium are also listed in several articles in the Notary Code of Ethics. Notary Code of Ethics which regulates the prohibition for notaries to set honorarium below the standard set by the association. These provisions can be clearly seen and read in Article 3 paragraph (13) of the Notary Code of Ethics that "Notaries and other people who assume and carry out the position of a Notary are obliged to carry out and comply with all provisions regarding the honorarium set by the association". This means that the association has made a rule relating to notary honorarium.

Whereas in addition to the article mentioned in Article 4 paragraph (10) of the Notary Code of Ethics also regulates honorarium, that a notary or other person who assumes and performs the position of a notary is prohibited from setting an honorarium to be paid by the client in a lower amount than the honorarium determined by the association. From the provisions of this article, it can be seen that the Notary Code of Ethics does not require a lower honorarium. This is proven by the stipulation by the association regarding the minimum standard of honorarium for Notary services.

Whereas by setting the minimum honorarium for notary services, it means that the Indonesian Notary Association (INI) wants to create uniform price standards

⁵Central Board of Indonesian Notary Association, *Identity of Indonesian Notary: Past, Present and Future*, Gramedia Pustaka, Jakarta, 2008, p. 94

⁶The results of an interview with a Notary in Kendari City

for notary services honorarium. Determination of honorarium standards for notary services by associations is aimed at preventing the emergence of unfair competition by fellow notaries against free honorarium by notaries. However, the increasing competition makes more and more notaries ignore this. Standard honorarium that has been set.

The legal responsibility of a notary by imposing sanctions on a notary who commits unfair competition in order to provide awareness to the party who violates it that an action taken is not in accordance with the applicable legal regulations and to return those concerned to act in accordance with the applicable legal regulations as well as to maintain balance of the running of a rule of law. Sanctions aimed at notaries are also a form of awareness for notaries not to violate applicable laws.

Responsibility in the legal dictionary can be termed liability and responsibility, the term liability refers to legal responsibility, namely accountability due to mistakes made by legal subjects, while the term responsibility refers to political responsibility.⁷

According to Hans Kelsen, in his theory of legal responsibility, it states that: "a person is said to be legally responsible for a certain action, that is, he can be subject to a sanction in the case of the opposite act".⁸Hans Kelsen further stated that:

Recent legal techniques require a distinction between cases when individual actions have been planned and intended for a certain effect of said actions and cases when an individual's actions bring harmful consequences without being planned or intended by the perpetrator..., the principle of imposing sanctions on individual actions only because the consequences of the act have been planned and with wrong intentions are not fully accepted in modern law, individuals are legally responsible not only if objectively harmful effects are carried out illegally, but also if the consequences of said actions have been intended even without wrongful intent, or if the consequences occurs without any intention or planned by the individual perpetrator. But the sanctions may be different in different cases.⁹

Hans Kelsen's theory of responsibility as described above is a critique of primitive legal principles that do not separate prohibited actions from the inner intentions of individual perpetrators. This concept is called the concept of absolute accountability, in which an individual's unlawful act is sufficient to be seen from the aspect of the act, that what is done is prohibited by law without regard to

⁷HR. Ridwan, 2006, State Administrative Law, Raja Grafindo Persada, Jakarta, p. 337.

⁸Jimly Asshiddiqie and Ali Safa'at, Op City. P. 56

⁹Ibid p. 56-57

the inner attitude of the perpetrator. Kelsen then gives his views on responsibility based on psychological qualifications called culpability or accountability based on the terms of error which are often called *dolus* and *culpa*.

Kelsen's formulation of absolute liability in modern law is only known in an omission offense, by stating that in modern law there are also known other forms of wrongdoing without intent or planning, namely negligence.¹⁰ Kelsen further divides the responsibilities consisting of:¹¹ Individual responsibility, that is, an individual is responsible for his own violations; and Collective accountability means that an individual is responsible for a violation committed by another person.

Based on the theory of legal liability put forward by Hans Kelsen above, associated with legal issues arising from unfair competition for Notaries in Notary practice, especially in the context of the Honorarium game set by the Association (Indonesian Notary Association), it can be said that a Notary legally responsible if in carrying out his position the Notary has violated the established legal provisions.

In connection with the Notary's violation in carrying out his position that has played with the minimum honorarium value set by the association, it can be seen from the notary's ethical responsibility. Professional ethics is a prescriptive ethics which is part of a certain system of ethics as a science. In a broader sense, ethics can be interpreted as the science of human intentional behavior as long as it is related to norms. Ethics provides an understanding that professional ethics is the science of intentional human behavior related to norms in social life as professionals. Professional ethics does not only discuss prescriptive norms in a profession, but also investigates the whole behavior and norms of notary professionals radically.

A code of ethics is a guidance guide, or moral or decency guidelines for a particular profession or a list of obligations in carrying out a profession that is compiled by the members of the profession itself and is binding on those who practice it. Another definition states that a code of ethics is a norm or practical

¹⁰*ibid*

¹¹Hans Kelsen, 2006, *Pure Law Theory* translated by Raisul Mutaqien, Nuansa & Nusa Media, Bandung, p. 140.

rule, both written and unwritten, regarding ethics relating to attitudes and making decisions on fundamental matters of the values and standards of behavior of people who are considered good or bad in carrying out their profession independently formulated, determined and enforced by professional organizations.

The Notary Code of Ethics is a moral principle determined by the Association of Indonesian Notaries based on a Congressional Decree Associations and/or those determined and regulated in the laws and regulations that govern this matter and those that apply to, and must be obeyed by each and all members of the association and everyone who carries out the duties and positions of a Notary. The legal basis of the Notary Code of Ethics is based on congressional decisions and laws and regulations.

The provisions of Chapter III Article 3 Amendments to the Notary Code of Ethics as a result of the Extraordinary Congress of the Indonesian Notary Association which was held in Banten on 29-30 May 2015, regulates the obligations of a Notary, namely:

- a. Have good morals, character and personality;
- b. Respect and uphold the dignity of the Notary Office;
- c. Maintain and defend the honor of the Association;
- d. Be honest, independent, impartial, trustworthy, thorough, full of responsibility, based on laws and regulations and the contents of the Notary's oath of office;
- e. Improving knowledge and professional skills that are already owned are not limited to legal and notary knowledge;
- f. Prioritizing service to the interests of society and the State;
- g. Providing services for making deeds and other authorities for people who can't afford it without charging an honorarium;
- h. Establish an office at the place of domicile and said office is the only office for the Notary concerned in carrying out his daily duties;
- i. Install 1 (one) nameplate in front of/in the office environment with a choice of sizes, namely 100 cm x 40 cm, 150 cm x 60 cm or 200 cm x 80 cm, which contains:
 - 1) Full name and valid title;
 - 2) Date and Number of Decree of the last appointment as Notary;
 - 3) Position;
 - 4) Office address and telephone/fax number.

The base of the nameplate is white with black letters and the writing on the nameplate must be clear and easy to read. Except in the office environment it is not possible to install the intended nameplate;

j. Present, participate and actively participate in activities organized by the Association

k. Present, participate and actively participate in activities organized by the Association;

l. Respect, obey, carry out the Rules and decisions of the Association;

m. Paying association dues in an orderly manner;

n. Paying bereavement money to help the heirs of a deceased colleague;

o. Carry out and comply with all provisions regarding the honorarium set by the Association;

p. Carry out the position of Notary in his office, except for certain reasons;

q. Creating an atmosphere of kinship and togetherness in carrying out office duties and daily activities as well as treating colleagues well, respecting one another, appreciating each other, helping each other and always trying to establish communication and friendship;

r. Treat every client who comes in kindly, regardless of their economic status and/or social status;

s. Make deed within reasonable limits to implement laws and regulations, especially the Law on the Office of Notary Public and the Code of Ethics.

Whereas further in the provisions of Chapter III Article 4 Amendments to the Notary Code of Ethics resulting from the Extraordinary Congress of the Indonesian Notary Association held in Banten on 29-30 May 2015, stipulates the prohibition of Notaries, as follows:

a. Having more than 1 (one) office, either a branch office or a representative office;

b. Installing a nameplate and/or writing that reads "Notary/Notary Public Office" outside the office environment;

c. Carry out self-publication or promotion, both individually and collectively, by including their name and position, using print and/or electronic media, in the form of:

1) Advertisement;

2) Congratulations;

3) Condolences;

4) Thank-you note;

5) Marketing activities;

6) Sponsorship activities, both in the social, religious and sports fields.

d. Cooperate with service bureaus/people/legal entities that essentially act as intermediaries to find or get clients;

e. Signing a deed that has been prepared by another party;

f. Send request to client for signature;

- g. Attempting or trying in any way, so that someone moves from another Notary to him, whether the effort is directed directly to the client concerned or through the intermediary of another person;
- h. Force the client by withholding the documents that have been submitted and/or applying psychological pressure with the intention that the client continues to make the deed to him;
- i. Carry out efforts, both directly and indirectly, which lead to unfair competition with fellow notaries;
- j. Determine the honorarium that must be paid by the client in a lower amount than the honorarium that has been determined by the Association;
- k. Intentionally employing people who are still employees of another Notary's office without prior approval from the Notary concerned, including accepting work from another Notary's office employee;
- l. Disrespect and/or blame the Notary's colleagues or the deeds made by him. In the event that a Notary encounters and/or finds a deed made by a colleague which turns out to contain serious errors and/or endangers the client, the Notary is obliged to notify the colleague concerned of the mistake he made in a way that is not patronizing in nature, but to prevent things that are not desirable to the client concerned or the colleague;
- m. Not carrying out obligations and committing violations of the Prohibition as referred to in the Code of Ethics by using electronic media, including but not limited to using the internet and social media;
- n. Form a group of colleagues that are exclusive in nature with the aim of serving the interests of an agency or institution, moreover closing the possibility for other Notaries to participate;
- o. Using and including a title that is not in accordance with the applicable laws and regulations;
- p. Make a deed that exceeds the reasonable limit, the amount of which is determined by the Honor Council;
- q. Participate in auctions to get work/deed making.

That

Whereas based on the two provisions of the Article mentioned above, it can be concluded that with regard to the "game" of honorarium carried out by a Notary, it has been regulated clearly and firmly in the provisions of Article 3 regarding the obligations of a Notary and Article 4 concerning Prohibitions in carrying out the position of a Notary, so that if The notary violates the minimum honorarium set by the association, so it is certain that the notary has committed the following violations:

- a. Violating the provisions of Article 3 number 13 namely the Notary's obligation to respect, comply with, implement the Association's regulations and decisions;

- b. Violating the provisions of Article 3 number 16 namely the Notary's obligation to carry out and comply with all provisions regarding honorarium determined by the Association;
- c. Violating the provisions of Article 4 number 7 namely Prohibition of a Notary trying or trying in any way, so that someone moves from another Notary to him, whether the effort is directed directly to the client concerned or through the intermediary of another person;
- d. Violating the provisions of Article 4 number 9 namely the Prohibition of Notaries from engaging in efforts, both directly and indirectly, which lead to unhealthy competition with fellow Notaries;
- e. Violating the provisions of Article 4 number 11, namely the Prohibition of a Notary stipulating the honorarium that must be paid by the client in an amount lower than the honorarium that has been determined by the Association.

It is these provisions that are violated by the Notary if the Notary deliberately "plays" the minimum honorarium limit determined by the Indonesian Notary Association Regulations, which of course this action is an act of unfair competition in the world of notarial practice, so that such a Notary must be able to account for his actions. The notary's ethical responsibilities relate to moral norms which are a measure for a notary to determine the right or wrong or good or bad of the actions taken in carrying out their profession. This responsibility includes 3 (three) things. First, when the action is carried out in a state of normal ability of the mind to function. Second, in the event that the Notary commits a violation with free will. Third,

The professional code of ethics is also important as a means of social control, besides that the existence of the Code of Ethics is intended to organize so that the behavior of members of this profession has guidelines for their professional practice.¹² Therefore a notary must always carry out his position according to the notary's code of ethics stipulated in the Congress of the Indonesian Notary Association which has regulated the obligations and prohibitions that must be obeyed by a notary in enforcing the notary's code of ethics and complying with the laws governing the position of a notary, namely the Act No. 30 of 2004 concerning the Position of Notary.

If there is a violation of the Code of Ethics by a Notary, then based on the provisions of Article 8, Article 9 of the Notary's Code of Ethics stipulates that the Honorary Council is authorized to conduct an examination. According to these

¹²Ignatius Ridwan Widyadharma, *Ethics of the Legal Profession and Its Role*, (Semarang: Publishing Agency of Diponegoro University Semarang, Print I 2001), p. 45

provisions, the Honorary Board is an instrument of the Association which has the authority to examine violations of the Code of Ethics and impose sanctions on violators in accordance with their respective powers.

The notary did Violations of the Notary Code of Ethics may be subject to sanctions based on Article 6 Amendments to the Notary Code of Ethics, namely:

- a. rebuke;
- b. Warning;
- c. Temporary suspension of Association membership;
- d. Honorable discharge from Association membership;
- e. Dishonorable termination of Association membership.

Whereas the procedures for imposing sanctions carried out by the Honor Council consist of:¹³

- a. Examination and imposition of sanctions at the first level

The Regional Honorary Council is an autonomous body in making decisions that has the duty and supervision of the implementation and observance of the code of ethics by members of associations in their respective regions. If there are members who are suspected of violating the code of ethics, whether the allegations stem from the knowledge of the Regional Ethics Council or because of reports from the Regional Executive or other parties, then within 7 (seven) working days the Regional Ethics Council is obliged to immediately hold a hearing to examine allegations of violations, if in the decision of the Regional Ethics Council session finds evidence of a violation of the code of ethics, the trial will simultaneously determine the sanction for the violation.

The decision of the Regional Honorary Council session must be sent to the violating member with a copy to the Branch Manager, Regional Administrator and Central Executive and Central Honorary Council which is carried out within 7 (seven) working days after the decision was made by the Regional Honorary Council session.

- b. Examination and imposition of sanctions at the Appeal Level

Examination and imposition of sanctions at the appeal level are carried out by the Regional Ethics Council. Decisions containing sanctions for temporary dismissal (schorsing) or dismissal (onzetting) from association membership can be submitted/appealed to the Regional Honorary Council, within 30 (thirty) working days after the date of receipt of the letter from the Regional Honorary Council, with a copy to the Honorary Council Center, Central Management, Regional Management and Regional Management.

¹³Sri Yuniati, Sri Endah Wahyuningsih, December 2017, Mechanism of Imposing Sanctions Against Notaries Who Violate the Notary's Code of Ethics, Journal of Deeds Vol. 4 Number 4 Unissula, Semarang

The Regional Ethics Council is obligated to render a decision and send a decision to members requesting an appeal and a copy to the Regional Ethics Council, Regional Administrators, Regional Administrators and Central Executive within 7 (seven) working days after the Regional Honorary Council session renders its decision on the appeal. If the examination and imposition of sanctions at the first level have been carried out by the Regional Ethics Council, since at the regional management level the Regional Ethics Council has not yet been formed, then the decision of the Regional Ethics Council is a decision at the level of appeal.

c. Examination and imposition of sanctions at the Final Level

Decisions containing sanctions for temporary dismissal (suspension) or dismissal (onzetting) from association membership carried out by the Regional Ethics Council may be submitted/requested for examination at the last level to the Central Ethics Council, within 30 (thirty) working days after the date of receipt of the letter imposition of sanctions from the Regional Honor Council and copies thereof to the Regional Honor Council, the Central Executive, the Regional Administrator and the Regional Administrator. The Central Ethics Council is obliged to give a decision in the last level examination through its session.

Decisions stipulated by the Regional Ethics Council, the Regional Ethics Council, as well as by the Central Ethics Council are carried out by the Regional Executive. Regional Administrators are obliged to record in the member's book of associations in the Regional Administrators for every decision made by the Regional Honorary Council, Regional Honorary Council and/or Central Honorary Council regarding the case of the code of ethics along with the name of the member concerned.

That regarding the obligations, prohibitions and legal liability for violations of the Code of Ethics committed by a Notary through the imposition of sanctions as stipulated in the provisions of Article 6 Amendments to the Notary Code of Ethics above, in practice it turned out to be ineffective, this was stated by Notary Mifta Husabri Asbar, SH, M.Kn. which states that the regulations stipulated by the association organization do not have coercive force because they are not stipulated by law, the consequence is that the most serious violation of the association rules is expulsion from the association, a Notary who is expelled from the association remains a notary, meaning the provisions regulated by the association (Indonesian Notary Association) has no coercive power to compel the notary to obey the honorarium determination.¹⁴

Whereas the problem of unfair competition in connotarial practice is due to the ineffective application of association rules and the imposition of ethical sanctions as stated by Notary Mifta Husabri Asbar, SH, M.Kn above, bringing the impact of increasingly massive "tariff war" between Notaries. The war in fixing honorarium

¹⁴The results of an interview with a Notary in Kendari City

prices often occurs in order to get clients. Often the Notary "price war" honorarium with fellow colleagues even dare to give a price that is very far from what should be determined by the association. Such a Notary's action will certainly have an impact on the professionalism of the Notary, because usually in carrying out his authority, the Notary is responsible for providing legal certainty, order and legal protection for the community through the authentic deeds he made, so the Notary must be able to take good care of all the deeds he made and not have legal deficiencies that can damage the Notarial deed. The Notary's workload which will be greater due to the "lowering price" attitude will certainly have an impact on the Notary's professionalism in making authentic deeds.

The ineffectiveness of sanctions for violating the Notary's code of ethics above can have a negative impact on the notary world, association regulations (Indonesian Notary Association) regarding the Notary's code of ethics can be overruled by Notaries because until now the Notary Office Law (UUJN) has never regulated and determined that violation of the Notary's code of ethics which has an impact on the imposition of Notary's ethical sanctions can be a reference for imposing administrative sanctions regulated and determined by the Notary's Position Law which can dismiss a Notary from his position, even though the Law on Notary Office stipulates that a Notary before carrying out his/her position must pronounce an Oath of Office before the Minister or appointed official whose contents of the oath or promise state that a Notary in carrying out his/her position must maintain the attitude, behavior and will carry out the obligations in accordance with with the Code of Professional Ethics, honor, dignity and responsibility as a Notary.¹⁵

The provisions of the Notary's oath of office which clearly state that the Notary is obliged to carry out his position by complying with the Notary's code of ethics determined by the only Notary organization, namely the Indonesian Notary Association, are not followed by imposing sanctions if the Notary violates his oath of office, especially those relating to violations of the Notary's code of ethics. The absence of clear rules in the Law on Notary Office regarding the imposition of follow-up sanctions, namely administrative sanctions that can dismiss a Notary from his position for violating the oath of office, specifically related to the implementation of the Notary's code of ethics becomes a

¹⁵Article 4 paragraph (1) and paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary

"lightning" for the Notary to actually disobey the rules of the code of ethics that regulated and determined by the Indonesian Notary Association.

According to the author, follow-up sanctions in the form of administrative sanctions for Notaries who have violated the Notary's code of ethics determined by the Indonesian Notary Association and have been sanctioned by the Notary Honorary Council need to be regulated in the Notary's Position Law, this is because the Notary's code of ethics was made by The Indonesian Notary Association is an inseparable part of the Notary Office Law, because Article 4 paragraph (1) and paragraph (2) of the Notary Office Law stipulates that a Notary must take an oath before carrying out his position, and the oath is broken down clearly the Notary's obligation to comply with the Notary's code of ethics that has been regulated and determined by the Indonesian Notary Association, so that it is necessary to regulate and stipulate in the Notary Office Law regarding the legal consequences of not implementing or violating the Notary's oath of office relating to violations of the Code of Ethics.

The implementation of the sanction for the Notary mentioned above is an inseparable part of the violation of the law committed by the Notary against the violation of the Notary's code of ethics which carries the consequence of Notary's responsibility, this is in accordance with the theory of responsibility put forward by Hans Kelsen which basically states that "a person is said to have legally responsible for a particular act is that he can be subject to a sanction in the case of the opposite act.

Based on the above arguments, it can be concluded that a Notary who has committed unfair competition by not complying with the amount of honorarium determined by the association is a violation of the Notary's code of ethics. Notaries who commit these violations can be burdened with responsibility in the form of imposing ethical sanctions as determined and regulated in the regulations of the Indonesian Notary Association which is the only Notary organization recognized by the Notary Position Law. However, because these ethical sanctions did not have a deterrent effect for the Notary because there was no threat of dismissal from his position as a Notary for a Notary who violated the code of ethics.

3.2. What are the Juridical Implications of Unfair Competition by Notaries

That the organization has rules that must be obeyed by every member and these rules are binding on its members, this applies to an association. Provisions regarding associations are regulated in Staatsblad 1870 Number 64. In addition, regulations regarding associations are also listed in Book III Chapter IX of the Civil Code. Likewise with the Notary Association within the Indonesian Notary Association, where all provisions constituting the rules of the association are binding on the Notary who is a member.

and the latest Amendment to the Articles of Association has been approved by the Minister of Law and Human Rights of the Republic of Indonesia based on a decision letter dated 12 January 2009 Number AHU-03.AH.01.07. 2009, therefore as and is a Notary organization as referred to in Act No. 30 of 2004 concerning the Office of a Notary Public promulgated based on the State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432 and came into effect on the 6th October 2004, as amended by Act No. 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary Public which has been promulgated in the State Gazette of 2014 Number 3, Supplement to the State Gazette Number 5491. The Indonesian Notary Association as an association with a legal entity and as a professional forum for its members in setting organizational goals and objectives that are binding on its members, was agreed upon and decided in a congress as the highest forum for its members, this is as stipulated in Article 10 A paragraph (2) The Articles of Association of the Notary Association stipulated at the Extraordinary Congress of the Indonesian Notary Association in Banten on 29-30 May 2015 which reads:

"Congress is a meeting of Association members who are holders of power that cannot be handed over to other equipment in the Association which is carried out directly as stipulated in the Bylaws and held every 3 (three) years."

Through the congress as the highest forum of the Notary Association, rules have been established that must be upheld and implemented by each member of the association, these rules are then crystallized through an agreed upon code of ethics as a basic reference for the actions of each member of the association in order to keep the purpose of forming the association always maintained. especially to maintain the dignity of the notary and harmony among fellow members of the association. The rules of the game in the form of a Notary's code of ethics must be implemented by all its members, this is in accordance with the provisions of article 13 paragraph (1) of the INI Articles of Association which states that the Notary's Code of Ethics is stipulated in congress and is a moral rule that must be obeyed by every member of the association. Based on this provision, then the Notary's code of ethics is binding on its members, namely Notaries not only because they have ethical values and moral rules that should

be upheld and implemented but also because the Association's code of ethics is the agreement of all members of the organization. And this also applies to members who later join as members of the INI organization who are seen as agreeing and agreeing and being bound by the provisions of the organization.

Congress as the highest Forum of Notary members has agreed that there should be no unfair competition among members of the Indonesian Notary Association Organization and the application of lower honorarium bills than determined by the association. This is as stipulated in the provisions of Chapter III Article 4 Changes to the Notary Code of Ethics as a result of the Extraordinary Congress of the Indonesian Notary Association which was held in Banten on 29-30 May 2015, among others:

- a. Having more than 1 (one) office, either a branch office or a representative office;
- b. Installing a nameplate and/or writing that reads "Notary/Notary Public Office" outside the office environment;
- c. Carry out self-publication or promotion, both individually and collectively, by including their name and position, using print and/or electronic media, in the form of:
 - 1) Advertisement;
 - 2) Congratulations;
 - 3) Condolences;
 - 4) Thank-you note;
 - 5) Marketing activities;
 - 6) Sponsorship activities, both in the social, religious and sports fields.
- d. Cooperate with service bureaus/people/legal entities that essentially act as intermediaries to find or get clients;
- e. Signing a deed that has been prepared by another party;
- f. Send request to client for signature;
- g. Attempting or trying in any way, so that someone moves from another Notary to him, whether the effort is directed directly to the client concerned or through the intermediary of another person;
- h. Force the client by withholding the documents that have been submitted and/or applying psychological pressure with the intention that the client continues to make the deed to him;
- i. Carry out efforts, both directly and indirectly, which lead to unfair competition with fellow notaries;
- j. Determine the honorarium that must be paid by the client in a lower amount than the honorarium that has been determined by the Association;
- k. Intentionally employing people who are still employees of another Notary's office without prior approval from the Notary concerned, including accepting work from another Notary's office employee;
- l. Disrespect and/or blame the Notary's colleagues or the deeds made by him. In the event that a Notary encounters and/or finds a deed made by a colleague

which turns out to contain serious errors and/or endangers the client, the Notary is obliged to notify the colleague concerned of the mistake he made in a way that is not patronizing in nature, but to prevent things that are not desirable to the client concerned or the colleague;

m. Not carrying out obligations and committing violations of the Prohibition as referred to in the Code of Ethics by using electronic media, including but not limited to using the internet and social media;

n. Form a group of colleagues that are exclusive in nature with the aim of serving the interests of an agency or institution, moreover closing the possibility for other Notaries to participate;

o. Using and including a title that is not in accordance with the applicable laws and regulations;

p. Make a deed that exceeds the reasonable limit, the amount of which is determined by the Honor Council;

q. Participate in auctions to get work/deed making.

Provisions not to engage in unfair competition and collection of honorarium below the minimum honorarium set by the association cannot be seen as an such organizational rule but must be seen as an agreement with the members of the Notary stipulated in the congress and seen as an agreement attached to the members of the Notary.

Provisions regarding unfair competition and the prohibition of billing below the minimum honorarium were then followed up by the Regional Management of the Southeast Sulawesi Indonesian Notary Association which determined the minimum honorarium for Notary services in order to create harmony among Notary colleagues through the Southeast Sulawesi Notary Honorarium issued on July 28, 2020 .

Referring to the matters specified above, violations of the Notary's code of ethics cannot only be seen as a violation of the code of ethics but also an act that violates an agreement in the congress forum of the Indonesian Notary Association as a member of the association. So that juridically the actions of a Notary who commits unfair competition can be implicated in violating the collective agreement where the agreement is considered as a law for the parties who make it (*Pacta sunt servanda*) binding on it as stipulated in Article 1338 of the Civil Code which reads:

"All agreements made legally apply as laws to those who make them"

Referring to the results of this study which reveal that there are still notaries who carry out the notary profession but violate the provisions for applying notary fees, the actions taken by notaries who engage in unfair competition may have implications as an act of default. According to Subekti certain forms and conditions until the default is fulfilled are as follows:

1. Not doing what he promised to do.
2. Carry out what it promises, but not as promised.
3. Does what it promises but is too late.

4. Doing something according to the agreement is not allowed to do.

Meanwhile, according to Satrio There are three forms of default, namely:

1. Not fulfilling performance at all. With respect to the debtor who does not fulfill his achievements, it is said that the debtor does not fulfill his achievements at all.

2. Fulfilling achievements but not on time. If the debtor's performance can still be expected to be fulfilled, then the debtor is considered to have fulfilled the achievement but not on time.

3. Fulfills achievement but is inappropriate or mistaken. Debtors who fulfill achievements but are wrong, if the wrong achievements cannot be corrected, the debtor is said to have not fulfilled achievements at all

Against acts of default, compensation can be requested. Compensation is paying for all losses due to the destruction or damage to the creditor's property due to the debtor's negligence. To claim compensation there must be billing or (subpoena) in advance, except in certain events that do not require a reprimand. Provisions regarding compensation are regulated in article 1246 of the Civil Code, which consists of three types, namely: costs, losses and interest. Costs are all expenses for expenses that have actually been incurred by creditors, while interest is all losses in the form of loss of profit that has been imagined or calculated beforehand.

Based on the foregoing, based on the theory of legal responsibility stated by Hans Kelsen, who stated that in a case the sanction imposed on the perpetrator (delinquent) was due to his own actions which made the person responsible, where this principle is upheld which states that a person can only be legally held accountable if there is an element of error that he has committed. Therefore, a Notary who engages in unfair business competition and collects an honorarium below the minimum honorarium may be declared in default.

Considering the management structure of the Indonesian Notary Association down to the regional level, this is regulated in article 11 paragraph (2) of the articles of association of the Notary Association where the management structure consists of:

1. Central Executive domiciled in the Capital of the Republic of Indonesia;
2. Regional Managers domiciled in the Provincial Capital;
3. Regional Administrators domiciled in the City/Regency.

And considering that the provisions regarding the minimum honorarium of a Notary in Southeast Sulawesi are stipulated by the Southeast Sulawesi Regional Management of the Indonesian Notary Association, it is appropriate for the Management of the Southeast Sulawesi Regional Association of Indonesian Notaries to file a breach of contract against a Notary who applies a withdrawal of honorarium below the honorarium set by the association. The legal standing of filing a lawsuit by the management of this association is in accordance with the provisions of Article 1655 of the Civil Code which states that the management can act in court as either a plaintiff or a defendant.

Based on the discussion that has been discussed and described by the researcher above, the researcher concludes that the Juridical Implications for a Notary who engages in unfair competition and withdraws honorarium below the minimum honorarium set by the Association, the Notary may be declared to have violated the agreement on applying the minimum honorarium set by the Association. is a congress mandate as a forum for agreement of association members so that a lawsuit for default by the Association can be filed against them in this case by the Indonesian Notary Association by first giving a warning or subpoena to a Notary who has charged an honorarium below the minimum Honorarium set by the Association.

4. Conclusion

A notary who has committed unfair competition by not complying with the amount of honorarium determined by the association is a violation of the Notary's code of ethics. Notaries who commit these violations can be burdened with responsibility in the form of imposing ethical sanctions as determined and regulated in the regulations of the Indonesian Notary Association which is the only Notary organization that is recognized by the Notary Office Law. However, because the ethical sanction apparently does not have a deterrent effect for the Notary because there is no threat of dismissal from his position as a Notary for a Notary who violates the code of ethics, it is appropriate that the Notary Position Law also stipulates administrative sanctions for violations of the Notary's code of ethics.

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