

The Notary Services Costs in Establishing the Limited Liability Company related to Constitution Number 5 of 1999 Pertaining to Monopolistic Practice Prohibition and Unfair Business Competition

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Abstract: This aim of this study was to figure and elucidate the correlation of principles contained in notary statute of office pertaining to the notary service competition in providing the public service; the method used in this study was the empirical and normative law. The data collection was conducted through the library research and field observation. The data was analyzed by qualitative approach. The result showed that notary has the right for emoluments based on the provided service they gave and the notary has the authority in providing the certificate for limited liability company establishment. Based on the regulation of ministry of justice and human rights number 3 of 2017 concerning the cost for legal notary service in providing the deed to limited liability company, micro, small and medium business company; and the costs determination based on INI works in February 17th 2007 concerning of minimum costs for legal notary. In fact, this regulation was not fully applied by notary. There were several notary who violated this regulation, so that the principle linkages in UUJN which regulates the notary shall implement the regulation based on the ordinance, ethical code, honor, and responsibilities. Since the regulation has not been fully applied, there were unfair competitive costs amongst notaries in providing the deed for limited liability company establishment in Banda Aceh.

Keywords: notary minimum service costs, private company, business competition.

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I. Introduction

Indonesia is the state of law, as it stated in article 1 paragraph (3) of constitution of Republic Indonesia that "Indonesia is the state of law which not based only on the mere of authority". It is stated in article 1 paragraph (2) of the constitution of Republic Indonesia that "sovereignty is in the hands of the people and shall be implemented based on the constitution". To represent the state of law, the country has provides the public service for each of people in Indonesia. The public service is a service which provided by the authorized government for public.¹

According to Article 1 paragraph (1) Number 25 of 2009 concerning Public Services (well known as the Law of Public Services) states that, public services are activities or framework service which aimed based on regulations for every people and resident of goods, services, and / or administrative services provided by public service providers. The implementation of public services is also referred to officials, employees, offices and also those who work in association with a mission to provide an event or activities for public services.

Besides the officials which given authority to provide the public service, officials who comply the Law number 5 of 2014 concerning the civil servant apparatus (known by ASN Law) as well as officials besides the ASN which known by the general officials. The general official is a pointed and appointed man with the general sovereignty. This general sovereignty appears as the representative of a country. As a representative and participants, the notary is required to comply the government obligations and has the authority to provide the public services in several certain matters.

The Notary is a person who pointed and appointed by institution which has the general power. In this case, a notary is pointed by the Minister of Justice and Human Rights. As a general official, a notary has the legal standing to act as the executor for evidentiary law and provide the service for those who needs the services

¹Sastriomasyur, "Efektivitas Pelayanan Publik dalam Perspektif Konsep Administrasi Publik", *Jurnal Academia Fisip Universitas Tadulako*, Vol 05 No. 01, hlm. 969.

in term of authentic deed for perfect evidentiary in the field of civil law². The notary has the responsibility to conduct a part of country authority in the field of private law and has the specific tasks which useful to provide the authentic deed which has the perfection in evidentiary .therefore, the notary has a solid trust given both either by public or by government.³

According to Article 1 number 1 of Law Number 2 of 2014 concerning of Amendments to Law Number 30 of 2004 about the Notary position (known as UUJN), states that “a notary is a public official who has the authorized to provide an authentic deed and also has other authorities as referred based on this Law or other Law”. As a general official who has the job to provide the public service for the public, a notary has the rights to collect the costs based on the services they give based on Article 5 paragraph (3) letter c of Public Service Law. This because the notary gets their budgets based the service they provide to community/clients, not from the local government budget

One of the notary authority which be a focus of this research scope is in providing the limited liability company’s deed as it written in article 7 paragraph (1) act number 40 Of 2007 related to limited liability company (known as UUPT), it is written that limited liability company has to consist of at least 2 persons or more and has to be legally recorded and written as a deed in Bahasa Indonesia by the notary. This Law is deliberately regulated that the authentic deed is required as the requirements in establishing a company where the required deed has to be legal in the term of administration. “the deed for limited liability company consists of statute and related information”.⁴Hence, the notary has the authority to act as an attorney to state the legalization of legal department of a limited liability company as it stated in article 7 paragraph (4) UUPT in the Ministry of Judicial and Human Rights department that “the limited liability company may obtain the legal standing right after the date when the ministerial decree declared the legal standing to regulate the limited liability company”.⁵

The ordinance of article 7 paragraph (4) UUPT is related to definition of limited liability company as it stated article 1 number (1) UUPT, which defined that “a company is a law entity established based on agreement and run the business by utilize the registered capital including the stock and has to meet the requirements regulated by the Law”.⁶

“ As similar to the private company, the notary also has the authority to provide the deed as follows;

1. The deed of article association changes,
2. The deed of merger, amalgamation, acquisition, or dissolution,
3. The deed of share taking,
4. The deed of amalgamation,
5. Annual general meeting (RUPS), and
6. Deed of dissolution”.⁷

As the notary has the right to provide the deed mentioned above, the notary has its own rights to be paid based on the service they provide. This because the notary is the general official who paid based on the service, not the government’s wage. Regarding to notary service, “based on the ministry of judicial and human rights regulation Article 2 paragraph (1) number 3 of 2017 concerning to notary service costs in providing the deed for private company for micro, small and medium business (known as Permenkumham number 3 of 2017), stated that the notary has to set the minimum costs in providing the deed of establishment for private company, micro and UMKM as it regulated in this ministerial regulation”. As it regulated on article 2 paragraph (2), the costs of notary service in providing the deed of establishment depends on the amount of registered capital. The charged for micro, small and medium enterprises with the maximum amount of registered capital Rp.25.000.000 (twenty five million Rupiah) is Rp.1.000.000 (one million Rupiah) while the maximum registered capital for micro small and medium enterprises with the maximum amount of registered capital is Rp.1.000.000.000 (one billion Rupiah)

²HerlienBudiono, 2013, *Kumpulan Tulisan Hukum Perdata di bidang Kenotariatan*, Citra Aditya, Bandung, hlm. 220.

³Umar Ma’ruf, *Tinjauan Hukum Kedudukan dan Fungsi Notaris Sebagai Pejabat Umum dalam Membuat Akta Otentik (Studi Kasus di Kecamatan Bergaskabupaten Semarang)*, Jurnal Pembaharuan Hukum Unissula, Vol. II, No.3, hlm. 302.

⁴Gatot Supramono, 2004, *Hukum Perseroan Terbatas*, Jakarta, Djambatan, hlm. 5.

⁵Riftia Anggita Wulansari, *Implementasi Kepastian Hukum Akta Notaris Berdasarkan Perspektif Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas*, Jurnal Akta, Vol. 4, No.4, hlm. 717.

⁶Binoto Nadapdap, *Hukum Perseroan Terbatas*, Jakarta, Aksara, 2004, hlm. 3.

⁷Salim Hs, *Peraturan Jabatan Notaris*, Jakarta, Sinar Grafika, 2018, hlm. 36.

The notary service cost is also comply and regulated by Indonesia Notary Association (INI). This organization is established “as the unifier for the pointed and official notary who act as general official in Indonesia as it regulated in notary code. The ethical code relates to the tasks executor, because the code is determined on all behaviors which have to be obeyed by the notary”.⁸This code can be seen on the Indonesia Notary Association official report (INI) Aceh on Februari 17th 2007 pertaining to notary service costs.

However, based on the observation conducted by the author, she found that several notary has different service cost, she also found that several notary has even the lower cost. This causes the unfair competition amongst the notary. As a part on INI, the notary also expected to obey the regulation stated by the INI. The violation of code stated by INI is considered as code disobedience to “Article 2 of notary code”. This code has to be applied by all of association member or for those who works as a notary either as officials or daily professional life.

As it regulated in notary code, all member of notary association has to obey the code especially in regulations which concern in the service costs. This service cost regulation prohibits any violation pertaining to the service costs for those who meet the notary to arrange the deed as it has stated in Indonesia Notary Association official report in Aceh.

Besides the notary ethical code, there are codes for other professions including accountant, doctor, advocate, lawyer and so on. The code is also appear in the business which well known by business code. This business code has to be obeyed and aimed to reduce the undesirable clash and increase the economic order amongst the businessman.⁹However, besides has to obey the code, those who run the business is also expected to comply the Law as it regulated in constitution Number 5 of 2009 pertaining to monopolistic business prohibition and unfair competition (known as Anti-Monopoli Act). This Act is aimed to prevent the unfair business competition amongst the business man and to impose the sanction for the Act-breaker.

Even though the notary does not act as a businessman, the notary should run their obligations in providing the deed as best as they could by considering the fair competition amongst the notary. By the time goes on and the technology goes further, there will be more people who works as a notary and it is possible for the notary to utilize the technology in obtaining future projects or client. Therefore, it is important for the notary to pay a respect for each other as a notary or as a partner in order to prevent unfair business competition. It is also highly important for the notary to avoid the unfair business competition including lower the service charged.¹⁰The most appearing code violation in notary service cost is lower the charged for the provided service. Generally, this violation appears in the form of providing the service in way lower charged which trigger the unfair and monopolistic competition amongst the notary.¹¹

II. Materials and methods

Based on the research background mentioned above, the author will examined the occurring issue. The author focused on the issue where the notary lower the service charged in providing the deed of establishment for private company which may trigger the unfair business competition amongst the notary. This issue may also violate the principles consisted in notary Law where the Law is aimed to regulate the secure notary system works. In this study, the problem identification was restricted to what anti-monopolistic principles could be applied to regulate the notary business competition?

In this research, the normative and empirical law was used as the research method. The author used the statue approach and conceptual approach. The data collection was conducted by library research. The research was also took place in Banda Aceh. The author analyzed the law materials by using the qualitative method in order to obtain and provide the descriptive data which represent the reality through this phenomenon. The descriptive data provided in this research were expected to be able to provide clear exposure based to the result taken from field observation during the research.

III. Discussion

“As it written in article 1 number 1 pertaining to the notary, a notary is a general official which has the special authority and licensed to provide the authentic deed and other authorities as it regulated under the constitution”. The notary has several degree and capacities which could be useful for the state and national

⁸AnikSuryani, “PerananIkatanNotaris Indonesia (INI) dalamPelaksanaanTugasNotarisSesuaiKodeEtik”, *JurnalRepertoriumUniversitasSebelasMaret*, Vol. III, No.2, hlm. 21.

⁹ Henie Kurniawati, “PentingkahEtikaBisnisBagi Perusahaan”, *Literatur Review*, PoliteknikNegeri Bandung, 2015, hlm. 2.

¹⁰MunirFuady, 2005, *ProfesiMulia (EtikaProfesiHukum Hakim, Jaksa, Advokat, Notaris, Kurator Dan Pengurus)*, Citra AdityaBahti, Bandung, hlm.136-137.

¹¹MunirFuady, 1999, *Hukum Anti Monopolimenyongsong era persaingansehat*, Citra Aditya Bakti, hlm.81.

interest because a notary has the independency and sovereignty as it written in constitution.¹²The notary presence and existence is the purposes of Law which expected to serve the public interest and provide the needed authentic written legal evidentiary of event, occasion, or legal action.

It is a fact the notary authority scope in Indonesia law corridor is extremely wide. Besides providing the legal authentic deed, the notary also has 11 more authorities regulated and written in "article 15 UUJN. Those are:

1. Providing the authentic deed for legal entity,
2. Providing the original of the deed,
3. Providing the deed savings,
4. Providing the grosse,
5. Providing the certified copy,
6. Providing the extract of the deed,
7. Providing the Privately Made Deed signed before and attested by notary
8. Privately Made Deed registered with the notary's office,
9. Providing the certified copy,
10. Deed compatibility compared to the original deed
11. Providing the legal counseling related to the deed making".

Generally, in carrying out his/her occupation as a notary, they also expected to comply the obligations related to "article 16 paragraph (1), the notary's obligations are:

- a. Being honest, solid, independent, impartial, and protect the parties interest involved in legal actions;
- b. Providing the deed in the form of original of the deed and save the deed as a part of notary protocol;
- c. Providing the deed of grosse, certified copy and extract of the deed based on the original of the deed;
- d. Providing the services regulated in Law, excepting the reasonable excuse to deny.
- e. Remain the confidential issue and its content related to deed making in order to provide the clean service in a deed making based on the notary sworn, unless the law stipulates the otherwise;
- f. Binding the collected deed he/her made in a month into a record in the form of a book which consists of 50 deeds for the maximum amount of number, if the recorded deeds cannot be recorded in a book then the deeds could be recorded for more than one book, and record the original date of the deed, month and year of making in every book cover;
- g. Providing the protest deed list for the paid and unpaid service for the deed he/she provides;
- h. Providing the deed list relates to the testamentary based on the monthly timeline deed;
- i. Send the deed list as it mentioned in letter H or list zero relates to testamentary to the Testament department centers which has the obligation and task in a notary field within five days on the first Sunday of every next month;
- j. Record the testamentary date of delivery at the end of every month
- k. Having a stamp contained the state symbol of Republic of Indonesia and which consists of name, position and concerned address right by the enclosing space of the stamp;
- l. Read out the deed for the concerned register which has to consists of at least 2 witnesses and has to be signed at that time by the registers, witnesses and notary;
- m. Providing the internship for future notary".

The authentic deed is a written page which provided by the notary relates to the register's interest which consists of activities, deals, stipulations regulated by the law. The authentic deed also has to consist of the wanted interest of the registers which has to written clearly by the notary. The company register deed is one of the authentic deed which provided by the notary. Discussing the private company, we surely know that the private company is a legal entity business which generally appears in the term of a business field. This legal entity is well known and widely used by the business man and capital owner in their works to obtain the profit. However, it is written in "Article 1 number 1 of 2007 pertaining to private company law which defined the private company as a legal entity appeared in the form of capital alliance which established based on the deals and business activities by utilize the registered capital. This registered capital is divided into 8 shares has to meet the required requirements as it regulated in the law".

The scope for the description is regulated in article 1 number 1 of 2007 pertaining to private company law. The scope could be asunder into several elements related to private company term. Those are;

- A. The private company is a legal entity
- B. The private company is established by agreements erseroan
- C. Private company is a capital partnership
- D. Private company is subjected to the law of UUPPT 2007

¹²Salim H.S, 2017, *peraturanjabatannotaris*, sinar grafika, Jakarta, hlm. 26

In carrying out their authority and duties, the notary do not receive any remuneration retire funds from the government who pointed them. Furthermore, even the notary is pointed and appointed by the government, the notary does not deserve to receive the service cost, remuneration and retire funds provided by government. Instead of receiving the funds provided by government, the notary receives their income based on the service provided by the notary to their clients or registers. Sometimes, the notary provides free service for the lacking people. Regarded to the notary service cost and charged, the service cost is subjected to obey the law. One of law which regulated the notary service cost is the 'Judicial and Human rights ministerial regulation Number 3 of 2007 which stated the notary service cost in providing the authentic company registration deed in establishing the private company, micro, small and medium business (now known as permenkumham number 3 of 2007) as in article 2 paragraph 1 stated that every notary is obliged to provide the service cost related to service they give for the clients based on the registered capital. the notary service charged is determined by as follows :

NO	CRITERIAS	SERVICE CHARGED
1	Maximum registered capital 25.000.000 (twenty five million rupiah)	Rp. Rp. 1.000.000 (one million rupiah)
2	Maximum registered capital 1.000.000.000 (one billion rupiah)	Rp. Rp. 5.000.000 (five million rupiah)

The determination of regulated notary service cost above is the minimum determination. In this case, the notary has a right to claim the service cost in any price for the service he/she provides as long as the claimed cost is not cheaper and below the standard mentioned above. In addition, the determination of notary service cost also subjected to the written rules which consisted in notary code. A notary is expected to subject the code which compiled in the organization named Indonesian Notary Association. The research result conducted by interview to Mrs.Nurdhani S.H., SpN as notary and served as Regional Supervisor Council (MPD) in Banda Aceh stated that the INI is purposed to unifier all notary or person who carries the duty and tasks as general officers in Indonesia as it regulated in the notary code.

The ethical code is extremely related and cannot be separated to the stakeholders and pointed officer who works in a field of law. This code is regulated and determined all actions which have to be subjected by the notary and general officials. One of the regulations stipulated by the organization of INI is written on February 17th of 2007 pertaining to the notary minimum service cost. Based on the research result conducted by interview to Mr.Teuku Abdurrahman, S.H., Sp.N as a notary and chief of notary Honorary Board Direction in Aceh, he stated that a notary is subjected to determine the service cost in at least Rp.8.000.000 in providing the deed of company registration in establishing the private company. Those who violated this regulation are considered as law breaker and code disobedience.

However, even the notary is quite different to businessman; the notary is subjected to carry his authority and obligations based on the code in providing the service in authentic deed making for legal entity of a private company. The notary is also subjected to work based on the notary principles which regulated legally in constitution where every notary has to be discipline and comply the rule of organization and also subjected to obey administrative and financial requirements ruled by the organization. Furthermore, the principles contained in UUJN are;

a. The principle of equality;

As the technology grows up, the existence of a notary is needed and has become the potential support for Indonesian people as it related to constitution Number 2 Of 2014 pertaining to notary standing which stated that a notary standing is needed as official law provider for authentic deed making. In providing the service and run the responsibilities, the notary is forbidden to dissent the provided service based on the public caste viewed in social and economic background. The notary has to provide the service based on law view and factor through his/her registers. This view could be used to determine either the notary may provide the service or not.

b. The principle of trust;

Being a notary means being the official and trusted general official who provides the legal services for public interest. The notary is subjected to conceal several or even all contents and information written in the deed they provide. This regulation is aimed to provide the match authentic deed as it sworn in oath/official pledge unless the law determines otherwise (article 16 paragraph (1) of F and article 4 paragraph (2) No 2 of 2014 pertaining to notary standing).

c. The principle of Law inevitability;

In affecting the job, a notary is subjected to submissive the job based on dogmatic standing or fixated on the legal law related to actions which will be chosen and written in the deed. The deed produced by notary

has to meet and match to legal law. While if there are appearing issues related to the deed making, a notary may use the deed they provided as valid and legal power for all parties.

d. The principle of accuracy;

The notary is subjected to investigate all of evidentiary instrument provided by the registers. The notary also has the rights to obtain the detail information and statements provided by registers in considering and provide the information in the deed. A notary in his prudence has to identify the registers/client based on their personality and background identity. A notary has to ask, observe, investigate, listen the register's/client's interest and carefully examine the evidence and all information. A notary is also subjected to provide advices related to register's interest and obey the rules of deed making and other obligations related to his/her occupation as a notary.

e. The principle of excuse;

In the deed provided by the notary, the contained information has to match to considerations and supporting valid information taken from the field. The lexical choice and language used is also subjected to fit in formal requirements. In order to provide the authentic deed, the notary may use Bahasa Indonesia which relates, easy, light, formal and fit the requirements. Furthermore, the language used is also has to be easily understood by complainant.

f. The prohibition for authority abuse;

The scope of notary authority is regulated in "article 15 Law No 2 of 2014 pertaining to notary standing, it stated that the notary who acts and performs far from his responsibility and his authorities is considered as law breaker and classified as an authority abuse'.

g. The prohibition of arbitrary actions;

The notary has to reflect and able to review all the files displayed files proposed by the registers. In this case, In this case the notary has a legal standing to make a decision proposed by registers whether it can be described in the deed contents or not. The taken decision must be based on legal factors that must be described to the parties.

h. The principle of proportionality;

According to "Article 16 paragraph (1) letter A in Law No 2 of 2014 pertaining to notary standing, the notary is obliged to safeguard the interests of the parties involved in legal actions or in carrying out his duties, a notary also shall prioritize law balance between the rights and obligations of the parties. While if there are any injustice found in granting the rights and obligations proposed by the parties, the notary is subjected to provide counseling and advices to re-write and change the deed contents.

i. The principle of professionalism

In carrying out the entire set of his standing, the notary must emphasize the expertise (knowledge) based on Act No 2 of 2014 pertaining to notary standing code, the notary is expected to provide credible and truthful services for public and the deed they provided. The provided deed should not merely be seen only based on the parties' interest without considering the rules which regulated the code and behavior.

Therefore, the principles mentioned above is contained as a content of constitution pertaining to UUJN as a rules to guide how the notary is supposed to be discipline, independence and professional in carrying his/her duties. It is a must that amongst notary to play a good competition uphold and run their business based on the principle of professionalism in carrying out their duties and required to prioritize expertise (knowledge) based on the Law which regulated notary Code. This professionalism has to be conducted in providing the public service and on the deed provided by the notary. This requirement is based on the constitution No 2 of 2014 pertaining to the notary standing which required the notary to obey all rules, especially in maintaining the association's norms and uphold the competition amongst the notary.

In order to shape a notary who has a good attitude and perfect behavior, the notary is expected to be able realize a good ethic. This code is aimed to shape the condition where all notaries obey the statute as it regulated in principles related to the constitution No 2 of 2014 pertaining to notary standing. In addition, the notary is subjected to obey the regulations made by organization of INI (Indonesia Notary Association). One of the regulations made by INI is the regulation which purposed to protect the notary dignity by not compete the other notary especially in service cost. The unfair competition in service cost amongst notary will violate the communion relation amongst notary and will be considered as a contradiction to constitution No 5 of 1999 pertaining to the monopolistic practice prohibition and unfair competition. This unfair competition may

influence the notary in carrying their duties where it harms their focus on expertise the justice. In this unfair business competition situation, the notary cannot provide the basic objectives of notary code in their service.

IV. Result

Based on the observations result, the author found that there were unfair business competition amongst the notary in establish the minimum service cost which always be different depended on the notary who provided the service. The author even found that there were notaries whocited the service cost below the minimum cost which may violate the rules and may trigger the conflict amongst notary. Furthermore, based on research result conducted in Banda Aceh by interviewing 3 samples (notaries) in 2019, the author found that what the cause the different service cost between fellow notary was determined under the stipulation was because the notary wanted to have evangelist clients/registers where they will be back in future to ask the further service by using the similar notary especially in term of the deed making. Another reason which appeared in different notary service cost wasthe client/registers may have the lower price compared to other notary who obey the minimum service cost. Generally, the notary who lower the service cost especially in providing the deed for private company may have more clients/registers compared to those who standardized the service cost based on the UUJN. The Based on this phenomenon, it can be concluded that the low service cost were generally applied by the notary who taken up their legal standing or those (notary) who have just opened their own office in order to attract or build the attractive service for public

V. Conclusion

A notary is an authorized administrator which obligated to provide the authentic deed and also have other duties in which has the right to be paid based on the service cost related to service they give for their clients/registers. One of the notary tasks and roles is providing the deed of establishment for private company. However, even though the notary is not similar to a businessman, the notary is subjected to enforce his authority to provide the authentic deed for private company based on the fair competition amongst notary. Based on the facts obtained by observing the community, the author found that there were still few who violated these provisions in Banda Aceh. These findings were against the principles, code and honor of notary which regulated clearly in the UUJN. However, it can be concluded that the implementation of regulations which regulated the notary service cost especially in providing the deed of company registration for private company was not fully held by several notaries in Banda Aceh which may cause the unfair business competition amongst notary.

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