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Reconstruction of the Regulation on Notaries' Obligation to Provide Pro Bono Legal Assistance to the Indigent

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ABSTRACT
Article 37(1) of Law No. 2 of 2014 Amending Law No. 30 of 2004 on the Office of the Notary obliges notaries to provide free legal services to "indigent persons," yet the phrase is ambiguous, leaving notaries without a clear eligibility threshold and producing inconsistent service. This study examines the current regulation of the notary's obligation to provide free legal aid to the indigent and formulates an ideal reconstruction of that regulation. It employs a normative-juridical method with statutory and conceptual approaches; legal materials were collected through library research, selected and reduced systematically, and analyzed descriptively and analytically. The findings show that Article 37(1) and its elucidation offer no operational definition of "indigent persons," so eligibility is judged subjectively, which undermines legal certainty and the principle of access to justice. The study proposes reconstructing Article 37(1) so that indigence is established through objective administrative proof, namely a written statement from an authorized official and/or government poverty data, referring to Statistics Indonesia (BPS) indicators and Ministry of Social Affairs Decrees Number 146/HUK/2013 and Number 262/HUK/2022. The practical implications are that notaries obtain a uniform and quick verification standard limited to formal checks of official documents, the misuse of free services is prevented, and poor people gain more certain access to notarial services; pending a statutory amendment, a ministerial or professional-organization guideline can serve as an interim reference.

Keywords: Ambiguity, Notary, Indigent Persons

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INTRODUCTION

Fundamentally, a notary is a public official authorized to draft deeds specifically, authentic deeds. This is affirmed in Article 1, point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Office. Authentic deeds issued by a notary must incorporate all acts, agreements, and matters of certainty in accordance with prevailing laws and regulations. Deeds drawn up and ratified by a notary constitute authentic evidence, as they possess conclusive evidentiary value and carry full legal consequences. A notary is designated as a public official because the profession involves appointment and dismissal by the government. Consequently, beyond the duty of drafting deeds, a notary has the obligation and authority to serve the public in specific capacities such as exercising governmental authority in the legal sphere even without receiving remuneration from the government Law Number 2 of 2014, 2014, Art. 1 point 1). Notaries are required to provide legal services to the public. These services cannot be reduced to drafting deeds. Article 15 paragraph (2) of the Law also authorizes notaries to legalize private deeds and to give legal counselling in connection with the making of a deed (Law Number 2 of 2014, 2014, Art. 15(2)), and Putri and Bagiastra (2026) count consultation and counselling among the free services covered by Article 37.

Several features set the notary profession apart from other professions, and most of them come from the Law itself. A notary has to meet the educational and other requirements of Article 3 before being appointed, must act with trustworthiness, honesty, care, independence and impartiality (Article 16 paragraph (1) letter a), and must keep confidential everything about the deeds made and the information obtained for making them (Article 16 paragraph (1) letter f). Notaries must also join a single professional organization (Article 82 paragraph (1)), which sets and enforces the Code of Ethics (Article 83 paragraph (1)) (Law Number 2 of 2014, 2014). In practice this role is played by the Indonesian Notary Association (Ikatan Notaris Indonesia or INI), which also imposes sanctions on notaries who violate the Code. Besides these features, the office has a service function toward the community. A notary exercises part of the state's authority in civil law, and when assisting a client must still ensure legal certainty and fairness and give legal protection in significant transactions.

Regarding other characteristics of the notary profession, reference is made to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Office. This legislation clearly establishes the legal framework governing the notary office in Indonesia. The notary office is an institution established by the Indonesian state, designating the notary as a specific professional role with duties and tasks defined by law, entailing specific, continuous authority within a permanent scope of work. In the performance of their duties, notaries must strictly adhere to prevailing laws and regulations. Consequently, if a notary performs an act exceeding the authority prescribed by statute, such action may be classified as an unlawful act, as it constitutes a deliberate violation of the authority defined in the Law on the Notary Office (Law Number 2 of 2014, 2014, Art. 15).

In essence, a notary is a public official whose duties, responsibilities, and authority are governed by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Office of Notary. As a public official, a notary exercises certain state functions within the realm of notarial practice particularly in civil matters centered on the authority to draft and authenticate official deeds. Holding the position of a respected public official, a notary does not merely focus on administrative tasks while providing legal services to the public; they also bear a moral and social responsibility to facilitate access to justice for all segments of society. Given their status as practitioners of an esteemed profession, notaries undoubtedly play a vital role as public officials.

It is important to note that the role of a notary is classified as an officium nobile (a noble profession); this implies that not everyone can hold the office of notary, as specific requirements or qualifications must be met. Although notaries are appointed and dismissed by the government, the remuneration they receive referred to as an honorarium is similar to that of other professions, such as advocates. Regulations regarding notary honoraria are set forth in Article 36, paragraph 1 of the Law on the Notary Office, which stipulates

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that a notary is entitled to an honorarium for legal services rendered. The amount of the honorarium is based on the economic and sociological value of each deed drafted by the notary (Law Number 30 of 2004, 2004). The economic value component of the honorarium is determined by the object of the deed, while the sociological value component is determined by the social function of that object. These values are further defined in Article 36, paragraphs 2, 3, and 4 of the Law on the Notary Office (Law Number 30 of 2004, 2004). When examining the provisions of Article 36 regarding honorarium standards, the regulated amounts are actually not particularly high. However, considering the costs involved in drafting contracts or processing deeds including expenses for each file submitted for processing it is understandable why some assume that notary services are quite expensive. Consequently, many parties including the economically disadvantaged still hesitate to fully entrust matters involving authentic deeds to notaries. Nevertheless, this does not mean that notaries are prohibited from providing pro bono legal assistance to the underprivileged in practice. The obligation to provide free legal assistance to the indigent is explicitly stipulated in the Law on the Position of Notary specifically in Article 37, paragraph (1) and a violation thereof entails sanctions ranging from a warning to dismissal from the office of notary, as prescribed in Article 37, paragraph (2) of the same Law.

The provision of legal assistance services to the public must strictly adhere to the Law on the Position of Notary and the provisions of the Notary Code of Ethics. It is important to reiterate that providing free legal assistance to the underprivileged is a normative obligation for notaries; therefore, compliance with existing regulations is crucial. Upholding integrity is paramount for a notary in carrying out their duties as a public official. Naturally, providing quality service can bolster a notary's career. Offering free legal assistance without charging fees for services rendered not only fulfills the obligations of the office but also enhances public trust in the profession, thereby elevating the notary's standing within the community (Sridana & Westra, 2020).

However, in practice, notaries are not always able to fulfill this normative obligation. This is due to a deficiency in the article addressing the obligation to provide free legal services or assistance to the underprivileged specifically, the lack of further regulations detailing the requirements that must be met to qualify for such services (Sridana & Westra, 2020). Article 37, paragraph (1) of the Law on the Office of Notary explicitly states that notaries are required to provide notarial legal services free of charge to underprivileged individuals (Law Number 2 of 2014, 2014). This provision establishes that providing free legal services to the underprivileged is an obligation incumbent upon notaries in their capacity as public officials. A notary may not turn a client away just because the client cannot pay. Refusal is still possible for reasons the law recognizes (Law Number 2 of 2014, 2014, Art. 16(1)(e)), but poverty is not one of them. This provision essentially embodies the state's guarantee of access to justice, in accordance with the rule-of-law principle enshrined in Article 1, paragraph (3) of the 1945 Constitution (Sirojul Hakim & Santoso, 2025). In practice, however, applying Article 37, paragraph (1) is challenging due to the dilemma surrounding honoraria; performing these duties entails operational costs beyond the mere fulfillment of the obligation to provide free legal assistance. Currently, there are various perspectives regarding the interpretation of Article 37, paragraph (1), particularly concerning the phrase "underprivileged individuals", which is considered ambiguous. This ambiguity impacts notarial practice, thereby creating legal uncertainty (Yasa & Purwanto, 2026).

The ambiguity of a specific phrase in Article 37, paragraph (1) renders the application of the principle of "access to justice" ineffective. This principle is a crucial indicator for realizing a democratic state governed by the rule of law and social justice; it reflects the public's ability to obtain legal services effectively and affordably. Current realities reveal an access gap driven by economic constraints. High legal service costs often serve as a primary barrier preventing the public particularly the underprivileged from accessing the services of a notary. Limited legal literacy further exacerbates the difficulty of realizing this principle. Restricted access to legal institutions also weakens the position of the public, especially the economically disadvantaged, thereby subjecting them to greater injustice. Consequently, the state must implement mechanisms to bridge this gap. One such measure involves the role of public officials in delivering legal

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services. Therefore, to realize the principle of access to justice, notaries as public officials must properly implement pro bono legal assistance (Novira et al., 2026).

Given the critical importance of legal aid for the indigent, a normative reconstruction of the phrase "person who is unable to pay" (or "indigent person") in Article 37 paragraph (1) of the Law on the Position of Notary is required to establish an ideal formulation. Such a reformulation is expected to clarify the definition of an indigent person and the criteria by which an individual is classified as such. Objective indicators of economic incapacity are necessary to ensure legal certainty, uniformity in the application of norms, and effectiveness in fulfilling the obligation to provide free legal aid to the indigent. Several studies have looked at who counts as "unable to pay" under Article 37 paragraph (1) of the Law on the Position of Notary (Oktavia et al., 2023, Kirana & Suprapto, 2026, Putri & Bagiastra, 2026). They describe how notaries decide in practice or conclude that no operational criteria exist. As far as this article could find, none of them sets out a revised text of the provision that deals with how indigence is established. Existing studies related to the provision of free legal aid include the following: First, the study by Made Putra Darma Yasa and I Wayan Novy Purwanto (2026). This research addresses the issues surrounding legal certainty in determining who qualifies as a "person unable to pay" within the context of a notary's obligation to provide free services. The findings indicate that the absence of an operational definition creates normative ambiguity, resulting in legal uncertainty. In practice, the determination of "indigent" status remains subjective and lacks uniform standards, creating a potential for injustice and abuse (Yasa & Purwanto, 2026).

Second, research by Wiky Sectiona and Muhammad Hafidh (2025). This study examines the application of the notary's obligation to provide legal services to the underprivileged. The findings indicate that the Law on the Notary Profession (UUJN) clearly stipulates the obligation to provide legal services to the underprivileged. However, implementation in the field faces obstacles; strategic measures and serious efforts are required to ensure this obligation is fulfilled optimally (Sectiona & Hafidh, 2025). Third, research by M Zahid Qutub Zubairi (2025). This study discusses the role of notaries in providing free legal services to the underprivileged. The results show that despite the existence of legal regulations, implementation remains problematic, particularly regarding the criteria for service recipients and the pressure of administrative sanctions on notaries. Consequently, clearer legal standards are needed to ensure this obligation is carried out effectively and equitably (Zubairi, 2025). Fourth, research by Made Alit Handra Putra Wiratama, I Nyoman Surata, and I Komang Kawi Arta (2024). This study focuses on the implementation of the notary's obligation to provide free notarial legal services to the underprivileged (a case study at the office of notary Komang Hendy Prabawa, S.H., M.Kn.). The findings reveal that implementation is hindered by the absence of legal provisions defining exactly who qualifies as "underprivileged." Additionally, public awareness regarding the notary's obligation to provide free notarial legal services remains limited (Putra Wiratama et al., 2024).

Based on several previous studies, it can be concluded that existing articles consistently address the notary's obligation to provide free legal assistance. A key obstacle to implementing the provisions of Article 37, Paragraph (1) of the Law on the Office of Notary is the ambiguity of the legal norm, stemming from the absence of a statutory definition for an "indigent person" (or a person lacking financial means). Previous research has mostly described the problem and as far as could be found, has not drafted a revised text of the provision that deals with how indigence is established. This article explains the current regulations governing a notary's obligation to provide free legal assistance to such individuals and proposes an ideal regulatory formulation for this obligation. These objectives are addressed in the article titled "Reconstruction of the Regulation on Notaries' Obligation to Provide Pro Bono Legal Assistance to the Indigent." The aim of this article is to examine the existing regulations regarding this obligation and to determine the ideal formulation for governing the notary's duty to provide free legal assistance to the indigent.

The contribution of this article is a drafted norm. The earlier studies mostly stop describing the problem. Oktavia et al. (2023) found that notaries decide based on personal ethics because no official limit exists, and

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Yasa and Purwanto (2026) showed that the missing definition leads to legal uncertainty. Sectiona and Hafidh (2025) and Zubairi (2025) ask for strategic measures and clearer standards, but they do not say what those standards should contain. Here the proposal is written as a text of Article 37 paragraph (1) that can be read next to the current wording. The level of analysis is also different. Putra Wiratama et al. (2024) studied one notary office and Sectiona and Hafidh (2025) studied problems of implementation, whereas this article works on the norm itself, using statutory analysis and the poverty criteria of the Ministry of Social Affairs and Statistics Indonesia (BPS). Access to justice is then used to test the proposed clause, so that the clause does not become a new barrier for the people it is meant to help

METHODS

This article employs a normative-juridical research method. It is prepared through an examination of primary and secondary library materials, utilizing both statutory and conceptual approaches. Two types of legal materials are used: primary and secondary. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary serves as the primary legal material, together with the other regulations that support the explanation of the Notary Law. The secondary legal materials are scholarly journal articles on notarial law, legal aid and poverty. Regarding data collection, a literature study is utilized to gather information ranging from journal articles on notarial law to expert opinions concerning the legal issues at hand, including the ambiguity of legal norms. Additionally, information is gathered regarding the reconstruction or reformulation of existing legal norms to refine them. For the analysis of legal materials, the author employs a descriptive-analytical method, correlating legal theory and implementation practices with the specific issues under investigation.

Legal materials were collected and reduced in four steps. The first step was inventory. Primary materials were gathered from the statutes and regulations on the notary office, legal aid and the handling of the poor, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary, Law Number 16 of 2011 concerning Legal Aid, Government Regulation Number 42 of 2013 on legal aid, Law Number 13 of 2011 concerning the Handling of the Poor, the 1945 Constitution, the Notary Code of Ethics, and Decrees of the Minister of Social Affairs Number 146/HUK/2013 and Number 262/HUK/2022. Secondary materials were taken from national scholarly journals found through journal portals, using keywords such as notaris, jasa hukum cuma-cuma, orang tidak mampu, access to justice, and kekaburan norma. The second step was selection. A source was kept if it dealt with Article 37 paragraph (1) and the phrase "indigent persons", if it was a statute or a published journal article, and if it was recent enough to reflect the rules now in force. Duplicates and off-topic items were dropped. The third step was reduction. The selected materials were summarized and sorted under four themes, namely the notary's obligation and honorarium, the access-to-justice principle, poverty indicators, and normative vagueness and how it is resolved, and only information related to the research problem was kept. In the last step the reduced materials were analyzed through grammatical interpretation of the six phrases of Article 37 paragraph (1) and through conceptual analysis. The results were then drawn together deductively into the proposed reformulation, which was tested against the principles of legal certainty and access to justice.

RESULTS AND DISCUSSION

Regulations Regarding the Notary's Obligation to Provide Free Legal Assistance to the Indigent

The obligation of a notary to provide free legal assistance to the indigent is stipulated in the Law on the Notary Office specifically Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 in Article 37, paragraph (1). Article 37, paragraph (1) states: "A Notary is obliged to provide legal services in the field of notarial practice free of charge to persons who are indigent" ((Law Number 2 of 2014, 2014). A normative and grammatical analysis of Article 37, paragraph (1) reveals six key legal phrases. First, "notary," the legal subject burdened with the obligation as a public official. Second, "obliged to provide," an imperative phrase indicating a legal duty. Third, "legal services," the object of the obligation that the notary must provide. Fourth, "in the field of notarial practice," a phrase limiting the scope of legal services to matters falling within notarial authority. Fifth, "free of charge," denoting the manner or nature of the service

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provisionspecifically, without a fee (honorarium). Sixth, and finally, "persons who are indigent," the subjects who receive the free legal services from the notary.

The final phrase "persons who are indigent" falls into the category of vague terminology. The Law on the Office of Notary does not clearly define or classify individuals considered to fall within this category; the statute merely refers to "persons who are indigent," and the explanatory notes accompanying the article offer no further clarification. In practice, the application of this article has proven ineffective, with numerous obstacles hindering the realization of access to justice. This lack of clarity leads notaries to adopt varying perspectives when assessing an individual's social status. Questions arise as to whether presenting a certificate of financial incapacity or proof of social welfare benefits is sufficient to establish that a person belongs to this category, or whether an assessment must instead be based on the Decree of the Minister of Social Affairs of the Republic of Indonesia Number 146/HUK/2013 (since updated by Decree Number 262/HUK/2022) regarding the Determination of Criteria and Data Collection for the Destitute and Persons Unable to Pay. This is because the said Decree outlines specific socioeconomic indicators that can serve as parameters for evaluating an individual's social status.

The ambiguity surrounding the phrase "indigent persons" in Article 37, paragraph (1) of the Law on the Office of Notary can be clarified by considering other regulations that address the prohibition against charging fees below the minimum threshold set by the association. This regulation is found in Article 4, point 10 of the Notary Code of Ethics, which stipulates that notaries are prohibited from setting client fees lower than those established by the INI association. Setting fees at such low levels can be deemed improper conduct, as it may foster unfair competition and undermine the integrity of the notary office as an honorable profession (Kusuma & Bagiastra, 2022). The Code of Ethics, however, deals with part of this. In its 2015 text, Article 3, point 7 required notaries to provide deed-making services and other notarial services to people who cannot afford them, without charging an honorarium (Ikatan Notaris Indonesia, 2015). Article 4, point 10 therefore should not be read as a ban on free services for the indigent. Putri and Bagiastra (2026) point out that the 2025 amendment of the Code no longer regulates services without honorarium explicitly, so the ethical rule and the statute are now out of step. Either way the real problem lies elsewhere, because neither the statute nor the Code says how a person shows that he or she is indigent. A notary who waives the fee without a clear standard can be accused of undercutting the association's fee rules

Philosophically, the wording of Article 37, Paragraph 1 reflects several values. First is the value of social justice. This value dictates that access to legal services should not be limited to those with financial means but must also be attainable for the underprivileged. This aligns with Article 34, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which stipulates that "the poor and neglected children are cared for by the State" (Constitution of the Republic of Indonesia of 1945, 1945). Consequently, the welfare of the poor is indirectly a state priority, requiring all public officials including notaries to participate in realizing "access to justice." Second is the social function inherent in the office of the notary. As an officium nobile (noble office), the position of notary carries a social responsibility regarding public service; it is not a profession driven solely by profit. Third is equality before the law. Every individual is entitled to equal rights and protection, including access to legal services without discrimination. Fourth is access to justice. This principle serves as a means for the underprivileged to obtain services such as the handling of agreements, the drafting and legalization of deeds, and other notarial services. Among all the values underpinning the philosophy of this article, the principle of access to justice stands out as a crucial component that must be championed.

The principle of "access to justice" guarantees every person the right to equality before the law ensuring fair access to dispute resolution regardless of social or economic background. This concept is reinforced by Article 28D, Paragraph 1 of the 1945 Constitution, which guarantees every person fair legal certainty and equal treatment before the law, and by the human rights provisions of Chapter XA (Articles 28A-28J). Equality before the law is also written into Article 27, Paragraph 1 of the 1945 Constitution, which states that all individuals or citizens hold an equal position before the law, a concept known as the principle of equality before the law (Constitution of the Republic of Indonesia of 1945, 1945). Access to justice also serves as a means for the public to safeguard and reclaim their rights in resolving legal issues whether through formal or informal channels in a manner consistent with human rights norms (Rangkuti & Pane, 2024). Ultimately, this access guarantees the fundamental human right to equality and justice.

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Firmansyah et al. (2022), referring to research by the American Bar Association, explain that the principle of "access to justice" comprises six elements: a. Legal framework: Laws and regulations exist to govern the rights and obligations of citizens and to provide mechanisms for resolving justice-related issues; b. Legal knowledge: The public is aware of their rights and obligations, as well as the mechanisms available to resolve their justice-related issues; c. Legal advice and representation: The public has access to the legal advice and representation necessary to resolve their justice-related issues; d. Access to justice institutions: Affordable and accessible justice institutions whether formal or informal exist and are capable of processing cases in a timely manner; e. Fair procedures: Justice institutions (formal or informal) ensure that the public has the opportunity to present their cases and that disputes are adjudicated impartially and without undue influence; in cases resolved through mediation, individuals make voluntary decisions to settle their issues; f. Enforceable decisions: Justice institutions are capable of enforcing their decisions, including the imposition of sanctions (Firmansyah et al., 2022). The principle of access to justice embodies an element of fairness that yields legal certainty and societal benefit. The application of this principle is evident in the philosophical underpinnings of legislation, and it is also applied in practice within both judicial and extra-judicial settings. As previously explained, Indonesia's implementation of the principle of access to justice can be grounded in Article 27, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which guarantees that citizens hold an equal position before the law and the government. Beyond the Constitution, Law Number 16 of 2011 concerning Legal Aid serves as a primary legal basis for realizing this principle, embodying the state's mandate to provide access to justice and free legal assistance to the underprivileged (Law Number 16 of 2011, 2011). The provision of free legal aid constitutes a key avenue for implementing the principle of access to justice. There are two terms for such free legal aid Pro Bono and Pro Deo both of which facilitate access to justice. These terms describe practices where services are provided without charge to the needy or the underprivileged. Pro Bono refers to the practice of providing legal services for free, where the legal work performed is not funded by the state. Conversely, under Pro Deo, the legal professional does not bear the costs of providing the free legal assistance; instead, the state is responsible for funding the resolution of the case (Erika et al., 2025).

As public officials, notaries do have the option to provide legal services on a pro bono or pro deo basis. However, fulfilling this obligation is challenging because the role of a notary differs from that of another esteemed legal profession advocates who have various avenues for realizing the principle of access to justice. Currently, the provision of free legal assistance to the underprivileged by notaries relies solely on the notary's own initiative and capacity. Law Number 16 of 2011 concerning Legal Aid is built around accredited legal aid providers, namely legal aid institutions and community organizations. It does not make notaries legal aid providers, and there are no specific regulations supporting the implementation of Article 37, Paragraph 1 of the Law on the Notary Profession regarding this matter. Notary associations primarily oversee member development, enforce the code of ethics, and enhance professional knowledge to uphold the profession's dignity and ensure effective public service. This contrasts with the legal profession of advocates, which utilizes Legal Aid Institutions (LBH) or Legal Aid Posts to handle cases for the underprivileged free of charge. Law Number 16 of 2011 provides the legal framework for the establishment and operation of these Legal Aid Institutions in Indonesia. The law regulates these institutions, which are tasked with providing legal assistance to the public particularly those with limited financial means (Marlina et al., 2024).

In practice, implementing the principle of "access to justice" often faces both structural and operational challenges. Limited access to justice can stem from several factors, including: (1) Weaknesses in the approach to legal aid, which is frequently viewed as an act of charity rather than a constitutional right available to every citizen particularly those affected by inequalities in economic, political, social, and cultural structures; (2) A lack of understanding or outright ignorance among marginalized communities regarding the legal system and applicable procedures; legal language is often difficult for laypeople to comprehend, leaving them legally uninformed; (3) High levels of corruption within judicial institutions, which render marginalized communities unable to afford the costs incurred during the "legal process"; (4) Ineffective implementation of policies regarding legal aid services; service provision has historically been profit-oriented rather than focused on public service, and high litigation costs combined with a lack of free legal aid disadvantage vulnerable groups; and (5) Legislation that tends not to favor lower-income communities, thereby further

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narrowing the scope for obtaining proper justice (Awan Arrassy et al., 2025). The effectiveness of law enforcement is closely linked to the theory of legal effectiveness. For legal application to be effective, law enforcement officials must properly carry out their respective duties and functions including the provision of free legal aid (Nasril, 2023). Similarly, applying the principle of access to justice for those requiring assistance in civil and notarial matters necessitates the involvement of notaries, who as legal subjects bear obligations in their capacity as public officials.

It is important to remember that in practicing their profession, a notary must be prudent when selecting clients. Rapidly changing times have led to swiftly evolving social dynamics, and public demand for services related to agreements and the drafting and issuance of notarial deeds is on the rise. Distinguishing and classifying an individual's social status can be difficult when existing norms are ambiguous. Parties appearing before the notary might claim to be indigent. If a notary is negligent and fails to conduct a thorough background check relying solely on a certificate of indigence presented at the time of the meeting new problems may certainly arise. This situation persists even when a notary wishes to fulfill the obligations set forth in Article 37, Paragraph 1 of the Law on the Notary Profession, acting on the principle that public officials have a duty to facilitate access to justice. While the application of the "access to justice" principle is indeed crucial and closely linked to Article 37, Paragraph 1 of the Law on the Notary Profession, the ambiguity surrounding the notary's obligation to provide pro bono legal assistance prevents the effective implementation of this provision. This creates problematic consequences for both the notary profession and the public due to the lack of legal certainty.

An Ideal Formulation for Regulating Notaries' Obligation to Provide Pro Bono Legal Assistance to the Indigent

The legal issue of normative vagueness is frequently encountered within existing legal frameworks. Vague norms affect the application of the law, potentially preventing the realization of legal objectives. Laws intended to provide certainty can instead become uncertain due to problematic substance (Yasa & Purwanto, 2026; Putri & Bagiastra, 2026). Ideally, the law should be certain and free from ambiguity or multiple interpretations. A norm's susceptibility to multiple interpretations indicates that the law is failing to align with its primary purpose. Normative vagueness or vage normen refers to a situation where a legal rule exists but its substance is problematic; this may manifest as phrases or words lacking clear definitions, thereby rendering them open to multiple interpretations (Yasa & Purwanto, 2026; Putri & Bagiastra, 2026).

To resolve legal issues arising from norm ambiguity where interpretation is required to clarify the meaning of vague provisions various approaches can be employed, ranging from the statutory approach to the historical approach. Both are crucial in determining the outcome of the interpretation. First is the statutory approach, which focuses on the written legal formulation. Since statutes are textual in nature, examining their substance and specific wording allows one to map out the meaning contained within the articles. Second is the historical approach, which is also useful for addressing norm ambiguity. Fundamentally, statutes are enacted with specific objectives in mind; one cannot simply make a subjective judgment that a legal norm is ambiguous without considering this context. Delving into historical factors is essential because external elements beyond the lawmakers themselves can contribute to a norm's ambiguity. The historical approach can be applied by studying the academic draft (naskah akademik) that accompanies a bill, which Law Number 12 of 2011 requires (Law Number 12 of 2011, 2011, Art. 43(3)), or by examining the legal policy underlying the enacted norm.

Fundamentally, legislation is enacted to address issues and resolve conflicts; thus, it is natural for statutory provisions to employ language geared toward conflict resolution. Legal provisions cannot be interpreted solely based on their literal text; they require contextual interpretation as well. This is because legislation comprises two layers: the written legal text and the legal norm which, while not explicitly written, holds meaning lying beneath that text. Precise interpretation is essential to grasp the underlying norms. Should there be indications of normative ambiguity, reconstruction must be undertaken promptly, as normative certainty ensures universal compliance. Access to justice is also facilitated when legal rules possess inherent certainty. This applies to the issue of normative ambiguity found in the phrase "person who is unable" in Article 37, Paragraph 1 of the Law on the Position of Notary. Interpreting the meaning of this phrase is

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necessary to enable a reconstruction of the norm, thereby yielding an ideal formulation for the legal regulation contained in that article.

Before planning a reformulation regarding the existing phrase, it is necessary to determine the definition and criteria for classifying someone as "incapable" (or financially disadvantaged). Article 37 speaks of "orang yang tidak mampu", but Law Number 13 of 2011 concerning the Handling of the Poor uses the term fakir miskin (the destitute and the poor). It defines them in Article 1 point 1 as people who have no source of livelihood at all, or who have one but cannot meet the basic needs of a decent life for themselves and their families (Law Number 13 of 2011, 2011, Art. 1 point 1). This is the closest statutory definition available, but it is still general. It does not say how a lack of livelihood or of basic needs is to be measured, so it does not tell a notary who qualifies. Quantitatively, countries employ varying standards to define the poverty line. Poverty standards may be measured based on low expenditure levels, daily nutritional intake, and non-food costs (Mustofa & Utomo, 2023). Theoretically, there are two types of poverty based on income: natural poverty and structural poverty. Natural poverty is also known as absolute poverty. This type of poverty is defined by an individual's inability to meet minimum basic needs such as food, clothing, healthcare, housing, and education required for living and working. In short, absolute poverty is a condition in which an individual's income level falls below that of people situated at the poverty line. Conversely, structural poverty stems from human factors, such as economic and development policies that fail to reach all segments of society, resulting in inequality regarding the distribution of productive assets and income (Mustofa & Utomo, 2023).

According to an earlier round of poverty data collection by Statistics Indonesia (BPS), there are 14:

Residential floor area of less than 8 m^2 per person.

Residential flooring made of earth, bamboo, or low-quality wood.

Residential walls made of bamboo, thatch, low-quality wood, or unplastered masonry.

Lack of private sanitation facilities (shared with other households).

Household lighting source does not utilize electricity.

Drinking water source is an unprotected well, spring, river, or rainwater.

Daily cooking fuel is firewood, charcoal, or kerosene.

Consumption of meat, milk, or chicken is limited to once a week.

Purchase of new clothing is limited to one set per year.

Ability to afford meals is limited to once or twice a day.

Inability to pay for medical treatment at a community health center (*Puskesmas*) or polyclinic.

Head of household's income source is: farming on a land area of 0.5 hectares; farm laborer, fisherman, construction worker, plantation worker, or other employment with an income below Rp 600,000 per month.

m. Highest education level of the head of household: no schooling, did not complete primary school, or only primary school education.

Lack of savings or easily sellable assets valued at Rp 500,000, such as: a motorcycle (financed or fully paid), gold, livestock, a motorized boat, or other capital goods (Mustofa & Utomo, 2023).

Based on BPS criteria, if an individual or family meets nine of these fourteen variables, they can be categorized as poor. These criteria are also typically used for the allocation of the BLT (Direct Cash Assistance) program.

Regarding the legislative framework, there is currently no specific law defining the criteria for "underprivileged persons" (or the "needy"). However, there remains a Decree of the Minister of Social Affairs of the Republic of Indonesia Number 146/HUK/2013 concerning the Determination of Criteria and Data Collection for the Destitute Poor and Underprivileged Persons. This regulation categorizes underprivileged persons into two groups: first, those who are registered, and second, those who are unregistered. Individuals falling under the criteria for registered destitute poor and underprivileged persons are defined as follows: a) persons lacking a specific means of livelihood and/or those with a means of livelihood that fails to meet basic needs; b) persons whose primary expenditure is on staple food consumption; c) persons unable to access or facing difficulties accessing healthcare services, except at Community Health Centers (Puskesmas) or government-subsidized facilities; d) persons unable to purchase annual clothing for family members; e) persons able to afford schooling for their children only up to the junior high school level (SMP); f) persons living in houses with walls made of bamboo, wood, cinder blocks, or stone that are in poor condition or of

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low quality, and are not plastered to meet habitable housing standards; g) persons living in houses with floors made of earth, wood, cement, or ceramic tiles that are in poor condition or of low quality; h) persons living in houses with roofs made of palm fiber (ijuk), tarpaulin/plastic sheeting, clay tiles, zinc, or asbestos that are in poor condition or of low quality; i) persons living in dwellings without electricity or with an electrical connection lacking a meter; j) persons living in a dwelling with a floor area of less than 8 square meters per person; k) persons whose drinking water comes from unprotected wells, springs, rivers, rainwater, or other unprotected sources (Decree of the Minister of Social Affairs of the Republic of Indonesia Number 146/HUK/2013 concerning the Determination of Criteria and Data Collection for the Destitute Poor and Underprivileged Persons, n.d.).

The criteria for the destitute, the poor, and the needy who are not yet registered are as follows: a) individuals classified as homeless; b) individuals classified as beggars; c) members of Remote Indigenous Communities (KAT); d) women in socially and economically vulnerable situations; e) victims (excluding cases involving physical violence); f) migrant workers facing social issues; g) people impoverished due to natural or social disasters, covering the period from the end of the emergency response phase up to one year thereafter; h) recipients of services from Social Welfare Institutions; i) correctional inmates or detainees in remand centers; j) individuals suffering from Thalassemia Major; k) individuals suffering from Adverse Events Following Immunization (AEFI) (Decree of the Minister of Social Affairs of the Republic of Indonesia Number 146/HUK/2013 concerning the Determination of Criteria and Data Collection for the Destitute, the Poor, and the Needy, n.d.).

Based on BPS criteria, if an individual or family meets nine of these fourteen variables, they can be categorized as poor. These variables were used in the past to allocate the BLT (Direct Cash Assistance) program. They come from an older round of poverty data collection. Today the Ministry of Social Affairs works from its integrated social welfare data (DTKS), which is being replaced by the National Single Socio-Economic Data (DTSEN), and its criteria for the poor were updated by Decree Number 262/HUK/2022. The 14 variables are used here only to show what objective indicators look like, not as the current legal standard. Regarding the legislative framework, no statute defines "persons unable to pay" for the purposes of Article 37 of the Notary Law. Law Number 13 of 2011 concerning the Handling of the Poor deals with the destitute and the poor (fakir miskin) (Law Number 13 of 2011, 2011), and it is the Ministry of Social Affairs that sets the criteria. The first decree on the subject was Decree Number 146/HUK/2013 concerning the Determination of Criteria and Data Collection for the Destitute Poor and Persons Unable to Pay, which was issued to implement contribution assistance for national health insurance. It was later updated by Decree Number 262/HUK/2022 concerning the Criteria for the Poor. Under that decree a person with no place to live is classified directly as destitute and poor, while a person who does have a shelter is assessed against eight further indicators, such as whether the household head is unemployed, whether more than half of household spending goes to food, and whether the household has a private toilet (Decree of the Minister of Social Affairs Number 262/HUK/2022, 2022; Prihartini et al., 2025). Decree 146/HUK/2013 is still worth reading because it covers both people with no livelihood at all and people whose livelihood does not meet their basic needs, which comes close to what "unable to pay" is meant to capture. The 2013 decree categorizes underprivileged persons into two groups: first, those who are registered, and second, those who are unregistered. Individuals falling under the criteria for registered destitute poor and underprivileged persons are defined as follows: a) persons lacking a specific means of livelihood and/or those with a means of livelihood that fails to meet basic needs; b) persons whose primary expenditure is on staple food consumption; c) persons unable to access or facing difficulties accessing healthcare services, except at Community Health Centers (Puskesmas) or government-subsidized facilities; d) persons unable to purchase annual clothing for family members; e) persons able to afford schooling for their children only up to the junior high school level (SMP); f) persons living in houses with walls made of bamboo, wood, cinder blocks, or stone that are in poor condition or of low quality, and are not plastered to meet habitable housing standards; g) persons living in houses with floors made of earth, wood, cement, or ceramic tiles that are in poor condition or of low quality; h) persons living in houses with roofs made of palm fiber (ijuk), tarpaulin/plastic sheeting, clay tiles, zinc, or asbestos that are in poor condition or of low quality; i) persons living in dwellings without electricity or with an electrical connection lacking a meter; j) persons living in a dwelling with a floor area of less than 8 square meters per person; k) persons whose drinking water comes

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from unprotected wells, springs, rivers, rainwater, or other unprotected sources (Decree of the Minister of Social Affairs Number 146/HUK/2013, 2013).
The criteria for the destitute, the poor, and the needy who are not yet registered are as follows: a) individuals classified as homeless; b) individuals classified as beggars; c) members of Remote Indigenous Communities (KAT); d) women in socially and economically vulnerable situations; e) victims of violence; f) migrant workers facing social issues; g) people impoverished due to natural or social disasters, covering the period from the end of the emergency response phase up to one year thereafter; h) recipients of services from Social Welfare Institutions; i) correctional inmates or detainees in remand centers; j) individuals suffering from Thalassemia Major; k) individuals suffering from Adverse Events Following Immunization (AEFI) (Decree of the Minister of Social Affairs Number 146/HUK/2013, 2013).
Based on the previously explained categories, it is evident that qualifying an individual as "indigent" cannot depend on a bare claim of indigence or on the notary's own judgment. It has to rest on a determination by the competent government institution, made against specific criteria. A certificate of incapacity or a social assistance letter is therefore acceptable only as formal evidence of that determination. The older BLT scheme, for example, required at least nine of the fourteen BPS variables, and the current Ministry criteria are likewise applied by government institutions, not by individual notaries. Therefore, the definition of an "indigent person" under Article 37 paragraph (1) requires substantive clarity to prevent ambiguity or multiple interpretations. An ideal formulation for the phrase "indigent persons" would clarify that such an individual is someone who, from an economic standpoint, is classified as destitute/poor or unable to pay under the criteria set by the Ministry of Social Affairs, as verified by government data and/or a certificate from an authorized official. Consequently, the existing provision and the proposed reconstruction can be compared as follows (the wording added or changed by the reconstruction is shown in bold):

Before the reconstruction (existing text of Article 37, paragraph (1)):
“A Notary is obliged to provide legal services in the field of notarial practice free of charge to persons who are indigent.”

After the reconstruction (Alternative 1):
“A Notary is obliged to provide legal services in the field of notarial practice free of charge to an indigent person, defined as a party who is economically classified as destitute/poor or unable to pay under the criteria set by the Minister of Social Affairs, as shown by government data and/or a certificate from an authorized official.”

After the reconstruction (Alternative 2):
“A Notary is obliged to provide legal services in the field of notarial practice free of charge to a party who is economically unable to pay, as evidenced by administrative proof issued by an authorized official or government institution, the types of which are further regulated by ministerial regulation.”

Of the two, Alternative 2 is the better operative text. The definition of an indigent person would go in the elucidation of Article 37, paragraph (1), and the list of acceptable documents in an implementing guideline. Alternative 1 puts a definition inside the operative sentence and ties the norm to criteria that can change.
With this formulation, it must also be emphasized that the relevant regulations serving as the reference point may include the Decrees of the Minister of Social Affairs of the Republic of Indonesia Number 146/HUK/2013 and Number 262/HUK/2022 on the criteria for, and data collection of, the destitute/poor and persons unable to pay, or any later regulation that replaces them.
The access-to-justice framework is not only background for this proposal. It is the main reason why the reformulated clause asks for administrative proof of indigence. If the six elements are applied to the clause (Firmansyah et al., 2022), the requirement matters in three ways. First, elements (c) and (d), legal advice and representation and affordable, accessible services, are met only when the free service in Article 37 paragraph (1) reaches the people it is meant for. Advocates can rely on Legal Aid Institutions, but a notary bears the cost of a free service personally, so the notary needs an objective way to tell who is entitled. A certificate from an authorized official, or proof of registration in government poverty data, gives that basis without relying

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on the notary's own judgment. Without it a notary will understandably hesitate or refuse, and that shuts out the very people the provision protects (Sridana & Westra, 2020). Second, elements (a) and (e), the legal framework and fair procedures, require eligibility rules that are known in advance and applied equally, which is consistent with equality before the law in Article 27 paragraph (1) of the 1945 Constitution (Constitution of the Republic of Indonesia of 1945, 1945). When the rule names the document to be brought, applicants know where they stand and every notary applies to the same standard. Third, access to justice has to work in practice and not only on paper. Because eligibility rests on documents issued by the state, a notary who serves such a client free of charge is carrying out a statutory duty and is not undercutting the association's fee standard. This also settles the doubt about Article 4, point 10 of the Notary Code of Ethics raised earlier, which in its 2015 text must be read together with Article 3, point 7. Administrative proof of poverty should therefore not be seen as an extra bureaucratic hurdle. It is what turns access to justice from a principle into a right that the poor can claim from a notary.

A further question is how a notary can check these documents in daily practice without causing delays that would block access to justice themselves. The answer proposed here is to keep the notary's task to checking documents. Whether a person is poor is decided by the government bodies that issue the documents, applying the criteria of the Ministry of Social Affairs (Decrees Number 146/HUK/2013 and Number 262/HUK/2022) and, where relevant, BPS indicators. The notary does not repeat that assessment and only confirms that the applicant holds at least one document from a closed list, which the implementing guideline of the new article should set out: (a) a poverty certificate (surat keterangan tidak mampu) from the village or sub-district head or an equivalent official; (b) proof of registration in the Ministry of Social Affairs' data on the poor and underprivileged; or (c) proof of participation in a government social assistance scheme, such as the Family Hope Program (PKH), direct cash assistance, or subsidized national health insurance (PBI-JKN). Indonesian legal aid rules already work in a similar way. The Legal Aid Law asks for a poverty certificate from the village or sub-district head (Law Number 16 of 2011, 2011, Art. 14(1)(c)), and its implementing regulation allows an applicant who has no certificate to attach other documents instead, such as a health insurance card or a direct cash assistance card (Government Regulation Number 42 of 2013, 2013, Art. 8(1)). Several safeguards can keep the check short. The check is done in a single meeting, in which the notary confirms that the document is genuine and comes from the right office (signature, stamp and number), that the name and identity number match the applicant's identity card, and that the validity period set in the guideline has not expired. The applicant also signs a statement that the documents and information are true, so that responsibility for a false claim lies with the applicant. This answers the earlier concern that people might simply say they are poor. If the applicant does not yet hold a document, the notary can accept a receipt showing that it has been applied for and begin the preparatory work, then finalize the deed once the document is handed in within a reasonable time. Waiting for a certificate should not stall the service. Finally, the notary keeps copies in the service file as proof of compliance. The Notary Supervisory Council (Majelis Pengawas Notaris) or the professional association can examine that file when it has to judge whether the duty was fulfilled or a refusal was justified. The Indonesian Notary Association (INI) could help by issuing a standard checklist and declaration form, so that all notaries follow the same procedure.

An ideal formulation for the phrase "indigent person" can provide legal certainty, as it prevents individuals from simply claiming to be poor or "indigent" without clear criteria. The use of administrative indicators ensures that the fulfillment of a notary's obligations remains objective. Furthermore, this approach helps prevent the misuse of the right to free assistance; clear regulations preclude parties who are actually financially capable of taking advantage of free legal aid services. Additionally, a precise formulation fosters uniformity in notarial practice, as all notaries would apply the same standards when determining eligibility for free legal aid. Such a formulation would also align with the concept of legal aid found in other regulations such as the Legal Aid Law and strengthen the protection of access to justice, given that notarial legal aid is fundamentally a form of legal service for vulnerable populations.

The phrase "indigent person" in Article 37, paragraph (1) of the Law on the Office of Notary requires redefinition, as it contains a normative ambiguity that could lead to inconsistent application of the notary's obligation to provide pro bono legal assistance. Therefore, by reformulating the phrase to include objective indicators of economic incapacity, it is hoped that legal certainty and effectiveness will be achieved in the implementation of this pro bono obligation. The reformulation settles who is entitled, but not who bears the

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cost. A compensation or quota mechanism worked out with the professional organization could be a subject for further research.

A petition under paragraph (1) or (2) may be filed only by: a. the prospective spouse or spouse; b. the guardian; or c. a family member in the direct line of ascent or descent.

The examination of the petition shall follow the procedural law applicable in the religious courts.

CONCLUSION

The obligation of notaries to provide free legal assistance to the indigent is currently governed by Article 37, paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary. There is ambiguity in the phrase "indigent persons" in Article 37, paragraph (1), resulting in the absence of a defined threshold for classifying such individuals. Consequently, in practice, notaries hold varying perspectives on how to classify someone as indigent, and the forms of free legal assistance provided differ from one notary to another. An ideal solution to resolve the ambiguity or multiple interpretations within the article would be to clarify the phrase by requiring that the status of indigence be substantiated by an official certificate from an authorized authority or by administrative evidence in accordance with statutory regulations. Viewed through the access-to-justice principle, such administrative proof allows free services to be directed objectively to those entitled, and verification remains swift when notaries limit themselves to formal checks of a closed list of documents issued by government institutions. However, implementing such a reformulation cannot be achieved immediately, given the complexities involved in amending legislation. The author hopes for the existence of legal regulations beyond the Decrees of the Minister of Social Affairs of the Republic of Indonesia Number 146/HUK/2013 and Number 262/HUK/2022 concerning criteria and data collection for the destitute and indigent that can serve as a definitive reference for applying Article 37, paragraph (1). Such regulations would allow notaries to consistently provide free legal assistance without disparate treatment of the public.

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