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PRO BONO PUBLICO IN THE PROFESSIONS OF NOTARIES AND LAND DEED OFFICIALS (PPAT): AMARTYA SEN'S PERSPECTIVE ON JUSTICE

Agus Winarno[1a*], Lego Karjoko [2b]

[12] Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

[a]*E-mail: aguswinarno@student.uns.ac.id*
[b]*E-mail: legokarjoko@staff.uns.ac.id*

(*) Corresponding Author
aguswinarno@student.uns.ac.id

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ABSTRACT

This article analyzes the normative basis and the problems of implementing pro bono publico in the professions of notaries and Land Deed Officials, or *Pejabat Pembuat Akta Tanah* (PPAT) through Amartya Sen's framework of justice. The study employs normative legal research with statute and conceptual approaches. The primary legal materials comprise the Notary Office Law, the PPAT office regulation, the Legal Aid Law, and their implementing regulations; the secondary materials consist of the works of Amartya Sen and previous studies on free legal services. The findings show that the pro bono obligation is expressly stipulated in Article 37 paragraph (1) of Law Number 2 of 2014 and Article 31 paragraph (2) of the PPAT office regulation, but its normative effectiveness is constrained by three main problems: the absence of clear criteria for indigent persons, the lack of uniform institutional procedures and mechanisms, and the unavailability of a proportionate funding or cost-support scheme. From Sen's perspective, these conditions hinder the expansion of people's capabilities to exercise their civil and land-related rights in practice. The pro bono obligation cannot automatically be regarded as contradicting professionals' right to remuneration; the central issue lies in the distribution of the burden and the design of the regulation. The article recommends standards for verifying beneficiaries, service standards, recording and supervision, and measurable institutional support.

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INTRODUCTION

Notaries and Land Deed Officials (Pejabat Pembuat Akta Tanah, PPAT) perform an important function in ensuring certainty in civil and land-related legal relationships. Authentic deeds, formally executed agreements, and documents transferring rights over land are not merely administrative products; they are instruments that enable citizens to exercise rights, transfer assets, regulate family relations, develop economic activities, and establish their legal standing. Access to notarial and PPAT services is therefore directly related to access to law. When service fees become a barrier for low-income communities, formal equality before the law does not necessarily translate into an equal ability to exercise rights in practice (Amini & Suratman, 2023; Aziz et al., 2023).

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Indonesian positive law has provided a basis for services rendered without fees to indigent communities. Article 37 paragraph (1) of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Notary Office (Pemerintah Pusat Indonesia, 2014) obliges notaries to provide legal services in the notarial field free of charge to persons who are unable to pay. A similar obligation is found in Article 31 paragraph (2) of Government Regulation Number 37 of 1998 on the Office Regulation of PPAT, as amended by Government Regulation Number 24 of 2016 (Pemerintah Pusat Indonesia, 2016). These provisions indicate that pro bono publico in both offices is not merely a philanthropic act dependent on the goodwill of the officeholder, but a normative obligation inherent in the public function of the profession.

Although the normative basis is clear, previous studies show recurring problems of implementation. Firdaus (2019) highlights the obligations of notaries and the consequences of refusing to provide free services (Firdaus, 2019). Manik (2021) points to the lack of clarity regarding the types of services that must be provided and the criteria for persons who are unable to pay (Manik, 2021). Halim and Nurman (2023) found that the provision of notarial services to underprivileged communities in Situbondo remains infrequent and is affected by a low level of understanding of the service schemes (Halim & Nurman, 2023). Arshandi et al. (2024) demonstrate implementation problems in Pontianak (Arshandi et al., 2024), while Novira et al. (2026) again confirm variations in the interpretation of the forms of service and the identification of beneficiaries in Padang City (Novira et al., 2026). These studies are important, but most of them focus on notaries, on particular locations, or on issues of sanctions and local practice.

The research gap lies in the fact that three issues have not yet been integrated within a single analytical framework: the relationship between the pro bono obligations of notaries and PPAT, the substantive capability of poor communities to use legal services, and the need for an institutional design that enables the obligation to operate consistently. These issues cannot be resolved merely by affirming that a provision imposing the obligation exists. A norm must be assessed by its ability to reduce the injustices that citizens actually experience. It is at this point that Amartya Sen's thought offers a relevant analytical framework.

Sen does not construct a theory of justice by searching for fully ideal institutions. Instead, he directs attention to comparisons among actual situations and to the reduction of identifiable injustices. Justice is assessed by the lives that people are actually able to achieve, not merely by the perfection of formal rules (Sen, 2009). This approach is connected to the notion of capability, namely a person's substantive freedom to achieve valued functionings, that is, valued states of being and doing (Sen, 1999). In the context of pro bono, the principal question is not only whether the law contains an obligation to provide free services, but whether the arrangement genuinely expands poor people's ability to obtain the documents, protection, and legal certainty they need.

Another element of Sen's thought is public reasoning. Judgments about justice should not be determined by a single actor behind closed doors but should be tested through reasons that can be openly justified (Sen, 2009). This idea is important when the law uses general terms such as 'persons who are unable to pay' without uniform operational indicators. The criteria for beneficiaries, the forms of service, the verification procedures, and the allocation of costs require transparent and examinable reasons so as not to generate new forms of discrimination. The capability approach in social policy also demands that policy not stop at formal provision but enhance the real abilities of groups facing constraints (Andry, 2025; Iswahyudi & Asnawi, 2024).

Gustav Radbruch's thought on justice, legal certainty, and utility remains useful as a supporting framework for explaining the importance of clear norms, but the main analysis of this article is anchored in Sen. Accordingly, the debate is not directed at an abstract opposition between justice and certainty, but at how a legal obligation can produce a real reduction in injustice without imposing a disproportionate responsibility on the profession (Binawan, 2022; Islamiyati, 2018).

Based on this background, the study addresses two questions. First, how is the pro bono publico obligation of notaries and PPAT interpreted from Amartya Sen's perspective on justice? Second, what are the normative construction and the problems of its implementation, and what regulatory design is required for the obligation to be effective? The study aims to formulate a normative reading that links professional obligations, the capabilities of indigent communities, and institutional needs, so that pro bono does not remain a merely declaratory legal command.

METHOD

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This study is normative legal research. The approaches employed are the statute approach and the conceptual approach. The statute approach is directed at the 1945 Constitution of the Republic of Indonesia, Law Number 2 of 2014 on the Notary Office, Government Regulation Number 37 of 1998, as amended by Government Regulation Number 24 of 2016, on the PPAT Office Regulation, Law Number 16 of 2011 on Legal Aid, Government Regulation Number 42 of 2013, and implementing regulations concerning proof of poverty and legal aid funding. The Notary Code of Ethics is used as a supplementary normative material to examine the dimension of professional obligation.

The secondary legal materials consist of the works of Amartya Sen, principally Development as Freedom, Rationality and Freedom, and The Idea of Justice, together with scholarly articles on pro bono, access to justice, professional ethics, capabilities, and notarial/PPAT services. Tertiary legal materials are used in a limited manner to assist in clarifying terms. The search was conducted through library research and documentation, focusing on the themes of 'free legal services', 'notary pro bono', 'PPAT and indigent persons', 'access to justice', 'capability', and 'public reasoning'. The selection of materials was based on their relevance to the norms, the implementation problems, and the justice framework under analysis (Efendi & Rijadi, 2022).

The analysis was conducted in a qualitative-prescriptive manner in three stages. First, the norms governing the pro bono obligation were identified and compared to determine their scope and regulatory gaps. Second, these normative problems were evaluated using Sen's concepts of the reduction of actual injustice, capability, and public reasoning. Third, the results of the analysis were used to formulate recommendations for regulatory design. This study uses no interviews, observations, or field data; therefore, the term 'implementation' in this article refers to implementation problems as reflected in the norms and in secondary research, not to a direct empirical claim of this study.

RESULT AND DISCUSSION

The Normative Pro Bono Obligation from the Perspective of Amartya Sen's Theory of Justice

The pro bono obligation of notaries is expressly formulated in Article 37 paragraph (1) of the Notary Office Law. The provision uses the word 'shall' (*wajib*), so it is not merely an ethical exhortation. For PPAT, Article 31 paragraph (2) of the PPAT office regulation likewise obliges PPAT and Interim PPAT (*PPAT Sementara*) to provide services without charging fees to a person who is unable to pay. The Notary Code of Ethics reinforces this direction by positioning service to indigent communities as part of professional responsibility. This construction shows that the state links the public function of the office with a corrective obligation toward the economic barriers experienced by service users (Firdaus, 2019; Manik, 2021).

From the standpoint of Sen's conception of justice, the existence of this obligation can be understood as an instrument for reducing actual injustice. Inequality of access does not always arise from the absence of rights. A person may hold the same right to execute a deed or to transfer a right, yet lack the economic capacity to access the necessary services. Within the capability framework, the problem lies in the gap between formal rights and the substantive freedom to use those rights. Pro bono services function to narrow this gap by removing one of the conversion factors that constrain access, namely the cost of professional services (Iswahyudi & Asnawi, 2024; Sen, 1999).

Access to deeds and land services has consequences broader than the mere possession of documents. Certainty regarding status, obligations, or the transfer of rights can determine a person's capacity to undertake subsequent legal actions. Pro bono services should therefore not be narrowed to charitable assistance. They are a mechanism that enables indigent communities to convert formal rights into usable legal opportunities. In this sense, the obligation is consistent with the guarantee of just legal certainty in Article 28D paragraph (1) of the 1945 Constitution and with the special treatment aimed at achieving equality and justice in Article 28H paragraph (2) of the 1945 Constitution.

A capability-based reading also changes the measure of success. Compliance cannot be measured merely by the existence of a norm or by the individual willingness of an official to help. A more substantive measure is whether prospective beneficiaries can learn of their rights, prove their eligibility without excessive burden, obtain services within a reasonable time, and acquire legal outcomes that they can actually use. Studies of notarial services in several regions show that unclear procedures and low public knowledge can prevent a normative obligation from automatically becoming real access (Arshandi et al., 2024; Halim & Nurman, 2023; Novira et al., 2026).

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At the same time, Sen's approach does not require that professional interests be disregarded. A realization-focused conception of justice assesses the totality of institutional consequences. Notaries and PPAT still need certainty about the scope of services, evidence of beneficiaries' eligibility, the costs to be borne, and protection for their professional decisions. Such clarity is an element of legal certainty that supports, rather than negates, the objective of justice (Binawan, 2022; Setyawan & Priyono, 2024).

Implementation Problems: Beneficiary Criteria, Procedures, and Institutions

The first problem is the lack of an adequate operational definition of 'persons who are unable to pay'. The Notary Office Law and the PPAT office regulation identify the recipients but provide no indicators of income, asset ownership, status in social protection programs, or the evidentiary documents that must be accepted. This gap opens wide room for discretion. On the one hand, discretion is needed so that officials can respond to concrete circumstances; on the other, without minimum standards, applicants in the same economic condition may be treated differently. This finding recurs in the studies of (Arshandi et al., 2024; Firdaus, 2019; Manik, 2021; Novira et al., 2026).

The legal aid regime in fact provides a normative reference that can serve as a starting point. Law Number 16 of 2011 and Government Regulation Number 42 of 2013 recognize proof of poverty through a certificate of poverty (*surat keterangan miskin*) or other documents showing economic status. However, that regime was designed for legal aid delivered through accredited legal aid providers, not specifically for notarial and PPAT services. Rigidly adopting its proof mechanism also risks creating new administrative barriers for citizens who already have limited administrative capability. Proof must therefore offer certainty while also allowing rational alternatives.

The second problem is the unclear scope of the services included in pro bono. The formulations 'legal services in the notarial field' and 'services without charging fees' do not distinguish in detail among professional honoraria, administrative fees inherent in the process, taxes or state/regional revenues, third-party costs, and expenses beyond the control of the notary or PPAT. This lack of clarity may have two consequences. Recipients may assume that the entire process must be free of every charge, while officials may interpret the obligation merely as the waiver of a particular honorarium. Without standards, the achievement of justice depends on individual interpretation.

The third problem is the absence of an institutional mechanism connecting applicants, officials, verification, recording, supervision, and dispute handling. Current norms place the obligation primarily on individual officials. There is no uniform referral pathway if an applicant is refused, no standardized recording system that can show the number and types of services provided, and no allocation of burdens among officials. This condition makes policy evaluation difficult. Within Sen's framework of public reasoning, such institutions are needed so that the reasons for accepting or refusing a request can be openly examined and do not depend solely on personal judgment (Sen, 2009).

The fourth problem concerns funding. The state legal aid scheme under Law Number 16 of 2011 and its implementing regulations provides a budgetary mechanism for legal aid organizations that meet specified requirements. That scheme is not directly designed as a cost-reimbursement mechanism for notaries or PPAT. This does not mean that every pro bono service must always be paid for by the state. Pro bono still entails a social obligation of the profession. However, when a norm mandates services and imposes sanctions for refusal, policymakers need to determine proportionately which burdens may reasonably be borne by the profession and which require institutional support.

Article 28D paragraph (2) of the 1945 Constitution guarantees the right to work and to receive fair and proper remuneration and treatment in an employment relationship. This provision cannot automatically be used to conclude that the pro bono obligation is unconstitutional. First, the nature of the offices of notary and PPAT is not identical to that of an ordinary employment relationship. Second, legal professions may be burdened with social obligations provided that these have a legal basis and are proportionately designed. The more appropriate constitutional question is whether the distribution of burdens, the scope of the obligation, the procedures, and the sanctions are sufficiently clear to prevent arbitrariness. Accordingly, the main issue is not a direct conflict between the right to remuneration and pro bono, but the need for regulation that balances public access with certainty for the profession.

This lack of clarity also affects accountability. Notaries and PPAT are offices founded on public trust, so the integrity of their services must be accountable (Adjie, 2008). On the other hand, services that are overly bureaucratic may close off access for those who are in fact unable to pay. Striking this balance requires a design that takes the characteristics of recipients

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into account, not merely a uniform procedure. The capability perspective reminds us that two persons with similar documents or income may have different abilities to access institutions, understand procedures, or bear indirect costs (Andry, 2025; Sen, 1999).

Designing a Capability-Oriented and Proportionate Pro Bono Regulation

The first improvement is the establishment of a tiered standard of beneficiary eligibility. The regulation may use documents already recognized in the legal aid regime as primary evidence, for example a certificate of poverty or documents from social protection programs. This standard needs to be complemented by an alternative mechanism for applicants who are in fact unable to pay but lack such documents. The alternative could take the form of a statement of economic circumstances that is verified in a limited manner on the basis of supporting documents and a recorded professional assessment. A tiered model maintains certainty while preventing the proof procedure from becoming a new barrier.

The second improvement is the formulation of service standards that clarify what is meant by pro bono services. The regulation needs to distinguish professional honoraria from mandatory costs determined by the state or by third parties. Applicants must receive information from the outset about the components that are waived and the components that may still arise. This transparency is important to prevent disputes and to ensure that the phrase 'free of charge' does not produce differing expectations between recipients and officials. The standards should also cover service time, required documents, legitimate grounds for refusal, and referral procedures when an official cannot handle a request.

The third improvement is an institutional mechanism for recording and supervision. The supervisory authority and professional organizations can develop a simple recording format covering the type of service, the basis of eligibility, the form of fee waiver, and the outcome of the service, without excessively disclosing personal data. Aggregate data are needed to determine whether the obligation is being fulfilled, which regions have high demand, and whether the burden is reasonably distributed. This principle accords with public reasoning because policy can then be evaluated on the basis of accountable information rather than assumptions.

The fourth improvement is the regulation of proportionate cost support. The options need not take the form of full payment for every service. The government and professional organizations may design support for certain administrative components, a referral or rotation system, institutional funds, or other forms of support after assessing needs and fiscal capacity. The essential point is that the social obligation of the profession should not be eliminated, but the systemic costs arising from public policy should also not be left entirely to individuals without limit. Proportionate arrangements will reduce the risk of covert refusals and improve the sustainability of services.

The fifth improvement is procedural protection for notaries and PPAT. Officials who have followed the verification procedure, provided written reasons, and made referrals where necessary must be given certainty regarding the legal consequences. Conversely, refusal without objective grounds toward applicants who meet the criteria must remain subject to supervision and sanctions. This model is fairer because sanctions are directed at violations of procedures and measurable obligations, not at differences in judgment arising from the vagueness of norms.

The regulatory design must also be formed through public reasoning. The government, the supervisory authorities of the profession, notary and PPAT organizations, academics, legal aid organizations, and community groups who are prospective beneficiaries need to be involved in testing the feasibility of the criteria and procedures. Such participation is not a mere formality. In Sen's framework, policy reasons gain strength when they are open to scrutiny from the perspective of those affected (Sen, 1999, 2009). This approach can prevent overly narrow poverty standards and ensure that the regulation responds to real conditions.

With this construction, pro bono can move from a declaratory obligation toward an institution that genuinely expands capabilities. The aim is not to make notaries and PPAT substitutes for legal aid organizations, but to ensure that, when the legal needs of communities fall within the distinctive authority of the two offices, economic barriers do not negate access. The separation of authority is maintained, but the service pathway for indigent communities is made clear, measurable, and accountable. This view is consistent with the idea that law must provide concrete benefits while preserving certainty and professional integrity (Ananda et al., 2024; Pratama & Astariyani, 2025; Sari et al., 2025).

CONCLUSION

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This study yields two main findings. First, pro bono publico for notaries and PPAT is a normative obligation with a legal basis, not merely a voluntary social act. From Amartya Sen's perspective, the obligation is relevant because it functions to reduce actual injustice by expanding the capabilities of indigent communities to exercise their civil and land-related rights. The measure of success therefore does not stop at the existence of a provision, but lies in recipients' ability to obtain services and to use the results in practice.

Second, the effectiveness of this obligation remains constrained by unclear criteria for indigent persons, an unclear scope of services, unclear verification procedures, institutional mechanisms, and funding support. This condition is not adequately explained as a direct conflict with Article 28D paragraph (2) of the 1945 Constitution. A social obligation of the profession can be justified so long as it is formulated clearly and proportionately. The problem to be resolved is the distribution of burdens and procedural certainty, so that public access is protected without placing the profession in a state of uncertainty.

Subsequent regulation needs to contain flexible yet measurable standards for verifying beneficiaries, the limits and components of pro bono services, recording and supervision, referral mechanisms, and proportionate institutional or cost support. The formulation of these standards should involve the affected parties so that policy reasons can be openly tested. With such a design, pro bono can function as a genuine instrument of access to justice while safeguarding the certainty and sustainability of the notarial and PPAT professions.

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