

Challenges of the notary in determining the honorarium making of deeds

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ABSTRACT

This study aims to find out the problems and challenges of determining the honorarium of a notary in making a deed and the solution. This research is normative juridical research using statutory, conceptual, and case approaches. Legal materials were collected through literature study and analyzed using qualitative analysis. The results of this study indicate that there are problems in determining the honorarium for making deeds, namely 1) notaries are faced with a choice between following the organizational provisions of the Indonesian Notary Association or participating in market competition; 2) there are several notaries who end up being dragged into bargaining over the cost of making a deed which has actually been stipulated by the notary professional organization because they are more indulging their egos to get a large number of clients without considering the notary's dignity as a public official; and 3) it is necessary to stipulate rules on the minimum honorarium for Notaries, so that an equal honorarium will be formed between one Notary and another.

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1. Introduction

Humans as God's creatures have literally been awarded rights without any differences between one human being and another, and between one profession and another. Included in human rights is the right to get a decent life guarantee, both in terms of income and welfare as well as security, as well as the right to feel safe when carrying out actions related to the law. To fulfill this function, the state provides a position called Notary. Notary is not only a profession, but also a position that is needed by the community to obtain legal certainty and guarantee legal protection for every act committed by members of the public.

The importance of the position of Notary in guaranteeing legal certainty and protection for every act committed by every member of the public has also been put forward by Markus who stated that to create a protection and legal certainty as well as in terms of order, there must be activities in the administration of law or what is called (law) administrative) which is expected to achieve proper and orderly objectives. This is needed to avoid all forms that can cause a legal relationship that is not good and can be detrimental to the legal subject itself and the community, so that a Notary can provide certainty in the deed (Ajie, 2008).

The position of a Notary must be independent or neutral, meaning that a Notary is expected to provide legal counseling for and for legal actions taken by a Notary at the request of his client. In terms of taking legal action for his client, the Notary may also not take the side of his client, because the Notary's job is to prevent problems from occurring. If indeed the Notary wants to refuse to provide his services to the party who needs it, then the refusal must be a refusal in a legal sense, in the sense that there is a clear and firm legal reason or argument so that the party concerned can understand it (Manuaba, Parsa, Ariawan, 2018).

In addition to the obligation to do things that have been regulated in law, Notaries still have other obligations. So, this relates to the Notary's oath/promise which states that a public official will keep the contents of the deed and the information obtained in carrying out his/her position, unless ordered by law that the notary is not obliged to keep confidential and provide the necessary information related to the deed (Pranangtyas, 2019).

Thus, only laws can order a Notary to disclose the secret contents of the deed and information, or statements known to the Notary relating to the drawing up of the deed. Determination of the amount of the Notary honorarium is based on the economic and sociological value of each deed he makes, as stipulated in Article 36 of Law Number 30 of 2004 concerning the Office of a Notary. Apart from being based on the provisions of article 36 of the Notary Office Law, the amount of the honorarium is also based on the stipulation of the association (Indonesian Notary Association/INI), as in the Notary Code of Ethics in article 3 point (13) of the Code of Ethics, notaries are required to implement and comply with the provisions regarding honorarium association set. The Notary's hopes that there will be no unfair competition among fellow notaries by giving an honorarium below the predetermined honorarium. Article 4 point 10 of the Notary's Code of Ethics regulates that a Notary should not set an honorarium to be paid by a client that is lower than the honorarium that has been determined by the association. This rule was made to avoid unfair competition among notaries, which has an impact on the Notary's position. Nevertheless, the arrangement regarding the Notary's honorarium by the association is still not a clear amount, only setting the upper and upper limit by using the term "not exceeding" as stipulated in the Law on Notary Office (UUJN), Article 36 Number 2 Year 2014 (Nuh, 2011).

The fact is that many Notaries violate the code of ethics, namely setting fees under the provisions of the Indonesian Notary Association. Because for a Notary, if he persists with the number of fees for making a deed from the Indonesian Notary Association (INI), then the potential for losing clients is high. The client will switch to another Notary who will likely lower the fee for making the deed. This problem is inseparable from the increasingly intense competition between notaries. The number of Notaries in a district/city area is not proportional to the number of requests for deed making. The number of notaries available in an area is more than the demand for making deeds, so that notaries have the potential to reduce the fee for making deeds under the provisions so that the client prefers the Notary to do the deed.

2. Method

2.1. Types of Research

This research uses normative juridical legal research, namely legal research that examines and examines the legal norms contained in the provisions of laws and regulations (Asyhadie, SH, & Rahmawati Kusuma, 2019; Indriati & Nugroho, 2022). The approach used in this study is the statutory and conceptual approach. The legal material used is the Notary Office Law and the Notary Code of Ethics. Legal material processing techniques are carried out with library techniques (Indriati & Nugroho, 2022; Putra, Najwan, Rahmalia, & Daud, 2021). Library techniques are carried out by recording and understanding the contents of each information obtained from existing legal materials. The legal material analysis technique used in this study is a descriptive technique, namely a technique used to analyze a problem that must be used in a study.

3. Results and Discussion

3.1. Notary Challenges in Determining the Honorarium for Making Deeds

In the era of globalization, which has increasingly made competition between people in the world of work, workers, including notaries, carry out strategies so that people choose the Notary to ask for a deed. The increasing number of notaries will automatically cause an "honorarium war" among fellow notaries. This resulted in competition in getting clients so that the honorarium of some notaries was lower and conversely there were also some notaries who asked for a higher honorarium that exceeded the maximum limit as mandated in the Notary Office Law (Badroen, 2006).

The number of Notaries continues to increase according to the law of demand. When the demand does not increase (the national economic condition is not conducive), the supply increases (the number of notaries increases) so the price/honor will be pressured to a lower value than before. This has caused several Notaries to carry out a "pick-up the ball strategy" by carrying out a "price-slashing" action. This price reduction activity violates the provisions of Article 4 point 10 of the Notary Code of Ethics which prohibits Notaries from setting a lower honorarium than the honorarium determined by the association. In essence, a Notary is a public official assigned to serve the public's need for authentic evidence that provides certainty of civil law relations. So that if authentic evidence is still needed, the position of a Notary will still need its existence in society. There are several cultural factors in society that can influence a Notary in carrying out his position in the context of determining the fee for making a deed ego culture to win itself, notary honorarium bargaining culture, and the culture of exploiting weaknesses of notaries.

3.1.1 Ego Culture to Win Itself

The assumption "the client is king" makes the client feel that anything he wants can be done with a certain amount of money. This is often found in economically strong circles who feel that honorarium is a measure of service. Economically strong people often interpret that high honors affect the services they get. With a high honorarium, they will get "special" services, for example a client without complete administrative requirements, but who has a high amount of money, feels that the Notary will still carry out his will. The mindset that money can buy everything is still formed in urban society, so the morale of a Notary is greatly tested by this. Junior notaries often become easy targets for economically powerful people because they assume that junior notaries still need financial support for their office operations. So that high-income people tend to approach junior notaries with the lure of large honorariums.

3.1.2 Notary Honorarium Bargaining Culture

In determining the honorarium, the Notary has its own indicator, but it often conflicts with practice. The existence of a culture of "bargaining" in society makes the image of a Notary diminish. Communities often make offers when the Notary has determined the amount of honorarium. Meanwhile, the minimum threshold for a Notary to receive honorarium for his services has been determined by the Association of Notaries. The Notary feels that he has no other choice if he still follows the provisions in determining the honorarium. He feels that the existence of his profession will be threatened if it burdens people who need help with this profession. Thus, allowing the negotiation process with a note that the legal actions taken do not conflict with laws and regulations and reduce the dignity of the Notary himself.

3.1.3 The Culture of Exploiting Weaknesses of Notaries

Even though he has been careful in carrying out his duties and obligations, the Notary still has shortcomings that can harm him. Errors that occur cannot be completely avoided, so that sometimes there are persons (third parties) who have bad intentions and take advantage of the existence of a Notary. For example, when drawing up an inheritance deed, one of the heirs is fake, so the Notary is summoned to serve as a sanction at the request of the court, and participates in providing information about what he saw, heard, and knew. The behavior of these individuals is very detrimental to the Notary, so the Notary must be sensitive or careful in dealing with his client. The Notary must be firm so that the client cannot see any weak points and take advantage of the situation. Notaries who violate existing regulations will be subject to sanctions as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. The law contains that the sanctions imposed on Notaries who have violated the rules, are not just civil or administrative sanctions but also criminal sanctions and a code of ethics. Included in determining the honorarium, a Notary who does not apply the honorarium in accordance with existing regulations will also be subject to sanctions. This regulation regarding honorarium has been regulated in Article 4 Paragraph (10) which explains that a Notary or a person who holds the position of a Notary Public may not and is prohibited from setting an honorarium in a lower amount than the honorarium determined by the association. The existence of the position of Notary was first recorded on August 27, 1620, with the appointment of a Dutchman named Melchior Kerchem. Kerchem is tasked with taking care of the public interest relating to the registration of all documents and deeds. The notaries were given freedom in carrying out their duties and prohibited the procurator from interfering with Notary work in 1950 (Central Board of the Indonesian Notary Association, 2008).

Even though the Notary Office Regulations (PJJ) are no longer in accordance with the times, PJJ is still used by the government as the only law governing Notary affairs in Indonesia from 1860 to 2004. Therefore, INI (Indonesian Notary Association) is trying to build a new Notary law in the 1970s to accommodate developments in the legal and business environment in Indonesia. Its main law, *Notariswet*, has undergone several amendments to adapt to legal and business developments in the Netherlands, so it can be said that changes to PJJ are something that needs to be done. In 2004, INI succeeded in developing a new Notary law that can accommodate the dynamics of the current legal and business environment. The law is the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary Public, which has been updated again with Law Number 2 of 2014. Indonesian Notaries do not adhere to the Anglo-Saxon legal system which merely acts as a ratifier of agreements, such as Notaries in America Union. According to the Anglo-Saxon Legal System, a deed drawn up by an Anglo-Saxon Notary has no force, so it cannot be used as authentic evidence that can be used before a court of law. This of course will harm the people who have used the services of a Notary for years. This system also endangers the existence of Indonesian Notaries because it lowers the status of a Notary to merely legalizing documents, not a legal officer (Central Board of the Indonesian Notary Association, 2008). Indonesian notaries adhere to the Latin-European Continental legal system which has the authority to give legal advice and check whether an agreement made has complied with the terms of the agreement and is not detrimental to either party. If the quality of Indonesian Notaries is qualified, intellectually, mentally, and spiritually, then the government will easily optimize the achievement of legal performance as planned. Notary itself is one component in the field of law that has a big role for the government (Central Board of the Indonesian Notary Association, 2008).

3.2. Efforts to Overcome Notary Challenges in Determining the Honorarium for Making Deeds

In fact that happens, in practice "the maximum limit which is expressed in the biggest words or does not exceed what causes a problem". Because in the absence of certainty about the amount of the honorarium, it is possible to bargain between the Notary and the client. Based on the Notary Office Law, it has been regulated regarding the Notary profession honorarium, but only at the maximum limit as stated in Article 36 of the Notary Office Law. The problem that often arises is that, as a Public Official, it is only natural that people use the services of a Notary and hope to obtain the services provided by a Notary, in this case in the form of making deeds that have value and quality that can be relied upon and have legal certainty. In carrying out their duties, a Notary may only receive an honorarium from his client. On the other hand, even though it is a position granted by the state, a Notary does not receive a salary from the state in carrying out his professional obligations. As stated in Article 36 of Law Number 2 of 2014. Until now, the Notary professional honorarium regulations

do not state the exact amount or proportion, but only determine the maximum limit specified by the word "not exceeding" as referred to in Article 36 of the Notary Office Law (UUJN) Number 2 of 2014.

As a public official, the Notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by interested parties or by a general rule to be stated in an authentic deed, guarantee the certainty of the date of the deed, save the deed, provide a copy, grosse, everything as long as the making of the deed by a general regulation is not assigned or excluded to officials or other people. The state gives a mandate to Notaries to carry out their duties and functions so that they can meet all the needs of society in the field of law, especially civil law. Not every citizen can be appointed as a Notary, but those who can be appointed as a Notary are people or citizens who meet the requirements stipulated in the laws and regulations. The procedures for applying for the appointment of a Notary are regulated in Article 3 to Article 7 of the Regulation of the Minister of Law and Human Rights Number 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Dismissal and Extension of the Notary's Term of Office in conjunction with Article 5 to Article 7 of the Regulation of the Minister of Law and Human Rights Number 25 of 2014 concerning Terms and Procedures for Appointment, Transfer, Dismissal and Extension of the Notary's Term of Office. The validity period of the Decree on the appointment of a Notary is when the Notary begins to exercise his authority. However, the existence of the Decree does not necessarily mean that the Notary can carry out his authority, but the Notary must be sworn in first by the Minister or appointed Official before carrying out his authority. The Notary oath that has been carried out by an authorized official is the initial momentum for a Notary in carrying out his position. If there is a Notary who violates legal norms, he will be subject to sanctions or punishments which have been regulated in Law Number 30 of 2004 concerning the Position of Notary. To avoid problems that often arise in carrying out their profession, a Notary must be able to equip himself with sufficient knowledge, especially in the Notary field. While carrying out his duties, even though he is appointed and dismissed by the government, a Notary does not receive a salary from the government, so that the honorarium received by a Notary is the personal income of the Notary concerned.

Honorarium is the right of a Notary, meaning that people who need the services of a Notary must pay a Notary's honorarium, although the Notary is also obliged to help free of charge to people who cannot afford to pay an honorarium to a Notary. Limitation of being able or not capable of this Notary himself who can assess it. Based on the Law on Notary Office Number 2 of 2014, the matter of honorarium is also regulated in Article 36, 1) a Notary is entitled to receive an honorarium based on the economic and sociological values of each deed he makes. Basically the Notaries stated that to comply with the existing regulations, but according to them the problem is that the existing regulations are unclear, and/or do not have firmness; and 2) determination of the amount of honorarium of a Notary in the practice of exercising his position is determined based on the economic value and sociological value of each deed he makes. To complement the provisions of Article 36 of Law Number 2 of 2014, several Indonesian Notary Association (INI) officials in several regions have made guidelines for regulating the amount of honorarium that can be received for each type of work (Hendra, 2003).

Therefore, it is very important to make rules regarding the minimum honorarium for a Notary, so that when the minimum honorarium limit has been set, an equal honorarium will be formed between one Notary and another. Based on the description above, it is better for the organization or association to discuss the minimum limit of Notary honorarium. In the absence of an agreement from the association regarding the minimum limit of Notary Honorarium since the enactment of Law Number 30 of 2004 concerning the Position of Notary Public so that it has an impact on unfair competition between fellow Notaries as stated in Article 4 Paragraph (9) of the Notary Code of Ethics of the Indonesian Notary Association, that doing efforts, either directly or indirectly, which lead to unfair competition with fellow notaries.

In preparing local regulations, the basic consideration that needs to be considered is the establishment of a Notary organization in the form of a Notary code of ethics concerning the minimum honorarium limit for Notary professional services. However, they have the confidence and ability to decide legally based on Article 1338 paragraph (1) of the Civil Code: "all agreements made legally are valid as laws for those who make them". The strength of the existence of this agreement is basically binding on the parties and where the parties have agreed on the existence of the form and content of an agreement that must be carried out in good faith.

Thus, if there are matters that are not specifically regulated in statutory regulations, they must be regulated and mutually agreed upon by the parties. The ideal honorarium arrangement for a Notary means the desired regulation governs the Notary's honorarium. It is better if the stipulation regarding the honorarium can be stipulated in the Notary's organizational regulations, where the stipulation of the Notary's organizational regulations applies in each respective region or region. It is determined how much the minimum honorarium for Notary services is, so that a sense of justice and equality is created for notaries in receiving honorarium for their legal services. Then in the organizational regulations, sanctions are made for violations of the provisions for setting a minimum honorarium standard for Notary services that apply in each region or region of each region. Based on the description above, it is necessary to amend Article 36 of the Notary Office Law (UUJN) so that it also mentions the determination of the minimum honorarium limit determined by the Notary office organization, so that the determination of the Notary profession organization has certainty in determining the honorarium based on the Position Law. Notary (UUJN)

4. Conclusion

Based on the analysis, it was concluded that the reasons for the Notary's challenges in determining the honorarium for making a deed were the existence of an ego culture to win for themselves. The mindset that money can buy everything is still formed in urban society. Junior notaries often become easy targets for economically powerful people because they assume that junior notaries still need financial support for their office operations. So that high-income people tend to approach junior notaries with the lure of large honorariums. Apart from that there is a culture of haggling over honorarium, the community often makes offers when the Notary has determined the amount of honorarium. The Notary feels that he has no other choice if he continues to follow the provisions in determining the honorarium because he feels that the existence of his profession will be threatened if it burdens people who need help with their profession. Thus, allowing the negotiation process with a note that the legal actions taken do not conflict with laws and regulations and reduce the dignity of the Notary himself. There is a culture of taking advantage of the Notary's weaknesses, even though he has been careful in carrying out his duties and obligations, the Notary still has shortcomings that can harm him. Errors that occur cannot be completely avoided, including in determining the honorarium, a Notary who does not apply an honorarium in accordance with existing regulations will also be subject to sanctions. Efforts to overcome these challenges are to establish rules regarding the minimum honorarium limit for Notaries, so that when the minimum honorarium limit has been set, an equal honorarium will be formed between one Notary and another. It is better for the organization or association to discuss the minimum limit of Notary honorarium. In the absence of an agreement from the association regarding the minimum limit of Notary Honorarium since the enactment of Law Number 30 of 2004 concerning the Position of Notary Public so that it has an impact on unfair competition between fellow Notaries as stated in Article 4 Paragraph (9) of the Notary Code of Ethics of the Indonesian Notary Association, that doing efforts, either directly or indirectly, which lead to unfair competition with fellow notaries.

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