



The obligation of notary to provide services to clients in making deeds

Anisia Kamila¹, Dahlan², Darmawan²

¹ Student of Master Program of Notary University Syiah Kuala Banda Aceh, Indonesia

² Lecture Master Program of Notary of University Syiah Kuala Banda Aceh, Indonesia

Abstract

Law Number 2 of 2014 on the Position of Notary explains the obligations of a Notary. One of the Notary's obligations is contained in Article 16 paragraph (1) letter d of the Notary Position (UUJN), which is about Notaries who are obliged to provide services per this law's provisions unless there are specific reasons for refusing it. This research aims to answer why a Notary refuses to provide services in making deeds and the legal consequences if a Notary refuses them. The research method used is empirical juridical, combining legal materials as secondary data with primary data obtained directly from the field results. The results show that Notaries refuse to provide services to clients due to the incompatibility of honorarium, and the deed to be made is feared to cause legal problems in the future. Notary refusing to provide services to clients should have clear reasons and pay attention to all aspects of applicable law. Therefore, the client has an effort to make a complaint to the Notary Supervisory Council, but the regulation needs to explain how the refusal will be sanctioned clearly.

Keywords: notary, service, deed

Introduction

A notary is a public official with the authority to make authentic deeds, as stated in Article 1 Paragraph (1) of Law Number 2 of 2014 concerning the Notary Position (hereinafter abbreviated as UUJN). Notaries are obliged to make deeds and have other authorities as described in the UUJN (Ira Koesoemawati dan Yunirman Rijan., 2009)^[7].

A notary is a noble, honorable profession and always has a connection with ethics and morals when carrying out its position. In carrying out their duties, Notaries must maintain and uphold the dignity of the profession in trust and honor. Because of the inherent ethics of the Notary profession, it is called a noble profession (Abdul Ghofur, 2009)^[2].

Notaries have one main task, namely making authentic deeds. Based on Article 1868 of the Civil Code, it is a deed made in the form prescribed by law before an employee who has that authority in the place where the deed is made (A. Kohar, 2004)^[1].

Notaries become public officials responsible for ensuring their deeds' authority or authenticity. Notaries who are appointed by the highest management of the State are given trust and recognition for providing legal services for the benefit of many people (Ketut Adi Gunawan, 2020)^[9].

Besides making authentic deeds, the Notary must provide services to interested clients. In providing a legal service as a Notary, paying attention to all aspects of existing law and applicable social rules is recommended so that in making deeds, it cannot cause legal problems (Salim HS, 2015)^[12].

Legal services provided by Notaries should not discriminate against the social, economic, or political status of clients who face Notaries. All must be treated equally regardless of status. This is to uphold the duties of a Notary who carries out the mandate of the State and to maintain the honor of the office of a Notary so that he continues to carry out his duties professionally (Perkasa, 2019)^[11].

Article 16 of the UUJN states the obligations of Notary in carrying out their duties, one of which is regulated in Article 16 paragraph (1) letter d of the UUJN states that: "Notaries

are obliged to provide services in accordance with the provisions of this Law, unless there is a reason to refuse." So, the Notary should provide services to clients without having to refuse; if they refuse, they must have specific reasons. The reason is related to what causes the Notary to be impartial, such as having a marital relationship with the Notary himself or his husband or wife. These make one of the parties cannot act to perform actions or other things not permitted by law (Abdul Ghofur Anshori, 2009)^[3].

Materials and methods

This research is an empirical juridical research method in the form of empirical studies to obtain a theory of implementing the law in society. The research was conducted by combining library research, namely reviewing journals, books, and regulations related to the problem. Data were obtained directly from the community as the first source through field research by conducting interviews.

Data analysis is carried out using a qualitative approach, which is research that classifies data following the problems studied and is taken as a conclusion and implemented to provide analysis in scientific research.

Results and discussion

A notary is a public official appointed and dismissed by the government and given the authority and obligation to serve the public on some issues. As stated in Article 1 paragraph (1) of UUJN, Notary is a public official trusted by the public to make authentic deeds. An authentic deed is a writing that can be used as concrete evidence. An authentic deed contains all acts, agreements, and stipulations regulated by law or desired by the interested parties to be mentioned in the deed. Notaries are obliged to provide legal services and consultations to the public. The state presents the Notary profession to serve the legal interests of people who need evidence in the form of authentic deeds according to the request concerned by the Notary. Thus, without people who need Notaries, Notaries are useless (Habib Adjie, 2014)^[5].

Notaries, apart from paying attention to their obligations, must also pay attention to the authorities and prohibitions stipulated in the UUJN and the Notary Code of Ethics in providing services to clients who need their services in the field of notarial affairs, especially in making authentic deeds (Ayu Ningsih, 2019) ^[4]. Article 15 of the UUJN stipulates that "Notaries have the authority to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations and which are desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy, and quotation of the deed. All as long as the making of the deed is not assigned or excluded to other officials or persons stipulated by law (Jaifurrachman, 2011) ^[8].

Service is providing services and serving the community carried out by public services to fulfill the needs and needs of the community and implementers following statutory provisions. Based on the main rules and procedures set out, the needs, in this case, are not individual needs but various needs that are expected by the community.

The obligation is any burden ordered by law to a person or legal entity. Notary obligation must be done by the Notary, which is ordered by the Notary Position Law and other laws and regulations. A notary is a profession that exercises the power of the State in the field of private law and has a vital role in making authentic deeds that have perfect evidentiary power because the position of a Notary is a trustworthy person and must have good behavior (Munir Fuady, 2002) ^[10].

A Notary essentially must provide services to the public who need their services based on Pancasila (five official pillars, foundational philosophical theory of Indonesia), being aware of and obeying the laws and regulations, the Notary Office Law, the Notary Code, the oath of office by working honestly, independently, impartially, and with a sense of responsibility. Specifically, the obligations of the Notary are regulated in the revision of the Notary Position Law and the Notary Code of Ethics in accordance with the nature of the emergence of Notary authority born due to the law.

Article 16 of the UUJN mentions the obligations of a Notary in explaining his/her position. One of the obligations contained in the governing law is in Article 16 paragraph (1) letter d of the UUJN, which states that: "Notaries are obliged to provide services in accordance with the provisions of this Law, unless there are reasons to refuse." Thus, the Notary is obliged to provide services to the client without having to refuse. If the Notary refuses to provide services, there must be specific reasons. The explanation part of the word "reason to refuse" is the reason that causes the Notary not to favor a person who has a blood relationship with the Notary or his husband or wife. One of the parties cannot act to perform acts or things not permitted by law (Herlien, 1999) ^[6].

According to the results of research on Notaries who refused to provide deed-making services to clients, the refusal factor was due to a mismatch or alignment of the honorarium that Notaries set that makes them refuse to provide services to clients. The Notary is not allowed to refuse every client who comes to perform legal acts, such as making deeds, especially for economically disadvantaged clients. Following Article 37, paragraph (1) of the UUJN, "Notaries are obliged to provide legal services in the field of notarial

affairs free of charge to people who cannot afford it." In reality, legal and notarial services are needed by people. The use of notarial services by people who can afford it can be done by giving an honorarium to the Notary. Differences in financial ability have an impact on the use of Notary services. Thus, in reality, the Notary not only ignores the rules following Article 16 paragraph (1) letter d but other obligations are ignored as stipulated in Article 37 paragraph (1) of the UUJN.

Another research result is that a Notary refuses to provide legal services to clients to make a deed, namely the deed of establishment of an association because the Notary is concerned that his vision and mission violate the Law. Thus, it is concerned that this will cause problems for the Notary or the party concerned and result in legal problems.

The refusal to provide Notary services in the UUJN must be clearly outlined. However, a Notary with high knowledge and professionalism must deeply analyze all related legal aspects when dealing with clients.

The above provisions are associated with Notaries who are required to provide legal services and have the right to refuse. However, for certain reasons, it becomes a limitation of the Notary and protection for the court or client. In rejecting a client, the Notary must be thorough and consider all pertinent legal aspects.

Conclusion

Based on the results of this study, the consideration of the Notary in refusing services in making authentic deeds to clients is non-judicial reasons, namely the factor of honorarium discrepancy and the deed requested by the client to be made contrary to the Notary's conscience. Notary considers that the deed to be made can cause undesirable things in the future. Notaries who do not fulfill or violate their obligations are not necessarily given the law. It will be subject to sanctions as stipulated in Article 85 of the UUJN regarding the provision of sanctions in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal.

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