



Application of notary legal services to the community that is not subject to notary honorarium fees in west aceh regency

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Abstract

Regarding the implementation of notary legal services in making authentic deeds, the notary is entitled to receive an honorarium for the legal services provided. Notaries as one of the public services do not receive an honorarium from the government based on the provisions of Article 5 paragraph (3) letter c 1 of Law Number 25 of 2009 concerning Public Services. Notaries receive honoraria based on the provisions stipulated in Article 36 paragraph (1) of Law Number 30 of 2004 concerning Notary Positions (hereinafter referred to as UUJN), which states that: "Notaries are entitled to receive honoraria for legal services rendered in accordance with their authority". Every certain legal action made in the form of an authentic deed by a notary is entitled to receive an honorarium. The calculation of the honorarium is based on the economic value and the sociological value of each authentic deed made by a notary. However, what about people who cannot afford notary fees, considering that the UUJN regulates that the public can be provided with free legal services. Article 37 paragraph (1) UUJN which states that: "Notaries are obliged to provide legal services in the field of notary free of charge to people who can't afford it". In practice, this provision becomes a complicated problem, because there is no further explanation regarding the provisions for the category of poor people to be given free notary legal services. This research is juridical normative with a statutory approach, an analytical approach, a legal concept approach, and a historical approach. The sources of legal materials in this study are secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials and primary data in the form of interviews. as supporting data, analyzed qualitatively and concluded deductively.

Keywords: legal services, notary, honorarium

Introduction

Indonesia is a legal state which is defined based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). In a legal state, the state provides public services to every Indonesian community based on Article 1 paragraph (2) of the 1945 Constitution which explains that: "sovereignty is in the hands of the people and is carried out according to the Constitution". Regarding these provisions, the intended public service is in the form of services to the community carried out by government officials. Government officials who are given the authority to carry out public services must comply with and comply with statutory regulations.

The definition of public services is stated in Article 1 point 1 of Law Number 25 of 2009 concerning Public Services (hereinafter referred to as UUPP), which explains that: "activities or series of activities in the context of fulfilling service needs in accordance with statutory regulations for every citizen and residents for goods, services and administrative services provided by public service providers. Public service providers other than government officials who become State Civil Apparatus (ASN), other officials who carry out some of the government's obligations are public officials.

One of the state public officials who has an important role in carrying out his duties and positions in carrying out legal actions to serve the interests of the community is a notary. Based on Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as UUJN-P), it states that "a notary is a public official who is authorized to make an authentic deed and has other authorities. as referred to in this Law or based on other laws".

Herlien Budiono explained that "notaries as public officials are tasked with providing services to people who need their services in making written evidence, especially in the form of authentic deeds in the field of civil law." Regarding the implementation of notary legal services in making authentic deeds, the notary is entitled to receive an honorarium for the legal services provided.

Notaries as one of the public services do not receive an honorarium from the government based on the provisions of Article 5 paragraph (3) letter c of the UUPP. This means that the notary's income does not come from the state or regional revenue and expenditure budgets, but the community directly pays the honorarium for notary legal services.

Notaries receive honoraria based on the provisions stipulated in Article 36 paragraph (1) of Law Number 30 of 2004 concerning Notary Positions (hereinafter referred to as UUJN), which states that: "Notaries are entitled to receive honoraria for legal services rendered in accordance with their authority". Every certain legal action made in the form of an authentic deed by a notary is entitled to receive an honorarium.

The calculation of the honorarium is based on the economic value and the sociological value of each authentic deed made by a notary. It is explained in Article 36 paragraph (2) of the UUJN that: "the amount of honorarium received by a notary is based on the economic value and sociological value of each deed he makes".

Arrangements regarding fees charged to clients for notary legal services are further regulated in Article 36 paragraph (3) of the UUJN which stipulates that: the calculation of the economic value of each authentic deed to obtain a notary's honorarium is calculated based on the value of the authentic deed. For the economic value of a deed up to Rp. 100,000,000.00 (one hundred million rupiah) or equivalent to the value of grams of gold at that time, the fee charged to pay the honorarium of a notary in making an authentic deed is a maximum of 2.5% of each authentic deed.

For the economic value of a deed above Rp. 100,000,000.00 (one hundred million rupiah) up to Rp. 1.000.000.000,00 (one billion rupiah), the fee charged to pay the notary's honorarium in making an authentic deed of a maximum of 1.5% of each authentic deed. Meanwhile, the economic value of a deed is above Rp. 1.000.000.000,00 (one billion rupiah), the fee charged to pay the notary's honorarium in making an authentic deed of a maximum of 1% of each authentic deed, and for further provisions on the honorarium given for the economic value of a deed above Rp. 1,000,000,000.00 (one billion rupiah), may be based on an agreement between a notary and the parties.

Article 36 paragraph (4) of the UUJN states that: "the sociological value of an authentic deed is determined based on the social function of the object of each authentic deed with the honorarium received by a notary at a maximum of Rp. 5,000,000.00 (five million rupiah)". In the explanation of Article 36 paragraph (4) of the UUJN it is stated that: "deeds that have a social function, for example the deed of establishment of a foundation, deed of establishment of a school, deed of waqf land, deed of establishment of a house of worship, deed of establishment of a hospital". However, this sociological value is difficult to determine in a deed because there are no parameters used to calculate it.

For each authentic deed made by a notary, the amount of the honorarium fee is determined based on the provisions in Article 36 of the UUJN, but the UUJN does not regulate the minimum fee for the notary's honorarium. In addition to these provisions, notaries are also subject to and obedient to the notary association organization, namely the Indonesian Notary Association (INI).

Article 4 point 10 Amendments to the Code of Ethics of the Notary Special Congress INI Banten, 29-30 May 2015 (hereinafter referred to as KEN), states that: "The notary is prohibited from setting the honorarium to be paid by the client in an amount lower than the fee set by the association". The purpose of these provisions, INI association has set a minimum fee charged to clients to pay notary fees. So that the notary can apply the cost of a deed to the client if the client asks for a reduction in the cost of the notary's honorarium by referring to the minimum limit for the notary honorarium set by this association.

The provisions in Article 3 point 7 KEN, states that: "implement and comply with all rules regarding the honorarium set by the association". These provisions are given to maintain relations with fellow notaries who have the same working area. Munir Fuady explained that: "fellow notaries should be respectful in a family atmosphere and notaries are also prohibited from holding unfair competition, such as by lowering tariffs/service fees".

Fraud can occur in determining the cost of making an authentic deed by providing an honorarium below the average minimum price determined by the laws and regulations and this association. Unfair competition between fellow notaries to get clients is a problem that often occurs and has been investigated by previous researchers.

However, what about the people who are unable to pay the notary honorarium even though the minimum fee for the notary fee has been given. Considering that every class of society requires the legal services of a notary, those groups of people who have sufficient finances or are economically capable can provide an honorarium to a notary for making an authentic deed. On the other hand, for economically disadvantaged groups, they cannot pay the notary's honorarium for making authentic deeds. Meanwhile, the notary's honorarium comes from the community and in practice the notary is charged with office fees, employee salaries and other costs every month. With the provisions in Article 37 paragraph (1) UUJN which states that: "a notary is obliged to provide legal services in the field of notary free of charge to people who can't afford it". In practice, this provision becomes a complicated problem, because there is no further explanation regarding the provisions for the category of poor people to be given free notary legal services.

Article 37 paragraph (1) UUJN cannot be realized in real terms because the implementing regulations of the Law do not yet exist. Regarding these provisions, what kind of notary legal services are not subject to a notary fee. Considering the notary as a public official who is authorized to provide legal counseling and make authentic deeds regarding all actions, stipulations and agreements desired by the parties as well as other authorities regulated by UUJN.

Research methods

This type of research is normative juridical research, namely researching library materials or research on secondary data in the form of primary legal materials, secondary legal materials, tertiary legal materials,

supported by primary data in the field. The research approach used is a statutory approach, an analytical approach, a legal concept approach, and a historical approach. The sources of legal materials in this research are secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials and primary data in the form of interviews as supporting data, analyzed qualitatively and concluded deductively.

Results and Discussion

Notaries, as public officials in carrying out their duties and positions related to a person's civility, have attribution authority, namely the authority given to notaries born from UUJN, as the legal basis for notaries carrying out their duties and positions. The authority of a notary is regulated in Article 15 from paragraph (1) to paragraph (3) of the UUJN. Attribution authority is the granting of new authority to a position based on a statutory regulation or rule of law. So that if a notary commits an action outside his authority, the notary has committed an unlawful act.

Based on the research of researchers, in practice the authority of a notary related to Article 37 paragraph (1) of the UUJN in providing legal services for free without being charged an honorarium in West Aceh Regency has no implementing regulations and has not collaborated with the local government. According to the experience of several notary clients, notary client Rahmad, said that: he had a desire to have a rental deed made for renting a house for a social space, but because the foundation he had created had not been running actively and effectively, he felt that there were not enough funds to pay the notary's fees, and I have never known that a notary can provide legal services for free.

Maimunah's notary client, a customer of a sharia bank, said that: when making a loan with a credit agreement deed made, he asked for assistance regarding the fee for the notary, because he was unable to pay the notary fee, and the policy taken by the notary by offering an agreement was made under hand by way of legalizing the agreement, because the fee for the honorarium is cheaper than a notarial deed.

Notary client Jefry, said that: his family is of Chinese descent, at the time of the distribution of the inheritance using the services of a notary and the distribution was carried out, then a year later he planned to get married and came to the notary's office to make a deed of separation of assets with his future wife, considering that the inheritance was obtained before marriage and his wife already has a child. An offer from a notary by reducing the honorarium fee because he had been his client, but he was rejected because he thought he could still pay the honorarium in full.

The application of notary legal services to the public free of charge is not only for the poor, but also for people who are classified as capable can be provided with free legal services with several factors, namely as follows:

1. Underprivileged people who are given legal services free of charge by a notary, because of the sense of social and brotherhood among others,
2. The middle class community who are given legal services free of charge by a notary, because of a notary partner, a request from a notary colleague, and there is still a family relationship with a notary
3. Affluent people who are given legal services free of charge by a notary, because of the remuneration for the help of the community who are notary clients, and people who are permanent clients of notaries are given free notary fees or a reduction in notary fees.

Notary Azhar Ibrahim, said that in practice the application of free legal services to the public in the form of an authentic deed had never been given by him. However, services such as legal consultation regarding notary services are often carried out, because many people still do not understand their rights and responsibilities in carrying out legal actions and do not understand the duties and authorities of a notary.

Notary Rinna Keumala, said that she had never received a client request not to be charged an honorarium, considering that technically notaries require office operational costs, and notaries as general officials are not paid by the government, notaries seek their own salary from the honorarium for legal services and their authority according to UUJN.

Notary Cut Ida Khairani, said that to this day he as a notary in carrying out his duties and positions has never accepted people who come to his office to be asked to make a deed for free. He also does not refuse if there are people who are less able to ask for a deed to be made free of charge, and do not make it difficult for the community if it is based on good intentions and has complete documents.

Notary Rinaldiansyah, stated that the provision of legal services for free would have no problems if the community could complete the requirements as a appearer and complete the documents required for making the deed, accompanied by a letter of incapacity from the local government or keuchik. This aims to avoid irresponsible persons and minimize losses on operational costs, especially since a notary who has just opened an office does not yet have many clients to cover operational costs. Notaries must be honest, independent, thorough and impartial, in carrying out their duties and positions regarding all legal products. Thus, the notary can act neutrally, work independently according to the UUJN.

If it is associated with the theory of legal effectiveness which examines and analyzes the success, failure, and influencing factors in the implementation and application of the law. The influencing factors can be studied from the aspect of success and failure aspect. The factors that influence the success include legal substance, structure, culture, and facilities. Legal norms are said to be successful or effective if they are obeyed and implemented by the community and the law enforcers themselves. If a rule of law is obeyed by the majority of the targets for which it is obeyed, it can be said that the rule of law is effective. However, if not, the rule of law is ineffective.

Soerjono Soekanto suggests that the degree of legal effectiveness can be seen from several factors, namely from legal factors and legislation, law enforcement factors, community compliance factors with the law, so that the assumption is known that, "High compliance levels are an indicator of a functioning legal system. And the functioning of the law is a sign that the law has achieved the purpose of the law, namely trying to defend and protect the community in social life." Next, are the factors of facilities and facilities that support law enforcement, and cultural factors. These five factors are closely related, because they are the essence of law enforcement, and are also a measure of the effectiveness of law enforcement.

In law enforcement factors, what determines the effectiveness or not of written law performance is law enforcement itself. In this connection, it is necessary to have reliable law enforcers so that law enforcers can carry out their duties properly. Reliability in relation here is covering professional skills, having a good mentality or personality of law enforcement is an important role. If the legislation is good, but the quality of law enforcement is not good, it will cause problems. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcement.

Here it can be seen that a notary as one of the law enforcers who carries out his profession must prioritize the notary's (scientific) expertise, integrity, and good morals in carrying out his duties and positions based on UUJN and KEN. The position of a notary is a position of trust mandated by law and the community, for this reason the notary is responsible for carrying out the trust given to him by always upholding legal ethics and the dignity and integrity of his position. Because if this is ignored by a notary, the effectiveness of the law is not realized in the field.

In addition, the factor of facilities or facilities that support law enforcement. That is, the availability of facilities in the form of facilities and infrastructure for implementing officers in carrying out their duties. The facilities and infrastructure in question are infrastructure or facilities used as a tool to achieve legal effectiveness. The infrastructure must clearly be a part that contributes to the smooth running of the duties of law enforcement at the place or location of work.

The non-fulfillment of the factors in the effectiveness of the law proves that the implementation of the rule of law is not effective in the field. The absence of an explanation or implementing regulations from Article 37 paragraph (1) of the UUJN, shows the failure of implementation in accordance with Article 37 paragraph (1) of the UUJN. So that people think they do not get the facilities provided by the government regarding the provision of notary legal services for free.

The provision of free legal services by a notary means that the award that should be given by the client as a reward for the notary service is free of charge. Notary legal services can be in the form of legal counseling, ratification of written evidence and making authentic deeds. According to notary Cut Idda Khairani, legal assistance that a notary can provide to underprivileged communities can be in the form of legal services in the field of consultation regarding legal problems faced by the community, not only making authentic deeds.

Notaries who do not carry out their duties and positions in accordance with the provisions in Article 37 paragraph (1) of the UUJN, the notary concerned may be subject to sanctions. Sanctions against a notary for violating Article 37 paragraph (1) of the UUJN are regulated in Article 37 paragraph (2) of the UUJN, namely "a notary who violates the provisions as referred to in paragraph (1) may be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissal, respectful dismissal, or dishonorable discharge". Article 37 paragraph (1) of the UUJN does not provide a more detailed explanation in the provision of notary legal services that are not subject to a notary honorarium fee. This makes it difficult for notaries to carry out their duties and positions, considering that notaries incur office operational costs, employee honoraria and other costs. For this reason, it is necessary to have clear implementing regulations in regulating the provisions of the article, such as the provisions for litigation in court.

Provision of legal aid for litigation in courts that already have implementing regulations, both from the preparation of laws and regulations, regulations regarding verification of legal aid organizations, allocation of funds, as well as procedures for providing free legal aid and so on. In fact, the provision of legal services to the poor or the poor is regulated in Law Number 16 of 2011 concerning Legal Aid (hereinafter referred to as UUBH).

Based on Article 3 of the UUBH, the basic consideration for the issuance of this Law is that the state is responsible for providing legal aid for the poor as a manifestation of access to justice, as well as the regulation regarding legal aid organized by the state must be oriented towards the realization of just social change.

Legal aid in this UUBH is defined as legal services provided by legal aid providers free of charge to legal aid recipients. Recipients of legal aid are poor people or groups of people. Meanwhile, legal aid providers are legal aid institutions or community organizations that provide legal aid services based on UUBH.

The provision of free legal aid to the poor as provided by a notary to the community is also common in litigation in court, based on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014 concerning Guidelines for Providing Legal Services for the Poor in Court (hereinafter called Perma No.1/2014).

The conditions for filing a lawsuit or litigation in court for free to economically disadvantaged people are regulated in Article 7 paragraph (2) of Perma No.1/2014, as follows:

1. A certificate of incapacity issued by the local village head/lurah/regional head stating that it is true that the person concerned is unable to pay court fees.
2. Certificates of other social benefits such as poor family cards, community health insurance cards, poor rice cards, family hope program cards, direct cash assistance cards, social protection cards, or other documents

related to the list of poor people in the government's integrated database or issued by another agency authorized to provide information on incapacity.

Legal aid in the free trial court, the costs of all litigation processes in court are not borne by the community, but are borne by the state through the budget of the Supreme Court of the Republic of Indonesia as regulated in Article 6 paragraph (1) of Perma No.1/2014.

Free legal aid as regulated in laws and regulations, in its implementation has not met the needs of the poor in obtaining legal aid. For this reason, the Aceh Province, West Aceh Regency, has ratified the West Aceh Regency Qanun Number 4 of 2015 concerning Legal Aid for the Poor (hereinafter referred to as Qanun No. 4/2015). Article 7 of Qanun No. 4/2015 explains that:

Recipients of legal aid are entitled to legal aid until the case has permanent legal force, to obtain free legal aid, to obtain information and documents related to the implementation of the provision of legal aid and to obtain services in accordance with the principles of public service.

To obtain legal aid, prospective legal aid recipients must apply for legal aid in writing or verbally to the legal aid provider. Article 12 paragraph (2) of Qanun No. 4/2015, explains that: recipients of legal aid attach a photocopy of their valid and still valid and legalized identity card, a certificate of incapacity from the keuchik where the applicant for legal aid is domiciled and a true description or explanation. Truth about the legal issues at hand.

Legal aid provided to recipients of legal aid includes civil and criminal legal issues, both litigation and non-litigation (Article 4 paragraph (2) of Qanun No. 4/2015). Legal aid is also in the form of receiving and exercising power of attorney, accompanying, representing, defending, taking other legal actions for the legal interest of the recipient of legal aid (Article 4 paragraph (3) of Qanun No. 4/2015). Funding is regulated in Article 18 (Article 4 paragraph (3) of Qanun No. 4/2015). Which explains that: the financing of legal aid needed for the implementation of legal aid is charged to the Village Revenue and Expenditure Budget (hereinafter referred to as APBK) in accordance with the financial capacity of the Regency Government.

The legal aid received by the people of West Aceh Regency in litigation in the Court can be carried out well, because it is facilitated by implementing regulations, and supporting local government regulations, for the realization of legal aid in litigation in court for the poor.

Conclusion

The application of notary legal services to the public that are not subject to a notary honorarium in West Aceh Regency has not been realized properly, because there is no implementing regulation of Article 37 paragraph (1) of the UUJN. Notaries receive an honorarium from the public, and the lack of information from the public regarding notary legal services that can be provided free of charge, is an obstacle to the realization of this Article. And a notary as a public official who is not given an honorarium from the government and has office operational costs, employee honoraria, and other costs, makes it difficult for a notary to provide free legal services to the public without the implementing regulations of the UUJN.

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