

Honorarium Notary for Legal Services in Making Authentic Deed

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Abstract

The purpose of this study was to analyze the Notary's honorarium for legal services in making authentic deeds. Notary is one of the professions in the legal field, which provides legal services for citizens in terms of making authentic deeds. Every authentic deed made, of course, a notary as a legal service provider is entitled to receive an honorarium. This research is a normative juridical study, with a descriptive approach. In this research, it is further studied regarding the Notary's honorarium for legal services in making authentic deeds. In accordance with the provisions in Article 36 paragraph (2) UUJN, Notary fees for legal services in making authentic deeds are based on the economic value and sociological value of the deed that has been drawn up. In Article 36 paragraph (3) of the JN Law, it is determined that the economic value is determined from the object of each deed. Thus, the Notary's honorarium is important for legal services as an authentic deed maker.

Keywords

honorarium services, authentic deed



I. Introduction

Indonesia is a state of law (recht staat), not a mere power state (macht staat). This was confirmed in the 1945 Constitution of the Republic of Indonesia (UUD 1945) before the amendment, namely in the Explanation section, and after the amendment was made, it was confirmed in the Body, namely in Article 1 paragraph (3) which stipulates that: "The state of Indonesia is a state of law".

Law is one of the most important elements in a state life. The fact of people's increasingly dynamic life has made law a controlling sign. From this, it can be emphasized that the law plays an important role in the life of society, nation and state, and must be used as a solution to the problems that occur. The actual law cannot be sharply distinguished from the form of social behavior. Law is also the work of humans in the form of norms containing behavioral guidelines which are a reflection of human will about how society should be fostered and where it should be directed. (Hartanto, 2020).

Law plays an important role in the life of society, nation and state, and must be used as a solution to the problems that occur. Law as a rule is not something that comes just like that, but the law comes from society, which is then used by society to regulate the forms of human relations. Society cannot escape from the bonds that exist between it. Therefore, it is a fact that must be acknowledged that: "Where there is a community, there must be law" (Lili & Ira, 2001).

At this time, the need for community members for notary legal services is very large. Notaries are able to meet these needs, because they have the function of making and providing authentic deeds as strong evidence, so that they are expected to provide legal protection for the holder, as well as for parties with an interest in the deed.

Regarding Notaries, at this time it has been regulated in a statutory regulation, namely Law Number 2 of 2014 concerning the Position of Notary (UU JN). Article 1 paragraph (1)

of the JN Law provides that: "Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in this law or based on other laws".

B.N. Marbun, determines that: "Notary is a public official who is the only one authorized to make authentic deeds regarding all actions, agreements and regulations that must be carried out by a general rule or desired by those concerned to be stated in an authentic deed, guaranteeing the certainty of date, keeping the deeds, and providing copies and quotations thereof, all of it so far the making of the deeds is not assigned or excluded to other public officials" (Marbun & Anwar, 2006).

Based on the provisions of Article 3 of the JN Law, the requirements to be appointed as Notary are 1) Indonesian Citizen (WNI); 2) fearing God Almighty; 3) Be at least 27 (twenty seven) years old; 4) Physically and mentally healthy as stated by a health certificate from a doctor and psychiatrist; 5) Certified with a Bachelor of Law (S.H.), and graduated from the bachelor's degree in notary; 6) Has undergone an internship or has actually worked as a Notary employee for a period of at least 24 (twenty four) consecutive months at the Notary's office on his own initiative or on the recommendation of the Notary Organization (ON) after passing the strata two notary; 7) Not having the status of a civil servant, state official, Advocate, or not currently holding another position which by law is prohibited from concurrently serving as a Notary; 8) Never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal act which is punishable by imprisonment of 5 (five) years or more. Roza (2020) stated that in order for an act to qualify as a criminal act, it must fulfill the elements, namely that there must be a human act, the act must be prohibited in the criminal law, the act must be against the law, and the act must be due to his mistake. Broadly speaking, the criminal act of corruption has elements of an act against the law; elements of enriching oneself or others; and elements can harm state finances.

Notary is a public official who is authorized to make deeds regarding all actions, agreements, and decisions which are required by general law, or the parties concerned to be stated in an authentic deed, determine the date, keep the deed and provide a valid copy. (grosse), copies and quotations thereof, as long as the making of the deeds is also not obliged by the official or is a special obligation.

"The notary in his position is actually an institution with his deeds giving rise to authentic (strength) characteristics, so that the means of proof can prove legally and strongly about a legal event, thus creating more legal certainty (*rechtszekerheid*)" (Notodisoerjo, 1993). In terms of making an authentic deed, of course, a notary is entitled to receive an honorarium for the legal services he has provided.

II. Research Methods

The research method used in this study is a normative legal research method that emphasizes statutory regulations and the opinions of scholars. In connection with the type of research used is normative legal research, the approach used is the statutory approach (statue approach), namely by examining the applicable laws and regulations, because this research will focus on the rule of law which is also the central theme of the research (Muhammad, 2004). This research uses descriptive analysis, namely the results of the research are processed and described to provide a description of the facts related to notary service fees and the provisions of sanctions in Law Number 30 of 2004 concerning Notary Position (Marzuki, 2008).

In normative legal research, data processing is carried out by means of a systematic method of written legal materials. Systematization means making a classification of these legal materials to facilitate analysis and construction work (Soekanto & Mamudji, 2006)

Data processing is obtained then carried out discussion, examination and grouping into certain parts to be processed into information data. The results of the analysis of legal materials will be interpreted using the interpretation method (Asshiddiqie, 1997).

III. Result and Discussion

"The concept of a notary arises from the need in human relations, which requires evidence for him regarding the civil law relationship that exists and / or occurs between them, an institution with its servants assigned by the general power (*openbaar gezag*) for where and if the law the law requires that or desired by the community, to make written evidence that has authentic power (Tobing, 1983)."

"The position of a notary as a functionary in society, is still respected until now. A Notary is usually considered an official where someone can get reliable advice. Everything that he writes and determines (the constituency) is correct, he is a strong document maker in a legal process (see. 1870 Civil Code). "

The main task of the notary is to make an authentic deed, where the authentic deed according to Article 1870 of the Civil Code (KUH Perdata) provides the parties that make it an absolute agreement and provides perfect evidence of what is contained in it. Notary has the authority to create a perfect means of proof by law, in the sense that everything regulated in the authentic deed is in essence deemed to be true (Purnayasa, 2018). This is very important for parties who need a means of proof for a purpose, both for personal gain and for the interests of the business sector.

Notary has a domicile in the regency or city. The area of office of a Notary covers the entire province from his domicile. The notary is obliged to have only one office, namely at his domicile. Notaries are not authorized to regularly perform positions outside their place of domicile. Notaries can carry out their positions in the form of civil unions while still paying attention to their independence and impartiality in carrying out their positions.

The Minister has the authority to determine the formation of a Notary's position in a region by considering proposals from ON. The formation of a Notary's position is determined based on: business activity, population, the average number of deeds drawn up by and / or before a Notary every month.

Notary can submit a written request to move the notary's office to the Minister. The requirement to move to a region of office is after 3 (three) consecutive years of carrying out office assignments in certain regencies and / or cities at the domicile of a notary. An application for a change of position can be submitted after first obtaining a recommendation from ON. The period of 3 (three) years for a change of position does not include leave that has been carried out by a notary. In certain circumstances, at the request of the Notary concerned, the Minister can transfer a Notary from one area of office to another.

Notaries have the right to leave which can be taken after the Notary has served for 2 (two) years. During the leave period, the Notary is obliged to appoint a replacement Notary. Each leave is taken for a maximum of 5 (five) years, including the extension. During the term of office of a Notary, the total leave period is no longer than 12 (twelve) years.

The notary submits a written request for leave accompanied by a proposal for the appointment of a replacement notary. In Article 27 paragraph (2) UUJN, it is stipulated that the request for leave is submitted to the competent official, a) "Regional Supervisory Council, in the event that the leave period is not more than 6 (six) months; b) Regional Supervisory

Council, in the event that the leave period is more than 6 (six) months to 1 (one) year; c) Central Supervisory Council, with a leave period of more than 1 (one) year”.

The leave permit certificate contains at least the name of the notary, the start date and end of the leave, the name of the substitute notary accompanied by documents that support the replacement notary.

A copy of the leave permit certificate from the Regional Supervisory Council (MPD) is submitted to the Minister, the Central Supervisory Council (MPP), and the Regional Supervisory Council (MPW). An application for leave may be rejected by the official authorized to grant leave. Rejection of leave request must be accompanied by reasons for rejection. MPD rejects the leave request can be appealed to the MPW. MPW rejects the leave request can be appealed to the MPP.

Notary who is on leave is obliged to submit the Notary protocol to the substitute Notary. The substitute notary submits back the Notary protocol to the notary after the leave ends. Handover is made an official report and submitted to MPW. Requirements to be appointed as a substitute Notary Public, a special replacement Notary Public, and a temporary Notary Public is an Indonesian citizen who has an S.H. certificate, and has worked as a Notary office employee for at least 2 (two) consecutive years.

If in one office area there is only 1 (one) Notary Public, MPD may appoint a special replacement Notary who is authorized to make deeds for the personal benefit of the Notary Public or his family. The temporary appointment is not accompanied by the handover of the Notary protocol. The special substitute notary must take an oath / promise of office by the Minister or the appointed official.

If the notary passes away, the husband / wife or family in a straight line of lineage of two seminars must notify the MPD. The notification must be submitted within 7 (seven) working days. If the Notary dies while on leave, the notary's duties are carried out by a substitute Notary as a temporary official of the Notary, no later than 30 (thirty) days from the date of the Notary's death. The temporary official of the Notary submits the Notary protocol from the Notary who dies to MPD no later than 60 (sixty) days from the date of the Notary's death. Notary's temporary officer can make deeds in his own name and has a Notary protocol.

- a. "Up to IDR.100.000.000.00- (one hundred million rupiah) or gram gold equivalent at that time, the honorarium received at the most was 2.5% (two point five percent);
- b. Above IDR.100.000.000.00 - (one hundred million rupiah) up to IDR.1.000.000.000.00 - (one billion rupiah) the honorarium received is at most 1.5% (one point five percent);
or
- c. Above IDR. 1.000.000.000.00 - (one billion rupiah) the honorarium received is based on an agreement between the Notary and the parties, but does not exceed 1% (one percent) of the object for which the deed is made.

The sociological value is determined based on the social function of the object of each deed with a maximum honorarium of IDR. 5.000.000.00-(five million rupiah).

IV. Conclusion

Notary is a public official who has the authority to make an authentic deed. For each authentic deed made, of course, a notary as a legal service provider is entitled to receive an honorarium. In accordance with the provisions in Article 36 paragraph (2) UUJN, Notary fees for legal services in making authentic deeds are based on the economic value and sociological value of the deed that has been drawn up.

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