WORLD CLASS ISLAMIC CYBER UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY
DOCTORAL PROGRAM OF LAW
FACULTY OF LAW
PROCEEDING OF INTERNATIONAL CONFERENCE ON
THE LAW DEVELOPMENT FOR PUBLIC WELFARE
ISSN: 2798-9313
Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Juridical Analysis of the Regulation of the Notary's Position Law Concerning Notary's Honorarium

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Abstract. *Article 36 jo 37 of the Law on the Position of Notary as if the Notary's honorarium is strictly limited by regulations that limit the knowledge of Notaries, even though other positions, namely Doctors and Advocates, are given freedom in determining the honorarium and are considered similar to Notaries because their work implementation is the same, namely looking for their own clients, they are given more freedom. and justice. The purpose of writing is to analyze the juridical analysis of the Notary Position Law regulations regarding Notary's honorarium and provide input on solutions. The approach method in this research uses normative juridical. Data collection was carried out through library research studies. Processing of this research data with secondary data is divided into primary, secondary and tertiary legal materials. The results of this research are researchers provide conclusions and suggestions that In the future, the government (State) needs a more in-depth study in revising Notary regulations, if necessary, first reviewing the history and books of Notaries, so that the Notary profession, which has helped the government so far, will have a clearer role and authority in the future, if necessary, the government because There have been many regulations on how Notaries must act and play a role for the State, they should also be given wages (honorarium) or signs that Notaries' livelihoods will be more decent and prosperous in the future.*

Keywords: *Honorarium; Law; Notary; Position.*

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

1. Introduction

Political law relates to applicable law and the law aspired to in a country (ius constituendum), thus allowing for frequent changes in the law in the form of regulations, especially in the legal regulations of notaries, especially the Law on the Position of Notaries (UUJN), which according to the author, there are still many who have not made Notaries prosperous, so the author needs to write this journal to reconstruct legal politics notary so that future UUJN can contain more regulations that can improve the lives of Notaries in Indonesia.

Rule regarding the area of office of Notaries in Article 18 paragraph (2) in conjunction with Chapter VI Honorarium "Notaries have an area of office covering the entire province of their place of residence and the amount of honorarium received by the Notary is based on the economic value and sociological value of each deed he makes." This third rule is the top 3 (three) rules that need to be reconstructed, because they cause the most injustice for Notaries, although if they are broken down again there are still many rules for the Notary's position that need to be reconstructed. The rules regarding the area of office of Notaries when compared to the rules of the Indonesian Medical Code of Ethics do not regulate working area boundaries, such as a Doctor must be in a maximum of 1 (one) province like a Notary and there are no minimum and maximum limits regarding the withdrawal of honorarium from patients who seek treatment from a Doctor, as well as the rules of the Law on Advocates in Article 5 paragraph (2) in conjunction with Article 21 paragraph (2) Law Number 18 of 2003 "the working area of Advocates covers the entire territory of the Republic of Indonesia and the amount of honorarium for legal services is determined fairly based on the agreement of both parties (between Advocate with his client)". This can be analyzed. The position of Notary is once again considered to be of little value in the eyes of the State and it seems as if the movements of Notaries are very restricted by regulations that shackle and reduce the freedom of Notaries, even though other positions are similar to Notaries, namely both Doctors and Advocates because their job implementation is the same, namely looking for their own clients is given more freedom and justice.

Various issues of conflict make a deed relating to honorarium this is what chose this problem to be researched. That's why the researcher wants to propose the title "Judicial Analysis of the Regulations on the Notary Position Law About Notary Honorarium".

Talking about theory, 3 (three) theories will be referred to to analyze this research, namely:

a. Basic Theory (Grand Theory): Stufenbau theory. According to Hans Kelsen, norms are layered in a hierarchical structure. In other words, the legal norms below apply and originate

and are based on higher norms, and higher norms also originate and are based on even higher norms and so on until they stop at the highest norm which is called the Basic Norm (Grundnorm) and still according to Hans Kelsen, it is included in a dynamic norm system. Therefore, law is always formed and abolished by the institutions whose authorities have the authority to form it, based on higher norms, so that lower (inferior) norms can be formed based on higher (superior) norms, in the end the law becomes hierarchical. -levels and layers form a hierarchy.

b. Middle Theory: Theory Welfare State. Then the term welfare state or welfare state. The originator of the welfare state theory, Mr. R. Kranenburg, states that the state must actively seek prosperity, acting fairly which can be felt by the whole community evenly and in balance, not for the welfare of certain groups but the whole people. In contrast to Kranenburg's[3] opinion, Logemann said that the state is essentially an organization of power that includes or unites human groups which are then called nations. So first of all, the state is an organization of power, so this organization has an authority, or gezag, which means it can impose its will on everyone covered by the organization.[4]

c. Applied Theory: Cybernetic Theory. This theory is the teachings of Jeremy Bentham The essential points of his teachings will be presented:

The aim of law and the form of justice according to Jeremy Bentham is to realize the greatest happiness of the greatest number (the greatest happiness for the greatest number of people).

According to Bentham, the purpose of forming legislation (UUJN in this research) is to produce happiness for society. So legislation (especially UUJN) must try to achieve four goals, namely:

1) To provide substance (to provide living expenses).

2) To provide security (to provide protection).

3) To attain equity (to achieve equality).

According to Bentham, there are two (2) types of study in legal science (jurisprudential study), namely:

1) Expository Jurisprudence

This expository legal science is nothing more than the study of law as it is. The object of this study is to find the basics of legal principles through analyzing the legal system.

2) Censorial Jurisprudence

This sensorial legal science is a critical study of law (also known as deontology) to increase the effectiveness of law in its operation).

III. Gap Analysisand Problems

Ruleregarding the area of office of Notaries in Article 18 paragraph (2) in conjunction with Chapter VI Honorarium "Notaries have an area of office covering the entire province of their place of residence and the amount of honorarium received by the Notary is based on the economic value and sociological value of each deed he makes." This third rule is the top 3 (three) rules that need to be reconstructed, because they cause the most injustice for Notaries, although if they are broken down again there are still many rules for the Notary's position that need to be reconstructed. The rules regarding the area of office of Notaries when compared to the rules of the Indonesian Medical Code of Ethics do not regulate working area boundaries, such as a Doctor must be in a maximum of 1 (one) province like a Notary and there are no minimum and maximum limits regarding the withdrawal of honorarium from patients who seek treatment from a Doctor, as well as the rules of the Law on Advocates in Article 5 paragraph (2) in conjunction with Article 21 paragraph (2) Law Number 18 of 2003 "the working area of Advocates covers the entire territory of the Republic of Indonesia and the amount of honorarium for legal services is determined fairly based on the agreement of both parties (between Advocate with his client)". This can be analyzed. The position of Notary is once again considered to be of little value in the eyes of the State and it seems as if the Notary's honorarium is very limited by regulations that limit Notary's knowledge, even though other positions, namely Doctors and Advocates, are given freedom in determining the honorarium and are considered similar to Notaries because of their implementation. the work is the same, namely looking for their own clients with more freedom and justice.

IV. State of Art

The politics of notarial law can be said to have achieved prosperity, namely if the legal product of notarial rules, in its core rules are based on the UUJN, both the content and the purpose of the rules formed to achieve (ius constitutum) must produce the goal of prosperous rules according to Islam, especially QS Quraish. The current situation does not yet reflect these welfare indicators because the restrictions on the Notary's movement space as explained in the background above have resulted in the Notary still feeling afraid of not being able to meet the living needs of his family, especially in the regulations limiting the Notary's honorarium and the scope of the Notary's work. limited to only one province.

2. Research Methods

The approach method in this research uses a normative juridical research type, namely legal research using a juridical-normative approach method, namely legal research carried out by examining library materials or secondary data. Research specifications are carried out descriptively analytically, namely a way of describing the condition of the object under study based on actual facts at this time. In this case, it is describing the juridical analysis of the regulations on the Notary Position Law regarding Notary's honorarium. Normative research uses secondary data collection, namely data obtained from literature studies. Secondary data itself can be divided into primary, secondary and tertiary legal materials.[8] To complete the secondary data, field practice data was collected from the National Land Agency (BPN) Tegal office, colleagues from Tegal Notaries, the Indonesian Notary Association (INI) Tegal Notary organization and the Indonesian Notary Association (INI) Java Tengah, and the writing staff as Tegal Notary. The data collection technique in this research is library research, namely a collection of data obtained by studying related laws and regulations, books, journals, newspapers and other written sources related to the problem. researched as a theoretical basis. The data analysis method used to describe and process the data collected in this research is qualitative description. Qualitative descriptions are used in the method of describing data in this research because the main data used is not in the form of numbers that can be measured.

3. Results and Discussion

Notary rights regarding honorarium are regulated in Articles 36 and 37 UUJN as follows, Article 36 “(1) Notaries have the right to receive an honorarium for legal services provided in accordance with their authority.

(2) The amount of honorarium received by a Notary is based on the economic and sociological value of each deed he makes.

(3) The economic value as intended in paragraph (2) is determined from the object of each deed as follows:

a. up to IDR 100,000,000.00 (one hundred million rupiah) or the equivalent of a gram of gold at that time, the maximum honorarium received is 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 a maximum of 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.

(4) Sociological value is determined based on the social function of the object of each deed with a maximum honorarium received of IDR 5,000,000.00 (five million rupiah).

Article 37 Notaries are obliged to provide legal services in the field of notarial services free of charge to people who cannot afford them."

The rules for Indonesian Advocates (Attorneys at Law) in Chapter V Article 21 of Law Number 18 of 2003 regulate the honorarium for Indonesian Advocates (Attorneys at Law) as follows:(1) Advocates have the right to receive an Honorarium for Legal Services provided to their Clients. (2) The amount of the Honorarium for Legal Services as intended in paragraph (1) is determined fairly based on the agreement of both parties." From these regulations it can clearly be underlined that they are "determined fairly" so that the State and its law making institution, namely the DPR, more appreciate the work services of Indonesian Advocates (Attorneys at Law) to communicate and negotiate for themselves regarding the amount of honorarium they will receive with their clients. This regulation also indirectly (implicitly) says that Indonesian Advocates (Attorneys at Law) will be wise and reasonable in determining their honorarium rates so that they are given the flexibility and freedom to set their own rates while Notaries are not considered wise.

First If you want to analyze it using theoretical studies in this journal, it clearly means that Indonesian Notaries have a way of working to get the same clients (patients) as Indonesian Doctors so that they can be compared which will be useful for the analysis of this journal so that in the future the UUJN revision should be changed. to provide more freedom to estimate the amount of Notary's honorarium rates, because Indonesian Advocates (Attorneys) who are clearly said to be officium nobile (noble and honorable work) in their actions towards small communities are sometimes still arbitrary in determining the honorarium rates for their work which is considered this journal is "unnatural". This means that verbal reasons which state that there is a regulation regarding limiting the honorarium rates of Indonesian Notaries under the pretext of maintaining the dignity of State officials as Notaries are included as reasons which are nonsense (made up) and do not have the slightest benefit but will cause jealousy of Indonesian Notaries towards Indonesian Advocates (Attorneys at Law) and Indonesian Doctors, so that they are not worthy of fulfilling the elements of the theory of utilitarianism which assumes that something exists and was created to provide the greatest benefit to society.

Then secondly, if you want to analyze it using general welfare theory (welfare state) also does not fulfill the elements in this theory because the essence is that the State intervenes in dealing with all the problems of its people, here according to this journal the State is favoritism in regulating the lives of its people, which in the case of Notaries is strictly regulated regarding the amount of honorarium for their work services, while Indonesian Advocates (Attorneys at Law) and Indonesian Doctors are not regulated regarding the amount of honorarium for their work services, it clearly does not pass the elements of the welfare state theory, that is, if the theory indicates that the point is that the State intervenes in dealing with all the problems of its people because previously the theory of nachwakerstaat (night watchman state)) results in the injustice of a strong society over the weak.

The State should go through the law making institution (DPR) in Indonesia regulates the same thing for Indonesian Notaries, Advocates (Attorneys) and Indonesian Doctors, because all three are equal in terms of looking for clients (patients). If 2 (two) jobs are not regulated regarding the amount of honorarium for their work, the same should be true for Indonesian Notaries. So that the social welfare is in the form of material that is obtained equally between Notaries, Indonesian Advocates (Attorneys), and Indonesian Doctors.

If the State with a law making institution (DPR) feels that it has been wise in making legal regulations regarding guidelines for procedures for applying its profession, because it has summoned representatives of the Indonesian Notary Association (INI) organization to create UUJN or an Advocate organization to make regulations for the Law on Advocates and the Indonesian Doctors Association (IDI) in making the Medical Practice Law, in its implementation the State must not remain silent if it turns out that there are still many "unreasonable" honorarium rates by an Indonesian Advocate (Attorney at Law) for his clients or honorarium rates that are "unreasonable "truly in accordance with the patient's medical needs," not just Notaries, because it is regulated regarding the limit on the amount of honorarium for their work services, those who violate it will be dealt with strictly, while Indonesian Advocates (Attorneys at Law) and Indonesian Doctors, because it is not regulated regarding the amount of honorarium rates for their work, will not be dealt with strictly if violating the editorial of the article that has been explained in this journal above, this will lead to lack of prosperity and justice because even though justice is not equal, according to this journal, the State has failed to try to implement proportional justice between Indonesian Notaries, Indonesian Advocates (Attorneys) and Indonesian Doctors.

Third, if the rules for the amount of Notary's honorarium are to be analyzed using cybernetic theory, this will fail to meet the two requirements, namely goal, meaning that an article in the

UUJN regulations must have a clear objective. This clear aim is the same as the aim of the Politics of Notarial Law as it is the same as the aim of implementing laws in the State of Indonesia, one of which is to achieve "advancing general welfare". This journal actually sees the opposite, with its analysis of the utilitarianism theory explained above, it is clear that it does not provide usefulness/advantages with the existence of restrictions on regulations regarding the amount of honorariums for Indonesian Notaries because with Verbal reasons which state that there is a regulation regarding limiting the honorarium rates of Indonesian Notaries under the pretext of maintaining the dignity of State officials as Notaries include reasons that are nonsense (made up) and have no benefit at all but will cause jealousy of Indonesian Notaries towards Advocates (Lawyer at Law) Indonesia and Indonesian Doctor, so it is not appropriate to fulfill the elements of the theory of utilitarianism which assumes that something exists and is created to provide the greatest benefit to society.. So if this happens, the Article rules are formed without a clear purpose, so they will not provide benefits for Notaries in Indonesia.

4. Conclusion

It is this principle of independence that the Notary should return to his khittah, namely as in history on 12 November 1620 where the Notary was no longer the secretarius van don gerechte. Notaries are free to determine their careers without government interference (not under government pressure). There is no intervention from the government in determining the fees for Notary services and at the same time the government does not bind Notaries with regulatory restrictions (as in the UUJN) to hold concurrent positions as given to the medical profession. There needs to be a more in-depth study by the government (State) in the future in revising Notary regulations, if necessary first reviewing the history and books of Notaries, so that the Notary profession which has helped the government so far, in the future gets a clearer role and authority, if necessary the government because There have been many regulations on how Notaries must act and play a role for the State, they should also be given wages (honorarium) or signs that Notaries' livelihoods will be more decent and prosperous in the future.

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Bobby Savero quotes Mark Lutz: Economics can no longer be seen as the theory of maximum possible production with consequent effects on welfare, but rather, in the opposite manner, as the theory of maximum possible welfare with consequent effects on production. Bobby Savero, Indonesian Economy Between Chinese and Proletariat, in http://bobbysavero.blogspot.com/2008/05/ Ekonomi-indonesia-antara-tionghoa-dan.html, accessed Thursday, November 26 2020.