

RINGKASAN

**Ayu Indah Tawari 220510303 Wanprestasi Dalam Perjanjian Layanan Jasa Hukum Dalam Perkara Perceraian (Studi Putusan Nomor 5/Pdt.G/2023/PN Tkn)
(Prof. Dr. Yulia, S.H.,M.H dan Dr. Marlia Sastro, S.H.,M.Hum)**

Perjanjian layanan jasa hukum merupakan bentuk perjanjian pemberian kuasa antara Advokat dan pemberi kuasa yang bersifat timbal balik, kedua belah pihak memiliki hak dan kewajiban yang harus dilaksanakan secara proporsional. Namun demikian, setiap pihak mempunyai kebebasan membuat perjanjian baik secara tertulis maupun lisan sepanjang memenuhi syarat sah perjanjian sesuai ketentuan Pasal 1320 KUHPdata, selain itu terdapat ketidakjelasan kedudukan hukum mengenai perjanjian layanan jasa hukum antara Advokat dan pemberi kuasa yang dibuat secara lisan. Permasalahan hukum yang timbul adalah kekuatan hukum yang mengikat dan kemampuan pembuktian di pengadilan apabila terjadi wanprestasi dalam perjanjian lisan, khususnya keabsahan perjanjian lisan tanpa bentuk tertulis serta akibat hukum dan mekanisme pembuktian apabila terjadi pelanggaran kewajiban timbal balik antara Advokat dan pemberi kuasa.

Tujuan penelitian ini adalah untuk mengetahui bentuk perjanjian layanan jasa hukum dan akibat hukum terhadap wanprestasi antara Advokat dan pemberi kuasa dalam perjanjian jasa hukum serta untuk mengetahui pertimbangan hukum majelis hakim mengenai hak dan kewajiban para pihak dalam perjanjian jasa hukum pada Putusan Nomor 5/Pdt.G/2023/PN Tkn.

Metode yang digunakan adalah kualitatif dengan menggunakan pendekatan yuridis normatif dan pendekatan kasus. Sumber data yang digunakan berupa data sekunder yang terdiri dari bahan hukum primer, sekunder, dan tersier, yang dikumpulkan melalui studi kepustakaan dan dianalisis secara deduktif untuk memperoleh kesimpulan yang sesuai dengan permasalahan penelitian.

Hasil penelitian menunjukkan bahwa bentuk perjanjian layanan jasa hukum antara Advokat dan pemberi kuasa lahir dari kesepakatan para pihak secara lisan mengenai pembayaran honorarium sebesar 10% dari hasil perkara apabila dimenangkan. Dalam proses persidangan penggugat tidak berhasil menghadirkan alat bukti yang cukup kuat untuk membuktikan adanya kesepakatan 10% tersebut baik melalui bukti tertulis, saksi, maupun alat bukti lain yang dapat memperkuat dalilnya. Akibat hukum wanprestasi dalam perjanjian jasa hukum secara lisan dipengaruhi oleh ketidakmampuan dan kelemahan penggugat dalam aspek pembuktian menyebabkan dalil wanprestasi yang diajukan penggugat tidak terbukti secara hukum, sehingga majelis hakim menolak gugatan penggugat untuk seluruhnya. Pertimbangan majelis hakim lebih menitikberatkan pada aspek pembuktian formal sesuai Pasal 283 Rbg (*Rechtreglement voor de Buitengewesten*) dan Pasal 1865 KUHPdata, tanpa mempertimbangkan asas *ex aequo et bono* (kepatutan dan keadilan). Padahal rangkaian fakta menunjukkan adanya hubungan jasa hukum, pelaksanaan prestasi oleh penggugat, penerimaan manfaat oleh pemberi kuasa, serta pembayaran sebagian honorarium menunjukkan adanya hubungan jasa hukum yang relevan guna mencapai keadilan substantif.

Saran kepada penggugat, masyarakat dan Advokat agar dapat membuat perjanjian jasa hukum secara tertulis dengan memuat hak, kewajiban, besaran honorarium dan ruang lingkup pekerjaan secara jelas. Sedangkan pemerintah perlu menyempurnakan regulasi, meningkatkan pengawasan, serta menyediakan mekanisme penyelesaian sengketa yang efektif dan adil. Majelis hakim juga diharapkan mempertimbangkan seluruh alat bukti secara proporsional dan menerapkan asas *ex aequo et bono* (kepatutan dan keadilan) demi mewujudkan keseimbangan antara kepastian hukum dan keadilan substantif.

Kata Kunci: Wanprestasi, Perjanjian, Layanan Jasa Hukum, Perkara Perceraian

SUMMARY

Ayu Indah Tawari 220510303 **Default in Legal Services Agreement in Divorce Cases (Study of Decision Number 5/Pdt.G/2023/PN Tkn)**
(Prof. Dr. Yulia, S.H., M.H dan Dr. Marlia Sastro, S.H., M.Hum)

A legal services agreement is a form of power of attorney agreement between the Advocate and the Attorney which is reciprocal, both parties have rights and obligations that must be carried out proportionately. However, each party has the freedom to make an agreement both in writing and orally as long as it meets the legal requirements of the agreement in accordance with the provisions of Article 1320 of the Civil Code, besides that there is an unclear legal position regarding the legal service agreement between the Advocate and the power of attorney made orally. The legal problems that arise are the binding legal force and the ability to prove in court in the event of a default in the oral agreement, especially the validity of an oral agreement without a written form as well as the legal consequences and evidentiary mechanism in the event of a violation of mutual obligations between the Advocate and the power of attorney.

The purpose of this research is to find out the form of the legal service agreement and the legal consequences for the default between the Advocate and the power of attorney in the legal service agreement and to find out the legal considerations of the panel of judges regarding the rights and obligations of the parties in the legal service agreement in Decision Number 5/Pdt.G/2023/PN Tkn.

The method used is qualitative using a normative juridical approach and a case approach. The data source used is in the form of secondary data consisting of primary, secondary, and tertiary legal materials, which are collected through literature studies and analyzed deductively to obtain conclusions that are in accordance with the research problem.

The results of the study show that the form of legal services agreement between the Advocate and the power of attorney was born from the verbal agreement of the parties regarding the payment of honorarium of 10% of the outcome of the case if won. In the trial process, the plaintiff did not succeed in presenting evidence strong enough to prove the existence of the 10% agreement either through written evidence, witnesses, or other evidence that could strengthen his postulate. The result of the legal default in the legal service agreement was orally influenced by the plaintiff's inability and weakness in the evidentiary aspect, causing the postulates of default submitted by the plaintiff to be legally unproven, so the panel of judges rejected the plaintiff's lawsuit in its entirety. The panel of judges' deliberations focused more on the aspect of formal proof in accordance with Article 283 of the Criminal Code (*Rechtreglement voor de Buitengewesten*) and Article 1865 of the Civil Code, without considering the principle of *ex aequo et bono* (propriety and justice). In fact, the series of facts shows that there is a relationship between legal services, the implementation of achievements by the plaintiff, the receipt of benefits by the power of attorney, and the payment of part of the honorarium indicate that there is a relationship of relevant legal services in order to achieve substantive justice.

Suggestions to the plaintiff, the community and the Advocate to be able to make a legal service agreement in writing by clearly stating the rights, obligations, amount of honorarium and scope of work. Meanwhile, the government needs to improve regulations, increase supervision, and provide an effective and fair dispute resolution mechanism. The panel of judges is also expected to consider all evidence proportionately and apply *the principle of ex aequo et bono* (propriety and justice) in order to achieve a balance between legal certainty and substantive justice.

Keywords: *Default, Agreement, Legal Services, Divorce Case*