

## **THE PROBLEMS OF COURT SERVICES TYPES AND TARIFF BASED ON GOVERNMENT REGULATION NUMBER 53 OF 2008**

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### **Abstract**

The administration of judiciary is a form of state obligation as the fulfillment of civil rights for citizens. Various efforts in improving the quality of court services is continue to be encouraged through a modern judiciary with the development of information system technology, a necessity in the era of globalization. In addition, there is a paradigm shift in public services from traditional model to modern, efficient, effective and transparent public service. This was marked by changes in the form of services from manual performance models to information system automation and digitalization. The general practice of fulfilling public demands for government services continues to evolve rapidly following a series of measures (optimal), while the ability and capacity of service providers in meeting the demands of services of the developing community are slower follows the calculation series. As a result, there is a gap that requires continuous improvement through service innovation that requires sufficient funding. At present, the main government funding sources from the taxation sector are no longer able to cover all state expenditures. The trend of state income from the two sectors of state revenue, namely the tax and non-tax sectors in the last five years shows that the income from the tax sector continues to increase, while the Non-Tax State Revenue (PNBP) sector is relatively declining. Moreover, the provision of public services is endeavored to be free of charge. In judicial services, optimization of PNBP is based on the principle of administering justice (simple, fast and low cost) which has been regulated through Government Regulation Number 53 of 2008. The instructions for implementing government regulations have not been able to fully accommodate the activities and activities of case services, resulting in internal policies letter of the Secretary of the Republic of Indonesia No.268/SEK/01/V/2010 Regarding Time

Remaining Cases and Case Fee Giro Services. Thus, it will be examined whether the demand deposit services and the remaining down-payment cases are the performance of the judiciary and whether it is possible for the Ministries/Institutions to self-determine through internal policies on the types of charges and non-PNBP tariffs set by PP No. 53 of 2008.

*Penyelenggaraan peradilan merupakan bentuk kewajiban negara sebagai pemenuhan hak sipil bagi warga negara. Berbagai upaya meningkatkan kualitas pelayanan peradilan terus didorong melalui peradilan yang modern dengan pengembangan teknologi sistem informasi yang menjadi keharusan di era globalisasi. Selain itu, telah terjadi pergeseran paradigma pelayanan publik dari model tradisional ke arah pelayanan publik yang lebih modern, efisien, efektif dan transparan. Hal tersebut ditandai dengan perubahan bentuk layanan dari model kinerja manual kepada otomatisasi dan digitalisasi sistem informasi. Praktik umum pemenuhan tuntutan publik atas layanan pemerintah terus berkembang dengan cepat mengikuti deret ukur (optimal) sedangkan kemampuan dan kapasitas penyedia layanan dalam memenuhi tuntutan layanan masyarakat berkembang lebih lambat mengikuti deret hitung. Akibatnya, terjadi ketidakseimbangan (gap) yang memerlukan perbaikan terus menerus melalui inovasi layanan yang memerlukan pendanaan yang cukup. Saat ini, sumber pendanaan utama pemerintah dari sektor perpajakan tidak lagi mampu menutupi seluruh pengeluaran negara. Trend pendapatan negara dari dua sektor penerimaan negara yaitu sektor pajak dan non pajak dalam lima tahun terakhir menunjukkan bahwa penerimaan dari sektor pajak terus mengalami kenaikan, sedangkan pada sektor Penerimaan Negara Bukan Pajak (PNBP) relatif menurun. Terlebih, untuk penyediaan layanan publik disebabkan untuk bebas biaya. Pada layanan peradilan, optimalisasi PNBP didasarkan pada prinsip penyelenggaraan peradilan (sederhana, cepat dan biaya ringan) yang telah diatur melalui Peraturan Pemerintah Nomor 53 tahun 2008. Petunjuk pelaksanaan peraturan pemerintah tersebut belum mampu menampung sepenuhnya aktivitas dan kegiatan pelayanan perkara, sehingga dikeluarkan kebijakan internal yaitu surat Sekretaris MA RI No.268/SEK/01/V/2010 Perihal Sisa Biaya Perkara dan Jasa Giro Biaya Perkara. Dengan demikian, akan dikaji apakah jasa giro dan sisa panjar perkara merupakan kinerja peradilan dan apakah dimungkinkan Kementerian/Lembaga menentukan sendiri melalui kebijakan internal atas jenis pembebanan dan tarif PNBP di luar yang telah diatur oleh PP No. 53 Tahun 2008.*

**Keywords:** types and rates, complexity, judicial services, PNBP.

## **Introduction**

Judicial service is one form of state obligation that must be available as the fulfillment of basic rights which are the civil rights of every citizen. The United Nations General Assembly has long ratified a resolution concerning civil rights, namely: the International Covenant on Civil and Political Right (ICCPR) and its optional protocol: Optional Protocol to the International Covenant Civil and Political Rights in 1966 and ratified by Indonesia on 28 October 2005 through Law Number 12 of 2005 concerning ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights). One of the things stipulated in the agreement relates to the civil rights of citizens. Civil rights and political rights are derived from the inherent dignity and of the human person are guaranteed and respected human existence by the state in order to be free to enjoy the rights and freedoms in the field of civil and political fulfillment is the responsibility of the state. Universal civil rights are freedom of speech, thought and expression, religion and a fair and impartial trial.

As an effort to build public trust in the judiciary, various efforts have been made, among others, through improving the quality of public services by continuing to encourage the realization of modern justice through the development of information system technology that has become a necessity in the current era of globalization. Currently, there has been a paradigm shift in the public service of a traditional public service model toward a more modern public service, efficient, effective and transparent impact on a number of changes in the form of a performance model of the service manual to automation and digitalization of information systems.

The administration of justice is part of service to the community, specifically justice seekers. The judiciary is no longer only required to conduct trials in accordance with the principles of justice that are simple, fast, and light, but also provide quality services. The judiciary does not only support the basic needs and civil rights of citizens.

The state by upholding the principles of justice, but also supports the principles of public service. As a friendly home for justice seekers, the judiciary must be able to be a comfortable and safe place to function as a home for its inhabitants, to become a place of friendship to seek

help from all parties. This can be realized by improving the quality of the service of the judiciary towards the community.<sup>1</sup>

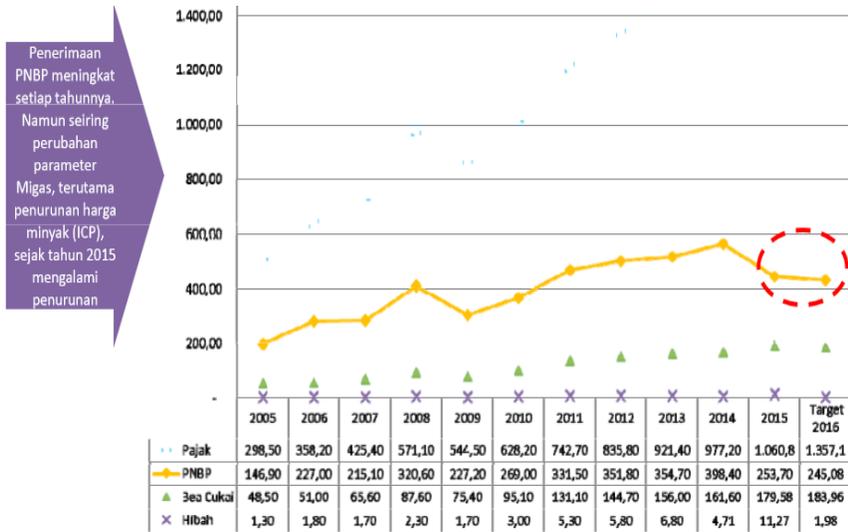
Public demands for service delivery to the community follow a series of measures, while the ability of service providers to work is limited to following a series of calculations so that repairs must be carried out continuously through service innovation. Efforts to fulfill this excellent service certainly require sufficient funding, and currently, the main funding source from taxation is no longer able to cover all state expenditures. Therefore, in accordance with the direction of fiscal policy in 2015-2019 as an effort to support inclusive and equitable economic growth, increasing non-tax state revenues continues to be explored optimally. The efforts carried out include improving the administration/orderly administration and depositing PNBPN into the state treasury, legal certainty and justice for the people participating in the financing of development and services. However, this policy of optimizing non-tax state revenues is faced with the demand for the presence of the state in basic services of civil rights as a state obligation with good quality and not burdening society.

One of the direct participation of the public in public services is reflected in the imposition of PNBPN on services as a form of participation that is not only intended to finance services but also shows justice for citizens because the provision is determined and or specifically for service users. Illustration of trend in data from the state revenue sector in the State Budget, from tax and non-tax, shows that tax sector revenues still dominate state revenues (Figure 1 and Figure 2).

Based on the figures, the state income trend from the two revenue sectors shows the consistency of income from the tax sector continues to increase, while the non-tax revenue (PNBPN) sector is relatively declining. Although there is an effort to explore the potential of PNBPN revenue in ministries/institutions by optimizing PNBPN but specifically for public services, it is free of charge, so that the cumulative trend in the contribution of PNBPN to state revenues is relatively uneven even tending to decline in 2016.

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<sup>1</sup> Hatta Ali. Speech of the Chief of the Supreme Court of the Republic of Indonesia in the MA Annual Report 2017 "Improving the Integrity and Quality of Public Services in the Implementation of the Independence of Judicial Bodies"



Source: Presentation material from the Ministry of Finance's PNB Directorate.<sup>2</sup>

**Figure 1.** PNB contribution in the APBN

This can be understood because the actual imposition of fees for services as a service to the public must pay attention to three things, namely: 1) the impact of imposition on the community and its business activities; 2) costs of administering Government activities in connection with the type of PNB concerned; and 3) aspects of justice in imposing burdens on the community.<sup>3</sup> Therefore, in determining the type and tariff of PNB for public services, it must be done carefully and selectively because the imposition of PNB on public services is an integral part of the administration of the state as a form of service and utilization of natural resources to the community.<sup>4</sup>

<sup>2</sup> “Pengelolaan PNB. 2016 <https://www.anggaran.depkeu.go.id/%2Fcontent%2Fpublikasi/%2Fbimtek/%2520a1/%2F3.%2520Pengelolaan%2520PNBP.pdf&usg=AOvVaw0HU9sv8XlvMqk43tH64rB>

<sup>3</sup> UU no. 20 of 1997 concerning Non-Tax State Revenues

<sup>4</sup> Susana Supiani. The Role and Existence of PNB in development. Available at <http://stalianbandung.ac.id/index.php?r=artikel/detail&id=98>



Source: Presentation material from the Ministry of Finance's PNB Director.<sup>5</sup>

**Figure 2.** PNB component in the APBN

At the judiciary in accordance with the mandate of the constitution and Law No. 20 of 1997 has regulated the types and tariffs of PNB applicable to the Supreme Court and the judicial bodies which are under them through Government Regulation No. 53 of 2008 concerning the types and tariffs of Non-Tax State Revenues that apply to the Supreme Court and the judicial bodies below which are further explained through a letter of the Deputy Chief of the Supreme Court Non-Judicial Sector No. 42/WKMA-N.Y/XI/2008 concerning: Guidelines for Implementation of Republic of Indonesia Government Regulation No. 53 of 2008 dated November 4, 2008, addressed to the Chairmen of the Appellate and First Level Courts throughout Indonesia. The main regulation in PP 53 of 2008 and this operational guideline is related, among others:

a) Types of non-tax state revenues for judicial services are generally divided into 5 (five types/groups) based on the level/environment of the judiciary, namely: 1) Registrar's rights to the

<sup>5</sup> "Pengelolaan PNB. 2016. Available at <https://www.anggaran.depkeu.go.id/content/Publikasi/bimtek/2520a1/F3.%20Pengelolaan%20PNBP.pdf&usg=AOvVaw0HU9sv8XIVMcqk43tH64rB>

Supreme Court; 2) Registrar ship rights of the General Courts; 3) Registrar's Right to the Religious Courts; 4) Registrar's rights to the state administrative court; 5) other administrative rights.

b) The PNPB imposition/collection mechanism includes the activity unit and the imposition rate. Administration through recording in journal books and case financial master books.

c) PNPB collection mechanism and collection by the cashier to the treasurer of the receipt to be deposited as PNPB.

Based on data from non-tax state revenue at the Supreme Court in line with the national PNPB revenue trend, it also tends to decrease, even there are certain types of revenues (423411 legalizations of signatures) tend to decline significantly and up to the first semester of 2018 to zero.

The description of the receipt of Functional PNPB on the Supreme Court is shown in the following Table 3:

**Table 3.** Trend of Functional PNPB on LK of the Supreme Court of the Republic of Indonesia

No	Revenue type		Reception				Jumlah
	MAP	Description	2015	2016	2017	2018 (July)	
1	423411	Signature Legalization Income	3,947,301,500	3,099,750,100	51,120,000	-	7,098,171,600
2	423412	Letter Approval Revenue	472,657,971	509,579,800	362,788,350	173,314,020	1,518,340,141
3	423413	Lege and Wages in Court Clerks' Registrars	1,669,976,200	1,614,107,146	1,045,140,400	449,714,300	4,778,938,046
4	423415	Case Fee Income	17,457,028,971	18,600,654,388	19,507,808,103	9,557,252,488	65,122,743,529
5	423419	Prosecutor's and Other Justice Revenues	27,735,789,187	21,925,361,347	26,376,803,419	10,641,634,653	86,679,588,606
Total			51,282,753,408	45,749,452,781	47,343,660,272	20,821,915,461	165,197,781,922

*Source: Data as though from LK and Ministry of Finance's e-Reconstruction Application as of July 28, 2018*

Over time, the development and complexity of the evolving judicial services has emerged as a problem with PP No. 53 of 2008 and its operational guidelines that have not been able to fully accommodate the activities and activities of case services. In some provisions different interpretations arise between one court and another. For example, the treatment of demand deposits from a case deposit account and the remaining down payment. The answer to the problem of misuse of demand deposits and the remaining down payment is regulated through a letter of the Secretary of the Republic of Indonesia No.268/SEK/01/V/2010 Concerning Time Remaining Cases and Case Fee Giro Services which basically regulate: that giro services and the remaining down-payment of cases not taken by the party after 6

months of notification constitute judicial income which is included as Other Justice Revenues (423419). Some questions continue to interfere with the demand for giro services, among others, whether the demand deposit service and the remaining down payment are judicial performance, and whether it is possible for the ministries/institutions to determine themselves through internal policies on the types of fees and PNBP tariffs outside those stipulated in PP 53 of 2008. One of the arguments used as the basis for its rationalization is that the giro services obtained are the results and/or accumulations of deposits of third party funds managed by the court from case activities (including third-party deposits, namely collateral for suspension, execution, consignment and others), while the remaining down payment is not a performance/achievement of the judiciary but the management of the down payment is an activity/activity carried out in the courtroom so that the effects/excesses of the activity are used as acceptance/PNBP of the court. Thus, demand deposit services and the remaining down payment are claimed as judicial performance and are included as the type of receipt/PNBP of the judicial institution.

Based on the above description and discourse in the implementation of PP No. 53 of 2008 for judicial services is at least caused by two main problems; how can existing technical policies be able to accommodate all revenues and potential revenues that became services as PNBP objects, and how do technical explanations related to the conditions and or limitations of a service make PNBP objects as intended in PP No. 53 of 2008?

### **Types and Rates of Non-Tax State Revenues at the Supreme Court and the Judiciary**

That in accordance with Law No. 20 of 1997 states that the group of state revenues includes revenue from service activities carried out by the government, the basis for its imposition is stipulated through government regulations with the type and tariffs that pay attention to their impact on the community and business activities, the costs of administering services by the government and aspects of justice.<sup>6</sup>

Therefore, the Supreme Court as a representation of the service provider in the justice sector through Government Regulation No. 53

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<sup>6</sup> UU no. 20 of 1997 concerning Non-Tax State Revenues (PNBP) Article 2-3

of 2008 stipulates the types and tariffs of PNBP applicable to the Supreme Court and the judicial bodies below them divided into 5 types of receipts. The types of PNBP in the Supreme Court and the judicial bodies below them are generally only divided into 5 types of acceptance accounts, namely:

- 1) 423411 Legalization of Signature (no more collected)
- 2) 423412 Revenue Approval of Letters under Hand
- 3) 423413 *Leges* and Wages in Registrar
- 4) 423415 Case Fee Income
- 5) 423419 Attorney and Other Justice Revenues

The details of each of these acceptance accounts can be seen in table 1 below.

**Table 1.** Types and Functional PNBP Rates at Judicial Institutions

423411		Income Legalization of Signature (not collected again)	Unit	Fee in IDR
	1	Legalization of signatures	Per decision	10.000,00
	2	Legalization of one or more signatures in the deed including civil registration deed, without prejudice to the stipulated in ord. S.1916 No. 46	Per letter	5.000,00
423412		Revenues Down Endorsement Letter in Hand		
	1	Ratification of the Letter under the hand	Per letter	5.000,00
423413		<i>Leges</i> and Wages in Registrar		
	1	<i>Leges</i> money	Per decision/ determination	3.000,00
423415		Case Fee Income		
	1	Cassation Application Registration Fee	Per Case	50.000,00
	2	Registration Application for Judgment Fee	Per Case	200.000,00
	3	Registration Fee for Application of Material Test Rights	Per Case	50.000,00
	4	Registration fee for the appeal request	Per Case	50.000,00

	5	The registration fee claim/appeal in PN/PA/TUN	Per Case	30.000,00
	6	Registration fee at the Commercial Court	Per Request	1 ml IDR- 4 ml IDR
423419		Revenue and Justice Prosecutor Other		
	1	Submission of derivatives/copies of court decisions/stipulations	Per sheet	300,00
		<b>Editorial rights</b>	Per decision/determination	5.000,00
	1	Showing letters to interested parties regarding letters stored in the court	Per File	5.000,00
	2	Confiscation/execution of movable or immovable goods and for recording the revocation of a confiscation in the official report	Per Determination	25.000,00
	3	Perform general upfront sales/auction on court order	Per Determination	25.000,00
	4	Recording of making deeds or minutes of cursing or from other decisions not as a result of a court decision	Per decision	5.000,00
	5	Recording: Something submitted by the deed in the Registrar's Office in the event that is required by law	Per deed	5.000,00
	6	Recording: Submission of the deed above by Registrar/Bailiff	Per deed	5.000,00
	7	Recording: Submission of letters from case files	Per File	5.000,00
	8	The original deed made in the Registrar's Office, except for the storage of the deed of civil registration and the entry or transfer of the deed as well as any written statements issued by the Registrar in the case required by law	Per deed	5.000,00
	9	Registration of the power of attorney to represent the litigant in court	Per deed	5.000,00

	10	The cost of making incidental power of attorney	Per power of attorney	5.000,00
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*Source: processed from PP 53 of 2008 and its operational guidelines*

## **Implementation of PP 53 of 2008 and the Problems**

Referring to the Results Report Examination of the 2013 Financial Case Management and 2014 Third Quarter by the BPK related to PNBP for case services (technical) revealed the condition that: 1) Imposing PNBP Not In Accordance with the Court Chairperson's Decree Regarding Long-Term Process Fees; 2) Imposing PNBP Not In Accordance with Government Regulation Number 53 of 2008; 3) Imposing PNBP Has No Legal Basis; 4) there is PNBP (HHK and Service Giro) that have not been deposited to the State Treasury amounting to Rp198.91 million and late payment to the State Treasury of IDR 6.42 billion.<sup>7</sup>

The results of these examinations at least parse some of the classic problems with case management costs. Referring to the case cost terminology in a civil case as described that the case fee consists of:

- 1) Secretariat costs (Griffiekosten) or rights secretariat, the levies as ministry of justice services provided to the party litigant to be paid to the state in which the type and tariffs have been regulated by Government Regulation No. 53 of 2008 or in other terms referred to as Registrar's Rights (HHK) and;
- 2) The cost of the case settlement process is the cost of operating/implementing a settlement.<sup>8</sup>
- 3) Tax stamp on documents. Stamp duty is an indirect tax that is incidentally collected if a document referred to by the Stamp Duty Law 1985 is made on a condition, act or event in a society.<sup>9</sup>

In its implementation through the Supreme Court Regulation (Perma) 02 of 2009 which was later replaced with Perma 03 of 2012 which was the mandate of Law No. 14 of 1985 concerning the Supreme Court as last amended by Law No. 03 of 2009 still mentions that the

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<sup>7</sup> Report on Examination Results on 2013 and Q3 2014 Financial Case Management.

<sup>8</sup> Muhammad Anis, "Disclosure of court fees adequately in the financial statements of the judicial work unit", *Jurnal Hukum dan Peradilan*, vol. 2, no. 2 (2013)

<sup>9</sup> Media Release Directorate General of Taxes. Ministry of Finance. Director General of Taxes Issues Stamp Design in 2014.

component of the process/down payment costs of the case still includes the administrative cost component/HHK outside the operational costs of the case/implementation of case settlement and stamp duty/indirect tax on documents..

Implementation of Government Regulation (PP) 53 of 2008 concerning Types and tariffs for non-tax state revenues that apply to the Supreme Court and the judicial bodies below to date are still understood in various ways. This is because the instructions for implementing the regulation have not been explained in detail/details of service activities or activities intended as objects of imposition of PNBP so that in the implementation in the developing field various interpretations of PNBP objects. In addition, in the operational guidelines, there are activities/services in the courtroom/case which are potential technical revenues not covered/not yet regulated. Following are some practices of variation in the implementation of the relation to PNBP objects for services in the court, among others, as follows:

*Types of HHK/PNBP that are calculated and/or collected/charged at the time of the down-payment assessment*

In its implementation based on the provisions of the included/calculated HHK/accounting costs in the process/case costs are the registration fees and editorial rights in the estimation of the court case, to the Supreme Court, the court's right to public justice, the court's right to the religious court, the administrative rights of the state administrative court and other administrative rights.<sup>10</sup> In addition to stamp duty, which is a direct tax on documents (not HHK components) and case/operational costs, other cases consist of expenditures needed for the administration of justice which includes costs of calls, notifications, confiscation, local inspection, oath, translator, and executions must be recorded in an orderly manner in each journal book that is calculated on the component of the down-payment case.<sup>11</sup>

Even in some judicial precisely insert financing for PNBP / other HHK components i.e. for the delivery relative by bailiff equivalent / considered as a deed delivered by a bailiff. In this regard, the problem

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<sup>10</sup> Letter of Deputy Chair of the MA Non-Judicial Field No. 42/WKMA-N.Y/XI/2018 concerning Implementation Guidelines for PP 53 of 2008.

<sup>11</sup> Book II Guidelines for Implementation of Duties and Administration of Courts in the Four Judicial Environments.

associated with the loading of PNBP objects in the relationship in the estimated decline and/or in the case of the advanced costs of the case can be debated by entering *relas* as the cost component in the estimation of the forward case. However, that is not appropriate because: 1) based on the provisions mentioned above (*Juklak PP* No. 53 year 2008) PNBP components in downsizing are only possible in registration and editorial; 2) debates about whether PNBP objects are willing to be reviewed.

#### *Imposing PNBP on Statement Letter (Certificates)*

The debate related to the type and rate of the imposition of non-tax revenues (PNBP) for the certificate for prospective regional heads and deputy heads of a given area is now clear that the submission in court free of charge.<sup>12</sup> This is reaffirmed through SEMA 02 of 2018 concerning fee waivers for all types of services in the form of a certificate in court. On both of these things, although explicitly been set, but is still found in some courts still wearing non-tax revenues with the argument that the financing really no longer exist but non-tax revenues continue to be imposed. It is considered inappropriate if seen and based on the spirit and efforts to improve public services. The next problem is related to the imposition of non-tax revenues on document legalization services. If earlier on legalization service copy/photocopy of a letter or a copy of the judgment or stipulation imposed PNBP IDR 5.000-/deed or IDR 10.000, -/decision, then it should be after the issuance of Law No. 30 In 2014 the imposition of non-tax revenues over the legalization of signatures on a letter/certificate and copy/photocopy of the decision should not be levied again in court although in Regulation 53 of 2008 still allow the imposition of PBNP over the legalization of the signature. This is a step forward and provides certainty and forms of support to public service on civil rights that are not paid.

#### *PNBP on Registration Case*

In general, the basic services of the judiciary produce output in the form of decisions (verdicts) and on the determination (*beschikking*) can

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<sup>12</sup> Circular Letter No. 03 of 2016 concerning Application for Certificate of Candidate for Regional Head and Deputy Regional Head in Court.

easily be sorted not only on the output of services in the form of verdicts and stipulations, but also on litigant parties, namely in two cases or more parties, namely the plaintiff and the defendant, while in the case of petition there is only one party, namely the party who submitted the application or called the applicant. Based on the above classification, in practice, the lawsuit and the PNB object are attached to the registration as stipulated in the operational guidelines PP. 53 of 2018. Debate/variation in the field was found in the case that the request for execution was ambiguous because the PNB object which was intended as a type of PNB for the execution of seizure/execution and/or withdrawal of a confiscation occurred with the registration of IDR 25,000, not during the confiscation/execution and or recording of revocation of a confiscation carried out.

The practice according to the author is not right, because the PNB object for the case of an execution request should be 2 (two), namely: 1) for registering cases of requests for execution as well as for cases of consignment requests subject to IDR 30,000 PNB, and; 2) for the determination to carry out the execution (seizure/execution of movable or immovable goods and for recording the revocation of a seizure) and for recording the revocation of confiscation in the official report of IDR. rejected and the process of examining the application was decided to be imposed on PNB *leges* for the stipulation of IDR. 3,000. So that for the registration of cases the request for execution should only be subject to PNB of IDR. 30,000, and for the determination of the chief of court for the execution of seizure/execution and/or recording the revocation of a confiscation of the stipulation subject to PNB of IDR. 25,000-.

#### *Imposition of HHK /PNB on Relas bailiffs*

The difference in the imposition of PNB on *relas* so far has been based on the argument that *relas* is a deed, so as in Annex PP No. 53 Th. 2008 points above submission of deeds by clerks/bailiffs are PNB objects. In most courts in the Religious Courts environment, the view that *relas* is not a deed as is the deed known to the religious court is a divorce certificate, so that *relas* are excluded from the PNB object as referred to in the attachment to PP No. 53 Th. 2008. It is different from the general practice in the general court environment that *relas* is a deed that becomes the object of imposition of PNB/HHK, although in its

implementation there are also various treatments. This shows an inconsistency with the provision that there are some judges wearing PNBP/HHK for *relas* every time they are summoned and in some courts the imposition of PNBP/HHK on *relas* is only imposed on first time calls/notifications to both the defendant and the plaintiff. Based on the description of the operational guidelines PP. 53 of 2008 actually meant as PNBP object is not on the surrender activity but on the recording activity.

*The HHK/PNBP on the basis is willingly charged from the relas fee*

Another variation on the imposition of PNBP/HHK on *relas* is on the imposition, namely in some courts the imposition of PNBP/HHK on *relas* is taken from the *relas* cost itself (reducing the *relas* costs that are taken to bailiffs); and included in a separate component in the calculation of the down payment case. The second root problem in the practice of imposing PNBP on the aforementioned *relas* is the assumption that *relas* is a PNBP object because *relas* is considered as a deed document submitted by the clerk/bailiff intended in the PP No. operational 53 of 2008 letter E. Other Registrar's Rights point 11.

This assumption is not fundamental because the PNBP object for the deed submission activities is intended to be in the recording activity, of course, the intended recording is recording in the register book, not in the submission of the deed/letter but rather the recording of the activities referred to in the register. The next problem with this relationship in the current practice in the general court is to notify/call for criminal cases because currently the costs of calls and notifications have been allocated for the trial and submitting a copy of the decision to the Public Prosecutor (JPU), Detention Center/jail, the defendant and/or legal counsel whether it must be submitted by the bailiff through the *relas* mechanism (following the civil case) or simply delivered by the courier (not necessarily bailiff) without a letter in the form of *relas* enough through mail expeditions as proof of the call/delivery that has been delivered which needs to be specifically regulated.

*The mechanism of collection and deposit of technical/functional PNBP to the State Treasury*

In the mechanism of PNBP/HHK collection in the judiciary, there are also a number of diverse practices, although technically it has been regulated in the PP 53 the Year 2008 operational guidelines but there are still gaps in interpretation, including:

- a) The authority of the cashier in collecting PNBP related to cases is only related to PNBP/HHK registration and editorial rights.
- b) The other PNBP outside the points above for collection is carried out in several separate parts, for example, in the power of attorney and the collection is done in the legal section. The deposit mechanism also differs: there are those who make a centralized deposit through the cashier to be forwarded periodically ( $\leq 7$  days) to the treasury of receipt and then deposited to the state treasury; or there is someone who deposits the other PNBP/HHK, each part immediately submits it to the receipt treasurer at any time without going through the cashier.

The problem should be that all receipts be carried out at one door (through the cashier) even though the collection is not fully carried out by the cashier. For example for other PNBP and incidental when services are provided. Therefore, there needs to be an instrument that ensures that collection/payment for the imposition of PNBP tariffs on services is carried out by parties directly to the cashier through the instrument before (as a prerequisite) the service is provided. This is important to provide certainty/transparency and good internal control of services.

#### *Administration/Reporting Mechanism for Technical/Functional PNBP*

Problems in the administration are related to administrative aspects, recording and bookkeeping whether it has been in accordance with the principles of good administrative management, namely accountable, transparent, effective and efficient. Administrative aspects that have not been regulated through strict regulations have led to several work units making their own mechanisms. Some things that become problems include, namely:

- a) Weaknesses in administrative accountability in the submission of money from service applicants (stakeholders/community) and from cashiers or others who collect PNBP/HHK directly to the treasurer of the receipt without being supported by a

handover document and or adequate receipt. In the operational guidelines for PP No. 53 of 2008, the proof of submission of money from the cashier to the treasurer of the receipt is made on the HHK book by the cashier, the date and the amount of money submitted are then signed by the recipient's treasurer. Then, what about the proof of submission of money from the party requesting services to the judicial officer who charges HHK/PNBP fees including the delivery to the cashier or directly to the recipient's treasurer for other services. Therefore, in the context of transaction evidence and the administrative accountability tool for submitting money to services as a service fee, it must be made in the form of receipts. Receipts are a standard proof of receipt for a sum of money signed by the recipient, then handed over to the payer who has the strength as proof of adequate transactions including delivery from the cashier to the recipient treasurer;

- b) PNBP collection mechanism for other services is in several parts so that internal certainty and control is weak. Therefore, there should be a mechanism that regulates collection carried out in one door, that is, entirely through the cashier, because only the cashier mentioned internally can collect at least 7 days to be deposited in the state treasury through the treasurer of receipt. The problem is what if the PNBP collection is not done by the receipt treasurer whether it is also subject to the 7-day internal policy. Based on the provisions in Presidential Decree No. 42 Th. 2002 concerning the National Budget Implementation Guidelines as amended by Presidential Decree No. 72 Year 2004 concerning First Amendment to Presidential Decree No. 42 of 2002 and Presidential Regulation No. 53 of 2010 concerning the Second Amendment to Presidential Decree No. 42 year 2002.

In the provisions of Presidential Decree No. 42 of 2002, as last amended by Presidential Regulation No. 53 of 2010, distinguish clearly the obligation to deposit to the State Treasury on PNBP that has been collected based on the subject/person conducting the collection. If done by someone other than the treasurer, it is required immediately even 1 (one) working day after the receipt must be deposited to the State Treasury. By contrast, if the non-tax collector carried by the treasurer,

who can make deposits after a week or 7 days. This rule is in line with the internal policy of the PP No. 53 of 2008 the authority of the treasurer in the collection is carried out by the cashier so that the treasurer of the receipt when it has been submitted by the cashier must immediately deposit the PNBP/HHK received to the state treasury.

The next problem is how the revenue collected is not carried out by the cashier but in other parts of the court providing services such as in the legal, criminal, civil code and other parts. According to the practice, there are 2 (two) treatments, namely: 1) some work units (*satker*) make deposits on PNBP/HHK collected by the cashier, namely registration and editorial staff by depositing cash to the treasurer at the end of the week and by the treasurer deposited to the state treasury on the first day of the week after. Then for PNBP/HHK the collection is not done by the cashier on the day of collection, directly submitted to the treasurer of receipt and the treasurer of the receipt immediately deposits the PNBP/HHK; 2) PNBP/HHK collection conducted in addition to the cashier is handed over to the cashier periodically (once a week) deposited to the state treasury through the recipient's treasurer. According to the authors, the second practice/approach is more effective and efficient to do than the first practice/approach if it has to be done. However, this regulation of deposit rules is regulated differently in the Regulation of the Minister of Finance (PMK) Number 03 of 2013 concerning the procedure for receiving and depositing PNBP which requires deposits by the treasurer of receipt of PNBP/HHK which is collected at the end of the day, namely:

*“Depositing PNBP as referred to in Article 3 paragraph (3), is carried out by the Receiving Treasurer at the end of each working day when PNBP is received.”*

There are two arguments for deposit arrangements in PMK No. 3 of 2013, namely: 1) in the hierarchy of the position rules of the Presidential Decree and/or Presidential Instruction are higher than the PMK so that what must be followed is the provision in a higher regulation; 2) internal policy through guidelines PP No. 53 of 2008 specifically regulates the internal policies of the institution and in terms of practicality, efficiency in contains cost and deposit rates every day with a relatively small value (consideration of materiality level) does not describe the efficiency and effectiveness of the work.

### **Discourse on Implementation of PP No. 53 of 2008**

The following are some of the problems that often arise and there is no uniformity of treatment regarding the object of imposition of PNBP as intended in PP No. 53 of 2008 and its operational guidelines and some of the authors' views are explained as follows:

#### *Legalization of signatures*

Legalization of signatures according to the Indonesian dictionary (KBBI) is an endorsement (according to law or law); legalizing means making it legal; validate (letters and so on); so the term legalize means making it legal. Several models/types of known legalization practices from regulations, namely: 1) legalization of digital data, 2) legalization of deeds under the hand, and 3) legalization of signatures. After the promulgation of Law No. 30 of 2014 concerning Government Administration changed the perspective of government services in general, which also included judicial services.<sup>13</sup> That improving the quality of government administration in the use of authority must refer to the general principles of good governance based on provisions/legislation so that through government administration arrangements can provide legal protection not only to citizens and government officials.

One concrete manifestation related to government administration in an effort to improve the quality of government administration is the release of all financing in terms of legalization of documents which so far impose uncontrolled tariffs so that from the economic side it decreases competitiveness because the public service costs are not guaranteed by the state. Therefore the spirit of fee waiver on the legalization services of government officials including the legalization of the judiciary should not be collected again with the argument that the law annulled the rules for the type of receipt of legalized signatures on PP No. 53 of 2008.

#### *Derivative Submission Phrase/copy of decision/stipulation*

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<sup>13</sup> UU no. 30 of 2014 concerning Government Administration Article 1 paragraph 3.

Submission of derivatives/copies of decisions/stipulations covering derivatives/copies of decisions/stipulations at all levels of the judiciary, starting from the first level, derivatives/copies of decisions/appeals, derivatives/copies of decisions/stipulations of cassations and derivatives/copies of decisions/judgments.

Derivatives and/or copies of decisions/stipulations in this definition are understood as official documents issued by the court as documents that fulfill formal requirements according to their designation different from copying/photocopying that do not have formal legality as a document as evidence.

*Phrases showing letters*

The service to show the intended letter is a service showing a letter to those who are interested in being stored in the courtroom; interested parties can be related to legal proceedings to examine files (inzage), or others, among others, for:

- a) archives of the letter of evidence relating to cases, both those that are still running and those that have permanent legal force;
- b) other court archives

*The phrase foreclosure/execution of goods moving/not moving*

The intended PNB object for seizure/execution is not for registration so that it is collected at the beginning as a registration fee but when the establishment of the seizure/execution of movable and immovable goods has been made and or for recording the revocation of a confiscation.

*Recording phrase:*

- a) Preparation of deeds or minutes of cursing or from other decisions, not as a result of court decisions;
- b) Something Submitted by deed in the Registrar carried out in matters that are required by law;
- c) Submission of the deed by Registrar/Bailiff;
- d) Submission of letters from case files

The above activity is the object of imposing PNB on the recording activity. Thus, the PNB object attached to the recording activity is intended to record the general register in the court or a special

register made, not on the activity of making a deed, or submitting the deed/letter but whether or not the recording activity is carried out in the register.

*The original deed phrase made in secretariat*

Deed made in the courtroom is excluded from the storage of civil registration deeds and the entry or transfer of the deed, as well as any written statements issued by the clerk in matters that are required by law, so that the object of imposition of PNBP is in the activity of making a deed in the court as an example, among others, information made by the clerk does not propose a cassation; statement of late filing an appeal and/or cassation and/or other information required by law.

*Registration of power of attorney*

The object of the imposition of PNBP on the registration activity means that there is a record in the register book.

*Leges money*

*Leges* based on KBBI is seal stamp issued by the regional government so that in fact if referring to the definition of *leges* on KBBI means the object of imposition of PNBP on the judiciary is on the object/goods not for its services. The next question is that the form of a judicial dispute currently being equated/intended is that the logo or judicial stamp needs to be clarified. As such, the object of imposition of PNBP is as simple as IDR 3.000, - per stipulation/decision on the derivative submission/copy of the current decision/stipulation in the logo and/or court stamp on the derivative document/copy of the decision/stipulation.

## **Conclusion**

Based on the results of the discussion of the above issues related to several issues that are polemic and varied in the implementation of PP No. 53 of 2008 in the judiciary can be concluded that, types and rates on PP No. 53 of 2008 has not accommodated all potential state revenues from judicial service activities. There are still a number of descriptions of other literary rights which have multiple interpretations, especially of the recording phrases for making, and the submission of

deeds or letters that are the object of an imposition of PNBP attached to the recording activity or to the service for making or delivering services. The technical/functional HHK/PNBP administration mechanism does not yet describe the administration of accountability, in particular, the submission of HHK/PNBP money by the cashier to the receipt treasurer and from the service applicant with service providers and PNBP/HHK collection mechanisms spread over several parts.

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