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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 Law On The Position Of A Notary Regarding The Residential Place and Working Area Of The Notary Too Restricted

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Abstract. Article 18 paragraphs (1) and (2) UUJN regulates the position of Notary which contains the place of domicile and working area of the Notary which reads as follows "(1) Notary has a place of domicile in the regency or city area. (2) A notary has an area of office covering the entire province of his/her place of domicile." It will be explained in this journal that restrictions on Notaries movement and work space are not in line with the concept of social welfare (social welfare state), Islamic welfare theory, utilitarianism theory, and cybernetic theory. The purpose of writing is to analyze the juridical analysis of the Notary Position Law regulations regarding Notary honorariums and provide input for 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. As a result of this research, the researcher provides conclusions and suggestions regarding how a Notary can provide good legal counseling if, for example, his friend's relations are from outside his area of office, for example, the Notary's territory is in Central Java, then his friend's relations are from Jakarta because of regulations that limit his position and area of Notary work.

Keywords: Article 18 paragraphs (1) and (2); Justice; Notary Public Position Law; Notary Work Area.

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1. Introduction

Article 18 paragraphs (1) and (2) UUJN regulates the position of Notary which contains the place of domicile and working area of the Notary which reads as follows "(1) A notary has his or her domicile in a regency or city area. (2) A notary has an area of office covering the entire province of his/her place of domicile." According to this journal, restrictions on the location and work area of notaries also limit the space for notaries to move and are not based on any theory when the UUJN makers made these regulations. It will be explained in this journal that restrictions on Notaries' movement and work space are not in line with the concept of social welfare (social welfare state), Islamic welfare theory, utilitarianism theory, and cybernetic theory.

This journal will criticize the comparative law validation method (comparison of laws) with the rules of the Law on Advocates and Medicine, because it is seen from the way it gets clients and the way it works, namely that they both look for their own clients without being paid by the State, the difference is as explained in the previous sub-chapter, Notaries are public officials while Legal Advocates (Lawyers) and Doctors are not public officials.

If we look at Article 5 paragraph (2) of Law Number 18 of 2003 concerning Advocates, it regulates the work area of Legal Advocates (Lawyers) who are free to take work anywhere throughout the territory of the State of Indonesia, as it reads "The work area of Advocates covers the entire territory of the Republic of Indonesia ." Meanwhile, Law Number 29 of 2004 concerning Medical Practice and other related medical regulations "does not regulate the work area of doctors", which means that it implicitly (not explicitly) allows doctors to open practices anywhere throughout the territory of Indonesia.

Various issues regarding the domicile and working area of Notaries are what chose this issue to be researched. That's why the researcher wants to propose the title "**Judicial Analysis of the Regulations on the Notary Position Law About The Notary's Domicile and Work Area are Too Restricted**".

II. Theoretical framework

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

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- a. Basic Theory (Grand Theory): **Stufenbau theory**. According to Hans Kelsen, norms are layered in a hierarchical structure.¹ 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,² 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 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.³
- c. *Applied Theory*: **Cybernetic Theory**. This theory is the teachings of Jeremy Bentham⁴ The essential points of his teachings will be presented:
 - i. 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).
 - ii. According to Bentham, the purpose of forming legislation (UUJN in this research) is to produce happiness for society. So legislation (especially UUJN) must strive to achieve four goals, namely:
 - 1) *To provide substance*(to provide living expenses).
 - 2) *To provide security*(to provide protection).

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¹Satjipto Rahardjo, Legal Studies, (PT Citra Aditya: Bandung), page 43.

²Bobby Saver 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 Saver, Indonesian Economy Between Chinese and the Proletariat, accessed from <http://bobbysaver.blogspot.com/2008/05/Ekonomi-indonesia-antara-tionghoa-dan.html>, on November 26 2020.

³Jimly Asshiddiqie, Constitutional Law and the Pillars of Democracy, (Jakarta: Sinar Graphics, 2011), page 133.

⁴*Ibid*, pages 100-101.

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3) *To attain equity*(to achieve equality).

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

III. *Gap Analysis and Problems*

An explanation of regulations regarding determining the position and territory of Notaries in the section "considering" Ministerial Regulation of the Ministry of Law and Human Rights Number 27 of 2016 with philosophical reasons, namely "that with the increase in population, increasing economic growth, the expansion of districts/cities in Indonesia, as well as increasing public understanding and awareness of legal services provided by Notaries, and in In order to expand the distribution of legal services by Notaries throughout Indonesia, it is necessary to reorganize the Formation of Notary Positions and Determine Regional Categories", here it is underlined because "the increase in population and public awareness of legal services provided by Notaries" cannot be used as an excuse for Notaries is specialized and differentiated from Legal Advocates (Lawyers) and Doctors, because in fact the professions of Legal Advocates (Lawyers) and Doctors also have the same number of people who need these professions, meaning the reason is "the increase in population and public awareness of the professions of Legal Advocates (Lawyers) and Doctors" This is justified, but why is it that only Notaries are limited in their space and work area while Legal Advocates (Lawyers) and Doctors are not limited. This shows that it is incompatible with the theory of welfare (social welfare state), Islamic welfare, and the theory of utilitarianism (utility/benefits). Especially in the theory of utilitarianism because these regulations are clearly not beneficial and useful for Notaries, in fact they will only cause setbacks for Notaries to be able to do good and be more beneficial for the wider community in Indonesia.

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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 Notary's movement space as explained in the background above result in Notary's still feeling afraid of not being able to meet the living needs of their family, especially in the rules limiting the Notary's honorarium, the Notary's scope of 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.⁵ 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.⁶ In this case, it is describing the juridical analysis of the regulations on the Notary Position Law about *The notary's place of residence and working area are too limited*. 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.⁷ To complete the secondary data, data was collected from statutory regulations regarding the boundaries of the Notary's work area, journals and related books. 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.⁸

⁵Soerjono Soekanto and Sri Mamudji, Normative Legal Research, (Rajagrafindo Persada: Jakarta), page 12.

⁶Hadari Nawawi, Social Research Instruments, (Gadjah Mada University: Yogyakarta), page 47.

⁷Mukti Fajar ND and Yulianto Achmad MH, Dualism of Normative & Empirical Legal Research, (Student Library: Yogyakarta), page 42.

⁸Bambang Waluyo, Legal Research and Practice, (Sinar Graphics: Jakarta), pages 77-78.

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3. Results and Discussion

Firstly, we will discuss the incompatibility of the rule "restricting the position and work area of Notaries" with the theory of utilitarianism (utility/benefits), where the existence of this rule means that it greatly limits Notaries whose authority in Article 15 paragraph (2) letter e is said to "provide legal counseling in connection with the making of a Deed;," here we will criticize how a Notary can provide legal counseling properly if, for example, his friend's relations are from outside his area of office, for example, the Notary's territory is in Central Java, then his friend's relations from Jakarta ask about the issue of the sale and purchase deed, If there are regulations that limit the Notary's position and work area, then it would be permissible for the Notary to respond like this to his friend's relations "I'm sorry because your house is outside my work area, I am prohibited from answering that, because I'm afraid I will be punished by UUJN because of Article 18 paragraphs (1) and (2)", even though this article is felt by this journal to be contrary to the authority of Article 15 paragraph (2) letter e UUJN which requires providing legal counseling in relation to deeds.

It is clear that if the Notary understands superficially (rawly) Article 18 paragraphs (1) and (2) UUJN it will cause misinterpretation (misinterpretation) because for example the Notary has thoughts with a positivism paradigm (naïve realism)⁹ This is justified, because only criminal law knowledge is prohibited from being used analogous to criminal law but not in civil law. If there is a Notary who understands Article 18 paragraphs (1) and (2) UUJN, this will cause the theory of utilitarianism to not come out because the aim of the rules provided by this theory is expected to be of maximum benefit and benefit to society at large.

If other ideas arise, restrictions Article 18 paragraphs (1) and (2) UUJN is for distributing work to Notary colleagues because demand (demand) to become a Notary is greater than the supply (the capacity of one district/city requiring a Notary) is less which then causes inequality in Notary jobs, such as senior Notaries or Notaries who are good at socializing will definitely get more work than their colleagues, then the Notary wants to share his work with his colleagues (the sociological reason that life aims to help each other and help each other) but this cannot be used

⁹The ontology of the positivist paradigm is naïve reality. The ontology of this research assumes law as real, visible, external, visible to the five senses, objective, universally accepted, context-free and must not be influenced by society's values and morals, cause and effect; reductionist and deterministic which comes from social events that are eliminated to become simple so that the legal form is clear and can be understood and pragmatically interpreted as it is. Taken in Norman K. Denzin and Yvonna S. Lincoln, Handbook of Qualitative Research. (Yogyakarta: Student Library, 2009), page 124.

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as a reason for the regulations limiting the Notary's position and area of office, because if by chance the Notary who gets a lot of clients gets potential clients. from outside the area of office (for example Papua City), then the Notary is in the area of office of Central Java Province, even though the Notary during his school days had many friends, most of his friends lived on the island of Java, with some one or two friends coming from Sumatra, Kalimantan , and Sulawesi, but do not have friends on the island of Papua, so it will be up to the prospective client to decide. This would actually be contrary to the theory of utilitarianism (usefulness/benefit), because the Notary is supposed to be able to benefit by helping potential clients from Papua, but because of the restrictions of Article 18 paragraphs (1) and (2) UUJN, the Notary is not can help or benefit other people, and also conflicts with the authority to "provide legal counseling" because of the perceived fear of violating Article 18 paragraphs (1) and (2) UUJN.

Second, this will obviously automatically alienate the Notary from the theory of welfare (social welfare state) because if the Notary is restricted regarding his or her position and area of office, so that the Notary does not receive material material in the form of an honorarium which is useful for supporting his life and family, his family will automatically not get material that can be used to buy food and this clearly contradicts the welfare theory in Islam QS Quraish verses (3) and (4) that is worshiping God (the owner) of the Kaaba, eliminating hunger, and eliminating fear, especially in the case of the Notary's failure to eliminate hunger for his family because he was prohibited from taking jobs from prospective clients who were outside the Notary's work area. It is clear that the rules of Article 18 paragraphs (1) and (2) UUJN are completely baseless and can be said to be nonsense and not useful for Notaries.

If we return a little to understand the emergence of theorywelfare state (welfare state) which shifts the nachtwakersstaat (night watchman state), so that the State intervenes to solve problems in the lives of its people, so that prosperity can be realized from solving community problems, as if this journal sees the opposite with the regulations limiting the position and area of office of Notaries means that the State indirectly has not paid attention to the welfare of the Notary or deliberately allows the Notary not to achieve prosperity in his life.

Therefore, the regulations limiting the position and area of office of Notaries need to be removed so that the role of Notaries in society in Indonesia can be maximized like the professions of Legal Advocates (Lawyers) and Doctors or changed according to the regulations in the Legal Advocates (Lawyers) Law, the area of their position is the entire territory of the State of Indonesia. . If notaries in the future can be more useful for the wider community in Indonesia, then this will be

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in line with theoryutilitarianism and automatically his family will receive prosperity, both welfare state and prosperity in Islam.

Third, if the rules for limiting the location and area of office of Notaries are to be analyzed using cybernetic theory with AGIL requirements, it clearly does not fulfill these four requirements. The first requirement is adaptation, it is clear that the rules for limiting the position and area of office of Notaries fail to adapt to the development of life in the 4.0 era in Indonesia, which has been explained what the 4.0 era is in the discussion of the previous sub-chapter, which essentially demands adaptation from humans. regarding the development of internet technology, because with the ease of the internet, client relations from outside the island or outside the office area are no longer impossible, if you think a little back to the beginning of the formation of the UUJN, namely in 2004, although it was revised in 2014, indeed in 2004 technological developments The internet has not experienced rapid development because it was only in 2008 that Android appeared, which made it easy to search for news or goods on the internet via cellphone, even though its competitor Apple had been pioneering since 1976, but only received much attention from the wider public after Android appeared.¹⁰ The failure to obtain the results of the 2014 UUJN changes indicates that it is not in line with the legal meaning explained in the previous sub-chapter, namely ius/jus, namely rights/rules and prudence, namely looking to the future, where the aim of forming laws, especially UUJN, should be to be able to predict life far into the future so that it can become rules that provide justice and prosperity for the lives of Indonesian Notaries in the future.

The second condition is goal, meaning that an article in the UUJN regulations must have a clear objective. This thesis actually looks at the opposite, with its analysis of the theory of utilitarianism which has been explained above, it is clear that it does not provide usefulness/advantages with the existence of regulations limiting the position and working area of Notaries resulting in Notaries not being more useful for the wider community in Indonesia but only being picky, namely limited to the community included in one broad environment of the Notary's office area. So if this happens, where the Article rules are formed without a clear objective, it will result in the public not immediately understanding the law quickly and well, so that the principle of legal fiction (people must know and understand the law) in their country will take longer to achieve.

The third condition is integration (unity), the rules of Article 18 paragraphs (1) and (2) UUJN concerning restrictions on the location and working area of Notaries which have been discussed

¹⁰ http://id.wikipedia.org/wiki/Android_%28sistem_operasi%29

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above are in conflict with Article 15 paragraph (2) letter e UUJN regarding the obligation to provide legal counseling, because with the restrictions it is prohibited. Taking a prospective client's job outside of his or her area of office automatically makes the Notary less enthusiastic about providing legal counseling as widely as possible throughout the territory of the State of Indonesia. It is clear that these two articles actually show their own contradiction.

The fourth and final condition in the theorycybernetics i.e. latency, obviously does not meet the requirements of latency cybernetic theory (each sub-system must be interconnected and provide benefits to each other). If the three previous cybernetic requirements fail to be fulfilled by the above rules for limiting the position and area of office of a Notary, resulting in a lack of unity with Article 15 paragraph (2) letter e, not in accordance with the political objectives of Notarial law, and unable to adapt to the development of life in the 4.0 era in the country. Indonesia, and finally automatically failed to meet the latency requirements, because the latency requirements, namely the three previous sub-systems, had to be met and were interconnected with a common goal to provide their respective benefits.

4. Conclusion

How can a Notary provide good legal counseling if, for example, his friend's relations are from outside his area of office, for example the Notary's domicile is in Central Java, then his friend's relations from Jakarta ask about the issue of the sale and purchase deed, if there are regulations that limit the position and working area of the Notary, then it will be allowed if the Notary responds like this to his friend's relations "I'm sorry because your house is outside my work area, I am prohibited from answering that, because I am afraid that I will be punished by UUJN because of Article 18 paragraphs (1) and (2)", even though that article is This journal feels that it is in conflict with the authority of Article 15 paragraph (2) letter e UUJN which requires providing legal counseling in relation to deeds.

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