

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

## **Reconstruction Of The Requirements For The Appointment Of A Substitute Notary Based On Value Pancasila Justice**

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**Abstract.** Article 33 paragraph (1) UUDN regulates the rules regarding the requirements to become a substitute Notary and temporary Notary. These rules are made for Notaries who are on temporary leave if there are obstacles in carrying out their work as a Notary such as going on the Hajj, illness, etc. The article reads "Requirements for being appointed as a Substitute Notary and Temporary Acting Notary are Indonesian citizens who have a law degree and have worked as an employee of a Notary's office for at least 2 (two) consecutive years." 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 sociological juridical. Data collection was carried out through field research studies. This research data processing uses primary data which is divided into primary and secondary legal materials. The results of this research, the researcher provides conclusions and suggestions that the age requirements to become a Notary also do not represent justice for prospective Notaries, because it will make them unemployed for too long, as well as Substitute Notaries who do not give opportunities to prospective Notaries who are still unemployed, but instead give them the opportunity to get a S.H. title. strata 1 to replace instead of candidate M.Kn. Of course, many are still unemployed.

**Keywords:** Article 33 paragraph (1); Justice; Notary Public Position Law; Substitute Notary.

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## 1. Introduction

*Article 33 paragraph (1) UUJN regulates the rules regarding the requirements to become a substitute Notary and temporary Notary. These rules are made for Notaries who are on temporary leave if there are obstacles in carrying out their work as a Notary such as going on the Hajj, illness, etc. The article reads "The conditions for being appointed as a Substitute Notary and Temporary Acting Notary are an Indonesian citizen who has a law degree and has worked as an employee of a Notary's office for at least 2 (two) consecutive years."*

This journal wants to criticize these regulations again using the legal comparative (comparison) validation method with the Legal Advocates (Lawyers) Law and the Police of the Republic of Indonesia. It turns out that Law Number 18 of 2003 concerning Advocates does not regulate the replacement of temporary Legal Advocates (Lawyers) because these regulations are deemed useless/useful so they are not regulated in the Law on Advocates. Meanwhile, the Police of the Republic of Indonesia (Polri) regulates the "Temporary Dismissal" of Polri dinar officials in Article 10 paragraph (2) of Law Number 15 of 2015 concerning Procedures for Temporary Dismissal from Positions in the National Police Service of the Republic of Indonesia regulates as follows "In terms of Polri service positions "Those who have been temporarily suspended have been filled by replacement officials, officials carrying out HR functions in accordance with their authority, continuing to develop the careers of the members of the National Police concerned by providing them with positions as low as possible, equivalent positions."

Here we want to criticize regarding appeal to appeal (equal comparison), this journal compares Article 33 paragraph (1) UUJN regarding substitute Notaries and temporary Notary Public officials with the National Police regulations because both have the characteristics of being general officials, the difference is that the National Police are general officials who help the State to maintain security & public order, upholding the law, and providing protection, protection and services to the community who are paid by the State, while a Notary is a public official who has the authority to make deeds in the field of Civil Law matters who are not paid by the State. Apart from that, why is the Notary compared to a Law Advocate (Lawyer) because both have the nature of their profession, namely officium nobile (honorable profession).

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The appeal to appeal (equal comparison) part of the National Police Law can be underlined, namely "by providing the lowest possible position with an equivalent position", so if for example the level of the National Police being replaced is Chief of Police (Kapolri) then the replacement must have standards, experience, and the same or almost equivalent educational level as the Chief of Police, namely Police General replaced by Commissioner General of Police (Komjenpol) who eventually became Police Chief and his rank rose to Police General.

Various issues regarding substitute notaries are what chose this journal issue to be researched. That's why researchers want to propose the title "**Reconstruction of Regulations for Appointing Substitute Notaries Based on Pancasila Justice Values**".

## II. Theoretical framework

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.<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup>

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

<sup>2</sup>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 the Proletariat, accessed from <http://bobbysavero.blogspot.com/2008/05/Ekonomi-indonesia-antara-tionghoa-dan.html>, on November 26 2020.

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

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- c. *Applied Theory: Cybernetic Theory.* This theory is the teachings of Jeremy Bentham<sup>4</sup> 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).
    - 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 sensorial 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*

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<sup>4</sup>*Ibid*, pages 100-101.



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Researchers have special attention to the amendment rules in Article 3 letters c and e regarding the elaboration of the requirements to become a Notary in Article 2, "be at least 27 years old & the requirements to become a Notary are to have a law degree and pass the second level of notary", while the requirements to become a Substitute Notary are in Article 33 paragraph (1) "the requirement to become a Substitute Notary and Temporary Acting Notary is an Indonesian citizen who has a law degree and has worked as a Notary office employee for at least 2 (two) consecutive years." Here the author sees the dissimilarity in the requirements for becoming a Notary and a Substitute Notary, where the requirements for becoming a Substitute Notary are easier. The author analyzes this meaning that the position of Notary is undervalued by the State, for example, if the position of the Republic of Indonesia Police is replaced, such as Commissioner General of Police (Komjen Pol), if there is a replacement, it will not be replaced with Chief Commissioner of Police (Kombes Pol), because the author sees the value of a rank. Other State institutions and the imbalance in replacement of positions will mean that the replacement will not understand how to carry out this level. Meanwhile, the position of Notary, here the author sees, is a position that has no value and worth to the State, so the regulations say that it doesn't matter if a Bachelor of Notary graduate is replaced by a Bachelor of Law degree 2 graduate and there is no age limit as per the requirements for a Notary, namely 27 years, the most important can be replaced, such as 25 years of age. have been a Notary employee for at least 2 (two) years.

#### **IV. State of Art**

If you want to give a reason for the emergence of Article 33 paragraph (1) UUJN which makes it easier for substitute Notaries and temporary Notary officials, namely to accelerate so that the position of Notary official in the district or city domicile doesn't immediately become vacant, why not just take "Notary candidates who are currently interning", because as explained in the discussion of the previous sub-chapter, the demand for becoming a Notary is greater than the supply or the more precise meaning is that the need for accepting Notaries in a district or city area is less, which will certainly cause great resistance -The amount for Notary candidates where the number of Notary candidates who do not graduate in the Notary test is greater than those who pass, this is a php method (giving false hope).

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Why not pass the Notary test, one of which is taken from "Notary candidates who are currently interning" given the opportunity to become a substitute Notary or temporary Notary official with the provisions that those who have the opportunity to become a substitute Notary and temporary Notary Public are prospective Notaries with the best grades in the joint internship process held by the Ministry of Law and Human Rights, but of course those who have an M.Kn. degree will be given the opportunity to carry out a real process, even if only temporarily, this is actually in accordance with the theory of utilitarianism, which is useful/beneficial because it doesn't waste so much quantity (notary candidates) as it is said that we are prohibited from throwing away -wasting food, this is the same as the UUJN makers should have thought more about the large number of people who want to become Notaries (notary candidates) because of the enthusiasm of the public to understand the law, especially Civil Law or what could be called the Ministry of Law and Human Rights or the UUJN makers have done something redundant (wasting away) Notary candidates and is haram (forbidden) in Islam.

If in the past, when you were the smartest intern Notary candidate, you were then given the opportunity to take over the duties of a Notary who was prohibited from making mistakes in making decisions about signing an agreement, and had the opportunity to briefly become a substitute Notary and temporary Notary Public, then when the smartest Notary intern candidate was already a Notary and was bored and about to leave the position of the "honorable" Notary profession, he will definitely consider (think about it) because in the past he was tougher than his friend who was only an apprentice Notary candidate so he appreciated the work of the Notary profession more. This is what the theory of utilitarianism wants, which emphasizes the greatest use/benefit for the wider community so that there is no longer the term mubadzir (wasting waste) for Notary candidates by refusing to pass the test, this is more hated by the Islamic religion because it is an act of mubadzir (wasting waste). -sia) the law is haram (forbidden).

## **2. Research Methods**

The approach method in this research uses a type of sociological juridical research, namely legal research using a juridical-sociological approach, namely legal research carried out by examining library materials or primary 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 reconstruction of regulations for appointing

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substitute notaries based on Pancasila values of justice. Empirical research due to socio legal<sup>5</sup> and take data obtained from field data, both interviews and/or question aire scarried out by directly observing competent parties in the Central Java Notary Association Organization (INI) and INI Karanganyar Regency, peer notaries in Karanganyar Regency, and experienced research notary staff. Research in this dissertation research requires data obtained by conducting Field Research, namely a collection of data obtained by means of either interviews and/or question naires. carried out by directly observing the competent parties.<sup>6</sup>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.<sup>7</sup>

### 3. Results and Discussion

If the rules of Article 33 paragraph (1) UUJN regarding the disproportion between substitutes for Notaries who have the title M.Kn. replaced by someone with an S.H. degree. Analyzed with theoretical studies in this journal, it is clear that nothing is in accordance with the above, which has been explained by the theories of utilitarianism (utility), welfare (social welfare state) and Islamic welfare, as well as cybernetic theory.

*First*, above, it has been clearly explained that the correlation between mubadzir (wasting in vain) is not in line with the theory of utilitarianism (usefulness/benefit).

*Second*, if we want to analyze welfare, both the welfare state which emphasizes (social welfare) in Indonesia and Islamic welfare, also do not fulfill the elements of welfare theory. Because of Article 33 paragraph (1) UUJN regarding substitute Notaries and temporary Notary Public officials as explained above regarding mubadzir (wasting in vain) instead of giving prospective Notaries an internship opportunity while those appointed are only those with a Bachelor of Laws (SH) degree. which is usually the Notary's staff. This clearly appears to be a waste of time, because a large number of prospective Notary interns are not appointed first to be tested to become substitute Notaries and officials while Notaries are better off appointing other people

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<sup>5</sup>Suteki (2008), "The Urgency of Research Traditions in the Scientific Research Process" (Paper at the National Seminar on Research Methodology in Legal Sciences, organized by the Law and Society section of FH-UNDIP, Semarang, 16 December 2010), page 32.

<sup>6</sup>Soerjono Soekanto and Sri Mamudji, Normative Legal Research. (Jakarta: PT Raja Grafindo Persada, 2003), page 57.

<sup>7</sup>Bambang Waluyo, Legal Research and Practice, (Sinar Graphics: Jakarta), pages 77-78.



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who only have a Bachelor of Laws (SH) who have no appeal to appeal (comparable) to the education and title of Notary (M.Kn.). Here, it is not in accordance with the welfare state theory because the State with UUJN regulations fails to make prospective Notaries who have struggled and taken great pains to become Notaries, get their welfare, but many are still rejected. If given the opportunity to become a substitute Notary and temporary Notary, the prospective Notary will be more disdain for the State and achieving its material welfare (the essence of social welfare). Meanwhile, welfare in Islam also studies the rules for substitute Notaries and temporary Notary officials who fail to fulfill the elements of welfare theory in Islam. Based on QS *Quraish verses (3) and (4)* that is worshipping God (the owner) of the Kaaba, eliminating hunger, and eliminating fear, especially in the case of the failure of the Notary in eliminating hunger for his family because of not being allowed to notary candidates who had studied hard and achieved the title of Master of Notary (M.Kn.) this actually makes it impossible to become a substitute Notary and a temporary Notary official, causing more and more unemployed Notary candidates/notary candidates who are apprentices, so that with unemployment the prospective Notary still does not receive material in the form of money to eliminate hunger for himself and his family, and still haunted by fear in navigating life in the world.

*Third, if the requirements for a substitute Notary and temporary Notary are to be analyzed using cybernetic theory, this will fail to fulfill the second requirement, 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". In fact, this journal sees 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 for replacing Notaries and temporary Notary officials resulting in the large number of notary candidates not being reduced and many still being unemployed because these regulations do not provide opportunities for candidates. a notary with the title of Master of Notary (M.Kn.) becomes a substitute Notary and a temporary Notary, instead appointing another person with only a Bachelor of Laws (SH) degree to take over as a substitute Notary. So if this happens, the Article rules are formed without a clear purpose, so they will not provide benefits for prospective Notaries in Indonesia.*

#### 4. Conclusion

The requirements for becoming a Notary also do not represent justice for Notary candidates, because it will make them unemployed for too long, as well as Substitute Notaries which do not

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give opportunities to Notary candidates who are still unemployed, but instead give S.H. strata 1 degree candidates the opportunity to replace them instead of M.Kn. Of course, many are still unemployed.

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