

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 Offices Law Notary Article 15 Paragraph (2) Letters F And G

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Abstract. Article 15 paragraph (2) letters f and g "make deeds relating to land or auction minutes deeds". Referring to the legal principle of *lex posterior derogate legi priori* (the latest law overrides the old law) then those who implement it are indeed PPAT officials and Auction Officials. The purpose of writing is to analyze the juridical analysis regarding the regulations of the Notary Position Law Article 15 paragraph (2) letters f and g 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. The results of this research, the researcher provides conclusions and suggestions that Notaries are not authorized to make Auction Minutes Deeds in their capacity as Notaries, because this would conflict with Article 35 of the Auction Regulations (Vendu Reglement). Notaries can only make auction minutes deeds and carry out auctions in their capacity as Class II Auction Officials, as regulated in Article 7 of the Auction Instructions (Vendu Instructions) in conjunction with Article 1 Paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 159/PMK.06/2013 concerning Class II Auction Officer.

Keywords: Disharmonization; Law; Notary; Public.

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1. Introduction

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

In rules regarding other powers of Notaries written in Article 15 paragraph (2) letters f and g "to make deeds relating to land or auction minutes deeds." In fact, the rules regarding other powers of Notaries have been widely understood by the author and the author's colleagues as Notaries, which have never been implemented and carried out by Notaries, because these rules are contrary to the Government Regulations regarding Regulations for Land Deed Making Officials (PPAT) both in the old rules and the amendment is in Article 1 paragraph (1) "PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to condominium units", while the Auction Implementation Instructions regulations are in Article 90 paragraph (2) Regulation of the Minister of Finance Number 27/PMK.06/2016 "Minutes of Auction Minutes signed by the Auction Officer at the closing of the auction", in this case it appears that there are overlapping and conflicting rules between the rules for the position of Notary with PPAT and Auction Official, meaning the position It can be said that notaries are still underestimated because their authority rules in Article 15 paragraph (2) letters f and g are taken over by PPAT and Auction Officials. Referring to the legal principle of *lex posterior derogate legi priori* (the newest law overrides the old law) then those who implement it are indeed PPAT officials and Auction Officials, but if you refer to the legal principle of *lex superior derogate legi inferior* (higher law overrides lower law), the rule should be The position of a Notary is higher because it is in the form of a Law compared to Government Regulations and Minister of Finance Regulations, if you look at the legal hierarchy (hierarchy) of statutory regulations Articles 7 and 8 (PUU) Number 12 of 2011 in conjunction with 15 of 2019.

Various issues of conflict make deeds relating to land or deeds of minutes of Lelang this is what chose this problem to be researched. That's why the researcher wants to propose the title "Judicial Analysis of the Regulations on the Notary Position Law Article 15 paragraph (2) letters f and g".

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. 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: Pancasila Theory of Justice. In Pancasila the word justice is found in the second principle and the fifth principle. The value of just humanity and social justice contains the meaning that the essence of humans as cultural and natural beings must have a just nature, that is, fair in relation to oneself, fair towards other humans, fair towards the community, nation and state, fair towards the environment and fair towards God. The Almighty. The consequences of justice values that must be realized include: Distributive justice, namely a relationship of justice between the state and its citizens, in the sense that it is the state that is obliged to fulfill justice in the form of sharing justice, in the form of welfare, assistance, subsidies and opportunities to live together based on rights and obligations; Legal justice, namely a relationship of justice between citizens and the state and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the laws and regulations in force in the state; and commutative justice, namely a reciprocal justice relationship between one citizen and another. As is known, social justice is part of the formulation of the fifth principle of Pancasila. This social justice presupposes individual justice. This means that the attitudes or behavior of Pancasilaist individuals are attitudes and behavior that have a priority or virtue in the form of justice. Besides that, individuals are also the goal of justice. What this means is that justice is not only aimed at society in general, but also at individuals. However, this individual is not just an atomistic entity that is completely separated from its socio-cultural context, but rather an individual in its connection with other individuals and with society. Here social justice is not the same as socialism which does not really care about individual interests.

c. Applied Theory: Legal System Theory. This theory talks about law as a system, Lawrence M. Friedman suggests that there are components contained in law, namely: The component called structure, namely institutions created by the legal system such as district courts, administrative courts which have the function of supporting the working of the legal system itself. These structural components enable the provision of legal services and work on an orderly basis. The substantive component is in the form of legal norms, be they regulations, decisions and so on,

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all of which are used by law enforcers and those who are regulated. The cultural component of law, namely consisting of ideas, attitudes, hopes and opinions about the law. This legal culture is differentiated between internal legal culture and external legal culture, namely the legal culture of society in general.

In this case rules regarding other powers of Notaries written in Article 15 paragraph (2) letters f and g "to make deeds relating to land or auction minutes deeds." In fact, the rules regarding other powers of Notaries have been widely understood by the author and the author's colleagues as Notaries, which have never been implemented and carried out by Notaries, because these rules are contrary to the Government Regulations regarding Regulations for Land Deed Making Officials (PPAT) both in the old rules and the amendment is in Article 1 paragraph (1) "PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to condominium units", while the Auction Implementation Instructions regulations are in Article 90 paragraph (2) Regulation of the Minister of Finance Number 27/PMK.06/2016 "Minutes of Auction Minutes signed by the Auction Officer at the closing of the auction", in this case it appears that there are overlapping and conflicting rules between the rules for the position of Notary with PPAT and Auction Official, meaning the position It can be said that notaries are still underestimated because their authority rules in Article 15 paragraph (2) letters f and g are taken over by PPAT and Auction Officials. Referring to the legal principle of *lex posterior derogate legi priori* (the newest law overrides the old law) then those who implement it are indeed PPAT officials and Auction Officials, but if you refer to the legal principle of *lex superior derogate legi inferior* (higher law overrides lower law), the rule should be The position of a Notary is higher because it is in the form of a Law compared to Government Regulations and Minister of Finance Regulations, if you look at the legal hierarchy (hierarchy) of statutory regulations Articles 7 and 8 (PUU) Number 12 of 2011 in conjunction with 15 of 2019.

Researcher see clearly that the law making institution (the rule maker, namely the DPR in Indonesia) is a group of people who do not understand and are careless in making regulations regarding the position of notary public. What should be done by the Land Deed Official must not be regulated in the UUJN regulations, so before making the regulations, they should be studied and studied as best as possible and as accurately as possible, if necessary, first deepen the reading and history regarding the Notary Position. So that the revision of Article 15 paragraph (2) letters f and g "making deeds relating to land or auction minutes deeds" of the Notary Position Law in the future can be useful for Notaries, especially if analyzed as in the theoretical study used by this journal, namely Lawrence M Friedman's theory of the legal system which emphasizes that the substance of the law must be fair so that enforcement of

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the legal structure and legal culture will follow, then legal rules are made for Notaries so that they can be in accordance with people's daily lives (sub in the principle of legality), so that then they are written in the norms (editorial) of the Article in the revision UUJN.

2. Research Methods

The approach method in this research uses a normative juridical research type, namely legal research using a juridical-normative approach method, namely legal research carried out by examining library materials or secondary data. Research specifications are carried out descriptively analytically, namely a way of describing the condition of the object under study based on actual facts at this time. In this case, it is describing the juridical analysis of the regulations of the Notary Position Law Article 15 paragraph (2) letters f and g. 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. To complete the secondary data, field practice data was collected from the National Land Agency (BPN) Tegal office, colleagues from Tegal Notaries, the Indonesian Notary Association (INI) Tegal Notary organization and the Indonesian Notary Association (INI) Java Tengah, and the writing staff as Tegal Notary.⁷ The data collection technique in this research is library research, namely a collection of data obtained by studying related laws and regulations, books, journals, newspapers and other written sources related to the problem. researched as a theoretical basis. The data analysis method used to describe and process the data collected in this research is qualitative description. Qualitative descriptions are used in the method of describing data in this research because the main data used is not in the form of numbers that can be measured.

3. Results and Discussion

Article 15 paragraph (2) letters f and g "make deeds relating to land or auction minutes deeds." In fact, the rules regarding other powers of Notaries have been widely understood by the author and the author's colleagues as Notaries, which have never been implemented and carried out by Notaries, because these rules are contrary to the Government Regulations regarding Regulations for Land Deed Making Officials (PPAT) both in the old rules and the amendment is in Article 1 paragraph (1) "PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to condominium units", while the Auction Implementation Instructions regulations are in Article 90 paragraph (2) Regulation of the Minister of Finance Number 27/PMK.06/2016 "Minutes of Auction Minutes signed by the Auction Officer at the closing of the auction", in this case it appears that there are overlapping and conflicting rules between the rules for the position of

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Notary with PPAT and Auction Official, meaning the position It can be said that notaries are still underestimated because their authority rules in Article 15 paragraph (2) letters f and g are taken over by PPAT and Auction Officials. Referring to the legal principle of *lex posterior derogate legi priori* (the newest law overrides the old law) then those who implement it are indeed PPAT officials and Auction Officials, but if you refer to the legal principle of *lex superior derogate legi inferior* (higher law overrides lower law), the rule should be The position of a Notary is higher because it is in the form of a Law compared to Government Regulations and Minister of Finance Regulations, if you look at the legal hierarchy (hierarchy) of statutory regulations Articles 7 and 8 (PUU) Number 12 of 2011 in conjunction with 15 of 2019.

This is of course very interesting because with the enactment of the Law on the Position of Notaries, it means that the Notary has the same authority as the Auction Officer to make an Auction Minutes deed which is an official report made by the Auction Officer during an auction. For Notaries, the reference used to create an authentic deed is the Law on the Position of Notaries, while for Auction Officials the legal reference is the Auction Regulations (Vendu Reglement, Stbl. 1908: 189 as amended by Stbl. 1940: 56). So it can be said that many questions have arisen regarding the Auction Minutes and the authentic deed made by the Notary.

The authority of a Notary in article 15 paragraph (2) letter (g) UUJN is not something new or some say it is an expansion of authority for a Notary and even assumes that a Notary without being appointed as an auction official can directly have the authority to make a deed of auction minutes with the consideration that which regulates this authority is a Law which is hierarchically higher in position than the ministerial regulations which regulate the authority of auction officials (*lex superior derogat legi inferiori*) or the Vendu Reglement and Vendu Instructie which are set aside on the grounds of the *lex posterior derogat legi priori* principle, only then can these two principles be used only to resolve conflicting laws and regulations and the author sees that these authority arrangements are contradictory and even regulate each other without any separate explanation so they do not show legal consistency. Where the Minister's regulation should be a *lex specialis* which regulates the appointment of Notaries as Auction Officials.

However, the appointment of a notary as an auction official is also not included in the prohibition of holding multiple positions for notaries as in article 17 UUJN because the legal arrangements for such appointments are regulated in the Vendu Reglement, Vendu Instructie, and Decree of the Minister of Finance of the Republic of Indonesia Number 106/PMK.06/2013 concerning Amendments to the Minister of Finance Regulation 93/PMK.06/2010 concerning Auction Officials in conjunction with Regulation of the Minister of Finance of the Republic of

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Indonesia Number 159/PMK.06/2013 concerning Amendments to Minister of Finance Regulation 175/PMK.06/2010 concerning Class II Auction Officials which is also the *lex specialis* of notary authority in Article 15 paragraph (2) letter (g) UUJN.

Auction Minutes is a legal product created by the Auction Officer. This was then confirmed by the Decree of the Minister of Finance Number 159/PMK.06/2013 concerning Amendments to the Regulation of the Minister of Finance Number 175/PMK.06/2010 concerning Class II Auction Officials which states that an Auction Officer is a person who, based on statutory regulations, is given special authority to carry out sales of goods by auction. Linked to the definition of general official in the previous explanation, auction officials can be categorized as general officials as intended by Article 1868 BW. If the auction minutes are prepared by the Auction Officer as a General Official then the auction minutes are a type of official deed or deed.

Examining the extension of authority to Notaries to make auction minutes as mentioned in Article 15 Paragraph 2 letter g of the Law on the Position of Notaries cannot immediately be implemented because based on Article 35 *Vendu Reglement* in conjunction with PMK Number 159/PMK.06/2013 only notaries have determined and appointed as a Class II Auction Officer with the authority to lead the auction and prepare Auction Minutes.

So, a Notary is not authorized to make a Deed of Auction Minutes in his capacity as a Notary, because that would be contrary to Article 35 of the Auction Regulations (*Vendu Reglement*). Notaries can only make auction minutes deeds and carry out auctions in their capacity as Class II Auction Officials, as regulated in Article 7 of the Auction Instructions (*Vendu Instructie*) in conjunction with Article 1 Paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 159/PMK.06/2013 concerning Class II Auction Officer.

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the legal structure and legal culture will follow, then legal rules are made for Notaries so that they can be in accordance with people's daily lives (sub in the principle of legality), so that then they are written in the norms (editorial) of the Article in the revision UUJN.

Second, the Notary profession is a public position that has a high philosophical meaning, namely "upholding dignity, dignity and honor". Don't let this philosophical understanding be damaged and diluted by the government and the state in interpreting an unfair system, namely the absence of a balance of rights and obligations, resulting in the position of the Notary in the realm of the government (State) becoming overlapping and unclear, in fact where the State wants to place it. Notary, which in the end will actually create confusion and make things difficult for the Notary in a difficult and biased future, especially in meeting his daily needs.

4. Conclusion

Notaries as Public Officials can also hold concurrent positions as Class II Auction Officials, this is in accordance with Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning Notary Positions Article 15 paragraph (2) letter g which states that Notaries have the authority also prepare Auction Minutes and based on Minister of Finance Regulation Number 106/PMK.06/2013 concerning Auction Implementation Guidelines which states that certain people as Class II Auction Officials are Notaries. Notaries who have been appointed as Class II Auction Officials have the authority to make Deeds of Auction Minutes and Conduct Auctions. So a Notary is not authorized to make a Deed of Auction Minutes in his capacity as a Notary, because that would be contrary to Article 35 of the Auction Regulations (Vendu Reglement). Notaries can only make auction minutes deeds and carry out auctions in their capacity as Class II Auction Officials, as regulated in Article 7 of the Auction Instructions (Vendu Instructie) in conjunction with Article 1 Paragraph (1) of the Regulation of the Minister of Finance of the Republic of Indonesia Number 159/PMK.06/2013 concerning Class II Auction Officer.

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