

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

The Prohibition of Leaving the Position of a Notary With in 7 (Seven) Consecutive Days Is a Nonsense Reason

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Abstract. *The prohibition rule regarding "leaving the area of office for more than 7 (seven) working days" actually has 1 (one) prohibition rule which according to this journal is unreasonable and is not in accordance with the theory of utilitarianism (usefulness/benefits). The purpose of writing is to analyze the prohibition on leaving a Notary's position within 7 (seven) consecutive days for nonsense reasons 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, researchers provide conclusions and suggestions that these regulations cannot adapt to developments in the 4.0 era in Indonesia. That is why the legal regulations prohibiting Advocates (Lawyers) in Indonesia do not regulate this matter because it is deemed not to provide benefits for Advocates. Why not remove this rule because with the difference in city location between the Notary and the client it is enough to communicate using the internet, either WhatsApp, or Facebook, or email, or Google Cloud. So that a Notary who is not in a fixed place is considered to be able to complete the required work because the laptop device can be taken anywhere, to any city, to any country, so there is no reason for the slightest use/benefit of the arrangement "leaving the area of office more than 7 (seven) working days".*

Keywords: Article; Justice; Law; Notary; Public.

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1. Introduction

Article 17 paragraph (1) letter b UUJN regulates the prohibition on Notaries from leaving their positions within 7 (seven) consecutive days, as reads "leaving his/her area of office for more than 7 (seven) consecutive working days without a valid reason", in this journal we will criticize the comparative law validation method (comparison of laws) with the rules of the Law on Advocates and Medicine. The rules of Law Number 18 of 2003 concerning Advocates only regulate 4 (four) prohibited things that Legal Advocates (Lawyers) cannot do. These prohibitions are:

"Article 18 paragraph (1): Advocates in carrying out their professional duties are prohibited from differentiating treatment of clients based on gender, religion, politics, descent, race, or social and cultural background;

Article 20 paragraph (1): Advocates are prohibited from holding other positions which conflict with the interests of their duties and the dignity of their profession;

Article 20 paragraph (2): Advocates are prohibited from holding other positions that require service in such a way as to be detrimental to the Advocate profession or reduce freedom and independence in carrying out their professional duties;

Article 23 paragraph (1): Foreign advocates are prohibited from appearing in court, practicing and/or opening legal services or representative offices in Indonesia."

It can be concluded that the prohibitions for Legal Advocates (Lawyers) in Indonesia in carrying out their profession are prohibited from differentiating between clients based on SARA, prohibited from taking other jobs that conflict with the dignity of their profession, prohibited from carrying out other services that could harm the dignity of their profession, and Advocates (Lawyers) Foreign law is prohibited from carrying out proceedings and opening practice offices in Indonesia.

This journal analyzes the four prohibitions on the Indonesian State Law's Advocate (Lawyer) regulations above, all of which are important and substantial prohibitions (discussing the main content), while the prohibitions in the UUJN are too technical and limit the space for Notaries to innovate and provide more benefits to the nation. and the State of Indonesia.

Various issues regarding the prohibition on leaving his position within 7 (seven) consecutive days. That's why the researcher wants to propose the title "The Prohibition of Leaving a Notary's Position Within 7 (Seven) Consecutive Days Is a Nonsense Reason".

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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.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 Bentham.⁴ The essential points of his teachings will be presented:

1) 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).

2) 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:

a. *To provide substance* (to provide living expenses).

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

²Bobby 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.

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

⁴*Ibid*, pages 100-101.

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- b. *To provide security* (to provide protection).
- c. *To attain equity* (to achieve equality).
- 3) According to Bentham, there are two (2) types of study in legal science (jurisprudential study), namely:
 - a. *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.
 - b. *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).

The prohibition rule regarding "leaving the area of office for more than 7 (seven) working days" actually has 1 (one) prohibition rule which according to this journal is unreasonable and is not in accordance with the theory of utilitarianism (utility/benefits), namely the rule in Article 17 paragraph (1) letter f which reads "concurrently holding a position as leader or employee of a state-owned enterprise, regionally-owned enterprise or private business entity", if we analyze both the rule prohibiting 7 (seven) consecutive days from leaving its territory and the rule prohibiting concurrently being leadership (Director/CEO) in a Private Owned Enterprise (BUMS) is something that has no benefit whatsoever, even if what is prohibited is being a leader of a State Owned Enterprise (BUMN) it still makes sense because it separates State and Private employment status, but if being prohibited from becoming a BUMS leader clearly doesn't make sense, because this journal's thinking is like this, if a Notary is not an ASN official because he is not paid by the State (may not be confused with Private/Semi Private), but to take a position in the same line as the private sector (related to being a BUMS leader) why not? Yes, even if UUJN makers can think and reflect when forming UUJN, if Notaries are allowed to open BUMS and become Director/CEO of BUMS, BUMS programs related to CSR (Corporate Social Responsibility) will certainly make it easier for the State to carry out community service program activities. community, perhaps in the form of planting trees, scholarships, and improving the environment around BUMS, clearly this will be in accordance with the theory of this thesis, namely utilitarianism, because this theory really supports activities that have a positive impact, especially useful or of maximum benefit to society.

If the rules regarding Article 17 paragraph (1) letter b "leaving the area of office for more than 7 (seven) working days" analyzed with theoretical studies in this journal, firstly it is clearly not in accordance with the theory of utilitarianism (usefulness/benefit) or it could be said to be an unfounded rule (nonsense/nonsense) because the rule is considered blind to The development of the online era, which is all made easy by technology and the internet, is not in accordance

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with the adaptation to the development of life in the 4.0 era in Indonesia.⁵The 4.0 era in Indonesia requires collaboration between technological tools and humans, so these regulations need to be changed because they are not in line with the theory of utilitarianism, according to this journal, these regulations do not provide usefulness/advantages in terms of ease of work for Notaries but are considered a setback to existing Notary regulations. unable to adapt to developments in the 4.0 era in Indonesia. That is why the legal regulations prohibiting Advocates (Lawyers) in Indonesia do not regulate this matter because it is deemed not to provide benefits for Advocates. Why not remove this rule because with the difference in city location between the Notary and the client it is enough to communicate using the internet, either WhatsApp, or Facebook, or email, or Google Cloud. So that a Notary who is not in a fixed place is considered to be able to complete the deed work because the laptop device can be taken anywhere, to any city, to any country, so there is no reason for the slightest use/benefit of the arrangement "leaving his/her area of office more than 7 (seven) working days".

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.⁶Research 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.⁷In this case, the description of the prohibition on leaving the Notary's position within 7 (seven) consecutive days is a nonsense reason. Research in this journal research requires data obtained by conducting Library Research (library study), namely a collection of data obtained by studying related laws and regulations, books, journals, newspapers and written sources. others related to the problem being studied 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

3. Results and Discussion

⁵Industrial Revolution 4.0 is a phenomenon that combines cyber technology and automation technology. The implementation concept is centered on the concept of automation carried out by technology without requiring human labor in the application process (<https://www.jagoanhosting.com/blog/era-revolution-industri-4-0/>).

⁶Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Oregon, 2005), p. xii.

⁷Hadari Nawawi, *Social Research Instruments*, (Gadjah Mada University: Yogyakarta), p. 47.

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

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If the rule regarding Article 17 paragraph (1) letter b "leaving the area of office for more than 7 (seven) working days" is analyzed using theoretical studies in this thesis, firstly it is clearly not in accordance with the theory of utilitarianism (usefulness/benefits) or it could be said to be an unfounded rule. (nonsense) because this regulation is considered blind to the development of the online era, which is all made easy by technology and the internet and is not in accordance with the adaptation to the development of life in the 4.0 era in Indonesia.⁹ The 4.0 era in Indonesia requires collaboration between technological tools and humans, so these regulations need to be changed because they are not in line with the theory of utilitarianism, according to this journal, these regulations do not provide usefulness/advantages in terms of ease of work for Notaries but are considered a setback to existing Notary regulations. unable to adapt to developments in the 4.0 era in Indonesia. That is why the legal regulations prohibiting Advocates (Lawyers) in Indonesia do not regulate this matter because it is deemed not to provide benefits for Advocates. Why not remove this rule because with the difference in city location between the Notary and the client it is enough to communicate using the internet, either WhatsApp, or Facebook, or email, or Google Cloud. So that a Notary who is not in a fixed place is considered to be able to complete the deed work because the laptop device can be taken anywhere, to any city, to any country, so there is no reason for the slightest use/benefit of the arrangement "leaving the area of office more than 7 (seven) working days".

Second the rule "leave the area of office for more than 7 (seven) working days" if analyzed using theoretical studies in this journal, if the first analysis using the theory of utilitarianism no longer passes or is not appropriate, secondly if analyzed using cybernetic theory which Talcott Parsons considers a system of regulations It is good if it has fulfilled the 4 (four) AGIL criteria, namely adaptation, goal, integration, and latency, which if translated into Indonesian, the UUJN regulations should have gone through the adaptation stage, have clear goals, and can unite the welfare of Notaries throughout Indonesia. , and latent, namely all sub-systems unite together and provide benefits to each other. However, this journal considers that UUJN is far from Talcott Parsons' AGIL because first it was explained that the rule prohibiting "leaving one's area of office for more than 7 (seven) working days" is no longer in line with the development of life in the 4.0 era in Indonesia so it may be considered unacceptable. adapt to the times. Even the meaning of law itself according to Satjipto Rahardjo in his book "Legal Science" is jurisprudence which comes from the words "ius/jus" which means rights/rules and "prudence" means looking far into the

⁹Industrial Revolution 4.0 is a phenomenon that combines cyber technology and automation technology. The implementation concept is centered on the concept of automation carried out by technology without requiring human labor in the application process (<https://www.jagoanhosting.com/blog/era-revolution-industri-4-0/>).

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future, with the meaning that the legal rules created should be able to be used to long term in the future.¹⁰

Apart from the prohibition rule on "leaving the area of office for more than 7 (seven) working days" it does not fulfill the adaptation requirements according to cybernetic theory, it also does not fulfill the goal requirements, which have been explained in this journal in the discussion of the previous sub-chapter, UUJN regulations. not yet in accordance with the political objectives of Notarial law in accordance with paragraph IV of the preamble to the 1945 Constitution of the Republic of Indonesia, namely justice and welfare for Notaries because the prohibition regulations prevent Notaries from collaborating with other parties abroad or outside the city if discussions on cooperation are difficult (difficult to reach an agreement) of course requires time that cannot be limited to a maximum of 7 (seven) days and must return to the office again.

Then the rule prohibiting "leaving the area of office for more than 7 (seven) working days" also fails to fulfill other cybernetic requirements, namely integration (unity) because this shows that UUJN makers do not see other rules that are similar to Notaries such as the rules for the profession of Advocates (Lawyers). Law and Medicine in Indonesia both look for their own clients, in fact these prohibitive regulations will later cause jealousy among Indonesian Notaries to hold protests and demonstrations because Notaries are considered different and are isolated because the regulations too hinder the movement of Notaries and are not adapted to other similar professions. with the way a Notary works. If there is a demonstration or protest, this means causing disintegration (no unity) in Indonesia.

Finally, the theoretical analysis of the rule prohibiting "leaving the area of office for more than 7 (seven) working days" for Notaries is that it does not pass or does not comply with other cybernetic theory requirements, namely latency (each sub-system must be interconnected and provide benefits to each other). It is clear from the three things that the cybernetic requirements fail to be fulfilled by the prohibition rules above resulting in a lack of unity, not in accordance with the political objectives of Notarial law, unable to adapt to the development of life in the 4.0 era in Indonesia, and finally automatically failing to fulfill the latency requirements, because the latency requirements are the third The previous sub-systems must be fulfilled and interconnected with a common goal to provide their respective benefits.

¹⁰Satjipto Rahardjo, Loc. Cit.

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4. Conclusion

The prohibition rule regarding "leaving the area of office for more than 7 (seven) working days" actually has 1 (one) prohibition rule which according to this journal is unreasonable and is not in accordance with the theory of utilitarianism (usefulness/benefits). These regulations cannot adapt to developments in the 4.0 era in Indonesia. That is why the legal regulations prohibiting Advocates (Lawyers) in Indonesia do not regulate this matter because it is deemed not to provide benefits for Advocates. Why not remove this rule because with the difference in city location between the Notary and the client it is enough to communicate using the internet, either WhatsApp, or Facebook, or email, or Google Cloud. So that a Notary who is not in a fixed place is considered to be able to complete the deed work because the laptop device can be taken anywhere, to any city, to any country, so there is no reason for the slightest use/benefit of the arrangement "leaving the area of office more than 7 (seven) working days".

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