

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 Notary's Position Law Concerning Civil Apparatus Official Notary State (ASN) or Not

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Abstract. Article 54 paragraphs (1) – (2) letter j, namely that Notaries are the only ones deemed by Law Number 24 of 2009 who do not receive a salary by the State based on the ASN Law or other laws. The purpose of writing is to analyze the juridical analysis of the regulations on the Law on Notary Positions regarding whether or not Notaries are State Civil Apparatus (ASN) officials 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 that in order to harmonize legal politics in order to improve the welfare of Notaries in the future, this journal found that it is necessary to revise changes in UUJN regulations that Notaries who are said to be public officials are not ASN officials, but in fact Notaries work independently. independent and private, and also do not receive wages from the government for the results of their hard work, then the politics of notarial law need to be changed in the future in the form of regulations that are more prosperous for Notaries.

Keywords: ASN Notary or Not; Article 54; Notary Public Position Act; Well-being.

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1. Introduction

Political law relates to applicable law and the law aspired to in a country (*ius constituendum*)¹, 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 journal to reconstruct legal politics notary so that future UUJN can contain more regulations that can improve the lives of Notaries in Indonesia.

Rule Categories of public officials who may wear the "Garuda Bird" stamp as a symbol of the State as stated in Article 54 paragraph (1) - (2) of Law Number 24 of 2009 concerning the Flag, Language and National Emblem, as well as the National Anthem namely "(1) The State Emblem as a seal or official letterhead as intended in Article 52 letter a is used by: a. President and vice president; b. People's Consultative Assembly; c. House of Representatives; d. Regional Representative Council; e. Supreme Court and judicial bodies; f. Audit Board of the Republic of Indonesia; g. ministers and ministerial level officials; h. head of the Republic of Indonesia's representative office abroad who has the position of extraordinary ambassador and plenipotentiary powers, consul general, consul and permanent charge d'affaires, honorary consul general and honorary consul; i. governor, regent or mayor; j. Notary Public; and K. other state officials determined by law. (2) The use of the State Emblem as an official seal for offices as intended in Article 52 letter b is used for offices: a. President and vice president; b. People's Consultative Assembly; c. House of Representatives; d. Regional Representative Council; e. Supreme Court and judicial bodies; f. Audit Board of the Republic of Indonesia; g. ministers and ministerial level officials; h. head of the Republic of Indonesia's representation abroad who has the position of extraordinary ambassador and full authority, consul general, consul and permanent charge d'affaires, honorary consul general and honorary consul; i. governor, regent or mayor; j. Notary Public; and K. other state officials as determined by law." The officials mentioned above, including the President, Vice President, MPR, DPR, DPD, MA, BPK, Ministers, Ambassadors, Governors, Regents and Mayors, all receive salaries by the State based on Article 22 of Law Number 5 of 2014 concerning Apparatus. State Civil Service (ASN) in the form of "a. salaries and allowances; b. paid leave; c. protection; and D. competency development", while Article 54 paragraphs (1) – (2) letter j, namely that Notaries are the only ones considered by Law Number 24 of 2009 who do not receive a salary by the State based on the ASN Law or other laws.

¹Moh. Mahfud MD, Legal Politics in Indonesia. (Rajawali Press: Jakarta, 2019), page 9.
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Various issues of conflict make a deed relating to honorarium 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 About Notary Public Civil Service Official (ASN) or Not".

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.² 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,³ 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.⁴

- c. *Applied Theory:* Cybernetic Theory. This theory is the teachings of Jeremy Bentham⁵ The essential points of his teachings will be presented:

²Satjipto Rahardjo, Legal Studies, (PT Citra Aditya: Bandung), page 43.

³Bobby 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.

⁴Jimly Asshiddiqie, Constitutional Law and the Pillars of Democracy, (Jakarta: Sinar Graphics, 2011), page 133.

⁵*Ibid*, pages 100-101.

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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).

According to Bentham, the purpose of forming legislation (UUJN in this research) is to produce happiness for society. So legislation (especially UUJN) must try 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).

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).

Gap Analysis and Problems

Rule regarding the categories of public officials who may wear the "Garuda Bird" stamp as a symbol of the State as stated in Article 54 paragraph (1) – (2) of Law Number 24 of 2009 concerning the Flag, Language and National Emblem, as well as the National Anthem namely "(1) The State Emblem as a seal or official letterhead as intended in Article 52 letter a is used by: a. President and vice president; b. People's Consultative Assembly; c. House of Representatives; d. Regional Representative Council; e. Supreme Court and judicial bodies; f. Audit Board of the Republic of Indonesia; g. ministers and ministerial level officials; h. head of the Republic of Indonesia's representative office abroad who has the position of extraordinary ambassador and plenipotentiary powers, consul general, consul and permanent charge d'affaires, honorary consul general and honorary consul; i. governor, regent or mayor; j. Notary Public; and K. other state officials determined by law. (2) The use of the State Emblem as an official seal for offices as intended in Article 52 letter b is used for offices: a. President and vice president; b. People's Consultative Assembly; c. House of Representatives; d. Regional

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Representative Council; e. Supreme Court and judicial bodies; f. Audit Board of the Republic of Indonesia; g. ministers and ministerial level officials; h. head of the Republic of Indonesia's representation abroad who has the position of extraordinary ambassador and full authority, consul general, consul and permanent charge d'affaires, honorary consul general and honorary consul; i. governor, regent or mayor; j. Notary Public; and K. other state officials as determined by law." The officials mentioned above, including the President, Vice President, MPR, DPR, DPD, MA, BPK, Ministers, Ambassadors, Governors, Regents and Mayors, all receive salaries by the State based on Article 22 of Law Number 5 of 2014 concerning Apparatus. State Civil Service (ASN) in the form of "a. salaries and allowances; b. paid leave; c. protection; and D. competency development", while Article 54 paragraphs (1) – (2) letter j, namely that Notaries are the only ones considered by Law Number 24 of 2009 who do not receive a salary by the State based on the ASN Law or other laws.

State of Art

The politics of notarial law regarding Notaries including whether they are State Civil Apparatus (ASN) or not It can be concluded that in order to harmonize legal politics in order to improve the welfare of notaries in the future, this journal found that it is necessary to revise changes in UUN regulations that notaries who are said to be public officials who are not ASN officials, but in fact notaries work independently and privately, also do not receive wages from the government for the results of their hard work, then the politics of notarial law need to be changed in the future in the form of regulations that are more prosperous for Notaries.

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, it is describing the juridical analysis of the regulations on the Notary Position Law about Notary, State Civil Apparatus (ASN) official or not. 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.⁸To complete the secondary data, primary legal materials were taken in the form of

⁶Soerjono Soekanto and Sri Mamudji, Normative Legal Research, (Rajagrafindo Persada: Jakarta), page 12.

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

⁸Mukti Fajar ND and Yulianto Achmad MH, Dualism of Normative & Empirical Legal Research, (Student Library: Yogyakarta), page 42.

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statutory regulations and journals and books related to the title. 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.⁹

3. Results and Discussion

First, if you use Jimmly Asshiddiqie's theory¹⁰ which has been explained in the theoretical framework of this journal regarding welfare state, that the Indonesian State uses Social welfare state, where the state in the sense of government is not only tasked with maintaining security and order, but the main task of the state is to provide material welfare and spiritual welfare. Material welfare, for example, provides food, work, housing, etc., for marginalized citizens. Meanwhile, spiritual prosperity is intended for the state to guarantee the freedom of each individual to embrace their religion or beliefs and worship according to the teachings they believe in.

If we underline the point that the State is not only tasked with maintaining security and order, but also providing material welfare for Notaries in Indonesia, this has actually never been done. As mentioned above, both Article 1868 of the Civil Code and Article 1 number 1 UUJN agree that a Notary is a "public official or State official", but in practice Notaries are not paid a salary by the government (State).

Meanwhile, in the category of public officials who may wear the "Garuda Bird" stamp as a symbol of the State as stated in Article 54 paragraph (1) - (2) of Law Number 24 of 2009 concerning the Flag, Language and National Emblem, as well as the National Anthem namely "(1) The State Emblem as a seal or official letterhead as intended in Article 52 letter a is used by: a. President and vice president; b. People's Consultative Assembly; c. House of Representatives; d. Regional Representative Council; e. Supreme Court and judicial bodies; f. Audit Board of the Republic of Indonesia; g. ministers and ministerial level officials; h. head of the Republic of Indonesia's representative office abroad who has the position of extraordinary ambassador and plenipotentiary powers, consul general, consul and permanent charge d'affaires, honorary consul general and honorary consul; i. governor, regent or mayor; j.

⁹Bambang Waluyo, Legal Research and Practice, (Sinar Graphics: Jakarta), pages 77-78.

¹⁰Lutfi J. Kurniawan & Mustafa Lutfi., Op. cit., pages 67-68.

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If we use the concept of a social welfare state, it is clear that the state has not yet passed and fulfilled the requirements because it is still being picky about which official profession it will take provide material welfare.

Second, when analyzed with Islamic welfare, based on QS. Quraish paragraphs (3) and (4) there are 3 indicators of fulfilling welfare, namely worshiping God (the owner) of the Kaaba, eliminating hunger, and eliminating fear as explained in the framework of welfare theory in Islam above, clearly does not meet the criteria for eliminating hunger and eliminating fear, because Notaries are still told to earn their own wages, even in honorarium as stated in Article 36 UUDN is still limited by the State in providing wage rates to its clients, even though the State does not pay a penny while other officials are given salaries based on Article 22 of the ASN Law. This is if we look at Notaries who don't have too many clients (not good at getting clients), then they still get a shadow of fear and are not yet free from hunger to fulfill their daily needs, even though the Notary has contributed to helping the State to make it easier for the State to complete problems in the field of Civil Law, especially regarding civil agreements and obligations.

Third, also if you want to look at the political ideals of notarial law to achieve the legal goals of the Indonesian State based on Paragraph IV of the 1945 Constitution of the Republic of Indonesia, especially the social justice section, if you want to use cybernetic theory in which the social sub-system, which includes law, is a product of a political interest (political sub-system), here the Notary has not paid attention to justice. Borrowing John Rawls's theory Juridical Analysis of The Regulation of The Notary's Position Law Concerning Civil Apparatus Official Notary State (ASN) or Not
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about fairness (majority justice) has not been fulfilled because the majority of Notaries have to elbow each other and bring down other Notaries, this theory alludes to the State which should provide material welfare because in this theory it is the State which must try to provide welfare for the majority the community, especially notaries. Borrowing from Aristotle's theory of distributive justice also does not fulfill the requirements of justice, because justice should be achieved if the State through the Government has divided its rights proportionally between officials of the President, Vice President, MPR, DPR, DPD, MA, Ministers, Ambassadors, but not for Notaries. think about it even though proportional distributive justice would require that, for example, a Notary's salary be lower than that of other officials. Another theory of utilitarianism, which is one of the theoretical frameworks used in this journal, which has been explained in the theoretical framework of this journal, also does not meet the requirements of Jeremy Bentham's utilitarian theory of justice, because Notaries have not benefited at all from the birth of UUJN apart from only being messengers and assistants. Country.

4. Conclusion

It was concluded that in order to harmonize legal politics in order to improve the welfare of Notaries in the future, this journal discovered that it was necessary to revise changes in UUJN regulations that Notaries who were said to be public officials who were not ASN officials, but in fact Notaries worked independently and privately, also did not receive wages. from the government for the results of their hard work, the politics of notarial law need to be changed in the future in the form of regulations that are more prosperous for Notaries.

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