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Reconstruction of the Regulation of the Position of a Notary as a Public Official Based on Justice Values

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Abstract
This research aims to analyze and find regulations on Notary positions as public officials that are not based on the value of justice, analyze and find weaknesses in the current regulations on Notary positions. As well as to find a reconstruction of the regulations for the position of Notary as a public official based on the value of justice. The research method used is a normative legal research method aimed at examining the function of a norm which places the law as an instrument that regulates and controls society. The approaches used in this research are the conceptual approach, statutory approach, philosophical approach and comparative approach. The analysis used is descriptive qualitative.In carrying out the position of notary, professional responsibilities are required related to the services provided by the Notary. This responsibility can arise because the Notary does not fulfill the agreement that has been agreed with the client or as a result of the notary's negligence as a service provider which results in an unlawful act. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries does not contain the obligation of Notaries as service providers to provide the widest possible information to clients regarding the duties and authorities of notaries. A notary makes a mistake, negligence or violation, so the party who is often blamed is the client. This is clearly not true and does not fulfill a sense of justice towards the client because it is an act of passing the responsibility for one's mistakes onto another person. Regulations on Notary positions as public officials as regulated in the UUJN are known to have several weaknesses. These weaknesses are found in the regulation of the notary's authority in making land deeds which clashes with the PPAT, resulting in a conflict of authority, and to obtain an ideal notary position law and fulfill a sense of justice, the reconstruction of the Notary's position as a public official in the Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 requires reconstruction of Article 1 number 1 and Article 15 paragraph (1) of UUJN so that the scope of notary authority relating to making land deeds is not blurred and does not conflict with PPAT authority as explained in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials. Article 3 letter b of the UUJN also needs to be reconstructed because the words of fear of God Almighty are abstract, subjective so they cannot be seen and cannot be measured.
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A. INTRODUCTION

Notary institutions came to Indonesia at the beginning of the seventeenth century with the existence of the Vereenigde Oost Ind Compagnie (VOC).[1] And since the presence of the VOC in Indonesia, trade traffic was carried out using notarial deeds, this is based on Notodisoerjo stating that "Notarial Institutions were known in Indonesia which was colonized by the Dutch". Initially this institution was intended for European groups, especially in the civil sector.[2]

The role of a notary in the service sector is an official who is given authority by the state to serve the public in the civil sector, especially to make authentic deeds. As a public official appointed by the Government, notaries are assigned to assist the general public in making written agreements that exist or arise in society.

The need for this written agreement to be made before a Notary is to guarantee certainty for the parties entering into the agreement. A notary is a public official appointed by the Government to assist the general public in making agreements that exist or arise in society. A written agreement made before a Notary is called a deed, with the aim that the deed can be used as strong evidence if one day there is a dispute between the parties or there is a lawsuit from another party. The point is that a notarial deed has a very important function. Therefore, to avoid the invalidity of a deed, notary institutions are regulated in the Notary Position law, namely Law Number 2 of 2014 as an amendment to Law Number 30 of 2004 concerning Notary Positions, in this dissertation, UUJN No. 2 of 2014. Since its promulgation, the law from that date has been implemented as a replacement for the Reglement op Het Ambt in Nederlands Indie (Stbl. 1860:3) or Notary Position Regulations (PJN). Notary as

[1] Habib Adjie, 2008, *Notaris Indonesia (tafsir tematik terhadap UU No 30 tahun 2004 tentang jabatan notaris),* Bandung: Refika Aditama, hlm. 3
[2] R.Soegondo Notodisoerjo, 1993, *Notariat di Indonesia (Suatu Penjelasan),* Jakarta: Grafindo, hlm. 13

a Public Official, a professional whose statements should be trustworthy, whose signature and seal can provide a guarantee and serve as strong evidence, as well as being an independent party in providing information without any defects.

Article 1 number 1 UUJN No. 2 of 2014 states, a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. The word authority is a term equivalent to "authority", "legal power", "bevoegheid". In the concept of "authority" it is characterized as "public action". F.A.Stroink stated "In the public concept, authority is a core concept in statecraft and administration", while Henc Van Maarseveen stated, "in statecraft, authority (bevoegheid) is described as power (rechtsmacht). So in the public concept, authority is related to power.[1]

A notary is a general or public official who is given by law, with the authority to carry out some of the state's or government's authority in civil matters, of course he is obliged to provide services to the public optimally and comprehensively.[2] Also public officials who carry out a profession, in providing services to the public, apart from being a position of trust, where the public (service users) trust the notary by using his services and the state trusts him by giving authority in the private sector to the notary, which is determined by law. The existence of notaries is essentially the result of the power of natural selection.[3]

Actions carried out by Notaries are said to be public actions. According to Ten Berge, “Publiekrechtelijkrechts handelegin kunnen a lecht voorvloeien uit publiekrechtelijk bevoegheiden. Een overheidsorgaan moet voor het nemen van publiekrechtelijk beslissing beschikken over expliciet toegekende, dan wel door het recht veronderstelde bevoegheiden (Public action can be carried out through the use of public authority). Determination of government decisions by authorized organs must be based on authority that has been clearly regulated, where this authority has been stipulated in existing regulations.[4]

In fact, there are two main elements inherent in a notary as a public official, namely expertise obtained through formal education, experience and training as well as service to the interests of the community. Professional relationships with the public as service users are built on trust as a moral basis, where service users (the public) place full trust in the expertise of a professional, namely a notary.[5]

Administratively, Notaries are appointed and dismissed by the government. However, this does not mean that notaries are subordinate to the government. A notary in carrying out his duties must be independent, not take sides with anyone, and not depend on anyone. This means that the Notary is outside the parties in the relationship and is not one of the parties in the relationship.

In this function, it can be said that the Notary is an officer, but he is not an enforcer. Notaries must be independent and independent, the word independent in this case contains many meanings, including structural independence, functional independence, financial independence, administrative independence.[6]

It is said to be structurally independent if the organ of the notary office institutionally stands independently of the organizational structure of a particular State or government. In this case, for example, to what extent the Notary's official organs are within or outside the structure of the Ministry and Human Rights of the Republic of Indonesia. However, a Notary can also be said to be functionally independent if, for example, institutionally he is under or within a government organization, but in carrying out his functions he is free and independent and cannot be intervened by, even related government officials. Another element that can be used as a measure of independence is finance.

To the extent that a Notary's official organ can regulate and manage their own finances, this can also be called independence, namely being independent, free-spirited, and not tied to other parties.[7] Meanwhile, in the context of personnel administration and so on, if the organ in question is not at all related to the government administrative system, including the social aspects of appointing and dismissing employees, then the organ of office in question is not influenced by the wishes of certain parties.[8]

If a Notary fulfills these four characteristics of independence (structural independence), functional independence, financial independence, administrative independence, then it can be said that the Notary is truly independent. Therefore, the Notary does not have the will (wilsvorming) to make a deed for another person and the Notary will not make any deed if there is no request or will (wilsvorming) from the parties and the Notary is

[1] Philipus M. Hadjon, *Tentang Wewenang,* Makalah, disampaikan dalam Penataran Nasional Administrasi, Unair, Surabaya, 9 - 1 4 Pebruari 1998.
[2] https://jabar.kemenkumham.go.id/berita-kanwil/berita-utama/notaris-wajib-memberikan-pelayanan- . (29 November 2022).
[3] Pieter Ieter Latume, 2018, *Code of Ethics, Code of Cunducts and Sense of Ethics sebagai Sistem Etika dan Pola* Perilaku *Notaris*, https://ikanotariatui.com-kode-etika-notaris/. (29 November 2022).
[4] Philipus M. Hadjon, *Op cit*, hlm. 2.
[5] Pieter Ieter Latume, *Op cit.*
[6] https://media.neliti.com/media/publications/14084-ID-prinsip-kemandirian-notaris-dalam-pembuatan-akta-otentik.pdf. (2 December 2022).
[7] Marline Eva Lyanti, *Independensi Peran Jabatan Notaris Sebagai Profesi Penunjang Pasar Modal*. https://www.researchgate.net/publication/343158449_Independensi_Peran_Jabatan_Notaris_sebagai_Profesi_Penunjang_Pasal_Modal. (2 December 2022)
[8] https://media.neliti.com/media/publications/14084-ID-prinsip-kemandirian-notaris-dalam-pembuatan-*akta*-otentik.pdf., Op cit. (2 December 2022).

not a party to the deed.

The elements of a statement of will or formation of will (beslissing/wilsuiting) of a beschikking are clearly stated by Ten Berge as follows:

"Een besluit impliceert een beslissing, dat wilzeggen een wilsuiting die gericht is op toegevoegde waarde. Die toegevoegde waarde bij een besluit stukje extra normstelling dat er zonder die beslissing niet zou zijn. Een besluit is begen tussenschakel van de "gelede normstelling (a written decision, including government decisions, can be said to be the formation of the will for added value through the addition of norms).

Without additional norms, a decision has no meaning, a government decision is a link in the chain of previous norms).[1]

In relation to the statement of will (beslissing) relating to the character of a notary's deed as a Land Deed Making Official (PPAT), Philipus M. Hadjon said that a "beslissing" contains a formation of the will (wilsvorming) of the official concerned. A deed in the sense of a letter used as evidence does not contain a beslissing, what is there is a willsvorming from the binding parties and not a willsvorming from the PPAT which can be stated in a "beslissing". With this it can be emphasized that the PPAT deed is not a "besluit". This also means that the PPAT deed is not a TUN decision because the State Administrative Court decision is one of the "besluit".

Authentic deeds as the strongest and most complete evidence have a very important function in every relationship in society. According to Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law, made by or in the presence of public officials who have authority for that purpose in the place where the deed is made. According to Article 1 point (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this law or under other laws.

Notaries have a difficult main task, apart from having to provide the best possible service to the public, they also have to be accountable for their actions both while serving as a Notary and after retiring as a Notary. Because a deed made by or before a Notary is an authentic deed and its authenticity continues, even until the Notary dies, his signature on the deed remains valid, even though the Notary can no longer provide information regarding the events at the time the deed was made.

A notary, through deeds made by or in his presence, carries a burden and responsibility to ensure certainty for the parties. A Notary must uphold his duties and carry them out appropriately and honestly, which means acting according to the truth in accordance with the Notary's oath of office. A Notary in providing services must maintain the noble ideals of the profession in accordance with the demands of his obligations of conscience.

As we know, a notary has a role in determining whether an action can be expressed in the form of a deed or not. The Notary must consider and look at all documents shown to the Notary, examine all evidence shown to him, listen to statements or statements from the parties. The decision must be based on reasons that must be explained to the parties. These considerations must take into account all aspects, including problems that will arise in the future.

Notaries are required to keep everything entrusted to them confidential and must not hand over copies of deeds to unauthorized people. In terms of authority stated in article 15 paragraph (1) UUJN No. 2 of 2014 which states, among other things, that a Notary has the authority to make authentic deeds regarding all deeds, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed , provide the grosse, copy and quotation of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

Furthermore, in article 15 paragraph 2 UUJN 2014 stated, the Notary also has the authority to certify the signature and determine the certainty of the date of the underwritten letter by registering it in a special book; record letters under hand by registering in a special book; make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned; validate the suitability of the photocopy with the original letter; provide counseling regarding the preparation of deeds; make deeds relating to land; or make a deed of auction minutes.

Notaries are appointed and dismissed by the government, meaning that notaries in carrying out their duties are appointed and dismissed by the Minister of Human Rights. Even though Notaries are administratively appointed and dismissed by the government, this does not mean that Notaries are subordinate to the government, but in carrying out their duties, Notaries must be independent, not take sides with anyone, and not depend on anyone. Nowadays, there are many cases involving notaries because their position may violate the Professional Code of Ethics, and the Regional Supervisory Council may even protect Notaries so that they are not permitted to testify in court.

In carrying out notarial activities, notaries may violate the principle of caution or participate in violating the

[1] Philipus M. Hadjon, 1987, *Perlindungan Bagi Rakyat*, PT. Bina Ilmu, Surabaya, hlm 140.

scope of their office in making authentic deeds. Therefore, the Code of Ethics for Notaries is very important in carrying out their profession, because the nature and essence of the Notary's work in carrying out the office of notary is in order to create certainty for the parties.

Notaries in carrying out their positions or in their daily behavior must always be based on notarial values, morals and ethics. If the notary does not behave well, then the existence of the notary will be naturally selected or distrusted by the public or his authority will be removed in part or in full by the State based on law. Article 9 paragraph (1) letters c and d UUJN No. 2 of 2014 states that a Notary is temporarily dismissed from his position, because: c. committing disgraceful acts; and D. violates the obligations and prohibitions of office.

Since the enactment of the Law on the Position of Notaries, developments that are directly related to the world of notary law today, namely:

1. There is an "expansion of Notary's authority", namely the authority stated in Article 15 paragraph (2) point f, namely: "authority to make deeds relating to land".
2. Authority to draw up an auction minutes deed. This auction minutes deed, prior to the enactment of the Law on Notary Positions, became the authority of the auctioneer in the State Debts, Receivables and Auctions Agency (BUPLN) based on Law Number 49 Prp of 1960. Apart from that, it also provides other authorities as regulated in the Legislative Regulations. invitation.
3. Other authorities regulated in these Legislative Regulations are authorities that need to be scrutinized, searched for and discovered by the Notary, because these authorities may already exist in the Legislative Regulations, and also new authorities will be born after the enactment of the Legislative Regulations. new invitation.

The authority given to Notaries is clearly stated in Article 15 of Law Number 2 of 2014 concerning the Position of Notaries. Of the several authorities given to Notaries above, Notaries are based on Article 15 paragraph (2) letter f of Law Number 2 of 2014, in which case Notaries are also given the authority to make deeds relating to land. It's just that the law does not impose an obligation on notaries to provide information to clients regarding the obligations and violations of a notary. This resulted in many complaints from the public regarding violations committed by notaries,[1] which resulted in lawsuits in the district court, state administrative court, and even complaints regarding alleged criminal acts.[2]

An authentic deed made by a Notary has the strongest evidentiary power and plays an important role in every relationship in people's lives. Through an authentic deed, rights and obligations are clearly determined, certainty is guaranteed, and at the same time disputes are avoided. So an authentic deed made by a Notary has strong evidentiary power as long as its truth is not disputed by anyone, unless the denial of the deed can be proven otherwise, for example that the deed made by the Notary is fraudulent or defective, so that the deed can be declared by a judge as a deed. who is disabled.

Article 42 UUJN states that Notarial deeds are written clearly in an uninterrupted relationship and do not use abbreviations. Blank spaces and gaps in the deed are clearly outlined before the deed is signed, except for deeds printed in forms based on statutory regulations. All numbers to determine the quantity or quantity of something mentioned in the deed, such as mention of date, month and year are expressed in letters and must be preceded by a number.

In relation to the provisions in Article 42 UUJN above, the Notary's deed should use good and correct Indonesian, if in the event the person present does not understand the language used in the deed, the Notary is obliged to translate or explain the contents of the deed in a language that the person present understands. In carrying out their duties, the Notary has a basic principle that is adhered to in assessing a deed, namely the principle of presumption of validity or better known as presumptio iustae causa, meaning that a deed made by a Notary must be considered legally valid until a party declares the deed to be invalid. Apart from that, the Notary when making a deed does not investigate the truth of the documents submitted by the party making the deed. This means that the Notary as a public servant can act quickly and precisely, and it is not the Notary's authority to determine whether a document is valid or not in the event of forgery, so the Notary only checks the administrative completeness to make a deed.

B. RESEARCH METHODS

C. RESEARCH RESULTS AND DISCUSSION

Below, the author presents notary positions in several countries as comparison material which will later be used as input for regulations on notary positions in Indonesia.

1. Netherlands

Dutch notaries are members of the KNB (Royal Association of Latin Notaries). They provide specialized services that are different from those offered by other practitioners, including barristers,

[1] https://sulbar.kemenkumham.go.id/berita-kanwil/5630-sering-digugat-lantaran-bikin-pelanggaran-kemenkumham-bakal-perketat-pengawasan-notaris (23 Mei 2023).
[2] *Ibid*

barristers and tax advisors. Their most important characteristic is their independence and impartiality. They may also be referred to as Dutch Notaries Public or Public Notaries.

Dutch notaries have university degrees and some of them specialize in certain areas, for example real estate, family or corporate. Notaries may request the services of other more specialized practitioners, including firms. Notaries cannot perform the duties of a lawyer; hence they are not allowed to represent people in court. According to the provisions, lawyers cannot replace Dutch lawyers.

In the Netherlands, Notaries are divided into two, namely Notaries and Junior Notaries. Notaries can sign deeds, while junior notaries are not entitled to this authority. Dutch notaries can also have private offices, but local laws do not recognize them as entrepreneurs, despite this fact. Junior notaries, in principle, train to become notaries. Junior notaries are required to complete a certain period of service at an accredited notary office. Junior notaries have a bachelor's degree but may prefer to continue working in an accredited office rather than opening a private office.

A Dutch notary acts in the interests of the party signing a transaction or agreement. Dutch lawyers are bound by confidentiality clauses that make it impossible for clients to betray them. Notaries draw up and carry out deeds. They issue their respective papers to the parties involved, while also keeping copies in their offices. After preparation of the notarial agreement, the notary must update the respective registers (e.g. for private and public companies, marriage contracts, etc.).

Notaries have expert knowledge in a particular field and therefore notaries can perform advisory functions. While they cannot perform the services offered as an attorney, they can provide advice regarding the act of signing. Therefore, if we plan to sign a contract in that country, it would be more appropriate to first seek professional advice.

2. Japan

Like many countries in the world, Japan maintains a notary system for notarizing documents and authenticating signatures. Many notary appointments and arrangements in Japan come from former judges or prosecutors. In Japan, notaries are most often asked to attest private deeds or prepare notarial deeds upon request based on facts or rights.

In Japan Notaries basically function as a preventive measure against breach of contract. Once a contract is notarized, the parties are less likely to violate it because the notarization serves as presumptive proof that they agreed to the contract through their own free will. In addition, notarial deeds or contracts that have been notarized have strong evidentiary value in court if a lawsuit arises. Even if the original contract has been misplaced or stolen, the notarial deed is kept in the notary's office to prevent it from being lost or destroyed.

In some international cases, a notary at a consulate or embassy may be preferable to using a Japanese notary. Notaries are not required to understand the language or content of contracts because notaries are for signature only, and even Japanese notaries can create signatures on English documents.

3. Belgium

The notary profession in Belgium has existed since the Napoleonic era when the first notarial law was promulgated. Currently there are more than 1,600 notaries who annually sign more than 1 (one) million real estate deeds. The Federation of Notaries (Fednot), founded in 1891 employs around 250 people in Brussels and provides services to notary offices.

The overall aim of the notarial institution, which is unique for Belgium, has not changed over the years. The agency aims to instill trust among citizens in a divided country and ensure certainty in their real estate transactions.

It is not easy to become a notary public and requires about ten years of study and apprenticeship. The passing rate on the annual exam is only about twenty percent. Even though a notary is a public official who is authorized by the state to act as a professional advisor in all matters relating to real estate transactions. Apart from that, notaries also function as personal advisors on important milestones in people's lives such as wills and so on. During the entire purchasing process, clients can request changes to the notarial deed at no additional cost other than the costs already incurred. A notary can handle family actions at minimal cost or for free, for example a waiver of a deficient inheritance.

The philosophical basis underlying the reconstruction of Article 15 paragraph (1) which states, "Notaries have the authority to make authentic deeds regarding all deeds, agreements and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee certainty of the date of making the deed, keeping the deed, providing grosse, copy and quotation of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

In the explanation, it is stated that the exception to this deed is a land deed. That making authentic deeds regarding land deeds is the authority of the Land Deed Making Official, while juridically these regulations must be strict to achieve certainty.

In reality on the ground, many land deeds are made by Notaries, for example Land Sale and Purchase

Agreements. Where the Land Sale and Purchase Agreement often causes problems which will later involve a Notary. Many cases occur because the Land Sale and Purchase Agreement still has the possibility of uncertainty. Meanwhile, the Sale and Purchase Deed made by the Land Deed Official must take place as long as it is carried out according to the rules.

Progressive serves to break the deadlock. Progressives demand the courage of the authorities to interpret the article to civilize the nation. If this process is correct, the ideals built in enforcement in Indonesia are parallel to the nation's efforts to achieve common goals. Ideality moves away from the practice of uncontrolled inequality like today, so that in the future Indonesia will no longer have discrimination for the poor because it will not only serve the rich. If equality in the future cannot be realized, partiality is absolute. Humans create not only for certainty, but also for happiness.

In a progressive perspective, progress must mean progress. Progressive means progressive. The definition of progressive is changing quickly, making fundamental reversals in theory and practice, and making various breakthroughs. This liberation is based on the principle that it is for humans and not vice versa and that it does not exist for itself, but for something broader, namely for human dignity, happiness, prosperity and human glory.[1]

In simpler terms, progressives are those who carry out liberation, both in the way they think and act internally, so that they are able to just let it flow to complete their task of serving humans and humanity. So there is no engineering or partiality in enforcing it. Because according to him, the aim is to create justice and prosperity for all people.[2] The presence of progressiveness is not a coincidence, it is not something that is born without a cause, and it is not something that falls from the sky. Progressive is part of the never-ending process of searching for the truth.

Based on a progressive perspective, the authority to make land deeds should clearly be given to the PPAT without any freedom given to the Notary. In practice, legal uncertainty often occurs as a result of Notarial Sale and Purchase Agreements. This happens because the Land Sale and Purchase Agreement does not use the principles of sale and purchase when a land deed is made by the PPAT, namely in plain, cash and real terms. The parties often use this Sale and Purchase Agreement to ensure that this agreement is canceled. Parties also often do not implement what has been mutually agreed with the aim of canceling the agreement.

Observers say that enforcement in Indonesia is very concerning. In the 1970s there was already the term "judicial mafia" in the vocabulary in Indonesia, during the New Order it shifted from social engineering to dark engineering because it was used to maintain power. In the reform era, the world is increasingly experiencing commercialization. According to Satjipto Rahardjo, the essence of the setback above is the increasing scarcity of honesty, empathy and dedication in carrying out, then Satjipto Rahardjo asks the question, what is wrong with us? What is the way to overcome it?[3]

The progressive idea is to place humans as the main centrality of all discussions about. With progressive wisdom, it invites attention to human behavioral factors. Therefore, progressives place a combination of regulatory factors and enforcement behavior in society. This is where understanding the progressive idea is important, that the concept of "best" must be placed in the context of complete integration in understanding humanitarian problems.

Thus, progressive ideas do not merely understand the system in a dogmatic way, but also aspects of social behavior in an empirical way, so that it is hoped that humanitarian problems will be addressed in their entirety and oriented towards substantive justice.

The following is a conception of progressive:

1) As a Dynamic Institution

Progressives reject any notion that institutions are final and absolute, instead progressives believe that institutions are always in the process of becoming (law as a process, law in the making). Satjipto Rahardjo explained as follows:

> Progressives do not understand it as an absolute, final institution, but rather is determined by its ability to serve humanity. In the context of such thinking, it is always in the process of continuing to become. It is an institution that continuously builds and changes itself towards a better level of perfection. The quality of perfection here can be verified in the factors of justice, welfare, concern for the people and so on. This is the essence "which is always in the process of becoming (law as a process, law in the making).[4]

In such a context, it will appear to move, change, following the dynamics of human life. As a result, this will affect our way of life, which will not just be trapped in the rhythm of "certainty", the status quo and as a final scheme, but rather a life that is always flowing and dynamic, both through changes in laws and culture.

[1] Pengertian Progresif, http://www.referensimakalah.com /2013/01/ pengertian--progresif.html?m=1, (07 June 2023).
[2] *Ibid.*
[3] Faisal, 2010, *Menerobos Positivisme* , Yogyakarta: Rangkang Education, hlm. 70.
[4] *Ibid,* hlm. 72.

When we accept it as a final scheme, it no longer appears as a solution to humanity's problems, but humans are forced to fulfill the need for certainty.

2) As a Teaching of Humanity and Justice

The philosophical basis of progressiveness is an institution that aims to lead humans to a just, prosperous life and make humans happy.[1] Progressive starts from the assumption that it is for humans and not vice versa. Based on this, birth is not for itself, but for something broader, namely for human dignity, happiness, welfare and human glory. That is why when problems occur within, it is the ones who must be reviewed and corrected, not humans who are forced to be included in the scheme.

The statement that it is for humans, in the sense that it is only a "tool" to achieve a just, prosperous and happy life, for humans. Therefore, according to progressives, it is not the goal of humans, but only a tool. So that substantive justice must take priority over procedural justice, this is solely so that it can appear to be a solution to humanitarian problems.

In accordance with technological developments, with the vast area and dense community activities, there is also a need for efficiency in carrying out the office of notary in the digital era.

3) As an Aspect of Regulations and Behavior

Progressive orientation relies on regulatory and behavioral aspects. Regulations will build a positive system that is logical and rational. Meanwhile, the behavioral aspect will drive the rules and systems that have been built. Because the assumption built here is that it can be seen from the social behavior of enforcers and the community. By placing the behavioral aspect above the regulatory aspect, this human and humanitarian factor has exciting elements such as compassion (new feelings), empathy, sincerety (sincerity), dedication, commitment (responsibility), dare (courage) and determination (determination).

> Satjipto Rahardjo quoted Taverne as saying, "Give me good prosecutors and judges, then even with bad regulations I can make good decisions." Prioritizing (human) behavior rather than statutory regulations as the starting point for the enforcement paradigm will lead us to understand it as a humanitarian process and project.[2]

Mengutamakan faktor perilaku (manusia) dan kemanusiaan di atas faktor peraturan, berarti melakukan pergeseran pola pikir, sikap dan perilaku dari aras legalistik-positivistik ke aras kemanusiaan secara utuh *(holistik),* yaitu manusia sebagai pribadi (individu) dan makhluk sosial. Dalam konteks demikian, maka setiap manusia mempunyai tanggung jawab individu dan tanggung jawab sosial untuk memberikan keadilan kepada siapapun.

4) As the Teaching of Liberation

Progressives position themselves as a "liberation" force, namely freeing themselves from legalistic-positivistic types, ways of thinking, principles and theories. With this characteristic of “liberation”, progressives prioritize “goals” over “procedures”. In this context, to carry out enforcement, creative, innovative steps are needed, even "mobilization" or "rule breaking".

> Satjipto Rahardjo gave the following example of progressive enforcement. The actions of Supreme Court Justice Adi Andojo Soetjipto on his own initiative tried to dismantle the atmosphere of corruption within the Supreme Court. Then Supreme Court judge Adi Andojo Sutjipto bravely made a decision by deciding that Mochtar Pakpahan had not committed treason during the very authoritarian Soeharto regime. Next, there was a high court decision made by Benyamin Mangkudilaga in the Tempo case, he was against the Minister of Information who sided with Tempo.[3]

The "liberation" paradigm referred to here does not mean leading to anarchy, because whatever is done must still be based on the "logic of social propriety" and the "logic of justice" and not solely based on the "logic of regulations" alone. This is where progressives uphold morality. Because conscience is placed as the driving force, driver and controller of the "liberation paradigm". In this way, the progressive paradigm that is "for humans, and not vice versa" will make progressives feel free to seek and find the right format, thoughts, principles and actions to make it happen.

According to Satjipto Rahardjo, progressive enforcement is carrying out not just the black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law or. Enforcement is not only intellectual intelligence, but also spiritual intelligence.

Enforcement is carried out with full determination, empathy, dedication, commitment to the nation's suffering and accompanied by the courage to look for other paths than what is usually done.[4] In general, progressive characters can be identified as follows:

1) Progressive studies try to shift the focus of studies that originally used optics to human behavior

[1] Mahmud Kusuma, 2009, *Menyelami Semangat Progresif; Terapi Paradigmatik Atas Lemahnya Penegakan Indonesia*, Yogyakarta: Antony Lib bekerjasama LSHP, hlm. 31.
[2] *Ibid,*, hlm. 74.
[3] *Ibid,*, hlm. 75.
[4] Satjipto Rahardjo, 2009, *Penegakan Suatu Tinjauan Sosiologis*, Yogyakarta: Genta Publishing, hlm. xiii.

(behavior);
2) Progressive consciously places its presence in close relationship with humans and society;
3) Progressive shares an understanding with legal realism because it is not seen from the optics itself, but is judged from the social goals to be achieved and the consequences arising from its work;
4) Progressives are close to Roscue Pound's sociological jurisprudence which examines not only the study of regulations but goes out and looks at the effects and workings of them;
5) Progressive is close to natural law theory because it cares about meta-juridical matters; And
6) Progressive is close to critical legal studies (CLS) but has a broader scope.[1]

Throughout the course of the discourse on progressive theory, several typologies have emerged that summarize various thoughts, both the results of research and the thinking of sociologists. Sidharta studied the ideas and thoughts of progressive theory from various primary and secondary data sources and concluded that there were postulates in progressive thought, namely:[2]

(1) In essence, every human being is good, so this characteristic is worthy of being capital in building a good life. Not a king (of anything), but just a tool for humans to give grace to the world and humanity. It does not exist for itself but for something broader and greater.
(2) Progressives must be pro-people and pro-justice. It must be on the side of the people. Justice must be placed above regulations. Enforcers must have the courage to break through the rigidity of regulatory texts.
(3) Progressive aims to lead humans to prosperity and happiness. This is also in line with the Eastern perspective which prioritizes happiness.
(4) Progressive is always in the process of becoming. It is not a final institution, but is determined by its ability to serve humanity.
(5) Progressives emphasize the good life as a good foundation. The basis lies in the behavior of the nation itself because it is the behavior of the nation that determines the quality of the nation.
(6) Progressive has a responsive type, that is, it will always be linked to goals outside the textual narrative itself. The responsive type rejects autonomy which is final and cannot be challenged.
(7) Progressives encourage the role of the public. Considering that we have limited abilities, entrusting everything to power is an unrealistic and wrong attitude. For this reason, progressives agree to mobilize the autonomous power of society (encourage the role of the public).
(8) Progressive in building a country with a conscience. In a nation, the main thing is culture. The culture in question is a culture of people's happiness.
(9) Progressive is carried out with spiritual intelligence. Spiritual intelligence does not want to be limited by benchmarks, nor is it only contextual, but wants to get out of existing situations in an effort to search for deeper truths of meaning or values.
(10) The progressive destroys, replaces and liberates. Progressives reject status quo and submissive attitudes. The status quo attitude causes us not to dare to make changes and considers doctrine as something that must absolutely be implemented. This attitude only refers to the maxim "the people for".

Romli Atmasasmita concluded that there were 9 (nine) main ideas of progressive theory presented by Satjipto Rahardjo, namely:

(1) Rejecting the analytical jurisprudence or rechtsdogmatiek tradition and sharing ideas with currents such as legal reliism, freirechtslehre, sociological jurisprudence, interressenjurisprudenz in Germany, natural theory and critical legal studies.
(2) Reject the opinion that order only works through state institutions.
(3) Progressive is aimed at protecting the people towards the ideal.
(4) Rejecting the status-quo and not wanting to make it a technology that has no conscience, but rather a moral institution.
(5) Is an institution that aims to lead humans to a just, prosperous life and make humans happy.
(6) Progressive is, "which is pro-people and pro-justice".
(7) The basic assumption of progressives is that “is for humans”, not vice versa. In connection with this, it does not exist for itself, but for something wider and bigger, so whenever there is a problem in and with, it is the one who is reviewed and corrected, not humans who are forced to be included in the system.
(8) It is not an absolute and final institution but really depends on how humans see and use it. Humans are the ones who decide.[3]

Law Number 2 of 2014 concerning Notary Positions has weaknesses. These weaknesses include the

[1] Satjipto Rahardjo, *Progresif: yang Membebaskan*, Jurnal Progresif, Vol. 1 No. 1 April 2005, PDIH Ilmu Undip, hlm. 6-8.
[2] Saifullah, *Kajian Kritis Teori Progresif Terhadap Status Anak Di Luar Nikah Dalam Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010*, http:// onesearch.id/Record/IOS1278.article-415, (10 Juni 2023).
[3] *Ibid.*

existence of dual positions between notaries and PPATs regarding the authority to make land deeds, giving rise to conflicts of authority between notaries and PPATs after the enactment of Law Number 2 of 2014 concerning the Position of Notaries.

Article 1 number 1, states:

"A notary is a public official who is authorized to make authentic deeds and has other authorities as intended in this Law or based on other laws."

Then in Article 15 paragraph (1) UUJN it is also stated:

"A notary has the authority to make authentic Deeds regarding ***all deeds, agreements*** *and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations "The deed, as long as the deed is made, is not assigned or excluded to other officials or other people as determined by law."*

Meanwhile, according to Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials, provides the following explanation:

"*PPAT is a public official who is given the authority to make authentic deeds regarding* **certain actions regarding land rights or ownership rights to apartment units.**

Based on the definition of Notaries and PPATs, the substance that will be discussed by the author in this dissertation is the issue of authority between Notaries and PPATs in making authentic deeds specifically relating to land rights. Article 1 number 1 and Article 15 paragraph (1) UUJN notaries have the authority to make land title deeds because land deeds are authentic deeds. Meanwhile, Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials, only grants authority to PPAT.

Thus, it can be said that there is a blurred authority regarding the preparation of land title deeds between the notary and the PPAT, giving rise to conflict. Therefore, Article 1 number 1 and Article 15 paragraph (1) UUJN need to be reconstructed by providing confirmation of the scope of authority of Notaries and PPATs, for example Notaries have the authority to make authentic deeds relating to deeds, agreements and/or other provisions in order to guarantee certainty of an action. Meanwhile, PPAT has the authority to make authentic deeds specifically for actions regarding land rights. This is different from other countries such as the Netherlands, Japan and Belgium which clearly provide functions and are firm regarding the authority of Notaries.

Basically, Notary and PPAT are different professions but can hold concurrent positions in accordance with statutory provisions. This is based on the statement in Article 17 paragraph (1) letter g UUJN which states that Notaries are prohibited from holding concurrent positions as Land Deed Making Officials and/or Class II Auction Officials outside the Notary's place of office. The prohibition rule in this article does not appear to be intended to prohibit notaries and PPATs from holding concurrent positions but rather prohibits a Notary who holds concurrent positions as a PPAT from holding concurrent positions outside of the Notary's position. This article can be interpreted as an argumentum a contrario, namely by determining certain things for certain events, so that the regulations can apply in the opposite way to events outside of the provisions of the law. So, in argumentum a contrario it can be interpreted that a Notary can hold the same position as a PPAT as long as he is in the same position as his position as a Notary.

Table 5.1

Chapter	Article Sound	Article Weaknesses	Reconstruction of Article
Article 1 paragraph (1)	A notary is a public official who is authorized to make authentic deeds and has other authorities as intended in this Law or based on other Laws.	This article is vague because there are no exceptions regarding authentic deeds	This article needs to be reconstructed by adding an explanation to the article, which was originally quite clear with an explanation of the authentic deed which is not related to land.
Article 15 paragraph (1)	The Notary has the authority to make authentic Deeds regarding all deeds, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations of the Deed , all of this as long as the deed is made is not assigned or excluded to other officials or other people as determined by law.	This article is vague because there are no exceptions regarding authentic deeds	This article needs to be reconstructed by adding an explanation to the article, which was originally quite clear with an explanation of the authentic deed which is not related to land.
Article 15 paragraph (2)	Apart from the authority as intended in paragraph (1), the Notary also has the authority to: a. validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book; b. record letters under hand by registering in a special book; c. make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned; d. validate the suitability of the photocopy with the original letter; e. provide legal counseling regarding the making of Deeds; f. make deeds relating to land; or g. make a Deed of auction minutes.	Article 2 letter f is deleted	Apart from the authority as intended in paragraph (1), the Notary also has the authority to: a. validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book; b. record letters under hand by registering in a special book; c. make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned; d. validate the suitability of the photocopy with the original letter; e. provide legal counseling regarding the making of Deeds; f. make a Deed of auction minutes.

D. CLOSING

Regulations on the position of Notaries as public officials are not yet based on the value of justice because there are parties such as Notaries who are authorized by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries to make authentic deeds of which Article 1 paragraph (1) and Article 15 paragraph 1 of the Notary's authority to make authentic deeds (no restrictions) can even make things that fall within the authority of the PPAT. Article 15 paragraph (2) letter f states that you can make land deeds, but in reality BPN cannot accept land deeds made by Notaries, because there are other parties who are also authorized by law to make land deeds such as PPAT. Reconstruction of the regulations for the position of Notary as a public official in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004

concerning the Position of Notary Public needs to be carried out, namely Article 1 number 1 and Article 15 paragraph (1) UUJN by adding to the explanation which was previously sufficient clearly given an explanation of the authentic deed which is not related to land. In Article 15 paragraph (2) letter f, the notary's authority to make deeds relating to land is removed, so that the scope of the notary's authority relating to making land deeds is not blurred and does not conflict with the PPAT's authority.