


COMPARISON OF NOTARY LAW IN INDONESIA AND SINGAPORE

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<i>PAPER INFO</i>	<i>ABSTRACT</i>
Received: April 2023	<p>Background: In order for a law to evolve, a comparative law is needed, one of which is in Notary Law. Each country has a lot of differences and of course there is a similarity in terms of Positions, Function and Regulation on how to be appointed as a Notary Public.</p> <p>Aim: This study examines the advantages and disadvantages by examining the similarities and differences in Terms, Functions and Position of a Notary between Act Number 2 of 2014 concerning amendments to Act Number 30 of 2004 concerning Notary Positions and the Singapore's Notaries Public Act 1959.</p> <p>Method: The research method that was used in this research is normative legal research methods that focus on research in legislation, written regulations, and comparative law research.</p> <p>Findings: In Indonesia, notary has more functions and powers compare to Notary in Singapore. To become a Notary, a Notary must have a bachelor degree in law, a Master degree in Notary Education and Undergoes an internship or worked 24 months in a row at notary's office. Meanwhile in Singapore, Notary public is not a legal professional.</p>
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INTRODUCTION

In order for a law or regulation in each country to evolve, research is needed. One of the disciplines that is use in legal research is comparative law. Comparative law is a discipline that involves the study of one legal system to another legal system including their constitutive elements and their differences and how their elements combine into a system (Hirschl, 2019). Comparative law is research that compares two countries with a different legal system, in civil legal systems they have written and updated legal code (Siems, 2019). A case law is the second source in these jurisdictions. Whereas in common law, they rely on case law where they use precedent judicial decision as their main law (Abduh & Hanifah, 2020). The current research compares two countries and that is Indonesia's and Singapore's legal systems. where Indonesia adheres a civil law legal system and Singapore adheres a common law legal system. Notary in Indonesia have different terms on how to be appointed, positions and functions when compared to Singapore's regulations.

It was explained in ASEAN Senior Law officials meeting that was held in Singapore on 3-4 December 1999, that the Latin notaries in Indonesian is a legal professional and the Anglo-Saxon notary public in Singapore is not (ASEAN, 1999). In civil law legal systems, a notary and a lawyer are two different legal professionals that is independent and can stand alone. Meanwhile in Singapore, Notary couldn't stand alone and they could have concurrent position as an advocate or solicitor. To be qualified as an advocate, that person must either graduated with at least bachelor of law as a second-class lower honor from national university of

Singapore or graduated from second class upper honors or equivalent in other qualified university in United Kingdom, Canada, New Zealand, Australia, United States (Collins, 2013). The purpose of this research is to examine the advantages and disadvantages of each countries' Notary Law and could give insight to the academicians, public, practitioners about Notaries in Indonesia and Singapore. Based on the results of the discussion above, the problem formulations in the research are:

- 1) How is the terms, functions and positions of a Notary in Indonesia based on Act Number 2 of 2014 regarding amendments to Act Number 30 of 2004?
- 2) How is the terms, functions and positions of a Notary in Singapore based on the Notaries Public Act 1959?
- 3) What are the differences and similarities that explains the advantages and disadvantages of the regulations in each country?

METHOD

The research method that was used in this research is normative legal research methods that include research on laws and regulations that refer to the provisions of other written regulations, and comparative legal research between Indonesian and Singaporean legislation in Notary Law. The data obtained for the writing of this journal is secondary data, namely the results of research from the results of library studies in the form of scientific articles and books written by scholars, and tertiary legal materials obtained to support primary and secondary legal materials obtained through internet media.

RESULTS AND DISCUSSION

Terms, Position and Functions of Notary in Indonesia

Notaries exist in Indonesia because society requires evidence. Authentic evidence is regarded as strong evidence. According to Article 1868 of the Civil Code, an authentic deed is a deed whose form is determined by the law and is made by or in the presence of public officials who have the power to do so at the place where the deed is made (Soimin, 1995). In Indonesia, a country that adheres to civil law, a Notary is considered as one of legal professionals. Notary is a public official who is authorized to make authentic deeds and other authorities (Act Number 2 of 2014 concerning Amendments to Act Number 30 of 2004 on Notary Positions). To make an authentic deed, a person must become a "public official" (Rose, 2019). Hence, a Notary must have a position as a public official. Without this position, the Notary does not have the authority to make an authentic deed. A notary is appointed by the Ministry of Law and Human Rights according to the Article 2 Act Number 30 of 2004 on Notary Positions. According to article 3 Act Number 2 of 2014 concerning Amendments to Act Number 30 of 2004 on Notary Positions, the requirements to be appointed as a notary in Indonesia are the following:

- 1) Minimum age of 27 years old;
- 2) A bachelor degree in law and a master degree in Notary Education;
- 3) Have faith in Almighty God;
- 4) An Indonesian Citizen;
- 5) Having a health certificate from a doctor and psychiatrist;

- 6) Undergoes an internship or worked 24 months in a row at notary's office or on their own initiative or from the recommendation of a notary organization after graduated from Master Degree in Notary Education;
- 7) Does not have the status of a civil servant, state official, advocate, or not holding other positions which by law is prohibited from being duplicated with the position of Notary;
- 8) Have never been sentenced to imprisonment based on a court decision for committing a crime which punished by imprisonment of 5 (five) years or more.

The purpose of determining the age limit which is 27 years old for maturity will ultimately point to the notion of responsibility, which is to ensure that the actions committed by a person can be legally accounted for and therefore can be prosecuted if his/her actions prejudice other parties. A bachelor degree in law is needed for a person to understand how regulations and law works in Indonesia and Master degree of Notary Education is needed to learn and practice on how to make deeds of contracts, deals or decisions which those documents are required by the law to be formulated in an authenticated document (Cristine, 2021). Notary must be an Indonesian citizen, so as "Having faith in almighty god" is a requirement to be appointed as a notary because it is according to the first principle of Indonesia's Pancasila that is "God Almighty". Notary must be healthy mentally and physically to make deeds and other powers that is authorized by the law. The notary has the authority to make an authentic deed of all decision, agreements, and statutes required by law and/or according to the request of interested parties to be stated in an authentic deed, set the date of deed, depositing the deed, provide Grosse, copies and citation of deeds, as long as the deeds are made assigned or excluded to other officials or other persons stipulated by law. In addition to the powers mentioned above, a Notary is also authorized to Registered a notarize signature and set the date of the underhand contracts, make an underhand contracts, make a copy of the underhand contracts and register it in the form of a copy containing a description as written and described in a letter that concerned, validate the compatibility of photocopies with original letter, provide legal advice regarding with the making of the Deeds, make a deed related to land, make a minutes of auction deed.

In carrying out its duties, a Notary must obey and comply with the regulations affecting Notaries Public such as: Act Number 2 of 2014 concerning Amendments to Act Number 30 of 2004 on Notary Positions, Code of Notary Ethics and other provisions regarding the obligations. A Notary must not hold a multiple position as advocate, civil servants or other positions that is prohibited by the law because it will affect on the deeds that they have made (Oktavia et al., 2019). In the Article 17 Act Number 2 of 2014 concerning Amendments to Act Number 30 of 2004 on Notary Positions, Notary is prohibited to:

- 1) Carry out positions outside the office territory;
- 2) Leave the territory of the office for more than 7 consecutive working days without valid reason;
- 3) Holding concurrent positions as a civil servant;
- 4) Holding concurrent positions as a state official;
- 5) Holding concurrent positions as an advocate;
- 6) Holding concurrent positions as a leader or employee of a state-owned enterprise, agency regionally owned business, or private business entity;

- 7) Holding concurrent positions as Land Deed Making Officer and/or Class Auction officer II outside the Notary's domicile;
- 8) Become a Substitute Notary; and
- 9) Perform other work that is contrary to religious norms, decency, or propriety that may affect the honor and dignity of the Notary's position.

The deeds made by a notary who carries out multiple positions only has a legal force of an underhand agreement or contract. Article 1869 of the Civil Code determines that a notarial deed is considered to have the power of evidence as an underhand contract if it fulfills the following provisions:

- 1) The public official is incompetent;
- 2) The public official is incapable of law;
- 3) The deed is defective in its form. Despite the deed signed by the parties still has legal force as an underhand contract or agreement

As a result, it can be a reason for the parties who feel aggrieved to claim fees, damages and interest. Legal consequences for a notary who performs multiple positions subject to administrative sanctions and the role of the supervisory board that carries out examinations and decisions regarding the sanctions imposed on the notary.

Terms, Position and Functions of Notary in Singapore

Singapore is a common law country and have an Anglo-Saxon notary profession. In common law legal system, A notary public is not a legal professional (Tan, 2009). Notary is prohibited to give legal advice and draft documents such as contract and wills, and arranges purchase and sale of land and property unless that notary is an advocate or a solicitor as well. Only lawyers who are legal professional and this implementation is also adopted by Singapore's policies. A notary Public in Singapore is a practicing lawyer and has been appointed by the Senate. According to Notaries Public Act 1959, Notary public means a person who has been appointed as a notary public under section 3 but does not include any person whose appointment has been revoked under section 5 (Notaries Public Act, 1959). In section 3, it was explained that Notaries public is appointed by the Senate. The senate must appoint a person who is eligible to become a notary for a period not exceeding than 12 months. Before being appointed as a notary, a person must first work as a lawyer or advocate for at least 7 years. A notary must be a qualified Advocate or Solicitor with a practicing certificate. In the section 5, it was explained that a person couldn't appointed as a Notary if that person has been struck off the roll solicitors and advocates in Singapore, become bankrupt or made an arrangement with creditors, or has been found guilty of such professional or other crimes according to the Senate who made him to become unfit.

According to Notaries Public Act Chapter 208, Section 4, it is stated that, without limiting the scope of the powers and functions, the practical functions of a notary public follow those applicable in England, with some variations, and are primarily as follows (Arnold, 2020):

- 1) Administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed:
 - a) For the purpose of confirming or proving the due execution of any documents;
 - b) By any master or member of the crew of any vessel in respect of any matter concerning the vessel; or

- c) For the purpose of being used in any court or place outside Singapore
- 2) Take or attest any affidavit or statutory declaration referred to in paragraph a.
- 3) Have an exercise such as other powers and functions as may be prescribed.

The power of Singapore's Notary public is to issue and sign certificate for each document to attest deed, contracts and other documents that are to be used abroad required for organizations and foreign authority (Notaries Public Rules, 1999).

The Differences and Similarity in Notary Regulations of Both Countries

Notary in civil law and common law have a lot differences in terms of how they could be appointed, their powers and function as well as their Position. The first difference is in civil law countries, notary has more dominant position and more important than in common law countries. A notary could make deed of contracts, decision or deals, set the date of deed, save it and give the legitimate Grosse, copies or partial citation of deeds; as long as the making of the deeds are not tasked to other public officials and are only exclusive duty of the notary (EEC, 2000). On the other hand, Notary in common law has limited tasks such as attest deeds contracts and other documents that are to be used abroad required for organizations and foreign authority. Second, Notary in Indonesia are independent and impartial legal professionals that can give legal advice and draft documents, whereas notary in Singapore couldn't. In conclusion, the notary public is not independent and impartial like in the Latin Notary. Third, in Singapore, a Notary couldn't give legal advice and draft documents or contracts unless they are a solicitor or an advocate of a Supreme court in Singapore. While in Indonesia, a Notary Public could give legal advice especially regarding with the making of the Deeds, contracts and documents that is authorized by the law. Fourth, Notary Public is not a legal professional in Singapore, while Notary public is a legal professional in Indonesia. Fifth, Notary Public in Indonesia is appointed by the Ministry of Law and Human Rights and a notary that is appointed must have a bachelor degree in law and master degree in Notary education and doesn't have to have experienced as an advocate but they must have an experience in Notary for 2 years after they graduate from the Notary academy. Meanwhile in Singapore, a Notary Public is appointed by the senate. And for a notary to be appointed they must have at least 7 years' experience as an advocate. The last difference is that in Singapore, a notary public could have concurrent positions as advocate or as a solicitor, meanwhile in Indonesia, a notary couldn't have concurrent position as an advocate. The only similarity of both notary public in each country is that both notary public could witness a document signed in front of him/her and notarize signatures for documents and notarial seal.

The Weakness and Strength of Each Country's Regulation in Notary Law

Advantages and disadvantages of notary in Singapore:

- 1) Notary Public in Singapore cannot stand alone and is not an independent Legal profession;
- 2) Notary is usually and advocate or a Solicitor;
- 3) Notary public who is also an advocate in Singapore could attend in the court for advocacy and a Notary must have an experience as an advocate. Notary who is a solicitor mostly involve in litigation and seldom involve in regular attendance for advocacy.; and

- 4) A notary only could give legal advices and draft documents if they are a solicitor or an advocate.

Advantages and disadvantages of notary in Indonesia:

- 1) Notary is an independent legal profession;
- 2) Notary are prohibited to hold concurrent position as an advocate;
- 3) Notary couldn't attend in the court for advocacy; and
- 4) Notary could give legal advices and draft documents such as contract and wills, arranges the purchase and sale of land and property.

CONCLUSION

Comparative law could be used to upgrade legal code, by comparing Singapore's and Indonesia's in terms, position and regulations in Notary Law. The conclusion is that in Indonesia, Notary has more functions and powers compare to Notary in Singapore. Notary is an independent, impartial legal professionals, they could give advice and draft legal documents but couldn't attend in the court for advocacy because a notary couldn't have concurrent positions as an advocate or lawyer. To become a Notary, a Notary must have a bachelor degree in law, a Master degree in Notary Education and Undergoes an internship or worked 24 months in a row at notary's office. Meanwhile in Singapore, Notary public is not a legal professional. Notary must have at least 7 years' experience as an advocate, usually Notary in Singapore is an advocate or Solicitor. Therefore, they could have concurrent positions as a Notary public and an advocate or solicitor.

In Singapore, Notary is an advocate, so the costs incurred are smaller and more efficient because one person can have two professions. Meanwhile in Indonesia, a notary may not hold concurrent positions as an advocate, so the costs incurred are more and less efficient. Hoping that from this research, Indonesia could be more efficient and have a lesser cost for the convenience of the client in terms of processing legal documents.

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