

The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution era 4.0

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The industrial revolution era 4.0 brings changes in various sectors, including the legal sector. Phenomena of disruptive innovation in the industrial revolution era 4.0 stimulates the existence of the notaries and notarial deeds. Evidence in private procedural law questions whether they can be replaced by digital technology. The present study aims to examine the existence of notaries and notarial deeds as evidence of the industrial revolution era 4.0. The present study is a legal normative study which utilises constitutional and conceptual approaches as its method. notaries in Indonesian institutions are established by the state in order to serve people who need evidence in the form of authentic deeds. Provisions regarding authentic deeds are regulated in the Indonesian Civil Code, which requires that a notarial deed is made, and its form is prescribed by the law. Moreover, a notarial deed is published by an appointed public official with whom the responsibility is placed. A notarial deed has an absolute character in which, from beginning till end, the deed consists of information that is submitted by the notary (Notaris Verklaring). The existence of the deed cannot be replaced by other technology.

Key words: *notary, notarial deed, the industrial revolution era 4.0.*

Introduction

Rapid development has brought the world to the era of the industrial revolution 4.0. The beginning of 2018 is an era of the industrial revolution 4.0. It combines Cyber Physical Systems, the Internet of Things, Networks and the virtual world. The industrial revolution 4.0

that hit the millennial world poses challenges to all segments of life that require creativity as an answer. The industrial revolution era 4.0 is characterised by patterns of the digital economy, artificial intelligence, big data, robotics, etc. These are part of the disruptive innovation phenomena.

Disruptive innovation can be interpreted as innovations that produce new things, and with their existence they simultaneously damage, revoke and replace what existed before. The happening of *disruptive innovation* is in line with the adage ‘in every age there is a human being and in every human being there is a time’. The ‘time’ must not pass, but we can never be the ‘human’. With the phenomenon of disruptive innovation, humans are required to be able to follow the changes that exist.

Changes also occurred in the field of law within the industrial revolution 4.0 era, which is a challenge to respond to future problems. Law is one of the most important fields in the implementation of national development in Indonesia. It is stated clearly in Article 1, paragraph (3) of the 1945 Constitution that the state of Indonesia is a state of law. The constitutional foundation mentioned above provides an understanding that the administration of the Indonesian state is based on the concept of law. Law, in relation to the national development framework, is both an object and a subject of development. Law, as an object of legal development, is a sector that must be prioritised. As a subject of legal development, it must be developed as an instrument and support facilities for national development efforts.

One of the changes in the field of law is in civil procedural law, especially in terms of evidentiary law. Proof will always be associated with evidence. Proof is something that is used to convince the truth of an argument or position. Evidence is a tool used to prove the arguments of a party in court. Examples include written evidence, testimonies, suspicions, oaths and others. Changes in law have occurred since the enactment of Law no. 11 of 2008, which concerns information and electronic transactions (UU ITE) that introduced the existence of electronic documents. Along with the disruptive innovation that left the conventional electronic pattern, the traffic of electronic documents used as evidence is increased as well.

In the era of the industrial revolution 4.0, almost all segments are replaced by technology. This results in reduced employment in the labour force. It is also interesting to note that the existence of a notary and their products, in the form of authentic deeds, have strength as perfect proof in the midst of the industrial revolution 4.0. Whether or not the phenomenon of disruptive innovation occurs will determine if the role of the notary is replaced with technology.

Method

The present study uses normative legal research methods to find solutions to existing legal problems. The research approaches used are the statute approach and the conceptual approach.

Discussion

The existence of the notary position in the industrial revolution era 4.0

Industry 4.0 is a term that was first coined in Germany in 2011, which was marked by a digital revolution. This industry relates to industrial processes connected with digital technology. These include various types of technology ranging from 3D printing to robotics, which are believed to be able to increase productivity.

In 2015, a research team from the University of Dortmund, Germany consisting of Hermann, Mario Pentek, Tobias Otto and Boris discovered the concept of Industry 4.0. It consists of (1) *Cyber-Physical Systems (CPS)*; (2) *Internet of Things (IoT)*; (3) *Internet of Services (IoS)*; and (4) *Smart Factories*. Based on the concept above, Industry 4.0 is further defined as:

'A collective term for technologies and concepts of value chain organisations. Within the modular structured Smart Factories of Industry 4.0, CPS monitor physical processes create a virtual copy of the physical world and make decentralised decisions. Over the IoT, CPS communicate and cooperate with each other and humans in real time. Via the IoS, both internal and cross organisational services are offered and utilised by participants of the value chain.'

The fourth industrial revolution era is coloured by artificial intelligence, super computers, genetic engineering, nanotechnology, automatic cars and innovation. These changes occur at exponential speed, which will have an impact on the economy, industry, government, and politics. In this era, more visible forms of the world become a global village. The world is currently facing a 4th industry change or what is known as Industry 4.0. Based on the analysis of the Mckinsey Global Institute, Industry 4.0 has a very large and broad impact, especially in the employment sector. Here, robots and machines will eliminate many jobs in the world.

Human resources become a problem that have to be faced in the industrial revolution 4.0. That is because the industrial revolution 4.0 requires reliable and superior human resources and special expertise. In the legal profession, positions such as notary are demanded to be able to improve services to the community with maximum utilisation of existing information

technology. Within the Industrial era 4.0, notaries are required to possess critical thinking skills and to be able to solve problems, communicate, create and collaborate.

The existence of the notary position cannot be separated from the provisions of Article 1868 of the Indonesian Civil Code, which states 'An authentic deed is a deed in the form determined by the Act, made by or in front of the public official authorised for it in the place where the deed was made'. One of the public officials referred to in this Article is the notary. From this provision, it can be understood that the existence of a notary public is authorised to make authentic deeds.

An authentic deed is a product of a notary Public. It is used as evidence that has been determined in the Civil Procedure Code. Regarding evidence that is recognised in civil proceedings, it is remuneratively regulated in Article 1866 of the Indonesian Civil Code and Article 164 *Het Herziene Indonesisch Reglement* (HIR). These consist of: a) written evidence; b) evidence with witnesses; c) suspicion; d) recognition; and e) oaths. The written evidence is placed first. This is consistent with the reality of the type of letter or deed in a civil case. It plays an important role in all activities involved in the civil field, deliberately or when written in a letter or deed.

An authentic deed has a very important meaning in today's social life because it is able to become evidence that has the power of proof. It is in accordance with the formulation of Article 1870 of the Indonesian Civil Code, which states that an authentic deed provides complete or perfect binding evidence of what is contained in it for parties as well as their heirs or persons who are entitled to them. In this sense, what is written in the deed must be trusted by the judge. It must be considered as true, as long as there is no unrighteousness and no other party that can prove otherwise by providing additional proof.

The legal basis for the existence of a notary in Indonesia is regulated by Law No. 30 of 2004, which concerns the position of notary and Law No. 2 of 2014, which concerns amendments to Law No. 30 of 2004 concerning the position of notary Public. The ratio legis regarding the position of notary in Indonesia can be seen in the consideration of Considering Law No. 30 of 2004. It basically states that Indonesia is a state based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order, legal protection and the core of truth and justice to be held by the office of a notary. Authentic deeds made by or before a notary will provide legal certainty, legal protection and are expected to prevent disputes.

According to Paulus Effendi Lotulung, public service is the essence of the task of the field of government, which is based on the principle of providing and ensuring legal certainty for members of the community. In certain fields, the task is given by law and entrusted to the notary. Therefore, the public must also believe that the notarial deed issued provides legal

certainty for its citizens. The existence of authority given by the law and the trust of the people serves as the basis for the duties and functions of the notary in legal traffic.

Tan Thong Kie expressed his opinion regarding the existence of the position of the notary. He indicated that the public needed a figure whose statements could be relied upon, can be trusted and whose signature, as well as everything (the seal), provides guarantees and strong evidence. This person serves as an impartial expert and a defective advisor (*onkreukbaar* atau *or future*). If an advocate defends a person's rights when a difficulty arises, then a notary must try to prevent that difficulty from occurring.

The notary has a role in the activities of carrying out the legal profession that cannot be separated from the fundamental issues related to the function and role of the law itself. The law is defined as the rules that govern all people's lives. Notary Institutions are institutions that exist in society and arise because of the needs of community members who carry out legal actions. This requires the existence of written evidence if there is a dispute or problem, so that it can be used as the strongest evidence in court. That is the reason people need notary services to make authentic deeds.

The position of a notary public official is an honorary position given by the state attributively through a law to someone it trusts. The task of the notary is to carry out some of the public functions of the state and work for the service of the public interest, especially in the field of civil law. The public service is in the field of deed making services and other tasks, which are charged to the notary public. It is attached to the title of a public official in the scope of their duties and the authority of the notary. A notarial deed issued by a notary public provides legal certainty for the public.

Openness to science and technology in the legal community is unavoidable. The industrial revolution 4.0 is good for millennial society because it helps accelerate the administration, archiving and sending of data so that *Cyber Physical Systems, the Internet of Things and Networks* can be regarded as useful. It also has a negative impact, since human resources who do not have virtual thoughts will be eliminated because they can be replaced with robots. Humans with forward thinking and intelligence will still exist and are irreplaceable.

The position of the notary in the era of the industrial revolution 4.0, based on technological sophistication, is still irreplaceable. The existence of a notary will not be replaced by technology in the near future because there are characteristics inherent in the notary that cannot be replaced by technology. In addition, the authority possessed by a notary in carrying out his/her office duties is regulated in Law No. 2 of 2014, which is visionary and able to address the changes that would occur.

In carrying out the duties of office, a notary has general authority, special authority and authority that will be born in the future (*ius constituendum*). Article 15, paragraph (3) of Law No. of 2014 was mentions ‘...notary public has other authorities regulated in statutory regulations’. In the explanation section of the article, it is also stated that “What is meant by ‘Other authorities regulated in statutory regulations’, among others, is the authority to certify transactions conducted electronically (*cyber notary*)...” The notary authority mentioned in Article 15, paragraph (3) of Law no. 2 of 2014 ensured that the position of notary authority should not be interpreted rigidly so as to keep up with the times.

Another thing that will keep the position of the notary public in existence in the era of the industrial revolution 4.0 is that notaries are people who can think and have a conscience. The synergy between the notary's ability to think with their conscience will not be replaced by a machine or robot born from technology. The results of technology, although able to think, do not have a conscience.

According to Liliana Tedjosaputro, notaries are people with special education and expertise that cannot be replaced by robots because they have to think virtually in the future. Therefore, it is not possible to only enter data on a computer and expect the computer to complete the task. If the data is falsified, if the computer can find out because the computer works like a robot. It cannot think that something is suspicious, so it cannot be used for making evidence as a notary public does.

Legal professionals, such as notaries, are officials who are appointed to make authentic evidence. The quality of the profession bearer is reflected in his or her attitude that has scientific expertise and motivation in realising/carrying out his or her professional duties. This is a mandate, not a power. A qualified professional carrier is characterised by having high skills in carrying out his or her duties, having knowledge and experience and intelligence in analysing a problem. They must be sensitive in reading situations, fast, precise and careful in making the best decisions based on sensitivity. They must also have a forward-looking attitude so that they are able to anticipate developments that occur in the future, have an independent attitude based on confidence in personal abilities and are open to listening and respecting other parties. They must be careful in choosing the best for themselves in order to make fair decisions based on truth.

The position of a notary is a respected position and has a very important role in the community. Those who hold the position are certainly required to have both scientific and leadership qualities. Science, especially in the field of law, must be truly understood by the notary in depth. This is reflected in one of the requirements for the appointment of a notary, which is mentioned in Article 3, letter e of Law No. 2 of 2014, stating they must have ‘Graduated with a Bachelor of Laws and graduated from the notary level’. The existence of

special qualifications regarding minimum education requirements for the appointment of a notary public is caused by the carrying out of the duties of the notary public. This is the carrying out of the office assignments that are *esoteric*, which means they must be specifically learned or understood. Education and special skills possessed by notaries will be characteristic of the position of notary, and it will not be possible to replace that with technology.

These conditions will make the community's need for evidence that has the strength of perfect proof increase. The development of the age will also have implications for the presence of new legal problems, the resolution of which can only be done with thoughts, ethics, honesty and conscience. This will ensure that the position of notary public will not be disrupted along with the presence of the industrial revolution 4.0.

The existence of the notarial deed as evidence of the industrial revolution era 4.0

Provisions in Article 1867 of the Indonesian Civil Code stipulate that written evidence is carried out with authentic writings, as well as underhanded writings. Evidence in the form of a letter is written evidence. Evidence in form of letter is divided into two forms, which are an authentic deed and other documents that are not a deed. In Article 1869 of the Indonesian Civil Code, it is stated that a letter can be called a deed if it is signed. The function of this signature is to differentiate one deed from another. A deed, according to its form, is still divided into authentic deeds and deeds under the hand.

The strength value of authentic deed (*bewijskracht*) is regulated in Article 1870 of the Indonesian Civil Code and Article 285 *Rechtsreglement voor de Buitengewesten* (RBg), which determine that the strength value of an authentic attached deed is perfect (*volledig bewijskracht*) and binding (*bindende bewijskracht*). This means if the authentic deed's presented evidence meets the formal and material requirements and the opposing evidence presented by the defendant does not reduce its existence, it adds to the power of proof that is perfect and binding (*volledig en bindende bewijskracht*). Therefore, the truth of contents and statements contained therein are perfect and binding for the parties that are mentioned in the deed. It is also perfect and binding for the judge, acting as a perfect and sufficient basis for the judge to make decisions in the resolution of a disputed case.

The difference in power of evidence provided by an authentic deed when compared to an unofficial deed is that the authentic deed becomes proof of the truth of all its contents until there is a sign of the falsity of the deed. The unofficial deed only has the power of proof if the signature is recognised to be true, and as for the date of this deed, the third party it does not possess power as evidence. A notarial deed is an authentic deed that has the strength of physical, formal and material evidentiary value.

The outward proof of power (*Uitwendige Bewijskracht*), namely the physical ability of a notarial deed, is the ability of the deed itself to prove its validity as an authentic deed (*acta publica probant sese ipsa*). If viewed from the outside (publishment) as an authentic deed, in accordance with the rules of law that have been determined regarding the terms of an authentic deed, it is considered valid until someone proves that the deed is not outwardly authentic.

Formal proof of power (*Formele Bewijskracht*), namely the notarial deed, provides certainty that an event and the facts in the deed are actually carried out by a notary or explained by the parties involved at the time stated in the deed. This is in accordance with the procedures specified in the making of the deed. Formally, to prove the truth and certainty about the day, in includes the date, month, year, time faced and the parties faced. Initials and signatures of the parties, witnesses and notaries prove what was seen, witnessed and heard by the notary (on the official deed/official report), in addition to recorded statements delivered by the parties (on the party deed).

The strength of material evidence (*Materiele Bewijskracht*), namely certainty about the material of a deed, is what is stated in the deed as valid proof of the parties making the deed or those who get the rights. This applies to the public, unless there is evidence to the contrary (*tegenbewijs*).

The three aspects mentioned above constitute the perfection of a notarial deed as an authentic deed. If it can be proven in a court hearing that there is one aspect that is not true, then the unofficial deed or the deed that is proven false is considered a degraded deed that no longer has the power of proof or is regarded as an unofficial deed.

Notarial deeds consist, in part, of a notary's statement (*Notaris Verklaring*). This is at the beginning and end of the deed. It is also in the part which is the statement of the parties (*Partij Verklaring*), i.e. the contents of the deed. At the beginning of the deed and the end of the deed, there is a statement from the notary (*Notaris Verklaring*). It becomes the responsibility of the notary public. Information from the notary is important in a deed because it is a form of proof of strength in an authentic deed. The power of formal proof within a deed can be used as evidence to show that the notary is conducting their duty based on statements delivered by the parties when carrying out the notarial position.

The development of scientific and technological progress goes on and at the same time introduces new types or forms of more sophisticated evidence. However, because the provisions regarding the type or form of evidence are enumerative and imperative, the parties and the judge must not rule out or add new evidence unless the parties agree on it. Proof law that has applied in Indonesia until now still adheres to certain types of evidence. Beyond that,

other evidence is not justified. Based on Yahya Harahap, evidence that is submitted outside the provisions of the law can be regarded as not being valid as evidence. Therefore, it does not have the value of the strength of proof to corroborate the truth of the proposition or rebuttal stated.

The enactment of the ITE Law has actually confirmed that there is new evidence in the form of electronic documents. Article 5 of the ITE Law states that electronic information and/or documents and/or printouts are legal evidence and have legal consequences. The provision also recognises that electronic information and/or documents and/or printouts are extensions of valid evidence in accordance with the applicable procedural law in Indonesia. The requirements for electronic information and/or documents can be declared valid when using an electronic system in accordance with applicable laws and regulations. However, the provisions regarding electronic information and/or electronic documents do not apply to letters which, according to the Law, must be made in written form. Letters, along with their documents must be made in the form of authentic deeds or deeds made by the notary public according to the Law.

Article 15 paragraph (1) of Law No. 2 of 2014 determines that the notary has the authority to make an authentic deed regarding all deeds, agreements, and stipulations that are required by legislation and/or desired by the parties concerned to be stated in an authentic deed. The formulation mentioned in the article above emphasises that the making of an authentic deed is not only based on the wishes of the parties concerned, but there are also statutory provisions that require certain legal actions to be made in the form of authentic deeds.

The characteristics of a notarial deed, as an authentic deed that includes physical, formal and material strength of evidence, include the notary's statement (*Notaris Verklaring*). This is a manifestation of proof of power in an authentic deed. The necessity for certain legal actions must be made in the making of an authentic deed. The existence of an authentic deed as evidence in civil procedural law will continue to exist in the industrial revolution 4.0 era.

Conclusion

The position of a notary will continue to stand firm in the era of the industrial revolution 4.0 because notaries are people who can think and have a conscience. The synergy between the notary's ability to think with their conscience ensures that they will not be replaced by a machine or robot born from technology. The results of technology, although created to be able to think, do not have a conscience. The presence of the industrial revolution 4.0 will make business traffic increase and occur across countries. These conditions will make the community's need for evidence that has the strength of perfect proof increase. The development of the age will also have implications for the presence of new legal problems,



the resolutions of which can only be found with thoughts, ethics, honesty and conscience. This will make the position of notary public undisrupted in the presence and development of the industrial revolution era 4.0.

The existence of a notarial deed as an authentic deed in the Civil Procedure Code will not be replaced along with the enactment of the industrial revolution era 4.0. This is because the authentic deed consists of evidentiary strength that is physical, formal and material and contains a statement made by the notary (*Notaris Verklaring*). This statement is a manifestation of the strength of proof of a notarial deed and the existence of the obligation for certain legal actions that must be adhered to with an authentic deed. In addition, developments in the direction of electronic evidence are currently limited to the provision that electronic documents do not apply to letters that, according to statutory regulations, must be made through a notarial deed.

Acknowledgement

A notary public is a position presented by the state to serve the community's needs for authentic deeds. The notary must deepen their knowledge, be able to understand the latest regulations and always able to adjust themselves amid technological advancements. In doing so they are always able to provide certainty and legal protection for the people who use their products.

Along with the development of technology, new regulations are needed in order to be used as a legal basis to publish a notarial deed in digital form (paperless). The existence of the deed in digital form will make business activities more effective and efficient when compared to the deed in the conventional form.

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