

Expansion of Notary's Authority Extention in Organizing and Developing Cooperatives: Problems of Ambiguity of Norms and Their Solutions

I Gede Abdhi Satrya Mahardika¹

Abstract

This research is based on the problem of vague norm regarding the expansion of notary authority in the administration and development of cooperatives. Research was conducted to find a solution to the problem by using relevant legal theories. This research is normative legal research that uses a statutory a conceptual approach. The results of the research showing that the expansion of notary authority in organizing and developing cooperatives leaves the problem of vague norm. The problem occurs because there were articles whose normative construction is not clear enough, resulting in vague norms. Furthermore, the problem of vague norms can be solved by using several relevant legal theories. These legal theories are the theory of legal certainty, the theory of authority, and the theory of obedience.

Keywords: Vague Norm, The Authority of Notary, Administration and Development of Cooperatives, Legal Theories

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¹ Universitas Udayana, abdhi.gede@gmail.com

1. Background of the Problem

Nowadays, the existence of notaries, especially in Indonesia, is very much needed by the community. Notaries play a very important role because of the expertise they have. The expertise possessed by the notary is in the form of expertise in making a deed and at the same time guaranteeing the validity of the deed they make. When making a deed, the notary is bound by certain rules that have been set by the government. The existence of certain rules that bind the notary is due to the fact that Indonesia is a state of law.

A state of law is a state whose governance is always based on legal rules that are formed and determined by the authorized government. This is in accordance with the concept of a state of law put forward by Julius Stahl, who stated that one of the important elements of a state of law is the existence of a government based on laws and regulations.¹ Thus, Indonesia as a state of law must also have legal rules that serve as guidelines for national life and state governance. National life and state governance referred to in this case also include the process and procedures for making a deed carried out by a notary.

Talking about the rules that bind notaries in carrying out their functions and duties, it is first mandatory to know about the legal basis that provides legitimacy to the existence of the notary profession in question. The legal basis is the provisions of Article 1868 of the Indonesian Civil Code. This article stipulates that "an authentic deed is a deed made in a form determined by law by and/or before a public official authorized for that purpose". The public official referred to in Article 1868 in question is a Notary.

Notaries as public officials are further regulated specifically in Law No. 30 of 2004 concerning the Position of Notaries. Over time and to adapt to the development of society, the Notary Position Law has also been updated through the stipulation of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries. The Notary Position Law itself contains various provisions relating to notaries. These provisions include the definition of a notary, the requirements to become a notary, and the authorities held by a notary.

Regarding the authority of a notary, the regulation can be found in Article 15 of the relevant law. Article 15 consists of three paragraphs which read as follows:

¹ Nasarudin, Tubagus Muhammad. (2020). "Konsepsi Negara Hukum Pancasila dan Implementasinya di Indonesia." *Pranata Hukum: Jurnal Ilmu Hukum*, Vol. 15 (No. 1), 43-52. h. 45

- “(1) *Notaris berwenang membuat Akta autentik mengenai semua perbuatan, perjanjian, dan penetapan yang diharuskan oleh peraturan perundang-undangan dan/atau yang dikehendaki oleh yang berkepentingan untuk dinyatakan dalam Akta autentik, menjamin kepastian tanggal pembuatan Akta, menyimpan Akta, memberikan grosse, salinan dan kutipan Akta, semuanya itu sepanjang pembuatan Akta itu tidak juga ditugaskan atau dikecualikan kepada pejabat lain atau orang lain yang ditetapkan oleh undang-undang.*
- (2) *Selain kewenangan sebagaimana dimaksud pada ayat (1), Notaris berwenang pula:*
- a. mengesahkan tanda tangan dan menetapkan kepastian tanggal surat di bawah tangan dengan mendaftar dalam buku khusus;*
 - b. membukukan surat di bawah tangan dengan mendaftar dalam buku khusus;*
 - c. membuat kopi dari asli surat di bawah tangan berupa salinan yang memuat uraian sebagaimana ditulis dan digambarkan dalam surat yang bersangkutan;*
 - d. melakukan pengesahan kecocokan fotokopi dengan surat aslinya;*
 - e. memberikan penyuluhan hukum sehubungan dengan pembuatan Akta;*
 - f. membuat Akta yang berkaitan dengan pertanahan; atau*
 - g. membuat Akta risalah lelang.*
- (3) *Selain kewenangan sebagaimana dimaksud pada ayat (1) dan ayat (2), Notaris mempunyai kewenangan lain yang diatur dalam peraturan perundang-undangan.”*

The authority of the notary is further divided into three, namely the main authority regulated in paragraph (1), additional authority regulated in paragraph (2), and other authority regulated in paragraph (3). The existence of such regulation, especially in paragraph (3), shows that there is an expansion of the authority held by the notary. The authority held by the notary due to this expansion is not regulated in the Notary Law, but rather in other laws and regulations. Therefore, it is very possible that the notary has various other authorities, in addition to the authority as regulated in Article 15 paragraph (1) and paragraph (2) of the Notary Law and its amendments.

Another example of a law that also contains provisions regarding the authority held by a notary is the Regulation of the Minister of Cooperatives and Small and Medium Enterprises No. 9 of 2018 concerning the Implementation and Development of Cooperatives. In the ministerial regulation, there are several articles that contain provisions regarding the granting of authority to

notaries to exercise certain authorities. However, the provisions as referred to are not yet clear enough, resulting in the emergence of problems of unclear norms.

Various previous studies that are the state of the art of this research are as follows. Ni Kadek Ayu Ena Widiasih in 2020 through her journal entitled “The Authority of Notaries in Certifying Transactions Carried Out Electronically (Cyber Notary)”, raised the issue of what form of notary authority to certify transactions electronically.² Tomy Indra Sasongko in 2018 with his journal entitled “The Authority of Notaries in Making Auction Minutes Deeds After the Enactment of the Minister of Finance Regulation Number 90/PMK.06/2016 concerning Guidelines for Implementing Auctions with Written Offers Without the Presence of Auction Participants Through the Internet” discussed how the authority and responsibility of notaries in the auction process were carried out.³ Furthermore, Hardianto Djanggih and Nurul Qamar in 2018 through their journal entitled “Application of Criminology Theories in Combating Cyber Crime”, discussed how criminology theories are applied in combating cyber crime.⁴

The research in this journal, when compared with several previous studies, has similarities related to its main theme, namely the expansion of notary authority and the use of legal theories to solve a legal problem. The thing that distinguishes the research in this journal is related to the legal issues raised. The differences in the issues raised indicate that the research in this journal is not a plagiarism of previous research.

The purpose of this study is to analyze the ambiguity of norms related to the authority of notaries in organizing and fostering cooperatives and to find solutions to the problem of the ambiguity of these norms by using relevant legal theories. The results of this study are expected to be able to provide contributions in the form of thoughts to all interested parties, both practitioners and academics in order to understand the ambiguity of norms related to the expansion of notary authority in Permenkop UKM No. 9 of 2018 and understand how legal theories are used to overcome the problem of the ambiguity of the relevant norms.

² Widiasih, Ni Kadek Ayu Ena. (2020). “Kewenangan Notaris dalam Mensertifikasi Transaksi yang Dilakukan Secara Elektronik (*Cyber Notary*).” *Acta Comitatus: Jurnal Hukum Kenotariatan*, Vol. 5 (No. 1), 150-160. h. 152

³ Sasongko, Tomy Indra. (2018). “Kewenangan Notaris dalam Pembuatan Akta Risalah Lelang Pasca Berlakunya Peraturan Menteri Keuangan Nomor 90/PMK.06/2016 tentang Pedoman Pelaksanaan Lelang dengan Penawaran Secara Tertulis Tanpa Kehadiran Peserta Lelang Melalui Internet.” *Lex Renaissance*, Vol. 1 (No. 3), 206-225. h. 211

⁴ Djanggih, Hardianto., & Qamar, Nurul. (2018). “Penerapan Teori-Teori Kriminologi dalam Penanggulangan Kejahatan Siber (*Cyber Crime*).” *Pandecta*, Vol. 13 (No. 1), 10-23. h. 10

2. Problem Formulation

Based on this, research on the ambiguity of norms related to the expansion of notary authority in organizing and fostering cooperatives is important to conduct. The legal issues discussed in this study are:

1. What is the form of ambiguity of norms related to the authority of notaries in organizing and fostering cooperatives as regulated in the Regulation of the Minister of Cooperatives and SMEs No. 9 of 2018?
2. How to solve the problem of the ambiguity of norms by using relevant legal theories that are related to the problems raised?

3. Research Method

In order to produce accurate and targeted discussions, research must use methods that are relevant to the nature and characteristics of the problem to be studied.⁵ The research in this journal is in the form of normative research by conceptualizing law as a rule or norm that is considered appropriate to be a benchmark for behaving in society.⁶

The approach method used is the legislative approach method and the conceptual approach. The legal materials in this study consist of primary legal materials in the form of laws and regulations, and secondary legal materials in the form of books and scientific journals that are relevant to the topics discussed. These legal materials were collected through document studies and analyzed using qualitative analysis techniques.

4. Research Results

4.1 Ambiguity of Norms Regarding the Expansion of Notary Authority in the Regulation of the Minister of Cooperatives and SMEs concerning the Implementation and Development of Cooperatives

First of all, it is important to explain that the regulation regarding the expansion of notary authority in Permenkop UKM No. 9 of 2018, is contained in several articles. The articles include:

⁵ Qamar, Nurul., *et.al.* (2017). *Metode Penelitian Hukum (Legal Research Methods)*. Makassar: CV. Social Politic Genius (SIGn), h. 2

⁶ Bachtar. (2018). *Metode Penelitian Hukum*. Banten: Unpam Press, h. 58

- a. **Article 10 paragraph (8):** *“Notaris membuat salinan Akta Pendirian untuk koperasi yang bersangkutan.”*
- b. **Article 12 paragraph (5):** *“Rapat pendirian Koperasi sebagaimana dimaksud pada ayat (1) dapat dihadiri oleh Notaris.”*
- c. **Article 12 paragraph (6):** *“Notaris sebagaimana dimaksud pada ayat (5) mencatat kesepakatan tentang pokok-pokok hasil pembahasan dalam rapat pendirian untuk dirumuskan dalam akta pendirian.”*
- d. **Article 12 paragraph (7):** *“Penetapan nama koperasi sebagai hasil rapat persiapan pendirian dapat di lakukan konfirmasi oleh Notaris pada SISMINBHKOP.”*
- e. **Article 14 paragraph (4):** *“Berkas dokumen kelengkapan sebagaimana dimaksud pada ayat (1) dan surat tanda terima sebagaimana dimaksud pada ayat (3) disimpan oleh Notaris.”*
- f. **Article 16 paragraph (3):** *“Notaris dapat langsung melakukan pencetakan Surat Keputusan Menteri tentang pengesahan Akta Pendirian Koperasi, dengan menggunakan kertas berwarna putih ukuran F4/folio dengan berat 80 (delapan puluh) gram serta memuat frasa yang menyatakan ‘Keputusan Menteri ini dicetak dari SISMINBHKOP.’”*
- g. **Article 24 paragraph (6):** *“Dokumen kelengkapan sebagaimana dimaksud pada ayat (1) sampai dengan ayat (4) disimpan oleh Notaris.”*
- h. **Article 26 paragraph (3):** *“Notaris dapat langsung melakukan pencetakan sendiri Keputusan Menteri mengenai pengesahan dan jawaban laporan mengenai Perubahan Anggaran Dasar Koperasi, menggunakan kertas berwarna putih ukuran F4/folio dengan berat 80 (delapan puluh) gram serta memuat frasa yang menyatakan ‘Keputusan Menteri dan jawaban laporan ini dicetak dari SISMINBHKOP.’”*

Based on the articles above, it can be seen that in fact there has been an expansion of the authority held by notaries. The expansion of authority, the regulation of which is outside the Notary Law, in fact still leaves a legal problem in the form of a problem of unclear norms. At first glance, the problem of unclear norms in the Regulation of the Minister of Cooperatives and SMEs is indeed not visible. However, if examined further, the problem of unclear norms can be found in Article 10 paragraph (8).

Article 10 paragraph (8) of the Regulation of the Minister of Cooperatives and SMEs No. 9 of 2018 concerning the Implementation and Development of Cooperatives is an article that contains the problem of the ambiguity of the norms as intended. This can occur because the construction of the norms in the relevant article is too simple, so that the wording of the article does not provide sufficient confirmation regarding the matter that is actually to be regulated.

The article that only states that “*Notaris membuat salinan Akta Pendirian untuk koperasi yang bersangkutan*” is not clear enough to regulate who is authorized to make a copy of the deed of establishment of the cooperative. Is it only to the notary who has made the deed of establishment for the cooperative in question? Or also to other notaries as long as the other notary has been appointed or registered as a Notary Making Cooperative Deeds by the Minister of Cooperatives and Small and Medium Enterprises? This unclear regulation is what has the potential to be interpreted differently by many parties, so that problems like this can be classified as problems of unclear norms.

4.2 Solving the Problem of Normative Ambiguity with Relevant Legal Theories

The problem of the ambiguity of norms related to the expansion of notary authority regulated in the Regulation of the Minister of Cooperatives and SMEs No. 9 of 2018 can be solved by using several legal theories put forward by experts. The theories that can be used because they are relevant to the problem of the ambiguity of norms include:

a. Theory of Legal Certainty

The theory of legal certainty is a theory that requires certainty in applicable law. According to this theory, certainty is one of the basic values that must exist and be fulfilled in a legal system. This is because the certainty itself can provide a guarantee that everyone will be able to clearly understand what their rights and obligations are. Thus, the aspect of justice will be fulfilled and everyone will be protected from arbitrary actions.

The theory of legal certainty was pioneered by Gustav Radbruch. According to Gustav Radbruch, a legal rule must be made definite in written form.⁷ Without legal certainty,

⁷ Julyano, Mario., & Sulistyawan, Aditya Yuli. (2019). “Pemahaman terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum.” *Jurnal Crepido*, Vol. 1 (No. 1), 13-22. h. 13

everyone will not know what to do, which can trigger chaos. The theory of legal certainty expects the implementation of clear, permanent, and consistent laws, which cannot be influenced by subjective matters.⁸

With this theory of legal certainty, the problem of normative ambiguity can be solved by making changes to the provisions that contain the normative ambiguity, in this case Article 10 paragraph (8) of the Regulation of the Minister of Cooperatives and SMEs No. 9 of 2018 concerning the Implementation and Development of Cooperatives. The new regulations that will later be stipulated as amendments to the old regulations that are problematic because they contain normative ambiguity, must be an improvement on the old regulations concerned and be able to firmly regulate the matters contained therein. This is to prevent the creation of conditions of legal uncertainty caused by normative ambiguity in a statutory regulation.

b. Theory of Authority

The authority referred to in the theory of authority is defined as the ability or authority granted by law to an organ or agency to carry out a function based on positive law. The theory of authority states that an authority must be strictly regulated and stipulated in laws and regulations. This implies that the authority obtained by an organ or agency must be based on a valid legal basis. Thus, authority can also be defined as power that is formalized through applicable laws and regulations.⁹

Philipus M. Hadjon stated that legitimate authority can be obtained in three ways, namely by attribution, delegation, and also mandate.¹⁰ Attribution is the granting of authority by the legislator to a government organ. This means that the authority obtained by attribution is the authority that comes from the law. Furthermore, delegation is the granting of authority from one government organ to another government organ. This means that the authority obtained by delegation is the authority that comes from a delegation. While the mandate is different from attribution or delegation. In a mandate there is no granting or delegation of an

⁸ Prayogo, R. Tony. (2016). "Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 tentang Hak Uji Materiil dan dalam Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 tentang Pedoman Beracara dalam Pengujian Undang-Undang." *Jurnal Legislasi Indonesia*, Vol. 13 (No. 2), 191-201. h. 194

⁹ Hadi, Syofyan., & Michael, Tomy. (2017). "Principles of Defense (Rechtmatigheid) in Decision Standing of State Administration." *Jurnal Cita Hukum*, Vol. 5 (No. 2), 383-400. h. 390

¹⁰ *Ibid.*

authority, but only a permit to exercise an authority belonging to and on behalf of another organ that grants the permit.¹¹

The relationship between the theory of authority and the problem of unclear norms related to the expansion of the notary's authority to make copies of cooperative deed of establishment regulated by the Ministerial Regulation on the Implementation and Development of Cooperatives, namely when facing the problem of unclear norms when carrying out his duties, a notary can use this theory of authority to identify whether he is indeed authorized to carry out the relevant authority.

In relation to making a copy of the cooperative's deed of establishment, a notary must know the basis of the authority to make a copy of the deed in general. The basis of this authority is in the Notary Law and its amendments, specifically in Article 57. Article 57 of the Notary Law and its amendments, reads: “*Grosse Akta, Salinan Akta, Kutipan Akta Notaris, atau pengesahan surat di bawah tangan yang dilekatkan pada akta yang disimpan dalam Protokol Notaris, hanya dapat dikeluarkan oleh Notaris yang membuatnya, Notaris Pengganti, atau pemegang Protokol Notaris yang sah.*”

Based on the provisions of the article above, it can be seen that not all notaries have the authority to make a copy of a deed. Likewise, a copy of the deed of establishment of a cooperative cannot be made by just any notary. However, only notaries who are given authority by Article 57 of the Notary Law and its amendments can make a copy of the deed of establishment of a cooperative as referred to in Article 10 paragraph (8) of the Regulation of the Minister of Cooperatives and SMEs No. 9 of 2018 concerning the Implementation and Development of Cooperatives.

c. Theory of Compliance

Compliance theory is a theory that states that everyone will generally obey and comply with the applicable legal rules because they have been indoctrinated to do so. Everyone has been taught from the beginning to always obey the legal rules that apply in society. This learning process includes socialization to everyone who will later be able to recognize, understand, and obey these rules.

¹¹ Sharon, Grace. (2020). “Teori Wewenang dalam Perizinan.” *Justicabelen*, Vol. 3 (No. 1), 50-65. h. 61

Soerjono Soekanto stated that the factors that can influence compliance with the law include compliance, identification, and internalization. Compliance means that compliance is influenced by the hope of getting a reward or the desire to avoid existing punishments. Identification means that compliance is influenced by the desire to maintain good relations with the authorities that create and establish a legal rule. Internalization means that compliance is influenced by the belief that the existence of these legal rules has a beneficial purpose.¹²

The relationship between the theory of compliance and the problem of the ambiguity of norms related to the expansion of the authority of a notary to make copies of cooperative deed of establishment, namely as long as the problem of the ambiguity of the norm has not been resolved by updating the regulations containing the ambiguity of the norm, a notary must continue to comply with the basic rules that bind him. For example, a notary must continue to comply with the provisions of Article 57 of the Notary Law and its amendments, so that no actions occur outside the authority of the notary himself.

5. Conclusion and Recommendations

Based on the discussion of the material presented above, the following conclusions can be drawn. The regulation regarding the expansion of notary authority in Permenkop UKM No. 9 of 2018 is contained in several articles, including Article 10 paragraph (8), Article 12 paragraph (5), Article 12 paragraph (6), Article 12 paragraph (7), Article 14 paragraph (4), Article 16 paragraph (3), Article 24 paragraph (6), and Article 26 paragraph (3). Among these articles, there is one article whose normative construction is not clear enough, thus causing the problem of normative ambiguity. The article is Article 10 paragraph (8). Furthermore, the problem of normative ambiguity can be solved by using several legal theories that are relevant to the problem. These legal theories are the theory of legal certainty, the theory of authority, and the theory of compliance.

References

Book

¹² Sholihin, Riyadus. (2023). "Membangun Kesadaran Hukum Siswa dalam Berkendara." *Jamparing: Jurnal Akuntansi Manajemen Pariwisata dan Pembelajaran Konseling*, Vol. 1 (No. 1), 12-18. h. 15

Bachtiar. (2018). *Metode Penelitian Hukum*. Banten: Unpam Press.

Qamar, Nurul., *et.al.* (2017). *Metode Penelitian Hukum (Legal Research Methods)*. Makassar: CV. Social Politic Genius (SIGn).

Journal

Djanggih, Hardianto., & Qamar, Nurul. (2018). "Penerapan Teori-Teori Kriminologi dalam Penanggulangan Kejahatan Siber (*Cyber Crime*).” *Pandecta*, Vol. 13 (No. 1), 10-23. DOI: <https://doi.org/10.15294/pandecta.v13i1.14020>

Hadi, Syofyan., & Michael, Tomy. (2017). "Principles of Defense (*Rechtmatigheid*) in Decision Standing of State Administration.” *Jurnal Cita Hukum*, Vol. 5 (No. 2), 383-400. DOI: <https://doi.org/10.15408/jch.v5i2.7096>

Julyano, Mario., & Sulistyawan, Aditya Yuli. (2019). "Pemahaman terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum.” *Jurnal Crepido*, Vol. 1 (No. 1), 13-22. DOI: <https://doi.org/10.14710/crepido.1.1.13-22>

Nasarudin, Tubagus Muhammad. (2020). "Konsepsi Negara Hukum Pancasila dan Implementasinya di Indonesia.” *Pranata Hukum: Jurnal Ilmu Hukum*, Vol. 15 (No. 1), 43-52. DOI: <https://doi.org/10.36448/pranatahukum.v15i1.217>

Prayogo, R. Tony. (2016). "Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 tentang Hak Uji Materiil dan dalam Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 tentang Pedoman Beracara dalam Pengujian Undang-Undang.” *Jurnal Legislasi Indonesia*, Vol. 13 (No. 2), 191-201. DOI: <https://doi.org/10.54629/jli.v13i2.151>

Sasongko, Tomy Indra. (2018). "Kewenangan Notaris dalam Pembuatan Akta Risalah Lelang Pasca Berlakunya Peraturan Menteri Keuangan Nomor 90/PMK.06/2016 tentang Pedoman Pelaksanaan Lelang dengan Penawaran Secara Tertulis Tanpa Kehadiran Peserta Lelang Melalui Internet.” *Lex Renaissance*, Vol. 1 (No. 3), 206-225. DOI: <https://doi.org/10.20885/JLR.vol3.iss1.art9>

Sharon, Grace. (2020). "Teori Wewenang dalam Perizinan.” *Justicabelen*, Vol. 3 (No. 1), 50-65. DOI: <http://dx.doi.org/10.30587/justiciabelen.v3i1.2249>

Sholihin, Riyadus. (2023). "Membangun Kesadaran Hukum Siswa dalam Berkendara.” *Jamparing: Jurnal Akuntansi Manajemen Pariwisata dan Pembelajaran Konseling*, Vol. 1 (No. 1), 12-18. DOI: <https://doi.org/10.57235/jamparingv1i1.953>

Widiasih, Ni Kadek Ayu Ena. (2020). "Kewenangan Notaris dalam Mensertifikasi Transaksi yang Dilakukan Secara Elektronik (*Cyber Notary*).” *Acta Comitas: Jurnal Hukum Kenotariatan*, Vol. 5 (No. 1), 150-160. DOI: <https://doi.org/10.24843/AC.2020.v05.i01.p13>

Regulation

Kitab Undang-Undang Hukum Perdata Indonesia (*Burgerlijk Wetboek*)

Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 117, Tambahan Lembaran Negara Republik Indonesia Nomor 4432).

Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3, Tambahan Lembaran Negara Republik Indonesia Nomor 5491).

Peraturan Menteri Koperasi dan Usaha Kecil dan Menengah Nomor 9 Tahun 2018 tentang Penyelenggaraan dan Pembinaan Perkoperasian (Berita Negara Republik Indonesia Tahun 2018 Nomor 833).