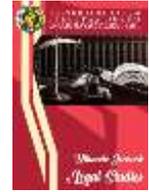




ULTIMATE JOURNAL OF LEGAL STUDIES (ULJLS)

Journal homepage: <https://talenta.usu.ac.id/uljls>



Globalization and Notary Authority in Making Agreements

Rina¹, Agus Yudha Hernoko², Rosnidar Sembiring³, Hasim Purba⁴

^{1,3,4} Faculty of Law, Universitas Sumatera Utara, Medan, 20155, Indonesia,

² Universitas Airlangga, Indonesia

*Corresponding Author: rinash73@gmail.com

ARTICLE INFO

Article history:

Received April 19, 2023

Revised May 3, 2023

Accepted May 31, 2023

Available online June 15, 2023.

E-ISSN: -

P-ISSN: -

How to cite:

Rina. (2023). Globalization and Notary Authority in Making Agreements. Journal Ultimate Journal of Legal Studies, 1(1), 27-39.

ABSTRACT

The industrial revolution in the era of globalization greatly influenced the authority and practice of notary in the future and became an interesting issue. Developments in technology (information) are the result of human intellectual works that have brought extraordinary change in human lifestyle. The purpose of this research to determine the impact of globalization regarding the authority of a notary and the ideal authority in developing and completing the authority and services of a notary in the era of the industrial revolution 4.0. and Society 5.0. Notaries play a role in carrying out some of the public functions of the state in the field of civil law which carry out legal services to people/public who have responsibilities regarding authentic evidence in the form of letters, deeds or documents made in writing for various legal actions, agreements and stipulations law or other authorities. The research method used is normative juridical by reviewing and analyzing legal materials in the form of notary regulations using library research with conceptual approach, statute approach and comparative approach.

The results of this study are that currently notaries in Indonesia are still bound by Indonesian Notary Act namely *Undang Undang Jabatan Notaris* (shorten UUJN) which is no longer fulfill with the needs of the development of globalization. The authority of notary services and practices as a result of the impact of globalization is a challenge and opportunity for the development and improvement of the future of the profession and position of a notary with the support of information technology which must be regulated by the state through amendments to UUJN.

Keywords: *Agreement; Globalization; Notary; Technology.*

ABSTRAK

Era globalisasi revolusi industri sangat mempengaruhi kewenangan dan praktik notaris kedepannya dan menjadi satu isu menarik. Kemajuan teknologi (informasi) merupakan hasil karya intelektual manusia yang telah membawa perubahan luar biasa dalam pola hidup manusia. Penelitian ini bertujuan untuk mengetahui dampak globalisasi berkaitan kewenangan notaris serta kewenangan yang ideal dalam pengembangan dan penyempurnaannya atas kewenangan dan jasa pelayanan notaris dalam era revolusi industri 4.0. dan *society 5.0*. Notaris berperan dalam menjalankan sebagian fungsi publik dari negara di bidang hukum perdata yang menjalankan pelayanan hukum kepada masyarakat luas yang memiliki tanggung jawab berkenaan dengan alat bukti otentik berupa surat-surat, akta-akta maupun dokumen yang dibuat secara tertulis atas berbagai perbuatan, perjanjian dan penetapan hukum ataupun kewenangan lain. Metode penelitian yang digunakan adalah yuridis normatif dengan mengkaji dan menganalisis bahan hukum berupa peraturan kenotariatan menggunakan studi kepustakaan dengan pendekatan konseptual, pendekatan perundang-undangan dan pendekatan perbandingan.



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International.

Hasil dari penelitian ini adalah untuk saat ini notaris di Indonesia masih terikat oleh UUN yang sudah tidak sesuai dengan kebutuhan perkembangan globalisasi. Kewenangan jasa dan praktik notaris akibat dampak globalisasi merupakan tantangan dan peluang bagi pengembangan dan perbaikan masa depan profesi dan jabatan notaris dengan dukungan informasi teknologi yang harus diatur oleh negara melalui perubahan UUN.

Kata kunci: Globalisasi; Notaris; Perjanjian; Teknologi.

1. Introduction

Globalization in the economy along with the development of information technology in the era of the industrial revolution 4.0 and now move to society 5.0. have big effect in increasing of cooperation between subjects of international law. The development of technological progress has become a very influential part and expedite the facilitates of every human activities in doing many things through digital communication tools and devices such as exchanging information and data, making payments, ordering or purchasing across domestic and international borders without limit. The development of Information and Communication Technology has given effect in the exchange of information around the world can be done in seconds. (Kominfo, 2018) The use of electronic devices such as computers, which used to be big as production machines, are getting smaller and more sophisticated and communication tools that are getting smarter (smartphones) allow people to connect with other people around the world faster and faster without limits.

The advanced technological create all kinds of new sensors and utilize the information generated from these sensors and record it for 24 hours automatically and whether we realize or not, this new phenomenon has caused the loss of one's private life because all human movements and activities can be monitored at the control center. (Binus.Ac.Id, 2021). Computers can perform complex calculations using cloud computing. Industrial revolution 4.0 could create machines that are able to learn, realize they have made mistakes and make corrections appropriately so that they can improve subsequent results like a human. (Mansur, 2015) On the other hand, the integration of Cyber Physical System (CPS) & Internet of Things and Services (IoT and IoS) into industrial processes which include manufacturing, logistics and other processes and with integrated manufacturing activities through the massive use of wireless technology and big data making data utilization more efficient with server systems, integrating all automation activities in one system. This cyber physical system is upgraded by Society 5.0. which introduced by Japan where Society 5.0. give the possibility to use Artificial Intelligence (AI) which using big data and robot to do and support people activities.

The fusion of digital & internet technology with conventional industries which has a huge impact on the world of work including legal professions such as legal consultants, lawyers, and notaries. The Industrial Revolution 4.0. and Society 5.0. give priority to the element of speed in the availability of information, where all entities in one industrial environment such as people, machines, technology are always connected & can share information each other without boundaries (borderless).

In general, Industry 4.0. describes a development trend towards automation and data exchange in technology and processes in the manufacturing industry. These trends include the Internet of Things (IoT), Industrial Internet of Things (IioT), Cyber physical systems (CPS), Artificial Intelligence (AI), smart factories, Cloud Computing Systems etc. Even in the Industrial Internet of Things design, this industrial level could create a manufacturing system where machines in factories are equipped with wireless connectivity and sensors to monitor and visualize the entire production process. The autonomous decision-making could done directly by this technology. Meanwhile, wireless connectivity and machine augmentation will greatly advance with the full rollout of 5G. Thus, it will provide a faster response time, enable real-time communication between systems.

The fourth industrial revolution and Society 5.0. are related to digital twin technology. This technology can create virtual versions of installations, processes and applications that exist in the real world. This virtual version could be tested by making it more effective, usable and cost-effective. The Society 5.0., where people's lives have been focused on humans with collaboration with robots using the Internet of Things (IoT) and Artificial Intelligence. Interestingly, this virtual version can be created in the real world and linked, through the Internet of Things. This technology allows cyber-physical systems to communicate and cooperate with each other and exchange data in real time. This technology can be integrated and processed automatically. In addition, this automation includes interconnectivity between processes, information transparency, and technical assistance for decentralization decisions (Binus.Ac.Id, 2021).

The era of digitalization will have a global impact, eliminating around 1-1.5 billion jobs throughout the years 2015-2025 due to the replacement of human positions with automatic machines (Gerd Leonhard, Futurist). Technologies like 5G, AI and AI-as-a-service business models are driving a re-imagining of manufacturing, supply chains, urban infrastructure, energy and mobility. Global spend on ICT technology in 2022 is expected to be \$5.82 trillion. (Forum, 2023) Investment in digital infrastructure is increasing with more than \$64 billion generated.

Globalization has made the trade relations of countries in the world including Indonesia closer. The existence of globalization certainly affects various sectors in Indonesia, including the economic sector. Improvement of the infrastructures set up by the Indonesian government is one of the best visions that can attract investors from overseas. (Gischa, 2020)

Indonesia is a heaven for investment in the world and the world recognizes Indonesia as one of the countries that is quite safe and comfortable to invest in. (Satria) This is due to several factors supported by the Indonesian government namely: getting facilities and incentives such as tax incentives, new markets are easy to find, human resources and cheap raw materials, cheap labor prices, licenses and transfer of technology. Besides that, Indonesia has ratified international agreements related to investments and international trades.

For Indonesia, the main benefit in the economic sector is the opening of export-import routes and trade between countries, thereby increasing income and foreign exchange for Indonesia. The Indonesian government will face an incessant number of products such as goods and services from overseas coming to Indonesia so that local entrepreneurs must be able to compete by having strategy and innovating so that their products could survive and compete with overseas ones.

The Indonesian government's policy in the field of investment is embodied in regulation namely Limited Liability Company Law Number 40 of 2007 (hereinafter referred to as the Company Law), Law Number 25 of 2007 concerning Investment (hereinafter referred to as Investment Law) and Law Number 8 of 1995 concerning the Capital Market (hereinafter referred to as Capital Market Law), then facilitating the ease to proceed license and permit under one roof through Online Single Submission (hereinafter referred to as OSS) by issuing Government Regulation Number 5 of 2021 to replace Government Regulation Number 24 of 2018.

The Investment Law explains that the activity of foreign investors can fully or jointly with domestic/local investors for invest their capital to do business in the territory of the Republic of Indonesia subject to the provision of Indonesia law and regulation.

Indonesia government also opens the opportunities for Indonesian people to invest overseas by actively joining world forums such as G20 Summit, WTO (World Trade Organization), and participate in ratifying various economic trade policy agreements such as MEA /AEC (Asean Economic Community) which is realization of the free market in the Southeast Asia, TRIPS (Trade Related Aspects of Intellectual Property Rights), GATT (General Agreement on Tariffs and Trade).

The development of this technology requires the advance of legal science, so that could support technology developments. The change of the world, information technology and economic at least give influence to force law to change also in order to adapt the situation. The society need everything run faster, efficient and save cost. The presence of a notary in order to play his role in carrying out state's functions in legal services in society such as to integrate, harmonize and coordinate the society interests is urgently needed without ignoring the precautionary principle. For Indonesian Notary, the industrial revolutions expedite and make it easy in filing, administration and sending and changing data. (Tedjosaputro, 2019) However, Indonesian Notary Law (UUJN) still using the old fashion concept namely using manual and conventional/ traditional concept. Physically presence before notary, wet signature, keep hard documents keep maintained.

The existence of different interests in society and notary can lead clashes one to another. The role of notary in public interest in order to limit and protect certain interest each other with legal regulations (Rahardjo, 1982) without break the notary's authority.

Ease of doing business in cross border international trade in the economic sector with the industrial revolution 4.0 and Society 5.0.also has an impact on the profession of notaries in the law field who make agreement/deeds between citizens or between government institutions or non- government institutions for domestic and international interests. Notaries will be directly involved in making written evidences, investment cooperation agreement, establishment of business entities which involve individuals or cooperations for business expansion in Indonesia or overseas.

Ease of technology and exchange of information is a challenge for notaries who are bound by UUJN in carrying out their position and authorities. Hasim Purba stated that the role and presence of information technology in daily activities will facilitate and provide legal certainty for the parties. However, in nature this development also has raise problems juridical and non-juridical. (Purba, 2020).

2. Research Method

Research method of this article is a normative juridical by reviewing and analyzing legal materials in the form of notary regulations using conceptual approach, statute approach and comparative approach with library research by qualitative descriptive method. This method examines the role and functions of a notary from the legal aspects that apply in supporting investment in Indonesia and overseas in line with industrial revolution 4.0 and Society 5.0.in the interest of global economic developments in term of making agreements which are connected to UUJN, other regulations and international agreements which involve notaries' authorities.

3. Result And Discussion

3.1. Law, Globalization, and the Industrial Revolution

In the modern world, the Global Village, as Marshall McLuhan describe it in the 1960s- (Krol, 2011) information spreads rapidly. This condition has a direct impact to the world and expedite the change of social, political and economic. Even the small part of the world become closer and integrated. The contribution of development in technology information in order to remove barrier for the purpose making new world, with closer relationship will make one country will depend on other country by mutualism.

This process has been noticed since the era great geographical discoveries and obtaining its momentum since computer revolution in the mid of 20th century. Exchange accelerated extraordinarily with the information on a global scale that has supported and enhanced the dynamic of the global process for many political economics, and social institutions, especially affects the legal function of society.

In the scope of a country, globalization also affects law because regulations and statutory have to be adapted to the demand and real conditions of current world developments, otherwise it will affect on lagging behind the regulations or statutory themselves. The impact of globalization affect against the field of law could understood with some reasons, (Michael) first in general, globalization could be accepted as a new paradigm for modern people in the world community, with a clear concept in the world's general discourse. The fundamental debate over globalizations occurred in the 1990's without leading to a clear consensus.

Second, the development paradigm in field of law in responding the globalization, is not by shifting the correct paradigm, however by incorrect paradigm, therefore hard efforts are needed to adapt to the methodological concept of nationalism which has provided a new paradigm for the last two hundred years or more. The same thing can found in social theories regarding state paradigm, therefore globalization has not led to the correct paradigm friction.

The third reason, in the end, globalization raises interdisciplinary challenges between globalization in the field of law. In one side, there are so many conceptual and theoretical discussion of globalization undermine or ignores law as one of important factor. A broader understanding of globalization distinguishes only three aspects: economic, cultural, political while law is not include in this aspect. In fact, in the law paradigm itself, globalization have been impact against the law. On the other side, globalization has implemented or applied legal theory and legal doctrine in a simple concept.

Broadly speaking, according to Kennedy (Wells, 2012) the globalization phase in the legal field could concluded that in the first phase explicitly includes ideas or theories that to explain globalization. In the second phase is the ambition to confirm the globalization hypothesis consistently. Another thing in the third phase explain globalization occurs because of supporting from political intervention so that resulting opening economy market as well as reform the legal system of each country. Kennedy's opinion concerning globalization is the result of interpretation of contemporary internal legal culture which make globalization affects all people in legal fields, including legal professors, judges and lawyers in carrying out their duties and authorities.

Globalization process especially in the legal field will affect toward domestic law in each country, because of the concept of globalization changes the nature of social relationships from the national level to the global level, thereby providing opportunities justice in global for global community. Globalization eliminates space in social interaction, globalization is also create the basis for national society and global society in social relationships. From the political perspective, globalization pulls out or lifts national territories boundaries into global.

Significantly the change of politic and law occur fundamentally and directly, so the way to rule social relations should be changed too. In order the regulation become effective, it should involve the countries in global level. The state has major role in the basis for reviewing and re-arranging regulations to regulate social relations from national regulations become global regulations even though not the only one play the role. (Wells, 2012)

Globalization brings the concept of justice from the domestic level to justice at the global level. By globalization, we realize that we need to assist each other in responding to the needs and concerns that occurs beyond national boundaries. For this reason, global mobilizations is needed for information, power, capital or public opinion, because through globalization we could review whether political policies we have carried out could have impact on other sectors of people life directly or dramatically as well as in the term of benefits and social conditions from country in other part of the world.

As the effect of globalization in internal relations and trade, quite a number of foreign or international legal regulations will also be adopted in national regulations so that there is a need to create transnational rules in the area of public and private law. These transnational rules legal principal will be accepted faster as national law because the transnational legal principals are a game in international and global communication and economy. (Supriyono, 2019).

Business player or business entities will carry out their investment and trade across countries must be aware of applicable provisions and authorities and taking into account the legal system in force in those countries through the services of a notary or legal practitioners. Notaries must also understand and learn the system that applies in the country concerned in terms of making deeds and agreements that involve foreigners or foreign entities in carrying out their functions and authorities when dealing directly face to face using technology and digital media in the era industrial revolution.

The Industrial revolution 4.0 or called cyber physical system is a revolution that focuses on automation and collaboration between cyber technologies. The 4.0 revolutions itself emerged in the 21st century with the main characteristic being the incorporation of information and communication technology into the industrial sector. The emergence of this revolution, changing many things in various sectors. For example previously factory required a lot of workers to carry out its operations, now it is being replaced by the use of technological machines.

In the midst of the industrial revolutions 4.0., there are 9 technologies that are main pillars in the development in every existing industry to be ready digitally, (barki.uma.ac.id, 2021) namely:

1. *Internet of Things or IoT*; The first technology in development that occurred in the industrial revolution 4.0 was the Internet of Things or IoT which is a concept where an object has the ability to transfer existing data over a network without the need for human interaction. *Internet of Things or IoT* itself is a system that uses various computing devices, mechanical devices, and digital machines become a

connected unit. *Internet of Things or IoT* system has four components consisting of sensor devices, connectivity, data processing and user interfaces. One example of a product from *Internet of Things or IoT* technology is Jarvis which can turn off the lights when it is morning. In addition, several other application that take advantage of *Internet of Things or IoT* are bicycles which uses *Internet of Things or IoT* for bike sharing, e Fishery which uses *Internet of Things or IoT* to feed fish automatically, Qlue which uses *Internet of Things or IoT* for smart cities and Hara which uses *Internet of Things or IoT* for food and agriculture.

2. *Big Data*; The second technology under development that occurred in the industrial revolution 4.0. is Big Data. Big Data is a term used to describe large volumes of data, both structured and unstructured data. Big data itself has been used in many businesses and can help a company determine the direction of his business. Big data itself has been used in Indonesia such as Sonar platform, *Paques* Platform, Warung Data Databot.
3. *Augmented Reality*; The third technology under development that occurred in the industrial revolution 4.0. is augmented reality, also known as AR. AR is technology that combines two dimensional virtual world objects with existing three dimensional object into a real environment, then project these existing virtual objects into a real time. Some applications which used AR technology are chatbot applications and face recognitions.
4. *Cyber Security*; The fourth technology under development that occurred in the industrial revolutions 4.0. is cyber security which is a form of effort to protect all information held from cyber attacks. Cyber attack itself is a kind of action which deliberately carried out to disrupt the confidentiality, integrity as well as availability of information.
5. *Artificial Intelligence* or AI; The fifth technology under development that occurred in the industrial revolution 4.0. is Artificial Intelligence or we called AI. AI itself is a form of computer technology or a machine that has intelligence like a human. The main function of AI is its ability to learn data received on an ongoing basis. The more data received and analyzed, the better it will be in making predictions.
6. *Additive Manufacturing*; The sixth technology in development that occurred in the industrial revolution 4.0. is *Additive Manufacturing* which is a new breakthrough in the manufacturing industry and is often known for using 3D printers. With the development of the current digital era and the progress of the current digital era, digital images or designs made, can be used as real items with adjustable sizes and shapes.
7. *Simulation*; The seventh technology in development that occurred in the industrial revolutions 4.0. is Simulation which is a representative form of operation from time to time. Simulation is often used in a variety of contexts, such as in technology simulations used for performance optimization, safety engineering, testing and training.
8. *System Integration*; The eighth technology in development that occurred in the industrial revolution 4.0. is System Integration, which is a series of links between several systems, both physically and functionally. The system will also combine the existing sub-system components in one system so that it can guarantee each existing functions can work properly as an integral part of the existing system.
9. *Cloud computing*; The ninth technology under development that occurred in the industrial revolutions 4.0. is cloud computing which is a technology that makes the internet today the center for data management and applications. By using this cloud computing, computer users are given access to enter virtual server that can be used as a server configurations via internet. There are three types of service models from cloud computing itself, which consist of:
 - a. ***SaaS which stands for Cloud Software as a Service is a service provided to use applications that have been provided by cloud infrastructure.***
 - b. ***PaaS*** which stands for ***Cloud Platform as a Service*** which is a service provided to use a given platform so that developers who use it only need to focus on developing an applications.
 - c. ***IaaS*** which stands from ***Infrastructure as a Service*** which is a service provided to use the provided infrastructure, where one can process, store, network and use the resources needed.

Ease of accessing information by using gadget and other technologies, effectiveness in the field of production by replacing existing human resources with the machine technology, increasing national income because people could produce goods in a relative short time with good quality, even though we need to keep increasing job opportunities for labor experts, due to using a machine still require a human expert to move its system. It is a positive impact of the industrial revolutions.

The negative impact of the industrial revolutions 4.0. which need to be anticipated such as the systems being subject to vulnerable cyber attacks, need for high costs in investments for equipment and workers because of we have to spend money for investment in advance for buying tools/equipment and training employees to be skillful so they could run the tools and equipment well, massive urbanization due to an increasing population in the big cities, the use of machines will produce air and water pollutions, large amount of waste, and other negative things that could damage the whole environment.

This industrial revolution 4.0. is upgraded by society 5.0. using Artificial Intelligence and robot to settle social problem which is integrated by cyber space and physical. In the era Society 5.0., technology has been handle to manage and analyze database from people and give feedback to people again in the physical with various shapes. Compare to era 4.0. where everything have been done automatically, however for era society 5.0.the purpose of the technology to complete the process well, have responsibility and give value. Era society 5.0. have a higher convergence level in cyber space and physical.

3.2. Authority of Indonesian Notaries Related to the Industrial Revolution

According to the law (*rechtskraak/rechtmacht*) the authority is a power given to state agencies or officials to carry out governmental actions and or actions in accordance with the legal rules as the basis of their authority. Habib Adjie (Habib Adjie, 2020) stated the authority is the power given as well as the limitation of power by law to official or state bodies to be able to carry out governmental action (*bestuur handelingen*) and or other legal actions (*rechthandelingen*) and concrete action (*feitelijk handelingen*) in accordance with the conformity /procedure regulated by law and intended to raise certain legal consequences against person or legal entities.

According to Habib Adjie (Habib Adjie, 2020), the authority has three elements, namely:

- a. Legal Basis; Each authority must be able to demonstrate the legal basis (either the constitution, law/ Government regulation replacement of law (PERPU), Government Regulation, Presidential Regulation, or Regional Regulations) on which this authority is based. An official or state agency can not say he has authority to take certain actions, but the actions taken apparently not regulated by law. No matter how small that authority, it must have legal basis. For example, a notary who makes a death certificate or birth certificate stated to have taken an arbitrary action (without authority) because UUJN or other laws do not give such authority to a notary to make death certificate or birth certificates.
- b. Legal Conformity; Even though a state official or agency has the authority to take certain legal actions, the official or agency cannot use that authority freely. State officials or agencies must follow the procedure prescribed by law. Officials or agencies must follow the procedure required by law, not based on their own will and interest. The obligation of officials or bodies to comply with procedures established by law and not based on personal will or desires in

- exercising their authorities is called legal conformity. For example, UUJN has stipulated procedure for a notary in making a deed such as the obligation of the parties to appear before notary or the deed must be read in front of the parties. Therefore, the notary is obliged to carry out the procedure ruled by UUJN, not of his own free will, for example by simple making a video call via social media such WhatsApp or other instead of facing as not ruled by UUJN.
- c. Influence; The use of authority by state officials or bodies aims to create influence of legal consequences for a person and or entity such as public legal entities and private legal entities. The legal consequences for actions taken by the official or agency could cause or nullify/remove the rights, obligations, position or legal status of a person and or entity. Any action taken on the basis of legal authority is valid to be revoked/cancelled (*vermoeden van rechmatigheid*), then every action has the power of action (applicability) and binding power to the person and or legal entity. For example, a deed drawn up by or before a notary in accordance with the notary's authority and made based on the correct procedure according to UUJN, the deed is valid and binding for the parties and has a position as a perfect and valid evidence.

This description shows that the position of a notary is strategic because there is interference or intervention by the state (government) in regulating the authority and placement of a notary is one of the proof that the presence of a notary is not only needed by the society, but also must receive special arrangement by the state (government). However, the authority exercised by this notary public makes the society/public as the object of his work legally, which is expected to raise competition among the notaries, so that for the legal certainty, the authority must be regulated in carrying out his position.

Notary is a public official meaning someone who is appointed, authorized and obliged by the state to serve the public/society in certain matters. It shows the role of the state in determining the position or existence of a notary. Without state's intervention, there will never be a juridical norm that gives authority to a notary.

In order to make authentic deed, a person must have the position as a public official. Notary is a public official who is given the right to use the Garuda state symbol in his stamp when exercising his authority.

Article 15 paragraph (10) UUJN, notaries have the authority to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and or desired by interested parties to be stated in authentic deeds, guaranteeing the certainty of the date of deed, keep the deed, provide grosse, copy and excerpt of the deed, all of that as long as the making of the deeds is not signed or excluded to other officials or other people determined by law.

Paragraph (2), in addition to the authority referred to in paragraph (1), the Notary also has the authority to:

- a. validate the signature and determine the certainty of the date of the letter under the hand by registering in a special book.
- b. post private letters by registering in a special book;
- c. make a copy of the private documents in the form of a copy containing a description as written and described in the relevant letter.
- d. Verify the suitability of the photocopy with the original letter
- e. Provide legal counseling in connection with the making deed
- f. Make a deed relating to land; or

g. Make a deed of minute of auction

All the authorities exercised by the notary were carried out manually and conventionally and followed the applicable laws and regulation before the industrial revolution era. The transition to shifting notary services and authorities from manual and conventional to digitization with digital transformation has been consciously and unconsciously carried out, but this shift has not been accompanied by the strengthening of laws and regulations. The concept of digitalization that supports notaries in carrying out their functions and authorities is currently only partially regulated in company law. UUJN as a legal umbrella for notaries has not regulated clearly and unequivocally, only briefly mentioned in the explanation UUJN article 15 paragraph (3) namely the authority of a notary to certify transactions carried out electronically (cyber notary) and it is enough to protect the notaries in running their role and authorities.

3.4. Notary Authority in Making Agreements

Provision regarding agreements as part of the *Burgelijke Wetboek (BW)* Book of Civil Code, book III chapter two which is still used as a general provision government agreements. Article 1313 of the Civil Code states that an agreement is an act in which one or more people bind themselves to one or more other people. Herlien Budiono (Budiono, 2011) also explained the definition of the agreement as a legal act that causes, changes, abolishes rights or creates a legal relations in such a way that the agreement creates legal consequences which is the aim of the parties.

Observing the definition of a legal expert with the definition of agreement in article 1313 of the Civil Code, shows that an agreement or a legal relations between two parties where one party promises to do one thing or not to do anything, while the other party has the right to demand the implementation of that promise. (Budiono, 2011) Due to an agreement is not accompanied by the achievements, the agreement is null and void by law. (MARI, 2008)

The validity of the contract/agreement according to Indonesian Law based on the provisions of article 1320 Civil Code includes subjective conditions and objective conditions. Agree this who bind themselves (*de toestemming van degenen die zich verbinden*), the ability to make agreement (*de bekwaamheid om eene verbintenis aan te gaan*), is a subjective requirement because these two conditions are directly with the people or parties who are bound by an agreement while a certain thing and a lawful cause is an objective requirement because it relate to the object of the agreement. Herlien Budiono (Budiono, 2011) is of the opinion that apart from the four elements mentioned, there is a fifth elements of the agreement, namely the form of the agreement which is determines the form of the agreement in a formal form or a legal actions which requires it to be made in a certain form.

A *contract* according to Black's Law Dictionary (Edition, 2019) is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. Catherine Tay Swee Kian also stated that *contract is an agreement which binds the parties concerned in other words a contract is an agreement enforceable by law*. (Chim, 1991) Definition of contract / agreement shown the essence of a contract is agreement, where the agreement is formed from the process of offering and acceptance.

If the agreement requires a formal form, the notary will be authorize to do so in accordance with the applicable laws and regulations. For agreements that are prepared by a notary and will be held and made as evidence for the parties in Indonesia, will refer and comply with the applicable provisions

and regulations, for example, must be made in Indonesian language, must follow the format of the authentic deed provisions that have been determined and must be made before a notary, the contents of the notarial deed were made at the request, desire and will of the interested parties (article 38 paragraph (3) c UUJN).

Article 15 paragraph (1) UUJN states that a Notary has the authority to make authentic deeds regarding all actions, agreements and stipulations required by law and or desired by interested parties. There is no prohibition for an Indonesian notary to assist the parties to compile and legalize an agreement which contains all actions, agreements and stipulations in other formats other than authentic deeds that have been determined by laws and regulations to be used in Indonesia or overseas as long as they meet the requirements specified in accordance regulations in force in Indonesia or the country concerned. If the interested parties have agreed on what was agreed in the contract/agreement, the notary can legalize the document as an authentic deed or under hand agreement which is legalized or recorded (*waarmerking*)

In the practice of cross-border investment or trade agreement where the parties could not be present together to sign an agreement for example an agreement made between Indonesian citizen residing in Indonesia and Singaporean citizen residing in Singapore. If one of the parties is in Indonesia, then the agreement signed by the party in Indonesia, then it will be legalized under the status of underhanded agreement legalized by an Indonesian notary and then sent to Singapore in digital format and or hard copy physical form and signed by the other party before a Singaporean public notary and legalized by Singaporean public notary. The signing can be reached and witnessed by other party using digital media in the form of video call/conferences or platforms available in the industrial revolutions era or vice versa and the documents is uploaded and sent to the parties and in Singapore this procedure is accepted.

One option in other the notary could play their authority abroad without break the UUJN by adopting the Hague Convention which is rectify by Indonesian government currently. Indonesian notary will certify the person appear before him and legalize the document presented to the notary.

Some of the notary's work in registering business entities such as registering company's name, partnership business through the website of the Ministry of Law and Human Right have been carried out by digitization, however the burden and risk of inputting data starting from the completion of work on the website is borne and become the responsibility of the notary completely because of disclaimer from the Ministry of Law and Human Right although on the other hand the information data inputted by the notary comes from the client and the control and soft file is kept in the Ministry data's base. Frankly speaking, on the digitization process really assists the notary's works faster, easier and effective.

4. Conclusion

Notaries in carrying out their positions are always required to act professionally and comply with laws and regulations related to UUJN and the Civil Code. The profession and work of a notary is greatly affected if the notary himself and the government do not anticipate the developments and impacts of the industrial revolutions era. Occupational risk being required for notaries to remain

professional and the other side legal instruments for law related to notary digitization have not been regulated and inadequate technological infrastructure is an obstacle and threat for notaries. The challenge faced by notaries today is the preparation of the notaries to resolve the problems of interested parties in term domestic and cross country agreements without violating UUJN. The preparation of notaries in dealing with various problems related to the complexity of the legal requirements of the parties make the need for legal protection and certainty through authentic deed, legalization and digitalization of deed of agreement very urgent and priority.

However, in practice the implementation of digitization carried by a notary can not be carried out in totally due to there are no laws or regulations specifically made to regulate digitization and cyber notary.

Notary is a trusted honorable position (*officium nobile*) given by the state so that a notary must have good and adequate scientific law quality in term of professionalism, especially with regard to the substance of the agreement stipulated in the agreement, familiar and could adopt and run the technology well, have foreign language skills especially English language and good moral integrity in carrying out the legal profession while still complying with the rules and laws relating to the position and profession of a notary. For this reason, notaries need to be supported by technology infrastructures and facilities in facing industrial revolution era such as regulations, educations, protection of cyber security including using cyber notary.

Ease of obtain information and open market creates the need for services, protection and legal certainty for the public, resulting in the impact of competition among notaries so that the service provided by notaries really have value and weight that can be relied upon. The notary himself must be skillful and being expert by keep learning and have good behavior, attitude and moral value.

On the other side, Indonesian notaries are bound and subject to and limited by the authority set forth in UUJN. In making authentic deeds and legalizing documents for use in trade and economic traffic in Indonesia is the basis of evidence and can be fulfilled by a notary with the support of the government /state through regulatory tools and technological infrastructures. The use of digitization devices in document exchange traffic and obtaining legal information is also possible with the digitalization era, such as using email, smartphones, cloud and other technological devices. It is expected government will pay more attention in preparing infrastructures in technology and regulatory changes related to the notary law and continuous learning by notaries to update and upgrade themselves are needed in order to adapt with this new era for the best and safety in running their rule as *officium nobile*. Amendment UUJN in order to fulfill society needed in globalization and protect notaries in running their authority are urgently required.

References

- Artikel *Pengertian, Jenis Serta Dampak Revolusi Industri*, 9 Desember 2021, <https://Barki.Uma.Ac.Id/2021/12/09/Pengertian-Jenis-Serta-Dampak-Dari-Revolusi-Industri-4-0/>,
- Artikel *teknologi Digital Sebagai Kunci Utama Era Industri 4.0*, 1 Maret 2021, <https://Graduate.Binus.Ac.Id/2021/03/01/Teknologi-Digital-Sebagai-Kunci-Utama-Pada-Era-Industri-4-0/>,

- Black Law's Dictionary, 11th Edition, Thomson.(2016)
- Catharine P.Wells, Thought On Duncan Kennedy's Third Globalization, Comparative Law Review Vol.3, Tanggal 4 Januari 2012, Boston College Law School,
- Catherine Tay Swee Kian Dan Tang See Chim *Contract Law*, Singapura: Times Book International, 1991
- Dikdik M Arief Mansur Dan Elisaris Gultom, *Cyber Law Dan Aspek Hukum Teknologi Informal*, Bandung, Refika Aditama,
- Dr. Habib Adjie Dr. Rusdianto Sesung, S.H., M.H. "Tafsir, Penjelasan, Dan Komentor Atas Undang Undang Jabatan Notaris, Refika, Bandung, 2020.
- Hague Convention
- Herlien Budiono, *Ajaran Umum Hukum Perjanjian Dan Penerapannya Dibidang Kenotariatan (Bandung, Citra Aditya Bakti, 2011.*
- Kitab Undang Undang Hukum Perdata
- Kominfo, "Apa Itu Industri 4.0. Bagaimana Indonesia Menyongsongnya, 19 Februari 2019, https://www.kominfo.go.id/content/detail/16505/apa-itu-industri-40-dan-bagaimana-indonesia-menyongsongnya/0/sorotan_media, diakses 14 Mei 2022.
- Kominfo, "Perkembangan TIK Akibatkan Pertukaran Informasi Dalam Hitungan Detik", https://Www.Kominfo.Go.Id/Content/Detail/1318/Perkembangan-Tik-Akibatkan-Pertukaran-Infomasi-Dalam-Hitungan-Detik/0/Berita_Satker, Diakses 14 Mei 2022.
- Kominfo, "Revolusi Industri 4.0.", 28 Januari 2020, <https://aptika.kominfo.go.id/2020/01/revolusi-industri-4-0/> diakses 14 Mei 2022
- Malgorzata Krol, *Legal Culture And Legal Transplants, Report To International Congress Comparative Law, Vol. 1, Special Issue 1, Article 22, 2011*
- Pambudi Satria, "Indonesia Surga Investasi Dunia", <https://Investor.Id/National/67910/Indonesia-Surga-Investasi-Dunia>, Investor Id.
- Purba, Hasim, "Kontrak Elektronik Sebagai Alat Bukti Dalam Hukum Acara Perdata Dalam Pembaharuan Hukum Nasional Indonesia di Era 4.0., Pokok Pokok Pemikiran Guru Besar Ilmu Hukum, editor: Joni Emerzon dkk, Bandung: Alumni, 2020.
- Putusan Mahkamah Agung Republik Indonesia (MA RI) Nomor 1790 K/Pdt/2008 Tertanggal 20 Pebruari 2008.
- Ralf Michael, *Globalization And Law, Law Beyond The State*, http://Scholarship.Law.Duke.Edu/Cgi/Viewcontent.Cgi?Article=5540&Context=Faculty_Scholarship., Diakses Tanggal 15 Mei 2022.
- Satjipto Rahardjo, *Ilmu Hukum, Bandung, Alumni, 1982*
- Serafica Gischa, "Peran Indonesia Dalam Globalisasi Dan Dampaknya", <https://Www.Kompas.Com/Skola/Read/2020/01/20/180000369/Peran-Indonesia-Dalam-Globalisasi-Dan-Dampaknya?Page=All>. Diakses 14 Mei 2022.
- Supriyono, *Pengaruh Globalisasi Terhadap Pembangunan Hukum Dan Tantangannya Di Era Revolusi Industri*, Jurnal Hukum Responsif FH, UNPAB,
- Tedjosaputro, Liliana (2019) *Hukum Jabatan Notaris Dan Relevansinya Dalam Kehidupan Masyarakat Semarang*, CV Agung
- Undang Undang Jabatan Notaris No 30 Tahun 2004 Tentang Jabatan Notaris
- Undang Undang No 2 Tahun 2014 Tentang Perubahan Atas Undang Undang Jabatan Notaris No 30 Tahun 2004