

OPTIMIZATION THE ROLE OF PUBLIC NOTARY IN FACING THE ASEAN FRAMEWORK AGREEMENT ON SERVICE (AFAS) IN THE ASEAN AREA TO MAKE TRADE AGREEMENT

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Abstract: *Asean Framework Agreement On Service is an ASEAN member country agreement regarding the liberalization of services in various fields. With the agreement of ASEAN Member States to the Asean Framework Agreement On Service, the legal aspect is very much needed in business activities, one of the legal aspects (legal) of cooperation between international business actors is legal services from the Notary profession. However, at present there is no specific regulation in the provisions of the ASEAN Framework Agreement on Service for the legal service sector provided by the position of Notary. Based on the description above, the problem is formulated as follows: How to optimize the role of a notary in dealing with the ASEAN Framework Agreement on Service in the ASEAN region in making trade agreements? This type of research is a normative legal research and the approach used in this study is an approach through legislation, analysis approach. Asean Framework Agreement On Service where ASEAN countries need to ratify the Hague Convention 1961, so that the notarial deed in the ASEAN region can apply internationally.*

Keywords: *Optimization, Notary, AFAS, Trade Agreement, ASEAN.*

1. INTRODUCTION: The Development of Asean of Asean Framework Agreement on Service in Asean Area

The rapid development of relations between nations in carrying out various forms of cooperation is a challenge for the Indonesian people in facing free trade in the ASEAN region, various aspects underlying cooperation between ASEAN countries and geographical proximity to regions make it necessary for countries in the ASEAN region to form cooperation from various fields, such as cooperation in the fields of education, social and culture, trade, technology and other forms of cooperation.

All forms of cooperation are inseparable from efforts to form a legal umbrella so that each interest between nations can be protected, the source of freedom to enter into international agreements with other countries both unilaterally and multilaterally, namely the birth of the 1969 Vienna Convention and the agreement is adapted to national law each country, as one of the developments of cooperation between nations in the ASEAN region is the birth of the Asean Framework Agreement On Service, namely the liberalization of financial services both financial institutions and non-financial institutions.

Asean Framework Agreement On Service or abbreviated as AFAS, AFAS was signed by the ASEAN Economic Ministers on 15 December 1995 in Bangkok, Thailand. Service liberalization aims to remove barriers to service provision among ASEAN countries (1)

One example of the application of AFAS is the signing of 2015 by three countries namely Brunei Darussalam, Cambodia and Indonesia, with the title Protocol to implement the six package of commitments on financial services under the ASEAN Framework Agreement On Services signed in Kuala Lumpur On March 20, 2015 on the protocol to -6 (6) AFAS on Financial Services, therefore currently Banks from various ASEAN Countries can operate in the territory of Indonesia.

There are currently three Malaysian banks operating in Indonesia, namely Maybank, Maybank Syariah and CIMB. These three banks are capable of operating in Indonesia. Based on information from Agus Martowardoyo as the Governor of Bank Indonesia said the gap in penetration of Indonesian banks is still far compared to Malaysia and Singapore. As a result, the banks of the two countries penetrated to all corners of the country. While there are only a few Indonesian banks in the two countries. with a number of branch offices and Automatic Teller Machines (ATMs) spread throughout Indonesia. Agus explained, the three Malaysian banks had 1,456 branch offices with ATMs spread in 4,317 points. While there are only one branch of the Indonesian bank operating in Malaysia, one remittance office and one ATM (2)

In connection with the application of AFAS in Indonesia, it will be a challenge for Notaries to face competition between countries, especially the authentic deeds needed in the business field, Notaries are required to understand and

understand international law and not just dwell on national law, given that the rapid development of international law and cooperation between countries, especially in the ASEAN region. The notary will enter the era of globalization where there will be many cross-country contracts, by looking at the current legal developments, the law on the position of Notary has not been able to accommodate the development of the globalization era, especially after the entry into force of AFAS.

At present there is no specific regulation in the AFAS provisions regarding the legal services sector provided by the position of Notary, in this case it is necessary to link the AFAS provisions with statutory regulations, especially Law Number 2 of 2014 Amendment to Law Number 30 Year 2004 Regarding the Position of Notary, this is intended to harmonize or harmonize between national law and international law, so that the Notary is able to understand the problems of international law in the business sector related to his duties and responsibilities as general officials in dealing with AFAS.

Even though AFAS has been enacted, the law of the Notary office is still used as a guideline for the Notary in carrying out his position, this is intended as a form of protection against Notaries from unfair competition, because with the application of AFAS there will be potential for legal problems for the Notary Public, and violations may occur. The area of the Notary's position by carrying out his work abroad that is free from the supervision of the Notary Honorary Council, with an analysis in the form of a legal interpretation of the relationship between AFAS and the Notary Position Law making AFAS and the Notary Position Law a unity that cannot be separated, so that national legal provisions such as the Notary Position Act remains a priority even though AFAS has been ratified.

2. LITERATURE REVIEW:

2.1 REVIEW OF ASEAN FRAMEWORK AGREEMENT ON SERVICE (AFAS) NOTARY

2.1.1 AFAS Definition and Function

AFAS (ASEAN Framework Agreement on Services) is an agreement and cooperation in the framework of the liberalization of trade in services in the ASEAN forum. The agreement between ASEAN countries in principle reflects the desire for fellow ASEAN members to liberalize trade in services between ASEAN countries more broadly and in depth compared to liberalization adopted in the framework of the GATS / WTO (General Agreement on Trade in Services / World Trade Organization) (3)

AFAS functions as a form of international cooperation between ASEAN countries, especially in the service sector, so that with AFAS, ease of business between ASEAN countries can be carried out, because the existence of AFAS is very important as a legal basis for cooperation in the service sector, and various forms of professions are needed in improving relations between citizens in the ASEAN region, it is therefore necessary to increase cooperation by adjusting the national law of a country with other countries, so that cooperation through AFAS is very important, especially in enhancing the role of the Notary in the future.

2.1.2 Important Element In AFAS Regulation

There are important elements in Afas Regulation as follows :

a. Commitment of AFAS

In giving commitments at AFAS, ASEAN countries are required to provide a better level of commitment to their fellow ASEAN members compared to their commitments in the GATS-WTO, as well as the rules developed in AFAS the scope of liberalization services beyond what has been regulated and implemented under GATS scheme. Therefore it can be said that AFAS is also known as GATS Plus. The liberalization process in the service sector is carried out gradually and carefully by considering the national interests and the level of economic development of ASEAN member countries. For this reason, the principle of flexibility agreed upon by all ASEAN countries (pre-agreed flexibility) and the application of the ASEAN.

b. Regional Negotiation Of AFAS and ACFTA

Services negotiations at ACFTA are regional negotiations that are not too ambitious compared to other regional FTA negotiations because Indonesia only commits 33 sub-sectors compared to AANZFTA (88 sub-sectors); AFAS (128 sub-sectors); RCEP (100 sub-sectors), etc. ACFTA negotiations have reached the Third Package negotiation stage (October 2015) where Indonesia has finished giving its requests and offers to China, to further enter and until now Indonesia is still in the process of ratification (the decision is in the DPR whether this ratification only needs Perpres or Law). In the negotiating text, this agreement has no unique provisions that can only be found in this agreement. This is consistent with the character of low ambition as demonstrated by its market access commitment. In addition, in this ACFTA agreement there is no specific annex on certain sectors proposed by ASEAN and China.

2.2 DEFINITION OF NOTARY, DUTIES AND CODE OF ETHIC

Notary Public is an authorized official to make an authentic deed regarding all deeds, agreements and stipulations required by statutory regulations and / or desired by the interested parties to be stated in an authentic deed, guaranteeing certainty of the date of making the deed, keeping the deed, giving grosee , a copy and quote of the deed

2.2.1 Notary Duties

Notary Duties to their authority to make agreement as follows :

- Book the letters under the hand by registering in a special book (waarmerking).
- Make a copy of the original letter brought by hand in the form of a copy that contains the description as written and illustrated in the letter in question.
- To validate the compatibility of the photocopy with the original letter (legalized).
- Provide legal counseling in connection with the making of the deed.
- Make auction minutes. Correct the deed relating to land.
- Make a deed of writing error and / or typo contained in the minutes of the deed that has been signed, by making an official report

2.2.2 Notary Code Of Ethic

Notary has a code of ethics to carry out their duties, the Notary Code of Ethics and henceforth will be called the Code of Ethics is all moral rules determined by the Association of Indonesian Notary Societies which will henceforth be called "Association" based on decisions of the Congress of the Association and / or which are determined by and regulated in regulations legislation governing that matter and which applies to and must be obeyed by each and every member of the Association and all those who carry out their duties as Notaries, including Temporary Notary Officers, substitute Notaries, and Special Substitute Notaries.

3. OBJECT OF RESEARCH

Based on the description above, it is necessary to study through an analytical approach related to the relevance of the law between the notary aide and the aleralization of services after the application of AFAS by seeing the authority of a notary public as a profession that provides legal services that are helpful in dealing with the liberalization of services (law) of the Asean Framework Agreement On Service. Based on the description above, then 2 (two) points of problem formulation can be drawn, namely:

- How is the legal relevance between the role of the Notary and the liberalization of services after the entry into force of AFAS?
- How is the ideal optimization for the role of the Notary in dealing with the ASEAN Framework Agreement on Service for making trade agreements?

4. ANALYSIS:

4.1 LEGAL RELEVANCE BETWEEN THE ROLE OF THE NOTARY AND ASEAN FRAMEWORK AGREEMENT ON SERVICE TO MAKE TRADE AGREEMENT

4.1.1 Purpose of Asean Framework Agreement On Service

AFAS (ASEAN Framework Agreement on Services) is an agreement and cooperation in the framework of the liberalization of trade in services in the ASEAN forum. The agreement between ASEAN countries in principle reflects the desire for fellow ASEAN members to liberalize trade in services between ASEAN countries more broadly and in depth compared to liberalization adopted in the framework of the GATS / WTO (General Agreement on Trade in Services / World Trade Organization).

AFAS Very important in promoting more open trade in services between countries in the ASEAN region. AFAS aims to:

- a. To enhance cooperation in services among Member States in order to improve the efficiency and competitiveness, diversity of production capacity and supply and distribution of services of their suppliers within and outside ASEAN. (Increasing cooperation between member countries in order to improve efficiency and competitiveness, as well as diversification of production capacity and supply and distribution of supplier services both in and out of the ASEAN region)

- b. To eliminate substantially restrictions to trade in services among Member States; (Removes barriers to trade in services between fellow members)
- c. To liberalize trade in services by expanding the depth and scope of liberalization beyond those undertaken by Member States under the GATS with the aim to realizing a free trade area service (Liberalize trade in services by strengthening the level and scope of liberalization undertaken by member States under the GATS agreement / WTO with the aim of creating a free trade area in services (5)

4.1.2 Special Service of AFAS

The types of services that Indonesia has included in the schedule of Specific Commitments are service sectors offered compiled in a list of specific commitments known as the Schedule of Specific Commitments / SC. Sectors that Indonesia has included in the Schedule of Specific Commitments (SC) have 7 sectors in the AFAS framework includes:

- Financial services
- Telecommunications services
- Construction services
- Tourism services
- Sea transportation services
- Air transport services
- Business services

Sectors that Indonesia has included in the Individual Action Plan (RAI) within the AFAS framework cover 12 service sectors, namely:

- Business Services (Accountants, Architects, Engineering)
- Communication Services (Post, Telecommunications, Audiovisual)
- Construction Services
- Distribution Services
- Educational Services
- Environmental Services
- Financial Services (Banks and Non-Banks)
- Health and Social Services
- Tourism and Travel Services
- Recreation, Culture and Sports Services
- Transport Services (Sea, Air, Land and Train)
- Other Services
- Energy Services Subsector (6)

Cooperation in the business sector above requires legal aspects, especially documents relating to agreements, endorsements and others. With the agreement of ASEAN Member States to AFAS the legal aspects relating to Notary services will facilitate the objectives of the liberalization of banking services between ASEAN Member Countries.

This is supported by the provisions of the ASEAN FRAMEWORK AGREEMENT ON SERVICE 1995 as explained by Article II: Areas of Cooperation number 3:

"Member states shall identify important sectors for cooperations number and formulate Actions Plans, Programs and Understanding that shall provide details on the nature and extend of the cooperation."

Expected Outcomes It is expected that through the various liberalization packages, ASEAN can experience freer flow of trade and investment in the services sector through progressively higher levels of commitments and more certain and predictable rules in the various sub-sectors, such as:

- Air transport: sales and marketing of air transport services, computer reservations, aircraft repair and maintenance, etc.
- Business services: IT services, accounting, auditing, legal, architecture, engineering, research and development, computer-related services, advertising, etc.
- Construction: construction of commercial buildings, civil engineering, installation works, rental of construction equipment, etc.
- Distribution: commission agent services, wholesale trade, retail trade, etc. * Education: adult education, primary education, secondary education, etc.
- Environment: sewage, sanitation, noise abatement, nature and landscape protection services, etc.
- Financial services: banking, insurance, securities and broking, financial advisory, consumer finance, etc.
- Healthcare: medical and dental services, hospital services, nursing, ambulance, etc.

- Telecommunication: voice telephone services, mobile phone services, business network services, data and message transmission, e-mail, etc.
- Transport: international passenger and freight transport, maintenance and repair of transport equipment, storage and warehousing, freight forwarding, etc.
- Tourism: hotel and lodging services, food serving, tour operators, travel agencies, etc. ASEAN continues to work on further expanding and deepening services liberalization to cover all sectors and sub-sectors. Steps are being taken to achieve a free flow of services by 2015, with flexibility as outlined in the AEC Blueprint (7)

4.1.3 Sub Sector (Legal) and Relevance With Notary Role

The sub-sector (Legal) as explained above is an important sector to be identified by ASEAN Member States in enforcing service liberalization, bearing in mind that there is a lot of business cooperation going forward, the legal (legal) sub-sector is a matter relating to good legislation and regulations. written or unwritten in creating order and justice from various actions, including creating order in business interactions and activities between business actors, both on a national and international scale.

In negotiating the liberalization of services, AFAS applies the principles as applied in the WTO. These principles include: (8)

- Most Favored Nation (MFN) treatment - the convenience provided to one country also applies to all other countries;
- Non Discrimination - the imposition of trade barriers applied to all countries without exception.
- Transparency - each member country must publish all regulations, legislation, implementation guidelines and all generally applicable decisions / provisions issued by the central and regional governments.
- Progressive Liberalization, namely liberalization in stages according to the level of economic development of each member country.

Point 3 above is a form of cooperation between ASEAN member countries in notifying the legislation, in the liberalization of services activities require the legal sector (legal) as protection and investment guarantees for business actors between countries, one form of the legal sector (legal) is service law through professional services engaged in law such as Advocates and Notaries, specifically regarding Notaries are public officials who are authorized to carry out their positions in the realm of civil law, their authority is regulated in statutory regulations, namely Law Number 2 of 2014 on Amendments to Laws Number 30 of 2004 concerning the position of Notary, bearing in mind the principles of AFAS that Member States are obliged to make notification of all laws and regulations for implementing guidelines and all generally applicable decisions in general both issued by the central government and regional governments, so that the provisions of au Notary law must be notified and adjusted to international relations between ASEAN member countries. the purpose of which is to support business activities between business actors across ASEAN Member States.

4.2 THE IDEAL OPTIMIZATION FOR THE ROLE OF THE NOTARY IN DEALING WITH THE ASEAN FRAMEWORK AGREEMENT ON SERVICE FOR MAKING TRADE AGREEMENTS

4.2.1 Harmonization of National Law with International Law

The application of AFAS provisions that have been approved by ASEAN Member States, especially for the national interest of the Republic of Indonesia, has had an impact on the field of legal services, especially regarding the duties and positions of the Notary, with the implementation of the financial services liberalization cooperation of the ASEAN Member Countries. Legal professional services to help business actors between ASEAN member countries one of the important sectors in the business in question is the legal aspect, and one of the professions required is the Notary profession.

Law Number 2 of 2004 is an amendment to Law Number 30 of 2004 Concerning Notary Position, Article 1 of the UUJN has made it clear that Notary Public is the authorized official to make authentic and other authorities as referred to in this law. Notary authority is not explained in the law of Notary position only, but in the Civil Code also explained Notary authorized to make an authentic deed. Article 1868 of the Civil Code explains "An authentic deed is a deed determined by law made by or an official in charge for that place where the deed was made" with the explanation that an authentic deed must be made into an authorized official.

a. Regulation Of Notary According To Indonesian Law As The Asean Country

The authority of a Notary in making an authentic deed is very beneficial for dealing with AFAS, because transactions between Indonesian citizens and foreign nationals, especially ASEAN, require authentic deeds in the form of transactions contained in the agreement. The authority of the Notary has been regulated in Article 15 of the UUJN, as a source of Notary authority granted directly by law. Article 15 of Law Number 2 of 2014 concerning the Position of Notary explains as follows:

"The notary is authorized to correct written errors and / or typographical errors contained in the minutes of the signed Deed".

Notary in his position as a public official and at the same time as a profession is tasked with making an authentic deed. The authentic deed he made is a deed that has a strong and perfect legal proof. Thus, his position as a deed of the creator that is needed in the community needs to be monitored, lest the position is misused. (9) So that with good order and supervision, the role of the Notary in dealing with service liberalization is not misused.

Bentham defines international law to refer solely to the law based on treaties and agreements between nations. International law deals with laws based on agreements between countries. (10). At present, international law refers to the rules and norms that govern the actions of countries and other entities that are recognized as having international legal personalities such as international organizations and individuals, in relation to each other. (10) Meanwhile, traditionally international law is a legal institution that regulates the relations of independent states in times of war and peace. International law is said to be formal law in Indonesia because it cannot be separated from the application of the rule of law in Indonesia and ASEAN. With regard to agreements treaties by which the countries concerned bind themselves to incorporate these two uniform laws into their respective national laws.(11) The existence and nature of international law is unnecessary doubt, so it requires a legal binding basis international. Theories about the binding force of international law, such as theory natural law has a great influence on law international since the beginning of its growth. This is the first teaching has strong religious characteristics, for the first time released from relation to religion by Hugo Grotius secularized, then natural law is defined as the ideal law based on the nature of human beings as intelligent beings or unity of rules inspired by nature in human reason. (12)

b. Relevance Theory of To Combine National Law And Internasional Law

The theory of legal sovereignty comes from an English translation, namely the sovereignty law of theory, the theory of legal sovereignty developed by the Krabbe, this Krabbe teaching emerged as a reaction to the theory of state sovereignty. In the teachings of state sovereignty, law is placed lower than the state, meaning that the state is not subject to the law because the law is interpreted as orders from the state itself (imperative form of a norm). (13)

Law is the highest authority in the country, therefore it requires a source of law to establish legislation, one of which is international law. This is also confirmed in the 1945 Constitution Article 1 paragraph 3 that Indonesia is a State of Law. So, with the existence of such a decree, it is necessary to make progressive changes regarding the authority of the Notary to deal with the liberalization of services by harmonizing national law and international law especially with regard to the notary deed internationally, so that the application of AFAS becomes more optimal with the role of the Notary.

4.2.2 Ratify Apostile/Hague Agreement 1961

The Convention de La Hayepada on 5 October 1961 produced the Hague Convention Abolishing the Requirements of Legalization for Foreign Public Documents or commonly known as The Apostile Convention. For countries that ratify it, there is no need for legalization tiered legalization procedures. Between countries that have joined the Apostile Convention can mutually accept notarial deeds in their countries to be used as documents in trade and law automatically.(14)

The regulation of egalization is Staatsblad 1909 No. 291 concerning the legalization of signatures. Legalization from RI Representatives is only an endorsement of the signature and previous stamp and not the contents of the document, and this legalization is different from what is meant in the Law of Notary Position. Therefore, the legalization of the Notary itself still does not apply abroad.

Based on Minister of Foreign Affairs Regulation no.09 / A / KP / XII / 2006/01 concerning General Guidelines on Procedures for Foreign Relations and Cooperation by Regional Governments. This provision provides a regulation that documents used abroad must be legalized by a notary / authorized institution, the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, as well as in Indonesia. And regarding documents from abroad with the addition of stamp duty at the post office.

5. CONCLUSION:

AFAS and Notary Regulation Have Legal Relevance To Optimize Notary Role

Based on the description above, the authors draw a recommendation are ASEAN countries should ratify the Apostile Convention / Hague Convention 1961 so that the notary deed in ASEAN countries can apply internationally with countries that have ratified the convention, especially in the ASEAN region, so that there is no tiered legal process. With the ratification of the Apostile Agreement, the role of the Notary will be more optimal in the face of service liberalization, after the entry into force of AFAS. And then the author draw some conclusions as follows :

- Whereas there is a logical link or legal relevance between the role of the Notary and the liberation of services after the entry into force of AFAS, so that it is necessary to make progressive changes regarding the authority of the Notary to face service liberalization by harmonizing national law and international law, especially with regard to the application of the notary deed internationally, so that the application of AFAS becomes more optimal with the role of a notary public.
- The ratification of the 1961 Apostile Convention / Hague Convention for the application of international notary deeds is very important to support and optimize the role of notaries in dealing with AFAS in ASEAN, so that the role of the Notary becomes more important and greatly helps business transactions between citizens of the ASEAN region.

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