The Responsibility of Notaries in Strengthening International Cooperation Agreements for Orangutan Conservation in Kalimantan

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Abstract

The role of a Notary is needed in natural resource conservation activities in terms of making deeds of nature protection cooperation agreements involving foreign parties. One form of this collaboration can be seen from the Deed of Cooperation Agreement between the Directorate General of KSDAE and Canada's York University regarding Cooperation in Conservation of Bornean Orangutans in Kutai National Park. In this deed there are matters of a civil nature such as funding, third party assistance, as well as alternative dispute resolution implemented in Indonesia, so that the deed has civil elements. This is where the role of a Notary is very much needed in making a contribution in terms of making deeds and authenticating deeds. Notaries can carry out waarmerking to indicate that the deed of agreement complies with Indonesian laws and regulations, and make authentic deeds or addendums to deeds regarding assistance and participation from third parties. With the participation of the Notary, the implementation of the Kalimantan Orangutan Conservation will have a strong legal standing, so that it can prevent defaults, protect the rights and obligations of the Indonesian party in this agreement, and provide perfect proof if a dispute occurs.

I. Introduction

Indonesia is endowed with extraordinary biodiversity, encompassing both flora and fauna, which has attracted numerous conservation initiatives at both the national and international levels.[1] Consequently, the establishment of legally binding cooperation in the field of conservation, involving various objectives and interests, requires the participation of a Notary as the public official authorized to execute authentic deeds, including cooperation agreements.

Indonesia's rich biodiversity has attracted a wide range of organizations and movements dedicated to environmental conservation and the protection of natural resources, both domestic and international. Given the significance of biodiversity conservation in Indonesia, its implementation requires a clear legal framework that is consistent with the applicable laws and legal principles governing conservation activities within the country.

An illustration of such cooperation can be found in an International Cooperation Agreement on Nature Conservation, executed in December 2021 between an Indonesian governmental entity, namely the Directorate General of Natural Resources and Ecosystem Conservation (Direktorat Jenderal Konservasi Sumber Daya Alam dan Ekosistem – DG NREC/KSDAE), and a foreign public institution represented by a team of researchers from York University, Canada. The agreement was concluded to facilitate collaborative orangutan conservation activities within Kutai National Park, East Kalimantan. It was signed separately by the parties in Jakarta, Indonesia, and Toronto, Canada, on 10 November and 10 December 2021, respectively, and was subsequently published in the Treaty Database maintained by Indonesia's Ministry of Foreign Affairs.

Within this context, the concept of an agreement becomes fundamental whenever two or more entities intend to cooperate in conservation activities. Once the parties reach a mutual understanding, their consensus must be embodied in a legally binding agreement in order to produce enforceable legal consequences.[2] Such an agreement is ordinarily set forth in a written legal instrument commonly referred to as a Deed of Agreement. Article 1320 of the Indonesian Civil Code recognizes the principle of freedom of contract, allowing parties to determine the contents, parties, conditions, and form of their agreement. Accordingly, an agreement may be executed either as a private deed (akta di bawah tangan) or as an authentic deed (akta autentik).

An authentic deed is a legal instrument executed by a duly authorized public

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[1] Agus Setiawan, "Keanekaragaman Hayati Indonesia: Masalah dan Upaya Konservasinya," *Indonesian Journal of Conservation* 11(1) (2022), hlm. 14.

[2] Lita Paromita Siregar, "*Apakah Setiap Perjanjian Harus Dibuat di Hadapan Notaris ?*" smartlegal.id, 12 Februari 2019, tersedia dalam https://smartlegal.id/smarticle/2019/02/12/apakah-setiap- perjanjian-harus-dibuat-di-hadapan-notaris/ , diakses pada 3 April 2024.

official in accordance with statutory requirements and therefore possesses the highest evidentiary value under Indonesian law. As such, it constitutes conclusive evidence unless successfully challenged through legal proceedings. In Indonesia's legal system, a Notary is a public official specifically educated, appointed, and authorized to prepare authentic deeds relating to legal acts, agreements, and legal determinations.[3] Consequently, an authentic deed executed by a Notary enjoys the highest degree of evidentiary force among all forms of documentary evidence, as its authenticity and legal validity are presumed by law.[4]

A Notary is a public official recognized by the State and vested with the authority to perform public functions in serving the public interest. As a state-appointed public official, a Notary's duties are inseparable from the legal framework and fundamental legal principles prevailing within society, particularly the positive laws of Indonesia.

In this regard, the legal expertise of a Notary is indispensable in identifying the legal acts, procedures, and formal requirements that must be observed when acting as the public official authorized to execute authentic deeds. Likewise, in relation to the Notary's authority and responsibilities in formalizing agreements concerning biodiversity conservation in Indonesia, the Notary plays a vital role in ensuring that such agreements are legally valid, enforceable, and capable of supporting the realization of national interests in the conservation of natural resources.

2. Research Method

This study employs a doctrinal legal research approach by analyzing legal theory, jurisprudence, and legal philosophy to address the research issue, namely whether the provisions contained in the cooperation agreement are consistent with the legal principles governing international agreements. The research adopts an explanatory research typology, aiming to explain and reinforce the legal theory relating to the Orangutan Conservation Cooperation Agreement and to evaluate its conformity with applicable international legal instruments.

The research relies on secondary data, which are classified into primary legal materials and secondary legal materials. The primary legal materials consist of statutes and other written laws applicable in Indonesia, including Law Number 24 of 2000 on International Treaties, which serves as the principal legal framework governing international agreements and their underlying legal principles, Law Number 5 of 1990 on the Conservation of Living Natural Resources and Their Ecosystems, which provides the legal basis for biodiversity conservation activities in

[3] Lumban Tobing, *Peraturan Jabatan Notaris*, (Jakarta: Erlangga, 1996), hlm. 31.

[4] Alwesius, *Dasar Dasar Teknik Pembuatan Akta Notaris*, (Depok: Badan Penerbit FHUI, 2022), hlm. 12-13.

Indonesia; and, Law Number 30 of 2004 concerning the Office of Notary, together with its subsequent amendment, which are collectively referred to as the Indonesian Notary Office Law (Undang-Undang Jabatan Notaris/UUJN) and regulate the authority, duties, and responsibilities of Notaries in Indonesia.

The secondary legal materials comprise books, scholarly journals, and the opinions of legal scholars relevant to the issues under examination. These materials are further supported by tertiary legal materials, including information obtained from reputable internet sources, legal dictionaries, and general language dictionaries. The tertiary legal materials relied upon in this thesis include Black's Law Dictionary and the Kamus Besar Bahasa Indonesia (KBBI) (Great Dictionary of the Indonesian Language).

3. Results and Discussion

A. The Cooperation Agreement between the Directorate General of KSDAE and York University, Canada, on Orangutan Conservation in Kutai National Park as a Public International Agreement Containing Private Law Elements

Clear and binding legal regulations governing the implementation of conservation activities are essential to ensuring the effective promotion and enforcement of conservation efforts in Indonesia. The Law on the Conservation of Living Natural Resources and Their Ecosystems represents the culmination of various legal and scientific considerations aimed at supporting the conservation and sustainable management of Indonesia's biodiversity,[5] undamentally, the conservation of living natural resources and their ecosystems constitutes an integral component of sustainable national development in furtherance of the principles embodied in Pancasila..

The cooperation agreement on orangutan conservation in Kalimantan between the Directorate General of Natural Resources and Ecosystem Conservation (Directorate General of KSDAE) and York University concerns the management and conservation of Indonesia's natural resources. Consequently, every legal act embodied in the agreement falls within the regulatory scope of the Law on the Conservation of Living Natural Resources and Their Ecosystems. Accordingly, the agreement should be formalized through a legally binding instrument capable of creating legal certainty for the contracting parties while simultaneously serving as conclusive evidence in the event of future disputes arising from its implementation.

[5] Penjelasan Umum Paragraf 4 Undang Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya: "... sasaran Konservasi yaitu: menjamin terpeliharanya keanekaragaman sumber genetik dan tipe tipe ekosistemnya sehingga mampu menunjang pembangunan, ilmu pengetahuan, dan teknologi yang memungkinkan pemenuhan kebutuhan manusia yang menggunakan sumber daya alam hayati bagi kesejahteraan (pengawetan sumber plasma nutfah);"

The Law on the Conservation of Living Natural Resources and Their Ecosystems constitutes the principal legal framework governing the protection of the public interest in relation to the utilization, conservation, and sustainable management of Indonesia's natural resources. Since the cooperation agreement between the Directorate General of KSDAE and York University directly concerns Indonesia's biodiversity and natural resources, all legal acts arising from the agreement must conform to the provisions of this legislation. Therefore, the agreement should be embodied in a legal instrument that provides legal certainty, establishes binding obligations upon the parties, and serves as a legally enforceable instrument with full evidentiary value should any dispute arise in the future.

From a legal perspective, the identities of the contracting parties demonstrate that the agreement involves both a governmental authority and a legal entity. The Directorate General of KSDAE is an implementing agency within the Ministry of Environment and Forestry of the Republic of Indonesia, operating under and accountable to the Minister of Environment and Forestry.[6] York University, on the other hand, is a public research university located in Toronto, Canada. Although the concept of an agreement is traditionally associated with private law, where a government institution enters into a contractual relationship with a legal entity for the purpose of carrying out governmental functions, such an agreement may properly be characterized as a public international agreement that incorporates elements of private law.[7]

Article 15 of Law Number 24 of 2000 on International Treaties provides that the entry into force of an international treaty must be expressly stipulated within the treaty itself. In the context of a bilateral treaty, both parties must mutually agree on the date upon which the treaty becomes effective in order to be legally bound by its provisions. Accordingly, a bilateral international agreement becomes effective in Indonesia only when its entry into force has been explicitly specified in the agreement. With respect to the Orangutan Conservation Cooperation Agreement under examination, the agreement was signed by representatives of the respective institutions rather than by the institutions themselves as legal entities. Its formal recognition was subsequently effected through its registration with the Ministry of Foreign Affairs of the Republic of Indonesia..

Article 19(1) of the conservation agreement expressly provides that the agreement shall enter into force and become binding upon the parties immediately

[6] Direktorat Jenderal KSDAE, "Struktur Organisasi Direktorat Jenderal KSDAE," *https://ksdae.menlhk.go.id/* , tersedia dalam https://ksdae.menlhk.go.id/struktur-organisasi.html, diakses pada tanggal 1 April 2024.

[7] Ilyas, Anshori et.al, *Kontrak Publik*, (Jakarta: Prenadamedia Group, 2021), hlm. 1.

upon its execution.[8] When read together with Article 15 of Law Number 24 of 2000, this provision indicates that the agreement became legally effective and binding on the parties immediately after it was signed in Indonesia and Canada.

Private law agreements are fundamentally governed by the principle of consensualism, whereby the binding force of a contract arises from the mutual intention and consent of the parties to be legally bound. Although the Orangutan Conservation Cooperation Agreement was executed solely by representatives of the respective institutions and was not concluded through the more formal mechanisms generally associated with international treaties such as the exchange of instruments of ratification or ratification through Indonesian legislation,[9] it may nevertheless be characterized as an international agreement falling within the sphere of private international law, as it regulates a legal relationship between legal entities originating from different jurisdictions.

Because the parties to the agreement represent a governmental institution and a public legal entity, the agreement may appropriately be classified as a public international agreement. Nevertheless, its substantive provisions satisfy the essential requirements of a private law contract as stipulated in Article 1320 of the Indonesian Civil Code concerning the validity of agreements. Furthermore, the agreement conforms to Article 1234 of the Indonesian Civil Code, which provides that an obligation may consist of giving something, doing something, or refraining from doing something. Under the conservation agreement, the parties undertake to perform certain acts relating to the conservation of natural resources. Although these obligations are non-commercial in nature, they nonetheless create legally enforceable rights and obligations for both parties.

Several provisions of the agreement further demonstrate its private law character. For example, Article 11 governs the financing of conservation activities.[10] Under this provision, the costs of implementing the conservation program are borne by the parties, and either or both parties are authorized to seek financial support from third parties, subject to the prior approval of the other party. The requirement of mutual consent regarding third-party funding, together with the express possibility of involving third parties in financing the conservation program, reinforces the

[8] "PKS ini berlaku sejak tanggal penandatanganan dan wajib tetap berlaku untuk jangka waktu 3 (tiga) tahun."

[9] Nafiatul Munawaroh, *3 Tahapan Perjanjian Internasional dan Penjelasannya*, 2023, hukumonline.com, tersedia dalam https://www.hukumonline.com/klinik/a/tahapan-perjanjian- internasional-cl4997/ diakses pada 25 Maret 2024.

[10] Pasal 11: Pendanaan.

1. Pendanaan kegiatan kerja sama berdasarkan CA ini akan bersumber dari dana para pihak.
2. Salah satu pihak dapat mencari pendanaan dari pihak ketiga untuk pelaksanaan kegiatan kerja sama dengan persetujuan dari pihak lainnya.

agreement's character as a private law instrument governing legal obligations relating to proprietary and financial interests within the law of obligations.

Article 1233 of the Indonesian Civil Code provides that obligations arise either by agreement or by operation of law. Pursuant to Article 1234 of the Civil Code, an obligation may consist of giving something, performing an act, or refraining from performing an act. Within every legal obligation, one party is entitled to demand performance (the creditor), while the other is obligated to render such performance (the debtor).[11] Accordingly, if the funding arrangement contemplated under Article 11 of the conservation agreement is financed by a third party established in Indonesia, the legal relationship arising from such financing would naturally fall within the scope of Indonesian private law..

Article 13 of the agreement, concerning Asset Ownership and the Results of the Cooperation, provides that all outputs of the conservation activities—including both movable and immovable property that continue to serve a useful purpose in the implementation of orangutan conservation—must be transferred to the Directorate General of KSDAE through an official Minutes of Asset Handover. This provision implies that the implementation of the conservation program will involve the utilization of assets provided by the Directorate General of KSDAE, thereby creating a form of Cooperation for the Utilization of State or Regional Assets (Kerja Sama Pemanfaatan/KSP), whereby government-owned assets are utilized by another party to enhance regional revenue or other lawful sources of financing.[12] The utilization and transfer of such assets are governed by Indonesian positive law, particularly Minister of Home Affairs Regulation Number 19 of 2016 concerning Guidelines for the Management of Regional Property. Under this regulation, where government assets are utilized through a cooperation arrangement, the parties are required to execute a KSP Agreement between the Governor, Regent, Mayor, or the authorized Asset Manager and the KSP partner. Such an agreement must expressly be executed in the form of a notarial deed,[13] Furthermore, because the conservation agreement expressly permits the involvement of third parties for financing purposes, any participation by such third parties should be formalized through an addendum to the principal agreement. Although physically separate, the addendum forms an integral and

[11] Subekti dalam Joko Sriwidodo dan Kristiawanto, *Memahami Hukum Perikatan*, (Yogyakarta: Kepel Press, 2021), hlm. 2.

[12] Pasal 1 Angka 35 Peraturan Menteri Dalam Negeri Nomor 19 Tahun 2016 tentang Pedoman Pengelolaan Barang Milik Daerah menyatakan bahwa "Kerja Sama Pemanfaatan yang selanjutnya disingkat KSP adalah pendayagunaan barang milik daerah oleh pihak lain dalam jangka waktu tertentu dalam rangka peningkatan pendapatan daerah atau sumber pembiayaan lainnya."

[13] Pasal 179 Ayat (1) Peraturan Menteri Dalam Negeri Nomor 19 Tahun 2016 tentang Pedoman Pengelolaan Barang Milik Daerah.

inseparable part of the principal agreement and serves as the legal basis for the participation of the third party. Accordingly, in the author's opinion, the involvement of any third party should likewise be documented by means of a notarial deed. This further supports the conclusion that the agreement constitutes a public international agreement incorporating substantial private law elements.

The existence of these private law elements necessitates the involvement of a Notary, as the public official authorized to execute authentic deeds. The Notary should therefore prepare authentic deeds relating to the implementation of the Cooperation Agreement or, at a minimum, officially register the agreement through the process of waarmerking (official recording of a private document). This function constitutes an important aspect of the Notary's statutory authority and professional responsibility in enhancing the legal quality, evidentiary value, and legal certainty of cooperation agreements governing the conservation of endangered and protected wildlife, as exemplified by the Orangutan Conservation Cooperation Agreement between the Directorate General of KSDAE of the Ministry of Environment and Forestry and York University, Canada. The involvement of Notaries should likewise be encouraged in similar or larger-scale international cooperation agreements in the future in order to strengthen legal protection, minimize the potential for disputes, and safeguard Indonesia's national interests.[14]

B. The Orangutan Conservation Agreement in Kalimantan from the Perspective of Private International Law

Given that the agreement examined in this study was concluded between a domestic entity and a foreign entity of different nationalities, it may properly be characterized as an international agreement. Consequently, the legal rules and procedures governing the preparation and execution of the conservation agreement are subject not only to Indonesian law but also to the principles of Private International Law.

Private International Law governs private legal relationships involving a foreign element or extending across national borders.[15] Such a foreign element may relate to the place where the agreement is concluded, the nationality or domicile of the parties, the subject matter of the agreement, or the place where the legal act is performed. With respect to the parties, a foreign element exists where the legal relationship involves persons or legal entities of different nationalities or domiciles. Likewise, a foreign element concerning the subject matter arises where the agreement is executed or performed outside the territory of a particular State.

[14] Anugrah Yustica, "Peran Etika Profesi Notaris Sebagai Upaya Penegakan Hukum", Notarius, Vol. 13, No. 1, 2020, Universitas Diponegoro, Semarang, hlm. 5.

[15] Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional, Cetakan Kesatu*, (Bandung: PT. Alumni, 2003), hlm. 1.

The rules of Private International Law generally encompass two categories. The first consists of substantive conflict-of-law rules, namely legal principles that determine the applicable substantive law governing a legal relationship. The second comprises procedural or adjectival rules, which regulate the legal remedies and procedural mechanisms available to parties for enforcing the rights conferred upon them under the applicable substantive law through judicial proceedings.[16]

One manifestation of a private international legal relationship is an international conservation cooperation agreement, namely an agreement between parties from different jurisdictions that seeks to ensure the protection, sustainable management, and utilization of conservation areas. An international conservation agreement is therefore a reciprocal arrangement between two or more entities engaged in conservation activities that contains a foreign element by involving more than one legal system and consequently creates legally binding rights and obligations for the parties.

The execution of an international conservation cooperation agreement is governed by the principle of freedom of contract, as recognized under Article 1338 of the Indonesian Civil Code, which permits the parties to determine the contents of their agreement in accordance with their respective interests and objectives. Nevertheless, such contractual freedom is not absolute. Pursuant to Article 1337 of the Indonesian Civil Code, which serves as one of the principal sources of Indonesian Private International Law, every agreement must have a lawful cause (causa). Accordingly, the contents of an agreement must not conflict with applicable laws and regulations, public order, morality, or the prevailing customs and values of society.

Since the Orangutan Conservation Agreement in Kalimantan is concluded between parties of different nationalities, it should expressly stipulate the choice of law governing the agreement. Such a clause determines the national legal system applicable to the agreement, thereby providing legal certainty should disputes arise in the future. If one party commits a breach of contract by failing to perform its contractual obligations, the dispute may then be resolved under the legal system chosen by the parties, facilitating a more efficient dispute resolution process.

The choice of law constitutes one of the most fundamental legal principles in drafting international agreements involving parties from different jurisdictions. In general, every country possesses its own legal system, reflecting distinct legal concepts, principles, and norms. Consequently, determining the governing law and the competent jurisdiction within an international agreement is essential because these provisions directly affect the resolution of disputes between the contracting

[16] A. Aminah, "Pilihan Hukum dalam Kontrak Perdata Internasional," *Diponegoro Private Law Review*, vol. 4, no. 2 (2019), hlm. 6.

parties.

In his work *Introduction to Indonesian Private International Law* (*Pengantar Hukum Perdata Internasional Indonesia*), Sudargo Gautama explains the doctrine of choice of law (rechtskeuze), arguing that contracting parties are free to determine the governing law applicable to their agreement, provided that such choice does not violate public order (*ordre public*) or constitute an evasion of the law (*fraus legis*). Meanwhile, the concept of jurisdiction, as defined in *Black's Law Dictionary* and cited by Huala Adolf in *Basics, Principles and Philosophy of Arbitration*, refers to the authority or competence of a court to hear and adjudicate a legal dispute.

The implementation of the choice of law doctrine in the Orangutan Conservation Agreement is evident from several connecting factors demonstrating that the agreement is substantially governed by Indonesian law. The agreement primarily involves an Indonesian governmental institution; accordingly, it is reasonable and legally appropriate that the parties subject themselves to Indonesian law. Considering that the agreement combines elements of both public law and private law, and that its implementation significantly affects local communities within the conservation area, the application of Indonesian legislation is indispensable.

The choice of Indonesian law embodied in the conservation agreement reflects all relevant connecting factors recognized in Private International Law. The agreement concerns conservation activities conducted within Indonesian territory, was executed in Indonesia, expressly designates Indonesian law as the governing law, and regulates rights and obligations that directly influence the management and future development of orangutan conservation efforts in Kalimantan. Therefore, Indonesian law constitutes the most appropriate governing legal system for the agreement and provides the strongest legal basis for ensuring legal certainty and resolving any disputes arising from its implementation.

C. The Responsibilities of a Notary in the Preparation of an Authentic Deed

The Indonesian Civil Code recognizes three fundamental principles governing contractual agreements. First is the principle of binding force (pacta sunt servanda), under which an agreement constitutes law for the parties who have entered into it. Consequently, the rights and obligations stipulated in the agreement are legally binding and must be performed by the contracting parties. Second is the principle of freedom of contract, which grants the parties the autonomy to determine the contents of the agreement and to choose with whom they wish to contract, provided that the agreement does not contravene applicable laws or regulations. Third is the principle of consensualism, which provides that, as a general rule, an agreement does not require any specific formalities to be legally valid. An agreement comes into existence once the parties freely and knowingly express their mutual consent to be bound by its terms.

The essential element in harmonizing the intentions and declarations of the parties to a contract is their mutual consent. In examining the legal requirements for a valid agreement, particularly the requirement of a lawful cause (causa yang halal), it should be understood that the lawful cause does not refer to the reason that prompted the parties to conclude the agreement, but rather to the legal substance or purpose embodied in the contract itself. Accordingly, the substance of an agreement must comply with Article 1337 of the Indonesian Civil Code and must not conflict with statutory law, general principles of law, morality, or public order.[17]

Where an agreement fails to satisfy the requirement of a lawful cause, it is deemed null and void by operation of law (void ab initio). Article 1335 of the Indonesian Civil Code expressly provides that an agreement founded upon an unlawful cause has no legal force and is therefore null and void because it fails to satisfy the objective requirements for a valid contract.

The concepts of lawful and unlawful cause must also be assessed objectively by examining the substance and formation of the parties' agreement. The Indonesian Civil Code establishes four essential requirements for the validity of a contract, which are divided into subjective and objective requirements. The subjective requirements relate to the legal capacity of the parties and consist of: (i) the mutual consent of the parties, and (ii) the legal capacity of the parties to enter into the agreement. The objective requirements concern the subject matter of the agreement and require: (i) the existence of a definite object, and (ii) a lawful cause.

Where the objective requirements are not fulfilled, the agreement loses its legal validity and is deemed never to have existed. A contract that is void ab initio is considered legally ineffective from the outset, thereby extinguishing its existence as a legally enforceable agreement. Conversely, where only the subjective requirements are not fulfilled, the agreement is voidable rather than automatically void. A voidable contract remains legally effective and binding unless and until one of the parties successfully seeks its annulment. Accordingly, although such an agreement produces legal effects from the moment it is executed, it may subsequently be rescinded upon the request of the party entitled to challenge its validity.

Where parties reach a mutual agreement and intend for that agreement to be legally binding, their consensus is embodied in the form of a contract. Such a contract is subsequently reduced into a written instrument commonly referred to as a Deed of Agreement. Article 1320 of the Indonesian Civil Code recognizes the principle of contractual freedom by allowing individuals to enter into written agreements and to determine the contents, parties, terms and conditions, as well as the form of the agreement. Such agreements may be executed either as a private deed (under hand)

[17] KUH Perdata, Pasal 1337.

or in the form of a notarial deed.[18]

Although the principle of freedom of contract grants broad autonomy to contracting parties, subject only to applicable legal limitations and the interests of the parties themselves, Article 1875 of the Indonesian Civil Code emphasizes that an agreement should preferably be reduced into a written instrument acknowledged by the person against whom it is invoked. Such acknowledgment gives the document complete and binding evidentiary value comparable to that of an authentic deed.

A Notary possesses attributive authority to execute authentic deeds pursuant to statutory law. This authority is original in nature, meaning that it is conferred directly upon the Notary by legislation rather than delegated by another governmental authority. In addition, a Notary may prepare deeds relating to land transactions; however, such authority is subject to statutory limitations because land deeds may only be executed by a Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT). Accordingly, the preparation of land deeds generally falls outside the ordinary competence of a Notary, unless the Notary simultaneously holds the office of PPAT.

Accordingly, viewed from the perspective of statutory duties and authority, the role of a Notary extends beyond merely drafting authentic deeds. A Notary is also responsible for safeguarding the continuity, authenticity, and binding legal force of the deed. In essence, the principal responsibility of a Notary is not merely the preparation of the instrument itself, but rather the assurance of its authenticity as an official legal document. It should also be recognized that a Notary is not the only public official authorized to produce authentic deeds in Indonesia. Certain public institutions and officials are vested by law with the authority to prepare and authenticate specific categories of authentic instruments within their respective fields of competence. Nevertheless, the authority of a Notary to execute authentic deeds is exceptionally broad and is subject to very few substantive limitations. In practice, the principal limitation upon a Notary's authority is the existence of the parties' mutual consent to execute the deed and the possibility that the deed may subsequently become the subject of judicial review or legal challenge. Ultimately, the preparation of authentic deeds relating to the vast majority of civil legal transactions occurring in Indonesia generally falls within the competence of a Notary. This remains the case so long as no specific statutory provision assigns such authority exclusively to another public official or institution. As the public official entrusted with conferring authenticity upon legal instruments, the Notary plays a central role in ensuring legal certainty, evidentiary reliability, and legal protection for the parties to an agreement.

A deed executed by a Notary in accordance with the procedures prescribed under the Law on the Office of Notary (Undang-Undang Jabatan Notaris/UUJN)

[18] KUH Perdata, Pasal 1320.

retains its status as an authentic deed, thereby possessing perfect evidentiary value. An authentic deed with full evidentiary force plays a significant role in judicial proceedings, as it provides strong and conclusive evidence should a dispute concerning the deed arise in the future.

This evidentiary function underscores the indispensable role of the Notary as a public official authorized to prepare authentic deeds. The authority of a Notary in the preparation of legal instruments is, in principle, extensive and is not confined solely to corporate transactions. Rather, it encompasses virtually all legal agreements existing under Indonesian law, provided that the preparation of such deeds is not expressly assigned by statute to another public official, such as a Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT).

This broad authority also raises the question of the Notary's role in the preparation of international agreements, particularly bilateral agreements involving foreign parties. To date, no statutory regulation expressly confers upon Notaries the authority to prepare international agreements or international authentic deeds. Consequently, the legal basis for such authority must be derived through a systematic interpretation of existing legislation. In this regard, the authority of a Notary to prepare a deed involving a foreign national must ultimately be interpreted in conjunction with the provisions of the Indonesian Civil Code.

With respect to agreements concluded between an Indonesian citizen and a foreign national, the Law on the Office of Notary (UUJN) does not expressly regulate the participation of foreign nationals as parties to a notarial deed. Nevertheless, the recognition of foreign parties in an authentic deed may be inferred from Article 43 of Law No. 2 of 2014, which requires that notarial deeds be executed in the Indonesian language.[19] This requirement is reinforced by Article 31 of Law No. 24 of 2009[20] as well as Article 26 paragraph (1) of Presidential Regulation No. 63 of 2019, both of which mandate the use of the Indonesian language in memoranda of understanding and agreements involving state institutions, government agencies, Indonesian private institutions, or Indonesian citizens..[21] Accordingly, even where an agreement is concluded between an Indonesian citizen and a foreign national, the agreement must nevertheless be executed in the Indonesian language. This requirement reflects the continuing application of Indonesian law to Indonesian citizens and ensures compliance with mandatory statutory provisions governing contractual instruments.

[19] UUJN, Pasal 43.

[20] Undang Undang tentang Bendera, Bahasa, dan Lambang Negara, serta Lagu Kebangsaan, Undang Undang Nomor 24 Tahun 2009, LN. 2009/ Nomor 109, TLN Nomor 5035, selanjutnya disebut UU 24/2009, Pasal 31.

[21] *Peraturan Presiden tentang Penggunaan Bahasa Indonesia*, Perpres Nomor 63 Tahun 2019, LN.2019/NO.180, selanjutnya disebut Perpres 63/2019, Pasal 26 Ayat (1).

Furthermore, the use of the Indonesian language serves to satisfy the formal legal requirements for the validity of the agreement, thereby ensuring that the contract possesses full legal validity and functions as a legally binding instrument upon the parties.[22]

Accordingly, a Notary fundamentally possesses the authority to accommodate agreements entered into between Indonesian parties and foreign parties by preparing authentic deeds in a foreign language, provided that the deed also complies with the mandatory requirements of Indonesian law. Nevertheless, because the office of Notary exists solely within the Indonesian legal system, such authentic deeds are governed exclusively by Indonesian positive law, are legally binding only under Indonesian jurisdiction, and cannot be governed by the laws of another country.

D. Legalization, Waarmerking, and Legal Counseling in Relation to Deeds of Agreement

Private deeds exist as a manifestation of the principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code (KUHPerdata), which provides that: *"All agreements* lawfully *made shall bind the parties as law."* This provision signifies that Indonesian positive law recognizes the possibility of contractual arrangements beyond those expressly regulated by statutory law, including agreements that deviate from conventional contractual forms, thereby affirming the application of the principle of freedom of contract.

The principal issue, however, is whether such private agreements have been executed in accordance with the general principles of contract law. Article 1320 of the Indonesian Civil Code prescribes four essential requirements for the validity of an agreement, namely: the mutual consent of the parties; the legal capacity of the parties to enter into an agreement; a definite subject matter; and a lawful cause..

These requirements are mandatory legal conditions that must be fulfilled for an agreement to be legally valid, binding, and capable of creating rights, obligations, and legal consequences for the parties. Failure to satisfy even one of these requirements renders the agreement null and void by operation of law, thereby preventing it from producing any binding legal effect.

It is within this context that legalization (legalisasi) and waarmerking assume considerable importance in the preparation of contractual agreements. Legalization refers to the process whereby the parties execute a document in the presence of a Notary. Through this process, the Notary certifies the authenticity of the signatures affixed to the document and confirms that they were executed by the parties before

[22] Widi Nugrahaningsih, Marginingsih, "Kekuatan Hukum Dari Perjanjian Bisnis Dengan Akta Notaris Antara Warga Negara Indonesia Dan Warga Negara Asing," *Seminar Nasional Riset Terapan IX*, Vol 11, No 1, hlm. 378-384, (2022), hlm. 382-383.

the Notary.[23] Articles 1874, 1874a, and 1880 of the Indonesian Civil Code further provide that private deeds not executed before a public official, particularly those intended to bind third parties, may not enjoy full legal effect unless they have been legalized by a Notary..

Waarmerking constitutes one of the statutory authorities conferred upon a Notary under Article 15 of the Law on the Office of Notary (UUJN). It is the act of officially registering a privately executed deed in a special register maintained by the Notary. Through this registration, the Notary records the existence of the private deed without becoming a party to its contents or guaranteeing the substantive truth of the agreement. The primary purpose of waarmerking is to establish that the deed has been acknowledged by the Notary and entered into the Notary's official register. Nevertheless, the rights and obligations of the parties arise from the moment the private deed is signed by the parties themselves, rather than from the subsequent registration before the Notary.

With particular reference to the Cooperation Agreement between the Directorate General of Natural Resources and Ecosystem Conservation (DG KSDAE) and York University, Canada, the involvement of third-party funding and the transfer of regional government assets necessarily gives rise to numerous ancillary agreements and contractual addenda, all of which fall within the scope of Indonesian private law. Consequently, legalization and waarmerking become especially significant in relation to Article 13 of the Conservation Cooperation Agreement, which requires the written consent of the parties for any amendment, deletion, or transfer of ownership of assets under paragraph (2), as well as the preparation of an Asset Handover Report (*Berita Acara Serah Terima Aset*) as prescribed under paragraph (3).

In this context, legalization and waarmerking serve as formal evidence that a Notary—as Indonesia's authorized public official empowered to prepare authentic deeds—has examined the agreement, verified the identities of the parties, and confirmed that the agreement complies with the applicable legal principles and statutory regulations of Indonesia. Through the process of waarmerking, the agreement, notwithstanding the different nationalities of the contracting parties, may continue to be regarded as a legally valid and binding agreement possessing enhanced evidentiary value in the event of future litigation. This evidentiary strength derives from the existence of the Notary's official registration and signature, together with the recording of the agreement in the Notary's official register.

[23] Tim Legalitas, "Apa itu Legalisasi, Legalisir dan *Waarmerking* Notaris?" *legalitas.org*. Dibuat 14 November 2023. Diperbarui 27 April 2024. Tersedia dalam legalitas.org/tulisan/apa-itu-legalisasi-legalisir-dan-*waarmerking*-notaris#:text=Legalisir%20Notaris%20adalah%20proses%20memastikan%20bahwa%20dokumen,dengan%20dokumen%20asli%20yang%20diperlihatkan%20kepada%20Notaris. Dikakses pada 24 April 2024.

As expressly provided under Article 15 of the Law on the Office of Notary (UUJN), the authority of a Notary extends beyond the preparation of authentic deeds and includes the provision of legal counseling to parties who may not fully understand the applicable law. Article 2 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.01-PR.08.10 of 2006 concerning Legal Counseling Guidelines provides that legal counseling is intended to foster greater public legal awareness so that every member of society understands and appreciates his or her rights and obligations as a citizen, thereby promoting a legal culture characterized by legal consciousness, compliance with the law, and respect for human rights.

Accordingly, from a juridical perspective, legal counseling constitutes a form of governmental administrative function intended to disseminate legal knowledge and promote public understanding of the law. Such activities must be conducted in accordance with the principle of legality and the statutory framework governing the authority of the Notary. Importantly, the beneficiaries of legal counseling are not limited to Indonesian citizens but also include foreign nationals who seek to understand Indonesian law and its legal system.

Considering that the Orangutan Conservation Agreement is a bilateral international agreement, one of the contracting parties necessarily represents a foreign entity that may not possess adequate knowledge of Indonesian law. In such circumstances, the legal expertise of a Notary becomes indispensable in providing comprehensive guidance regarding Indonesian law, particularly the law of contracts, obligations, private law, and legislation governing the conservation and protection of natural resources.[24]

The ability of a Notary to provide legal counseling concerning Indonesian legislation is therefore rigorously tested, requiring the Notary to explain legal concepts clearly, accurately, and in language that is readily understandable, while also responding effectively to questions from the parties. Consequently, proficiency in foreign languages constitutes an increasingly important professional competence for Notaries, enabling them to provide legal certainty and meaningful legal guidance to foreign nationals who are unfamiliar with the Indonesian legal system.

4. Conclusion

1. The cooperation agreement concerning orangutan conservation in Kutai National Park, East Kalimantan, between the Directorate General of Natural Resources and Ecosystem Conservation (Directorate General of KSDAE), Ministry of

[24] Ranggapandu Cindarputera, Mohamad Fajri Mekka Putra, "Kewenangan Notaris Dalam Persoalan Penyuluhan Hukum Dan Mediasi," *Jurnal Ilmu Sosial dan Pendidikan (JISIP)* Vol. 6, No. 3 (2022), hlm. 192.

Environment and Forestry of the Republic of Indonesia, and York University, Canada, constitutes a public bilateral international agreement, as it was concluded within the sphere of public law and involves one party acting in the capacity of a governmental authority. Nevertheless, the substance and legal elements of the agreement also satisfy the characteristics of a private law contract, particularly through the fulfillment of the requirements set forth in Article 1320 of the Indonesian Civil Code, the existence of obligations "to perform certain acts," as well as the involvement of third parties and the transfer and return of regional government assets. Accordingly, the agreement may be classified as a public international agreement with private law characteristics, whereby both public and private law operate complementarily to provide legal certainty and protection for the implementation of the agreement.

2. Ultimately, the implementation of the agreement remains subject to the principles of Indonesian private law. The conservation agreement should therefore be reinforced through legal instruments governed by Indonesian law by involving a Notary Public as the authorized public official responsible for preparing authentic deeds. The participation of a Notary serves to strengthen Indonesia's legal position in the private law aspects of the agreement and to minimize the risk of contractual breach, particularly with respect to agreements involving third-party participation in project financing and the transfer of assets to the Directorate General of KSDAE. In addition, Notaries play an important role in providing legal counseling to foreign parties regarding Indonesian contract law, thereby enhancing their understanding of the legal principles and contractual norms applicable under Indonesian law.

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