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Analysis of Civil Service Fellows Based on Article 20 Law Number 2 of 2014 Concerning Amendment to Law Number 30 of 2004 Concerning Position Notary

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Abstract
The purpose of this study is to analyze the mechanism of work and responsibilities of a notary if they are incorporated in a notary civil association based on article 20 of the Notary Position Law. The research method used is Normative research conducted by examining library materials and regulations related to the notary civil partnership. The approach taken is the statutory approach and conceptual approach. The theory used is the theory of legal certainty and the theory of legal responsibility. The results of this study indicate that the notary's civil partnership refers to the office of the notary public, but the working system is still based on the independence of each notary. Allies may not interfere with the deed made by their allies because the deed is the responsibility of the notary who made it and he is obliged to keep the contents of the deed from any party outside the agreement. The responsibility of a notary public in the matter of making the deed remains a personal responsibility, the allies will not be responsible for the deed made by their allies.
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1. Introduction

Notary public based on article 1 number (1) of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 Notary Position (UUJN) is a general official authorized to make an authentic deed and has other authorities as referred to in this Act or based on other laws. The position of a Notary Public General, in the sense that the authority that is in the Notary Public has never been given to other officials, as long as that authority does not become the authority of other officials in making authentic deeds and other authorities, then that authority becomes the authority of the Notary.[1]

Based on article 20 paragraph (1) of Law Number 30 Year 2004 Notary Position (UUJN), it is stated that in carrying out his position the notary public can form a civil union by taking into account independence and impartiality. Paragraph (2) states that the form of civil alliance as referred to in paragraph (1) is regulated by notaries based on the provisions of the legislation. Then paragraph (3) states further provisions regarding the requirements for carrying out the position of Notary as referred to in paragraph (1) regulated in a Ministerial Regulation.

As the implementing regulation of article 20 paragraph (3), the Republic of Indonesia Minister of Law and Human Rights Regulation No. M.HH.01.02.12 of 2010 is stipulated on the Requirements to Run a Notary Position in the Form of a Civil Union. Notary civil union in the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number M.HH.01.02.12 of 2010 is defined in Article 1 number 1, namely "Notary Civil Civil Union, hereinafter referred to as the Union is an agreement of cooperation of Notaries in carrying out their respective positions - as a Notary by entering all the requirements to establish and administer and join in one office with the Notary ". With the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH.01.02.12 of 2010 it is expected to provide legal certainty and a foundation for the Notary to enter into cooperation in the form of a civil union.[2]

In 2014 the UUJN underwent changes, with the invitation of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. One of the amended articles is the provisions of article 20. These changes are found in article 20 paragraphs (1) and (3). In paragraph (1) there is a change in the term from the Civil Union to the Civil Alliance. While the provisions of paragraph (3) are deleted. With the abolition of the provisions of paragraph (3) the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number M.HH.01.02.12 of 2010 concerning Requirements for Running a Notary Position in the Form of a Civil Union becomes invalid. This results in no more regulations governing notary civil alliance while the regulation is very necessary considering that in article 20 the latest UUJN does not provide a clear explanation of the civil alliance. However, in 2018 the Minister of Law and Human Rights Regulation number 17 of 2018 has

[1] Habib Adjie, *Hukum Notaris Indonesia Tafsir Telematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008), hlm. 40
[2] Ibid, hlm.11

been issued concerning registration of limited partnership, firm alliance and civil alliance. But according to the author, the regulation is not enough to provide a legal basis for a notary civil association because the regulation only regulates the procedure for registering a civil partnership and there is no article on the mechanism of notary civil partnership, whether it is the same or different from other civil groups. From the background description above, it will be explained about the mechanism of notary civil partnership and notary responsibilities in the civil partnership.

2. Research methods

This research is focused on normative legal research because it studies and analyzes a variety of statutory regulations on notary civil partnership. This research uses a statutory approach and conceptual approach. Material Collection Tool in this writing is in the form of a document study that is looking for and collecting secondary material related to legal theory and practice that occurs in a civil partnership Notary Public.

3. Results and discussion

3.1 The Mechanism of the Work of the Perdada Perdada based on Article 20 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public

In the literature and jurisprudence the term partnership is not a single term because there is a companion term which is a corporation and a union. These three terms are often used to translate Dutch terms: maatschap, ven-noot schap.[1]

The form of civil alliance (burgerlijke maatschap) as regulated in Chapter VII of Book III, KUHPER is a partnership that is included in the field of general civil law, because what is called burgerlijke maatschap generally does not run a company. It turns out that burgerlijke maatschap in practice also often runs the company. We can know this from article 1623 of the KUHPER bsd. Article 16 KUHD. Article 1623 of the Criminal Procedure Code reads: a special civil union is a civil partnership that only applies to certain items of use or results obtained from these items or concerning a certain business, does a company or does work. While Article 16 of the Indonesian Criminal Code reads: what is called a firm alliance is a civil partnership which was established to run a company under a common name. (firm). From the provisions of these two articles, it can be concluded that the civil partnership can run the company. This type of partnership is included in the field of commercial law, whereas civil partnership which does not operate a company is included in the area of general civil law.[2]

Apart from these two terms, there are other terms, namely the company. Hilman Hadikusuma explained that the word sero means shares in a partnership, a company means shareholders, a company means a trade union, a partnership or also called an airline. In Dutch the company is called maatschap which also means union or partnership. According to article 1618 KUH Prdata referred to as the company is an agreement between two or more people who commit themselves to enter something into a partnership with a view to dividing the profits derived from the partnership. So the company here means a civil union which contains elements of mutual will, cooperation, shared goals, and sharing profits.[3]

So the term company with the term partnership contains the same meaning, it's just that the first is seen from the narrow meaning in terms of understanding while the second is in the broad sense in terms of the participation of people.[4]

Of the three terms, which are used in this study is the term civil alliance in article 1618 of the Civil Code which is an agreement between two or more people who bind themselves to put something (inbreng) into an alliance with the intention of dividing the profits obtained by it.

Maatschap or civil alliance is a collection of people who usually have the same profession and are willing to meet together by using a common name. Maatschap is actually a common form of limited partnership and firm. Where in fact the rules of maatschap Firma and CV are basically the same, but there are things that distinguish between the three.[5] Basically the establishment of a maatschap can be done for 2 purposes, namely:[6]

a. For commercial activities
b. For alliances that run the profession

Agreements in civil partnership generally contain the following matters:[7]

a. Profit sharing, if the distribution of profits is not regulated then the provisions according to the law apply
b. The purpose of cooperation
c. Time or duration The establishment of a civil partnership can be done verbally or in writing.

[1] Chidir Ali, Badan Hukum, cetakan ke-2, PT Alumni, Bandung, 1999, hlm.133
[2] Ibid, hlm.134
[3] Ibid, hlm.135
[4] Ibid
[5] Sudiarto, Hukum Badan Usaha di Indonesia, Cetaka Pertama, Garuda Ilmu, Selong, 2019, hlm.2
[6] ibid
[7] ibid

Civil alliance established since the agreement between the founders or when its establishment was determined in the association's articles of association. Civil alliance usually acts under the names of its members or partners, although it is not a general requirement.[1]

Article 1618 of the Civil Code requires two things for a civil partnership agreement, namely:

a. Contributions from each partner in the form of money, goods or certain skills / crafts;

b. Intends to share the benefits that result.

The registration of civil alliance itself is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018 concerning Registration of Limited Partnership, Firm Alliance, and Civil Alliance. Civil alliance registration can be done electronically or electronically. Non-electronic registration is done because:

a. Notary whose domicile is not yet available on the internet; or

b. The Business Entity Administration System does not function properly based on an official announcement by the Minister,

Civil alliance registration is done by making a request for registration to the Minister. The request was made through the Business Entity Administration System.

Notary Civil Alliance is formed based on expertise.[2] Expertise as a notary can be a capital for the notary to open a joint office.[3] This is because the expertise as a notary is a specific and specific skill so that it can provide benefits to the civil union. This is then strengthened by Article 20 paragraph (1) of Law Number 2 Year 2014 Regarding Amendments to Law Number 30 Year 2004 concerning Position of Notary stating:

"Notaries can run in the form of civil alliance with due regard to independence and impartiality in carrying out their positions".

Based on article 20 of the latest UUJN mentioned in paragraph 1 that the Notary can carry out his position in the form of civil alliance with due regard to independence and impartiality in carrying out his position. But no definition is given regarding the intended civil alliance. Then in paragraph 2 it is stated that the form of civil alliance as referred to in paragraph (1) shall be regulated by Notaries based on the provisions of the Law.

The form of civil alliance is governed by a notary based on statutory provisions. This means that the general form of civil partnership contained in the Civil Code and the Commercial Code.[4]

The Civil Alliance with due regard to independence and impartiality in carrying out his position, in this case the Notary Public is a Public Official. The term independent is often equated with Mandiri. In the concept of management, the institution concerned is managerially able to stand on its own without being dependent on its superiors (dependent on). While Independent both managerially and institutionally does not depend on their superiors or on other parties.[5]

In this independence there are 3 (three) forms, namely:[6]

1. Independent Structural, that is, institutional independence (institutional) which in the structure chart (organigram) is firmly separated from other institutions. In this case, even though the Notary is appointed and dismissed by the Minister of Justice (Minister of Justice and Human Rights), it does not institutionally mean being subordinate to the Minister of Justice (Minister of Justice and Human Rights) or is within the structure of the Ministry of Law and Human Rights.

   Article 2 of Law Number 2 of 2014 concerning amendments to Law number 30 of 2004 concerning Notary Position stipulates that the notary is appointed and dismissed by the government. What is meant by the government in this case is the minister in charge of law (Article 1 paragraph 14 of Law Number 2 of 2014 concerning amendments to law number 30 of 2004 concerning Notary Position) even though administratively appointed and dismissed by the government, does not mean to be subordinated (subordinates) who appointed him government.

   Therefore, the notary in carrying out his duties:

   a. Be autonomous

   b. Do not side with anyone (impartial)

   It does not depend on anyone (independent), which means that in carrying out their duties, their office cannot be interfered with by the party who appointed them or by other parties

2. Independent Functional, i.e. independent of its function which is adjusted to the laws and regulations governing the duties, authority and position of a notary public.

[1] Kurniawan, Hukum Perusahaan, Cetakan I, Genta Publishing, Yogyakarta 2014, hlm.43

[2] Binta Afida Rahmatika, 2016, *Kemandirian dan Kerahasiaan dalam Menjalankan Jabatan Notaris Sebagai Anggota Persekutuan Perdata.* Yogyakarta: Fakultas Hukum Universitas Islam Indonesia., hlm. 58

[3] ibid

[4] Ermin Marikha, Efektivitas Pasal 20 Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2014 Tentang Jabatan Notaris, Jurnal Repertorium Volume III Universitas Sebelas Maret, Surakarta, 2016, hlm.67

[5] ibid

[6] Habib Adjie, *Hukum Notaris Indonesia-Tafsir Tematik Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008), hlm.31.

As mentioned in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, there are two conclusions, namely:

a. The duty of the notary public is to formulate the wishes / actions of the parties into an authentic deed by taking into account applicable law.
b. Notarial deed as authentic deed has perfect proofing power. so that it does not need to be proven or supplemented with other evidence, if there is a person / party who assesses or states that it is incorrect, it must prove the assessment or statement in accordance with applicable law.

3. Financial Independent, namely independent in the financial sector who have never received a budget from any party.

Even though the notary is appointed and dismissed by the government, he does not receive salary and pensions from the government. the notary only receives an honorarium from the community he has served or can provide free services to those who cannot afford it.

These independent provisions are regulated in a Notary obligation listed in article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning amendments to Law number 30 of 2004 concerning Notary Position.

Judging from the independence principles, the notary must not only have an independent structural relationship with the Ministry of Law and Human Rights who appoints a notary public, but also functional independence between fellow Notary colleagues and financial independence in financial management.

Functional independence is carried out in acting on behalf of the position. Article 16 paragraph (1) letter f of Law number 2 of 2014 concerning amendments to Law number 30 of 2004 concerning the position of notary states that the notary is obliged to maintain the confidentiality of the deed and supporting documents. Besides that, it is obligatory to prioritize a balance between the rights and obligations of the parties facing the notary.

In this functional independent principle, the notary also has the obligation to make the evidence desired by the legal subject as an adjunct to the legal actions of the parties facing independently in the sense of not involving his colleagues in the form of a notarial deed.

Even though the notary joins a civil alliance, only the notary public makes a deed that puts a signature on the deed. Both on the minuta and copy. starting from the beginning of the deed to the end. The signature is only a matter of administration, but a notary colleague cannot influence the authority of a notary colleague. Moreover, if there is a binding alliance rule and must be obeyed by each notary in the partnership may not affect the authority of the notary public. No less important, the notary public is also bound in financial independence which is underlined on this matter in carrying out his position, the notary is indeed entitled to receive an honorarium. However, based on this principle notaries are prohibited from obtaining income from other parties outside of what he obtained from carrying out the position of each notary who is a member of the notary's private civil association standing alone in receiving the honorarium.

3.2 Allied Liability For Mistakes Made By His Ally Friends

Notary as a position with special characteristics has its own responsibilities that must be carried out with regard to the authority, obligations and prohibitions that have been regulated in the notary position law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 Notary Position. Mentioned in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 of Notary Position (UUJN), the Notary Public has the authority to make an authentic deed and matters relating to the validity of a deed (Article 15 paragraph (2) UUJN) such as legalization, war marking, legal counseling in connection with the deed making. An authentic deed is a deed made in a form that has been determined by law, made by or before an employee or official in charge for that in the place where the deed was made (Article 1868 BW). This deed is very important for the parties concerned, because authentic deed is a law for the parties concerned, besides that authentic deed is also a valid and perfect evidence in a court.[1]

The existence of the deed is very important for the parties concerned, so the Notary must guarantee and be responsible for the certainty of the date of making the deed, the parties facing or the parties concerned, saving the deed both minuta, copies and quotations and grosse deed. In addition to several things as mentioned previously, the Notary Public must also guarantee and be responsible for the confidentiality regarding everything and all information obtained from the relevant deed, in accordance with the oath or appointment as stated in Article 16 letter f UUJN. If the confidentiality is not guaranteed, the Notary concerned may be subject to sanctions in the form of dishonorable discharge from his position in accordance with Article 85 UUJN.[2]

Responsibility (aansprakelijkheid or liability), means the obligation to compensate if the commitment that has been promised is not fulfilled, so that if the engagement is really not carried out, then the person (ally)

[1] C.S.T. Kansil dan Christine S.T. Kansil, 2006, *Pokok-Pokok Etika Profesi Hukum*, Pradnya Paramita, hlm. 86.
[2] Andria Fairuz Tuqa, Herlia, Damayanthi Prahastini Puteri Maarif, Lolyta Zullva Triselinda Caesar, *Kerjasama Antar Notaris Dalam Bentuk Persekutuan Perdata, 2019,* Jurnal Hukum Magnum Opus Volume II Nomor 2 Universitas Airlangga, Surabaya, hlm.15

responsible can be sued for fulfilling his achievements.[1]

Based on articles 1642 to 1645 Civil Code, the responsibilities of allies in the partnership can be described as follows:

1. If an ally establishes a legal relationship with a third party, then the relevant ally alone is responsible for legal actions carried out with that third party, even though he says he is acting in the interest of the community.
2. The act shall only bind other allies if;

a. Obviously there is a power of attorney from other allies.

b. The results of his actions or profits have been clearly enjoyed by the alliance.

3. If several allies of civil alliance have relations with third parties, then the allies can be held equally accounted for, even though their income is not the same, except if the agreement made with the third party clearly stipulates the balance of their responsibilities each of the allies according to the agreement.
4. If a civil alliance enters into a legal relationship with a third party on behalf of the alliance, then the alliance can immediately sue the third party.

The responsibility of the Notary includes the material truth of the related deed, divided into 4 points, namely: [2]

1) Notary liability in a civil manner against the material truth of the deed he made; Juridical construction used in civil liability for material truth to a deed made by a Notary Public is the construction of acts against the law.
2) Notary criminal responsibility for the material truth in the deed he made; Regarding criminal provisions, it is not regulated in UUJN, but notary liability is criminally imposed if the Notary public commits a criminal act. UUJN only regulates sanctions for violations committed by Notaries against UUJN, such sanctions can be in the form of a deed made by a Notary that does not have authentic power or only has power as a deed under the hand. For the Notary himself, sanctions can be given in the form of a warning to the dismissal of the dishonor.
3) Notary's responsibility is based on the Notary Position Rules for the material truth in the deed he made; The Notary's responsibility is mentioned in Article 65 of the Law JN which states that the Notary is responsible for any deed he makes, even though the Notary's protocol has been submitted or demeaned to the depositor of the Notary's protocol.
4) Notary's responsibility in carrying out his / her office duties based on the Notary code of ethics.

In the practice of notary civil alliance, the notary in accordance with his independent position still acts individually and does not recognize the practice of giving power between allies. This is because a notary must have professional behavior.[3] Therefore, the responsibility of a notary is also borne by each person in relation to the deed he made. Allied notaries are not responsible for mistakes made by their allies when it comes to making a deed.

4. Conclusion

The mechanism of notary civil partnership work based on applicable laws and regulations is in accordance with article 1618 of the Civil Code which reads civil partnership is an agreement between two or more people who are bound themselves to put something (inbreng) into the alliance with the intention of dividing the profits obtained because of it, but in the notarial civil division the profit sharing is not the orientation of this notary civil partnership. Notary civil alliance is also subject to Act Number 17 of 2018 concerning the Registration of Limited Partnership, Firm Fellowship and Civil Alliance regarding procedures for establishing a civil alliance and is also subject to Act Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 About the position of Notary. Notary civil alliance regulated in UUJN is a partnership that aims not to run the company in the commercial sense and profit is not not an orientation for Notaries. The said notary civil association is a joint office of the Notary where the client who comes to the office with this notary will later face one of the notaries who are members of the civil partnership. Everything that is done by the notary public and the client will be the responsibility of the relevant notary public and become a secret that must be hidden from other notary members of the civil partnership in accordance with the obligations of the notary public.

Accountability of a notary public in a civil partnership is only limited to the deed he made. The notary is not responsible for the mistakes of allied notaries made against the deed he made because even though the notary is in a civil partnership, the notary in carrying out his work remains in their respective independence. Notaries may not interfere with the deeds made by the notary public.

[1] Zainal Asikin dan L. Wira Prisa Suhartana, Op.cit. hlm 28
[2] Grace Novika, 2015, *Perlindungan hukum Bagi Notaris Untuk Menjaga Kerahasiaan Isi Akta Yang Dperbuatnya Dalam Perkara Pidana (Studi di Pematang Siantar)*, Jurnal Universitas Sumatra Utara Volume VII, Medan, hlm.9
[3] C.S.T.Kansil, Op.Cit, hlml. 71.

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