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Legal Implications of Civil Partnerships for Notaries

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ABSTRACT: Pursuant to Article 1 point 1 of the Notary Position Law as amended (UUJNP), a Notary is a public official authorized to draw up authentic deeds and vested with other authorities as stipulated in this law or other laws and regulations. Accordingly, authentic deeds executed by notaries play a crucial role in ensuring legal certainty in civil matters. However, Article 20 of the Notary Position Law, as amended by the UUJNP, permits notaries to establish a civil partnership, which may give rise to legal and ethical dilemmas concerning the principles of notarial independence, confidentiality, and professionalism. This research employs a normative juridical method. The study focuses on the implications of civil partnership arrangements on the principle of notarial independence and on the liability of notaries for the confidentiality of deeds within such partnerships. The results indicate that as long as a notary maintains independence in structural, functional, and financial aspects, the regulation of civil partnerships may in fact strengthen legal certainty and legal protection of authentic deeds. Conversely, should a notary fail to uphold the confidentiality of a deed as mandated by the Notary Position Law, the notary may be held civilly liable under the fault-based liability doctrine as regulated in Article 1365 of the Civil Code. Furthermore, the notary may also be subject to administrative sanctions under Article 16 paragraph (11) of the UUJNP, ranging from a written warning to temporary or permanent dismissal.

KEYWORDS: Notarial Independence, Confidentiality, Civil Partnership.

I. INTRODUCTION

Pursuant to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stipulated that "The State of Indonesia is a state based on law." The concept of a state based on law implies that all aspects of national and state life must be grounded in applicable legal norms, thereby ensuring legal certainty, justice, and utility for all citizens. This principle affirms that every action by both government and society must adhere to established legal rules, such that no party may act arbitrarily.

Legal certainty emphasizes that all citizens, including the government, must comply with laws that are clearly and consistently formulated. Its purpose is to create justice and order in social, political, and economic life. Legal certainty includes the clarity of legal norms, regulatory stability, and legal protection that the public can rely on. Through legal certainty, individuals can clearly understand their rights and obligations, as well as obtain effective legal protection against unlawful actions.

Within the Indonesian legal system, there are various professions that play strategic roles in ensuring legal certainty—one of which is the notary. As a public official, the notary holds a central position in upholding the law in Indonesia. In addition to the significant number of notaries across the country, the profession is also considered part of the legal elite. The fundamental basis of the notarial profession is trust; professionals within this community bear a significant responsibility entrusted to them by society. As a public official, a notary serves as an organ of the state equipped with public authority, authorized to exercise a portion of state power to produce written and authentic evidence in civil law matters. The term "public" in this context does not refer to algemeene (in the Dutch sense). The authority inherent in the notarial office is specific in nature—namely, the authority to draw up authentic deeds.

based on Article 1 point 1 of Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 on the Position of Notary, a notary is defined as a public official authorized to draw up authentic deeds and vested with other authorities as stipulated in this Law or based on other laws and regulations. The notarial office is not a structural position within the governmental organization; however, the notary's authority is an attribution, as the appointment to the position of notary is based on the provisions of the Notary Office Law. Although a notary is appointed by the state to perform public functions, a notary is not a civil servant and does not receive a salary from the state (Sjaifurrachman and Habib Adjie, 2011).

Legal Implications of Civil Partnerships for Notaries

In the development of the legal-political framework concerning notaries, it is recognized that a notary may form a civil partnership, as stipulated in Article 20 of Law Number 30 of 2004. However, this provision was subsequently amended in line with the enactment of Law Number 2 of 2014, which, among other changes, replaced the term "Civil Association" with "civil partnership" and eliminated paragraph (3) of said article.

Article 20 of the Amended Notarial Office Law (UUJN-P) opens the possibility for legal ambiguity, as the substitution of the term civil union with civil partnership and the deletion of paragraph (3) in Article 20 causes the regulation to revert to the provisions of the Indonesian Civil Code, which does not provide a detailed explanation on how a notary is to implement a civil partnership in practice. This article raises interpretive uncertainties: on the one hand, a notary is required to perform their duties in a neutral, honest, independent, autonomous, and impartial manner with integrity, as mandated by Article 16 paragraph (1) letter a of the UUJN-P. On the other hand, Article 20 grants notaries the flexibility to cooperate with other notaries through civil partnerships.

From a legal reasoning perspective, the application of civil partnerships in notarial practice may give rise to ethical dilemmas and conflicts of interest. This is due to the obligation of notaries to maintain independence and integrity in carrying out their official duties, which may be compromised by commercial cooperation relationships established within the framework of a civil partnership.

Furthermore, the author observes that, in the context of managing a shared office under a civil partnership model, notaries will inevitably utilize common facilities such as office space, rooms, computers, printers, and other equipment. This situation may conflict with the provisions of Article 16 paragraph (1) letter f of the UUJN-P, which requires notaries to maintain the confidentiality of all matters related to the deeds they draw up and any information obtained for the purpose of drafting those deeds, in accordance with their oath or pledge of office. In this regard, confidentiality should be interpreted to mean that the deed may only be known to the notary, the notary's witnesses, and the relevant parties.

When viewed in practice, civil partnerships involving two or more notaries sharing office space and facilities raise a critical issue: how can a notary ensure the confidentiality of the contents of a deed if the same facilities are jointly used and the notaries operate under the same roof? Consequently, the author identifies a normative ambiguity within the UUJN-P, as neither the UUJN-P nor Ministerial Regulation Number M.HH.01.AH.02.12 provides a clear and detailed regulatory framework on how notaries are to safeguard the confidentiality of deeds under such arrangements.

Therefore, the author asserts that there exists a normative obscurity in Article 20 of the UUJN-P, as it fails to clearly and comprehensively regulate the implementation of notarial civil partnerships.

II. RESEARCH METHOD

This legal research adopts a normative approach, as the discussion is focused on the regulation of the concept of notarial civil partnership as governed by statutory provisions. This study also applies interpretative methods as part of legal discovery (rechtsvinding). According to Sudikno Mertokusumo, interpretation by judges is an explanation that must lead to an application of the law which is acceptable to society in relation to concrete legal events. Interpretation, in this context, is a tool or method for understanding the meaning of statutory provisions (Askarial, 2018).

The research approach employed in this study is the statute approach. This involves examining all statutory regulations relevant to the issues discussed by the author and studying the existence, consistency, and alignment between one law and another. The results serve as the basis for constructing arguments to resolve the legal problems identified in the research (Syamsudin, 2007).

III. RESULTS AND DISCUSSION

A. Implications of Civil Partnership Regulation on the Principle of Independence

The regulation of the notarial profession has undergone significant development with the enactment of Law Number 2 of 2014 as an amendment to Law Number 30 of 2004. One of the key changes lies in Article 20 of the Amended Notarial Office Law (UUJN-P), particularly the substitution of the term (association) with (partnership) and the deletion of paragraph (3). However, it must be emphasized that Ministerial Regulation of the Ministry of Law and Human Rights Number M.HH.01.AH.02.12 of 2010 concerning the Requirements for Practicing as a Notary in the Form of a Civil Partnership remains valid and in force. The deletion of paragraph (3) in Article 20 of the UUJN-P should be understood as the removal of its textual content only—not the revocation of its implementing regulation.

This is because the provisions regarding the requirements for notaries to practice in the form of a civil partnership, as previously mentioned in Article 20 paragraph (3) of Law Number 30 of 2004 (prior to amendment), had already been implemented through Ministerial Regulation Number M.HH.01.AH.02.12 of 2010. As such, it is no longer necessary to restate these requirements in Article 20 paragraph (3) of the amended law, since the regulation already sufficiently governs the matter. In other words, the substance of Article 20 paragraph (3) of the UUJN remains applicable.

Although the Ministerial Regulation remains in effect, the amendment in paragraph (1) changing the term association to partnership has led to the application of Article 1618 of the Indonesian Civil Code (*Burgerlijk Wetboek*), which defines a civil partnership as an agreement between two or more persons who commit to contribute goods, funds, or labor (expertise) with the aim of obtaining mutual profit.

As public officials, notaries hold an essential role in upholding legal certainty, order, and protection for the public through the execution of authentic deeds. And as public officials, notaries must be independent. In everyday language, the term "independent" is often equated with "*autonomous*" (Dhoni Martien, 2023). In the context of management, being autonomous means that an institution can operate independently from its superiors in managerial terms, although institutionally it remains dependent. In contrast, being independent means being free from both managerial and institutional dependencies (Habib Adjie, 2008).

Normatively, the principle of notarial independence and impartiality is already guaranteed in various provisions of the notarial code of ethics and professional regulations. However, in the absence of legal clarity regarding the form and extent of influence within a civil partnership, such principles are at risk of being undermined by partnership practices that may lead to domination by one party over another, including client acquisition or handling of key deeds for personal benefit. Ideally, a civil partnership should include an internal system comprising clear division of labor, an internal code of ethics, and an independence clause within the partnership deed. These mechanisms are essential to prevent interference among notaries in professional decision-making and must be supported by supervision from the Notary Supervisory Council and the professional awareness of each member.

The independence of a notary in a civil partnership can be examined through three dimensions:

1. Structural Independence
   Notaries hold an institutionally distinct position from other institutions, including the Ministry of Law and Human Rights. However, Article 1636 of the Civil Code permits a partner appointed as a manager to act on behalf of the partnership, even if this conflicts with the interests of other partners. If this concept is applied to the notarial profession, the independence of a notary may be threatened due to potential interference from other partners. Each notary operating within a civil partnership must remain individually responsible for deeds they execute, as stipulated in Ministerial Regulation Number M.HH.01.AH.02.12 of 2010. Therefore, the relationship among notaries in such partnerships should be purely administrative or managerial, without hierarchical ties that bind their professional authority. Thus, institutional independence is preserved both in relation to the government and among notaries in a partnership structure.
2. Functional Independence
   Functional independence requires that a notary perform their professional duties in accordance with applicable laws, especially the Notarial Office Law and the aforementioned Ministerial Regulation. In civil partnerships, with respect to staff usage, it is imperative that shared personnel be avoided. Shared employees may create risks of information leakage and conflicts of interest among notaries. Accordingly, each notary should employ their own administrative staff to ensure that their functions and authority remain intact without violating the Notarial Office Law.
3. Financial Independence
   Financial independence is essential for maintaining professionalism and integrity. Economic autonomy protects notaries from being influenced by collective financial interests within the partnership, which may compromise their neutrality. To uphold financial independence in a civil partnership, a notary should:
   a. Manage income individually, separate from the partnership's finances, to avoid financial dependency that could affect decision-making;
   b. Reject any form of economic interference, either from partners or external parties, that may undermine objectivity in their duties;
   c. Ensure that the partnership's financial structure does not create pressure or incentives that could jeopardize their neutrality and professionalism.

Thus, while notaries may participate in civil partnerships, they must maintain structural, functional, and financial independence to uphold neutrality and professionalism as mandated by prevailing laws. If these aspects of independence are properly maintained, the regulation of civil partnerships can actually reinforce legal certainty and protection offered by authentic deeds, as well as reduce administrative costs. Additionally, it may foster knowledge exchange among partners.

However, failure to uphold these aspects of independence could result in serious violations of the principle of notarial neutrality. This can erode the trust of parties in notaries, as legal products issued under such circumstances may no longer reflect the parties' true intentions. According to Philipus M. Hadjon, the law must protect citizens from public officials who act in violation of principles of justice and legal certainty. If notarial independence is compromised, legal protection becomes weak. Service users may fall victim to hidden conflicts of interest. Hence, the principles of legal protection and public trust are significantly threatened.

From a legal protection perspective, lack of independence may deprive one party of legal safeguards that authentic deeds are meant to provide. Therefore, the notarial profession can only function effectively if the principle of independence is applied in practice. Notaries who fail to uphold their independence may also be subjected to administrative sanctions and held legally liable for negligence or misconduct, as stipulated in Article 16 paragraph (11) of the Notarial Office Law. Such failures can also lead to loss of professional legitimacy, ultimately jeopardizing the sustainability of their profession.

According to Satjipto Rahardjo, law is not merely a set of norms, but also a moral expression of a just society. A notary who lacks independence is deemed to have disregarded professional ethics and moral values of justice. It is thus essential for notaries to uphold professionalism to maintain their role as instruments of legal certainty. Failure to recognize this neutral position may lead to detrimental legal consequences.

In addition to independence, one of the core obligations of a notary is to maintain the confidentiality of all matters concerning the deeds they create and the information obtained in the course of doing so, in line with their oath of office as provided in Article 16 paragraph (1) letter f of the Notarial Office Law. The main purpose of this obligation is to provide legal protection for the interests and intentions of the parties involved in a legal act. By safeguarding confidentiality, notaries ensure that the information provided by the parties remains private and cannot be misused by unauthorized individuals.

B. Liability of a Notary for Maintaining the Confidentiality of Deeds Within a Notarial Civil Partnership

The notarial profession is a fiduciary one that demands a high standard of integrity. A notary serves as an extension of the state and government, providing legal services in the field of civil law to the public (Gitayani, L. P. C., 2018). The obligation to maintain the confidentiality of a deed is a fundamental criterion for assessing a notary's credibility. If this duty is violated, public trust in the notary may diminish. The legal certainty guaranteed by the existence of authentic deeds loses its significance if the information contained therein is no longer protected. Therefore, strict enforcement of confidentiality rules and the imposition of sanctions for violations are both preventive and repressive measures that must be upheld.

Thus, the notary's obligation to keep deed contents confidential is not merely a normative obligation, but also a legal instrument for protecting the interests of the parties involved. The application of legal liability theory as developed by Munir Fuady provides a solid juridical framework to assess a notary's errors or negligence and to promote a system of accountability that is fair and proportional.

A concept closely related to legal obligations is the concept of legal liability. That a person is legally responsible for a particular act or bears legal liability means they are subject to sanctions if their actions contravene applicable regulations (Hans Kelsen, 2006). In his pure theory of law, Hans Kelsen stated that the concept of legal obligation is closely connected to the concept of liability. According to Kelsen, a person is considered legally liable if they can be sanctioned for violating prevailing legal norms.

A notary must conduct their profession with professionalism, good character, and uphold the dignity of their office. They must also respect colleagues, support one another, and defend the good name of the notarial organization. As a professional, a notary is accountable to their profession, particularly in adhering to the notarial code of ethics (Ignatius Ridwan Widyadharma, 1994).

The fundamental basis for the execution of a notarial deed lies in the existence of the will or request of the parties involved. A notarial deed essentially reflects formal truth, meaning it is based on the information provided by the parties to the notary. An authentic deed must be binding, in the sense that all statements contained therein must be presumed to be true and to have occurred as stated, in accordance with the actual circumstances. Therefore, if any party challenges or doubts its veracity, the burden of proof lies upon that party to demonstrate such doubt or falsity.

Another important element that must be incorporated in an authentic deed is that it must include all elements of evidence—written documentation, witnesses, presumptions, admissions, and oaths. Maintaining the confidentiality of the minuta of the deed is a mandatory obligation for a notary. The physical form of all parts of the minuta must be kept solely within the notary's protocol and stored at the notary’s office as part of the official notarial protocol. Under the provisions of the Notarial Office Law (UUJN-P), the confidentiality of the minuta's content must be preserved by the notary and may not be disclosed to or accessed by unauthorized parties.

Accordingly, notaries must exercise both individual and social responsibility, particularly by adhering to positive legal norms and by submitting to the professional code of ethics. This obligation serves to reinforce the binding nature of existing positive legal norms. In shared office arrangements under notarial civil partnerships, challenges arise in safeguarding deed confidentiality. Notaries within a partnership often use shared facilities such as office space, rooms, computers, printers, and other devices. This situation may conflict with Article 16 paragraph (1) letter f of the Notarial Office Law (UUJN-P), which mandates that notaries must keep all matters concerning deeds confidential, including information obtained for the purpose of preparing such deeds, in accordance with their oath of office. This confidentiality requirement dictates that deeds may only be accessed by the notary, notarial witnesses, and the interested parties.

In practice, when two or more notaries operate within the same civil partnership and share office facilities, concerns arise over how a notary can guarantee the confidentiality of deeds if shared resources allow for access by other notaries. Thus, using a legal discovery approach, it must be emphasized that such civil partnerships must not be used as a loophole to avoid professional obligations—particularly the duty to maintain deed confidentiality as stipulated in Article 16 paragraph (1) letter f and reinforced in Article 16 paragraph (11) of the UUJN-P regarding sanctions for violations.

Article 16 paragraph (11) of the UUJN-P stipulates that sanctions for failing to maintain deed confidentiality include verbal warnings, written warnings, temporary suspension, honorable discharge, and dishonorable discharge. In addition, under civil law, negligence in safeguarding deed confidentiality can constitute an unlawful act (onrechtmatige daad) if it causes harm to interested parties. This aligns with Article 1365 of the Indonesian Civil Code, which states:

"Every unlawful act that causes harm to another person obliges the party at fault to compensate for such harm."

Accordingly, if a notary within a civil partnership cannot ensure the confidentiality of deeds, they may be held civilly liable to compensate for resulting damages. This demonstrates that while civil partnerships may offer efficiency in resource utilization, they also entail legal risks concerning confidentiality obligations as mandated by the UUJN-P and the Civil Code. Therefore, clearer and more detailed regulations are needed within the UUJN-P to establish mechanisms for protecting confidentiality in notarial civil partnerships, so as to avoid normative conflicts in practice.

IV. CONCLUSIONS

Based on the discussion of the main issues outlined above, the researcher can draw the following conclusions:

1) The provision of Article 20 paragraph (1) of the Notarial Office Law as amended (UUJN-P) essentially provides room for notaries to adopt a more efficient working model. As long as each notary adheres to Ministerial Regulation Number M.HH.01.AH.02.12 of 2010, particularly in exercising their official authority in accordance with the UUJN-P and the notarial code of ethics, a civil partnership does not contradict the principle of notarial independence. The independence of notaries as a fundamental principle is not automatically forfeited merely by virtue of their joining a civil partnership entity. As long as the office is exercised professionally, without subordination among partners, and without interference in the execution of their respective authorities, the principle of independence remains intact.
2) The liability of a notary concerning the confidentiality of deeds within a notarial civil partnership may give rise to civil liability under the fault-based liability doctrine (*schuld aansprakelijkheid*), as regulated in Article 1365 of the Indonesian Civil Code (*Burgerlijk Wetboek*). In addition, the notary may also be subject to administrative sanctions under Article 16 paragraph (11) of the UUJN-P, ranging from written warnings, temporary suspension, to permanent dismissal.

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