

Application Of Notary Responsibilities In Civil Arrangement Of The Position Of Notary And The Principle Of Civil Alliance

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Application Of Notary Responsibilities In Civil Arrangement Of The Position Of Notary And The Principle Of Civil Alliance

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Abstract: This study aims to discuss regarding how the interpretation of Article 20 of Law Number 2 of 2014 concerning the Position of Notary related to the interests of the Notary Civil Society and how the application of Notary responsibilities in the civil alliance regulated in Article 20 of Law Number 2 of 2014 are related to Article 1618 of the Criminal Code concerning alliance. The research method used in this paper uses the legal research method of literature, using secondary data in the form of written legal materials relating to the problems that are the object of this writing such as laws and regulations, books, articles and other writings. The results showed that there is cooperation between the notaries who are members of the Notary Civil Society and the knowledge of the resource person that there is no Notary civil partnership which is carried out at this time.

Keywords : notary responsibilities, civil arrangement, Law no. 2 of 2014, civil code, notary position.

1 INTRODUCTION

With its increasing presence to meet the needs of the community, related to the existence of Article 20 of Law Number 2 of 2014 concerning the Position of Notary that the notary may carry out his position in the form of a civil union by taking into account the independence and impartiality in carrying out his position, the form of the civil union referred to is governed by the notary public based on the provisions of the legislation, and further provisions regarding the requirements in carrying out the position of notary public in the form of a civil union are regulated in a Ministerial Regulation (Santiago, 2017; Sukhovenko, 2019). As implementing regulations of Article 20 of Law Number 2 of 2014 concerning Notary Position, the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number: M.HH.01.AH.02.12. of 2010 was issued on February 8, 2010 which provides legal certainty and the basis for notaries in Indonesia in establishing civil unions. The emergence of the provision that a notary in Indonesia can carry out his position in the form of a notary civil union is one of the government's efforts to support the improvement of service delivery to communities throughout Indonesia in the field of notary public, and increase the knowledge and expertise of the notary public (Yulia et al., 2018). With the provisions of Article 20 of Law Number 2 of 2014 concerning the Position of Notary, the Notary's civil alliance raises the pros and cons of experts. First, according to Yunirman Rijan (2018) that article regulating the notary's civil alliance is useless, it is proven that there is no civil alliance which is established by any item. Basically the work of the Notary is individual so that if several notaries join the civil alliance, problems will arise in terms of maintaining client confidentiality and also the issue of the responsibilities of the Notary members of the alliance." Second, another opinion expressed by Herlien Budiono (2018), this civil partnership is commonly practiced in the Netherlands.

The formation of a notary civil alliance only aims to unite in the same office. Each notary who is incorporated in the partnership continues to act for himself. The purpose of the formation of a civil alliance itself is to improve services to the community in the field of notarization; increase the knowledge and expertise of union friends; and for office cost efficiency. When reviewed with the provisions of Article 1618 of the Indonesian Criminal Code, the definition of partnership is based on an agreement made between two or more people who are bound to one another, that is, to put something (inbreng) into a partnership with the purpose of seeking profit. Civil alliance as defined above contains elements (Budiono, 2010) of (1) formation of partnership based on mutual agreement (2) the existence of inbreng which means that each partner is required to put money, goods and others or his craft into the company, and the form of inbreng can be in the form of money, goods or labor (3) with the aim of dividing profits among the people involved. The fact that basically there is no notary who established a notary civil association. The phenomenon that was found was that there were several Notaries who had offices in the same office. This joint office is referred to by the Notary concerned as being a notary civil association but only having an office in one office. This is in line with one of the goals of the Notary's civil partnership, which is to save office operational costs.

2 THE PROBLEM

The issues discussed regarding how the interpretation of Article 20 of Law Number 2 of 2014 concerning the Position of Notary related to the interests of the Notary Civil Society and how the application of Notary responsibilities in the civil alliance regulated in Article 20 of Law Number 2 of 2014 are related to Article 1618 of the Criminal Code concerning alliance.

3 RESEARCH METHOD

The research method used in this paper uses the legal research method of literature, using secondary data in the form of written legal materials relating to the problems that are the object of this writing such as laws and regulations, books, articles and other writings (Soekanto & Mamudji, 2003). Analysis of the data used in this study is qualitative data

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analysis to answer the problems in this writing.

4 APPLICATION OF NOTARY RESPONSIBILITIES IN NOTICED CIVIL ARRANGEMENT

The notary who has the authority to make a deed in the form of a civil alliance must be responsible for the deed he made, such responsibilities include, responsibilities under the Notary Law, civil liability, criminal liability, responsibility based on a notary code of ethics. The responsibility lies with each notary not delegated, transferred or replaced by other Notaries who are members of a civil partnership. In this case, the Notary's responsibility in making a deed in the Notary Civil Alliance regulated in Article 20 Notary Law is related to Article 1618 of the Indonesian Criminal Code. The responsibility of the Notary as a profession and as a position is born from the existence of obligations and authority given to him, the obligations and authorities are legally and bound to take effect since the notary takes his oath of office as a Notary. The oath that has been said is the one that should control all notary actions in carrying out his position. In order to carry out professional duties and positions professionally and without blemish from the community, the moral and law for a Notary Public is something that cannot be separated (Budiono, 2007). Notary profession who is also a public official must be based on moral values, so his work must be based on obligations, that is, there is a good will in himself, not depending on the goals or results achieved. Supporting moral attitude of notary professional ethics is to act on the basis of determination, the awareness of the obligation to uphold professional ethics, create idealism in practicing the profession, which is not working for profit, serving others (Refningsih et al., 2019). Basing on the moral values and ethical values of a Notary Public, the occupation of a notary public service is a service to the community (client) independently and not taking sides in the notary field. The notary in his service is lived as a vocation based on the spirit of devotion to fellow human beings in the public interest and rooted in respect for human dignity in general and notary dignity in particular. Jobs that can be accounted for by the notary profession require talent and ability. For this reason, notaries are required to equip themselves with satisfactory quality education standards, have the authority to act freely and are able to control themselves. Then the work of a Notary is a professionalism that is required to always act professionally. The task of a notary is to make an authentic deed desired by the parties for a certain legal act. Without a request from the parties, the notary will not make any deed. The notary in making a deed must be based on the statement or statement of the parties present before the notary, then the notary pours the statements/statements into a deed, where the deed has fulfilled the scientific, formal and material provisions in making an authentic deed. The notary in making the deed must be based on legal regulations or procedure for making the deed. In addition, the Notary also has a role in providing legal advice in accordance with the problems faced by parties who need the services of a notary public. Notary in carrying out his position and profession based on the applicable laws and regulations will create a legal product in the form of a notarial deed which is an authentic deed that is a deed that has birth, formal and material truth so that it has full or perfect proof of strength, so that it can be proven otherwise by the party that denies it. The power of proof of birth or self (uitwendige bewijskracht) is the outward ability of an authentic deed to prove its validity as an authentic deed. When viewed

from the outside (birth) as an authentic deed and in accordance with the rules of law that have been determined regarding authentic deed, until proven otherwise, it means that there is someone who proves that the deed is not an outward authentic deed. In addition, in providing his services as a professional, according to Abdulkadir Muhamad, a Notary is responsible to himself and to the community. Being accountable to yourself, means that the Notary works because of moral, intellectual and professional integrity as part of his life. In providing services, a professional always maintains the noble ideals of the profession in accordance with the demands of his conscience obligations, not because of mere mere hobbies.

5 ACCOUNTABILITY FOR CIVIL ASPECTS

Hans Kelsen (2006) further divided the responsibilities consisting of:

1. Individual responsibility, that is, an individual is responsible for the violations he committed himself;
2. Collective responsibility means that an individual is responsible for an offense committed by another person;
3. Liability is based on an error which means that an individual is responsible for an offense that was committed intentionally and presumably with the aim of causing harm;
4. Absolute liability which means that an individual is responsible for violations that he did because he was unintentional and not expected.

Civil sanctions are imposed for mistakes that occur due to breach of contract, or acts that violate the onrechtmatige daad law. This sanction in the form of reimbursement of costs, compensation and interest is a result that will be received by the Notary Public from the claimants if the relevant deed only has proof as a deed under the hand or the deed is null and void by law (Sjaifurrachman & Adjie, 2011). Civil sanctions are sanctions imposed on mistakes that occur due to breach of contract, or acts that violate the onrechtmatige daad law. This sanction in the form of reimbursement of costs, compensation and interest is a result that will be received by a Notary from the suit of the parties if the deed concerned only has proof as a deed under the hand or deed canceled by law. Notary Deed cannot be assessed or stated directly and unilaterally has the power of proof as a deed under the hand or null and void by law by parties whose names are in the deed or by other people with an interest in the deed. When the parties consider something wrong with the deed, the party concerned must sue the Notary and the plaintiff must be able to prove his claim, whether the Notary Deed does not meet the Outward, Formal or Material aspects and and proves the loss. So that the responsibility of a Notary civil is for the Notary who does not carry out their obligations in accordance with the code of ethics and the Law of JN and causes harm to the person or party concerned, the Notary can be sued in accordance with the provisions of Article 1365 of the Civil Code. And the Notary shall be jointly and severally responsible between the Notary Public and the staff of the Notary Office in accordance with Article 1367 of the Civil Code.

6 CONCLUSIONS

Interpretation of Article 20 of Law Number 2 of 2014 concerning notary position which reads notary can carry out

his position in the form of a civil partnership by taking into account the independence and impartiality in carrying out his position. According to the informant, the notary civil association is also known as *inbreng*, where there is cooperation between the *notaries who are members of the Notary Civil Society* and the knowledge of the resource person that there is no Notary civil partnership which is carried out at this time. The application of Notary responsibilities in civil partnership Notary is regulated in Article 20 of Law Number 2 of 2014 when it is related to Article 1618 of the Indonesian Criminal Code concerning the alliance on the making of Deed in civil alliance consisting of responsibility for material truth and responsibility for formal truth. The responsibility for material truth relates to the validity of the proof of the deed, while the responsibility for formal truth relates to the making of the deed which must be in accordance with the provisions of the legislation. It is expected that the Notaries who will make a civil alliance to make an agreement for the Notaries, so that in carrying out the civil partnership can provide certainty and legal protection based on the agreement which is the law for those who make it. It is expected that the Notary Public in a professional alliance will be professional in taking responsibility for his deeds if he does not pay attention to the physical, material and formal aspects in making the deed.

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