

Assessing the Concept of a Civil Partnership for Notaries in Indonesia

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Assessing the Concept of a Civil Partnership for Notaries in Indonesia

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A shift regarding notaries which was originally banned is now allowed after Indonesia has developed its own regulations related to the position. Only a few notaries form a partnership in Indonesia's implementation. This differs from notaries in the Netherlands, where the majority work in co-operation with other professions. The purpose of this research is to investigate the concept of a Civil Partnership of notaries in Indonesia and the nature of the concept. The research method consists of normative / doctrinal legal research which using three (3) approaches: statute, historical, comparative, as well as interviews. The research results indicate that Civil Partnership for notaries essential provides efficiency that can increase notaries' welfare in order to obtain a proper office and improve legal services. The current concept is only limited to a shared office, in terms of office management but not work, considering the fact that notaries works individually.

Key words: *Notary, Civil Partnership*

Introduction

Notary is a profession that is still in great demand (Kunni Afifah, 2017:147-161). The number of notaries in Indonesia has increased annually. In early 2010, The Minister of Law and Human Rights inaugurated around two thousand new Notaries placed throughout Indonesia. In 2016, the estimated number of notaries throughout Indonesia was more than 17,000. This number will continue to increase annually.

The annual increase of the number of notaries coupled with increasingly complex social problems that require notary services give opportunities to notaries to establish a civil partnership of notaries. The intention is for some public notaries to establish an office together with the ordinances governed by the notary. It is possible for a notary to establish a civil federation of notaries, because the establishment of a notary civil federation has been legally governed.



History shows that based on the Indonesia principle of concordance using the existing law in Netherlands named *Staatblad* 1860 which created while Indonesia was a colony. *Staatblad* 1860 Article 12 warns notaries that they will lose their positions if they carry out a Civil Partnership. There is Fear of leaking the fact that most service users are European while Indonesian citizens called *Pribumi* are subject to customary laws. A shift took place in 2014. There was an amendment to Law Number 30 of 2004 in Article 20 paragraph (1) which stated that a notary may form a civil partnership. This amendment was welcomed because it was able to provide a legal breakthrough.

Civil Partnership refers to Article 1618-1652 of the Civil Code which requires the distribution of profits and work jointly carried out, while the previous Civil union has now been replaced by Civil Partnership which is only limited to a shared office. These differences create disharmony between the Civil Code and the Notary Public's position regarding the concept of Civil Partnership. This disharmony will create legal uncertainty a multi vote for notaries.

The reality in Indonesia shows that at this time only a few offices run the Civil Partnership, the causes for notaries not implementing this concept whether it is unclear regulations that create legal uncertainty so it needs a new concept or a concept contrary to philosophy of notaries, whereas it is expected that the concept of civil partnership can be run by a notary, bearing in mind that the number of notaries is increasing annually, which will provide a solution to the distribution and efficiency of notaries, especially new ones.

The problems to be investigated are: What is the essence of the concept of notary civil partnership in Indonesia and what is the concept of civil notary partnership in existence today? This study carried out in depth in legal and philosophical research to obtain answers..

Research Method

The research consists of prescriptive normative legal research using three approaches: statue, historical and comparative approach as well as interviews with several related stakeholders (Peter Mahmud Marzuki, 2009: 133). Legal research was carried out using relevant books and journals. All legal materials were collected and systematically analysed and structured in order to obtain coherence in solving legal issues.

Discussion

The Essence of the Concept of Civil Partnership regarding notaries in Indonesia

The concept of Civil Partnership of notaries has positive and negative views by various groups. Those who are against it maintain that it is better for it to be abolished since the



enactment of Act Number 30 of 2004 concerning Notaries' public legal position (Yunirman Rajiman, 2018).

One of the problems that arises is basically caused by notaries' work as an individual. Notaries have the authority to make a deed containing formal truth in accordance with what the parties have told the notary and he or she must keep it confidential (Valentine, 2014). If notaries join the *matschaap*, there will be a problem in securing the client's confidentiality, as well as notary members' responsibility towards *matschaap*. A problem might occur regarding client confidentiality if it is known by more than one notary. If that client is handled by *maatschap*, then his or her identity will be known to many people besides the notary. There are other challenges regarding the responsibility of notary members of *matschaap* a client's problem can cause notaries to deny responsibility, also handled by another notary in the same *matschaap*. If there is a problem in *matschaap*, then responsibility will become shared so that it will become a new challenge. It becomes shared responsibility as any notary members in *maatschap* can sign the deed.

Parties who allow the concept of a civil partnership of notary have other opinions. According to Herlien Budiono, this Civil Partnership is commonly practised in the Netherlands. The establishment of a notary civil alliance only aims to unite in the same office. Each notary who is incorporated in the partnership continues to be independent. The purpose of the formation of a civil partnership is to improve services to the community, increase the knowledge and expertise of union friends as well as increasing cost efficiency (Irma Devita, 2018).

This study makes a comparison with the notary profession in the Netherlands. The selection is based on the fact that Indonesia and the Netherlands have the same characteristics in regarding notary profession. There are two types of notaries, Latin and public notaries, which is one of the reasons for making a comparison. The practice of partnership in the Netherlands is carried out between notaries with not only the legal but also the accounting profession. Notaries, lawyers and accountants can carry out the profession by forming a partnership, which is different from Indonesia, which only allows notaries to form fellowship within the same profession.

According to Herlien Budiono no study has been completed regarding civil partnership conducted by notaries, but Herlien Budiono (2015:28) agrees with Pitlo (260) that the Civil Partnership of notaries is basically the same as the civil alliance in the Civil Code. However, civil alliance is not only for profit but can also be in the form of benefits which can be obtained by jointly using or enjoying facilities.

The absence of prior research regarding the concept of civil notaries as described above is consistent with research regarding Act Number 2, 2014 amendment of Act Number 30 of



2004 concerning legal position of public notaries, where the reference to civil partnership of notaries still creates legal uncertainty. This is due to the fact changes were not carried out effectively. The amendment is only in terms of notaries' civil union to become a Civil Partnership of Notary. The essence remains the same between the old and new laws. Likewise, based on the academic paper and the minutes of trial, there is no clear discussion regarding civil partnership of notaries. Therefore, it creates disharmony between the legal public position of notaries and the Civil Code. On the other hand, a more in-depth study was conducted referring to the minutes of the trial for the formation of the legal position of public notaries, which was developed in order to elevate notaries' proper office as many notaries do not have proper offices.

The essence of Article 20 legal position of public notaries regarding civil partnership is to provide convenience in terms of efficiency and to raise the status of notaries. Furthermore, the incurred cost by a notary to open an office which requires a large cost, is not comparable to his or her income, especially concerning new notaries.

According to Gustav Radbruch, law is useful for people. As part of the ideals in law (*idee des recht*), justice and legal certainty require a complementary benefit (Gustav Radbruch, 1961: 36). According to Radbruch's theory of the three basic values, each provision is contained in the legal position of public notaries, which must fulfil three basic values including legal certainty, justice and expediency. The regulation of civil notary partnership is unclear, concerning whether regulated substance is only technical in nature in the form of a Ministerial Regulation, therefore not providing legal certainty for those who run the partnership. If a statutory regulation does not have legal certainty then it is unable to create justice with expediency.

So far, Act Number 2 of 2014 and the amendment of Act Number 30 of 2004 legal position of public notaries only regulates the civil alliance of notary limited to a shared office, while on the other hand the rules regarding civil alliance are also regulated in the Civil Code. Civil alliance creates an overlap between Act Number 2 of 2014 and amendment of Act Number 30 of 2004 Notary Public's Position Law and the Civil Code, thus causing confusion in understanding and implementing them. Therefore, in order to create legal certainty, each statutory provision must have legal clarity, without causing doubts and misinterpretations, nor contradicting other regulations. Therefore, based on Gustav's theory, it is important to create a law or legislation that provides legal certainty so that the law can create justice and benefit.

Likewise, Article 20 Act Number 2 of 2014 and amendment of Act Number 30 of 2004 Notary Public's legal position should create justice for all levels of society, not only for a certain group, therefore in creating a regulation regarding a civil alliance, the notary must



create justice as the aim of the Article in the laws and regulations. Justice in law is the right of all Indonesians, not only a certain group. Gustav states that justice is the most important part of law.

The Concept of Civil Partnership of notaries s Today

The emergence of a provision that states that notaries can carry out their positions in the form of a Civil Partnership of notaries in an attempt by the government to support the improvement of service delivery to communities throughout Indonesia in the notarial sector, as well as increasing the knowledge and expertise of notaries. However, the unclear legal regulations regarding the concept of the Civil Partnership of Notary and the existing legal rules are only limited to allowing Civil Partnership, which is why a notary does not practice Civil Partnership and the majority still open their offices individually.

An important issue which is still a concern amongst notaries regarding notaries' Public's Position Law regarding Civil Partnership of notaries is the confidentiality of deeds made by a Public Official. It is very risky to maintain confidentiality of deeds in Civil Partnership. The obligation for the Notary to keep the contents of the deed confidential and all information obtained in making the deed is intended to protect the interests of parties related to the deed. Keeping the contents of the deed confidential is also one of the obligations of notaries as stated in Article 16 paragraph (1) letter e of the Notary Public's Position Law which states that "in carrying out his or her position, the Notary is obliged to keep everything confidential about the deed made by him or her and all the information obtained to create the deed in accordance with oaths / promises of position, unless the law stipulates otherwise."

Based on data obtained from the total number of notaries, there are only three notary offices registered in partnership in Indonesia. This is certainly not comparable to the number of notaries in Indonesia today, although in reality there are several offices in cities that carry out alliances but are not officially registered. The data shows that partnerships are not in demand in Indonesia, whereas almost all notaries are running a partnership. Notaries in Indonesia, especially newly appointed public notaries have difficulty in running funds for office operations, which may be the solution to cost efficiency. The following table describes allied notary offices.

Table 1:

No.	Legal Entity Name	Legal Entity Type
1	Notary Office of Aulia Taufani and Aryanti Artisari	Civil Partnership of Notary
2	Notary Office, PPAT, and Legal Consultation Nathalia Alvina Jinata, S.H. and Partners	Civil Partnership of Notary
3	Notary Office Benedict Remard	Civil Partnership of Notary



Source: Directorate General of General Law Administration Ministry of Law and Human Rights

An interview was conducted with one of the offices that runs the alliance according to which at the level of implementation the concept is only limited to a shared office, in terms of saaja office management, bearing in mind that notary work is individual in nature. This is in line with Mugae Johar, a representative of the Indonesian Notary Association, according to which civil alliance of notaries was due to seeing the development of the number of notaries increasing through the office location. However, the notion of a notary civil alliance is limited to a joint office that may only exist in terms of office management, not in terms of the implementation of the position, because in principle the alliance run by a doctor is different from one run by a notary.

The concept of Civil Partnership of Notary can be sought after by notaries, because in Indonesia the number of notaries increases annually. In early 2010, the Minister of Law and Human Rights installed around 2000 new notaries throughout Indonesia. The increase in the number of notaries can reach 1000 to 1,500 per year produced by more than 30 Universities that open the Notarial Law Master Program. In 2016, the estimated number of notaries was more than 17,000 throughout Indonesia. This number is increasing annually. Opportunities for the distribution of notaries are increasingly open due to the dynamics of regional expansion and the increasingly complex problems of society, therefore this issue needs to be a concern for the distribution of notaries.

According to Bentham, there is one main moral principle, called "Principle of Utility." The Utility Principle is defined as property in every object that can produce benefits, enjoyment, happiness or that prevent damage, pain, crime and unhappiness. The first rule of morality is to act in such a way as to produce the greatest welfare, to the extent that it is possible. Therefore, in deciding what each person has to do in a Civil Partnership, a Notary must consider which type of behaviour will produce the greatest happiness for all. According to utilitarian morality, its adherents must pay attention to the welfare of each person equally and regulations are determined by each individual law in accordance with their respective actions (AcumenvStocksfield, 2007). Based on Bentham's theory, a notary has a very important role to take responsibility for his or her actions if it has violated the rules determined by the law in their respective personal actions.

This concept provides benefits to the notary, including providing relief in terms of operational costs, Notaries can improve services to the community, which should be welcomed positively especially as Indonesia is joining the ASEAN economic community (called MEA). Furthermore, the benefits obtained are also related to the Notary protocol, in



the event that a notary who moves or retires can hand over his or fellowship to a friend, this naturally makes it easier for the public to look for protocol notary holders.

Bentham's theory emphasises expediency. The theory of utilitarianism is rational because it requires that all existing regulations must be accounted for based on benefits for as many people as possible, otherwise a rule that does not have benefits for as many people as it should be removed. This also applies to the Civil Partnership of Notary regulated in Act Number 2 of 2014, amendment of Act Number 30 of 2004 Notary Public Position Law that the existence of the current Act Number 2 of 2014 amendment of Act Number 30 of 2004 Notary Public's Position Law, specifically regulating the Civil Partnership of Notaries, is not widely implemented by the notaries as the concept is still unclear. Act Number 2 of 2014 amendment of Act Number 30 of 2004 Notary Public's Position Law does not bring much benefit to the public, especially for notaries.

The current Act Number 2 of 2014 amendment of Act Number 30 of 2004 Notary Public's Position Law must be changed comprehensively with the concept Civil Partnership of Notary which should bring great benefits to notaries, especially new ones. With the hope of increasing interest from notaries to run a Civil Partnership because it can ease the cost of opening a new office for operational costs. A gathering of notaries in the form of Civil Partnership will enable them work together if needed, and the notary can share his or her experience and knowledge with each other through Partnership.

The formation of regulations regarding the Civil Partnership of Notaries is very much needed because the community's need for Notary services continues to increase. The number of notaries has also increased, therefore the presence of a Civil Partnership is a solution. Civil Partnership is not only limited to sharing an office, but an ideal concept is needed, which synchronises relevant laws and regulations. Thus, the formation of regulations regarding Civil Partnership of Notary with a clear and explicit concept can provide some benefits to the general public, especially for the notaries as stated by Bentham.

Conclusion

The essence of a Civil Partnership of Notary is to ease the efficiency cost in terms of operational costs, because many notaries have difficulty with funding the construction of offices, which is a way to elevate the dignity of notaries to have an ideal office and also be able to offset operational costs. The concept of of Civil Partnership being only limited to run a share office that is only in operational management do not work together.



Recommendation

A further in-depth study of the Civil Partnership is needed so that this topic can be examined by notaries. A study is expected to create a comprehensive concept that can provide a solution to the increasing number of notary positions, as this is the responsibility of the State for the distribution of notaries. Furthermore, the meaning of the essence of Partnership is to become strong when done jointly doing together so that the Notary can improve services in providing legal services as the nature of Civil Partnership is to work together.

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