

REVIEWING THE CONCEPT OF NOTARY CIVIL PARTNERSHIP IN INDONESIAN LEGAL ARRANGEMENT

ANNISA ANGRAINI DAULAY¹, FX. JOKO PRIYONO², R. BENNY RIYANTO³

Faculty of Law, Universitas Diponegoro, Semarang, Indonesia¹

Faculty of Law, Universitas Diponegoro, Semarang, Indonesia²

Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia³

daulayannisa@gmail.com¹

Abstract - *The shift to a notary which was originally prohibited is now allowed after Indonesia has its own Regulations regarding the Notary Position. In practice in Indonesia, only a few notaries form partnerships, this is different from the notaries in the Netherlands, where the majority of them form alliances with other professions. The purpose of this study is to determine the essence of the concept of a notary civil partnership in Indonesia and how the concept of a notary civil partnership exists. The research method used is a normative/doctrinal legal research method using three (3) approaches, namely, statue approach, historical approach, comparative approach, and interviews. The results of the study show that the essence of a notary civil partnership is to provide efficiency that can elevate the dignity related to the welfare of a notary in order to have a proper office and improve legal services and services. The current concept is only limited to a joint office, in terms of office management but not for doing work, considering that the work of a notary is individual*


Keywords: Notary, Legal positions, Law, Indonesia

INTRODUCTION

In the community, being a notary is a profession that is still in great demand, besides that the position of a notary was born because people are in need of their profession (Afifah, 2017). From year to year the number of notaries in Indonesia is increasing. This was proven at the beginning of 2010 the Minister of Law and Human Rights had inaugurated around 2000 new Notaries who were placed throughout Indonesia (Ash, 2010). In 2016, the estimated number of notaries spread throughout Indonesia was more than 17,000. This number will continue to increase from year to year. The phenomenon of an increase in the number of notaries from year to year and coupled with the increasingly complex problems of the community who need the services of a Notary, provides an opportunity for Notaries to form alliances and establish a Notary civil partnership, meaning that several Notaries can establish a joint office with the procedures regulated by the Notary Public. the notaries who will be partnered. A notary who will establish a notary civil partnership is very possible because the formation of a notary civil partnership has been regulated in law, although until now there have been pros and cons in terms of establishing a civil partnership.

History shows that based on the principle of concordance, Indonesia used the existing law in the Netherlands, namely the 1860 *Staatblad* which at that time Indonesia was a colony. Article 12 *Staatblad* threatens the notary public to lose his position when carrying out an alliance, according to the author, the meaning of this article is because it is feared that there will be leakage of the confidentiality of the deed of notary service users, who at that time were mostly European users while Indonesian citizens called the indigenous group did not. use the services of a Notary because it is subject to customary law. There was a perigeon where in 2014 an amendment was made to Law Number 30 of 2004. One of these changes is contained in Article 20 paragraph (1) which previously stated that a Notary may form a Civil Union to become a Notary may form a Civil Partnership. Of course, this change is welcomed because it is able to provide a new legal breakthrough to the world of Notaries.

Talking about civil partnerships refers to Article 1618-1652 of the Civil Code which requires the sharing of profits obtained and work done together, while in the past and present civil unions have been replaced with civil partnerships only limited to joint offices. The existence of these differences creates



disharmony between the Civil Code and the Law on Notary Positions regarding the concept of a civil partnership. The reality in Indonesia shows that currently the concept of civil partnership is not widely implemented, only a few offices run the civil partnership, so this needs to be studied what causes the notary not to implement this concept, whether the regulations are unclear which creates legal uncertainty, so it needs to be made. a new concept or indeed this concept is contrary to the notary's philosophy, even though it is hoped that the concept of civil partnership can be carried out by a notary considering that the number of notaries is increasing from year to year and this will provide a solution to the distribution of notaries and efficiency especially new notaries. This study aims to examine the essence of the concept of a notary civil partnership in Indonesia and the current concept of a notary civil partnership.

METHOD

This research is prescriptive normative legal research using three (3) approaches, namely the legal approach (statue approach), historical approach (historical approach) and comparative approach (Marzuki, 2009). The research conducted interviews with several related stakeholders. The collection of legal library materials is carried out using relevant books and journals. The entire legal material is collected and then analyzed systematically and structured in order to obtain the truth of coherence in solving legal issues.

RESULT AND DISCUSSION

1. The Essence of the Concept of a Notary Civil Partnership in Indonesia

The concept of a notary civil partnership is still the pros and cons of various groups. Parties who are against the civil alliance and claim that it is better to abolish it because since the enactment of the 2004 Law on Notary Position, the article is useless where it is proven that there is no maatschap that has been established, it can even become a problem. One of the problems that arise is because basically the work of a notary is individual. The position of a notary as a public official who is authorized to make a deed that contains the formal truth in accordance with what the parties have notified the notary and the notary is obliged to keep it a secret (Mowoka, 2014). So that if several notaries join matschap, problems will arise in terms of maintaining client confidentiality, and also problems with the responsibilities of notaries who are matschap members. In the matter of maintaining client confidentiality, there may be problems if the client's confidentiality is known to more than one notary. If a client is handled by maatschap, the identity of the client will be known by many people or more than one notary. Regarding the responsibilities of notaries, matschaap members also have problems, because if there is a client problem, the notary can deny being responsible for client problems handled by other notaries in matschaap. But in matschaap if there is a problem then the responsibility will become a shared responsibility so that it will be a problem if there is a notary member of the maatschap who does not want to be responsible. Why the problems that arise will be shared responsibility, because anyone notary member of the maatschap can sign the deed.

Parties who allow the concept of a notary civil partnership give another opinion, this civil partnership is commonly practiced in the Netherlands. The formation of a notary civil partnership 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 establishment of a civil partnership itself is to improve services to the community in the field of notary public; improve the knowledge and expertise of union mates, as well as for office cost efficiency (Fatin, 2020).

After searching from various sources, it turns out that the concept of a notary civil partnership was born without any prior research. The same thing was also stated according to Budiono (2015) that in fact there has never been a study of a Notary civil partnership conducted, but Budiono (2015) that a notary civil partnership is basically the same as a civil partnership in the Civil Code (Al-Shabatat, 2021). But in a civil partnership, it is not only for profit but can also be in the form of benefit, this can be obtained by using or enjoying the facilities together.

There is no prior research regarding the birth of the notary civil concept as described above, this is in line with the author's search on the academic text of the establishment of the Notary Office Act No. 2 of 2014, where it is unclear what the Notary civil partnership is, so that it still creates ambiguity that

creates a legal uncertainty regarding the Notary civil partnership. This happened because the changes were not significant. Changes are only in terms from a Notary civil union to a Notary civil union, other than that the essence remains the same, both the old law and the new law. Likewise, based on the academic text and the minutes of the trial, there is no clear discussion regarding the civil partnership of a Notary. Therefore, the absence of a study of this concept has led to disharmony between the Law on Notary Position and the Civil Code. But on the other hand, if you look at further elaboration in finding an essence, a deeper study is carried out and the author refers to the minutes of the session of the formation of the Law on Notary Position saying that the concept of a notary civil partnership exists in order to raise the degree of a notary in order to have a proper office, because there are still notaries who have offices. not worth even closing his office.

The essence of Article 20 of the Law on Notary Position regarding civil partnerships is to provide convenience in terms of efficiency and also raise the dignity of a notary, besides that if you look at the costs that must be incurred by a notary to open a notary office, it requires a large cost to be issued, it is not comparable to income received, especially new notaries. According to Radbruch, law is everything that is useful to the people. As part of legal ideals (*idee des recht*), justice and legal certainty require a complement, namely expediency (Radbruch, 1961). With regard to Gustav's theory regarding the three basic values, every provision contained in the Law on Notary Position must fulfill these three basic values, namely legal certainty, justice and expediency. So far, the regulation on Notary civil partnerships is not clear, that the substance regulated is only technical in nature in the form of a Ministerial Regulation so that it does not provide legal certainty for those who run the partnership. If a statutory regulation does not have legal certainty then it is certain that it will not be able to create justice as well as benefit.

So far, Law on Notary only regulates notary civil partnerships to be limited to joint offices, while on the other hand the rules regarding civil partnerships are also regulated in the Civil Code that civil partnerships are carried out jointly, this of course creates overlapping rules between Law on Notary Position and the Civil Code, with This creates confusion in understanding and implementing the Law on Notary Position. Therefore, to create legal certainty, every statutory provision that is made must have legal clarity in it, does not cause doubts and multiple interpretations, nor is it contradictory to other regulations. So based on Gustav's theory, the important thing that must be considered in making a law or legislation is to provide legal certainty so that the existence of the law can create justice and benefit. Likewise, the existence of Article 20 of the Law on Notary Position should create justice for all levels of society, not just for a group of people, therefore in making a regulation regarding a civil partnership, a Notary must create justice as the purpose of making the article in the legislation. Justice in law is the right of everyone without exception, not only for a group of people but for all Indonesian people. Gustav stated that justice is the most important thing in the existence of a law, it is not permissible for a law or statutory regulation to be made to the exclusion of justice.

2. The Current Concept of a Notary Civil Guild

The emergence of a provision that states that a notary can carry out his position in the form of a notary civil partnership is an effort by the government to support the improvement of service delivery to people throughout Indonesia in the notary field, as well as increase the knowledge and expertise of notaries. However, the unclear legal regulations regarding the concept of a Notary Civil Partnership and the existing legal rules are only limited to allowing for civil partnerships, making the reason why Notaries do not practice in the form of a civil partnership and the majority still open offices independently.

An important issue that is still a matter of concern and debate among Notaries against the Law on Notary Position related to a notary civil partnership is the confidentiality of deeds made by a public official. With the form of a civil union, it becomes very risky to maintain a confidentiality on the deeds that he makes (Lisdiyono et al., 2018). The obligation for the Notary to keep the contents of the deed confidential and all information obtained in the making of the deed aims to protect the interests of the parties related to the deed. Confidentiality of the contents of the deed is also one of the obligations of the Notary as regulated in Article 16 paragraph (1) letter e of the Law on Notary Position which states that "in carrying out his position, the notary is obliged to keep everything about the deed he made and all information obtained for the making of the deed in accordance with oath/promise of office, unless the law stipulates otherwise". Based on the data obtained from the total number of existing Notaries,

there are only 3 notaries who register partnerships in Indonesia. This is certainly not comparable to the number of notaries currently in Indonesia, although in reality there are several offices in several cities that carry out partnerships but do not register them officially. Table 1 defined allied notary offices.

Table 1. Business entity of Notary

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

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

From these data, the author sees that in practice, the implementation level is that in practice this concept is only limited to a joint office, namely only in terms of office management but not for doing work, considering that the work of a notary is individual and this is in line with what was conveyed by Mugae Johar namely that the birth of a civil partnership in a Notary is due to the fact that the number of Notaries is increasing with the location of their offices being close to each other (Isra. 2009). However, the idea of a notary civil partnership is only limited to a joint office that may be done only in terms of office management, not in terms of carrying out positions, because in principle a partnership run by a doctor is different from a partnership run by a notary (Isra, 2009).

Should the presence of this notary civil partnership concept be of interest to notaries, because in Indonesia the number of notaries continues to grow every year. In early 2010 the Minister of Law and Human Rights has inaugurated around 2000 new Notaries who will be placed throughout Indonesia. The growth in the number of Notaries, if averaged annually can reach 1000 to 1,500 Notaries per year produced by more than 30 universities that have opened the Notary Masters Program (NNP, 2017). In 2016, the estimated number of Notaries was more than 17,000 people spread throughout Indonesia. This number is increasing from year to year. Opportunities for the spread of Notaries are increasingly open as the dynamics of regional expansion and the increasingly complex problems of today's society emerge, so this needs to be a concern for the distribution of notaries.

As Jeremy Bentham argues that there is one main moral principle, namely the "Principle of Utility". The principle of utility is defined as a property in every object that can produce profit, benefit, enjoyment, happiness or which prevents damage, pain, evil and unhappiness. The first rule of morality is to act in such a way as to produce the greatest welfare, so far as is possible. Therefore, in deciding what each person in a civil partnership should do, a Notary must consider which kind of behavior will produce the greatest happiness for everyone (Mulgan, 2007; Mariyam & Setiyowati, 2021). Utilitarian morality has the idea that its adherents must pay attention to the welfare of everyone equally. Linked to the Notary Position based on Jeremy Bentham's theory, it has a very important role, namely that each person personally in carrying out his profession must have the ability to account for his every action if it turns out to have violated the rules. - the rules determined by law individually according to their respective actions.

Bentham's theory focuses on expediency (Crimmins, 1996). The theory of utilitarianism is rational because it always demands that every existing regulation must be accounted for based on its benefits for as many people as possible, otherwise a regulation that does not have benefits for as many people should be eliminated (Brink, 1986). This also applies to Notary civil partnerships regulated in Law on Notary Position that the current Law on Notary Position, especially those that regulate Notary civil partnerships, is not widely implemented by Notaries because the concept of Notary civil partnerships is still unclear. So that the existence of Law on Notary Position does not bring much benefit to many people, especially to Notaries.

In this regard, the author is of the opinion that the current Law on Notary Position must be changed comprehensively with the concept of a Notary civil partnership, which must bring great benefits to Notaries, especially new Notaries. With the hope of increasing interest from Notaries to run a civil partnership because it can reduce the cost of opening an office and its operational costs. With the

gathering of Notaries in the form of a civil partnership, they can work together if it is needed, and Notaries can share experiences and knowledge with other partners.

The establishment of regulations regarding the concept of a Notary civil partnership is urgently needed because the community's need for Notary services continues to increase, so the number of Notaries is increasing, therefore the presence of a civil partnership is a solution. Of course, civil partnerships are not only limited to the current joint office, but an ideal concept is needed, which synchronizes the relevant laws and regulations. Thus, the formation of regulations regarding the civil partnership of Notaries with a clear and unequivocal concept in a comprehensive manner can provide benefits to the general public, especially for Notaries as stated by Jeremy Bentham.

CONCLUSION

That the essence of a notary civil partnership is to provide relief in terms of operational costs, namely efficiency, because many notaries have difficulties regarding funding for office construction and this is a way to raise the dignity of a notary in order to have an ideal office and also be able to reduce operational costs. The current concept is that a civil partnership is only limited to running a joint office, which is only in operational management, not to do work together.

Further in-depth study of civil partnerships is needed so that this topic can be of interest to notaries. A study is expected to be able to develop a comprehensive concept that can provide a solution to the increasing number of notary positions, because this is the responsibility of the State for the distribution of Notaries. Furthermore, the meaning of partnership is to be strong when doing it together so that notaries can improve services in providing legal services because the nature of a civil partnership is to work together.

REFERENCES

- [1] Afifah, K. (2017). *Tanggung jawab dan Perlindungan Hukum bagi Notaris secara Perdata terhadap Akta yang dibuatnya*. *Lex Renaissance*, 2(1), 10-10.
- [2] Al-Shabatat, M. A. Z. (2021). *Adopting a limited liability partnership for the legal profession in the partnership law: a critical review from Indonesia's perspective*. *Journal of Legal, Ethical and Regulatory Issues*, 24(2), 1-17.
- [3] Brink, D. O. (1986). *Utilitarian morality and the personal point of view*. *The Journal of Philosophy*, 83(8), 417-438.
- [4] Budiono, H. (2015). *Kumpulan Tulisan Hukum Perdata*. Bandung: Citra Aditya Bakti
- [5] Crimmins, J. E. (1996). *Contending interpretations of Bentham's utilitarianism*. *Canadian Journal of Political Science/Revue canadienne de science politique*, 29(4), 751-777.
- [6] Fatin, D. A. (2020). *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*. *JL Pol'y & Globalization*, 98, 1.
- [7] Isra, S. (2009). *Kekuasaan dan perilaku korupsi: Catatan hukum*. Jakarta: Penerbit Buku Kompas,
- [8] Lisdiyono, E., Setiyowati, S., & Wijayanti, E. I. (2018). *Kajian Yuridis tentang Sewa Menyewa Aset Yayasan Rumah Sakit kepada Rumah Sakit yang Berbentuk Perseroan Terbatas: Studi Kasus pada PT. Senuk Jaya Husada*. *Lex Publica*, 5(1), 32-43.
- [9] Mariyam, S., & Setiyowati, S. (2021). *Legality of Artificial Intelligence (AI) Technology in Public Service Transformation: Possibilities and Challenges*. *Lex Publica*, 8(2), 75-88.
- [10] Marzuki, P. M. (2009). *Penelitian Hukum*. Jakarta: Kencana Prenada group
- [11] Mowoka, V. P. (2014). *Pelaksanaan Tanggung Jawab Notaris terhadap Akta yang Dibuatnya*. *Lex Et Societatis*, 2(4).
- [12] Mulgan, R. (2007). *Truth in government and the politicization of public service advice*. *Public administration*, 85(3), 569-586.
- [13] NNP. (2017). *Ikatan Notaris Indonesia Mulai Himpun Data-Data Notaris se-Indonesia*. Available at <https://www.hukumonline.com/berita/a/ikatan-notaris-indonesia-mulai-himpun-data-data-notaris-se-indonesia-lt587dd1670518b>
- [14] Radbruch, G. (1961). *Einfuehrung In Die rechtswissenschaft*, 1961. Stuttgart: Koehler Verlag.