Legal Consequences Due To The Vacancy Of Notary Maatschap Implementation Regulation

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Abstract.

This study aims to analyze: a) the concept of Notary maatschap in Law No. 30 of 2004 concerning the Position of Notary jo Law No. 2 of 2014 concerning the Position of Notary and also according to article 1618 of the Civil Code; b) knowing the legal consequences of the deletion of paragraph (3) of Article 20 of Law No. 2 of 2014 concerning the Position of Notary; c) knowing the basis for the implementation of the Notary maatschap.This research uses normative legal research methods and prescriptive analysis with a statute approach. The legal materials used are primary legal materials and secondary legal materials. The data collection techniques used are literature study, data analysis, description, construction, argumentation, and systematization techniques. The results of this study show that the first regulation Implementation in UUJN is no longer valid based on the principle of lex posterior derogat legi priori. So, the Notary Civil Partnership is based on the Civil Code and Article 20 of the UUJN. However, the provisions of the Civil Partnership of the Civil Code are not relevant if used by the Notary Maatschap. In the absence of clear regulations, the independence of Notary in working is limited because they have to collaborate with allied partners. This impacts the structural, functional, and financial independence of Notaries who previously worked independently. This includes maintaining the confidentiality of deeds. These two Notary Maatschap give rise to multiple interpretations and legal uncertainty, which can then lead to a violation of the Notary's oath of office, so the provisions of Article 20 of UUJN-P should be revoked.

Keywords: *Legal Consequences of Maatschap, Legal Vacancy and Notary Civil Partnership.*

I. INTRODUCTION

A notary is one of the legal professions authorized to make authentic deeds. The Law on the Position of Notary, which serves as a guideline for Notaries in carrying out their professional duties and is regulated in Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 on the Position of Notary, provides a foundation for the existence of Notaries as public officials. Although emphasized in this definition as a public official (openbare ambtenaar), Notaries are not considered employees according to civil service laws or regulations. In return for the services he has provided to clients, he does not receive a salary or bezoldigd staatsambt but honorarium (Andasasmita, 1981: 45). According to Article 2 of Law Number 30 Year 2004 (UUJN), the Minister is the person who appoints a Notary. The appointment of a Notary is done by the State attributively through law to a person who has been entrusted. The Minister of Law and Human Rights can appoint a Notary who can carry out his/her duties without interference from the management of her body or the executive body. The Notary profession will be free to perform its functions without fear, thus allowing it to operate impartially and independently, which is the definition of freedom in this context (Waluyo, 2005: 41). Civil partnership is regulated in Chapter VIII Part One, Book III Articles 1618 to 1652 of the Civil Code. In Article 1618 .In the development of Notary, UUJN was formed where there are arrangements that regulate that Notaries are allowed to carry out the practice of being able to cooperate in carrying out their official duties in the form of a business entity by joining in the form of a civil association (maatschap).

Law No. 30 of 2004 (UUJN) regulates that Notaries can join a civil association as stated in Article 20 of the UUJN. It is known that Article 20 paragraph (1) of the UUJN provides provisions regarding the permissibility of civil associations for Notaries in carrying out their positions, which allows Notaries to create unions and join a joint office. Then, the continuation of the maatschap is further regulated by the requirements of the Notary Civil Association in Article 20, paragraph (3) of the UUJN. In 2010, as a follow-

up to this paragraph, the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH.01.AH.02.12 of 2010 concerning Requirements for Running the Office of Notary in the Form of an Association was formed, which contains 7 chapters and 21 articles. However, there is no official explanation as to why Notary Civil Associations are allowed, if we look back to when PJN was still in effect, Notary Civil Associations were not allowed for Notaries (Adjie, 2008: 97). The crucial issue is that Notaries are still debating against the UUJN regarding civil associations where associations that were previously regulated in article 12 of the PJN were prohibited, are now allowed as regulated in article 20 of the UUJN, namely in the confidentiality of deeds made by or before him as a Public Official.The basis for not conducting a Notary Civil Association, as stated by G.H.S. Lumban Tobing, is that the civil association is not beneficial for the general public because it reduces competition and public choice about the desired Notary if the place there are only a few Notaries.

In addition, the obligation of confidentiality, a major responsibility of Notaries, is not guaranteed. Again, in considering the establishment of this maatschap, the public interest must be prioritized (Tobing, 1996: 107). A Notary must prioritize service to the interests of society and the state. This is determined based on Article 3 Number 6 of the Notary Code of Ethics. It can be interpreted that Notaries are appointed not for the benefit of individual Notaries, the position of Notary is a position of service, therefore Notaries must always prioritize the interests of society and the state (Anshori, 2009: 172). While there are still many opinions regarding the rules of Notary civil associations, Article 20 paragraph (3) has been deleted in Law No. 2 of 2014 (UUJN-P). As seen in the Academic Paper of the Draft Law on Notary Position 2014, there are seven discussion points regarding changes, and there is no discussion of changes regarding Article 20 paragraph (3) on civil associations. However, there are changes regarding the crucial substance, namely the implementing regulations. Therefore, Article 20 paragraph (3) was deleted, which resulted in the invalidation of the provisions of the implementing regulations, which had the legal consequence of cancelling Permenkumham M. HH.01.02.12 of 2010 concerning Requirements for Running the Office of Notary in the form of an Association according to the Antinomy Theory. Legal principles can resolve antinomy in the application of concrete regulations. So, with this antinomy, the principle of lex posterior derogate lex priori can be used in its resolution to show that with the amendment of Article 20 of the UUJN, the old rules apply to the new rules. With the inapplicability of Article 20 paragraph (3), it can be a problem for Notaries to understand and carry out the practice of Civil Partnership for Notaries because there is a legal vacuum.

With the abolition of Permenkumham, the Notary returns to Article 20 and the Civil Code in carrying out the practice of Civil Partnership. Notaries in forming and implementing a Civil Partnership refer to the laws and regulations governing maatschap, namely the Civil Code and Article 20 of the UUJN-P. Article 20 of the UUJN-P only states that a Notary can create a Civil Partnership without further explanation. However, if the Notary Civil Partnership is accommodated with the Civil Code, Article 1618 does not fit. There is an element of seeking profit from a Civil Partnership. So, it is known that the Notary Civil Partnership is deemed inappropriate if it is again based on the Civil Code. In addition, Article 16 of UUJN-P stipulates that Notaries must work independently so that the benefits obtained by Notaries (maatschap members) are not the result of working for and on behalf of the maatschap. However, for and on behalf of himself based on the Decree he received and not because of mutual benefits. Civil partnerships in the Civil Code (KUHPer) are general, while the Law on the Office of Notary (UUJN) is specialized. The character and nature of the position of a Notary is different from that of a public accountant or advocate. Therefore, with the existence of UUJN, the principle of lex specialis derogate legi generali applies, which means that special laws override general laws. Then, suppose it is juridically permissible, and there is no guidance in the UUJN-P. In that case, it can be interpreted as giving freedom to Notaries to form rules by the collective agreement by Notaries.

However, it should be noted that Notaries are legal officials who carry out some of the state's authority, so there must be certainty of regulations that regulate a limit to the extent to which Notaries can act without violating the UUJN-P and the Notary Code of Ethics not only limited to the principle of freedom of contract. So, the Notary Civil Partnership will only be able to implement clear rules. The laws and regulations used as a reference are also deemed incompatible with the purpose of the Notary.Based on the

background previously described, the legal issue in this paper is the existence of Article 20 paragraph (3) of Law Number 2 in 2014 after the abolition of the norm of implementation of the Notary maatschap. This study aims to discover the concept of a Notary maatschap and the legal consequences of abolishing the norm of implementation of a Notary maatschap.

II. METHODS

The legal research used in this thesis is normative legal research, which focuses on studies with library methods and mostly examines secondary legal materials by the research topic. Normative legal research has contained research on positive law, principles in law, and systematics in laws and regulations, including how the laws and regulations are synchronized with each other and in comparison and history regarding the law. The research method is a legal approach based on regulations (statute approach). The statute approach is used to examine and understand the legal regulations that are the focus of the research. The legal materials used in this research consist of primary legal materials and secondary legal materials, namely primary legal materials; Civil Code, Law Number 30 of 2004 concerning Notary Position jo Law Number 2 of 2014, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH.01.AH.02.12 of 2010 concerning Requirements for Running a Notary Position in the Form of a Civil Association. Secondary legal materials; are books and journals that contain the basic principles of legal science and the views of scholars with high qualifications (Marzuki, 2011: 142).

Secondary legal materials in this research include scientific law books, journals, and articles. In normative legal research, data collection can be taken from literature studies on legal materials, both secondary and primary. So that in conducting normative legal research, it can read, analyze, and compare literature studies in these legal materials by the topics taken. In addition, data collection is also carried out by identifying normative frameworks and exploring legal theories related to the concept of Civil Partnership.The data is then comprehensively analyzed by considering its source and hierarchy. To analyze the legal material that has been collected, various analytical techniques will be used, such as description techniques, construction techniques, argumentation techniques, and systematization techniques. (Ahmad Rifai, 2001: 61) Simply put, this data analysis is an assessment process involving reviewing, criticizing, supporting, adding, or commenting on research results. Furthermore, based on this assessment and with theoretical understanding, a conclusion is made.

III. RESULTS AND DISCUSSION

The civil partnership of Notaries referred to herein refers to collaboration using office facilities and equipment. However, it should be noted that an alliance among Notaries is not an engagement in joint liability, errors, or omissions committed by one Notary or his/her allies will not affect or associate with the other Notaries. Each Notary will be responsible for his/her actions without attracting the involvement of other Notaries in the consequences. The results of the Congress of the Indonesian Notary Association in Surabaya in 2009 said that the Notary Civil Association, inspired by the existence of the Notary Civil Association in the Netherlands, has become a common practice after undergoing several changes. Almost half of the total number of Notaries in the Netherlands have formed a similar alliance. However, there is no official explanation as to why Notary Civil Associations are allowed, if we look back to when the PJN was still in effect, Notary Civil Associations were not allowed for Notaries (Adjie, 2008:97). The crucial issue that Notaries are still debating against Law Number 30 Year 2004 UUJN regarding civil associations, where associations that were previously regulated in article 12 of the PJN were strictly prohibited even with the threat of losing their positions, are now allowed as regulated in article 20 of the UUJN, namely in the confidentiality of deeds made by or before them as Public Officials. With the permission of the Notary maatschap, it becomes very difficult to maintain the confidentiality of the deed because the Notary has been sworn to maintain the confidentiality of the deed he made.

According to Herlien Budiono, Notaries are considered unprepared to run the Association by the code of ethics. Herlien stated that the existence of a Notary maatschap in Indonesia is a dilemma; on the one hand, the maatschap is expected to improve the quality of Notary services, but on the other hand, the public

is still unprepared in terms of discipline, moral values, and high professional ethics. There is a concern that the Notary maatschap will become a kind of Notary deed company (Budiono, 2013: 71). The Association of Land Deed Officials expressed criticism of the Notary Civil Association at that time through a statement from Maferdy Yulius, who served as the chairman of the Revision team of the Notary Position Law, and Otty Hari Chandra Ubayani as the secretary. They expressed the opinion that it is necessary to revise the Notary Position Law to prevent the formation of a Notary monopoly, aiming to create justice and equitable sustenance. In particular, they highlighted Article 20, which allows Notaries to form civil associations, creating a situation where Notaries can monopolize clients. Even retired Notaries can retain control of their clients through civil unions, passing on the clients to persons or their families, thus possibly creating a Notary dynasty. (Tanjaya, 2012:42) In the practice of a Notary related to civil partnerships in the Netherlands, Notaries can open a joint office with prospective Notaries or cooperate with an advocate's office. Even the Netherlands allows associations between different professions, such as civil associations consisting of lawyers, notaries, and doctors. (Ke, 2000: 149).

Therefore, the concept of a notary maatschap in the Netherlands differs from what is intended in the UUJN-P. While there are still many opinions regarding the rules of Notary civil associations, Article 20 paragraph (3) has been deleted in Law No. 2 of 2014 (UUJN-P). Therefore, Article 20 paragraph (3) is deleted, which results in the invalidity of the provisions of the ministerial regulation, which has the legal consequence of canceling Permenkumham M. HH.01.02.12 of 2010 concerning Requirements for Running the Office of Notary in the form of an Association.If seen in the Academic Paper of the Draft Law on Notary Position 2014, there are seven points of discussion regarding changes to the UUJN that do not affect the real problems Notaries face, especially related to efforts to achieve equity and increase competition between Notaries in their work. In addition, it is known that of the seven points above, there is no discussion on the amendment of Article 20 paragraph (3) on civil unions. However, there are changes regarding the crucial substance, namely the implementing regulations. The elucidation section of UUJN-P Article 20 only states that the provision is "Quite clear," so it can be interpreted that the legislator felt there was no need for further explanation in the article.Therefore, the Regulation of the Minister of Law and Human Rights (Permenkumham) M. HH.01.02.12/2010 concerning Requirements for Running the Office of Notary in the form of an Association after Article 20 paragraph (3) of UUJN-P can be said to be abolished by analyzing it using the Antinomy Theory according to which from the theory it is known that conflicts between two or more rules require resolution through interpretation. Antinomy reflects two different but complementary concepts. #

The application of antinomy in legal principles must be done collaboratively because the application of these principles has different purposes, and the abstract nature of legal principles allows their application to depend on certain situations to complement each other. In the study of legal science, the principle of lex posterior derogat legi priori means that the new law negates the validity of the old law, meaning that with the enactment of a new regulation, the old regulation is declared revoked and invalid. So, it is known that a new law has been used where. The new law, in this case, is Article 20 of UUJN-P. Normatively, it can be interpreted that the Notary in forming and implementing a Civil Partnership refers to the laws and regulations governing maatschap, namely the Civil Code and Article 20 of the UUJN-P. Article 20 of the UUJN-P only states that a Notary can create a Civil Partnership without further explanation. However, something else is needed if the Notary Civil Partnership is accommodated with the Civil Code article 1618. In the Civil Code, it can be interpreted that a Civil Partnership is an agreement by which two or more people bind themselves to include something in the partnership to share the benefits that occur because of it. Therefore, there is an element of seeking profit from a Civil Partnership. So, it is known that the Notary Civil Partnership is deemed inappropriate if it is again based on the Civil Code. The Notary Civil Partnership is limited to a joint office (Fonni, 2018: 39). Habib Adjie stated that the Civil Partnership regulated by the Notary Office Law (UUJN) has a purpose not oriented toward commercial business activities. Notary members of a Civil Partnership are considered public officials who carry out their profession with responsibility for their work. In this context, profit is not the main focus or orientation in the Notary profession.

Notaries perform their duties based on idealistic principles and motives, regularly and independently in a particular field, demonstrate a high level of expertise, and are based on their role as public officials (Adjie, 2015: 155).So, it is known that Notaries must work independently so that the benefits obtained by Notaries (maatschap members) differ from those working for and on behalf of the maatschap. However, for and on behalf of himself based on the Decree he received and not because of mutual benefit. According to the Civil Code, each member of the partnership has no obligation to maintain confidentiality, as is done by the Notary Civil Partnership regulated in Article 16 of UUJN-P. Suppose the Notary exists without the motive of seeking financial gain. In that case, the concept of Civil Partnership in the Civil Code is irrelevant in the exercise of the office of Notary (Lubis, 1994:3).Then, if it is juridically permissible and in the UUJN-P there is no guidance whatsoever, it can be interpreted as giving freedom to Notaries to form rules by mutual agreement by Notaries. Habib Adjie argues that it should be noted that Notaries are public officials who carry out some of the state's authority, so there must be certainty of regulations that regulate a limit to the extent to which Notaries can act without violating the UUJN-P and the Notary Code of Ethics not only limited to the principle of freedom of contract. Notaries who will form a joint office are given complete freedom in its formation, so the implementation of law and supervision becomes less effective. For example, the regulations on establishing, supervising, and dissolving a maatschap, maintaining the oath of office, husband and wife running a joint office, the form of maatschap agreement, and others need to be clarified limitations.Previously, the government had indeed regulated through Permenkumham Number M.HH.01.02.12 of 2010 concerning the provisions for the establishment of maatschap, one of which was the prohibition of marital or blood relations between Notary members.

In addition, there is also no uniformity in the rules of maatschap for Notaries. It can be linked to legal certainty, which is understood as a legal order that should avoid the chaos that may occur; legal certainty wants the law to exist in the form of normative documents so that all forms of legal actions run by the norms that have been made. In addition, the concept of legal certainty is used so that there are no multiple interpretations of a legal act that has yet to be regulated in the legislation. Legal certainty can be realized with the provisions on how the Notary Civil Partnership agreement should be structured. This legal clarity is the result of general legal regulation. The general characteristics of legal regulations emphasize that the purpose of law is to create certainty (Ali, 2002: 83). So it is known that several things that need to be considered in preparing article-by-article explanations of a law involve: ensuring consistency with the subject matter regulated in the main body; maintaining that there is no expansion or addition of norms that are not by the contents of the main body; avoiding repetition of subject matter that has been regulated in the main body; presenting descriptions of words, terms, or definitions without repeating those that have been explained in general provisions.If analyzed using legal system theory, where R. Subekti defines a system, namely an order consisting of several mutually sustainable parts, the arrangement is based on a plan, the result of thought in achieving a goal. So, the law must be intertwined with one another, as stated in this legal system theory. Because if, for example, the Notary maatschap is contradicted in PJN Article 12 with the threat of loss of office and also the Notary oath of office in Article 4 jo Article 16 but then allowed in UUJN and UUJN-P, it can be said that there is a contradiction in the legal system. The makers of the Notary Law have created a regulation that results in a discrepancy between the body and its explanation. In the body, Article 20 paragraph (1) of UUJN-P emphasizes civil partnerships, which should be subject to the provisions of the Civil Code.

However, the explanation states that civil partnerships are only in the form of joint offices. Thus, there is an addition of a new norm that causes differences in legal concepts between the main content and the explanation. Therefore, the elucidation should function to explain the norms contained in the main body without confusion. The absence of implementing regulations also adds to the factors making Notaries hesitant to form a Civil Partnership. Therefore, very few notaries create a maatschap because it potentially impacts the principles of notarization. Notary maatschap can only be applied in big cities with more complex problems and heavier workloads requiring collaboration between Notaries. Therefore, the author argues that the various reasons for allowing the Notary Civil Partnership are more to support the notary's interests than the client's. Implementing the current Civil Partnership still seems forced because Notaries in Indonesia are

not ready when compared to what happened in the Netherlands as a reference or example of what is expected as a form of Notary Civil Partnership. Suppose you want to adopt it like in the Netherlands. In that case, there needs to be clear rules in advance including how to maintain the confidentiality of the deed by the oath of office and how to implement it without violating the Code of Ethics. The existence of a notarial institution in Indonesia is an absolute condition conditio sine quanon, mandated by legal regulations to provide assistance and services to people who need authentically valid written documents related to circumstances, events, or legal acts. Thus, regarding the formation of a Notary Civil Partnership, the purpose is only for the benefit of the Notary forming the Civil Partnership, not more for providing services that can meet the community's needs. The continuation of legal protection for clients or service users still needs to be regulated. Therefore, if indeed the regulations used as a reference have yet to be regulated completely and, in practice, are also less effective. Article 20 should be revoked because it creates too many interpretations for Notaries, leading to the disadvantage of clients.

IV. CONCLUSION

With the deletion of Article 20, paragraph 3 of the UUJN-P, the Civil Partnership refers to the laws and regulations governing maatschap, namely the Civil Code and Article 20 of the UUJN-P. Article 20 of the UUJN-P only states that a Notary can create a Civil Partnership without further explanation. However, if the Notary Civil Partnership is accommodated with the Civil Code, Article 1618 becomes inappropriate. Notaries are public officials who carry out some of the state's authority, so there must be certainty of regulations that regulate and limit the extent to which Notaries can act without violating the UUJN-P and the Notary Code of Ethics not only limited to the principle of freedom of contract.

Notaries are not ready to run the Association by the code of ethics regarding discipline, moral values, and high professional ethics. There are concerns that the Notary maatschap might violate the oath of office and code of ethics. Therefore, the Civil Partnership will only be effective with legal certainty in its implementation. Therefore, if there is no certainty on how a Notary can enter into a maatschap without violating his oath of office and in practice it is also ineffective, then Article 20 should be revoked.

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