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Dialectics Method in Completion of Notary & PPAT Service Capacity Issues with Lecturers as Social Problems in the Legal Education Scope

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ABSTRACT--Law colleges or colleges that have law faculties, often found practitioners in the field of law, such as: Notary, PPAT, Advocates and other legal profession bearers who are deemed to be scientifically qualified and get a call in the academic field, namely becoming a lecturer or teaching staff with the status of Permanent Lecturer at the law school. However, in his special journey, the Notary and PPAT professions often get highlights and even become social problems which depart from the perspective that the profession will not guarantee the continuity and certainty of Tridarma Peneltiain (teaching, research and service). The dialectical method according to Hegel, which carries the method or way of understanding and solving problems based on three elements, namely thesis, antithesis and synthesis, is expected to be able to construct social problems which are very vulnerable to occur at law colleges in Indonesia.

Keywords: dialectics, dual positions, Notary & PPAT, lecturers, problems social, legal higher education

I. INTRODUCTION

Universities that have law faculties are naturally found in many professions in the field of law, like Advocates, Notaries, PPAT, Class II Auction Officers, Mediators, Curators and other legal profession bearers who are deemed to be scientifically qualified and have vocations in academics, become lecturers at a law school or law school or even a law graduate program.

This fact is certainly valid, when there are no prohibiting rules, both those stipulated by laws and codes of ethics that regulate moral behavior and attitudes that are specifically applied to the legal profession concerned to assume multiple positions as lecturers at the tertiary institution.

The contribution and contribution obtained by law students from lecturers who have a legal professional background is a balanced approach and understanding between the world of legal science and the world of legal practice in reality, as is the case between das sollen and das sein. Furthermore, law students are expected to get a quality understanding of what constitutes the rule of law and legal facts, how the law is applied to certain conditions, how law enforcers and actors carry out the law, and how people respond to the law, and so on.

Phenomenon that departs from social issues such as dual lecturer positions addressed to legal profession bearers such as Notary and PPAT has raised doubts about whether or not concurrent positions as lecturers or lecturers are carried out.

This doubt has the potential to cause a social argument which sometimes leads to the uncertainty of the law of a legal profession such as a Notary who works at a tertiary institution. A question that can be said is enough to make the profession of Notary and PPAT professionals and who work as Lecturers argue with each other considering the provisions of the legislation regarding the Notary Position, the Notary Code of Ethics and the Indonesian PPAT. Furthermore, the sanctions set forth in Article 85 of Law Number 30 Year 2004 concerning the Position of Notary and the Indonesian Notary Association Code of Conduct from verbal reprimands, written reprimands, temporary dismissals, respectful dismissals or until disrespectfully dismissals.

Regardless of any social reaction to the above question, the occupation of the double position according to the stakeholders is a social phenomenon that has the potential to become a legal problem in itself if no legal certainty is given to it.

II. RESEARCH METHOD

Legal research is a scientific activity that is based on certain methods, systematic, and thinking, which aims to study one or several specific legal phenomena by analyzing it unless it also carries out an in-depth implementation of the legal facts and then strives for a solution to the problems that arise. arises in the relevant symptoms.[1]

The method of approach that will be used by the author is the socio-legal Research approach, which is an alternative approach that tests doctrinal studies of law. The word socio in socio-legal studies reflects the interrelationship between the context in which the law is located. That is why when a socio-legal writer uses social theory for analytical purposes, they are often not aiming to pay attention to sociology or other social sciences, but law and legal studies.[2]

III. FINDINGS AND DISCUSSION

A. Notary Legal Foundation As A Professional

The existence of arrangements regarding Public Officials and Authentic Deed can be found in Article 1868 of the Civil Code (Civil Code), which states that: An authentic deed is a deed in the form determined by the law made by or before a Public Official authorized for that place where the deed was made. Article 1868 of the Civil Code does

not explain who is meant by the Public Official; however, if we use a systematic interpretation between Article 1 number 1 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Position of Notary to Article 1868 of the Civil Code, then in the legal norms it can be interpreted to mean that the Official Generally in Article 1868 the Civil Code is none other than the Notary himself. The notary is an extension of the government in this case the state, where the state has given trust to the Notary to carry out some of the affairs or duties of the state, particularly in the field of civil law.

Notary Public is an official authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. What is meant by this Law 'in the above definition is none other than Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. Whereas what is meant by other laws is the applicable laws and regulations, in addition to Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, which also contains the authority and order to the Notary Public to make a notarial deed. it or other things according to the main tasks and authorities based on statutory regulations. The other laws include Act Number 42 of 1999 concerning Fiduciary Guarantees, Act Number 40 of 2007 concerning Limited Liability Companies, Law Number 20 of 2011 concerning Flats, and so forth.

Listening to the authentic definition of Notary, implied that Notary is a profession which, if classified as belonging to 3 practical laws 4, which certainly has its own main duties and authorities based on statutory regulations.

As stated by Rachmad Umar as a Central Jakarta Retired Notary and as the Secretary of the Indonesian Notary Association, the main task of carrying out the Notary profession is: to exercise part of the State's power, to make written and authentic evidence, in the field of civil law. Based on the official definition as explained earlier, the authority of the Notary profession is related to the making of written evidence in the form of an authentic deed, along with everything that is derived from the making of the authentic deed as well as other authorities based on statutory regulations.

In detail, the authority of the profession of Notary is stated in Article 15 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position which reads:

1. Notary has the authority to make an authentic Deed regarding all deeds, agreements and stipulations required by statutory regulations and / or that is desired by the interested parties to be stated in an authentic Deed, guaranteeing the certainty of the Deed making date, keeping the Deed, giving grosse, copy and quotation Deed, all of that as long as the drafting of the Deed is not also assigned or excluded to other officials or other people determined by law.
2. In addition to the authority referred to in paragraph (1), the Notary also has the authority to:
   a. ratify the signature and determine the certainty of the date of the letter under the hand by registering in a special book;
   b. book a letter under the hand by registering in a special book;
   c. make a copy of the original letter under the form of a copy containing the description as written and described in the relevant letter;
   d. approve photocopying with the original letter;
   e. provide legal counseling in connection with the making of the Deed;
   f. make Deed relating to land; or
   g. make the Deed of minutes of auction.
3. In addition to the authorities as referred to in paragraph (1) and paragraph (2), the Notary Public shall have other authorities regulated in the legislation. "

In essence, the profession of Notary profession is assigned to carry out a part of the state's authority in the field of civil law and to that end it is given certain authority, including to make written evidence in the form of an authentic deed. Positions That Are Not Allowed to be Done by a Notary The determination of what concurrent positions are not allowed to be held by a notary is not a difficult thing to answer. Article 17 letters c, d, e, f, g, h, and i of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary has explicitly stated that Notaries are prohibited from: concurrently serving as a civil servant, concurrently serving as a state official, concurrently serving as an advocate, concurrently serving as a leader or employee of a state-owned enterprise, a regionally-owned business entity or a private business entity, concurrently serving as an Acting Officer for Land Deed outside the area of Notary's position, becoming a Substitute Notary, carrying out work others that are contrary to religious norms, decency, or propriety that can affect the honor and dignity of the position of Notary.

The bearer of a position of Notary who violates the said provisions and carries out a double position that is prohibited in Article 17 letters c, d, e, f, g, h, and i of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position The notary, then based on Article 85 of Law Number 30 Year 2004 concerning Notary Positions may be subject to sanctions in the form of: verbal reprimands, written warnings, temporary dismissals, dismissal with respect, dismissal with disrespect. As mentioned above, the legal rules contained in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary have explicitly stipulated the dual positions which are prohibited from being carried out by the Notary and the following sanctions if violations occur. Next below will be seen from the perception of moral rules that apply to the Notary.

The Indonesian Notary Association's Code of Ethics is all moral norms determined by the Association of Indonesian Notary Societies that apply to and must be obeyed by each and every member of the Association and all people who carry out their duties as Notaries, including Acting

Notaries, Substitute Notaries and Notary Substitutes. Special. Based on Article 3 of the Indonesian Notary Association Code of Conduct, it is stated essentially that: Notaries and other people who assume and carry out the position of Notary must: have good morals, character and personality; respect and uphold the dignity and position of the Notary Public; performing acts generally referred to as obligations to be obeyed and carried out including but not limited to the provisions contained in the legislation governing the position of Notary.

In connection with the prohibition on dual positions for Notaries as regulated in Article 17 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, also stipulated in the Indonesian Notary Association Code of Ethics; then in this case it can be said that the violation of the prohibition of a dual position for the incumbent of the Notary Public is also a violation of the Indonesian Notary Association Code of Ethics. Therefore, the Honorary Board of the Indonesian Association of Notaries in accordance with their respective authorities, based on Article 6 of the Indonesian Notary Association Code of Ethics, can conduct an examination for a Notary who is suspected of violating and imposing sanctions on the position of a Notary Public who is proven to violate the Indonesian Notary Association Code of Ethics, whose sanctions can be: Warning, warning, suspension (dismissal), Onzetting (dismissal), or dismissal with no respect. The notary is demanded to always walk within the rules of law and moral rules that have been determined for him. Herlien Budiono said that the provision of intellect was obtained by a notary from formal education, internships and experience in practice. While the provision of spirituality arises from within oneself, from within conscience, and is described as behavior in carrying out the position of notary in accordance with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position and Code Notary Ethics.[3]

B. Notary Dual Position with Lecturer as a Social Problem

Viewed from the perception of its establishment; Article 60 of Law Number 12 Year 2012 concerning Higher Education basically states that State Universities are established by the Government, while Private Universities are established by the Community by forming a legal entity body with a nonprofit principle and must obtain the Minister's permission. The said legal entity organizing body may take the form of a foundation, association and other forms in accordance with statutory provisions. What is meant by the principle of non-profit based on the explanation of Article 60 of Law Number 12 of 2012 concerning Higher Education is the principle of activities whose purpose is not to make a profit, so that the rest of the business results of activities must be reinvested into the University to increase capacity and / or quality education services. Thus, based on the explanation of Article 60 of Law Number 12 Year 2012 concerning Higher Education, it can be ascertained that Private Higher Education can only be established by a legal entity operating body with a nonprofit principle. Therefore, in a contrario it can be constructed that the establishment of tertiary institutions cannot be established by a business entity (both State-Owned Enterprises, Regional-Owned Enterprises, or Private Business Entities) whose purpose is to seek as much profit as possible.

In connection with the establishment of tertiary institutions, one of which can be done by an organizing body in the form of a Foundation; in article 1 number 1 of Law Number 16 Year 2001 Concerning Foundation, it has been defined by the legislators that what is meant by a Foundation is a legal entity consisting of assets separated and intended to achieve certain objectives in the social, religious and humanitarian fields , which has no members. The definition of the Foundation shows that the goal of the Foundation is not the achievement of as much profit as possible, but the achievement of certain goals in the social, religious and humanitarian fields.

In practice, the achievement of certain objectives in the social sector includes establishing or organizing formal education (including establishing tertiary institutions) and informal settings, hospitals, polyclinics, funeral homes, funeral services, funeral services and crematoriums. Achievement of certain goals in the religious sector includes establishing a house of worship, establishing a retreat center and a guesthouse for spiritual guidance and service, and others. While the achievement of certain goals in the humanitarian field includes establishing orphanages, nursing homes, blind homes, helping victims of natural disasters, refugee camps, human rights and the environment and so on.

The discussion regarding the Foundation not as a business entity, is emphasized in the Elucidation of Article 3 paragraph (1) as amended by Law Number 28 of 2004 concerning Amendment to Law Number 16 of 2001 concerning Foundations; which basically states that the Foundation is not used as a business entity and cannot carry out business activities directly, but must go through the business entity it establishes or through another business entity in which the Foundation includes its assets. This is a logical consequence, because the foundation is not a business entity, but it is permissible to carry out capital participation in a business entity while still observing the requirements set out in the legislation.

Based on the provisions above, it is certain that the Foundation is a legal entity, but is not included as a business entity whose purpose is used for profit. This is certainly very different from business entities, both state-owned, regional-owned, and private, which are used as a business entity with the aim of seeking as much profit (especially in the form of a limited liability company).

Article 17 letter f of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 Concerning Notary Position explicitly states that there is a prohibition for the profession of Notary to concurrently serve as a leader or employee of a state-owned enterprise, a regionally-owned business entity or an entity private business. During a certain period of time, during the time the official Notary teaches, even though there is no written agreement signed, it can be said that there has

been a legal relationship in the form of an engagement, which occurs between people who are notaries and the Foundation where the university is shelter or established. In connection with the Foundation is a legal entity that is not a business entity as described above; so even though between the Notary and the Foundation there is a work relationship and there are remuneration that occur because of it; then still the Notary is not a leader or employee of a business entity. Thus, a Notary who has a double position as a Lecturer / teaching staff or who has a structural position in a university by obtaining a decision on the appointment or closing the work agreement and getting wages from the work he is undergoing, can be ascertained that he has not violated the provisions regarding the prohibition as stated in Article 17 letter f of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position. In addition, being a lecturer / teaching staff or carrying out a structural position at a tertiary institution certainly does not include doing other work that conflicts with religious norms, decency, or propriety that can affect the honor and dignity of the Notary's position as explicitly regulated in Article 17 letter i Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position.

For the sake of legal certainty, a little more in-depth study of dual positions and what work may be done by a Notary Public other than as a Lecturer/ Lecturer (who is not a Civil Servant);

Iksan firmly stated that, positions that may be concurrently held:

I. Land Deed Making Officer (PPAT);
II. Class II Auction Officers;
III. Mediator as referred to in Article 1 paragraph (6) of PERMA No. 01/2008;
IV. Lecturer.

The concurrent occupation of a position as a Land Deed Making Officer (PPAT) as referred to in number 1 above, of course means that the working area is in accordance with the domicile of the Notary as stipulated in Article 18 paragraph 1 of Law Number 2 of 2014 concerning Amendments to the Law Law Number 30 of 2004 concerning Notary Position. In number 4 above it is also explicitly stated that the position that may be held by the bearer of the position of Notary is a teacher / lecturer; of course it is intended that the instructor / lecturer is not a lecturer / lecturer having the status of a civil servant (vide Article 17 letter c of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position). If it is constructed a contrario from Article 17 letter i of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary; then the Notary may also carry out other work which certainly does not conflict with: religious norms, decency, or propriety that can affect the honor and dignity of the position of Notary. Based on this analysis, Notaries are not prohibited or permitted to assume double positions as lecturers.

After the existence of legal certainty regarding the concurrent positions or occupations which may and may not be carried out or carried out by a Notary; Furthermore, debates that may arise regarding concurrent positions or other work that may be carried out / carried out by a Notary usually are continued, among others: the time of activities used to carry out other activities that are not included notary activities and the place of activities that are not carried out in his own office.

As for the use of time allocated by the Notary and the place of carrying out activities that are not related to notary activities carried out outside his office because he concurrently serves as a lecturer or teaching staff, it can be explained that: as long as people who need their services as Notaries in terms of making authentic deeds are still can be well served; then it should be that the use of time and place of activity in carrying out their duties as a lecturer is not a violation. The implementation of this matter is of course done as long as he does not leave his office area for more than 7 (seven) consecutive working days as stipulated in Article 17 letter b of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position of Notary Public.

If the "argument argument" regarding the use of time and place of activity due to the position of a Notary Public concurrently holds a position as a Lecturer / teaching staff, it is still being conducted; then consistently, the debate about the use of time and place of the activity might also be continued with an ongoing debate about how the Notary Public reads the deed of Credit Agreement and the Deed of Granting Mortgage Rights or other deeds not in his office but still within the territory his position with the use of time activities that are sometimes not short, what about the Notary who has a salon, cake shop, printing, motorcycle repair shop, how about the Notary who performs concurrent positions as a Land Deed Making Officer (PPAT), how about a Notary who concurrently serves as an Auction Officer Class II and the Mediator who carry out their duties outside the office of the Notary, or perform other work that is permitted or not in conflict with the prohibition of concurrent positions as stipulated in Article 17 letters c, d, e, f, g, h, and i of the Law Law Number 2 of 2014 concerning Amendments to Law Number 30 T Tentang 2004 About Notary Position.

Arrangements that specifically regulate the prohibition and permissibility of concurrent positions above can be assessed based on the Pancasila ideals as a test tool for the applicable positive law, and positive law directors as an effort to regulate the life arrangements of the people and nation. The ideals of Pancasila are ideas, tastes, intentions, inventions and thoughts regarding the law or perception of the meaning of law, which in essence consists of three elements: justice, usefulness (doelmatigheid) and legal certainty.

A notary who concurrently serves as a lecturer does not bring up injustice among other Notaries who act concurrently as lecturers, nor to lecturers who do not hold concurrent positions as Notaries. Everything will be done and placed according to their respective portions. Notaries who also become lecturers can even contribute, among others, there is a balanced approach and understanding between the world of legal science and the world of legal

practice in fact, between das sollen and das sein. Students are expected to get an understanding, among others, about: what are the legal rules and legal facts, how the law is applied to certain conditions, how law enforcers and actors in carrying out the law, and how people respond to the law, and so forth. This certainly fulfills the element of usefulness (doelmatigheid). Article 17 letters c, d, e, f, g, h and i of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position has provided legal certainty regarding concurrent positions which are prohibited from being carried out by the bearer Notary profession.

V. CONCLUSION

The prohibition of a double position of a notary is a dual position that contradicts Article 17 letters c, d, e, f, g, h, and i of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position and Indonesian Notary Association Code of Conduct. Development of a dual position both as a Notary and also as a lecturer or teaching staff in a college or law faculty or graduate program can be justified or does not violate Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position and The Indonesian Notary Association Code of Conduct as long as the tertiary institution is formed or established by a legal entity of the Foundation (not established or in the form of a state-owned business entity, regionally-owned business entity, or private business entity) and / or the Notary does not hold concurrent position as (lecturer with status) government employees. Notaries who become lecturers or teaching staff, cannot be considered or included in the category as doing other work that is contrary to religious norms, decency, or propriety that can affect the honor and dignity of the Notary's position. According to the opinion of the writer, becoming a lecturer or teaching staff is doing other work that even if imbued and done properly and correctly can increase the honor and dignity of the position of the Notary himself.

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