

## The Legal Position of Notary Deed in Establishing Water-Using Farmers' Associations

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**Abstract.** *The role of the Notary in the process of establishing the Association, among others, is to make a deed of Establishment of the Association and register it with the Ministry of Law and Human Rights if it is desired that the association is a legal entity. The existence of an authentic deed made by a notary is used to protect and guarantee the rights and obligations of the parties to the agreement. A normative juridical approach is used in this study, and is carried out by examining existing library materials. The results of this study are the legal position of a notary deed in the establishment of a water user farmer association in Semarang district is recognized by regulations, namely according to Act No. 16 of 2017 concerning Stipulation of Government Regulation in Lieu of Act No. 2 of 2017 concerning Amendments to Act No. 17 of 2013 concerning Social Organizations. The legal consequences that arise from the establishment of a notarized association of farmers using water will result in legal certainty for farmers in improving irrigation management independently, efficiently, and effectively.*

*Keywords: Deed; Establishment; Farmer.*

### 1. Introduction

Every Indonesian citizen has the right to freedom of association, assembly and expression. These rights are guaranteed by the 1945 Constitution of the Republic of Indonesia ("UUD 1945"). One example of the freedom of association,

assembly, and expression of opinion is that every Indonesian citizen has the right to form associations.<sup>1</sup>

In Indonesia, associations are regulated, among others, in the Civil Code ("KUHPerdata"), Act No. 17 of 2013 concerning Social Organizations ("Act No. 17 of 2013"), Government Regulation in Lieu of Act No. 2 of 2017 concerning Amendments to Act No. 17 of 2013 concerning Social Organizations ("Perpu No. 2 of 2017"), which has subsequently been enacted as Law through Act No. 16 of 2017 concerning Stipulation of Substitute Government Regulations Act No. 2 of 2017 concerning Amendments to Act No. 17 of 2013 concerning Social Organizations to Become Law ("Act No. 16 of 2017"), Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2016 concerning Procedures for Submitting Applications for Legal Entity and Approval of Amendments to the Articles of Association of Associations ("Permenkumham No. 3 of 2016"), and Staatsblad 1870 Number 64 concerning Associations with Legal Entities ("Stb. 1870-64")<sup>2</sup>.

Associations can be in the form of legal entities or not. In addition to that, true companies are also recognized by law as associations of people, whether the associations are organized or recognized as such by the general authority, or the associations are accepted as permitted, or have been established for a specific purpose not against the law or good morals.<sup>3</sup>

The association is also a form of social organization (ormas). UU no. 17 of 2013 states that legal entities can take the form of associations. The definition of an association, which is a legal entity, can be found in Permenkumham No. 3 of 2016. Article 1 number 1 defines an association as a legal entity which is a collection of people established to realize certain common goals and objectives in the social, religious, and humanitarian fields and not to distribute profits to its members. Ormas in Act No. 16 of 2017 is defined as an organization founded and formed by the community voluntarily based on common aspirations, desires, needs, interests, activities.<sup>4</sup>

The role of the Notary in the process of establishing the Association, among others, is to make a deed of Establishment of the Association and register it with

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<sup>1</sup>Ali, Chidir. (2014). *Badan Hukum*, Bandung: PT. Alumni, p. 110

<sup>2</sup> Aga Wigana, Political Directions For Land Law On Land Property Rights For The People, *The 5<sup>th</sup> International Conference and Call for Paper Faculty of Law 2019*, Sultan Agung Islamic University

<sup>3</sup>Subekti, R. and Tjitrosudibio, R. (2014), *Kitab Undang-Undang Hukum Perdata*, Jakarta: Balai Pustaka.p. 23

<sup>4</sup> Ambe J. Njoh, Liora Bigon, Erick O. Ananga, Richard A. Ayuk-Etang, Institutional, economic and socio-cultural factors accounting for gender-based inequalities in land title procurement in Cameroon, *Journal of Public Transportation*, p. 116-125, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

the Ministry of Law and Human Rights if it is desired that the association is a legal entity. Because the making of the deed is an act of a Notary in holding office, he must obey and be subject to the Notary Code of Ethics. The code of ethics is regulated in the 2015 Notary Code of Ethics (KEN 2015) which was held in Banten on 29-30 May 2015. The code of ethics that must be adhered to for the establishment of the Association mentioned above is contained in Article 3 of the 2015 Notary Code of Ethics<sup>5</sup> (KEN). There are many codes of ethics that are general in nature, there are some that are specific related to the establishment of the Association, namely having good morals, character and personality,

The existence of an authentic deed made by a notary is used to protect and guarantee the rights and obligations of the parties to the agreement so that if in the future one of the parties violates it, it can be subject to sanctions or penalties.<sup>6</sup>This can make the public trust and be protected and the parties can express their will in the form of a notarial deed and provide legal protection. Regarding the deed of establishment of the Association, the notary is authorized to make the deed based on the rights and obligations he has obtained. For example in this study, namely the establishment of the association of Water User Farmers (P3A).

Water User Farmers Association (P3A) is all farmers who receive direct or indirect benefits and benefits from water management and irrigation networks which include rice field owners, rice cultivators, fish pond owners who get water from irrigation networks and other irrigation water users. The Water User Farmers Association (hereinafter abbreviated as P3A) aims to utilize the potential of irrigation water available in tertiary plots or rural irrigation areas for the welfare of farming communities. The Water User Farmers Association (P3A) also has working area boundaries, namely tertiary plots, pump irrigation areas whose service area is the same as tertiary plots, and rural irrigation areas. The Water User Farmers Association (P3A) is an association that is social in nature with the aim of leading to results for water management and irrigation networks at the farm level to improve the welfare of its members. The Water User Farmers Association (P3A) is equipped with articles of association and by-laws which are

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<sup>5</sup> E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

<sup>6</sup>Dewi, Santia and Diradja, R.M Fauwas. (2011). *Panduan Teori dan Praktik Notaris, Buku Seru*, Jakarta: Dhakhapres.p. 10

approved by the Regent/Mayor of the Head of Level II Region after obtaining approval from the Village Head and the local officer.<sup>7</sup>

## 2. Research Methods

A normative juridical approach is used in this study. This approach is a legal research method of literature with the method or method used in this legal research by examining the existing library materials regarding the position of the authentic deed made by the Notary and the deed of establishment of the association made by the Notary.

## 3. Result and Discussion

### 3.1 Legal Position of Notary Deed in Establishing Water-Using Farmers' Association in Semarang Regency

Notaries as contained in the provisions of Act No. 2 of 2014 Amendments to the Law on Notary Positions Number 30 of 2004 are public officials who are authorized to make authentic deeds and have other authorities as referred to in this Law or based on other laws. Based on this definition, it can be seen that the law has provided a clear and unequivocal understanding that a Notary is an official in charge of making an authentic deed.<sup>8</sup>

Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, and others. The need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relations, both at the national, regional, and global levels. Through an authentic deed that clearly determines rights and obligations, guarantees legal certainty, and at the same time it is hoped that disputes can be avoided. Although the dispute cannot be avoided, in the dispute resolution process the authentic deed which is the strongest and most complete written evidence provides a real contribution to dispute resolution.

Making authentic deeds is required by laws and regulations in order to create certainty, order, and legal protection. In addition to an authentic deed made by

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<sup>7</sup>Nawasis, Guidelines for the Implementation of the Development of Water User Farmers' Associations (P3A), <http://nawasis.org/portal/digilib/read/pedoman-pelaksanaan-pembinaan-perkumpulan-petani-pemakai-air-p3a-/47757>, accessed on October 30, 2021

<sup>8</sup> T Deen, Ong Argo Victoria, Sumain. Public Notary Services In Malaysia. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026, 2018, [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=9BcCVQUAAAAJ&citation\\_for\\_view=9BcCVQUAAAAJ: XoXffv-tXoC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=9BcCVQUAAAAJ&citation_for_view=9BcCVQUAAAAJ: XoXffv-tXoC)

or before a notary, not only because it is required by laws and regulations but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order, and legal protection for interested parties as well as for the community.

Mr. Asharinnuha SH, M.Kn as the Semarang Regency Notary explained that the Notary in making the association's legal entity deed must adjust and include these provisions in the deed which will then be inputted into the Legal Entity Administration System, because if the Notary does not include it in accordance with the provisions contained in the administrative system, then the electronic filling for ratification of the legal entity of the association cannot be processed further.<sup>9</sup>which results in the ratification of the Association's legal entity cannot be carried out. In this case, it is emphasized that the authority of a Notary to make an authentic deed is required by laws and regulations.

The deed of establishment of the association made by a notary is an authentic deed. The form of the deed is usually regulated in a separate statutory regulation. In article 1868 of the Criminal Code. said that "an authentic deed is a deed in the form determined by law, made by or before public officials who have power for that at the place where the deed was made."

The making of a legal entity deed of an association by a notary is clearly stated in Article 11 of the Law on Community Organizations Number 17 of 2013 that the deed of establishment of an association legal entity is made by a notary containing the Articles of Association or the Articles of Association and Bylaws. Usually the Articles of Association that are made are the most important part of a deed of establishment of a legal entity, including in this case an association. The notary in compiling the deed of establishment which contains the Articles of Association of a legal entity will refer to the applicable law as a guideline<sup>10</sup>.

The issuance of Candy No. 3 of 2016 is expected to be able to increase the role of the Notary in making the Deed of Establishment of a legal entity association. This is due to the fact that in the regulation it is not enough to obtain legal entity status only with a Notary deed, but requires approval from the Government through the Minister of Law and Human Rights. So that association deeds made by a Notary without any approval from the Minister cannot use the name of the Association in carrying out civil actions. If it is associated with the theory of legal responsibility, not only is a Notary responsible for his profession, he is also

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<sup>9</sup>Interview with Asharinnuha SH,M.Kn, as a Notary in Semarang Regency on April 13, 2022

<sup>10</sup> Ong Argo Victoria, AR Ariyana, D Arifani, Code of Ethics and Position of Notary in Indonesia. *Sultan Agung Notary Law Review* 2 (4), 397-407, 2020, [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=9BcCVQUAAAAJ&citation\\_for\\_view=9BcCVQUAAAAJ:ODE9OILHJdcC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=9BcCVQUAAAAJ&citation_for_view=9BcCVQUAAAAJ:ODE9OILHJdcC)

responsible to the public regarding legal explanations related to community legal entities.

The legal basis and regulations that will be used as guidelines for the deed of establishment have not yet been regulated firmly, still referring to the Dutch heritage regulations, namely *Staatsblad 1870 Number 64* so that there are still many obstacles and obstacles that are found in notarial practice in making the association's legal entity deed, especially with the issuance again. Regulation of the Minister of Law and Human Rights Number 6 of 2014. Prior to the issuance of the Regulation of the Minister of Law and Human Rights Number 6 of 2014 concerning the Ratification of Legal Entities of Associations and Act No. 17 of 2013 concerning Community Organizations, the making of legal entity deeds of associations was carried out by a Notary based on *Staatsblad 1870 No.64* concerning Legal Entity Associations, An association is defined as a group of people as regulated in the Third Book of the Ninth Chapter of the Civil Code (*Burgerlijke Wetboek 1848*) Articles 1653 to 1665.

The membership of the association is private, meaning that it cannot be transferred or inherited as is the case with the shareholders of a limited liability company, although the articles of association may specify otherwise. The transfer of membership of the association, apart from being regulated in the articles of association, can also occur due to law, for example due to merger or consolidation. There is a need for arrangements regarding membership of the association, regarding rights and obligations and procedures for ending membership in the Association.

What about the association itself, how many people must be included as a condition for the establishment of the association's legal entity. This is not regulated in the laws and regulations so that the Notary in making the deed of establishment of the legal entity of the association lists the founder of the association only based on the wishes and requests of the interested parties. Thus, for the number of people who intend to establish an association in notarial practice, the Notary deed will be stated differently, depending on the wishes of the parties.

In the event that the format for the establishment of the Association and the supporting documents are in accordance with the provisions of the legislation, the *Menkumham* immediately expresses no objection to the application for legalization of the Association's legal entity electronically. The Minister of Law and Human Rights issues a Ministerial Decree concerning the legalization of the Association's legal entity electronically and submitted to the applicant within a maximum period of 14 (fourteen) days from the date of the statement of no objection from the *Menkumham*. Notaries can directly print the Decree of the

Minister of Law and Human Rights regarding the ratification of the legal entity of the Association, using white paper size F4 (Folio) weighing 80 (eighty) grams<sup>11</sup>.

The process of ratifying the legal entity of the Association carried out through the AHU Online System as mentioned above must be carried out in accordance with the applicable laws and regulations. One of the rules that must be complied with is the limitation on the use of the Association's name. The name of the Association ordered must meet the requirements stipulated in the provisions of the legislation. The Applicant must fill out a statement form containing that the name of the Association ordered is in accordance with the provisions of the legislation and the Applicant is fully responsible for the name of the Association ordered.

Based on the theories and provisions as mentioned above, in the case of the establishment and legalization of the legal entity of the Water-Using Farmers' Association in Semarang Regency, the legal status of the association is recognized by regulations, namely according to Act No. 16 of 2017 concerning Stipulation of Government Regulations in Lieu of Law. Act No. 2 of 2017 concerning Amendments to Act No. 17 of 2013 concerning Community Organizations, while the main responsibility of the Water-Using Farmers Association (P3A) organization is to carry out the operation and maintenance of irrigation networks in tertiary plots, while also discussing issues regarding management irrigation water, stipulate and implement regulations in tertiary plots based on deliberation of member meetings.

### **3.2. Legal Consequences Born From the Establishment of Notarized Water-Using Farmers' Associations**

One of the powers possessed by a notary is to make deeds in general, with limitations as long as, among other things, other officials are not excluded by law, concerning deeds that must be made or are authorized to make authentic deeds regarding all acts, agreements, and stipulations. required by law or desired by the person concerned, regarding the legal subject (person or legal entity) for whose interest the deed was made or desired by the interested party, authorized regarding the place where the deed was made, this is in accordance with the domicile and area of office notary and regarding the time of making the deed, in

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<sup>11</sup> Yaya Kareng, Ong Argo Victoria, RJ Moertiyono, How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, 2019, [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=en&user=9BcCVQUAAAAJ&citation\\_for\\_view=9BcCVQUAAAAJ:bKqednn6t2AC](https://scholar.google.com/citations?view_op=view_citation&hl=en&user=9BcCVQUAAAAJ&citation_for_view=9BcCVQUAAAAJ:bKqednn6t2AC)



this case the notary must guarantee the certainty of the time to appear before the parties listed in the deed.<sup>12</sup>

Article 15 of the Notary Position Act (UUJN) regulates the authority possessed by a Notary. One of the authorities possessed by a Notary is to make an authentic deed regarding all actions, agreements, and provisions required by laws and/or desired by the interested parties, to be stated in an authentic deed, to guarantee the certainty of the date of making the deed, to save the deed, to give a grosse, , copies and excerpts of the deed, all as long as the making of the deed is not assigned or excluded to officials or other people stipulated by law (Article 15 paragraph (1)).

Notaries as public officials in addition to having the authority also have obligations that must be carried out. In carrying out its authority, the Notary must also pay attention to the obligations that must be carried out by the Notary. Notary obligations are something that must be done by a Notary, which if done or violated, then the violation will be subject to sanctions to the Notary concerned. Notary obligations are regulated in Article 16 paragraph (1) of the Law on Notary Positions (UUJN).

One of the obligations of the Notary is to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions and provide services in accordance with the provisions of the UUJN, unless there is a reason to refuse it. Therefore, based on the obligations of a Notary as mentioned above, a Notary in carrying out his position acts trustworthy, honest, thorough, independent, impartial, and protects the interests of the parties involved in legal actions and may refuse to provide legal services as long as this results in the Notary impartiality, such as having a blood or marriage relationship with the notary himself, or with his husband or wife,

The notary in making the legal entity deed of the Association must adjust and include these provisions in the deed which will then be inputted into the Legal Entity Administration System. Because if the notary does not include it in accordance with the provisions contained in the administrative system, then the electronic filling for ratification of the legal entity of the association cannot be processed further which results in the ratification of the legal entity of the association cannot be carried out. In this case, it is emphasized that the authority of a notary to make an authentic deed is required by legislation.

The making of a legal entity deed of an association by a notary is clearly stated in Article 11 of the Law on Community Organizations Number 17 of 2013 that the

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<sup>12</sup>Adjie, Habib, (2013), *Kebatalan dan Pembatalan Akta Notaris, cetakan ke-2*, Bandung: PT. Refika Aditama.p. 56.



deed of establishment of an association legal entity is made by a notary containing the Articles of Association or the Articles of Association and Bylaws. Usually the Articles of Association that are made are the most important part of a deed of establishment of a legal entity, including in this case an association. The notary in compiling the deed of establishment which contains the Articles of Association of a legal entity will refer to the applicable law as a guideline. The legal basis and regulations that will be used as guidelines for the deed of establishment have not yet been clearly regulated.

Notary profession is a unique occupation. Its authority to make authentic deeds is given by law. Therefore, a Notary is considered to be exercising part of the power of the State. Therefore, it is fitting for a Notary to carry out his duties responsibly as a State official. Authentic deeds, as the strongest and most complete evidence, play an important role in every legal relationship in society.

Notary deed which has the power of proof as a private deed or will be null and void by law. According to Kelsen, law is a system of norms. Norms are statements that emphasize aspects of "should" or *das sollen*, by including some rules about what must be done. Norms are the product of deliberative human action. Laws that contain general rules serve as guidelines for individuals to behave in society, both in relation to fellow individuals and in relation to society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.

The Notary Deed provides certainty that an event and fact mentioned in the deed was actually carried out by a Notary or explained by the parties who appear at the time stated in the deed in accordance with the procedures that have been determined in the making of the Notary deed. Formally to prove the truth and certainty about the day, date, month, year, time (time) to appear, and the parties appearing, initials and signatures of the parties/appearers, witnesses and a Notary (on the official deed/minutes), and record the statements or statements of the parties/appearances (on the deed of parties). With the P3A, it is hoped that the farming community will have the ability to develop their own potential, motivation, and circumstances. Through this WUA organization, it is hoped that the community will have the skills to plan and implement irrigation management activities in a good, sustainable and independent manner. These are things that the farming community gets from the WUA organization as an example of socio-cultural development. So regarding the establishment of a notarized Water User Farmers Association, it will result in legal certainty for farmers in improving irrigation management independently, efficiently, and effectively.

#### 4. Conclusion

The role of the legal position of a notary deed in the establishment of a water user farmer association in Semarang district is recognized by regulations, namely according to Act No. 16 of 2017 concerning Stipulation of Government Regulation in Lieu of Act No. 2 of 2017 concerning Amendments to Act No. 17 of 2013 concerning Community Organizations, while the main responsibility of the Water-Using Farmers Association (P3A) organization is to carry out the operation and maintenance of irrigation networks in tertiary plots, in addition to discussing issues regarding irrigation water management, establishing and implementing regulations in tertiary plots based on member meetings. The legal consequences that arise from the establishment of a notarized association of farmers using water will result in legal certainty for farmers in improving irrigation management independently, efficiently, and effectively.

#### 5. References

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#### **Interview:**

Interview with Asharinnuha SH,M.Kn, as a Notary in Semarang Regency on April 13, 2022