

The Role of the Notary Honorary Council on the Summon of a Notary by Police Investigators Regarding the Deed He Made

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ABSTRACT

This research is about the role of the Notary Honorary Council on the Summon of a Notary by a Police Investigator related to the Deed he made. The problems formulated are First, What is the Role of the Notary Honorary Council against the summons of a Notary by Police Investigators and Second, How is the Legal Protection for Notaries related to the Deed made. The type of research used in this thesis is normative research using a statutory approach and examining it descriptively. In this study, primary and secondary legal materials were used. The results of the research obtained are First, that based on Article 66 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary jo. Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council, namely the Notary Honorary Council gives or does not give approval if a Notary is summoned by a Police Investigator related to the deed. Second, the importance of giving approval to the Regional Notary Honorary Council in examining and taking a photocopy of the minutes of deed related to alleged criminal acts committed by a Notary is closely related to the function of the Regional Notary Honorary Council in providing protection to Notaries related to the notary's obligation to keep the contents of the deed confidential as stated in Article 24 paragraph (2) letter b Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Honorary Council of Notaries.

Keywords: *Honorary Council of Notaries, Summons of Notaries, Police Investigators.*

1. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia expressly explains that the state of Indonesia is a state of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law is to guarantee legal certainty. The meaning of legal certainty that someone will be able to get something that is expected under certain circumstances.[1] To guarantee legal certainty in every event and action by every legal subject, evidence is needed. One of the strongest evidence that has an important role is an authentic deed. Authentic deed as the strongest evidence that has an important role in every legal relationship in people's lives. According to Article 1868 of the Civil Code, an authentic deed is a deed made in the form determined by law by or before a public official who is authorized to do so at the place where the deed was made [2]. The official who is

authorized to do so by the authorities according to the provisions that have been set is a notary. Notary is a public official who is only authorized to make an authentic deed regarding all agreements and stipulations required by general regulations or by interested parties who are required to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and quotations thereof, all as long as the deed by a general regulation is not assigned or excluded to officials or other people [3].

As a public official, a notary is given the authority to make an authentic deed regarding all actions, agreements and stipulations based on the applicable laws and regulations. The presence of a Notary is intended to assist and serve the public who need authentic written evidence regarding legal circumstances, events or actions. Substantively, a notarial deed can be in the form of a condition, event or legal action that is desired by the parties to be stated in the form of an authentic deed to be used as evidence and based on the laws and regulations that certain legal actions must be made in

the form of an authentic deed [4]. The position of a notary is a position of trust, so the nobility and dignity of the position of a notary must be maintained, both when carrying out the duties of a position and the behavior of a notary's life as a human being which directly or indirectly affects the nobility and dignity of the notary position [5].

Notaries can only provide information or opinions that can be proven true, must be sincere to the client and use all their scientific sources.

In addition, the notary is also obliged to keep everything he knows about the problems faced by the client, because of the trust that has been given to him. In article 16 paragraph (1) letter f of Law Number 2 of 2014 concerning the Position of a Notary on the Amendment to Law Number 30 of 2004 concerning the Position of a Notary, it is explained that everything regarding the deed he made and all information obtained for making the deed is in accordance by oath/promise of office, unless the law provides otherwise. This means that in carrying out his position, he must always keep the secret of the deed he made, including information requested by other parties, including by investigators, unless the law provides otherwise.

The Law on Notary Positions stipulates that when a notary in carrying out his duties is proven to have committed a violation, the notary may be subject to sanctions. In this case the notary intentionally or unintentionally together with the parties to make a deed with the intent and purpose to benefit only certain parties or appearers or harm other appearers which must then be proven in court.

Regarding allegations of legal cases committed by a notary, it is necessary to get protection and guarantees in order to achieve legal certainty. Guarantees of protection and guarantees of achieving legal certainty for the implementation of Notary duties have been regulated in Law Number 30 of 2004 concerning the Position of Notary which was later amended by Law Number 2 of 2014 [6].

One form of legal protection provided by the Amendment Law on Notary Positions is the establishment of a Notary Honorary Council which has the task of fostering Notaries. This task is a mandate from the Minister of Law and Human Rights given to the Notary Honorary Council. The provisions regarding the meaning, duties and functions of the Notary Honorary Council are not regulated in detail in the Law on Notary Positions, but these provisions are regulated in Ministerial Regulation as mandated by Article 66A paragraph (3) of the Amendment Law on Notary Positions [7].

As a follow-up to the provisions of Article 66A paragraph (3) of the Amended Notary Position Act, then the Minister of Law and Human Rights of the Republic of Indonesia issued Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedure, and Budget of the Notary Honorary Council. In Article 1 number 1 of the Regulation of the Minister of Law and Human Rights of

2021 it is stated that "The Honorary Council of Notaries has the authority to carry out the guidance of Notaries and the obligation to give approval or rejection for the purposes of investigation and judicial proceedings, for taking a photocopy of the Minutes of Deed and summoning a Notary to attend the examination related to the Deed or Notary Protocol which is in the Notary's custody [8].

Looking at the provisions of the definition of the Notary Honorary Council above, there are at least 2 main tasks, namely coaching through supervision and the task of granting approval in a Notary examination by investigators, public prosecutors and judges. The purpose of this second task according to Article 24 paragraph (2) of the Regulation of the Minister of Law and Human Rights of 2021 is that the Regional Notary Honorary Council has the function of carrying out guidance in order to maintain the dignity and honor of a Notary in carrying out his professional position and provide protection to Notaries related to Notary obligations to keep the contents of the Deed confidential.

Based on the above background, the researcher is interested in conducting a research entitled "The Role of the Notary Honorary Council on Summons of a Notary by Police Investigators Related to the Deed He Made"

Based on the explanation above, the main problems in this research are as follows:

- (1) What is the role of the Notary Honorary Council against the summons of a Notary by Police investigators.
- (2) How is the legal protection for a notary related to the deed he made

2. METHOD

The type of research used is normative juridical with a Statutory Approach. The statutory approach is carried out by reviewing all laws and regulations related to the legal object being discussed. This research is focused on reviewing and researching legal material, namely the role of the Notary Honorary Council on Summons of a Notary by Police Investigators based on the Notary Position Legislation and literature related to the subject matter discussed.

Data was collected through a literature study using primary and secondary legal materials. Primary legal materials are binding legal materials which are statutory regulations that have relevance to the title the author has chosen, among others; Law Number 30 of 2004 concerning Notary Positions, Law Number 2 of 2014 Amendments to Law Number 30 of 2004 concerning Notary Positions, the Criminal Procedure Code, and Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Honorary Council of Notaries.

Then secondary legal materials, namely legal materials that provide direction and explanation of primary legal data, consisting of literature books, articles, and other scientific works related to this research.

Then from the data collected, the author selects the information obtained based on its quality, and then concentrates on solving the problem which will then be prepared efficiently so that the outline obtained is clear and complete regarding the object of research, especially the role of the Notary Honorary Council on Notary Calls. by the Police Investigator in connection with the Deed he made.

3. DISCUSSION

3.1. The role of the Notary Honorary Council on the summons of a Notary by Police investigators

Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in the Law on Notary Positions. In the sense of public officials according to the provisions of Article 1869 of the Civil Code, if a deed is not made by or before a public official, or an official who is not authorized by law for that purpose, then the deed is not an authentic deed. It is also emphasized in Article 1868 of the Civil Code which is used as the legal basis "An authentic deed is a deed in the form determined by law, made by or before a public official authorized for that at the place where the deed was made".

The notary profession is a job with special expertise that requires extensive knowledge, as well as a heavy responsibility to serve the public interest and the core task of a notary is to regulate in writing and authentically legal relations between the parties who unanimously request the services of a notary.

A notary may be sentenced to a criminal sentence if it can be proven in court that the notary intentionally or unintentionally together with the parties/appearers to make a deed with the intent and purpose of benefiting only certain parties or appearers or harming others. If this is proven in court, the notary must be punished. Therefore, only a notary who is not trustworthy in carrying out his duties when making a deed for the benefit of a certain party with the intention of harming a certain party or to commit an act that violates the law [9].

After the changes to the laws and regulations for the position of a Notary, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, in particular Article 66, the authority to give approval to investigators for taking a photocopy of the minutes of deed and summoning a Notary, given to the Notary Honorary Council.

The definition of the Notary Honorary Council, is not found in the Amendment Law on Notary Positions, but after the issuance of the Regulation of the Minister of Law and

Human Rights of the Republic of Indonesia Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and the Budget of the Notary Honorary Council contained in Article 1 number 1 defines "The Notary Honorary Council has the authority to carry out Notary development and the obligation to give approval or rejection for the purposes of investigation and judicial proceedings for taking a photocopy of the minutes of deed and summoning a Notary to attend an examination related to the notary deed or protocol that is in the notary's storage." The Notary Honorary Council is given special authority as stated in Article 66 of the Law on Notary Positions. The existence of the Notary Honorary Council must be respected by anyone because its presence is ordered by the Law on the Amendment of Notary Positions. When an investigator will summon a Notary with regard to the deed made by the Notary concerned, the summons must go through the Notary Honorary Council because it is authorized first to examine it. Thus, it is inappropriate if the investigator feels the most powerful to summon a Notary without asking permission from the Notary Honorary Council. Procedures like this are already part of the criminal procedural law and the application for a permit is mandatory so that if an investigator violates the procedure, it can be categorized as having violated the Amendment Notary Position Act and can be reported to the investigator supervisory agency. Likewise, when a Notary is summoned by an investigator, he is obliged to wait for the results of the examination from the Notary Honorary Council [10].

The Notary Honorary Council consists of:

1. The Central Notary Honorary Council (established by the Minister, domiciled in the State capital, DKI Jakarta), the Central Notary Honorary Council has the task of fostering the Regional Notary Honorary Council in relation to its duties. In carrying out the task of fostering the Central Notary Honorary Council, it has the function of supervising the Regional Notary Honorary Council.
2. Regional Notary Honorary Council (established by the Director General on behalf of the Minister, domiciled in the provincial capital). The Honorary Council of Regional Notaries is tasked with examining applications submitted by investigators, public prosecutors, and judges.

Article 24 paragraph (1) letter b Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council declares the Notary Honorary Council The territory gives approval or rejection of the request for approval to summon a Notary to be present in the investigation, prosecution, and judicial process.

The Regional Notary Honorary Council has the discretion to reject or approve applications submitted by investigators,

public prosecutors and judges based on the results of examinations conducted by the Examining Council.

Parameters for granting approval or rejection by the Regional Notary Honorary Council, Regional Notary Honorary Council in giving approval or rejection to investigators, public prosecutors and judges, must pay attention that if a criminal event is clear without the need for examination of the Notary as a witness (the Regional Honorary Council of Notaries refuses) or vice versa without a Notary's testimony a report of a criminal event or a criminal event occurring cannot be processed further, so a Notary's testimony is needed so that a criminal event becomes clear (the Regional Notary Honorary Council gives approval).

In conducting an examination of a Notary, the Chairperson of the Regional Notary Honorary Council forms an examining board consisting of 3 (three) people consisting of each member of the Regional Notary Honorary Council. The Investigating Panel has the authority to examine and give approval or rejection of requests by investigators, public prosecutors, or judges for:

- a. Taking photocopies of the minutes of the deed and the letters attached to the minutes of the deed and/or the protocol of the Notary in the Notary's storage and summons of the Notary
- b. Summons of a Notary for a judicial process by Investigators
- c. In conducting an examination, the Investigating Panel has the authority to summon a Notary based on a request from an Investigator.
- d. The summons to the Notary as referred to in paragraph (1) shall be made through a letter signed by the Chairperson of the Regional Notary Honorary Council.
- e. In an urgent situation, a summons can be made by facsimile and/or electronic mail which is immediately followed by a summons.
- f. The summons to the Notary shall be made no later than 5 (five) days prior to the examination.
- g. The notary must be present to fulfill the summons of the examining board and may not be represented
- h. Under circumstances of necessity, the Notary may be present virtually and the notary's statement shall be contained in the inspection report which is signed electronically by attaching the virtual inspection recording.
- i. In the event that the Notary is not present after being summoned legally and properly 2 (two) times in a row, the Examining Council may make a decision on the request of the Investigator.
- j. The Chairperson of the Regional Notary's Honorary Council is obliged to provide an answer in the form of approval or rejection of the application within a period of 30 (thirty) working days from the date of receipt of the request.

k. If the time period is exceeded, it is considered that the Regional Notary Honorary Council has received the request for approval.

The criminal acts related to the position of a Notary as regulated in several articles of the Criminal Code are as follows:

1. Forgery of letters (Article 263, Article 264, Article 266 of the Criminal Code)
2. Embezzlement (Articles 372 and 374 of the Criminal Code)
3. Fraud (Article 378 of the Criminal Code)
4. Participate in doing (Article 55 of the Criminal Procedure Code)

Without strong initial evidence that the deed was made and indicates a criminal act or the alleged notary participated in committing and or providing false information in the deed, the Notary Honorary Council may refuse the investigator's request to give permission to examine the notary. then each investigator will conduct an examination of the Notary either as a witness or as a suspect, is required to first ask permission from the Notary Honorary Council.

3.2. Legal Protection for Notaries related to the Deed Made

The Notary Honorary Council functions to realize the protection of the position of a notary in relation to the deed he made to support the implementation of a clean and professional notary position. Notary Honorary Council in Notary Institutions Notary Honorary Council is an institution presented by Notary Institutions in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary.

Honorary Regional Notaries have the function of providing guidance in order to maintain the dignity and honor of Notaries in carrying out their professional positions and provide protection to Notaries related to the Notary's obligation to keep the contents of the Deed confidential.

1. The function of the Notary Honorary Council has attributive authority, where the Honorary Council has the authority to provide guidance for notaries as public officials in carrying out their professional code of ethics. The implication of Article 66 and Article 66A is that the Notary Honorary Council was formed with the authority to provide guidance to assist the Minister of Law and Human Rights in an effort to provide guidance to Notaries as public officials related to the interests of the judicial process. The Notary Honorary Council may make a decision to give approval or not in relation to the request for summons of a notary and examination of photocopies of the Minutes of Deed and/or letters attached to the Minutes of Deed or the Notary Protocol that are in the Notary's custody. The scope of authority of the Notary Honorary Council needs to be distinguished from the authority of the Notary Supervisory Council.

The supervisory function is carried out to prevent legal problems from arising. Meanwhile, the Regional Notary Honorary Council has the authority to act if there have been legal problems and/or disputes involving the parties, so that evidence is needed for legal actions that have been carried out by the parties and/or there are allegations of mistakes/criminal acts committed by the Notary. Guidance in this case can be understood as protection and legal protection for Notaries who have carried out their duties based on correct principles and notary knowledge.

2. The function is to provide guidance in order to maintain the dignity and honor of a Notary in carrying out his profession

To maintain the dignity and honor of Notaries in carrying out their professional positions, the Indonesian Notary Association already has a Notary Code of Ethics. Thus, the Notary Honorary Council in carrying out guidance in order to maintain the dignity and honor of a Notary in carrying out his profession of office is by fostering the application of a notary code of ethics. If this function is carried out, automatically the public interest of parties related to notarial affairs will also be protected.

The function of providing protection to Notaries is related to the Notary's obligation to keep the contents of the Product Deed secret as a public official is a deed that has legal force and perfect proof value for the parties and anyone, as long as it is not proven otherwise, that the deed is invalid by using the principle limited valid presumptions. However, a Notary has the right to refuse as a professional public official by having to hold his oath of office not to provide the contents of the deed.

On the other hand, a Notary must stand in the interest of the state which refers to the public interest in order to complete the legal process in the judiciary so as to produce a fair, beneficial decision and guarantee legal certainty. The

4. CONCLUSION

(1) The role of the Notary Honorary Council in the summons of a Notary by Police investigators is to give or not give approval for the purposes of the judicial process, the investigator in the case of taking a photocopy of the minutes of the deed and/or the letters attached to the minutes of the deed or the Notary protocol in the Notary's depository and summoning the Notary Public to attend the examination related to the notary deed or protocol that is in the Notary's storage.

(2) The importance of the function of giving approval to the Regional Notary Honorary Council in examining and taking photocopies of the minutes of the deed related to the alleged crime committed by the Notary is closely related to the function of the Regional Notary Honorary Council in providing protection to the Notary in relation to the Notary's obligation to keep the contents of the deed confidential as stated in Article 24 paragraph (2) letter b of the Minister of

notary as a public official who is obliged to keep the contents of the deed secret must obtain legal protection when the notary concerned must disclose the contents of the deed he made to the authorized institution in accordance with his capacity. Notaries need legal protection to keep their positions secret related to the contents of the deed in terms of examining the Notary from the investigation stage to the court stage in criminal cases. The notary's right of refusal cannot be ignored. There are sanctions for Notaries who reveal the secrets of their positions, namely Criminal Sanctions, namely violating Article 322 paragraph (1) of the Criminal Code with the threat of imprisonment for a maximum of 9 months or a maximum fine of Rp. 9,000,- [11];

If the deed made by or before a Notary has indications of a crime in which the Notary must release or ignore the obligation to keep secrets related to the contents of the deed because it is in the public or State interest and assists the legal process, then Article 16 paragraph (1) letter f and Article 54 of the Law Position of Notary Changes, the secret of the position can be set aside if there are higher interests that require the Notary to provide testimony or information so that Notaries are released from their oath of office in accordance with applicable laws and regulations. The waiver of the right of denial (secret of office) can be done because the Notary is responsible for the material truth of the related deed. This form of Notary responsibility is criminally not regulated in the Notary Position Act, but the Notary's criminal responsibility is imposed if the Notary commits a criminal act. The Notary Position Act only regulates sanctions for violations committed by the Notary against the Notary Position Act, the sanctions can be in the form of a deed made by a Notary that does not have authentic power or only has the power as an underhand deed [12].

Law and Human Rights Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council.

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