

LEGAL PROTECTION OF NOTARIES AGAINST THE USE OF THE RIGHT TO RENOUNCE IN CRIMINAL CASES

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Abstract

The Notary as a public official should keep the contents and information in the deed confidential in accordance with the Notary's oath of office in Article 4 paragraphs (1) and (2) and Article 16 paragraph (1) letter f of the UUJN which is realized in the notary's right of denial. However, in criminal cases, the use of the right of denial still cannot be implemented perfectly due to the lack of understanding between the public and the police regarding the right of denial as a notarial obligation and the regulations governing it, resulting in several problems such as errors in the procedure for taking photocopies of deed minutes and summoning notaries as witnesses, expert witnesses and defendants which not only harm notaries but are also considered not respecting the right of denial inherent in notaries. So, on this basis, the legal protection of the notary's right of denial needs to be carried out proportionally. The formulation of the problems in this research are: (1) How is the Notary's Right of Recusal in Criminal Cases? And (2) How is the Legal Protection of Notary's Right of Recusal in Criminal Cases? The research conducted is normative legal research with a statutory approach, case approach, and conceptual approach. The technique of collecting legal materials is done through literature studies. The data source used is secondary data, which includes primary legal materials and secondary legal materials. Based on the results of the study, notaries can file a right of denial in the court process to carry out the obligation to keep the contents and information of the deed confidential in making the deed. Protection of the notary's right of denial so that Article 66 paragraphs

(1) and (3) of the UUJN is fulfilled requires a coaching function by MKN contained in Article 24 paragraph (2) Permenkumham Number 17 of 2021 and the correct procedure for summoning notaries according to Article 28 Permenkumham Number 17 of 2021.

Keywords: Legal Protection, Denial Right of Notary, Notary, Criminal

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Introduction

The Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws in accordance with the provisions of article 1 point 1 of Law Number 2 of 2014 on the amendment of Law Number 30 of 2004 concerning the Position of Notary. Notary as a Public Official to be given the authority to make authentic deeds and other authorities stipulated in the Law and carry out actual practice cannot be separated from the obligation to take an oath. The oath of office is not only a formal requirement that must be taken before the Notary carries out his duties under Article 4 paragraphs. (1) and (2) of the UUJN; more important than this is the implementation of the Notary's oath or promise in the performance of the duties of the Notary position.

The right of recusal is a translation of *verschoningrecht*, which means the right to be released from the obligation to provide testimony as a witness in a case, be it a civil case or a criminal case. Furthermore, regarding the definition of the notary's right of denial, it is stated that the right of denial is the right to refuse to give testimony or the right to ask for a retreat from testimony (*verchoningrecht*), in the notary's right of denial there is an obligation not to speak (*verschoningsplicht*) so that the Notary not only has the right not to speak (*verchoningrecht*) but has an obligation not to speak (*verschoningrecht*). (Widhasani & Latumeten, 2022)

The Notary's Right of Recusal is contained in one part of the Notary's oath or promise to keep secret the contents of the deed and information obtained in the performance of the Notary's office. Article 16 paragraph (1) letter f of the UUJN stipulates that the Notary

is obliged to keep confidential everything regarding the Deed he makes, and all information obtained to do the Deed under the oath or promise of office unless the law determines otherwise. Article 1909 paragraph (3) of the Civil Code also stipulates that any person under his position, occupation, and position is obliged by law to keep something confidential, but only regarding matters whose knowledge is entrusted to him as such. In addition, Article 4 Paragraph (15) of the Notary Code of Ethics stipulates that Notaries are prohibited from violating the contents of the oath of office.

Notaries must be able to hold and maintain the secrets of the office under the provisions in Article 54 of the UUJN that Notaries can only provide, show, or disclose the contents of the Deed, Grosse Deed, Deed Copy, or Deed Excerpt to people with a direct interest in the Deed, heirs, or people who acquire rights unless otherwise provided by statutory regulations. This provision is an exception to the provisions of Article 1909 Paragraph (1), Paragraph (2) of the Civil Code, that every person called as a witness is obliged to provide testimony. (Zagoto, 2020)

The Notary, a Public Official authorized to do Authentic Deeds, is obliged to independently and impartially protect the interests of members of the public by keeping the contents of the Deed and the information made before him confidential so that the public or other unrelated parties do not know it. These deeds will become evidence of disputes between the parties, and the Notary can also be asked to disclose the Deed's contents (disclose secrets). Generally The notary making the Deed can be summoned by the Investigator (Police) or the Prosecutor (Attorney) as a witness and asked for his testimony, and often, the Notary is also asked to disclose the contents (disclose secrets) of the Deed as mentioned earlier to the investigator or prosecutor. (Arisaputra, 2012)

In recent years, the phenomenon of Notaries receiving summons from Investigators (Police/Police) has become increasingly common in the community. The summoning of the Notary by the Investigator (Police), usually at the beginning of the summoning, places the Notary as a witness to the dispute of the parties whose deeds were made by and before the Notary. The summoning of the Notary by the Investigator (Police) is preceded by a report from one of the parties who feel aggrieved by the deed to the Police.

This action is not under the provisions of Article 15 of the UUJN, which states that Notaries are authorized to make authentic deeds regarding all acts, agreements, and provisions required by laws and regulations and / or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and quotation of the deed. The notary's authority in making the contents of the deed is only limited to what the parties want, so if the parties feel disadvantaged, then it is incorrect because the notary only pours the will of the parties into the deed.

In addition, in notarial practice, Notaries are often involved in a civil or criminal dispute caused by the fault of the parties who make a deed in front of him, and the dispute is reported to the Police Investigator or Prosecutor. The Police Investigator or Prosecutor also often directly summons the Notary based on a summons. Problems that often occur in the field related to the summoning of notaries that even though there is a summons from the Police Investigator or Prosecutor to come to the Police or Prosecutor's office, the Notary still does not come to appear, even though he has been summoned many times by the Police or Prosecutor because the summons from the Police or Prosecutor's Office is directly addressed to the Notary concerned. (Suprayitno, 2020)

In practice, some events happen to Notaries considered insubordinate by the Police because they are unwilling to fulfil the Police summons. The Notary will be forcibly picked up and temporarily arrested or detained because they are considered to obstruct or interfere with the examination by the authorities. However, basically, this is a need for more understanding on the part of the Police about the Notary's oath of office.

(Suprayitno,2020)

Article 2 paragraph (2) of the Memorandum of Understanding between the Indonesian National Police and the Indonesian Notary Association (No. Pol: B/1056/V/2006 No: 01/MOU/PPINI/V/2006) states that the summoning of Notary- PPAT is carried out after the investigator has obtained approval from the Supervisory Panel, which is a body that has the authority and obligation to carry out guidance and supervision. (Aman, 2019)

In addition to the cases of summoning notaries that are not under the procedures above in the previous study, problems arise when the police not only summon notaries as witnesses, expert witnesses, and defendants without going through the procedure but also the police confiscate notary protocols in the form of photocopies of deed minutes not under the procedures in Article 22 paragraph(2) Permenkumham Number 17 of 2021 jo Article 66 letter (b) UUJN. One of the actual cases related to this is found in the South Jakarta District Court Decision Number 88/Pid.Pra/2021/PN JKT.SEL, which outlines: The Indonesian National Police / Polri (Respondent) applied for permission from the Bali Regional Notary Honor Council to summon Notary I Wayan Darma Winata (Petitioner) as a witness, but the application was rejected under Letter Number UM.MKNW.Prov Bali.02.21-8 dated February 4, 2021. The rejection was accompanied by a statement that MKNW approved providing a photocopy of the deed minutes. However, the Respondent unlawfully and coercively came to the Applicant's office on March 18, 2021, to request the Applicant's testimony as a witness. Then not only that, but the Respondent also confiscated the original minutes, which clearly violated Article 66 paragraph (1) of the UUJN because, for the benefit of the judicial process, investigators, public prosecutors, or judges with the approval of the Regional Supervisory Council are authorized to take photocopies of the minutes of deeds and/or letters attached to the Minutes of deeds or Notary Protocols in the Notary's storage.

The ignorance of the public regarding the authority of the Notary so that they file a lawsuit against the Notary, as well as the ignorance of the Police and Public Prosecutors regarding the regulations governing the taking of photocopies of notarial minutes or protocols and the summoning of notaries so that in practice these things are carried out without first obtaining approval from the Notary Honor Council will clearly harm the Notary. The Republic of Indonesia, as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, guarantees certainty, order, and legal protection for every citizen. So, notaries, as public officials who provide legal services to the public, need protection and guarantees to achieve legal certainty.

Problems

The problem formulations in this research are:

1. How is the notary's right of renunciation in criminal cases?
2. How is the Legal Protection of the Right of Notary in Criminal Cases?

Methods

The research method used is normative juridical research with a statutory approach (Statue Approach), case approach (Case Approach), and conceptual approach (Conceptual Approach). The Legislation Approach is an approach using legislation or regulation. In the statutory method, the author needs to understand the hierarchy and the principles in the legislation. The Case Approach is carried out by examining cases related to the issue at hand. The conceptual approach is an approach using legislation, the views of scholars, and doctrines that develop in law. (Peter Mahmud Marzuki, 2005)

The research specification used is prescriptive analysis in accordance with the problem in this study, namely by identifying legal problems, conducting legal reasoning, analyzing the problem at hand, and then providing a solution to the problem. (Peter Mahmud Marzuki, 2005)

The source of data in this research is secondary data. Secondary data is library data, which includes laws and regulations, literature books, scientific works, articles, and documents related to research materials. Secondary data in this research plan includes Primary Legal Materials and Secondary Legal Materials. In this case, the author uses primary legal materials in the form of the Criminal Procedure Code, Civil Code, UUJN/UUJN-P, 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 Notary Honor Council. Secondary Legal Materials include research results, works from legal circles, literature books, scientific works from scholars, and official documents of the problems studied.

The data collection method in this research uses the literature method, namely by looking for the theoretical basis of the research problem. The results of this research will be presented in the form of narrative text arranged systematically. Systematic in the sense that all secondary data obtained will be connected with primary data by analyzing it.

In this research, the analysis method used is the Qualitative Normative method, which is a logically arranged discussion and description of the results of research on norms, methods, and legal theories relevant to the subject matter.

Discussion

1. Notary's Right of Recusal in Criminal Cases

Notaries, as public officials, have the authority to make authentic deeds under the provisions in article 1 point 1 of the UUJN. An authentic deed caused by a notary is also called a Notarial Deed, which means that it is an authentic deed made by or in the presence of a Notary according to the forms and procedures stipulated in the Notary Position Law under the provisions in Article 1 point 7 of the UUJN. In Article 1868 of the Civil Code, an authentic deed is a deed in the form prescribed by Law, made by or before public servants authorized to do so in the place where the deed is done.

When examined, there are 3 (three) elements of an authentic deed, which include: made in a specific form. In the presence of an authorized official and where the deed is made. An authorized public official is an official who is given the right and power to make authentic deeds. One of the authorized officials is a Notary. Notary deeds can be referred to as authentic deeds because they have fulfilled the three elements of authentic deeds above. Notaries are officials authorized to make deeds whose provisions are regulated by the Law in the place where the notarial deed is made. Notarial deeds, as authentic deeds, have binding and perfect evidentiary power. Binding means that what is stated in the deed is considered as valid as long as the untruth cannot be proven. Perfect means that the authentic deed is sufficient to prove itself without needing other evidence. (Sulhan, 2022)

An authentic deed basically contains 3 (three) kinds of evidentiary power, namely formal evidentiary power, which means proving between the parties that they have explained what is written in the deed; material evidentiary power, which means proving between the parties that it is true that the event mentioned in the deed has occurred, and outward evidentiary power, which means that in addition to proving between them there are also third parties where on the date, month, and year mentioned in the deed have appeared to the employee explaining what is contained in the deed. (Prabawa, 2017)

Notaries have the authority to do an authentic deed regarding all actions, agreements, and stipulations required by legal regulations and/or desired by those concerned to be confirmed in an authentic deed. The deed made "by" or "in front of" the notary can be valid

evidence when the deed he made becomes the object of dispute. (Salsabila et al., 2018)

In the criminal justice process, there will be an evidentiary process that emphasizes evidence based on Article 184 of the Criminal Procedure Code, namely witness testimony, expert testimony, letters, clues, and the defendant's statement. In Article 1866 of the Civil Code, what can be used as evidence is written evidence, evidence with witnesses, suspicion, confession, oath, and everything by applying the rules set out in the Civil Code. Over time, in some instances, the litigants can be represented by lawyers. Prosecutors, judges, or the parties concerned in court find it necessary to present a notary as a witness concerning the deed he has made. (Arisaputra, 2012)

A notary is an office of trust that must be in harmony with those who carry out the duties of the office of a Notary as a person who can protect the trust and interests of the community. Therefore, the implementation of Notary as an office of trust, the Notary has the obligation to keep confidential all legal acts outlined in the contents of the deed and all information given to the Notary in the making of the deed under the oath/pledge of notary office in Article 4 paragraph (1) and (2) of UUJN: "I swear: That I will keep the contents of the deed and the information obtained in the performance of my office confidential.". The obligation for a Notary to keep the contents of the deed and the information obtained in the performance of his/her position confidential is also regulated in Article 16 Paragraph (1) letter f, which stipulates that "Keep confidential everything regarding the Deed he/she makes and all information obtained to make the Deed under the oath/pledge of office, unless the law determines otherwise." (Ariesta Rahman, 2018)

In addition to the above provisions, other laws and regulations that also regulate the obligation to keep the contents and information confidential can be seen in the provisions of Article 170 paragraph (1) of the Criminal Procedure Code, which reads: "Those who because of their work, dignity or position are obliged to keep secrets, can ask to be exempted from the obligation to provide information as witnesses, namely about matters entrusted to them.". Article 1909 paragraph (2) point 3e of the Civil Code, which reads: "Any person who by virtue of his position, occupation or office is obliged by law to keep something secret, but only concerning matters of which his knowledge has been entrusted to him as such."

Departing from the aforementioned statutory provisions opens the right of denial for notaries. The right of denial of notaries is based on Article 4 paragraph 2 jo Article 16 paragraph 1 letter e jo Article 54 of the UUJN, which in principle states that the right of denial of notaries is a right not to speak or *vercshoningsrecht*, the right here is also an exercise of the right not to speak or *vercshoningsplicht*, even in front of the court, If it is not supported by statutory regulations (such as the optional provisions contained in Article 16 paragraph 1 letter e jo Article 54 UUJNP, meaning that notaries are not allowed to provide testimony regarding what is contained in their deeds, notaries not only have the right not to speak but have the use of the right not to speak. (Arisaputra, 2012)

The purpose of notarization is to protect the secret of office. However, this right of denial does not mean anything when dealing with the interests of the judicial process. This insignificance is because Article 4 paragraph (2) and Article 16 paragraph (1) letter f of the UUJNP do not clarify the Notary's circular obligations. The presence of a Notary plays an essential role in legal traffic, especially with regard to the creation of authentic written evidence. This act aims to ensure legal certainty, order, and protection needed by the community related to authentic written evidence regarding circumstances, events, or legal acts, as mandated in Article 1868 of the Civil Code. This obligation can end when a statutory regulation orders the Notary to disclose the secrets of his/her office. (Aman, 2019)

According to Nurhidayati, there are 3 (three) kinds of Notary's positions in exercising the right of renunciation, namely: (Adinugraha, 2015)

- a. As a witness

A notary who is asked to be a witness about the deed he/she made can exercise his/her right to resign as a witness. The Notary must expressly state to the judge that he will exercise his right of recusal as a witness because his position is obliged to keep secrets. The notary can send a letter of request to the court so that he can withdraw as a witness.

b. As an expert witness

The needs of judicial practice require notaries to provide expert testimony. Liliyana Mulyadi argued in the September-October 2004 edition of *Media Notariat* that listening to the opinion of a Notary can explain his expertise and provide information that can clarify a case. Article 120, paragraph (2) of the Criminal Procedure Code provides an exception if, due to dignity, work, or position that obliges a person to keep a secret, may refuse to provide the requested information.

c. As a defendant

In essence, a deed made by a Notary is an authentic deed that provides perfect proof. A notary is not responsible for the content of the deed because the deed itself contains the will of the parties made before the Notary. If the Notary becomes a suspect or defendant for falsifying a letter, he/she cannot exercise the right of renunciation.

The Criminal Procedure Law adheres to a system of proof based on negative legislation (negative wettelijk) and the existence of a minimum limit of proof (minimum bewijs), causing evidence in the form of authentic deeds alone cannot be used as a basis for judges to decide a case. The principle that a sentence can be imposed must fulfill two conditions: valid evidence (wettige bewijsmiddelen) and the judge's confidence (overtuiging des rechts). In the formulation of Article 183 KUHAP, the evidence required is at least 2 (two) valid evidence. In other words, the minimum evidence is 2 (two) valid evidence. The search for material truth, namely the real truth, basically requires adequate evidence. (Salsabila, 2018)

In practice, along with the passage of time and the alternation of cases that occur, a Notary as a Public Official in carrying out his position, is often involved with legal cases both as a witness and as a suspect, so in some instances, the litigants (can be represented by Lawyers), Prosecutors, Judges, or parties concerned in the court who feel the need to present a notary as a witness, related to the deed he made. (Dewi, 2018)

The summoning of a Notary as a witness related to the alleged criminal offense of a deed made before him in the criminal justice process is essential to obtain direct information from the Notary concerned regarding the deed made before him at the request of the litigating parties (clients). This provision is based on the function of criminal procedural law, which is different from civil procedural law. Van Bemmelen argues that there are three functions of criminal procedural law, one of which is the main objective of seeking and obtaining the complete truth as a whole and as a whole. (Andi Hamzah, 1996)

One of the actual cases is contained in the South Jakarta District Court Decision Number 88/Pid.Pra/2021/PN JKT.SEL outlines that the Indonesian National Police / Polri (Respondent) applied for permission from the Bali Regional Notary Honor Council to summon Notary I Wayan Darma Winata (Petitioner) as a witness. However, the application was rejected under Letter Number UM.MKNW.Prov Bali.02.21-8 dated February 4, 2021. The rejection was accompanied by a statement that MKNW approved to provide a photocopy of the following deed minutes:

- a. Deed of Declaration as Heir Number 06, dated April 20, 2019;
- b. Deed of Minutes of Extraordinary General Meeting of Shareholders of Limited Liability Company PT Jayakarta Balindo Number: 06 dated October 23, 2019; and
- c. Deed of Minutes of Extraordinary General Meeting of Shareholders of PT Jayakarta

Balindo Limited Company Number: 01 dated April 17, 2020.

However, the Respondent unlawfully and coercively came to the Applicant's office on March 18, 2021, to request the Applicant's testimony as a witness. Then not only that, the Respondent, apart from taking photocopies of the minutes of the above deeds, also confiscated the original minutes using Receipt Letter Number: STP/189/III/2021/Dittipideksus dated March 18, 2021, against the following minutes of deeds:

- a. Minuta Akta No. 06 Dated April 20, 2019 Notary I Wayan Darma Winata, SH, address at Jl Raya Sempidi No.81 Badung, Bali;
- b. Minuta Akta No. 06 dated October 23, 2019 Notary I Wayan Darma Winata, SH, address Jl Raya Sempidi No. 81 Badung, Bali;
- c. Minuta Deed No. 06 dated January 26, 2020 Notary I Wayan Darma Winatam SH, address Jl Raya Sempidi No. 81 Badung, Bali;
- d. Minuta Deed No. 01 dated April 17, 2020 Notary I Wayan Darma Winata, SH, address Jl Raya Sempidi No. 81 Badung, Bali;
- e. Minuta Deed No. 02 dated June 4, 2020 Notary I Wayan Darma Winata, SH, address Jl Raya Sempidi No. 81 Badung, Bali.

The taking of the minutes of the deed is separate from the procedure because only a photocopy of the minutes of the deed can be taken. The summoning of the Notary as a witness by the Police is rejected. The subsequent summoning is carried out without obtaining approval from the Regional Notary Honor Council in that case, is not allowed, and this is contrary to article 66 letter (1) of the UUJN, which states:

"In the interest of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honor Council are authorized:

- a.) take a photocopy of the Deed Minute and/or letters attached to the Deed Minute or Notarial Protocol in the Notary's storage; and
- b.) summon the Notary to appear in the Deed or Notarial Protocol examination in the Notary's custody."

In addition, the mechanism for taking photocopies of deed minutes or deed protocols and wrong summons by the Police is not under the provisions of the Terms and procedures for summoning notaries regulated by the Minister of Law and Human Rights Regulation Number 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, Article 28 paragraph (1) is a request for approval to take a photocopy of the minutes of a deed or Notary Protocol summoning of a Notary by an investigator, public prosecutor, or judge to attend an examination related to a deed or Notary Protocol that is in the storage of a Notary, submitted to the Chairman of the Regional Notary Honor Council under the working area of the Notary concerned.

The above case is a problem that occurs in the field due to the lack of understanding between the public as a litigant and the Notary's authority to do a deed under Article 15 of the UUJN, as well as the ignorance of the police/public prosecutor regarding the authority of the Notary Honor Council to approve regarding the summoning of notaries and the taking of photocopies of deed minutes or deed protocols and not understanding the mechanism for summoning notaries as witnesses or suspects under Article 66 letter (b) of the UUJN. More importantly, the public, the investigators (Police), or the prosecutors (prosecutors) still do not understand the Notary's right of denial contained in Article 4 paragraphs (1) and (2) of the UUJN and Article 16 paragraph (1) letter f of the UUJN.

2. Legal Protection of Notary against Notary's Right of Recusal in Criminal Cases

The Republic of Indonesia, as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, guarantees certainty, order, and legal protection for every citizen. Notaries, as public officials who carry out the profession of providing legal services to the public, need to get protection and guarantees in order to achieve legal certainty.

According to Philipus M. Hadjon, legal protection can be interpreted as an effort to provide rights to protected parties under the obligations they have performed. Legal protection is part of the operation of the legal function to realize justice, benefit, and legal certainty. Protection itself is protection given to legal subjects under applicable legal regulations. (Dewi, 2018)

According to Habib Adjie, notaries hope to get proportional protection when carrying out their duties as notaries. At least there is a fair, transparent, and scientific examination when the examining panel at the Regional Notary Honor Council examines a notary at the request of the Police, prosecutor's office, or court. (Adjie, 2013)

Legal protection for notaries has normatively been provided by the applicable laws and regulations, namely in this case as follows: (Supriyatno, 2020)

- a. The establishment of the Notary Honor Council as mandated in Article 66 of the UUJN, whose supervision includes the implementation of the Notary position.
- b. Regarding the procedures for taking the minutes of deeds and summoning notaries, according to Article 66 Paragraph (1) of the UUJN, which states that for the benefit of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honor Council are authorized to take photocopies of the minutes of deeds and/or letters attached to the minutes of deeds or notarial protocols in the storage of notaries and summon notaries to attend examinations related to deeds or notarial protocols that are in the storage of notaries.
- c. The Notary's right of denial as stipulated in Article 170 of KUHAP, Article 1909 Number 3 of the Civil Code, Article 4 Paragraph (2) of UUJN, Article 16 Paragraph (1) Letter F of UUJN-P.
- d. Memorandum of Understanding between the National Police of the Republic of Indonesia and the Indonesian Notary Association Number 01/MOU/PP-INY/V/2006 Regarding the Development and Improvement of Professionalism in the Field of Law Enforcement.
- e. Decree of the Central Supervisory Council Number C-MPPN.03.10-15 Regarding the Granting or Rejection of Approval for the Summoning of Notaries by Investigators, Public Prosecutors, and Judges.
- f. The terms and procedures for summoning notaries are regulated by Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honor Council.
- g. 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.

Notaries in carrying out the secrets of office need to be given legal protection in order to: (Aman, 2019)

- a.) maintain the nobility, dignity, and honor of the office of Notary, including when giving testimony and proceeding in the examination in court

- b.) keep the contents of the Deed and all information obtained to make the Deed confidential and maintain the minutes or letters attached to the Deed Minute or Notary Protocol, which are in the Notary's custody.

To be able to realize legal protection, as mentioned above, requires coordination from related parties such as the Regional Notary Honor Council, the Community, the Investigator (Police), and the Prosecutor (Prosecutor) so that legal protection of notarial rights can be carried out proportionally. With the coaching function carried out by the Regional Honorary Council, it is hoped that notaries, under their authority in Article 15 paragraph (2) letter e of the UUJN, can provide legal counseling in connection with the making of the Deed so that the parties (clients) of the notary understand that the authority of the notary contained in article 15 paragraph (1) of the UUJN. This policy can be done so that in the future, there will be no more summoning of notaries as witnesses by the Investigator (Police), which is preceded by a report from one of the parties who feel aggrieved by the Deed to the Police.

Furthermore, Article 24 paragraph (1) of Permenkumhan Number 17 of 2021 states that the duties of the Regional Notary Honor Council are to examine requests submitted by investigators, prosecutors, or judges and to give approval or rejection of requests for approval to take photocopies of deed minutes and summon Notaries to appear in investigations, prosecutions, and judicial proceedings. However, suppose it is related to the problems that occur in the field. In that case, the investigators (police) take photocopies of deed minutes or deed protocols that do not follow procedures and summons to notaries are made without prior approval from the Notary Honor Council. This provision is not only contrary to Article 66 letter (b) of the UUJN, which states that for the benefit of the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary Honor Council, are authorized to summon Notaries to attend examinations related to Notarial Deeds or Protocols that are in the Notary's storage. However, this is also considered not respecting the duties of the Notary Honor Council under Article 24, paragraph (1) of the Permenkumham.

Summoning a notary under the correct mechanism should be based on the provisions of Article 28 Permenkumham Number 17 of 2021, namely:

1. Requests for approval to take photocopies of the minutes of deeds or Notarial Protocols and the summoning of Notaries by investigators, public prosecutors, or judges to attend examinations related to deeds or Notarial Protocols that are in the custody of Notaries shall be submitted to the Chairman of the Regional Notary Honor Council under the working area of the Notary concerned.
2. The request, as referred to in paragraph (1), shall be submitted in writing in Indonesian, and a copy shall be sent to the Notary concerned.
3. The request, as referred to in paragraph (2), must contain at least:
 - a. the name of the notary;
 - b. the address of the Notary's office
 - c. the number of the deed and/or letter attached to the minutes of the Deed or Notarial protocol in the custody of the Notary; and
 - d. the subject matter of the alleged case.
- e. the Chairman of the Regional Notary Honor Council must provide an answer in the form of approval or rejection of the request as referred to in paragraph (1) within a maximum period of 30 (thirty) working days as of the date of receipt of the request.
- f. In the event that the Regional Notary Honor Council does not provide an answer within the period as referred to in paragraph (4), the Regional Notary Honor Council shall be deemed to have accepted the request for approval.

The examination mechanism carried out by the Regional Notary Honor Council must be under the provisions of Article 29 of Permenkumham Number 17 of 2021. In conducting an examination, the Examining Panel is authorized to summon a Notary based on a request from an investigator, public prosecutor, or judge. The summons to the Notary is made through a letter signed by the Chairman of the Regional Notary Honor Council. However, in urgent circumstances, the summons can be made by fax and/or electronic mail, immediately followed by a summons letter. The summons to the Notary is made within a maximum of 5 (five) days before the examination is conducted, and the Notary must be present to fulfill the summons of the Examining Panel and may not be represented. Suppose the Notary is absent after being legally and properly summoned 2 (two) times in a row. In that case, the Examining Tribunal may decide on the request of the investigator, public prosecutor, or judge. (Riandini Arief et al., 2019)

Furthermore, according to the provisions of Article 30 Permenkumham Number 17 of 2021, the Examining Panel gives approval or rejection after hearing direct information from the Notary concerned. The direct testimony is stated in the minutes of the examination. In the event that the Examining Tribunal approves the request of an investigator, public prosecutor, or judge, the Notary is obliged to:

- a. provide a photocopy of the minutes of the Deed and/or letter required to the investigator, public prosecutor, or judge; and
- b. submit a photocopy of the minutes of the Deed and/or letter as referred to in letter a with a delivery report signed by the Notary and the investigator, public prosecutor, or judge witnessed by 2 (two) witnesses.

According to Article 32 and Article 33 of Permenkumham No.17 of 2021, granting approval and refusal to investigators, public prosecutors, or judges for the benefit of the judicial process in taking photocopies of the minutes of Deeds and/or letters and summoning notaries, is carried out in the case of: (Caesar et al., 2023)

1. there are allegations of criminal offenses related to the minutes of deeds and/or letters attached to the minutes of deeds or Notary Protocol in the custody of the notary;
2. the right to prosecute has not been waived based on the provisions on expiration in the laws and regulations in the field of criminal law;
3. there is a denial of the validity of the signature from one or more parties;
4. there is an allegation of a reduction or addition to the deed minutes and/or
5. there are allegations that the Notary has postponed the date (antidatum). The five things above are criteria or benchmarks for the Regional Notary Honor Council in granting approval and rejection of requests submitted by investigators, public prosecutors, or judges. This means that if, based on the results of the examination of the notary, the criteria mentioned above are found, then there is no legal reason for the Notary Honor Council to reject the request for approval submitted by the investigator, public prosecutor, or judge, even though according to the notary's testimony in carrying out his duties and positions, he has complied with the procedures stipulated by UUJN.

Conclusion

Notary as a public official in his authority to make authentic deeds cannot be separated from his obligation in Article 16 letter (f) of the UUJN to keep confidential everything about the deed he makes and all information obtained for the making of the deed under the oath/pledge of office contained in Article 4 paragraph (1) and paragraph (2) of the UUJN which is realized in the form of the notary's right of denial. Related to the taking of photocopies of notarial minutes or protocols and the summoning of investigators (Police)

and prosecutors (Attorney) as witnesses, expert witnesses, and suspects open the use of the right of denial for notaries as a form of legal protection. However, in practice, there are still many mistakes in the mechanism of taking photocopies of notarial minutes or protocols and summoning notaries by authorized parties that are not under Article 66 of the UUJN. This policy proves the lack of understanding of the public, investigators (Police) and prosecutors (Prosecutors' Office) about the existence of notarial rights and regulations governing them so that they are often ignored or cannot be used by notaries to the fullest, so legal protection is needed.

Legal protection of the notary's right of denial in criminal cases is reflected in the guidance function of the Notary Honor Council in Article 24 paragraph (2) Permenkumham Number 17 of 2021, which is in the form of maintaining the dignity and honor of Notaries in carrying out their profession and providing protection to Notaries related to the Notary's obligation to keep the contents of the Deed confidential. Regarding the mechanism for summoning a notary by the competent authority that is not under Article 66 of the UUJN, it must be carried out by summoning a notary under the correct mechanism under the provisions of Article 28 Permenkumham Number 17 of 2021, summoning a notary by an investigator, public prosecutor, or judge to attend an examination related to a deed or Notary protocol that is in the Notary's storage is submitted to the Chairman of the Regional Notary Honor Council under the working area of the Notary concerned.

Suggestion

In order to realize legal protection optimally, notaries can participate with their authority in Article 15 paragraph (2) letter e of the UUJN to provide legal counseling in connection with the making of the Deed so that the parties (clients) of the notary understand the authority of the notary in connection with the making of the Deed so that in the future there will be no more summoning of notaries as witnesses by the Investigator (Police) which was preceded by a report from one of the parties who felt aggrieved by the deed to the Police.

Investigators (Police) and prosecutors (Attorney) are expected to understand that each profession has its governing regulations so that the summoning of notaries and the collection of deed minutes and notary protocols in the future can be carried out according to the correct mechanism under the provisions in Permenkumham Number 17 of 2021.

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