

SUMMONING NOTARIES BY PROSECUTORS AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 16/PUU-XVIII/2020

Sri Sulistyawati¹, Kartina Pakpahan², Sartika Sari³
Universitas Prima Indonesia
Email: sartikasari423@gmail.com

Abstract

In carrying out their duties and authorities, notaries are given legal protection as in Article 66 paragraph 1 of Law Number 2 of 2014 (UUJN). In the Constitutional Court Decision No.16/PUU-XVIII/2020, the judge rejected the lawsuit of the plaintiff PJI (Indonesian Prosecutors Association) on the basis that the plaintiff did not have legal standing. This study aims to analyze the Constitutional Court Decision No.16/PUU-XVIII/2020 regarding the examination and summoning of Notaries by the Prosecutor. This research, normative legal research, is conducted with a statute approach using the theory of authority, namely by reviewing and analyzing regulations related to the legal issues being addressed. The results show that the decision provides special protection to the duties of Notary, but also weakens the position of the Prosecutor in summoning the Notary. Article 66 of the UUJN overlaps with Article 1 paragraph (2) of the Prosecutor's Office Law which authorizes the Prosecutor as a Civil Servant with a functional position that has the specificity to carry out its duties, functions and authorities based on the law. Efforts need to be made by Prosecutors and Investigators to prevent and eradicate criminal acts involving Notaries without violating human rights and the rights of Notaries regulated by law.

Keywords: Attorney, Notary, Constitutional Court, Crime by Notary, Legal Protection.

INTRODUCTION

The existence of Notary in Indonesia is recognized in the provisions of Article II of the Transitional Rules (AP) of the 1945 Constitution. Notary is one of the state officials appointed by the Minister of Law and Human Rights, as an extension of government for the sake of the state, whose position is very important and needed in people's lives to assist and serve people who need authentic written evidence of circumstances, events, or legal acts. (Ramadhani, Rodliyah, and Djumardin 2020) Notaries as public officials have an important role in carrying out their duties as public servants in the field of law. Notary is a legal profession so that the notary profession is a noble profession (*nobile officium*). (Yustica, Ngadino, and Maharani Sukma 2019)

Notaries are required to work with high professionalism and credibility and independently and can cause problems such as a relationship between a notary and a client. For this reason, the Government of the Republic of Indonesia through the Minister of Law and Human Rights established an institution that oversees Notaries and the public who use Notary services through the Notary Honor Council (MKN). MKN is referred to in article 66 of the Notary Position Law, has the authority to grant permission for examination and summoning of Notaries by the Police, Prosecutors and Judges as well as parties who are aggrieved by the actions of the notary. (Hably and Djajaputra 2019)

In the order of criminal law, the initial stage carried out by law enforcement officials when someone is suspected of committing a criminal offense is investigation, examination

and summoning. In contrast to a Notary, if a Notary is suspected of committing a criminal offense, the investigation stage includes submitting a request for summons and examination of the notary suspected of committing a criminal offense through the Notary Honor Council. According to Yahya Harahap, investigation is a series of actions to seek and find circumstances or events related to crimes and criminal acts or alleged criminal acts. (Ramiyanto 2018) According to Lawrence Friedman, there are 3 (three) elements in the legal system, namely legal substance or material, legal institutions and legal culture. The first element is general rules and legal principles. The second element refers to the overall organization, institution and officials, including legislative, executive and judicial bodies and their agencies, such as government bureaucracy, courts, prosecutors, police, and specialized fields such as lawyers and notaries. The third element is the actual element that refers to the overall decision or behavior related to the first element. (Carrillo 2007)

John Locke divided the powers of a state into three branches, legislative, executive, and federal. (Redi and Syahril 2020) The theory of separation of powers was further developed by Montesquieu, dividing power into judicial power, legislative power and executive power. (Suherman 2019) The Criminal Procedure Code stipulates in Article 1 paragraph (2) that Investigators in the judicial power are Indonesian National Police Officers or certain Civil Servant Officers (PPNS) who are given special authority to conduct investigations in accordance with the law. Furthermore, the Police are also given the authority in Law Number 2 of 2002 concerning the Indonesian National Police. (Undang-Undang Kepolisian 2002)

The Attorney General's Office occupies judicial power through Law No.16 of 2004 which has been amended to Law No.11 of 2021 concerning the Public Prosecution Service. The Attorney General's Office is a government agency in the field of prosecution and other judicial bodies that exercise state power according to law. Apart from the field of criminal justice prosecution, the Attorney General's Office plays a role in the process of investigating criminal cases. (Undang-Undang Kejaksaan 2021) This role is contained in Article 1 point 1 of the Prosecutor's Office Law and Article 1 point 6 letters (a) and (b) and article 13 of the Criminal Procedure Code, which basically states: "Prosecutors are functional officials authorized by law to act as public prosecutors and executors of court decisions that have obtained permanent legal force as well as other powers based on law. Article 284 paragraph (2) of the Criminal Procedure Code in conjunction with Article 17 of Government Regulation No. 27/1983 concerning the Criminal Procedure Code, which states that the authority to investigate certain criminal offenses specifically regulated by certain laws is carried out by investigators, prosecutors and other authorized investigating officials appointed based on statutory regulations. (Undang-undang No.8 1981)

This research discusses the Constitutional Court Judicial Review Decision No.16/PUU-XVIII/2020. The conflict of authority between the Public Prosecutor's Office and the Notary Honor Council with the enactment of Article 66 of Law Number 2 of 2014 concerning the Notary Position. The Prosecutor's Office views the existence of the Notary Honor Council as hampering the process of handling notary cases. Article 66 regulates as follows:

1. In the interest of justice, with the approval of the Notary Honor Council, investigators, public prosecutors, or judges are authorized to:
 - a. Taking photocopies of deed records and/or letters attached to deed records or notarial agreements that are under the supervision of a notary; and
 - b. Summoning a notary to participate in an examination in connection with a deed or notarial agreement that is under the supervision of the notary.
 - c. Make a copy of the minutes or letter as referred to in paragraph (1) letter a to make the minutes of delivery.

No later than 30 (thirty) working days after the receipt of the request for approval as referred to in paragraph (1), the Notary Honor Commission shall respond by accepting or rejecting the request for approval. (UUJN 2014)

In the Judicial Review of the a-quo case, Applicant I is the Indonesian Prosecutors Association, Applicant II is a Public Prosecutor as a research prosecutor in charge of handling the case of the Crime of Providing False Statements into an authentic deed in the report of TSG (complainant) by making a police report Number: LP/508/IV/2018 dated April 16, 2018. Applicants III, IV and V are individual prosecutors and the Court found no evidence that the applicants are investigators in special criminal cases or public prosecuto. (Salinan Putusan No.16/PUU-XVIII/ 2020)

This occurred when Applicant II as the prosecutor handling the criminal case of giving false information into an authentic deed, where the case was followed up by investigators of the Criminal Investigation Unit of the National Police Headquarters through the Director of Economic and Special Crimes had sent a letter to the Chairman of the Notary Honor Council of West Java Province, which basically conveyed a request that approval be given to conduct an examination of the notary on behalf of PTIG as a witness. MKN has given an answer stating that there are no sufficient and objective clues that PTIG has knowledge of the reported case.

Petitioner II stated that UUJN Article 66 Paragraph 1 concerning "approval of the Notary Honor Council" greatly hampers and impedes the process of fair law enforcement. When the a-quo case was heard, at that time the legal status of the Attorney General's Office, namely Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

In examining Article 66 paragraph (1). Paragraph (2) and paragraph (3) of Law No. 16/2004 on the Office of Notary, filed against Article 1 paragraph (3) of the Criminal Code, Article 27(1), Article 28D of the 1945 Constitution Paragraph (1), Article 28I paragraph (2) of the 1945 Constitution, several points of action/appeal against Article 66 UUJN, namely: Article 1 paragraph 1 of the Prosecutor's Office Law and Article 1 paragraph 6 letters (a) and (b) and Article 13 of the Criminal Procedure Code basically state that: "The public prosecutor is a function authorized by the legal officer Prosecutor and executor of court decisions that have obtained permanent legal force and other powers by law.

At the end of the trial, the Constitutional Court Judge in Decision Number 16/PUU-XVIII/2020 conveyed his decision that:

1. Declare that the petitions of Applicants 1, 3, 4 and 5 are in admissible.

2. Deny Applicant 2's request for exemption and remainder.

Chaos has occurred in the criminal justice system after the Constitutional Court Decision Number 16/PUUXVIII/2020, where overlaps occur between Article 1 of the Prosecutor's Office Law, Article 66 of the 2014 UUJN, Article 26 PermenkumHam Number 7 of 2016 in conjunction with Article 33 of Government Regulation 17/2021 in terms of authorizing the examination of notaries. In principle, the Public Prosecutor's Office does not have the authority to examine notaries, but the prosecutor as a public prosecutor has the right to summon notaries and request copies of deed records, while the Notary Honor Council has full authority to examine and adjudicate in a general meeting of Notaries including granting permission.

Therefore, further analysis is needed of the Constitutional Court Decision Number 16/PUU-XVIII/2020 on efforts to prevent and eradicate criminal acts involving notaries, as well as how other efforts can be made by prosecutors and investigators to overcome these challenges. In this case, the role of the community is also important in providing support and information related to criminal cases involving notaries.

LITERATURE REVIEW

In the online dictionary of the Indonesian language, it is explained that the definition of profession is a field of work based on certain expertise, (skills, vocational and so on). Regulations are defined as rules (regulations) that must be obeyed by members (of a group or society). Illegal means not legal according to the law. (KBBi 2023)

The legal profession is one of the professions that requires moral values and its development. (Supriyadi 2006) Judicial review in the common law legal system is often understood as an effort to test legislation carried out by the judiciary, although in the context of a broader scope of authority, because sometimes it also tests administrative products (administrative Acts). (Waltemath 2007)

Legal standing is the entitle or right that justifies the subject to file a petition for judicial review. Legal standing (commonly translated: legal standing) underlies the justification for the subject (party) seeking justice to file a judicial review petition before the Constitutional Court. (Waltemath 2007)

METHOD

This research, which is normative legal research, is conducted with a statutory approach, namely by reviewing and analyzing regulations related to the legal issues being addressed. (Salim 2019) In addition, a conceptual approach is also used, which departs from the views and doctrines that have developed by studying the views of doctrines in legal science that are relevant to the issues faced in this research. (Salim 2019) The data sources that will be used in this research are obtained based on library research. The data used in this research is secondary data. As secondary legal materials are mainly law books including theses, theses, and legal dissertations, legal dictionaries and comments on court decisions. (Peter Mahmud Marzuki 2010) The data and legal materials in this research are analyzed with existing legal theories and laws and regulations with a qualitative approach,

which is arranged systematically and analyzed to thoroughly answer each legal problem submitted. (Manan and Harijanti 2016)

RESULTS AND DISCUSSION

Contents of Results and Discussion

1. Supervision and Inspection of Notaries

History Supervision, examination and imposition of sanctions on Notaries are carried out by the judicial bodies that existed at that time, as stipulated in Article 140 Reglement op Rechtelijke Organisatie en Het Der Justitie (Stbl. 1847 No. 23), Article 96 Reglement Buitengewesten, Article 3 Ordonantie Buitengerechtigde Verrichtingen - State Gazette 1946 Article 135 and Article 50 of the Notary Position Regulation, then supervision of Notaries is carried out by the general court and the Supreme Court as stated in Articles 32 and 54 of Law Number 13 of 1965 concerning Courts within the General Court and the Supreme Court. There is also Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 1984 concerning Procedures for Supervision of Notaries, Joint Decree of the Chief Justice of the Supreme Court and the Minister of Justice Number KMA/006/SKB/VII/1987 concerning Procedures for Supervision, Enforcement, and Self-Defense of Notaries. (Widiatmoko 2007)

In 2004, Law No. 30 of 2004 on the Office of Notary was enacted for the first time. Then in 2014 due to the Decision of the Constitutional Court of the Republic of Indonesia Number 49/PUUX/2012, the government enacted Law Number 2 of 2014 concerning the Notary Position (UUJN) as a replacement for Law Number 30 of 2004. As the implementer of supervision, examination and imposition of sanctions for notaries in which there is a Notary Honor Council Institution or abbreviated as MKN which is an independent body in making decisions that has the duty and obligation to provide guidance or guidance in order to strengthen the Notary institution in enforcing the Notary Position Law for everyone who carries out the position of Notary. (Maya 2017)

The authority of MKN is also regulated in the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honor Council which provides rules related to the procedures or procedures for criminal law enforcement committed by notaries and the important role of MKN in it. Article 23 states that the application is submitted by the investigator, public prosecutor or judge to the Chairman of the Regional Notary Honor Council (MKN), in accordance with the working area of the Notary concerned. The request must be forwarded to the notary to take action in the form of: (Endah Sumiarti, Djodi Suranto 2015)

1. Examination of notaries (including Substitute Notaries and Temporary Notary Officials) to appear in investigations, prosecutions and judicial proceedings relating to notarial deeds or protocols that are in the custody of notaries.
2. Retrieval of photocopies of the minutes of deeds and/or letters attached to the minutes of deeds or notarial protocols in the custody of the notary.
3. Retrieval of notarial deed minutes and/or letters attached to notarial deed minutes or notarial protocols in the notary's storage.

Article 23 paragraph 4 of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honor Council states that Upon a request submitted by an investigator, public prosecutor or judge, the Regional Chairman of MKN must provide an answer in the form of approval or rejection of the request of the investigator, public prosecutor or judge, within a period of no later than 30 days from the date of receipt of the request, further Article 23 paragraph 5 of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honor Council, namely If the period of 30 days from the date of receipt of the request has passed, the Regional MKN Chairman does not or has not provided an answer, it is deemed that the Regional MKN Chairman accepts the request for approval submitted by the Investigator, Public Prosecutor or Judge.

In practice, MKN's role in the existence of reports or requests for permission by law enforcers related to reports of criminal acts committed by notaries, MKN will form an Examination Team consisting of 3 (three) people representing each element of MKN Regional members then make a schedule for examination hearings and summons the parties. (Hermawan and Abdul Chalim 2017) The role of the examination team in this case has the authority to declare rejecting the request of law enforcement or accepting the request of law enforcement to hold a notary summons by law enforcement. Related to MKN accepting the summoning of notaries by law enforcement, in this case if there has been a violation of office by the notary in carrying out his duties.

In article 32 paragraph (2) Permenkumham No.17 of 2021 states that the approval or rejection of the request of Investigators, Public Prosecutors and Judges against a Notary is based on the results of the examination and decision of the Regional Honor Council Plenary meeting which is not regulated in the previous Permenkumham. The juridical consequence of summoning a notary by law enforcement without being preceded by an MKN examination is that the summons is illegal and unlawful. In Soerjono Soekanto's opinion, the approval given by MKN to law enforcement must pay attention to the elements, namely Regulations, Apparatus, Implementation and Community conditions. (Nugraha 2021)

The role of the Notary Honor Council in providing protection for notaries suspected of committing criminal acts does not necessarily have to go through MKN first, but notaries are allowed to come directly to law enforcement to provide information without being preceded by an examination by MKN. MKN's legal protection of notaries is given as protection of the position of notaries as public officials, but if the notary commits errors or negligence on behalf of the person, the notary will not be given legal protection by MKN.

In Habib Adjie's opinion, if there is a Notary who sincerely or voluntarily wants to directly fulfill the summons from the investigator, public prosecutor, or judge, then it is only allowed. If there is a Notary who does so, then everything will be his own responsibility with all the legal consequences. (Adjie 2017) The presence of a notary without being preceded by an MKN examination and providing information to law enforcers cannot be subject to criminal sanctions because based on Article 1 of the Constitution 50 KUHP states that anyone who commits an act to implement the provisions of the law cannot be punished.

The role of MKN in giving approval or refusal to law enforcers when examining Notaries suspected of violating criminal law while carrying out their duties can be analyzed

based on the theory of authority, therefore the authority possessed by MKN in approving the examination of Notaries requested by law enforcers is attributive authority. J.G. Brouwer argues that attribution is an authority given to an organ (institution) of government or State institution by an independent legislative body. This authority is original, which is not taken from a previously existing authority. The legislative body creates an independent authority and not an extension of the previous authority and gives it to the competent organ. (Vika Rochmawati 2021) In line with that, Indroharto argues that the authority obtained by attribution, namely the granting of new government authority by a provision in the legislation, is born or created a new government authority. (Indroharto 1993)

2. Weakness of Prosecutor's Authority in Notary Examination

The Functional Position of Prosecutor referred to in paragraph 1 of the Prosecutor's Act is a position of technical expertise in the organization of the Prosecutor's Office which, due to its function, enables the smooth implementation of the duties of the Prosecutor's Office. (Undang-Undang kejaksaan 2004) Functional positions strengthen the position of special prosecutors that accommodate the characteristics of prosecutors to optimize the implementation of their duties and functions and strengthen the organization, including the arrangement of concurrent prosecutor assignments outside the prosecutor's office in accordance with the competence and authority of the prosecutor. (Undang-Undang Kejaksaan 2021)

The Prosecutor's Office is one of the bodies whose functions are related to the power of the Judiciary which is positioned as a government agency. To be appointed as a Prosecutor, one of the requirements that must be met is that he is a Civil Servant. In handling cases by the Public Prosecutor's Office, in the explanation of Article 284 paragraph (2) KUHAP states that what is meant by all cases are cases that have been submitted to the court, the meaning of "special provisions of criminal procedure as referred to in certain laws" are special provisions of criminal procedure as referred to, among others:

1. Law on the investigation, prosecution and trial of economic crimes (Undang-Undang No.7 tahun 1955).
2. Law on the eradication of corruption (Undang-Undang No. 3 tahun 1971).

Regarding the Judicial review by the Prosecutor's Office in the a-quo case, Hamdan Zoelfa argued that the petition was declared "unacceptable" (niet ontvankelijk verklaard) on the grounds that the Constitutional Court of the Republic of Indonesia is not authorized to hear it. (Zoelva 2012) According to HIR and RBG, the reasons for the inadmissibility of a lawsuit/application can be caused by invalid power of attorney, lack of legal interest, premature application, and applications outside of competence, including: (Saleh 1981)

1. Article 147 R.bg/123 H.I.R; Either party, if they so desire, may request the assistance of or delegate to a proxy, who for that purpose shall be executed by a special power of attorney, unless the body granting the power of attorney is present in person.
2. If the Prosecutor is acting as a representative of the Government, no special letter is required.

3. The power of attorney referred to may be by notarial deed, by deed made by the Registrar of the District Court within whose jurisdiction the person granting the power of attorney resides or actually resides, or by deed under hand legalized and registered in accordance with the Ordinantie in Stbl 1916 No.46.
4. Public servants who, according to general regulations, act as representatives of the state, no special power of attorney is required. The District Court is authorized to order that the parties who have given power of attorney, be present in person at the hearing, this authority does not apply to the President.

Based on the explanation above, the author argues that the basis for the Constitutional Court's rejection of the a-quo case with the decision "cannot be accepted" is correct. The special power of attorney requirements is cumulative, which means that if one of the requirements is not fulfilled, it results in a defect in the power of attorney, which in itself means that the position of the power of attorney as a formal party representing the power of attorney becomes invalid.

In addition, there is a Memorandum of Understanding between the Indonesian National Police with Ikatan Notaris Indonesia (No.Pol: B/1056/V/2006 No: 01/MOU/PPINI/V/2006) Article 1 paragraph (2) states that legal actions carried out by investigators in the form of summoning, examination, confiscation and other actions according to the law that are responsible in accordance with Article 7 paragraph (1) letter j of KUHAP, can also be carried out to Notary-Land Deed Officials (PPAT), both as witnesses and suspects, especially in relation to a criminal act in the making of Notary-PPAT deeds, in accordance with the provisions of Article 66 Undang-Undang No.30 year 2004 about the Notary Position (UUJN). (Yetniwati 2021)

In Article 7 paragraph (2) of the Criminal Procedure Code (KUHP), there is an explanation of Article 109 of the Criminal Procedure Code which states that in the case of notification by the Investigator as in Article 6 paragraph (1) letter b, it is carried out through the Investigator mentioned in Article 6 paragraph (1) letter a, namely the Police Investigator.

Contents of Discussion Results

1. Implications of the Constitutional Court Decision Number 16/PUU-XVIII/2020 on the Notary Honor Council and Presecutors

Constitutional Court Decision Number 16/PUU-XVIII/2020 provides special protection for notaries in terms of examination and summons by prosecutors or police investigators. The implication of Article 66 of the UUJN which leads to the decision of the Constitutional Court Number 16/PUU-XVIII/2020, the Minister of Law and Human Rights issued the 3rd amendment of Permenkumham, namely Number 17 of 2021 concerning the duties and functions, requirements and procedures for appointment and dismissal, organizational structure, work procedures, and budget of the Notary Honor Council.

According to M. Reza Berawi, equality before the law is related to the need for summons and the presence of Notary in the examination of criminal cases, both as Experts, Witnesses and Suspects / Defendants, for the following reasons: (Indriani 2016)

1. Present as an Expert, in this case the Notary is summoned and needs to be present in the examination of a criminal case as a legal expert authorized to make authentic deeds so that special legal considerations are needed according to his expertise related to the authority and responsibility of the Notary and matters that can provide explanations to Investigators, Public Prosecutors, Judges, and justice seekers.
2. Present as a Witness, in this case the Notary is summoned and needs to be present in the examination of a criminal case, in his capacity as a public official who makes authentic deeds, his testimony is needed regarding what is seen, heard and supporting evidence in the making of the authentic deed, whether or not there are indications of criminal acts in the process.
3. Present as a suspect, in this case the Notary is summoned and needs to be present in the examination of a criminal case as a suspect based on preliminary evidence so that it is suspected that there is a criminal act committed by the Notary as an authentic deed maker, either alone or jointly, which is found by the Investigator, so that the Notary must be accountable for the act before the law.

Through a search of cases in the Supreme Court directory, there are decisions that ensnare Notaries in criminal cases after the emergence of the Notary Honor Council in Law Number 2 of 2014, some examples of which are:

1. Notary HN, Found guilty of Embezzlement Crime (Article 14 letter (a) KUHP). (*Salinan Putusan Banding Nomor: 446/Pid/2017/PTMDN, Putusan No.203/Pid.b/2017/PN.Mdn 2017*)
2. Notary NI, Proven guilty of committing the crime of fraud (Article 378 KUHP). (*Salinan Putusan No.346/Pid.B/2015/PN.Kpn, n.d.*)

Based on the above example, the "protection and certainty of a just law" and "equality in law" which are constitutional rights of every Indonesian citizen as well as recognition of human rights have been implemented. The existence of the Notary Honor Council in the Notary Position Law does not prevent the judicial process for Notaries involved in criminal acts, the existence of MKN is a form of disciplinary examination of Notaries to protect the notary protocol, not against notaries if they commit crimes.

The implications for the Prosecutor's Office in the decision of the a-quo case due to the invalid power of attorney and/or the plaintiff not having legal standing in the a-quo case show the weakness of the Prosecutor's Office so that it makes the Prosecutor's Office revise Law No. 16 of 2004 amended to Law No.11 of 2021 concerning the Prosecutor's Office, several articles are inserted in the material of the Prosecutor's authority. Among them, in Law No.16 of 2004, article 30 consists of article 30 paragraph 1 letter a to letter e, paragraph 3 letter a to letter f. In Law No.11 of 2021, between article 18 and article 30, article 31 is inserted 3 articles, namely articles 30A, 30B and 30C. (Undang-Undang Kejaksaan 2021)

The provisions of Article 18 paragraph (3) are amended to read: "The Attorney General together with the Minister who organizes government affairs in the field of law and / or other ministers appointed by the President may become a power of attorney in handling cases in the Constitutional Court.". This proves that the decision of the Constitutional Court No.16/PUU-XVIII/2020 is very influential.

Based on the analysis above, the author argues that the position of the Prosecutor's Office is institutionally under the executive power of the Judiciary which gets a direct mandate from the 1945 Constitution. In terms of authority in carrying out the duties and functions of the Public Prosecutor's Office, it is part of the judicial power, namely the prosecution institution that has received attribution from the Government through Law No.16 of 2004 as amended by Law No.11 of 2021 concerning the Public Prosecutor's Office, thus the Public Prosecutor's Office as a Public Prosecutor can summon a Notary as a witness, defendant or take photocopies of the Deed Minute and / or letters attached to the Deed Minute or Notary Protocol in the Notary's storage in the interests of the judicial process in various cases both in civil, criminal or state administration by requesting the approval of the Notary Honor Council in advance.

2. Legal Certainly of Constitutional Court Decision Number 16/PUU-XVIII/2020

Legal certainty is contained in the norms in Article 66 paragraph (3) and paragraph (4) of the 2014 UUJN, namely creating fair legal certainty regarding the limits of the authority of the Notary Honor Council to give approval and protection to Notaries as public officials who are obliged to keep the secrets of their position. The existence of the Notary Honor Council is not to provide protection to Notaries without basis and deny the public interest of the wider community. In Article 27 of Permenkumham Number 7 of 2016 as amended by Article 31 of Permenkumham Number 25 of 2020, it is stipulated that the taking of minutes of deeds and/or letters can be done in the case of:

1. Suspicion of a criminal offense related to the minutes of deeds and/or letters attached to the minutes of deeds or Notary protocol in the Notary's custody.
2. The right to prosecute has not been waived based on the provisions on expiry 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 of the parties.
4. Suspicion of a reduction or addition to the minutes of the deed; or
5. Suspicion that the Notary has postponed the date (antidatum)

The examining panel in conducting its consideration to grant approval or rejection of the Notary examination, by first hearing direct testimony from the Notary who will be the object of examination. If the results of the examination are based on the information provided by the Notary and the conditions contained in Article 31 Permenkumham Number 25 of 2020 have been fulfilled, then there is no reason for the Examining Panel not to give approval to the request for examination of the Notary. In the event that the Examining Tribunal gives approval to the request of the investigator, public prosecutor, or judge, the Notary is obliged to:

1. Providing photocopies of deed minutes and/or letters required to investigators, public prosecutors, or judges; and
2. Submitting a photocopy of the minutes of the deed and/or letter as mentioned in letter a, with the minutes of submission signed by the Notary and the investigator, public prosecutor, or judge witnessed by two witnesses.

Legal certainty is also provided in article 66 paragraph (4) by stating that it is deemed accepted to examine the Notary if there is no answer either rejecting/accepting the request to examine the Notary after 30 days have passed. Article 66 paragraph (3) and paragraph (4) create fair legal certainty on the limits of the authority of the Notary Honor Council to give approval and protect Notaries as public officials who are obliged to keep official secrets.

According to the Judges of the Constitutional Court, "Article 66 paragraph (4) is very necessary in creating fair legal certainty on the limits of MKN's authority to give approval to investigators, prosecutors and judges in summoning notaries or examining other files for judicial purposes as referred to in Article 66 paragraph (1) of the Notary Position Law. Based on these considerations, the Petitioner's arguments regarding the unconstitutionality of Article 66 paragraph (1) and paragraph (4) of the Notary Public Office Law are unreasonable according to law". (Salinan Putusan No.16/PUU-XVIII/ 2020)

In the legal considerations above, there are two points of view. First, the grammar of the consideration of the Constitutional Court Judges which states "the limit of MKN's authority to provide approval for investigators, public prosecutors and judges in summoning notaries" is indirectly implemented in Article 66 paragraph (1) of Law No.2 of 2014. In this case, it determines the period of obligation of the Notary Honor Council in providing an answer to accept or reject a request for approval to examine a notary for the benefit of the judicial process, investigators, public prosecutors, or judges.

Second, the grammar of "examining other files for judicial purposes as referred to in Article 66 paragraph (1) of the Notary Position Law" which is also indirectly implemented in the amendments to Article 66 paragraphs (3) and (4) of Law No.2 of 2014. In this case, the two paragraphs a-quo determine the procedural law for summoning notaries and the obligation of the public prosecutor to submit the case file to the court when it is fully completed.

The limit of MKN authority is a procedural authority, because MKN's authority comes from laws and regulations. The main one is the Notary Position Law. Meanwhile, in terms of exercising its various authorities, MKN must pay attention to various implementation requirements stated in the laws and regulations. (Maya 2017) Based on the explanation above, the author argues that the legal considerations of the Constitutional Court Judges in Decision Number 16/PUU-XVIII/2020 are in accordance with the principles of the objectives of justice, expediency, legal certainty and the interests of the state. The authority of the Notary Honor Council to give approval to investigators, public prosecutors, or judges to take photocopies of the Deed Minute and/or letters attached to the Deed Minute or Notary Protocol in the Notary's storage in the interest of the judicial process is not contrary to the principle of equality of citizens before the law as stipulated in the 1945 Constitution.

CLOSING

Conclusion

The existence of Notaries in Indonesia is recognized in the provisions of Article II of the Transitional Rules (AP) of the 1945 Constitution. The authority of the Notary Honor Council is regulated in Law Number 2 of 2014 concerning the amendment of Law Number

30 of 2004 concerning the Position of Notary in article 66. The Minister of Law and Human Rights of the Republic of Indonesia through Regulation No.M.03.HT.03.10 Year 2007 regulates the Implementation of Summoning Notaries. The Implementation of Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honor Council are regulated in Permenkumham No.17 of 2021 replacing Permenkumham Number 25 of 2020, there are changes in article 32 paragraph (2) in Permenkumham No.17 of 2021, namely giving approval or rejection of the application of the Investigator, Public Prosecutor, or Judge based on the results of the examination and decision of the Plenary meeting which is not regulated in the previous Permenkumham. The mechanism for examining and summoning Notaries by the Prosecutor after Decision No.16/PUU-/2020 based on Article 66 paragraphs 3 and 4 is required to obtain approval from the Notary Honor Council. Prosecutors, Investigators and / or other law enforcers are required to seek approval from the Notary Honor Council when summoning a Notary as a suspect, witness, or expert and taking photocopies of the Deed Minute and / or letters attached to the Deed Minute or Notary Protocol in the Notary's storage in the interests of the judicial process in various cases both in civil, criminal and state administration.

Suggestions

A law on the procedural law of the Office of Notary must be drafted immediately to reshape the law that enforces the law on the examination of Notary procedures based on *Reglemen Acara Perdata*, because Notaries and the Notary Honor Council need a legal umbrella in carrying out the Notary protocol in protecting state archives. Law enforcement officials in carrying out law enforcement against notaries suspected of committing criminal acts against the law must comply with the Constitutional Court Decision Number 16/PUU-XVIII/2020, because the decision has binding and final legal force. Notaries in carrying out their duties and positions must obey the law in accordance with the Notary Position Law and the notary code of ethics, so as to avoid criminal cases. In addition, it is necessary to make efforts that can be made by prosecutors and investigators in preventing and eradicating criminal acts involving notaries after the Constitutional Court Decision Number 16/PUU-XVIII/2020.

REFERENCES

- Adjie. 2017. *Memahami Majelis Pengawas Notaris (MPN) Dan Majelis Kehormatan Notaris (MKN)*. Edited by Sumayyah Dinah. Kesatu. Bandung: PT.Refika Aditama.
- Carrillo, Jo. 2007. "Links and Choices: Popular Legal Culture in the Work of Lawrence M. Friedman." *Southern California Interdisciplinary Law Journal* 17 (1): 1–22. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1139342.
- Endah Sumiarti, Djodi Suranto, Yennie. 2015. "Fungsi Majelis Kehormatan Notaris Ditinjau Dalam Perspektif Pelindungan Jabatan Notaris Dan Kepentingan Umum." *Pakuan Law Revieww Review* 1 (2): 139–214. <https://journal.unpak.ac.id/index.php/palar/article/view/936/796>.
- Hably, Rio Utomo, and Gunawan Djajaputra. 2019. "Kewenangan Notaris Dalam Hal

- Membuat Akta Partij (Contoh Kasus Putusan Mahkamah Agung Nomor: 1003 K/Pid/2015).” *Jurnal Hukum Adigama* 2 (2): 482. <https://doi.org/10.24912/adigama.v2i2.6562>.
- Hermawan, Udi, and Munsyarif Abdul Chalim. 2017. “Kewenangan Majelis Kehormatan Notaris Wilayah Dalam Memberikan Persetujuan Terhadap Pemanggilan Notaris Oleh Penegak Hukum.” *Jurnal Akta* 4 (3): 449. <https://doi.org/10.30659/akta.v4i3.1820>.
- Indriani, Desi. 2016. “Criminal Law Policy to Limitation Authority Investigations on Notary.” *Fiat Justicia, Sinta* 2 10 (1): 149–74. <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/656/631>.
- Indroharto. 1993. *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara*. 1st ed. Jakarta: Pustaka harapan.
- KBBI. 2023. “Kamus Versi Online/Daring Dalam Jaringan.” In . <https://kbbi.web.id/profesi>.
- Manan, Bagir, and Susi Dwi Harijanti. 2016. “Konstitusi Dan Hak Asasi Manusia.” *Padjajaran Jurnal Ilmu Hukum, Sinta* 2 3 (3): 448–67. <https://journal.unpad.ac.id/pjih/article/viewFile/11606/5428>.
- Maya, Evi Apita. 2017. “Kedudukan Dan Kewenangan Majelis Kehormatan Notaris Dalam Pembinaan Terhadap Notaris.” *Jurnal IUS Kajian Hukum Dan Keadilan, Sinta* 2 5 (2): 245. <https://doi.org/10.29303/ius.v5i2.455>.
- Nugraha, Moeh Angga. 2021. “Persetujuan Majelis Kehormatan Notaris Atas Pemanggilan Notaris Dalam Pemeriksaan Tindak Pidana.” *Jurnal Officium Notarium* 1 (2): 403–13. <https://doi.org/10.20885/jon.vol1.iss2.art20>.
- Peter Mahmud Marzuki. 2010. *Pengantar Penelitian Hukum*. 3rd ed. Jakarta: Universitas Indonesia.
- Ramadhani, Dian, Rodliyah Rodliyah, and Djumardin Djumardin. 2020. “The Obligation of Notary to Prevent and Eradicate Criminal Acts of Money Laundering.” *International Journal of Multicultural and Multireligious Understanding* 7 (5): 367–77. <https://doi.org/http://dx.doi.org/10.18415/ijmmu.v7i5.1688>.
- Ramiyanto, Ramiyanto. 2018. “Presidential Permit to Summon Suspect of Corruption of the Member of the House of Representatives.” *Sriwijaya Law Review* 2 (2): 203. <https://doi.org/10.28946/slrev.vol2.iss2.128.pp203-214>.
- Redi, Ahmad, and Shintamy Nesyicha Syahril. 2020. “The Institutional Position of the Corruption Eradication Commission Based on the Constitutional Court Decision Number 36/PUU-XV/ 2017 in Terms of the State Institutional Structure” 478 (Ticash): 141–46. <https://doi.org/10.2991/assehr.k.201209.018>.
- Saleh. 1981. “Hukum Acara Perdata (H.I.R/R.B.G).” In , keempat. Jakarta Timur: Ghalia Indonesia.
- Salim. 2019. *Penerapan Dan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. 1,cetakan ed. Jakarta: PT.Raja Grafindo Persada.
- Salinan Putusan Banding Nomor: 446/Pid/2017/PTMDN, Putusan No.203/Pid.b/2017/PN.Mdn. 2017. Medan. <https://putusan3.mahkamahagung.go.id/>.
- Salinan Putusan No.16/PUU-XVIII/. 2020. https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_6887.

- Salinan Putusan No.346/Pid.B/2015/PN.Kpn.* n.d. <https://putusan3.mahkamahagung.go.id/>.
- Suherman, Andi. 2019. "Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman." *SIGN Jurnal Hukum* 1 (1): 42–51. <https://doi.org/10.37276/sjh.v1i1.29>.
- Supriyadi. 2006. "Etika Dan Tanggung Jawab Profesi Hukum." In , 1st ed., 20. Jakarta: Sinar Grafika.
- Undang-Undang kejaksaan. 2004. *Undang-Undang No. 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia. Tambahan Lembaran Negara RI Nomor 4401.*
- Undang-Undang Kejaksaan. 2021. *Undang-Undang No. 11 Tahun 2021 Perubahan Atas Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia. Tambahan Lembaran Negara Republik Indonesia Nomor 6755.*
- Undang-Undang Kepolisian. 2002. *Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia.*
- Undang-undang No.8. 1981. *Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana (KUHP). Lembaran Negara Republik Indonesia Nomor 76 Tambahan Lembaran Negara Nomor 3209.*
- UUJN. 2014. *Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Undang- Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Lembaran Negara Republik Indonesia Nomor 5491.*
- Vika Rochmawati. 2021. "Kewenangan Mahkamah Konstitusi Dalam Judicial Review Undang Undang Terhadap UUD 1945." *Unisla Skripsi* (53): 62211. <http://eprints.unisla.ac.id/173/>.
- Waltemath, Charles. 2007. "Judicial Review." *Economist* 385 (8552): 1–6. <https://doi.org/10.14393/rfadir-50.2.2022.65622.333-353>.
- Widiatmoko. 2007. *Himpunan Peraturan Jabatan Notaris.* Jakarta.
- Yetniwati. 2021. "Perlindungan Hukum Terhadap Notaris Penerima Protokol: Bentuk Dan Batasan." *Undang: Jurnal Hukum* 4 (1): 213–44. <https://doi.org/10.22437/ujh.4.1.213-244>.
- Yustica, Anugrah, Ngadino Ngadino, and Novira Maharani Sukma. 2019. "Peran Etika Profesi Notaris Sebagai Upaya Penegakan Hukum." *Notarius* 13 (1): 60–71. <https://doi.org/10.14710/nts.v13i1.29162>.
- Zoelva, Hamdan. 2012. "Constitutional Complaint Constitutional Question and Protection of Citizen's Constitutional Rights." *Jurnal Media Hukum, Google Scholar* 19 (1): 152–65. <http://journal.umy.ac.id/index.php/jmh/article/view/1984>.