

# The Establishment of A Notary Honor Assembly As A Representation of Notary Protection

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## Abstract.

*This study aims to identify and analyze the establishment and implementation of the duties of the Notary Honorary Council at the Regional Office of the Ministry of Law and Human Rights in Central Java as a form of notary protection. This study uses a sociological juridical approach. Based on the research, it is concluded that the establishment and implementation of the duties of the Notary Honorary Council at the Regional Office of the Ministry of Law and Human Rights in Central Java has been carried out in accordance with the 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 Budgeting of the Notary Honorary Council.*

*Keywords: Honorary Council; Notary; Protection.*

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## 1. Introduction

Making an authentic deed is not only the authority of a notary official, so that the position of a notary as a position that participates in ensuring certainty, order and legal protection by making authentic written evidence regarding legal conditions, events or actions must be protected in one institution. . This is stated in the preamble to letter c of Act No. 2 of 2014 which states that a Notary as a public official who carries out the profession in providing legal services to the public, needs to get protection and guarantees in order to achieve legal certainty.

Based on the preamble of letter c of Act No. 2 of 2014 it can be concluded that basically the position of a notary is vulnerable to disturbances, and if these disturbances are allowed it can affect the provision of legal services to the public, so that it will interfere with the achievement of legal certainty as aspired by law. Notaries in carrying out their authority must obtain guarantees of certainty, order, and legal protection in every action related to the position of a notary.

One form of interference with the implementation of a notary's job duties is the criminalization of a notary such as: "In practice there has been a Notary (say Notary X) who makes a Partij Deed, in the form of PKR at the GMS of a PT, then becomes a "defendant" and in the first instance court sentenced to 2 (two) years. What is even more surprising is that the presenter who in fact was the proxy of the minutes of the GMS under the hand to pour the GMS into the PKR who had been accused of having entered false information into the authentic deed, was declared acquitted and the decision had permanent legal force (*Inkracht van gewijsde*). This is a "criminalization of the implementation of the duties of a notary public". Why can it be said "criminalization" of the implementation of the position of a notary? Because when viewed from the existing legal facts, namely the existence of a PKR deed at the PT GMS made by/in front of a notary, actually in terms of the technique

the deed is correct and there are no legal provisions/laws that have been violated, either Law no. 30 of 2004 concerning the Position of a Notary, Law No. 1 of 1995 concerning PT (at that time) but law enforcers still insisted that the notary was charged with falsifying the deed or the notary was considered to have committed a crime."<sup>1</sup>

The regulation of protection and guarantees for notaries in relation to the implementation of their duties, undergoes several dynamics. Initial arrangements regarding legal protection and guarantees for notaries in relation to the implementation of their duties are regulated in Staatsblad 1860 Number 3, where this law applies before Act No. 30 of 2004 concerning Notary Positions.

After the era of Staatsblad 1860 Number 3, legal protection and guarantees for notaries in relation to the implementation of their duties are regulated in Act No. 30 of 2004 concerning Notary Positions, namely in Article 66 paragraph (1) of Act No. 30 of 2004, namely: "For the purposes of the judicial process, the public prosecutor investigator or judge with the approval of the Regional Supervisory Council is authorized to: Take a photocopy of the Minutes of Deed or letters attached to the Minutes of Deed or the Notary Protocol in the notary's depository, and Calling a notary to attend an examination related to the deed he made or the Notary Protocol that is in the notary's storage.

Along with the development of time, the protection of notaries as regulated in Article 66 of Act No. 30 of 2004, has been revoked and declared invalid based on Constitutional Court Decision No. 49/PUUX/2012 dated March 23, 2013 due to a judicial review of this provision. So that after the declared invalidity of the provisions of Article 66 of Act No. 30 of 2004, in 2014, the government established Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary.

Based on the provisions of Act No. 2 of 2014, the function of legal protection for the implementation of the notary position which was formerly the authority of the Regional Supervisory Council (MPD), is now the supervisor who also carries out legal protection for the implementation of the notary position duties is carried out by the Notary Honorary Council (MKN).

Legal protection for the position of a notary is carried out by the government, because a notary is a public official, has an obligation to maintain the confidentiality of the deed he made, in general many call it a right of denial, but if something is categorized as a right, then the consequence is that something can not be used, meaning that it is optional or optional, while the matter of maintaining the confidentiality of the deed made by a notary or certain official, based on the sentences contained in the provisions governing it, is clearly an order, not optional or optional, so it should be more precisely referred to as an obligation.

The obligation to deny is contained in various provisions of the law, the following will describe the provisions regarding the obligation to deny:

- The provisions of Article 16 letter f of Act No. 2 of 2014 which states that "In carrying out his office, a notary is obliged to keep everything about the deed he

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<sup>1</sup>Mulyoto, (2010), *Kriminalisasi Notaris dalam Pembuatan Akta Perseroan Terbatas (PT)*, Cakrawala Media, Yogyakarta, p. 45-46

made and all information obtained for making the deed in accordance with the oath / promise of office, unless the law provides otherwise. "

- The provisions of Article 1909 paragraph (3) of the Civil Code (KUHP) which stipulates that: "Anyone who because of his position, work or position according to law is required to keep something secret, but only regarding matters whose knowledge is entrusted to him so"
- The provisions of Article 170 paragraph (1) of the Criminal Procedure Code (KUHP) which instructs that: "Those who because of their work, dignity or position are required to keep secrets, may request to be released from the obligation to provide information as witnesses, namely regarding entrusted to them."
- The provisions of Article 322 paragraph (1) of the Criminal Code (KUHP) which stipulates: "Anyone who intentionally discloses a secret that must be kept because of his position or work, both now and in the past, shall be punished with imprisonment for a maximum of nine months or a maximum fine of nine thousand rupiahs.

The obligation to deny, although it has similarities with legal protection for a notary when carrying out his duties as stated in Article 66 of Act No. 2 of 2014, which both does not allow the deed made by a notary to be disclosed immediately, however, the obligation refusal is more accurately referred to as a form of legal protection for the public who are clients of a notary, not a form of legal protection for a notary in carrying out his duties.

The reason the obligation to deny is more accurately referred to as a form of legal protection for a notary client is because the notary is not a party to a deed he made, if the notary has no interest whatsoever in the deed he made, even if everything contained in the deed until it is known to the public, the notary does not have any loss or gain, the parties in the deed or the client are harmed the role or position of the notary in the deed he made, is only limited to making, nothing else.

Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions in Article 66A states that regulations regarding duties and functions, requirements and procedures for appointment and dismissal, organizational structure, work procedures, and budget of the Notary Honorary Council regulated by Ministerial Regulation. The implementing regulations for Article 66A are regulated by several Regulations of the Minister of Law and Human Rights, namely the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2016 concerning the Notary Honorary Council which was revoked by Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2020, the last of which was revoked by a Ministerial Regulation. RI Law and Human Rights Number 17 of 2021.

The authority of the Notary Honorary Council is to carry out notary development. This authority is attached to the obligation to give approval or refusal for the purposes of the investigation and judicial process, for taking the minutes of the deed and summoning a notary to attend an examination related to the notary deed or protocol that is in the notary's depository.<sup>2</sup>

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<sup>2</sup>Article 1 number 1 Permenkumham No.17 of 2021

The implementation of the authority of the Notary Honorary Council that has been formed, there are still many shortcomings so that there are still some things related to the protection of a notary before the law. This can be seen in several matters that contain uncertainty in the law, including the following:

- The process if an investigator, public prosecutor, or judge wants to take a photocopy of the minutes of the deed, and or the letters that are placed on the minutes of the deed or notary protocol that are in the notary's depository, must be with the approval of the Notary Honorary Council as stipulated in Article 66 paragraph (1) of the Law. -Act No. 2 of 2014.
- The implementation of the authority of the Notary Honorary Council in giving approval or rejection for the purposes of the investigation and judicial process, often encounters obstacles, especially regarding the obedience of the notary in cooperating in the investigation process.
- The Honorary Council of Notaries in the Region that was formed encountered problems in the notary examination process because the assembly members came from several elements.
- The existing legal norms regarding the Notary Honorary Council are still incomplete to be implemented.
- The function and usefulness of the notary element in the membership of the Notary Honorary Council is often considered as an element that defends the notary who will be examined regarding the summons of a notary in an investigation or judicial process, so that it often violates the sense of justice of the community which should be protected by law.
- The addition of the duties of the Notary Honorary Council in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021, namely to provide guidance to the Regional Supervisory Council regarding the duties and functions of the Notary Honorary Council,

Legal certainty is one of the principal things in a legal norm, because one of the goals of law is to maintain legal certainty, as Sudikno Mertokusumo explained: "In achieving its goals, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating ways to solve legal problems and maintain legal certainty."<sup>3</sup>

The purpose of this research is to find answers to the questions as mentioned in the problem, so the objectives of this research are: To find out the establishment and implementation of the duties of the Notary Honorary Council in the Regional Office of the Ministry of Law and Human Rights Central Java as a form of notary protection.

## 2. Research Methods

The method used in this paper is an empirical juridical approach. The specifications used in this study are descriptive analysis research, namely what is stated by the respondent in writing and verbally as well as real behavior, which is researched and studied as a whole.<sup>4</sup>

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<sup>3</sup>Sudikno Mertokusumo, (2008), *Mengenal Hukum Suatu Pengantar*, Liberty Yogyakarta, Yogyakarta, p. 77

<sup>4</sup>Soekanto, op.cit., p.250

### 3. Results and Discussion

The establishment of the Notary Honorary Council based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021 concerning Duties, Functions and Procedures for Appointment and Dismissal, Organizational Structure and Work Procedures and Budget of the Notary Honorary Council was carried out simultaneously for all provinces in Indonesia which was carried out in Bali on June 10, 2021. With the inauguration, the Regional Notary Honorary Council in Central Java Province has been appointed and carries out its duties with a membership of 7 (seven) people which are divided into 2 (two) people from the Government element, 2 (two) people from the Academics and 3 (three) people from the Notary element.

The duties of the Notary Honorary Council of Central Java Province are:

- conduct examination of applications submitted by investigators, public prosecutors, and judges; and
- give approval or rejection of the request for approval to summon a notary to be present in the investigation, prosecution, and judicial process.

Notary examinations carried out by the Notary Honorary Council are carried out when there is a written application submitted by investigators, public prosecutors, and judges. The application is submitted at the time of examination related to the notary deed or protocol that is in the notary's storage and is submitted to the Chairperson of the Regional Notary Honorary Council in accordance with the work area of the notary concerned. Applications submitted by investigators, public prosecutors and judges are submitted in writing in the Indonesian language and a copy is submitted to the notary concerned. The application must contain at least:

- name of the notary;
- notary office address;
- the number of the deed and/or letter attached to the minutes of the deed or the protocol of the notary in the notary's depository; and
- the subject matter alleged.

When the application reaches the Chairperson of the Notary Honorary Council, an Examining Council shall be formed consisting of a minimum of 3 (three) persons accompanied by 1 (one) secretary. The Investigating Panel has the authority to summon a notary based on a request from an investigator, public prosecutor, or judge. The summons of a notary shall be made through a letter signed by the Chairperson of the Regional Notary Honorary Council.

The formation of the examining board is carried out within no later than 5 (five) working days from the date of receipt of the report. The examining board has the authority to examine and give approval or rejection of requests from investigators, public prosecutors, or judges regarding the taking of photocopies of the minutes of deed and attached documents on the minutes of the deed and/or notary protocol in the notary storage and notary summons. Each examination result of the examination board is reported to the Chairperson of the Regional Notary Honorary Council.

In the examination carried out by the Examining Council, what must be done is to examine:

- There are allegations of violations of the code of ethics;

- There are allegations of violations of the implementation of the duties of a notary public;
- The behavior of notaries outside of carrying out their duties as a notary that can interfere with or affect the implementation of the notary's duties.

At the time of examination, before the Examining Council, a notary must bring a notarial deed which is evidence relating to the task of carrying out the duties of a notary, which confirms the *judex factie* in the verdict of the case examination. However, the demands of the case are basically:

- Notarial deed cannot be canceled;
- The function of a notary is only to record (write down) what is desired or put forward by the parties who appear before a notary;
- There is no obligation for a notary to investigate materially what is stated by the appearer;
- In the case of criminal and civil cases, the notarial deed will be disputed regarding its formal aspects, namely the certainty of the day, date, month, year and time when the appearers present data to be recorded;
- The parties who appear before the notary and the signature of the appearer
- The copy of the deed does not match the minutes of the deed
- There is a copy of the deed, but the minutes of the deed are not made
- The minutes of the deed are not signed in full, but the minutes of the deed are issued.

If in a criminal case, investigators, public prosecutors and judges will include a notary in legal action:

- Making fake/forged letters and using fake/forged letters (Article 263 paragraph (1), (2) of the Criminal Code)
- Doing counterfeiting (Article 264 of the Criminal Code)
- Ordered to include false information in an authentic deed (Article 266 of the Criminal Code)
- Doing, ordering those who participate in doing it (Article 55 in conjunction with Article 263 paragraph (1) (2) or Article 264 or Article 266 of the Criminal Code)
- Assist in making fake/or falsified letters and using fake/forged letters.

In a notary examination related to the deed made by the notary concerned, the Examining Council must have inspection parameters. The parameters in question include, among others, what is the procedure for making a notary deed, whether or not it is in accordance with the Law on Notary Positions. If everything is in accordance with the Law on Notary Positions, the deed is binding on the parties. This relates to the formal aspects of the notarial deed. Even though in reality the defects in the formal aspects will not cancel the binding power of the deed.

Meanwhile, if the matter is related to the material aspect, then what is examined is the matter with regard to all matters contained in the deed. Everything contained in the deed must be considered true as a statement or statement of the parties in the deed of the party (parties), anything that must exist materially in the deed must have certain limitations. Determining such limits depends on what is seen, heard by a notary or stated, explained by the parties before a notary. The will of the appearers stated in the deed is materially what the appearers say, the notary

only provides suggestions, but overall the contents of the deed are the wishes of the appearers.

The Examining Council in examining a notary must adhere to the principle of legal presumption in assessing a notary deed. This is because a notary is a public official who has certain powers as stipulated in Article 15 of the Law on Notary Positions. The principle of legal presumption in assessing a notary deed is used to assess a notary deed must be valid until there are parties who declare the deed invalid. To declare or judge the deed is valid or invalid.

Furthermore, the results of the examination will be made a Minutes of Examination. The summons to the notary shall be made no later than 5 (five) days before the examination is carried out. Notaries must be present to fulfill the summons of the Examining Council and may not be represented. In the event that the notary is not present after being legally and properly summoned 2 (two) times in a row, the panel of examiners may make a decision at the request of the investigator, public prosecutor, or judge. The Examining Council gives approval or rejection after hearing direct information from the notary concerned. The information is stated in the minutes of the inspection. In the event that the Investigating Panel gives approval to the request of the investigator, public prosecutor, or judge, a notary is obliged to provide a photocopy of the minutes of the deed and/or the necessary documents to the investigator, public prosecutor, or judge; and submit a photocopy of the minutes of the deed and/or letters with an official report of the submission signed by a notary and an investigator, public prosecutor, or judge witnessed by 2 (two) witnesses.

Taking minutes of deed and/or notary letters in the notary's depository is carried out in the event that there is an alleged criminal act related to the minutes of deed and/or letters attached to the minutes of deed or notary protocol in the notary's depository, the right to sue based on the provisions concerning expiration of the laws and regulations in the field of criminal law, denial of the validity of the signature of one or more parties, an alleged reduction or addition to the minutes of the deed; or there is an allegation that the Notary has postponed the date (antidatum).

After obtaining permission from the Notary Honorary Council, the notary can only provide, show and notify the contents of the deed, grosse deed, copy of the deed or excerpt of the deed, to people who have direct interest in the deed, heirs, and in this case the investigator or before the court.

Currently, the report data that has been submitted to the Notary Honorary Council of Central Java Province at the Regional Office of the Ministry of Law and Human Rights in Central Java consists of:

**Table 1<sup>5</sup>**  
**Table of Requests for Notary Investigations Submitted to the Notary Honorary Council**

| YEAR | INVESTIGATION APPLICATION | IN PROGRESS | RECEIVED | NOT ACCEPTABLE | ETC (case has been withdrawn) |
|------|---------------------------|-------------|----------|----------------|-------------------------------|
|      |                           |             |          |                |                               |

<sup>5</sup>Source of data: Secretary of the Honorary Council of Notaries for Central Java Region

|      |    |    |   |   |   |
|------|----|----|---|---|---|
| 2020 | 23 | 18 | 2 | 0 | 2 |
| 2021 | 25 | 25 | - | - | - |

Table 1 illustrates a decrease in the number of requests for investigation, and it can also be seen that many of these requests were granted or not.

Meanwhile, requests made by Law Enforcement Officials who want to conduct an examination of a Notary at the Regional Office of the Ministry of Law and Human Rights in Central Java can be seen in table 2<sup>6</sup>:

**Table II**  
**Table of Institutions Submitting Notary Examination to the Notary Honorary Council**

| NO | Year | Police | attorney | Court |
|----|------|--------|----------|-------|
| 1  | 2020 | 21     | 2        | 0     |
| 2  | 2021 | 23     | 2        | 0     |

Table 2 illustrates that the most requests for investigation are at the investigation level with a downward trend every year.

Table 1 and Table 2 are interconnected, and illustrate that the implementation of a notary's duties is very important in society. This also illustrates that several cases that enter the realm of investigation up to trial, really need the role of a notary as a public official who makes authentic evidence, especially in proving a case.

Authentic deeds made by a notary are divided into 2 types, namely party deeds and official deeds. In the party deed, the notary only includes information or the wishes of the parties in the deed he made, so that the notary cannot be held responsible for the contents of the deed, even though for example the data submitted by the parties is not true. The notary guarantees that the appearers correctly state what is written in the deed, but the notary does not guarantee that the appearers correctly state what is written in the deed. Meanwhile, the official deed (deed of relaas) of the notary makes a kind of official report regarding an event witnessed by the notary himself, namely the official report which was seen and heard by the notary himself. So that in this deed the notary has full responsibility.<sup>7</sup>

When an authentic deed made by a notary is declared legally flawed, then the deed is null and void or declared relegated to a private deed, and indeed the parties who feel aggrieved can file a lawsuit against the notary. The two tables also illustrate the importance of supervising and fostering notaries. Where this supervision and guidance is carried out in order to reduce the impact of errors and incompatibility of making authentic deeds with existing law. Because the discrepancy or error will affect and have an impact on society.

This role must be protected so that the dignity of the notary as an official who is trusted by the community to make the engagement can be maintained, so that the Notary Honorary Council from year to year must be equipped with sufficient administration and expertise in assessing which cases need to present a notary and which does not. The forms of notary responsibility that must be proven in the Honorary Council session are:

- The notary must prove that the deed made is a true and valid deed, meaning that it fulfills the legal will and requests of interested parties.

<sup>6</sup>Data obtained from the MKN Secretariat

<sup>7</sup>DR. Freddy Harris, Op. Cit, p.65.



- The deed is a quality deed that is in accordance with the rule of law and the will of the interested party in the true sense. The notary also explains to interested parties the truth of the contents and procedures of the deed he made.
- The deed has a positive impact, that is, anyone will admit that the notary deed has perfect evidence.

Moreover, there are currently many notary education providers in Indonesia. The inculcation of notary knowledge and skills in college plays an important role, because until now notary knowledge has been in making authentic deeds and recognizing the needs of the notary the party facing is a hereditary science. In the sense that there are no laws and regulations that standardize the method of making a deed, how to identify the needs and identities of the appearers and how to administer state documents in the hands of a notary. So that the diversity of forms and methods currently needs to be considered in detail by the Honorary Council of Notaries, as the builder and supervisor of notaries in their respective regions.

#### 4. Conclusion

Implementation of the establishment and implementation of the performance of the Notary Honorary Council at the Regional Office of the Ministry of Law and Human Rights Central Java, carried out in accordance with the 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, Procedures Work and Budgeting of the Notary Honorary Council. It began with the inauguration of the Central Java Regional Notary Honorary Council in Surabaya on September 22, 2016, but currently for the Period of 2020 to 2023 it was inaugurated in Bali on June 10, 2021. The membership of the Honorary Council of Notaries for the Central Java Region consists of 2 (two) people from elements of the Government, 2 (two) people from the elements of Academics/experts and 3 (three) people from the notary element.

#### 5. References

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##### Regulation:

- [1] Article 1 number 1 Permenkumham No.17 of 2021