

The Constitutionality of Notaries Honorary Assembly in the Enforcement of the Notary Ethics Code

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Abstract. *In general, Notaries are regulated in Act No. 30 of 2004 concerning the Position of Notary and Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary. A notary, in this case, may also double as a Land Deed Making Officer. The research used normative juridical methods with descriptive analytics. Prioritizing secondary data, namely literature studies, verdicts, books, and others, as the primary data. Indonesia, as a country of law, of course, everything has been regulated by regulations. This applies to all sectors and professions in Indonesia, including notarial matters. The Notary Profession is a legal profession that is entirely in demand. The position of a Notary is considered a noble profession, but there are still notaries who make mistakes or are negligent in carrying out their positions. Therefore, an institution is required that carries out supervision of a Notary. The institution is now known as the Honorary Assembly of Notaries. However, the existence of the Notary Honorary Assembly has not entirely caused trust in the community because it is still considered to cover up the mistakes of notaries who have harmed the community in carrying out their duties. The recruitment process that has not been transparent and involves the public may be one of the causes of the lack of such trust. So, in this case, the Notary Honorary Assembly must update its recruitment pattern.*

Keywords: Constitutionality; Enforcement; Ethics; Honorary.

1. INTRODUCTION

Indonesia, as a country of law, of course, everything has been regulated by regulations. The regulations in force in Indonesia are based on the state philosophy, namely Pancasila, formulated more deeply in the 1945 Constitution of the Republic of Indonesia. The regulations that apply in Indonesia are made tiered. Because the Constitution of the Republic of Indonesia in 1945 is the culmination of the applicable regulations in Indonesia, all applicable regulations must not conflict with the 1945 Constitution of the Republic of Indonesia.

This applies to all sectors and professions in Indonesia, including notarial matters. Notaries, although not part of law enforcement, is one of the legal professions that are

pretty interested in the public whose task is to make documents in the form of authentic deeds and other documents that are still within the scope of their work.

The position of Notary has recently come into the public spotlight mainly because of a case of unlawfully wiping or taking rights to land, which happened to befall the artist Nirina Zubir. Unfortunately, most people do not distinguish between Notaries and Land Deed Making Officers. Indeed, the Notary and the Land Deed Making Officer are different positions, although closely related. However, a Notary may concurrently serve as a Land Deed Making Officer or Auction Officer.

Based on the relationship between the work of a Notary and land issues, most Notaries also concurrently hold the position of Land Deed Making Officer, so the community views the Automatic Land Deed Making Officer as a Notary. If there is a dispute over land ownership due to a transfer of rights or inheritance taken care of by the Land Deed Making Officer, then in the assumption that the guilty community in the case is a Notary as reported both in online media, television, and newspapers.

The position of a Notary is considered a noble profession, but there are still notaries who make mistakes or are negligent in carrying out their positions. Therefore, an institution is required that carries out supervision of a Notary. The laws and regulations governing the supervision of Notaries are contained in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (Law on the Position of Notary), carried out by the Minister by establishing an Honorary Assembly of Notaries.

After the enactment of changes to the Notary Office Law in 2014, there is still a distrust of certain parties to the Notary Honorary Assembly Institution in supervising Notaries through its tools, namely the Regional Supervisory Council at the Regency/City level and the Regional Supervisory Council at the Provincial level. This is proven to have been submitted several times by Judicial Review of the articles in the Notary Position Law related to the Notary Honorary Assembly, especially the provisions of Article 66 of the Notary Position Law contained in the Constitutional Court decision Number: 16 / PUU-VIII / 2020, the constitutional court decision Number: 22 / PUU-XVII / 2019 and the Constitutional Court decision Number 72 / PUU-XII / 2014. From these decisions, the Panel of Judges of the Constitutional Court still considers it necessary to maintain the existence of Article 66 of the Notary Position Law to ensure legal certainty and justice for the community and notaries.

2. RESEARCH METHODS

The normative juridical method was used in this study. It is taken from the study of secondary data through a Literature study based on existing laws and regulations, as well as court decisions, contracts, and other legal documents. Besides that, there are also research results and other studies and references.¹ Descriptive analysis was a research method used in this paper, using detailed or accurate data about humans or

¹ Badriyah Khaleed. (2010). *Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundang-undangan*. Yogyakarta: Medpress Digital. p.41

other symptoms to clarify conjectures. Besides that, they can be used to make old theories used or in making newer theories.²

The data source is the subject from which data can be obtained.³ The data source is also the data taken in conducting this study.⁴ Primary data are data obtained from respondents through direct measurement. Secondary data is data obtained from books and so on. The data obtained from the secondary data does not need to be processed anymore.⁵ Because of this, the writing of this paper is to use secondary data.

3. RESULTS AND DISCUSSION

In Indonesia, the legal profession is one of the most popular professions starting with advocates, judges, and prosecutors, and also including, in this case, notaries. Notaries, like other positions, are professionals with no small rights and responsibilities to the public. Because the Notary has a specific scope in doing the deed, which in the trial has absolute evidentiary power, so the Notary must also obey the ethics of the notary profession so that his honor as a general official can still be maintained in carrying out his duties, not only inside at the time as a notary but also when serving outside his position. The notary profession is also honorable because the state gives attributive authority to notaries through the law to do authentic deeds for the public interest.⁶

Notaries are required to take the oath before the Minister or officials appointed by the state before carrying out the duties of their office. In this oath of office, the Notary must not take sides with either party and must do justice to the parties in terms of explaining the consequences of the agreement made. This is done so that it is not easy to get a lawsuit from the parties who, in the future, feel aggrieved for doing a deed.⁷

In carrying out his activities as a Notary, he must be guided by the law and the code of ethics as part of professional morals. In Article 15 of the Notary Position Law, in essence, the authority of a Notary is as follows:

- The Notary is authorized to do authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and/or desired by the interested person to be stated in the authentic deed, guarantee the certainty of the date of doing the deed, keep the deed, provide gross, copies and quotations of the deed, all of which are as long as the making of the deeds is not also assigned or excluded to other officials or other persons stipulated by law.

² Ahmad Tanzeh. (2011). *Metodologi Penelitian Praktis*. Yogyakarta : Teras. p.5

³ Suharsimi Arikunto. (2006). *Prosedur Penelitian Suatu Pendekatan Praktik*. Jakarta: Rineka Cipta. p. 129.

⁴ Andra Tersiana. (2018). *Metode Penelitian*. Yogyakarta : Start up. p. 74

⁵ *Ibid*, p.75

⁶ Nabila Mazaya Putri Dan Henny Marlyna. (2021). Pelanggaran Jabatan Dan Perbuatan Melawan Hukum Yang Dilakukan Olehnotaris Dalam Menjalankan Kewenangannya, *ACTA DIURNAL* : Vol. 5, No.1. p. 64

⁷ Budi Hariyanto. (2022). Peran Majelis Pengawas Notaris Dalam Upaya Penegakan Terhadap Pelanggaran Kode Etik Notaris Berdasarkan Undang-Undang Jabatan Notaris. *JURNAL IUS* : Vol.X, No.01. p.18.

- In addition to the authority as referred to in paragraph (1), Notaries are also authorized to:
 - certify the signature and establish the certainty of the date of the letter under the hand by registering in a particular book;
 - keeping the letters under the hand by registering in a particular book;
 - make a copy of the originals of the letters underhand in the form of copies containing the description as written and described in the letter in question;
 - carrying out the endorsement of the compatibility of the photocopy with the original letter;
 - providing legal counseling in connection with the making of deeds;
 - make deeds relating to land; or
 - make a deed of auction minutes.
- In addition to the authority as referred to in paragraphs (1) and (2), the Notary has other powers regulated in the laws and regulations.

According to Sudikno Mertokusumo, a letter is something that contains a signature, can be read, and states that a thought can be used as proof. Letter evidence consists of 2 (two) types: deeds and ordinary letters. A deed is a letter deliberate from the very beginning made for proof. The deed consists of an authentic deed and an underhand deed.⁸

- Authentic Act
According to Article 1868 of the Civil Code, an Authentic deed is a deed whose form is determined by the Act made by or before the public servants in power at the place where the deed is done. As for what is meant, these general employees are notaries, police, and judges.⁹
- Act underhand.
The underhand writing or also called the deed under hand is made in a form not prescribed by law or made by the parties based on the agreement or agreement of the parties, which is subject to the provisions of articles 1320 and 1338 of the Civil Code and is not required before an authorized official or Notary.

Authentic deeds and deeds under the hand are made to be used as evidence. The critical difference between the two types of deeds is that in the value of proof, the Notary deed as evidence, the deed must be seen as it is. It does not need to be assessed or interpreted but written in the deed. The deed under hand has the power of proof to the extent that the parties acknowledge it or there is no denial from the parties.¹⁰

In the world of notaries, there is what is known as the Honorary Assembly of Notaries. The Honorary Notary Assembly is a body that has the authority to carry out the development of a Notary and the obligation to give approval or refusal for investigation and judicial process, for taking photocopies of minutes deeds and summoning Notaries to be present in examinations related to notarial deeds or protocols that are in the Notary's storage.

⁸ <https://www.djkn.kemenkeu.go.id/kpkn-lahat/baca-artikel/15189/Mengenal-Jenis-Alat-Bukti-dalam-Hukum-Acara-Perdata.html>, accessed on July 9, 2022

⁹ *Ibid*

¹⁰ Habib Adjie. (2011). *Kebatalan dan Pembatalan Akta Notaris*. Bandung : Refika Aditama. p.8

The function and purpose of establishing the Notary Honorary Assembly are to ensure legal certainty to the public that the notaries have carried out positions following the applicable corridors, namely the Notary Position law, by conducting guidance and supervision of notaries. Therefore it is necessary to have credible and impartial people in the Honorary Assembly of Notaries. The Honorary Assembly of Notaries is in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (Law on the Position of Notary).

Article 66 of the Notary Office Act, as follows:

- For the judicial process, the investigator, public prosecutor, or Judge, with the approval of the honorary panel of Notaries, is authorized to:
 - take a photocopy of the Minuta Deed and/or letter attached to the Minuta Deed or Notary Protocol in the Notary's storage; and
 - Summons a Notary to be present in the examination relating to the Notary Deed or Protocol that is in the custody of the Notary.
 - Taking a photocopy of the Minuta Deed or letters as referred to in paragraph (1) letter a, the minutes of submission is made.
- Taking a photocopy of the Minuta Deed or letters as referred to in paragraph (1) letter a, the minutes of submission are made
- The honorary panel of notaries, within a maximum of 30 (thirty) working days from the receipt of the letter requesting approval, as referred to in paragraph (1), shall provide an answer to accept or reject the request for approval.
- Suppose the honorary assembly of the Notary does not answer within the period referred to in paragraph (3). In that case, the honorary assembly of the Notary shall be deemed to have received a request for approval.

It can be concluded from Article 66 of the Notary Office Act above that the Notary Honorary Tribunal has the absolute and final authority to approve or disapprove the summoning of a notary to be present in the examination of cases.

This is the highlight of the community because of the large number of Notaries who should be suspected of committing several acts that violate the law and code of ethics. However, the existence of the Notary Honorary Assembly is often considered to cover up this matter. This is illustrated by the many *judicial reviews* submitted against Article 66 of the Notary Position Law, namely the Constitutional Court Decision Number: 16 / PUU-VIII / 2020, the Constitutional Court Decision Number: 22 / PUU-XVII / 2019, and the Constitutional Court Decision Number 72 / PUU-XII / 2014.

In the judicial review conducted in 2014, it was considered that *the legal standing* did not meet because the petitioner was an advocate, so the subject matter of the application was not considered again. In 2019 the petitioner was the one who was the victim of an alleged criminal offense committed by a notary in the case of the use of false blanks, a deed of sale, and purchase of land rights. A deed of sale and purchase made by a notary not according to the ordinances and rules of the law, but the Panel of Judges said the application was unclear or vague and in this application was considered legal standing nor does it fulfill because the one deemed to be fulfilling is the Investigator, the Public Prosecutor or the Judge. Finally, in 2020, another examination of the applicants was carried out, including the Chairman of the

Indonesian Prosecutors Association, some of his work prosecutors, and one prosecutor who conducted the investigation. The other four applicants were deemed not to meet the legal standing. Therefore, although some met the legal standing requirements, the Panel of Judges rejected the petitioner's application for legal standing.

As is the case in the petitioner's application in the Constitutional Court Decision Number: 16/PUU/VIII/2020, on page 38, point 97, it is said, "That the authority of the Notary Honorary Assembly also has the potential to be used as a criminal who works as a Notary to deliberately commit an act contrary to the law and use the Honorary Notary Assembly to avoid legal responsibility for his actions. It also does not rule out the possibility of criminals using the Authentic Deed made by the Notary behind the article, in the hope that the Notary as a gatekeeper cannot be examined by law enforcement so that the perpetrator is not revealed."

On the plea of *a quo*, in essence, the Constitutional Court said that it was precisely the effect or result of the absence of the role of the Honorary Tribunal so that the guidance of the Notary could not be explicitly done in guiding the Notary when carrying out obligations, among others, to keep secrets about the deeds he produced following his oath of office. It was then said that another reason in consideration, the Constitutional Court conveyed Article 66 paragraph (4) of the Notary Office Act precisely to ensure legal certainty while limiting the authority of the Notary Honorary Tribunal when it comes to agreeing or not to the investigator, to the public prosecutor as well as to the Judge when there is a summons to the Notary and everything that follows it.

The similarity between the constitutional court decisions above is that in its petition, it essentially requests that Article 66 of Act the Position of Notary is contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force.

From what is described above, there is a severe problem. So that it is related to the Honorary Notary Assembly is considered to have a *conflict of interest* to defend the Notary. To give rise to the confidence of the Notary Honorary Assembly that the Notary Honorary Assembly has already carried out, which should have been seen from a process from the beginning how the Notary Honorary Assembly. The elements are regulated in Article 4 of the Notary Position Law, which reads;

- The Notary Honorary Assembly consists of:
 - 3 (three) persons from the Notary element;
 - 2 (two) people from government elements; and
 - 2 (two) people from an expert or academic element.
- The Notary Honorary Assembly, as referred to in paragraph (1), consists of 7 (seven) members consisting:
 - a. 1 (one) chairman concurrently a member;
 - b. 1 (one) deputy speaker concurrently a member; and
 - c. 5 (five) members.
- The Chairman and deputy speaker of the Notary Honorary Assembly shall be of different elements and be elected from and by the members of the Notary Honorary Assembly.

- The election of the Chairman and deputy speaker of the Honorary Assembly of Notaries is carried out by deliberation.
- Suppose the election by deliberation does not reach an agreement. In that case, the election of the Chairman and deputy speaker of the Honorary Assembly of Notaries is carried out by voting.
- The election of the Chairman and vice-chairman by way of voting, as referred to in paragraph (5), shall be carried out on the condition that it must be attended by at least 50% (fifty percent) plus 1 (one) of the number of members.

It can be seen from the article above that the Honorary Notary Assembly does not only consist of Notaries but there are governments and also experts or academics. It should be seen here that the Honorary Notary Assembly also considers opinions and views outside the scope of the Notary itself.

Then, to strengthen the public's trust, especially in law enforcement, the Honorary Notary Assembly needs strict conditions for the person to be elected as a person regulated in Article 6 of the Notary Position Law.

- To be appointed a member of the Notary Honorary Assembly must meet the following requirements:
 - Indonesian nationality;
 - fear the One God;
 - the least educated law degree;
 - physically and spiritually healthy;
 - never committed a despicable deed;
 - not being named as a suspect for committing a felony offense;
 - has never been convicted based on a court decision of permanent legal force for committing a criminal offense with a criminal threat of 5 (five) years or more;
 - has never been declared bankrupt based on a court ruling of permanent legal force; and
 - experienced in law for at least 3 (three) years.
- As referred to in paragraph (1) point c, the requirements are excluded for the Head of the Regional Office and the Head of the Legal and Human Rights Services Division of the Regional Office.
- In addition to meeting the requirements in paragraph (1), prospective academics or experts do not work as advocates or legal counsel.
- The requirements as referred to in paragraph (1) must be proven by the completeness of supporting documents which include:
 - photocopies of identity cards or other legalized proof of self;
 - photocopies of legalized law degree diplomas;
 - a certificate of physical and spiritual health from a government hospital doctor;
 - recent curriculum vitae and color photographs with a size of 4x6cm (four by six centimeters);
 - a sealed affidavit each stating:
 - ❖ never committed a despicable deed;
 - ❖ does not work as an advocate or legal counsel;
 - ❖ has never been convicted of a sentence of 5 (five) years or more based on a court decision of permanent legal force;

- ❖ has never been declared bankrupt based on a court ruling of permanent legal force; and
- ❖ not being named as a suspect for committing a felony offense.

Such strict requirements for selecting candidates for the Notary Honorary Assembly are illustrated in the above conditions. This should have been able to make the public believe in the Honorary Notary Assembly itself.

Even so, the Honorary Notary Assembly should have won the public's trust, as evidenced by the Honorary Assembly of the East Java Region Notaries. As many as 733 notaries from 2017 until now were examined. Of these, 14 notaries were declared criminally implicated. Both those still in the process of investigation, trial, and appeal to appeal to the cassation. For 2019, 6 notaries will have their accounts closed. This was revealed by the Head of the East Java Ministry of Law and Human Rights, Susy Susilawati, during a Focus Group Discussion (FGD) on the Use of Electronic Media in Notary Supervision.¹¹

Carrying out the duties as a Notary Honorary Assembly is, in fact, not easy. In addition to the conditions that must be met, many can also be dismissed with disrespect based on the proposal of the Supervisory Board. (PasaL 18 paragraph (3) regulation of the Minister of Law and Human Rights 16/2021).

From the above, a new renewal is needed to increase trust in the Notary Honorary Assembly. There are seven members of the Notary Honorary Assembly where three people from notaries, two people from government elements, and two people from expert elements or academics. It is necessary to have a more open recruitment pattern, at least to elements of experts or academics, as the Corruption Eradication Commission does. The Corruption Eradication Committee carried out a pattern of inquiry openly. Even the selection committee asked for the opinions of the public and other institutions, such as the Center for Financial Transaction Reporting and Analysis, the Supreme Court, and the Attorney General's Office.

The selection committee for the Honorary Notary Assembly can imitate the open steps taken by the Committee of the-i Commission of the Corruption Eradication Commission so that public participation is more significant, for example, open registration through the media, both online, print, and electronic, so that the Honorary Assembly of Notaries can carry out their duties without having to be overshadowed by accusations of being a party that obstructs law enforcement. The more involved the public is in the recruitment pattern, the more it increases public trust. In addition, the process carried out must be transparent, both indicators of assessment and the process that takes place. So that the purpose of creating an institution is achieved, namely to guide notaries in the context of law enforcement, but notaries are also protected so that other law enforcement agencies are not arbitrary towards notaries.

4. CONCLUSION

The process of forming the Honorary Assembly of Notaries is long and gradual. To

¹¹ <https://jatim.tribunnews.com/2019/09/19/733-notaris-diperiksa-majelis-kehormatan-notaris-wilayah-jatim-tahun-ini-6-akun-notaris-ditutup>, accessed July 9, 2022

become a member of the Honorary Notary Assembly, obtained from 3 elements, three people are obtained from the Notary element, two people are obtained from the government element, and two from the expert or academic element. The Notary Honorary Assembly is needed not only for coaching but also for assisting law enforcement. The Honorary Notary Assembly shall not protect the Notary if there is an alleged criminal act. However, on the contrary, the Honorary Notary Assembly must keep the Notary if it does not commit alleged criminal acts and should not be treated arbitrarily by law enforcement. However, it often still causes distrust in society in some instances. In the field, sometimes there is dissatisfaction between the parties, so the existence of the Honorary Notary Assembly was questioned and considered to violate the 1945 Constitution of the Republic of Indonesia, so that judicial review was carried out several times, and at least a judicial review was carried out in 2014, 2019 and 2020. However, all of them were rejected by the Constitutional Court. New updates are needed to increase public confidence in the existence of the Notary Honorary Assembly.

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