

Notary's Responsibility for the Deed of Power of Attorney in Original if the Applicant Provides False Information

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Abstract. *Notaries are required to keep minutes of the deed, however, in Article 16 paragraph (2) of the UUJN, this obligation is excluded if the Notary issues a deed of power of attorney in originali. The purpose of this study is to determine: 1) The Notary's responsibility if the person appearing provides false information in making a deed of power of attorney in originali. 2) Legal protection for the Notary if the person appearing provides false information in making a deed of power of attorney in originali. This type of research is normative legal research. Using the statute approach method. The type of data used is secondary data derived from primary, secondary, and tertiary legal materials and also uses primary data as complementary data to support this research. The data collection method uses literature studies. The analysis in this research uses qualitative analysis. The results of the study concluded: 1) The Notary is only responsible for the certainty of the date, that it is true that on the date, day, month and year as stated in the original power of attorney, it is true that the person appearing before the Notary to make the original power of attorney and regarding the validity of the signature in the original power of attorney, the Notary is not responsible for the contents of the original power of attorney made by or in his presence, the contents of the original power of attorney are entirely the responsibility of the person appearing, because the original power of attorney is made based on the wishes or desires of the person appearing. 2) If a Notary is summoned by an investigator in relation to an original power of attorney deed made before him, the Notary Honorary Council, which then forms an Examining Council, will summon and examine the Notary first and if the Honorary Council gives approval to the Notary to comply with the investigator's summons to be asked for information regarding an original power of attorney deed made by or before him, then the Notary can request assistance from the Notary Honorary Council, this is done to protect the Notary and maintain the dignity and honor of the Notary's position.*

Keywords: Attorney; Notary; Originali; Power.

1. Introduction

The notary is obliged to make a deed in the form of a deed minute and keep it as part of the notary protocol. The notary is also obliged to attach letters and documents as well as the fingerprints of the parties to the deed minute. Then the notary is also obliged to issue a deed grosse, a copy of the deed, or an extract of the deed based on the deed minute. Article 1 paragraph (8) of the UUJN explains that the deed request is the original deed which includes the signatures of the parties, witnesses, and the notary.

The minutes of a deed must be kept and stored in their original form. This is to ensure its authenticity and security from forgery or misuse. Minutes of a deed are included in the category of vital documents that must be kept by a notary to provide legal certainty for the parties involved in its creation.¹ Meanwhile, the deed protocol is a collection of documents which constitute state archives which must be stored and maintained by a notary.

Essentially, keeping the minutes of the deed in the notarial protocol is an obligation for the notary. The notary is also obliged to maintain, care for, and preserve the notarial protocol, storing it in a good and proper place to prevent damage. Another obligation that must be carried out by the notary in making an authentic deed is to attach letters and documents as well as the fingerprints of the parties appearing on the minutes of the deed. This is done to strengthen the evidence, then to protect the notary if at a later date the parties appearing deny the signature and its authenticity. If the notary fails to do so, the notary may be subject to sanctions.

However, an exception is made to the Notary's obligation to keep the minutes of the deed in question if the Notary makes or issues an original deed, as regulated in Article 16 paragraph (2) of the UUJN. In the explanation of Article by Article of the UUJN, it is stated that an original deed is a deed made by a Notary by handing over the original to the relevant party.

Article 16 paragraph (3) of the UUJN states that one of the original deeds is a power of attorney. A power of attorney is a deed that is deliberately made to serve as evidence that the grantor of the power of attorney has given his authority to the recipient of the power of attorney to carry out a matter as stated in the contents of the power of attorney. When carrying out his duties and

¹Boni Fransius S, Hasim Purba, & Suprayitno. (2024), "Notary's Responsibility for Storing and Maintaining Minutes of Deeds as Notary Protocol in Accordance with the Notary Law", in COMSERVA: Journal of Research and Community Service, Volume 4, No. 6 October 2024, p. 1705. <https://share.google/P10wi7DosLrwNPYSl> accessed on May 18, 2025 at 21.00 WIB.

position, a notary must not be suspicious and must believe any information given by the parties appearing before him.²

So, what happens if, when making a power of attorney deed in original which is carried out before a Notary, it turns out that the parties appearing have given false information. Then, with a power of attorney deed in original made by or before a Notary, it becomes the basis for a person to commit an unlawful act. This research aims to find out what the Notary's responsibilities are if the person giving false information in making a power of attorney deed in original made by or in front of him, because when making a deed of power in original the Notary does not keep minutes of the deed along with other additional documents as evidence for the Notary.

2. Research Methods

The type of research used in this study is normative legal research, the approach method in this study is the statute approach. The type and source of data in this study are secondary data obtained from the results of library research sourced from primary legal materials, secondary legal materials, and tertiary legal materials. This study also uses primary data used as supporting data to strengthen the findings or research results obtained directly from experts in the field of notary. The data collection method in this study was carried out by library research. In this study, the author uses qualitative data analysis by describing the data in the form of sentences, which is then discussed on the problem being studied, so that from the description a conclusion can be drawn on the subject matter of the study.

3. Results and Discussion

3.1. Notary's Responsibility for the Deed of Power of Attorney in Original if the Applicant Provides False Information

According to Salim HS, a deed in original is a letter of evidence made in front of a Notary, where the original deed that has been signed by the parties, witnesses and the Notary is directly handed over to the parties, in this case the presenter.³ According to Muhammad Hafidh, an original deed is an authentic deed made by or before a Notary and given to the parties is a deed containing the signatures of the parties and the Notary. This is different from authentic deeds in general, where in authentic deeds in general what is given to the parties is only a copy of the deed and the one who signs on the copy of the deed is only the Notary, while

² I Made Dwi Sanjaya, et al, (2020), "Notary's Responsibility for Making Authentic Deeds Based on Forged Documents", in Journal of Legal Construction, Volume 1, No. 2, p. 302. <https://share.google/RK76VsPASotpbg8RI> accessed on May 18, 2025 at 22.15 WIB.

³ Salim HS, (2015), One Deed Making Technique, Jakarta: Rajagrafindo Persada, p. 153.

the minutes of the deed containing the signatures of the parties and the Notary are kept by the Notary.⁴

Pieter EL is of the opinion that, a deed in originali is an original deed that is given directly to the parties interested in the deed, this deed in originali is not stored in the Notary's protocol, so that especially in deeds in originali, the Notary cannot issue a copy of the deed, extract of the deed and grosse of the deed.⁵ Even though the original deeds have been submitted to the relevant parties, the Notary remains responsible for each deed he issues.⁶

Based on the statements above, in the author's opinion, what differentiates an original deed from other general deeds is that the original deed given to the person appearing is a deed containing the complete signatures of the parties and the Notary, whereas in other general authentic deeds, what is given to the person appearing is a copy of the deed containing only the Notary's signature, and the minutes of the deed containing the complete signatures of the parties and the Notary are kept in the Notary's custody.

In principle, the binding force of a deed in originali is the same as the minutes of the deed, namely it is perfect evidence for the parties who made it. Deeds in originali are limited in nature, meaning that they are regulated by law, as stated in Article 16 paragraph (3) UUJN. So, not all deeds can be made and issued in originali form, but are limited to certain deeds only.⁷

Article 16 paragraph (3) UUJN explains the types of deeds in originali, the types of deeds in originali are as follows:

- 1) Deed of payment of rent, interest and pension;
- 2) Deed of cash payment offer;
- 3) Protest deed against non-payment or non-receipt of securities;
- 4) Power of attorney;
- 5) Certificate of ownership, and other deeds;

⁴Interview with Muhammad Hafidh Notary/PPAT Semarang City, November 18, 2025.

⁵Pieter EL, (2010), "Notary as witness or defendant", Paper, Bandung. quoted from Salim HS, loc.Cit.

⁶Putra Arifaid, (2017), "Legal Responsibility of Notaries for Original Deeds", in IUS Journal: Legal and Justice Studies, Volume 5, No. 3 December 2017, p. 517. <https://share.google/wBwr2Aq664ofXWsLF> accessed on October 31, 2025 at 20.00 WIB.

⁷Shella Dwi Aulina, (2022), "Legal Analysis of Notarial Deeds in Original Form", in IURIS STUDIA: Journal of Legal Studies, Volume 3, No. 2, p. 66. <https://share.google/FNlJ6gh5SBwcwaJQ> accessed on October 25, 2025 at 20.00 WIB.

As stated in Article 16 paragraph (3) of the UUJN above, one of the original deeds is a power of attorney. A power of attorney is evidence containing a statement from the grantor of power of attorney that the party receiving the power of attorney has the rights and obligations to carry out something given by the grantor of power of attorney.

According to Muhammad Hafidh, what differentiates a deed of power of attorney in originali and other general deeds of power of attorney is that it is at the end of the deed, where at the end of the deed of power of attorney in originali there are the words "this deed is made in originali form, valid as one and one valid for all", whereas in a general deed of power of attorney, what is given to the parties is only a copy and the words at the end of the deed are "given as a derivative".⁸Even though Article 16 paragraph (2) of the UUJN provides an exception for Notaries to keep minutes of deeds in the event that the Notary issues a deed in originali, in practice, According to Muhammad Hafidh, the Notary will still keep the minutes of the original power of attorney deed along with other supporting documents which are then attached to the minutes of the original power of attorney, such as a photocopy of the identity of the person appearing and the person appearing's fingerprints. The notary will make the original power of attorney in 3 (three) copies, where 1 (one) copy is for the principal, 1 (one) copy for the person receiving the power of attorney, and then 1 (one) copy is kept by the notary, in each copy of the original power of attorney, all of which are sufficiently stamped and have the signatures of the parties and the notary.⁹

Salim HS also argued that the original deed submitted to the parties is the deed signed by the parties, witnesses, and the notary. Meanwhile, the minutes of the deed must be kept by the notary. The minutes of the deed kept by the notary are the deed signed by the parties, witnesses, and the notary.¹⁰According to economical the author, this is done to protect the Notary's self, to prevent if in the future the parties deny the signature contained in the original power of attorney deed, therefore the Notary will continue to keep 1 (one) copy of the in original power of attorney deed along with other supporting documents such as the identity of the presenter and the presenter's fingerprints.

An original power of attorney is a deed made based on the wishes of the parties appearing before a notary, where the contents of the original power of attorney are entirely the wishes of the parties, as conveyed by the parties. According to GHS Lumbun Tobing, a party deed is a deed containing descriptions or information, statements of the parties as told before a notary. The parties wish

⁸Interview with Muhammad Hafidh Notary/PPAT Semarang City, November 18, 2025.

⁹Ibid.

¹⁰Salim HS, Op.cit, p. 162.

for their descriptions or information to be set forth in a notarial deed.¹¹Then R. Subekti argued that a deed between parties is a deed made by or before an authorized official, the substance of which is derived from the will and statements of the parties. In a deed between parties, the parties usually come and deliberately provide information or perform a legal act to be confirmed by a notary in an authentic deed.¹²When drafting a deed between the parties, a notary acts only as a recorder of the agreement reached by the parties. They have no authority or obligation to verify the validity or accuracy of the information provided by the parties.¹³

Notaries are often dragged into legal problems, as a result of deeds made by or in their presence, because the deeds they make contain elements of a criminal act because the person appearing provides false information in the authentic deed.¹⁴ Several articles in the Criminal Code that often involve notaries include:

Article 263 paragraph (1) of the Criminal Code explains: "Anyone who makes a false letter or includes a letter that can give rise to a right, obligation or release from debt, or which is intended as evidence of something with the intention of using or ordering another person to use the letter as if the contents were true and not forged, is threatened if the use can cause a loss, due to forgery of the letter, with a maximum prison sentence of six years."

Article 264 paragraph (1) number 1 of the Criminal Code explains: "Forgery of documents is punishable by a maximum prison sentence of eight years, if committed against an authentic deed." Then Article 266 of the Criminal Code explains:

1) Anyone who orders the insertion of false information into an authentic deed about an event whose truth must be stated by the deed, with the intention of using or ordering another person to use the deed as if the information were in accordance with the truth, is threatened, if the use can cause harm, with a maximum prison sentence of seven years.

2) Anyone who intentionally uses the letter mentioned in the first paragraph, the contents of which are not true or which are falsified as if they were true and

¹¹GHS Lumban Tobing, (1991), *Regulations on the Position of Notary*, Jakarta: Erlangga, p. 51.

¹²Dedi Pramono, (2015), "The Evidential Power of Deeds Made by Notaries as Public Officials According to Civil Procedure Law in Indonesia", in *Lex Jurnalica*, Volume 12, No. 3 December 2015, p. 253. <https://share.google/hWNncDYUaGSPNrCN> accessed on October 31, 20.40 WIB.

¹³R. Santyaningtyas, AC Zubaidi, (2020), "Role of Land Deed Officials in Legal Satisfaction Guarantee for Complete Systematic Land Registration", in *Notary Journal* Volume 5, No. 1, p. 49.

¹⁴Agus Santoso, (2020), "Corruption Crimes Committed by Notaries-PPAT in Exercising Their Official Authority", in *Journal of Law and Notary*, Volume 4, No. 1 March 2020, p. 65. <https://share.google/dZM4HETMsnVWbrXQG> accessed on October 31, 2025 at 23.30 WIB.

not fake, is threatened with the same punishment, as the falsification of the letter can cause harm.

Providing false information is a form of someone's bad faith, this bad faith refers to someone's intention or deliberate act to lie to harm other people.¹⁵ False statements refer to the actions of a person who acts in bad faith, because he intentionally makes a dishonest statement accompanied by deception to achieve a goal that is contrary to good faith.

Good faith in the context of making a deed, as regulated in Article 1338 paragraph (3) of the Civil Code, which describes the attitude that must be upheld by the parties and the Notary.¹⁶ From the perspective of the person appearing, good faith requires that the agreement or deed drawn up not harm the other party. The person appearing is also expected to be a legal subject who has the right or authority to the object of the agreement, in this case, the original power of attorney.

Hans Kelsen, in his theory of responsibility, explains that a person is legally responsible for an act they have committed if they are responsible for the sanctions imposed as a result of their actions that violate applicable law. Failure to fulfill obligations will result in sanctions.¹⁷ This sanction is a coercive measure imposed by the law to ensure that legal subjects properly fulfill their obligations. According to Hans, legal subjects subject to this sanction are said to be "responsible" or legally responsible for the violation.

A power of attorney in original is a deed of the parties (partij), because the deed is made based on the will or desire of the parties.¹⁸ Therefore, regarding the false information contained in the original power of attorney deed made by or before the Notary, it is entirely the responsibility of the person appearing, because it is an act carried out by the person appearing himself. As stated by Habib Adjie, the contents of the deed are the will or desire of the people appearing themselves, not the desire or desire of the Notary, therefore if the contents of the deed are questioned by the parties or other interested parties, then this is their own

¹⁵Aldi Indra Tambuwun, (2016), "Sanctions Against Witnesses Who Give False Statements Under Oath Based on Article 242 of the Criminal Code Concerning Perjury and False Statements", in *Lex Privatum Journal*, Volume 4, No. 6, p. 35. <https://share.google/ptQYfdkzn0sXbX9yK> accessed on November 2, 2025 at 02.00 WIB.

¹⁶Adjeng Dian Andari, (2022), "Implications of PMH in the Making of Nominee Agreement Deeds by Notaries from the Aspect of Civil and Criminal Liability (Case Study of Supreme Court Decisions)", *Indonesian Notary*, Volume 4, No. 1. quoted from Valentia Berlian Ayu Febrianti, Rusdianto Sesung, (2024), "Basis for Rejection of Deeds by Notaries Based on the Principle of Bad Faith", in *Rio Law Journal*, Volume 5, No. 1, February-July 2024, p. 305. <https://share.google/hwWS3Y4xiRXblPM74> accessed on November 2, 2025 at 09.00 WIB.

¹⁷Hans Kelsen, (2008), *Pure Theory of Law*, Translated by Raisul Muttaqien, *Pure Theory of Law: Basics of Normative Legal Science*, Sixth Edition, Bandung: Nusa Media, p. 134.

¹⁸Interview with Muhammad Hafidh Notary/PPAT Semarang City, November 18, 2025.

problem and they are the ones responsible.¹⁹ Because a notary merely frames the will or desire of the person appearing in a notarial deed, this aligns with the theory put forward by Hans Kelsen, mentioned above, that a person is legally responsible for an act they have committed and is liable for any sanctions resulting from that act.

According to Muhammad Hafidh, the Notary's responsibility for the original power of attorney is the same as the Notary's responsibility for other authentic deeds, because the original power of attorney is also an authentic deed and is a deed of the parties (*partij*), then the Notary's responsibility in the original power of attorney is only towards the beginning and end of the deed, while for the contents of the deed is the responsibility of the parties. The Notary is only responsible for the certainty of the date, that it is true that on the day, date, month, year and hour as stated at the beginning of the deed, the parties appeared before the Notary, and regarding the validity of the signature, that it is true that the parties have signed the deed, while for the contents of the deed is the responsibility of the parties themselves, because the original power of attorney is a deed of the parties (*partij*) made based on the will or desire of the parties themselves.²⁰ According to Habib Adjie stated that a notary's duty is simply to draft a notarial deed in accordance with the UUJN. If the contents of the deed are disputed by the parties or other interested parties, the matter is their own.²¹ The notary is not authorized to question or doubt the accuracy of the information provided by the parties during the making of the deed.²²

From the above opinion, it can be concluded that, the Notary only makes the original power of attorney deed as desired by the appearing party, because the original power of attorney deed is a deed of the parties (*partij akte*) then the contents of the original power of attorney deed are made based on the explanation or information provided by the appearing party themselves, therefore, regarding the truth of the information or content of the original power of attorney deed, it is entirely the responsibility of the parties themselves. Because the Notary only makes the deed as desired by the parties who appear before him, which means, if there is no appearing party who wants to make an authentic deed, then the Notary will not make the deed. The main basis or core in making a Notarial deed, namely there must be a desire or will (*wilsvorming*) and request from the parties, if the desire and request of the parties do not exist then the Notary will not make the intended deed.²³

¹⁹Habib Adjie, (2014), *Weaving Thoughts in the World of Notaries & PPAT*, Bandung: PT. Citra Aditya Bakti, p. 30. (Hereinafter abbreviated as Habib Adjie I).

²⁰Interview with Muhammad Hafidh Notary/PPAT Semarang City, November 18, 2025.

²¹Habib Adjie, *Op.cit*, p. 57.

²²Valentina Berlian Ayu Febrianti, Rusdianto Sesung, *Op.cit*, p. 309.

²³Habib Adjie, (2008), *Civil and Administrative Sanctions Against Notaries as Public Officials*, Bandung: Refika Aditama, p. 57. (Hereinafter abbreviated as Habib Adjie II).

The Notary's responsibility in an original power of attorney is only for the beginning and end of the deed, while the contents of the deed are the responsibility of the parties appearing. As explained in Article 38 paragraph (3) letter c UUJN which states that "the body of the deed contains the contents of the deed which are the will and desire of the interested parties" in this Article emphasizes that the contents of the deed are the will and desire of the parties appearing who come before the Notary. Thus, the contents of the original power of attorney are the will or desire of the parties appearing themselves, not the will or desire of the Notary. Therefore, regarding false information in an original power of attorney made by or before the Notary, if the false information is information provided by the parties appearing, then this is entirely the responsibility of the parties concerned. Because in carrying out his duties, the Notary only confirms the will of the parties, and the Notary is not responsible for the truth of any information provided by the parties appearing.

This is also confirmed through the Supreme Court Jurisprudence in Supreme Court Decision Number 702K/Sip/1973 on September 5, 1973 which states that "The Notary's function is only to record/write what is desired and stated by the parties appearing before the Notary. There is no obligation for the Notary to investigate materially about what is stated by the person appearing before the Notary." This decision provides limitations regarding the professional responsibilities of the Notary in making authentic deeds, the Notary is not given the obligation to investigate the truth of the information given by the person appearing.

As long as the Notary has carried out his/her duties in accordance with the applicable provisions, in this case in accordance with the provisions of Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning the Position of Notary, regarding all matters relating to the making of authentic deeds as regulated in Article 1868 of the Civil Code which defines a deed that is said to be an authentic deed, so that it can be a deed that has perfect evidentiary power, regarding the procedures, forms, and other procedures in making a deed as regulated in the UUJN, which if the provisions as regulated in the UUJN are not implemented then the deed is degraded to a private deed. Which means, in making an authentic deed, the Notary is only formally responsible for the deed.

The formal and procedural aspects of making the original power of attorney, such as ensuring that all parties involved have given their consent consciously and that the contents of the original power of attorney do not conflict with statutory regulations, in this case Article 1320 of the Civil Code which regulates the valid conditions of the agreement, as well as all other legal requirements have been fulfilled. In relation to the form of the deed, the competence of the person appearing, and the reading of the deed in the presence of witnesses, as

regulated in Article 38, Article 39, Article 40 UUJN, because if these are not done or not implemented, then the evidentiary power of the original power of attorney will be imperfect and the original power of attorney only has evidentiary power as a private deed as regulated in Article 41 UUJN.

However, in practice, Notaries are often considered as parties involved in criminal acts, as a result of the contents of authentic deeds made by or in their presence. Article 55 paragraph (1) number 1 of the Criminal Code regulates that "those who commit, order to commit, and participate in committing acts shall be punished as perpetrators of criminal acts."

Participation or conspiracy is carried out by two or more people and the criteria for conspiracy include joint initiative and joint implementation.²⁴ Those who participate in the act are those who jointly carry out the act, who intentionally take part in the act.²⁵ Notaries in making deeds, even though no statutory regulations are violated, are often accused of falsifying deeds or inserting false information into authentic deeds, and participating in falsifying deeds, especially if what is made by the Notary is a deed of the parties or *partij akta*, even though in making *partij akta*, the Notary only confirms or includes anything/everything that the parties want into the deed.²⁶

As stated by Habib Adjie, the inclusion of the Notary's name and signature by certain parties involved in law enforcement is often interpreted to mean that the Notary is a party to the Deed. Therefore, when the contents of the deed are disputed by those named in the deed or by other parties, the Notary is often placed as a defendant, or co-defendant, or also as a witness, or even a suspect or defendant.²⁷ This clearly contradicts the authority of a Notary as an official who is given the authority to make deeds based on the will or desire of the parties, as regulated in Article 38 paragraph (3) letter c UUJN, which explains that: "the contents of the deed are the will and desire of the interested parties." This means that the position of a Notary is only to make deeds, and the deed is made based on the will or desire of the parties. As the form of the deed of the parties, the Notary is not a party to the deed.²⁸

This also contradicts the legal theory put forward by Hans Kelsen which states that "a person is legally responsible for an act he has committed, if he bears responsibility for the sanctions imposed as a result of his actions which are

²⁴Schaffmeister, et. all, (1995), Criminal Law, Yogyakarta: Liberty, p. 269.

²⁵Moeljatno, (1985), Criminal Law, Attempted Crimes, Participation Crimes, Jakarta: Bina Aksara, p. 87

²⁶Mulyoto, (2021), Basics of Deed Making Techniques, Yogyakarta: Cakrawala, p. 75.

²⁷Habib Adjie I, Op. cit. p. 29.

²⁸Ayu Pratiwi, (2022), "The Position of Notaries as Participants in Criminal Acts of Corruption", in Jurnal Officium Notarium, Volume 2, No. 2 August 2022, p. 318. <https://share.google/1dj0fU285G2t82SvH> accessed November 5, 2025 at 14.20 WIB.

contrary to applicable law." Based on this theory, it can be understood that a person is only responsible for his actions which are contrary to the law.

In this context, the Notary only carries out his/her official duties in accordance with existing regulations. Regarding the name of the Notary listed in the deed, this is a formal aspect in an authentic deed, as stipulated in Article 38 paragraph (2) letter d of the UUJN, which states that "the beginning of the deed or the head of the deed contains the full name and domicile of the Notary". However, the Notary is not related to the contents of the deed, and the Notary has no legal interest in the contents of the deed in question. As stated by Habib Adjie, a deed is made because of the will of the parties, without the will of the parties, of course the deed would not have been made by the Notary.²⁹

3.2. Legal Protection for Notaries for Deeds of Power of Attorney in Original if the Applicant Provides False Information

The legal protection provided by UUJN, namely through Article 16 paragraph (1) letter f and Article 54 paragraph (1) UUJN, Notaries have an obligation to keep confidential everything related to deeds made by or before them, and this obligation gives Notaries the right to refuse. The right to refuse is used when the Notary is asked to provide information related to the contents of the deed he made. The term right to refuse is a translation of *verchonningsrecht* which means the right to be released from the obligation to provide information as a witness in civil or criminal cases. The right to refuse is an exception to the general legal principle which states that every person who is summoned as a witness is obliged to attend the summons to provide information.

The right to rebut is a legal protection granted to a notary by law to provide information relating to deeds made by or before a notary. The notary's right to rebut is not only a right but also an obligation of the notary, which if violated will be subject to sanctions according to the law. The notary not only has the right to remain silent, but is also obliged to remain silent.³⁰ The Notary's right of recusal is not only for the interests of the Notary himself, but also for the interests of the parties who have placed their trust in the Notary. The Notary is trusted to store all information or statements of the parties who have appeared before the Notary to make a deed.

In general, anyone can be a witness, however, Article 170 of the Criminal Procedure Code provides the right to resign (*verchonningsrecht*) to provide testimony for those who due to their position, dignity and work are required to keep secrets. Then Article 322 paragraph (1) of the Criminal Code regulates that

²⁹Habib Adjie I, Op. cit., p. 32.

³⁰Akbar Tri Mahendra, Aisyah Ayu M, (2023), "The Notary's Right to Refuse to Obligate Him to Keep Deeds Confidential", in *Gorontalo Law Review Journal*, Volume 6, No. 2 October 2023, p. 266. <https://share.google/3s67jTDUzXbc69QrJ> accessed on November 5, 2025 at 21.45 WIB.

"anyone who intentionally reveals a secret that he is required to keep because of his position, is threatened with a maximum prison sentence of nine months." Based on Article 322 paragraph (1) of the Criminal Code, it appears that official secrets are something that is very attached to a person who due to his position is required to keep secrets, this is not an excessive consequence because the responsibility of a Notary as a public official is very heavy because the things he does intentionally will have legal consequences, not only for the parties or clients, but also other parties concerned and interested.³¹

The implementation or application of the Notary's right of denial in maintaining the confidentiality of the deeds he made is the obligation of the Notary as a law-abiding Indonesian citizen, because in this right of denial the Notary acts on the orders of state law which requires information known by the Notary, then the Notary is legally obliged to provide information that he knows in the judicial process, however the Notary must know about the limitations in providing information related to the deeds made by or in his presence.³²In other words, the right of denial can be waived if there is a higher interest that requires the Notary to disclose official secrets, as stated in the last sentence of Article 16 paragraph (1) letter f and Article 54 paragraph (1) UUJN, which states "unless the law determines otherwise". However, the Notary must still understand the limitations of what can and cannot be conveyed.

A notary may be requested by law enforcement officials who require information from the notary regarding an original power of attorney deed drawn up by or in their presence. During the investigation phase, to request information from the notary, the investigator must first obtain approval from the Notary Honorary Council.

As regulated in Article 66 UUJN which states that: "for the purposes of the judicial process, investigation, public prosecutor or judge must obtain approval from the Notary Honorary Council". The Notary Honorary Council is a body established by the Minister of Law and Human Rights of the Republic of Indonesia which has the authority to provide guidance to Notaries and the obligation to provide approval or rejection for the benefit of investigators and the judicial process, for the taking of photocopies of minutes of deeds and summons Notaries to attend examinations related to deeds or Notary protocols that are in the Notary's storage as regulated in Article 66A UUJN.

For the examination process of the Notary, then the Chair of the Regional Notary Honorary Council forms an Examination Council consisting of 3 (three) members

³¹Erwina Junita Sari, (2022), "Implementation of the Notary's Right to Refuse to Confidentiality of the Contents of Notarial Deeds Based on the UUJN and the Notary's Code of Ethics" Thesis, UIN Notary Study Program, p. 78. <https://share.google/PGce0edsnLCqEvJAD> accessed on November 5, 2025 at 23.00 WIB.

³²Ibid, p. 268.

consisting of each element of the members of the Regional Notary Honorary Council as regulated in Article 26 paragraph (1) of Permenkumham No. 17 of 2021 concerning the Notary Honorary Council. The examination council is authorized to summon and conduct an examination of the Notary concerned. Granting approval or rejection of the application is carried out based on the results of the examination from the Examination Council which has summoned and conducted an examination of the Notary concerned and then the Notary Honorary Council makes an Examination Minutes to be decided in a plenary meeting of the Regional Notary Honorary Council.

The results of the decision of the plenary meeting of the Notary Honorary Council. If the decision of the Notary Honorary Council rejects or does not give approval regarding the submitted application, then the Notary cannot be summoned to be asked for information related to the original power of attorney deed made before him, and vice versa, if the Notary Honorary Council gives approval, then with the approval of the Notary Honorary Council, the Notary is permitted to fulfill the summons of investigators, public prosecutors and judges to be asked for information related to the original power of attorney deed made by or before him.

The Honorary Council in giving approval or rejection to investigators, public prosecutors and judges, must pay attention that if a criminal event is clear and real without the need for a Notary to be examined as a witness, then the Honorary Council will reject it, and vice versa, if without a Notary's statement in the minutes or criminal event, the event that occurred cannot be processed further so that a Notary's statement is needed so that the criminal event can be clarified, become clear and real, then the Honorary Council will give approval.³³

The purpose of the initial examination conducted by the Notary Honorary Council is to create legal certainty for the public in accordance with the principle of trust that underlies the authority of Notaries. This is then done with the aim of maintaining the honor, nobility and image of the Notary Institution, which aims to prevent Notaries and Notary protocols from being made the object of arbitrary examination without a strong basis, which has the potential to damage the dignity and honor of the Notary profession. Because Notary is a noble profession that is trusted to help the public, Notaries also have a fundamental obligation to maintain confidentiality of all matters relating to deeds made by or before them.

The Notary Honorary Council must be respected by everyone because its presence is mandated by the UUJN. This procedure is part of criminal procedural

³³Danu Giritono, (2020), "Legal Protection for Notary Public in Performing Their Duties As A General Officer Based on Law of Notary Office in Kendari Region", in the SANLAR Sultan Agung Notary Law Review Journal, Volume 2, No. 4, p. 628

law and is imperative or mandatory for permit applications. Therefore, if investigators, public prosecutors, and judges fail to comply with this procedure, they may be considered a violation of the UUJN and may be reported to the supervisory agency responsible for investigators, public prosecutors, and judges.³⁴ The presence of the Notary Honorary Council provides "protection" for Notaries if the Notary's statement is needed in a criminal case or a Notary deed is needed by law enforcement officials to clarify a criminal case.³⁵

If the request to summon the Notary is approved, the Regional Notary Honorary Council can provide assistance to the Notary in the examination process before investigators, public prosecutors, or judges as explained in Article 33 paragraph (3) of the Minister of Law and Human Rights Regulation No. 17 of 2021 concerning the Notary Honorary Council. According to Habib Adjie, when providing answers to the questions asked, the Notary is sufficient to provide an explanation regarding the Notary's position in making the deed, the Notary does not need to provide an answer to the main case because the contents of the deed that are questioned by the parties which then give rise to problems, are entirely the will or desire of the parties and not the desire of the Notary if the Notary provides an answer in the main case, then the Notary has an obligation to prove everything mentioned in his answer, even though the Notary does not know the matter in question.

When linked to Philipus M. Hadjon's theory of legal protection, he states that legal protection is the protection of dignity and respect, as well as the recognition of the human rights held by legal subjects, which are rooted in Pancasila. Recognition of human dignity and respect is fundamentally embodied in the principles of Pancasila and the concept of a state based on the rule of law.³⁶ Philipus M Hadjon also believes that Pancasila is a source of recognition of human dignity and worth, recognition of human dignity and worth is intrinsically attached to Pancasila.³⁷

The legal protection provided by the state to Notaries in this case through Article 66 of the UUJN with the establishment of the Notary Honorary Council, which indicates that investigators, public prosecutors, and judges in order to summon and conduct examinations related to deeds made by or before a Notary, must first obtain approval from the Notary Honorary Council. With this, law

³⁴Habib Adjie I, Op. cit., p. 35

³⁵Alfiyan Mardiansyah, et.all, (2020), "The Authority of the Notary Honorary Council in the Investigation Process of a Criminal Case Involving a Notary", in Repertorium: Scientific Journal of Notary Law, Volume. 9, No. 1, p. 53.<https://share.google/TgHDB5rCrWFgGLQ3H> accessed on November 13, 2025, at 16.00 WIB.

³⁶Philipus M Hadjon, (1989), Legal Protection for the Indonesian People: A Study of Principles, Their Handling by the Courts within the Scope of General Courts and the Formation of State Administrative Courts, Surabaya: Bina Ilmu, p. 20.

³⁷Ibid, p. 206.

enforcement officers such as investigators, public prosecutors, and judges cannot summon Notaries simply to ask for information for the purposes of investigation or trial related to original power of attorney deeds made by or before them that contain false information.

When linked to legal protection facilities in Philipus M Hadjon's legal protection theory, the Notary Honorary Council is a preventive legal protection facility provided by the state to Notaries. The Notary Honorary Council aims to protect the dignity and honor of Notaries to prevent Notaries from being made objects of arbitrary examination without a strong basis, which has the potential to damage the dignity and honor of Notaries. Then to ensure that the request or application to summon the Notary has met the formal and substantial requirements stipulated by law. The Notary Honorary Council also assesses the extent to which the Notary's statement is important in the investigation and trial process, because the contents of the deed and information obtained by the Notary from the parties cannot be opened arbitrarily. In this regard, the Notary Honorary Council provides protection to Notaries regarding the Notary's obligation to keep confidential everything related to the deed, whether this has been enforced in accordance with the Notary's oath of office, as regulated in Article 24 paragraph (2) of the Minister of Law and Human Rights Regulation Number 17 of 2021 concerning the Notary Honorary Council.

In essence, the Notary Honorary Council acts as the first protection given to a Notary, which aims to protect the Notary from arbitrary actions by law enforcement officers in summoning the Notary to be asked for information related to the original deed made by or in his presence, this is done to protect and oversee the implementation of the Notary's right of recusal.

4. Conclusion

The Notary is only responsible for confirming the date, that it is true that the date, day, month and year as contained in the original power of attorney deed, it is true that the person appearing before the Notary to make the original power of attorney deed and regarding the validity of the signature in the original power of attorney deed, the Notary is not responsible for the contents of the original power of attorney made by or in his presence, the content of the in original power of attorney is entirely the responsibility of the presenter himself, because this power of attorney is The originali is made based on the wishes or will of the person present, and the Notary only makes the power of attorney deed in originali as desired by the person present. If a Notary is summoned by an investigator in relation to an original power of attorney deed made before him, the Notary Honorary Council, which then forms an Examining Council, will summon and examine the Notary first and if the Honorary Council gives approval to the Notary to comply with the investigator's summons to be asked for information regarding the original power of attorney deed made by or before

him, then the Notary can request assistance from the Notary Honorary Council, this is done to protect the Notary and maintain the dignity and honor of the Notary's position. Even though Article 16 paragraph (2) of the UUJN provides an exception for Notaries to keep minutes of the deed in the event that the Notary issues a deed in originali, it is best for the Notary to keep 1 (one) copy of the deed of power of attorney in originali along with other supporting documents such as photocopies of the identities of the parties appearing, as well as the fingerprints of the parties appearing. This is done as a form of self-protection if problems arise later as a result of the deed of power of attorney in originali made by or before the Notary, or if the parties appearing later deny their signature, especially on the deed of power of attorney in originali, because the deed of power of attorney can be the basis for someone to commit an unlawful act.

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