

## IMPLEMENTATION THE AUTHORITY OF THE NOTARY HONORARY COUNCIL FOR PROVIDE LEGAL PROTECTION TO NOTARIES IN MEDAN CITY

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### ABSTRACT

*Legal protection is an essential element as well as a consequence of the rule of law, that the state is obliged to guarantee rights citizen law, not least for a Notary. Legal protection for Notaries can be realized in a juridical arrangement (bescherming juridische voorzieningen). The problem in this study is how the deed made by the Notary is related if there is an indication of a crime, How is the legal protection for the Notary in connection with the Notary deed if there is an indication with a criminal act, and the implementation of the authority of the Notary Honorary Council in providing legal protection to Notaries in the City of Medan regarding the linkage of the Notary deed if there is an indication of a criminal act? This research is juridical normative and empirical. Normative juridical research refers to statutory regulations, while empirical research is obtained in the field. The results of the study show that the connection between an authentic deed made by a Notary with the occurrence of a crime is an authentic deed and the protocol can be used as evidence of a criminal act or in the manufacture there is a criminal element which is a mistake. Notary or the parties' error in not wanting to be honest in providing their statements to the Notary; or is there an agreement that has been made between the Notary and one of the parties who appear, the factors that cause the forgery of the deed, in this case where a Notary is involved with the desire of the appearer to provide unilateral benefits to the appearer. This can be caused by intentional and negligence. Legal protection for Notaries as public officials in Article 66 paragraph (1) of Law Number 2 of 2014, states that: For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to: Take a photocopy of the minutes of the deed and/or or letters attached to the minutes of the deed or protocol of the Notary in the Notary's depository; and Calling the Notary to attend the examination related to the Notary deed or protocol that is in the Notary's storage. Legal protection for Notaries in Article 66 of Law Number 2 of 2014 includes substitute Notaries, Temporary Notary Officials and Notary Emeritus or werda Notary. In carrying out its duties, the Notary Honorary Council may conducting an examination of a Notary who is suspected of committing a violation (malpractice) related to the alleged criminal element in the process of making an authentic deed. If there is evidence of a violation (malpractice) committed by a Notary that causes harm to the parties, then in this case the Notary Honorary Council can give approval to the Investigator to be examined in the judicial process, but if the Notary Honorary Council does not find any criminal elements in the deed made by or before a Notary, the Notary Honorary Council cannot give approval for examination to Investigators, Public Prosecutors or Judges.*

Keywords: Notary, and Honorary Council.

### A. Introduction

In the era of globalization, notarial institutions play an important role, this can be seen and felt by the community when carrying out a legal act such as renting, buying and selling, debts and so on. Creating legal certainty is a form and role for Notaries, and also as a form of fulfillment of life for all citizens.

The role of the Notary in accommodating and creating legal certainty in legal actions taken to meet the needs of citizens according to the demands of the times. There is an increasing intensity and complexity in legal relations related to the development of people's lives, thus requiring protection and legal certainty regarding evidence to be able to clearly distinguish between rights and obligations from existing legal subjects. Orderly and proper law administrative activities can create legal protection, certainty and order in order to prevent things that result in legal defects that can harm the community and legal subjects. circumstances, events or legal actions.

Substantively a Notary deed can be in the form of a condition, event or legal action that is desired by the parties to be stated in the form of an authentic deed to be used as evidence and based on laws and regulations that certain legal actions must be made in the form of an authentic deed. An authentic deed is one of the means of evidence before a court that has perfect evidentiary power (as referred to in Article 1870 of the Civil Code). The person who has the authority to make an authentic deed is an authorized official, one of which is a notary as a public official. The need for a written agreement to be made before a notary to guarantee legal certainty and fulfill a strong evidentiary law for the parties to the agreement. As referred to in Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. The philosophical basis for the establishment of Law Number 30 of 2004 concerning the Position of a Notary is the realization of guarantees of legal certainty, order and legal protection based on truth and justice. Through the deed he made, the Notary must be able to provide legal certainty to users of Notary services. The deed made by or before a notary can be authentic evidence in providing legal protection to any parties with an interest in the deed regarding the certainty of the event or legal action being carried out.

However, the Notary has the obligation to include what is contained in the deed, it has been fully understood and in accordance with the wishes of the parties, by reading out so that the contents of the deed are clear and providing access to information, including access to relevant laws and regulations for the parties to the deed. There are 4 (four) things that must be considered in carrying out the position of a Notary, namely:

1. In carrying out his professional duties, a Notary must have strong moral integrity. In this case, all moral considerations must underlie the implementation of professional duties. Even if you get a high reward for services, something that is contrary to morals must be avoided.

2. Notaries must be honest, not only with clients, but also with themselves. He must know his limits, not make promises just to please the client, or that the client will continue to use his services. All of them are a separate measure of the level of intellectual honesty of a Notary.

3. Notaries must be aware of the limits of their authority, comply with legal provisions regarding how far they can act and what they can and cannot do. Contrary to professional behavior if the Notary is domiciled and resides not at the place of domicile as a Notary, or puts up a board and has an office at his domicile, but his place of residence is in another place. A Notary is also prohibited from running a position outside the area of office, and if violated, the deed in question will lose its authenticity.

4. Even if a person's expertise can be used as a straightforward effort to earn money, in carrying out his professional duties he is not solely driven by money considerations. A Pancasilaist Notary must hold fast to an essential sense of justice, not be affected by the amount of money, and not merely create formal evidence to pursue legal certainty, but ignore a sense of justice.

An authentic deed is perfect evidence for both parties, the heirs or the person who has rights to it. The contents of the authentic deed are considered true, as long as the untruth cannot be proven. An authentic deed has 3 (three) kinds of evidentiary powers, namely:

1. The strength of formal evidence to prove the certainty of an event and fact in the deed was actually carried out by a notary or explained by the party appearing at the time stated in the deed in accordance with the procedures stipulated in the deed making.

2. The strength of material evidence proves between the parties that the events mentioned in the deed have actually occurred.

3. The binding force proves between the parties and a third party, that onThe deed concerned has appeared and explained what was written in the deed.

The purpose of making a deed before a Notary is as strong evidence if at any time there is a dispute between the parties or there is a civil lawsuit or criminal prosecution from another party. If there is a civil lawsuit or criminal prosecution from one of the parties, it is possible that the Notary will be involved in the problems of the litigants regarding the deed made by the Notary. , even though the Notary has carried out his duties and authorities in accordance with the rule of law (in accordance with the Law on Notary Positions, and the Notary Code of Ethics), the Notary Honorary Council must provide legal protection to the Notary concerned by summoning and examining the Notary for his statement before give approval or reject the request submitted by the investigator who wants to examine the Notary. attaching an authentic deed, he uses a false identity or a fake letter or document, so that a Notary who tries to help formulate the will of that party into an authentic deed becomes involved in legal problems and can even be accused of participating in or assisting in committing a criminal act in the process of making the deed. the authenticity, even though the Notary is not authorized or obliged to check the authenticity of all documents submitted by the parties to the Notary. This is a strong warning for Notaries to be careful in carrying out their duties as public officials in making authentic deeds. If in the event that the Notary Honorary Council does not find any evidence related to the alleged malpractice committed by the Notary, the Notary Honorary Council is obliged to provide a form of legal protection to the Notary concerned by not giving approval to the investigator, prosecutor or judge to summon and examine the Notary in court.

It is felt that the current legal arrangements have not accommodated legal protection for Notaries. Protection of Notaries is only limited to the approval of the Notary Honorary Council. for the benefit of the judicial process, investigators, public prosecutors, or judges. As stated in Article 66 of Law Number 2 of 2014, which states:

(1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to:

a. Take a photocopy of the minutes of the deed and/or letters attached to the minutes of the deed or the protocol of the notary in the Notary's depository; and

b. Calling the Notary to attend the examination related to the Notary deed or protocol that is in the Notary's storage.

(2) Taking a photocopy of the minutes of the deed or letters as referred to in paragraph (1) letter a, an official report of the submission is made

(3) The Notary Honorary Council within a maximum period of 30 (thirty) working days from the receipt of the request for approval as referred to in paragraph (1) must provide an answer to accept or reject the request for approval.

(4) In the event that the Notary Honorary Council does not provide an answer within the period as referred to in paragraph (3), the Notary Honorary Council is deemed to have received the request for approval.

In providing legal protection to Notaries, the Notary Honorary Council must look carefully whether the reported Notary is proven intentionally or not to have committed a violation in the process of making an authentic deed. If it is proven to have committed a form of criminal act, such as falsifying a letter or ordering to commit and/or participating in committing a crime in the process of making an authentic deed, in this case the Notary Honorary Council as a legal protection institution does not need to provide any form of legal protection to Notaries like that, because in addition to tarnishing the good name of the Notary institution it will also have a sociological impact on society, that the Notary as an institution of trust will lose public trust. In this case as the implementation of Article 66 paragraph (1) of Law Number 2 of 2014, the Assembly Honorary Notary has the right to give approval to investigators who wish to summon a Notary to be examined in court. This is done to maintain the nobility and dignity of the Notary position itself, so that the legal protection of the Notary position is not misused by irresponsible parties involving the Notary. Notaries as public officials in carrying out their positions need to be given legal protection, among others first, to maintain the

dignity of their positions, including when giving testimony and proceeding in examinations and trials. Second, keep the minutes or letters attached to the minutes of the deed or protocol of the Notary in the Notary's storage. Third, keep the contents of the deed and the information obtained in the making of the deed confidential. Legal protection is an essential element as well as a consequence of the rule of law, that the state is obliged to guarantee the legal rights of citizens, not least for a notary. Legal protection for Notaries can be realized in a juridical arrangement (*bescherming juridische voorzieningen*). In carrying out their positions as public officials who carry out the profession in providing legal services to the public, it is necessary to obtain protection and guarantees in order to achieve legal certainty. Therefore, they are interested in conducting research on the Implementation of the Authority of the Notary Honorary Council in providing legal protection to Notaries in Medan City.

The formulation of the problem in this study are:

1. How is the relationship between the deed made by the Notary and the crime?
2. What is the legal protection for a Notary in connection with a Notary deed with a criminal act?
3. How is the implementation of the authority of the Notary Honorary Council in providing legal protection to Notaries in Medan City?

Based on the formulation of the problem, the objectives of this study are:

1. To analyze the relationship between a deed made by a Notary and a criminal act.
2. To analyze the regulation of the authority of the Notary Honorary Council in providing legal protection to Notaries.
3. To analyze the implementation of the authority of the Notary Honorary Council in providing legal protection to Notaries in Medan City.

## **B. Result: Relation Between Notary Deed and Crime**

The philosophical basis for the establishment of the Law on Notary Positions is the realization of legal certainty, order and legal protection with the core of truth and justice. Authentic made by or before a notary is able to guarantee certainty, order, and legal protection. The function and role of the Notary in the national development movement is increasingly complex today, because smoothness and legal certainty cannot be separated from the services and legal products provided by the Notary. The deed made by or before a notary becomes authentic evidence in providing legal protection to interested parties for the deed regarding the certainty of the event or legal action being carried out. The authentic deed contains the formal truth in accordance with what the parties have notified the Notary.

That what is contained in the Notary Deed has truly been understood and in accordance with the wishes of the parties, by reading it so that the contents of the deed are clear and providing access to information, including access to the relevant laws and regulations for the parties. Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in people's lives. In various business relationships, banking activities and so on, the need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relationships. Through an authentic deed, rights and obligations are clearly determined, guaranteeing legal certainty and at the same time it is expected to avoid disputes. Although the dispute cannot be avoided, in the process of resolving the dispute, the authentic deed is the strongest and most complete written evidence that makes a real contribution to the settlement of cases cheaply and quickly. In essence, the authentic deed contains the formal truth according to what the parties have notified the Notary. However, the Notary has an obligation to include that what is contained in the Notary deed has been understood and in accordance with the wishes of the parties. Thus, the parties can decide freely to approve or disapprove of the contents of the deed to be signed. As a public official, a Notary is required to be responsible for the deed he made. If it turns out that later it contains a dispute, this needs to be questioned, whether this deed was the fault of the Notary or the fault of the parties who did not want to be honest in providing information to the Notary; or whether there is an agreement that has been made between the Notary and one of the parties who appear.

If the deed issued by the Notary contains legal defects due to the Notary's fault, either negligence or due to the Notary's intention, then the Notary shall provide liability. Notaries as public officials who are authorized to make authentic deeds, in carrying out their duties can not only be punished or criminally prosecuted. But it can also be sued to the District Court based on the deed. In the case of a civil lawsuit, the Notary is only as a co-defendant, not as a defendant. However, the deed made by a Notary can be requested for cancellation by the aggrieved party based on a decision that has permanent legal force. In the Notary Position Act, it is regulated that when a Notary is proven to have committed a violation, it can be subject to or sanctioned, in the form of civil, administrative and Code of Ethics sanctions. Notary position. The sanctions have been regulated in such a way, both in the Notary Position Act and the Notary Position Code of Ethics, which do not regulate criminal sanctions against Notaries. In practice it is found that a legal action or violation committed by a Notary can actually be subject to administrative or civil sanctions or the Notary's Code of Ethics, but is later withdrawn or qualified as a criminal act committed by a Notary. The qualification aspect is;

1. date, month, year, and facing time;
2. Parties (who) appear before a Notary;
3. Facing signature;
4. The copy of the deed does not match the minutes of the deed;
5. There is a copy of the deed, without the minutes of the deed being made; and
6. Minutes of deed are not signed in full, but a copy of the deed is issued.

If this aspect is proven to have been violated by the Notary, the Notary concerned may be subject to civil or administrative sanctions, or this aspect is a limitation which, if proven, can be used as the basis for imposing administrative sanctions and civil sanctions against the Notary. But it turns out that on the other hand, such limitations are taken or resolved criminally or used as the

basis for criminalizing a Notary, namely having made a fake letter or falsifying a deed with qualifications as a crime committed by a Notary. . If the Notary is proven to have violated the formal aspect, it can be subject to civil sanctions or administrative sanctions depending on the type of violation or sanctions from the Notary's Code of Ethics. Within the scope of the task of carrying out the position of a Notary, namely making evidence that is desired by the parties for a certain legal action, and that evidence is at the level of Civil Law, and that the notary makes a deed because there is a request from the parties facing. Without a request from the parties, the notary will not make any deed, and the notary will make the deed in question based on evidence or information or statements of the parties stated or explained or shown to or before a notary. in the form of a notarial deed while still adhering to the rule of law or the procedure or procedure for making the deed and the legal rules relating to the relevant legal action as outlined in the deed. The role of the notary in this case is also to provide legal advice in accordance with the existing problems. Whatever legal advice is given to the parties and then poured into the deed concerned remains as a wish or statement of the parties concerned, no and not as a statement or statement of a Notary.

Criminalizing a notary based on these aspects without conducting in-depth research or proof by looking for elements of error or intentionality from the notary is an act without a legal basis that cannot be accounted for. For example:

1. Notaries are accused with qualifications of making falsely or falsifying a letter as if the letter is an original and not falsified letter (Article 263 paragraph (1) of the Criminal Code), of falsifying a letter, and the forgery has been carried out in the deed - authentic deed (Article 264 paragraph (1) number 1 of the Criminal Code), includes a false statement in an authentic deed (Article 266 paragraph (1) of the Criminal Code). The authority of a notary is to make a deed, not to make a letter, thus it must be distinguished between a letter and a deed. Letter means a letter in general which is made to be used as evidence or for certain purposes in accordance with the wishes or intentions of the maker, which is not bound by certain rules, and the deed (authentic deed) is made with the intention of being evidence that has perfect evidentiary power, made before an official authorized to make it and bound in a predetermined form. Thus, the definition of a letter in Article 263 paragraph (1) of the Criminal Code is not *mutatis mutandis* as an authentic deed, so it is not appropriate if a Notary deed is treated as a letter in general.

2. Information or statements and wishes of the parties/appearers expressed before a notary is the basic material for a notary to make a deed according to the wishes of the parties who appear before a notary. Without any information or statements and wishes from the parties, it is impossible for a notary to make a deed. Even if there is a statement or information that is suspected to be false, it is included in the authentic deed, it does not cause the deed to be fake. For example, an authentic deed includes a statement based on a marriage certificate shown to a notary or an Identity Card (KTP) from the original physical observation. If it is proven that the marriage certificate or ID card is fake, it does not mean that the notary has entered or included false information in the notary deed. Materially the falsity of this matter is the responsibility of the parties concerned.

the punishment of a notary can only be carried out with limitations, if:

1. There is a legal action from the notary against the formal aspect of the deed which is intentionally, fully aware and with conviction and is planned, that the deed was made before a notary or by a notary jointly (agree ) to be used as a basis for committing a criminal act;
2. There is a legal action from a notary in making a deed before or by a notary which if measured based on the Notary Position Act is not in accordance with the Notary Position Act; and
3. The notary's actions are not appropriate according to the agency authorized to evaluate the actions of a notary, in this case the Notary Supervisory Council.

Notary in carrying out his position as a public official who makes an authentic deed is not possible to falsify the deed, but the party who appears asking for the deed to be made does not rule out the possibility that the appearer gives incorrect information and provides fake letters/documents so that the deed is born. containing false information. Notaries in taking an action must be prepared and based on the applicable legal rules. Examining all evidence shown to a notary and listening to statements or statements of the parties must be carried out as the basic material to be stated in the deed. In other words, a notary in carrying out his duties must have accuracy, where this accuracy is acting honestly, thoroughly, independently, impartially, and safeguarding the interests of the parties involved in legal actions.

In addition to procedural fraud, notaries in carrying out their duties can also commit criminal fraud. These criminal misappropriations include:

#### **1. Deed Forgery**

In this case where a notary is involved with the wishes of the appearer to provide unilateral benefits to the appearer. The notary colluded with the appearer in the matter of making the deed. Forgery of this deed can be in the form of forgery of signature by the appearer who is known by the notary concerned.

#### **2. Falsification of Information**

Before making the deed, the notary also first asks for information from the appearers. This statement of the appearer will later be poured by the notary into the deed. In the case of taking information from a notary public, a notary may also be involved in the falsification of this information. The notary colludes with the appearer in the case of loading false information to be made in an authentic deed.

Criminalizing a notary with reasons for the formal aspect of the deed will not cancel the notary deed which is the object of the criminal case and the deed concerned remains binding parties. In civil cases, violations of the formal aspects are considered as an act of violating the law and this is done by filing a lawsuit against the notary. Denial of this formal aspect must be carried out by the appearer himself, not by a notary or other parties. Material aspects of the notary deed, everything stated must be judged to be

true as a statement or statement of a notary in the relaas deed and must be assessed as a statement or statement of the parties in the deed party (party). Anything that must exist materially in the deed must have certain limitations. Determining such limits En depends on what is seen and heard by a notary or stated, explained by the parties before a notary.

### C. Legal Protection Against Notaries in Relation to Notary Deeds with Criminal Acts

In the opinion of Phillipus M. Hadjon that legal protection for the people against a government action can be preventive and repressive, namely as follows:

1. Preventive legal protection aims to prevent disputes which directs government action to exercise prudence in decision-making based on authority. In this case, the Notary as a public official must be careful in carrying out his duties based on the authority given to him by the State to make an authentic deed to ensure legal certainty for the community.

2.Repressive legal protection aims to resolve disputes, including their handling in the judiciary. In this case, with so many authentic deeds made by a Notary, it is not uncommon for the Notary to be questioned by one party or another because it is considered to have harmed his interests, either by denying the deed and the contents of the deed, signature or the presence of the party before the Notary.

#### 1. Notary Supervisory Council

Since the presence of notary institutions in Indonesia, supervision of notaries has always been carried out by the judiciary and the government, that the purpose of supervision is so that notaries when carrying out their duties fulfill all requirements related to the implementation of notary positions, in order to safeguard the interests of the community. , because the notary is appointed by the government, not for the benefit of the notary himself but for the benefit of the community he serves. Another purpose of supervision of a notary is that a notary is presented to serve the interests of the community who need evidence in the form of an authentic deed according to a request from anotary.Supervision of the implementation of the notary position is carried out by the minister in charge of notary affairs and in carrying out this supervision the minister forms a separate institution called the assembly. notary supervisor. The supervision carried out by the assembly is not only the implementation of the duties of the notary position to comply with the provisions of the UUJN, but also in accordance with the implementation of the law notary code of ethics. Article 67 Paragraph (3) UUJN determines that the Supervisory Council consists of 9 (nine) people consisting of the following elements:

- a. Government as many as 3 (three) people.
- b. There are 3 (three) notary organizations.
- c. Experts/academics as many as 3 (three) people.

has the scope of authority of the Supervisory Council to convene a session to examine allegations of violations of the notary code of ethics or violations of the implementation of notary positions.

- a. There are allegations of violations of the code of ethics.
- b. 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 supervisory board as the only agency authorized to supervise, examine and impose sanctions on notaries and in Article 68 of the UJN determines that the notary supervisory board consists of the Regional Supervisory Council (MPD), Regional Supervisory Council (MPW) and Central Supervisory Council (MPP).

#### 2. Notary Honorary Council

The Notary Honorary Council is a body that has the authority to carry out Notary development and the obligation to give approval or rejection for the purposes of investigation and judicial proceedings, for taking a photocopy of the minutes of the deed and summoning a Notary to attend an examination related to the Notary deed or protocol. which is in the notary's custody. The Notary Honorary Assembly consists of:

##### a. Central Notary Honorary Council

The Central Notary Honorary Council is formed by the Minister and is domiciled in the capital city of the Republic of Indonesia, which consists of the following elements:

- 1) Government (3 people);
- 2) Notary (2 people) B
- 3) Expert or academic (2 people).

##### b. Regional Notary Honorary Council

The Regional Notary Honorary Council consists of government elements, Notaries and Experts or Academics. The Regional Notary Honorary Council consists of 7 (seven) members consisting of 1 (one) chairman, 1 (one) deputy chairman, and 5 (five) members. elected from and by members of the Regional Notary Honorary Council which is carried out by deliberation. If the election by deliberation does not reach an agreement, the election of the chairman and vice chairman The Regional Notary's Honorary Council is conducted by voting. The Regional Notary's Honorary Council has the following duties:

- 1) To examine applications submitted by investigators, public prosecutors and judges.
- 2) Give approval for summons of a Notary to be present in the investigation, prosecution and judicial process.

The Regional Notary Honorary Council in carrying out its duties has the function of providing guidance in the context of:



- 1) Maintaining the dignity and honor of a Notary in carrying out his profession.
- 2) Provide protection to the Notary in relation to the Notary's obligation to keep the contents of the deed confidential.

The authority attached to MKN in approving police actions against a notary is mandated authority, namely the authority that comes from a process or delegation from a higher official or agency to a lower official or agency, in this case the delegation of authority from the Minister of Law and Human Rights. Humans to MKN to carry out the task of giving approval or not to investigators to examine notaries in the judicial process. This authority belongs to the MPD prior to the issuance of the Constitutional Court Decision Number 49/PUU-X/2012. In connection with the granting of the MKN authority associated with the Constitutional Court Decision Number 49/PUU-X/2012, it can be explained that the MKN authority by UJUN is given two powers as stipulated in Article 66UJUN, namely:

- a. The authority to give approval or refuse to give approval for the summons of a notary who is indicated to have committed a crime that must be examined by investigators, public prosecutors or judges and take a photocopy of the minutes.
- b. The authority to provide guidance to notaries so that notaries are protected from prosecution on the basis of having committed a crime.

The first authority is a change from the provisions of Article 66 Paragraph (1) UJUN Number 30 of 2004 which has been declared invalid as the decision of the Constitutional Court Number 49/PUU-X/2012, while the authority of MKN to provide guidance is also regulated in the Regulation of the Minister of Law and Human Rights. Man Number 7 of 2016 concerning the Honorary Council of Notaries. Article 20 of the Minister of Law and Human Rights Number 7 of 2016 stipulates that the authority of the Regional MKN based on the decision of the Regional MKN meeting includes:

- a. Examination of notaries for which approval is requested from the Regional MKN by investigators, public prosecutors, or judges.
- b. Granting approval or rejection of requests for approval to take a photocopy of the minutes of the deed and/or letters attached to the minutes of the deed or notary protocol in the notary's depository.

Granting approval or rejection of requests for approval to summon a notary to be present in investigations, prosecutions, and judicial processes relating to notarial deed or protocols that are in the custody of a notary. for taking a photocopy of the minutes of the deed and summoning a notary to attend an examination related to the notarial deed or protocol that is in the notary's depository. Originally Article 66 of the UJUN Number 30 of 2004 stipulates that for the purposes of the judicial process, investigators, public prosecutors, or judges with approval MPD is authorized:

- a. Take a photocopy of the minutes of the deed and/or the letters attached to the minutes of the deed or the protocol of the notary in the notary's depository.
- b. Calling the notary to attend the examination related to the deed he made or the notary protocol that is in the notary's storage.

Then Article 66 of the UJUN Number 30 of 2004 has been amended several times, namely:

- a. Based on the decision of the Constitutional Court number 49/PUU-X/2012 dated 28 May 2013 decided that Article 66 Paragraph (1) of Law Number 30 of 2004 concerning the phrase "with the approval of the Regional Supervisory Council" was declared to have no binding legal force. The considerations of the judges of the constitutional court include:

1) That against a notary as referred to in Article 66 Paragraph (1) of the UJUN different treatment can be justified as long as the treatment is related to actions within the scope of the code of ethics, namely those relating to the attitude, behavior, and actions of the notary in carry out duties related temporality. According to the constitutional court, the different treatment for the position of a notary is regulated and protected in the notary code of ethics, while a notary as a citizen in the law enforcement process at all stages must be treated equally before the law as referred to and guaranteed by Article 27 Paragraph (1) and Article 28D Paragraph (3) of the 1945 Constitution. Therefore, the requirement for MPD approval is contrary to the principle of independence in the judicial process and is contrary to the obligations of a notary as a citizen who has equal standing before the law. In this way, protracted judicial process will also be avoided, which will result in protracted efforts to enforce justice which in the end can actually lead to denial of justice itself. Delayed justice is justice delayed (justice delayed justice denied)

2) That the constitutional court on the other hand also understands the importance of maintaining the authority of a notary as a public official whose honor must be guarded so that special treatment is needed in order to maintain the dignity of the notary concerned in the judicial process, including against the notary, it requires prudence from law enforcement in carrying out legal actions, but such treatment must not conflict with the principles of the rule of law which include, among others, equality before the law and the principle of judicial independence.

The issuance of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of a Notary as mentioned above, Article 66 of Law Number 30 of 2004 has been amended as follows:

That for the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the MKN authorized:

- 1) Take a photocopy of the minutes of deed and/or letters attached to the minutes of the deed or notary protocol in the notary's depository.
- 2) Calling the notary to attend the examination related to the notary deed or protocol that is in the notary's storage.
- 3) Taking a photocopy of the minutes of the deed or the documents made an official report of delivery.

4) MKN within a maximum period of 30(thirty) working days from the receipt of the letter of request for approval must provide an answer to accept or reject the request for approval.

5) In the event that the MKN does not provide an answer within that time period, the MKN is deemed to have received the request for approval.

As amended by UJUN Number 2 of 2014 it is stated that in carrying out coaching, the minister forms MKN. While the provisions regarding the duties and functions, terms and procedures for appointment and dismissal, organizational structure, work procedures and budget for MKN are regulated by a Ministerial Regulation. Number 2 of 2014 mentioned above, has issued Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning MKN, hereinafter referred to as Permenhumham Number 7 of 2016. In understanding the legal protection of Notaries in Article 66 of Law Number 2 of 2014 it must include it includes a substitute Notary, Temporary Notary Officer and Notary Emeritus or *werda* Notary, because in practice there are still frequent summons (examination) to Notaries who have stopped serving as Notaries to be examined by investigators related to deeds that have been made while still serving as a Notary. It is hoped that with the existence of Law Number 2 of 2014 the existence of the Notary Honorary Council can provide legal protection for all people who (have) carried out their duties as a Notary.

#### **D. Implementation of the Authority of the Notary Honorary Council in Providing Legal Protection to Notaries**

Speaking Implementation of law means talking about the implementation of the law itself where the law was created to be implemented. The law can no longer be called a law, if it has never been implemented. The implementation of the law always involves humans and their behavior. The role of the Notary Honorary Council is very necessary to provide legal guidance and protection for Notaries in order to avoid legal problems that can bring down the Notary institution as an institution of trust for the community. The presence of the Notary Honorary Council is expected to provide an optimal form of legal protection for Notaries and can provide preventive and curative guidance in the enforcement of Law Number 2 of 2014 in carrying out their duties as public officials.

If there is a case related to the alleged malpractice carried out by a Notary in the process of making an authentic deed that causes harm to one of the parties in the deed he made, then in this case there are several steps that must be obeyed by both investigators and MKN, in order to ensure certainty. and legal protection for related parties, namely:

1. investigators, public prosecutors, and judges for the benefit of the judicial process can take a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the protocol of the Notary in the Notary's custody by submitting an application. in writing to MKN, and the application is also submitted to the Notary concerned;
2. MKN has the authority to examine Notaries who are reported to have committed criminal acts in the process of making the deed.
3. MKN may give approval to investigators, public prosecutors or if the Notary concerned is proven to have committed a criminal offense in the process of making the deed.
4. If the MKN does not find any evidence of a violation related to the alleged crime committed by the Notary, then in this case MKN cannot give approval to the investigator who wants to summon the Notary.
5. The period for MKN in giving approval or not giving written approval to the investigator is 30 days from the receipt of the application letter from the investigator (Article 66 paragraph (3) UJUN-P).

If within that period of time MKN does not provide an answer, then MKN is considered to have given approval (Article 66 paragraph (4) UJUN-P).

The position of MKN in providing legal protection for Notaries is an independent institution, because in this case the existence of MKN is not a sub part of the government that appointed it. MKN in carrying out its authority issues a decision not influenced by other parties or institutions, so in this case the decision made by MKN cannot be contested. Regarding the position of MKN should be formed in stages starting from the district or city (regional), regional, and central levels, this aims to avoid the accumulation of cases that enter and must be resolved through MKN, and in addition so that MKN institutions can quickly respond in giving decisions to approve or refuse requests from investigators related to taking a photocopy of the minutes of the deed or the summons of the Notary itself for the benefit of the judicial process. This is because the law only gives 30 days to give the decision. If there is no response within that timespan, the Honorary Council is deemed to have approved there quest.

The existence of the MKN which is formed in stages makes it also possible to provide appeals for parties who feel disadvantaged (Notaries and investigators) to a higher level, namely through the Regional MKN, as well as the Central MKN, by placing the results of the Regional MKN decisions as the object of examination. The result of the decision issued by the Central MKN is a final decision or cannot be contested. This is done because the MKN is an independent body that issues decisions as the final result of the Notary examination. Notary institutions, and can confirm the existence of the MKN institution. It is also intended that the Notary institution is not easily blamed by other parties related to the deed made by the Notary.

#### **E. Conclusion**

1. The connection between an authentic deed made by a Notary with the occurrence of a crime is an authentic deed and the protocol can be used as evidence of a criminal actor in the making there is a criminal element which is the Notary's fault or the fault of the parties not wanting to be honest in giving their statements to the Notary; or whether there is an agreement that has been made between the Notary and one of the parties who appear, the factors that cause the occurrence of deed forgery, in this case where a Notary is involved with the wishes of the appeared to provide unilateral benefits to the appeared. The notary colluded with the appeared in the matter of making the deed. Forgery of this deed can be in the

form of falsification of signatures by the appeared who is known by the notary concerned, and falsification of information by the appeared, in the case of taking information from the appearance of the notary may also be involved in falsifying this information. The notary colludes with the appeared in the case of loading false information to be made in an authentic deed. This can be caused by intentional and negligence.

2. Legal protection for Notaries as public officials in Article 66 paragraph (1) of Law Number 2 of 2014, states that: For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to:
  - a. Take a photocopy of the minutes of the deed and/or the letters attached to the minutes of the deed or the protocol of the Notary in the Notary's storage; and
  - b. Calling the Notary to attend the examination related to the Notary deed or protocol that is in the Notary's storage.

Legal protection for Notaries in Article 66 of Law Number 2 of 2014 includes substitute Notaries, Temporary Notary Officials and Notary Emeritus or *werda* Notary.

3. The Notary Honorary Council in connection with the authenticity deed made by a Notary with a criminal act shall conduct an examination of the Notary concerned. If during the examination there are indications that the Notary has deviated from the procedure for making the deed, the Notary Honorary Council will give permission or approval to the Police for the summons. However, if the Notary's examination does not find any indication of a criminal act, the Notary Honorary Council has the authority to not give approval for the summons.

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