

## LEGAL PROTECTION FOR NOTARIES AS THE CO-DEFENDANT PARTIES DUE TO APPEARERS' FALSE INFORMATION

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### ABSTRACT

*The research objective was to determine and analyze why Notaries were vulnerable to being appointed as co-defendants or withdrawn in legal problems. Therefore, legal protection was needed against a Notary appointed as a co-defendant due to false statements made by the appearer. The theories used were justice theory, protection theory, legal certainty theory, and legal authority. This research used the normative research method, also known as doctrinal legal research, which focused on written regulations. Furthermore, this research used primary and secondary legal materials. The collection technique of legal materials, including literature, journals, laws, and regulations, was a qualitative data analysis technique. The research results concluded that: first, Notaries are vulnerable to being used as co-defendants because the notary and the parties involved have a legal relationship in making the deed. Hence, if a problem occurred and they felt aggrieved, the parties would withdraw the Notary as a co-defendant because they assumed that the Notary participated to provide the deed. Consequently, they hoped that the notary could also be responsible for the losses they suffered. Second, the notaries were vulnerable to legal problems, so the notaries required legal protection, and the legal protection itself has been regulated clearly in the Law on Notary Positions in Article 66 concerning the interests in court proceedings, investigators, prosecutors, or judges must all obtain approval from the Notary Honorary Council. Hence, the Notary felt protected because he could not immediately be summoned for questioning.*

Keywords: Legal Protection, Notary, Co-Defendant, False Information, Appearer

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### INTRODUCTION

In recent days, Notaries are something important in society. The Notaries play a role in public services. The Notary's role is intended to serve and assist the community in agreeing in the form of an authentic deed with legal certainty that will be used as evidence that has perfect proof.

The importance of the role of the Notary in helping to protect the public in an agreement is more preventative because the deed is a perfect evidence so that the authentic deed is made to prevent the community from legal problems. So that the issuance of an authentic deed makes people feel safe and protected against legal problems that will one day come (Sjaifurrachamn and Habib Adjie, 2011).

Given how significant the duties and position of the Notary in society are, as well as the evidentiary value of the authentic deeds he makes, the position of a notary can be said to be a trusted position. This position of trust given by law and society requires a person who works as a notary to be responsible for carrying out the trust as well as possible and uphold general ethics, dignity, and position as a general official (Abdul Jalal, Suwitno and Sri Endah Wahyuningsih, 2018: 228).

The provisions of Article 1 Paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary explains that a Notary is a public official authorized to make an authentic deed and has other powers as referred to in this law or based on other laws.

A Notary as a Public Official has the scope of a Notary, namely to make evidence desired by the party for a certain legal action, and that evidence is at the level of Civil law, and that the Notary takes action because there is a request from the party facing him, without any request from the parties. parties, the Notary will not make any deed, and the Notary will make the intended deed based on evidence or statements of the parties or shown to or before the Notary, and then the Notary will frame it outwardly, formally and materially in the form of a Notary deed, based on legal rules or procedures or procedures for making a deed and rules relating to the legal action in question that remain in the deed (Habib Ajie, 2007).

A notary plays a vital role in making civil evidence, such as the authentic deed. In carrying out his duties, the Notary must always act carefully, impartially, and thoroughly in examining the facts and essential documents shown to the Notary, listening to statements, and recording the statements of the presenters.

In this case, the Notary is necessary for the community and has a heavy responsibility. If a deed he makes is problematic, the Notary is drawn into a problem. However, the Notary in creating the deed does not necessarily of his own will. Notaries make it based on the parties' wishes and the applicable laws and regulations.

The importance of a notary doing a deed makes the Notary always included in a matter regarding the deed he made. A notary is considered very vulnerable to being used as a co-defendant in legal matters and a court of law for his deed. One party feels aggrieved by the existence of the deed, so he sues a notary because he feels that the Notary had a leading role in doing the deed.

In practice, it is often found when there is a Notary deed that the parties or other third parties dispute, the Notary is frequently withdrawn as a party participating in committing or helping to commit a criminal act, namely making or providing false information in the Notary deed (Habib Ajie, 2008).

Problems that always concern notaries make notaries find out the protection needed to protect the authority, obligations, and rights of a notary. Many consider that a notary needs to be protected so that an investigator or a judge in a court cannot necessarily blame a deed made by a notary. Many new notaries need to be guided and have a strong mentality to face various problems in carrying out their positions as notaries; thus, Thus, new notaries feel safe with legal protection aimed at notaries in carrying out their duties.

In this case, the Notary needs legal protection if the Notary is withdrawn in a legal case. With legal protection, it is felt that the Notary cannot directly participate or be appointed as a co-defendant. The existence of legal protection hopefully can protect Notaries from legal problems that have recently been found in the Notary's environment.

## RESEARCH METHOD

In this study, the author used a normative research design. Normative research focuses on written laws and regulations that find legal rules, legal principles, or legal doctrines proposed by experts related to the legal issues raised and then concludes from the findings above to answer the problems. The theories used were justice theory, protection theory, legal certainty theory, and legal authority. The legal materials used were primary and secondary legal materials. Primary legal materials are sourced from laws and regulations; secondary sources of materials, namely explanations of primary legal materials in the form of books, journals, expert opinions, and legal issues related to the legal protection of notaries. The analysis technique used was qualitative analysis using statutory provisions. Then, it was related to literature studies and conclusions.

## RESEARCH RESULTS

### 1. Notaries are Vulnerable to Being a Co-Defendant

A notary is arguably a position of trust, and that is precisely what notary services are needed, both now and in the future. A notary is an important place to realize the wishes of the client. Then, if in the future it turns out that the client has broken a promise or even a notary has broken a promise, it can be said to be a default as it has been regulated in Article 1243 of the Civil Code with consequences must be responsible for his mistakes (Irma Garwan et al., 2021: 31)

The authority of a Notary has been regulated in Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning the Position of a Notary. Article 15 paragraph (1) concerning the authority of a Notary states that the Notary has the authority to do authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of doing the deed, keeping the deed, providing grosse, copies, and quotations of the deed.

In addition, Article 15 paragraph (2) concerning the Position of a Notary states that a Notary is also authorized to ratify signatures and determine the certainty of the date of an underhand letter by registering in a particular book, registering an underhand letter by registering in a particular book, making copies of the original letter in a particular book under the hand in the form of a copy containing the description as written and described in the letter in question, ratifying the suitability of the photocopy with the original letter, providing legal counseling in connection with the making of the deed, providing the deed related to land and making the deed of the minutes of the auction. Based on some of these authorities, the services of a Notary are mostly needed by the community to carry out authentic deeds.

In carrying out his position, a Notary must be able to act professionally based on a noble personality by always performing his duties under applicable laws and regulations while upholding the Notary professional code of ethics as a sign that must be obeyed. Notaries must know what is called professionalism in carrying out their positions which have the following elements: (1) must be honest with those who appear or themselves (2) know with certainty the limits of their authority (3) have good moral integrity (4) are not tempted by money so that their position is not based on money (Liliana, 1995: 86).

The task carried out by a Notary is so heavy that the Notary is vulnerable to legal problems if there is an error in the deed he made, even though it is not the fault of a notary, it will still be scattered to be held accountable because he feels that the notary made the deed..

From this authority, the Notary has a not-light responsibility. The regulation of the position of a notary only focuses more on the authority, obligations, and prohibitions of a notary so that if there is a legal case involving a notary. The law on the position of the notary itself does not regulate it. There are no specific rules regarding if a notary is withdrawn in the realm of law.

Heretofore, news about a Notary or PPAT being "examined" means being brought to the realm of law due to carrying out his duties everywhere. Nevertheless, not few, after research, the case did not need to go to the realm of law. However, it was still being processed into the realm of law with various arguments by law enforcement (Agus Wijayanto, 2017: 793).

It makes the attention of all notaries as if the notary is always looking for reproach for faults by certain persons. Thus, the notary is very vulnerable to legal problems. The aggrieved party has sued many notary officials for the deed he made.

Notaries are advised to always be thorough, careful, and professional in carrying out their positions so that there is no gap in finding faults with the notary. Notaries must adhere to the Law on Notary Positions and the Code of Ethics to minimize lawsuits against notaries.

Even though the notary is careful, it is difficult to know whether the presenter is telling the truth or not because the notary's abilities are limited. Thus, the notary can only know the formal truth, not the material. For instance, an heir faces a notary with a certificate of inheritance and wants to buy and sell land, where it turns out that all of the heirs are not listed in the heirs' letter from the village. Notaries do not have the authority to investigate whether the documents they brought are correct.

One of the reasons why notaries are often used as co-defendants is that the client or the appearer facing the notary does not speak the truth. Therefore, it is detrimental for a notary if what the client said is invalid, and the notary has no authority to investigate whether all the client's words are correct. If everything that is brought and the information said by the client does not violate the rules, the notary has considered that what the client said to the notary is correct.

Any party who feels aggrieved may claim compensation for losses as in Article 1365 of the Civil Code, which states, "Every unlawful act that causes harm to another person obliges the person who, because of his mistake in issuing the loss, replaces the loss".

The article has made one of the reasons why the notary is vulnerable to being a defendant. It is due to the parties who feel aggrieved. After all, the deed made by the notary causes harm to one the appearing party, so that the notary is withdrawn and dragged into a problem because it has harmed the deed written by the notary..

The provisions of Article 1365 of the Civil Code contain the following elements (Dedi Purwadi, 2017: 191):

- a. Acts that violate the law
- b. There must be an error
- c. There must be a loss caused
- d. There is a causal relationship between the act and the loss.

Hence, applying Article 1365 is not permissible to immediately use the article if there is a direct loss. However, all elements must also be fulfilled. Suppose one of the elements is not fulfilled. In that case, the notary cannot be said to be detrimental because the notary has provided the deed under the appearer's wishes, and the deed making has been adjusted to the statutory regulations that regulate it.

When the Notary deed made before or by a Notary has been completed and given to the parties or appearers, then the Notary's duties have been completed. Furthermore, the Notary shall administer the minutes of the Notary deed, which will last as long as the world has not ended. As long as the Indonesian Notary world is not dissolved, a copy of the deed/minuta deed will similarly have a juridical age that can exceed the biological age of the Notary. A notary deed as an authentic deed has the power of perfect and robust proof. Therefore, whoever declares the deed is wrong or incorrect, then the one who states it must prove it through the district court trial. It needs to be applied as the meaning of the authenticity of the notary deed (Agus Wijayanto, 2017: 795).

Proof of a perfect deed makes the notary vulnerable to being called into legal problems. Thus, he is considered to be involved. This assumption makes Notaries vulnerable to being used as co-defendants in legal cases.

The relationship between the Notary and the parties makes the Notary vulnerable to being a co-defendant because many presenters nowadays are making false statements or false documents. Meanwhile, the Notary has no obligation to check whether everything brought by the parties is appropriate. Notaries only act under the principles of prudence and professionalism.

In carrying out their current duties, the Notary faces the risk of being able to be brought into the realm of administrative law, civil law, and criminal law in connection with his actions. Notaries are often used as co-defendants in court. It can be seen that currently, there is a notary who is brought to a court of law and usually as a co-defendant so that the Notary in the performance of his office is overshadowed by bad things that can be brought at any time to the court of law (Khairunnisa Noor Asufie and Ali Impron, 2021: 89).

## **2. Legal Protection for Notaries as Co-Defendants**

Legal protection for Notaries is felt necessary to protect several things related to Notaries being dragged to court because of disputes between the parties. In this case, the protection is carried out solely to protect the Notary as a public official, not as an individual.

The protection of the Notary must be carried out fairly and maximally in line with the Notary as a public official who helps the public to convey everything into the deed they want. False information made by the appearer will harm the notary. If indeed the false information made by the appearer is proven and makes one of the parties feel aggrieved and sue the court, the notary will undoubtedly be involved in the This requires legal protection for a notary in the review process of the alleged deed forgery in Article 66 of the Notary Position Act through a preliminary examination by the Regional Notary Honorary Council (MKNW) so that a notary summoned by the investigator must be approved by the Regional Notary Honorary Council to be summoned and examined before the investigator (Andi Nurfajri Riandini et al., 2019: 54)

Notaries as public officials in carrying out their positions in providing services to the public are given legal protection as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Law on Notary Positions Article 66, which mentions:

- 1) For the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary Honorary Council, are authorized to:
  - a. Taking the Minutes of Deed and/or letters placed on the Minutes of Deed or Notary Protocols in the Notary's depository; and
  - b. Summoning the Notary to appear in the examination related to the Deed or Notary Protocol in the Notary's custody.
- 2) Copying the Minuta Deed or letters referred to in paragraph (1) letter a, an official submission report is made.
- 3) The Notary Honorary Council must provide an answer to accept or reject the request for approval within 30 (thirty) working days from the receipt of the request for approval, as referred to in paragraph (1).
- 4) If the Notary Honorary Council does not provide an answer within the period referred to in paragraph (3), the Notary Honorary Council is deemed to have received the request for approval.

Article 66 of the Law of Notary Position explains that as public officials are given legal protection, notaries cannot be directly summoned. All processes in which a notary is summoned for questioning as a witness or co-defendant must go through a process determined by the Notary Honorary Council. The Notary Honorary Council first summons the Notary concerned for questioning before deciding whether to approve to examine. If the Notary Honorary Council approves an examination of t a notary and an authentic deed he has made, then to protect the Notary, can use his right of denial, and the Notary is entitled to assistance from the management of the Indonesian Notary Association who can provide support so that the Notary can obtain legal standing Correct.

Article 66 paragraph (1) of the Law of Notary Position is an effort to enforce the implementation of the obligation to deny and the right to refuse a Notary, where the approval of the Notary Honorary Council is the key to unlocking the obligation to deny and the right to deny a Notary. After receiving a request from the police, a public prosecutor or court judge invites a Notary in an examination related to the deed he made or the Notary protocol in the Notary's depository. Furthermore, the Notary Honorary Council will summon the Notary concerned to be examined whether there is any relevance to presenting a Notary in the examination process before the court in connection with the deed he made, where one or more parties used a notary deed as evidence. Suppose, according to the consideration of the Notary Honorary Council after examining the Notary concerned, the presence of the Notary in the trial is required. In that case, the Notary Honorary Council will provide a letter of approval to the applicant, namely the police, prosecutors, and courts, preferably if according to the consideration of the Notary Honorary Council, the presence of a Notary in court is not required because there is no its relevance to the deed made, which is used as evidence, the Notary Honorary Council will reject requests from the police, prosecutors, or courts (Heryanti, 2016: 329).

The right to deny and the obligation to deny is one form of legal protection a notary provides. Article 4 of the Law on Notary Positions states that, "I swear/promise: ... .. that I will keep the contents of the deed and information obtained in the exercise of my position secret .... ". In this article, the Notary has legal protection for Keeping a deed secret is a right of denial by a notary all the contents of the deed and things that are not written in the deed so that with the right to deny, the Notary has the right not to be present as a witness or resign as a witness because he must keep secret all the contents of the deed made by the Notary.

Obligations to deny are obligations that a Notary owns, a Notary because of his position (*verschoningrecht*), an obligation to deny (*verschoningsplicht*), and an obligation to provide information on the deed he made. The statement/testimonial given by the Notary is following as stated in the deed. The notary must keep the entire contents of the deed and all the information he heard confidential (Khairunnisa Noor Asufie and Ali Impron, 2021: 106).

The obligation to deny is a crucial instrument given by the Notary Position Act to Notaries. Nevertheless, in practice, this obligation is not carried out by many Notaries, even most Notaries when examined by the Local Supervisory Council, Regional Supervisory Council, or Central Supervisory Council, or during examination by investigators or in court, prefer to open their mouths to tell and disclose all matters relating to the deed made by or before a Notary. Thus, the position of a Notary as a position of trust has been violated by themselves (Khairunnisa Noor Asufie and Ali Impron, 2021: 118).

Heretofore, "lex specialist derogat legi generali" is used. Hence, notaries have clearly regulated the legal protection of the notary in the Notary Position Act specifically to override the Criminal Code but in practice is not so.

Legal protection given by a notary to his deeds in a civil manner is the summons of a notary by the public prosecutor investigator. The judge must be carried out with the approval of the Notary Honorary Council.

## CONCLUSION

Notaries are vulnerable to being used as co-defendants for false statements of the accused because of the Notary's relationship with these parties; many of the plaintiffs are currently making false statements or false documents. Meanwhile, the Notary has no obligation to check whether everything brought by the parties is appropriate. Notaries only perform based on the principles of prudence and professionalism. They have duties, obligations, authorities, and prohibitions that have been clearly explained in the Notary Position Law. Therefore, the Notary has a large responsibility for his deeds. Although, in contrast, the Notary does not have an obligation to check the correctness of the documents or information submitted by the parties, the Notary must also apply the principle of prudence and meticulousness in doing deeds. If one party does this, the Notary is also included as a co-defendant.

Legal protection for Notaries was necessary because Notaries were frequently involved in legal cases that attracted a Notary. In the Law on Notary Positions, it was evident that the protection of Notaries was contained in Article 66 of the Law on Notary Positions through preliminary examination by the Regional Notary Honorary Council (MKNW) so that a Notary who is summoned by an investigator must obtain approval from the Regional Honorary Council to be summoned and examined before an investigator. Hence, all must go through the Notary Honorary Council and could not directly summon Notaries individually for questioning. Then, in carrying out calls, Notary was accompanied by a Notary Supervisory Council to protect all their rights and obligations.

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