

The role of the notary honorary council regarding the summoning of notaries by the resort police investigators of Banda Aceh city

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Abstract

Based on Article 66 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, it clearly states that only the Notary Honorary Council can approve the summons and/or collection of the Minutes of the Deed and/or letters attached to the minutes of the deed or the Notary protocol in the Notary's storage. However, in reality, some cases are permitted, and those that are not allowed by the Aceh Region Notary Honorary Council to be examined by investigators.

Based on the background above, this study aims to analyze the problem of the position of the Notary Honorary Council regarding the summons of notaries by investigators, the considerations of the Notary Honorary Council in granting permission for investigators to examine notaries suspected of committing criminal acts and the legal efforts that notaries can take against the decision of the Notary Honorary Council regarding the approval of investigators' requests.

The research method used in this study is empirical juridical, which is a type of sociological, legal research or field research that examines applicable legal provisions and what happens in reality in society. Data collection is carried out by interviewing related parties to answer the problems in this study.

The study results show that the Notary Honorary Council acts as a body with the authority to carry out Notary guidance and the obligation to provide approval or rejection for investigation and the judicial process. The approval given by the Notary Honorary Council to investigators is based on considerations of alleged criminal acts or assisting law enforcement in collecting evidence to detain suspects of criminal acts. The legal efforts that a notary can take if they do not accept the Notary Honorary Council decides to file a civil lawsuit for compensation to the District Court.

The suggestion from the results of this study is that the Ministry of Law and Human Rights should strengthen the supervision system of the Notary Honorary Council by forming an independent evaluation team. In addition, formulate regulations that provide access for notaries to take legal action if the Notary concerned feels disadvantaged by the decision of the Notary Honorary Council.

Keywords: Notary, legal counseling, notary authority

Introduction

Article 1 number 1 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary (hereinafter abbreviated as UUJN), a Notary is a public official who is authorized to do authentic deeds which are and have other authorities as referred to in this law or based on other laws. Public officials such as Notaries have a role in providing services to the community related to their authority in making authentic deeds. (Pertwi, 2017) The creation of an authentic deed requires written evidence. The presence of a notary is intended to help and serve the community that needs authentic written evidence regarding circumstances, events, or legal acts. Substantively, a notarial deed can be a condition, event, or legal act that is desired by the parties to be stated in the form of an authentic deed to be used as evidence and based on statutory regulations that certain legal actions must be made in the form of an authentic deed. (Ayuningtyas, 2020)^[20].

The Notary's duties, in addition to assisting by making authentic deeds, also include legal consultations for the public. A notary needs to understand the provisions stipulated by law so that the general public, who do not know or do not understand the rules of law, can understand correctly and not do things contrary to the law. Notaries prevent legal problems through authentic deeds that they

make as perfect evidence in court; what will happen if the credibility of the perfect evidence is doubted? The need for individual responsibility, namely the truth of the deeds made and social whose function is to be used by others, especially obedience to positive legal norms and willingness to submit to the Code of Professional Ethics, is even mandatory so that it will strengthen the existing positive legal norms. (Indonesia, 2008)

The UUJN stipulates that when a notary is proven to have committed a violation in carrying out his/her duties, the Notary may be subject to sanctions in the form of civil sanctions, criminal sanctions, administrative sanctions, and the Notary's code of ethics. A Notary is examined by Investigators, Public Prosecutors, and Judges if the Notary falls into the category of Article 33 of the Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning the Duties and Functions, Requirements, and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council, namely:

- a. There is an alleged criminal act related to the minutes of the deed and/or Notary documents in the Notary's custody;
- b. The right to sue has not lapsed based on the provisions on the expiration of the statute of limitations in the criminal law regulations;

- c. There is a denial of the validity of the signature from one or more parties;
- d. There is an alleged reduction or addition to the minutes of the deed and/or
- e. An alleged Notary is postponing the date (antidatum).

However, it was found that there were notarial deeds disputed by the parties listed in the deed or other parties interested in it. In addition, some notaries became parties who participated in or helped commit a criminal act related to the deed made. In this case, the Notary intentionally or unintentionally together with the parties made the deed with the intent and purpose of benefiting a particular party or party or harming other parties which must then be proven in court.

A legal protection mechanism is needed for a notary in the case of an examination process related to allegations of alleged forgery of deeds or other allegations in the criminal realm. Legal protection for Notaries in carrying out their duties and authorities for the implementation of service functions and the achievement of legal certainty in providing services to the community has been regulated and stated in a separate law, namely the UUJN.

In carrying out his services, a Notary must be careful because his negligence can cause legal problems in the future, and the Notary can be faced with the judicial process to provide his statement or submit a photocopy of the minutes of the deed. However, the notaries tend to refuse to provide information to protect the secrecy of the position. Article 66, number 1 of the UUJN, states that for the interests of the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary Honorary Council (hereinafter abbreviated as MKN), are authorized to take photocopies of the minutes of the deed or letters attached to the minutes of the deed or the Notary protocol in the Notary's storage and summon the Notary to attend the examination related to the deed or Notary Protocol in the Notary's storage.

Examination of Notaries by law enforcement officers for the benefit of the judicial process must be carried out with the approval of the Regional Supervisory Council. The Regional Supervisory Council is a supervisory council formed by the Minister to exercise its authority to supervise notaries at the district or city level. This authority is no longer valid with the Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 49/PUU-X/2012. The Decision of the Constitutional Court of the Republic of Indonesia is the basis for law enforcement officers to directly take photocopies of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Notary Protocol in the Notary's storage and summon the Notary to attend the examination related to the deed he made without the need for the approval of the Regional Supervisory Council.

According to Article 1 number 1 of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council, it is stated that: The Notary Honorary Council is a body that has the authority to carry out the guidance of Notaries and the obligation to provide approval or rejection for investigations regarding the taking of photocopies of minutes of deeds and summoning Notaries to attend examinations related to deeds or Notary protocols that are in the Notary's storage. The presence of this MKN is expected to provide optimal legal

protection for notaries. It can provide preventive and curative guidance in enforcing the UUJN's duties as public officials. The MKN's approval of the Investigator is the legal basis for the Notary's justification to reveal the secrets of his position without being subject to sanctions. (Dahlan, 2016)^[3]. (Sumiarti, 2015)^[5].

Based on the provisions of Article 66 A UUJN and Article 20 of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council, the MKN must first conduct an examination in the process of granting approval. The examination is conducted by holding a hearing on implementing the Notary's office against a Notary. After the examination is carried out, the final results of the MKN examination are stated in the form of a Decree, which contains approval or rejection of the request of the Investigator, Public Prosecutor, or Judge. In practice, it was found that there were cases permitted by the MKN to be examined by investigators and cases not permitted by the MKN to be examined by investigators. From 2023 to 2024, the secretariat of the Aceh Region Notary Honorary Council received 12 (twelve) applications for approval by approving 5 (five) applications and rejecting 7 (seven) applications.

Based on the description in the background above, this paper will examine "The Role of the Regional Notary Honorary Council Regarding the Summons of Notaries by Investigators in Banda Aceh City."

Materials and Methods

Based on this research, an empirical legal research method (empirical juridical) is used to examine the law or legal provisions that apply as the object of its research. In this case, law is not viewed only as a perspective and applied discipline but also as an empirical or legal reality. In empirical research, the approach that can be taken consists of qualitative and quantitative approaches. However, this study The approach method used by the author in this study is a qualitative approach method, which is a way of analyzing research results that produce descriptive analysis data, namely data stated by respondents in writing or verbally as well as real behavior, which is researched and studied as something whole. Thus, data collection techniques are carried out through field and library research. (Imran, Penelitian Komunikasi Pendekatan Kualitatif Berbasis Teks, 2015)^[4].

Results and Discussion

In carrying out their profession, notaries require specific competencies and comprehensive insight, accompanied by significant responsibility in providing services to the community. The main task of a notary is to formulate in writing and authentically the legal relationship agreed upon by the parties requesting their services. This process requires notaries to pay attention to elements of professional behavior, including in the preparation of notarial deeds containing information and statements of the parties, which are made based on the will of the parties and then compiled by the format determined by applicable laws and regulations. (Arief, 2019)^[1].

According to Ignatius Ridwan Widyadharma, professions generally have characteristics, namely the existence of special knowledge, the existence of moral standards and rules, working with an orientation towards community service and interests, the existence of special permits to

carry out the profession, and the existence of a professional organization. So, a person can be said to be a professional in a particular profession if he/she adheres to and carries out the code of ethics as agreed upon in his/her organization.

Notaries as public officials have a responsibility (accountability) to the State because notary products are legal documents that are state archives and perfect evidence. In carrying out their duties and authorities, notaries are also responsible to the community through the deeds they make for every legal act entrusted to them; therefore, in this responsibility, Notary Quality Control is attached and implemented through a Notary supervision system regulated by the Notary Position Law. The term notary supervisory body is not mentioned literally in the UUJN-P; only in the definition of the Notary Supervisory Board is it explicitly stated that it is a body.

Supervision and guidance on the notary position are carried out by the Supervisory Board as stated in Article 1 number 6 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN-P); the Supervisory Board is a body that has the authority and obligation to carry out guidance and supervision of Notaries. The notary supervisory system is built in a supervisory system, so a community protection system is built based on authentic deeds made by notaries. At the same time, there is an increase in the quality and professionalism of notaries in carrying out their work as public officials. On the other hand, notary protection must be interpreted as the protection and accountability of notaries for deeds that fulfill the elements of authentic deeds as regulated in applicable laws and regulations.

The one who has the authority to carry out guidance, supervision, and examination of Notaries is the Minister of Law and Human Rights, in the implementation of which the Minister forms the Notary Supervisory Board. The Minister, as the head of the Ministry of Law and Human Rights, has the task of assisting the President in carrying out part of the government's affairs in the field of Law and Human Rights, as regulated in Article 35 of Presidential Regulation Number 9 of 2005 concerning the Position, Duties, Functions, Organizational Structure and Work Procedures of the Ministry of State of the Republic of Indonesia.⁵³ Even though notaries are not State Civil Apparatus and are not paid by the State through the State Budget or Regional Budget, notaries are trusted by the State to be the liaison for the administration of the community to the government.

The Notary Honorary Council has a very important position in the legal system and governance of the notary profession in Indonesia. This position places the Notary Honorary Council as an official institution formed based on laws and regulations to carry out the functions of supervision, guidance, and protection of notaries. In the context of the theory of legal authority, the Notary Honorary Council is a formal position that provides legitimacy and authority to the Notary Honorary Council to act in the realm of public law through its duties and responsibilities.

Legally, authority is the ability granted by laws and regulations to carry out actions that have legal consequences. Authority used without a clear legal basis or exceeding the specified material, territorial, and time limits can cause legal defects and cause the action to be null and void. Therefore, the theory of authority emphasizes the importance of legality and limitations in using authority by state officials or institutions. Thus, the position of the

Notary Honorary Council, according to the theory of legal authority, is a formal position that grants the Notary Honorary Council the rights and obligations to use its authority legally and responsibly to carry out the functions of supervision, development, and protection of the notary profession. This position emphasizes that the actions of the Notary Honorary Council must always be based on a strong legal basis, meet legal conformity standards, and aim to control and maintain the behavior of notaries by applicable provisions.

According to Notary Ahmad Rifqi, the Notary Honorary Council is tasked with the following: Suppose a notary conducts an examination at the investigation, inquiry, or court level and wants to take letters in the form of deeds for investigation, inquiry, and court. In that case, approval must first be obtained from the Notary Honorary Council. Although Article 66 has been requested for judicial review at the Constitutional Court by the prosecutor's office because it limits the investigation process, the judge considered that permission was needed from the Notary Honorary Council to take information and notarial deeds.

It can be concluded that the Notary Honorary Council has the same position as the Notary Supervisory Council as a supervisor and supervisor of notary positions that violate applicable laws and regulations but have different duties and functions. The Notary Honorary Council is domiciled in the National Capital (Center) and the Provincial Capital. The duties, functions, requirements, procedures for appointment, dismissal, organizational structure, work procedures, and budget of the Notary Honorary Council have been specifically regulated in Permenkumham Number 17 of 2021 to clarify the position of the Notary Honorary Council in providing approval or rejection of the interests of the judicial process at the request of investigators, public prosecutors, or judges.

The conclusion is that the Notary Honorary Council has a very important position and is mandatory in summoning a notary by investigators. Based on Article 66 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council, every summoning of a notary by investigators related to a notarial deed or Protocol must first obtain approval from the Notary Honorary Council of the authorized Region. The position of the Notary Honorary Council is also closely related to the principle of legal conformity in the theory of authority, which demands that every use of authority must be based on a clear legal basis and by applicable legal standards. The Notary Honorary Council must act based on the provisions of the Notary Law and its implementing regulations so that every decision taken has legal legitimacy and can be legally accounted for. With this position, the Notary Honorary Council becomes an institution that balances the interests of law enforcement and the protection of the notary profession. Notaries can be prosecuted criminally if, later on, the authorities, such as the Police and public prosecutors, can prove that the Notary has consciously and convincingly benefited one party and harmed the other party. Notaries can also be punished criminally if proven in court that intentionally or unintentionally, the Notary, together with the parties or the parties, made a deed intending to benefit only a certain party or party and causing harm to the other

parties. If this is proven in court, the Notary must be punished by applicable law.

The examination conducted by investigators on a notary who is a suspect in a criminal act against a deed he made, according to the duties of the Police, has been regulated in Article 16 Paragraph (1) letter c of Law Number 2 of 2002 concerning the Republic of Indonesia National Police (Indonesian Police Law) by investigating his actions. Investigations can only be carried out if an event is considered criminal. Therefore, before taking coercive measures, the data and facts obtained from the results of the investigation must first be carefully determined. Thus, an investigation is a follow-up to an investigation activity. (Suryanta, 2024) ^[6],

In carrying out its duties to investigate cases involving notaries, the Indonesian Police must submit a request for approval to take photocopies of the minutes of the deed or Notary Protocol and summon the Notary to attend an examination related to the deed or Notary Protocol in the Notary's custody, submitted to the Head of the Notary Honorary Council for the Region by the work area of the Notary concerned.

The examination of violations committed by Notaries must be carried out in a holistic-integral examination (comprehensive and as one unit) by looking at the external, formal, and material aspects of the Notary's deed, as well as the implementation of the Notary's duties according to the Notary's authority. In addition to being based on legal regulations that regulate violations committed by Notaries, it must be combined with the reality of Notary practice. In this regard, according to Meijers, a major error (*hardschuldrecht*) is required for actions related to work in the field of science (*wetenschappelijke arbeiders*) such as Notaries.

Investigations conducted by the Indonesian Police to be able to summon a notary about alleged violations of criminal acts by the Criminal Procedure Code and the Indonesian Police Law, which have the right to summon parties to be questioned about a criminal act, but specifically for the position of Notary there has been cooperation between the Police in this case the Chief of Police with the Indonesian Notary Association (INI) has held an MoU (Memorandum of Understanding), Number: 06/MOU/PP-INI/VIII/2018 and Police Number: B/46/VIII/2018, which in the third part contains:

1. About reports of alleged criminal acts committed by a notary, the Police may coordinate with INI in investigating.
2. If the investigation is proven a criminal act, INI will assist the Police in coordinating with the Notary Honorary Council.
3. If the alleged criminal act is not proven, the Police will stop the investigation and/or inquiry process.
4. This section describes matters relating to the summons, examination, and retrieval of photocopies of notarial deed minutes, requests for expert testimony, requests for forensic laboratories, and requests for suspension of detention.

In carrying out his/her duties, a Notary is based on or equipped with various legal knowledge and other knowledge that must be mastered in an integrated manner by a Notary. Deeds made before or by a Notary have the

position of perfect evidence, thus a Notary must have good intellectual capital in carrying out his/her duties. Examination of a Notary is inadequate if carried out by a party who has not yet studied the world of Notaries, meaning that the party who will examine the Notary must be able to prove the major mistakes made by the Notary intellectually. In this case, the power of legal logic is needed in examining a Notary, not the logic of power or authority needed in examining a Notary. Article 66 Paragraph (1) of the UUJN-P stipulates that for the interests of the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary Honorary Council, have the authority to:

1. take a photocopy of the minutes of the deed and/or letters attached to the minutes of the deed or Notary's Protocol in the Notary's custody; And
2. summon the Notary to attend an examination relating to the Notarial deed or Protocol in the Notary's custody.

If a notary in carrying out his authority and obligations as a public official in making an authentic deed turns out to give rise to criminal law problems regarding the contents of the deed, then the Notary concerned is obliged to be responsible for it by fulfilling the Investigator's summons to be heard in his capacity as a witness or suspect. Still, before the Investigator can summon the Notary, the Investigator must submit a letter of application for permission to summon the Notary addressed to the Notary Honorary Council where the Notary works.

Public prosecutors and judges wishing to examine a notary must obtain approval from the Notary Honorary Council first. This is done because a notary is a public official providing public services. In addition, summoning an official requires permission from an agency, institution, or body authorized to supervise a particular position. Likewise, summoning a Notary must obtain written approval from the Notary Honorary Council.

After the law enforcer obtains approval from the Notary Honorary Council, a notary must maintain the confidentiality of other information unrelated to the problem being processed. The Notary must do this because of his obligation to maintain the confidentiality of the deed in carrying out his position or confidentiality by answering all questions related to the case in question and not adding or exaggerating information from what is required.

The consideration of the Notary Honorary Council in granting permission for investigators to examine notaries suspected of committing a crime is based on the balance between the need for law enforcement and the protection of the notary profession. The Notary Honorary Council must ensure that the request for examination by investigators has a clear legal basis relevant to the alleged crime involving the Notary and does not violate the principle of confidentiality of the Notary's position as regulated in the Notary Law.

The Notary Honorary Council is tasked with maintaining the dignity of the Notary's position as a public service official and his/her obligation to keep the contents of the deeds he/she has made confidential. The permission given by the Notary Honorary Council to investigators to conduct investigations into notaries can be seen from a positive perspective, namely as a reminder for notaries not to violate the notary code of ethics and the notary law and to minimize acts of abuse of office. So, the Notary Honorary Council is not formed to protect notaries from crimes committed but as

an institution that maintains the honor of the Notary's position.

As regulated in Article 16 paragraph (1) letter f UUJN-P in carrying out his position, a notary must keep confidential everything regarding his deeds and all information obtained to make the deed by the oath or promise of office unless the law determines otherwise. The explanation of Article 1, number 7, letter f, states that a notary must keep confidential everything related to deeds and other letters to protect the interests of all parties related to the deed.

If the Notary does not accept the Regional Notary Honorary Council's decision in approving the request of investigators, public prosecutors, or judges to be examined in the trial process, then the Notary concerned can file a lawsuit with the local District Court. This is as explained by Notary Ahmad Rifqi that the Notary Honorary Council is a body appointed by the Minister of Law and Human Rights of the Republic of Indonesia, not a TUN official who is appointed through an administrative process and has the status of a Civil Servant.

According to Retnowulan Sutantio, legal remedies are the rights law grants to an individual or legal entity to file an objection or challenge a judge's decision under certain conditions. This aims to ensure that the aggrieved party can obtain legal protection and the opportunity to obtain justice through the available legal mechanisms. Legal remedies are a fundamental right to fight against decisions that are considered unfair or unlawful. In the context of the MKN decision, legal remedies through lawsuits to the District Court are a legitimate and effective way for notaries to protect their rights and legal standing while maintaining the principles of justice and legal certainty in implementing the notary profession. If a Notary suffers a loss due to a decision or action by the MKN that is considered unlawful or causes a loss, the Notary can file a civil lawsuit in the District Court to claim compensation. This lawsuit is based on an unlawful act (*onrechtmatige daad*) committed by the MKN or related parties. This civil lawsuit is independent and does not replace efforts to cancel the decision at the PTUN but rather as a claim for compensation for the losses suffered.

Notaries who feel aggrieved by the decision of the Notary Honorary Council still have the option to file a civil lawsuit, such as filing a lawsuit with the District Court or seeking a resolution through other mechanisms regulated by law. The decision of the Notary Honorary Council is administrative and focuses more on coaching and supervising notaries, not as a body with executive or administrative powers like a TUN official. Therefore, although the decision of the Notary Honorary Council can significantly impact a notary's career, the legal path available to object to the decision is not through the PTUN but through legal efforts to the District Court. Lawsuits filed with the District Court are included in civil lawsuits filed because the decision of the Notary Honorary Council can affect the Notary's civil rights, especially in carrying out his profession. Notaries can sue the Notary Honorary Council if they feel that their rights have been ignored or harmed by the decision issued.

Conclusion

The position of the Notary Honorary Council is that of a body formed to guide and supervise notaries. Guidance and supervision carried out by the Notary Honorary Council by conducting examinations of notaries due to a request for

approval from investigators, public prosecutors, or judges to be asked for information or request notary documents in following up on the investigation process based on reports from the public regarding notarial deeds that are indicated as a criminal act.

The approval given by the Notary Honorary Council to the application of an investigator, public prosecutor, or judge is considered based on the results of the Notary's examination if there is an alleged criminal act as regulated in Article 32 paragraph (1) and Article 33 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning the Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council.

Legal efforts that can be taken by a notary when they do not agree with the decision of the Notary Honorary Council to grant permission to law enforcement to conduct an examination and request the provision of notary information along with related documents and deeds; they can file a lawsuit with the District Court as a civil lawsuit because they feel that their rights have been ignored or harmed due to the decision issued.

Suggestion

The role of the Notary Honorary Council (MKN) in supervising and fostering notaries is important to be strengthened through regulations that support its effectiveness, including the implementation of routine education and training programs to prevent criminal acts. The Ministry of Law and Human Rights needs to form an independent evaluation team to monitor the MKN's performance transparently, including examining and approving applications from investigators, public prosecutors, or judges. In addition, it is necessary to facilitate regulations that provide notaries with access to legal action if they are harmed by the MKN's decision to maintain justice, legal certainty, and legal protection for notaries and the MKN.

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