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CALL FOR NOTARY TO TESTIFY BEFORE THE COURT IN A LITIGATION CASES UNDER INDONESIAN NOTARIAL ACT AND PENAL LAW

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ABSTRACT

Not infrequently in the process of law enforcement against a notary who is involved in legal matters often there are obstacles in the process of summoning him as a witness to hear his statement for the investigation process by the authorities. This is because based on Article 66 paragraph (1) of Law Number 2 of 2014 reads: "Summoning a Notary for the investigation process suspected of committing a criminal act must obtain prior approval from the Notary Honorary Council". The procedure for obtaining approval from the Notary Honorary Council to carry out the examination of a notary public as a witness begins with the Investigator must provide a letter of request to the Notary Honorary Council to carry out the investigation process to the Notary who is suspected of committing a criminal offense. From the above background, the authors formulated the main issues including: How is the Calling of a Notary as a Witness in a Criminal Case Based on Law Number 8 of 1981 concerning Criminal Procedure Law and Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Position of Notary, What Is the Ideal Arrangement About Summoning a Notary as a Witness in a Criminal Case. The purpose of this research is to Analyze the Summoning of Notaries as Witnesses in a Criminal Case Based on Law Number 8 of 1981 concerning Criminal Procedure Law and Law Number 30 of 2004 as amended to Law Number 2 of 2014 concerning Notary Position. To Analyze Ideally Arrangements Regarding Notary Calling as a Witness in a Criminal Case. This type of research is a Normative research that is a method of library research that is legal research conducted by studying and examining library materials in the form of primary legal materials and secondary legal materials. While the nature of this study is descriptive, because the authors intend to provide an overview of the problems that are the subject of research.

Keywords: notary; penal law; witnesses.

INTRODUCTION

Notaries in carrying out their duties and positions must always be subject to the laws and regulations, ethical codes and morals. If the deed he made contains legal defects caused by a notary, whether it is due to negligence or intentionality by the notary himself, then the notary can be held liable both civil and criminal.¹

As stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state of law (rechtstate) not a State of power (machstate) whose position serves as Norms that are binding on the government, every institution or citizen and citizen of the Republic Indonesia². The existence of a phrase in the Indonesian Constitution that states that Indonesia is a legal state, so every citizen has the right to receive legal protection and every citizen is equal before the law (equality before the law)³.

Besides that, because Indonesia is a legal country, there is no difference in the attitude of treatment in the eyes of the law, whether from race, religion and class or position in the country of Indonesia. The content of Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, reads; "Everyone has the right to recognition, guarantees, protection, and certainty of law that is fair and equal treatment before the law". If you look at the contents of this article, the position of each person is the same in the eyes of the law⁴.

There was a change in the law on the notary position carried out by the Government and the House of Representatives (DPR), which was previously Law Number 30 of 2004 has been changed to Law Number 2 of 2014 concerning the Position of Notary Public. In Law Number 2 of 2014 which has been revised, the content of Article 66 of Law Number 30 of 2004 is rearranged into Article 66 which reads "with the approval of the Notary Honorary Council.

Not infrequently in the process of law enforcement against a notary who is involved in legal matters often there are obstacles in the process of calling him as a witness to be heard information for the investigation process by the authorities. This is because based on Article 66 paragraph (1) of Law Number 2 of 2014 reads: "Summoning a Notary for the investigation process suspected of committing a criminal act must obtain prior approval from the Notary Honorary Council". The length of time the consent given by the notary public clearly becomes an obstacle in the investigation process carried out by the police if the criminal case involves a notary public.

¹ Ratna Nova Andana dan Hari Purwadi, Perlindungan Hukum Terhadap Notaris atas dugaan Tindak Pidana Pasca Berlakunya Peraturan Menteri Hukum dan Hak Asasi manusia Nomor 7 Tahun 2016 tentang Majelis Kehormatan Notaris, *Jurnal Hukum Content*, Vol 5, No 1 (2018).

² Yudi Krismen US, *Pendidikan Pancasila Untuk Perguruan Tinggi*, Rajawali Pers, Jakarta: 2019, hlm. 105.

³ Abdul Aziz Hakim, *Negara Hukum dan Demokrasi di Indonesia*, Pusaka Belajar, Yogyakarta: 2011, hlm. 39.

⁴ *Ibid*, hlm. 40.

The following are a few examples of criminal cases which were hampered by the investigation process because they had to obtain approval from the Notary Honorary Council to allow the police to conduct an investigation of a notary who was allegedly involved in a criminal offense;

1. The fictitious BNI 46 Pekanbaru credit that occurred in Pekanbaru regarding the constraints on the call made by the police to the notary is handling the fictitious BNI 46 Pekanbaru credit case. Obstacles discovered, namely not yet issued an approval letter from the Notary Honorary Council (Notary)⁵. Riau Police Public Relations Head of Police Commissioner Guntur Aryo Tejo obstacle that inhibits the investigation of fictitious credit BNI 46 Pekanbaru is a requirement to check a notary needed a permit. 'Filing has not been completed because there has been no approval letter from the notary. In the case of BNI 46 Pekanbaru, it involved a DFD notary public. Meanwhile, his party through investigators has sent a letter requesting an examination of DFD as a sanction in the case of fictitious BNI 46 Pekanbaru credit⁶. Currently this case has been broken up with a sentence of imprisonment for 2 years which must be carried out by the convicted person.
2. The Notary Case of Tjandra Santoso regarding the making of a fake deed that occurred in Pekanbaru regarding the hindrance of a summons carried out by the police against Tjandra Santoso as a sanction, namely not yet issuing an approval letter from the Notary Honorary Council (Notary)⁷. Head of Riau Police Public Relations Commissioner Pol Guntur Aryo Tejo, the obstacle that hinders the investigation of the fake deed is that a requirement to examine a notary requires a permit.
3. Fictional BRI Agro Pekanbaru credit that occurred in Pekanbaru involving 2 notaries who were still witnesses to hear their statements during the investigation process. Obstacles discovered, namely not yet issued an approval letter from the Notary Honorary Council (Notary)⁸.
4. Cases of alleged forgery of Deed of Sale (AJB) involving notaries in the Rengat area. In this case the police summoned the notary to listen to information for the process of investigating the Falsification of the Sale and Purchase Act (AJB) of land in the Rengat area. It through the investigator.

has sent a letter requesting an examination of the notary. However, the Notary Honorary Council has not yet obtained the agreement so that the notary cannot be presented for the police investigation⁹.

⁵ www.PelitaRiau.com diakses pada tanggal 19 Oktober 2019.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ www.datariau.com. Diakses pada tanggal 9 November 2019.

The police have the authority to call someone to be heard or examined as a witness or suspect. However, with the provisions stipulated in Article 66 of Law Number 2 of 2014 concerning the Position of Notary that requires the investigator when calling a notary, he must first ask permission from the Notary Supervisory Council (MPN) to carry out an investigation of the notary who is allegedly involved in criminal case.

The provision that requires the police in investigating notaries must obtain approval from the Regional Supervisory Council clearly proves there are differences in law enforcement carried out to the notary public. This is clearly a dilemma for the police in carrying out law enforcement against notaries.

From what has been described above certainly becomes the background for the author to discuss further in a study by selecting the title: "Notary Calling as a Witness in a Criminal Case According to Law Number: 2 of 2014 concerning the Position of Notary and Law No. 8 of 1981 concerning the Criminal Procedure Code".

Based on the background description above, the authors formulate the problem as follows :

1. How is the Calling of a Notary Public as a Witness in a Criminal Case According to Law Number 2 of 2014 concerning the Position of Notary Public and Law No. 8 of 1981 concerning the Criminal Procedure Code?
2. What is the Ideal Setting Regarding Notary Calling as a Witness in a Criminal Case According to Law Number 2 of 2014 concerning the Position of Notary Public and Law No. 8 of 1981 concerning the Criminal Procedure Code?

a. Research Purposes

- a) To Analyze the Calling of a Notary as a Witness in a Criminal Case According to Law Number 2 of 2014 concerning the Position of Notary Public and Law No. 8 of 1981 concerning the Criminal Procedure Code.
- b) To Analyze Ideally Arrangements Regarding Notary Callings as Witnesses in a Criminal Case According to Law Number 2 of 2014 concerning the Position of Notary Public and Law No. 8 of 1981 concerning the Criminal Procedure Code

b. Use of Research

- a) Theoretically, it is expected that the results of this study can be used as a reference for readers as well as input in the development of science in the field of legal science, especially Constitutional Law, and Criminal Procedure Law.

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- b) Practically, it is expected that the results of this research can be used as material for comparison and provide input to Notaries, the Police, Academics, and Practitioners as well as experience for writers in an effort to solve the problems that have been formulated.

RESEARCH METHODS

In this study the authors use the methodology that is considered most appropriate to the state of the object of this study, as follows:

Types and Nature of Research

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Judging from the type, this research can be classified into normative legal research that is research based on books or literature to study and examine the research to be conducted¹⁰. The selection of this method, as explained by Peter Mahmud Marzuki, states that normative legal research is about the way in the rule of law, legal principles, and doctrine in responding to legal issues. Analytic-explorative in nature through library materials¹¹.

The focus in this study is on calling the notary public as a witness in a criminal case. The research approach is used in explaining and answering research problems:

- a. (Statute approach) namely the approach to the statutory regulation as for the rules used regarding the summons as witnesses in criminal cases.
- b. The level of legal synchronization is the approach used to uncover the reality to the extent of the implementation of the notary summons as a witness in a criminal case.
- c. The historical approach used to examine the background of this research is about calling up a notary public as a witness in a criminal case.
- d. The conceptual approach is used based on the views or doctrines developed in the science of law.

In this study the authors used this approach from the opinion of legal experts regarding the notary calling as a witness in a criminal case.

Data Source

Data source comes from secondary data. Secondary data in this type of research is divided into three types of data carried out namely:

Primary legal material is legal material derived from other laws and regulations and has a relationship with this journal.

¹⁰ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tindakan Singkat*. (Jakarta: Raja Grafindo, 2007), hlm. 13-14.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Kencana Pranada Media Group, Jakarta: 2015, hlm. 164.

Secondary legal material, which is a provision that supports and is needed in observing in the form of journals, articles, papers, newspapers, and other forms needed.

Tertiary legal material, is additionally containing directives and understandings that are useful in this study¹².

Data Collection Technique

The collection of material in normative legal research is only used documentary study techniques/library studies. In certain circumstances non-structured interview techniques can be used which serve as a support rather than as a tool for obtaining primary data.

Data Analysis

After going through the process of data collection and data processing, then the data were analyzed descriptively qualitatively, this analysis technique did not use statistical figures, but rather the explanations in written form which were presented in a straightforward manner. The data obtained will then be analyzed and described and then concluded with the deductive method that is inferring from a statement that is general into a statement that is specific.

DISCUSSION

With the difference in rules regarding the calling of a notary according to Law Number 30 of 2004 concerning the Position of Notary and Law No. 8 of 1981 concerning the Criminal Procedure Code which in turn gives rise to different interpretations and violates the principle of equality before the law, the author will discuss the following:

Summoning a Notary as a Witness in a Criminal Case According to Law Number 30 Year 2004 Concerning the Position of Notary and Law No. 8 of 1981 concerning KUHAP.

UU no. 8 of 1981 concerning KUHAP is the main source for criminal procedural law for the general judicial environment in Indonesia. Regarding the procedure for summoning witnesses and suspects by investigators, in Article 112 as follows¹³:

- 1) The investigator conducting the examination, stating the reasons for the summons clearly, has the authority to summon suspects and witnesses who are deemed necessary to be examined by a valid summons with due regard to the reasonable grace period between the receipt of the call and the day a person is required to fulfill the summons.

¹² Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum...*, Op.Cit., hlm. 12.

¹³ Lihat Pasal 112 KUHAP.

- 2) The person summoned must come to the investigator and if he does not come the investigator calls again, with orders to the officer to bring it to him.

In general, summons of witnesses or suspects by Investigators are carried out directly without requiring the approval of other parties / officials. Therefore, the provision of Article 66 paragraph (1) which requires the approval of the Regional Supervisory Council for summons to a Notary Public is a special provision for the general provisions for calling witnesses and suspects in Law No. 8 of 1981 concerning KUHP.

Besides being regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code the authority of the police to make summons is also regulated in Law Number 2 of 2002 concerning the National Police, Article 16 states that in the framework of carrying out tasks in the field of criminal legal proceedings, the National Police of the Republic of Indonesia is authorized to:¹⁴

- 1) Making arrests, detention, search and seizure,
- 2) Prohibit anyone from leaving or entering the scene of the case for the purposes of investigation.
- 3) Bringing and bringing people to the investigator in the context of the investigation.
- 4) Ask the suspect to stop and ask for and check the identity,
- 5) Do a check and seizure of the letter,
- 6) Calling people to be heard and examined as suspects and witnesses,
- 7) Provide the necessary members in relation to the examination of matters,
- 8) To stop the investigation,
- 9) Hand over the case file to the public,
- 10) Apply directly to immigration officials in urgent need to impose restraint and deter against suspected criminal offender,
- 11) Provide guidance and research assistance to civil servant investigators and receive the results of civil servant investigators to be submitted to the public prosecutor,
- 12) Take other action in accordance with the law of responsibility.

The authority of the Police to carry out the investigation is set out in Article 7 of Law No. 8 of 1981 Concerning the Criminal Procedure is the investigator as referred to in Article 6 paragraph (1) of letter a because of its obligations:¹⁵

- 1) Receive a report or complaint from someone about a crime.
- 2) Perform the first action at the scene of the incident.

¹⁴ Lihat Pasal 16 Undang-Undang Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia.

¹⁵ Lihat Pasal 7 KUHP.

- 3) Ask the suspect to stop and check the suspect's identity.
- 4) Conduct arrest, detention, search and seizure, inspection and seizure of the letter.
- 5) Take fingerprints and take pictures of someone.
- 6) Calling people to be heard and examined as suspects or witnesses.
- 7) Bring in the required experts in relation to the matter of examination.
- 8) Conduct a cessation of investigation
- 9) Take other action in accordance with the law of responsibility.

New investigations can be made if an event is believed to be a crime. Therefore, prior to the coercive action, the data are first carefully selected and facts obtained from the results of the investigation. Thus the investigation is a follow-up to the activities of an investigation.¹⁶

In the Law of Notary Position, it is regulated that when a Notary in carrying out his/her office duties is proven to have committed a violation, the Notary Public may be subject to sanctions or be subject to sanctions, in the form of civil, administrative, and ethical codes of Notary positions. These sanctions have been regulated in such a way, both in the PJN and now in the Notary Position Act and the Notary Position Code of Ethics, which does not regulate criminal sanctions against Notaries. In practice it is found that a legal action or violation committed by a Notary may actually be subject to administrative or civil sanctions or a code of ethics of the position of Notary Public, but then withdrawn or qualified as a criminal offense committed by a Notary Public.

Deed made before or by a Notary Public has a position as evidence, thus the Notary must have good intellectual capital in carrying out his / her office duties. An examination of a Notary is inadequate if done by those who have not yet studied the world of Notaries, meaning that those who will examine the Notary must be able to prove a big mistake made by a Notary intellectually, in this case the logical (legal) strength needed in examining a Notary, not the logic of strength or power required in examining a Notary Public.

Everything related to Notary activities that cause criminal law problems must get approval from the Notary Honorary Council. For the smooth process of the investigation or examination of Notaries who become Suspects and Defendants, it is necessary for the police or prosecutors to consult in advance with the Notary Honorary Council.

¹⁶ Gatot Tri Suryanta, *Penyidikan Tindak Pidana di Polsek Amarta, Tesis, Program Studi Kajian Ilmu Hukum Kepolisian, Program Pasca Sarjana Universitas Indonesia*. Jakarta: 2002. hlm.46.

Before an examination of a Notary Public, in accordance with the provisions, the Notary must be summoned in advance through an Official Summon issued by the Investigator, on the condition that:¹⁷

- a) The investigator clearly states the reason for the summons with due regard to the reasonable grace period for the call and if it does not come, the investigator can call again, as stipulated in Article 112 of the Criminal Procedure Code.
- b) If the suspect and witness reside outside the investigator's jurisdiction, the examination can be carried out at the residence of the suspect or witness as stipulated in Article 119 of the Criminal Procedure Code.
- c) Summon is carried out no later than 3 (three) days as stipulated in article 227 of the Criminal Procedure Code.
- d) When the suspect or witness summoned gives a reasonable and reasonable reason that he cannot come to the investigator conducting the examination, the investigator comes to his residence as stipulated in Article 113 of the Criminal Procedure Code.

With the provision that requires the investigator to seek approval from the Notary Supervisory Board, it will clearly slow down in the investigation process carried out by the police regarding criminal acts that occur and involve the notary public in these criminal acts. The following are a few examples of criminal acts which are hampered by law enforcement due to the police having to ask permission from the Notary Supervisory Board in calling or examining notaries.

1. The fictitious BNI 46 Pekanbaru credit that occurred in Pekanbaru regarding the constraints on the calls made by the police to the notary is handling the fictitious BNI 46 Pekanbaru credit case. Obstacles discovered, namely not yet issued an approval letter from the Notary Honorary Council (Notary).¹⁸ Riau Police Public Relations Head of Police Commissioner Guntur Aryo Tejo obstacle that inhibits the investigation of fictitious credit BNI 46 Pekanbaru is a requirement to check a notary needed a permit. 'Filing has not been completed because there has been no approval letter from the notary. in the case of BNI 46 Pekanbaru,¹⁹ it involved a DFD notary public. Meanwhile, his party through the investigators has sent a letter requesting an examination of DFD as a sanction in the case of fictitious BNI 46 Pekanbaru credit. Currently this case has been broken up with a sentence of imprisonment for 2 years which must be carried out by the convicted person.
2. The Notary Case of Tjandra Santoso regarding the making of a fake deed that occurred in Pekanbaru regarding the hindrance of a summons carried out by the police against Tjandra Santoso

¹⁷ Zulkarnaen Adinegara (Karrowassidik Bareskrim Polri), *Modul Mekanisme Penyidikan Terhadap Notaris Yang Diduga Melakukan Tindak Pidana*, Hal 8, yang disampaikan pada acara pelatihan pembekalan anggota bagi pengurus wilayah INI se-Indonesia dan pengurus daerah INI se-Jabotabek di Hotel Santika Premiere Jakarta tanggal 15 Januari 2015.

¹⁸ www.PelitaRiau.com diakses pada tanggal 19 Oktober 2019.

¹⁹ *Ibid*.

as a sanction, namely not yet issuing an approval letter from the Notary Honorary Council (Notary).²⁰ Head of Riau Police Public Relations Commissioner Guntur Pol Aryo Tejo obstacle that inhibits the investigation into the making of the fake deed is a requirement to examine a notary required permission letter.

3. Fictional BRI Agro Pekanbaru credit that occurred in Pekanbaru involving 2 notaries who were still witnesses to hear their statements during the investigation process. Obstacles discovered, namely not yet issued an approval letter from the Notary Honorary Council (Notary).²¹
4. Cases of alleged forgery of Deed of Sale (AJB) involving a notary in the South Jakarta area. In this case the police summoned the notary to be heard for information for the investigation of the Falsifying Deed of Sale (AJB) of land in the Rengat area. it through the investigator has sent a letter requesting an examination of the notary. However, the Notary Honorary Council had not yet obtained the agreement so that the notary could not be presented for the police investigation.²²

The imposition of a criminal sentence against a Notary Public does not automatically result in the deed being null and void by law. One thing that is not legally appropriate if there is a criminal court ruling with a ruling canceling a notarial deed on the grounds that the notary is proven to have committed a falsified criminal act. Therefore, in order to place a Notary as a convict, for a deed made by or before the Notary concerned, the legal action that must be taken is to cancel the deed concerned through a civil claim.

In the Memorandum of Understanding between the Indonesian Notary Association and the National Police of the Republic of Indonesia (Polri) regarding the development and improvement of Professionalism in the Field of Law Enforcement which consists of 3 Chapters and 6 articles, where Chapter I contains general provisions relating to legal actions of a person suspected of being involved in a criminal act.

The mechanism for carrying out summons and examinations by investigators based on Law Number 2 of 2014 concerning the Position of Notary that should be implemented at this time is:

- a) Investigators must submit a letter to the Notary Honorary Council (MKN) stating what purpose they are called for, whether to take a photocopy of the Minutes of Deed, or letters attached to the Minutes of Deed or Notary protocol in Notary Storage, or the need to summon Notaries to attend in examinations relating to the Minutes of Deed he made or the Notary protocol in the Notary Depository.
- b) Explain with understandable, concise and clear sentences about what matters and who.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

- c) After 30 (thirty) days the investigator will obtain the decision of the Notary Honorary Council (MKN) to give "approval" or "not give approval" at the request of the Investigator.

Article 66 of Law Number 30 of 2004 concerning the position of notary has been declared contrary to Article of the 1945 Constitution (1945 Constitution), precisely contrary to Article 27 Paragraph (1) and Article 28D Paragraph (1) of the 1945 Constitution Related to legal protection for Notary Public, where the Notary Public Official has the authority to make an authentic deed as intended in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position. The deed can be called authentic, basically it must contain formal truth in accordance with what the parties told the notary public. Therefore, legal protection for notaries is needed in carrying out his position as a public official.

According to M. Reza Berawi, the position of equality before the law is related to the need for summons and notary presence in the examination of criminal cases, whether as an Expert, Witness or Suspect / Defendant, with the following reasons:²³

- a) As an Expert, in this case the notary is called and his presence is required in the examination of criminal cases as a legal expert authorized to make an authentic deed so that special legal considerations according to his expertise are related to the authority and responsibility of the notary public and matters that can provide an explanation to the Investigator, Public Prosecutor, The judge, as well as the party seeking justice;
- b) As a Witness, in this case the notary is called and his presence is needed in the examination of criminal cases, in the capacity as a public official who makes an authentic deed, his testimony is needed for what is seen, heard and supporting evidence in making the authentic deed, whether in the process indication of a criminal act or not;
- c) As a suspect, in this case the notary is called and his presence is required in the examination of a criminal case as a suspect based on preliminary evidence so that it is proper to suspect a criminal act committed by a notary public, making an authentic deed, whether done alone or jointly, which is found by the investigator, so the notary must take responsibility for the act before the law.

In accordance with the explanation above, the principle of equality before the law "equality in law" and "fair legal protection and certainty" are constitutional rights of every Indonesian citizen as well as recognition of Human Rights that cannot be reduced in any circumstance or situation.

According to the author's analysis related to the notary public involved in the judicial process for committing a crime, the authority of the Notary Honorary Council based on Act Number 2 of 2014

²³ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*. UII Pres, Yogyakarta:2009, hlm. 37

concerning the Notary Position can be considered as a counterproductive authority with the law enforcement process itself, because the Notary Honorary Council such as limit the authority of judges, prosecutors and investigators in carrying out their duties and functions as law enforcement officers in carrying out judicial processes for notaries who commit certain criminal acts.

In accordance with the theory of authority, that as an organization authority is a juridical ability based on public law, there are also rights and obligations bound, so that authority is not merely interpreted as rights based on public law, but also obligations as public law. Authority is not only interpreted as power, therefore, in exercising rights based on public law, it is always bound by obligations based on unwritten public law or the general principle of good governance.

According to the author in accordance with the theory, the authority of the Notary Honorary Council over the judicial process for the notary public is that organizational authority based on public law, namely Law Number 2 of 2014 concerning Notary Position. Through this law, the Notary Honorary Council has rights and obligations, related to a notary who goes through a judicial process, as stipulated in Article 66 Paragraph (1) of Law Number 2 of 2014 that for the benefit of the judicial process, investigators, public prosecutors, or judges with the approval of the notary honorary assembly authorized to take a photocopy of the Minutes of Deed and / or letters attached to the Minutes of Deed or Notary Protocol in Notary Storage; and summon a Notary to attend the examination relating to the Deed or Notary Protocol which is in the Notary's depository.

Based on the research results above, it is related to the criminal law policy regarding the limitation of authority in the investigation of a Notary, so the author's view is that there are differences in the conduct of criminal investigations relating to the Notary profession, especially in terms of his summons and examination. The difference is in the procedure or mechanism for the summon, namely the investigator must seek the approval of the Notary Honorary Council (MKN) to examine a notary who is suspected of committing a crime. There is a grace period of 1 (one) month to obtain an answer to the approval of the Notary Honorary Council (MKN). Currently to summon a Notary, the investigator must refer to Article 66 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.

The 30-day period given by the Act to the Notary Honorary Council (MKN) is the final time, meaning that within 30 days the MKN must quickly examine and clarify the Notary in order to determine the "approved" or "disapproved" request for inspection by the investigator of the Notary referred to.

If the criteria are agreed upon and if the reasons are not agreed upon, this must be measured and can be accepted by common sense and in accordance with existing legal facts. This is certainly not in harmony with several legal principles in the Criminal Procedure Code, namely, First: the principle of

equality before the law (everyone), Second: The judicial process is fast, simple and low cost before the person concerned is found guilty by Judge, this also contradicts the principle of independence of the judicial process.²⁴ Except in the scope of the Notary Code of Ethics, namely attitudes, behavior, and deeds of notaries related to morality.

Some of the jargon commonly used in English to refer to the principle of the rule of law is 'the rule of law, not of man'. The so-called government in essence is the law as a system, not individuals who only act as 'puppets' from the scenario of the system that governs it.²⁵

This on the other hand can also be detrimental to the rights of the Notary Public and increasingly burdens the duties of the Notary Public in carrying out their duties and positions in making authentic deeds. With the decision of the Constitutional Court, a lot of anxiety arises from the Notary practitioners, because the privilege to be treated and protected in carrying out their duties and positions on behalf of the state as a Notary Public is lost. In carrying out their duties, the Notary always takes note of the requirements or provisions stipulated by the Law in order to guarantee legal certainty for the parties making the agreement.²⁶

The mandatory approval of the Regional Supervisory Council is contrary to the principle of independence in the judicial process and contradicts the obligations of a Notary Public as equal citizens before the law and contrary to the principle of equality before the law, because the authority held by the Notary Honorary Council in approving the notary summons and taking photocopy of Notary protocol by investigators, public prosecutors and judges the same authority held by the Regional Supervisory Council which was revoked by the Constitutional Court.

Ideally Arrangements Regarding Notaries Involved in the Legal Process in Law Number 2 of 2014 Amendment to Law Number 30 of 2004 Concerning Notary Position

In the Law of Notary Position, it is regulated that when a Notary in carrying out his/her office duties is proven to have committed a violation, the Notary Public may be subject to sanctions or be subject to sanctions, in the form of civil, administrative, and ethical codes of Notary positions. These sanctions have been regulated in such a way, both in the PJN and now in the Notary Position Act and the Notary Position Code of Ethics, which does not regulate criminal sanctions against Notaries. In practice, it is found that a legal action or violation committed by a Notary may actually be subject to

²⁴ Dalam Putusan Majelis MK yang mengabulkan permohonan uji materi Pasal 66 ayat (1) UU No 30 Tahun 2004 tentang Jabatan Notaris yang diajukan Kan Kamal. Dalam Putusannya, MK membatalkan frasa "dengan persetujuan Majelis Pengawas Daerah" dalam pasal yang diuji. Prosedur itu dinilai bertentangan dengan prinsip equal protection sebagai mana yang dijamin UUD 1945, <https://www.hukumonline.com> dikutip 3 November 2019.

²⁵ Jimly Asshiddiqie, *gagasan Negara Hukum Indonesia*, [https://pn-gunungsitoli.go.id/assets/image/files/ Konsep_Negara_Hukum_Indonesia.pdf](https://pn-gunungsitoli.go.id/assets/image/files/Konsep_Negara_Hukum_Indonesia.pdf).

²⁶ Santi Dewi dan R.M Fauwas Diradja, *Panduan Teori dan Praktik Notaris*. Pustaka Yustisia, Yogyakarta: 2011, hlm. 65-66.

administrative or civil sanctions or a code of ethics of the position of Notary Public, but then withdrawn or qualified as a criminal offense committed by a Notary Public.

The limitations that are used as the basis for criminal prosecution are a formal aspect of the notarial deed. If the Notary is proven to have violated the formal aspects, civil sanctions or administrative sanctions may be subject to the type of violation or the Notary Code of Ethics.

The notary's statement as a witness in a criminal case is needed to explain the deed he made relating to the legal event explained by the attorney. While the notary's statement as a suspect is needed in relation to the notary's liability for the authentic deed that is his responsibility. Based on this it can be said that the notary as a citizen is not immune from law.

Regarding this matter, it does not mean that the notary is free or clean from the law or without being punished or immune from legal threats. The notary public may receive a criminal sentence if it can be proven in a court proceeding that he/she intentionally and/or did not intentionally notary together with the parties/the parties make the deed with the intent and aims to benefit the parties and/or certain legal subjects or parties or harm other parties. .

If related to these matters can be proven in the trial, then the notary who is proven to do so must be punished. Because of these reasons, only the Notary carelessly carries out his duties and the occupation of his position, when making authentic deeds for the purposes of certain parties with the intent and purpose of harming certain parties and or to commit an act of violation of the law.²⁷

In examining the notary that is related to the deed he made, the parameters must be to the procedure for making a notarial deed, in this case UUJN. If all procedures have been carried out, the deed concerned will still be binding on those who made it before the notary. Criminalizing a notary for reasons of formal aspects of the deed will not invalidate the notarial deed which is the object of the criminal case and the deed concerned remains binding on the parties.

Therefore MKN only has the role of protecting the profession of Notary not Personal Notary. Therefore, when a Notary public commits or is suspected of committing a criminal act that has nothing to do with the duties of a Notary Public, the Investigator does not need to seek MKN approval to examine it. So in this case the absolute authority of the MKN is limited to the profession of a notary carrying out his position, whether the notary is in accordance with carrying out its functions and duties according to the applicable laws and regulations.²⁸

²⁷ Habib Adjie, *Hukum Notaris Indonesia, (Tafsir Tematik Terhadap Psl. No 30 Th 2004 Tentang Jabatan Notaris*. Refika Aditama, Bandung: 2008, hlm. 24.

²⁸ *Ibid*, hlm. 27.

The position and authority of the MKN are stated in Art. 66 paragraph (1) which explains that the summons of a Notary for the benefit of the judicial process by the investigator, public prosecutor, or judge must go through the approval of the MKN.²⁹

If all this time, because of the aforementioned matters, the Notary has been placed in the position of a convict, indicating there are parties who do not understand what and how and the position of the Notary in the national legal system. Placing a Notary as a convict (before being convicted as a suspect and defendant) or convicting a Notary indicates that other parties outside the Notary, such as the police, prosecutors, and courts or other legal practitioners show a lack of understanding of the world of Notaries.

According to the Author Ideally, the impose of a criminal sentence against a Notary Public does not necessarily result in the deed being null and void. One thing that is not legally appropriate if there is a criminal court ruling with a ruling canceling a notarial deed on the grounds that the notary is proven to have committed a falsified criminal act. Therefore, in order to place a Notary as a convict, for a deed made by or before the Notary concerned, the legal action that must be taken is to cancel the deed concerned through a civil claim.

Procedures for imposing administrative sanctions are carried out directly by the agency authorized to impose these sanctions, and civil sanctions are based on court decisions that have permanent powers whose verdicts punish the Notary to pay fees, damages, and interest to the plaintiff, and criminal sanction procedures based on a court decision that already has a legal force whose ruling convicts a notary to undergo certain crimes. The imposition of administrative sanctions and civil sanctions is intended as a correction or reparative and regression of the notary deeds.

The formal aspects of a notary deed can be used as a basis or a limitation to criminal notary, as long as the formal aspects are intentionally proven that the deed made before and by the notary to be used as a tool to commit a criminal act against the making of a party deed or voluntary deed

For the sake of law enforcement, the Notary must comply with the provisions of formal criminal law and material criminal law as regulated in the Criminal Code and the Criminal Procedure Code, and on the implementation considering that the Notary performs acts in the capacity of his position to distinguish between acts of Notaries as legal subjects, Article 50 of the Criminal Code provides legal protection against a Notary who states that: "anyone who commits an act to carry out the legislation, may not be punished".³⁰

²⁹Udi Hermawan dan Munsyarif Abdul Chalim, kewenangan majelis kehormatan Notaris Wilayah dalam Memberikan Persetujuan terhadap Pemanggilan Notaris oleh Penegak Hukum, *Jurnal Akta*, Vol. 4 No. 3 September 2017.

³⁰R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Politeria, Bogor: 1993, hlm. 66.

Therefore, the Notary must have good moral integrity, accuracy and good skills in making authentic deeds that are appropriate in the notary regulations. If the authentic deed is in accordance with the regulations of the Notary Law, then the Notary does not need to be afraid if called by the police to be questioned. This can actually help the police force and the role of the MKN in enforcing the law in the Notary Sector. Notary Honorary Council or Regional Supervisory Council is not a superbody or protection agency. This institution is actually in the midst of the Notary as the giver of recommendations and recommends the Notary, in the law enforcement process related to the deed made by a Notary Public.

Supervision of the Notary profession is carried out by the Notary Supervisory Board formed as an embodiment of Article 67 of the UUJN. The establishment of the Notary Supervisory Board is intended to improve services and legal protection for the community of Notary services users. Because in fact there are irregularities that are mostly done by the Notary in carrying out his authority and position starting from irregularities that are administrative in nature and deviations that result in material losses to the community of Notary services users.

This institution also functions in order to escort Notaries affected by legal cases, so that they are not enforced arbitrarily before they are proven or proven, for Law Enforcement related to Deed made by the Notary, the MKN must be able to provide a fair decision for a Notary, then the Notary Public those affected by a legal case must first obtain permission from the Notary Honor Council.

Law enforcement against a notary who commits a crime should be relevant to the same position before the law in accordance with the principle of equality before the law. A notary public has the same position before the law as regulated in Article 27 Paragraph (1), Article 28D Paragraph (1) of the 1945 Constitution. If a notary is proven to have committed a crime, the legal implication of the client and prospective client is the loss of public trust against the notary concerned

According to the Author Article 66 and Article 66A of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, it seems clear that the duties and functions, requirements and procedures for appointment and dismissal, organizational structure, work procedures, and the Notary Honorary Council budget is regulated by Ministerial Regulation. Decision of the constitutional court Number 49 / PUU-X / 2012 the judges of the court have considered the process of police action by the investigator, to take the documents in the notary safekeeping and summon the notary to be present in the examination relating to the documents he made which can only be done with the approval of the Regional Supervisory Council, according to the Court, it belongs to a group of regulations which should not contain different treatment that is contrary to the principle of equal protection as guaranteed by Article 27 Paragraph (1) and Article 28D Paragraph (3) of the 1945 Constitution, namely equality or equality before the law and government.

Thus the Constitutional Court is one of the actors of judicial power besides the Supreme Court. However, the Constitutional Court was specifically designed as one of the sole actors of judicial power. Does not have a judiciary under it and is not a subordinate of other institutions. This is what distinguishes the decision of the Constitutional Court with other judicial decisions. This is inseparable from the authority which becomes the competence of the Constitutional Court as a constitutional court which is focused on constitutional disputes and is based on the constitution. The nature of the Constitutional Court's ruling is also different from other conventional courts which provide access for parties to make further legal remedies.³¹

The entire process of law enforcement against the notary public as formulated above must be carried out without interference or intervention from other powers outside the court, in this case including the authority of the Notary Honorary Council to give approval to police actions against the notary public. Such matter is in line with the principle of the implementation of an independent judicial power as regulated in Article 24 of the 1945 Constitution and Article 3 Paragraph (2) of Law Number 48 Year 2009 concerning Judicial Power which confirms, *All interference in the affairs of justice by a party outside the jurisdiction judiciary is prohibited, except in cases referred to in the Constitution of the Republic of Indonesia of 1945* ". To the notary as referred to in Article 66 Paragraph (1) of the Notary Department's law of different conduct may be allowed during the course of the proceedings in relation to the action within the scope of the code of conduct relating to the attitude, behavior, and conduct of the notary in the discharge of duties related to morality.

Judicial proceedings for notaries in accordance with the provisions of the LawJN are not relevant to the equality of citizens before the law which should not discriminate against the treatment of citizens who commit crimes or wrongdoing. The approval of the Notary Honorary Council also contradicts the principle of independence in the judicial process.

CONCLUSION

Summoning a Notary Public as a Witness in a Criminal Case cannot be carried out like calling a witness in a general criminal case. Summoning a Notary as a witness in a criminal case must go through the permission and approval of the MPD. The approval and permission of the Regional Supervisory Council is one of the obstacles for the Police Investigator in conducting the criminal investigation process involving a notary public. Ideally the time given in the investigation process should not be too long ie 30 days if there is no answer, the police can forcibly call the notary concerned. if

³¹ Didit Hariadi Estiko dan Suhartono, *Mahkamah Konstitusi, Lembaga Negara Baru Pegawai Konstitusi*. Pusat Pengkajian dan Pelayanan Informasi Sekretariat Jenderal DPR RI, Jakarta: 2003, hlm. 14.

permission can be shortened to 7 days if the notary does not give permission, the police can make an effort to summon the notary who will be asked to testify as a witness or suspect.

The members of the Notary Supervisory Board should also involve academics and the public in order to create neutrality in deciding notaries involved in legal matters. The availability of a budget for the Notary Supervisory Council (MPD, MPW and MPP) which is used for office facilities and infrastructure needs as well as salaries for members, so that the performance of the Notary Supervisory Council (MPD, MPW and MPP) can be further improved and conducts Legal Socialization to the public large.

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