



## **Legal Protection and Law Assistance to Notaries as a Public Official in Indonesia**

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**Abstract:** The value of the rule of law is a source of moral norms in the Indonesian legal system. According to Number 2 of 2014, the position of a notary has not accommodated legal protection and law assistance for a notary as a public official. The Notary Honorary Council's approval is the only limit for the judicial process, investigators, public prosecutors, or judges. Article 66, paragraph 1, states that in the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to take copies of the minutes of the deed and/or letters attached to the minutes or the notary protocol in the notary's depository. The council also has the authority to summon the notary to participate in the examination of the notary deed or protocol under their custody. It is necessary to investigate further legal protection and efforts to provide legal assistance to notaries as public officials. This research employs normative legal methods and a statutory approach. Laws and legal regulations regarding the legal protection of notaries are the data analyzed in the article. The results of this study indicate that, as public officials, notaries have legal protection and legal assistance from the profession. The protection obtained includes nondisclosure rights and obligations. Notaries also receive protection from the Notary Honorary Council. Suppose any law enforcement officer wants to confiscate a copy of the minutes of the deed and/or the letters attached to the minutes of the deed or the notary's protocol in the notary's depository. The Notary Honorary Council must approve it. If law enforcement officers want to call a notary for a review of a notary deed or protocol in the notary's custody, the council must also approve this request. The provision of legal assistance to notaries in dealing with legal processes is given through the expansion of the authority of the Notary Honorary Council in Article 66, paragraph 2, of Law Number 2 of 2014 concerning Notary Positions.

**Keywords:** *Legal protection, law assistance, notary, public official*

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**Abstrak:** Pancasila merupakan sumber nilai tertib hukum, merupakan sumber norma moral dalam sistem hukum Indonesia. Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan notaris belum mengakomodir perlindungan hukum dan bantuan hukum bagi notaris sebagai pejabat umum. Hanya sebatas persetujuan Majelis Kehormatan Notaris untuk kepentingan proses peradilan, penyidik, penuntut umum, atau hakim. Pasal 66 ayat 1 menyatakan bahwa proses peradilan, penyidik, penuntut umum, atau hakim dengan persetujuan Majelis Kehormatan Notaris berwenang mengambil minuta akta dan atau surat yang dilekatkan pada minuta atau protokol notaris dalam penyimpanan notaris. Majelis juga berwenang memanggil notaris untuk menghadiri pemeriksaan yang berkaitan dengan akta atau protokol notaris dalam penyimpanan notaris. Perlu dikaji lebih lanjut perlindungan hukum dan upaya pemberian bantuan hukum kepada notaris sebagai pejabat umum. Penelitian tersebut menggunakan metode hukum normatif dengan pendekatan perundang-undangan. Undang-undang dan aturan hukum tentang perlindungan hukum notaris sebagai data yang dianalisis dalam artikel tersebut. Hasil penelitian ini menunjukkan bahwa sebagai pejabat umum, notaris memiliki perlindungan hukum dan pendampingan hukum profesi. Perlindungan yang diperoleh tersebut meliputi hak dan kewajiban kerahasiaan. Notaris juga mendapat perlindungan dari Majelis Kehormatan Notaris. Misalkan ada aparat penegak hukum yang ingin menyita minuta akta dan/atau surat-surat yang dilekatkan pada akta atau protokol notaris yang berada dalam penyimpanan notaris. Itu harus disetujui oleh Majelis Kehormatan Notaris. Misalkan aparat penegak hukum hendak memanggil notaris untuk menghadiri pemeriksaan mengenai suatu akta atau protokol notaris dalam penyimpanan notaris. Itu juga harus disetujui oleh Majelis Kehormatan Notaris. Pemberian bantuan hukum kepada notaris dalam menghadapi proses hukum diberikan melalui perluasan kewenangan Majelis Kehormatan Notaris dalam Pasal 66 ayat 2 Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris.

**Kata Kunci:** Perlindungan hukum, pendampingan hukum, notaris, pejabat umum

## **Introduction**

Every implementation of the duties and positions of a notary must be based on its integrity and honesty. This is because the work results in the making of the deed and the maintenance of the protocol are very important in the application of the law of evidence. Furthermore, the deed as authentic evidence concerns the interests of justice seekers. Thus, the implementation of the notary's duty and position must be supported by an accountable moral will. Notaries in dealing with legal problems, both litigation and non-litigation, do not receive legal assistance and face legal problems themselves personally without any legal assistance in the context of protecting the notary profession as a public official.

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Suppose a notary is suspected of making a mistake (alleged malpractice) in making a deed, even though he has carried out his duties and authorities according to the law (the Notary Position Act and the Notary Code of Ethics). In that case, the Notary Honorary Council must protect the notary concerned. It is conducted by summoning and examining the notary before giving approval or rejecting the request submitted by the investigator who wants to examine the notary.<sup>1</sup>

There is a possibility that a party or client appearing before a notary has bad intentions, such as a client using a false identity or a fake letter or document asking for a deed to be made. Therefore, the notary who formulates the will in a deed is involved in legal problems and even accused of participating or assisting in committing a crime in making the deed. In fact, a notary is not authorized or obliged to check the authenticity of all documents submitted to him/her. This is a warning for notaries to be careful in carrying out their duties as Public Officials in making authentic deeds. Suppose the Notary Honorary Council does not find any evidence related to the alleged malpractice by the notary. In that case, the council is obliged to provide legal protection by not approving the investigator, prosecutor, or judge to summon and examine the notary in the trial.

A legal arrangement regarding to the position of a notary is felt to have not accommodated legal protection for a notary. It is due to only limited to the approval of the Notary Honorary Council for the benefit of the judicial process, investigators, public prosecutors, or judges. Article 66 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions states that: 1) For the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to: a) Take a copy of the minutes of the deed and/or the letters attached to the minutes or the notary protocol in the notary's depository; and b) Summoning the notary to attend the examination related to the notary deed or protocol in the notary's custody; 2) An official submission report is made if the copy of the minutes of the deed or documents as referred to in paragraph 1 letter a are taken. 3) The Notary Honorary Council, within a period of no later than 30 (thirty) working days as of the receipt of the request for approval as referred to in paragraph (1) must provide an answer to accept or reject the request for approval; 4) If the Notary Honorary Council does not provide an answer within the period as referred to in paragraph (3), the council is deemed to have received the request for approval.<sup>2</sup>

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<sup>1</sup> Deviana Yuanitasari, "The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers," *Sriwijaya Law Review* 1, No. 2 (2017). Yuni Setiawati, "Notaries at Risk: Urgent Need for Legal Protection Against Criminal Acts," *Rechtsidee* 12, No. 1 (2023). Soegianto Soegianto, "Professional Ethics and Legal Protection for Notary," *Jurnal Pembaharuan Hukum* 6, No. 2 (2020).

<sup>2</sup>Rineke Sara and Theresia Trisnaning, "Law Enforcement Against the Criminal Act of Forgery of Documents by a Notary in The Perspective of Law No. 30 of 2004 Concerning the

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Notary Honorary Council must look carefully at whether the reported notary is proven intentionally or not to have committed a violation in the deed-making process in providing legal protection. Suppose the notary is proven to have committed a criminal act, such as falsifying a letter or ordering to and/or participating in committing a crime in the deed-making process. In that case, the council does not need to provide any form of legal protection to the notary. This is because, in addition to tarnishing the good name of the notary institution, it will also have a sociological impact on society, i.e., losing public trust.

The Regulation of the Indonesian Notary Association Number 08/PERKUM/INI/2017 concerning Procedures for Providing Legal Aid and Assistance to Members of the Indonesian Notary Association states that the Scope of Legal Aid Provision includes: civil cases, criminal cases, disciplinary Action, Disputes Out of Court (Non-Litigation).<sup>3</sup> Article 3 states that the costs required to provide legal aid and accompaniment, including transportation, accommodation, and consumption costs, shall be borne by the notaries concerned while considering their capabilities. As a public official, a notary in carrying out his office needs to be provided with legal protection, including maintaining the dignity of the position, including when giving testimony and proceeding in examinations and trials, keeping the minutes or letters attached to the minutes of the deed or the protocol of the notary in the notary's depository, and keeping the contents of the deed and information obtained in the deed making process confidential.<sup>4</sup>

Legal protection is an essential element and a consequence of the rule of law. The state is obliged to guarantee the legal rights of citizens, including notaries. Legal protection can be realized in a juridical arrangement (*bescherming juridische voorzieningen*). Therefore, it is necessary to obtain protection and guarantees to achieve legal certainty to provide legal protection for notaries as public officials. Therefore, it is crucial to realize the Law on Notary Positions regarding the Protection and Legal Assistance of the notary profession as a public official.

A main authority owned or possessed by a public officer is to make an authentic deed.<sup>5</sup> When referring to the provisions of Article 1868 of the Civil

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Implementation of Administrative Sanctions or The Notary's Code of Ethics," *Jurnal Indonesia Sosial Sains* 4, No. 12 (2023), p. 1257-1263. Law, Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning Notary Positions.

<sup>3</sup>Indonesian Notary Association Regulation Number 08/PERKUM/INI/2017 concerning Procedures for Providing Legal Aid and Assistance to Members of the Indonesian Notary Association.

<sup>4</sup>Gassanova Farah Diba, et.al., "Perlindungan Hukum Bagi Para Pihak Akibat Pembuatan Tindak Pidana Yang Dilakukan Oleh Notaris," *Journal of Legal Research* 4, No. 2 (2022).

<sup>5</sup>Sjaifurrachman and Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam*

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Code, which is the source of birth and the existence of public officials, the article defines the term of the authentic deed, and the term Public Official is a translation of the term *Openbare Ambtenaren* in Article 1868 *Burgelijk Wetboek*. Furthermore, the article mentions that an authentic deed is made in the form determined by law by or before a public official authorized for that at the place where the deed was made. The law clearly states that there are three main elements for the realization of an authentic deed, namely: 1) The form of an authentic deed is determined by law, meaning that it cannot be determined by the rank of legislation under the law, for example, a Government Regulation, let alone a Ministerial Regulation or a Ministerial Decree; 2) It is made by or before a public official; and 3) The deed is drawn up by or before a public official in his/her area of authority.<sup>6</sup>

Concerning need for a notarial deed as the strongest civil evidence according to applicable legal order, it is necessary for a public official assigned by law to carry out the making of the authentic deed. It is undeniable that the position of a notary is vulnerable to being targeted by law enforcement officers. A current viral term is criminalization. Therefore, while at work, notaries are constantly reminded to be professional, subject to applicable laws and regulations governing the standards of the Notary Position Act and other regulations, including Land Titles Registrar (*Pejabat Pembuat Akta Tanah/PPAT*) position regulations. Besides, there is a Code of Ethics.

Notaries always maintain dignity, both at work and in the society. It leads to a choice of not being wrong in carrying out their duties and positions. It is forbidden to violate the law or do inappropriate actions regarding office ethics and public morals. However, no matter how good a notary is, there are still those who have to deal with the courts, either because they made a mistake, or accidentally made a mistake, or even for those who were innocent and had carried out the procedure correctly. Hitherto, news about a notary being investigated, meaning that he was brought to court for carrying out his duties, is still often heard. However, not a few, after research, the case does not need to go to court. Yet, it is still being processed into the court with various arguments by law enforcement officers. This is concerning and dangerous because it seems like this profession is easily swayed by individuals looking for loopholes for faults for certain motivations.<sup>7</sup> The term is criminalization or turned into a criminal.<sup>8</sup>

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*Pembuatan Akta*, Bandung: Mandar Maju, 2011, p. 55.

<sup>6</sup> Sjaifurrachman and Habib Adjie, *Aspek Pertanggungjawaban Notaris*, p. 56.

<sup>7</sup> Dewi Padusi Daeng Muri, *Mungkinkah Organisasi Notaris Diberi Kewenangan Beracara Khusus Membela Anggotanya*, in <http://medianotaris.com>, 2021.

<sup>8</sup> Nyoman Serikat Putra Jaya, *Kriminalisasi Notaris/PPAT dalam Menjalankan Jabatannya*, Jakarta: Sinar Grafika, 2017, p. 1.

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Academically, criminalization means lifting/doing an act that was not originally a criminal act into a criminal act, which is the authority of the legislators.

This research uses normative legal methods with a statutory approach. Laws and legal regulations regarding the legal protection of notaries are the data analysed in the article.<sup>9</sup> Law, no. 2 of 2014 concerning the position of notary, the main object of which is analysed and supplemented with other legal regulations. Likewise, journal articles and expert opinions in books about notary positions in Indonesia are also references in the article.

## Legal Protection in Taking Minutes of Deed and Summoning a Notary

Pancasila is a source of values for the rule of law, a source of moral norms for implementing the law in Indonesia, in the administration of the state and as a nation.<sup>10</sup> Ethical norms and moral norms in Pancasila must be the basis for the implementation and administration of the state. The position of a notary with the status of a public official has the authority to make authentic deeds and various other authorities in civil law. Adequate law enforcement organs are needed to obtain certainty, justice, and effective use of the law.<sup>11</sup> In the field of civil law, one evidence to obtain legal certainty is letter evidence.<sup>12</sup> A notary is a public official who has the mandate and authority of the state in the form of duties, obligations and authorities in providing services to the public in the civil sector. The existence of a notary is contained in the Civil Code, especially the Fourth Book on Proof and Expiration. The strongest written evidence is in the form of an authentic, perfect, strongest and complete deed so that in addition to guaranteeing legal certainty, a notarial deed can avoid disputes.<sup>13</sup>

It is hoped that it will be able to guarantee legal certainty with the existence of an authentic deed that clearly determines the rights and obligations of each party. It is expected to avoid disputes at the same time. If a dispute cannot be avoided, it is hoped that the authentic deed is the strongest and most complete written evidence that makes a real contribution to the settlement of cases cheaply

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<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2018.

<sup>10</sup> Aris Yulia, "Profesi Notaris di Era Industrialisasi Dalam Perspektif Transendensi Pancasila," *Jurnal Law and Justice* 4 No. 1 (2019), p. 57.

<sup>11</sup> Doddy Noormansyah, "Holding Game, Merger dan Penegakan Hukum Persaingan Usaha," *Jurnal Hukum Litigasi* 7 (2006), p.10.

<sup>12</sup> Andri Gotama, et.al., "Analisis Yuridis Perlindungan Hukum Terhadap Notaris Sebagai Pejabat Umum dalam Sistem Peradilan Pidana Terkait Kewenangan Membuat Akta Otentik (Studi Penelitian Di Kota Batam)," *UNES Law Review* 6, No. 1, (2023), p. 3731-3742.

<sup>13</sup> Mohamat Riza Kuswanto, "Urgensi Penyimpangan Protokol Notaris Dalam Bentuk Elektronik dan Kepastian Hukumnya di Indonesia," *Jurnal Repertorium* 4, No. 1, (2017), p. 62.

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and quickly.<sup>14</sup> Institutionally, authentic deeds are made by a social institution known as a notarial institution. This institution sociologically arises from the need for the association of fellow human beings who require evidence related to the existing and/or existing civil law relationship between them.<sup>15</sup>

The role of a notary is enormous both for the community and in assisting the government's duties. Therefore, it is necessary for a notary to get adequate legal protection in carrying out his office, especially if a notary is summoned or asked for minutes of his deeds by the police, prosecutors, or courts. Therefore, law Number 30 of 2004, as amended by Law Number 2 of 2014, states that summons of the notaries and confiscation of copies of minutes of deed or notary protocols required approval from the Regional Supervisory Council.<sup>16</sup>

Constitutional Court Number 49/PUU-X/2012 decided to abolish or terminate the authority of the Regional Supervisory Council in Article 66 paragraph 1 of Law Number 30 of 2004,<sup>17</sup> no approval from the Regional Supervisory Council is required in summoning a notary or taking a copy of minute notarial deed and/or protocol in 2013. Decision of the Constitutional Court puts the authority of the position of a notary in a worrying position. It makes it easy for notaries to be criminalized and the police or investigators can pick up or check the notaries at will. Consequently, several things need to be considered after the Constitutional Court decision comes into effect regarding the summons of a notary and confiscation of the copy of the notaries' minutes and protocols in the judicial process by the police, prosecutors, or judges, i.e.<sup>18</sup>

1. Strongly requesting to law enforcers that notaries as public officials must maintain their dignity and honour to be treated specifically to maintain their dignities in the judicial process. It is necessary to exercise prudence in law enforcement in taking actions without injuring the rule of law principles.
2. Ensuring that law enforcers coordinate with the Regional Supervisory Council when a notary is called to attend an examination related to the deed.

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<sup>14</sup> Nur Aini and Yoan Nursari Simanjuntak, "Tanggung Jawab Notaris Atas Keterangan Palsu Yang Disampaikan Penghadap Dalam Praktik Pendirian Perseroan Terbatas," *Jurnal Komunikasi Hukum Universitas Pendidikan Ganesha* 5 No. 2 (2019), p. 107.

<sup>15</sup> Heriyanti, "Perlindungan Hukum Terhadap Notaris yang Terindikasi Tindak Pidana Pembuatan Akta Otentik," *Jurnal Yustisia* 5 No. 2, (2016), p. 327.

<sup>16</sup> Grace Avianti, et.al., "Legal Analysis of Cracking Down on Violations of Notary Code of Ethics According to Law No. 2 of 2014 concerning Amendments to the Notary Position Law," *QISTINA: Jurnal Multidisiplin Indonesia* 2, No. 2 (2023), p. 834-838.

<sup>17</sup> Constitutional Court Number 49/PUU-X/2012 Decided to Abolish or Terminate the Authority of The Regional Supervisory Board.

<sup>18</sup> Syafran Sofyan, *Perlindungan Hukum Profesi PPAT-Notaris*. Papers at the National Seminar, Perlindungan Hukum Terhadap Notaris oleh Majelis Kehormatan Notaris in Master of Notary Law Faculty of Diponegoro University, Semarang, 2015, p. 4.

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Law, Number 2 of 2014 was successfully promulgated, becoming a hope for notaries to get legal protection in carrying out their positions on January 15, 2014. The Notary Honorary Council's presence can give permission or not to summon a notary and take minutes of the deed for the judicial process. Notaries have to receive legal protection and law assistance in carrying out their positions as public officials appointed and dismissed by the government and carrying out some of the government's duties in the field of civil law. There is a legal principle that states that a person cannot be punished for committing an act of carrying out the provisions of the law. This is stated in Article 50 of the Criminal Code. According to R Soesilo, what is required or ordered by law cannot be punished by another law.<sup>19</sup>

A transformation of legal basis as a reference for carrying out the position of a Notary in its journey undergoes changes or revisions. Law Number 30 of 2004 concerning Notary Positions was amended by Law Number 2 of 2014, which came into force on January 15, 2014. Amendments to Law No. 30 of 2004 were deliberately made. One of them is a form of resistance to the decision of the Constitutional Court, which revoked the authority of the Regional Supervisory Council in giving approval. This is proven by the emergence of a new body called the Notary Honorary Council, one of which has the authority to remind the authority of the Regional Supervisory Council in Article 66 paragraph (1) before being tested and then decided to be cancelled by the Constitutional Court. When Law Number 2 of 2014 was promulgated, there was no official definition regarding the meaning of the Notary Honorary Council. In Article 66A of Law Number 2 of 2014 stated that the Notary Honorary Council is an extension of the minister to carry out guidance to notaries.<sup>20</sup>

Article 66 paragraph 1 of Law Number 2 of 2014 states that the Notary Honorary Council has an authority to approve to summon a notary and take a copy of the minutes of the deed for the benefit of the judicial process. The presence of the Notary Honorary Council is felt to restore the Carrying out the law means not only being limited to carrying out acts ordered by law, but more broadly, including acts carried out under the authority given by law. Legal protection is not solely in the sense that a notary is immune to the law. However, it is legal protection for professionalism, especially protecting the interests of the parties stated in an authentic deed, where the deed becomes a state archive should be protected. authority of the notary profession as a public official. However, a new problem

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<sup>19</sup>R Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politeia, 1993, p. 66.

<sup>20</sup>Law, Number 30 of 2004 concerning Notary Positions was amended by Law Number 2 of 2014.



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arisen, the agency itself has not yet been formed.

Presence of the Notary Honorary Council is very urgent to be formed immediately. A few months after Law No. 2 of 2014 was enacted, the existence of the Notary Honorary Council had to accept the harsh reality again to be tested in the Constitutional Court. It is related to the phrase with the approval of the Notary Honorary Council in Article 66 paragraph 1 of Law Number 2 of 2014. The petitioner for judicial review, Tomson Situmeang, thought that the presence of this phrase revives the provisions that the Constitutional Court decided in 2013 through the Decision of the Constitutional Court Number 49/PUU/X/2012. Approval of the Notary's Honorary Council is the key to unlocking the non-disclosure obligation of the notary.<sup>21</sup>

An application for material test against Article 66 paragraph 1 of Law Number 2 of 2014 was rejected by the Constitutional Court, considering that the presence of the Notary Honorary Council in Law Number 2 of 2014 is not contrary to Article 27 paragraph 1 and Article 28 D paragraph 1 The 1945 National Constitution of the Republic of Indonesia. Establishment of the Notary Honorary Council is a form of protection for notaries from the complexity of their duties and obligations and guarantees for the use of notary's nondisclosure rights in carrying out tasks that require standard protection. The existence of Article 66 paragraph 1 of Law Number 2 of 2014 actually provides protection and equality of position before the law to notaries in giving evidence in the legal process.<sup>22</sup> Final result of the examination (the Notary Honorary Council against a notary) is the approval or rejection of requests from investigators, public prosecutors, and judges regarding the contents of the deed, copy of minutes, or other letters. However, the decision of the Notary Honorary Council is included in the scope of concrete, individual, final state administrative decisions, which are the object of a lawsuit to the State Administrative Court.

A summons to a notary by an investigator may occur if: 1) It is raised by the parties whose names are mentioned in the deed; 2) It is raised by another party who is not a party to the deed but feels harmed by the issuance of the deed in question.<sup>23</sup> As long as the Honorary Council of Notaries has not been formed, notaries can exercise the nondisclosure right (*verschoningsrecht*) and the nondisclosure obligation (*verschoningsplicht*). Notaries rarely use these two things in practice because they are protected by the authority of the Regional

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<sup>21</sup><http://www.hukumonline.com/berita/baca/lt54511017e573c/persetujuan-mkn-adalah-kunci-pembuka-kewajiban-ingkar-Notaris>.

<sup>22</sup><http://www.hukumonline.com/berita/baca/lt54511017e573c/persetujuan-mkn-adalah-kunci-pembuka-kewajiban-ingkar-Notaris>.

<sup>23</sup> Habib Adjie, *Hukum Notaris Indonesia: Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Bandung: Refika Aditama, 2008, p. 8.

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Supervisory Council (later the Notary Honorary Council). Nondisclosure rights and obligations are automatically attached since he/she took office. Nondisclosure rights and obligations are not in the interest of the notary himself but the interests of the party entrusting his interests to the notary. These rights and obligations of nondisclosure may be exercised (used) with limitations as long as it is examined to request a statement/clarity regarding the act made before a notary.<sup>24</sup>

### Approval of the Notary Honorary Board and Notary Obligations

The basis of the Notary Honorary Council gives approval to investigators, public prosecutors or judges in Article 24, Article 28, Article 29, Article 30, Article 32, and Article 33 in Regulation of the Minister of Law and Human Rights Number 17 of 2021. An examining panel gives approval or rejection after hearing direct information from the notary concerned, which is stated in the minutes of examination. If the examining panel approves the request of the investigator, public prosecutor, or judge, the notary is obliged to: 1) Provide copies of minutes of the deed and/or necessary letters to investigators, public prosecutors, or judges; and; 2) Submit a copy of the minutes of deed and/or documents as referred to in letter a with an official report of the handover being made signed by a notary and investigator, public prosecutor, or judge witnessed by 2 (two) witnesses.

Retrieval of minutes of deed and/or notarial letters in the notary's depository as referred to in Article 22 of the Minister of Law and Human Rights, is carried out if: 1) The existence of allegations of criminal acts related to the minutes of the deed and/or letters affixed to the minutes of the deed or notary protocol in the notary's custody; 2) The right to sue has not expired based on the expiration provisions in the legislation in the field of criminal law; 3) There is a denial of the validity of the signature of one or more parties; 4) There is an allegation of reduction or addition to the minutes of the deed; or 5) There is an allegation that the notary has postponed the date (*antidatum*).<sup>25</sup>

The Honorary Council of Notaries may refuse a request to summon a Notary to appear or not allow the notary concerned to appear based on the request of the investigator, public prosecutor, or judge as long as the notary concerned has made the deed in accordance with the Notary Office Law and has not committed a violation. The basis for consideration of the Notary Honorary Council to refuse to give approval at the request of the investigator, public prosecutor and judge,

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<sup>24</sup> Syafran Sofyan, *Perlindungan Hukum Terhadap Notaris oleh Majelis Kehormatan Notaris*, in Master of Notary of Law Faculty Universitas Diponegoro, Semarang, 2015, p. 6.

<sup>25</sup>Minister of Law and Human Rights Regulation Number 17 of 2021 concerning Duties and Functions, Conditions and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Honorary Council of Notaries.

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namely:<sup>26</sup> The deed/document referred to in the request of the investigator, public prosecutor, or judge after examination by the examining panel is:

1. There is no relevance to the deed made by the notary concerned;
2. There is an error in mentioning the date or number of the deed between that mentioned in the request of the investigator, public prosecutor and judge with that made by the notary concerned;
3. The act made is not a notarial act, but an act of the Land Deed Registrar;
4. To the question in question, the investigator has settled a settlement by the parties in an amicable manner;
5. Against the object of the dispute being in the process of a civil case or the object of the dispute has been decided by a judge who in principle the deed made by the notary concerned has been in accordance with the provisions of applicable law;
6. The notary concerned in making the deed is based on a letter of authority or power of attorney. The problem does not lie in the deed made by the notary concerned but is based on a power of attorney made by another notary.
7. The notary in making the deed is based on the certificate of the beneficiary. In making the deed, it is in accordance with the applicable provisions. It turns out that there is an error in the relevant Beneficiary Certificate.

Regarding the object in the deed, some measures have been taken under applicable procedures or provisions. For example, a check has been carried out at the Land Office on uncertified land, and a letter of no dispute has been requested from the head of the village or subdistrict. Furthermore, a declaration of physical control acknowledged by the Head of Village of Subdistricts where the object is located has been issued. In addition, the proof of ownership is perfect and has been thoroughly examined by the Notary concerned.

Notaries are often called witnesses when there is a dispute regarding the deed he made as the official making of authentic deeds. Even a notary is also a party reported in an investigator's report. Based on Law Number 2 of 2002, Article 16 states that in the context of carrying out tasks in the field of criminal proceedings, the State Police of the Republic of Indonesia is authorized to:

1. Arrest, detain, search and confiscate;
2. Prohibit any person from leaving or entering the scene of a matter for investigation;
3. Bring and present people to the investigator for the investigation;
4. Order the suspect to stop and ask for and check identification;

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<sup>26</sup> Suprayitno, *Beberapa Permasalahan Umum Notaris Sumatera Utara Terkait Ketentuan Pasal 66 Undang-Undang Jabatan Notaris*, Notary National Seminar Material by Pengwil Ikatan Notaris Indonesia Sumatera Utara, Hotel Grand Kanaya, on October 5, 2017.

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5. Carry out inspection and confiscate letters;
6. Summon people to be heard and examined as suspects and witnesses;
7. Bring the experts in connection with the inspection of matters;
8. Stop the investigation;
9. Submit the case file to the public prosecutor;
10. Submit requests directly to immigration officials in urgent circumstances to carry out prevention and deterrence against people suspected of committing criminal acts;
11. Provide guidance and investigation assistance to investigators of civil servants as well as receive the investigation results of civil servant investigator to be submitted to the general public;
12. Take other actions in accordance with the law in charge.

The authority of the National Police to conduct investigations is regulated in Article 7 of the Criminal Procedure Code, namely investigators as referred to in Article 6 paragraph (1) letter a because their obligations have the authority to: 1) Receive a report or complaint from someone regarding the existence of a criminal act; 2) Take the first action at the scene of the matter; 3) Order a suspect to stop and checking the suspect's identification; 4) Arrest, detain, search and confiscate, examine and confiscate letters; 5) Take fingerprints and pictures of a person; 6) Summon people to be heard and examined as suspects or witnesses; 7) Bring in the experts in connection with the examination of matters; 8) Stop the investigation; and 9) Take other actions in accordance with the law in charge.

A new investigation can be conducted if an event is believed to be a criminal act. Therefore, before coercion, the data and facts obtained from the investigation results are first carefully determined. Thus, the investigation is a follow-up to the activities of an investigation.<sup>27</sup> Therefore, examination of violations committed by notaries must be an integral, holistic examination (comprehensive and unified) by looking at the external, formal and material aspects of the notary deed, as well as the implementation of the duties of a notary in accordance with the authority of the notary, in addition to based on legal rules governing violations performed by a notary. It also needs to be combined with the reality of Notary practice.

A major offense (*hardschuldrecht*) is required for acts related to work in the scientific field (*wetenschappelijke arbeiders*) such as notaries in this regard. A notary has a privilege in the process of examining criminal cases to protect his position as a public official. Hence, some provisions must be met first by law

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<sup>27</sup> Gatot Tri Suryanta, *Penyidikan Tindak Pidana di Polsek Amarta*, Thesis, Police Legal Studies Study Program, Graduate Program of Universitas Indonesia, Jakarta, 2002, p. 46.

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enforcement before summoning a notary. Examination of a notary as a suspect or defendant must be based on the procedures for making a notary deed, namely:<sup>28</sup>

1. Making an introduction to the appearer, based on his identity shown to the notary;
2. Asking then listening and paying close attention to the wishes or wills of the parties;
3. Examining the letter evidence related to the wishes or wills of the parties;
4. Providing advice and creating a deed framework to meet the wishes or desires of the parties;
5. Fulfilling all administrative techniques for making a notarial deed, such as reading, signing, providing copies, and filing minutes;
6. Performing other obligations related to the duties of a Notary.

Witnesses are valid evidence in general. A witness is a person who gives testimony, either orally or in writing or by signature. It is explaining what he witnessed himself (*waarnemen*), whether it is an act or action of another person or a situation or an event. Thus, a witness is someone who testifies by describing what is seen and heard. Whereas in Criminal Procedure Code, definition of a witness is stated that a witness is a person who can provide information for the investigation, prosecution and examination in a court hearing about a criminal case that he has heard himself, seen himself, and/or experienced himself.

A witness testimony is given as a person experiencing or knowing the actual events or facts of an event being examined. A notary only act as a witness stating what is seen, known and heard in the case. Therefore, the notary's testimony regarding the substance of the deed will not be considered a violation of the notary's nondisclosure right. It is described in Article 4 paragraph 1 jo Article 16 paragraph 1 letter e jo Article 54 of Law Number 30 of 2004. The obligation to keep the office secret has been aborted with the crime of fraud. The criminal acts related to the position of notary regulated in several articles of the Criminal Code are as follows:

1. Forgery of letters in Article 263 of the Criminal Code, imprisonment for a maximum of six years;
2. Forgery of letters carried out on authentic deeds in Article 264 of the Criminal Code, with a maximum imprisonment of eight years;
3. Giving false information in an authentic deed under Article 266 of the Criminal Code, punishable by imprisonment for a maximum of seven years;
4. Revealing secrets in Article 322 of the Criminal Code, with a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs.

Based on the description above, the definition of a witness contains several elements that must be possessed as legal evidence: 1) At least one person; 2) Can

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<sup>28</sup> Habib Adjie, *Hukum Notaris Indonesia*, p. 24.

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provide information or testimony; 3) An oral or written statement or testimony (signature) that explains what is experienced, witnessed, seen or heard by oneself in a situation or event; 4) For investigation, prosecution and examination in court for investigation. In the Criminal Procedure Code, the exception to being a witness is stated in the provisions of Article 186 of the Criminal Procedure Code.

The provisions of Article 170 of the Criminal Procedure Code also stipulate that those who, because of their work, dignity, or position, are required to keep secrets may be exempted from the obligation to provide testimony as witnesses. According to the article's explanation, the job or position determines the obligation to keep a secret determined by the laws and regulations. However, the judge determines whether or not the freedom not to give testimony is legal.

The criminal liability of a notary in a criminal act is not the same as the criminal liability of an ordinary civilian because the summons and investigation of a notary must be based on the provisions of Article 66 of Law Number 2 of 2014. For the judicial process, investigators, public prosecutors, or judges must have the authority with the approval of the Notary Honorary Council. Without the approval of the Notary Honorary Council, law enforcers cannot prosecute or carry out investigations of the Notary.

Examination of a notary, either when placed as a witness to provide information in court proceedings or as a witness or someone investigators are questioning, actually does not need to speak or provide other information other than what is stated in the deed. A notary may only bring a copy of the deed in question and then show it to the judge or investigator without the need to provide any testimony. An authentic deed which is a notary legal product, has perfect legal force (if it is made correctly), and ex-officio law enforcers must assume that the deed is valid and what it is.

### **Legal Assistance to Notaries by the Notary Supervisory Board**

According to Regulation of the Minister of Law and Human Rights Number 17 of 2021 that one of the roles of the Notary Honorary Council is to give approval to law enforcement when examining a notary who is suspected of violating criminal law while carrying out his position. In Article 23 paragraph 3 of the Regulation of the Minister of Law and Human Rights, it is stated that the Regional Notary Honorary Council may accompany a notary in the examination process before investigators, public prosecutors, or judges. The assistance is a form of legal protection given to the notary concerned by the Regional Notary Honorary Council. Such legal protection does not mean that, in this case, the notary is protected if the notary commits a criminal act but is protected in connection with the making of the deed and is not the notary's fault.

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A notary cannot take refuge under the nondisclosure right when a notary is suspected of committing a crime. The notary's nondisclosure right cannot be used as a shield to avoid the criminal court process. However, the special right of denial is used for confidentiality in the notarial deed as mandated by Law Number 30 of 2004. The right of default is not an instrument of protection for a notary from criminal acts that he has committed to make a notarial deed. The right of default attached to the notary only protects the parties' interests contained in the deed as a secret of office.

The Regional Notary Honorary Council assists the notary in order to:<sup>29</sup>

1. Passively ensures the notary that someone is accompanying him, or
2. Re-explain if there are questions from investigators regarding the reasons for the investigator's request being granted by the Regional Notary Honorary Council, or
3. Help the notary so that he can answer all questions asked by the investigator, or
4. Increase the notary's confidence when undergoing examinations.

Role of the Notary Honorary Council in the provisions of Article 66 of Law Number 2 of 2014 and the Regulation of the Minister of Law and Human Rights Number 17 of 2021 in giving approval to law enforcement when examining a notary who is suspected of violating criminal law while carrying out his office has been effective and running well. A notary in dealing with legal problems, both litigation and non-litigation, does not receive legal assistance, facing legal problems by the notary concerned himself personally. Therefore, the notary in facing legal problems, as a suspect, can be given legal assistance in a form of legal protection. Therefore, legal assistance is given to notaries who are facing legal problems, including criminal law issues.

Law assistance includes exercising power of attorney, accompanying, defending, and/or taking other legal actions for the legal interest of a notary. Providing Notary Legal Aid is carried out by the Notary Honorary Council, with the expansion of the authority it has based on the Notary Position Act, in Article 66 paragraph 2 of Law Number 2 of 2014, i.e.:

- (1) For the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to:
  - a. Take copies of the minutes of the deed and/or letters affixed to the minutes of the deed or notary protocol in the notary's custody; and
  - b. Summoning the notary to attend the examination related to the notary deed or protocol in the notary's storage.

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<sup>29</sup> Habib Adjie and Muhammad Hafid, *Memahami Majelis Kehormatan Notaris*, Semarang: Sinergi Offset, 2016, p. 7.

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- (2) For the approval of the Notary Honorary Council, as referred to in paragraph 1 letters a and b, that:
- a. In the case of a copy of the minutes of a deed or documents as referred to in paragraph 1 letter a is taken, an official submission report is made.
  - b. In the case of summoning a notary to attend the examination as referred to in paragraph 1 letter b, against a notary with the status of a suspect or defendant, the Notary Honorary Council has the authority to provide legal assistance.

### Notary Legal Protection

A notary is a public official appointed and dismissed by the state through the Minister of Law and Human Rights of the Republic of Indonesia. However, even though appointed and dismissed by the state, notaries are not state officials or state employees who receive a salary from the state. A notary as public official, open offices and carry out positions using their own funds and efforts without any assistance from the state. Notaries do not receive facilities from the state in carrying out their duties as public officials, which in essence is to carry out part of the government's authority in the field of authentic deeds, which are also state documents.

Consequence of the position held by notaries is that they have duties and obligations that must be carried out. However, in addition to the duties and obligations, notaries also have special powers and rights regulated in the Law on Notary Positions. Therefore, every implementation of a notary's duties, obligations, authorities, and rights has to receive legal protection from the state. Legal protection includes all efforts made by the provisions of laws and regulations to provide legal protection for all implementation of the duties, obligations, authorities, and rights of notaries as public officials appointed and dismissed by the state.<sup>30</sup>

Law Number 30 of 2004 provides a special procedure for law enforcement and protection of Notaries. Article 66 of Law Number 30 of 2004 stipulates that for judicial proceedings, investigators, public prosecutors, or judges with the approval of the Regional Supervisory Council are authorized to take a photocopy of the minutes of the deed and/or letters attached to the minutes of the deed or protocol of the notary with the approval of the Regional Supervisory Council.

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<sup>30</sup> Winahyu Erwiningsih and Mahrus Ali, "Notary and Legal Arrangement of Criminal Law: Legal Protection for Notaries Facing Criminal Cases," *Corporate Law & Governance Review* 5, No. 2 (2023), p. 150-155. Nur Risca Tri Indarwati, "Responsibility of Notaries and Legal Protection for Defective Legal Document," *Authentica* 6, No. 1 (2023), p. 37-47



Then, the Regional Supervisory Council holds a plenary meeting to determine whether or not the summons/investigation process from the notary concerned is approved.

Notaries have special rights because their position is given by law as public officials appointed and dismissed by the state. Special right as a public official is the nondisclosure right which is an exception to Article 1909 paragraph (1) of the Civil Code. In carrying out their duties as public officials, notaries often deal with legal processes at the inquiries, investigation, and trial stages. In the legal process, notaries must provide information and testimony regarding the contents of the deed made. When faced with the oath of office, where the notary is obliged to keep the deed's contents made secret, this is contrary to one another. In these circumstances, a notary may use the nondisclosure right or the right to be released as a witness as regulated by the laws and regulations. The nondisclosure right is a legal consequence of the obligation to keep something known to be secret. The oath of office of a notary in Article 4 and the obligations of a notary in Article 16 paragraph (1) letter e of Law Number 30 of 2004 require notaries not to speak, even in court. This means that the notaries are not allowed to testify about what was made in the deed. Therefore, notaries not only have the right to speak but have the obligation not to speak.

This obligation overrides the general obligation to give testimony as referred to in Article 1909 paragraph (1) of the Civil Code (*lex specialist derogat lex generalist*). Article 1909 paragraph (2) of the Civil Code reads: However, they may request to be released from their obligation to testify: 1) Anyone with blood ties in a straight line up or down without limiting degrees, and a line to the side up to the third degree with a notary or the parties; 2) All jobs or positions that are required by law to keep something secret, but only regarding the knowledge entrusted to him. Article 170 paragraph (1) of the Civil Code states that: 1) Those who because of their work, dignity, or position are required to keep every confidential, can ask to be released from the obligation to give testimony as witnesses, i.e. about matters entrusted to them; 2) The judge determines whether or not the reasons for the request are valid.

The obligation to keep everything related to the deed and other documents confidential is to protect the interests of all parties related to the deed according to the explanation of Article 16 of Law Number 30 of 2004. Article 66 paragraph (1) letters a and b of Law Number 30 of 2004 states that for the interest of the judicial process, investigators, public prosecutors, or judges with the approval of the Regional Supervisory Council are authorized to: 1) Take photocopies of the minutes of the deed and/or letters affixed to the minutes of the deed or notary protocol in the notary's depository; 2) Summon the notaries to attend the

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examination regarding the deed they made or the notary protocol in the notary's depository.

According with the substance of Article 66 paragraph (1) of Law Number 30 of 2004, it can be said that the word "approval" has the meaning that in the absence of approval, something cannot be done. Therefore, for the judicial process, the approval of the Regional Supervisory Council must be obtained. This shows confidentiality and that it is not easy to take a photocopy of the minutes of the deed and/or the letters attached to the minutes of the deed or the protocol of the notary in the notary's depository. Moreover, it is not easy to summon a notary even with the aim of being present at the examination for the investigation by the investigator concerning the deed made by the notary. The provisions of Article 66 paragraph (1) letters A and B only apply in criminal cases because the article is closely related to the investigator's task: the police. In addition, Article 66 paragraph (1) letters a and b are also related to the prosecutor's duties as a public prosecutor in the criminal justice system in Indonesia and related to the duties of Judges as the one who decides the sentence in criminal cases.

If a notary is sued civilly, an approval of the Regional Supervisory Council is not required. To strengthen the provisions of Article 66 paragraph (1) letters A and B of Law Number 30 of 2004, the Indonesian Notary Association has made a joint agreement with the Indonesian National Police. It is stated in a Memorandum of Understanding Number Pol: B/1056/ V/2006, Number: 01/MoU/PP-INI/V/2006 dated May 6, 2006. Furthermore, in 2007, the authority of the Regional Supervisory Council regarding Summons of Notaries, Taking Minutes of Deeds was strengthened again by Regulation of the Minister of Law and Human Rights Number M.03.HT.03.10 of 2007 concerning Taking Minutes of Deeds and Summoning of Notaries. Thus, *Polri* (Indonesian National Police) Investigators who make direct summons to Notaries without seeking approval from the Regional Supervisory Council are against the law (*onrechtmatigedaad*) or contrary to the Law, especially Article 66 paragraph (1) of Law Number 30 of 2004.

Application of Article 66 paragraph (1) letters A and B of Law Number 30 of 2004 is a legal corridor in approving pro justicia to be carried out against a Notary. For that, the Regional Supervisory Council may use two benchmarks: 1) Approval of examination of a notary as a witness is given if the notary deed is evidence or facts relevant to a criminal event that is strongly suspected of having occurred; 2) Approval for examination of a notary as a suspect and/or defendant can only be given by the Regional Supervisory Council, as long as the notary concerned has previously been proven to have made a mistake in carrying out his position or professionalism based on a decision of the Supervisory Council which is final and binding.

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The Regional Supervisory Council is required to conduct an examination first in giving approval. The examination in accordance with Article 70 letter a of Law number 30 of 2004, by holding a hearing to examine allegations of violations of the Notary's Code of Ethics or violations of the implementation of the notary's position. After examining the notary concerned, the final results of the examination of the Regional Supervisory Council shall be stated in the form of a Decree. The contents approve or reject the investigator's application against the notary concerned.<sup>31</sup>

Purpose of the notary's examination is to protect a notary from positions that require to keeps everything about deed made and all information obtained for the making of the deed in accordance with oath or promise of office. It is regulated in Article 16 paragraph (1) letter e of Law Number 30 of 2004. A Notary is obliged to keep everything related to deeds and other documents confidential. The purpose of keeping the deed and other documents secret in the Notary protocol is to protect the interests of all parties related to the deed. The Regional Supervisory Council approves or rejects the request of the investigator, public prosecutor, or judge to provide legal protection for the notary and also all parties involved in the notary deed.

The Regional Supervisory Council has the authority to approve the application of investigators, public prosecutors, or judges in the case of taking minutes and/or summoning a notary. The implementation of Article 66 of Law Number 30 of 2004 must be carried out honestly, fairly, transparently, ethically, professionally, and in accordance with the provisions of the applicable laws and regulations. In addition to the two forms of legal protection against notaries above, notaries have legal protection i.e. the understanding of law enforcement on the duties and authorities of notaries and the understanding of law enforcement on the rules contained in Law Number 30 of 2004.

### **Legal Protection for Notary Criminalization**

While carrying out their positions, some notaries have received calls from the police and were investigated for alleged abuse of office in making the deed. Several cases involve making a deed of agreement and deed of sale and purchase. Problem is resolved through mediation between the parties and does not go to court. Many clients feel aggrieved and take legal action. In this case, some notaries use legal counsel, and some do not use legal counsel to help resolve the issue. Hence, usually during the legal process, the notary is accompanied or assisted by the Supervisory Council or the Notary Honorary Council. There are still many notary officials being sued by the community in court regarding the

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<sup>31</sup> Eva Zuliana, et.al., "The Law Enforcement Analysis of Violations of the Notary Code of Ethics," *Sultan Agung Notary Law Review* 4, No. 3 (2022), p. 728.

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deeds they made. The lawsuit concerns the transfer of land, making deeds, engagements, and agreements in the field of trade or business. Even a notary or Land Deed Official (PPAT) has received a summons from the police and was investigated on suspicion of being involved in falsifying documents. Members of the Indonesian Notary Association are urged to be more careful in serving the public regarding the making of deeds and letters and continue to refer to the Law on Notary Positions and the Notary Code of Ethics in connection with these conditions. Moreover, many notaries are entangled in various cases, so that notaries in carrying out their duties and responsibilities must comply with the Law on Notary Positions.<sup>32</sup>

Notaries are appointed by the state, but economically and sociologically carry out a liberal profession (*vrije beroep*). Task of a notary is to carry out a liberal profession in society as a foundation of trust from the values of ordinary people in the field of law to defend the interests of the world community, which is full of uncertainty and bureaucracy. Many cases ensnare notaries due to their inaccuracies or mistakes. Notaries have to adhere to the Law on Notary Positions and the Code of Ethics to minimize Notaries' criminalization. However, it is very unfortunate when a Notary who has made a mistake must receive strict sanctions in the form of a warning, warning, temporary dismissal from the association's membership, or worse, dishonorable discharge from the association. This sanction is carried out so that there is supervision and a deterrent effect for Notaries who make mistakes.

The Notary Position Act contains or provides rules regarding obligations, powers, and prohibitions accompanied by sanctions if violated in the context of carrying out functions as a public official who has the authority to make authentic deeds and other authorities granted by law. Sanctions in the form of a written warning, temporary dismissal, honorable discharge, or dishonorable discharge are scattered in several articles of the Notary Position Act. There are also sanctions in the form of verbal warnings where the procedure for imposing the sanctions is regulated in a Ministerial Regulation. In addition, if the authentic deed made by a notary does not meet the requirements or rules stipulated by the Notary Position Act, the deed only has evidentiary power as an underhand deed. It becomes a reason for the party suffering the loss to claim compensation, reimbursement of costs, and interest to a notary as stipulated in Article 44 paragraph (5), Article 48 paragraph (3), Article 49 paragraph (4), Article 50 paragraph (5), and Article 51 paragraph (4) of the Notary Position Act.

When the notary deed made before or by a notary has been completed and given to the parties/appearing, the notary's duties are complete. Furthermore, the

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<sup>32</sup> Muhammad Kamran, "Notary's Responsibility in the Exercise of Authority as An Authentic Deed Official," *Journal of Law and Sustainable Development* 12, No. 4 (2024).

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notary shall administer the minutes of the Notary deed, which will last as long as the world does not end and as long as the Indonesian Notary world is not dissolved. Likewise, a copy of the deed/minute of the deed will have a juridical age that can exceed the biological age of the notary.

A notary deed as an authentic deed has perfect and strong evidentiary power so that whoever declares the deed is wrong or incorrect is obliged to prove it through a court trial. This needs to be done according to the meaning of the authenticity of the notary deed. Notaries are often faced with the trial process or dealing with the authorities because of the actions of the parties who made the deed before the notaries have disputes with other parties. The dispute is then reported to the investigator/police or prosecutor. From the statement of Article 13 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 above, it can be concluded that a notary can be dishonourably dismissed from his position by the minister at the suggestion of the Central Supervisory Council if the decision on the criminal sentence received is 5 (five) years or more and have obtained permanent legal force. Thus, the legal status of the notary changes from Defendant to Convict.

Such a situation is very concerning in the notary world. The world of Notaries is so beautiful with strong legal aspects (both the deed and the institution). The presence of notaries is desired by the state with the task/authority to carry out state duties that the state cannot carry out. Therefore, a notary institution is formed to serve people who need authentic evidence subject to Civil Law. In this regard, Notaries are given the authority to use state institutions in their official seals/stamps. Only Notaries are given such authority in official structures outside the state/government. However, it is very concerning nowadays that notaries can easily become defendants or convicts.

Certain measures or parameters involve a notary in civil or criminal matters. In practice, notaries are often made or positioned as defendants by other parties who feel that the legal actions in the deed are categorized as legal actions or actions of a notary or a notary together with other parties mentioned in the deed. One of the duties of a Notary's position is to formulate the wishes/actions of appear into the form of an authentic deed, taking into account the applicable legal rules. As stated in the Jurisprudence of the Supreme Court of the Republic of Indonesia: "...notary's function is to only record/write down what is desired and stated by the parties who appear before the notary. There is no obligation for the notary to investigate materially anything (things) put forward by the appeared before the Notary."<sup>33</sup>

If the deed made before or by a Notary is problematic by the parties themselves (then it becomes the business of the parties themselves) the notary

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<sup>33</sup> Supreme Court Decision Number: 702 K/Sip/1973, September 5, 1973.

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does not need to be involved, and the notary is not a party to the deed based on the substance or meaning of the Supreme Court's Decision. Suppose in the position of a case like this, i.e. the deed is disputed by the parties themselves, and is not problematic from the external, formal, and material aspects. In that case, it is very contrary to the above-mentioned legal rules and in the practice of the Indonesian courts; 1) Notary concerned is proposed and summoned as a witness in court regarding the deed made before or by the notary, which is used as evidence in a case; 2) Notary as a defendant in court regarding the deed he made and is considered detrimental to the plaintiff is tried in general court (civil case).

An example of a case related to Notary protection is the search of Notary Ridwan Zainuddin in the Selayar Islands, South Sulawesi Province, carried out without prior examination by the Notary Honorary Council. It is considered to reduce the protection of the Notary in providing information related to the deed made before him. It was done after obtaining a search warrant from the Court, which previously did not get approval from the Honorary Council of Notaries for the South Sulawesi Region. That decision is regrettable. Those notaries receive preferential treatment under Article 66 of the Law on Notary Positions is not entirely true. As a citizen, a notary can still be prosecuted criminally or civilly if he commits a violation. The Notary Honorary Council assesses whether the violation is a violation of office and allows the investigator to ask the notary to provide information regarding the deed made before him and show the minutes or other protocols in the construction of Notary Law.<sup>34</sup>

It is reasonable if the Notary Honorary Council must first assess whether the error or violation is the notary's fault or not. This is because the notary is only party who witnesses and formulates the wishes of appear. The Notary Honorary Council plays a role in protecting the notary in providing information before the judge related to the deed made before the notary. Position of a notary is a position of trust. Nobility and dignity of the position of a Notary must be maintained, both in carrying out the duties of the office and in the behaviour of a Notary's life as a human being which directly or indirectly affects the nobility and dignity of the notary's position.

Article 12 letter c of Law Number 2 of 2014 concerning the Position of a Notary confirms that a notary is dishonourably dismissed from his position by the Minister of Law and Human Rights at the suggestion of the Central Supervisory

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<sup>34</sup> Rastra Ananda, et.al., 2022. "The Role of The Notary Regional Supervisory Board in Responding to Violations of Notary Duties and Positions". *Indonesia Private Law Review* 3, No. 2 (2022). Rizal Alamsyah Hadi Saputra, "The Legal Protection for Notaries against Civil Efforts on Authentic Deeds That Have Been Published," *Sultan Agung Notary Law Review* 5 No. 3 (2023), p. 111-132

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Council for committing a legal act demeaning the honour and dignity of a Notary. Notaries can only provide information or opinions that can be proven true, must be sincere to the client, and use all scientific sources. A notary is obliged to keep everything he knows about the problems faced by the client because of the trust that has been given to him.

Law on Notary Positions stipulates that if a notary is proven to have committed a violation in carrying out his duties, the notary may be subject to sanctions in the form of civil sanctions, administrative sanctions, and the code of ethics sanctions of the notary position. It can be found that a violation of the law by a notary can only be subject to administrative sanctions or civil sanctions, or even only in the form of sanctions for the code of ethics for the position of a Notary. However, notaries are often withdrawn as parties who participate in committing or assisting in committing a crime, i.e. making or providing false information in a notary deed if the parties or other third parties dispute a notarial deed. In this case, the notary, intentionally or not, together with the parties, makes a deed to benefit only certain parties or appear or harm, which must then be proven in court.

A legal protection mechanism is needed for a Notary in terms of the examination process related to allegations of alleged deed forgery or other allegations in the criminal realm for this reason. The mechanism has been regulated in Article 66 of Law Number 2 of 2014 through a preliminary examination by the Regional Notary Honorary Council. A notary whom the investigator summons must obtain approval from the Regional Notary Honorary Council to be summoned and examined before the investigator. However, there are still notaries who are immediately summoned by investigators and examined without obtaining prior approval from the Regional Notary Honorary Council. Protection of the minutes of deed held by a notary is also a concern, so approval from the Regional Notary Honorary Council is required if investigators need the minutes of deed in examining a notary.

## **Conclusion**

It can be concluded that the notary profession as a public official has nondisclosure rights and obligations for legal protections and assistance of law based on the discussion and novelty. Notaries also get protection from the Notary Honorary Council in the form of approval or rejection concerning the request for copies of the minutes of the deed and/or letters attached to the minutes of the deed or notary's protocol by the law enforcement. Every summons of a notary to attend an examination related to a notary deed or protocol in the notary's depository must be approved by the Notary Honorary Council. A provision of legal assistance to notaries in dealing with legal processes is an effort to realize the legal protection

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of the notary profession as a public official. Legal assistance is given to notaries facing legal processes in the criminal justice system with the status of suspects and defendants. Such legal assistance includes exercising power of attorney, accompanying, defending, and/or taking other legal actions for the legal interest of a notary. Providing legal assistance to notaries is carried out by the Notary Honorary Council, with the expansion of authority based on the Notary Position Act, in Article 66 paragraph 2 of Law Number 2 of 2014.

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