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Legal Protection for the Notarial Office when Designated as a Suspect In a Criminal Case

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Abstract: Legal protection for notaries constitutes a fundamental element in maintaining the independence, professionalism, and public trust in the notarial office as a public official. The Law on the Office of Notary, particularly Article 4 paragraph (2) and Article 16 paragraph (1) letter f, affirms the obligation of notaries to maintain the confidentiality of the contents of deeds and any information obtained in the course of their duties. However, the phrase “unless otherwise stipulated by law” creates broad room for interpretation and potentially gives rise to legal uncertainty. Therefore, legal protection for notaries must be formulated in two main forms, namely preventive and repressive protection. Preventive protection includes clear regulations and effective oversight to prevent potential misuse or criminalization of the notarial office. Meanwhile, repressive protection is required when a notary is subjected to criminalization or violation of rights, in the form of adequate legal assistance. One essential mechanism in this context is the obligation for law enforcement officers to obtain prior approval from the Notary Honorary Council (Majelis Kehormatan Notaris, MKN) before initiating any investigation against a notary. As custodians of civil secrets, notaries must be optimally protected in order to uphold the dignity of the law and ensure legal certainty for the public.

Keywords: Legal Protection, Notarial Office, Suspect, Criminal Law

INDROTUCTION

A Notary is a public official granted authority by the state to draw up authentic deeds and exercise other authorities based on Law Number 30 of 2004 concerning the Position of Notary and Law Number 2 of 2014 as an amendment to the aforementioned Law (hereinafter referred to as the Law on the Position of Notary). The strategic role of notaries in civil legal transactions makes their presence and integrity essential in ensuring legal certainty, order, and protection within society. Therefore, legal protection for notaries in carrying out their official duties is of utmost importance, particularly in the context of drafting authentic deeds (Mulyoto. 2011).

A notary is required to comply with various legal provisions and professional ethics. One of the obligations strongly emphasized by the law is the duty to maintain the

confidentiality of deeds and any information obtained during the execution of notarial duties. This provision is explicitly stipulated in Article 4 paragraph (2) of Law Number 2 of 2014, which sets forth the oath or pledge taken by notaries before assuming office. Part of the oath reads: "That I will keep confidential the contents of deeds and any information obtained during the performance of my duties." This oath is not merely symbolic but serves as a moral and legal foundation binding the notary throughout their tenure. Should a notary violate this oath, they may be subject to sanctions in accordance with applicable laws and regulations (Mulyoto. 2011).

In Indonesia's legal system, a notary is a public official who plays a crucial role as the drafter of authentic deeds, which possess the highest evidentiary value in civil legal transactions. The role of a notary goes beyond administrative tasks and is closely tied to the protection of citizens' civil rights. Thus, legal protection for notaries is essential, both in performing their duties and in preserving the integrity of the legal instruments they produce. The Law on the Position of Notary firmly designates the notary as a public official authorized by the state to produce legal instruments in the form of authentic deeds. These deeds serve as lawful, strong, and binding evidence, making notaries a trusted party for important legal documentation. Therefore, any deviation in the execution of their duties and authority can erode public trust in the notarial institution and weaken the legal evidentiary system itself (Putri A.R. 2011).

A notary does not merely act as a neutral party recording the intentions of the involved parties into a deed, but also as a guarantor of the legal quality of such deeds. The law requires that a notary act honestly, independently, impartially, and in compliance with legal procedures and professional ethical standards when drafting a deed. This is intended to ensure that the resulting deed serves as a high-quality evidentiary instrument that is, one with perfect evidentiary strength (authentic deed); legally accountable in and out of court; and capable of providing legal certainty to the parties involved. However, in practice, it cannot be denied that some notaries violate these principles, for example, by committing forgery, collusion, or neglecting legal procedures for personal gain or under pressure from certain parties. As a result, the deed produced no longer meets the quality standards expected by society.

Based on the foregoing, this study aims to focus on two main issues: first, how legal protection is provided to notaries involved in criminal acts while carrying out their duties and authorities, as reviewed under the Law on the Position of Notary; and second, what forms of legal protection are available to notaries both in court and outside of court from the perspective of the Law on the Position of Notary.

METHOD

This research uses a normative juridical method, which is an approach based on library studies and analysis of written legal norms. The focus of this research is to examine the legal protection of notaries involved in criminal acts while performing their duties and authority as regulated in Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning the Position of Notary. The research is conducted by reviewing the legislation, legal doctrines, and relevant court decisions to address two main issues: legal protection for notaries facing criminal legal processes in relation to the performance of their duties, and the form of legal protection for notaries both inside and outside the courtroom. The technique for collecting legal materials is through library research on primary and secondary legal literature. Legal materials are analyzed qualitatively, emphasizing systematic and teleological interpretation to obtain prescriptive legal conclusions.

RESULTS AND DISCUSSION

LEGAL PROTECTION FOR NOTARIES IN THE EXECUTION OF THEIR OFFICIAL DUTIES BASED ON THE NOTARY POSITION ACT

Legal protection for notaries is an essential aspect in ensuring the independence and professionalism of the notarial office as a public official. In Indonesia's legal system, notaries are specifically regulated through the Notary Position Act. The primary objective of this regulation is to provide legal certainty for both notaries and the public as users of notarial services. As public officials, notaries are authorized by the state to produce authentic deeds. These deeds serve as evidence with full legal force in judicial processes (Tedjosaputro, Liliana. 2003). Therefore, the process of drafting such deeds must be carried out independently, objectively, and within the legal framework established by the law. In fulfilling these official duties, notaries must receive legal protection to prevent them from being easily intervened with, pressured, or criminalized by irresponsible parties (Abdul Ghofur, 2009).

Legal protection for notaries is explicitly stipulated in various provisions of the Notary Position Act and its amendments introduced through Law No. 2 of 2014. One such form of legal protection concerns the confidentiality of the notary's office. This is affirmed in Article 4 paragraph (2) of the Notary Position Act, which states that in their oath or pledge of office, notaries must declare: "...that I will keep confidential the contents of deeds and information obtained in the course of performing my duties." This provision is not merely symbolic or administrative in nature but serves as a moral and legal foundation that must be strictly upheld by every notary. Any violation of this principle may result in administrative or even criminal sanctions. Furthermore, this obligation is reinforced in Article 16 paragraph (1) letter f of the Notary Position Act, which emphasizes that in carrying out their duties, notaries are obliged to: "maintain the confidentiality of all matters related to the deeds they produce and all information obtained in the preparation of said deeds in accordance with the oath or pledge of office, unless otherwise stipulated by law."

The confidentiality of the notarial office is a form of protection for information obtained by the notary during the process of drafting deeds. This includes the contents of the deed, data of the involved parties, and any consultations between the parties and the notary. This principle is essentially similar to the *attorney-client privilege* in the Anglo-Saxon legal system, which grants clients the right to keep confidential any communications with their attorney. However, in the notarial context, this protection is not absolute due to the clause "unless otherwise stipulated by law." This clause becomes problematic because the limitations on when and in what context "the law stipulates otherwise" are not specifically explained either in the Notary Position Act or in other relevant legislation.

The phrase "unless otherwise stipulated by law" in the context of legal protection for notaries opens up broad avenues for interpretation. Does it refer to provisions in criminal procedural law, civil law, or other sectoral legislation such as the Anti-Corruption Law, Money Laundering Law, or Taxation Law? This normative gap potentially disadvantages notaries when faced with demands from law enforcement agencies for example, requests for deed copies or testimony involving information they are obliged to keep confidential. In practice, notaries frequently face a dilemma between complying with procedural law (e.g., being summoned as a witness in a criminal trial) and fulfilling their ethical and sworn obligations to maintain confidentiality. If a notary discloses confidential information due to law enforcement pressure, they may be deemed in violation of the code of ethics or even face civil lawsuits from clients. Conversely, if they refuse to disclose such information, they may face legal sanctions for allegedly obstructing an investigation or other legal proceedings (Cahyarini Luluk Lusiaty dan Kartika Kismawardani, 2023).

Legal protection for public officials such as notaries falls within the concepts of both preventive and repressive legal protection. Preventive protection is provided through clear

legal provisions, oversight by professional organizations (in this case, the Indonesian Notary Association), and clarity regarding the scope of duties and authority. Repressive protection, on the other hand, involves legal mechanisms to defend notaries in the event of rights violations, such as unfounded complaints, criminalization, or unlawful data seizure. The roles of the Notary Supervisory Councils and the Notary Honorary Council are crucial in providing such protection. For instance, in cases where law enforcement seeks information from a notary, pursuant to Constitutional Court decisions and court rulings, investigators are required to obtain prior approval from the Notary Honorary Council before examining a notary in relation to deeds they have executed (Sjaifurracman, 2011).

The duty to maintain confidentiality is further emphasized in Article 16 paragraph (1) letter f of the Notary Position Act, which states: “In carrying out their duties, notaries are obliged to maintain the confidentiality of all matters concerning the deeds they have prepared and all information obtained for the preparation of deeds in accordance with their oath or pledge of office, unless otherwise stipulated by law.” This provision underscores that notaries must not arbitrarily disclose or leak information related to the deeds they create, whether to outsiders or to unauthorized parties. This duty serves not only to protect the parties involved in the deed but also to uphold the dignity of the notarial office as a neutral and trusted public institution.

The explanation of Article 16 paragraph (1) letter f of the Notary Position Act explicitly states: “The obligation to maintain the confidentiality of all matters related to the deeds prepared and all information obtained in connection with deed preparation is intended to provide legal protection to the parties involved, so that the contents of the deed and any confidential or personal information disclosed by the parties remain unknown to others.” This explanation makes clear that the confidentiality obligation is not merely an administrative formality, but a concrete form of legal protection for all parties involved in the deed. Without this obligation, parties may be reluctant to disclose personal or sensitive information to the notary, ultimately undermining public trust in the notarial institution.

The phrase “unless otherwise stipulated by law” in Article 16 paragraph (1) letter f of the Notary Position Act leaves ample room for interpretation. To date, there has been no specific provision detailing under what circumstances notaries may disclose confidential information. This creates practical issues, particularly when notaries are summoned as witnesses or asked to submit deeds during investigations by law enforcement agencies. In this context, the Constitutional Court has ruled that law enforcement officers must obtain permission from the Notary Honorary Council before examining a notary or requesting information related to a deed. This mechanism is intended as a legal safeguard to prevent notaries from being easily subjected to criminalization or pressure from certain parties.

Legal protection for notaries does not only concern the individual notaries themselves but also the rights and legal interests of the parties who execute deeds. In this regard, notaries are the guardians of private civil law secrets and must be respected and protected under the law. Aside from confidentiality, other forms of legal protection for notaries include administrative and ethical aspects. The Notary Position Act stipulates that oversight of notarial conduct and performance is carried out by Regional, Provincial, and Central Supervisory Councils, as well as the Notary Honorary Council. These mechanisms are designed to ensure that notaries perform their duties professionally and to provide protection in the face of baseless threats or accusations. In practice, legal protection is also provided through legal assistance by professional organizations, such as the Indonesian Notary Association (Ikatan Notaris Indonesia or INI), which plays an active role in defending its members against disproportionate legal actions.

FORMS OF LEGAL PROTECTION FOR NOTARIES INVOLVED IN CRIMINAL ACTS IN JUDICIAL AND EXTRA-JUDICIAL PROCEEDINGS

The Law on Notary Office strengthens the role and position of notaries as public officials vested with significant authority in civil legal affairs. Beyond serving as the drafter of authentic deeds, a notary also functions as the guardian of legal certainty, order, and protection. The Law on Notary Office regulates not only the duties and responsibilities of notaries but also the mechanisms for legal protection of their roles and functions. Accordingly, there are at least three key elements entitled to legal protection. These three elements are closely linked to the notary's function as the creator of authentic evidence, the custodian of legal confidentiality, and a public official whose independence must be safeguarded.

The first element entitled to legal protection is the authentic deed prepared by the notary. An authentic deed constitutes the strongest and most conclusive evidence in judicial proceedings, as stipulated in Article 1868 of the Indonesian Civil Code. This deed is drawn up by or before a public official authorized to do so and adheres to the form and procedure prescribed by law. Under the Law on Notary Office, deeds created by notaries fall into two categories. Deeds required by law to be made by or before a notary, such as deeds of incorporation, deeds of land sale and purchase, and deeds of donation. Deeds made upon the request of the parties, though not legally required, to ensure the evidentiary strength of a legal act, such as loan agreements, powers of attorney, or statements (Adjie, Habib. 2007). Both types of deeds retain legal force and are protected by the state. Deeds produced by notaries must be respected and recognized in legal proceedings as valid and strong evidence, and may be used outside of court in various legal and transactional contexts to guarantee legal certainty. Legal protection for such evidence safeguards not only the legal interests of the parties involved but also the integrity of the national legal system.

The second element receiving legal protection is the person and office of the notary. This protection relates to the notary's status as a public official executing the mandate of law. Given that notaries often act as intermediaries in disputes, they are vulnerable to legal pressure, including civil lawsuits or criminal summonses as witnesses or suspects. The Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest provides protection by stipulating that a notary may not be summoned directly by investigators, prosecutors, or judges in connection with deeds or statements obtained in the performance of their duties without prior approval from the Notary Honorary Council (Adjie, Habib. 2007).

A notary has the right to refuse to provide testimony, except as otherwise required by law, in accordance with the confidentiality of office principle as set out in Article 16 paragraph (1) letter f of the Law on Notary Office. The notary's liability regarding the contents of a deed is limited to matters directly performed in their presence and those for which the notary is legally authorized to guarantee. Legal protection is essential to prevent the criminalization or legal intimidation of notaries in the course of their duties, thus enabling them to act independently, objectively, and professionally without external interference.

The third element entitled to legal protection is the parties with an interest in the notarial deed those who request the deed or whose names appear within it. This protection focuses on the confidentiality, legal security, and validity of the legal relationship recorded in the deed. The Law on Notary Office, specifically Article 16 paragraph (1) letter f, obligates notaries to maintain confidentiality over all information obtained in the deed-making process, except where otherwise mandated by law. This provision aims to Protect the privacy and legal reputation of the parties; Enhance public trust in notaries as public officials; Ensure sensitive personal or business information is not misused or disclosed to unauthorized parties.

The law sets boundaries for how notaries must act. If a notary deviates from these provisions, the resulting evidence risks Lacking authentic evidentiary value; Being annulled

or disregarded in legal proceedings; Causing harm to one or more involved parties; Undermining the objectivity and legitimacy of the notarial profession. It must be noted, however, that such deviations are not always solely attributable to the notary. Sometimes, parties knowingly opt for non-authentic documents, such as ordinary statements, which do not require authentic deeds (Muhammad Raditiya Pratama Ibrahim dan Amad Sudiro, 2022). In such cases, the notary is not fully liable, as they are merely accommodating the parties' preferences. Nonetheless, the notary remains ethically and legally obligated to explain the consequences of such choices to the parties.

Notaries, in carrying out their duties and authorities professionally and without coercion, are entitled to legal protection, both in court and outside of court. Notaries cannot be summoned by investigators, prosecutors, or judges without approval from the Notary Honorary Council. They have the right to refuse to disclose information related to deed contents or any information acquired in their official capacity, unless required by law. The state ensures that notaries may carry out their duties professionally and free from undue pressure, including from dissatisfied parties. Such legal protection is necessary to prevent notaries from becoming victims of criminalization or tools of irresponsible political or economic actors (Nadhilah Izazi dan Sulistio Adiwianto, 2024). Without adequate legal protection, notaries would be vulnerable to interference, ultimately compromising the quality of the evidence they produce. As public officials, notaries play a central role in Indonesia's civil legal system. Their principal duty is to draw up authentic deeds as the highest form of legal evidence with conclusive evidentiary strength. Hence, it is crucial to ensure the deeds created by notaries maintain authenticity and legal accountability. In this regard, the Law on Notary Office imposes strict requirements concerning the creation, storage, and safeguarding of deeds.

Article 16 paragraph (1) letter b stipulates that a notary must prepare deeds in the form of a Minuta Akta and retain them as part of the Notary Protocol. The Minuta Akta is the original script of a deed, signed by the parties and the notary, and forms part of the official notarial archive. This obligation serves two main purposes. The minuta is the sole authentic version of the deed, bearing original signatures and kept by the notary; Copies (grosse or excerpts) are derivatives of the minuta and lack evidentiary force if not consistent with it. In cases of doubt or allegations of forgery, the minuta held by the notary can be used for verification. By comparing the copy or excerpt with the minuta, the authenticity of the document can be ascertained. This is vital in both civil and criminal cases, particularly during trials. If the minuta is lost, the evidentiary strength of the deed is significantly weakened due to the absence of an authentic reference.

The Minuta Akta forms part of the Notary Protocol, which is a collection of authentic notarial documents that must be managed, protected, and preserved in accordance with statutory provisions. Upon the end of a notary's term, the protocol must be transferred to a successor notary or one appointed by the Minister of Law and Human Rights. The Notary Protocol holds the legal status of a state archive, as it directly relates to the legal interests of the public. Therefore, its storage must meet high standards of security and confidentiality. Breaches of this provision may result in administrative, civil, or criminal sanctions (Adjie, Habib. 2009).

The Law on Notary Office also explicitly regulates who may view or obtain a copy or excerpt of a deed. Article 54 affirms that a notary may only disclose, present, or inform the contents of a deed to Legal heirs; Parties with legal rights arising from the deed. Persons without direct legal interest in a deed are not entitled to know its contents. This restriction aims to protect the legal confidentiality of the parties named in the deed and prevent misuse of legal data or information by unauthorized persons. Deed confidentiality serves as legal protection for both clients and the notary and reflects the integrity and professionalism of the notarial office (E. Juanda, 2016). Exceptions may only be made upon a court order, specific

legal provisions mandating disclosure, or for criminal investigation purposes (subject to prior approval by the Notary Honorary Council).

A notary who fails to create a Minuta Akta or does not properly store it may face administrative sanctions, including reprimands, warnings, suspension, temporary dismissal, or permanent dismissal, as provided in Articles 85 and 86 of the Law on Notary Office. Furthermore, if the notary's fault causes harm to other parties, they may be subject to civil liability under tort or breach of contract. If there is a criminal element, such as forgery or abuse of authority, the notary may be prosecuted under the Indonesian Penal Code, particularly Article 263 (forgery of documents) and Article 266 (inducing the inclusion of false information in an authentic deed).

Legal protection afforded to notaries is not intended merely for personal defense, but primarily to safeguard the notary's social function as a provider and custodian of legal evidence. By retaining the Minuta Akta and ensuring its confidentiality, notaries contribute to maintaining legal stability in society. The credibility and authority of a notary as a public official who drafts authentic deeds lies in their ability to uphold the authenticity and integrity of those deeds. Therefore, legal protection for the storage mechanisms of the minuta and access restrictions to deeds constitutes part of the state's effort to uphold legal certainty, justice, and legal order.

CONCLUSION

Legal protection for notaries is a crucial element in maintaining their independence, professionalism, and public trust in the notarial office as a public official. The Notary Law, particularly Article 4 paragraph (2) and Article 16 paragraph (1)(f), affirms the notary's obligation to maintain the confidentiality of deeds and information obtained in the course of their duties. However, the phrase "unless otherwise provided by law" opens the door to broad interpretation and potential legal uncertainty. Therefore, legal protection for notaries must include both preventive protection through clear regulations and effective oversight, as well as repressive protection through legal assistance in cases of criminalization or rights violations. Protective mechanisms such as the requirement for law enforcement to obtain approval from the Notary Honorary Council before examining a notary are essential to prevent abuse of authority. As custodians of private legal secrets, notaries must be protected to uphold the dignity of the legal system and ensure legal certainty for the public.

The Notary Law affirms the notary's role as a public official with essential authority in civil legal affairs. Notaries are not only authentic deed drafters but also uphold legal certainty, order, and protection. Legal protection encompasses three main elements: (1) authentic deeds, (2) the notary's person and office, and (3) parties to the deed. Authentic deeds possess perfect evidentiary force under Article 1868 of the Civil Code and are state-protected whether mandated by law or made upon request. The second element protects the notary from arbitrary legal summons. A notary may not be summoned by investigators, prosecutors, or judges regarding deeds or confidential information without approval from the Notary Honorary Council (MKN), per Article 16(1)(f). Thirdly, parties named in deeds are protected under the principle of confidentiality. Only those with direct legal interest may access the deed's content. The notary's obligation to draft and safeguard deeds in *minuta* form as part of the Notarial Protocol ensures evidentiary integrity and supports public trust in the legal system.

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