

Research Article

# Notary Liability Examined by Investigators in Criminal Actions of False Information on Authentic Deed

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**Abstract.** To provide clarity, order, and legal protection, it is essential to have authentic written documentation of acts, agreements, stipulations, and legal events performed by or before an authorized official. Laws and rules are necessary for authentic deeds in order to establish clarity, order, and legal protection. Society need a notary who is dependable, trustworthy, whose signature and all stamps give assurances and evidence, an impartial expert and advisor who is faultless (*onkreukbaar* or unimpeachable), keeps his mouth shut, and enters into an agreement that will protect him in the future. The purpose of the implementation of this research is to see how the form of notary accountability in the crime of giving false information for authentic deeds. This research will be conducted using a qualitative approach and normative juridical methods. The results of this study found that the research method used was a normative juridical research method. The responsibilities of a Notary can be divided into Civil Liability, Criminal Liability, and Administrative Responsibilities. This MKN institution has an essential role in replacing the MPD's part. MKN has the authority to approve the police, public prosecutors, and judges to examine notaries, only formed in 2016.

**Keywords:** Responsibility, Notary, False Information.

## A. INTRODUCTION

Indonesia makes law a constitutional basis that becomes the rules in society, national, and state life. As a state of law, Indonesia possesses the following elements: 1) That the government's duties and obligations must be based on laws or statutory regulations; 2) There is a guarantee of human rights (citizens); 3) There is a division of power within the state; and 4) There is judicial oversight (*rechterlijke controle*) (Dewantara et al., 2019).

The law that applies in a country protects human interests so that the law regulates all relationships between individuals or individuals. Rules are made to protect the community from various problems and are expected to solve any issues that will arise both in the present and future (Hoofnagle et al., 2019).

To ensure clarity, order, and legal protection, authentic written documentation of legal acts, agreements, stipulations, and events performed by or before authorized officials is required. In this instance, one of the authorized officials is a notary, as a public official who provides community legal services requires protection and guarantees in order to obtain legal certainty. The position of notary has two facets: on the one hand, he is the holder of a state office, and on the other, he is the practitioner of the profession. But in essence, the same applies to regulating legal interactions in writing between diverse parties, with execution based on the request of the parties for a negotiated (peaceful) resolution (Lubis & Ramadhani, 2021).

In practice, a notary is necessary for Indonesia's people. According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN), Article 1 number 1 states that: "Notaries are public officials who are authorized to do authentic deeds and have other authorities as intended in this Law or based on other Laws".

The term "public official" is defined as an official tasked with making an authentic deed that serves the public interest, and notaries possess these criteria (Seroja, 2022).

In UUJN Article 15 point 1 states that: "Notaries are authorized to do authentic deeds regarding all acts, agreements, and stipulations required by laws and desired by the interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copies, and quotations of the deed, all of that as long as the making of the deed is not also assigned or excluded to other officials or other people stipulated by law".

Laws and rules are necessary for authentic deeds in order to establish clarity, order, and legal protection. Articles 38 through 65 of the UUJN specify the forms and processes for preparing a notarial act as an authentic act. A deed becomes authentic if it satisfies the legal requirements; consequently, a notary is required to carry out his duties with complete discipline and professionalism, and his moral integrity should not be questioned. What is contained in the beginning and end of the deed, which is the responsibility of the notary, is an expression that reflects the real situation at the time the deed was created (Iryadi, 2019).

The presence of a notary is essential for establishing legal certainty and safeguarding the community. What will occur if the credibility of the conclusive evidence is questioned when a notary is attempting to prevent the occurrence of legal issues via the use of a genuine document he drafted as the ideal courtroom evidence? Individual and social responsibility, including adherence to good legal norms and a readiness to subject to a professional code of ethics, is even required in order to reinforce positive legal norms already in place (Rosadi, 2020).

According to research by Subekti, "what is called a deed is a writing that is solely made to prove something or an event, therefore, a deed must always be signed". Meanwhile, according to Sudikno Martokusumo, "a deed is a signed letter containing events that form the basis of a right/engagement that was made from the beginning intentionally for proof". "So that the making of a Notary deed can be used as evidence in a legal dispute that is used as a tool to recall events that have occurred, so that it can be used for evidentiary purposes" (Rezhana et al., 2021).

According to Article 1868 of the Civil Code, an authentic deed is a deed in the legal form. Made by or before public officials with authority in the location where the act was performed. So that in civil disputes, the authentic deed is evidence that is binding and coercive, meaning that the judge must accept that all legal events indicated in the authentic deed are accurate unless there is other evidence that might negate the deed's power of proof (Basri, 2021).

A notarial deed possesses perfect evidential force, so that if certain individuals or parties judge or declare the deed invalid, they are required to show their assessment or statement in accordance with the law. An unlawful act (PMH) is an act that violates the applicable laws and regulations. Any person or business actor who violates applicable laws and regulations can be said to be a PMH. Article 1365 of the Civil Code states that PMH is any act that causes harm to other people, people who cause harm to others and people who cause losses are required to provide compensation to people who experience these losses (Dharmawan et al., 2022).

The actions taken by a notary when carrying out a PMH in carrying out his profession will undoubtedly bring the notary into the realm of criminal law. Things that are included in the PMH that a notary does, such as: giving false information. The fact in society is that many parties offer inaccurate data and information to a notary while creating a deed (Immanuella & Hoesin, 2022).

A notary's responsibility is to deliver data and information provided by the parties without additional investigation into the data's veracity. As we all know, notaries lack the authority to examine or seek material truth from the facts and information supplied by the parties. This impacted his deed, which later became problematic (Aini & Simanjuntak, 2019).

The responsibilities of a notary as a profession are derived from the obligations and powers delegated to him; these obligations and powers are legally obligated to take effect once the notary takes the oath of office. The notary's conduct should be governed by the oath he takes upon assuming his post (Mido et al., 2018).

The UUJN does not specifically establish legal protection for notaries throughout the inspection procedure associated with document falsification. When a notary is interrogated in a criminal proceeding pursuant to Article 66 of the UUJN, he is required to gain approval from the honorary assembly, but in reality, this is not done, the notary is immediately summoned by investigators and examined. The honorary assembly then failed to give legal protection during the examination procedure. This is due to the fact that the UUJN does not regulate legal protection for notaries in criminal cases. Furthermore, the UUJN does not regulate the criminal liability of a notary for a document based on fabricated data and information provided by the parties. So that there is a lack of legislative rules in the UUJN concerning legal protection and the responsibilities of a notary when executing a contract based on falsified data and information provided by the parties.

## **B. LITERATURE REVIEW**

### **1. Responsibility Theory**

The theory of legal responsibility is needed to explain the relationship between the responsibilities of a notary and the authority of a notary based on the UUJN in the field of civil law. A concept related to legal obligation is the concept of legal responsibility (liability). Two terms refer to responsibility in the legal dictionary: responsibility and liability. According to Henry Campbell Black's legal dictionary in Black's Law Dictionary, the notion of responsibility, namely, general responsibility, is called responsibility, while legal responsibility is called liability. "Liability is a condition of being responsible for a possible or actual loss, penalty, evil, expense or burden, a condition which creates a duty to perform immediately or in the future" (Afriana, 2020).

According to Hans Kelsen, who describes the theory of legal responsibility, a concept related to a legal obligation (responsibility) is the concept of legal responsibility (liability). A person legally responsible for specific actions can be subject to a sanction if his actions are contrary to the law because of his actions that make that person accountable. Typically, in a case, the sanction imposed on the perpetrator (the delinquent) is due to his actions which makes the person responsible (Merry et al., n.d).

Responsibility based on the definition of responsibility is the obligation to be responsible for the laws it implements and repair the damage it causes. Hans Kelsen, the founder of the pure legal theory, also introduced the concept of responsibility. According to Hans, responsibility and responsibilities are closely connected but not identical. This obligation results from the legal norms that control and impose duties on legal issues. Subjects under the rule of law who are saddled with obligations must carry out these commitments. Sanctions will ensue from failing to fulfill responsibilities. This sanction is a compelled act of the rule of law to ensure that legal subjects comply with their duties (Widyatama et al., 2022).

According to Hans, legal subjects subject to sanctions are said to be "responsible" or legally responsible for violations. Based on this concept, it can be noted that responsibility arises from legal rules that provide obligations to legal subjects with the threat of sanctions if these obligations are not carried out. Such a responsibility can also be said to be a legal

responsibility because it arises from the order of the rule of law or the law, and the sanctions given are also sanctions set by law, therefore the responsibility carried out by legal subjects is a legal responsibility (Safitri, 2021).

According to Raden Soegondo Notodisoerjo, a notary can be held liable for fraud or deception originating from himself. This is possible if a notary is involved in a transaction. There are four types of notary responsibilities, namely: 1) Civil responsibilities of the notary to the material truth of the deed he made; 2) The notary's criminal responsibility for the material truth in the deed he made; 3) The notary's responsibility based on the Notary Position Regulation (PJM) for the material truth in the deed he made; and 4) Notary's responsibilities in carrying out their duties in accordance with the Notary's code of (Arsy et al., 2021).

## 2. Authority Theory

The terms power and authority are often found in political science, government science, and law literature. Power is frequently confused with authority, and power and authority are frequently used interchangeably. Even authority is frequently synonymous with authority. Power usually forms a relationship because "there is one party who rules, and the other is ruled" (Saputra et al., 2020).

According to Phillipus M. Hadjon, there is a subtle distinction between the terms authority and "bevoegheid" if one looks attentively. The distinction is in the legal nature. The term "bevoegheid" is employed in both public and private law. The phrase authority or authority should be utilized in our legal idea of public law. However, power has two aspects, namely political aspects and legal aspects. In contrast, authority only has legal aspects, which means that power can be sourced from the constitution and from outside the constitution (unconstitutional), for example, through war or coup d'état. In contrast, the authority is sourced from the constitution (Hippy et al., 2020).

In the Netherlands, the concept of bevoegdheid is used in public law, therefore, bevoegdheid does not have a legal character. Whereas in Indonesia, the idea of authority is always interpreted as a concept of public law because authority is always associated with using power. Following the opinion above, Prajudi Atmosudirdjo stated: "Authority is the power to carry out all actions in the field of public law, while the power to take action in the field of private law is called rights". Authority consists of at least three components, namely: 1) The influence component is intended that the use of authority aims to control the behavior of legal subjects; 2) The fundamental legal component is intended that the authority must be based on a clear law; and 3) The legal conformity component requires that authorities must have clear standards (for general authorities), and specific standards (for certain types of authority) (Setyowati & Rahayu, 2021).

Legally, authority is the capacity of laws and regulations to execute actions with legal repercussions. Every use of authority must have a legal basis in positive law to prevent arbitrary behavior. The use of government authority is always constrained by a minimum of positive law (Syawawi, 2021).

Regarding the concept of the rule of law, the use of such authority is constrained or always subject to written or unwritten laws. It is referred to as "formal power" when it is derived from statutory, executive, or administrative powers. Authority is the power of a certain set of people or power over a specific government or area of government affairs. Authority is the right to give orders and the power to ask for obedience (Nasution, 2020).

## 3. Legal Certainty Theory

Certainty is an essential aspect of the law, particularly for stated legal standards. Without clarity, the law loses its meaning because it can no longer serve as a guide for

everyone's behavior. One of the aims of the law is described as being certainty. Community order has a close relationship with legal certainty since order is the core of certainty. Regularity instills in individuals a sense of security, allowing them to carry out the activities essential to social life (Sinaga, 2018).

The relationship between legal certainty and justice is tight, yet the law is not synonymous with justice. The law is universal, obligatory, and generalizing. Individualistic and subjective, justice cannot be generalized. Legal certainty is the application of a law in accordance with its intent, so that the public can be assured it will be carried out. Creating legal certainty in laws and regulations requires requirements relating to the internal structure of the legal norm. The internal requirements are as follows: 1) Clarity of concepts used. Legal norms contain descriptions of specific behaviors, which are then incorporated into certain concepts; 2) Clarity of the hierarchy of authority from the institutions forming the laws and regulations. The clarity of this hierarchy is important because it concerns whether it is legal or not and whether or not it is binding on the laws and regulations it makes. The clarity of the hierarchy will provide direction to lawmakers who have the authority to form specific laws and regulations; and 3) Consistency of statutory legal norms. The provisions of several laws and regulations related to a particular subject do not conflict with each other (Hernawati & Suroso, 2020).

Legal certainty requires competent and authoritative persons to govern the law in legislation so that the regulations have a legal aspect. This element will provide assurance that the law acts as a rule that must be followed. Based on these definitions, assurance can have numerous meanings, including clarity, absence of different interpretations, absence of conflicts, and implementability. The law must be enforceable in society and transparent, so that anyone can comprehend the intent of a legal provision (Saragih et al., 2022).

Hans Kelsen argues that the law is a set of rules. Norms are statements that highlight the "should" or *das sollen* component by giving guidelines for what must be accomplished. Norms are the result of conscious human conduct. Laws containing general norms serve as guidance for individuals' behavior in society, both in their relationships with other individuals and with the community as a whole. These principles restrict society's ability to burden or take action against individuals. Legal certainty is established by the existence of these rules and their application (Martiono, 2020).

## **C. METHOD**

This research will be carried out using the juridical-normative method. The type of this research is descriptive research. The research data comes from various laws and regulations and various studies in the form of legal books or scientific journals that are still relevant to this research. The process of data collection is carried out through a literature study. The research data will then be analyzed through a qualitative normative analysis method.

## **D. RESULT AND DISCUSSION**

### **1. Notary Accountability in the Crime of False Information**

In order to enforce the law, a notary carries a mandate that affects the interests of the entire society; consequently, a notary must take professional responsibility for the orders he executes. Responsibilities and professional ethics are intimately tied to integrity and morals, therefore a notary cannot be expected to have good responsibilities and professional ethics if they lack integrity and morality.

When examined through the lens of the UUJN, the responsibilities of a notary are intimately tied to their duties and employment. Notaries are allocated and accountable for registering and ratifying (*waarmerken* and legalization) privately prepared letters or deeds, in

addition to making valid deeds. As a public authority, the notary is responsible for private, tax, and criminal law.

It is possible that liability in one area of the law does not pertain to another. On the other hand, actions that give rise to PMH-based demands or litigation (Article 1365 of the Civil Code) can result in criminal law action. The Notary is primarily responsible for matters of private law. As an official, his authority is limited to the time he remains an official, as stipulated by the law.

Article 65 of the UUJN mandates that Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials are liable for all executed documents, even if the Notary Protocol has been submitted and transferred to the Notary Protocol custodian. Considering Article 65 of the UUJN, the notary remains accountable for the document he drafted.

Assume, in accordance with the idea of responsibility, that the Notary's accountability results from the execution of his responsibilities and positions. Therefore, the responsibility used in UUJN is error-based responsibility. Because he willfully performed the conduct and caused damages to the parties, a Notary might be held responsible for his violations. Based on this, the implications of false information contained in the notary deed, whether it is a factor from the notary himself due to lack of prudence, negligence or intentional factors and other factors, namely information that is falsified by the parties who appear, the notary can be held accountable for his mistakes for including false information in the deed he made.

Suppose, in carrying out his position as a Notary, he commits an error or violation, either intentionally or unintentionally, which causes a legal problem so that he is involved in a criminal act or in court matters. In that case, the Notary concerned can be examined by the police. Based on Article 66 paragraph (1), UUJN states that: "for the interest of investigators, public prosecutors, and or judges with the approval of the Notary Honorary Council (MKN) has the authority: (a) obtain a photocopy of the Minutes of Deed and a letter which is an integral part of the Minutes of Deed/Notary Protocol that a notary keeps, and (b) summon a notary to attend an examination related to the deed for which he is responsible/a Notary Protocol that a notary keeps".

The statement of a notary as a witness to a criminal case is needed to explain the deed he made concerning the legal events described by the appeared. Meanwhile, the notary's statement as a suspect is required concerning the notary's responsibility for the authentic deed that is his responsibility. Based on this, it can be said that notaries as citizens are not above the law.

In order to demonstrate that there are indications of illegal conduct in an authentic document, the presence of a notary is required in the examination of criminal cases from the level of investigation and prosecution by prosecutors to the level of proof through court examination. The need for a notary to assess criminal cases involving a deed whose creation suggests a criminal act depends heavily on the formal and material characteristics of the notary deed itself.

For cases involving a notary who is a suspect based on evidence at the beginning of the police report related to the deed, which is the responsibility of the notary, an assessment is made that indicates a criminal act, and this results in a notary being summoned to explain how the deed process took place, as well as the evidence base which is the basis for making the deed.

Based on the foregoing, the responsibilities of a Notary can be divided into:

a. Civil liability

Civil sanctions are penalties imposed for mistakes stemming from negligence or illegal conduct (*onrechtmatige daad*). Civil punishments may include refund of expenses,

compensation, and interest. The notary will be subject to sanctions if he receives a lawsuit from the appearers, who are aggrieved because the in issue deed is legally faulty and so has probative force as a fraudulent deed or is null and void.

A notary deed has perfect evidentiary authority, but if certain requirements are broken, the deed's evidentiary value is diminished and it becomes a fraudulent deed. Article 1869 of the Civil Code allows a notary deed with the same force as an underhand deed provided it does not comply with the following requirements: 1) The in question official is not authorized; 2) There is no public official involved; and 3) As long as the parties recognize it, the flaw in the form of a private deed has good probative value.

Even if the parties violate specific UUJN restrictions, the relevant deed retains full evidential force and is binding on the parties.

#### b. Criminal liability

The task of carrying out the position of a notary is to make the evidence needed by the parties for a particular legal action. The notary makes a deed at the request of the parties. The notary makes a deed based on evidence, information, or statements of the parties stated, explained, or shown to the notary. Notaries also play a role in providing legal advice to parties related to existing problems. Whatever direction the notary gives to the parties is then poured into the deed in question, it remains as the wishes and statements of the parties, not as a statement or statement of the notary.

In practice, it is often found that if there is a notarial deed that the parties or other parties dispute, the notary is usually withdrawn as a party who participates in committing or assisting in committing a crime, namely providing false information in the notary deed. With this, it creates confusion as to whether it is possible that the notary intentionally erred or made a mistake together with the parties to do a deed intended to commit a criminal act.

If the notary is proven to have violated this, he must be given sanctions. In connection with the above, to request a notary's statement on the report of a particular party according to Article 66 of the UUJN, if the police summon a notary, the Prosecutor's Office, or a judge, the agency wishing to summon must seek approval from the Notary Honorary Council.

The provisions of Article 66 of the UUJN are imperative for the Police, Prosecutors, or Judges, which means that if the Police, Prosecutors, and Judges underestimate the provisions of Article 66 of the UUJN, it can be categorized as a violation of the law. When a person is not allowed to be summoned, the Police or the Prosecutor's Office will summon the witnesses of the notary deed mentioned at the end of the deed.

#### c. Administrative responsibilities

Article 16, paragraph (1) of the UUJN states that in carrying out their positions, Notaries are obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions. Based on this, the Notary, in carrying out his authority as an official that has been determined by law to do a deed, is required to act by taking into account the moral and proper elements in carrying out an act, in this case, the making of an authentic deed.

In addition to UUJN, regarding the actions that a Notary must take in carrying out his position, it is also stated in the Notary Code of Ethics in Article 3 where Notaries are required to: Have good morals, character, and personality; Respect and uphold the dignity of the position of Notary; Protect and defend the honor of the Association; Be honest, independent, impartial, trustworthy, thorough, full of responsibility, based on the laws and regulations and the contents of the oath of the Notary Position.

So in carrying out their positions, Notaries need to pay attention to the provisions of laws and regulations such as the UUJN and the Code of Ethics. These regulations can be used

as guidelines for Notaries in carrying out their positions so that in carrying out a legal act (doing an authentic deed), it is considered appropriate and correct and does not violate existing rules.

## **2. The Position of the Notary Honorary Council in the Crime of False Information on the Authentic Deed**

Article 66 paragraph (1) UUJN 30 of 2004 states that: “For the interest of investigators, public prosecutors, and or judges with the approval of the Regional Supervisory Council (MPD) have the authority: (a) obtain a photocopy of the Minutes of Deed and a letter which is an integral part of the Minutes of Deed/Notary Protocol that a notary keeps, and (b) summon a notary to attend the examination related to the deed for which he is responsible/ the Notary Protocol that is in the custody of the Notary.

So the Indonesian National Police investigators must first ask for permission from the MPD, which matters are following the rules or things regulated in Article 66 paragraph (1) UUJN 30 of 2004. However, in practice, requests for permits submitted by investigators from the Indonesian National Police are often not granted/accepted by the MPD. Not being given or granted a permit request submitted by an investigator of the Indonesian National Police by the MPD, of course, has created obstacles for investigators of the Indonesian National Police during the investigation process of the police report that the applicant made.

In a phrase and a sentence “with the approval of the MPD” related to the provisions of Article 66 paragraph (1) UUJN 30 of 2004, it is not necessary to apply because a notary is examined either as an expert or witness or suspect for being involved in a criminal act not “with the approval of the MPD” but only by notifying the notary organization or the notary supervisory board, which is in line with containing the principle of a state based on a law which guarantees certainty, order, and protection in the legal aspect with the core of essential truth and justice.

Based on this, there is an applicant who states that the rules of Article 66 paragraph (1) UUJN 30 of 2004 as long as the phrase or sentence “with the approval of the MPD” is very contrary to the rules of Article 27 paragraph (1) & Article 28 d (1) UUD 1945, because if the phrase/sentence is “with the approval of the MPD”. Then the Constitutional Court of the Republic of Indonesia, concerning its authority to revoke the phrase “with the approval of the MPD,” grants the petition for a judicial review, and the phrase contradicts Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which describes that Article 27 paragraph (1) all citizens have the same position before the law and the government and are obliged to uphold the law and the government without exception. Developments in the legal substance/material field are currently being carried out are efforts to reform the Indonesian material criminal law (KUHP).

With the Constitutional Court Decision No. 49/PUU-X/2012 dated March 26, 2013, then, Article 66 paragraph (1) UUJN 30 of 2004 changed its sound to “For the process, investigators, public prosecutors or judges are authorized” (not authorized by the MPD):

- a. Take a photocopy of the Minutes of Deed and the letter attached to the Minutes of Deed or the Notary Protocol in the Notary’s possession; and
- b. Calling a Notary to be present to carry out an examination related to the deed is the responsibility of making it or the Notary Protocol that the Notary keeps.

The statement of a notary as a witness to a criminal case is needed to explain the deed he made concerning the legal events described by the appeared. Meanwhile, the notary’s statement as a suspect is required for the notary’s responsibility for the authentic deed that is his responsibility. Based on this, it can be said that notaries as citizens are not above the law.

In order to demonstrate that there are indications of illegal conduct in an authentic document, the presence of a notary is required in the examination of criminal cases from the

level of investigation and prosecution by prosecutors to the level of proof through court examination. The need for a notary to assess criminal cases involving a deed whose creation suggests a criminal act depends heavily on the formal and material characteristics of the notary deed itself.

For cases involving a notary who is a suspect based on evidence at the beginning of the police report related to the deed, which is the responsibility of the notary, an assessment is made that indicates a criminal act, resulting in a notary being summoned to explain how the deed process took place, as well as the evidence base which is the basis for making the deed.

One of the legal subjects who get legal protection is a notary. Legal protection for a notary is related to his duties and responsibilities as a general official doing the deed. In addition to protecting their duties and responsibilities as public officials, the protection of notaries is also part of the legal protection for the appearers of the deeds made by a notary. For example, a notary is caused by his position; he will have the right to deny (*verschoningrecht*) and the obligation to reject (*verschoningsplicht*) and must provide information on the deed made by him. The privileges of the notary are accommodated in Article 1909, paragraph (3) of the Civil Code, and Article 322 of the Criminal Code.

Protection of notaries as witnesses in criminal cases after the Constitutional Court's no. 49/PUU-X/2012 dated March 26, 2013, the process of summoning a notary through MKN Notary per the provisions of Article 66 of the UUIJN. In addition, notaries are still protected from the rights and obligations of notarizing as referred to in Article 1909 paragraph (3) of the Civil Code and Article 322 of the Criminal Code. The position, authority, and responsibilities of the MPD as a Notary Supervisory agency in the regions indicate that the MPD is still present in the Notary organization and functions as a Supervisory agency. This is based on UUIJN 30 of 2004, which still regulates the MPD as a supervisory board in the notary organization.

Article 66 of the UUIJN states that the MPD is authorized to examine a notary in connection with a request by an investigator, public prosecutor, or judge to take a photocopy of the minutes or other documents attached to the minutes or in the notary protocol in the notary's custody. The MPD is also authorized to summon a notary in connection with the deed he executed or in the notary protocol in the notary's custody.

Habib Adjie believes that, regarding the judicial process, investigators, public prosecutors, or judges are authorized to take photocopies of the minutes of the deed and letters attached to the minutes of the deed or notarial protocol in storage; and summon a notary to attend the examination related to the deed he made or the notarial protocol that is in the notary's storage without the consent of the MPD.

In UUIJN, the role of MPD for making a Xerox of the deed minutes and summoning a notary has been replaced by MKN, as indicated in Article 66 of UUIJN.

- a. For the judicial process, investigators, public prosecutors, or judges with the approval of MKN are authorized to:
  - 1). take a photocopy of the minutes of the deed and the letters attached to the minutes of the deed or the protocol of the notary in the notary's depository; and
  - 2). summon a notary to attend the notary deed or protocol examination in the notary's storage.
- b. A photocopy of the Minutes of Deed or documents, as referred to in paragraph (1) letter a, is an official submission report.
- c. The Notary Honorary Council, within 30 (thirty) working days of receiving the letter of request for approval as referred to in paragraph (1), must provide an answer to accept or reject the support request.

- d. Suppose the Notary Honorary Council does not provide an answer within the period as referred to in paragraph (3). In that case, the Notary Honorary Council is deemed to have received the request for approval.

With the transfer of the MPD's position to the MKN, the MPD's role now has authority under Article 70 of the UUJN. Regarding Article 66 A UUJN pertaining to MKN, which was held in the context of promoting a notary. Article 1 point 6 outlines the functions of the Notary Supervisory Council (MPN) to guide and oversee notaries. Thus, there are two (two) assemblies whose purpose is to provide advice and oversight to notaries: MPN and MKN.

UUJN 30 of 2004 and UUJN have no rules regarding criminal provisions. In Article 15 of Law Number 12 of 2011, laws and Regional Regulations can contain criminal provisions so that they can be regulated/what provisions make a notary can be punished. The General Chairperson of the Central Indonesian Notary Association (INI) regrets that there is no provision for this crime. As a result, law enforcers can arbitrarily ensnare notaries in the criminal realm. For this reason, clear and firm arrangements are needed in the Minister of Law and Human Rights Regulation and the MoU with Enforcers, especially in determining that a notary is suspected of having committed a crime and is a suspect.

MKN has the authority to grant police, prosecutors, and judges permission to examine notaries. The Ministerial Regulation is Ministerial Regulation Number 17 of 2021 issued by the Minister of Law and Human Rights of the Republic of Indonesia to regulate the Notary Honorary Council (Minister of Law and Human Rights Number 7 of 2016). The Minister of Law and Human Rights regulation was released on February 5, 2016. The substance of the Minister of Law and Human Rights regulation governs the MKN's position, organizational structure, and authority.

The Minister of Law and Human Rights Regulation Number 17 of 2021 an implementing rule mandated by Article 66 A of the UUJN to establish MKN. If you look at the UUJN, it does not regulate the definition of MKN. Besides, it is not regulated about where the position of MKN is located. Article 91 B of the UUJN mandates that the law's implementing regulations be formed no later than 1 (one) year after the UUJN is promulgated. The slow pace of the Ministry of Law and Human Rights in issuing the Minister of Law and Human Rights Regulation as an implementing regulation made the MKN establishment take a long time.

The Minister of Law and Human Rights regulation must be published within one year following the UUJN's promulgation. Due to the delay in issuing the Minister of Law and Human Rights Regulation, notaries called by law enforcement lack legal protection and clarity. This is determined by who authorizes law enforcement to summon or inspect a Notary.

In the transfer of authority in seeking approval from the MPD to MKN, as regulated in Article 66 of the UUJN, the police asked for authorization from the MKN. However, what happened was that the MKN could not approve because the authority to approve a Notary examination carried out by law enforcement, in this case, the police, was under the authority of the Regional MKN. This is based on the rules contained in Article 23 of the Minister of Law and Human Rights Number 7 of 2016.

So far, the Regional MKN has not been established. This is based on the fact that the Notary is an extension of the government to assist the community in doing deeds. In addition, it is also possible that there are irresponsible Notaries who violate the law and take refuge in their positions as Notaries. Every deed made before a Notary by the parties must be kept confidential and protected from any party. This is following the mandate of Article 4 UUJN. So the Regional MKN Institution must be formed to maintain the independence and honor of the Notary from any party.

MKN conducts an examination trial first before law enforcement summons a notary. The role of MKN in approving law enforcement when examining a Notary suspected of

violating criminal law while carrying out his office. MKN in approving law enforcers can be seen from 4 elements, namely: 1) Regulation; 2) Apparatus; 3) Implementation; and 4) Community Conditions.

The role of MKN in approving law enforcers when examining a Notary who is suspected of violating criminal law while carrying out his office, when viewed from the legal rules governing MKN's authority in the UUJN and Regulation of the Minister of Law and Human Rights No. 17 of 2021 Number 17 of 2021 concerning the Honorary Council of Notaries, then the regulation has been effective. The existing rules on requests for approval of a Notary examination carried out by law enforcers are the authority of MKN.

The authority of the Notary Honorary Council regarding this matter is also regulated in the Minister of Law and Human Rights Regulation 17 of 2021 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council. Article 24, paragraph (1) stipulates that the Regional Notary Honorary Council has the following duties: 1) conduct examination of applications submitted by investigators, public prosecutors, or judges; and 2) approve or reject the request for authorization to take a photocopy of the minutes of the deed and summon a Notary to be present in the investigation, prosecution, and judicial process.

The legislation made by authorized officials must be binding and coercive so that the purpose of forming the law is effective. The role of MKN in approving law enforcement when examining a Notary who is suspected of violating criminal law while carrying out his office if examined from the theory of authority, the authority possessed by MKN in approving a Notary examination requested by law enforcers in this case investigators, public prosecutors and judges is attributive authority. This is based on MKN's authority, a mandate from the laws and regulations that must be implemented and implemented in the community.

The decision of the MKN Management to give temporary approval to law Enforcers when they want to examine a Notary and conduct an examination trial before law enforcement summons a Notary is a right decision. This is based on the effectiveness of the laws and regulations that govern it.

## **E. CONCLUSION**

A Notary's obligation arises when an error in the performance of their duties causes harm to the individual requesting their services. On the basis of the preceding, a Notary's duties can be categorized as Civil Liability, Criminal Liability, and Administrative Responsibilities. The Notary Honorary Council has the jurisdiction to grant police, prosecutors, and judges permission to interrogate notaries. This is specified in Ministerial Regulation No. 17 of 2021 pertaining to the Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council.

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