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The Role of the Notary Honourable Council in Providing Legal Protection for Notaries Facing the Risk of Criminal Offences

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Abstract: The Notary Honourable Council (Majelis Kehormatan Notaris, MKN) plays an important role in providing legal protection for notaries who are subject to legal proceedings arising from the performance of their office. In practice, however, problems persist concerning the exercise of the MKN's authority and the relationship between the MKN approval mechanism and the powers of law enforcement officials. This study aims to analyse the role of the MKN in providing legal protection for notaries facing the risk of criminal offences and to examine the protection of notaries under urgent circumstances pursuant to the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHP). The study employs normative legal research using a statutory approach and a conceptual approach. Legal materials were obtained through a literature study encompassing statutory regulations, books, scholarly journals, and related legal documents, and were subsequently analysed qualitatively using a descriptive-analytical method. The findings indicate that the role of the MKN as a procedural protection mechanism for notaries has not yet functioned optimally. This is evidenced by inconsistencies in the exercise of its authority, investigative processes that do not always observe MKN approval, and suboptimal inter-institutional coordination. Furthermore, a disharmony exists between the Notary Office Law (UUJN) and the KUHP concerning searches and seizures under urgent circumstances, which may give rise to legal uncertainty and compromise professional confidentiality as well as the protection of notarial protocols. Harmonisation of the provisions of the UUJN and the KUHP is therefore required in order to clarify the mechanism for protecting notaries without impeding the law enforcement process.

Keywords: Notary Honourable Council, Legal Protection, Criminal Offence, Criminal Procedure Code

INTRODUCTION

A notary is a public official who derives authority from the state to draw up authentic deeds and to exercise such other powers as are regulated by statutory provisions. This is affirmed in Article 1 point 1 of Law Number 2 of 2014 concerning the Amendment to Law

Number 30 of 2004 concerning the Office of Notary (UUJN). The authority of a notary is further regulated in Article 15 paragraph (1) of the UUJN, which includes, among other things, the drawing up of authentic deeds concerning acts, agreements, and stipulations desired by interested parties or required by statutory regulations. This position establishes the notary as an official who plays an essential role in providing legal certainty and legal protection to society through the authentic deeds that he or she produces (Adjie, 2008; Borman, 2019; Nurarifah & Hakim, 2024).

Authentic deeds occupy an important position within the system of evidence because they constitute written evidence possessing perfect evidentiary force insofar as they satisfy the requirements prescribed by law. Article 1868 of the Indonesian Civil Code (KUHPdata) stipulates that an authentic deed is a deed drawn up in the form prescribed by law by or before an authorised public official. Accordingly, the performance of the notarial office is connected not only to the interests of the parties but also to legal certainty, public order, and legal protection. This position simultaneously requires notaries to discharge their office professionally, diligently, and in conformity with statutory provisions (Damayanti, 2024; Febrian & Sagita, 2022; Nurarifah & Hakim, 2024; Putri & Adjie, 2024).

On the other hand, the exercise of such authority gives rise to legal risk when a deed or an act relating to the performance of the notarial office is suspected of being connected to a criminal offence. The criminalisation of the notarial office does not merely denote the imposition of criminal punishment upon notaries; it also concerns the use of criminal law instruments against acts performed in the course of the office. A notary may be placed in the position of a witness, a person subject to examination, or a suspect when a deed or the process of its creation is suspected of being linked to a criminal offence. Such circumstances may arise even where the notary has followed the procedures of the office in accordance with the UUJN, particularly where statements or conduct on the part of the appearing parties lie beyond the notary's knowledge and control (Akbar & Nugraha, 2026; Damayanti, 2024; Delfit & Dewi, 2024; Rusmana, 2025).

This risk demonstrates the need to afford legal protection that remains consistent with the interests of law enforcement. Such protection relates, among other matters, to the obligation of notaries to keep confidential all matters concerning deeds and information obtained in the performance of their office. That obligation correlates with the notary's right of refusal (*hak ingkar*) as regulated in the UUJN. The right of refusal is a consequence of the duty to preserve professional confidentiality and affords protection to information obtained by notaries in the exercise of their authority (Mahendra, 2024; Pratama, 2021; Putri & Adjie, 2024). In the context of examining notaries for the purposes of judicial proceedings, Article 66 of the UUJN provides a special mechanism by requiring the approval of the Notary Honourable Council (MKN). That provision stipulates that, for the purposes of judicial proceedings, investigators, public prosecutors, or judges may, with the approval of the MKN, obtain photocopies of the original deed (*minuta akta*) and/or documents attached to the original deed or to the notarial protocol, and may summon notaries to attend examinations relating to deeds or notarial protocols held in their custody. This mechanism is further regulated by Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021 concerning the duties and functions, requirements, procedures for appointment and dismissal, organisational structure, working procedures, and budget of the MKN (Merdiansyah et al., 2023; Putri & Pujiyono, 2019; Syafyandra, 2024).

The existence of this mechanism has become increasingly relevant following the entry into force of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP). Several provisions of the new KUHP regulate the authority of investigators to conduct searches and seizures under urgent circumstances, including situations determined on the basis of the investigator's own assessment. These provisions give rise to normative problems when

applied to documents or notarial protocols that fall specifically within the protective regime of Article 66 of the UUN. Such regulatory divergence has the potential to generate difficulties concerning the relationship between the authority of investigators in criminal law enforcement and the authority of the MKN to grant approval for the examination of notaries and for the retrieval of documents relating to notarial protocols (Maita & Silviana, 2026; Sriwati, 2022).

This issue carries practical relevance, as a number of cases demonstrate the involvement of notaries in legal proceedings without the approval of the MKN, a matter that has been questioned in various studies and media reports (Caesar et al., 2023; Rahayu et al., 2025). These circumstances indicate that the mechanism for protecting notaries within judicial proceedings still requires further examination, particularly with respect to the position, authority, and function of the MKN when notaries are confronted with allegations of criminal offences. At the same time, the protection of notaries cannot be separated from the requirements of law enforcement and the interests of proof in criminal proceedings.

On the basis of the foregoing, a problem arises as to how the MKN performs its role in providing legal protection for notaries facing the risk of criminal offences, particularly in the context of the summoning of notaries and the retrieval of original deeds or notarial protocols, and how this relates to the provisions of the new KUHAP. This study therefore aims to analyse the role of the Notary Honourable Council in providing legal protection for notaries facing the risk of criminal offences by examining the authority of the MKN, the mechanism for granting approval in judicial proceedings, and the relationship between the protection of the notarial office and the interests of criminal law enforcement.

METHODS

This study employs normative legal research, treating law as the object of study through an analysis of the norms, principles, and legal provisions relating to the role of the Notary Honourable Council (MKN) in providing legal protection to notaries facing the risk of criminal offences. Normative legal research is conducted through a literature study drawing upon legal materials in the form of statutory regulations, court decisions, legal literature, doctrine, and other relevant legal sources (Irwansyah, 2021; Muhaimin, 2020).

The approaches employed comprise the statutory approach and the conceptual approach. The statutory approach is undertaken by examining the provisions governing the notarial office, the authority and functions of the MKN, professional confidentiality and the notary's right of refusal, and the mechanism for examining notaries within criminal judicial proceedings. This approach is used principally to analyse the interrelationship between the Notary Office Law and the applicable law of criminal procedure. The conceptual approach, meanwhile, is used to analyse the concepts of legal protection, notarial accountability, and the authority of the MKN, as well as the relationship between the interest in protecting the notarial office and criminal law enforcement.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials comprise the Indonesian Civil Code, the Criminal Code, the Criminal Procedure Code, Law Number 30 of 2004 concerning the Office of Notary, Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notary, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021 concerning the Notary Honourable Council, and the Notary Code of Ethics. Secondary legal materials consist of books, scholarly journal articles, research findings, expert opinions, and legal doctrine relating to the protection of notaries and the risk of criminal offences. Tertiary legal materials are used as supporting materials and include legal dictionaries and encyclopaedias.

The collection of legal materials was carried out through library research by tracing, identifying, and examining various legal materials relevant to the research problem. The

materials thus collected were then selected, classified, and systematised according to the legal issues under examination, so as to establish the interrelationships between the norms and concepts forming the basis of the analysis.

The analysis of legal materials was conducted qualitatively and descriptively, namely by describing, interpreting, and relating legal provisions to relevant concepts and doctrines. The analysis was directed towards identifying the position and authority of the MKN in providing legal protection to notaries, particularly in the face of criminal examination proceedings, the summoning of notaries, and the retrieval of original deeds or notarial protocols. Conclusions were drawn deductively, namely by analysing general legal provisions and principles in order to arrive at conclusions concerning the role of the MKN in the legal protection of notaries facing the risk of criminal offences.

RESULTS AND DISCUSSION

The findings indicate that the Notary Honourable Council (MKN) occupies an important position in providing legal protection to notaries confronted with judicial proceedings, particularly where the examination relates to deeds or notarial protocols. That position is a consequence of the character of the notarial office as a public office exercising authority conferred by statute and carrying the obligation to preserve the confidentiality of deeds and of information obtained in the performance of the office.

The protection of notaries within judicial proceedings is specifically reflected in Article 66 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notary. That provision positions the approval of the MKN as part of a mechanism that must be observed by investigators, public prosecutors, or judges when summoning a notary for examination relating to deeds or notarial protocols, and when obtaining photocopies of original deeds and/or documents attached to original deeds or notarial protocols held in the notary's custody. The MKN therefore functions not merely as an institution concerned with the honour and compliance of notaries, but also as a body performing a function in protecting the exercise of the notarial office within legal proceedings.

Examination of that provision indicates that the MKN approval mechanism is intended to maintain a balance between the interests of law enforcement and the protection of the notarial office. MKN approval does not constitute an obstruction of the law enforcement process; rather, it is a mechanism for ensuring that measures taken to examine notaries and to access documents held in their custody are carried out in accordance with the law. In this context, the MKN occupies the position of an institution that reviews requests submitted by law enforcement officials, taking into consideration the connection between such requests and the performance of the notarial office and the deeds or protocols concerned.

The role of the MKN is likewise closely connected to the notary's obligation to preserve professional confidentiality and to the existence of the right of refusal. A notary is in principle obliged to keep confidential all matters concerning the deeds he or she draws up and the information obtained in the performance of the office, unless the law provides otherwise. Consequently, when a notary is summoned in judicial proceedings, a legal mechanism is required to ensure that the examination does not automatically extinguish the duty of professional confidentiality. In this respect, the MKN functions as part of a protective mechanism enabling the interests of legal examination to proceed without disregarding the professional and legal obligations inherent in the notarial office.

On the other hand, the findings reveal difficulties when the provisions on the protection of notaries are confronted with the authority of law enforcement officials under the law of criminal procedure. The entry into force of Law Number 20 of 2025 concerning the Criminal Procedure Code raises normative issues concerning the regulation of searches and seizures under urgent circumstances. Provisions affording investigators scope to take certain measures

in urgent circumstances must be applied with care where the object of such measures relates to original deeds or notarial protocols that are subject to specific regulation under the UUJN.

This divergence in regulatory character demonstrates the need to establish clear limits concerning the relationship between the authority of investigators and the mechanism for protecting the notarial office. Provisions on urgent circumstances within the law of criminal procedure may give rise to problems of interpretation if applied to documents held in a notary's custody without regard to the specific provisions governing the examination of notaries and the retrieval of notarial documents. The exercise of investigative authority in relation to notaries and notarial protocols must therefore continue to observe the principle of legal certainty, the protection of professional confidentiality, and the special provisions contained in the UUJN.

The findings further indicate that the role of the MKN comprises two interrelated dimensions. First, the MKN affords protection to notaries so that judicial proceedings are not conducted arbitrarily in relation to the office and the documents held in their custody. Second, the existence of the MKN continues to support the interests of law enforcement by providing a mechanism for reviewing requests from law enforcement officials in accordance with the applicable provisions. The protection afforded by the MKN cannot therefore be construed as conferring immunity upon notaries from legal process; it constitutes instead a procedural mechanism for ensuring that the involvement of notaries in judicial proceedings is conducted in accordance with the law.

On the basis of the overall findings, the MKN performs a strategic role in maintaining a balance between the legal protection of notaries and the interests of criminal law enforcement. That role is realised principally through the mechanism of approval for the summoning of notaries and the retrieval of documents relating to deeds or notarial protocols. Developments in the law of criminal procedure, however, indicate the need for harmonisation and clarity of application as between the provisions of the UUJN and the KUHAP, so as to avoid divergent interpretations concerning the authority of law enforcement officials and that of the MKN. Such clarity is required in order to provide legal certainty for notaries and law enforcement officials alike in the exercise of their respective powers.

Discussion

The Role of the Notary Honourable Council in Providing Legal Protection for Notaries

The Notary Honourable Council (MKN) plays an important role in providing legal protection for notaries in the performance of their duties and authority. That position is inseparable from the character of the notarial office as a public office to which the state confers the authority to draw up authentic deeds. Deeds drawn up by or before a notary serve an important function as written evidence and provide legal certainty for the parties. The performance of the notarial office accordingly requires legal protection so that such authority may be exercised professionally without apprehension concerning the inappropriate use of criminal proceedings (Adjie, 2008; Borman, 2019; Febrian & Sagita, 2022; Hartono, 2021; Kihi et al., 2024; Nurarifah & Hakim, 2024; Zaenal, 2022).

Criminal risk in relation to notaries may in principle arise from allegations of a notary's involvement in a criminal act connected to a deed or to the performance of the office. In practice, a notary may be required to give evidence as a witness, be examined in the course of an investigation, and may even be designated a suspect where a criminal offence is alleged. Such circumstances do not necessarily indicate that the notary has committed a criminal offence, since a deed drawn up by a notary essentially records the statements or intentions of the appearing parties. Material errors committed by the appearing parties may lie beyond the notary's knowledge and control. This consideration constitutes one of the reasons for the

importance of a mechanism protecting notaries when confronted with legal proceedings (Akbar & Nugraha, 2026; Damayanti, 2024; Rusmana, 2025).

Such legal protection cannot be construed as conferring immunity upon notaries from legal process. A notary may still be held accountable where legal proceedings establish conduct satisfying the elements of a criminal offence. The protection afforded is directed rather towards ensuring that the examination of notaries is conducted in accordance with the applicable legal procedure and with due regard to the distinctive character of the notarial office. Legal protection and criminal law enforcement thus constitute two interests that must be held in balance.

In this context, the MKN performs an important function as part of the mechanism protecting the notarial office. The existence of the MKN provides a mechanism of review prior to a notary being summoned or documents relating to notarial protocols being used for the purposes of judicial proceedings. Such a mechanism is necessary because notaries are obliged to preserve the confidentiality of all matters relating to deeds and to information obtained in the performance of the office. That obligation is connected to the right of refusal inherent in the notarial office as a consequence of the duty to preserve professional confidentiality (Mahendra, 2024; Pratama, 2021).

The Mechanism of Notary Honourable Council Approval in Judicial Proceedings

The role of the MKN in protecting notaries is specifically apparent in Article 66 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notary. That provision stipulates that, for the purposes of judicial proceedings, investigators, public prosecutors, or judges may, with the approval of the MKN, obtain photocopies of original deeds and/or documents attached to original deeds or notarial protocols held in a notary's custody, and may summon notaries to attend examinations relating to deeds or notarial protocols held in their custody (Putri & Pujiyono, 2019; Riandini et al., 2019).

Under that provision, two forms of action are normatively subject to MKN approval: the obtaining of photocopies of original deeds and documents attached to original deeds or notarial protocols, and the summoning of notaries for the purposes of examination. This mechanism demonstrates that legal proceedings involving notaries are not framed entirely as a direct relationship between law enforcement officials and the notary; rather, an institutional mechanism must be observed where such measures relate to deeds or notarial protocols.

MKN approval in this context serves to review requests from law enforcement officials before legal measures are taken in relation to a notary. The MKN may assess the relevance of a request to the performance of the notarial office and to the object connected with the deed or notarial protocol. The MKN thus operates as a mechanism of both oversight and protection, ensuring that the examination process remains within the bounds of the law and does not disregard the duty of confidentiality inherent in the notarial office.

These provisions are further elaborated in Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021, which governs the duties and functions, requirements, procedures for appointment and dismissal, organisational structure, working procedures, and budget of the MKN. This further regulation demonstrates that the MKN's authority to grant approval is not merely an administrative procedure but forms part of the system of legal protection for the exercise of the notarial office (Syafyandra, 2024).

MKN approval should accordingly be understood as a procedural mechanism intended to maintain a balance between the interests of judicial proceedings and the protection of the notarial office. The requirement of such approval does not remove the authority of law enforcement officials to conduct investigations where a criminal offence is alleged, but rather imposes a procedural limit where those proceedings concern a notary in his or her capacity as a public official and relate to deeds or protocols held in his or her custody.

Protection of Notaries and the Right of Refusal in Criminal Proceedings

The obligation to preserve professional confidentiality constitutes one of the essential characteristics of the notarial office. That obligation is necessary in order to assure the public that information and statements conveyed to a notary for the purpose of drawing up a deed cannot be freely disclosed. The notary's right of refusal therefore stands in close relation to that duty of confidentiality. The right of refusal in principle provides a basis upon which a notary may decline to give certain information relating to the contents of a deed and to information obtained in the performance of the office, insofar as no legal provision requires the disclosure of such information (Mahendra, 2024; Putri & Adjie, 2024).

In criminal proceedings, this position lends a distinctive character to the examination of notaries. A notary appears not merely as an individual possessing knowledge of an event, but may have come to know certain information by virtue of his or her position as a public official and because that information was obtained in the course of performing the office. The examination of notaries must therefore take into account the boundary between personal information and information obtained in the performance of the office.

In this context, the MKN performs the role of ensuring that the examination process does not disregard the duty of professional confidentiality. Such protection simultaneously provides certainty as to the procedure to be followed by law enforcement officials when they require a notary's testimony or documents relating to deeds and notarial protocols. The MKN may thus be regarded as an instrument bridging the interests of law enforcement and the interest in preserving the confidentiality and dignity of the notarial office.

Problems in the Application of the UUJN in Relation to the 2025 Criminal Procedure Code

The question of legal protection for notaries has become more complex with the entry into force of Law Number 20 of 2025 concerning the Criminal Procedure Code. On the basis of the provisions examined in this study, the KUHAP confers upon investigators the authority to conduct searches and seizures in certain circumstances of an urgent character. Those provisions afford scope, among other things, for investigators to act without prior authorisation from the chairperson of the district court in the conditions specified by statute.

A normative problem arises when such authority is applied to documents or objects connected with the performance of the notarial office. On the one hand, the law of criminal procedure confers upon investigators the authority to obtain and secure evidence for the purposes of investigation. On the other hand, the UUJN specifically regulates the mechanism for summoning notaries and for obtaining documents relating to original deeds or notarial protocols through MKN approval. This divergence in regulatory character calls for careful interpretation, so that the authority of investigators is not understood in isolation from the special provisions governing the protection of the notarial office (Maita & Silviana, 2026).

Such circumstances are all the more pertinent in relation to provisions on urgent circumstances, one determinant of which is the investigator's own assessment. That formulation may create interpretative latitude in application, particularly where the object of a search or seizure relates to documents held in a notary's custody. In the absence of clear limits and mechanisms, divergent interpretations may generate uncertainty as to whether such measures must first observe the protective mechanism contained in the UUJN (Rahayu et al., 2025; Sriwati, 2022).

From a legal perspective, this issue demonstrates the importance of observing the principle of *lex specialis derogat legi generali* where a provision specifically regulates a particular legal object or subject. The UUJN constitutes the special regulation governing the notarial office, including the mechanism for summoning notaries and for obtaining documents relating to notarial protocols. The KUHAP, by contrast, constitutes procedural law of general

application in criminal proceedings. The application of criminal procedural provisions to notaries must therefore take account of the special provisions of the UUJN insofar as the object and the measures concerned fall within the scope specifically regulated therein.

The Position of the MKN as a Counterweight between the Protection of Notaries and Law Enforcement

On the basis of the overall analysis, the MKN occupies a strategic position in maintaining a balance between the legal protection of notaries and the interests of law enforcement. That protection is effected principally through the mechanism of approval for the summoning of notaries and the retrieval of documents relating to original deeds or notarial protocols. This mechanism affords the MKN scope to ensure that legal proceedings involving notaries continue to observe the provisions concerning the office, confidentiality, and notarial protocols (Caesar et al., 2023; Kihl et al., 2024).

Nevertheless, the MKN cannot be positioned as an institution that removes or replaces the authority of law enforcement officials. Where a criminal offence is alleged, an investigation may still be conducted in accordance with the applicable law. The role of the MKN lies in the procedural protection of the notarial office, particularly where the measures of law enforcement officials relate directly to deeds or notarial protocols (Delfit & Dewi, 2024; Merdiansyah et al., 2023).

Legal protection for notaries must accordingly be situated within a framework of balance. Notaries remain accountable for acts performed in the exercise of their office where those acts are proven to satisfy the elements of a legal violation; however, the examination and use of documents relating to the performance of the office must be carried out through the procedures prescribed by statutory regulation. It is in this respect that the MKN performs an important role in ensuring that the protection of the notarial office is maintained without impeding the law enforcement process.

Developments in the law of criminal procedure following the entry into force of the 2025 KUHAP demonstrate the need for harmonisation between the provisions of criminal procedural law and the UUJN. Such harmonisation is required in order to clarify the relationship between the authority of law enforcement officials and that of the MKN, particularly in urgent circumstances involving searches, seizures, the summoning of notaries, and documents forming part of notarial protocols. That clarity is ultimately required in order to afford legal certainty to notaries, law enforcement officials, and members of the public who have an interest in the existence of authentic deeds.

CONCLUSIONS AND RECOMMENDATIONS

The findings indicate that the role of the Notary Honourable Council (MKN) in providing legal protection for notaries has not been optimal, as demonstrated by inconsistencies in the exercise of its authority, investigative processes that do not always observe MKN approval, and suboptimal inter-institutional coordination. Moreover, a disharmony persists between the UUJN and the KUHAP in the regulation of searches and seizures under urgent circumstances, which has the potential to generate legal uncertainty, compromise professional confidentiality, and weaken the function of the MKN as a procedural protection mechanism for notaries.

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