



## **JLPH:** **Journal of Law, Politic and Humanities**

E-ISSN: 2962-2816  
P-ISSN: 2747-1985<https://dinastires.org/JLPH> ✉ [dinasti.info@gmail.com](mailto:dinasti.info@gmail.com) ☎ +62 811 7404 455DOI: <https://doi.org/10.38035/jlph>  
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# **Legal Protection of the Office of Notary against the Principle of Confidentiality in View of Article 66 Paragraph (4) of the Notary Law**

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**Abstract:** This article is entitled “Legal protection of notary positions against the principle of confidentiality in review of Article 66 paragraph (4) of the UUJN”. The research method used is normative juridical research, using secondary data to analyze legal issues. The result of the research is that the legal protection of notaries in maintaining the confidentiality of the contents of their authentic deeds is not effective with the application of article 66 paragraph (4) of the UUJN by law enforcement in examining notaries. This is due to the absence of implementing regulations for article 175 of Law No. 6 of 2023 Jo article 66 paragraph (4) of UUJN, which has implications for the examination of notaries without protection and legal defense efforts to submit to law enforcement photocopies of the Deed Minute and/or letters attached to the Deed Minute or Notary Protocol in the Notary's storage which are confidential and guaranteed by law. Direct examination of notaries based on Constitutional Court Decision 20 PK/PID/2020 if MKN does not respond to law enforcement's request for notary examination (Article 66 (4) UUJN).

**Keyword:** Notary Honor Council, Examination, Confidentiality.

## **INTRODUCTION**

The existence of the Notary institution is based on the needs of the community in making authentic deeds as binding evidence. The role of Notary in providing public interest services is to provide services in making deeds and other tasks that require Notary services. The Kenotariatan Institution is one of the social institutions in Indonesia, this institution arises from the needs in the association of fellow human beings who require evidence of the civil legal relations that exist and or occur between them (Iryadi, 2020). One of the important considerations for the birth of the Notary Position Law (UUJN) No.2 of 2014 concerning amendments to UUJN No. 30 of 2004, among others, is to ensure certainty, order and legal protection for those who need written evidence in the form of authentic deeds regarding circumstances, events or legal acts organized through certain positions. One of the specific

positions authorized to make written evidence in the form of an authentic deed is a notary as a public official who carries out his profession in legal services to the community.

Notaries in carrying out their professional duties as Notaries are supervised and fostered by Notary Organizations. The Notary Organization is incorporated in a forum called the Indonesian Notary Association (INI).

Notaries in carrying out their duties as public officials must comply with the legal rules contained in the Notary Position Law and the Code of Ethics contained in the Notary Organization. In carrying out their duties as authentic deed-making officials, notaries are often suspected of cases of criminal violations in carrying out their duties as notaries. Notary criminal offenses are intended when carrying out their positions and duties is to make false documents or falsify documents in the authentic deed formed by a notary. In addition to this, filling in false statements in an authentic deed formed by a notary is also an offense, while related to the notary can be summoned at any time from law enforcement is that a notary is used as a witness for all legal issues that have a relationship to the deed he formed. In the implementation process, for example, requests made by law enforcers do not explain concretely the chronology of the things requested and not all law enforcers understand the procedures for summoning a Notary to come to an examination that has a relationship to the deed or protocol of the notary profession.

Based on Article 66 of the Notary Position Law, law enforcers do not easily summon notaries or request copies of authentic deeds formed by a notary. Based on the existence of Article 66 of the Notary Public Office Law, the procedure for summoning a notary is not easy. as well as requesting copies of authentic deeds formed by a notary. Based on the existence of Article 66 of the Notary Position Law, the procedure for summoning a Notary for investigation activities where there are allegations of carrying out criminal acts must first be approved by MKN. Regarding the process of obtaining approval by the Notary Honor Council through the mechanism of the Investigator must submit a request document to MKN to carry out investigation activities against Notaries who are suspected of carrying out criminal acts. in these conditions the Notary Honor Council is given a grace period of 1 month to respond to the investigator, if MKN rejects or accepts the submission of the investigation.

In its implementation, the role of MKN when there is a request from law enforcement regarding alleged criminal acts committed by a notary, MKN then compiles an Examination Team consisting of three people, who are representatives of each MKN region, which then determines the time to summon and examine. The role of the examination team in this condition has the authority to make a decision whether to accept or reject the request requested by law enforcement to summon a notary. MKN agrees to summon the notary according to the request requested by law enforcement, for examination, then the results of the examination of the MKN team have described that the notary has committed a violation in carrying out his position in the form of a violation of duties, functions and authority. Regarding the decision to give MKN's rejection or approval of the summoning of a notary during the 1 month grace period. MKN does not respond to the examination of a notary, of course, raises legal consequences for a notary in his profession (Maya, 2017).

If law enforcers do not get an answer from MKN for 30 days after the request is given, then law enforcers based on article 66 paragraph (4) UUJN In the event that the Notary Honor Council does not provide an answer within the period referred to in paragraph (3), the Notary Honor Council is deemed to have accepted the request for approval. Therefore, law enforcers based on the official report of the request to the MKN, in the interest of the judicial process, investigators, public prosecutors, or judges can legally summon the Notary directly to take a photocopy of the Deed Minute and/or letters attached to the Deed Minute or Notary Protocol in the Notary's storage; and b. summon the Notary to appear in an examination related to the Deed or Notary Protocol that is in the Notary's storage.

Thus, during the examination process, the Notary must provide information about the deed given, while the Notary himself has an obligation in accordance with his oath of office and also stated in Article 4 and Article 16 of the Notary Office Law that notaries are obliged to keep confidential everything about the deeds they make and all information obtained for the purpose of making deeds in accordance with the oath / promise of office, unless the law determines otherwise. Thus, the legal issue is how is the legal protection of the notary position against the principle of confidentiality in terms of article 66 paragraph (4) of the notary office law?

## **METHOD**

Teknik penulisan artikel ini menggunakan metode penelitian hukum dengan jenis/tipe penelitian Normatif, menggunakan pendekatan penelitian statute approach dan conceptual approach (MRizky, 2020). Adapun sumber data sekunder yakni menggunakan bahan hukum primer berupa regulasi yang relevan dengan isu hukum, dan bahan hukum sekunder yang merupakan pendapat maupun teori hukum yang relevan dengan isu hukum dalam penulisan ini. Teknik pengumpulan data yang digunakan yakni menggunakan panduan dokumentasi dari sumber data sekunder, penulisan ini menggunakan teknik analisis deskriptif dengan metode berfikir deduktif.

## **RESULTS AND DISCUSSION**

When carrying out work, a notary has the potential to encounter problems that arise such as, for example, legal consequences related to the implementation of the notary profession. Legal consequences are opportunities for occurrence in an “uncertainty” (uncertainty) that is “undesirable” (not expected) that may occur in the future, which arises as a consequence or impact on the implementation of the notary profession, which has a dangerous nature, it can take the form of civil consequences or consequences of liability or criminal impacts that can cause dismissal, dismissal or loss to the notary profession, in these conditions what is meant is the potential to be a defendant or suspect to be convicted in criminal matters (Kasus et al., 2022). The importance of legal protection is given to notaries, so that they can exercise their authority without fear that problems will arise in the future.

Legal protection can be defined as the delivery of protection for human rights that have harmed someone and submitted to the general public so that everyone can get all the rights that the law provides through statutory regulations. Not only that, legal protection can also be defined as a guarantee that the government provides for all its citizens to carry out their obligations, rights and all legal urgencies in an orderly and safe manner.

Furthermore, legal protection must also be accompanied by the contribution of the government or the state, because it is a form of obligation or responsibility of the government. In relation to these conditions, the UUJN in its implementation to provide legal protection to notaries in carrying out their duties and authorities properly, without intervention or pressure from law enforcement, the LMKN (Notary Honor Council Institution) was formed.

The state has issued Law No.2 of 2014 concerning the Position of Notary as a replacement for Law No.8 of 2004 as a regulation that regulates the institution of the Notary Honor Council, which functions to impose sanctions, supervision and examination of notaries. MKN is a body that has an independent nature when making decisions that have the obligation and duty to provide direction or guidance on the activities of strengthening the Notary institution in applying the UUJN to all people who carry out their profession as Notaries (Nurjannah et al., 2018). Based on the main authority to carry out guidance, examination and supervision of Notaries, it is carried out by the Ministry of Law and Human Rights, which in its technical implementation is carried out by the MPN (Notary Supervisory Council) and MKN (Notary Honor Council) with their respective authorities that have been given.

Regarding MKN, it has duties and authorities as stated in Article 66 of the UUJN, which are as follows: 1. For the needs of the implementation of investigators, public prosecutors, judges or judicial processes through agreements, MKN has the authority: a) to take copies of the minutes of deeds or letters attached to the minutes of deeds or Notary protocols when storing Notaries; b) and to summon Notaries to come to be examined which have a connection to the protocol or Notary deed contained in the Notary's storage (Azhari et al., 2022). Article 66 paragraph 1-4 of the UUJN positions MKN to have final and absolute authority in terms of not responding, giving approval or disagreeing with the summoning of a notary to appear in the process of examining a case. This is because MKN, as also stipulated in Articles 66, 66A of the UUJN, is an article that has an imperative nature. The related conditions result in the prosecutor, judge or investigator being unable to carry out further legal efforts. Based on the three options that can be implemented by MKN when carrying out its obligations, then with the authority it has, it can use administrative law tools when carrying out activities of duties and authority. One of the administrative law tools used when carrying out related government activities is the legal tool of licensing (Muslim, 2020), namely granting law enforcement requests for the process of being examined by notaries, not approving or not approving the process.

The main role of MKN in criminal cases carried out by a notary is in the form of granting permission to law enforcement or refusing law enforcement because it does not include a professional violation. The existence of MKN's main role is related to the secrets of the Notary profession seen from the theoretical side and the implementation of justice, in which Notary is obliged to carry out his profession in line with laws and regulations, aspects of prudence, code of ethics, trustworthiness, honesty and accuracy, if these things are ignored when forming a deed, making the relevant Notary later responsible for the impact of violating important points that must be fulfilled. That is the basis for the importance of the examination carried out by MKN, because only MKN understands the deed product formed by a notary, whether it violates the law or not. The Notary Honor Council has the authority to include summoning Notaries to conduct examinations related to the deeds they form. Taking the deed minutes, documents that have a connection to the deed and taking the related Notary SOP. Because Notaries have the responsibility to maintain the secret content of the deed in line with the instructions in the UUJN, MKN conducts a Notary examination first so that it can provide an appropriate decision on the relevant Notary to attend the examination conducted by law enforcement or not. Not only in the UUJN 2014, the responsibility to maintain confidentiality is also stipulated in the criminal procedure law, civil law and criminal law. in Article 322 paragraph 1 of the Criminal Code which threatens the Notary as an office holder, can be sentenced to imprisonment for 9 months or a maximum fine of Rp.9,000 if he reveals the secrets of the office. Article 1909 paragraph 2 of the Criminal Code states that anyone who by virtue of his position, position, or occupation is obliged by law to keep a secret, but only in relation to conditions in which he has been entrusted with knowledge. The Criminal Procedure Code also emphasizes the right to deny the position of a witness whose statement is needed in legal procedures. Article 170 paragraph 1 of the Criminal Procedure Code states that those whose work, dignity, or position requires the obligation to keep secrets can request freedom of use of the right to give a statement as a witness (Kurniawan, 2021).

There are several conditions for summoning a notary that must be fulfilled by the public prosecutor, judge or investigator, carried out if 1) there are allegations that a criminal act has occurred related to the minutes of the deed or notary documents stored at the notary 2) there is still the right to prosecute based on the provisions regarding expiration in the applicable laws and regulations in the aspect of criminal law; 3) there is a refusal to certify the signature by one or more parties; 4) there is a possibility of additions or subtractions to the minutes of the deed. There is a possibility of additions or subtractions to the deed minutes 5) there is a possibility

of notaries carrying out the creation of a backward date (anti datum). MKN conducts examinations based on measuring instruments to start in line with what has been determined in Permenkumham No.17 Thn 2021. The examination of a notary conducted by the Notary Examination Panel is carried out through identifying problems, in this condition it is the main thing in the case submitted from the public prosecutor, judge or investigator as well as hearing statements by the relevant notary. Then determine the solution of existing problems through considerations that have an impact on the risks that arise by carrying out an analysis by the elements of the examining panel.

The examining panel when carrying out considerations in order to give refusal or approval to the examination of a Notary, through first hearing a direct statement submitted by the Notary which is then used as an object in conducting the examination. If the result of the examination is based on a statement given by a Notary and has fulfilled the requirements listed in Article 31 Permenkumham No.17 Thn 2021, there is no reason for the Examining Panel not to give permission to the desire to examine the Notary. In the event that the examining panel grants permission to the wishes of the public prosecutor, judge or investigator, the Notary has an obligation to: 1. Submit a copy of the minutes of the deed or document required by the public prosecutor, judge or investigator and 2. Provide a copy of the minutes of the deed or document as mentioned in number 1, through the preparation of minutes of provision affixed with the signature of the Notary and the public prosecutor, judge or investigator and seen by 2 people who are witnesses. But if the Notary is seen from the side of the Examining Panel as having carried out his obligations in line with the money regulated and determined by the rules of law and is deemed not to have committed an offense when carrying out his obligations regarding the formation of deeds so that the Examining Panel will later reject the desire to call the Notary that has been determined. The decision given by MKN can be an object of a lawsuit from a notary at the PTUN as a State Administrative Dispute. If the Notary feels a loss or his rights are ignored when making a summons carried out by MKN, the Notary can file a lawsuit against MKN to the PTUN in his area. If the legal remedy given to the notary is a civil sanction, all legal remedies that can be implemented by the notary are through the implementation of various businesses, such as administrative appeals or filing a lawsuit at the PTUN. The right that a notary has in filing a lawsuit at the State Administrative Court over the approval of MKN in his area to the Investigator to carry out the investigation process against a notary, and as long as the lawsuit activity continues and still does not have permanent legal force, making the investigator still has no authority in carrying out investigation activities against a notary, until there is a PTUN Decision that has permanent legal force. The decision given by MKN is a state administrative object, so a notary has the right to file a lawsuit to cancel the approval of MKN in his area which contradicts the existing provisions to the PTUN.

Article 66 paragraph 4 of the Notary Position Law states that if MKN does not give an answer during the grace period as referred to in paragraph (3), MKN is declared to have agreed. Making law enforcers based on the minutes document has made a request to MKN, for the purposes of judicial activities, judges, public prosecutors, and investigators can make an official summons directly to the notary to collect copies of the Deed Minute and documents attached to the Deed Minute or Notary Protocol in the Notary storage, summon the notary to come to conduct an examination related to the Deed or Notary Protocol contained in the Notary storage. Based on the existence of this article, a fictitious-positive case is applied to the application submitted by law enforcers to the MKN. where supposedly law enforcers still cannot conduct an examination of a notary when they have not submitted a fictitious-positive application to the State Administrative Court.

The involvement of law enforcers in article 66 paragraph 4 related, could not be implemented when the start of Law No.6 of 2023 concerning the enactment of PERPU No.2 of 2022 concerning work creation into law, in Article 175 no 6 has also deleted paragraphs 4 and 5 of

article 53 of the AP Law which stipulates the procedure for filing fictitious-positive applications at the Administrative Court (Eka et al., 2023). So based on this, decisions that have a fictitious-positive nature no longer need to be submitted to the Administrative Court in order to get a decision. The related conditions indirectly have an impact on the absolute authority of the Administrative Court when determining the decision on fictitious-positive applications and the enactment of a legal vacuum in fictitious-positive cases has been absent since the enactment of the Job Creation Law, similar to the case that occurred in article 66 paragraph 4 of the JN Law.

As a result, there are no related legal arrangements because the organizing regulations regarding the settlement of fictitious-positive problems have not been issued (Pratama, 2020). The examining panel when carrying out considerations in order to give refusal or approval to the examination of a Notary, through first hearing a direct statement submitted by the Notary which is then used as an object in conducting the examination. If the result of the examination is based on a statement given by a Notary and has fulfilled the requirements listed in Article 31 Permenkumham No.17 Thn 2021, there is no reason for the Examining Panel not to give permission to the desire to examine the Notary. In the event that the examining panel grants permission to the wishes of the public prosecutor, judge or investigator, the Notary has an obligation to: 1. Submit a copy of the minutes of the deed or document required by the public prosecutor, judge or investigator and 2. Provide a copy of the minutes of the deed or document as mentioned in number 1, through the preparation of minutes of provision affixed with the signature of the Notary and the public prosecutor, judge or investigator and seen by 2 people who are witnesses. But if the Notary is seen from the side of the Examining Panel as having carried out his obligations in line with the money regulated and determined by the rules of law and is deemed not to have committed an offense when carrying out his obligations regarding the formation of deeds so that the Examining Panel will later reject the desire to call the Notary that has been determined. The decision given by MKN can be an object of a lawsuit from a notary at the PTUN as a State Administrative Dispute. If the Notary feels a loss or his rights are ignored when making a summons carried out by MKN, the Notary can file a lawsuit against MKN to the PTUN in his area. If the legal remedy given to the notary is a civil sanction, all legal remedies that can be implemented by the notary are through the implementation of various businesses, such as administrative appeals or filing a lawsuit at the PTUN. The right that a notary has in filing a lawsuit at the State Administrative Court over the approval of MKN in his area to the Investigator to carry out the investigation process against a notary, and as long as the lawsuit activity continues and still does not have permanent legal force, making the investigator still has no authority in carrying out investigation activities against a notary, until there is a PTUN Decision that has permanent legal force. The decision given by MKN is a state administrative object, so a notary has the right to file a lawsuit to cancel the approval of MKN in his area which contradicts the existing provisions to the PTUN.

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The involvement of law enforcers in article 66 paragraph 4 related, could not be implemented when the start of Law No.6 of 2023 concerning the enactment of PERPU No.2 of 2022 concerning work creation into law, in Article 175 no 6 has also deleted paragraphs 4 and 5 of article 53 of the AP Law which stipulates the procedure for filing fictitious-positive applications at the Administrative Court (Eka et al., 2023). So based on this, decisions that have a fictitious-positive nature no longer need to be submitted to the Administrative Court in order to get a decision. The related conditions indirectly have an impact on the absolute authority of the Administrative Court when determining the decision on fictitious-positive applications and the enactment of a legal vacuum in fictitious-positive cases has been absent since the enactment of the Job Creation Law, similar to the case that occurred in article 66 paragraph 4 of the JN Law.

As a result, there are no related legal arrangements because the organizing regulations regarding the settlement of fictitious-positive problems have not been issued (Pratama, 2020). So that law enforcers can use Supreme Court Decision Number. 20 PK/PID/2020, where the decision states the opinion “which is further emphasized in Article 66 paragraph 4 which says, ”in the condition that MKN has not given an answer during the grace period as referred to in paragraph 3, MKN is declared to have approved the application for approval.” The Applicant's clause that considers Article 66 paragraph 4 of the UUJN to be redundant, because through substance it is said by the Applicant as in Article 66 paragraph 3, is incorrect. The Court is of the view that Article 66 paragraph 4 of the UUJN a quo is precisely emphasizing that MKN cannot obstruct the authority of public prosecutors, judges or investigators when exercising their authority for the purposes of judicial activities as stipulated in Article 66 paragraph 1 of the UUJN. Furthermore, the provision of the article a quo aims to protect a notary as a public official when carrying out duties, especially providing protection for the existence of minutes which are state documents that have a confidential nature “.

Based on some of these things, the result of interpreting various regulations so that they can be applied to law enforcement or to protect a Notary when maintaining secrets is absurd. This condition has an impact on the absence of something that protects the notary when maintaining the confidentiality of the content of his authentic deed. The existence of Law No.6 of 2023 until now still does not issue organizing regulations on fictitious-positive issues, making it possible to summon the Notary directly based on the Constitutional Court Decision No.20 PK /PID /2020 if the MKN does not respond to requests from law enforcement for notary inspection.

## CONCLUSION

Legal protection of notaries in maintaining the confidentiality of the contents of their authentic deeds is not effective with the application of article 66 paragraph (4) of the UUJN by law enforcement in examining notaries. This is due to the absence of implementing regulations for article 175 of Law No. 6 of 2023 Jo article 66 paragraph (4) of UUJN, which has implications for the examination of notaries without protection and legal defense efforts to submit to law enforcement photocopies of the Deed Minute and/or letters attached to the Deed Minute or Notary Protocol in the Notary's storage which are confidential and guaranteed by the Law.

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- Kasus, S., Mahkamah, P., No, A., & Pid, P. K. (2022). MEMBERIKAN PERLINDUNGAN HUKUM BAGI NOTARIS Amira Budi Athira , Siti Hajati Hoesin . \*\* Mahasiswa Magister Kenotariatan Fakultas Hukum Universitas Indonesia Abstract A Notary , is one of the professions in the law field , that truly deserves legal protection in carrying out their duties and functions as public officials that are authorized to make authentic deeds . Therefore , in the even of a notary is suspected of committing a violation of criminal law or an unlawful act , the role of the Notary Honorary Council is urgently needed to participate in providing legal protection for notaries . The duties and functions of the Notary Honorary Council itself is to give approval or refusal for the purposes of investigation in the judicial process . This also plays an important role because it aims to maintain the authority of a notary , so that there is no legal process that goes wrong or inappropriate even arbitrarily by criminalizing the act of a notary as a criminal offense , not necessarily an error in criminal law . However , in practice , this function still has several obstacles . This can be seen in the Court Verdict No . 20 / PK / Pid / 2020 , where a notary is criminally charged , even though it is not classified as a criminal realm , but in the administrative realm . Keywords : Notary Honorary Council , criminal law , and legal protection . Abstrak Notaris , merupakan salah satu profesi di bidang hukum yang sudah sepatutnya mendapatkan perlindungan hukum dalam menjalankan tugas dan fungsinya sebagai pejabat publik yang diberi wewenang untuk membuat akta autentik . Oleh karena itu , dalam hal seorang notaris diduga melakukan suatu pelanggaran hukum pidana atau perbuatan melawan hukum , peran Majelis Kehormatan Notaris sangat dibutuhkan untuk turut memberikan perlindungan hukum bagi notaris . Tugas dan fungsi dari Majelis Kehormatan Notaris sendiri , adalah memberikan persetujuan atau penolakan untuk kepentingan penyidikan dalam proses peradilan . Hal ini juga memegang peranan penting karena bertujuan untuk menjaga wibawa notaris , agar tidak terjadi proses hukum yang salah atau tidak tepat bahkan sewenang-wenang dengan mengkriminalisasi perbuatan notaris sebagai tindak pidana , yang belum tentu merupakan kesalahan dalam hukum pidana . Namun , dalam pelaksanaannya , fungsi ini masih memiliki beberapa kendala . Hal ini dapat dilihat dalam Putusan Mahkamah Agung No . 20 / PK / Pid / 2020 , dimana seorang notaris dijera hukuman pidana , meskipun sebenar... 08(20), 565–579.
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