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## **The rights of the notary honoress assembly approval on notary calls in the judicial process**

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**Abstract.** This research is a normative legal research using primary and secondary legal sources. Paying attention to the conditions needed for a notary's summons to be present in the judicial process is felt to be very important, because it's an effort to obtain the truth regarding legal cases involving parties who need the services of a notary and also a notary himself related to the deed he made in his client transactions. The efforts of the Notary Honorary Council in order to guarantee the protection of the position of a Notary are increasingly seen in the provisions of Article 27 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council, which is formulated: "The Regional Notary Honorary Council can accompany Notaries in the examination process before the investigator".

**Keywords.** notary; judicial process

### **Introduction**

Notary is a public official who has the authority to make authentic deeds for all legal acts based on general regulations or by those with an interest to be stated in an authentic deed. The authority of a notary in making deeds is basically an extension of the state in providing services to people who need deeds. Notary deeds are needed as evidence of legal actions by the parties who need them. As a state official, a Notary is obliged to provide the best service, trustworthy, honest, thorough, independent, impartial, and safeguard the interests of clients. Notaries are required to provide services in accordance with the provisions of the Law or Notary Public Affairs of 2004 (UUJN-2004), unless there is a reason to refuse it. (Putranda & Ngadino, 2019)

One of the efforts to guarantee legal protection to the state is through Article 66 paragraph (1) Law or Notary Public Affairs of 2004. The provisions of this article are basically an indirect legal protection for a Notary who is suspected of committing a criminal act related to the deed he has drawn up. Article 66 paragraph (1) is formulated: For the benefit of the judicial process, investigators, public prosecutors, or judges "with the approval of" the Notary Honorary Council has the authority...and so on. However, the provisions of Article 66 paragraph (1) Law or Notary Public Affairs of 2004 are degraded and lose their validity, based on the Constitutional Court Decision Number 49/PUU-X/2012, which revokes and negates the existence of Article 66 paragraph (1) Law or Notary Public Affairs of 2004.

In 2014, the legislature made changes to Law or Notary Public Affairs of 2004 by issuing Law or Notary Public Affairs of 2004, and in this law Article 66 paragraph (1) is

returned in the same article and editorial as contained in Article 66 paragraph (1) Law or Notary Public Affairs of 2004, namely maintaining the approval of the Notary Honorary Council in the notary summons in the trial process. This shows that there is a strong reason for the state to guarantee legal protection for notaries who are indicated to have committed a criminal act related to the deed they have made. Based on the background, the research question is the nature of the Notary's Homeland Council's approval of the notary's summons related to the deed he made as a result of the alleged corruption in the making.

### **Types of Research**

This research is a normative legal research using primary and secondary legal sources.(Michael, 2019)

### **Discussion**

Efforts to provide legal protection for Notaries from legal traps have been carried out since the enactment of Law or Notary Public Affairs of 2004, by forming the Regional Supervisory Council (MPD), which has the authority to give approval to efforts to present Notaries in the judicial process. This authority is regulated in Article 66 paragraph (1) Law or Notary Public Affairs of 2004, which is fully formulated:

- (1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Regional Supervisory Council have the authority to :
  - a. Take a photocopy of the Minuta Deed and/or letters attached to the Minuta Deed or Notary Protocol in the notary's deposit; and
  - b. Summoned the Notary to the present at the examination relating to the deed he made or the Notary Protocol that was in the Notary's custody. The Regional Supervisory Council's authority was then declared no longer binding by the Constitutional Court decision No. 49/PUU-X/2012, which canceled Article 66 paragraph (1) of Law or Notary Public Affairs of 2004.

The authority of the Regional Supervisory Council in Article 66 paragraph (1) Law or Notary Public Affairs of 2004 is deemed incompatible with the principle of *equality before the law* as one of the characters or characteristics of a rule of law.(Acemoglu & Wolitzky, 2018) As in Article 66 paragraph (1) Law or Notary Public Affairs of 2004, because the article gives *prevelege* to Notaries when dealing with the law. This principle is reflected in Article 27 of the 1945 Constitution of the Republic of Indonesia, which is formulated "Every citizen has the same position in law, and is obliged to uphold the law and government without exception.(Slamet Suhartono & Wahyono, 2019)

In addition, another reason for the cancellation of the provisions of the article was based on the constitutional loss suffered by the plaintiff, because when he processed the police report on the alleged false information in the deed made by a Notary, and which harmed him, he was prevented by the need to seek approval from the Regional Supervisory Council. The Regional Supervisory Council approval is deemed incompatible with the criminal law enforcement process and the principle of an independent judicial power that doesn't want any party to interfere in law enforcement. So that the Regional Supervisory Council approval is considered to hinder the judicial process regulated in the Criminal Procedure Code and isn't in accordance with the criminal justice system in force in Indonesia.

Honesty lies in morals, therefore justice cannot be separated from society's judgment. Furthermore, it's said that government policies and legal policies are distributed proportionally on the basis of human dignity for the sake of realizing general welfare.(Kuhn & Hawkins, 1963) Taking into account John Rawls' opinion, Article 66 paragraph (1) Law or Notary Public

Affairs of 2004 injures the public's sense of justice, because it's thought that there is unfair treatment that is felt by the community. This injustice occurs because there is an unbalanced distribution of legal policies between notaries and people who are dealing with the law.

The competence of the Constitutional Court to examine, hear and decide on the cancellation of Article 66 paragraph (1) Law or Notary Public Affairs of 2004 is also the basis for consideration of Constitutional Court judges. To find out whether there is such power or not, it's necessary to investigate the presence and absence of the authority of the Constitutional Court. The investigation of this authority is important, considering that in a constitutional state it's bound by the principle of *rechtmatigebestur*, that every use of authority must be found a legal basis.(Kosariza et al., 2020)

With regard tot he authority to judge the petition for judicial review of Article 66 paragraph Law or Notary Public Affairs of 2004 against the Constitution, regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic, which was formulated: "The Constitutional Court has the authority to judge at the first and final levels whose decisions are final and binding to test the law against the Basic Law,...etc. It's for this reason that the Constitutional Court shall examine, judge and decide to grant the plaintiff's petition in the judicial review of Article 66 paragraph (1) of Law or Notary Public Affairs of 2004.

The allegation of false information in the notary's deed is also one of the reasons for the Constitutional Court to accept and adjudicate and decide on the request for judicial review of Article 66 paragraph (1) Law or Notary Public Affairs of 2004. Considering that forgery is a criminal act, then the judicial proceedings suspected of committing a criminal act shouldn't require Regional Supervisory Council approval, so it's only natural that the Regional Supervisory Council phrase in Article 66 paragraph (1) issued through a material test against that article.(Jafar, 2018)

Not long after, exactly 3 (three months) later, the provisions of Article 66 paragraph (1) were returned by the legislative body, the provisions of the articles through Law or Notary Public Affairs of 2004 which amended Law or Notary Public Affairs of 2004, with the same articles and the same formulation of norms. Returning the norm of Article 66 paragraph (1) in Law or Notary Public Affairs of 2004, will then be followed up with the formation of the Notary Honorary Council based on the Regulation of the Minister of Law and Humand Rights Number 7 of 2016 concerning the Notary Honorary Council. This council later replaced the Regional Supervisory Council, with the same powers, namely to give approval to efforts for bring in a Notary in the trial process.(Edwar et al., 2019)

It's interesting to note, if you look at the efforts of the legislative body to return the phrase "the approval of the Notary Honorary Council, of course it has strong reasons. In other words, what is the urgency for the approval of the Notary Honorary Council related to efforts to bring a Notary in the judicial process. The effort to return the phrase "Notary Honorary Council approval" in Article 66 paragraph (1) Law or Notary Public Affairs of 2004 assumptively can be said that the phrase has a very important meaning, especially for a notary. Because notaries are public officials who replace the state in carrying out the profession of providing legal services to the public. For this reason, if the government together with the House of Representatives seeks to guarantee legal protection for Notaries, it's solely for the sake of achieving justice for Notaries in carrying out their duties.(Sesma, 2019)

In essence, the phrase of approval from the Notary Honorary Council doesn't differ in meaning from permission or approval or approval. In administrative law, a permit is one of the most widely used legal instruments by the government to control the behavior of it's citizens<sup>1</sup>. In the *Black's Law Dictionary* permission is given the meaning of "a permit, granted by an appropriate governmental body, generally for a consideration to a person, firm, or corporation

*to pursue some occupation or to carry on some business subject to regulation...A license is not a contract between the state and the license, but is mere personal permit.”(Garner, 2014)*

The term in the legal dictionary, permits (*vergunning*) is approval or approval from the government which is required for actions that generally require special supervision, but are generally not considered things that are completely undesirable.(Bastian & Michael, 2018) According to N.M. Spelt and J.B.J.M. ten Berge, permission is an approval from the ruler based on law or government regulation, to in certain circumstances deviate from the provisions of the statutory prohibition.(Spelt & Berge, 1991)

Permits are stipulated by state officials, so that from the point of view of their placement, permits are instruments of control of government tools to achieve what they are targeting. Thus, a permit is a state administrative legal instrument used by the government to control its citizens so that it runs in an orderly manner and for this purpose an administrative instrument is required. If Article 66 paragraph (1) in Law or Notary Public Affairs of 2004, which is reaffirmed in Law or Notary Public Affairs of 2004, limited to the phrase “approval from the Notary Honorary Council” can be used by the Notary Honorary Council to protect Notaries in carrying out their duties and obligations. This is based on the assumption that approval may not be issued of refuse to give approval to law enforcement officials to present a Notary in the trial process.

Article 66 paragraph (1) Law or Notary Public Affairs of 2004 gives discretion to the Notary Honorary Council to interpret itself regarding what reasons are the basis for refusal to give approval. This is because the Law on Notary Position and in the Regulation Human Rights Number 7 of 2016 concerning the Notary Honorary Council doesn't mention what could be the reasons for the Assembly to refuse to approve the application.

Approval of the Regional Supervisory Council Law or Notary Public Affairs of 2004 or the Notary Honorary Council (Law or Notary Public Affairs of 2004), is indirectly a form of legal protection for Notaries. This is because approval is one of the manifestations of a permit granted by a certain party in accordance with their authority. As van Praag said, that : *de hier bedoelde voemen worde aangeduid onder verschillende benmingen, zoals vergunning, verlof, machtiging, consessie, dispensatie, vrijstelling, ontheffing, etc.*(Palmans et al., 2012) So, approval is part of the permit containing approval or approval.

Another form of legal protection for Notaries can also be seen in Article 66 paragraph (2) Law or Notary Public Affairs of 2004, which also provides legal protection for Notaries, which stipulates that : “Taking photocopies of Minuta Deeds or letters as referred to in Article 66 paragraph (1) letter a Law or Notary Public Affairs of 2004, then an official report of the submission is made.” This provision aims to prevent arbitrariness by law enforcement officials against the right of the Notary not to easily provide or leak client secrets or information in connection with the deed he has drawn up.

Legal protection for notaries as public officials can also be seen from the basis for the consideration of the establishment of Law or Notary Public Affairs of 2004. One of the considerations is formulated as follows: “that a notary is a certain position that carries out the profession in legal services to the public, it's necessary to obtain protection and guarantees in order to achieve legal certainty”.(Atas et al., 2017) Legal protection for Notaries is indeed necessary, because of their position as state officials who assist the government in providing services to the public in making deeds required based on statutory regulations.(Kongres, 2019)

### **Conclusion**

Paying attention to the conditions needed for a notary's summons to be present in the judicial process is felt to be very important, because it's an effort to obtain the truth regarding legal cases involving parties who need the services of a notary and also a notary himself related



to the deed he made in his client transactions. The efforts of the Notary Honorary Council in order to guarantee the protection of the position of a Notary are increasingly seen in the provisions of Article 27 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council, which is formulated: "The Regional Notary Honorary Council can accompany Notaries in the examination process before the investigator".

It has been explained in the previous description, that the phrase or word "can" in a legal norm is a choice or choice, meaning that in the provisions of Article 27 paragraph (2) Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honorary Council, it's formulated: "...the Notary Honorary Council" can "assist, meaning that the Council can use it's authority or not use it's authority to assist the Notary in conflict with the law.

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