



Juridical Study on Notaries Who Commit Criminal Acts Based on Law Number 2 of 2014 concerning the Position of Notary

I Made Sada¹

Universitas Mahendradatta

Email: thebalisation@gmail.com

Erikson Sihotang²

Universitas Mahendradatta

Email: eriksonsihotang1@gmail.com

Ni Ketut Wiratny³

Universitas Mahendradatta

Email: wiratny@gmail.com

ABSTRACT

Notaries as public officials have significant legal responsibilities in making authentic deeds. This research aims to analyze the legal procedure for summoning a notary as a witness in a case of alleged fraud or embezzlement. The research method used is normative research, by analyzing relevant laws and literature regarding the criminal responsibility of notaries based on Law Number 2 Year 2014. The results show that the summoning of notaries as witnesses by investigators must fulfill the provisions stipulated in the law, including approval from the Notary Honor Council. In addition, there are significant differences in the procedure after the issuance of Constitutional Court Decision Number 49/PUU-X/2012. This research emphasizes the need to evaluate regulations related to summoning notaries to ensure independence and speed up the legal process. The implications of the findings include increased awareness of notaries and socialization to the public regarding their roles and responsibilities. This research shows the importance of increasing notaries' awareness of their legal responsibilities and the need for reform of legal procedures to speed up the summoning and examination of notaries. In addition, strengthening regulations and socializing to the public regarding the role of notaries can help prevent errors in the making of authentic deeds.

Keywords: Notary, criminal liability and authentic deed

INTRODUCTION

In the modern legal context, the role of notaries as public officials authorized to make authentic deeds is gaining more and more attention, especially in the midst of increasing cases of fraud and embezzlement involving legal documents (Tr, 2021). Globally, many countries have undertaken legal reforms to strengthen the integrity of the notary profession and prevent abuse of authority. These reforms show that these countries realize the importance of the notary profession in maintaining public trust in the legal system.

However, in Indonesia, despite the existence of various regulations, problems related to notary accountability still arise frequently (Catur, 2023). Especially after the issuance of the Constitutional Court Decision Number 49/PUU-X/2012, which changed the procedure for summoning notaries by investigators. This raises doubts about the limits and responsibilities of notaries in criminal cases, as well as how the legal process can proceed without compromising the independence of notaries as public officials.

Some previous studies have addressed the legal responsibilities of notaries, but few have examined the specific impact of recent regulations on notary practice (Agustin & Anand, 2021). For example, a study conducted by Rizki Amalia and colleagues showed a gap in the understanding of notary responsibilities amidst regulatory changes (Tacconi et al., 2019). The research implies the need for more in-depth studies to understand how notaries can protect themselves from criminal charges while still performing their duties professionally.

The urgency of this research lies in the need to evaluate the impact of regulatory changes on law enforcement in Indonesia. With the increase in cases involving notaries, it is important to identify how the summoning procedure and criminal liability of notaries can be clarified. In addition, this research is expected to provide constructive recommendations for policy makers in improving the existing legal system.

The novelty of this research lies in the approach that combines normative and empirical analysis of notary practices after regulatory changes. By focusing on the practical experiences of notaries and legal officers, this research aims to provide new insights that are relevant to legal academics and practitioners. It is expected to fill a void in the existing literature and make a significant contribution to the understanding of notaries' legal responsibilities.

The purpose of this study is to analyze in depth the legal procedures for summoning notaries as witnesses by investigators, as well as the criminal liability faced by notaries. This research also aims to explore how notaries can perform their duties properly without getting caught up in criminal issues that may arise due to the mistakes of other parties.

The benefits of this research will be felt not only by academics, but also by legal practitioners and policy makers. The results of the research are expected to serve as a reference in the formulation of more effective and transparent policies, as well as increasing notaries' awareness of their legal responsibilities. Thus, this research is expected to contribute to the strengthening of the legal system in Indonesia and increase public confidence in the notary profession.

RESEARCH METHODS

The research method used in this research is normative research method. This normative research utilizes various types of primary legal materials, such as laws and regulations, as well as secondary legal materials related to notary criminal liability as a source of research material. Legal cases involving notaries were analyzed to understand the context and implications of their actions in real situations. Statistical data related to criminal cases involving notaries was also collected to identify patterns and trends that could provide further insights. By incorporating empirical data, this research is expected to produce findings that are more relevant and applicable in the existing legal context.

RESULTS AND DISCUSSION

Legal Procedure In Summoning A Notary As A Witness By A Police Investigator Related To Alleged Cases Of Fraud Or Embezzlement On Deeds Made By A Notary

The provisions of Article 1 of Law No. 2 of 2014 provide a definition of a Notary as a public official authorized to make authentic deeds and other authorities referred to in this law (Samuel, 2022). Based on this definition, a notary is a public official who is authorized to make authentic deeds of a general nature. The authority of the notary has a difference with other public officials, which lies in the authority to make an authentic deed that has been expressly assigned to the public official by law (Permana et al., 2024). The notary in carrying out the duties of his authority as a public official has the main characteristics, namely in his position (position) which is impartial and independent (independent), even expressly said not to be one of the parties.

An investigator is a certain police officer of the Republic of Indonesia who is given special authority by law to conduct an investigation (Manik et al., 2017). Investigation is the action of the investigator to find and collect evidence, to make a description of the crime that occurred and to find the suspect, as mentioned in Article 1 point (1) and Article 6 paragraph (1) of the Criminal Procedure Code that can be said as an investigator, namely the police officer of the Republic of Indonesia who is given special authority, so someone who is appointed as an investigator must meet the requirements that support the task, such as, for example, have knowledge, expertise in addition to the terms of rank, however the Criminal Procedure Code does not regulate the issue specifically but according to Article 6 paragraph (2) of the Criminal Procedure Code.

A notary in carrying out the activities of his position must be in accordance with the authority and duties set forth for his position, this has been fully regulated in all legislation, both from civil and criminal elements, and specifically regulated in the UUJN. In the event that a Notary has performed his duties and authority in accordance with the law, then he is free from any claims. However, in the event that a notary commits a violation and results in the presence of certain parties who feel aggrieved, it is possible that the party who feels aggrieved will sue the notary concerned for his adverse actions (Adigita et al., 2019).

For the party who feels aggrieved, then he will first conduct an investigation into the cause of the loss (Felson, 2017). In the event that the loss is suspected to come from a notary who committed a violation and the party who feels aggrieved will sue the notary concerned, then the violation of the notary concerned will be seen as a violation of which, it could be a violation of the code of ethics, it could be a violation of the UUJN, it could, the notary act in question is a crime that contains criminal elements. Therefore, the summons of the Notary is further determined in advance, whether the violation of the notary in the civil element or contains criminal elements (Sulistyawati et al., 2023).

A notary can be included in the case of an authentic deed made by the notary concerned as an object of dispute arising from the parties to the deed (Isnaini & Utomo, 2019). In the event that the object of the dispute contains criminal elements and there are parties who report it or complain to the authorities, namely the police, then the next police action is to conduct an investigation to find and find an event that is suspected of being a criminal offense, and then determine whether or not an investigation can be carried out.

Calling a notary for examination at Level I (police) there are requirements and procedures for calling a notary, namely:

- a. The investigator, investigator, or judge in the interests of the judicial process may call a notary public as a witness, suspect, or defendant by submitting a written application to the regional supervisory Assembly.

- b. The application as referred to in Paragraph (1) shall be submitted to a notary.
- c. The application as meant in Paragraph (1) shall contain the reason for summoning the Notary as a witness, suspect, or defendant.

The terms of the notary summons are related to giving consent to the investigator, investigator, or judge for the benefit of the judicial process in the notary summons, based on Article 27 Number (1) Permenkum HAM No. 7 of 2016, conducted in terms of:

- 1 the existence of suspected criminal acts related to the minutes of the deed and / or notarial papers in the notary's storage;
- 2 has not lost the right to sue under the provisions on expiry in the legislation in the field of criminal law;
- 3 the existence of a denial of the validity of the signature of one or more parties;
- 4 an alleged reduction or addition to the minutes of the deed; or
- 5 There is a suspicion that the Notary has withdrawn the date (antidatum).

In conducting an examination of Notaries, the chairman of the honorary council of Notaries of the region formed an examination council consisting of 3 (three) people consisting of each element member of the honorary council of Notaries of the region (Wirman et al., 2019). The Examining Board consists of 1 (One) chairman and 2 (two) members. In conducting the examination, The Examining Board is assisted by 1 (One) Secretary. The establishment of the Examination Board shall be made within 5 (five) working days from the date the report is received. The Examining Board is authorized to examine and give approval or rejection to the request of the investigator, investigator, or judge regarding the taking of photocopies of the minutes of the deed and the letters attached to the minutes of the deed and/or notarial protocol in the notary's storage and Notary's summons. Each result of the examination of the examining body, reported to the chairman of the honorary Assembly of Notaries of the region (Rahman & Sesung, 2017).

In conducting an examination to a Notary, the examining body if it has a marital or blood relationship, as stated in the provisions of Article 22 Number (1) Permenkum HAM No. 7 of 2016, obliged to refuse to check notaries who have marital or blood relations in a straight line of descent down and/or up without restriction of degrees, as well as in a line to the side up to the third degree. Furthermore, as described in Article 22 Number (2), The Chairman of the Assembly in the event that the Examining Board has a marital or blood relationship, the chairman of the honorary Assembly of the territorial notary appoints his successor.

The difference in the role of police investigators in summoning and examining notaries both as witnesses and suspects of criminal acts, after the issuance of the decision of M K No. 4 9 / PUU-X/2012 is the same as the process of summoning and examination according to Article 66 paragraph (1) of Law No. 2 of 2014 on the position of Notary, namely it is no longer necessary to seek approval from the regional Supervisory Council (MPD) but to seek approval from the notary honorary council (MKN).

Based on these differences, the author will analyze it by utilizing the theory of legal work, namely that in the examination of a notary who is reported to have committed a criminal act stipulated in Article 66 paragraph (1) of Law Number 2 of 2014 concerning the position of Notary (Zaki & Saidin, 2024). However, the summons is more detailed regulated in the regulation of the Minister of Law and Human Rights number: M. 03.HT.03.10 of 2007 concerning the taking of minutes of notarial deed and summons.

The procedure for summoning is stipulated in Chapter IV of Article 14 regarding the terms and procedures for summoning notaries, which states: A) the investigator, Public Prosecutor or judge for the benefit of the judicial process may summon notaries as witnesses, suspects or defendants by submitting a written application to the notary honorary Assembly (Erwiningsih & Ali, 2023). b) The application as

meant in Paragraph (1) shall be submitted to a notary. c) The application as meant in Paragraph (1) shall contain the reason for summoning the Notary as a witness, suspect or accused.

The summons will not be directly granted the approval of the summons by the notary honorary council (MKN). MKN will study the summons and conduct an examination of the notary concerned. If it turns out that in the examination found errors in the procedure for making the deed, the MKN will give approval to the police summons to the notary. Furthermore, if the examination does not find any deviation in the procedure for making the deed, then MKN has the authority not to give approval to the notary summons. Approval will be given by written reply letter.

Article 15 of the regulation of the Minister of Law and Human Rights it is said that MKN will give approval to the summons of a notary whenever there is a suspicion of criminal acts related to the minutes of deeds and / or letters attached to the minutes of deeds or notarial protocols in notarial storage or have not lost the right to demand criminal.

The summons made by the investigator is considered valid and perfect, it must meet the following conditions : a) The Investigator mentions the reason for the summons clearly by taking into account the reasonable grace period for receiving the call and if it does not come, the investigator can call once again to appear to the investigator as stipulated in Article 112 of the Criminal Procedure Code; outside the legal area of the investigator, the examination can be carried out at the residence of the suspect or witness as provided for in Article 119 of the Criminal Procedure Code; c) the summons is carried out no later than 3 days in advance as provided for in Article 227 of the Criminal Procedure Code. The process of summoning and examination of notaries both as witnesses and suspects of criminal acts, as well as the process of summoning and examination according to Article 66 paragraph (1) of Law No. 2 of 2014 concerning the position of Notaries, namely no longer need to seek approval from the notary Supervisory Council (MPN) but seek approval from the notary honorary council (MKN). However, it is different after the decision of the Minister of Law and Human Rights, namely the consideration of the decision of the Constitutional Court Number: regulation of the Minister of Law and Human Rights number 7 of 2016, including: 1. The provision requiring the approval of the NSC contradicts the principle of independence in the judicial process and contradicts the obligations of a notary as a citizen. That way, it will avoid the existence of a protracted judicial process that results in protracted efforts to enforce justice which ultimately can lead to denial of justice itself. 2. The judicial process in order to take the documents in the notary's storage and call the notary to appear in the examination related to the documents he made does not need to ask for the approval of the MPD. The approval procedure is considered contrary to the principle of equal protection as guaranteed by the 1945 Constitution. 3. Different treatment of notaries can be justified as long as the treatment is within the scope of the notary Code of ethics, namely attitudes, behaviour, and deeds of notaries related to morality. While the Notary as a citizen in the process of law enforcement at all stages must be applied equally before the law as guaranteed Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution.

The Constitutional Court understands the importance of maintaining the authority of a notary as a public official who must maintain his honour, so it needs special treatment in order to maintain the dignity of notaries in the judicial process. Including, a cautious attitude of law enforcement officers is required in carrying out legal actions against notaries. However, this treatment should not be contrary to the principles of the rule of law, especially equality before the law and the principle of judicial independence.

Criminal Liability of a Notary Who Commits a Criminal Act Based On Law No. 2 of 2014 Concerning the Position of Notary

Being a country that adheres to the civil law legal system, one of which is Indonesia, notaries play an important role in serving the community by making authentic deeds as evidence or as legitimate/absolute characteristics for certain legal activities. Notary as one of the legal professions stipulates issuing a letter in the form of a deed that has the legal force of an authentic deed. According to Suhendar and Kartono, there are three aspects of responsibility: earning respect, respect, and authority. In addition, he states that there are three types of responsibility: professional technical responsibility, legal responsibility and moral responsibility. The civil liability of the notary for the material correctness of the deed drawn up by him will be outlined in the legal liability.

Civil liability is related to the responsibility of the notary to carry out his work. This responsibility is a consistent result that should be required of legitimate vocations in resolving their obligations. Obligations are based not only on moral but also on legal. It follows from this assumption that a person should be responsible for everything that he does.

The notary must identify the face in order to carry out his work and prevent identity falsification, therefore the precautionary rule must be observed. Connection with the foregoing, claims that whenever someone violates the law, their responsibility for their actions is usually essentially meaningless, and most of these offenses fall into the category of what the Civil Code calls "tort". Article 1365 to 1380 Book III of the Civil Code Chapter III on agreements made with legislation, control over *rechtmatige* and/or *tort*. The full content of Article 1365 of the Civil Code is as follows: "any unlawful act that harms a person obliges the person who through his fault caused harm to compensate for the harm".

Notary profession is a job with special skills that require extensive knowledge, as well as a heavy responsibility to serve the public interest and the core task of the notary is to regulate in writing and authentic legal relations between the parties in agreement requesting notary services. Notaries need to pay attention to the so-called professional behaviour that has the following elements: a notarial deed contains information and statements of the parties, made at the will or request of the parties, and the notary makes it in a form that has been determined according to the law. Notary is not a party to the deed, the inclusion of the notary's name in the deed due to the order of the law, further cancelling the notarial deed means outwardly not recognizing the deed, thus the deed is not a notarial deed. Assessment of a notarial deed outwardly is not a notarial deed, it must be proved from the beginning to the end of the deed, that there are conditions that are not met regarding the form of a notarial deed. If it can be proved that the notarial deed does not qualify as a notarial deed, then the deed will have an evidentiary value as the deed under hand, whose assessment of the evidence depends on the recognition of the parties and the judge.

Based on the above explanation of the notary's responsibility for the deed he made is a civil notary is only responsible for the head of the deed, meaning that contains the authority of the perpetrators in signing the deed, then the closing of the deed containing the authority of the witnesses and then faced by the perpetrators to sign the deed, while it is made not in violation of the clauses prohibited by the law and the norms of propriety existing in society as mentioned in Article 1320 of the Civil Code.

Notary is a profession that has a heavy duty, because he must put service to the community above all sundry. Therefore, a sense of responsibility both individually and socially, especially obedience to legal norms and a willingness to submit to the code of professional ethics is a mandatory thing, so that it will strengthen the existing positive legal norms. One of the provisions that can be applied to the notary

profession is the enforcement of criminal law and in this context the criminal law can be enforced if the notary has committed a criminal act or criminal offense.

Notaries in carrying out their duties and positions are subject and obedient to the provisions stipulated in the UUJN, so that any legal process must be completed in accordance with the UUJN. Notaries who will fulfil the call without the approval of the notary supervisory board are allowed but with the consequence that the notary supervisory board will not provide protection and will be free of hands related to the case being faced by the notary concerned. This is because the notary has violated the provisions specified in the UUJN. The principle of responsibility based on fault (liability based on fault) is the principle of responsibility for the general principles applicable in criminal and civil law. Notary can be held accountable if there are elements of error committed. To prove it, it is necessary to prove the existence of Deeds, mistakes, losses and causal relationships. It turns out that if there are parties who object and evidence can be found that it is known that there are things that are violated by the notary in making the deed, then the notary can be held accountable in accordance with the weight of the mistakes he made.

CONCLUSION

The legal procedure in summoning notaries as witnesses by Police investigators in relation to alleged cases of fraud or embezzlement of deeds made by notaries, after the issuance of Constitutional Court Decision Number 49/PUU-X/2012, shows that investigators no longer need to seek approval from the Regional Supervisory Council. However, Regulation of the Minister of Law and Human Rights No. 7/2016 requires investigators in summoning notaries to obtain permission from the Notary Honor Council. The liability of notaries as public officials involved in criminal cases will be imposed in accordance with the provisions in the Criminal Code.

In order to improve notary practice and the legal system in Indonesia, it is recommended to conduct further research that combines empirical and normative analysis, focusing on the effectiveness of existing regulations and their impact on notary practice. This research could include case studies and broader surveys to understand the perceptions of notaries and legal officials regarding the applicable procedures. In addition, notaries need to follow an ongoing training program that includes an understanding of current laws and professional ethics, in order to better perform their duties and reduce the risk of being involved in criminal acts. Policymakers are also advised to evaluate and revise the regulations governing the summoning of notaries, to make them clearer and less confusing, including considering strengthening the role of the Notary Honor Council in the legal process without reducing the independence of notaries. Finally, increased cooperation between notaries, the police, and other legal institutions is needed to ensure a more efficient and transparent legal process, for example by organizing discussion forums or seminars to improve communication and understanding between parties. With these steps, it is hoped that better notarial practices will be created and the legal system in Indonesia will be strengthened.

BIBLIOGRAPHY

- Adigita, M. R., Ma'ruf, U., & Witasari, A. (2019). The Role and Protection of Laws to Notary Related To the Dispute That Made Between the Parties. *Jurnal Akta*, 6(4), 447032.
- Agustin, I. Y., & Anand, G. (2021). Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective. *Lentera Hukum*, 8, 49.
- Catur, R. (2023). Comparison of Legal System Related to Implementation of Cyber Notary in Indonesia With Common Law And Civil Law System. *Jhbbc*, 41–52.

- Erwiningsih, W., & Ali, M. (2023). NOTARY AND LEGAL ARRANGEMENT OF CRIMINAL LAW: LEGAL PROTECTION FOR NOTARIES FACING CRIMINAL CASES. *Corporate Law & Governance Review*, 5.
- Felson, R. B. (2017). Predatory and dispute-related violence: A social interactionist approach. In *Routine activity and rational choice* (pp. 103–125). Routledge.
- Isnaini, H., & Utomo, W. (2019). The existence of the notary and notarial deeds within private procedural law in the industrial revolution era 4.0. *International Journal of Innovation, Creativity and Change*, 10(3), 128–139.
- Manik, J. D. N., Budiono, A. R., Djatmika, P., & Nurjaya, I. N. (2017). The authority investigators civil servant in the criminal justice system. *JL Pol'y & Globalization*, 58, 78.
- Permana, B. I., Al Farizy, M. R., & Manggala, F. P. (2024). Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence. *Jurnal Justiciabelen*, 7(1).
- Rahman, A. L. A., & Sesung, R. (2017). The Authority of the Honorary Regional Notary Assembly in Relating to Inspection of Notary of Move of Position Area by Law Enforcement Officer. *Unram Law Review*, 1(2).
- Samuel, B. (2022). Analysis of Legal Protection and Responsibilities of Notary Officials for Authentic Deeds Made. *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 733–739.
- Sulistiyawati, S., Pakpahan, K., & Sari, S. (2023). Summoning Notaries by Prosecutors After the Decision of the Constitutional Court Number 16/PUU-XVIII/2020. *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 2(10), 3243–3256.
- Tacconi, L., Rodrigues, R. J., & Maryudi, A. (2019). Law enforcement and deforestation: Lessons for Indonesia from Brazil. *Forest Policy and Economics*, 108, 101943.
- Tr, A. E. A. (2021). The Essence Of Notary Legal Offering In West Land Rights Disputes (Eigendom Verklaring). *INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW*, 2(1), 1–13.
- Wirman, W., Danil, E., & Fendri, A. (2019). Investigation of Crime Committed by a Notary with the Approval of the Honorary Board of Notaries. *International Journal of Multicultural and Multireligious Understanding*, 6(3), 822–832.
- Zaki, M., & Saidin, S. (2024). Legal Protection and Law Assistance to Notaries as a Public Official in Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(2), 821–846.
-

Copyright holder:

I Made Sada, Erikson Sihotang, Ni Ketut Wiratny (2024)

First publication rights:

Jurnal Syntax Transformation

This article is licensed under:

