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## THE ESSENCE OF GRANTING THE RIGHT OF DENIAL FOR NOTARY OFFICIALS IN LAW ENFORCEMENT PROCESSES

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### Abstract

Article 4 and Article 16 paragraph (1) letter f of UUJN oblige a Notary to maintain the confidentiality of everything about the deed he or she made as well as all information obtained that is necessary for making the deed in accordance with their oath of office, unless the law provides otherwise. This research aims to examine the essence of the right of denial for notaries in performing duties in accordance with the UUJN and to examine the consequences of the right of denial for notaries in the law enforcement process. The type of research used in this research is normative legal research and the approach used in this research is a statute approach and a legal concept approach. Based on analysis, it was found that if a Notary, who has been given the trust and has been sworn in in accordance with Article 4 of the UUJN concerning the Oath of Notary Position and also Article 16 paragraph (1) letter e of the UUJN concerning Notary Obligations, keeps the contents of the deed a secret, violating the oath, then he or she may be penalized. The consequence of the secrecy of the position held by a Notary in terms of providing testimony about the status of their right of denial is that the notary concerned will be disqualified if then the judge still rejects the application for the right of denial of the Notary in the trial, outside the exception to the law.

**Keywords:** law enforcement; notary; right of denial

### 1. INTRODUCTION

Indonesia, as a legal state based on *Pancasila* and the Constitution 1945 of the Republic of Indonesia (hereinafter referred to as "the Constitution 1945"), is a state that guarantees certainty, order and legal protection for every citizen of it. To realize the guarantee of certainty, order and legal protection, there is a need for authentic written evidence regarding acts, agreements, stipulations and legal events made before or by a Notary.

Notary is a position established by the state based on law. A person who has an academic degree in law cannot become a Notary if he or she does not go through the appointment process by the Minister (Anshori, 2013). Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of a Notary (hereinafter referred to as "UUJN") puts the notion of a

Notary, namely that: "Notary is a public official authorized to make authentic deeds and has other powers as referred to in this law or based on other laws."

The course of the Notary profession seems to be faced with a problem that actually threatens the sustainability of the profession, such as that a notary official is required to maintain confidentiality about clients. Confidentiality about clients certainly becomes very sensitive for disclosure to public because the Notary in this case must comply with and obey the oath of office that cannot be challenged. In addition, Notaries who have responsibilities in the fields of private law, tax law, criminal law and notary discipline must serve the interests of the people, help create certainty and provide legal protection to members of the public in carrying out their positions in accordance with the provisions of laws and the UUJN.

Article 4 and Article 16 paragraph (1) letter f of the *UUJN* require a Notary to maintain the confidentiality of everything about the deed he/she made and all information obtained for the purpose of making the deed in accordance with the oath of office, unless the law provides otherwise. The possibility of violating this obligation based on Article 16 paragraph (1) of the *UUJN* makes a Notary be subject to sanctions in the form of verbal warnings up to dishonorable dismissal.

It would be wiser if the violation in carrying out the position by a Notary in the law enforcement process is first examined and determined whether the violation that has been committed is personal or in the form of a violation of the Notary's position. The purpose is that Notaries do not become victims who are not supposed to be from the actions of the parties who made the deed.

Mariyantini (2013) in her research conducted a similar study that examined legal protection of the Notary for the deed he made when a dispute occurred and the Notary's limitations in providing information on the deed he made when a dispute occurred in court. The results of her study showed that legal protection for Notaries when a dispute occurs in court has been regulated in Article 66 of Law no. 30 of 2004 concerning the Position of Notary. In the case of giving testimony, a notary cannot reveal the deed he made either in part or in whole, because this is in accordance with Article 54 of the Notary Office Law, to keep everything that is notified to him confidential, because a deed made by or before a notary is a evidence that has perfect evidentiary power. The notary only formulates the information and statements he obtained from the appearers. Notary not only has the right to speak, but has the obligation not to speak. This obligation overrides the general obligation listed in Article 1909 paragraph (1) of the Civil Code because of the right to deny the profession of a notary, as a consequence of the obligation to keep something he knows secret. Another similar study also conducted by Rifai et al. (2021) that examined the purpose of the activation of the phrase "with the consent" and ratiolegis of article 66 paragraph (1) *UUJN-P*. The results of the study showed that the legal racial (objective) of the birth

of Article 66 paragraph (1) *UUJN-P* is to protect the right to refuse notaries as mentioned in Article 4 paragraph (2) and Article 16 paragraph 1 letter f *UUJN*, Article 66 paragraph (1) *UUJN* indeed it has protected the right of notary refusal, but Article 66 paragraph (1) *UUJN-P* enhances this right by establishing a Notary Honorary Council (MKN). MKN is a task shift from MPD as an institution that gives approval / rejection of applications submitted by investigators, public prosecutors or judges, only MKN is regulated in more detail by *Permenkumham* so that it has legal certainty. This MKN institution was formed to reduce the burden of the MPD's many duties so that the MPD only focuses on notary term examinations.

This research is a research work that is original or different from previous scientific research. One of the advantages of this study that other researchers' studies do not have is that this study focuses on the discussion and analysis of the essence and philosophical value of granting the right of immunity to Notaries in the law enforcement process. Therefore, this research aims to examine the essence of the right of denial for notaries in performing duties in accordance with the *UUJN* and to examine the consequences of the right of denial for notaries in the law enforcement process.

## **2. METHOD**

The type of research used in this research is normative legal research, which is a type of legal research conducted by examining legal literature and/or secondary data only (Soekanto & Mamudji, 2011). In addition, this research uses a statute approach and a legal concept approach. There are sources of legal materials used in this study, such as primary legal materials derived from statutory regulations and secondary legal materials obtained from the results of various studies, literature in the form of books and/or journals that have been accredited nationally and internationally. The analysis techniques used in this research are argumentative, evaluative, interpretative and systematic analysis, so the problems can be described and solutions to the legal issues studied can be found.

## **3. DISCUSSION**

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### **The Essence of the Right of Denial for Notaries in Performing Duties in Accordance with the UUJN**

The Code of Ethics of the Notary profession is very necessary to maintain the quality of legal services to the public. Because of this, the Indonesian Notary Association (hereinafter referred to as INI) as the only professional organization whose truth is recognized in accordance with the *UUJN*, establishes a code of ethics for its members due to the fact that the position of a Notary is a position of trust.

The journey of the Notary profession in Indonesia has developed following the development of the Indonesian state and nation. Contemporary Indonesian history recorded that in the reform era there was a significant change in the notarial institution. This change was marked by the success of the Reform Order government in enacting the *UUJN*. The *UUJN* is a replacement for the Notary Position Regulations (Stb. 1860-3) and the *Reglement op Het Notaris Ambt in Indonesie* (Stb 1860;3) which are Dutch colonial government regulations (Prakoso, 2015). The law states that a notary is the only public official who is authorized to make an authentic deed regarding all actions, agreements and stipulations required by a general regulation or by an interested party who is required to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, and provide the grosses, copies and quotations thereof; everything as long as the making of the deed is by a general rule.

As long as he/she has followed the procedures prescribed by the law, especially Article 16 and Article 17 of the *UUJN* regarding obligations and prohibitions when performing his/her office, a person who runs the position of a Notary is "immune". This means that a Notary cannot be punished because of or based on an act he/she has done according to the law, such as carrying out an act of constituting the intention or will of the parties who want the legal action they have taken to be proven by an authentic deed, unless the Notary is not in the capacity as a Notary is the same as people in general, who are subject to the principle of equality before the law.

Notaries are not obliged to investigate materially the things that are exposed by the bearers. Unknowingly, the Notary has been given an obligation to disobey with the meaning of something that must be carried out without any reason. It is based

on:

that the notary has the right to use the obligation to deny in accordance with the laws and regulations, both civil and criminal, and no one can force the notary to reveal the secret of their position without a clear reason;

that the deed made by and/or before a Notary is a perfect piece of evidence, because it explains everything stated by the parties, so it has perfect evidentiary power as stipulated in Article 1870 of the Civil Code.

If a Notary, who has been given a trust and has been sworn in according to the provisions of Article 4 of the *UUJN* concerning the Oath of Notary Position and Article 16 paragraph (1) letter e of the *UUJN* concerning Notary Obligations, keeps the contents of the deed a secret, violating his oath, then he may be subject to sanctions, as mentioned above. The sanctions in question are that the notary concerned can be fired, asked for compensation and even in accordance with Article 322 of the Criminal Code can be sentenced to prison or fined. In carrying out their duties, Notaries are expected to always hold fast and uphold the dignity of the profession as a position of trust and honorable. As a trusted public official, notarial deeds are expected to serve as strong evidence when it becomes a legal dispute in court.

### **The Consequences of the Right of Denial for Notaries in the Law Enforcement Process**

Notaries are appointed and dismissed by the government, but notaries do not receive salaries and pension guarantees from the government. The notary's income is only the honorarium obtained from their client (Adjie, 2011). Therefore, the client's relationship with the Notary is the trust. The basis for the right of denial for the position of trust lies in the public interest. A Notary is obliged to keep everything that is notified to them, as a Notary who is trusted by the public, confidential. The position of a notary is a position of trust (*vertrouwensambt*), in that, the notary is obliged to keep everything that is notified by their client confidential, either because of formal legal provisions, or because of material legal provisions.

Notaries as public officials are given legal protection by law in the provision testimonials in court. The legal protection provided is the right of denial, that is to say, the right to deny to give testimony in

court. The denial is not limited to the things stated in the deed they made, but the whole facts related to the deed.

The right of denial or the right to refuse is the legal immunity of the Notary not to speak or provide any information related to the deed (or other information related to the deed) made before or by the Notary. As a witness in prosecution and trial, it is *Verschoningsrecht* or a right not to speak or not to provide any information based on Article 170 of the Criminal Procedure Code and Article 1909 paragraph (3) of the Civil Code. Notaries are granted such obligations and a right of denial is merely not for the benefit of the Notary, but for the interests of the parties who have entrusted the Notary to that the Notary is trusted by the parties to be able to keep all the information or statements of the parties that have been given before the Notary related to the making of the deed.

Article 170 of the Criminal Procedure Code states that: "Those who because of their profession, dignity or position are required to keep secrets, can be asked to be released from their obligation to give testimony as witnesses, that is to say, about things entrusted to them". The judge determines whether or not all the reasons for the request are valid.

As a position of trust, a Notary in serving for their position is obliged to keep the contents of the deed and all information obtained in the exercise of their office confidential. This is in line with the oath of office pronounced before the Notary begins to serve their office, as confirmed in Article 4 Paragraph 2 of the *UUJN*. Confidentiality of the contents of the deed is also one of the obligations of the Notary as regulated in Article 16 paragraph (1) letter f of the *UUJN*. Thus, the limitation is that only the law can order a Notary to disclose the secret of the contents of the deed and information or statements known to the Notary relating to the making of the deed. Protection for Notaries related to all information about deed they made can also be in the form of right of denial and obligation to deny.

A Notary may perceive that there is a higher interest that can waive the right of denial he/she has, even though the Right of denial is left to the Notary himself, to make a choice whether the Notary will testify or not give testimony (Sulihandari & Rifiani, 2013). In the end, later it is the judge who will decide whether or not a Notary is necessary to testify in the case

settlement process. The use of this right of denial is returned to the Notary concerned, in the sense that it is returned to their own conscience. If they feel that they are in a wrong position and do not want to take sides, the Notary will use their right of denial, but if the Notary's statement as a witness is very necessary for a trial process, then he/she can choose not to use the right of denial and is willing to give testimony in the court. Therefore, in this context, the consequence of the secret of the position held by a Notary is that if in terms of giving testimony on the status of their right of denial, the notary will be disqualified if the judge continues to reject the application for the right of denial of the Notary in the trial, outside of the exception to the laws. However, if the application for the right of denial is accepted, the consequence is that the Notary will use the right of denial not to divulge the contents of the deed related to the examination he/she is attending.

#### 4. CONCLUSION

Based on the results explained above, it can be concluded that if a Notary, who has been given the trust and has been sworn in in accordance with Article 4 of the *UUJN* concerning the Oath of Notary Position and also Article 16 paragraph (1) letter e of the *UUJN* concerning Notary Obligations, keeps the contents of the deed a secret, violating the oath, then he or she may be penalized. The consequence of the secrecy of the position held by a Notary in terms of providing testimony about the status of their right of denial is that the notary concerned will be disqualified if then the judge still rejects the application for the right of denial of the Notary in the trial, outside the exception to the law.

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