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# LEGAL PROTECTION AGAINST A NOTARY ALLEGED TO COMPLETE MALPRACTICE IN THE PROCESS OF MAKING OUTENTIC DEEDS

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**Abstract:** A notary is a public official who is authorized by the state to make an authentic deed. On this basis, a legal protection is needed for a Notary if in carrying out his duties he is suspected of committing malpractice in the process of making an authentic deed as regulated in Article 38 of Law number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of a Notary, The formulation of the problem of Legal Protection Against Notary Positions Who Are Suspected of Malpractice in the Process of Making Authentic Deeds, Law Enforcement Procedures Against Notary Positions in Legal Protection Who Are Allegedly Conducting Malpractice in the Process of Forming Authentic Deeds through the Notary Honorary Council according to the Law on Notary Positions the method used in This research is a normative research with a statutory approach. The results of the research on the legal protection of the position of a notary who is suspected of committing malpractice in the process of making an authentic deed. In making the deed, it must be in accordance with the regulations of Law No. 2 of 2014 article 38 so that the deed becomes an authentic deed that has perfect proof. The summons of investigators must be through the Notary Honorary Council (MKN) can be carried out repressively because it is related to the application of article 66 paragraph (1) UUJN-P, namely in giving approval or refusal of requests for investigators who want to summon a Notary in the Judicial Process. The existence of the Notary Honorary Council (MKN) basically replaces the role of the Regional Supervisory Council (MPD) as the Legal Protection Agency for Notaries. aims to avoid arbitrary actions from investigators who want to summon a Notary in the trial. Law Enforcement Procedures for the position of a Notary in his Legal Protection who are suspected of committing Malpractice in the process of forming an Authentic deed through the Honorary Council as regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2020 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal , Organizational Structure, Work Procedure and Budget of the Notary Honorary Council 1) Submit a written application for those who feel disadvantaged or investigators to MKN. 2) The Chairperson of the Regional Notary's Honorary Council is obliged to provide an answer in the form of approval or rejection of the application within 30 (thirty) working days from the date of receipt of the application. Then if within that period of time no response is received, the Regional MKN is considered to have received a request for approval (Article 27 paragraphs 4 and 5)

**Keywords:** Notary, Malpractice, Legal Protection.

## 1. Introduction

Notary is a Public Official who is given authority by the State in making Authentic deeds. On this basis, a legal protection is needed for a Notary. If in carrying out his duties, the Notary is suspected of committing malpractice in the process of making an authentic

deed as stipulated in Article 38 Law number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of Notary. This will arise if the notary in making an authentic deed is not in accordance with applicable regulations and the cruelest thing is if a notary is correct in carrying out his position but is still found to be malpractice in making his deed.

From the description of the problem background above, the authors formulate the problem as follows:

1. What is the Legal Protection for a Notary who is suspected of committing malpractice in the process of making an Authentic deed?
2. How is the Law Enforcement Procedure against a Notary suspected of committing malpractice in the process of forming an Authentic deed through the Notarian Honorary Council according to the Notary Office Law?

## 2. Method

The method used in this research is normative juridical. The approaches used are statutory approaches, conceptual approaches and comparative approaches. The statutory approach (statute approach) is carried out to examine legal regulations which are the focus of research, particularly regarding the legal protection of Notaries in the Notary Office Act. The conceptual approach is carried out by identifying and understanding all legal concepts found in the doctrines and views of scholars.

Meanwhile, a comparative approach is carried out to see a comparison between one rule of law that regulates the same provisions, but is not in line with other laws, so that both similarities and differences can be identified which will greatly assist in the analysis process. In this case a comparison is used between Law Number 30 of 2004 Concerning the Position of Notary, after the publication of the Constitutional Court Decision Number 49/PUU-X/2012 and after the enactment of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary.

1. Primary legal materials are legal materials that have binding legal force<sup>1</sup>In this case, the primary legal materials will be:

- a) Civil Code (burgerlijk wetboek);
- b) The 1945 Constitution
- c) Law of Notary Office Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices
- d) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2020 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Honorary Council of Notaries
- e) Decision of the Constitutional Court Number 49/PUU-X/2012, Notary Code of Ethics.

2. Secondary legal material

Secondary legal materials are materials that are closely related to primary legal materials, and can help analyze and understand primary legal materials<sup>2</sup> Secondary legal materials in this research are books, literature, papers, research results, articles, and other scientific works related to this research, such as:

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<sup>1</sup> Suratman and Philips Dillah, Legal Research Methods, Bandung: Alfabeta, 2014, p. 67

<sup>2</sup> Suratman and Philips Dillah, Legal Research Methods, Bandung: Alfabeta, 2014, p. 67

- a) Research results;
- b) Scientific works of legal experts.
- c) Legal reading books or textbooks;
- d) Journals;

3. Tertiary legal materials

Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials. Tertiary legal materials in this study consist of:

- a. Indonesia Dictionary.
- b. English-Indonesian dictionary.

Data analysis was carried out in a descriptive manner which was used to examine normative or juridical aspects through a descriptive analytical method which describes the description of the data obtained and relates them to one another to obtain a general conclusion.

### **3. Legal Protection Against Notaries Who Are Allegedly Committing Malpractice in the Process of Making Authentic Deeds**

Before discussing Legal Protection for a Notary who is suspected of committing malpractice in the process of making an Authentic deed, it must first discuss the making of an authentic deed so that the MKN in providing protection is not wrong. make a notarized deed, and if a notary in making a deed is not in accordance with the rules set or deviates from the rules then it will have legal consequences and the deed will fall into the hands of authenticity. In addition, if a notary violates the rules (malpractice) in making a notarial deed other than being a private deed, then the notary will be subject to sanctions in accordance with applicable regulations.

As for Standard Forms and Functions of Notary Deeds Notary deed must be made in a form that has been determined by law. This is one of the characters of the notarial deed. The Notary Deed must contain subjective and objective elements in formulating the will of the parties into an authentic deed. In formulating a notarial deed, one must pay attention to the form or framework of a notary deed, which is as contained in Article 38 of the Law on the Position of a Notary Public No. 2 of 2014<sup>3</sup> concerning Amendments to Law No. 30 of 2004 concerning the Position of a Notary Public, as follows<sup>4</sup>

Article 38

- (1) Each Deed consists of:
  - a. Initial deed or head of deed;
  - b. Deed Body; And
  - c. End or closing Deed.
- (2) The initial deed or the head of the deed contains:
  - a. Deed title;
  - b. Deed number;
  - c. Hours, days, dates, months, and years; And
  - d. Full name and domicile of Notary.
- (3) The Body of the Deed contains:
  - d. Full name, place and date of birth, nationality, occupation, position, position, place of residence of the appearers and/or the person they represent;

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<sup>3</sup> Suratman and Philips Dillah, Ibit, p. 67

<sup>4</sup> Paulus J. Soepratignja, Techniques for Making Contract Deeds, Cahaya Atma Pusaka, Yogyakarta, 2006, p. 33.

e. Information regarding the position of acting as appearers;  
f. The contents of the deed which are the wishes and desires of the parties concerned;  
And

g. Full name, place and date of birth, as well as occupation, position, position and place of residence of each identifying witness.

(4) The end or closing of the Deed contains:

a. Description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);

b. Description of the signing and place of signing or translation of the Deed, if any;

c. Full name, place and date of birth, occupation, position, position and place of residence of each Deed witness; And

d. A description of the absence of changes that occur in the making of the Deed or a description of any changes that may be in the form of additions, deletions or replacements and the amount of changes.

If the author is of the opinion that in making a Notary deed consists of:

1. The beginning of the deed or the head of the deed, the body of the deed, and the end or closing of the deed. The beginning of the deed or the head of the deed must contain the title of the deed, the number of the deed, the time when the deed was drawn up, as well as the full name and domicile of the Notary.

2. The body of the Deed must contain the identity of the appearers, and/or the person they represent, and information regarding the acting position of the appearers. The body of the deed as described above can be shown directly to the parties who have attended.

3. The end or closing of the deed must contain the reading of the deed as referred to in Article 16 paragraph (1) letter (m) or Article 16 paragraph (7), a description of the signing and the place of signing or translation of the deed, if any, and the identity of each witness deed. Below has been shown in a picture regarding the end or closing of the deed as follows:<sup>5</sup>

Article 16 (1) Letters (m) and (7) of Law no. 2 of 2014

(1) In carrying out his position, a Notary is obligated to:

m) Read the Deed before the appearer attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a private will, and signed at the same time by the appearer, witness and Notary; And

(7) The reading of the Deed as referred to in paragraph (1) letter m is not required, if the appearer wants the Deed not to be read because the appearer has read it himself, knows and understands its contents, provided that this is stated in the cover of the Deed and on every page. The minutes of the deed were initialed by the appearers, witnesses and notary.

The form of the deed as mentioned above is a condition that must be fulfilled as a Notary (authentic) deed. In the provisions of Article 38 of the Notary Office Law No. 2 of 2014 concerning the Office of a Notary, there is no mention of sanctions against a Notary who makes a deed not in accordance with the provisions stipulated in Article 38 of Law No. 2 of 2014 concerning the Position of a Notary. So, if there is a violation, in the sense that the deed made by a Notary does not fulfill as an authentic deed or can be said to be

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<sup>5</sup> Law No. 2 of 2014 concerning the Position of Notary

defective in form, then the deed will only have the power of proof as a private deed if it is signed by the parties.<sup>6</sup>

Adpun Deed has a formal function (*causa formality*) and function as evidence (*probationis causa*).<sup>7</sup> The deed as a formal function means that a legal action will be more complete if a deed is made. Legal actions that must be stated in the form of a deed as a formal requirement are legal actions mentioned in Article 1767 of the Civil Code regarding debt agreements. The function of other deed which is also the most important function of the deed is the deed as a means of proof. An authentic deed is needed for the parties bound in an agreement to function as a means of proof in the future. A deed is a writing that is solely made to prove something or an event, therefore a deed must be signed<sup>8</sup>

The purpose of making an authentic deed as described by Teguh Samudra, in his book entitled *Law of Proof in Civil Procedures*, namely<sup>9</sup>

a) to declare the existence of a legal action; a deed is an absolute requirement for the existence of a certain legal action, in the absence of a deed, it means that the legal action does not occur, for example, the establishment of a Limited Liability Company, changes to the Articles of Association of a Limited Liability Company.

b) as evidence, that the intention of the parties in an agreement is to be notarized, for example, sale and purchase agreements, cooperation agreements and others. Both authentic deeds and private deeds are made with the aim or used as evidence, the only difference is that private deeds are made in a form that is not determined by law, without intermediaries or before an authorized Public Official. In this case, the evidentiary value of the private deed must be linked or supported by other evidence<sup>10</sup>

With the explanation above, the writer can draw a conclusion that the perfection of the notarial deed as evidence must be seen as it is, does not need to be assessed or interpreted otherwise, other than what is written in the deed.<sup>11</sup> as follows:

1. A notary deed made according to the provisions of article 38 of Law Number 2 of 2014 concerning the Position of a Notary Public is called an authentic deed and has perfect evidentiary power.
2. The deed under the hand has the power of proof as long as the parties admit it or there is no denial from one of the parties. If the parties admit it, then the underhanded deed has perfect evidentiary power as an authentic deed, but if one of the parties denies it or does not admit it, then the party submitting it as evidence must prove the truth (through other evidence/witnesses) and on denial of the evidence submitted to the judge.
3. Both private and authentic deed evidence must fulfill the formulation regarding the legitimacy of an agreement (Article 1320 of the Criminal Code) and materially bind the parties who make it (Article 1338 of the Civil Code) as an agreement that must be adhered to by the parties (*pacta sunt servanda*). Description of Deed Under Hand Deed Notary Form Made in a form that is not determined by law, and not made by an authorized public

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<sup>6</sup> Habib Adjie. *Cancellation and Cancellation of Notary Deed*, Refika Aditama, Bandung, 2011, p.1

<sup>7</sup> Sudikno Mertokusumo. *Indonesian Civil Procedure Code*, Fourth Edition, Liberty, Yogyakarta, 1993, page 115

<sup>8</sup> R. Subekti,. *Fundamentals of Civil Law*, PT.Intermasa, Printing XVIII, Jakarta, 1984, p..178.

<sup>9</sup> Firm Ocean. *Law of Evidence in Civil Procedures*, Alumni, Bandung 1992,, p.46.

<sup>10</sup> A.Kohar,. *Notary in Legal Practice*, Alumni, Bandung, 1983, p. 64.

<sup>11</sup> Habib Adjie. *Overview of the World of Notaries and PPAT Indonesia*, Bandar Maju, Bandung, 2009, p.33

official Made in a form that has been determined by law (Article 38 of the Notary Office Law), made before officials official (public employee) who is authorized and at the place where the deed is made.

Strength of Evidence Has the power of proof as long as the parties admit it or there is no denial from one of the parties. If one of the parties does not admit it, then the party submitting it as evidence must prove the truth (through other evidence/witnesses) and in case of denial the evidence is submitted to the judge. Have perfect proof. If the authentic deed is denied by the denier, then the one who denies it must prove its untruth. In practice, a Notary in making an authentic deed is made not only guided by or based on the provisions of laws and regulations governing the making of notarized/authentic deeds but also refers to the laws and regulations relating to the making of notarized deeds as well as the experience and knowledge as well as the belief of a Notary regarding the propriety of everything can be used as a reference for making an authentic deed.

In making an authentic deed, a Notary must pay attention to 3 (three) important elements in it, namely:

1. Requirements of an authentic deed (Article 1868 of the Civil Code)
2. Requirements for the validity of an agreement (Article 1320 of the Civil Code)
3. Notary Office Law (UUJN) and Notary Code of Ethics

- 1) Requirements of an authentic deed (Article 1868 of the Civil Code)

This has been explained above regarding the elements or conditions that must be met in an authentic deed, namely those consisting of the terms of the validity of the agreement (Article 1320 of the Criminal Code), Requirements for Making an Authentic Deed (Article 1868 of the Criminal Code) and Article 38 of Law no. 2 of 2014 concerning the position of a notary that in making a deed must include the beginning of the deed, the body of the deed, and the end of the deed, and the obligations and ethical standards of the notary profession which must be in accordance with article 16 (m) and number (7).

2) Requirements for the validity of the agreement Article 1320 of the Criminal Code Requirements for making an authentic deed (Article 1868 of the Criminal Code) Obligations and ethical standards of a Notary (Notary Office Law (UUJN) & Notary Code of Ethics. Against the terms of the validity of an agreement (Article 1320 of the Criminal Code) which contain elements as following:

- c) There is an agreement of those who bind themselves;
- d) The existence of skills for those who bind themselves;
- e) There is a certain thing;
- f) There is a lawful reason for making an agreement.

An authentic deed is a deed drawn up in a form determined by law in accordance with Article 1868 of the Civil Code and Article 38 of Law no. 2 of 2014 concerning the position of a notary that in making a deed must contain the beginning of the deed, the body of the deed, and the end of the deed, and the obligations and ethical standards of the notary profession which must be in accordance with article 16 (m) and number (7). made by or in the presence of public officials in power for that where the deed was made. Thus Based on this understanding, the author can conclude that a deed can be said to be an authentic deed must meet the requirements, namely;

- 1) Made in the form determined by law;

notary deed refers to the Law on Notary Office CHAPTER VII concerning Notary Deeds Part One Form and Nature of Deeds (Articles 38-53) and Article 1868 of the Civil Code.

2) Made by or before an official or public employee referring to the Law on Notary Office (UUJN) CHAPTER IV concerning the Position, Formation and Office Area of Notary Article 18 paragraph (1) and (2), Article 19 and Article 21 paragraph (1), (2), (3).

3) Made by the official or public employee must be authorized to make the deed at the place where the deed was made. The deed must be drawn up by an authorized official with reference to the Law on Notary Office (UUJN), regarding who, procedures, and since when a person can assume office as a Notary, besides that the authority of a Notary also refers to the Regulation of the Minister of Law and Human Rights Man of the Republic of Indonesia number M.01-HT.03.01 of 2006 concerning Terms and Procedures for Appointment, Transfer and Dismissal of Notaries).

According to the opinion put forward by Irawan Soerodjo, that there are 3 (three) essential elements in order to fulfill the formal requirements of an authentic deed and are also the legal basis for the existence of a Notary deed, namely:

- g) The deed must be made by (door) or before (ten overstaan) a Public Official.
- h) The deed must be made in the form determined by law.
- i) The Public Official by or by whom the deed was made, must have the authority to draw up the deed<sup>12</sup>

Based on the terms of the authenticity of a notarial deed, it can be described more clearly, namely as follows:

1) In Article 38 of the Notary Office Law (UUJN-P) which regulates the form of the Deed but does not specify the nature of the deed. In Article 1 number 7 of the Notary Office Law (UUJN-P) stipulates that a Notary deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in the Notary Office Law (UUJN-P), and it is implied in Article 58 paragraph (2) of the Notary Office Law (UUJN) it is stated that a Notary is obliged to make a List of Deeds and record all deeds made by or before a Notary.

2) The deed made by a notary in practice is called a relaas deed or an official deed of minutes which contains a description of the notary seen and witnessed by the notary himself at the request of the parties, so that the actions or actions of the parties committed are poured into the form of a notary deed.

3) A deed drawn up before (ten overstaan) a Notary, in practice a Notary is referred to as a party deed, which contains descriptions or statements, statements of the parties given or told before a Notary. The parties wish that their description or statement be included in a notarial deed<sup>13</sup> Making a notarial deed, both a relaas deed and a partij deed, which is the main or core basis in making a notary deed, that is, there must be a wish or will and a request from the parties, if the wishes and requests of the parties do not exist, the notary will not make the deed in question .

4) In formulating the wishes and requests of the parties, the Notary can provide advice while still adhering to the rule of law. When the Notary's advice is followed by the parties and is poured into a Notary deed, this remains the wish and request of the parties, not an act or action of the Notary.

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<sup>12</sup> Irawan Soerodjo. Legal certainty of land rights in Indonesia, Arkola, Surabaya, 2003, p.148

<sup>13</sup> G.H.S Lumban Tobing, Op City, p.51.

Thus the Notary as a public official is given general authority or power concerning the public (*openbaar gezaag*) by the State based on the law in exercising part of the State's power in the field of civil law in making authentic deeds<sup>14</sup>The authority of a Notary is not limited to the Notary's Position Law, but also based on other laws as long as this authority does not become the authority of other public officials, then this authority is the authority of a Notary<sup>15</sup>The other authority is the authority to make authentic deeds regarding all actions, agreements or stipulations required by laws and regulations and/or desired by the parties to be stated in an authentic deed to ensure certainty of the date of making the deed, save the deed, provide copies and quotations deed, all of that as long as there are no exceptions for other public officials stipulated by law. Based on these provisions, it shows that the existence of a Notary can be seen as a very important figure and is needed by the community, because the information contained in an authentic deed can be relied upon in providing guarantees as strong evidence and can provide legal protection for parties who need their services. As a consequence of the rule of law principle which guarantees legal certainty, order and protection with the core of truth and justice in the field of civil law, we need evidence that can clearly determine the rights and obligations of a person as a legal subject in society. In this case, an authentic deed made by or before a Notary is the strongest and most complete evidence and has an important role in every legal relationship in people's lives.

Notaries as public officials in making authentic deeds must always pay attention to the standards or requirements of an authentic deed, in addition to that, notaries must also always be based on applicable legal regulations (Notary Office Law and Notary Code of Ethics). If all of these conditions have been met, then the Notary can be sure to be free from all kinds of claims that have been filed with him. The Notary Office Law has placed a Notary as a public official, who carries out his duties as a position, therefore it is necessary to get legal protection is a Notary as a position, not a Notary as a person<sup>16</sup>

Thus, legal protection for the position of a notary who is suspected of committing malpractice in the process of making an authentic deed is the rights of a notary who is the result of a transformation of interests carried out through a legislative process in protecting lawmakers or parliament, so that the rights of a notary can be respected or protected and obeyed. The Notary Office Law has regulated the form of legal protection that can be given to a Notary in carrying out his duties as a public official, this is reflected in Article 66 paragraph (1) of Law No. 2 of 2014 concerning Notary Office (UUJN) which states that:

Article 66 Law no. 2 of 2014.

- i. For the purposes of the judicial process, investigators, public prosecutors or judges with the approval of the Honorary Council of Notaries have the authority to:
  - a. Take a photocopy of the Minutes of the Deed and/or the letters attached to the Minutes of the Deed or the Notary Protocol in the Notary's safekeeping; And
  - b. Summons the Notary to attend the examination related to the Deed or Notary Protocol which is in the Notary's custody.

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<sup>14</sup> R. Sugondo Notodisoerjo, *Notary Law in Indonesia, An Explanation*, Rajawali, Jakarta, 1982, page 44

<sup>15</sup> Habib Adjie. *Op Cit*, p. 14

<sup>16</sup> Sjaifurachman,. *Op Cit*, p. 96

- ii. Taking photocopies of Minutes of Deeds or letters as referred to in paragraph (1) letter a, minutes of submission are made.
- iii. At the latest 30 (thirty) working days from the receipt of the letter of request for approval as referred to in paragraph (1), the Honorary Council of Notaries shall give an answer accepting or rejecting the request for approval.
- iv. In the event that the Honorary Council of Notaries does not respond within the period referred to in paragraph (3), the Honorary Council of Notaries shall be deemed to have accepted the request for approval.

From the provisions contained in Article 66 paragraph (1) of the Notary Office Law, it can be seen that: Investigators, public prosecutors and judges are only allowed to take:

- j) Photocopy of minutes of deed and/or letters attached to minutes of deed or Notary protocol in the Notary's safekeeping;
- k) A contrario, investigators, public prosecutors, or judges, are not permitted or not allowed to take the minutes of the deed and/or the original documents attached to the minutes of the deed or the Notary's protocol in the Notary's safekeeping.

However, summons by investigators, public prosecutors or judges to attend the examination of a case, whether civil, criminal or state administration that is not directly related to the deed drawn up by a notary, does not require approval from the Notary Honorary Council (MKN). In understanding the legal protection for a Notary listed in Article 66 of the Notary Office Law (UUJN-P) this must include a substitute Notary, Temporary Notary Officer and Notary Emeritus or Werda Notary, because in practice summons (examination) are still often carried out on Notaries who have stopped serving as Notaries to be examined by investigators in relation to the deeds he made while still serving as a Notary<sup>17</sup>

It is hoped that with the existence of the Notary Office Act (UUJN-P), the existence of the Notary Honorary Council (MKN) can provide legal protection for everyone who (has) carried out their duties as a Notary.

Therefore the role of the Regional Supervisory Board (MPD) in providing legal protection for Notaries in carrying out their duties as public officials in making authentic deeds is urgently needed, this is done so that the Notary institution is not easily blamed by other parties, both from clients and from law enforcers. . The authority of the Regional Supervisory Council (MPD) has now become the authority of the Notary Honorary Council (MKN) in providing guarantees of legal protection for Notaries related to alleged criminal offenses (malpractice) in making authentic deeds.

Thus, the authors conclude that the existence of the Notary Honorary Council (MKN) is an implementation of the provisions of Article 66 paragraph (1) of the Notary Office Law (UUJN-P), so that if there is a Notary who is suspected of having committed an offense related to the deed he made, then investigators, public prosecutors and judges who wish to summon and examine a Notary must obtain prior approval from the Notary Honorary Council (MKN). <sup>18</sup>Bearing in mind the existence of the Regional Supervisory Council (formerly) which, as stated in Article 66 paragraph (1) of the Notary Office Law, has the authority to give approval or refuse approval submitted by investigators to summon and examine a Notary in the judicial process related to the deed he made. Based

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<sup>17</sup> Sjaifurachman, . Ibid., p. 97

<sup>18</sup> Mulyoto Ibid, p, 86

on the authority of the Regional Supervisory Council, it has also been regulated regarding procedures for handling that must be obeyed by the Regional Supervisory Council which is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.03.HT.03.10 of 2007 concerning Minuta Collection. The authority of the Regional Supervisory Council (MPD) has now become the authority of the Notary Honorary Council (MKN), so that in this case it is to optimize the function or role of the Notary Honorary Council (MKN) if a case occurs in the notary world related to the summons of a Notary by investigators who incidentally must obtain approval from the Notary Honorary Council, in this case the Notary Honorary Council may use the same handling procedure as the Regional Supervisory Council. This is done to reinforce the existence of the Notary Honorary Council as a legal protection institution for the position of Notary.

In the event of a case or case related to an alleged malpractice committed by a Notary, the police, public prosecutor or judge who wishes to summon the Notary, must first obtain permission from the Notary Honorary Council. The Notary Honorary Council (MKN) is an institution authorized to first examine a Notary who is suspected of committing a violation (malpractice) in the process of making a deed before giving approval or rejecting requests from investigators who will summon and examine the Notary. If a case occurs related to the alleged malpractice committed by a Notary in the process of making an authentic deed which causes harm to one of the parties in the deed made, then in this case there are several steps that must be followed by investigators and the Notary Honorary Council, in order to guarantee certainty and legal protection for related parties.

Based on the several provisions above, it can be concluded that, Substitute Notary, Temporary Notary, Emeritus Notary or Werda Notary by Article 322 paragraph (1) of the Criminal Code still requires to keep the contents of the deed and the information obtained related to the deed he made. In this case, it is necessary to emphasize in the Law on Notary Office (UUJN-Amendment) that the existence of Notaries, Notary Substitutes, Notary Temporary Officers, and Emeritus Notaries, have the right to obtain legal protection from the Notary Honorary Council (MKN) in relation to allegations of malpractice in the process of making authentic deed. If the investigator wants to summon and examine a Notary, Substitute Notary, Temporary Notary Officer, or Emeritus Notary, it is mandatory to obtain prior approval from the Notary Honorary Council (MKN). This is done with the aim of maintaining the nobility and dignity of the notary institution at the legal level, so that investigators do not arbitrarily summon the notary to be examined in the judicial process.

#### **4. Law Enforcement Procedures Against Notaries Who Are Allegedly Committing Malpractice in the Process of Forming Authentic Deeds Through the Notarian Honorary Council According to the Notary Office Law**

The position of a notary is a position of trust. The law in this case has given authority to notaries to produce authentic evidence. Therefore the provisions in Law no. 2 of 2014 concerning the Office of a Notary is so strict and full of sanctions, both administrative sanctions and criminal sanctions without reducing the possibility of imposing sanctions of dismissal up to dismissal.

This position of trust is certainly for the benefit of the community, so that the notary is obliged to keep everything entrusted to him secret, even if there are parts that are not included or omitted in the notarial deed that become witnesses in a criminal case, must obtain approval from the Notary Honorary Council.

Based on the provisions of Article 66 paragraph (1) UUJNP states that for the benefit of the judicial process, investigators, public prosecutors or judges with the approval of the Notary Ethics Council have the authority to:

- a. Take a copy of the minutes of the deed and/or letters attached to the minutes of the deed or notary protocol in the notary's repository; And
- b. Summon the notary to attend the examination related to the notary deed or protocol that is in the notary's repository.

With the existence of the provisions mentioned above, for the benefit of the judicial process, investigators must first require the approval of the Notary Honorary Council. This proves that it is not easy to take a photocopy of the minutes of the deed and the letters attached to the minutes of the notary deed or protocol and summon the notary to be examined in relation to the deed or notary protocol.

Notaries as public officials who carry out the legal profession or expertise in the notary field certainly do not escape from mistakes, whether they are small mistakes or big mistakes, both intentional and unintentional. Basically the main task of a notary is to make an authentic deed according to the request of his client which is based on applicable laws, in which the deed has perfect evidentiary power and functions as written evidence in civil cases and letters in criminal cases.

If the deed he makes contains juridical defects caused by his professionalism, then the legal consequences of the deed are void for the sake of law (void ab initio) or are deemed to have never existed and the notary concerned will usually be held accountable for the law whether he is a witness, suspect or defendant in a criminal case or as a defendant, co-defendant in civil cases and reported in alleged UUJN and Notary Code of Ethics<sup>19</sup>

UUJN, which has undergone changes in 2014, provides special procedures in the process of criminal cases against notaries where the approval of the Notary Honorary Council is a requirement that must be fulfilled by investigators, public prosecutors or judges to take pro justitia (for the sake of law) actions against notaries related to the implementation position. This provision has been regulated in more detail in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2020 concerning Duties and Functions, Terms and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Notary Honorary Council (hereinafter abbreviated as Permenkumham Number 17 Year 2021) which will take effect from 15 March 2021.

The Notary Examination Procedure is a form of legal protection for a notary by:

- 1) The application is submitted to the Chairman of the Regional Notary Honorary Council in accordance with the work area of the notary concerned (Article 27 paragraph 1). Requests for approval to take minuta deed or notary protocol and summon a notary by investigators, public prosecutors or judges to attend examinations related to deed or

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<sup>19</sup> Pieter Latumenten, "Notary Honorary Council as a Pillar of Criminal Law Enforcement Against Notaries", (in a paper presented at the One-Day Seminar on the Honorary Council of Notaries, Padang, March 4 2016), p. 1.

notary protocol which are in the notary's safekeeping are regulated in Permenkumham Number 17 of 2021.

2) The application is submitted in writing in the Indonesian language and a copy is submitted to the notary concerned (Article 27 paragraph 2). The application referred to contains at least the name of the notary, the address of the notary's office, the number of the deed and/or the letter attached to the minutes of the deed or the notary's protocol in the notary's safekeeping and the subject matter alleged (Article 27 paragraph 3).

3) The Chairperson of the Regional Notary Honorary Council is obliged to provide an answer in the form of approval or rejection of the application within 30 (thirty) working days from the date of receipt of the application. Then if within that time period no response is received, the Regional MKN is deemed to have received the request for approval (Article 27 paragraphs 4 and 5).

4) In carrying out the examination, the Chairperson of the Regional MKN forms an examining committee consisting of 3 (three) members consisting of each member of the Regional MKN (elements of notaries, experts/academicians and the government). The establishment of the board of examiners is carried out no later than 5 (five) working days from the date the report is received.

5) The examining committee has the authority to examine and give approval or rejection of requests by investigators, public prosecutors or judges regarding the taking of photocopies of minuta deed or letters and summons of a notary. Where the results of the examination are submitted to the Head of the Regional MKN so that they become the basis for a request by law enforcement (Article 25).

6) Summons to the notary are made by the examiner assembly through a letter signed by the Head of the Regional MKN and in urgent circumstances the summons is made via facsimile and/or electronic mail followed by a summons letter. The summons is made no later than 5 (five) days before the examination is carried out and the notary must be present to fulfill the summons and cannot be represented. In the event that the notary is absent after being summoned 2 (two) times in succession, the board of examiners may make a decision on the request of law enforcement (Article 28).

7) The examining committee will give approval or rejection after hearing direct information from the notary concerned and set forth in the inspection report. If the examining committee gives approval to the application of law enforcement, the notary is obliged to provide photocopies of minutes of deed and/or documents required by law enforcement and by making minutes of submission signed by the notary, investigator, public prosecutor or judge witnessed by 2 (two) witnesses (Article 29).

8) Taking minutes of deeds and/or letters and giving approval to investigators, public prosecutors or judges is carried out in cases (Article 30 and Article 31):

- a. There is an allegation of a criminal act related to the minutes of the deed and/or letters attached to the minutes of the deed or the notary protocol in the notary's safekeeping;
- b. The right to sue has not yet lapsed under the provisions regarding expiration in laws and regulations in the field of criminal law;
- c. There is a denial of the validity of the signature of one or more parties;
- d. There are allegations of reductions or additions to the minutes of the deed; or
- e. There is an allegation that the notary has postponed the date (antidatum).

9) Notary honorary assembly (MKN) Limited area only permits or rejects requests for minuta photocopying.

Thus, the Law Enforcement Procedure for the position of Notary in Legal Protection who is suspected of committing Malpractice in the process of forming an Authentic deed through the Notarian Honorary Council according to the Notary Office Law, is the authority of the MKN in terms of confiscation of requests and/or attached letters on the minutes of the deed or notary protocol? Confiscation of minuta notarial deeds can only be carried out by investigators with permission from the Head of the local District Court, but in urgent circumstances the confiscation can be carried out by the investigator first and then after that it must be immediately reported to the Head of the District Court, for approval. If confiscation is carried out by the court, which in the end is not to be destroyed but must be returned to the notary concerned or the notary holding the protocol because the minutes of the notary deed are state archives<sup>20</sup>

In addition, the Scope of the MPN and MKN The Notary Supervisory Council has the scope of authority to hold hearings to examine allegations of violations of the notary's code of ethics or violations of the implementation of the notary's office (Article 70 letter a, Article 73 paragraph (1) letters a and b, Article 77 letter a and b UUJN). Based on the substance of the article, the MPN has the authority to conduct hearings to examine:

- 1) There is an alleged violation of the code of ethics;
- 2) There is an alleged violation of the implementation of the duties of a notary;
- 3) The behavior of notaries outside of carrying out their duties as a notary

The scope of MKN is clearly stated in Permenkumham Number 17 of 2021, namely an agency that has the authority to carry out notary training and the obligation to give approval or refusal for the purposes of investigation and judicial process, for taking photocopies of minuta deed and summoning a notary to attend an examination related to the deed or Notary protocols that are in the Notary's repository.

Thus the role of MKN is in giving approval to law enforcers when examining a notary who is suspected of violating criminal law while carrying out his position. MKN as an institution that assesses the notary's mistakes if it finds strong evidence of a criminal offense committed by the notary, then on that basis MKN is willing to give approval to investigators, but if MKN does not find any criminal violations committed by the notary, then MKN can refuse the request approval from the investigator to summon the notary. The decisions that can be submitted by the Regional Examining Council to MKN are in the form of:<sup>21</sup>

- a. Oral and written warning sanctions; or
- b. Proposed imposition of sanctions on the Central Supervisory Council in the form of dismissal of:
  1. Temporary 3 (three) months up to 6 (six) months;
  2. With respect; or
  3. With no respect.

The decision is read out in a session open to the public and delivered to the reported party, complainant, MPD, MPP and the central board of the Indonesian Notary

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<sup>20</sup> Habib Adjie, Understanding: Regional Supervisory Council (MPD) and Notary Honorary Council (MKN), Refika Aditama, Bandung, 2017, p. 46.

<sup>21</sup> Article 26 paragraph (1) Permenkumham Number 15 of 2020.

Association with a letter of introduction within 30 (thirty) days from when the decision is read out. In the event that the complainant/reported person objects to the MPW's decision, they can submit an appeal to the MPP which is submitted through the MPW secretariat<sup>22</sup>

## 5. Conclusion

1. Legal Protection Against Notaries Who Are Allegedly Committing Malpractice in the Process of Making Authentic Deeds. In making a deed, it must be in accordance with the provisions of Law No. 2 of 2014 article 38 so that the deed becomes an authentic deed that has perfect proof. Calling investigators must go through the Notary Honorary Council (MKN) and can be carried out in a repressive manner because it is related to the application of Article 66 paragraph (1) UUJN-P, namely in giving approval or rejecting requests for investigators who wish to summon notaries in the judicial process. the existence of the Notary Honorary Council (MKN) basically replaces the role of the Regional Supervisory Council (MPD) as a Legal Protection Agency for Notaries aiming to avoid arbitrary actions from investigators who want to summon a Notary in court. in this case the arrangements regarding the position and legal remedies granted by the Notary Honorary Council (MKN) have been strictly regulated in a statutory regulation, namely the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2020 concerning Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Notary Honorary Council (hereinafter abbreviated as Permenkumham Number 17 of 2021) which came into effect on March 15, 2021.

2. Law Enforcement Procedures against Notaries suspected of committing Malpractice in the process of forming Authentic deeds through the Honorary Council which are regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2020 concerning Duties and Functions, Terms and Procedures for Appointment and Termination, Structure Organization, Work Procedure and Budget of the Notary Honorary Assembly which came into effect on March 15 2021. In addition, they must comply with the Nortarian office regulations, namely Law No. 2 of 2014 concerning the Position of Notary.

1. Submit a written request for those who feel they have been harmed or investigators to MKN.
2. The Chairperson of the Regional Notary Honorary Council must provide an answer in the form of approval or rejection of the application within 30 (thirty) working days from the date of receipt of the application. Then if within that time period no answer is received, the Regional MKN is considered to have received the request for approval (Article 27 paragraphs 4 and 5)
3. The establishment of the board of examiners is carried out no later than 5 (five) working days from the date the report is received.
4. Summons to the notary are made by the examiner assembly through a letter signed by the Head of the Regional MKN and in urgent circumstances the summons is made via facsimile and/or electronic mail followed by a summons letter. Summons are made no later than 5 (five) days.

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<sup>22</sup> Article 28 paragraph (1) Permenkumham Number 15 of 2020.

5. The examining committee will give approval or rejection after hearing direct information from the notary concerned and set forth in the inspection report.

6. The examining committee has the authority to examine and give approval or rejection of requests by investigators, public prosecutors or judges regarding the taking of photocopies of minuta deed or letters and summons of a notary.

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### Perundang-undangan.

- Uu No 2 Tahun 2014 Tentang Jabatan Notaris
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### Jurnal

- Pieter Latumenten, “Majelis Kerhormatan Notaris Sebagai Pilar Penegakan Hukum Pidana Terhadap Notaris”, (dalam Makalah yang disampaikan pada Seminar Sehari tentang Majelis Kehormatan Notaris, Padang, tanggal 4 Maret 2016).

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