

Authority of Samarinda City Governments in Giving License to Open State Land

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Abstract

This thesis is entitled "Authority of Samarinda City Governments in Giving License to Open State Land" with 2 (two) main issues, namely: (1) What are the criteria for rejection and acceptance that must be used as guidelines by the Notary Honorary Council for requests for approval of the process? summons to notaries who are not classified as obstruction of justice? (2) What is the legal protection for a Notary whose criteria are not classified as obstruction of justice by the Notary Honorary Council? Besides, this research is a kind of normative research. The research approach used is the statutory approach and the conceptual approach. The results of this thesis research indicate that the legal certainty of the decision of the Notary Honorary Council regarding the granting of a Notary summons permit by law enforcers can be formed if law enforcers can fully understand the functions of the Notary Honorary Council. In addition, the Notary Honorary Council must be consistent in making decisions so that there is legal certainty for the Notary. The Central Notary Honorary Council must conduct an examination of the Notary so that the good name of the position is protected and fully guarantees whether the Notary has made a genuine mistake personally or from the parties in the deed. The case should be suspended by the Notary Honorary Council as a form of protection for the position of a Notary, unless the Notary will be examined in a criminal case that has nothing to do with the making of the Notary deed. So that the Notary Honorary Council is not involved with the Obstruction of Justice. In the case of giving testimony, a Notary cannot disclose the deed he made either in part or in whole to other parties, this is in accordance with Article 66 paragraph 1 of the UUJN because as a trustee, the Notary is obliged to keep everything that is notified to him secret in his position as a Notary, even though there are some that are not included in the deed, and have been considered to represent the Notary in a trial so that the deed made by or before the Notary is a piece of evidence that has perfect evidentiary power.

Keywords

authority; notary call;
obstruction of justice



I. Introduction

The function and role of the Notary in national development is increasingly broad and growing, this is due to the existence of legal certainty in the service of legal products produced by Notaries are increasingly felt by the public, for that the government and society in particular have high hopes for Notaries, so that The services provided by Notaries really have a high value image and reliable weight, in increasing the development of national law.

Notaries in carrying out their duties must adhere to the provisions of laws and regulations and the provisions of the Notary Professional Code of Ethics. The current Notary Code of Ethics is a code of ethics that was formulated and changed at the

Extraordinary Congress of the Indonesian Notary Association (INI) in Banten on May 30, 2015, a change from the Notary Code of Ethics (INI) which was stipulated in Bandung on January 27, 2005. The Notary Code of Ethics contains the obligations, prohibitions, and exceptions for notaries in carrying out their positions. The professional code of ethics is an applied code of ethics that can change and be changed in accordance with the development of science and technology. This professional code of ethics is an embodiment of intrinsic moral values and cannot be imposed from the outside. The code of ethics is only effective if it is inspired by the ideals and values that live within the profession itself, so that it can be a benchmark for the actions of members of professional groups in seeking to prevent unethical acts for their members.

Supervision of Notaries is not only carried out by the Supervisory Council, but also by association organizations whose implementation is carried out by the Notary Honorary Council. The Notary Honorary Council according to Article 1 paragraph 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2016 is a body that has the authority to carry out Notary development and the obligation to give approval or refusal for the purposes of investigation and judicial proceedings, for taking a photocopy of the Minutes of Deed and summons of a Notary to attend the examination related to the Deed or Notary Protocol which is in the Notary's custody. In Article 2 paragraph 1 the Honorary Council of Notaries consists of:

- a. Central Notary Honorary Council; and
- b. Regional Notary Honorary Council.

The act of *obstruction of justice* is interpreted as an act that intends to hinder the legal process or a criminal act to obstruct the legal process. In accordance with the term as a criminal act or a criminal act, of course the act must meet the requirements so that the act or act committed is included in a criminal act.[3] Based on the nature of *obstruction of justice*, it is intended that a legal process against a criminal act be hampered or stopped, then it is certain that the act committed is an act at the time of the judicial process which includes investigation, investigation, prosecution and trial examination, which is carried out by the competent authority.

Due to this, the Notary Honorary Council which refuses to grant permission to summon or investigate an investigation can be categorized as *Obstruction Of Justice* or not. Because there is no clarity so that there is a blurring of norms that creates no legal certainty in determining the rejection or acceptance of a request for examination of a Notary, whether it is appropriate to include actions that hinder the trial process or not within the authority of the Notary Honorary Council.

Problem Formulation

1. What are the criteria for rejection and acceptance that the Notary Honorary Council must use as a guideline for requests for approval of the summons process for a Notary that is not classified as an *obstruction of justice*?
2. What is the legal protection for a Notary whose criteria are not classified as *obstruction of justice* by the Notary Honorary Council?

II. Review of Literature

Basically the main task of the Notary Honorary Council is to supervise the implementation of the Notary code of ethics, which has been determined by the organization including obligations, prohibitions and exceptions that must be carried out by members of the organization. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). In carrying out its duties, the Notary Honorary Council can conduct an examination of organizational members suspected of violating the code of ethics and if found guilty, the Notary Honorary Council has the right to impose organizational sanctions as stated in Article 6 paragraph 1 of the Indonesian Notary Association Code of Ethics in the form of reprimands, warnings, temporary suspension, dismissal and dishonorable discharge from association membership. At present, the urgency of the interests of investigation and justice related to the existence of a Notary is not only in general criminal acts, because with the development of the times and technology, many crimes are committed using the Notary profession to hide their crimes, for example using a Notary to launder money from the proceeds of committing crimes. specific crimes, namely corruption (eg by buying and selling shares, establishing a company, buying and selling business entities, and others). By paying attention to the sound of article 66 paragraph (1) UUJN, it can be concluded that the provisions in it are mandatory. This means that mandatory here also means both when dealing with general crimes and special crimes. So that the Notary Honorary Council has the authority if it refuses a request for approval from the judicial process, investigators, public prosecutors, or judges in taking a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or Notary Protocol in the Notary's custody and summoning the Notary to attend the related examination the deed and protocol.

III. Results and Discussion

The Criteria for Rejection and Acceptance that must be used as Guidelines by the Notary Honorary Council for Requests for Approval of the Summoning Process for Notaries who are not classified as Obstruction of Justice

The 2004 UUJN concerning Notary Positions in Article 66 prior to the Judicial Review to the Constitutional Court, Article 66 paragraph (1) states when Notaries are summoned for judicial proceedings by investigators, public prosecutors or judges, they must obtain approval from the Regional Supervisory Council. However, in Law Number 2 of 2014 Article 66 paragraph 1 must obtain approval from the Notary Honorary Council. Both in the 2004 UUJN and the 2014 UUJN, the reappearance of the phrase article 66 provides a space that a Notary who wants to be examined by investigators, public prosecutors and judges must obtain approval from institutions in the Notary Organization authorized by law.

The Notary Honorary Council which has the authority to give approval to the Police, Public Prosecutors, and Judges to examine Notaries was only formed in 2016. The Ministerial Regulation is the regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2016 (hereinafter referred to as PERMENKUMHAM) which regulates the Assembly Notary Honor. The Minister of Law and Human Rights Regulation was issued on February 5, 2016. The contents of the Regulation of the Minister of Law and Human Rights regulate the position of the Notary Honorary Council, the organizational structure and the Authority of the Notary Honorary Council. The

mechanism of the Regional Notary Honorary Council in giving approval/rejection of a summons request in the judicial process, among others:

3.1 Establishing an Examining

Council The examining board consists of Article 21 Paragraph (3) and (4) PERMENKUMHAM Number 7 of 2016, namely:

- a. 1 (one) chairman concurrently member, and
- b. 2 (two) members

3.2 Summoning a Notary

The application as referred to in paragraph (2) must contain at least:

- a. Notary name
- b. Notary office address
- c. Deed number and/or letter attached to the minutes of the deed or protocol of the Notary deed in the Notary's depository and;
- d. The subject matter of the Notary, who is summoned by the Notary Honorary Council properly and in accordance with the provisions of the legislation, must be present to fulfill the summons of the Examining Council and may not be represented. In the event that the Notary is not present after being summoned properly and properly 2 (two) times in a row, the Examining Council may make a decision on the request of the Investigator, Public Prosecutor, and Judge.

3.3 Examining the Notary

The examiner's board in the case of giving approval to the request of the public prosecutor investigator or judge, the Notary is obligated to:

- a. Provide a photocopy of the minutes of the deed and/or the required documents to investigators, public prosecutors and judges.
- b. Submit a photocopy of the minutes of the deed and/or documents as referred to in letter a with an official report of the handover being made which is signed by the Notary and the investigator, public prosecutor or judge in the presence of 2 (two) witnesses.

3.4 Elements and Basis of the Examining Council to give approval

Giving approval to investigators, public prosecutors or judges for the benefit of the judicial process in summoning a Notary, is carried out in the event that:

- a. There is an allegation of a criminal act related to the minutes of the deed and/or the Notary's letters in the Notary's depository.
- b. The right to sue has not yet been lost based on the provisions regarding expiration in the legislation in the field of criminal law.
- c. There is a denial of the validity of the signature of one or more parties.
- d. There is an allegation of reduction or addition to the minutes of the deed.
- e. There is an allegation that the Notary has postponed the date or (antidatum).

With this provision, for the sake of the judicial process, it must first obtain approval from the Notary Honorary Council. This shows the existence of confidentiality and that it is not easy to take a photocopy of the minutes of the deed and/or the letters attached to the minutes of the deed or the Notary's protocol in the Notary's depository and summon the Notary to be present in the examination related to the deed he made on the Notary protocol that is in the possession. in the Notary's storage. Therefore, the investigator's interest in taking a photocopy of the minutes of the deed is to see the validity of the parties or the

signatures of the parties In order to be able to take a photocopy of the minutes of the deed or letters, the investigator must first make a report of the submission. The Notary Honorary Council must first hear the statement of the Notary who made a deed which is used as evidence.

Members of the Notary Honorary Council are not only required to understand matters relating to the implementation of the duties of a Notary position, but must also understand the Procedural Law, in addition to having no doubts about their integrity. Therefore, members of the Notary Honorary Council must be aware that the Notary Honorary Council is not a defender for Notaries, but as an institution that has the duty and function to position proportionally and professionally regarding the need for a photocopy of the minutes of deed and/or letters attached to the minutes. Notary deed or protocol in Notary storage or Notary statement as requested by the Investigator for the purposes of the judicial process.

3.5 Legal protection for Notaries whose criteria are not classified as *obstruction of justice* by the Honorary Council of Notaries

The assistance carried out by the Notary Honorary Council is passive, that is, it only gives confidence to the Notary that there is an accompanying Notary so that the Notary is confident and confident when he has to deal with law enforcement officials. In the Memorandum of Understanding between the Indonesian Notary Association and the Indonesian National Police regarding the development and improvement of Professionalism in the Field of Law Enforcement, which consists of 3 chapters and 6 articles, Chapter I contains general provisions relating to the legal actions of a person suspected of being involved in a criminal act. Chapter II relates to the summons of a Notary related to the examination by Investigators, Notaries and procedures for confiscation of Notary deeds. Chapter III deals with guidance and counseling aimed at increasing the capabilities and professionalism of Notaries and the Indonesian National Police. Article 2 of the Memorandum of Understanding between the Indonesian Notary Association and the Indonesian National Police states that:

- a. Summons against a Notary must be made in writing and signed by the Investigator.
- b. The summons of a Notary is carried out after the investigator has obtained approval from the Supervisory Council which is an agency that has the approval of the Supervisory Council which is an agency that has the authority and obligation to carry out guidance and supervision.
- c. The summons must clearly state the reason for the summons, the status of the summoned (as a witness or suspect), the time and place, and its implementation on time.
- d. The summons is given no later than 3 (three) days in advance or a grace period of 3 (three) days from the date of receipt of the summons as recorded in the receipt to prepare the summoned Notary to collect the required data/materials.
- e. With the existence of a legal summons according to law, the Notary is obliged to fulfill the summons of the investigator as regulated in Article 112 paragraph (2) of the Criminal Procedure Code.
- f. If the Notary who is summoned for legal reasons cannot fulfill the summons of the Investigator, the Investigator may come to the office/residence of the Notary who was summoned to conduct an examination as regulated in Article 113 of the Criminal Procedure Code. (Article 113 of the Criminal Procedure Code states that, if a suspect or witness who is summoned gives a proper and reasonable reason that he cannot come to the investigator conducting the examination, the investigator comes to his place of residence).

The authority to give approval to investigators, public prosecutors or judges for the benefit of the judicial process in summoning a Notary is only with the Regional Notary Honorary Council protection of the Notary Honorary Council to maintain the confidentiality of the Notary's position. If a Notary is required to be a witness or a copy of a Notary deed is required, then before continuing an investigation, the police will send a request for approval of the examination to the Notary Honorary Council and then the Notary Honorary Council will hold a meeting first and summon the Notary to be heard before deciding whether the request is made from the police can be approved or not. If the decision of the Notary Honorary Council does not approve the request for investigation, the police must stop the summons. Vice versa, if the application is approved, the investigation process will continue.

V. Conclusion

- a. The legal certainty of the decision of the Notary Honorary Council regarding the granting of a permit to summon a Notary by law enforcers can be formed if law enforcers can fully understand the functions of the Notary Honorary Council. In addition, the Notary Honorary Council must be consistent in making decisions so that there is legal certainty for the Notary. The Central Notary Honorary Council must conduct an examination of the Notary so that the good name of the position is protected and fully guarantees whether the Notary has made a genuine mistake personally or from the parties in the deed. The case should be suspended by the Notary Honorary Council as a form of protection for the position of a Notary, unless the Notary will be examined in a criminal case that has nothing to do with the making of the Notary deed. So that the Notary Honorary Council is not involved with the *Obstruction of Justice*.
- b. In the case of giving testimony, a Notary cannot disclose the deed he made either in part or in whole to other parties, this is in accordance with Article 66 paragraph 1 of the UUJN because as a trustee, the Notary is obliged to keep everything that is notified to him secret in his position as a Notary, even though there are some that are not included in the deed, and have been considered to represent the Notary in a trial so that the deed made by or before the Notary is a piece of evidence that has perfect evidentiary power.

Suggestion

1. It is hoped that there will be a lot of studies from all parties (especially the legislature) that lead and focus on Actions that hinder the judicial process. In order to make reforms in the formulation of the Law on the Criminal Code and add important points, especially in the rules for obstructing the criminal justice process so that this rule provide legal certainty that is precise and clear and does not give rise to multiple interpretations of the regulation.
2. All parties, whether investigators, public prosecutors, or judges, should respect and uphold the oath of office, secret of office, and the right of denial owned by a Notary, and should be able to work well together and still hold fast to the existence of a Code of Ethics in every profession, regardless of except for the notary profession though. With these efforts, it is hoped that this is an effort to enforce the law and is also expected to have a positive impact on law enforcement itself

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