

Legal Protection of Notary Profession in Indonesia

Ida Bagus Gede Subawa¹, Sudarsono², A. Rahmad Budiono³

^{1,3}Doctoral Faculty of Law, ²Professor of Faculty Law,
Brawijaya University, Malang, INDONESIA.

ABSTRACT

Legal protection is essentially giving a sense of security by law to any person, in accordance with their respective fields including the Notary Profession. State law guarantees legal protection through the regulation of the provision of the rule of law, the problem is that these laws are subject to change so as to create legal uncertainty and may even lead to injustice, especially against the Notary profession. The problem studied is why the protection of the law office of Notary Public in Indonesia has ups and downs or changing? Is the legal implication of the law office of Notary protection settings at Law No. 2 of 2014 on the amendments to the Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary profession to the Decisions of the Constitutional Court of the Republic of Indonesia No. 49 / PUU-X / 2012?

The method applied to answer the problem is normative studies, the regulatory approach, conceptual approach, the historical approach and the approach of comparative law. Based on the findings that the regulation of legal protection against notary profession in Indonesia has experienced several changes due to the arrangement is dependent on the underlying legal political legislation makers in formulating the provisions concerning the legal protection of the Notary profession, and to prevent arbitrary action by law enforcement officials, any examination of the case relating to the office of Notary must first get approval from the Notary Honorary Council.

Keywords: Legal protection, Notary, Notary Honorary Council

INTRODUCTION

Article 1 paragraph 1 of Law No. 30 of 2004 concerning Notary as promulgated in the State Gazette of the Republic of Indonesia of 2004 numbers 117 and State Gazette of the Republic of Indonesia Number 4432 (hereinafter referred to as "UUJN") determines that the notary is a public official who is authorized to make authentic certificates and other authorities referred to in this Act.

According to Article 1 paragraph 1 UUJN, it can be seen that the deed created by or in the presence of a Notary Public is an authentic act, any person who denies the truth of an authentic deed must be able to prove otherwise denied.

The objective of the authentic document is as evidence that a legal action has been conducted before the Notary as stated in the deed, so it can be used as strong evidence in case of dispute between the parties and no appeal or other parties in connection with the contents of the deed. This makes the Notary as positions of trust that should be held legally responsible, moral, and ethical to the state and / or government, the public, the parties concerned or the client, and professional organizations.

Reminding the broad of authority mandated by law toward the notary officials, it is needed that an agency that oversees the implementation of the authority of the notary acts as an official position of authentic deed. Therefore UUJN has renewed scrutiny of the implementation of the provisions of the Notary office by a Notary Supervisory Council (NSC); it is intended to improve services and better legal protection for people who may be performed by a Notary Public Officials.

The Institution shall have the authority and obligation to implement the guidance and supervision of a notary is called the Supervisory Council, because the watch is then referred to as a Notary Supervisory Council (hereinafter referred to as "NSC"). This institution was established by the Minister of the authority delegated to supervise (and develop) Notary which includes behavioral and implementation authority Notary office.

In carrying out the duties and obligations, the institution is functionally divided into three (3) parts of the hierarchy according to the administrative division of a region that is at the district / city level is referred to as the Regional Supervisor Assembly (hereinafter referred to as "RSA"), at the provincial level is referred to as Regional Supervisory Council (hereinafter referred to as "RSC") and at the Central level known as Central Supervisory Council (hereinafter referred to as "CSC").

UUJN mandated obligations and to authorize the minister who then delegated to the NSC to provide guidance and oversight to the Notary. Function of supervision is focused in the perspective of the role of NSC to *pro justitia* acts committed by law enforcement, especially in the enforcement of the criminal justice system (integrated criminal justice system) from an entity that includes police, prosecutors and the courts.

Article 66 paragraph (1) UUJN (before it was canceled by the Constitutional Court of the Republic of Indonesia) determines that for the interests of justice, investigators, prosecutors, or judges with the approval of the Supervisory Council of the Regional authorities: a. take photocopies of Deed Minute and / or letters attached to Deed Minute or Notary Protocol in the storage of Notary; and b. call notary to be present in the examination relating to a deed made or in storage Notary protocols that are Notary.

It seems that the provision of Article 66 paragraph (1) of the UUJN mandates legal protection to the Notary office through NSC. Investigator, public prosecutor, or judge is not authorized to call a notary to be present in the examination relating to a deed made or Notary protocols in storage of Notary without prior approval of the RSA.

Although it is implied that Article 66 paragraph (1) UUJN has mandated legal protection of the Notary office, but according to the writer, it is not entirely so, since there is no opportunity for the investigator, public prosecutor, or the judge to call a notary to be present in the examination relating to a deed made or Notary protocols that are in storage of Notary i.e. after obtaining the approval of the RSA.

However, since the enactment of Law No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary as promulgated in the State Gazette of the Republic of Indonesia in 2014 and Supplement No. 3 to the State Gazette of the Republic of Indonesia Number 5491 (hereinafter referred to as "UUJN Amendment"), particularly in the provision of Article 66 paragraph (1) UUJN Amendment provides that: for the purposes of judicial proceedings, investigators, prosecutors, or judges with the approval of the Assembly authorized Notary

honor: a. taking photocopies of Deed Minute and / or documents attached to Deed Minute or Notary Protocol in storage Notary; and b. calling notary to be present in the examination relating to the Deed or Notary protocols that are in storage Notary. Under the provisions of Article 66 paragraph (1) UUJN Changes have set back the new institution as a form of legal protection for the Notary Profession of Notary Public called Honorary Council (MKN), MKN authority is similar to the authority of the Regional Supervisory Council (RSA) which has been annulled by the Constitutional Court of the Republic of Indonesia .

Legal Protection of Notary Profession in Indonesia by Law of the Republic Of Indonesia Number 30 of 2004 on Title Notary Profession

Based on some of the provisions of the articles of the preset UUJN implied legal protection OF Notary office preventively or through the provision of legislation which, among others, the provisions of Article 66 UUJN in conjunction with Article 4 UUJN paragraph 2 in conjunction with Article 16 paragraph 1 letter a of UUJN in conjunction with Article 54 UUJN in conjunction with Article 33 paragraph 2 UUJN and includes provisions beyond UUJN including Criminal Code Article 322, from all provisions of these articles, it can be seen that the core or spirits legal protection of notary office itself is set in the provisions of Article 66 UUJN means the articles that govern the legal protection of Notary profession will not be efficient if there is no provision in Article 66 UUJN that limit examination procedures of the Notary office by law enforcement agencies in the exercise of authority allegations of abuse of office notary through RSA approval.

Legal Protection of Notary Profession in Indonesia after Verdict Constitutional Court of the Republic of Indonesia Number: 49 / Puu-X / 2012

With the publication of CCRI Decision stating the non applicability of UUJN Article 66, it is no longer legal framework as the foundation of legal protection against Notary, therefore in this case I find there are some issues related to the problems that will be investigated in the existence of problematic philosophical question worth related to the existence of injustice Notary office. The injustice is that even if on one side of Notary is a position that is regulated by law (UUJN), but the post of the notary is not within the structure / hierarchy of government and do not receive a salary from the state, but on the other hand the Notary office is required to serve or to represent the state in providing services to the public. In addition, injustice can also be felt from the lack of legal protection against Notary official position and it means Notary can be examined by the investigator, public prosecutor or judge, so the official Notary can be used any time a suspect and later convicted.

That the provision of a sense of legal protection is essentially giving a sense of security by law to any person, in accordance with their respective fields including the notary office that in fact by law (statutory provisions) is a public official to perform any of the functions of public services, but the issue of legal protection against the ups and downs of Notary office as stipulated in the legislation.

In constitutional state, legal protection is placed into the rule of law, the problem is these laws are subject to change so as to create legal uncertainty and may even lead to injustice, especially against the Notary office. The purpose of giving legal protection to the post of Notary Public is in order that Notary can function optimally, meaning that in carrying out his duties and authority, Notary should not be overshadowed by a sense of worry and fear, if it is always overshadowed by the worry and fear in conducting his authority of the notary office, a

Notary Public can be less the maximum because he felt legal protection against the Notary office less than the maximum. So the purpose of legal protection against the notary office and in essence, that the implementation of the authority of the notary office can function optimally, but if it was always overshadowed by fears how may Notary perform the notary functions and duties office well.

Legal protection is essentially divided into two kinds, among others: 1) protection of preventive law, namely protection a law through legislation that aim for prevention; and 2) protection repressive laws, the enforcement or application of legal sanctions. The point legal protection is the right of every person including Notary office holders, Notary office therefore must be protected by law, but on the other hand there is the principle of equality before the law, so in this case can be found that if the problem ought to be discussed and completion is assessed on the one hand Notary office needs to get protection law in order to function optimally, but on the other hand there is the principle of equality before the law (equality before the law) that provide the same legal protection to any citizen or there should not any discrimination.

Notary office of legal protection problems eventually accommodated by lawmakers is to certify Law No. 2 of 2014, especially Article 66 which regulates the new institute called Notary Honorary Council, the principle that before examined by investigators, the Public Prosecutor or the Judges, it should obtain consent from Notary Honorary Council.

Legal Protection of Notary Profession in Indonesia by Law Number: 2 Year 2014 to Amend the Law of the Republic of Indonesia Number 30 Year 2004 Regarding Notary Profession

With the publication of CCRI Decision stating the non applicability of UUJN Article 66, there is no longer legal framework as the foundation of legal protection against Notary, therefore in this case I find there are some issues related to the problems that will be investigated is the existence of problematic philosophical question worth related to the existence of Notary office injustice. The injustice is that even if on one side Notary is a position that is regulated by law (UUJN), but the post of the notary is not within the structure / hierarchy of government and do not receive a salary from the state, but on the other hand they are required to serve the Notary office or duty to represent the state in providing services to the public. In addition, injustice can also be felt of the lack of legal protection against official position of Notary which means Notary can be examined by the investigator, public prosecutor or judge, so the official Notary can be used any time as suspect and later convicted.

That the provision of a sense of legal protection is essentially giving a sense of security by law to any person, in accordance with their respective fields including the notary office that in fact by law (statutory provisions) is a public official should perform any of the functions of public services (public service), but the issue as legal protection against Notary office undergoes the ups and downs as stipulated in the legislation.

In constitutional state, legal protection is placed into the rule of law, the problem is these laws are subject to change so as to create legal uncertainty and may even lead to injustice, especially against the Notary office. The purpose of giving legal protection to the post of Notary Public is in order that Notary Profession can function optimally, meaning that in carrying out his duties and authority Notary should not be overshadowed by a sense of worry

and fear, if it is always overshadowed by the worry and fear, of the notary office in practicing the authority as a Notary Public, it can be less maximum because he felt that legal protection of the Notary office is less maximum. So the purpose of legal protection against the notary office and in essence, that the implementation of the authority of the notary office to function optimally, but if it was always overshadowed by fears how may Notary performs the functions, duties, and notary profession well.

Legal protection is essentially divided into two kinds, among others: 1) protection preventive law, namely protection law through legislation that aims for prevention; and 2) protection repressive laws, the enforcement or application of legal sanctions. Protection legal point is the right of every person including office holders Notary, Notary office therefore must get legal protection, but on the other hand there is the principle of equality before the law, so in this case it can be found that if the problem ought to be discussed and completion is assessed, on the one hand Notary office needs to get legal protection in order to function optimally, but on the other hand there is the principle of equality before the law that provide the same legal protection to any citizen or there should not be any discrimination.

The problems of Notary office legal protection eventually accommodated by lawmakers that is to certify Law No. 2 of 2014, especially Article 66 which regulates the new institute called Notary Honorary Council, the principle is that before being examined by investigators, the Public Prosecutor or the Judge, it should obtain consent from Notary Honorary Council.

Legal Implications of Legal Protection Settings on Notary Profession of the Republic of Indonesia Number 2 Year 2014 with Constitutional Court Decision of the Republic Of Indonesia Number: 49 / Puu-X / 2012.

There is a conflict between the provisions of Article 66 paragraph (1) of Law No. 2 of 2014 on amendments to the Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary to the Decisions of the Constitutional Court of the Republic of Indonesia No. 49 / PUU-X / 2012 on essentially determines the notary must be treated the same as any other citizen in terms of dealing with the law enforcement process.

Referring to the final CCRI verdict decides that investigators, prosecutors or judges at any time may call a Notary even though the Notary has not any necessarily criminal offense related to the implementation of the authority of position and / or the code of professional conduct of notary office.

Legal certainty is one of the fundamental things necessary to ensure the fulfillment of rights and obligations which should be received by each party with an interest in social interactions in the community. This requires a valid evidence to determine with certainty of the rights and obligations clearly a person / entity as the subject of law in any legal relationship and legal act performed in public life, with the publication of CCRI verdict stating that the phrase "with the consent of the Supervisory Council of Regions" in conflict with Article 66 UUDNRI 1945 has no binding legal force, it is no longer legal umbrella as the spirit or essence of the legal protection of the Notary, meaning Notary officials can be checked at any time by the investigator, public prosecutor or judge, although it is not necessarily that Notary official makes errors and / or omissions in his conduct of authority of office tasks of Notary profession.

CONCLUSION

That the legal protection of the setting of Notary office in Indonesia has experienced several changes (ups and downs) because the arrangement is dependent on the underlying legal political official legislation makers in formulating the provisions concerning the legal protection of the Notary office set out in the regulations legislation made. It is necessary to study the model of normative legal protection of the Notary office in Indonesia that if it can be used as a guide for making legislation, so although officials making laws keep changing, the standard model of legal protection for the notary profession position should not change. That the legal implications of the law office of Notary protection settings at Law No. 2 of 2014 on amendments to the Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary to the Decisions of the Constitutional Court of the Republic of Indonesia No. 49 / PUU-X / 2012 is that there is normative debate that is which provisions must be complied with by the legal system in force in the Republic of Indonesia, especially by investigators, prosecutors and judges in connection with the examination of a case relating to the Notary office, to prevent misapplication of the law in practice law enforcement officers law, and there should be the basis of legal provisions for law enforcement officers, especially investigators, prosecutors and judges in conducting a case relating to the Notary office is Act No. 2 of 2014 on amendments to the Law of the Republic of Indonesia Number 30 year 2004 concerning Notary in particular the provisions of Article 66 which provides that: for the purposes of judicial proceedings, investigators, prosecutors, or judges with the approval of the competent Notary Honorary Council: a. Taking photocopy of Deed Minute and / or letters attached to Minute of Notary Deed or Notary Protocol in storage; and; b. Calling notary to be present in the examination relating to the Notary Deed or protocols that are in Notary storage. Because law enforcement officers, especially investigators, prosecutors and judges in law enforcement, they must be based on the principles of law and the provisions of applicable law. When law enforcement officers, especially investigators, prosecutors and judges do not implement the provisions of applicable law then such action is arbitrary actions.

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