

Reconstruction of Notary examination mechanism as a witness in the investigation phase after the Constitutional Court decision Number 49 / PUU-X/2012

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Abstrak: *The position of the Notary as a public official who is authorized to make authentic deeds places him in a strategic position in the civil law proof system as well as in the criminal law enforcement process. In practice, it is not uncommon for a notary to be called and checked at the stage of the investigation regarding the deed drawn up by him. This study aims to analyze the concept of notary position in the investigation process as well as the mechanism of summoning and examination of notaries as witnesses after the decision of the Constitutional Court decision Number 49/PUU-X/2012. The method used is normative legal research with a legislative and conceptual approach, especially to the Notary Office Act and the Code of Criminal Procedure. The results showed that notaries can be called as witnesses, experts, or related parties, but still bound by the obligation to maintain the confidentiality of the position. After the Constitutional Court decision, the mechanism for calling notaries must still pay attention to the principle of protecting positions through special procedures as stipulated in Article 66 of the UUJN. Therefore, a balance is needed between the authority of investigators in uncovering criminal acts and the protection of the dignity and independence of the notary profession in order to ensure certainty, justice, and legal expediency.*

Keywords : *Notary, Investigation, Secret Office, Legal Protection, Constitutional Court Decision.*

INTRODUCTION

The notary profession has a very strategic position in the Indonesian legal system as a public official authorized by the state to make authentic deeds. Based on Law No. 2 of 2014 on notary position as an amendment to Law No. 30 of 2004 on notary position, notary is affirmed as a public official who is authorized to make authentic deeds and has other authorities as stipulated in the laws and regulations.¹ The authority is not a mere delegated authority or administrative mandate, but rather an attribution authority directly granted by law. The position of the notary is not only as a free profession, but as an organ of state

¹ Nurmawati, B., Fahlevie, R. A., Herman, K. M. S., Suparman, M., & Lusua, A. (2023). Keabsahan Akta Notaris yang Menggunakan Cyber Notary dalam Pembuatan Akta Otentik Menurut Undang-Undang Jabatan Notaris. *Action Research Literate*, 7(9), 35-41.



law that performs most public functions in the sphere of civil law.² This construction places the Notary as part of a system of legal administration that has constitutional and juridical legitimacy in creating legal documents that have the highest evidentiary power.

An authentic deed made by a notary has a special position in the Indonesian legal proof system. In the perspective of Civil Procedure Law, an authentic deed is a written evidence that has perfect evidentiary power and is binding as long as it cannot be proven otherwise through a valid evidentiary mechanism.³ Even in Criminal Procedure Law, notarial deeds are often used as evidence of letters that have strong evidentiary weight in revealing legal events. The character of authenticity is born from the formal nature of the deed made by an authorized public official, fulfilling formal and material requirements as determined by law. Therefore, the existence of a notary serves to ensure legal certainty (legal certainty), order (order), and legal protection (legal protection) for the community, especially in civil relations such as agreements, establishment of legal entities, transfer of rights, and binding guarantees. In this context, the notary acts as a gatekeeper of legal transactions that ensures that every legal action is legally documented and has strong evidentiary power.⁴ But in practice, notarial acts are not uncommon as part of the construction of a criminal case, both as an object of dispute and as a means of evidence. In cases such as forgery of documents, fraud, embezzlement, money laundering, to corruption, notarial deeds are often used as a basis for tracing a series of legal events that allegedly contain criminal elements. In such situations, notaries are often called by investigators to testify as witnesses related to the formal aspects of making the deed, such as the identity of the parties, attendance, reading of the deed, and signing procedures.⁵ This is where the normative and ethical dilemma arises, because on the one hand the notary is obliged to assist in the enforcement process, but on the other hand is bound by the obligation to keep the position secret as stipulated in Article 4 and Article 16 of the notary position law. The secret of the position is a fundamental element that maintains the trust (trust) of the public towards the notary profession, so that its disclosure cannot be done carelessly without a clear legal basis.

The position of the notary in the process of criminal investigation is becoming more and more complex due to the fact that he is a public official who performs public functions, but is not part of the law enforcement apparatus. As citizens and subjects of Law, Notaries are subject to the provisions of the code of criminal procedure, including the obligation to be present when lawfully summoned by an investigator, public prosecutor or judge.⁶ However, his status as a public official who holds the secret of office requires a special

² Borman, M. S. (2019). Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris. *Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris*, 3(1).

³ Fauziannor, A., Rahman, M. A., Syaugi, A., & Ilham, M. I. (2025). Perbandingan kekuatan pembuktian antara akta otentik dan akta di bawah tangan dalam sengketa perdata. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1963-1976.

⁴ Ghani, A. R., Firdaus, M., & Al Ansari, M. (2025). Peran Notaris Dalam Pembuatan Akta Otentik Dan Dampaknya Terhadap Keabsahan Hukum Di Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1574-1582.

⁵ Nisa, S. K., & Gozali, D. S. (2025). Notaris Sebagai Terpidana Dalam Sengketa Para Pihak Atas Akta Perjanjian Yang Dibuatnya (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor 248/Pid. B/2022/Pn. Jkt. Brt). *Jurnal Kolaboratif Sains*, 8(6), 3493-3514.

⁶ Dewi, S. (2024). Kewenangan Penyidik Polri Dalam Pemanggilan Notaris Sebagai Saksi Dalam Perspektif Kepastian Hukum. *Collegium Studiosum Journal*, 7(2), 678-697.

protection mechanism so that his summons and examinations are not carried out arbitrarily or degrading the dignity of the position. The tension between the two legal regimes of Notarial law and Criminal Procedure Law becomes a problematic space that requires a balanced arrangement between the interests of the protection of the profession and the interests of law enforcement. The problem finds its central point in the provisions of Article 66 of the Notary Office law which requires the approval of certain institutions before the notary can be examined or before the minutes of the deed can be taken for the benefit of the judicial process. This approval mechanism is intended as a form of protection against the independence and honor of the notary position, as well as a filter to ensure that the summons is carried out in a proportionate and relevant manner. However, on the other hand, these provisions are often criticized because they are considered to have the potential to hinder the investigation process, slow down the collection of evidence, and cause the perception of special treatment of notaries compared to other professions. As a result, there is a conceptual tension between the protection of the notary's position as a public official and the interests of law enforcement who demand effectiveness, speed, and certainty in the investigation process.

Constitutional implications of the mechanism of summoning notaries in the criminal justice process can not be separated from the birth of the Constitutional Court Decision No. 49/PUU-X/2012. In the decision, the Constitutional Court of the Republic of Indonesia overturned the phrase "with the approval of the regional Supervisory Council" in Article 66 of the notary position law. The court considers that the provisions requiring such approval potentially violate the principle of equality before the law as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the Constitution of the Republic of Indonesia year 1945.⁷ In its consideration, the court affirmed that every citizen, including notaries as public officials, has an equal position before the law and government. The provision of special treatment in the form of an examination permit mechanism is seen to cause inequalities in the enforcement process, especially at the investigation stage.

The meaning of the original intent of the decision is crucial to be comprehensively understood. Substantively, the court did not deny the importance of protection to the Notary as a public official who holds the secrets of the Department. However, the court questioned the protection model that requires administrative approval as a prerequisite for examination, because it is considered to have the potential to hinder the judicial process and contrary to the principle of justice that is simple, fast, and low cost. This is where the academic debate arises: is what is canceled by the court is the existence of an approving institution (regional supervisory council) or the substance of the "approval" itself as a permit mechanism? Some argue that what is declared unconstitutional is the institution, so theoretically similar mechanisms can be revived through different institutional designs. However, another view asserts that the canceled essence is the necessity of consent itself, since it contradicts, in principle, the principle of equality before the law. The development of legislation after the court's decision actually showed a normative inconsistency. Through changes in the notary position law, the approval mechanism was revived with the transfer of authority to the notary honorary council (MKN). The technical arrangement is then outlined in the regulation of the Minister of Law and Human Rights number 7 of 2016 concerning the honorary Assembly of Notaries.

⁷ Marpaung, O. D. (2022). EKSISTENSI MAJELIS KEHORMATAN NOTARIS SETELAH TERBITNYA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 49/PUU-X/2012 DAN PUTUSAN NOMOR 16/PUU-XVIII/2020 DALAM UNDANG-UNDANG NOMOR 2 TAHUN 2014. *Jurnal Notarius*, 1(2).

Normatively, this construction is positioned as a form of protection of the honor and dignity of the post of notary. However, there is a potential for disharmony between the revised legal norms, ministerial regulations as derivative regulations, and amar and legal considerations of Constitutional Court decisions. This inconsistency raises fundamental questions about law-makers ' compliance with court rulings as final and binding, as well as creating uncertainty in investigative practice.

At a practical level, the impact of these regulations is quite significant on the effectiveness of law enforcement. Not a few notary examination permit applications submitted by investigators experience rejection or delay in the process at the MKN level. This condition has implications for the collection of evidence, the delay in the examination of witnesses, and potentially even affect the construction of evidence in certain criminal cases. For investigators, this mechanism can be viewed as a procedural obstacle; for notaries, it becomes a shield of protection of the profession; while for justice seekers, the situation has the potential to cause legal uncertainty.⁸ At this point, there is a conflict of values between legal certainty (legal certainty), justice (justice), and legal expediency (utility), all three of which should run harmoniously in the criminal justice system. Therefore, the study of the implications of the decision of the Constitutional Court and the development of regulation after it has high theoretical and practical significance. Analysis of the original intent of the decision is important to assess whether the reconstruction of the approval mechanism through MKN is in line with or deviates from the constitutional spirit built by the court. It is necessary to formulate a proportional notary examination mechanism that still protects the confidentiality and honor of the position, but does not hinder the effectiveness of the investigation and still upholds the principle of equality before the law.

METHODOLOGY

This study uses normative juridical research methods, namely legal research that places the law as a norm or rule contained in legislation, Court decisions, and legal doctrines. Normative juridical research focuses on the analysis of the principles, Systematics, synchronization, and consistency of legal norms in a system of legislation.⁹ In this context, the study was directed to examine in depth the provisions of Law No. 2 of 2014 on the position of Notary, the implications of the Constitutional Court Decision No. 49/PUU-X/2012, as well as its Implementing Regulations, in order to assess the suitability and harmony in the national legal system. In line with that, Soerjono soekanto stated that normative legal research is research conducted by examining library materials or secondary data as basic materials to be analyzed systematically in order to find the principles, structures, and legal concepts that are relevant to the issues studied.¹⁰

The approach used in this study is a statutory approach (statute approach) and conceptual approach (conceptual approach). The approach to legislation is carried out by studying various regulations related to the position of notary, Criminal Procedure Law, as well as relevant constitutional principles, to see the consistency and hierarchy of norms. Meanwhile, the conceptual approach is used to analyze concepts such as equality before the law, secret of office, professional protection, and the effectiveness of law enforcement

⁸ Ghuto, I. P., Ruslijanto, P. A., & Wardani, D. A. W. (2024). Implikasi Hukum bagi Notaris yang Menghindari Panggilan Penyidik. *Jurnal USM Law Review*, 7(2), 570-585.

⁹ Zainuddin, M., & Karina, A. D. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. *Smart Law Journal*, 2(2), 114-123.

¹⁰ Zaini, Z. D. (2011). Implementasi pendekatan yuridis normatif dan pendekatan normatif sosiologis dalam penelitian ilmu hukum. *Pranata Hukum*, 6(2).

in the perspective of legal doctrine and theory. The legal materials used include primary legal materials in the form of legislation and court decisions, as well as secondary legal materials in the form of books, scientific journals, and opinions of relevant legal experts. All legal materials are analyzed qualitatively with legal interpretation techniques to obtain a systematic and comprehensive argumentation of the problems studied.

RESULTS AND DISCUSSION

A. Concepts About The Notary And The Investigation Process

The basic concept of Notary as a public official in the Indonesian legal system is rooted in the provisions of Article 1 Number 1 of Law Number 2 of 2014 concerning the position of Notary which states that a notary is a public official who is authorized to make authentic deeds and has other authority as referred to in the law.¹¹ The phrase "public official" indicates that the notary is not just a private profession, but a public office that performs part of the functions of the state in the field of civil law. In the doctrine of Notarial law rooted in the continental tradition, notaries are known as *openbare ambtenaar*, that is, public officials appointed by the state to serve the interests of society in the formation of a written instrument of evidence that has perfect evidentiary power. The existence of notaries cannot be separated from the construction of a legal state that demands guarantees of certainty and order in every civil law relationship.¹² The authority of the notary is attributive, that is, the authority is directly granted by law, not the result of delegation from other organs. With this attribution character, notaries have independent legal legitimacy in carrying out their duties, while being directly responsible for the norms of the laws that regulate them. As a public official, notaries are required to have an independent, impartial, and impartial character to one of the parties in the legal act as outlined in the deed. Independence means that notaries are free from any party intervention, including pressure from interested parties; impartiality requires notaries to be neutral and objective; while the principle of impartiality requires notaries to maintain a proportionate balance of rights and obligations of the parties. This character is the foundation of ethics as well as jurisprudence so that the resulting deed truly reflects the will of the parties legally and does not contain formal defects. Within the framework of the national legal system, notaries are part of the system of public legal services, especially in the sphere of civil law. Its presence bridges the community's need for strong evidence in carrying out various legal acts, such as agreements, establishment of legal entities, transfer of rights, and binding guarantees. Through the authentic deed that he makes, the notary gives the guarantee of legal certainty because the deed has perfect evidentiary power regarding what is formally stated in it. Thus, the notary serves as a legal traffic officer who ensures that every legal event is documented in accordance with the provisions of laws and regulations, so that potential disputes in the future can be minimized.¹³

The authority of the notary is explicitly regulated in Article 15 of the Notary Office law, which confirms the main authority to make authentic deeds regarding all acts, agreements, and determinations that are required by laws and regulations or that are required by the parties to be stated in the authentic deed. In addition to the main authority, the notary also has additional authority, among others, certify the signature and determine the certainty of the date of the letter under hand (legalization), perform *waarmerking* (bookkeeping of letters under hand in a special book), and keep the minutes of the deed as part of the notary

¹¹ Gaol, S. L. (2018). Kedudukan akta notaris sebagai akta di bawah tangan berdasarkan undang-undang jabatan notaris. *Jurnal Ilmiah Hukum Dirgantara*, 8(2).

¹² Ghansham Anand, S. H., & Kn, M. (2018). *Karakteristik jabatan notaris di Indonesia*. Prenada Media. hlm. 23

¹³ Doly, D. (2016). Kewenangan notaris dalam pembuatan akta yang berhubungan dengan tanah. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 2(2), 269-286.

protocol which is a state archive. These authorities strengthen the position of the Notary as the center of legal documentation that ensures the authenticity and integrity of legal documents of the community. In addition to authority, notaries are also burdened with strict legal and ethical obligations. Article 4 and Article 16 Paragraph (1) letter f of the Notary Office law obliges the notary to keep secret everything about the deed he made and all the information obtained in order to make the deed. This obligation is a manifestation of the principle of trust (confidentiality) which is the basis of the relationship between the notary and the parties. In addition, the notary is formally responsible for the correctness of the identity and data of the facing parties. This responsibility is of a formal truth Nature, which means that the notary is obliged to ensure that the identity and the documents shown are in accordance administratively, but is not responsible for the material truth of the contents of the statements of the parties as long as there is no real indication of legal irregularities.¹⁴

The position of notarial deed in the Indonesian legal proof system occupies a very central position, especially in civil law. Authentic deeds made by notaries are qualified as perfect evidence (*volledig bewijs*), which is evidence that has full force of proof as long as it cannot be proven otherwise through a valid proof mechanism. This authentic character is born because the deed is made by or in the presence of an authorized public official, in the form and procedure prescribed by law. Based on Law No. 2 of 2014 on notary position, notaries are given attribution authority to make authentic deeds, so that their legal products obtain formal legitimacy as state documents that have high evidentiary value. A notarial deed is not just an administrative document, but a legal instrument normatively designed to ensure the certainty and stability of civil legal relations.¹⁵

Doctrinally, the power of authentic deed proof includes three dimensions, namely external, formal, and material strength. External force means that the deed is physically considered valid as an authentic deed as long as it meets the form prescribed by law. The formal power implies that what is stated and witnessed by the notary in the deed such as the date, the identity of the parties, and the signing process must be considered correct by the judge, unless it is proved that there is a formal defect. The material power is related to the truth of the contents of the statements of the parties set out in the deed, which in this context binds the parties as a law for them (*pacta sunt servanda*). The combination of these three aspects makes the notarial deed as written evidence that has a strong binding power and evidentiary power in the judicial process. In civil law, a notarial deed serves as the main means of evidence in proving the rights and obligations of the parties. Disputes regarding defaults, unlawful acts, and other civil disputes often rest on the existence and validity of authentic deeds. Meanwhile, in criminal cases, notarial acts remain relevant as a means of proof of a letter that can be used to prove the existence of a legal event or a specific legal relationship related to a criminal offense. For example, in cases of forgery, fraud, or corruption, a notarial deed can be a starting point for tracing the construction of an allegedly unlawful act. However, in the criminal context, the deed does not necessarily prove the existence of a criminal offense, but must be correlated with other means of evidence in accordance with the system of proof adopted by the code of Criminal Procedure.¹⁶

¹⁴ Wardhani, S. A. M. A. K., & Julianti, N. M. (2020). Tanggung Jawab Notaris Terhadap Legalisasi Akta Dibawah Tangan. *Kerta dyatmika*, 17(2), 45-55.

¹⁵ Rohman, F., Wibowo, K. M., Virgusta, A., & Rajib, R. K. (2025). KAJIAN YURIDIS TERHADAP PROSES PERANCANGAN KONTRAK MENJADI AKTA AUTENTIK DALAM PRAKTIK KENOTARIATAN. *Jurnal Intelek Insan Cendikia*, 2(11), 18064-18069.

¹⁶ Fauziah, E. (2026). TINJAUAN YURIDIS NORMATIF AKTA OTENTIK SEBAGAI ALAT BUKTI YANG SEMPURNA DALAM PRAKTIK KENOTARIATAN. *Jurnal Hukum dan Kesejahteraan*, 7(1).

The strategic role of notarial deed ultimately lies in its ability to create legal certainty and protection. Legal certainty is reflected in the clarity of the rights and obligations of the parties that are legally documented, thus minimizing the potential for disputes. Legal protection is realized through the assurance that every legal act is carried out according to procedures and obtains formal legitimacy from authorized public officials. The notarial deed serves as a preventive and repressive function: preventive because it prevents disputes through clear documentation, and repressive because it becomes a strong evidence tool if disputes are inevitable. In contrast to the civil sphere, which focuses on private interests, the Criminal Procedure Law regulates the mechanism of Investigation as the initial stage of the enforcement process against criminal offenses. According to the Code of Criminal Procedure, an investigation is a set of actions of an investigator to search for and collect evidence in order to make light of a criminal offense and find a suspect. The main purpose of an investigation is to ensure that an event is a criminal offense and to identify those who can be held accountable. In carrying out these duties, the investigator has the authority to call and examine witnesses, request expert testimony, carry out seizures, as well as other actions provided for by law. All of these powers must be exercised based on the principle of legality and due process of law, namely that any investigator's actions must have a clear legal basis and respect for Human Rights. This principle is important for maintaining a balance between the interests of law enforcement and the protection of individual rights in a Democratic state of law.¹⁷

In the process of investigating a criminal offense, the notary may be the party called to testify, especially when the deed he made is related to the legal event that is being examined. Based on the provisions of the Code of Criminal Procedure, any person who is considered to know, hear, or experience a criminal event himself can be called as a witness by the investigator. In this context, the notary does not, in principle, have absolute immunity against summoning as a witness, since he remains a legal Subject subject to the provisions of the code of Criminal Procedure. Calling a notary is usually related to the formal aspects of making a deed, such as the presence of the parties, the process of reading the deed, signing, and identifying supporting documents.¹⁸ The position of the notary in the investigation is not as an offender, but as a party to the clarification of the actions of his position. However, the position of the notary in the judicial process is not always the sole witness. In certain situations, a notary can also be questioned as an expert if the investigator or judge needs an explanation of the technical aspects of notarization, such as the procedure for making an authentic deed or the applicable administrative standards. In addition, there is also the possibility that the notary is positioned as a related party if the deed he made is suspected of containing legal defects or being a means of criminal acts. This difference in position carries different legal consequences, both in terms of the scope of the information provided and the inherent responsibilities. As a witness, the notary explains the facts; as an expert, he gives a professional opinion; while as a related party, he can be in a more complex position and potentially face further legal consequences.¹⁹

This is where the normative dilemma inherent in the notary position arises, which is between the obligation to provide information in the interests of law enforcement and the obligation to keep the position secret. Based on Law No. 2 of 2014 on the position of Notary, especially Article 4 and Article 16 Paragraph (1)

¹⁷ Yusefin, V. F., & Chalil, S. M. (2018). Penggunaan Lie Detector (Alat Pendeteksi Kebohongan) Dalam Proses Penyidikan Terhadap Tindak Pidana Dihubungkan Dengan Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana. *Wacana Paramarta*, 17(2), 71-82.

¹⁸ Putri, L. S., & Adjie, H. (2024). Pemeriksaan Minuta Akta Notaris Untuk Kepentingan Penyidikan Dikaitkan Kewajiban Notaris Merahasiakan Akta. *UNES Law Review*, 7(1), 318-325.

¹⁹ Aman, S. S., SH, M. K., NS, C., & PC, C. (2025). *Aspek Hukum tentang Hak dan Kewajiban Inkar Notaris*. Penerbit Adab. hlm. 26

letter f, notaries are obliged to keep secret everything about the deed and information obtained in the exercise of their position. This obligation is the embodiment of the principle of trust (confidentiality) which is the foundation of the relationship between the notary and the parties. However, within the framework of due process of law, the obligation cannot be interpreted as the right to absolutely refuse to provide information to the investigator. The relationship between notarial law and Criminal Procedure Law essentially reflects the relationship between *lex specialis* and *lex generalis*. The notary position law as *lex specialist* regulates specifically the authority, obligations, and mechanisms of notary examinations, while the Criminal Procedure Code as *lex generalis* regulates the procedures for investigation and evidence in general. Special arrangements regarding the calling of notaries are contained in Article 66 of the Notary Office law, which requires certain mechanisms before notaries can be examined or minutes of the deed can be taken for the benefit of the judicial process. This provision is intended as a form of protection against notary positions so as not to easily intervene in legal proceedings without a valid and proportionate reason.

B. Summoning and examination of a Notary as a witness at the investigation stage after the decision of the Constitutional Court Number 49 / PUU-X/2012

Background testing Article 66 of the notary position law cannot be separated from the construction of norms in Law Number 30 of 2004 on notary positions (old UUN) which in Article 66 paragraph (1) requires the approval of the regional Supervisory Council (MPD) before notaries can be examined by investigators, public prosecutors, or judges. This provision was originally intended as a form of protection against notary positions from being easily summoned or examined without a clear and relevant reason. The mechanism is also designed to maintain the honor and confidentiality of the notary's position as a public official who performs state functions in the field of civil law. In practice, however, such approval requirements are seen as creating obstacles in enforcement proceedings. The argument that develops then states that the provision is potentially contrary to the principle of equality before the law, the principle of equality of position of everyone before the law. The notary, despite the status of a public official, remains a citizen subject to the criminal justice system. With the MPD approval requirement, there is a perception that notaries receive special treatment that is not given to other professions. This situation raises the constitutional question of whether the protection of office is justified when it implies different treatment in criminal legal proceedings.²⁰

Testing the constitutionality of Article 66 of the old UUN was then filed against Article 27 paragraph (1) and Article 28D paragraph (1) of the Constitution of the Republic of Indonesia in 1945 which guarantees equality of position in law and government as well as the right to fair legal certainty. The application for material testing eventually gave birth to the Constitutional Court decision Number 49/PUU-X / 2012. In its decision, the Constitutional Court of the Republic of Indonesia overturned the phrase "with the approval of the regional supervisory council" because it was considered contrary to the constitutional principle of equality before the law. Analysis of the original intent of the court decision is important to understand the direction of constitutional policy to be built. In its legal considerations, the court stressed that any enforcement proceedings must proceed without discrimination and there should be no preferential treatment that impedes the judicial process. The court did not negate the need for protection against notaries, but considered that the administrative approval mechanism before the examination could potentially hinder the due process of law. Thus, the cancellation of the phrase is a correction to the design of norms that are considered inconsistent with the principles of the rule of law. Nevertheless, academic debate arose over the

²⁰ Wibowo, W. S., Najwan, J., & Bakar, F. A. (2022). Integritas Notaris Sebagai Pejabat Pembuat Akta Autentik dalam Undang-Undang Jabatan Notaris. *Recital Review*, 4(2), 323-352.

scope of the cancellation. Some people argue that what the court canceled was the licensing institution, namely MPD, so theoretically a similar mechanism could be redesigned through a different institution. Another view asserts that the main issue is not the institution, but the substance of the “approval” mechanism itself, which is considered to create special treatment. This debate is crucial because it will determine whether the legislator still has room to formulate a permit mechanism in a different form.²¹

The normative implications of the ruling directly touch on the mechanism of summoning a notary as a witness in criminal proceedings. Conceptually, after the consent phrase has been canceled, the notary should be able to be summoned by the investigator on the basis of the general provisions of the code of criminal procedure without additional administrative prerequisites. This confirms the position of the Notary as a subject of law subject to the principle of equality before the law. However, in the practice of subsequent legislation, the dynamics that took place actually showed a different development. After the decision of the Constitutional Court, the framers of the law revised Through Law No. 2 of 2014 on the position of Notary. In the revision, the approval mechanism was again regulated, but its authority was transferred from the MPD to the honorary Assembly of Notaries (MKN). In addition, Article 66 has an additional paragraph that regulates in more detail the procedure for requesting permission and the deadline for providing an answer. Normatively, this change is positioned as an effort to adjust to the court's decision while still providing protection to the notary position.²²

Further technical arrangements are then set out in the regulation of the Minister of Law and Human Rights number 7 of 2016 concerning the honorary Assembly of Notaries. This regulation regulates the procedure for applying for permission to call a notary by an investigator to the MKN, the procedure for Administrative Examination, as well as the deadline for making a decision. In practice, the investigator is obliged to submit a written application, accompanied by reasons and supporting documents, then the NSC will give approval or refusal within a certain period. Although designed as a measurable administrative mechanism, the existence of this technical regulation raises the potential for inconsistency of norms between the uujn as a result of changes, ministerial regulations as implementing rules, and the Constitutional Court decision that is final and binding. The disharmony can have an impact on legal uncertainty, both for investigators who need quick access to notary information, and for notaries who need certainty about the limits of protection of their positions.²³

The practical mechanism for summoning and examining notaries in the investigation process basically starts from the administrative stage submitted by the investigator to the notary honorary council (MKN). Based on the regulation in Law No. 2 of 2014 on notary position and its implementing provisions in regulation of the Minister of Law and Human Rights No. 7 of 2016, investigators are required to submit a written application containing the identity of the case, the reason for the summons, and the relevance of the notary's information to the proof of a criminal offense. The application is then registered and examined administratively by MKN before it is decided whether or not approval will be given. This stage shows that the summoning of a notary cannot be done directly as witnesses in general, but must go through a special

²¹ Farhaniatussafana, S. S., Utami, T., & Hartati, S. Y. (2026). Pembatalan Putusan Arbitrase Ad Hoc di Indonesia: Analisis Putusan Mahkamah Agung dalam Sengketa Konstruksi. *Journal of Legal, Political, and Humanistic Inquiry*, 1(3), 382-391.

²² Dewi, S. (2024). Kewenangan Penyidik Polri Dalam Pemanggilan Notaris Sebagai Saksi Dalam Perspektif Kepastian Hukum. *Collegium Studiosum Journal*, 7(2), 678-697.

²³ Dewi, S. (2024). Kewenangan Penyidik Polri Dalam Pemanggilan Notaris Sebagai Saksi Dalam Perspektif Kepastian Hukum. *Collegium Studiosum Journal*, 7(2), 678-697.

procedure that is a prerequisite. In considering the application, MKN generally assesses several aspects, including the urgency of the examination, the relevance of the deed or notary's statement to the case, and the potential violation of Official Secrets. MKN also considers whether the application has met the formal and material requirements as specified in the regulation. Normatively, this function is positioned as a filter mechanism to prevent abuse of authority by law enforcement officers and to preserve the honor of Notarial posts. However, the wide discretionary space in the assessment process has the potential to cause subjectivity in decision making.

Legal consequences if permission is not granted become a significant issue in practice. The refusal by MKN effectively prevented the investigator from examining the notary or obtaining the minutes of the deed required for proof. In such conditions, the investigator must find alternative means of evidence or re-submit the application with additional arguments. This situation can cause delays in the investigation process, potentially even affecting the construction of the case as a whole. For a criminal justice system that demands effectiveness and speed, these administrative barriers are a challenge. The impact on the smooth running of the investigation process is not only technical, but also substantive. When notarial statements are key in proving the formal aspects of a legal act that allegedly contain criminal elements, the delay in the examination can hinder the discovery of material truth. This raises the question of the proportionality between the protection of office and the interest of proof. On the one hand, notaries need protection from being easily criminalized; on the other hand, enforcement proceedings require access to relevant and legitimate information.²⁴

Problems and disharmony of norms are increasingly evident when the protection of the notary profession is perceived as directly facing the interests of law enforcement. The approval mechanism through MKN is intended as an ethical and professional protection, but in practice it is often seen as a procedural obstacle. The high rate of rejection or slow response to the application for summons can lead to the perception of special treatment of notaries. This tension reflects the conflict of values between the principle of equality before the law and the principle of protection of the Department. The potential obstruction of the process of proof in a criminal case becomes a logical consequence of the disharmony. In a proof system that requires a minimum of two valid pieces of evidence, notarial statements or minutes of deeds can be an important part of the proof construction. If access to the evidence is hampered, the effectiveness of the investigation can be disrupted. In the end, this condition affects not only the investigators, but also the victims and justice seekers who demand certainty in the resolution of the case.²⁵

Legal uncertainty is also felt by notaries themselves. On the one hand, the notary is bound by the obligation to keep the position secret; on the other hand, he has the potential to face legal pressure if he is considered uncooperative in the investigation process. For investigators, the ambiguity of the limits of MKN's authority caused procedural confusion. As for justice seekers, the protracted process can generate distrust of the judicial system. Disharmony of norms has a multidimensional impact on all actors in the legal system. In the perspective of legal certainty and justice, the fundamental question that needs to be answered is whether the MKN approval mechanism actually creates legal certainty. Legal certainty requires the existence of

²⁴ Pratidina, N. M. E. R., & Yudiantara, I. G. N. K. (2025). AKIBAT HUKUM KETIDAKLENGKAPAN BERKAS PENYELIDIKAN YANG DILAKUKAN TIM PENYIDIK DALAM PROSES PRA-PENUNTUTAN BERDASARKAN PERSPEKTIF ASAS PERADILAN CEPAT, SEDERHANA DAN BIAYA RINGAN. *Jurnal Media Akademik (JMA)*, 3(7).

²⁵ Imtiyaz, L., Santoso, B., & Prabandari, A. P. (2020). Reaktualisasi undang-undang jabatan notaris terkait digitalisasi minuta akta oleh notaris. *Notarius*, 13(1), 97-110.

clear, consistent and predictable norms of its application. If the approval mechanism relies on subjective assessment without measurable parameters, then legal certainty becomes weak. On the other hand, the principle of legality in criminal law requires that each investigator's actions have a clear legal basis, while the principle of protection of positions requires the existence of a security mechanism for the notary profession.

From the perspective of the theory of authority, the granting of authority to the NSC should be strictly limited so as not to go beyond the principle of due process of law. The authority should ideally be administrative in nature and should not interfere with the substance of the investigation. Within the framework of justice theory, overly protective mechanisms can hurt the public's sense of justice, while overly repressive mechanisms can threaten the independence of the profession. Therefore, it is necessary to reconstruct or reformulate the mechanism of calling notaries who are able to balance these two interests proportionally the ideal formulation of the notary examination mechanism should put forward a model that still protects the confidentiality of the position, but does not hinder the investigation process. One alternative is to emphasize the limits of MKN's authority only on administrative aspects, with strict time limits and clear legal consequences if it does not provide an answer. In addition, the norm of Article 66 of the UUJN needs to be refined to be in line with the principle of equality before the law and the spirit of the Constitutional Court's decision. The harmonization of regulations between UUJN, implementing regulations, and court decisions is an important step to ensure that the protection of the profession and the effectiveness of law enforcement go hand in hand within the framework of a legal state that upholds certainty, justice, and legal expediency.²⁶

CONCLUSIONS

The concept of notary and the investigation process shows that a notary is a public official who obtains direct attribution authority from the state based on Law Number 2 of 2014 concerning the position of notary to create an authentic deed that has perfect proof power. In the civil law proof system, the notarial deed serves as a means of proof *volledig bewijs* with external, formal and material strength, while in criminal cases the deed can be a means of proof of the relevant letter to reveal a legal event. This position places the Notary as part of the public legal service system that ensures certainty, order, and legal protection. However, when a notarial deed intersects with a criminal case, the notary can be called as a witness based on the provisions of the Code of Criminal Procedure, so that a relationship arises between notarial law as a *lex specialist* and Criminal Procedure Law as a *lex generalis* which demands a balance between the authority of the investigator and the protection of the notary position.

After the Constitutional Court Decision No. 49/PUU-X / 2012, the summoning and examination of notaries as witnesses is affirmed to be in line with the principle of equality before the law as guaranteed in the Constitution of the Republic of Indonesia year 1945. The cancellation of the consent phrase of the regional supervisory Assembly affirms that the protection of the profession must not hinder enforcement proceedings. However, the re-arrangement of the approval mechanism through the revision of the UUJN raises new dynamics that have the potential to create tension between the protection of positions and the effectiveness of investigations. Therefore, it is necessary to formulate a proportional mechanism, which maintains the confidentiality and honor of the notary position, but does not reduce the principle of equality

²⁶ Dento, A. (2025). *Prosedur Pemberhentian Sementara Notaris dalam Perspektif Due Process of Law. Jurnal Hukum Lex Generalis*, 6(4).

before the law and due process of law in the criminal justice system, so that a balanced certainty, justice and legal expediency is achieved.

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