

Role of Notary in Criminal Justice Process

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Submitted : 18/03/2025 Reviewed: 22/03/2025 Accepted: 25/03/2025

Abstract: *The criminal justice process raises a conflict regarding the role of a Notary, who is a public official responsible for creating authentic deeds and is bound by confidentiality, yet is required to testify about the deeds they have made. This study examines the role of the Notary as a witness in criminal cases involving deeds they have created and the legal protection provided to Notaries when giving testimony. The research uses an empirical juridical approach, collecting primary data through field interviews and document studies. The findings reveal that the Notary's role as a witness in criminal proceedings is crucial for investigations. Notaries summoned for investigation must first obtain approval from the Notary Honorary Council of the Region (MKNW) and provide information, both orally and in writing, at the trial. Notaries are called to participate in the examination of criminal cases in their capacity as public officials who create authentic deeds, and their testimony is essential regarding what they have seen, heard, and the supporting evidence in the creation of the authentic deed involved in the criminal case. The study also highlights the legal protection for Notaries as witnesses, including the requirement to obtain approval from the Notary Honorary Council of the Region (MKNW) through a written request with justifications. Furthermore, Notaries are protected under the rights and obligations outlined in Article 1909 paragraph (3) of the Civil Code and Article 322 of the Penal Code. This research contributes to a deeper understanding of the specific role of Notaries within the criminal justice system, an area that has been underexplored in existing literature, particularly in comparison to their role in civil matters. The study provides valuable insights into the legal challenges and protections faced by Notaries when testifying in criminal proceedings.*

Keywords: Authentic Deed; Criminal Justice; Notary; Legal Protection; Witness

DOI: 10.32801/lamlaj.v10i1.198

INTRODUCTION

Notary is an official who makes authentic deeds as stated in Law Number 2 of 2014 on the amendment of Law Number 30 of 2004 concerning Notary Position. The duties and authority of a notary as an authentic deed maker

have a very large role in realizing legal certainty.

This is because an authentic deed is a perfect evidence of a certain legal act or event.¹ Authentic deeds have perfect evidentiary power.² In certain cases, the parties to litigation in court find it necessary to present a notary as a witness, in

¹ Tan Thong Kie, *Studi Notariat & Serba-Serbi Praktek Notaris* (Jakarta: Ichtiar Baru van Hoeve, 2017), p. 157.

² G. H. S. Lumban Tobing, *Pengaturan Jabatan Notaris* (Jakarta: Erlangga, 2016), p. 55.

relation to the deed he made. Authentic deeds, which are the strongest and fullest evidence, can make a real contribution to the settlement of cases cheaply and quickly.³

There are many legal issues that require proof using authentic deeds. Proving the authenticity of a deed requires an examination of the authentic deed as the object of proof and an examination of the notary as the subject of making the authentic deed. The examination of the authentic deed and the notary as the maker of the authentic deed cannot be done just like that because of the confidentiality of the deed or minutes made by the notary.⁴ Examination of deeds made by notaries must go through the procedures stipulated by Article 66 paragraph (1) of Law Number 2 of 2014 on the amendment of Law Number 30 of 2004 concerning the Position of Notary, which must be approved by the Regional Supervisory Council.⁵

The criminal justice process sometimes requires a notary as a witness in a criminal event. The fact that the examination of notaries that has occurred so far is sometimes not in accordance with the provisions as stipulated by Article 66 paragraph (1) of Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Regarding the Position of Notary.⁶ In the criminal justice process at the investigation level,

investigators sometimes first conduct an examination of the notary before seeking approval from the Regional Supervisory Council. Only after the examination is completed do investigators seek approval from the Regional Supervisory Council. Practicality and speed of case handling are often the reasons. If this is the case, it means that the judicial process is carried out without obtaining the approval of the Regional Supervisory Council as stipulated in Article 66 paragraph (1) of Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary which is also regulated in Article 14 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.03.HT.03.10 of 2007 concerning Taking the Deed Minute and Summoning Notaries.

The provision of Article 16 paragraph (1) letter f of Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on the Position of Notary requires notaries to keep the deeds they make confidential, which becomes a problem when the notary serves as a witness in a criminal case.⁷ On the one hand, notary testimony is needed to shed light on criminal cases, but on the other hand, notaries must keep the deeds they make confidential. If the notary refuses to be a witness or refuses to provide testimony as a

³ Endang Hadrian dan Lukman Hakim, *Hukum Acara Perdata Di Indonesia: Permasalahan Eksekusi Dan Mediasi* (Yogyakarta: Deepublish, 2020), p. 42.

⁴ Candella Angela Anatea Taliwongso, "Kedudukan Akta Autentik Sebagai Alat Bukti Dalam Persidangan Perdata Di Tinjau Dari Pasal 1870 Kuh Perdata (Studi Kasus Putusan Nomor 347/Pdt.G/2012/PN.Mdn)," *Lex Administratum* Vol. 10, No. 2 (2022), p. 8.

⁵ Laurensius Arliman S., *Notaris Dan Penegakan Hukum Oleh Hakim* (Yogyakarta: Deepublish, 2015), p. 108.

⁶ Sriwati, "Problematisasi Penerapan Pasal 66 Undang-Undang Jabatan Notaris Terhadap Penegakan Hukum Pidana," *Jurnal Reformasi Hukum* Vol. 26, No. 1 (2022): p. 62.

⁷ Anang Alfiansyah, "Peran Majelis Kehormatan Notaris Terhadap Terbukanya Rahasia Jabatan Notaris Dalam Menjalankan Jabatan Publik," *Autentik's: Jurnal Hukum Kenotariatan* Vol. 1, No. 1 (2019): p. 5.

witness, the notary is subject to the provisions of Article 522 of the Criminal Code.⁸ Therefore, considering the characteristics of their duties, notaries who carry out their duties in good faith need to obtain legal protection.

Issues related to the role of notaries as witnesses in criminal cases have indeed been addressed in previous studies, such as those by Dian Ayunita Prasstumi⁹, titled "*The Obligation of Notaries to Maintain the Confidentiality of Deeds in Their Involvement in the Judiciary*," and by Ade Yuliany Siahaan and Aida Nur Hasanah¹⁰, titled "*The Role of Notaries as Creators of Authentic Deeds in the Process of Proof in Court*." These studies share a thematic similarity with this research, especially in terms of the notary's role in the judicial process. However, while Prasstumi's research focuses on the notary's obligation to maintain confidentiality and Siahaan and Hasanah's study emphasizes notaries' role in proving legal cases in court, this research introduces a novel perspective by focusing specifically on the role of notaries within the *criminal justice process*.

Unlike previous studies, which primarily discuss the notary's involvement in *civil cases*, this research investigates the role of notaries as witnesses in *criminal cases*, particularly regarding the deeds they have created. Additionally, this study explores the legal protection offered to notaries when testifying in court, an area that has

not been extensively covered in previous literature. Therefore, while there is thematic overlap, this research brings new insights into how notaries navigate their roles in criminal cases without breaching their confidentiality obligations, while also shedding light on the legal protections afforded to them in such situations.

Based on the above background, this study aims to examine the formulation of issues related to the role of notaries as witnesses in criminal cases, particularly concerning the deeds they have created, and the legal protection granted to notaries when giving testimony to assist the criminal justice process. The contribution of this research lies in providing a deeper understanding of the specific role of notaries within the criminal justice system, which has been less explored in existing literature. This research contributes to the discussion by filling the gap in current studies that primarily focus on the role of notaries in civil cases, offering new insights into the legal challenges and protections for notaries when they testify in criminal proceedings. Additionally, it provides a detailed analysis of how notaries can balance their confidentiality obligations with their role as witnesses in criminal cases, offering valuable guidance for both legal practitioners and policymakers.

METHOD

⁸ Khairunnisa Riani Putri dan Mella Ismelina Farma Rahayu, "Analisa Perlindungan Hukum Notaris dan PPAT Dalam Pembuatan Akta Berdasarkan Keterangan Palsu (Studi Kasus Putusan Nomor: 73/PDT. G/2012/PN. PL)," *Jurnal Sosial dan Teknologi* Vol. 3, No. 6 (2023): p. 519.

⁹ Dian Ayunita Prasstumi, "Kewajiban Notaris Menjaga Kerahasiaan Akta Dalam Keterlibatannya Di

Peradilan," *Jurnal Education and Development* 10, no. 2 (2022), <https://doi.org/10.37081/ed.v10i2.3586>.

¹⁰ Ade Yuliani Siahaan and Aida Nur Hasanah, "Peran Notaris Sebagai Pembuat Akta Otentik Dalam Proses Pembuktian Di Pengadilan," *Al-Usrah: Jurnal Al Ahwal As Syakhsyah* 11, no. 1 (2023), <http://dx.doi.org/10.30821/al-usrah.v11i1.16650>.

The type of research used in this study is normative legal research, which means legal research conducted by examining library materials¹¹. This normative research involves the study of legal systems, specifically research aimed at identifying legal definitions or foundations¹². This type of research is used because the researcher aims to examine everything related to the role and legal protection of notaries as witnesses in cases involving deed they have created in the criminal justice process.

The legal materials used in this research were obtained through a literature review of primary legal materials, which include the Criminal Code, the Civil Code, the Criminal Procedure Code, Law No. 2 of 2014 concerning Amendments to Law No. 2 of 2014 on the Position of Notary, the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.03.HT.03.10 of 2007 regarding the Taking of Deed Minutes and the Summoning of Notaries. Secondary legal materials were also used to provide explanations of the primary legal materials, consisting of literature and journals related to the role and legal protection of notaries as witnesses in cases involving deed, they have created in the criminal justice process. Additionally, tertiary legal materials were used to provide supplementary explanations or support for

existing data found in primary and secondary legal materials. The tertiary legal materials used were obtained through online searches

ANYLISIS AND DISCUSSION

The Role of Notaries as Witnesses in Cases Involving Deeds They Have Created in the Criminal Justice Process

A notary is an official who creates authentic deeds, as stated in the Law No. 2 of 2014¹³. The duties and authority of a notary as the creator of authentic deeds play a significant role in realizing legal certainty and protecting the public. This is because an authentic deed is considered the strongest form of evidence for a particular legal act or event¹⁴.

In practice, an authentic deed, being a strong tool of evidence, is frequently used in legal issues. The use of an authentic deed as evidence requires proving the authenticity of the deed in question, which necessitates the examination of the authentic deed as evidence. For this purpose, it is also necessary to examine the notary as the party who created the deed¹⁵. The authentication of the deed and the notary as the subject who created the deed cannot be done carelessly because an authentic deed contains confidentiality or minutes created by the notary¹⁶. Therefore, the examination

¹¹ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Depok: Prenada Media, 2018), p.129.

¹² Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2016), p. 93.

¹³ Oemar Moechthar, *Hukum Kenotariatan: Teknik Pembuatan Akta Notaris Dan PPAT* (Jakarta: Kencana, 2024), p. 4.

¹⁴ I Made Hendra Kusuma, *Problematisasi Notaris Dalam Praktik* (Bandung: Alumni, 2021), p. 42.

¹⁵ Leonardo WiraUtama. S and Siti Hajati Hoesin, "Saksi Di Muka Pengadilan: Bagaimana Kedudukan Akta Dan Peran Notaris?," *Jurnal Kertha Semaya* 10, no. 6 (2022): p. 1356.

¹⁶ Ammanda Michelle Sumampow and Mella Ismelina, "Batasan Pelaksanaan Hak Ingkar Notaris Dalam Rangka Menjaga Kerahasiaan Akta Menurut Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Perubahan Undang-Undang Nomor 30 Tahun

of the authentic deed and the notary is conducted in accordance with legal provisions. The examination of a notary is based on the provisions of Article 66 paragraph (1) of the Law No. 2 of 2014, which states that any examination of a notary related to the deed they created must be approved by the Regional Supervisory Council.

Based on the provisions of Law No. 2 of 2014, it can be said that notaries are protected by law, as law enforcement officers, especially police investigators, cannot easily seize authentic deeds or documents stored by notaries, nor summon notaries to attend an examination related to documents they are responsible for creating, without the approval of the Notary Honorary Council of the Region (Majelis Kehormatan Notaris Wilayah - MKNW). This means that the protection of notaries lies in the requirement to obtain permission from the Notary Honorary Council of the Region (MKNW) before summoning and/or examining a notary for the purpose of judicial proceedings¹⁷.

The testimony of a notary as a witness in a criminal case is needed to clarify the deed they created in relation to the legal event explained by the parties involved. Meanwhile, the testimony of a notary as a suspect is needed in relation to the notary's accountability for the authentic deed under their responsibility. Based on this, it can be

stated that notaries, as citizens, are not above the law.

In the process of proving the indication of a criminal act related to an authentic deed, the presence of the notary is required during the investigation, prosecution by the prosecutor, and trial proceedings. The necessity of the notary's presence for the examination of a criminal case related to a deed with indications of criminal acts is determined by both formal and material aspects of the notary's deed. In cases where a notary is a suspect based on evidence in an initial police report related to a deed under the notary's responsibility, an evaluation might indicate criminal acts, which would require the notary's presence to explain how the deed was created and provide the legal basis for its creation¹⁸.

Regarding the role of a notary in criminal cases, there is a difference compared to civil cases. In civil cases, a notary can only be asked to testify in court as an expert witness. However, in criminal cases, a notary can be called to testify as a regular witness and can even be charged in connection with the authentic deed they created when the deed becomes evidence in court¹⁹.

The factors that require the presence of a notary during the examination of a criminal case are:

2004 Tentang Jabatan Notaris," *Jurnal Hukum Adigama* 4, no. 1 (2021): p. 656.

¹⁷ Henry Lbn Toruan Donald, "Legalitas Keberadaan Majelis Pengawas Notaris Dan Majelis Kehormatan Notaris," *Jurnal Penelitian Hukum De Jure* 20, no. 3 (2020): p. 455, <https://doi.org/10.30641/dejure.2020.V20.435-458>.

¹⁸ Moeh Angga Nugraha, "Persetujuan Majelis Kehormatan Notaris Atas Pemanggilan Notaris Dalam

Pemeriksaan Tindak Pidana," *Jurnal Officium Notarium* 1, no. 2 (2021): p. 404, <https://doi.org/10.20885/JON.vol1.iss2.art20>.

¹⁹ Habib Adjie and Sri Agustini, "Kode Etik Notaris Menjaga Isi Kerahasiaan Akta Yang Berkaitan Hak Ingkar Notaris (UUJN Pasal 4 Ayat 2)," *Jurnal Hukum Dan Kenotariatan* 6, no. 1 (2022): p. 19.

- a. If the deed created by the notary causes harm to the parties involved or to other parties, and based on initial evidence, the notary is suspected of being involved in or assisting in the commission of a criminal act related to their authority under Article 15 of the Law No. 2 of 2014, which involves creating authentic deeds with elements of criminal acts such as:²⁰
 1. Article 55 of the Criminal Code—participation in the commission of a criminal act;
 2. Article 231 of the Criminal Code—assisting in the commission of a crime;
 3. Article 263 of the Criminal Code—forgery of documents;
 4. Article 266 of the Criminal Code – providing false information in the creation of an authentic deed;
 5. Article 372 of the Criminal Code – embezzlement;
 6. Article 378 of the Criminal Code – fraud;
 7. Article 385 of the Criminal Code – selling, exchanging, or encumbering land that has not been certified with a credit agreement (mortgage).
- b. To obtain testimony from the notary, both formally and materially, regarding the deed they created, based on reports from the parties harmed by the deed, requiring an objective examination by investigators.
- c. It is the obligation of every citizen to attend criminal investigations as a witness, expert witness, or interpreter under Article 224 of the Criminal Code, which states that anyone who is called as a witness, expert witness, or interpreter by law and deliberately fails to fulfill this obligation is subject to the following penalties:
 1. In criminal cases, a prison sentence of up to 9 (nine) months;
 2. In other cases, a prison sentence of up to 6 (six) months.

Legal Protection for Notaries as Witnesses in Providing Testimony to Assist the Criminal Justice Process

Notaries in carrying out their official duties are entitled to legal protection from various legal threats from parties who want to dispute the deed made by the Notary.²¹ If a Notary commits a violation and results in certain parties feeling harmed, then it is possible that the party who feels harmed will sue the Notary concerned for his detrimental actions.²²

For parties who feel aggrieved, they will first conduct an investigation into the cause of the loss. In the event that the loss is suspected to have originated from a Notary who committed a violation and the aggrieved party will sue the

²⁰ Leonta Revormen Sembiring, Jelly Nasser, and Irhamsah, “Tanggung Jawab Notaris Atas Ketidaksesuaian Salinan Akta Dengan Minuta Akta Dalam Akta Autentik,” *Jurnal Kritis Studi Hukum* 9, no. 8 (2024): p. 169.

²¹ Tarmizi, *Kode Etik Profesi Tentang Hukum Polisi, Hakim, Jaksa, Advokat/Penasehat Hukum, Pegawai Masyarakat, Notaris, KPK (Komisi*

Pemberantasan Korupsi), Panitera Dan Juru Sita, Arbiter Dan Mediator, Dan Intelijen Negara (Jakarta: Sinar Grafika, 2021), p. 50.

²² Ling Fransiska, “Degradasi Kekuatan Pembuktian dan Pembatalan Akta Autentik (Studi Putusan Mahkamah Agung Republik Indonesia No. 2377K/PDT/2016),” *Indonesian Notary* Vol. 3, No. 2 (2021): p. 347.

Notary concerned, it will then be seen which violation of the Notary concerned is a violation in which case, it can be in terms of violation of the code of ethics, it can be in terms of violation of Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning the Position of Notary, it can be a violation of civil provisions or more than that, the actions of the Notary concerned are crimes containing criminal elements. Therefore, the summoning of the Notary is then determined first, whether the Notary's violation is in the civil element or contains criminal elements.²³

A Notary can be included in the event that the authentic deed made by the Notary concerned is the object of a dispute arising from the parties to the deed. In the event that the object of the dispute contains criminal elements and there are parties who report it or complain about it to the authorities, namely the Police, then the next police action is to conduct an investigation to search for and find an event suspected of being a criminal offense, and then determine whether or not an investigation can be carried out.

The police, in conducting an investigation, may ask for information from a witness, and a Notary may be asked for information as a witness by the police.²⁴ A Notary may also be upgraded from a witness to a suspect in the event that the Police have conducted an investigation. Police

action in summoning a witness where the witness is a Notary in connection with duties performed in accordance with his/her position, the summons is not as regulated in the Criminal Procedure Code. Police or Investigators who will summon a Notary must first go through a series of regulations that have been established.²⁵

Arrangements for the summoning of Notaries as witnesses by the Police or investigators must be in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M-03.HT.03.10 of 2007 dated November 08, 2007 concerning the Taking of Deed Records and Summoning Notaries, in Article 14 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M-03.HT.03.10 of 2007 concerning the Taking of Deed Records and Summoning Notaries states that Investigators can summon Notaries as witnesses by submitting a written request accompanied by reasons to the Regional Supervisory Council and a copy is submitted to the Notary concerned. Investigators must obtain approval from the Regional Supervisory Council, this is intended to provide legal protection for notaries in carrying out their duties. The protection provided is related to maintaining the balance of notaries in maintaining the confidentiality of deeds with the interests of law enforcement in carrying out their

²³ Adelsa Enggie Fawzia Novaditiya Putri dan Suryawan Raharjo, "Analisis Pertanggungjawaban Pidana Notaris Dalam Menjalankan Profesinya Berindikasi Melawan Hukum Pidana (Studi Pada Kasus Putusan Nomor 40/Pid.B/2016/PN.Btl)," *Jurnal Kajian Hasil Penelitian Hukum* Vol. 5, No. 1 (2023): p. 11.

²⁴ Dian Ayunita Prasstumi, "Kewajiban Notaris Menjaga Kerahasiaan Akta Dalam Keterlibatannya Di

Peradilan," *Jurnal Education and Development* Vol. 10, No. 2 (2022): p. 213.

²⁵ Syafyandra, Adimansar, dan Bahmid Panjaitan, "Pertimbangan Majelis Kehormatan Notaris Dalam Memberikan Izin Pemeriksaan Notaris Terhadap Pemanggilan Yang Dilakukan Oleh Penyidik Polri," *Jurnal Media Akademik* Vol. 2, No. 5 (2024): p. 10.

duties. As affirmed in Article 66 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary.²⁶

After the Police or Investigator submits the request, the Investigator waits 14 (fourteen) days to determine whether the request is approved or rejected by the Regional Supervisory Panel.²⁷ In the process of giving approval, the Regional Supervisory Council is required to conduct an examination first. The examination in question is in accordance with Article 70 letter (a) of Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on the Position of Notary, namely by holding a hearing to examine the alleged violation of the Notary code of ethics or violation of the implementation of the Notary position against a Notary.

The purpose of the examination of the Notary is none other than to protect the Notary from his/her position which requires him/her to keep confidential everything regarding the deed he/she makes and all information obtained for the purpose of making the deed in accordance with his/her oath/pledge of office, this is regulated in Article 16 paragraph (1) letter (f) of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary.²⁸ A Notary is obliged to keep everything related to deeds and

other letters confidential, the purpose of confidentiality is to protect the interests of all parties related to the deed.²⁹ Therefore, the Regional Supervisory Council approving or rejecting the investigator's request is to provide protection for the Notary and also all parties involved in the Notarial deed.

After the examination, the final result of the examination of the Regional Supervisory Council is set forth in the form of a Decree, the contents of which give approval or reject the request of the investigator.³⁰ However, if the Regional Supervisory Council does not provide any information, then the Investigator can assume that the Regional Supervisory Council has agreed to the summoning of the Notary concerned, this is in accordance with Article 18 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M-03.HT.03.10 of 2007 concerning the Taking of Deed Records and Summoning Notaries. If the request is rejected by the Regional Supervisory Council, then there is nothing that can be done by the Police or Investigators, and the Notary concerned is free from any charges, but if the notary concerned still attends to fulfill the summons, all legal consequences arising are the responsibility of the person concerned. So in conclusion, the Regional

²⁶ Sekarressie Pathria Zhahara, Budi Santoso, dan Paramita Prananingtyas, "Pelaksanaan Penyidikan Oleh Lembaga Kepolisian Terkait Akta Yang Dibuat Notaris di Kota Semarang," *Notarius* Vol. 13, No. 2 (2020): p. 912.

²⁷ Andri Gotama et al., "Analisis Yuridis Perlindungan Hukum Terhadap Notaris Sebagai Pejabat Umum Dalam Sistem Peradilan Pidana Terkait Kewenangan Membuat Akta Otentik (Studi Penelitian di Kota Batam)," *Unes Law Review* Vol. 6, No. 1 (2023): p. 3738.

²⁸ Rindiana Larasati, *Dinamika Sistem Pengawasan Notaris di Indonesia* (Pekalongan: Nasya Expanding Management, 2023), p. 157.

²⁹ Yenny Febrianty, *Keberadaan Hukum Kenotariatan di Indonesia* (Cirebon: Green Publisher Indonesia, 2023), p. 16.

³⁰ Dedy Mulyana, Rika Kurniasari Abdulghani, dan Aulia Febrianti, "Implementasi Kewenangan Majelis Pengawas Notaris Terhadap Pelaksanaan Putusan Pengadilan Yang Membatalkan Akta Otentik," *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan* Vol. 6, No. 1 (2022): p. 109.

Supervisory Council will not be held responsible if there are arbitrary actions from law enforcers against the notary when undergoing the examination process as a witness.

In the event that the Regional Supervisory Council approves the summoning of a Notary as a Witness, and in the process of investigation and investigation, the Notary concerned who has the status of a Witness is upgraded to the status of a suspect, then the Notary may refuse to be made a suspect on the grounds that he/she was summoned as a witness in accordance with the request approved by the Regional Supervisory Council as a witness. If the Notary concerned will be made a suspect by the Police, the Police must again submit a written request accompanied by reasons to the Regional Supervisory Council in accordance with Article 14 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M-03.HT.03.10 of 2007 concerning Taking the Deed Minute and Summoning Notaries.

Notary's obligation to keep the contents of the deed confidential covers both the whole and part of the contents of the deed.³¹ The summoning of a notary as a witness related to the alleged criminal offense of a deed made before him in the criminal justice process is important to obtain direct information from the notary concerned regarding the deed made before him at the request

of the litigants. This is based on the function of criminal procedural law itself which is different from civil procedural law. Van Bemmelen argues that there are 3 (three) functions of criminal procedural law, one of which is the main objective of seeking and obtaining the truth as complete as possible as a whole and comprehensive.³²

Judges cannot only be satisfied with the formal truth shown, testing of the formal evidence at trial, as well as the facts found in the trial are taken into consideration to strengthen the judge's confidence in deciding the case. So that the authentic deed submitted as evidence at trial must be accompanied by other evidence and usually in the form of witness testimony.³³

This is the case with Notaries given legal protection by law in order to provide testimony at trial. This legal protection is in the form of notarial rights that can be used so that the obligation to maintain the secrets of his office is maintained.³⁴ The notary's right of denial is only limited to the denial obligation emphasized in the notary's oath of office and Article 16 Paragraph (1) letter f of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 concerning the Position of Notary, in the form of a deed he made along with the contents of the deed and all the facts obtained by the notary from his client in the process of making the deed, whether listed or not listed in the

³¹ Dekky Septio, Sri Ismawati, dan Agus, "Perlindungan Hukum Terhadap Notaris Terkait Kewajiban Notaris Untuk Merahasiakan Isi Akta Dalam Proses Pemeriksaan di Tahap Penyidikan," *Tanjungpura Acta Borneo Journal* Vol. 1, No. 2 (2023): p. 115.

³² Tinuk Dwi Cahyani, *Hukum Acara Pidana Indonesia (Dalam Teori dan Praktek)* (Malang: Universitas Muhammadiyah Malang, 2023), p. 4.

³³ Aman, "Perlindungan Hukum Notaris Dalam Melaksanakan Rahasia Jabatan," *Recital Review* Vol. 1, No. 2 (2019): p. 64.

³⁴ Liliana Tedjosaputro, *Keadilan dan Masyarakat Aplikasi Hukum Profesi Notaris Dalam Kehidupan* (Semarang: Butterfly Mamoli Press, 2021), p. 94.

deed. The obligation of the notary (Verschoningsplicht) is as follows:

1. Article 16 paragraph 1 letter f of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary states that in carrying out his/her position, a notary must keep confidential everything regarding the deed he/she makes and all information obtained for the purpose of making the deed in accordance with the oath/pledge of office, unless the law determines otherwise.
2. Is a completeness to the Notary in carrying out the duties of his office as a Notary's circular obligation.
3. If the Notary violates, the law does not order it, then upon the complaint of the injured party, the authorities can take action against the Notary (Article 322 paragraph 1 and paragraph 2 of the Criminal Code, unpacking secrets).
4. In the position of a Notary as a witness (civil case) the Notary may request to be relieved from the obligation to make a testimony, because his/her position is obliged by law to keep it confidential (Article 1909 paragraph 3 of the Civil Code).
5. A notary has an obligation of confidentiality, which is not for the benefit of the notary himself, but rather for the benefit of the parties who have entrusted the notary with their information. This research highlights the importance of this obligation, especially in the context of criminal cases, where the notary may be required to testify as a witness. The contribution of this research lies in its

exploration of how notaries can fulfill their duty of confidentiality while still participating in the criminal justice process. The study also provides recommendations on how legal protections can be enhanced for notaries when testifying in court, ensuring that their obligations to maintain confidentiality are not compromised. Furthermore, it offers insights into how notaries can balance their professional duties with their role as witnesses in criminal matters, providing both legal clarity and practical guidance for notaries, legal practitioners, and policymakers.

CONCLUSION

The role of a notary as a witness in criminal cases concerning the deeds they have created in the criminal justice process is crucial for the investigation. Notaries summoned for investigation must first obtain approval from the Notary Honorary Council of the Region (MKNW) and provide information, both orally and in writing, at the trial. Notaries are called to attend the examination of criminal cases in their capacity as public officials who create authentic deeds. Their testimony is essential regarding what they have seen, heard, and the supporting evidence in the creation of the authentic deed involved in the criminal case.

Legal protection for notaries as witnesses in assisting the criminal justice process includes the requirement to obtain approval from the Notary Honorary Council of the Region (MKNW) through a written request accompanied by reasons. Furthermore, notaries are still protected under the

rights and obligations outlined in Article 1909 paragraph (3) of the Civil Code and Article 322 of the Criminal Code.

This research contributes to the understanding of the specific role of notaries within the criminal justice system, an area that has been less explored in existing literature. By focusing on the notary's function as a witness in criminal cases, particularly regarding the deeds they have created, this study fills a gap in research that has primarily focused on the notary's role in civil matters. The findings of this research provide new insights into the legal challenges and protections that notaries face when giving testimony in criminal proceedings.

ACKNOWLEDGMENT

This research is funded by the DIPA BLU Faculty of Law, Tadulako University, for the 2024 fiscal year, based on the Decree of the Rector of Tadulako University No. 2653/UN28/KU/2024. The author would like to express gratitude to the Research and Community Service Institute of Tadulako University for their support in this study.

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