

Notary's Right to Refuse to Disclose the Contents of a Deed He Has Drafted

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ABSTRACT: Notaries have a duty to keep confidential all matters relating to deeds and other documents. This correlates with the right of refusal, whereby notaries have the right to refuse to provide information about their deeds to unauthorised parties. However, there is an exception to this duty: for specific purposes, a notary is permitted to provide information and explanations regarding the deeds they have drawn up to other parties, as stipulated in Article 66 of the Notary Public Law (UUJN-P). However, the issue arises regarding the extent to which this exception to the right of refusal can be applied to notaries, including when they are required to fulfil their obligations under Article 66 of the UUJN-P to be examined, provide explanations, or submit specific documents for judicial purposes. Therefore, it is necessary to conduct research on how the regulation regarding the notary's right to refuse disclosure is applied in the context of the confidentiality of the notary's position and what the legal consequences are for a notary who fails to fulfil their obligation to maintain the confidentiality of deeds. The objectives of this research are general and specific. This research is a normative study using a regulatory approach, a conceptual approach, and a historical approach. Based on the research findings, it is known that regulations regarding the right to refuse can be found in various laws and regulations. This right of refusal is implicitly regulated in Article 4 Paragraph (2), Article 16 Paragraph (1) Letter f, and Article 54 of the Notary Law Jo Notary Law-P, Article 1909 Paragraph (3) of the Civil Code, and Article 170 Paragraph (1) of the Criminal Procedure Code. Additionally, based on the research findings, it is known that there are legal consequences for notaries who fail to fulfil their obligation to maintain the confidentiality of deeds. If a notary violates this obligation, legal consequences may arise, both administratively, civilly, and criminally.

KEYWORDS: regulations, legal consequences, notary's right of refusal, obligation to maintain the confidentiality of deeds.

I. INTRODUCTION

Indonesia is a country based on law. From an axiological perspective, the purpose of law is to maintain social order, justice, and legal certainty (Atmadja & Budiarta, 2018). The guarantee of certainty, order and legal protection certainly requires authentic written evidence of acts, agreements, decisions and legal events, which in this case is realised through authentic deeds. The definition of an authentic deed is regulated in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code), which stipulates that: An authentic deed is a deed in the form prescribed by law, made by or in the presence of public officials authorised to do so at the place where the deed is made.

Under Article 1868 of the Civil Code, for a document to have authentic evidentiary value, it must be drawn up by a public official authorised to do so. Therefore, not everyone can or is permitted to create an authentic document, but only public officials authorised by law to create authentic documents. Additionally, according to R. Subekti, an authentic document is a written document intentionally created to serve as evidence of an event and signed (Subekti, 2007). This shows that authentic deeds provide legal certainty and validity to the contents listed therein, making them a very important piece of evidence in various legal processes to ensure that the facts listed therein are accountable and recognised by law. A notary is a public official authorised to issue authentic deeds, provided that the issuance of certain authentic deeds is not specifically reserved for other public officials. The public's need for notaries and the deeds they create has seen increasingly widespread development (Arben & Utama, 2024). The explanation states that a notary is a public official authorised to draw up authentic deeds, insofar as the drawing up of certain authentic deeds is not reserved for other public officials. The need for written agreements to be drawn up in the presence of a notary is to ensure legal certainty and to satisfy the requirement for strong evidence for the parties entering into the agreement (Jalal et al., 2018). According to Article 1(1) of Law No. 2 of 2014 Amending Law No. 30 of 2004 on the Office of the Notary (hereinafter referred to as the UUJN-P), it is stipulated that: A notary is a public official authorised to draw up authentic deeds and has other powers as referred to in this Law or based on other laws.

The authority to create authentic deeds is only exercised by notaries, insofar as the creation of certain authentic deeds is not reserved for other public officials. It can be concluded that notaries are the only public officials who have this authority. Given the

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importance of the duties and position of notaries in society and the evidentiary power of the authentic deeds they create, it can be said that the position of notary is a position of trust. This position of trust, granted by law and society, requires a person who works as a notary to be responsible for carrying out that trust to the best of their ability and to uphold legal ethics, dignity and the nobility of their position. Notaries, in carrying out their duties, provide the best possible service to the community who need their services (Adjie, 2011). Notaries also provide legal counselling to their clients to achieve a high level of legal awareness so that the public can understand and appreciate their rights and obligations as citizens and members of society (Jumiati, 2016).

Currently, the public has a greater awareness of the law in conducting legal transactions, whether in the field of business agreements, property transactions, company establishment, or other social activities that use notary services to create authentic deeds that bind the parties involved in the activity. As public officials authorised to create authentic deeds, notaries bear significant responsibilities, particularly in providing legal protection and certainty to the parties involved by ensuring that every statement, agreement, and declaration contained in the deed is valid and legally binding. The role of a notary public is not limited to document creation but also involves ensuring that the rights and obligations of the parties involved in the creation of the deed are protected in accordance with applicable laws and regulations.

Authentic deeds created by or in the presence of a notary public can be used as evidence in legal disputes, serving as a means to recall past events, thereby facilitating perfect proof for legal purposes. This is important to avoid future disputes that could harm all parties involved. Thus, the role of a notary is vital in creating trust and legal certainty in various business relationships, such as banking or land transactions. The need for written evidence in the form of authentic deeds has increased in line with the growing demand for legal certainty, both at the national and international levels (Pradhipta & Imanullah, 2019).

The position held by a notary is a position of trust. As a person of trust, a notary has the right to keep confidential all information disclosed to him as a notary, even if some of it is not included in the deed (Arisaputra, 2012). As a public official, a notary performs state duties and carries out state tasks that serve the public with the authority granted and the responsibilities entrusted to them. Therefore, a notary also exercises the power and authority of the state represented by the government, which distinguishes them from other officials. Like other public officials, a notary plays a role in providing legal services to the public (Cipto Soenaroyo, 2023).

In performing their duties as mandated by law, namely the creation of authentic deeds, notaries have the authority as stipulated in Article 15(1) of the UUJN-P, which states: Notaries are authorised to create authentic deeds regarding all acts, agreements, and decisions required by law or requested by the parties involved to be recorded in an authentic deed, ensuring the certainty of the date of the deed's creation, storing the deed, issuing certified copies, copies, and extracts of the deed, provided that the creation of the deed is not also assigned or exempted to another official or person designated by law.

Article 15(2) of the UUJN-P also provides that, in addition to the authority referred to in paragraph (1), a Notary is also authorised to:

- a. authenticate signatures and establish the certainty of the date of a handwritten document by registering it in a special book or through legalisation;
- b. register a handwritten document by entering it in a special book or through *waarmerken*;
- c. photocopying original handwritten documents in the form of copies containing the descriptions as written and depicted in the relevant document or collation copies;
- d. certifying the conformity of photocopies with the original documents or legalising them;
- e. providing legal advice in connection with the preparation of deeds;
- f. drawing up deeds relating to land; or
- g. drawing up auction deeds.

Article 15(3) of the UUJN-P stipulates that: In addition to the powers referred to in paragraphs (1) and (2), notaries have other powers as regulated by laws and regulations.

The above provisions illustrate that the position of notary is a position created by law, so the performance of the notary's duties is protected by law, as are the legal documents they produce (Wiradiredja, 2015).

Notarial deeds are confidential and only one party is permitted to view and access the contents of the entire notarial deed, including the contents of the deed itself, as well as everything related to the minutes of the deed and all letters placed in the minutes, copies, excerpts, gross amounts, and all information obtained in the making of the deed. The obligation to keep confidential all matters related to the deed and other documents is to protect the interests of all parties involved in the notarial deed.

As a legal official, the notary has the obligation to maintain the confidentiality of all deeds and information obtained in the course of their duties, as the contents of the deed and access to information remain accessible, including access to regulations in accordance with Article 4(2) of the Law -Law No. 30 of 2004 on the Office of Notary (hereinafter referred to as the Notary Law) and Article 16(1)(f) of the Notary Law, a notary is required to maintain the confidentiality of the contents of the deed and all information obtained by the notary in the preparation of the deed, such as the notary's oath of office, unless otherwise provided by law.

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Notaries may face potential violations of their obligations, as stated in Article 16(11) of the UUJN-P: 'A notary may be subject to sanctions ranging from a verbal reprimand to dismissal without honour.'

The purpose of this is to ensure that matters related to and involving the notary's duties are documented and regulated in criminal procedure law, civil procedure law, and the Criminal Code. Furthermore, Article 170(1) of the Criminal Procedure Code states, "Those who, by virtue of their work, dignity, status, or position, are required to keep secrets may be exempted from the obligation to provide testimony as a witness regarding matters entrusted to them." Additionally, Article 1909(2) of the Civil Code states, "Any person who, by virtue of their position, occupation, or office under the law, is required to keep something confidential, but only regarding matters whose knowledge has been entrusted to them as such." Article 322(1) of the Criminal Code also states that 'anyone who intentionally discloses a secret that they are required to keep due to their position or occupation, whether current or former, shall be punished with imprisonment for a maximum of nine months or a fine of up to six hundred rupiah.'

In practice, it has been found that notaries, in the course of their duties related to the preparation of deeds, which give rise to problems, are required to be called as witnesses by law enforcement officials in connection with their duties and positions. This creates a dilemma for notaries, as on one hand they are obligated to maintain the confidentiality of the deeds they prepare, while on the other hand they are required to act as witnesses by law enforcement authorities, especially since Indonesia upholds the principle of Equality Before the Law. Law enforcement authorities in Indonesia include the Police, Judges, Prosecutors, and Lawyers.

Initially, approval of the summons of a notary called by law enforcement officials was the authority of the Regional Supervisory Council. This is evident in the provisions of Article 66(1) of the Notary Law, which states that: for the purposes of judicial proceedings, investigators, public prosecutors, or judges, with the approval of the Regional Supervisory Board, are authorised to: a) take photocopies of the Notary Minutes and/or documents attached to the Notary Minutes or Notary Protocol stored by the notary; and b) summon the notary to appear in an examination related to the deed they have drawn up or the Notary Protocol in the notary's custody. The Regional Supervisory Board is part of the Supervisory Board, which, under Article 1(6) of the UUJN, is defined as a body with the authority and obligation to conduct supervision and oversight of notaries. Pursuant to Article 69 of the UUJN, the Regional Supervisory Board is established at the district or city level. The membership of the Regional Supervisory Board consists of representatives from the government, notary organisations, and experts/academics.

In line with the development of time and societal needs, revisions were made to the UUJN, resulting in the enactment of the UUJN-P. Pursuant to Article 66 of the UUJN-P, which is also related to Constitutional Court Decision No. 49/PUU-X/2012, it is stipulated that: for the purposes of judicial proceedings, investigators, public prosecutors, or judges, with the approval of the Notary Ethics Council, are authorised to: a) take photocopies of the Deed Minutes and/or documents attached to the Deed Minutes or Notary Protocol in the notary's custody; and b) summon the notary to appear in an examination related to the Deed or Notary Protocol in the notary's custody. Based on these regulations, there has been a change in the authority to grant approval for the summons of a notary by law enforcement officials, which was previously granted by the Regional Supervisory Council and has now been transferred to the Notary Ethics Council. Pursuant to Article 66A of the UUJN-P, the Notary Honour Council is formed by the Minister to carry out supervision. This council consists of three notary members, two government members, and two experts or academics.

In this supervision process, the notary component is more numerous than the government and expert or academic components, as notaries have a better understanding of their profession in the supervision process. In the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.02.PR.08.10 of 2004 concerning the Procedures for the Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures, and Inspection Procedures of the Notary Supervisory Council, supervision is an activity that is both preventive and repressive, including guidance activities carried out by the supervisory council towards notaries (Bombing, 2015).

In addition to Article 66 of the UUJN-P, which regulates the authority of the Notary Honour Council in providing protection to notaries, Article 16(1)(f) of the UUJN-P constitutes a form of protection for notaries in the performance of their duties, namely that notaries are obligated to 'keep confidential all matters relating to the deeds they create and all information obtained for the purpose of creating such deeds in accordance with their oath/pledge of office, unless otherwise provided by law.'

The explanation is that the obligation to keep confidential all matters related to deeds and other documents is to protect the interests of all parties involved in the deed. Article 54 of the UUJN states that: A notary may only provide, show, or disclose the contents of a deed, the original deed, a copy of the deed, or an excerpt from the deed to persons directly interested in the deed, heirs, or persons who have acquired rights, unless otherwise provided by law.

The UUJN has established the Notary's Duty of Confidentiality as a Notary's obligation, meaning something that must be carried out without any reason. The duty to keep confidential all matters related to deeds and other documents regulated in the UUJN as its *Lex Specialis*. Furthermore, Article 170 of the Criminal Procedure Code states: 1) "Those whose work, dignity, honour, or position requires them to keep secrets may request to be exempted from the obligation to provide testimony as witnesses regarding matters entrusted to them." 2) "The judge determines the validity of all reasons for such requests."

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As previously discussed, the UUJN contains a tendency toward ambiguity regarding the right to refuse. This right requires that notaries, in the performance of their duties, must keep confidential all matters related to the deeds they create and all information obtained for the creation of such deeds in accordance with their oath of office, unless otherwise provided by law. The obligation to keep confidential all matters related to deeds and other documents is to protect the interests of all parties involved in the deed. In the definition of the right of refusal, there is an element of 'unless otherwise provided by law'. This indicates an exception to the right of refusal or, in other words, for certain purposes, notaries are permitted to provide information and details regarding the deeds they have drawn up to other parties.

The exception to the right of refusal is also regulated in Article 66 of the UUJN-P, which stipulates that: for the purposes of judicial proceedings, investigators, public prosecutors, or judges, with the approval of the Notary Honorary Council, are authorised to: a) take photocopies of the deed minutes and/or documents attached to the deed minutes or notary protocols in the notary's custody; and b) summon the notary to appear in an examination related to the deed or notary protocol in the notary's custody. However, the issue is to what extent the exception to the right of refusal can be applied to notaries, including when they are required to fulfil their obligations under Article 66 of the UUJN-P to be examined, provide information, or submit certain documents for the purposes of judicial proceedings. Such issues highlight the ambiguity or vagueness of the legal norms, as on one hand, notaries are obligated to keep their deeds confidential, but on the other hand, they are required to provide statements to support the enforcement of the law. However, the regulations do not clearly specify the extent to which notaries may provide statements or the extent to which they may provide documents related to the deeds they have created.

Based on the above background, the researcher is interested in studying the legal regulation of a notary's right to refuse to disclose information in maintaining the confidentiality of the parties' deeds based on the UUJN. Analysis Therefore, it is important to conduct further research in the thesis proposal entitled 'a notary's right to refuse to disclose information in maintaining the confidentiality of the deeds they have drafted.'

II. RESEARCH PROBLEM

The research question in this study serves as a guide to determine the direction and focus of the research. The research question helps identify the main issues to be studied and clarifies the objectives of the research. Based on the explanation in the research background, the research questions in this study are as follows:

1. How are notary rights regulated in the context of notary confidentiality?
2. What are the legal consequences for notaries who do not fulfil their obligation to maintain the confidentiality of deeds?

III. RESEARCH METHOD

The type of research used is normative research, which examines the law from an internal perspective with the object being studied (Putra, 2021). Normative research aims to find legal rules or legal doctrines to answer the legal issues being studied (Fajar & Achmad, 2013). This study uses a legal approach and a conceptual approach. The legal approach is implemented by examining all laws and regulations related to the legal issues being studied. The laws and regulations examined are not only viewed based on their legal form, but also examined in terms of their content. In the conceptual approach, legal arguments are used to solve the problems raised in the research. This is done by understanding legal definitions, legal concepts, and legal principles that are related to the legal issues being studied (Marzuki, 2015). This study uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The technique for collecting legal materials in this paper uses a literature study, which means using library sources or what is commonly referred to as secondary legal materials, which are then analysed using guidelines from laws and regulations related to the issue being studied. The analysis of legal materials in this study was conducted descriptively through legal interpretation.

IV. RESULT AND DISCUSSION

1. Regulations Concerning The Right Of Notaries To Refuse To Act In The Context Of The Confidentiality Of The Notary's Position

a. Regulations on notary confidentiality rights to maintain the confidentiality of notary positions in various laws and regulations and notary codes of ethics

One of the important principles inherent in the position of notary in Indonesia is the obligation to maintain the confidentiality of all matters entrusted to him in the performance of his duties. To ensure this obligation, the law provides legal protection in the form of the right of refusal, which is the right of a notary to refuse to provide information or disclose the contents of deeds or information known to him due to his position as a public official. Additionally, the right to refuse is also interpreted as the translation of the term 'verschoningrecht,' which means the right to be exempted from the obligation to provide testimony as a witness in a case, whether it be a civil or criminal matter. A notary's right to refuse is not merely a right but also a duty, as violating it will result in legal sanctions. A notary is not only entitled to remain silent but also obligated to do so (Tobing, 1992).

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Legally, provisions regarding the right to refuse to testify can be found in Article 1909 Paragraph (3) of the Civil Code, which stipulates that there is an exception to the obligation to give testimony if the person in question, due to their position, occupation, and office, is required by law to keep confidential matters related to their position, occupation, and office. Specifically, Article 1909(3) of the Civil Code provides an important exception for individuals who, by virtue of their position, are required to keep certain matters confidential, thereby entitling them to refuse to provide testimony in court if doing so would violate the confidentiality mandated by law.

In the context of the notary's position, this provision reinforces the principle that notaries have the right of refusal, i.e., the right to refuse to testify or disclose the contents of deeds or information obtained in the performance of their duties. This right of refusal is not solely granted to protect notaries personally, but primarily to maintain the trust of the parties who use notary services.

Additionally, this right to refuse is implicitly regulated in Article 16(1)(f) of the Notary Public Law (UUJN-P), which stipulates that in performing their duties, notaries are obligated to keep confidential all matters related to the deeds they create and all information obtained for the creation of such deeds in accordance with their oath of office, unless otherwise provided by law. Based on this obligation to keep Deeds confidential, notaries also have the right to refuse to provide information or disclose the contents of Deeds or information known to them due to their position as public officials. This right to refuse is also reflected in the judicial system, where notaries have the right to refuse to testify if doing so would reveal the confidentiality of Deeds or information obtained based on their oath of office. Provisions regarding the right to refuse can also be implicitly found in Article 4(2) of the Notary Law, which regulates the oath/pledge of a notary. One of the pledges states: I pledge that I will keep confidential the contents of the deed and the information obtained in the performance of my duties. Based on this pledge, a notary has the right to keep the contents of the deed confidential.

Article 54 of the UUJN-P also stipulates that a notary may only provide, show, or disclose the contents of a deed, gross deed, copy of a deed, or excerpt from a deed to persons who have a direct interest in the deed, heirs, or persons who have acquired rights, unless otherwise specified by law.

Provisions regarding the right to refuse to testify can also be found in the Criminal Procedure Code (KUHP). Article 170(1) provides that: those who, by virtue of their work, dignity, or position, are required to keep secrets may request to be exempted from the obligation to provide testimony as a witness regarding matters entrusted to them. This provision provides a strong basis for the notary's right to refuse to testify in criminal law. As a public official appointed to create authentic deeds, a notary is bound by an oath of office to maintain the confidentiality of all deeds and information obtained from clients. This obligation to maintain confidentiality is absolute, unless otherwise provided by law. In practice, Article 170(1) of the Criminal Procedure Code serves as legal protection for notaries if they are ever requested to provide testimony as witnesses in criminal cases related to the contents of deeds or confidential information of the parties involved. Under this provision, notaries have the right to refuse to answer questions or disclose information falling within the scope of professional confidentiality, thereby avoiding a breach of their oath of office and maintaining client trust.

Additionally, the right to refuse to testify is also outlined in the Notary Code of Ethics. According to the Notary Code of Ethics, notaries have obligations toward their clients, one of which is the duty to keep confidential all matters related to the client's affairs. This is tied to the trust placed in them, even after the client's death. This means that notaries are also obligated to keep the contents of the deed they prepare for their clients confidential from parties who have no interest in it. This obligation is then correlated with the right to refuse, which states that notaries have the right to refuse to provide information or disclose official secrets, especially regarding the contents of the deed they have prepared, to other parties who do not have a strong legal basis. Of course, this is also related to one of the notary's obligations as stipulated in the UUJN-P, namely that notaries are obliged to keep confidential everything related to the deeds they draw up and all information obtained for the preparation of deeds in accordance with their oath/pledge of office, unless otherwise provided by law.

The principle of the right of refusal is not only about protecting notaries personally, but more broadly, it is part of the legal guarantee to protect the interests of parties who use notary services. With the right of refusal, parties can provide information honestly and openly, without fear that the contents of the information will be disclosed to third parties without a valid legal basis.

In practice, the right of refusal plays an important role in maintaining public trust in the notary profession as a neutral, independent, and responsible official. Through this mechanism, notaries perform both ethical and legal roles, namely ensuring that personal and confidential information is only used as intended, in accordance with the laws and regulations.

b. The Role of MKN in Protecting Notary Rights

In the practice of notary services in Indonesia, the protection of notary confidentiality is not only regulated by law, but also safeguarded through professional oversight and protection mechanisms. One important institution involved in this is the MKN (MKN).

The MKN was established under the provisions of the Notary Law (UUJN) to uphold the dignity, honour, and integrity of the notary profession. One of the MKN's key roles is to grant approval when there is a request to summon a notary by

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investigators, prosecutors, or judges in criminal court proceedings. This means that any notary wishing to comply with a summons from law enforcement authorities must first obtain approval from the MKN.

Initially, the authority to approve requests from law enforcement officials, whether for the summoning of a notary or the retrieval of notarial minutes or copies of notarial deeds, was entirely within the purview of the Regional Notary Supervisory Board (MPD). This provision applied prior to the fundamental changes introduced by Constitutional Court Decision No. 49/PUU-X/2012. This decision paved the way for revisions to the Notary Position Law (UUJN), which subsequently gave rise to new regulations in the form of Law No. 2 of 2014 on Amendments to the Notary Position Law.

With these changes, there has been a significant shift in authority. The task of granting permission or approval for requests from law enforcement officials, which was previously held by the MPD as part of the administrative oversight body, has now been fully transferred to the MKN. This change is not merely administrative but also has important implications for the protection of the independence and dignity of the notary profession, particularly regarding the principle of document confidentiality and the right to refuse, which are inherent to the profession.

In this context, the MKN serves as the first line of defence in protecting the notary's right to refuse to disclose information, particularly when the notary is asked to provide information that could reveal the secrets of his office. Pursuant to Article 66 of the Notary Law, the summoning of a notary for investigative or judicial purposes must first obtain approval from the MKN. Through this mechanism, the MKN assesses whether the request for information is genuinely valid, relevant, and does not violate the principle of confidentiality of the notary's office, which is protected by law.

With this role, the MKN acts as a guardian of the balance between the interests of law enforcement and the protection of notaries' rights and obligations in maintaining the confidentiality of deeds and information of the parties. The MKN ensures that notaries are not misused merely as a source of information, even though such information is protected by their oath of office and public trust.

There are regulations that specifically govern the MKN, namely Minister of Law and Human Rights Regulation Number 17 of 2021 concerning the Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organisational Structure, Work Procedures, and Budget of the MKN. Based on Article 3 of Minister of Law and Human Rights Regulation Number 17 of 2021, the MKN consists of: the Central MKN and Regional MKN. The MKN consists of three elements: three notaries, two government officials, and two experts or academics.

Pursuant to Article 22(1), the Central MKN is responsible for providing guidance to: a) Notaries in the performance of their duties and functions related to the Regional MKN; and b) The Regional MKN in matters related to the duties and functions of the Regional MKN. Meanwhile, based on Article 24, the Regional MKN is tasked with: a) conducting examinations of requests submitted by investigators, public prosecutors, or judges; and b) approving or rejecting requests for approval to take photocopies of deed minutes and summoning Notaries to attend investigations, trials, prosecutions, and judicial proceedings.

When reviewing these articles, it is clear that the Regional MKN has the authority and duty to approve or reject the summoning of notaries by law enforcement officials. However, specifically, these duties and authorities will be carried out by the examination council. This is because Article 17(2) stipulates that the Regional MKN, in carrying out its duties, forms an Examination Board and is assisted by the Regional MKN Secretariat.

Pursuant to Ministry of Law and Human Rights Regulation No. 17 of 2021, prior to the MKN making a decision to grant or reject the law enforcement agency's request, an examination of the notary will be conducted by the Examination Board. The authority of the Examination Board is to examine, request the necessary documents, and prepare an examination report to be decided upon in a plenary meeting of the MKN.

Furthermore, in conducting the examination, pursuant to Article 29 of Ministry of Law and Human Rights Regulation No. 17 of 2021, the Examination Board is authorised to summon the notary based on a request from the investigator, public prosecutor, or judge. The summons of a notary must be issued officially via a letter signed by the Chairperson of the Regional MKN. In urgent circumstances, the summons may be issued initially via fax or email, but must be followed by a written summons. The summons must be issued at least five days before the date of the examination. The summoned notary must attend in person and is not permitted to send a representative. If the notary concerned fails to comply with two consecutive valid and proper summonses, the Examination Council has the authority to make a decision at the request of the investigator, public prosecutor, or judge without the presence of the notary concerned.

After conducting the examination, the Examination Board is authorised to grant approval or rejection. The results of the Examination Board's examination are reported to the Chairperson of the Regional MKN. Furthermore, based on Article 28 Paragraph (3) and Paragraph (4) of Permenkumham Number 17 of 2021, the Regional MKN Chair is obliged to respond to the request as referred to, either in the form of approval or rejection, within a maximum period of 30 (thirty) days from the date the request is received. If no response is received within that period, the request is deemed to have been automatically approved.

Pursuant to Article 32 of Ministry of Law and Human Rights Regulation No. 17 of 2021, the MKN grants approval for law enforcement officials to obtain copies (photocopies) of the notarial deed minutes and/or documents if:

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- a. There is a suspicion of a criminal offence directly related to the deed minutes or documents attached to the deed minutes or notary protocol stored by the notary.
- b. The right to prosecute has not expired as stipulated in the provisions of criminal law regulations.
- c. There is a denial of the validity of the signature of one or more parties listed in the deed.
- d. There is a suspicion that the deed has been altered or added to.
- e. There are indications that the notary has engaged in antitatum practices, i.e., backdating the deed.

Pursuant to Article 33 of Permenkumham Number 17 of 2021, the MKN grants approval for law enforcement requests to summon notaries in the interests of the judicial process if:

- a. There is a suspicion that a criminal offence has been committed in relation to the deed or other notarial documents stored in the notary's protocol.
- b. The right to prosecute is still valid and has not expired based on the rules regarding the statute of limitations in criminal law.
- c. There is a party that denies the validity of the signature contained in the deed.
- d. There is a suspicion that the contents of the deed minutes have been unlawfully reduced or added to.
- e. There are indications that the notary has backdated the deed.

2. Legal Consequences For Notaries Who Fail To Fulfill Their Obligation To Maintain The Confidentiality Of Deeds

a. Notary's Obligation to Maintain the Confidentiality of Deeds in Relation to Notary's Right of Refusal

In the legal world, notaries play a strategic role as public officials authorised to draw up authentic deeds, which are recognised and have full probative force in the eyes of the law. This position places notaries in a very important role in providing certainty, order, and legal protection for the public who require the services of authentic and accountable deeds. One of the fundamental principles inherent in the position of notary is the obligation to always maintain the confidentiality of the contents of deeds and all information obtained during the performance of their duties.

The obligation to maintain the confidentiality of deeds is not merely a formality but a tangible manifestation of a notary's professional and moral responsibility towards the parties involved. Notaries often handle information that is personal, confidential, or even strategic in nature, such as family data, business transactions, cooperation agreements, land rights transfers, and inheritance documents involving the interests of multiple parties. Therefore, maintaining the confidentiality of deeds is an absolute necessity so that parties who entrust the preparation of deeds to notaries feel safe, protected, and assured that their information will not be misused or disclosed to unauthorised parties.

The confidentiality of deeds is also a form of respect by notaries for the privacy rights and dignity of the parties whose names are listed in the deed. By maintaining confidentiality, notaries contribute to creating mutual trust between the public and the notarial institution, which ultimately supports the realisation of a legal climate that is orderly, fair, and just. This principle is reinforced by provisions in the Notary Profession Act (UUJN), which explicitly stipulates that notaries are obligated to keep confidential all matters related to the deeds and documents they create, even after they no longer hold the position of notary.

The position held by a notary can also be referred to as a position of trust. As a trusted person, a notary not only formulates the wishes of the parties into an authentic deed, but also has an obligation to keep confidential everything that is disclosed to him by the parties, even if some of it is included in the deed. As a trusted individual, the Notary must ensure that the entire process of drafting the deed is conducted with good faith, honesty, and diligence, and guarantee that the parties' intentions are accurately, validly, and in accordance with applicable legal provisions. Furthermore, the trust that parties place in notaries is based on the belief that all information, data, and statements provided, whether included in the deed or not, will remain confidential.

This is where the moral and professional responsibility of a notary lies. In many cases, parties often have to disclose personal, sensitive, or even strategic business information. As a trusted individual, a notary does not merely write or record what is to be included in the deed but also listens, understands, and evaluates the information provided. Therefore, the trust of the parties in the notary can be maintained if the notary is strongly committed to keeping confidential all matters entrusted to them, including those intentionally omitted from the deed to protect the interests of the parties.

The obligation to keep confidential everything disclosed by the parties is a principle explicitly regulated in the Notary Public Act (UUJN) and the professional code of ethics for notaries. This principle also shows that the notary profession cannot be equated with other law enforcement professions that have the authority to disclose facts in court. Instead, notaries are equipped with the right to refuse to provide information about matters that should be kept confidential, unless otherwise specified by law.

There are several legal provisions governing the notary's obligation to maintain the confidentiality of deeds. Article 16(1)(f) of the UUJN-P stipulates that in performing their duties, notaries are obliged to keep confidential all matters relating to the deeds they draw up and all information obtained for the purpose of drawing up deeds in accordance with their oath/pledge of office, unless otherwise provided by law.

Provisions regarding the confidentiality of a notary's duties can also be found in Article 4(2) of the UUJN, which governs the oath/pledge of a notary. One of the pledges states: 'I pledge that I will keep confidential the contents of the deed and

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any information obtained in the performance of my duties.' Based on this pledge, a notary is entitled to keep the contents of the deed confidential.

Article 54 of the Notary Public Law (UUJN-P) also stipulates that a notary may only provide, show, or disclose the contents of a deed, gross deed, copy of a deed, or excerpt from a deed to persons directly interested in the deed, heirs, or persons who have acquired rights, unless otherwise provided by law.

Article 16(1)(f) of the Notary Public Act (UUJN-P) explicitly sets out the fundamental duty of a notary, namely the duty to maintain confidentiality. This provision states that in performing their duties, notaries are obliged to keep confidential all matters relating to the Deeds they draw up and all information obtained for the purpose of drawing up the Deeds, in accordance with their oath or pledge of office, unless otherwise provided by law.

The substance of this article emphasises that confidentiality is not merely a matter of professional ethics but a legal obligation inherent to a notary from the moment they take their oath or pledge of office before the authorised official. This oath or pledge not only contains a commitment to perform duties honestly, independently, and impartially, but also includes a promise to keep confidential all information known to the notary in the performance of their duties, whether such information is recorded in the deed or other information not recorded but communicated by the parties.

The meaning of 'everything concerning the Deed' in Article 16(1)(f) of the UUJN-P includes the contents of the deed, the data of the parties, and supporting documents submitted or shown to the notary during the deed-making process. Meanwhile, the phrase 'all information obtained for the preparation of the Deed' includes discussions, explanations, or other information that may be personal, sensitive, or strategic, which is conveyed by the parties directly to the notary.

This provision has an important purpose: to provide legal protection for parties using notary services. With the guarantee of confidentiality, parties can disclose information as widely as possible without fear of misuse or data leakage. This also supports the creation of authentic deeds that are legal, valid, and accountable, because the contents of the deed honestly and completely reflect the wishes of the parties.

Furthermore, Article 322 paragraph (1) of the Criminal Code stipulates that anyone who intentionally discloses a secret that they are required to keep due to their current or former position or profession shall be subject to a maximum prison sentence of nine months or a maximum fine of six hundred rupiah.

To ensure that notaries' obligation to maintain the confidentiality of deeds is truly implemented in practice, the state also provides a protection mechanism through what is known as the right of recusal. The right of recusal is the notary's legal right to refuse to provide information or disclose information related to deeds and information that should be kept confidential, even if requested by a third party, including law enforcement, unless otherwise stipulated by law.

Legally, the notary's obligation to maintain confidentiality of deeds gives the notary the right to refuse to provide information about the deed to unauthorized parties. This is known as the right of recusal. Furthermore, the right of recusal also provides legal protection for the notary's obligation to maintain confidentiality of the deed. Through the right of recusal, the notary can protect the deed from unauthorized and unrelated parties.

For notaries, the right of recusal is inherent in their position as guardians of the confidentiality of the deed. This means that when a notary is summoned to testify in court regarding a deed or information obtained in the course of their duties, the notary has the right to refuse to provide information if the information falls within the scope of professional secrecy. This right can be waived only if the law expressly requires the notary to disclose the confidentiality or if written permission is granted by the Notary Honorary Council (MKN), as stipulated in Article 66 of the Notary Law.

Thus, the obligation to maintain confidentiality of deeds and the right to rebut are closely related: (1) The obligation to maintain confidentiality is the legal and ethical responsibility of a notary to protect the confidentiality of his or her client. (2) The right to rebut is a legal protection mechanism granted to a notary so that he or she can carry out this obligation without fear of being forced to reveal official secrets in court.

This right to rebut acts as a balancing act to prevent notaries from being placed in a precarious position: on the one hand, bound by an oath of office to maintain confidentiality of the contents of the deed, and on the other, facing legal pressure to testify in court. Through this regulation, Indonesian law strives to ensure that the law enforcement process is fair, without compromising public trust in the confidentiality of the relationship between notaries and the parties they serve.

In other words, the right to rebut is an extension of the obligation to maintain confidentiality, which fortifies the integrity of the notary profession, ensuring its continued standing as guardians of public secrets, entrusted with producing authentic, valid deeds that are accountable before the law.

b. Exemption from the Notary's Obligation to Maintain the Confidentiality of Deeds

In principle, every notary has an absolute obligation to maintain the confidentiality of all matters relating to the deeds they draft and all information obtained during the deed-making process. This obligation is fundamental because it is one of the pillars that support the existence of the notary office as a position of trust. The public entrusts various important information,

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whether personal, family, or business, to notaries with the belief that all such information will be kept confidential and will not be leaked to unauthorized parties.

However, although the obligation to maintain confidentiality is absolute in principle, the law also stipulates exceptions in certain circumstances. These exceptions are important as a form of balance between protecting the confidentiality of the parties and the interests of law enforcement and justice. The existence of exceptions in the UUJN-P can be seen in Article 16 Paragraph (1) Letter F, which stipulates that: notaries are obliged to maintain the confidentiality of all matters relating to the deeds they draft and all information obtained for the purposes of drafting the deeds in accordance with their oath/promise of office, unless the law stipulates otherwise. The phrase "unless the law provides otherwise" indicates that there are exceptions under the law to the notary's obligation to maintain the confidentiality of deeds.

Exceptions to this obligation to maintain confidentiality are regulated in the UUJN, which essentially states that the obligation to maintain confidentiality does not apply if the law provides otherwise. This means that there are circumstances under which a notary is permitted or even required to disclose information that should be kept confidential. One example is when a notary is summoned to testify in court in a criminal or civil case directly related to the deed they drafted. If the court legally orders it, the notary may disclose certain information as long as it is regulated by statutory provisions.

Regulations regarding exceptions to notaries' obligations to maintain the confidentiality of deeds can be found in Article 66 of the UUJN-P, which stipulates that:

(1) For the purposes of the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary Public Prosecutor's Office, have the authority to:

a. take photocopies of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Notarial Protocol held by the Notary Public; and

b. summon a Notary Public to attend an examination related to the Deed or Notarial Protocol held by the Notary Public.

(2) A minutes of submission is prepared for the retrieval of photocopies of the Minutes of the Deed or letters.

(3) The Notary Public Prosecutor's Office, within a maximum of 30 (thirty) working days from the date of receipt of the request for approval, must provide a response, accepting or rejecting the request for approval.

(4) If the Notary Public does not provide a response within the time period specified in the UUJN, the Notary Public Prosecutor's Office shall be deemed to have accepted the request for approval.

The provisions contained in this article essentially regulate the mechanism for exceptions to the notary's obligation to maintain the confidentiality of deeds and the information obtained. This article emphasizes that although notaries are bound by the principle of confidentiality, there are certain circumstances under which this confidentiality may be breached for the purposes of law enforcement, particularly during investigations, prosecutions, and court proceedings.

Specifically, this article authorizes investigators, public prosecutors, or judges to take certain actions related to notarial minutes and protocols:

First, they may take photocopies of the minutes and any documents attached to the minutes or protocols;

Second, they have the authority to summon notaries to attend examinations directly related to the deeds or protocols held by the notary.

However, to prevent abuse of authority that could violate the principle of confidentiality, such actions cannot be undertaken lightly. This article explicitly requires prior approval from the Notary Council (MKN). The MKN serves as the guardian of the independence and honor of the notary profession, while also acting as a check and balance mechanism to ensure that requests from law enforcement officials remain in line with the obligation to maintain confidentiality of deeds.

Furthermore, the retrieval of photocopies of minutes of deeds or supporting documents must not be conducted informally; instead, a report of the transfer must be prepared. This ensures that the retrieval process is legally recorded, transparent, and legally accountable.

Administratively, the MKN has a maximum of 30 (thirty) working days from receipt of the request to provide a response, whether the request is approved or rejected. This deadline is crucial to prevent delays that could hinder the judicial process. Furthermore, if the MKN fails to provide a response within this time limit, the Honorary Council is legally deemed to have granted automatic approval (positive fictitious).

This provision demonstrates the balance between the obligation to maintain confidentiality and the interests of law enforcement. On the one hand, notaries are still granted legal protection through the MKN approval mechanism to prevent them from arbitrarily providing information or documents. On the other hand, law enforcement officials still have limited access to obtain relevant documents if truly needed to prove a case in court.

Furthermore, Article 224 Paragraph (1) of the Criminal Code also stipulates that: anyone summoned as a witness, expert, or interpreter under the law who intentionally fails to fulfill an obligation that must be fulfilled under the law shall be subject to criminal penalties of up to nine months' imprisonment, and in other cases, up to six months' imprisonment.

The essence of this provision is to ensure an effective and fair law enforcement process. The presence of witnesses, experts, or interpreters is not merely a formality but also a crucial element in the evidentiary process in court. Witness testimony

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and expert opinions often serve as a basis for judges in establishing material truth, while interpreters bridge any language barriers that may arise in the courtroom.

In judicial practice, notaries are among the parties who can be summoned as witnesses or experts. As a public official, a notary has the authority to create authentic deeds with full evidentiary force. Therefore, a notary's testimony regarding the deeds they create can be a crucial element of the evidence, particularly in cases of dispute regarding the authenticity, validity, or intent of the deed.

Thus, Article 224 Paragraph (1) of the Criminal Code serves as the basis for ensuring that any party with a legal obligation, including notaries as witnesses or experts, cannot arbitrarily evade legal summons. However, its implementation must still take into account the professional rules and ethics of the notary profession as stipulated in the Notary Law and its derivative regulations.

Article 159 of the Criminal Procedure Code stipulates that anyone legally summoned by an investigator, public prosecutor, or judge is required to appear in response to the summons. If someone deliberately fails to appear or refuses to testify without a valid legal reason, the provisions of a forced summons may apply. This is where the principle "no one may refuse to be a witness" (except those expressly excluded by law) applies as a legal obligation.

This principle of obligation is also emphasized through the threat of criminal sanctions in Article 224 of the Criminal Code, which essentially states that anyone summoned as a witness, expert, or interpreter who intentionally fails to fulfill this obligation is subject to imprisonment. This demonstrates the state's position that witness testimony is a crucial instrument in upholding the law.

In the context of notaries, as public officials regulated by the UUJN (National Law), notaries have a special role. Notaries are often asked to appear as witnesses in court because the deeds they prepare are authentic and have full evidentiary force. If the validity or authenticity of a deed is disputed, the testimony of the notary who prepared it is crucial to establishing the material truth. The obligation of a notary to appear in court is regulated in Article 66 of the UUJN, which stipulates that a notary may only be summoned to testify regarding a deed they have drawn up after obtaining written approval from the Regional Supervisory Council (MPD). This protects the notary's obligation to maintain professional secrecy, as stipulated in Article 4 and Article 16 paragraph (1) letter f of the UUJN.

This means that, although in principle everyone is obliged to comply with a summons as a witness, notaries are subject to additional requirements in the form of mechanisms to protect professional secrecy. Once permission from the Supervisory Council has been granted, the notary is obligated to attend and testify truthfully in court. Failure to comply without a valid reason after obtaining official permission may subject them to criminal sanctions under Article 224 of the Criminal Code.

Therefore, in practice, the legal obligation to testify and testify for a notary cannot be separated from the principle of protecting professional secrecy. Notaries must balance their obligations as witnesses supporting law enforcement with their ethical and legal obligations to maintain their clients' confidentiality. This collaboration between the Criminal Procedure Code and the UUJN reflects how criminal procedure law and notary law complement each other to support a fair, transparent, and accountable judicial process.

c. Legal Consequences for Notaries who fail to Fulfil their Obligation to Maintain the Confidentiality of Deeds

As public officials, notaries play a crucial role in creating legal certainty, order, and protection through the creation of authentic deeds. One of the fundamental obligations inherent in the notary's position is the obligation to maintain the confidentiality of all matters related to the deeds they create and information obtained in the performance of their duties. This obligation is expressly stipulated in Article 4 of the UUJN, which stipulates that notaries must maintain the confidentiality of the contents of deeds and all information obtained to protect the interests of the parties concerned. Article 16 Paragraph (1) Letter f of the UUJN-P also regulates the notary's obligation to maintain the confidentiality of deeds, unless otherwise specified by law.

Confidentiality of deeds is a form of legal protection for parties using notary services. Through this obligation, parties are guaranteed the freedom to provide accurate information and data, without fear of misuse or disclosure to unauthorized parties.

If a notary violates this obligation, legal consequences will arise, including administrative, civil, and criminal.

From an administrative perspective, violations of the obligation to maintain the confidentiality of notarial deeds may be subject to sanctions by the Notary Supervisory Board in accordance with the provisions of the UUJN. These sanctions are regulated in Article 16 Paragraph (11) of the UUJN-P, which stipulates that: notaries who violate the provisions referred to in Article 16 Paragraph (1) letters a to l, including the obligation to maintain the confidentiality of notarial deeds, may be subject to sanctions in the form of: a) written warning; b) temporary dismissal; c) honorable dismissal; or d) dishonorable dismissal.

From a civil perspective, a notary who intentionally or negligently leaks the confidentiality of a deed, resulting in losses for the interested party, can be sued for damages based on the principle of breach of contract or unlawful act as stipulated in the Civil Code (KUHPerdata). In this case, the notary is obligated to compensate for the material and immaterial losses incurred as a result of the breach of confidentiality.

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From a criminal perspective, a notary who intentionally leaks the confidentiality of a deed without legal basis can be prosecuted under Article 322 of the Criminal Code, which stipulates the criminal penalties for anyone who, due to their position or work, is required to maintain confidentiality but intentionally leaks it. The penalty for this violation is a maximum of nine months' imprisonment or a maximum fine of six hundred rupiah.

Furthermore, breaches of professional secrecy also have implications for the integrity and reputation of the notary profession. Notaries found to have violated the obligation of confidentiality will lose public trust, which is a key asset in carrying out their profession. The loss of public trust can directly impact a notary's credibility and even affect the legality of their deeds, especially if the violation results in the court annulling the deed.

Therefore, the obligation to maintain the confidentiality of deeds is not merely a formality, but a legal obligation with serious consequences if ignored. This serves as a reminder for every notary to always uphold the code of ethics and oath of office in carrying out their duties to uphold the dignity of the profession and ensure legal certainty for the public.

V. CONCLUSIONS

1. Regulations regarding the right of denial can be found in various laws and regulations. This right of denial is implicitly regulated in Article 4 Paragraph (2), Article 16 Paragraph (1) Letter f, and Article 54 UUDN Jo UUDN-P which essentially regulates that in carrying out his position, a notary is obliged to keep the deeds he has made confidential, unless the law determines otherwise. In addition, the right of denial is also found in Article 1909 Paragraph (3) of the Civil Code which provides an important exception for people who because of their position are required to keep certain things confidential, by having the right to refuse to provide testimony in court. In the Criminal Procedure Code, there are also regulations regarding the right of denial, namely in Article 170 Paragraph (1) which regulates that those who because of their work, dignity or position are required to keep secrets, can request to be released from the obligation to provide testimony as witnesses, namely regarding matters entrusted to them.
2. There are legal consequences for notaries who do not fulfill their obligation to maintain the confidentiality of deeds. If a notary violates this obligation, there will be legal consequences, both administrative, civil, and criminal. From an administrative perspective, violations of the obligation to maintain the confidentiality of deeds can be subject to sanctions by the Notary Supervisory Board in accordance with the provisions of Article 16 Paragraph (11) of the UUDN-P, namely from a written warning to dishonorable dismissal. From a civil perspective, a notary who intentionally or due to negligence leaks the confidentiality of a deed, thereby causing losses to interested parties, can be sued to pay compensation. From a criminal perspective, a notary who intentionally leaks the confidentiality of a deed without legal basis can be charged with the provisions of Article 322 of the Criminal Code. In addition, violations of official secrecy also have implications for the integrity and reputation of the notary profession.

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