

## **Analysis of Constitutional Court Decision No. 16/PUU-XVIII/2020 Regarding the Honorary Council's Approval of Summoning a Notary in the Examination of Criminal Cases**

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### **Abstract**

*In writing this journal the author discusses legal issues regarding the Analysis of the Constitutional Court Decision Number 16/PUU-XVIII/2020 concerning the Approval of the Honorary Notary Council for Summoning Notaries in the Examination of Criminal Cases. The Constitutional Court (MK) stated that it did not accept and rejected the judicial review of Article 66 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions regarding the examination of Notaries in the judicial process with the approval of the Notary Honorary Council ( MKN). The Petitioners argue that the phrase with the approval of the Notary Honorary Council in Article 66 of the Law on the Position of Notaries places the Notary Honorary Council as having absolute and final authority to approve or disapprove a notary's summons to attend a case examination. This means that investigators, public prosecutors and judges cannot take further legal action if the Notary Honorary Council does not give their approval. With the Constitutional Court's decision issued by the Constitutional Judge regarding Article 66 paragraph (1) of the Notary Law, a problem arises regarding the basis of the judge's consideration of the Constitutional Court's decision regarding the Honorary Council's approval of the summons of a Notary in the examination of criminal cases. The approval of the Notary Honorary Council in granting permission to the parties to take or notarize and examine the Notary remains valid. The Constitutional Court (MK) stated that it did not accept and rejected the material review requested by the Indonesian Prosecutors Association.*

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## **1. INTRODUCTION**

### **A. Background**

The rule of law is the concept of the state idealized by the founding fathers of the nation who discussed and formulated the 1945 Constitution of the Republic of Indonesia. Affirmation as a state of law is not just about making the ruler's statement a law, but the law should have the function and role of creating rational order and upholding justice for as many people as possible.

Indonesia is a State of Law, this phrase is stated in the Indonesian Constitution Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. Because Indonesia is a state of law, every citizen has the direct right to legal protection and every citizen is equal before the law without distinction. differentiate between types, races, religions and groups or positions. So that a beautiful, peaceful, just and dignified life order is created. In the 1945 Constitution of the Republic of Indonesia, Article 28D paragraph 1 states that every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.

This article clearly states that the state guarantees that everyone's position is equal before the law, without any differences or special protection between one person and another. One example of a case of enforcing Indonesian constitutional law is the Constitutional Court decision No. 16/PUU-XVIII/2020 concerning the Approval of the Honorary Council for Summoning Notaries in the Examination of Criminal Cases.

The Petitioner, in this case the Indonesian Prosecutor's Agreement (PJI), takes issue with Article 66 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a Notary, namely: "For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Honorary Council, the Notary has the authority to take photocopies of the minutes of the deed and/or letters attached to the minutes or protocol of the Notary in case of Notary irregularities. ; and summon the Notary to attend an examination relating to the Notary's deed or protocol which is subject to Notary deviation."

Constitutional review of Article 66 of the Notary Position Law, both in Law Number 30 of 2004 and its amendment, namely Law Number 2 of 2014, at least to date there have been four Constitutional Court decisions regarding the constitutional review of the a quo Article, namely the Court's Decision Constitution Number 49/PUU-X/2012, 72/PUU-XII/2014, 22/PUU-XVII/2019 and 16/PUU-XVIII/2020. Where the constitutional review of the a quo article relates to the regulation of procedures for summoning a Notary for the purposes of investigation and examination. Based on the legal considerations of the four a quo decisions, it is clear that the Constitutional Court has interpreted legal texts.

The interpretation used in this research is legal texts because the object is norms, thus the technique of interpreting the contents of these norms is the most appropriate technique for answering the problem. Ultimately, the quality of legal research can be measured by the quality of conceptual analysis, reasoning, rhetoric and finally the quality of references in the text.

The research results reveal that the four a quo decisions show that the Constitutional Court carried out textual and/or meta-textual interpretation activities. Likewise, after observing there is an indirect relationship between one of the legal considerations of Constitutional Court Decisions Number 49/PUU-X/2012, 72/PUU-XII/2014, 22/PUU-XVII/2019 and 16/PUU-XVIII/2020 and amendment to Article 66 as contained in Law Number 2 of 2014; so that the honor of the Notary is also maintained by implementing a careful attitude from law enforcers in carrying out legal action against the Notary. For this reason, the four a quo decisions have different rulings, some are accepted, some cannot be accepted and/or some are rejected.

The matter that is the subject of the lawsuit by the Petitioners is the provision that requires the approval of the Notary Honorary Council (MKN) to take a photocopy of the minutes of the Notary's deed/protocol, or to summon the Notary by law enforcement for the purposes of the judicial process.

## **B. Formulation of the problem**

The problem statement is used to clarify and provide important direction regarding the problem to be raised. So based on the background of the problem above, the author formulates the problem as follows:

1. What is the legal analysis of the Constitutional Court's decision No. 16/PUU-XVIII/2020 regarding the Approval of the Honorary Council for Summoning a Notary in the Examination of Criminal Cases in terms of the legal theory used by the judge in the decision?

2. Are there any discrepancies or legal gaps found in the Constitutional Court decision No. 16/PUU-XVIII/2020? What's the solution?

### C. Research purposes

In writing this paper, the author has the following objectives:

To be able to analyze a problem/court decision using legal methods, or through legal theory and be able to find legal solutions if legal gaps or inconsistencies are found.

### D. Research Uses

The authors hope that the results of this research will be useful for two things, namely:

1. Theoretical benefits

So that the writing of this paper makes a theoretical contribution to the development and progress of science, in this case the development and progress of civil law in particular and the development of legal science in the study of legal theory.

2. Practical benefits

So that this writing can be input and consideration for judges in efforts to enforce the law regarding the accountability of Notaries for deeds that have been made. Additionally, this paper can be used as an additional reference for academics, writers and people interested in the same field of study.

## 2. LITERATURE REVIEW

### Notary's Position as a Public Official

In carrying out his office, the Notary is in a neutral and impartial position, meaning that the Notary is outside the party carrying out the legal relationship and is not a party to the legal relationship. Notaries carry out their position in a neutral position between those present who ask for clarification. To ensure this neutrality, the Notary must act independently and impartially and not be influenced by the wishes of certain parties, especially if these wishes violate applicable legal provisions or are detrimental to other parties. .

In terms of maintaining the independence of Notaries in carrying out their positions, the appointment of Notaries is carried out by the government based on attributive authority or the provisions of the Law to carry out some of the powers possessed by the state, especially in the field of civil law. An authentic deed is evidence for the parties in an agreement which contains the rights and obligations of the parties relating to the matters that have been agreed upon.

Therefore, an authentic deed is useful for the parties to ensure their respective rights and obligations for the sake of legal certainty, order and legal protection for the interested parties and also for society as a whole. The authenticity of the deed remains even though the Notary concerned still has power even though he can no longer provide information regarding events at the time the deed was made.

An authentic deed that has been executed by a Notary does not preclude the possibility of violations occurring in the contents of the deed and every time there is an alleged violation of the law, the process of inquiry, investigation and trial must be carried out, in this case the Notary will reveal secrets regarding the contents of what was done in front of him. Regarding responsibility for deeds made before a Notary, it needs to be emphasized that the authority of a Notary in making Notarial deeds does not mean that the Notary can freely, according to his wishes, make authentic deeds without the parties being asked to make the deed.

Three conditions must be met in an authentic deed, namely:

1. By or in the presence of an authorized public official (authorized public official) where the matter issued by the authorized official in question must be trusted and acknowledged to be in accordance with the law (*rechtmatig*), for example a deed made by a Notary, auction official, deed making official civil registration and so on;
2. The format or form of the deed has been determined by law;
3. The deed is held at the place where the public official is authorized or at the legal domicile of the public official.

These three conditions must be met cumulatively. If one of these conditions is not met, the evidentiary power of the deed is not authentic and only has the evidentiary power of being a private deed. The requirements for authenticity of a Notarial deed are as follows:

1. The presenters face the Notary;
2. The presenters made their point;
3. The notary determines the intentions of the parties in a deed;
4. The notary reads the wording in the form of the deed to the audience;
5. The presenters put their signatures, which means confirming the things contained in the deed and the signing must be done at that time;
6. Attended by at least 2 (two) witnesses, unless otherwise provided by law.

The Notary's responsibilities include the material truth of the relevant deed, divided into 2 points, namely:

1. Notary's civil responsibility for the material truth of the deed he or she makes; The juridical construction used in civil responsibility regarding the material truth of what is made by the Notary is the construction of an unlawful act.
2. Notary's criminal responsibility for material truth in the deed he or she makes; related to criminal provisions are not regulated in the UUJN, but the Notary's criminal responsibility is imposed if the Notary commits a criminal act.

UUJN only regulates sanctions for violations committed by Notaries against UUJN, these sanctions can be in the form of deeds made by Notaries that do not have authentic power or only have the power of private deeds. The Notary himself can be given sanctions in the form of a warning or dishonorable dismissal.

### 3. DISCUSSION

#### A. Analysis of the Judge's Decision Viewed from Legal Theory Regarding the Perspective of Notary's Responsibility for Deeds

Legal Opinions in Constitutional Court Decisions Based on the Composition of Junior Constitutional Judges reveals that what is meant by "legal opinions in Constitutional Court decisions based on the composition of Constitutional Judges" is: "Includes all legal opinions of constitutional judges in the Constitutional Court decisions in question, both legal opinions contained in the legal considerations (*ratio decidendi*), different reasons (*concurring opinions*) and/or different opinions (*dissenting opinions*). In the end, whatever the resulting composition, the order of writing the composition is as follows: legal considerations, different reasons, new then the last one is a different opinion.

The legal research used in this decision is normative legal research because the object is norms, therefore the approach used uses interpretation techniques from the contents of these norms which is the most appropriate technique for answering the problem. In the end, the quality of legal research can be measured by the quality of conceptual analysis, reasoning, rhetoric, and finally the quality of references in texts to understand the law.

In the petition, it is argued that the loss of the a quo article was actually experienced by Petitioner II as a prosecutor tasked with handling the criminal case of providing false information in an authentic deed. This started with a report to investigators with number LP/508/IV/2018/Bareskrim dated April 16 2018. Based on this report, investigators issued an Investigation Order Number SP.Dik/266/V/RES.2.4/2018/Dit.Tipidus dated 15 May 2018 and has sent an Investigation Commencement Order (SPDP) Number R/91/V/RES.2.4/2018/Dit.Tipideksus dated May 15 2018 to the Deputy Attorney General for General Crimes.

Then, in the process of examining the case, the National Police Headquarters Criminal Investigation Unit investigator sent a letter to the Chairman of the Honorary Council of Notaries of West Java Province Number B/1044/V/RES.2.4/2019/Dit.Tipideksus dated 3 May 2019 which basically requested approval to carry out an examination of the Notary in the name of Patricia Tirta Isoliani Ginting. To this letter, the Notary Honorary Council gave an answer which basically could not agree to the investigator's request. Thus, until now the enforcement process for this case has been hampered and is detrimental or at least has the potential to harm prosecutors and the public in general.

In fact, material testing for approval or permission from the Honorary Council of Notaries to take minutes of Notarial deeds/protocols or Notary examinations is nothing new. In several cases, the Constitutional Court canceled similar provisions in the Law on the Position of Notaries.

Meanwhile, the government, the DPR and the Indonesian Notary Association will of course have one voice in the view that the provision of approval from the Notary Honorary Council, in taking photocopies of the minutes of the Notary's deed/protocol or notary examination, is in line with the existence of the right to deny (*verschoningsrecht*) and the obligation to deny (*verschoningsplicht*) owned by a Notary. In the world of notaries, the meaning is very well known and understood.

The rights and obligations of a Notary are stated in Article 16 paragraph (1) letter f, Article 54 paragraph (1) of the Notary Position Law, Article 322 of the Criminal Code, Article 170 of the Criminal Procedure Code, Article 1909 of the Civil Code, Article 146 HIR and Article 89 of the Law. -Law No. 51 of 2009 concerning State Administrative Courts. In Article 16 paragraph (1) letter f of the Notary Position Law, it is stated:

In carrying out his office, a Notary is obliged to: keep confidential everything regarding the deed he makes and all information obtained in order to make the deed in accordance with his oath/promise of office, unless the law determines otherwise.

Article 54 paragraph (1) of the Law on the Position of Notary states that a Notary can only give, show, or inform the contents of a deed, Whole Deed, copy of the deed or extract from the deed, to a person who has a direct interest in the deed, an heir, or a person who has acquired a right. unless otherwise determined by statutory regulations. In Article 322 of the Criminal Code, it is stated that anyone who deliberately discloses a secret that must be kept because of his position or livelihood, whether current or previous, is threatened with imprisonment for a maximum of nine months or a fine of a maximum of nine thousand rupiah. If a crime is committed against a particular person, then the act can only be prosecuted based on that person's complaint. Meanwhile, Article 170 of the Criminal Procedure Code states:

1. Those who, because of their work, dignity or position, are obliged to keep secrets, can ask to be released from the obligation to give information as witnesses, namely about matters entrusted to them.

2. The judge determines whether all the reasons for the request are valid or not.

Where in this case it turns out that the Constitutional Court's decision used conceptual analysis as intended in the Constitutional Court's decision Number 16/PUU-XVIII/2020 with a unanimous composition of all constitutional judges. This also means that the decision was decided without any different reasons and different opinions, ideas or understandings related to the legal opinion agreeing.

According to the author, judges decide cases by analyzing the case using legal theory and also jurisprudence with withdrawal procedures and a logical way of thinking, namely by connecting the legal considerations of the previous a quo decision which cannot be separated from the opinions, views and thoughts expressed by the judges. previous decisions contained in previous judges' decisions in jurisprudence by interpreting them textually, while the rhetoric can be observed by using effective language.

Judges focus on the law, in this case, the constitution is also a written instrument which also has a higher level than the law, and where the constitution can determine its legal impact on the law. Therefore, a more in-depth interpretation activity is needed.

In judicial practice, one method of constitutional interpretation can be used by judges in the same way as other methods of constitutional interpretation. There is no requirement for judges to only choose and use one particular constitutional interpretation method, for example only choosing and using an originalism interpretation method which is based on original intent. Judges can use several methods of constitutional interpretation simultaneously. In considering the decision, there is an interpretation or explanation of the law which has grammatical, systematic, teleological and historical elements.

Judges have the freedom to use types or methods of interpretation, but a judge must still have a strong basis for argumentation as to why he chooses a particular type or method of interpretation.

In this case the author thinks that constitutional judges use the theory of legal certainty and the theory of expediency. This can be seen from the legal interpretation used. When interpreting the constitution, constitutional judges are practically oriented in the proper sense. Namely textual interpretation and meta-textual interpretation. Textual interpretation through a legislative approach in this case consists of translating legal texts, legal provisions, legal norms, in a pre-interpretive sense, or formulating rules, such as constitutional clauses or laws. Becoming a legal norm, or more precisely an explicit legal norm.

Interpretation using a statutory approach carried out by the Constitutional Court as above is carried out by translating authoritative legal texts from various legal products to make explicit legal norms. In this case, the Constitutional Court declared that the Petitioner had no legal standing.

The legal products that are used as explicit legal norms include Constitutional Court Decisions Number 49/PUU-X/2012, 72/PUU-XII/2014, 22/PUU-XVII/2019 and 16/PUU-XVIII/2020. One thing that was not fulfilled for the Petitioner was that the research method used in writing this journal was normative juridical. The approach used is a statutory approach and a conceptual approach. This concept uses a normative juridical method with a statutory approach and the concept of legal materials used, namely; primary, secondary and tertiary legal materials. The analysis technique for the legal material that has been collected uses grammatical interpretation and systematic interpretation methods.

In this case, the Petitioner feels disadvantaged by the provisions of the a quo Article along the phrase/sentence "with the approval of the Notary Honorary Council". The Association of Indonesian Prosecutors as Petitioner I feel that it has legal standing, one of the arguments of which is that as the only professional organization for prosecutors, it is responsible for critical matters not only to protect their constitutional rights, but also to protect prosecutors throughout Indonesia whose rights and/or or its constitutional authority has been harmed or at least has the potential to be harmed by the enactment of the a quo phrase/sentence.

The decision explains whether there is a discrimination issue in a law or not, which can be seen from the perspective of how the constitution formulates the protection of a constitutional right, in the sense of whether the constitutional protection of that right is placed within the framework of due process or within the framework of equal protection. Such a distinction is important to make because if a law denies the rights of all people, then such denial is more appropriate to be assessed in the context of due process. However, if a law turns out to deny a right to some people but grants such a right to other people then This situation can be considered a violation of the principle of equal protection.

Furthermore, the Constitutional Court stated that all criminal law enforcement processes against Notaries must be carried out without interference or interference from other powers outside the judiciary. This is in line with the principle of independent administration of judicial power as regulated in Article 24 of the 1945 Constitution and Article 3 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states, "All interference in judicial affairs by other parties outside judicial authority is prohibited, except in cases as intended in the 1945 Constitution of the Republic of Indonesia";

According to the Constitutional Court regarding Notaries as intended in Article 66 paragraph (1) of the Law on the Position of Notaries, different treatment can be justified if a person's treatment is related to actions within the scope of the code of ethics, namely those related to the attitudes, behavior and actions of Notaries in carrying out their duties. related to morality. According to the Court, there is no need for different treatment in the Notary's position to be regulated and given protection in the Notary's Code of Ethics.

Therefore, the Constitutional Court stated that the requirement for approval from the Notary Honorary Council does not conflict with the principle of independence in the judicial process and does not conflict with the obligations of a Notary as a citizen who has an equal position before the law.

In this way, it will also be avoided that there will be a protracted court process which will result in protracted efforts to enforce justice which in the end can actually lead to a denial of justice itself. Justice delayed is justice denied.

Furthermore, the Constitutional Court stated that the pretrial process by investigators, public prosecutors, or judges to take documents in the Notary's custody and summon the Notary to attend an examination relating to the documents he or she created, which can only be carried out with the approval of the Notary's Honorary Council, is included in group of arrangements which should not contain different treatment which is contrary to the principle of equal protection as guaranteed by Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution, namely equality or equality before and after the government.

## B. Notary Responsibilities Based on Notary Position Regulations

The responsibility of a Notary is stated in Article 65 UUJN which states that a Notary is responsible for every deed he or she makes, even though the Notary's protocol has been submitted or transferred to the party holding the Notary's protocol.

The Notary's responsibilities in carrying out his/her duties are based on the Notary's code of ethics. The Notary's oath of office and the Notary's code of ethics contain the secrets of the Notary's position. As a position of trust, the Notary is obliged to safeguard the secrets entrusted to him. Punishment against a Notary can only be carried out with limitations, if there is legal action from the Notary regarding the birth, formal and material aspects of the deed that is deliberate, full of awareness and conviction and planned that the deed is made before the Notary or by the Notary together (in agreement) with the presenters to use as a basis for committing all criminal acts; there is legal action by a Notary in making a deed before or by a Notary which, if measured based on the UUJN, is not in accordance with the UUJN; and the Notary's actions are also inappropriate according to the agency authorized to assess the actions of a Notary, in this case the Notary Honorary Council.

The Notary profession is protected by the Notary Honorary Council (MKN), however the MKN only has the role of protecting the Notary profession, not the Notary's personality. Notaries must have good moral integrity, thoroughness and good skills in making authentic deeds that comply with Notarial regulations. If the authentic deed complies with the regulations of the Notary Law, then the Notary does not need to be afraid of being summoned by the police for questioning. This can actually help the police in enforcing the law in Indonesia.

Notary as a position has limitations in terms of its authority. Regarding the time limit for the Notary's responsibility for the deed made, it is limited to the Notary's physical and spiritual ability in carrying out his position. A notary who is no longer in office does not have the authority to make deeds and other authorities possessed by a notary who is still in office.

The explanation in Article 65 UUJN Number 2 of 2014 contains vague norms regarding time limits for accountability for Notaries who are no longer in office. This article does not specifically explain the expiry date for the notary's responsibility for deeds that have been made, so this article does not have legal certainty. Storing Notarial protocols by the Notary holding the protocol is an effort to guarantee and maintain the existence of the Notarial deed.

Notarial deeds in raw form will be kept by the holder of the Notarial protocol, even though the Notarial protocol has been handed over to another Notary, this does not mean that the Notary who is no longer in office is free from his responsibility for these deeds. There is no position in Indonesia whose responsibilities are unlimited. Every person who holds or holds a certain position in any field as an implementer of a state structure, government or organization has limitations. Each position has a time limit for responsibility, namely as long as the person concerned is still in office, because if the position that has been held has been completed then the person concerned has also finished the responsibilities in the position that he has held. Laws are regulations made by the authorities with the aim of regulating the way of life in society.

Basically, the law imposes a burden of responsibility for actions carried out by society. The law provides boundaries or signs of responsibility, this is done as a form of legal protection provided to the community. Legal protection is a form of service provided by the state to provide a sense of security to the community. The product of a



position in an agency must be in accordance with the laws of that position and the product remains valid even though the official in question no longer holds office.

If a party feels aggrieved by a product of office made by an authorized official, even though the official in question is no longer in office, then the party who feels aggrieved can file a lawsuit with the State Administrative Court and what is being sued is the object of the lawsuit.

This does not apply to Notaries, the product made by a Notary is an authentic deed made according to their authority based on the wishes of the parties. So if there is a party who feels disadvantaged regarding a deed made by a Notary, then that party can file a lawsuit at the General Court.

Tari as an office holder is obliged to act professionally in carrying out his position, in accordance with the standards set out in the UUJN, and provide the best possible service to the community.

Based on the concept of position as above, a Notary as a position has limits in terms of the authority he has and has a time limit in carrying out the duties and positions he holds. The time limit for a Notary's liability is as long as the land carries out his or her official duties, until the Notary retires because he or she has reached the age of 65 years or extended to 67 years, or retires at his or her own request.

For a substitute Notary, if he no longer acts as a substitute Notary and does not make any more deeds, then the Substitute Notary does not need to take any responsibility, nor does the temporary Notary Public. Even though the Notary's protocol has been handed over to the Notary who holds the protocol, this does not mean that responsibility shifts to the Notary who holds the protocol, whereas the Supervisory Council which determines the storage place for the Notary's protocol which at the time of handover of the Notary's protocol is 25 years old or more only has the obligation to carry out the deed as is. hold or keep it.

It is very difficult to accept logically if a Notary is sued in relation to a deed made in front of or by a Notary, because the scope of the Notary's duties is to make the deed desired by the parties for a particular legal action, apart from that the Notary also provides legal advice in accordance with deed issues. However, what is stated in the deed in question is entirely the wishes and information of the parties concerned. Legal protection for Notaries who are still serving as witnesses, suspects or defendants is specifically regulated in Article 66 UUJN Number 2 of 2014.

This article expressly states that for the purposes of judicial processes, investigators, public prosecutors and judges who require photocopies of minutes of deeds and/or letters attached to minutes of deeds or Notary protocols that are kept by the Notary, must obtain approval from the Council. Notary's honor first. However, this article does not apply to Notaries who are no longer in office or have retired. In this case, it can be interpreted that there is no legal protection for a Notary who has retired, even though he still holds responsibility for the deed he has made. Notaries who have completed their service do not receive distributive justice, namely justice related to equality of rights, because notaries who have served have lost their rights in legal protection according to their position even though they still have responsibility for the deed they have made when the deed was problematic.

In terms of providing testimony, a Notary cannot disclose the deed he has made, either in part or in full, because this is in accordance with Article 54 of the Notary's Office Law, to produce all the things that have been told to him, because a deed made by or in the presence of a Notary is a evidence that has perfect evidentiary power. The notary only formulates the information and statements he obtains from the audience.

Notaries not only have the right to speak, but have the obligation not to speak. This obligation overrides the general obligations contained in Article 1909 paragraph (1) of the Civil Code because there is a right of denial from the Notary profession, as a consequence of the obligation to keep something known confidential.

Legal protection in Indonesia relies on guaranteeing the government's rights to base its actions on the law, so that in order to achieve legal protection, legal products are used as the main thing for protection.

Notaries as public officials in carrying out their professional position must provide legal services to the public, and also have obligations determined by law to achieve legal certainty and protection. A notary is a public official who has the authority to make authentic deeds which function as a means of proof. This authentic Notarial Deed includes all acts, agreements and provisions required by statutory regulations. Apart from being stipulated in the Law, Notaries also have the authority to provide counseling related to making deeds. Apart from the authority regulated in the UUJN, Notaries also have responsibilities as office holders as stated in the UUJN.

All actions related to the position of Notary are regulated in the UUJN.

The UUJN is a form of preventive legal protection provided to Notaries, which means legal protection provided by the government before a violation occurs. The provisions contained in statutory regulations have the aim of preventing violations, as well as providing limitations in exercising the authority possessed and regulating obligations related to it.

The main ideas regarding the various possibilities for errors by Notaries that need to be differentiated are personal errors and errors in carrying out their official duties. For personal mistakes, the mechanism is the same as for ordinary people who can be held accountable and the same legal protection mechanisms apply as for ordinary people in general. For errors related to the position of a Notary, it is necessary to provide a legal protection mechanism that is different from that of ordinary people even if the Notary's term of office has ended or has retired. If this Notary protection organization is actually a filter for the authorities relating to the confiscation of photocopies of minutes of deeds and a filter for parties' cases that are not relevant for the Notary.

The importance of legal protection for Notaries is:

1. Maintain the honor and dignity of his position, including when giving testimony and proceeding in examinations and trials.
2. Keep active information confidential to protect the interests of the parties involved in the deed.
3. Maintaining the minutes or documents attached to the deed request, as well as the Notary's protocol in storing it, will thus be more guaranteed if all summoning, inspection and detention actions are carried out after obtaining permission from the professional organization that examines them first, so that in the end legal certainty will be created. for the public in accordance with the principles of trust that underlie the authority of the Notary.

In relation to summoning a Notary as a witness, especially in the criminal justice process, it must be based on the approval of the Notary Honorary Council. This aims to provide legal protection for Notaries in carrying out their duties. The protection provided is related to maintaining the notary's balance in maintaining the confidentiality of deeds with the interests of law enforcers in carrying out their duties as confirmed in the provisions of Article 66 of the Law on the Position of Notaries.

Before giving permission to a Notary to be examined as a witness at the investigation or trial stage, the Notary's Honorary Council will first summon the Notary to carry out

a hearing through the Regional Supervisory Council to ask for information regarding the request for a Notary's summons from either the investigator or the court. The results of the decision from the trial can approve or reject the notary's summons.

If the Notary Honorary Council gives its approval to summon a Notary as a witness, then the Notary concerned is obliged to comply. However, if you do not give permission for the Notary's summons, but the Notary in question remains present to fulfill the summons, all legal consequences that arise will be the responsibility of the person concerned, meaning that the Honorary Council of Notaries will not be held responsible if arbitrary actions occur on the part of the Notary. law enforcers to the Notary when undergoing the examination process as a witness.

1. Legal protection for Notaries in carrying out official secrets, apart from being generally regulated, has also been specifically regulated in the following statutory regulations: Article 17 paragraph (1) and paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which reads:
  - a. The party being tried has the right to object to the judge who hears the case.
  - b. The right to object as referred to in paragraph (1) is the right of a person being tried to submit an objection accompanied by reasons to a judge who is hearing the case.
2. Article 66 paragraph (1) and paragraph (3) of Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning the Position of Notaries, which reads:
  - 1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the authorized Notary Honorary Council:
    - a. Take a photocopy of the Deed Minutes and/or letters attached to the Deed Minutes or Notary's protocol in the Notary's custody; And
    - b. Summon the Notary to attend an examination relating to the Notary's deed or protocol which is in the Notary's custody.
  - 2) The Honorary Council of Notaries within a maximum period of 30 (thirty) working days from the receipt of the letter requesting approval as intended in paragraph (1) is obliged to provide an answer accepting or rejecting the request for approval.

In Article 54 paragraph (1) UUJN it is stated that a Notary can only give, show, or notify the contents of the deed, grossed deed, copy of the deed, or excerpt of the deed, to people who have a direct interest in the deed, heirs, or people who have acquired rights, except determined otherwise by statutory regulations.

In addition to the provisions mentioned above, the Notary will produce the contents of the deed and information obtained in the performance of his office in the course of his office. In the process of investigation, prosecution or examination in court, another Notary has the right to refuse, on the other hand the Notary has the obligation to produce the contents of the deed and all information obtained in making the deed as regulated in Article 16 paragraph (1) letter f UUJN.

#### 4. CONCLUSION

1. Judges decide cases by analyzing the case using statutory theory and also jurisprudence with transmission procedures and a logical way of thinking, namely by connecting the legal considerations of previous a quo decisions which cannot be separated from the opinions, views and thoughts expressed by previous judges. contained in previous judge's decisions.

2. Constitutional judges use the theory of legal certainty and the theory of expediency. This can be seen from the legal interpretation used. When interpreting the constitution, constitutional judges are practically oriented in the proper sense through a legislative approach, which in this case consists of translating legal texts, legal provisions, legal norms, in a pre-interpretive sense, or formulating rules, such as constitutional clauses or legislation. .
3. The Constitutional Court stated that the requirement for approval from the Notary Honorary Council does not conflict with the principle of independence in the judicial process and does not conflict with the obligations of a Notary as a citizen who has equal status before the law, however the Indonesian Notary Association needs to provide guidance to Notaries serving at regional and regional levels. , as well as the center in enforcing a Notary code of ethics that is firmer and more structured regarding the duties and responsibilities of Notaries in maintaining Notary ethics.
4. The Minister of Law and Human Rights as the supervisor of Notary organizations needs to make improvements to the Notary Honorary Council. In order to select members who sit on the Notary Honorary Council, they are people who are independent and have an honest attitude and integrity as well as carry out thorough coordination and evaluation of the performance of the Notary supervisory council at the central, regional and regional level.

#### **4. Suggestion**

1. It is necessary to regulate the principles of accountability of Notaries, especially regarding legal protection, taking into account the provisions of other laws and regulations because they involve various related provisions and laws and regulations so as to provide legal certainty for Notaries.
2. Considering that the position of Notary is a professional position in which the confidentiality of the position is very strong, it is necessary to carry out significant training and guidance for Notaries to increase competency standards.

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##### **B. Journals and Scientific Articles**

**170 | Analysis of Constitutional Court Decision No. 16/PUU-XVIII/2020 Regarding the Honorary Council's Approval of Summoning a Notary in the Examination of Criminal Cases**  
(Muhammad Taufiqsyah)

1. Judicial Journal Volume 13 Number 3 December 2020.