

## The Notary Law Politics in the Notary Position Act

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**Abstract.** *This study aims to determine the legal politics of the political aspects behind the process of forming laws and policies in a particular field, as well as greatly influencing the performance of relevant government institutions in that field in applying the provisions of legal products and policies, and also determine the policies of these institutions in a practical and operational setting. This research is a qualitative research with a normative juridical approach. Notary activities in Indonesia are heavily influenced by politics and law itself. The conclusion is that political influence can be seen from the making of a political product in the form of a special law that regulates the position of a notary, namely Act No. 2 of 2014 jo. No. 30 of 2004 concerning the Position of a Notary. And the status of Indonesia, which is a state of law, of course, will also affect the actions and actions of notaries because they must be guided by the applicable laws.*

*Keywords: Concept; Notary; Policy.*

### 1. INTRODUCTION

The definition of politics according to Mahfud MD is a legal policy or an official line (policy) on law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals as stated in the preamble of the 1945 Constitution.<sup>1</sup> The purpose of the state as referred to in the opening of the fourth paragraph of the 1945 Constitution essentially states:

- protect the entire Indonesian nation & the entire homeland of Indonesia;
- promote the general welfare;
- enrich the life of a nation; and
- implement world order based on freedom, eternal peace & social justice.

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<sup>1</sup>Sri Ahyani, Land Registration As A Legal Construction Of Law In Order To Facing Asean Economic Communities, *International Journal of Nusantara Islam* Vol. 06 No. 02 2017: (198-207), DOI: 10.15575/ijni.v6i2.6227, see to Sri Hartati, The Sustainable Cropland Protection In The Perspective Of Policy Implementation In Karawang Regency, *Journal of New Government Paradigm* Volume 2, 2<sup>nd</sup> Edition, 2015, p. 73

Legal politics has a legal subsystem, namely statutory regulations, including first, statutory politics is defined as a policy or regarding the determination of the content or object of the formation of legislation. Second, the politics of formation procedures are related to the legal system & legal instruments used in the formation of laws and regulations. Third, the politics of law application is related to the function of government administration in the field of law. Fourth, the politics of law enforcement is related to the joints of the state system such as a state based on law.

Legal politics has a sub-system of laws and regulations, including: procedures for formation;

- content or object;
- application of law; and
- law enforcement.

Based on the description above, this paper will only briefly explain the contents or objects of the laws and regulations of the legal political sub-system, in this case the contents or objects of the UUJN are limited to:

- "Considering" considerations;
- the body of the UUJN, including (1) authority; (2) Notary position; & (3) legal protection of Notary Position.
- explanation of UUJN.

## **2. RESEARCH METHODS**

This research is a qualitative research with a normative juridical approach. Based on primary & secondary data with library data collection methods.

## **3. RESULTS & DISCUSSION**

### **3.1. Considerations "Considering" UUJN**

Legal Politics in the Preamble of the UUJN mentions the "Considering" considerations as follows:

- that the Republic of Indonesia as a legal state based on Pancasila & the 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every citizen;
- that to ensure certainty, order and legal protection, authentic written evidence is needed regarding legal acts, agreements, stipulations, & events made before or by authorized officials;

- that a Notary as a public official who carries out his profession in providing legal services to the public, needs to get protection & guarantees in order to achieve legal certainty;
- that some provisions in Act No. 30 of 2004 concerning the Position of Notary are no longer in accordance with legal developments & community needs so that changes need to be made;
- that based on the considerations as referred to in letter a, letter b, letter c, & letter d, it is necessary to enact a Law concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary.

The consideration of "Remembering" as stated above, as the politics of legislation as a sub-politics of law, has implications for the body of the UUJN, including: authority, Notary position & legal protection Notary position which will be explained below.

### **3.2. Body UUJN**

- **Notary Authority**

The powers to be discussed are based on existing legal provisions (the constitution), so that authority is a legitimate authority. Thus, officials (organs) in issuing decisions are supported by sources of authority. According to HD. Van Wijk & Willen Konijnenbelt covers attribution authority, mandate & delegation.<sup>2</sup>

The authority of government organs (institutions) is an authority that is strengthened by positive law to regulate and maintain it. Without authority, a correct juridical decision cannot be issued.<sup>3</sup>

One of the sources of authority above, namely attribution which is the original authority on the basis of the constitution which is only owned by the DPR, the President, and the DPD in terms of the formation of laws. The product of the three state institutions is law, because the material regulated in the law is only limited to things of a general nature.<sup>4</sup>

If the above authority is related to the position of a Notary as a General Officer, it is based on the attribution authority obtained & given in Article 1 point 1 & Article 15 UUJN<sup>5</sup>.

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<sup>2</sup>Markus Lukman, (1997). *Eksistensi Peraturan Kebijakan Dalam Bidang Perencanaan & Pelaksanaan Rencana Pembangunan di Daerah Serta Dampaknya Terhadap Pembangunan Materi Hukum Tertulis Nasional*, Disertasi, Pascasarjana Universitas Padjadjaran, Bandung, p. 53

<sup>3</sup>A.M. Stroink in Abdul Rasyid Thalib, (2006). *Wewenang Mahkamah Konstitusi & Aplikasinya dalam Sistem Ketatanegaraan Republik Indonesia*, Bandung: Citra Aditya Bakti, p. 219

<sup>4</sup>Jimly Asshiddiqie, (2006). *Perihal Undang-Undang*, Rajawali Pers, Jakarta, p.148

<sup>5</sup> Ngadenan, Eksekusi Hak Tanggungan Sebagai Konsekuensi Jaminan Kredit Untuk Perlindungan Hukum Bagi Kepentingan Kreditur Di Mungkid, *Jurnal Law Reform*, Vol 5 No. 1

The authority referred to is the authority as referred to in Article 1 point 1 UUJN, as seen in the definition of a Notary, namely a General Official who is authorized to make authentic deeds & has other authorities as referred to in this Law or based on other laws<sup>6</sup>.

The authority of Article 1 point 1 UUJN (based on other laws) is described in Article 15 of the UUJN:

- "Notaries are authorized to make authentic Deeds regarding all acts, agreements, & stipulations required by laws and regulations and/or desired by those with an interest to be stated in an authentic Deed, guarantee certainty of the date of making the Deed, save the Deed, provide grosse, copies & quotations Deeds, all of which are as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law<sup>7</sup>.
- In addition to the authority as referred to in paragraph (1), a Notary is also authorized to:
  - certify the signature & determine the certainty of the date of the letter under the hand by registering in a special book;
  - book a letter under the hand by registering in a special book;
  - make a copy of the original underhand letter in the form of a copy containing the description as written & described in the letter concerned;
  - validate the compatibility of the photocopy with the original letter;
  - provide legal counseling in connection with the making of the Deed;
  - make a deed related to land; or
  - make a Minutes of Auction Deed.
- In addition to the authority as referred to in paragraph (1) & paragraph (2), a Notary has other powers as regulated in the laws and regulations."

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April 2010, see to Anang Ade Irawan, Pertanggungjawaban Ahli Waris Notaris sebagai Pejabat Umum atas Akta Notaris yang Menimbulkan Kerugian Para Pihak, *Jurnal Lentera Hukum*, Volume 5 Issue 2 2018

<sup>6</sup> Eko Puji Hartono, Akhmad Khisni, "The Role of PPAT in Making the Deed of Transfer of Rights to Land and/or Buildings Formerly of Customary Ownership Related to the Payment of Duty on the Acquisition of Rights to Land and/or Buildings", *Jurnal Akta* VOL. 5, No. 1, March 2018, see to Harnita, dkk. "Tanggung Jawab PPAT dalam Penetapan Nilai Transaksi Jual Beli Tanah & Bangunan di Kota Banda Aceh", *Udayana Master Law Journal*, Vol. 8 No. 3 September 2019, p. 354-370.

<sup>7</sup> Ibid.

The provisions of Article 15 of the UUJN above, raises the question of what is meant by the phrase: "Notary has other authorities regulated in the legislation?". In the explanation of Article 15 paragraph (3) of the UUJN it is explained that what is meant by "other authorities regulated in laws and regulations", among others include the authority to certify transactions made electronically (cyber notary), make waqf pledge deeds, & aircraft mortgages. "

Thus, the politics of legislation (legal politics) has determined & mentioned some of the other powers possessed by a notary, including:

- authority to certify transactions conducted electronically (cyber notary);
- make a deed of waqf pledge; and
- airplane mortgage.

However, because there is the phrase "among other things" in the explanation of Article 15 paragraph (3) of the UUJN, the consequences are open to explaining the phrase "among other things", what kinds of authority a Notary can have such as the authority to make legal opinions, the authority to make a deed of heir, make authentic deeds regarding certain legal actions on land or property rights on apartment units & so on<sup>8</sup>.

Notaries as "General Officials" as mentioned above, are given the authority by the state to declare the occurrence of a legal relationship between the parties in a deed that records directly the clauses of the agreement of the parties who promise. The promise that has been stated in the deed is a reflection of the sincere will of the parties,<sup>9</sup> & Notaries as "General Officials" are authorized to make authentic deeds, have an important role in people's lives, many sectors of the life of business transactions from the community that require the participation of a Notary, even some provisions that require it to be made with a Notary Deed which means that if it is not made with a Deed Notary, the transaction or activity has no legal force.<sup>10</sup>

The authority referred to is the authority as regulated in Article 1 point 1 (based on other laws) & Article 15 paragraph (3) UUJN (other powers are regulated in laws and regulations). So the authority can be regulated in the form of laws & regulations (Government Regulations, Presidential Regulations, Ministerial Regulations & so on)

- **Notary as Public Official**

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<sup>8</sup> Yunita Budi Chrissanni & Amin Purnawan, Peranan PPAT dalam Pemungutan Bea Perolehan Hak Tanah & Bangunan (BPHTB) On Line Atas Transaksi Jual Beli Tanah & Bangunan di Kota Magelang. *Jurnal Akta*, 4 (3) 2017, p. 3.

<sup>9</sup>Putri A.R. (2011). *Perlindungan Hukum Terhadap Notaris: Indikator Tugas-Tugas Jabatan Notaris yang Berimplikasi Perbuatan Pidana*, Jakarta: PT. Softmedia, p.7

<sup>10</sup>Samuel Hutabarat, *Kewajiban & Kewenangan Majelis Pengawas Notaris*, *Gloris Yuris*, Vlo.6, No. 3, 2006, p.87

The laws and regulations governing the position of a Notary as a public official are mostly still based on the laws and regulations from the colonial era of the Dutch East Indies & some are national laws and regulations.<sup>11</sup>

The term "public official" translated from *Openbare Ambttenaren* can be found in Article 1 *Stablat 1860 No. 3 Regulations on Notary Positions*, Article 1868 of the *Civil Code & Ordinance of September 16, 1931 regarding the honorarium of a notary*. In Article 1 point 1 UUJN expressly states:

"Notary is a public official who is authorized to make an authentic deed & has other authorities as referred to in this Law or based on other laws".

The meaning of Article 1 number 1 UUJN is that the General Officer is a position given to a person who is given attributive authority by UUJN in making an authentic deed & to him is given the authority to make an authentic deed.

The identification of a Notary as a Public Official relates to the authority as stated in Article 15 paragraph (1) of the UUJN, namely that a Notary has the authority to make an authentic deed, as long as the making of the deed is not assigned or excluded to other officials or people.

The meaning of Public Official shows its existence on the one hand in the domain of constitutional law. But on the other hand, it is in the domain of state administrative law. An example of appointment & dismissal as a Notary is accommodated by the Decree of the Minister of Law & Human Rights (*Kepmenkumham*).

On the other hand, the position of a Notary as a Public Official, such as ratifying the agreement of the parties before a Notary, is in the domain of civil law which is part of private law. Meanwhile, when a notary is an "Administrative Official or TUN Official", the legal implications are in the realm of state administrative law, which includes public law.

If the position of the notary is in the realm of civil law and state administrative law, in the event that the notary makes a mistake, the legal consequences are in the realm of civil law or administrative law. Thus, the consequences of mistakes made by a notary are not in the realm of criminal law, unless the notary's error is indicated by an element of a criminal act.

The next discussion is a Notary as a Public Officer in the UUJN, if it is related to the use of the use of the state symbol in a stamp or stamp or letterhead of office & a

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<sup>11</sup>The laws and regulations in question, among others; (a) *Reglement Op Het Notary Ambt in Indonesie (Stb.1860:3)* as last amended in the *State Gazette of 1954 Number 101*; (b) *Ordonantie of 16 September 1931 concerning Notary Honorarium*; (c) *Law Number 33 of 1954 concerning Deputy Notaries & Temporary Deputy Notaries*; (d) *Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts*; & (e) *Government Regulation Number 11 of 1949 concerning Oaths/Promises of Notary Positions*.

stamp or stamp containing the state symbol of the Republic of Indonesia, & in the space that surrounds it is written the name, position, & domicile of the Notary, the Notary as regulated in Article 54 paragraph (1) & paragraph (2) of Act No. 24 of 2009 which states in the letter j that is Notary.

Referring to the Notary Position above, it is essentially a General Official assigned with general powers to serve the public's need for authentic evidence that provides certainty of civil law relationships. So, as long as authentic evidence is still needed by the state legal system, the position of a notary will still need its existence in the community.<sup>12</sup>

Notaries are government employees without government salaries, notaries are retired by the government without receiving a pension from the government,<sup>13</sup> Notary is domiciled as a Public Official who is under the Ministry of Law and Human Rights in terms of appointment, dismissal, guidance & supervision of Notaries.

- **Legal Protection of Notary Position**

The state of Indonesia as a legal state based on Pancasila & the 1945 Constitution guarantees certainty, order and legal protection for every citizen. Guarantees of protection & guarantees of achieving legal certainty for the implementation of the duties of a Notary have been regulated in UUJN as stipulated among others in Article 66 paragraph (1) of the UUJN, which reads: "Taking minutes of deed & summoning a Notary for examination, must obtain approval from MKN."

The legal protection of the Notary means for the arbitrary actions of law enforcers. This can be seen in Article 66 paragraph (1) of the UUJN with the existence of the Notary Honorary Council, as a legal protection institution for Notaries whose function is to carry out initial examinations in the Notary organization trial to give approval or rejection to investigators from the police, prosecutors, and judges who summon a Notary. to be examined in court proceedings. In addition, MKN is also authorized to provide guidance to Notaries in carrying out their duties as public officials.

Based on the description above, Article 66 of the UUJN in the context of statutory politics as a legal political sub-system must be interpreted more broadly, namely in the context of protecting the interests of the wider community who have entrusted their interests to a Notary, & on the other hand as an "entrance" if law enforcers after obtaining approval from the Notary Honorary Council, law enforcers can examine documents & notaries as witnesses or suspects.<sup>14</sup>

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<sup>12</sup>Hartanti Sulihandari & Nisya Rifiani, *Prinsip-Prinsip Dasar Profesi Notaris*, Dunia Cerdas, Jakarta, 2013, p.4

<sup>13</sup>Lumban Tobing, G.H.S., (2012). *Peraturan Jabatan Notaris*, Jakarta, Erlangga, 1996. Moh. Machfud MD, *Politik Hukum di Indonesia*, Jakarta: Rajawali Pers, p.36

<sup>14</sup>Ibid

In the event that a notary is made a suspect because of the deed he made, he must first go through the examination of the Notary Honorary Council.<sup>15</sup>

After examining the notary, the Notary Supervisory Board determines & decides whether or not the notary in carrying out his position has violated the law or has intentionally harmed the parties in the deed. If there is a violation committed by a notary against the law, the notary can be made a suspect.<sup>16</sup>

If a Notary gives information to investigators, public prosecutors or to judges without the approval of the Notary Honorary Council, then the Notary concerned can be categorized as having disclosed the secret of his position. The notary's actions can be threatened by Article 322 of the Criminal Code & Article 84 & Article 85 of the UUJN.

Normative legal protection for Notaries has also been provided by the applicable laws and regulations, namely the right to deny a Notary as regulated in Article 4 & Article 16 paragraph (1) letter e UUJN, & the jurisprudence of the Supreme Court.

*First*, the provisions in Article 4 UUJN oblige Notaries not to speak, even before the court. This means that a notary is not allowed to testify about what is contained in the deed.<sup>17</sup>

This right of denial is attached to the notary at the level of investigation, investigation, and during the trial process. The attitude of the Notary is passive, in the sense of providing information on matters relating to the implementation of the position only.

The obligation to keep the secret must be carried out not only to maintain the confidentiality of the contents of the deed but also to keep all information obtained by using the right of denial a secret. This, in accordance with Article 1909 paragraph (3) of the Civil Code:

"Anyone who because of his position, work or position is required by law to keep something secret, but only regarding things that are entrusted to him because of his position, job and position". Second, the provisions in Article 16 paragraph (1) letter e UUJN, reads:

"The notary is obliged to keep everything about the deed he made & all information obtained for the making of the deed in accordance with the oath/promise of office, unless the law provides otherwise".

Based on Article 16 paragraph (1) letter f of the UUJN above, it is clear that it has given a clear message to every Notary that he must keep the legal product he makes in the form of a deed in accordance with the oath/promise of office, aimed at

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<sup>15</sup>Ibid

<sup>16</sup>Ibid

<sup>17</sup>Habib Adjie, (2009). *Hukum Notaris Indonesia (Tafsir Tematik Terhadap Undang-Undang Jabatan Nomor 30 Tahun 2004 Tentang Jabatan Notaris)*, Bandung: Refika Aditama, p.13



protecting the interests of all parties related to the deed. Confidentiality held by a Notary can only be canceled if there are other laws that determine otherwise from the substance of Article 16 paragraph (1) letter f of the UUJN. Likewise, what is regulated in Article 70 of the UUJN requires a notary to keep the contents of the deed confidential.

But so far there is no law that regulates the making of deeds regulated in laws other than UUJN so that the implication is that if the Notary does not comply, the Notary discloses the secret, then he is threatened with 9 (nine) months in prison, as stated in Article 332 of the Criminal Code, reads:

"Whoever deliberately discloses a secret which he is obliged to keep because of his current or former position or occupation, shall be punished with a maximum imprisonment of nine months".

*Third*, Jurisprudence of the Supreme Court can be used as a basis for consideration of several cases related to criminal acts faced by Notaries, namely the Supreme Court Decision Number 702K/SIP/1973, which in this case states that a notary functions only to record/write down anything that requested & stated by the parties who appear before the notary. Notaries are not required to investigate materially the statements desired by the appearer. Therefore, based on the decision, the author has analyzed & concluded if the deed made before by a notary in the future is problematic, then the matter will be fully the responsibility of the parties, the notary cannot be involved because the notary is not a party to the deed.<sup>18</sup>

- **Explanation of UUJN**

The explanation of the UUJN contains an explanation that the Republic of Indonesia as a legal state based on Pancasila & the 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every citizen.

To ensure certainty, order and legal protection, authentic written evidence is needed regarding actions, agreements, stipulations, and legal events made before or by a Notary.

Notaries as public officials who carry out the profession in providing legal services to the public, need to get protection & guarantees in order to achieve legal certainty. The guarantee of protection & guarantee of achieving legal certainty for the implementation of the duties of a Notary has been regulated in Act No. 30 of 2004 concerning the Position of a Notary.

However, several provisions in the Act are no longer in accordance with legal developments & community needs so that changes need to be made, which are also

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<sup>18</sup>Irene Dwi Enggarwati, (2015), (dkk) *Pertanggungjawaban Pidana & Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik*, Fakultas Hukum Universitas Brawijaya, p.

intended to further emphasize & strengthen the duties, functions, & authorities of Notaries as officials who carry out public services, as well as synchronization with the another law.

Several provisions were amended from Act No. 30 of 2004 concerning the Position of a Notary, including:

- strengthening the requirements to be appointed as a Notary, among others, the existence of a health certificate from a doctor & psychiatrist as well as an extension of the internship period from 12 (twelve) months to 24 (twenty four) months;
- additional obligations, prohibition of concurrent positions, & reasons for temporary dismissal of a Notary;
- imposition of obligations on prospective Notaries who are doing internships;
- adjustments to the imposition of sanctions applied to certain articles, among others, in the form of a statement that the Deed in question only has the power of proof as a private deed, verbal warning/written warning, or a claim for compensation to a Notary;
- distinction of changes that occur in the contents of the Deed, both absolute and relative;
- establishment of a Notary Honorary Council;
- strengthening & affirmation of Notary Organizations;
- confirmation to use Indonesian as the official language in making authentic Deeds; and
- strengthening the function, authority, and position of the Supervisory Board.

#### **4. CONCLUSION**

Based on the description above, it can be concluded that the politics of legislation which is a sub-system of legal politics is related to the authority of a Notary, the position of a Notary as a General Officer & legal protection for a notary position given by the makers of the UUJN, namely the government and the DPR.

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