

LEGAL IMPLICATIONS OF ARTICLE 66 OF LAW NUMBER 2 OF 2014 CONCERNING THE POSITION OF NOTARIES IN THE SUMMONING OF NOTARIES BY INVESTIGATORS



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Abstract

The notary, as a public official, plays a vital role in upholding legal certainty through authentic deeds. However, notaries in Indonesia are vulnerable to legal uncertainty when summoned by investigators in criminal proceedings without proper adherence to legal procedures. Article 66 of Law Number 2 of 2014 concerning the Position of Notary mandates that any summons by investigators must first obtain written approval from the Notary Honorary Council (Majelis Kehormatan Notaris/MKN) to protect the notary's independence and the confidentiality of their duties. This research formulates two main problems: the effectiveness of Article 66 in providing legal protection to notaries in Malang City and the alignment of its implementation with the principles of legal certainty and protection. The study aims to evaluate the actual practice of Article 66 in the field and identify influencing factors. Using an empirical legal research method with a qualitative descriptive approach, data were obtained through in-depth interviews with notaries, investigators, and relevant officials, supported by secondary legal materials. The findings reveal that the implementation of Article 66 is still inconsistent. Several notaries in Malang were summoned without prior MKN approval, which contradicts the law and undermines notarial legal protections. Factors affecting effectiveness include lack of coordination, limited understanding among law enforcers, and procedural ambiguity. The study concludes that although Article 66 is normatively protective, its practical application remains problematic and requires systemic improvements.

Keywords: Legal Protection, Notary Summons, Article 66, Notary Law

INTRODUCTION

Notaries serve as public officials authorized to draw up authentic deeds and ensure legal certainty in civil and administrative legal relations. Their role is fundamental to the legal system in Indonesia, particularly in transactions involving property, inheritance, and business affairs. As such, the legitimacy and independence of notarial duties must be safeguarded through proper legal frameworks. One crucial regulation is Article 66 of Law Number 2 of 2014 concerning the Position of Notary, which stipulates that any summoning of a notary by an investigator for the purpose of criminal proceedings must be preceded by written approval from the Notary Honorary Council (Majelis Kehormatan Notaris or MKN).

This provision serves a dual function: it protects the confidentiality of the information obtained by notaries in the course of their duties, and it safeguards the notary from arbitrary or premature legal action that may disrupt professional integrity. However, the implementation of Article 66 has sparked debate, particularly due to its perceived obstruction to law enforcement and accusations of creating unequal treatment under the law. Several judicial reviews, such as Constitutional Court Decisions No. 49/PUU-X/2012 and No. 16/PUU-XVIII/2020, have reaffirmed the article's validity while stressing the importance of procedural clarity and professional accountability.

Despite its normative strength, in practice, notaries in cities like Malang have reported being summoned without prior approval from MKN, thereby raising concerns about the effectiveness of Article 66 as a protective legal instrument. This study seeks to evaluate the effectiveness of Article 66 in safeguarding notaries when summoned for criminal investigations in Malang City and to assess whether its implementation aligns with the principles of legal certainty and legal protection. The objective is to identify the existing gaps in enforcement and to propose strategic improvements for ensuring both effective law enforcement and notarial independence.

REVIEW OF LITERATURE

The notary holds a pivotal position as a public official authorized to draw up authentic deeds which possess full evidentiary value in legal proceedings. According to Adjie (2008), the essence of the notary's function lies in their ability to provide legal certainty and to prevent disputes through authentic documentation. This role demands a high level of independence and integrity, particularly when handling sensitive information on behalf of clients. Consequently, it is imperative that notaries are protected against any interference that may undermine the trust placed in them.

Legal protection for notaries is regulated under Law Number 2 of 2014 concerning the Position of Notary, specifically Article 66, which prescribes that any summons by investigators, prosecutors, or judges must first be approved by the Notary Honorary Council (MKN). The provision serves to protect the notary's right to confidentiality and prevent arbitrary legal processes. Hadjon (1987) distinguishes between preventive and repressive legal protection, where preventive protection provides a framework to avoid harm before it occurs. In this context, the requirement for prior approval from MKN can be seen as a form of preventive legal protection, ensuring that the due process of law is followed.

Friedman (1975) proposes that the effectiveness of a legal norm is influenced by three components: legal structure, legal substance, and legal culture. In the context of Article 66,

the legal structure includes MKN, law enforcement agencies, and the judiciary; the substance refers to the clarity and enforceability of the article itself; and legal culture reflects the awareness and compliance of legal actors with the existing rules. Weakness in any of these elements may hinder the law's effectiveness in protecting notaries.

Another key principle relevant to this research is legal certainty. According to Radbruch (1932), legal certainty ensures that the law is applied consistently and predictably, allowing individuals to anticipate legal consequences. When Article 66 is bypassed, such as when notaries are summoned without MKN approval, it undermines both legal certainty and the integrity of the notarial institution. This situation also raises questions about the balance between law enforcement needs and professional protections, a theme echoed in the criticism of over-legalistic approaches to justice Rahardjo (2006).

Scholarly analysis by Pradnyan (2021) and Sriwati (2020) demonstrates that although Article 66 has a strong normative foundation, inconsistencies in its implementation persist, particularly due to a lack of coordination and awareness among law enforcement officers. These studies emphasize the importance of procedural transparency and institutional accountability in preserving the rule of law and protecting public trust in notarial services.

This literature review suggests that while the normative aspects of Article 66 are well-defined, its effectiveness in practice depends heavily on institutional performance and legal awareness. The gaps between norm and practice call for empirical investigation to understand the challenges in enforcing Article 66 and to propose policy recommendations that reinforce both legal protection for notaries and the efficiency of criminal investigations.

RESEARCH METHOD

This research adopts a juridical-empirical method, combining doctrinal legal analysis and field-based examination. The juridical aspect focuses on analyzing the normative content of Article 66 of Law Number 2 of 2014 concerning the Position of Notary, particularly its interaction with Article 175 of Law Number 6 of 2023 and the Constitutional Court Decision No. 20/PK/Pid/2020. Meanwhile, the empirical aspect observes the law in action, focusing on the actual implementation of notary summons procedures in Malang City.

In accordance with Soekanto & Mamudji (2014), the empirical juridical method is suitable for evaluating how legal norms are practiced by subjects of law, especially where inconsistencies between legal texts and legal practices occur. This study integrates a statute approach, conceptual approach Rizky (2020), and a case approach, particularly referencing real cases of notary summonses and objections handled by the Notary Honor Council (Majelis Kehormatan Notaris or MKN).

Data were obtained through interviews with notaries, legal academics, and investigators, supported by secondary legal materials including the Notary Law, Constitutional Court rulings, and administrative law interpretations. The research uses a purposive sampling technique, as suggested by Azhari et al. (2022), to select informants with relevant experience.

Descriptive qualitative analysis was employed, following the data reduction, display, and conclusion drawing model. The analysis was supported by legal interpretations from Maya (2017) regarding notarial immunity, and Pratama (2020) on fictitious-positive doctrines in state administrative law. The empirical findings were also cross-referenced with

doctrinal implications on confidentiality obligations under Article 4 and Article 16 of the Notary Law. Ultimately, this method allows a structured and comparative evaluation of the extent to which Article 66 provides actual legal protection for notaries against criminal procedures, especially when legal certainty is challenged by regulatory gaps or institutional inaction.

RESULTS AND DISCUSSION

This research reveals a critical gap in the implementation of Article 66 of Law Number 2 of 2014 concerning the Position of Notary, particularly in Malang City. Based on field interviews with eight notaries, it was found that only a minority were summoned through the correct legal mechanism with prior approval from the Notary Honorary Council (Majelis Kehormatan Notaris/MKN), while the majority were summoned directly by investigators without this procedural prerequisite.

Table 1.
Summary of Notary Summons in Malang

Status	Number of Notaries	Percentage
Summomed with MKN Approval	3	37.5%
Summomed without MKN Approval	5	62.5%

Source: Field interviews, 2025

This pattern indicates that the legal protection provided under Article 66 is frequently bypassed. According to Adjie (2008), such procedural violations diminish the authoritative nature of authentic deeds and undermine public trust in notarial institutions. Similar concerns were echoed by Diba (2022), who emphasized that unlawful interference with notarial confidentiality threatens legal certainty in civil transactions.

From an empirical perspective, investigators often justify bypassing MKN approval by citing urgency in criminal cases. However, this practice contravenes the Constitutional Court's interpretation in Decision No. 49/PUU-X/2012, which confirmed that the MKN's function is constitutional and intended to balance law enforcement with professional immunity. Furthermore, interviews with legal experts and MKN representatives reveal administrative inefficiencies and lack of dissemination about MKN protocols as key contributing factors. According to Erwiningsih & Ali (2023), lack of coordination between investigators and notarial oversight bodies creates procedural loopholes exploited during investigations.

In contrast, jurisdictions with well-disseminated MKN procedures, such as Jakarta and Surabaya, report significantly higher compliance with Article 66. This indicates that regional legal culture, as noted by Friedman (1975), plays a substantial role in determining the implementation of formal legal norms. The implication of these findings points to an urgent need for standardization and digitalization of the approval mechanism from MKN, as suggested by Avianti (2023b). This aligns with the broader movement toward e-governance in the Indonesian legal framework, aiming to enhance transparency, accountability, and accessibility of legal protections.

Therefore, this research not only reaffirms the protective intent of Article 66 but also highlights the practical deficiencies that must be addressed to preserve the professional integrity of notaries. This contributes to the development of legal scholarship by offering a field-based assessment of law enforcement behavior, adding depth to the normative analysis traditionally dominating discussions of notarial law.

To further illustrate the procedural discrepancies, Figure 1 below demonstrates the dual pathways observed in Malang City regarding the summons of notaries: one that follows legal procedures by obtaining prior approval from MKN and another that bypasses it altogether.

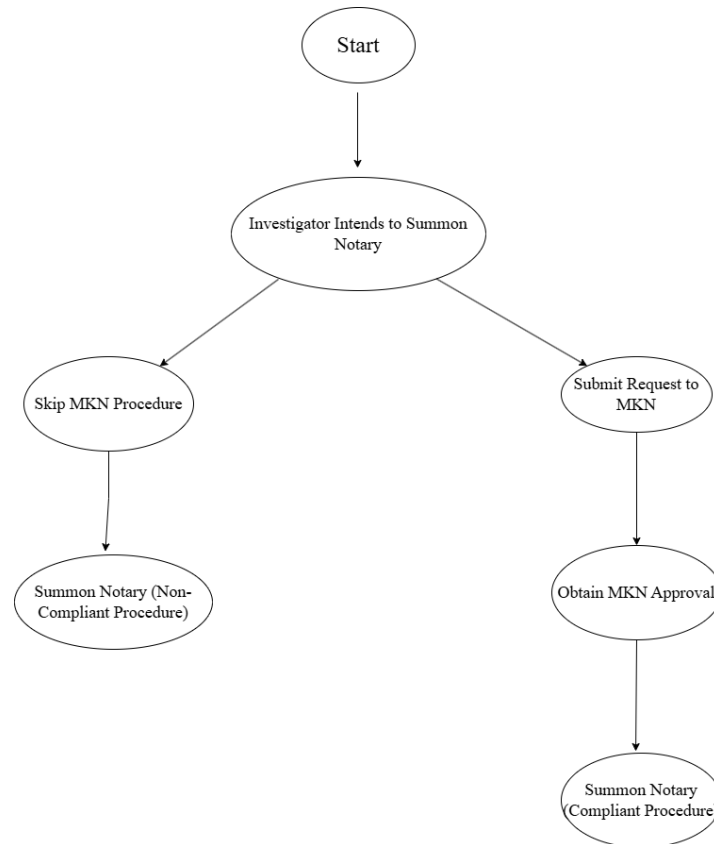


Figure 1.
Procedural Flow of Notary Summons in Practice

This diagram visually distinguishes the compliant and non-compliant practices reported by research informants. The existence of these two pathways reflects an inconsistent legal culture, reinforcing the thesis that legal certainty in Indonesia is often undermined by weak enforcement mechanisms and low institutional synergy. In line with Soekanto & Mamudji (2014) view, legal effectiveness is not determined solely by legislation but also by the behavior of law enforcers and the infrastructure that supports them.

Moreover, interviews with MKN officials highlight that the approval process itself is not technologically integrated. Manual submissions, lack of tracking systems, and regional disparities in interpreting Article 66 contribute to procedural delays and confusion. As Zaki and Zaki & Saidin (2022) observed, there is an urgent need to digitize notarial oversight functions to prevent violations while maintaining due process. The findings also show that

in regions with higher institutional discipline, the summons process consistently involves MKN, whereas less structured areas tend to bypass it. This supports the theory of legal pluralism proposed by Friedman (1975), where different institutional logics coexist within the same legal order. The implications are clear: uniformity in procedural application cannot be achieved without central intervention, standard operating procedures (SOP), and accountability mechanisms.

Additionally, several informants admitted not fully understanding their rights under Article 66, which underscores a systemic lack of legal literacy among notaries themselves. Avianti (2023a) argue that the absence of regular legal socialization initiatives from professional associations contributes to the vulnerability of notaries in criminal matters. This study reaffirms that professional ignorance, paired with institutional apathy, facilitates the erosion of legal protections guaranteed by law.

Therefore, based on both normative and empirical evidence, the study proposes the following: Establishment of a national digital platform for MKN approval requests. Periodic legal education programs for notaries on procedural safeguards. Issuance of binding guidelines by the Ministry of Law and Human Rights to synchronize practices across provinces.

Beyond the statistical overview, this study explores the normative gaps and behavioral inconsistencies that influence how Article 66 of Law Number 2 of 2014 is applied. The interviews with several notaries in Malang reveal a concerning trend: many notaries are unaware of the procedural protections afforded to them, including the mandatory approval of the Notary Honorary Council (Majelis Kehormatan Notaris/MKN) prior to any summons by investigators. This lack of awareness contributes to passive acceptance of potentially unlawful procedures.

The role of institutional communication also emerged as a decisive factor. Respondents indicated that the absence of clear operational standards and inter-agency coordination results in frequent misinterpretation or neglect of Article 66. As emphasized by Adjie (2008), legal protection mechanisms are only effective when they are consistently enforced and properly understood by both legal professionals and law enforcement authorities.

Further analysis points to the inconsistency in the legal culture across different regions. In jurisdictions where notaries maintain strong professional associations or have access to regular legal training, compliance with Article 66 is reportedly higher. This aligns with Friedman's theory of legal culture, where the efficacy of legal norms depends on the supporting institutions and the attitudes of those who implement them.

Moreover, the role of the Notary Honorary Council is often limited by bureaucratic inefficiencies. Informants reported delays in obtaining MKN responses, unclear application procedures, and absence of a real-time tracking mechanism for summons approvals. These limitations suggest that although the law is normatively adequate, its implementation is hindered by structural and administrative constraints. According to Ananda (2022), procedural rigidity in professional regulation can lead to functional failures in legal protection.

Another critical finding from the field is the tension between law enforcement urgency and procedural fairness. Investigators often prioritize speed and evidence collection over procedural compliance, arguing that MKN approval adds unnecessary delay. However,

as argued by Erwiningsih and Ali (2023), this approach risks criminalizing professionals without due process and undermines the constitutional values of legal certainty and presumption of innocence.

The implications of these findings are twofold. First, they confirm the need for institutional reform within MKN to make its procedures more transparent and accessible. Second, they emphasize the importance of strengthening notary awareness and self-advocacy, particularly in criminal proceedings. A well-informed notary is less likely to acquiesce to unlawful summons and more likely to demand procedural justice.

This research also extends prior work by Diba (2022) and Gotama (2023) by providing empirical evidence that supports theoretical arguments on the vulnerabilities faced by notaries in the criminal justice system. While prior studies focused primarily on legal doctrine, this paper introduces real-world testimony to underscore the functional disconnect between statutory protections and their enforcement. Ultimately, the findings suggest that Article 66, while legally sound, requires complementary institutional support and professional empowerment to fulfill its protective mandate. As Sjaifurrachman and Adjie (2011) argue, the value of legal norms lies not only in their content but in their lived enforcement.

CONCLUSION

This study concludes that the implementation of Article 66 of Law Number 2 of 2014 concerning the Position of Notary is hindered by practical inconsistencies, particularly in Malang City, where notaries are frequently summoned by investigators without prior approval from the Notary Honorary Council (Majelis Kehormatan Notaris), in violation of procedural safeguards. This finding reveals a disconnect between legal norms and their enforcement, influenced by low legal awareness among notaries and institutional inefficiencies within law enforcement agencies. Theoretically, this supports Lawrence Friedman's concept of legal culture, where the success of legal norms depends on the alignment of substance, structure, and culture. Practically, the study suggests the need for systemic reforms including digitalization of approval mechanisms, standardized procedures, and enhanced professional training. These efforts are essential not only to reinforce the protection of notaries but also to restore public trust in the integrity of authentic deeds. As a contribution to legal scholarship, this research provides an empirical foundation for understanding the limits of statutory protection in professional legal practice and opens new avenues for future studies focusing on inter-institutional coordination, comparative regional compliance, and the role of legal education in procedural justice.

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