
REFORMULATION OF THE APPROVAL OF THE HONORARY COUNCIL OF NOTARIES IN PROVIDING RECOMMENDATIONS FOR THE INTERESTS OF THE COURT



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Abstract

The Notary Honorary Council as a new organ that emerged in the Amendment to the UUJN has become a crucial organ in the law enforcement process for the benefit of the judiciary and its efforts to maintain the nobility and dignity of the Notary Office, this is because of the approval or rejection issued by the MKN at the request of investigators, public prosecutors or judges when they want to take a photocopy of the Minutes of the Deed and/or summon a Notary related to the Deed or Notary Protocol that is in the Notary's storage. This article provides an understanding of the actual characteristics of the MKN's authority and what the MKN's recommendation formulation is in order to maintain the honor of the Notary Office and uphold the judicial process. The results of the analysis found that the MKN's authority to provide approval or rejection of requests from investigators, public prosecutors, or judges for the benefit of the judiciary and the authority in terms of guiding as referred to in Article 66 and Article 66A of the Amendment to the UUJN is categorized as attributive authority based on several reasons: Authority granted by law; Authority that cannot be transferred; and Special purpose of authority. Meanwhile, the MKNW recommendation formulation for approval or rejection is in the form of a final and binding state administrative decision, and there are no Administrative Efforts. Clear procedures serve to realize legitimacy, transparency, and responsibility as well as the protection of the rights and interests of Notaries. The structure of the recommendation for approval or rejection made by the MKNW can at least include: the identity of the parties involved, the legal basis for the application, a description of the request, considerations and reasons for approval, limitations and provisions, the validity period of the approval, signatures, and official stamps.

Keywords: Notary Honorary Council, Authority, Recommendation Formulation

INTRODUCTION

The constitution plays a very important role in the administration of the state. As the highest basic law, the constitution functions to limit the power of the government, thus preventing abuse of authority and ensuring that all government actions remain within the established legal corridor. Considering that the constitution as the highest basic law is general and abstract in nature, implementing regulations are needed, namely laws as a form of interpretation of the constitution itself, especially in terms of determining the relationship between the government and citizens and ensuring the fulfillment of citizens' human rights, including the formation of state institutions and other fundamental equipment (Asshiddiqie, 2005). Law exists because of legitimate power, so legitimate power creates law. Provisions that are not based on legitimate power are basically not law.

Notaries, as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, are State Organs that have the position and commitment to offer types of legal services in the field of civil law (Salim, 2018). A notary is a Public Official appointed by the Government to assist the general public in making written agreements that exist or arise in the life of society. A person becomes a public official if he is appointed and dismissed by the government and is given authority and obligation for the authority (*gezag*) of the government (Salim, 2018). The importance of the position of Notary is that Notaries are given the authority by law to create a perfect means of proof, in the sense that what is stated in the authentic deed is essentially considered true (Suwardi, 2018). Mistakes made by a Notary in carrying out his/her duties can result in deeds made by or before him/her, namely being null and void, being cancelled, or only having the power of proof as a private deed, which can cause the Notary to be obliged to provide compensation (Anshori, 2010). The party harmed by the violation or mistake can file a claim or lawsuit for compensation to the Notary concerned through the court.

The position of a Notary in terms of the relationship with the person appearing is based on trust, which is an important factor, because the position held by a Notary is a position of trust (Sjaifurrachman, 2011). Law Number 30 of 2004 concerning the Position of Notary (referred to as the old UUJN) and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (referred to as the Amendment UUJN) provide the authority to state all acts, agreements, and determinations desired by the parties who deliberately come before to ask the Notary to have their statements stated in an authentic deed so that it has perfect evidentiary power, both externally, formally and materially (Prodjodikoro, 2000). Therefore, a Notary must be held accountable for the external, formal, and material truth of the deed. If the deed is not made as stipulated in the laws and regulations, it will result in a legal defect, so that the deed loses its authenticity, which can cause it to be canceled or null and void by law. The cancellation of an authentic deed can result in the Notary being liable or being held criminally responsible.

Based on Article 66 paragraph 1 of the old UUJN, it explains the existence of a special procedure that regulates that for the interests of the judicial process, investigators, public prosecutors or judges with the approval of the MPD have the authority to summon a Notary to attend an examination related to a deed made by or before them or a Notary protocol that is in the Notary's custody. Article 66 paragraph (1) of the old UUJN is contrary to the principle of independence in the judicial process of Article 3 paragraph (2) of Law No. 48 of

2009 concerning Judicial Power. In line with the Constitutional Court in its legal considerations in Decision No. 49/PUU-X/2012, it is stated that different treatment of the notary's position is regulated and protected in the notary's code of ethics. Meanwhile, notaries as citizens in the law enforcement process, all stages must be applied equally, as referred to in Article 27 paragraph (1) and Article 28 D paragraph (3) of the 1945 NRI Constitution. If the mechanism is applied in such a way, it will avoid the judicial process, which will cause a protracted process that affects the quality of efforts to enforce justice.

The Constitutional Court's ruling essentially eliminated the phrase "with the approval of the Regional Supervisory Council" as the norm in Article 66 paragraph (1) of the old UUJN, because it was considered to be contrary to the constitution. The Constitutional Court's ruling caused Article 66 paragraph 1 of the old UUJN to be invalid, as well as the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.03. HT.03.10 of 2007 concerning the taking of minutes and summoning of Notaries. Then the Amendment UUJN was formed by the legislators, and there were 44 articles that were improved, either in the form of additions, insertions, changes in substance, or deletions.

The amendment to the UUJN does not immediately resolve the polemics regarding the procedure for summoning notaries by the courts or law enforcement. There are several problems in its formation, especially related to the authority of the Notary Honorary Council (hereinafter referred to as MKN), which consists of representatives from Notaries, the Government, and Academics, and which functions as a legal protection institution for the position of Notary related to deeds made by and/or before him.

The first problem arises from the authority to grant "approval" being transferred to the MKN as contained in Article 66 paragraph (1) of the Amended UUJN, namely: For the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council have the authority to:

- 1) take a photocopy of the Deed Minutes and/or letters attached to the Deed Minutes or Notary Protocol in the Notary's custody; And
- 2) summon the Notary to attend an examination relating to the Notarial Deed or Protocol which is in the Notary's custody.

Based on the provisions in the article, there are similarities with Article 66 paragraph (1) of the old UUJN which only changes the phrase, namely "... with the approval of the MKN...", although based on the ruling of the Constitutional Court, the provisions of the article related to "approval" are no longer valid. However, in the Amendment UUJN, there is a transfer of authority from the MPD to the MKN as a new institution, which is a form of legal protection for the position of Notary.

The existence of MKN in the UUJN amendment is a positive and important thing to maintain the honor of notaries, namely the dignity and honor of notaries as officials who are required to maintain the confidentiality of the contents of the deed, but the formation of the UUJN amendment itself, according to the author, still requires improvements concerning the regulation of MKN. First, in every formation of a law, it is very important and fundamental to all concepts and understandings that will later be regulated in the material contents of the Law, as is generally found in the general provisions of Article 1. The UUJN amendment does not mention/explain what MKN is, as explained in Article 1 of this UUJN amendment, explaining Notaries, MPD, and other concepts that are considered important to be explained

first. Second, the UUJN amendment does not completely regulate the authority to provide recommendations to "maintain the dignity and honor of notaries".

Philosophical problems arise due to the authority of the MKN based on Article 66 paragraph (1) of the Amendment to the UUJN. In this case, not giving approval or rejection to the request of investigators, public prosecutors, or judges in the criminal case process, then the process stops and cannot be continued. So that this condition can hinder the law enforcement process and is contrary to the principle of independence in the judicial process, which aims to provide justice. The absence of justice and legal certainty for justice seekers is because, in the judicial process, requests to summon Notaries by the police, public prosecutors, and judges to find material and formal truth must obtain "approval" from the MKN. Sociologically-empirically, the obstruction of the judicial process will harm the community that seeks certainty and justice because of the authority of the MKN. The level of public trust in Notaries decreases as well as in judicial institutions, because law enforcement and justice are not achieved. In addition, it is also unavoidable from the existing legal problems, namely the conflict of norms that occurs due to conflicting regulations between the Amendment to the UUJN and Article 1 Number 2 of the Criminal Procedure Code and Article 15 paragraph (1) Letter f of Law No. 2 of 2002 concerning the Police, so that the conflict complicates the law enforcement process.

Based on the background that has been described, it is important to understand the actual characteristics of the authority held by the MKN in providing approval or recommendations at the request of Investigators, Public Prosecutors, or Judges for the benefit of the judicial process, as well as the appropriate legal formulation in providing approval or recommendations, as a form of legal protection for the honor and dignity of the Notary Office, and not including in terms of obstructing the judicial process.

RESEARCH METHOD

The research uses a normative legal research method, meaning that the problems to be studied, discussed, and described focus on applying positive legal rules or norms. The type of normative legal research is carried out by studying various formal legal rules, such as laws, literature that is theoretical in nature, and then connected to the main problem of discussion (Marzuki, 2016). The problem approach in this study uses 3 (three) types of approaches, namely the legislative approach, the conceptual approach, and the comparative approach. The sources of legal materials for research are divided into two types, namely primary legal sources and secondary legal sources. If it has legally binding power, it is categorized as a primary legal source (primary source), while if it does not have binding power, it is categorized as a secondary data source (secondary source).

RESULTS AND DISCUSSION

Characteristics of the Authority of the Notary Honorary Council in Providing Recommendations

In the law of governance, state administrative officials are the main actors in carrying out legal acts and actions of the main functions of government and government service functions, but in carrying out their actions and actions they must have clear authority.

Authority based on legal provisions is called legal authority. So that this authority is legitimate. Thus, officials (organs) in issuing their decisions are sourced from this authority.

The Notary Honorary Council (MKN) is a body formed by the minister for development, as regulated in Article 66A of the Amended Notary Law, which reads:

- (1) In carrying out coaching, the Minister forms a Notary Honorary Council.
- (2) The Notary Honorary Council consists of 7 (seven) people, consisting of the following elements: a. 3 (three) Notaries; b. 2 (two) Government members; and c. 2 (two) experts or academics.
- (3) Further provisions regarding the duties and functions, requirements and procedures for appointment and dismissal, organizational structure, work procedures, and budget of the Notary Honorary Council are regulated by a Ministerial Regulation.

The authority of the MKN in providing recommendations to take photocopies of the minutes of the deed and summon a Notary in the judicial process, as regulated in the provisions of Article 66 of the Amended UUJN, which reads:

- (1) For the judicial process, investigators, public prosecutors, or judges, with the approval of the Notary's Honorary Council, are authorized to:
 - a. Take photocopies of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Notary Protocol in the Notary's custody; and
 - b. Summon the Notary to attend the examination related to the Deed or Notary Protocol in the Notary's custody.
- (2) The taking of photocopies of the Minutes of the Deed or letters as referred to in paragraph (1) letter a, shall be followed by a report of the submission.
- (3) The Notary's Honorary Council, within a maximum of 30 (thirty) working days from the receipt of the letter requesting approval as referred to in paragraph (1), must provide an answer accepting or rejecting the request for approval.
- (4) If the Notary's Honorary Council does not provide an answer within the time period as referred to in paragraph (3), the Notary's Honorary Council shall be deemed to have accepted the request for approval.

The form and authority of the MKN are more clearly described and regulated in Article 1 number 1 of the Minister of Law and Human Rights Regulation Number 17 of 2021 concerning the Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council, namely: "The Notary Honorary Council is a body that has the authority to carry out Notary guidance and the obligation to provide approval or rejection for investigations and judicial processes, for taking photocopies of minutes of deeds and summoning Notaries to attend examinations related to deeds or Notarial Protocols that are in the Notary's custody."

Based on that, MKN is a state administrative body that has the authority to guide Notaries and the obligation to provide approval or rejection for investigation and judicial process, for taking photocopies of minutes of deeds, and summoning Notaries to attend examinations related to deeds or notarial protocols that are in the Notary's storage. The guidance is carried out by MKN to individual Notaries by conducting preliminary

examinations in the realm of administrative law concerning the existence or absence of violations of legality according to the Notary's job regulations. MKN is an independent body in making decisions that has the task and obligation to provide guidance or coaching in order to strengthen the Notary institution.

As regulated in Article 3 of the Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning the Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the MKN (hereinafter abbreviated as Permenkumham 17/2021), the MKN formation consists of the Central Notary Honorary Council (hereinafter referred to as MKNP) and the Regional Central Notary Honorary Council (hereinafter referred to as MKNW). Then, regarding the formation and position, the MKNP is formed by the Minister and is domiciled in the capital city of the Republic of Indonesia, while the MKNW is formed by the Director General on behalf of the Minister and is domiciled in the Provincial Capital as stipulated in Article 3 Paragraph (2) of Permenkumham 17/2021. The elements are explained in Article 4 of Permenkumham 17/2021 that the MKNP and MKNW consist of 7 (seven) members, including the chairman and deputy chairman, consisting of 2 (two) elements from the government, 3 (three) notaries, and 2 (two) experts or academics.

In carrying out the duties of guiding Notaries, MKN acts as a State Administrative Agency or Position where the guidance of Notaries is one of the duties of the Minister of Law and Human Rights in carrying out government affairs based on the applicable Legislation and has consequences for MKN which is also located as a State Administrative Agency or Position (Nugrahaningsih, 2023).

MKN is an institution that carries out the function of coaching for Notaries, especially in terms of providing recommendations for approval or rejection to investigators, public prosecutors, or judges for the taking of minutes of deeds and summoning Notaries. The existence of an element of coaching function is as if it were a delegation of function from the Minister of Law and Human Rights to MKN, which also makes it have the position of a state administrative body. So that MKN/MKNW can be qualified as a State Administrative Body or Official (Adjie, 2024).

However, there needs to be legal certainty that the absence of a clear statement of the position of the MKN as an Administrative Agency/Official in both the Old UUJN, the Amended UUJN and in Permenkumham 17/2021 has resulted in inadequate regulations, because to formulate the position of the MKN as an Administrative Agency/Official at this time it is only based on doctrine. Due to these conditions, legal certainty and legal protection are far from being achieved, especially to align the duties and authorities of the MKN as stated in the UUJN with the guidelines for implementing government as regulated in the Law on State Administration. Article 1, number 9 of the PTUN Law states:

A State Administrative Decision is a written determination issued by a state administrative body or official containing state administrative legal actions based on applicable laws and regulations, which are concrete, individual, and final in nature, and have legal consequences for a person or civil legal entity.

MKNW, in its position as a State Administrative Agency or Official, has the authority to make or issue a decision letter or stipulation, or, without considering the formality aspects related to the results of supervision, examination, or imposition of sanctions or granting of

permits addressed to the Notary concerned. By fulfilling the provisions of Article 1, number 3 of the PTUN Law.

In practice, the status of the MKNW decree or stipulation can be used as an object of a lawsuit by a Notary to the PTUN as a state administrative dispute (Adjie, 2024). As explained in Article 1, number 10 of the PTUN Law, it is stated that:

"State Administrative Disputes are disputes that arise in the field of state administration between individuals or civil legal entities with state administrative bodies or officials, both at the central and regional levels, as a result of the issuance of state administrative decisions, including personnel disputes based on applicable laws and regulations."

However, it should be noted that in disputes in state administrative courts, if a decision by a state administrative body or official is deemed inappropriate, does not comply with laws and regulations or some actions exceed authority and violate the general principles of good governance, then before that an administrative remedy mechanism must be taken which in state administrative courts is known as an administrative objection or administrative appeal. However, as per the laws and regulations, both the Old UUJN, the Amended UUJN, and Permenkumham 17/2021 concerning administrative remedies for MKNW decisions, there is a legal vacuum, which ultimately means there is no administrative objection or administrative appeal mechanism. This means that there is no administrative remedy for the MKNW decision regarding the application of Article 66 Paragraph (1) of the Amended UUJN as stated in Article 48 of the PTUN Law.

So, if a Notary objects to a process of summoning and examining MKNW, which will later produce a decision letter of approval or rejection of the application of Article 66 Paragraph (1) of the Amendment to the UUJN, then the Notary can immediately sue the MKNW to the State Administrative Court. The positive aspect obtained from this effort is that the assessment of the requested state administrative act is not only assessed in terms of the application of the law, but also in terms of policy, and allows for another decision to be made that replaces the previous State Administrative Decision (Laica Marzuki, 1992). So if a Notary files a lawsuit with the State Administrative Court, then as long as the lawsuit is ongoing until it has permanent legal force, the Notary can suspend the summons (Adjie, 2024).

Table of TUN disputes (PTUN Decisions) due to the issuance of KTUN MKNW regarding the granting of approval for the summons of a Notary

Number	Decision	Decision
1.	Decision Number: 21/G/2017/PTUN. SBY Jo. Appeal Decision Number: 156/B/2017/PT. PTUN. SBY	Canceling the Decree of the MKNW of East Java Number: UM.MKNW. JATIM.01.17-23
2.	Decision Number: 77/G/2018/PTUN-MDN	Canceling the Decree of the Chairman of the North Sumatra MKNW K.29/MKNW-SUMUT/04.18
3.	Decision Number: 13/G/2018/PTUN-TPI	Canceling the Decree of the MKNW of the Riau Islands

		Province Number: UM.MKNW-KEPRI.10.18-34
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As the cases listed in the table above are cases that have been tried at the PTUN, it can be concluded that the decision or determination of the MKNW in granting approval or rejection as per the implementation of Article 66 Paragraph (1) of the Amendment to the UUIJ is an object of dispute in the State Administrative Court because the MKNW is a State Administrative Official who carries out government affairs, namely approval of the granting of Notary Examination permits based on the authority he has in accordance with the principle of legality as stated in the provisions of the UUIJ, the Amendment to the UUIJ, and Permenkumham 17/2021. Where the decision or determination of granting approval or rejection issued has cumulatively fulfilled the elements of a State Administrative Decision, namely the decision or determination of the MKNW in approving as per the implementation of Article 66 Paragraph (1) of the Amendment to the UUIJ is in written form and is in accordance with Article 1 number 9 of the PTUN Law.

The term authority is aligned with the term “bevoegdheid” in Dutch legal terms. These two terms have slight differences that lie in their legal character, namely, the term “bevoegdheid” is used both in the concept of public law and in the concept of private law, while the term authority or authority in Indonesia is always used in the concept of public law (Hadjon, 1997). In other terms, authority or authority is aligned with “authority” in English. Authority in Black’s Law Dictionary (Campbell, 1990) is defined as:

“Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in scope of their public duties”.

Furthermore, H.D. Stout (Stout, 1994) said that:

"Authority is a concept that originates from the law of government organization, which can be explained as the entirety of the rules concerning the acquisition and use of government authority by public law subjects in public legal relations."

Authority as a public law concept consists of at least 3 (three) components, namely influence, legal basis, and legal conformity. The influence component is that the use of authority is intended to control the behavior of legal subjects. The basic legal component is that the authority must always be able to be designated as having a legal basis. The conformity component contains the meaning of the existence of authority standards, namely general standards (all types of authority) and special standards (for certain types of authority) (Hadjon, 1997).

Authority is associated with the concept of "bestuur", so government power is not merely a bound power (gebonden bestuur), but also a free power (vrij bestuur, discretionary power, Ermessen) (Susanto, 2020). As a public law concept, authority (bevoegdheid) is described as legal power (rechtmacht), where the concept above is also related to the formation of besluit (government decisions), which must be based on authority. In other words, government decisions by authorized organs must be based on authority that has been clearly regulated, where the authority has been stipulated in the existing legal regulations. In line with the opinion above, F.P.C.L. Tonnaer, in his book Ridwan HR. states that: Government authority in this regard is considered as the ability to implement positive law,

and thus, the legal relationship between the government and citizens can be detailed (Ridwan HR, 2002).

The various understandings and characteristics of authority, as stated above, although formulated in different languages, contain the understanding that authority provides a legal basis for acting and making certain decisions based on the authority given or attached to it, based on applicable laws and regulations. From the perspective of administrative law, knowing the source and how to obtain the authority of this government organ is important, because it concerns legal accountability (*rechtelijke verantwoording*) in the use of said authority, in line with one of the principles in a state of law; "*geen bevoegheid zonder verantwoordelijkheid* or there is no authority without responsibility" (there is no authority without accountability) (Ridwan HR, 2002).

The way to obtain government authority in administrative law literature is often referred to as the source of obtaining authority. Based on the two terms that refer to the same target and meaning, the way to obtain government authority (source of authority) can generally be obtained through attribution, delegation, and sometimes also mandate methods that are placed as separate methods. Every use of government authority (governmental action) is thus required to be based on legitimate authority (Susanto, 2020). According to Philipus M. Hadjon, all government steps must be based on valid (legitimate) authority. And classifying authority is obtained from three (3) sources, namely attribution authority, delegation authority, and mandate authority. Attribution authority is usually limited through the grouping of state power by the constitution, but in delegation authority, and mandate authority is authority that comes from submission (Hadjon, 2008).

In delegation, the transfer process originates from a government organization to another government organization based on statutory regulations, and responsibility is transferred to the delegator (delegation recipient). The person who gives the delegation cannot use the authority again, except after a withdrawal based on the principle of "*contrarius actus*". This means that every transfer, withdrawal of a regulation implementing legislation, can only be carried out by the official who decided the intended regulation, and is implemented with comparable or higher rules. While in the mandate, the transfer process is related to superiors and subordinates, which is routine. And responsibility remains with the mandate giver. At any time, the mandate giver can use the authority that is transferred (Hadjon, 2008).

Understanding the source of the MKN's authority in providing recommendations, it is necessary to carefully understand the provisions of Article 66 Paragraph (1) of the Amendment to the UUJN, which states:

- (1) For the interests of the judicial process, investigators, public prosecutors, or judges, with the approval of the MKN, have the authority to:
 - a. take photocopies of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Notary Protocol in the Notary's custody; and
 - b. summon the Notary to attend the examination related to the Deed or Notary Protocol in the Notary's custody.

It is clear that the source of the MKN's authority in providing recommendations can be seen from the phrase "with the approval of the MKN, it is authorized to: a. take a photocopy of

the Minutes of the Deed, (and so on...) b. summon a Notary to attend an examination related to the Deed, (and so on...)". The word "authorized" contained in Paragraph (1) of the UUNJP shows that the MKN's recommendation authority comes directly from the Law, namely a legal product made by a legislative institution and does not come from another institution, in this context the Ministry of Law and Human Rights.

Then, what is regulated in Article 66A Paragraph (1) of the Amendment to the UUJN is another authority in terms of carrying out "guidance" which in the author's opinion is also an attribution of the legislator, which is textually stated: "(1) In carrying out guidance, the Minister forms a Notary Honorary Council." The new article inserted between Article 66 and Article 67 of the Amendment to the UUJN clearly describes the authority of the Minister in forming the MKN to carry out guidance for notaries, not meaning that the authority for guidance lies with the Minister, but rather lies with the MKN itself.

Understanding the authority of the MKN in providing recommendations or approvals contained in Article 66 of the Amendment to the UUJN, which is categorized as a form of attributive authority, we need to explore the concept of attributive authority and its application in the context of the article. The authority of the MKN contained in Article 66 of the Amendment to the UUJN can be categorized as attributive authority based on several reasons: 1. Authority granted by law; 2. Authority that cannot be transferred; and 3. Specific purpose of authority.

1) Granting of Authority Based on Law

Article 66 of the Amendment to the UUJN explicitly grants authority to the MKN to conduct inspections and provide recommendations regarding violations of the notary code of ethics. This shows that the authority is granted directly by law and is not general in nature. Only the MKN has the right to conduct inspections and provide recommendations regarding sanctions and guidance, in accordance with the provisions of the law. This authority is attributive because it is expressly stipulated by law. No other agency or official can perform the same function without the same legal basis. In other words, the MKN holds exclusive authority granted by the Amendment to the UUJN for these tasks, which is a characteristic of attributive authority.

2) Non-Transferable Authority

The MKN's authority to conduct inspections and provide recommendations cannot be delegated to another agency without a Change in the legislation. This confirms that this authority is attributive because it is bound by the institutional structure and duties that have been stipulated by law. In the context of attributive authority, the MKN cannot transfer its duties to other institutions or other individuals. This authority is the exclusive responsibility of the MKN in accordance with the provisions of the mandate of the law, which confirms that the MKN is the only institution directly authorized to carry out these functions (primarily in providing approval/recommendations).

3) Functions and Objectives of Authority

The authority of the MKN has a specific objective, namely, to maintain the honor and integrity of the notary profession. This authority gives the MKN the authority to ensure that notaries comply with the code of ethics and professional standards, and to provide relevant recommendations regarding disciplinary actions and coaching. This attributive authority is designed to achieve specific objectives related to the development of the

notary profession. By granting this authority exclusively to the MKN, legislators through legal products in the form of laws ensure that coaching is carried out by bodies that have the appropriate authority, competence and knowledge.

Regarding the guidance as ordered by the Amendment to the UUJN in Article 66A Paragraph (3), the Ministry has made derivative regulations, none other than through the issuance of Permenkumham 17/2021. It is appropriate that the material content of the regulations related to the authority of the MKN in carrying out guidance is regulated, because the material content in the Amendment to the UUJN is more general in nature, so that it then needs to be regulated in more detail in technical regulations (Mahanani & Hariyani, 2023).

It is important to understand that the granting of two authorities to the MKN, namely 1) Authority to provide approval/recommendations and 2) Authority to guide Notaries, in this Amendment to the UUJN shows that there is a difference in concept, but in terms of function, they are interrelated regarding the provision of recommendations with the provision of guidance to Notaries by the MKN. So, the MKN, with its function of guiding Notaries, is indirectly related to maintaining the dignity and honor of Notaries in carrying out their functions through the authority to provide recommendations/approvals. This is in line with Permenkumham 17/2021 in Chapter I General Provisions Article 1, which defines the MKN as:

"A body that has the authority to carry out the guidance of Notaries and the obligation to provide approval or rejection for investigation and judicial process, regarding the taking of photocopies of minutes of deeds and summoning Notaries to attend examinations related to deeds or Notarial Protocols that are in the Notary's custody."

It is quite clear that the MKN has the authority to foster Notaries and must provide approval or rejection for investigation and judicial process. Of course, this shows that the authority in terms of the obligation to provide recommendations arises from Article 66 Paragraph 1 of the Amendment to the UUJN, meaning that this authority comes from direct attribution by the Law, not from a delegation delegated through the Minister.

Attribution is the granting of Authority to a Government Agency or Official by the 1945 Constitution of the Republic of Indonesia or Law, attribution also relates to the transfer of new authority, namely new authority given to the MKN which is none other than the formation of a new institution by Law based on the Constitutional Court Decision which has revoked the authority previously given to the MPN.

Strengthened by the opinion of Philipus M. Hadjon that attribution is an authority inherent in a position. Attribution is a normal way to obtain government authority. It is also said that attribution is the authority to make decisions (*besluit*) (Hadjon, 1997), state administrative decisions originating from Government Agencies or Officials, in this case, the MKN, in the form of recommendations or approvals to reject or accept investigators' requests or in the process for the benefit of the judiciary. So, the authority of the MKN in terms of the obligation to provide approval or recommendations from the perspective of the theory of authority is attributive authority, because this authority is given by the legislator through the legal product of the Amendment UUJN (Article 66) and is inherent in the position of the

MKN. So as long as the Amendment UUJN and the regulations therein regarding the MKN still exist, then this authority also remains, as long as it has not been changed/replaced.

Article 66A Paragraph (1) of the Amendment to the UUJN states that in carrying out coaching, the Minister forms the MKN. Article 3 of Permenkumham 17/2021 states that the MKN consists of: 1). The Central Notary Honorary Council (MKNP); and 2). The Regional Notary Honorary Council (MKNW); therefore, the coaching referred to in Article 66A Paragraph (1) includes coaching provided by the Central MKN and the Regional MKN.

Furthermore, in Article 22 Paragraph (1) of Permenkumham 17/2021, MKNP has the task of guiding Notaries in the context of implementing the duties and functions of MKNW and providing guidance to MKNW related to their duties and functions. More clearly described in Paragraph (2) regarding the functions of MKNP, namely: a. providing socialization and provision to Notaries regarding the duties and functions of MKN; and b. carrying out supervision and monitoring of the implementation of the duties and functions of MKNW.

Meanwhile, the duties and functions of the MKNW are contained in Article 24 Paragraph (1) of Permenkumham 17/2021, namely:

- a. conducting examinations of applications submitted by investigators, public prosecutors, or judges; and
- b. providing approval or rejection of requests for approval to take photocopies of minutes of deeds and summoning Notaries to attend investigations, prosecutions, and judicial processes.

Furthermore, in Article (2) in carrying out the duties as referred to in Article (1), the MKNW has the function of providing guidance in order to: maintain the dignity and honor of Notaries in carrying out their professional duties and provide protection to Notaries in relation to the Notary's obligation to keep the contents of deeds confidential.

From the explanation of the regulatory framework of the MKN's authority, it can be seen that the MKN only provides guidance by emphasizing 2 (two) main things, namely guidance on the aspect of the MKN Institution (in this case, the MKNW) and guidance on the aspect of the Notary Individual. Specifically in the context of guidance on the aspect of the Notary Individual, the MKNW provides guidance when the Notary is faced with a legal problem, where the MKNW examines the application submitted by the investigator, public prosecutor, or judge (Maya, 2017). Based on the MKN's consideration of the issuance of a decision letter in the form of a recommendation or approval, the MKNW thus pays attention to the functions and authorities of the MKN as referred to in Article 66A of the Amendment to the UUJN in conjunction with Article 1 number 1 of the Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning the MKN, namely emphasizing the function of guidance. So, the existence of the MKN functions to maintain the honor of the Notary as a state official. So, the MKN, with its function of providing guidance to Notaries indirectly, also functions to maintain the nobility and dignity of Notaries in carrying out their functions.

Legal Formulation Recommendations of the Notary Honorary Council for the Interests of Justice

As a public official, of course, action against the official's mistakes must be preceded by an examination of the official's responsibilities by means of administrative legal sanctions.

Therefore, action against the Notary's mistakes is not immediately directly linked to individual responsibility without being preceded by an examination of the official's responsibilities.

MKN has the authority to request official responsibilities from notaries. Philipus M. Hadjon explained that the enforcement of administrative law is different from the enforcement of civil and criminal law. According to him, the imposition of administrative sanctions can be carried out directly by government agencies/officials without having to go through the court process (Hadjon 2012). The examination of notaries by MKNW is a form of examination concerning official responsibilities in the realm of administrative law as a form of implementation of the notary's office. The product is a decision on "approval" or "rejection" of the request to summon a Notary and/or taking minutes of a notarial deed.

From the perspective of Administrative Law, procedures have a very important role in creating good governance. Related to this, Juli Ponce stated that procedures have 2 (two) functions in Administrative Law, namely non-instrumental functions and instrumental functions. So, procedures have a very important role in determining decisions of approval or rejection by the MKN. Procedures function to realize legitimacy, transparency, and responsibility as well as the protection of the rights and interests of Notaries. Juli Ponce even stated that procedures are a "legal shield" for fulfilling the rights and interests of citizens. Based on Article 64 of the Law on State Administration, it is stated that: "A decision can only be revoked if there is a defect: a) authority; b) procedure; and/or c) substance".

The procedure for providing MKN recommendations can be seen in Chapter IV regarding Duties and Functions, especially in the second part regarding "Implementation of Duties and Functions of the Examination Panel", stated in Articles 26 to 33 of Permenkumham 17/2021. To realize legitimacy, transparency, and responsibility as well as protection of the rights and interests of Notaries, and without reducing the essence of the law enforcement process, there needs to be simplification and new construction by adding several provisions regarding the procedure for providing recommendations by the Regional MKN, as follows:

1) Request for Taking Photocopy of Minutes of Deed and Notary Examination:

- a. The party (investigator, public prosecutor, or judge) who wants to examine the notary and take a photocopy of the minutes of the deed or Notary Protocol must submit a written request to the Head of the Regional MKN where the Notary concerned is located.
- b. The request must be in Indonesian with a copy to the Notary concerned and must contain complete information such as the name of the notary, office address, deed number, and main case.
- c. The MKNW has 30 days to respond; if there is no response from the MKNW, then it is deemed to have received the request for approval.

2) Formation of the Examination Panel:

- a. In examining the Notary, the Head of the MKNW forms an Examination Panel consisting of 3 (three) people, consisting of each element of the MKNW members.
- b. The formation of the Examination Panel is no later than 5 (five) Days from the date the report or request is received.

- c. The Examination Panel must refuse to examine the Notary concerned if they have a marriage relationship or blood relationship in a straight line downwards and/or upwards without degree restrictions, as well as in a lateral line up to the third degree.
- d. If the Examination Panel has the relationship as referred to, the Chairperson of the MKNW shall appoint a replacement.

3) Summoning a Notary:

- a. Summoning a notary is carried out by the Examination Panel based on a request from the authorized party (investigator, public prosecutor, or judge).
- b. Summons are made in writing no later than 5 (five) days before the examination is carried out, and the Notary must be present (may not be represented).
- c. In urgent circumstances, a summons can be made electronically.

4) Examination Process:

- a. The Examination Panel has the authority to examine the Notary and hear statements directly from the Notary concerned.
- b. The Notary's statement is stated in the examination report.
- c. In urgent circumstances, the examination can be carried out virtually.
- d. Every result of the Examination Panel's examination of the Notary concerned is reported to the Chairperson of the MKNW.

5) Decision-Making Process:

- a. If the Notary is absent after being summoned 2 (two) times in a row, the Examination Panel may issue a decision approving the request of the authorized party.
- b. The Examination Panel issues a decision approving or rejecting the request of the authorized party regarding the results of the examination of the Notary concerned with the following benchmarks:
 - i. There is an allegation of a criminal act related to the minutes of the deed and/or letters attached to the minutes of the deed or the Notary Protocol in the Notary's storage;
 - ii. The right to sue has not lapsed based on the provisions on the expiration of the statute of limitations in the criminal law regulations;
 - iii. There is a denial of the validity of the signature from one or more parties;
 - iv. There is an alleged reduction or addition to the minutes of the deed; and/or
 - v. An alleged Notary is postponing the date (antidatum).
- c. Approval or rejection of the request of the authorized party (investigator, public prosecutor, or judge) is carried out based on the results of the examination and the decision of the plenary meeting of the MKNW.
- d. The decision of approval or rejection of the request of the authorized party is issued in a decree signed by the Head of the MKN

6) Taking Photocopies of Minutes of Deeds and Summons of Notaries for the Interests of the Judicial Process:

- a. Taking photocopies of minutes of deeds and Summons of Notaries can be done when:
 - i. The Regional MKN does not respond to the request from the authorized party within a period of 30 (thirty) Days since the report or request was received.
 - ii. A decree of approval is issued by the Regional MKN when the Notary concerned is absent after being summoned 2 (two) times in a row, or the decision of approval is based on a plenary meeting of the Regional MKN of the Notary concerned, or

- b. Based on these circumstances, the Notary is obliged to:
 - i. Provide photocopies of minutes of deeds and/or letters required to investigators, public prosecutors, or judges; and
 - ii. Submit a photocopy of the minutes of the deed and/or letter as referred to in letter a by making a report of the submission signed by the Notary and the investigator, public prosecutor, or judge, witnessed by 2 (two) witnesses.

7) Accompaniment:

MKNW can accompany the Notary in the examination process before the investigator, public prosecutor, or judge, as referred to in Article 33 Paragraph (3) of Permenkumham 17/2021.

In general, the provisions outlined above aim to regulate the notary examination procedure fairly and transparently, and to protect the legal interests of both the party requesting the examination for the judicial process and the notary itself, namely in providing protection for the position of Notary.

In providing recommendations or approval for the interests of the judiciary, the MKN must consider several aspects:

- a. Legal Interests: The MKN must balance the protection of notaries and the legal interests of the community or parties requiring information from notaries, namely judges, public prosecutors, and police. This is important so that the legal process can run fairly and transparently.
- b. Compliance with Procedures: The MKN must ensure that all procedures stipulated in the legislation are complied with, including the time period for granting permission or rejecting an application.
- c. Legal Certainty: the existence of a MKN decision must provide legal certainty for both notaries and parties requesting information, in this case judges, public prosecutors and police. This is important to maintain the integrity of the legal system and public trust in notaries.

The MKNW recommendation structure in granting approval or rejection of requests from investigators, public prosecutors, or judges for the interests of justice is an obligation as mandated by law. This process is strictly regulated to ensure legal certainty and uphold the rights and responsibilities of Notaries as public officials.

The existence of the word "agreement" in Article 66 paragraph (1) of the Amendment to the UUJN is basically not a form of limiting the power of investigators, public prosecutors, or judges in the law enforcement process. However, the word is used as a means to limit the authority of investigators, public prosecutors, or judges that are too broad. Especially aimed at police investigators as the main mouthpiece for a criminal law process that often determines a suspect without clear rules (Muhaimin, 2020).

Therefore, in the framework of controlling the unlimited discretion, a legal instrument of recommendation is used through the MKNW as a Decision of the State Administrative Agency/Institution. The authority to provide recommendations is the authority granted by laws and regulations and the authority is granted to achieve concrete goals (Nasution, 2020). The authority of the MKN to grant permission is granted by the Amendment to the UUJN with a concrete goal, namely to determine whether to approve or reject the application for summoning a notary and/or taking a photocopy of the minutes of the notary deed with its product in the form of a KTUN.

The existence of a mechanism for requesting approval in summoning a Notary has a positive impact in providing legal certainty, protection, and guidance to Notaries in carrying out their duties. Thus, in accordance with the laws and regulations in Indonesia, as well as the requirements of the Law governing the Position of Notary, investigators are authorized to summon Notaries to conduct investigations into legal deeds made by the Notary. Related to the Structure of recommendations for approval or rejection made by the MKNW, at least it can include the following:

1. Identity of Parties Involved
Identity of Notary: Name, address, and registration number of the notary who is the subject of the request. Identity of Applicant: Identity of the party submitting the request for approval, namely the investigator, public prosecutor, or judge, along with information regarding the institution or agency where they work.
2. Legal Basis for Request
Explanation of the legal basis used by the applicant to submit the request for approval. This includes relevant articles of the law, for example, the Notary Law, as well as other provisions underlying the request.
3. Description of Request
Description of the specific action or information requested by the applicant. This may include a request to present a notary as a witness, retrieval of certain documents, or disclosure of a deed made by a notary.
4. Considerations and Reasons for Approval
Explanation of the reasons that are the basis for the MKN's considerations in approving. These considerations may include aspects of legality, public interest, and protection of the integrity of the notary profession.
5. Limitations and Provisions
Determination of the limitations that must be followed by the applicant in carrying out the approved action. This can include provisions on maintaining the confidentiality of information, using information only for investigative or trial purposes, and prohibitions on abusing authority.
6. Validity Period of Approval
Determination of the validity period of the approval letter. This time can be limited for specific action purposes or for a certain period of time according to law enforcement needs.
7. Signature and Official Stamp
Signature of an authorized member or leader of the MKN, and an official stamp as a sign of the validity of the approval letter.
8. Attachments (if any)
Additional documents or evidence that support the reasons for approving, such as MKN meeting minutes or other relevant legal documents.

This letter of approval aims to provide a clear legal basis and protect all parties involved, including notaries, in the legal process. It also ensures that the actions taken are in line with applicable regulations and do not violate the principles of professionalism and notary ethics.

The MKNW recommendation is a legal certainty to determine in advance whether there is an element of error from the notary or not. It is stated in the jurisprudence of the Supreme Court, decision Number No.702K/Sip/1973, whose legal principle states that Notaries, in carrying out their duties, are only formal. Notaries only function to record/write down what is desired and stated by the parties who appear before the notary. Notaries are not required to materially investigate matters stated by those appearing before the notary. In the examination of criminal cases allegedly committed by a notary, investigators, public prosecutors, or judges must request approval from the MKNW by submitting a written application in Indonesian to the Head of the MKNW, following the work area of the Notary concerned, a copy of which is submitted to the Notary.

In providing the recommendation, the MKNW forms an Examination Panel that is authorized to summon a notary based on a request from an investigator, public prosecutor, or judge. For this reason, the notary must be present, bringing the minutes of the deed/letter attached to the minutes of the deed and the deed register book, and/or other letters related to the deed that is the subject of the case, and in the examination process, to be shown to the MKNW.

The process of summoning a Notary, both as a witness and as a deed maker, must be strictly regulated to ensure legal certainty and protect the rights of the Notary as a public official tasked with providing valid and authentic deeds. This regulation is designed to provide clarity and reduce arbitrariness in the legal process by ensuring that all actions are carried out in accordance with clear and well-defined procedures (Syahrani, 2020). MKNW, in terms of giving approval or rejection regarding the taking of minutes of deeds and/or letters attached to the minutes of deeds or Notary protocols, and summoning a Notary upon request by the investigator, public prosecutor, or judge, several things are used as the basis or reasons, namely:

a) Approved

1. There is a violation committed by a Notary as stated in Article 33 of Permenkumham 17/2021.
2. Violating applicable provisions as stipulated in UUJN and its Amendments in UUJN Amendments.
3. The Notary admits to being involved in a criminal act.

b) Rejected

1. There is no violation committed by a Notary as stated in Article 33 of Permenkumham 17/2021.
2. The Legal Problem reported by the reporter has no relevance to the position of Notary and the Legal Product made by the Notary.
3. The Notary concerned is not a Notary who made the Deed requested by the investigator, public prosecutor, or judge.
4. The application is submitted against the Deed of the Land Deed Making Officer (PPAT) and not the Notary Deed.
5. Because in his position as a Notary, he has carried out his duties following the Notary Law, and no errors were found in the process of making the deed.
6. The Notary in question has been examined in the same case.

In addition, it is important for investigators, public prosecutors, and judges to provide clarity in their application letters regarding the notary's position, whether as a witness, suspect, or

others. Then, for requests for photocopies of minutes/letters attached, there must be clear reasons, as well as requests for signatures/thumbprints listed on the minutes of the deed/letter attached must first be tested for validity with clear reasons.

In addition, incomplete information in the application letter from law enforcement causes difficulties for MKNW members in decision making. Ambiguity is also often found in application letters regarding the legal status of notaries when summoned by investigators, whether as individuals or as members of the general public, which is very important to be used as a basis by MKNW for decision-making. If the application letter received by the MKNW secretary does not sufficiently explain the chronology of the case, it will result in the rejection of the recommendation for approval.

MKNW issues a recommendation for approval or rejection of a request for examination of alleged criminal acts committed by a notary, which will have implications for both the notary and the interested parties. MKNW is an institution mandated by the notary law to provide approval or permission to law enforcement to examine a notary when the notary is suspected or suspected of committing a violation of the law. The presence of MKNW can assist investigators in determining whether or not there are criminal elements related to the minutes of the deed and notary protocol.

However, it should be understood that MKNW is not only required to understand matters relating to the implementation of notary duties, but must also understand procedural law, in addition to its integrity not being in doubt. Therefore, MKNW members must realize that MKN is not a defender for Notaries, but rather an institution that has the task and function to proportionally and professionally position the need for photocopies of minutes of deeds and/or letters attached to minutes of deeds or notary protocols in the storage of notaries or notary statements as requested by investigators, public prosecutors, or judges for the judicial process.

The decision of the MKNW in providing recommendations for approval or rejection of requests from investigators, public prosecutors or judges regarding the taking of photocopies of minutes of deeds and summoning Notaries does not require the approval of the MKNP as superior because the MKNW has been given authority as per Article 24 Paragraph (1) and Paragraph (2) of Permenkumham 17/2021.

In the end, the recommendation for rejection or approval of the MKNW is final and binding because there is no appeal mechanism to the MKNP. This is due to the authority of the MKNP, namely:

- a. Provide approval to members of the Central MKN to carry out coaching and supervision of the implementation of the duties and functions of the Regional MKN;
- b. Request monthly reports from the Regional MKN;
- c. Sign administrative correspondence; and
- d. Coordinate members and the secretariat of the Central MKN.

It is final because it does not require approval from superiors, causing legal consequences for a Notary to provide a photocopy of the minutes of the deed and/or the required letters. So if anyone feels that in one of these stages there is something that results in a loss, it can be sued directly to the State Administrative Court, and the recommendation for approval or rejection of the MKNW is the object of the lawsuit.

CONCLUSION

The authority of the Notary Honorary Council (MKN) in granting approval or rejection of requests from investigators, public prosecutors, or judges for the benefit of the judiciary and the authority in terms of providing guidance as referred to in Article 66 and Article 66A of the Amendment to the UUJN is categorized as attributive authority based on several reasons: 1. Authority granted by law; 2. Authority that cannot be transferred; and 3. Specific purpose of authority. Technically, the authority of the MKN is further explained in Permenkumham 17/2021, in which, in terms of providing recommendations for approval or rejection of requests from investigators, public prosecutors, or judges, it is carried out by the Regional Notary Honorary Council (MKNW).

The formulation of the MKN approval or rejection recommendation is in the form of a final and binding state administrative decision, and there are no Administrative Efforts. The legal effort that must be taken by a Notary if he objects to the MKNW Decision is through a lawsuit at the State Administrative Court. In addition, the procedure has a very important role in determining the decision of approval or rejection by the MKNW, not as a form of limiting the power of investigators, public prosecutors, or judges in the law enforcement process. Clear procedures serve to realize legitimacy, transparency, and responsibility as well as protection of the rights and interests of Notaries. The structure of the recommendation for approval or rejection made by the MKNW can at least include: the identity of the parties involved, the legal basis for the application, a description of the request, considerations and reasons for approval, limitations and provisions, the validity period of the approval, signatures, and official stamps.

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