

Effectiveness of Application Article 18 Regulation of the Minister of Law and Human Rights Number 7 Year 2016 to the Role of the Notary Honorary Assembly in Protecting Notary Professions: Case Study in Bengkulu City

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Abstract

The writing of this journal aims to know and analyze the effectiveness of the application of Article 18 of Regulation of the Minister of Justice and Human Rights No. 7 of 2016 on the role of the Notary Public Honor Council in protecting the Notary profession in Bengkulu City and to find a formulation of the regulation on the protection of the Notary profession granted by the Assembly Honor Notary to ensure legal certainty in the future
Keywords: Legal Effectiveness, Legal Protection, Honorary Board of Notary, Profession Notary.

A. Background

In view of the vulnerability of the Notary profession of "bondage" law that can bound any time, the urgency of the presence of an institution or body that can protect the Notary profession would be highly desirable. When referring to Law No. 2 of 2014 on the Amendment to Law Number 30 Year 2004 about Notary's Office Law (hereinafter abbreviated NOL), then the legal protection for the profession of Notary especially in the investigation process has been provided for in Article 66, where protection Notary legal profession under Article 66 NOL was given by the Honorary Council of Notaries (hereinafter abbreviated HCN).

The beginning of the establishment of the HCN itself has been through a long debate. In the history of its development, the birth of HCN preceded by the inception of the Council of Regional Supervisor (hereinafter referred to as CRS) are arranged on Law No. 30 of 2004 concerning Notary as a rule earlier, but after the issuance of the Constitutional Court Decision Number 49 / PUU-X / 2013 that repeal article 66 paragraph 1 of Law No. 30 of 2004 concerning Notary office, which Article 66 paragraph (1) of Law No. 30 of 2004 concerning Notary office.

In its consideration, the Constitutional Court declares that the judicial process to retrieve documents that have been kept by Notary and call Notary to be present in the examination relating to the documents made it is not necessary to seek approval from the CRS. The approval procedure is deemed to be contrary to the principle of equal protection as guaranteed by the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). According to the Constitutional Court, the different treatment of Notary can be justified as long as the treatment is included in the code of Notary Ethics namely attitude, behavior, and deed of Notary related to morality. Notary as a citizen in the process of law enforcement at all stages must be applied equally before the law as guaranteed Article 27 paragraph (1) and Article 18D paragraph (3) UUDRI 1945.

The Constitutional Court at that time assessed the provision requiring CRS approval to be contrary to the principle of independence in the judicial process and contrary to the obligation of a Notary as a citizen. That way will avoid a protracted judicial process that resulted in protracted efforts to enforce justice that can eventually lead to denial of justice itself.

Due to loss of role of CRS at that time really big impact because one of function of CRS that is doing coaching and supervision to profession Notary. In various kenotariatan discussion groups, there are disappointments and concerns over some unscrupulous Notarized Persons who are negligent in performing their duties, which then affects the many assumptions that the Notary performs his duties and authority is not professional.

Some of the problems recorded include internal problems, lack of knowledge and legal skills of kenotariatan, lack of professionalism in providing legal services, the potential for incompetence in menjalankan position with the alleged existence of the practice of "price war" which resulted in the free fall of the economic price of a deed. Internal issues such as Notary positions often make the Notary's position in legal issues both criminal and civil. Not a few also questioned where the role of Notary organizations in fixing all these things.

The above conditions must surely get serious attention from the Notaries with full awareness and aspiration to restore the dignity of the Notary profession. Departure from the reality, then the new NOL was born as a

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substitute for the law on the previous position of Notary. The amendment to NOL then re-preserves the principle of protection for the Notary profession, with a new invoice moment called the "Honorary Council of Notaries" or which has been abbreviated as HCN.

In order to strengthen the existence of HCN, the Minister of Justice and Human Rights of the Republic of Indonesia issued Rule Number 7 of 2016 concerning the Notary Publicity Council (hereinafter referred to as Prime Minister of Law and Human Rights number 7 of 2016), which in Article 1 paragraph 1 explains the definition of HCN.

In order to strengthen the existence of HCN, the Minister of Justice and Human Rights of the Republic of Indonesia issued Rule Number 7 of 2016 concerning the Notary Publicity Council (hereinafter referred to as Prime Minister of Law and Human Rights number 7 of 2016), which in Article 1 paragraph 1 explains the definition of HCN. Furthermore, related to the task and the HCN of the region is also organized in Article 18 paragraph 1 which reads:

"(1) The Regional Notary Council shall have the following duties:

- a. Conduct examination of requests filed by investigators, prosecutors and judges;
- b. Approving or rejecting the request for approval of a Notary's invitation to be present in the investigation, prosecution and judicial proceedings. "

In the substance of Article 18 paragraph 1, in particular sub-paragraph b as above, it is not clear what arrangements or legal safeguards may be granted by the HCN further when it has approved the request to invoke the Notary concerned to be present in the investigation, prosecution and judicial process, The HCN no longer has full, ongoing responsibility for the process.

According to the Author, if the HCN has given approval for the Notary to be present in the investigation, prosecution, and or judicial process, then HCN should be obliged to participate in legal assistance to the Notary profession in order to provide legal protection and other defense related to deeds that have been made Until the legal matter faced is complete, if not done, then it has been contradictory with the duties and functions of HCN conducts guidance in order to maintain the dignity and honor of a Notary in running profession of his position and provide protection to Notary in relation to the obligation of Notary to conceal the contents of the deed as Contained in Article 18 paragraph 2 PM of Law and Human Rights No. 7 of 2016.

Therefore, such legal protection does not appear in Article 18 PM of Law and Human Rights Number 7 of 2016, which then appears in Chapter V in the sub-section of the Notary's invocation terms in Article 27, with the content of the Article namely: "The Notary Public Notary Council may accompany Notary In the process of examination in the presence of the investigator ", which in the contents of Article 27 is not obliged for HCN to provide assistance Notary, especially the mentoring is only at the stage of the examination process in the presence of investigators, whereas in the case of Notary's call not only in the process of investigation, Also on prosecution and judicial proceedings. If only based on Article 27, the legal protection given to the Notary will not run maximally.

B. Research Methods

This Journal is prepared using emprice law research method. This empirical law study is conducted directly with the spaciousness to search, observe, dig, and collect data about matters related to the effective implementation of Article 18 PM of Law and Ham Number 7 of 2016 on the role of HCN in protecting Notary profession in the city of Bengkulu.

C. Discussion

1. Effectiveness of Implementation of Article 18 PM of Law and Human Rights Number 7 of 2016 on the role of HCN in Protecting Notary Profession in Bengkulu City.

Legal Protection is a thing that has been mandated by the State by providing legal protection to the citizens according to that stated in the Preamble to the 1945 Constitution of the fourth paragraph. The protection of the law gives birth to the recognition and protection of human rights in its form as individual beings and social beings in a unitary state unit that upholds the spirit of kinship in order to achieve common prosperity. Legal Protection is an effort which according to Azar Usman gives the definition of Protection of law as follows: "Legal protection is any effort to ensure the legal certainty to provide protection to the parties concerned, the protection of this law is a protection provided by the government to protect and guarantee the rights and interests of the parties so that rights and obligations will arise Each of the parties ".

Based on the above opinion towards legal protection can be said that the protection of legal certainty to give birth in the community who has previously promised by the State. The legal protection not only provide protection against the individual for the fulfillment of rights and obligations, but also to the rights and obligations of society as a whole, or in other words the legal protection guarantees of the law to man in order to meet the interests of itself and its relationship with other parties .

Legal protection also provides solsi in solving legal problems and maintaining legal certainty so as to create

order and regularity. Therefore, when a violation occurs, the rights of the violated legal subject must have legal protection, including the Notary profession.

According to Notary ML (initials) as one of the members HCN in Bengkulu City stated that it was supposed to be a Notary in carrying out his profession with legal protection, whether by lemabaga supporters (HCN) or by the State, to function rather than the protection of the law will provide good performance for Notaries in a deed-aktanya, because the Notary will feel safe (safe), though Notaries does not violate legal rules brlaku dala practice.

According to Notary ML (initials) states some opinions related to legal protection which has been given to Notary in Bengkulu, namely:

- a. Conduct supervision and guidance system to Notary, as well as candidate Notary to mature in practice, and carefully and carefully in making each deed made;
- b. Where a call is filed by the investigator, the HCN of the territory conducts a checking or review of the aforesaid so that the examination has a strong legal basis, if it has no legal basis, the summons can not be fulfilled;
- c. Approval or rejection of a Notary's appeal request to be present in the legal process, especially in the investigation process, since the permission granted to this investigation process shall determine whether the Notary will undergo a lengthy legal process or not in any case addressed to the Notary. In order to grant this approval or penalaka, we (HCN) first check all existing files, which then clarify the truth, then we give a letter of consent to the investigator to continue the legal process by presenting the notary concerned, but if it is not proven then we (HCN) To announce a letter of rejection of the Notary's invitation.

According to KM (initials) as a police investigator in Bengkulu City, said that submitted by one of the above HCN members is correct, and at the same time dismissed the notion from the public and the notary profession who think that there is an element of coercion against the calling of the Notary.

According to the authors, although most of what has been done by HCN and the investigators mentioned above has been in accordance with the laws and regulations, it does not mean that legal protection measures by the HCN have been effectively felt by some notaries who have been called to attend the investigation process, The author, the effectiveness of an act of legal protection depends on what is received by the legal protection.

According to MN (initials) as a Notary in Bengkulu City who once called to attend the investigation process stated, giving some opinions related to the extent of legal protection that has been given by HCN to himself as a party who is a Notary Public:

- a. Although HCN has performed its duties and functions as an institution providing legal protection for Notary, but there is no further legal action given to Notary if the Notary is given approval to be present in the investigation process, as if HCN has been off hand and indifferent after Give approval to the investigator to present Notary. Whereas HCN should in the protection of law must protect the Notary until the culprit case ends, as well as accompaniment either in the process of investigation, prosecution even up to the stage of the judicial process, so that the legal protection that is given by the HCN more leverage;
- b. The legal protection constraints given by HCN to the Notary profession as mentioned above do not in fact contravene the legislation, since the law does not specifically provide an explanation as to the extent of the legal protection granted by the HCN to the Notary profession involved in legal disputes . But more than that, the notary involved in legal cases want to be protected maximally, not protected in a half way.

The author argues that the legal protection of the Notary profession needs to be maximized, it should be realized that in the NOL does not contain criminal provisions for a notary, but that does not mean the Notary profession is immune from law when committing a violation of the law in carrying out his position. Judging from the authority it is known that in carrying out his position, the Notary has the potential to perform several criminal acts including:

- a. Falsification of documents or letters (article 263 and article 264 of the Criminal Code);
 - 1) Example 1: Counterfeit payment letter (SSB) of acquisition of land and building rights ("BPHTB") and tax deposit mail (SSP);
 - 2) Example 2: Make a deed when knowing the requirements to make the deed is not fulfilled. For example, in the creation of credit agreements between banks and customers. Notary still keeps the deed of agreement, although not qualified because the guarantee is problematic. The consequences of making such deeds by a notary can cause a person to lose rights.
- b. Embezzlement (clause 372 and article 374 of the Criminal Code). For example, embezzlement of the client's paid BPHTB;
- c. Money laundering (Law No. 8 Year 2010 on Prevention and Eradication of Money Laundering Crime). The mode, the owner of the money to buy shares are then recorded in notarial deed. Share purchase mode allows money launderers to move money. If in the form of shares, automatic money from the

proceeds of crime becomes lawful, so easily transferred according to the wishes of the perpetrators of criminal acts. Therefore, the notary as a profession in charge of making the deed of incorporation and the sale and purchase of shares are asked to be aware of the possibility of money laundering.

- d. Providing false information under oath (Article 242 of the Criminal Code). For example, the case of false information given by a notary in East Java who was a witness in a criminal case.

According to the author, although in the case of the calling of a Notary just asking for information as a witness, the Investigator must call through HCN, if it is not done then it is very dear because the calling of Notary made without through HCN has been contrary to the Law, -The facts about HCN have been applied. Furthermore, if Notary is called Investigator without going through HCN then there is no responsibility that can be given by HCN that can make Notary is susceptible to "allegations" that are not true that it can make the Notary is getting falling on The case is happening, given the notary profession is very potential in committing a crime.

By observing the results of the interview process accompanied by the data as mentioned above, it can be said that the legal protection provided by HCN to the Notary profession is not maximal because it only gives approval and rejection of the calling of Notary conducted by the investigator, without any further legal assistance.

Although Article 27 18 PM of Law and Human Rights Number 7 of 2016 has stipulated the mentoring by HCN to the Notary being examined, however there is no phrase that obligates HCN to provide assistance, so it is appropriate with the result of research that there is no initiative from HCN To provide assistance to the HCN that was being elaborated as long as it is not required by the law, even more the mentoring mentioned by the law is only limited to the examination process in the presence of the investigator only.

Yet if we look in Article 18 paragraph 2, it can be seen that the duties that must be done by the HCN in protecting the Notary's profession is to maintain the dignity and honor of a Notary in running his profession and provide protection to Notary in relation to the obligation of Notary to conceal the contents of the Deed, which Where the two legal protection measures may be taken when assisting a Notary who is undergoing legal process after the approval of the Notary's invitation, since not a few of the Notaries who have been summoned in the process of "forcible" investigation to disclose the secret of the deed only for the sake of the investigator So that the investigation process can run smoothly.

Under these conditions, it is necessary to have a more detailed and in-depth affirmation of the law, particularly in Article 18 PM of Law and Human Rights Number 7 of 2016 in relation to legal assistance provided by HCN to a Notary who has been approved to attend the process The investigation until the legal process is completely over.

2. Regulation of Notary Profession Protection granted by HCN To Ensure Future Legal Certainty

The arrangements referred to in this case are arrangements contained within the law itself, so it is necessary to be understood in advance on the functions or the nature of the law's purposes.

According to Satjipto Rahardjo, Law is an inherent requirement of social life in a society, namely that the law will serve the members of society, whether it is the allocation of power, the distribution of resources, and the protection of the interests of the members of society itself, therefore the law becomes increasingly important as Means for realizing government policies. The awareness that law is an important instrument for the realization of certain goals, makes law as a conscious and active means used to govern society, through the deliberate use of the rule of law.

To see the relationship between law and social change requires a tool in the form of a concept that explains functionally the place of law in society. The tool shows the legal work that is:

- a. Formulate relationships between members of the community by determining the actions that are prohibited and which may be done;
- b. Allocate and affirm who may use power, over whom and how the procedure;
- c. Maintaining the adaptability of the community by re-establishing relationships in the community in the event of change.

Legal adjustment to social change is considered an unquestionable right, but if we are faced with the legal role of social control, it is still questionable about the legal capacity to carry out such a role; Because the law as a means of social control is faced with the problem of how to create change in society so that it can keep up with the changes that are happening.

Changes to the law can be done through legal development, which can be interpreted as an attempt to renew the positive law itself so as to fit the need to serve the community on the latest developments; And as an attempt to function the law in the course of development.

Based on the above opinions, it is not impossible and impossible for the law to be changed or refined in order to secure the interests and protect the community, including in this case the amendment of PM of Law and Human Rights Number 7 of 2016 concerning HCN, particularly in Article 18 which regulates the protection The law granted by HCN to the Notary profession. made intentionally.

According to the ID (initials) who became a Notary in the city of Bengkulu said that so far the legal protection provided by HCN is limited to the guidance and supervision of the authentic deed made by Notary, and when there is a call Notary by the investigator, HCN only give approval or At least to the call after a meeting or deliberation. So far there is no HCN that provides legal protection until the final stage in the judicial process, at least indeed HCN must provide legal assistance for the actual Notary is undergoing the process of investigation, and at least the subject is also regulated explicitly in legislation regulating the performance, Functions and duties of HCN institutions.

Authors' opinion on the regulation of professional protection of Notaries granted by HCN to ensure legal certainty in the future that is, by giving some additional substance substance in Article 18 PM of Law and Human Rights Number 7 of 2016 which regulate the accompaniment of Profession Notary by HCN in investigation stage , Prosecution or judicial proceedings. The substance should be added to ensure legal certainty to the extent of legal protection provided by HCN in order to protect the Notary profession, since the Notary profession is one of the professions that is respected and works for the State.

Although the urgency of adding the substance is more emphasized to be included in the PM of Law and Human Rights No. 7 of 2016, it does not mean that the addition of substance as intended by juda may be done in the NOL, however considering that the regulation on HCN is more specifically regulated in the PM of Law and Human Rights Number 7 of 2016, then according to the authors of the addition of substance is supposed and worthy to be added to the more specific regulations regulating the HCN, namely in the PM Law and Human Rights No. 7 of 2016. As already known also that the mentoring arrangements by the HCN has been Is regulated in Article 27 paragraph (2) of Chapter V on the terms of the Notary's call, but according to the Author the substance of the Article is still not maximally considering the absence of a phrase to require HCN to provide assistance to Notary and assistance in the Article only to the examination process in the presence of the investigator.

Thus, as a concrete form that can be given by the author based on several considerations and reasons described above, then the addition of substance in Article 18 PM of Law and Human Rights No. 7 of 2016 are as follows:

CHAPTER III TASK AND FUNCTION Article 18

- (1) The Regional Notary Council shall have the following duties:
 - a. To examine requests made by the investigator, public prosecutor, and judge; and
 - b. Grant approval or rejection of the request for approval of a Notary Call to attend in the investigation, prosecution and trial process;
 - c. In order to give the approval of the Notary's invitation to be present in the investigation, prosecution and judicial process, the Regional Notary Public Notary shall provide legal assistance to the Notary until the legal process is completed;
 - d. In order to give refusal to invite Notary to be present in the investigation, prosecution and judicial process, the Regional Notary Public Notary shall keep confidential all matters relating to the call to the public in order to maintain the good name of the Notary concerned.
- (2) In performing the duties as referred to in paragraph (1), the Regional Notary's Council of Honor has the function of guidance in order to:
 - a. To maintain the dignity and honor of a Notary in performing his / her profession; and
 - b. Provide protection to a Notary in relation to the obligation of Notary to conceal the contents of the Deed.

By adding the substance of Article 18 to letter c and d as mentioned above, it is expected to provide maximum legal protection to Notary, either to a Notary who is approved to be called or not approved. The substance of the addition is also mutually sustainable with Article 18 paragraph 2 which explains the purpose of the task of HCN itself, thus further confirming that HCN is supposed to be able to defend the Notary profession maximally if the Notary profession is being disputed.

The addition of the phrase in Article 18 PM of Law and Human Rights as mentioned above is expected to not only provide legal certainty to the legal protection accepted by the Notary profession, but also to provide legal certainty about the extent of legal protection provided by HCN in protecting the Notary profession, This is the HCN area of Bengkulu city.

In addition to adding the phrase in the rules of invitation as mentioned above, according to the Author it is also necessary to make a memorandum of understanding between Notary or HCN region with the investigator in the case of Notary's calling. It is also intended by Habib Adjie stating that To avoid the arbitrariness of the police in calling Notary, INI or HCN can make a memorandum of understanding with the police. In the memorandum set Notary's call must be written and signed by the investigator. The summons must clearly state the Notary's

status, the reason for the summons, and the police must be on time. In essence, a Notary must attend a valid call. But it's okay. In that case, the police can come to that Notary's office.

While if the status of a notary is a witness, he could not be sworn. Unless sufficient reason, the Notary concerned may not be present to the hearing. In the memorandum of understanding, the Notary also requests that they only be investigated by the investigator, not the auxiliary investigator. Even if the investigator will be investigated later, the reason should be reasonable and reasonable.

In the memorandum of understanding, it is also necessary to stipulate a clause on a Notary who is alleged to have committed a crime in respect of the deed he made, pursuant to Article 54 of the Criminal Procedure Code, in which the Notary is entitled to legal aid. The notary who becomes the suspect is entitled to be accompanied by the HCN board when examined by the police. If in the investigation is not proven the existence of criminal elements, then the investigator must issue SP3 in time as soon as possible.

The MoU reinforces the rule of notarial notification in Article 66NOL. The article determines, if the police or the investigator wants to call a Notary or take a minuta deed must be approved by HCN region. So that all can be run in accordance with the procedures that have been set in the rules of invitationed.

D. Conclusion

1. Effectiveness of the implementation of Article 18 PM Law and Ham Number 7 of 2016 Against the role of HCN in protecting the Notary profession in the city of Bengkulu proved to be still not optimal. Given the legal protection provided by HCN in Bengkulu area is merely to give approval and rejection of the calling of Notary submitted by the investigator, without any further legal assistance. Yet if we look further at Article 18 paragraph 2, it can be noticed that the duties that must be done by the HCN in protecting the Notary's profession is to keep the dignity and honor of the Notary in running the profession of his position and providing protection To the Notary to relation to the notes to con seal the contents of the Deed.
2. Regulation of professional protection of Notaries granted by HCN in order to guarantee legal certainty in the future. 7 of 2016, namely: c. In order to give approval to the Notary's invitation to the presentations of the investigation, prosecution and judicial process, the Regional Notary Council shall provide legal assistance to the Notary until the legal process is completed, in order to provide a refusal of the Notary's invitation to Be present in the investigation, prosecution and judicial process, Then the Regional Notary Public Notary public Not to mention the Notary concerned.

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