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The Right to Denial as Legal Protection for Notaries Dealing with Special Criminal Actions

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Abstract

The right of notary refusal is not only a right, but also has become an obligation. If the obligation is violated, will be subject to sanctions according to law. Notary not only has the right not to speak, but also has an obligation not to speak. Juridically, the right to refuse a notary is contained in Article 1909 (3) of the Civil Code (KUHPer) and refers to Article 146 (1) to 3 HIR. Meanwhile, the obligation to disobey a notary comes from Article 4 (2) UUJN and Article

16 (1) letter e UUJN. Today, there are many cases where the notary's name is involved, for example, such as a notary who is presented as a witness regarding a deed he made and used as evidence in a court case. Even though the notary has been given the right of denial in order to get legal protection for the deeds and his position as someone who knows the secrets of his client. However, in practice, notaries do not receive legal protection as mandated in related laws.

Keywords: Notary Denial Rights, Legal Protection, Special Criminal Actions

1. Introduction

The position of Notary is comprehensively regulated in Law No.2 of 2014 which was later amended and refined by Law No.30 of 2004 concerning the Position of Notary (UUJN). Based on the UUJN, the position of a Notary as a service to meet the needs of society (clients) is in the form of an authentic deed, independently and impartially in the notary field, and is rooted in respect for human dignity in general and the dignity of Notaries in particular.¹ Due to the position of an independent and impartial Notary, the deed produced is a definite legal certainty and guarantee.² A Notary cannot be intervened by the will of one of the parties, regardless of the interests of the other party and is not influenced by ethnic background, socio-economic conditions, skin color, origin of social groups, including the client's political ideology, but solely because of the relationship just work.³

Notary deed is strong evidence in a case process, as stipulated in Article 1868 of the KUHPer, namely: a form of deed made in accordance with the provisions of the law or made before an official who has the authority to make it and the making is done at the official's place. Furthermore, in Article 15 (1) UUJN it is clearly stated that a Notary deed as an authentic deed certainly has perfect evidentiary power. In the process of making the deed, what is notified to the Notary, then he has the obligation to keep it secret, even though there are certain parts that are not included in the deed, the Notary does not have the freedom to tell what was told to him as a Notary by the parties at the time of the discussion as a Notary. the initial stage in making the deed, even though not all of what was stated at the notary was included in the deed.⁴

The obligation to keep secret the contents of the deed made by a Notary as a public official, because before a Notary legally carries out his position he must first take an oath of office. As long as the Notary has not taken an oath, then the position may

¹ Herlien Budiono, *Notaris dan Kode Etiknya*, Upgrading & Refreshing Course Nasional Ikatan Notaris Indonesia, Medan, 30 Maret 2007, hal. 3.

² Cut Novadilla Halid, Sanusi, Novi Sri Wahyuni, Suhaimi, A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act, *International Journal of Multicultural and Multireligious Understanding*. 2023; 10(1): 65.

³ M Rabiell Bahana, Suhaimi, Darmawan, The role of notaries in the application of know your service user (PMPJ) principles as the implementation of the precautionary principle, *International Journal of Multidisciplinary Research and Growth Evaluation*. 2023; 04(03): 506.

⁴ Sjaifurrachman, dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, CV. Mandar Maju, Bandung, 2011, hlm 251-252.

not be carried out, because the deed made will later become an invalid deed. Therefore, the Notary is obliged to keep secret everything related to the deed he made, unless the law determines otherwise.

The position held by a Notary is a position of trust (*vertrouwensambt*), because another party has entrusted something to him for the purpose of making a deed which will later be used as evidence. *vertrouwenspersoon*) other people, then the Notary must keep what is entrusted to him by keeping everything that is told to him confidential. Thus, if the Notary cannot limit or protect himself from the obligation to keep secrets, then he will lose trust in society, especially his clients as service users, so that the title as a trustworthy person is lost.⁵ If other people's trust in the Notary in question is gone, then of course his career as a Notary will also decline, because other people will gradually find out about this. Moreover, if the Notary was sued in court for disclosing a client's secrets, then his career and future as a Notary will be ruined.

In the fourth book of the KUHP Article 1909 (3 e) it is determined that anyone who is due to work, position or because of his position is required to keep something secret by law, then he is obliged to keep it secret regarding matters entrusted to him. In addition, in the code of ethics stipulated in the City of Bandung on January 28, 2005, Article 4 (5 c) stipulates that notaries are prohibited from violating their oath of office.⁶

The right of refusal is a translation of *verschoningrecht* which means the right to be freed from the obligation to provide testimony as a witness in a case, be it a civil case or a criminal case. Furthermore, regarding the notary's right of refusal, G.H.S Lumban Tobing stated that, the right of refusal is the right to refuse to give testimony or the right to ask to withdraw from testimony (*verschoningrecht*). The right of refusal of the notary contains the obligation not to speak (*verschoningsplicht*) so that the notary not only has the right not to speak (*verschoningrecht*), but also has the obligation not to speak (*verschoningrecht*).⁷

Today, many notaries are brought to court or carry the name of a notary, for example, they are put forward as a witness regarding a deed they made, they are made a defendant in court regarding the deed they made and are considered detrimental to the plaintiff and as co-defendants in cases where they are suspected of providing assistance in criminal acts. money laundering, corruption, or other matters relating to notarial deeds.⁸ If this happens, then the Notary has deliberately participated in providing assistance to the occurrence of the crime, which in the KUHP is said to have participated in committing the crime, namely the person who helped commit it. In criminal law this is equated with a person who commits a crime, where the person who orders

to do it, helps to do it, is classified as the person who committed it.

A notary who is proposed in the law enforcement process as a witness, according to law, can refuse or withdraw from his obligations as a witness. The right to refuse this obligation is called denial (*Verschoningsplicht/Verschoning Splicht*).⁹ However, with the issuance of Government Regulation No.43 of 2015 (PP No. 43/2015) as the executor of Law No.8 of 2010 (UU-TPPU), a notary is included as one of the Reporting Parties in suspicious financial transactions. This is also in line with the recommendation issued by the Financial Action Task Force (FATF) which states that certain professions (including Notaries) who carry out their duties for the benefit or for and on behalf of Service Users and carry out Suspicious Financial Transactions, are required to report these financial transactions. to PPATK. Thus, the Notary in carrying out their duties must apply the Principle of Recognizing Service Users (PMPJ) in accordance with the mandate of the TPPU Law. As a follow-up to the PP, the Minister of Law and Human Rights issued Permenkumham No.9 of 2017 In implementing PMPJ when service users come to a notary to make a deed, the notary must be able to try to prevent suspicious financial transactions from occurring through a legal action before the notary. This is where the notary is required to be careful and really must recognize the users of his services.¹⁰

Article 2 (2) Permenkumham No. 9/2017 requires Notaries to implement PMPJ and report to PPATK if there are suspicions of suspicious financial transactions. Meanwhile when carrying out his position, the Notary is obliged to maintain the confidentiality of the deed he made (Article 16 (1e) UUJN). So, on the one hand there is the oath of office and the UUJN which are the legal umbrella for the office of a notary which prohibits disclosing the secrets of the deed and all information obtained from the Service User, but on the other hand the Government Regulation obliges the notary to report it to PPATK. This puts the Notary in a difficult position, and if it is not reported it will be subject to sanctions. Even though legal protection has been given to a Notary by law if he discloses the secrets of the contents of the deed he did in order to seek the truth in the legal process. The legal protection is the Right to Deny. The Right to Deny is the right to be asked to be acquitted or to refuse to act as a witness, which is granted by law.¹¹

According to Article 170 of the KUHP jo Article 54 UUJN jo Article 16 (1e) UUJN, the right to apply to a judge to be released from the obligation as a witness to disclose official secrets, namely regarding everything entrusted to him because of his work, dignity or notary position requires him to keep secrets, where the judge will make a decision, whether to approve or reject the request, it really depends on the consideration of the judge's decision.¹² However, even though the notary has been granted the right of refusal to

⁵ Lumban Tobing, *Peraturan Jabatan Notaris*, Cetakan III, Jakarta: Penerbit Erlangga, 1983, hal.117-118.

⁶ Miranda Laura Maria, "*Kewajiban Inkar Notaris Sesuai Dengan Undang-Undang Jabatan Notaris dan Kode Etik Notaris Saat Pemeriksaan Atau Peradilan*", Depok: Program Pasca Sarjana Magister Kenotariatan Fakultas Hukum Universitas Indonesia, 2011, hlm. 2.

⁷ Lumban Tobing. *Peraturan Jabatan Notaris*, Didalam Laurensius, hlm. 122.

⁸ Henny Saida Florida, "*Peran Notaris Dalam Pembuatan Akta Pendirian dan Akta Perubahan Anggaran Dasar Koperasi*", *Jurnal Saintech*, 6 (2) 2014, juni, hlm. 61.

⁹ Tan Thong Kie, *Studi Notariat dan Serba-Serbi Praktek Notaris*, Jakarta: PT. Ichtiar Baru Van Hoeve, 2007, hlm. 449.

¹⁰ M Rabel Bahana, Suhaimi, Darmawan, The role of notaries in the application of know your service user (PMPJ) principles as the implementation of the precautionary principle, *International Journal of Multidisciplinary Research and Growth Evaluation*. 2023; 4(3): 509.

¹¹ Habib Adjie, *Menjalin Pemikiran-Pendapat Tentang Kenotariatan*, Bandung: Citra Aditya Bakti, 2012, hal. 97.

¹² Sjaifurrachman, *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta*, Bandung: Mandar Maju, 2011, hlm. 45.

obtain legal protection for his deeds and positions, in practice the notary has received less legal protection as mandated in the law. This is because the notary is summoned to provide testimony in the legal process, without first obtaining permission from the MKN. So that it seems that the summons was carried out arbitrarily, even though the UUJN has regulated a mechanism for summoning Notaries.

2. Research Methods

The right type of research is normative juridical research, namely research on library materials or research on secondary data. Normative juridical research data is in the form of materials included in primary legal materials, secondary legal materials and also tertiary legal materials. These materials will be added to the primary data in the field as complementary data.¹³ Johnny Ibrahim said, "Normative juridical research can and should utilize the results of empirical science research, but these empirical sciences have the status of auxiliary sciences (*hulp wetenschap*) so that they do not change the nature of legal science as a normative science"¹⁴

Soerjono Soekanto and Sri Mamudji stated, "the results of empirical research need and can be used in normative juridical research because this can obtain clarity from research problems that are based on reality in society. Legal research which is normative in nature also focuses on positive legal rules in the form of international agreements that have relevance to the problem of this research. As for normative juridical research, it is useful to find out how the positive law governs a particular problem."¹⁵

This study uses a statutory approach, a conceptual approach and a historical approach. Furthermore, the data obtained is arranged systematically which is then analyzed qualitatively to get an explanation of the problem to be studied. Qualitative methods are useful for obtaining descriptive analytical data.¹⁶

3. Result and Discussion

3.1 Rights and Obligations of Denial for Notaries

Notary is a Public Official and not a Civil Servant. The term notary comes from the word "notary", which means a person who makes notes.¹⁷ Notaries who become Public Officials have the obligations specified in Article 16 (1) UUJN which among other things reads "that the Notary must act honestly, thoroughly, independently and impartially and protect the parties in a legal action, so that the parties feel protected and have legal certainty. In addition, the Notary also makes deeds in the form of Minutes of the Deed and keeps them, issues copies of the Deed, grosse of the Deed, or Quotations of the Deed based on the Minutes of the Deed, provides other services in accordance with UUJN.

Notaries, in the performance of their professional duties, as providers of legal services to the public,¹⁸ have a statutory duty to achieve legal protection and legal certainty, namely: Article 4 (2) UUJN in the 4th paragraph contains a notary oath regarding notary obligations to keep the contents of the deed secret, and in Article 16 (1) UUJN which regulates the obligations of a Notary in carrying out his position. Article 54 of the UUJN provides for deeds, copies of deeds and extracts from deeds, the notary can only hand over, produce or communicate the contents of the deed, deed, copy of the deed or the content of the deed, unless the law provides otherwise, the person who has a direct interest in the deceased, heir or person who acquires rights. Section 322(1) of the KUHP deals with criminal sanctions against persons who are under a duty of confidentiality but disclose the secret. In addition, Article 3 of the "Code of Conduct for Notaries" also stipulates the duties of notaries. A code of ethics is a norm established and accepted by all members of a notary. Every professional holder has two obligations, namely the obligation to carry out the profession in a responsible manner and the obligation not to violate the rights of others, and these two obligations are manifested in the following examples and attitudes:¹⁹

1. Responsible for work and results. A professional must produce something of quality.
2. Take responsibility for the impact of work on the lives of others.

Principles in law and ethics, that certain information may not be disclosed, because of the nature of the confidentiality attached to that information. Confidential information usually arises in a professional relationship, namely:

1. Secrets arising from the relationship between the bank and the customer are known as bank secrets.
2. Secrets that emerge from the relationship between the advocate and the client.
3. Secrets that arise from the relationship between doctors and patients.
4. Secrets arising from the relationship between the Notary and the service user (*klien*).

As a notary public official who is trusted, it is hoped that the deed he made will become strong evidence if disputes arise in court. However, in society, sometimes in a criminal case, a Notary is often summoned and asked to testify. The cases that the Notary often summons to provide testimony or testimony are forgery. In criminal law, forgery can be divided into 2 things, namely:²⁰

1. Falsification of material law, such as: signatures or writings in a notary deed are forged after the deed is drawn up by a notary. In cases like this, it is usually a third party who falsifies the deed.
2. Intellectual law falsification, such as: the information contained in the Notary deed is incorrect information. As for what is not true in this Notary deed is regarding the contents of the deed itself.

¹³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: PT Raja Grafindo Persada, 2012, hlm. 12

¹⁴ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, 2008, hlm. 315.

¹⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: Rineka Cipta, 1983, hlm. 78.

¹⁶ *Ibid.*, hlm. 32

¹⁷ R. Soesanto, *Tugas, Kewajiban, dan Hak-Hak Notaris, Wakil Notaris*, Pradnya Paramita, Jakarta, 1982, hlm. 34.

¹⁸ Irma Mulia Fitri, Ilyas Ismail, Suhaimi, *Pengawasan Dan Pembinaan Majelis Pengawas Daerah Terhadap Notaris Yang Melakukan Pelanggaran Di Kabupaten Aceh Timur*, *Syah Kuala Law Journal*. 2019; 3(1): 54.

¹⁹ Frans Magnis Suseno, *Etika Sosial, Proyek Pengembangan Mata Kuliah APTIK*, Jakarta, 1998, hlm. 148

²⁰ Alfi Afandi, *Hukum Waris Hukum Keluarga Hukum Pembuktian*, Rineka Cipta, Jakarta, 2004, hlm.200.

When a Notary is summoned by an Investigator to be questioned regarding a criminal case, a Notary cannot ignore the oath of office as a Notary. It is important for law enforcement officials such as investigators to know and understand the confidentiality of a notary position. So that the Notary can provide information freely without ignoring the secrecy of the Notary's position on the deed made by the Notary. Trustees do not have the right to provide information regarding the deeds made by them, they cannot simply interpret them as they wish on the grounds that they used their right of refusal, because this obligation to keep confidential has a very strong public law basis. Even though in reality an individual benefits from it, the obligation to secrecy is not imposed to protect the individual, but is borne in the interests of the parties.²¹

The right of refusal is not related to the rights of a witness, but rather is the right of the accused who is tried in court and addressed to the judge who tried him.²² The right of denial is the right to request that he be released from giving testimony in a criminal or civil case. According to Article 170 of the KUHAP, it really depends on the Judge who tried him whether the reason was accepted or not. If the judge concludes that he refuses the request for release, then automatically the notary's obligation to provide testimony is born. In accordance with what is specified in the elucidation of Article 8 of Law No.3 of 1971, the judge should consider that refusing a notary's request means that the rights of the notary have been reduced. Therefore, the testimony of the Notary is only requested as a last resort to complete the evidence. In the event that the application is rejected by the Judge, the Notary is automatically obliged to provide testimony, and this can lead to a conflict with the Notary's obligation not to reveal the secrets of service users. With the existence of laws and regulations governing the necessity or obligation to keep the contents of the deed confidential in accordance with their position, then other law enforcement parties who for the purposes of the judicial process, investigation, prosecution by the public prosecutor or the trial process intend to present a Notary as a witness, then the enforcement party must first The law requires approval from the Notary Honor Council (MKN). This approval, of course, begins with submitting an application to MKN, then MKN after receiving the request holds a hearing to decide whether the request can be granted or not.

If it turns out that the notary is summoned as a witness or as a suspect or defendant or during an examination by the MKN Notary opens secrets and gives a statement that should be kept confidential, while the law does not order it, then on complaints from parties who feel aggrieved to the authorities, action can be taken against the notary. the. Notary actions like this can be subject to criminal sanctions contained in Article 322 (1) and (2) of the KUHP.

Laws and regulations that abolish the limitations regarding the obligation to keep secret or use the obligation to deny, namely:

1. Article 36 of Law No.31 of 1999 which has been amended in Law No.20 of 2001, states that the obligation to give testimony also applies to those who according to their job, status, dignity or position are

required to keep secrets, except for religious officers who, according to their beliefs, must keep secrets.

2. Article 25 (1) Law No.20 of 2000, that: Officials for Making Land Deeds/Notaries and Head of the State Auction Office report the making of deeds or minutes of auction obtaining land and/or building rights to the directorate general of taxes no later than the 10th (ten) of the following month.
3. Article 19 (2) of the Emergency Law of the No.7 of 1955, namely: That a person who because of his job or position has the obligation to keep something secret, can refuse to show those documents or part of those letters that include the obligation to keep it confidential.
4. Article 35 (2) Law No.28 of 2007 namely: Whereas in the event that the party referred to in paragraph (1) is related to the obligation to conceal, for the purposes of auditing, tax collection, the obligation to conceal is abolished, except for banks, the obligation to conceal is abolished upon request written from the Minister of Finance.

The obligation to disavow is an essential and very important matter given by the UUJN to a Notary, but in practice it turns out that this obligation is not carried out by many Notaries, in fact most Notaries are examined by the MPD (Regional Supervisory Council) prior to the enactment of the UUJN-P or inspection. by investigators or in court, the Notary himself discloses his secrets and tells or discloses all things related to the deed drawn up by or before a Notary, so that the Notary himself has injured himself, as a result the Notary is no longer trusted by the service user community.²³ Investigators or Public Prosecutors, when examining criminal cases, use the basis of the Prosecutor's Law and the Police Law, as well as the KUHAP to carry out detentions, investigations, investigations or prosecutions, in addition to being summoned or examined by a Notary as a witness regarding the deed made by him. This is a dilemma for the Notary, because on the one hand he is asked to give testimony, while on the other hand the notary has the obligation to guard or keep the secrets of the deeds he makes, even the Notary acts as a witness by law enforcement using the basis that all citizens are obliged provide information if necessary.

3.2 Right to Denial as Legal Protection for Notaries

After the entry into force of the Constitutional Court Decision No.49/PUU-X/2012 on May 28/2013, there was an addition to Article 66 (3) and (4) UUJN which regulates if law enforcers, including police investigators, prosecutors and judges intend to take photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or Notary Protocol in the Notary's custody, or summoning a Notary to attend an examination related to the Deed or Notary Protocol must obtain approval from the MKN.

After the phrase with the approval of the MKN, the Notary is obliged to use the Rights and Obligations of Denial. However, it is different if a person is involved in a corruption case, then the use of the right and obligation to deny it becomes invalid, if a notary is proven to have committed an act that is beyond the authority of the notary in making the deed. If a Notary draws up a deed in which the Notary knows that the parties requesting the deed to be made are used to commit acts of Corruption, then in this

²¹ G.H.S. Lumbun Tobin, *Op.Cit*, hlm. 124.

²² G.H.S. Lumbun Tobing, Hak Ingkar (*Verschoningsrecht*) Dari Notaris dan Hubungannya Dengan KUHP, Media Notariat, 1992, hlm. 114

²³ Sjaifurahman dan Habib Adjie, *Op. Cit*, hlm. 89.

case a Notary cannot use the Rights and Obligations of Refutation, because a Notary intentionally and consciously makes deed used to commit corruption.

Notary as a witness who knows about the contents of the deed made where the parties facing him made the deed, then this does not apply in Corruption cases, in accordance with what is regulated in Article 21 of the UU-TIPIKOR, where every person who intentionally prevents, hinders, or thwarts directly or indirectly investigating, prosecuting and examining in court sessions against suspects and defendants or witnesses in corruption cases, shall be sentenced to a minimum of three years and a maximum of twelve years in prison and/or a maximum fine of Rp. 600,000. 000,- (six hundred million rupiah). Denial rights cannot be exercised because they are related to specific crimes, one of which is corruption, using the *lex specialis derogate lex generalis* principle. So, it is clear that the principle of *lex specialis derogate lex generalis* cannot be applied in cases of corruption, because this crime is included in the extraordinary crime.

The notary has the right and the duty to refuse the refusal, not for the benefit of the notary, but for the benefit of the party entrusting the notary, and the party assumes that the notary is competent to preserve the statement or the statement submitted by the parties to the notary in connection with the drafting of the deed.²⁴

The provisions of Article 66 UUN are legal norms that must be followed in the case of a Notary being asked to provide information or testimony in law enforcement, namely in the form of giving approval by the MKN. In this case, for this purpose, MKN can use two criteria which form the basis of its considerations, namely:

1. Give approval to the Notary to be asked for information as a witness, in the event that the Notary's deeds are evidence that is very relevant to a criminal event that is strongly suspected of having occurred.
2. Give approval in terms of examining a Notary as a suspect and/or accused, as long as the Notary concerned has previously been proven to have made a mistake in carrying out his or her position or professionalism based on an MKN decision. So, in this case MKN must convene and summon and examine the Notary in question, which in the end according to MKN's decision it turns out that the Notary has actually made a mistake in carrying out his duties and position.

As part of approval, MKN must first conduct an inspection. Verification must be conducted under Article 70(a) of the UUN by holding a hearing to consider alleged breaches of the Notary Code of Conduct or breaches of the notary's duties to notaries. The final outcome of the MKN review is recorded in the form of a resolution that approves or denies the investigator, prosecutor, or judge's request. The purpose of the examining notary is to protect him from his position, which requires him to keep secret all the contents of the deeds he has created and all information which he has obtained under his oath of office to establish the deeds.

According to the MoU No. 01/MOU/PP-INI/V/2006 between the National Police and the Indonesian Association of Notaries on the development and enhancement of

professionalism in the field of law enforcement, the duties and Power to strike a deal. That said, the police should always comply with applicable laws and regulations and respect and preserve the independence of all parties in the performance of their duties, positions and professions. The MoU stipulates that differences between the police and notaries in the exercise of duties and powers should be resolved through institutionalized and hierarchical consultations.

If in a criminal case, there are two laws and regulations, namely the KUHAP and the UUN which in certain articles regulate the procedure for summoning a person for the purposes of investigation, prosecution and trial, but because the UUN is a special law that only applies to Notary, then in the theory of science there is a principle that says *Lex specialis derogate legi generali*. In the sense that if there is a special law like that then the special law applies, and can override general laws. Where the KUHAP regulates people in general, and the UUN-P regulates people who are in special positions, namely the position of Notary.

So that if there are two rules that are of the same level, and their application is simultaneous and contradicts each other, then the specific rule is applied and overrides the general rule. The legal principle has a foundation, which is rooted in society and on the values chosen in common life, the function of the legal principle in law can legitimize and has an influence that can bind the parties. This is because of the legal norms that make the parties bound, where this existence has been determined fundamentally by the legislators.²⁵

The existence of legal principles in the legal system which is a principle provision in resolving conflicts within the legal system itself. Maintaining adherence to legal principles will make the legal system and justice system work according to their respective functions. Legal principles are always related to legal principles or written legal regulations. The legal principle is the foundation and heart of concrete regulations as the basis for abstract thought, and it contains ethical values that must be embodied in written regulations.²⁶

When the investigation process takes place, the Notary must provide information about the deed given, while the Notary himself, based on his oath of office, has the obligation to keep it confidential. This is stated in Article 16 (1) f UUN, where Notaries are required to maintain the secrecy of the contents of a deed. The position of the notary deed is as perfect evidence, in investigations and in court examinations. Notary deed is used as evidence in the process carried out by investigators. In order for a deed to have perfect strength in proof, the procedure for making an authentic deed must follow all the procedures specified in UUN. If there is a procedure or mechanism for making a deed that is not fulfilled and regarding this matter it is proven or can be proven, then the consequence is that the deed changes its nature or downgrades to a private deed.²⁷

If the notarial deed contains false information, if the parties can prove it, the notarial deed is invalid, and the agreement in the notarial deed is also invalid. The UUN provides that

²⁴ Helmi Abdul Azis, Dahlan Ali, Suhaimi, Tindak Pidana Penipuan Dengan Menggunakan Sarana Akta Perjanjian Yang Dibuat Di Hadapan Notaris, *AT-TASYRI': Jurnal Ilmiah Prodi Muamalah*. 2018; X(1): 25.

²⁵ Zainal Asikin, Pengantar Ilmu Hukum, Raja Grafindo, Jakarta, 2012, hlm. 102.

²⁶ Marwan Mas, Pengantar Ilmu Hukum, Ghalia Indonesia, Jakarta, 2004, hlm. 99.

²⁷ Luthfan Hadi, Op. Cit, hlm. 89.

criminal sanctions, in the form of civil sanctions, administrative sanctions, may be imposed if a notary commits a criminal offense in the performance of his duties. If a notary is clearly guilty of a formal violation, depending on the nature of the violation, he may be sanctioned or even violate the notary's code of ethics. As part of the notary's activities, that is, to provide the evidence required by the parties in relation to a particular legal dispute, and that evidence falls under the civil law system, the notary draws up a deed at the request of the parties. The notary will not draw up the deed without the request of the parties. The notary conducts the intended attestation based on evidence or statements made by the parties before the notary.

The results of the interviews can be explained that the right of refusal is a notary's obligation in carrying out his duties and position, at the same time it is a burden that must be borne by the notary in taking responsibility for his position as a trust in the community to maintain the secrecy of the contents of the deed he made to anyone outside the parties who mentioned in the deed. Even though UUJN has specified that a notary has an obligation to deny it, this does not make a notary immune from the law. There are several regulations that can invalidate a Notary's right of refusal, especially when it comes to crimes that fall into the category of extraordinary crimes. This does not make the Notary violate the UUJN and cannot be subject to the sanctions mentioned in Article 16 (11) UUJN as long as the rules for aborting the right of denial have a priority interest and information is needed from the Notary to convey everything contained in what he made. In this case the Notary may not cover it up, because the extraordinary crime is the interest of the community is prioritized, where the impact of the extraordinary crime can affect the socio-cultural system, affect the economic and political system and the resulting consequences have a broad impact on society, nation and state.²⁸

Convicting a Notary without carrying out an in-depth examination, as if the Notary had committed an act that fulfilled the element of intent or error, is an act that is in vain because the legal basis is unclear and cannot be legally justified. One example, for example, is the accusation against a Notary of having made a fake letter/deed or forged a document or a letter as if the contents of the letter were true and not falsified (Article 263 (1) of the KUHP). The forgery of the letter was carried out in the deeds based on Article 264 (1) to 1 KUHP..

If only because things like the above have made a notary a convict, that this shows that there are parties who do not understand what and how and the position of a notary in national legislation. Making a notary a convict shows that law enforcement officials show a lack of understanding of the world of notaries. In criminal cases regulated in Article 183 of the KUHAP, it is explained that judges are prohibited from convicting a defendant without being supported by at least two valid pieces of evidence and judges gain confidence that it is true that the crime that occurred was committed by the defendant, so that the defendant is guilty and the one requested accountability. Therefore, it is the accused who must be sentenced. An authentic deed drawn

up by a notary is evidence which cannot bind investigators and judges in proving, or is independent.²⁹

The obligation of a notary to keep the contents of the deed made secret is absolute and consequently if the notary discloses the secret, the notary has violated the rules and regulations and if the person who is harmed makes a complaint, the notary can be punished according to the provisions of Article 322 (1) and (2) KUHP.³⁰

If the notary is summoned as a witness and is asked for information regarding the contents of the deed that he has made, the notary can use his right of refusal, namely to ask to be released from the examination because he is obliged to keep secrets and other matters related to his position as a notary, in cases like this, the notary can refuse to be a witness and ask to be released from examination as a witness. This is called the right of denial, where the Notary does not deny the actions he has committed, but asks the judge to free himself from the obligation to testify before the court.

The right of refusal is actually not intended to protect the notary from being examined, but the right of refusal is for the benefit of the other party, namely the person who made the deed, namely so that the secrets contained in the deed are guaranteed not to be disclosed. Therefore, a notary must be careful and careful in making a deed because if there is negligence that causes a violation of the law, the notary can be processed by law and can also be subject to administrative sanctions.³¹

The limitation of a notary using the right of refusal is in accordance with UUJN, whereby a notary by virtue of his oath must keep everything contained in the deed made secret, and a notary is an official assigned to make a deed and is obliged to keep the contents of the deed secret. the contents made are in accordance with the provisions of Article 179 (1) of the KUHAP and Article 1909 (3) of the KUHP. So that it can be concluded that the right of refusal is actually an obligation, as an obligation to refuse is absolutely carried out and carried out by a Notary, except for laws that order to abort the obligation to refuse. The right of refusal cannot be used/executed because of a crime, meaning that if the notary commits a crime, he cannot use his right of refusal to be free from criminal prosecution.

4. Conclusion

In the UUJN it has been regulated regarding the Notary's Right to Refusal and it is already a Notary's oath of office to keep secret what is contained in the deed he made, where the Notary just sits quietly and does not provide information to answer investigators' questions regarding the contents of the deed he made. In Article 4 (2) and Article 16 f and Article 66 (3) UUJN, this matter is also regulated in Article 322 (1) of the KUHP where if a secret is divulged because of his position he is required to keep it secret, then this matter can be subject to criminal sanctions.

Notaries also receive legal protection when summoned by the police in the case of an investigation related to the deed they made as evidence, so the Notary has no obligation to attend, referring to the Oath of Office and the Notary also has the obligation to keep secret what is contained in the

²⁸ Wawancara dengan salah seorang Anggota Majelis Pengawas Daerah Notaris wilayah Aceh Utara, wawancara dilakukan pada April 2023.

²⁹ M. Yahya Harapahap, Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang di Pengadilan, Bandung, Kasasi, dan Peninjauan Kembali, Sinar Grafika, Jakarta, 2000, hlm. 283.

³⁰ *Ibid.*

³¹ *Ibid.*

deed, because the parties have entrusted it to the Notary. In Article 66 (3) of the UUJN it is emphasized that in the interest of the judicial process (starting from investigations at the investigator level to examination before a court session), it must obtain the approval of the MKN which has authority over the Notary to determine whether or not it is necessary to attend to fulfill summons in the proceedings. the law. In this case it is the MKN who decides whether the Notary is allowed to attend to fulfill the summons, or the MKN decides otherwise where the Notary is not allowed to attend to fulfill the summons. So that it is not arbitrary for the police, prosecutors and courts to summon a notary for questioning in connection with the making of a notary deed.

5. Suggestion

It is hoped that the government (especially related agencies) can socialize the provisions contained in the UUJN, both to law enforcement officials and to notaries, especially the problem of summoning a notary by law enforcement officials. This is important, because the mechanism for summoning or examining a Notary is regulated in UUJN as a special law (in this case the principle of *lex specialis derogate legi generalis* applies), which must first obtain MKN approval and this is something that must be respected and implemented. That all parties can carry out their functions and work in accordance with applicable laws, so as to provide good service to the community.

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