



The Authority of Honorary Committee of Notary in Obtaining the Copy of Original Deed Owned by Yasmine Citra Maulania

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Abstract

Honorary Committee of Notary is an institution chosen by the Minister of Justice and Human Rights as the supervisor of Notary position working based on Law Number 2 of 2016 regarding Amendment on Law Number 30 of 2004 regarding Notary Position. In Article 66 of Law of Notary Position, Honorary Committee of Notary basically has authority to give approval on the request of original deed copy. The implementation of this authority is set in the Regulation of Justice and Human Rights Minister Number 7 of 2016 regarding Honorary Committee of Notary. The validity of this Honorary Committee of Notary automatically gets rejection from some parties if related to judicature. Therefore, the researcher makes research question on how the role of Honorary Committee of Notary in obtaining original deed copy and how the effect of Honorary Committee of Notary consideration towards obtaining copy of original deed. The research method used is judicial normative in which it is an approach done based on primary law material by reviewing theories, concepts, law principles, and regulations regarding to this research. When the copy obtaining is requested to the Honorary Committee of Notary, the members of committee will conduct a meeting. In the meeting, the Public Notary must show his original deed and the members of Honorary Committee of Notary will assess whether it has been in line with the notary protocol or not. If it has been in line with it, the Honorary Committee of Notary deserves to refuse the proposal. This refusal will not be an issue in the assembly because the judicature can run by being supported by other proofs.

Keywords: Authority; Honorary Committee of Notary; Original Deed; Notary Protocol

Introduction

In its development, the regulation on Notary position can be seen from several rules specifically Law Number 33 of 1954 regarding Vice Notary and Temporary Vice Notary¹, Government Regulation Number 11 of 1986 regarding Oath of Notary, and Article 54 of Law Number of 2004 regarding

¹“Law Number 33 of 1954 Regarding Vice Notary and Vice Temporary Notary”, *State Gazette Number 101 of 1954, Supplement of State Gazette Number 700.*

Amendment on Law Number 2 of 1986 regarding General Judicature². However, the growth of Notary position makes the regulations divided in some laws to be ineffective. Hence, Law Number 30 of 2004 is made regarding Notary Position which is then called as Law on Notary Position (UUJN).³ In Article 1 of Law on Notary Position, it is stated that general official who has authority to make original deed and other authorities as meant in this law. The statement of Notary position as the general official reveals that a Notary has direct authority from state.

The authority owned by a Notary in Indonesia invites guidance and supervision on Notary which are done by judicature institution and governance. The objectives of guidance and supervision are in order that the Notary, when performing his duties, fulfills all requirements related to the duty implementation of notary position for the sake of community's purpose because a Notary is chosen by the government not for personal purpose but for community's purpose that he serves.⁴ If the deed made by the Notary has legal defect because of the Notary's mistakes both the Notary's neglect and the Notary's deliberateness, the Notary must show responsibility both from moral aspect and legal aspect.⁵ Other things supervised are the authority abuse is not occurred.

Basically, all law profession or position is not allowed to be given exclusiveness in judicature or other legal actions. It is in accordance with the intention of Article 27 number (1) which states that all citizens has equal position before law and is obliged to uphold law and the governance without exception.⁶ The article in 1945 Constitution of the Republic of Indonesia emphasizes that law in Indonesia must be fair and provide equality in every aspect. However, it is different from the special statement regarding confiscation; the original deed of a Notary is referred to Circular Letter of Supreme Court of the Republic of Indonesia Number 3429/86 dated April 2, 1986 regarding confiscation permission of original deed saved by a Notary/Registrar and Article 43 in Law.⁷

The above statement is actually true if related to the authority of Regional Honorary Committee of Notary. It is because basically deed made by a Notary is a contract by the parties that has been agreed and stipulated in form of writing. The contract that has been agreed that has made a deed and made by the official chosen by the state absolutely can be categorized as state archive. This statement absolutely justifies the proposal procedure of original deed copy obtaining through Regional.

However, it is surely still considered as exclusiveness for the notary. It is seen from the objection addressed in form of review on Law on Deputy Notary Position. "Previously, lawyer namely Tomson Situmeang problematizes Article 66 sub-section (1), (3), (4) Law Number 2 of 2014 regarding Amendment on Law Number 30 of 2004 regarding Notary Position especially the phrase on the approval of Honorary Committee of Notary regarding investigation of judicature process that involves a Notary. The reason is the similar regulation has been cancelled by material testing og Article 66 Sub-section (1) Law Number 30 of 2004 especially the phrase on the approval of Local Honorary Committee of Notary."⁸ Tomson Situmeang, in this case, acts to consider his position as a lawyer. In his cause of action to the Constitutional Court, Tomson Situmeang considers that the re-making of Article 66 in Law on Deputy Notary Position has equal substance in Article 66 in Law on Deputy Notary Position. However,

²Law Number 8 of 2004 regarding Amendment of General Judicature", *State Gazette Number 34 of 2004, Supplement of State Gazette Number 3327*.

³Law Number 30 of 2004 regarding Notary Position", *State Gazette Number 117 of 2004, Supplement of State Gazette Number 4432*.

⁴Lumban Tobing G.H.S., *Regulation of Notary Position*, Erlangga, Jakarta, 1983.

⁵Putri AR, *Law Protection towards Notary (Indicator of Notary Duties Having Criminal Action Implication)*, Sofmedia, Jakarta, 2011, p. 8.

⁶*Op.cit.*

⁷*Op.cit.*, p. 39.

⁸Website of Online Law, <http://www.hukumonline.com/berita/baca/lt54511017e573c/persetujuan-mkn-adalah-kunci-pembuka-kewajiban-ingkar-notaris>, accessed in March 21, 2018 at 22.14 Western Indonesian Time.

the change in both articles is only in its organizing board namely Local Honorary Committee of Notary which is changed to Honorary Committee of Notary.

The profession of Tomson Situmeang is once hampered by the case of Kant Kamal with the validity of Law Number 30 of 2004 regarding Notary Position. Afterwards, Judicial Review proposal is conducted in Constitutional Court. Then, the decision of Constitutional Court Number 49/PUU-X/2012 dated May 28, 2013 is issued which approves the material testing proposal towards Article 66 Sub-section 1 on Law Number 30 of 2004 regarding Notary Position. The order of Constitutional Court Decision basically removes the phrase “with the approval of Local Supervising Committee” in the tested article.⁹ After the removal, the notary can be invited and asked for his deed directly as long as it is considered essential by the judicature.

However, this thing does not last longer because Law on Deputy Notary Position is made. The similar substance is then re-presented in Article 66 in Law on Deputy Notary Position mentioning the presence of authority from Regional Honorary Committee of Notary in the procedure of original deed copy obtaining. Although the re-presenting of Article 66 in Law on Deputy Notary Position is made, in its practice, sometimes both a notary and other law professions do not implement it. Some notaries considering not making mistakes when their original deed copy are asked or the call as witnesses just directly approve the judicature request and not through procedure of Article 66 in Law on Deputy Notary Position. Besides, other law professions still consider that this article hamper them in performing their profession authorities.

Research Method

Jurisprudence is a science that is prescriptive and applied. By seeing the characters of the science, jurisprudence is always related to what it should be.¹⁰ With the characteristics, because the review lies on the legal norms and legal principles that regulate, the problem approach that will be used in this research is Judicial Normative approach. According to F. Sugeng Istanto, legal research is the research applied or treated specially in jurisprudence.¹¹ In line with the opinion of F. Sugeng Istanto, Moris L. Cohen, in his book entitled with *Legal Research* states that “*Legal Research is the process of finding the law that governs activities in human society*”.¹² Afterwards, Cohen emphasizes that “*It involves locating both the rule which are enforced by the states and commentaries which explain or analyze these rules*”.¹³ Furthermore, two bachelors namely Belgia Jan Gijssels and Mark Van Hoecker cited by Peter Mahmud Marzuki explains that legal research is a process to find legal regulation, legal principles, and legal doctrines to answer law issues faced.¹⁴

⁹Herman Faisal Siregar, *Judicial Implication of Constitutional Court Decision towards Existence of Local Supervising Committee of Notary (Analysis of Decision Number 49/PUU-X/2012 towards Article 66 Sub-section 1 in Law Number 30 of 2004)*, The Archive of Faculty of Law, University of Brawijaya, Malang, 2014, p.3.

¹⁰Yuslim, 2014. *The Authority of Governor as the Government Representative in Realizing Regency/Municipal Governance According to the 1945 Constitution of the Republic of Indonesia*, Summary of Dissertation, Padang, p. 36.

¹¹F. Sugeng Istanto, 2007. *Legal Research*, CV. Ganda, Yogyakarta, p. 29., cited from Saldi Isra, 2009. *The Shift of Legislation Function in Indonesia Governance System after Amendment of 1945 Constitution*, Dissertation of Master Program, Faculty of Law, University of Gadjah Mada, Yogyakarta, p. 141., in Saldi Isra, 2014. *System of Recruiting and Selecting Supreme Court Judge and Constitutional Judge in the Concept of Law State*, Research of National Law Guidance Agency in 2014, Jakarta, p. 10.

¹²Peter Mahmud Marzuki, *Legal Research*, CV. Ganda, Yogyakarta, Printing 3, Pranada Media Group, Jakarta, 2007, p. 137.

¹³*Ibid.*, p. 37.

¹⁴*Ibid.*, p. 29.

This research is a descriptive-analysis research which describes the prevailing regulations, related to law theories in the practice of positive law implementation, related to the problem researched.¹⁵ The data in this research are obtained from primary data and secondary data. Primary data is the data obtained directly in the field through interview with free and guided principle meaning that the ways to prepare the main questions as the guidance when interviewing. Interview is a data method by way of communication which is through contact or personal relation between data collector and data source (respondents). The communication can be done directly and indirectly.¹⁶ Secondary data is the data which consist of legal materials that prevail imperative like regulations and jurisprudence.

To obtain data needed in this legal research, it is done by using data collection technique namely library research and interview. In this thesis, the data processing obtained after the research is done is by editing. Editing is a re-research process towards notes, documents, and information collected by the data searcher which is expected to improve the quality of reliability.¹⁷ The data analysis that will be used is qualitative meaning that the description of analyzed data based on the regulations and the experts' opinion then it is discussed with the sentences that previously have been analyzed, the interpretation and the conclusion making in line with the discussed problems.

Result and Discussion

The Role of Honorary Committee of Notary based on Law Number 2 of 2014 regarding Amendment on Law Number 30 of 2004 regarding Notary Position.

The removal of Article 66 in Law on Deputy Notary Position causes the protection on notary profession decreased. This protection is seen based on the authority that has been done by the Notary. Based on the prevailing regulation, a Notary actually has authority in making and concealing the deed. Absolutely, this confidentiality is considered as a form of legal guarantee for the parties that have used the service of a Notary. Therefore, after the presence of removal for the Notary, everything done based on his authority no longer has a protection in his profession.

In the provision of Article 26 in Law on Deputy Notary Position, it explains about the absolute authority given to Honorary Committee of Notary. It occurs because the Decision of Constitutional Court Number 49 of 2012 regarding Law on Deputy Notary Position is issued. It is about the decision result removes the protection for the notary and the authority from Local Supervising Committee. During the period of not using the provision of Article 66 in Law on Deputy Notary Position, there occur some requests to show the copy of original deed in some judicatures in which it absolutely violates the regulation of ethics of notary which is the obligation to conceal the deed of the parties.

Therefore, law supervision and law guidance are conducted again through Honorary Committee of Notary. The protection for the Notary in Article 66 in Law on Deputy Notary Position is with limitation that as long as it is related to the duty in Article 15 in Law on Deputy Notary Position, the permit of Honorary Committee of Notary is obliged to be applied both when the notary is investigated as a witness, suspect, or defendant in a crime. This article is valid not only in the criminal case only regarding investigating officer, public prosecutor, and judge, while in the civil case, everyone deserves to file a lawsuit if their rights are violated by a notary deed. Although a notary in Law on Deputy Notary Position

¹⁵Suharsimi Arikunto, *Research Procedure of A Practical Approach*, Bina Aksara, Jakarta, 1989, p. 39.

¹⁶Riato, *Methodology of Social and Legal Research*, Granit, Jakarta, 2004, p. 72.

¹⁷Bambang Sunggono, *Methodology of Legal Research*, Raja Grafindo Persada, Jakarta, 2010, p. 126.

is mentioned as a state official, but they are able to be responsible individually if they conduct legal actions out of their authorities done.

Basically, responsibility in law term has wide definition. Responsibility in law term can be done if it is based on an obligation and is included into decision, power, and prowess covers the obligation to be responsible for the laws done. According to traditional theory, there are two types of responsibility which are responsibility based on fault and absolute responsibility.¹⁸ Viewed from these types, the Notary has absolute responsibility on his deed. Thus, the supervision on deed is conducted through authority of Honorary Committee of Notary based on Article 66 sub-section 1 letter (a).

In Article 66 of Law on Deputy Notary Position, besides functioning in supervision, Honorary Committee of Notary also has a role in terms of protection for the Notary position. The protection done by Honorary Committee of Notary is based on the regulation in Article 15 and Article 16 of Law on Deputy Notary Position. The authority that has been explained clearly in the regulations is intended that there will be no misunderstanding in interpreting Law on Deputy Notary Position.

In terms of authority, the Honorary Committee of Notary will review and investigate the deed that has been issued by the related Notary as well as ask for clarification of the Notary in order to consider the truth of the deed making, the deed content, and the deed requirement. It has its own regulation with the base of Law on Deputy Notary Position and additional explanation in the Regulation of Justice and Human Rights Minister Number 7 of 2016 regarding Honorary Committee of Notary.

The request of approval done by other law professions is firstly conducted through Honorary Committee of Notary. This process is under the reason that in running his duty, the Notary takes place as the state general official. In addition, the deed issued by the Notary becomes the state document protected as the state archive. If the document made by the Notary is expressed without any protection, it will lead to distrust for general people and juristic people involved. It absolutely makes the people not want to give their confidentiality to the related Notary.¹⁹

In Law on Deputy Notary Position in the article, it is stated that there is a periodic investigation on Notary protocol let alone in terms of deed keeping as Notary protocol; one of them is periodic investigation done by Supervising Committee of Notary. It absolutely becomes one of the forms of law protection on regulation in which the truth of protocol implementation by the Notary is always reviewed.

It certainly limits the possibility the occurrence of position abuse as a Notary in which the Notary to make irrelevant deed becomes narrower. Moreover, it widens the possibility the law protection for the parties who use the service of Notary. The deed truth that has been made as in line with this regulation is intended in order that the Notary deed asked as a proof becomes smaller and protecting the Notary profession. Sometimes in an assembly, the judge and other law professions like lawyer or investigator needs authentic deed as the written proof.

The assumption on the authority of Honorary Committee of Notary cannot be completely considered true. The relation of Article 66 of Law on Deputy Notary Position must be understood by considering *lex specialis derogate lex generali* principle. The exclusiveness on the authority of a Notary regarding the deed addressed for the sake of legal certainty for community. If the legal action is done continuously by the community without any guarantee from the state, the dispute in the nation will occur. Without the certainty, the justice and the social order from the law will not be achieved.

¹⁸ Jimly Assiddiqie and Ali Safa'at, *Idea of Law State*, accessed through http://www.jimly.com/makalah/namafile//Konsep_Negara_Hukum_Indonesia in July 20, 2019 at 16.30 Western Indonesian Time.

¹⁹ I made Puryatma, *Responsibility of a Notary in Deed Making*, Indonesian Notary Association Bali NTT Region, Denpasar, 2010, p. 85.

If according to the investigation of Honorary Committee of Notary there is no fault both from Law on Deputy Notary Position and ethics violated, then it is true that the refusal is there for the sake of protection as the legal guarantee for the parties. However, this is the thing that is not understood yet by the police, prosecutor, and judge. Therefore, the existence of Honorary Committee of Notary is still considered as the position authority that has been granted by the state. The provisions have been clear in the regulation and other law provision that explain the authority of Honorary Committee of Notary regarding to Article 66 in Law on Deputy Notary Position still gets counter response and is considered as a privilege.

This is seen by the presence of filing a lawsuit to the Constitutional Court to propose a review on the Article 66 in Law on Deputy Notary Position in which finally the Constitutional Court issues a decision in form of Decision Number 72/PUU-XII/2014 related to testing of Law Number 2 of 2014 regarding Notary Position. The validity of Article 66 in Law on Deputy Notary Position that provides substance which is same as the provision in the Article of Law on Deputy Notary Position and it will end on the loss of law enforcers independence especially police, prosecutor, and judge.

This request seeing the provision regarding there must be equality of rights of citizens before the law in Indonesia is in Article 27 sub-section (1) and Article 28 sub-section (1) in 1945 Constitution of the Republic of Indonesia. Moreover, the principle of law equality is also known as *equality before the law*. The equality intended is considered protecting and providing exclusiveness for the Notary position in his performance. The assumption on the authority of Honorary Committee of Notary is not completely considered true. The relations of Article 66 in Law on Deputy Notary Position must be understood by principle of *lex specialis derogate lex generali*.

The exclusiveness meant on the authority of a Notary regarding the deed addressed for the sake of legal certainty for community. If the legal action is done continuously by community without any guarantee from the state, the dispute will absolutely occur in the state. Without the certainty, the justice and the social order from law will not be achieved. The provision of Article 66 in Law on Deputy Notary Position for police, attorney, or judge is impressive. It means that if the police, attorney, or judge violates the provision of Article 66 in Law on Deputy Notary Position, it can be categorized as a violation on laws and can be categorized as it has abused the authority. Afterwards, the police, the attorney, or the judge can be reported to their superior in which it will stop the process of investigation temporarily done until the provision of Article 66 in Law on Deputy Notary Position is conducted.

Actually, if the Article 66 of Law on Deputy Notary Position done first will not be an issue for the authority of the investigator or other law professions. The process that has been explained clearly in the regulation mentioned previously. If indeed there is a fault and Honorary Committee of Notary sees this in line with the Article 26 of the Regulation of Justice and Human Rights Minister Number 7 of 2016 regarding Honorary Committee of Notary.

This gives explanation that the request on original deed copy can be done and it will not be difficult if there is a clear fault. However, sometimes, this clarity is still not understood, or even less to give freedom. Therefore, for some thoughts, the authority on Honorary Committee of Notary becomes the exclusiveness for the Notary position. However, there is an explanation related to Honorary Committee of Notary namely Article 1 number (1) in the Regulation of Justice and Human Rights Minister Number 7 of 2016 stating that Honorary Committee of Notary is an institution that has authority to conduct guidance for Notary and obligation to give approval or refusal for the purpose of investigation and the process of judicature, on the original deed copy obtaining and the notary calling to be present in the investigation related to the deed or Notary protocol that is in Notary keeping.

In this definition, there is a word of approval or refusal for the request. It explains that regarding to this copy of original deed, it can be given approval; however, it must have clear base. Moreover, in giving the copy of original deed, there are several procedures done. The deed that basically is confidential except for the parties is impossible to declare the content to other people. The condition and the procedure that have been set in law and other regulation are extremely clear. This provision does not hamper and has legal consequence for community until it harms in the future.

The Impact of Honorary Committee of Notary Authority Decision based on General Judicature.

One of the authorities of Honorary Committee of Notary known and explained in Law on Deputy Notary Position is about general judicature. It is in which the Article 66 of Law on Deputy Notary Position number (1) letter a states that for the purpose of judicature, investigator, general prosecutor, or judge with the approval of Honorary Committee of Notary has authority to obtain the copy of original deed and/or documents attached in the Original Deed or Notary Protocol in the Notary keeping. Authority itself has a definition of rights and power owned to do something.²⁰

The definition of authority in the Indonesian Dictionary is absolutely different from the definition of its base word namely competence. Competence has a meaning that to do public law action, for instance, the competence to sign/issue permits from an official on behalf of minister; besides, the authority is still under the minister himself. On the other hand, according to Ateng Syafrudin, it is stated that there is a difference between authority and competence.

Authority is what is called as formal power, the power coming from the power granted by laws; while competence is only about *onderdeel* (part) particularly from the authority.²¹ Besides statement, the word authority in the General Explanation of Law on Deputy Notary Position, it is stated that Notary is a general official who has authority to make authentic deed as far as the making of particular authentic deed is specialized for other general officials. Notary as a General Official is a professional whose information can be trusted in which his signature and seal can provide guarantee and be made as strong proof as well as an independent party in the law counseling that does not have defect.²²

The above explanation absolutely supports the definition of Article 66 of Law on Deputy Notary Position which emphasizes the protection for the users of Notary services because the position of Notary is considered as general official. Law on Deputy Notary Position makes Notary act as public official so that as the legal consequence, the notary deed obtains authentic position and is executorial.²³ The power of deed considered like this is obtained because the deed is made based on law and by the authorized party. The statement on this deed power is in line with that is meant in Civil Code stating that an authentic deed is a deed which is in form that has been set by the law, made by or before the authorized general official where the deed is used for.²⁴

Naturally, the authentic deed that has been made as a Notary absolutely contains formal truth in line with that is told by the parties to the Notary. However, the Notary has obligation to make sure that what is shown in the Notary deed truly has been understood and has been in accordance with the expectation of the parties specifically by reading it so that the deed becomes clear and it provides access

²⁰Viewed from <https://kbbi.web.id/wenang>, accessed in January 19, 2018 at 20.00 Western Indonesian Time.

²¹Ateng Syafrudin, *Towards Clean and Responsible Governance Implementation*, Jurnal Pro Justisia Edition VI, University of Parahyangan, Bandung, 2000, p. 22, accessed in May 3, 2019.

²²Juleni, *Implementation of Notary Investigation by Honorary Committee of Notary on Conjecture of Committing Crime based on the Regulation of Justice and Human Rights Minister of the Republic of Indonesia Number 7 of 2016*, University Sebelas Maret, 2018, p. 75, accessed in February 7, 2019.

²³Lutfan Hadi Darus, *Op.Cit.* p. 22

²⁴*Op.cit.*

towards information including access towards related laws for the parties in deed signing. Thus, the parties can determine freely to agree or disagree the content of deed that will be signed. Considering that the formal truth from the deed makes the authentic deed as the strongest and the fullest written proof so that things regarding deed like copy of deed, original deed, and the request for deed as the written proof for the assembly are set in Law on Deputy Notary Position.

As the strongest and the fullest written proof both from criminal aspect and civil aspect, everything in the deed must be recognized and obeyed by the parties except those who have exception on what has been written by a Notary. This exception sometimes causes a fault in the interpretation of Notary authority regarding deed and the authority of Honorary Committee of Notary as the bridge in general judicature. By this exception, some times the Notary who basically as a general official makes a deed and sees a truth only in his authority limit, but he is considered having a fault in the Notary deed.

The fault seen from the parties' side sometimes emerge if one of the parties feels harmed. It actually cannot be made as the responsibility of the Notary anymore because the contract implementation out of the deed depends on how the parties act. In which in making a contract, a Notary prepares the deed with one of considerations namely a legal cause or a justified cause. The truth that has been shown becomes Notary's consideration to make a contract.

However, the truth on deed occurs if there is a lawsuit, absolutely the deed of the Notary is considered not valid anymore and it erases the making of the contract. It is then taken as a consideration by some parties to ask Notary deed to be made as the consideration material in assembly and ask for the deed to be exposed in the assembly. This is where the duty or the implementation of Honorary Committee of Notary authority is run.

Some parties certainly expect that Honorary Committee of Notary will fulfil their requests regarding to the deed. However, it is not that easy because Honorary Committee of Notary has also processes in issuing the decision of the request. The assembly firstly done before the decision for the deed has its own process as explained in the Regulation of Justice and Human Rights Minister Number 7 of 2015 regarding Honorary Committee of Notary.

One of the articles in the Regulation of Justice and Human Rights Minister regarding Honorary Committee of Notary is explained that there must be an assembly first to assess the trust in the deed making. The deed considered authentic absolutely has been made by the Notary correctly and carefully. In which the carefulness in running his function and position is obliged to be implemented in order to protect the community's purpose. In addition, by this principle, the Notary realizes that all action in making a deed must be taken and arranged with careful steps.

Absolutely, besides, the provision in other Laws on Deputy Notary Position emphasizing that supervision in Notary field must be right and honest viewed from the statement that the members of Honorary Committee of Notary must not from Notary only. In the assembly conducted by Honorary Committee of Notary, there must be a person from academician and governance. This governance can be a person from other law professions too.

This shows justice in keeping the confidentiality of a Notary. In which the assessment for the request from other professions is absolutely responded by no alignment towards the profession of Notary. However, the confidentiality intended for a Notary as in line with his position and is set in Article 16 of Law on Deputy Notary Position is still kept. That in determining on how further the coverage of renegotiation rights of the notaries, it must be referred to the obligation of the notaries to not talk about the content of the deeds both regarding what is shown in the deeds and their position as Notary, even

before the court, except the things where the notary by a prevailing law frees him strictly from his position confidentiality oath.²⁵

The regulation that has been clear regarding this Honorary Committee of Notary position is still considered as exclusiveness. For some parties, they even consider that a Notary should be treated equally before the law (*equality before the law*). If the Article 66 of Law on Deputy Notary Position is re-conducted, there will be no changes in the provision of Article 66 of Law on Deputy Notary Position previously in which there is still a protection for a Notary in terms of judicature.

This is later that makes the presence of review request through Constitutional Court. It is still with same base in form of the position considered this profession has exclusiveness and it does not have equality before the law. This exclusiveness is removed by way of removing the role of Honorary Committee of Notary from Law on Deputy Notary Position. The attempt to remove it, the approval of Honorary Committee of Notary in the process of law involving Notary is eventually stopped under the decision of nine constitutional judges. It is because with the reason that the appellant does not have equality before the law, Constitutional Court Committee states that it does not approve the material testing of Article 66 sub-section (1), sub-section (3), and sub-section (4) Law Number 2 of 2014 regarding Amendment on Law Number 30 of 2004 regarding Notary Position.²⁶

In terms of the decision issued, the Constitutional Court considers that the judicature itself should not specialize a person or other juristic people. The exclusiveness is firstly justified in the Decision of the Constitutional Court of 2012 regarding Law on Deputy Notary Position. Besides, regarding Article 66 of Law on Deputy Notary Position, the Constitutional Court considers that there is no fault in the article. The article that requires the presence of Honorary Committee of Notary authority in judicature which intends for clarity based on procedure. Honorary Committee of Notary is considered more making easier and more making clearer the procedure in obtaining copy of deed.

The Impact of Honorary Committee of Notary Authority Decision based on Notary Ethics Code.

Initially, the institution granted authority by the Minister in helping the supervision of Notary is Supervising Committee of Notary. The initial distribution of the duties is in the Law on Deputy Notary Position. Law on Deputy Notary Position initially explains Supervising Committee of Notary consists of two namely Supervising Committee of Notary and Honorary Committee of Notary. The first duty of Honorary Committee of Notary is guidance for the notaries both ethics code and notaries' moral; while the Supervising Committee of Notary has duty of supervision regarding regulation that has been explained for Notary's action in Law on Deputy Notary Position.

Based on duty, Law on Deputy Notary Position only refers to the ethics code of notary and not having duty and other authorities. However, after the Decision of Constitutional Court Number 49/PUU-X/2013 is issued, change is there. The change occurs because of the removal of Article 66 in Law on Deputy Notary Position and it leads to the issuance of new regulation for the notary namely Law on Deputy Notary Position. In Law on Deputy Notary Position, the duty change of Honorary Committee of Notary occurs to be duty of guidance and supervision. It is seen from the Article 66 of Law on Deputy Notary Position which states that it is the duty of Regional Honorary Committee of Notary to give approval or refusal towards the investigation for notary.

²⁵Viewed from <http://Alwelius.Blogspot.co.id>, *Decision of Constitutional Court towards Article 66 of Law on Deputy Notary Position and the Action that can be Done in the Future*, accessed in January 20, 2019 at 22.25 Western Indonesian Time.

²⁶Viewed from <https://www.hukumonline.com/berita/baca/lt55dd7cde11b0d/pengujian-uu-jabatan-notaris-kandas>, accessed in January 19, 2019 at 19.45 Western Indonesian Time.

To follow up the provision of Article 66 in Law on Notary Position, the Justice and Human Rights Minister of the Republic of Indonesia has issued Regulation of Justice and Human Rights Minister of the Republic of Indonesia Number 7 of 2016 regarding Honorary Committee of Notary.²⁷ Moreover, in the provision, the duty of Honorary Committee of Notary is explained in Article 18 specifically the duty of Honorary Committee of Notary in terms of investigating the request proposed by the investigator, general prosecutor, and judge and also giving answer on approval from the request.

Besides, in Article 18 sub-section 2, Honorary Committee of Notary is asked to conduct guidance in keeping the prestige and honour in performing the position as well as to provide protection for the related Notary in terms of Notary obligation to protect the deed content. This protection statement absolutely can be forced to protect the deed content so that this authority is not to protect the notary individually but to his position duty. In running his profession, it must be done based on prestige because the duty of profession is the communal duty that is related directly to the basic values which are value and prestige.²⁸

If seen from the side of ethics code, it is clear in the guidance word in the explanation of the Article 16 above. The word “keeping prestige” shows that there is an element of ethics code that has been fulfilled and violated by notary. It absolutely becomes the duty of Honorary Committee of Notary to conduct guidance. The violation done by notary will get a protection from Honorary Committee of Notary which is in line with Article 27S Sub-section 1 of the Regulation of Justice and Human Rights Minister shows that if a criminal violation has been committed, the Regional Honorary Committee of Notary can accompany the notary in the investigation process before the investigator. The sentence used is “can accompany the notary”; the word “can” is not a must or an obligation, thus, it leads to a complicated thing if the Regional Honorary Committee of Notary grants the investigator’s request still can accompany the notary.²⁹

It should be emphasized that the Regional Honorary Committee of Notary in this case accompanies is only passive in which the Regional Honorary Committee of Notary is not active in the judge, but as its guidance duty, it requires them to provide support towards the notary under investigation. The Regional Honorary Committee of Notary still runs a duty to remind until what limit the copy of notary original deed can be shown for the judge because the ethics code that requires deed from the notary that must keep its confidentiality.

However, sometimes, judicature purpose is not through the procedure of the Regional Honorary Committee of Notary authority but through the procedure of confiscation directly. It must be differentiated because basically the proposal through request and confiscation are different. It can be seen from the definition of confiscation in Article 16 of the Criminal Procedure Code which is:

“Confiscation is a set of investigator’s action to take over or to save under his power on movable assets or immovable assets, tangible assets or intangible assets for the purpose of proving in the investigation, prosecution and judicature.”³⁰

The definition shows that confiscation is included into one of forcing attempts (*dwang middelen*) that can violate the human rights. Generally, it has been also set that the procedure cannot be done directly considering that there is law regulation in Indonesia. It is similar to the position of Notary for confiscation that must be through the procedure that has been determined by prevailing regulation namely Law on Deputy Notary Position. By considering the definition and the position, this notary deed can be categorized as the state archive. It absolutely makes the notary deed to be protected and to be kept.

²⁷Habib Adjie, *Understanding: Supervising Committee of Notary and Honorary Committee of Notary*, Refika Aditama, 2017, p. 36.

²⁸ Abu Jusuf, *Ethics of Notary as Law Profession*, Media Notariat, Number 2 of 1, Oktober, 1999, p. 72.

²⁹Habib Adjie, *Op. Cit.*, p.38.

³⁰Criminal Procedure Code, State Gazette of the Republic of Indonesia of 1981 Number 76, Article 1 number (16).

Conclusion

Based on the Article 66 in Law Number 2 of 2014 regarding Amendment on Law Number 30 of 2004 regarding the Position of Notary, it has explained clearly about the request procedure of original deed copy. The procedure that requires the request first to the Honorary Committee of Notary, then the members of the Committee must make a call for the related Notary. After that, the Notary Deed is asked and shown whether the making of deed has been in line with the Notary Protocol or not. After the consideration, the Members of Honorary Committee of Notary can make a decision of refusal or approval on the request of notary original deed copy.

Based on the provision in the Article 66 of Law Number 2 of 2014 regarding the Position of Notary, it is explained that the authority for the request of original deed copy addressed to the Honorary Committee of Notary is right. The realization of the article aims to give protection for the Notaries and the rights of the parties involved. Besides, the realization of the article has been made clear by issuing the Regulation of Justice and Human Rights Minister Number 7 of 2016 regarding Honorary Committee of Notary. Basically, a judicature can last too because the proof in a judge is not only a written proof as in the Article 1868 of Civil Code. Therefore, the protest coming from other law professions is basically not right if related to the exclusiveness whereas the procedure implementation of Article 66 itself aims to make other law professions easier in performing their obligations if they must deal with the work of Notary.

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