

Calling a Notary by Police Investigator Regarding the Relaa Deed Made by a Notary

(Case Study at Unit I Pidum Sat Reskrim West Lombok Regional Police)

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Abstract:

In Article 66 of Law No. 2 of 2014 in conjunction with Law No. 30 of 2004 concerning Notary Position (UUJN), namely: a. If needed by law enforcers in the judicial process, namely the investigator, public prosecutor or judge can submit a request for approval in order to summon a notary. The letter was submitted to the Honorary Board of Notaries; b. Within a maximum of 30 working days from the receipt of the letter of request, the Honorary Board of Notaries must provide the answer; c. If within the period of time determined by the Honorary Board of Notaries does not provide the answer, then the notary Honorary Council's silence is deemed to have received the request for approval. So that law enforcement can make calls to the notary concerned; d. After obtaining approval from the Notary Honorary Assembly, law enforcers are authorized to: 1. Request and take a photocopy of the Minuta deed and / or letters that have been attached to the Minuta deed in the notary deposit (notary protocol); 2. Calling a notary to attend the criminal examination process relating to the notary deed or protocol that is in storage. This type of thesis is normative juridical research that is descriptive analytical, meaning that a data analysis based on general legal theory is applied to explain another set of legal materials.

Conclusion: 1. Investigators are authorized to examine Notaries, where Investigators are authorized to receive reports or complaints about criminal acts, seek information and evidence, order to stop suspected persons or ask and examine personal identification and conduct other actions according to law, they can also acting on the orders of investigators to make arrests, forbid leaving search sites and confiscating them. 2. The procedure of investigation is carried out on a Notary after reporting on the Deed made by a Notary, and in the report stated that the Notary has committed a Criminal Act as stipulated in Article 66 of the UUJN. However, the summons of a Notary as a witness, suspect or defendant after the investigator submits a written request to the Regional Supervisory Board and the request is sent to the Notary by making an excuse rather than calling the Notary as a witness, suspect or defendant. After the issuance of the new Notary Position Act, based on Article 66 paragraph I of Act Number 2 of 2014 concerning the current Notary Position, the summons made by the investigator is considered valid if the investigator mentions the reason for the summons clearly, and the caller is Acts that are accountable according to the law are not in conflict with the law, in line with legal obligations, reasonable, reasonable within the investigator's office, based on proper consideration and respect for human rights.

Keywords: Act of Notary Position (UUJN), calling of notary, authority of police investigator

I. Introduction

The philosophical foundation was the birth of the Notary Position Act Number 30 of 2004 which was revised by Law No. 2 of 2014 concerning Notary Position is the realization of guarantees of legal certainty, order and legal protection with the essence of truth and justice. Through the deed he made, the Notary must be able to provide legal certainty to the public using Notary services.¹ The authentic deed in essence

¹ Salim HS. & Abdullah, *Perancangan Kontrak dan MOU*, Sinar Grafika, Jakarta, 2007, p. 101-102.

contains formal truth in accordance with what the parties notify the Notary. However, the Notary has the obligation to include that what is contained in the Notary deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that it becomes clear the contents of the Notary's deed and provides access to information including access to relevant laws and regulations. The party signing the Notary deed in carrying out its position plays an impartiality and Independency role.²

The position of the notary as an authentic deed-making official is stated in Article 2 Paragraph 1 of Act No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Position, which states:

“A notary is a public official who has the authority to make an authentic deed and has other authorities as referred to in this Act or under other laws”.

There are 2 (two) types / classes of notary deeds, namely:

1. Deed made by a notary (official certificate or official deed)
2. Deed made before a notary (partij deed)

In Article 66 of Law No. 2 of 2014 in conjunction with Law No. 30 of 2004 concerning Notary Position (UUJN), namely:

- a. If needed by law enforcers in the judicial process, namely the investigator, public prosecutor or judge can submit a request for approval in order to summon a notary. The letter was submitted to the Honorary Board of Notaries;
- b. Within a maximum of 30 working days from the receipt of the letter of request, the Honorary Board of Notaries must provide the answer;
- c. If within the period of time determined by the Honorary Board of Notaries does not provide the answer, then the notary Honorary Council's silence is deemed to have received the request for approval. So that law enforcement can make calls to the notary concerned;
- d. After obtaining approval from the Honorary Board of Notaries, law enforcement authorities are authorized to:
 - a. Request and take photocopies of minuta deeds and / or letters that have been attached to the minuta deed in the notary deposit (notary protocol). In connection with the photocopying of these documents, the investigator will make the minutes of submission to be submitted to the notary.
 - b. Call a notary to attend the criminal examination process relating to the notary deed or protocol that is in storage.

II. Result And Discussion

2.1 Authority of Police Investigator in Examining Notaries Regarding Relas Deeds Made by Notaries

2.1.1 General Overview of the Police Department

The police mean as organs and functions, namely as a government organ with the task of supervising, if necessary, using coercion so that those who are governed carry out the agency not to carry out prohibitions on orders. According to Article 1 number 1 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia (hereinafter referred to as the Law on the Police), the definition of “Police is all matters relating to police functions and institutions in accordance with laws and regulations.”

2.1.2 Duties and Authorities of Police Investigators

Investigators are authorized to:³

- a. Receive reports or complaints from someone about a crime;
- b. Conduct the first action at the time of the incident;
- c. Order to stop a suspect and examine the suspect's personal identification;
- d. Carrying out arrest, detention, search and seizure;
- e. Conduct inspection and seizure of letters;
- f. Call people to be heard and examined as suspects or witnesses;
- g. Take fingerprints and photograph someone;

² Herlin Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Citra Aditya Bakti, Bandung, 2007, p. 22.

³ Pasal 5,3 *Kitab Undang-undang Hukum Acara Pidana*, Grahamedia Press, 2016, Jakarta, p. 685.

- h. Bring in an expert who is needed in conjunction with a case examination;
- i. Hold termination of investigation;
- j. Conduct other actions according to the law that are responsible.

2.1.3 The Role of Police Investigators in the Judicial Process

The task of the National Police as an investigator can be said to reach the whole world. Its power and authority are extraordinarily important and very difficult. In Indonesia, the police play a major role in the investigation of general criminal law, namely the violation of the articles of the Criminal Code.

The mechanism of the criminal investigation process, namely receipt of reports/complaints, summons, arrests, detention, searches, seizures and handling of cases.

2.1.4 Police Authority in the Process of Investigation and Investigation of Notaries Based on the Act of Notary Position Number 30 of 2004

The procedure for conducting the calling of a Notary by the Investigator is related to the Act of Notary Position Number 30 of 2004 as follows:

- a. The investigator submits a letter to the Regional Oversight Board stating for what purpose, whether to take photocopies of Minutes of Deed and / or letters attached to the Minutes of Deed or Notary Protocol in the storage of Notaries; or the need to call a Notary to attend the examination relating to the Minutes of the Deed he made or the Notary Protocol in the storage of the Notary.
- b. In the application, briefly explain what case, who is the suspect.
- c. After obtaining approval, the Investigator can take action by the Police.

2.1.5 Police Authority in the Process of Investigation and Investigation of the Police against Notaries Based on Act No. 2 of 2014 Notary Position

After the issuance of the new Notary Position Act but based on Article 66 paragraph I of Act Number 2 of 2014 concerning the Notary Position in force now the authority to summon a Notary in the old UUJN is in the MPD and after the issuance of the new UUJN the authority to call a Notary is to the Honorary Council.

The summons made by the investigator is considered valid if the investigator mentions the reason for the summons clearly, and the call is an act that is legally responsible that is not contrary to the law, in line with legal obligations, reasonable, within the investigator's office, based on reasonable consideration and respect for human rights.

2.2 Procedure for Investigation in the Calling of Notaries by Police Investigators

2.2.1 Notary Inspection Stages

This Notary Calling and Examination Procedure are further clarified by the promulgation of the Republic of Indonesia Minister of Law and Human Rights Regulation Number 7 of 2016 concerning the Notary Honorary Assembly in Article 23 as follows:

- a. Application for approval of minuta deed or Notary protocol and calling of a Notary by the investigator, public prosecutor or judge to attend the examination related to Notary deeds or protocols that are in the Notary's filing submitted to the Chairperson of the Regional Notary Honorary Board in accordance with the Notary's work concerned.
- b. The application is submitted in writing in the Indonesian language and the copy is submitted to the Notary concerned.
- c. Requests must contain at least: a. name of the notary; b. Notary office address; c. deed number and / or letter attached to the Minuta deed or Notary protocol in the storage of a Notary; and D. the subject matter is alleged.
- d. The Chairperson of the Regional Notary Honorary Council must provide answers in the form of approval or rejection of the application within a maximum period of 30 (thirty) working days from the date of receipt of the application.

- e. If within the period referred to in paragraph (4) is exceeded, it is deemed that the Honorary Council of the Regional Notary receives a request for approval.

2.2.2 Examination of Notary

The results of the examination of the notary will produce two kinds of decisions which include:

- a. Approval, or
- b. Rejection

The agreement means that the Regional MKN allows or allows investigators, public prosecutors, or judges to take:

- a. Minuta deed, or
- b. Notary protocol that is in the storage of notaries, and
- c. Calling a notary

Rejection means that Regional MKN does not allow investigators, public prosecutors, or judges to take:⁴

- a. Minuta deed, or
- b. Notary protocol that is in the storage of notaries, and
- c. Calling a notary

2.2.3 Procedure for Notary Calling and Examination by Police Investigators

a. Example of Notary Calling and Examination by Police Investigator

Allegedly there has been a criminal offense of Document Forgery as intended in Article 263 paragraph (1) and paragraph (2) of the Criminal Code and or Article 264 paragraph (1) of the Criminal Code which occurred on Tuesday 23 October 2014 at around 16:40 a.m. at the office meeting room ALO, which was allegedly carried out by Bro AK, Dkk, where at the beginning of December 2015 the reporter was on behalf of Br GDS was summoned and examined by the West Nusa Tenggara Police and was shown the Minutes of the Extraordinary General Meeting of Shareholders of PT CL, dated 13 October 2014 by the NTB Regional Police and subsequently the reporter was shocked by the Official Report of the PT CL Extraordinary General Meeting of Shareholders because the reporter feels that he has never made, agreed to and signed the Minutes and with the Minutes of PT CL, Minute Deed No. 08, 10 October 2016 made before the SR Notary where in the Minutes of Deed 08 there was a reporter's signature allegedly false because so far the reporter felt that he had never been called before an SR Notary and had never signed the Minute Deed Number 08, so the reporter feel very disadvantaged.⁵

Based on Article 263 of the Criminal Code, paragraphs 1 and 2 read:⁶

Paragraph (1) "Anyone who makes a fake letter or falsifies a letter that can give rise to a right, engagement or debt relief, or that is intended as evidence rather than something with the intention of using or telling another person to use the letter as if it were true and not forged, threatened, if the use can cause harm, because of forgery of the letter, with a maximum imprisonment of six years. "

Paragraph (2), "Threatened by the same criminal act, anyone intentionally uses fake or falsified letters, as if it were true, if the use of the letter can cause harm."

And Article 264 paragraph (1) reads:⁷

Forgery of letters is threatened with imprisonment for a maximum of eight years, if done against:

- 1) *Authentic deeds;*
- 2) *Debt or certificate of debt from a country or part or from a public institution;*
- 3) *Sero or debt or sero or debt certificate from an association, foundation, company or airline;*
- 4) *Talon, proof of dividend or interest from one of the letters explained in 2 and 3, or evidence issued as a substitute for the letters;*

⁴*Ibid*, p. 203

⁵ Data from the Indonesian National Police NTB Resort West Lombok.

⁶ Article 263 paragraph (1), (2)., 3 Law Books, Graha Media Press, 2016, Jakarta.

⁷ Article 264 paragraph (1).

5) *Letters of credit or trade letters intended for distribution.*

b. Police Report by Victims

Based on the Victim's report to the Police Station, the Police made a report on behalf of the SR Notary stating that the SR Notary on the basis of the Victim's complaint violated Article 263 paragraph (1), (2) and or Article 264 of the Criminal Code with report number LP/374/X/2016/NTB/Res Lobar. With a report from the victim, the police received a report and gave STTLP and proceeded to the train.⁸

c. Warrant of Investigation and Investigation

In the interest of criminal investigation, it is necessary to issue an Investigation warrant based on Article 1 point 2, Article 5 paragraph (1), article 7 paragraph (1), Article 9 paragraph (1), Article 11, Article 84, Article 106, Article 109 paragraph (1), Article 110 paragraph (1) of the Criminal Procedure Code, Article 14 paragraph (1) letter g of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, and the Police report on criminal acts against the reporting party (Victim).

d. Minutes of Examination of Witnesses

The Administration of Investigation which is an absolute requirement in order to support the conduct of investigations both before and during and after it must be made in accordance with the precautionary principle in the police administration regarding both the legal basis, time, place, alleged article, criminal offense that occurred, the evidence seized and/or the identity of the suspect/witness as well as other parties involved in conducting the investigation, in accordance with what is desired by the Criminal Procedure Code. In this stage the investigator checks the witnesses to hear his statement as a witness of the victim with questions and records all the information explained by the victim.

e. Minutes of Suspect Examination

This official report specifically hears the statements of suspects in criminal cases of counterfeiting or contributes to criminal acts as referred to in Article 263 paragraph (1), (2) and Article 264 paragraph (1) of the Criminal Code in accordance with the Police report. This investigation was carried out by auxiliary investigators.

f. SPDP (Notice of Commencement of Investigation)

Notification of the commencement of the investigation was addressed to the head of the Mataram District Prosecutor's Office who informed him that it had begun in October 2016 investigating criminal acts of forgery on behalf of the reporter whose copy was addressed to the NTB Regional Police Chief, Dir Reskrim, West Lombok Police Chief, West Lombok Regional Police Chief.⁹

g. Arrest Warrant

For the purposes of investigating and / or investigating a Criminal Act, legal action should be taken in the form of arresting a suspect because of his circumstances or alleged acts of committing a Criminal Act based on sufficient initial evidence by ordering 3 (three) Investigators to arrest the suspect.

h. Detention Order

That for the sake of investigation and based on the results of the examination obtained sufficient evidence, the suspect is suspected of having committed a criminal act that can be subject to detention, the suspect is feared fleeing, damaging the elimination of evidence, then a detention warrant is required, namely detention of a suspect, SR Notary , placing the suspect in the Prison in the West Lombok Regional Police (RTP) Police

⁸ Interview with Brigadier I Nengah Budi Swardana, West Lombok District Police Assistant Investigator, On October 12, 2018.

⁹ Interview with Brigadier I Nengah Budi Swardana, West Lombok District Police Assistant Investigator, On October 12, 2018.

Detention House for 20 (twenty) days, with the implementation of this order, the investigator must immediately make a report of its implementation and make the minutes of detention.¹⁰

i. BAP of Detention

The detention report contains the incident of the detention of SR Notary suspects in the fraud case as intended in Article 263 Paragraph (1), (2) and Article 264 paragraph (1) of the Criminal Code based on the Police Report on behalf of the reporter and Detention Order.

j. BAP Foreclosure

For the purposes of confiscating Criminal acts, prosecution and judiciary in the form of confiscation of objects which are allegedly directly related to criminal acts that have occurred, Invisible Reskrim as Investigator issues a Confiscation Order based on the confiscation of the Chairperson of the District Court, Police Report, Law Number 2 of 2002 concerning the Republic of Indonesia National Police, Article 5, Article 44, Article 128, Article 129, Article 130, Article 131 of the Criminal Procedure Code.

With the issuance of a Foreclosure Order, a Confiscation Minutes shall be made based on Article 18 paragraph (2) of the Criminal Code and Police Report stating in this case that it has seized 1 (one) Exemplar photocopy of minutes of the extraordinary general meeting of PT CL shareholders dated October 14, 2014, 1 (one) Exemplar deed of Minutes of PT CL 007 meeting dated 16 October 2014, 1 (one) Exemplar Deed of statement of decision of the general meeting of shareholders of PT CL 08 dated 16 October 2014, All this evidence was confiscated from the Reporting Party.¹¹

k. Approval of Foreclosure Special Permit

The next step is for the Investigator to make a Request for Seizure Approval addressed to the Chairperson of the Mataram District Court for investigative purposes, so that the Chairperson of the Mataram District Court can issue the Approval of the Confiscation of Reporting evidence and the West Lombok Police Chief, Head of the Mataram District Court, Head Section of Professional and Security of West Lombok Regional Police. This letter of seizure application is intended to collect evidence both from the reporter and from the suspect.¹²

l. Determination of Confiscation of District Courts

Based on the seizure request, the Chairperson of the District Court after reading the suspect's case report letter, weighing enough reasons for the seizure permit and based on Article 43 of the Criminal Procedure Code (Law Number 8 of 1981) stipulates by giving permission to the Investigator to confiscate evidence both from the reporter and from the suspect such as 1 (one) Exemplar photocopy of the minutes of the extraordinary general meeting of PT CL shareholders dated October 14, 2014, 1 (one) Exemplar deed of minutes of the PT CL 007 meeting dated October 16, 2014, 1 (one) Exemplar Decree of decision statement PT CL 08's shareholders general meeting dated 16 October 2014. And the Chair of the District Court ordered the investigators to attach a copy of the confiscation letter to the case file.¹³

III. Conclusion And Recommendation

3.1 Conclusion

Investigators are authorized to examine Notaries, where the Investigator is authorized to receive reports or complaints about criminal acts, seek information and evidence, order to stop suspected persons or ask and examine personal identification and conduct other actions according to law, he can also act on orders investigators make arrests, forbid leaving search sites and confiscating.

The procedure of investigation is carried out on a Notary after reporting on the Deed made by a Notary, and in the report stated that the Notary has committed a Criminal Act as stipulated in Article 66 of the UUJN.

¹⁰ Interview with Brigadier I Nengah Budi Swardana, West Lombok District Police Assistant Investigator, On October 12, 2018.

¹¹ Interview with Brigadier I Nengah Budi Swardana, West Lombok District Police Assistant Investigator, On October 12, 2018.

¹² Interview with Brigadier I Nengah Budi Swardana, West Lombok District Police Assistant Investigator, On October 12, 2018.

¹³ Interview with Brigadier I Nengah Budi Swardana, West Lombok District Police Assistant Investigator, On October 12, 2018.

However, the summons of a Notary as a witness, suspect or defendant after the investigator submits a written request to the Regional Supervisory Board and the request is sent to the Notary by making an excuse rather than calling the Notary as a witness, suspect or defendant. After the issuance of the new Notary Position Act, based on Article 66 paragraph I of Act Number 2 of 2014 concerning the current Notary Position, the summons made by the investigator is considered valid if the investigator mentions the reason for the summons clearly, and the caller is Acts that are accountable according to the law are not in conflict with the law, in line with legal obligations, reasonable, reasonable within the investigator's office, based on proper consideration and respect for human rights.

3.2 Recommendation

The Supervisory Board is a body that has the authority and obligation to carry out guidance and supervision of the Notary. Input of Permenkumham later, functions must be strictly regulated, the role of each Supervisory Board (MPD, MPW, MPP), how to make the Supervisory Board's role more maximal, especially MPD, which is a supervisor and coach of Notaries in the regions, especially in sanctions for the notary. There must also be clear differences, regarding their roles and functions with the Honorary Assembly, so as not to overlap authority in the field. Especially members of the Board of Trustees and Honors outside the Notary profession, so that the capability, capacity, and ability in the field of notary really are seen, and of course those who sit and become members of the Assembly, people who have integrity, are honest, and have never done anything blameworthy or legal issues

Notaries in carrying out their duties and positions must be more careful in making deeds to minimize the possibility of errors that cause harm to themselves and the parties in the deed.

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