

LEGAL DYNAMICS OF NOTARY PUBLIC APPOINTMENT IN INDONESIA

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ABSTRACT

The development of Notary Public appointments in Indonesia began with the enactment of Reglement op het Notarisambt in Indonesie 1860, Notary Position Law 2004, and Notary Position Law 2014. Notary Public as Openbare Ambtenaren get the trust from the public to make perfect evidence. Increasing the requirements to be appointed as a Notary Public is a form of guidance and supervision of this position of trust. This research examines the dynamics of the appointment of a Notary Public from time to time with legal issues: How the development of Notary Public appointment? and What is State responsibility in the appointment of a profesional notary public? The method used is a normative juridical research method that examines legal principles using secondary data. While the data analysis method used is qualitative methods and the data collection tool used is document study. The result of this research is that there is an increase in requirements and standard of Notary Public appointment that strictly and honestly. State responsibility is to appoint trusted public officials by conducting training, coaching, supervision, and enforcing law for Notary Public candidate and Notary Public Organization.

Keywords: *Notary Public, Appointment, Openbare Ambtenaren.*

1. Introduction

Notary as a public official (*openbare ambtenaren*) is a person who with certain conditions obtains the authority from the state attributively to carry out some of the public functions of the state, especially in the field of civil law to make authentic evidence (Selenggang, 2017). This authentic evidence is authentic deeds that has perfect proving power based on article 1868 of Indonesia Civil Code.

Notary is one of the oldest professions in the world. According to Fauzie Yusuf Hasibuan (Fauzie Yusuf Hasibuan, 2020), the existence of a notary in ancient times can be seen from the existence of a statue that was on the side of the king of pharaohs in Egypt sitting while writing. So the notary profession has existed since about 5000 years ago, long before the lawyer profession was born.

Notary as a profession in the legal field is similar to other legal professions, for example a lawyer who is an *officium nobile*. Notary is an honorable position because he is a public servant in the field of civilization and assets. Through the notary service, the public will get perfect evidence in meeting their business needs. This perfect evidence is an authentic deed that distinguishes a notary from other professions.

As special as a notary position is, someone who will be appointed as a Notary Public must meet certain requirements. The requirements for the appointment of public notaries from time to time experience dynamics and changes due to changes in regulations, changing times, changes in the political situation, and needs in the notary

field itself. Political policy cannot be separated from the appointment of a Notary because political policy plays an important role in enacting the applicable law in Indonesia as *Rechtstaat*. Considering the concept of Constitutional State, it must be a commander in all aspects of life. (Sari et al., 2020)

Indonesia as a rule of law as mandated by Article 1 paragraph (3) of the Constitution recognizes a hierarchy of statutory regulations. Legal policy in the field of notaries can't be separated from the existence of these laws and regulations. In addition, professional organizations also have the authority to determine the technical mechanism for the appointment of a notary as a professional organization as a forum and institution for guidance and supervision for a Notary Public. So that the appointment of notaries applies two types of law, namely state law and organizational law. Regulation of the Minister of Law and Human Rights (hereinafter referred to as Permenkumham) is also categorized as state law.

Each level of government as the maker of laws and regulations has different ratios and legal reasoning in determining the notary appointment policy. This is because among them are held by different people with different characters. Legislation should be harmonious and consistent, but sometimes it is not the case. Technical regulations sometimes do not comply with the regulations above.

From the explanation and background above, it is necessary to have a juridical study using the Statute Approach. The legal issues that will be analyzed in this research are the first, how is the development of the appointment of public notaries in Indonesia? Second, what is the state's responsibility in the appointment of a notary? So there needs to be a juridical study which takes the topic "LEGAL DYNAMICS OF NOTARY PUBLIC APPOINTMENT IN INDONESIA".

2. Materials and Methods

The form of this research is juridical normative, namely by examining written legal norms directly on the subject matter which is the subject of this research. (Soerjono Soekanto, 1986) The data used in this study, namely secondary data which is not obtained directly from the field but through the process of searching for library materials, and in the form of secondary legal material in the form of theories taken from various literature works, the 1945 Constitution of the Republic of Indonesia and statutory regulations.

Researchers used data collection tools in the form of document studies and theories and existing regulations. The data analysis method used in processing the data related to this research is a qualitative method because data processing is not done by measuring the secondary data related to it, but analyzing the data descriptively. In a qualitative approach, research procedures produce descriptive analytical data.

3. Results and Discussion

As a profession, the appointment of a Notary is not done carelessly and too easy. Appointment must be based on law which of course, considering that Indonesia is a *rechtstaat* mandated by the constitution. The appointment of Public Notaries from time to time has experienced changes and increasing difficulties. The requirements to be promoted as Notary are cumulative, which means that all the requirements must be met, if not fulfilled, then someone cannot be appointed as Notary Public.

The requirements for the appointment of a Notary who will determine not to stand alone because the Notary candidate is burdened with two things. First, he must first take care of the terms of appointment as dictated by laws and regulations of the minister of law and human rights. Secondly he must also be literate of appointment documents. The law recognizes the existence of the principle of *Lex specialis derogat legi generali*, which means that a special rule (*lex specialis*) will override general laws (*lex generalis*). In that, with the aspects of appointment, also, namely regulations based on the Minister of Law and Human Rights regulations will be implemented by policy taker as implementing regulations. The Ministerial Regulation contains the technical provisions and implementing provisions of the above regulations.

Staatsblad 1860 Number 3 concerning Regulation of Notary Position

Initially, the appointment of a Notary in Indonesia was regulated in *Reglement op Het Notary-Ambt in Indonesia* Staatsblad 1860 Number 3 concerning Regulation of Notary Position (hereinafter referred to as Pjn 1860). According to Article 1 Pjn 1860, the definition of a notary is as follows:(Tobing, 1983)

"De Notarissen zijn openbare ambtenaren, uitsluitend bevoegd, om authentieke akten op te maken wegens alle handelingen, overeenkomsten en beschikkingen, waarvan eene algemeene verordening gebiedt of de belanghebbenden enerchlangen, dat bij authentiek geschekkingen daarvan grossen, afschrijf akten en uittreksels uit te geven; All this can be done dier akten door and algemene verordening there and there is ambtenaren of opgedragen character from voorbehouden is. "

Notary is a public official who is the only one who makes an authentic deed regarding all actions, agreements and stipulations required by a general rule or by an interested party to be stated in an authentic deed, guarantees the certainty of the date, keeps the deed and gives grosse, and all along making a general rule of law is not assigned or excluded to officials or other people.

From the regulation of Article 1 above, it appears that the Notary Public has a special character that is not owned by other positions. This special character is a notary, a public official who makes legal products in the form of authentic deeds. The term general official is not found in any position or profession. We see, for example, government officials, judges, prosecutors, police, and heads of services all bearing the title of civil servants. If these civil servants have the rank and position of an institution leader, they can be said to be state officials, not public officials.

Furthermore, the requirements for the appointment of a Notary based on Article 8 paragraph (1) of the Decree of the Minister of Justice and Human Rights Number M-01.HT.03.01 of 2003 concerning Notary are regulated as follows:

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. Faithful to Pancasila and the 1945 Constitution;
- d. A certificate of good behavior from the Indonesian National Police;
- e. Graduated from specialist notarial education or notarial master degree held by state universities;
- f. Has attended the minister of law and human rights technical training;
- g. At least 25 (twenty) years old;
- h. Physically and mentally healthy.

In the past, only a few campuses or universities opened notary programs so the requirement to be appointed as a Notary was someone with an M.Kn degree from a state

campus (*PTN* in Indonesian). Still under the same regulation, a Notary Candidate must attach the appointment documents, which are as follows:

- a. copy of notarial specialist education certificate or notarial master degree;
- b. copy of the certificate of having attended technical training approved by a notary;
- c. copy of identity card;
- d. copy of birth certificate;
- e. copy of marriage certificate;
- f. copy of taxpayer identification number;
- g. copy of the certificate of passing the code of ethics examination;
- h. copy of code of ethics examination certificate;
- i. a statement that does not hold concurrent positions;
- j. a statement from a notary that has participated in an internship at the notary's office for 2 (two) consecutive years after graduating from notary specialist education or master notary legalized by the local Notary professional organization;
- k. certificate of good behavior from the local police;
- l. health certificate from a government doctor;
- m. stamped statement letter willing to be placed in all parts of Indonesia;
- n. stamped statement letter willing to be appointed to accommodate other Notary protoko1;
- o. self photo; and
- p. Curriculum Vitae.

Law Number 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UJN 2004)

The appointment of a notary in 2004 is subject to the provisions of Law Number 30 of 2004 concerning the Position of Notary Public. This law was passed on October 6th 2004 and revoked the validity of the provisions for the appointment of the old Notary as stipulated in the Pjn 1860. So after approximately 59 years of independence for Indonesia, the original law made by the Indonesian nation was born. which regulates the Notary.

Based on Article 1 number 1 UJN 2004, Notary is a public official who has the authority to make authentic deeds and other powers as referred to in this Law. The provisions of this Article indicate that the legislators still adopt one of the old definition elements contained in Pjn 1860 with the term *openbare ambtenaren*.

The requirements for the appointment of a Notary according to Article 3 UJN 2004 are as follows:

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. at least 27 (twenty seven) years old;
- d. physically and mentally healthy;
- e. holds a bachelor law degree and has a master degree in notary;
- f. has undergone an internship or has actually worked as a Notary employee within 12 (twelve) consecutive months at the Notary's office; and
- g. not having the concurrent position.

UJN 2004 mandates seven requirements to become a notary which according to the author, these conditions have two characteristics. First, the general requirements, namely letters a, b, and d, apply to general professions or the majority of jobs. Meanwhile, the other letter requirements, namely c, e, f, and g, are special requirements because they are attached and closely related to a notary public.

Another different provision is that a Notary is at least 27 years old and it is not determined that he or she comes from a public or private university. As long as the candidate notary public has obtained the M.Kn title, he / she has met the requirements letter e. This additional age is indeed a polemic, on the other hand, it is a progression for the world of notary.

2006

Based on Article 2 paragraph (1) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.01.HT.03.01 of 2006 concerning the Requirements and Procedures for the Appointment, Transfer and Dismissal of Notaries (hereinafter referred to as Permenkumham 2006), the requirements for the appointment of a Notary are as follows:

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. loyal to Pancasila and the Constitution;
- d. certificate of physical and mental health;
- e. having a law degree and graduate from the bachelor's level notary or notarial Specialist education graduate;
- f. be at least 27 (twenty seven) years old;
- g. has attended technical training for notary candidates held by Menkumham;
- h. has undergone an apprenticeship or worked for 12 (twelve) consecutive months at a Notary office;
- i. certificate of never being involved in a crime from the Indonesian National Police;
- j. apply for appointment as a Notary;
- k. no concurrent positions.

Furthermore, in Article 2 paragraph (2) there are requirements for appointment documents that must be submitted by prospective notaries, namely:

- a. Copy of Identity Card;
- b. Copy of marriage book or marriage certificate;
- c. Copy of certificate of law undergraduate education and Notarial Specialist education or a photocopy of certificate of law and master degree legalized by the issuing university;
- d. A copy of the technical training certificate for the candidate Notary Public which is legalized by the Menkumham;
- e. Copy of birth certificate;
- f. Copy of code of conduct certificate;
- g. Copy of certificate of internship or work in a notary office for 12 (twelve) months;
- h. original certificate of local police record;
- i. original certificate of physical and mental health;
- j. original stamped statement does not hold concurrent positions;
- k. original stamped statement of the applicant willing to be placed in all region of Indonesia;
- l. original affidavit with duty stamp of agreeing to be the holder of another notary protocol;
- m. photo;
- n. original curriculum vitae;
- o. correspondence address, telephone number / cell phone / facsimile of the applicant and e-mail (if any); and
- p. postage stamps whose value corresponds to the cost of postage postage delivery

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN 2014)

During the validity period of the 2014 UUJN, there were various legal dynamics due to several regulatory changes. This change came about due to the issuance of a Regulation of the Minister of Law and Human Rights (hereinafter referred to as Permenkumham). In addition, there are also internal organizational regulations as in the regulations of the Indonesian Notary Association

The technical regulations of UUJN 2014 include the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2014 which regulates the Terms and Procedures for the Appointment, Transfer, Dismissal, and Extension of the Office of Notary Public (hereinafter referred to as Permenkumham 2014). Requirements for the appointment of a Notary according to Article 2 paragraph (1) Permenkumham 2014, namely:

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. at least 27 (twenty seven) years old;
- d. physically and mentally healthy;
- e. holds a law degree and has a bachelor's degree in notary;
- f. has undergone an internship or worked in a notary office for a minimum of 24 (twenty four) months;
- g. does not hold concurrent positions; and
- h. has never been sentenced to prison.

Furthermore, candidate Notaries must attach supporting documents as regulated in Article 2 paragraph (2) Permenkumham 2014, namely:

- a. copy of a certificate of law undergraduate education and notarial master education or notarial specialist education ;
- b. original certificate of local police record;
- c. original certificate of physical and mental health;
- d. Copy of identity card;
- e. original certificate of internship or work in a notary office for at least 24 (twenty four) months;
- f. a statement letter that does not hold concurrent positions; and
- g. proof of payment of non-tax state revenue.

Based on Article 2 paragraph (1) Permenkumham Number 62 of 2016 Regarding Amendments to Permenkumham Number 25 of 2014 concerning Terms and Procedures for the Appointment, Transfer, Dismissal, and Extension of the Office of Notary Public (hereinafter referred to as Permenkumham 2016), the requirements for the appointment of a Notary are as follows :

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. at least 27 (twenty seven) years old;
- d. physically and mentally healthy;
- e. holds a law degree and has a bachelor's degree in notary;
- f. has undergone an internship and worked in a notary office for at least 24 (twenty four) months;
- g. does not hold concurrent positions; and
- h. has never been sentenced to prison.

The appointment documents are regulated in Article 2 paragraph (2), namely as follows:

- a. Copy of legalized legal undergraduate education and notary master education or notarial specialist education;
- b. Copy of certificate of passing code of ethics held by Notary Public Organizations legalized by regional administrators, regional administrators, or central administrators;
- c. original certificate of local police record;
- d. original certificate of physical and spiritual health from the hospital doctor;
- e. Copy of identity card;
- f. original certificate of internship or work in a notary office for at least 24 (twenty four) months;
- g. a statement letter that does not hold concurrent positions;
- h. proof of payment of non-tax state revenue.
- i. A copy of the mark of passing the Notary appointment exam;
- j. Copy of Taxpayer Identification Number;
- k. Copy of birth certificate; and
- l. letter of willingness to hold the protocol.

As a complementary regulation of Permenkumham 2014 and Permenkumham 2016, the State technically regulates the implementation of the Notary Appointment Test in Permenkumham Number 25 of 2017 concerning Notary Appointment Examination (hereinafter referred to as Permenkumham 2017). To take the Notary Appointment Exam, candidate Notary Public must first fulfill several requirements, namely:

- a. Indonesian citizens;
- b. holds a bachelor of law degree and has a master degree in notary;
- c. has carried out an apprenticeship program at the Notary's office for at least 2 (two) years at the Notary's office which has a minimum work period of 5 (five) years and has issued a minimum of 100 (one hundred) deeds;
- d. in the internship program at the Notary's office has participated and his name has been stated on at least 20 (twenty) deeds;
- e. not having the status of a suspect or defendant;
- f. has passed the code of ethics exam; and
- g. has determined the plan of the domicile area.

To apply for the examination, prospective notaries must attach examination documents, namely:

- a. Copy of identity card;
- b. photo;
- c. bachelor of law and notarial master certificate or notarial specialist education program diploma;
- d. an internship certificate / certificate from the Notary Organization;
- e. code of ethics passing certificate;
- f. certificate of participation and whose name is stated on at least 20 (twenty) deeds of a Notary office where the Prospective Notary is apprenticed; and
- g. statement that the person concerned is not a suspect or defendant.

The existence of this examination arrangement is felt by some circles to be contrary to the conditions for notarial appointment in the UUJN. So that the basis for holding the notary appointment exam is challenged by interested parties by submitting a judicial review to the Supreme Court. The results of the examination of the Supreme Court can be traced in the Supreme Court Decision Number 50P / HUM / 2018 which was decided on September 20th 2018.

Supreme Court Decision Number 50P / HUM / 2018 granted the applicant's entire petition. The legal consequence of the decision of the Supreme Court is the Provisions regarding Notary Appointment Examination in Article 2 paragraph (2) letter j Permenkumham 2016 and Permenkumham 2017 do not have binding legal force and apply to the public and Menkumham are obliged to revoke the above provisions.

Permenkumham 2017 if examined from the point of view of the enforceability of a legal norm (*geltung*) is not consistent with the rules of the game in the formation of a statutory regulation. The Minister of Law and Human Rights is not authorized to issue the requirements for the Notary Appointment Examination because it is against the General Principles of Good Governance. Permenkumham 25/2017 gave birth to a new norm that contradicts Article 3 of the UUJN which regulates the requirements for the appointment of a Notary. This condition can qualify as a form of abuse of power.

One year after the cancellation of the Permenkumham 2016 and Permenkumham 2017 by the Supreme Court, Menkumham issued a new implementing regulation of UUJN, namely Pemenkumham Number 19 of 2019 concerning Requirements and Procedures for Appointment, Leave, Transfer, Dismissal, and Extension of Notary Term (hereinafter referred to as Permenkumham 2019) .

The requirements for the appointment of a notary based on the 2019 Permenkumham are as follows:

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. be at least 27 (twenty seven) years old;
- d. physically and mentally healthy;
- e. holds a bachelor law degree and has a master degree in notary;
- f. has undergone an apprenticeship or has actually worked as a Notary employee for a period of at least 24 (twenty four) consecutive months at the Notary's office on his own initiative or on the recommendation of the Notary Organization after passing the strata two notary;
- g. not having the status of a civil servant, state official, advocate, or not currently holding another position which is prohibited by law to be concurrently held as a Notary; and
- h. have never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more.

While the appointment documents are as follows:

- a. copy of identity card;
 - b. copy of birth certificate;
 - c. original certificate of physical and mental health;
 - d. copy of a law degree education certificate and notarial master education or notarial specialist education;
 - e. original certificate of internship or work in a notary office known to the Notary Organization for a minimum of 24 (twenty four) months;
 - f. a statement letter that does not hold concurrent positions;
 - g. original certificate of local police record.
- a. Copy of training certificate to improve the quality of the notary position;
 - b. Copy of code of conduct certificate;
 - c. original letter of willingness to hold the protocol; and
 - d. Copy of Taxpayer Identification Number.

There is an increase in the standard of appointment requirements from time to time, one of which is the result of the boom in notary program students in Indonesia. The boom in students was due to the mushrooming of the campus which opened a master program in notary. So that in 2018 the minister of law and human rights had a discourse to temporarily stop / moratorium on new student admissions for notarial master programs throughout Indonesia or to cancel new licenses for campuses that want to open notary master programs.(Elnizar, 2018)

From some of the above rules, if compiled, the appointment of a Notary can be made to someone if he meets the following requirements:

- a. Indonesian citizens;
- b. Believe in God Almighty;
- c. be at least 27 (twenty seven) years old;
- d. physically and mentally healthy;
- e. holds a law degree and has a bachelor's degree in notary;
- f. has undergone an apprenticeship or has actually worked as a Notary employee for a period of at least 24 (twenty four) consecutive months at the Notary's office on his own initiative or on the recommendation of the Notary Organization after passing the strata two notary;
- g. not having the status of a civil servant, state official, advocate, or not currently holding another position which is prohibited by law to be concurrently held as a Notary; and
- h. has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more.

It is not easy for someone to be appointed as a Notary Public because they have to fulfill several agendas determined by UUJN, Regulation of the Minister of Law and Human Rights Number 19 of 2019 concerning Requirements and Procedures for Appointment, Leave, Transfer, Dismissal, and Extension of Notary Position (hereinafter referred to as Permenkumham 19/2019), and the Rules of INI Association. These agendas must be fulfilled by notary candidate after graduating from the Notary Masters, such as:(Arrizal, 2020)

1. Passed the Pre-ALB Examination (ALB Member);
2. Registration of ALB (ALB Members) in the INI Central Board;
3. Internships / Work at the Notary Office for 24 (twenty four) months;
4. 4 (four) times participating in the Joint Internship (Magang Bersama) organized by the INI Regional Management;
5. Received 18 (eighteen) participation points of seminar INI;
6. Passed the Notary Code of Ethics examination;
7. Pass the training to improve the quality of the notary position organized by the Ministry of Law and Human Rights;
8. Oath of Position of Notary;

4. Conclusion

There is an increase in requirements and standard of Notary Public appointment that strictly and honestly. State responsibility is to appoint trusted public officials by conducting training, coaching, supervision, and enforcing law for Notary Public candidate and Notary Public Organization.

Suggestions to the Government to always harmonize the laws and regulations issued and to carry out guidance and supervision from the center to the regions so that the Notary as a public official with quality, integrity and morals (trustworthy, honest, thorough, independent, impartial, and caring for interests party)

References

- Arrizal, N. Z. (2020). *Legal Protection For Notary Candidate Who Are Interning / Working In A Notary Public Office*.
- Elnizar, N. E. (2018). *Kemenkumham Pastikan Mulai 2018 Penerimaan M.Kn. Harus Dihentikan*. Wwww.Hukumonline.Com.
<https://www.hukumonline.com/berita/baca/lt5a6b21f72f5a8/kemenkumham-pastikan-mulai-2018-penerimaan-mkn-harus-dihentikan/>
- Fauzie Yusuf Hasibuan. (2020). *Raih Gelar DR Demi Wujudkan Perlindungan Hukum Bagi Notaris*.
https://www.youtube.com/watch?v=oT_UZWcOxzo&list=LL&index=1&t=3797s
- Sari, S. D., Handayani, G. A. K. R., & Pujiyono. (2020). *Legal Protection Model on Esthetic Beauty Clinics Patients: Between Fulfilling Constitutional Rights and Doing Business*. 121(Inclar 2019), 178–184. <https://doi.org/10.2991/aebmr.k.200226.037>
- Selenggang, C. S. (2017). *Lecturer of Notary Position Regulations*.
- Soerjono Soekanto. (1986). *Introduction to Legal Research*. UI-Press.
- Tobing, G. L. (1983). *No Title*. Erlangga.