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The Examination Mechanism of Notaries in Criminal Proceedings: Approval of the Notary Honorary Council as an Exception to the Duty of Confidentiality

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ABSTRACT – This study discusses the position and function of the Notary Honorary Council in the Indonesian judicial system as well as the problems that arise in its implementation. The main focus of the research is to analyze the position and function of the MKN, the procedure for examining notaries by the Examining Council, the tension between the notary's obligation of confidentiality and criminal provisions, criminal law enforcement against notaries, and the parameters of MKN approval. This normative legal research uses statutory and conceptual approaches with primary and secondary legal materials analyzed qualitatively through grammatical and systematic interpretation. The results of the study indicate that the MKN has a strategic position as a balancing institution between the interests of law enforcement and the protection of the confidentiality of the notary office. The procedure for examining notaries has been regulated in detail, but its implementation faces obstacles related to time limits and approval parameters. The MKN approval parameters, which are cumulative in nature, provide legal certainty but require uniform understanding. This study recommends increasing socialization and improving regulations regarding MKN procedures and parameters.

Keywords: notary honorary council, official confidentiality, notary examination, MKN approval, law enforcement.

A. INTRODUCTION

A notary is a public official authorized to draft authentic deeds and to perform legal-service functions for the public in civil matters. The notary's position as a public official entrusted by the state carries with it an obligation to safeguard the confidentiality of the office, particularly matters relating to the content of deeds and information obtained in the course of performing professional duties (Sari et al., 2025). This confidentiality obligation is one of the fundamental pillars in maintaining public trust in the notarial institution, since clients who use notarial services need assurance that their personal information and the documents they submit will not be disclosed to other parties without permission. Professionalism and loyalty in carrying out one's duties are closely tied to the quality of the human resources performing them, so that the strength of a notary's commitment to confidentiality cannot be separated from that professional quality (Darmawan et al., 2020). However, in law enforcement practice, notaries are often confronted with requests from law enforcement officers to provide information or hand over confidential documents for the purposes of investigation and judicial proceedings (Khumaeroh et al., 2024). This condition places notaries in a dilemmatic position, since they must balance the obligation to maintain confidentiality with the obligation to assist law enforcement.

There should be a clear and integrated mechanism regulating the interaction between the interests of law enforcement and the protection of a notary's professional confidentiality. This mechanism should provide legal certainty for notaries in performing their professional duties while also giving law enforcement officers adequate access to the information and documents needed in judicial proceedings. Achieving such a balance is essentially in line with the broader principle that sound arrangements must reconcile competing interests so that no single interest is sacrificed for another (Mardikaningsih & Hariani, 2021). The institution authorized to grant approval for disclosing a notary's confidential information should function

effectively and efficiently, with clear procedures and a definite time limit. Since the approval issued by this institution is essentially the outcome of a collective decision-making process, the quality of that process determines how well the resulting decision can be accounted for (Darmawan, 2024). The parameters used to assess whether a request deserves to be granted should be formulated firmly and without ambiguity, so that the resulting decisions can be legally justified. An ideal system also guarantees that notaries who act in accordance with the prescribed procedure receive legal protection against the possibility of criminal prosecution for disclosing confidential information.

The approval mechanism of the Notary Honorary Council (MKN) still faces various obstacles in practice that affect its effectiveness and legal certainty. The notary-examination procedure involving the MKN often takes considerable time, which can hinder an investigation process that requires prompt action (Santoso et al., 2025). The lack of clarity regarding the parameters the MKN uses to grant or reject law enforcement requests is also a source of uncertainty for both notaries and investigators. Such differences in understanding often stem from divergent perceptions among the parties involved, which in various settings have been shown to produce inconsistency in how rules are applied (Sajjapong et al., 2022). In addition, differences in understanding persist among law enforcement officers regarding the obligation to request MKN approval before examining a notary, which risks producing actions that violate procedure. A similar gap between normative provisions and their implementation has also been observed in the enforcement of other regulations, suggesting that this is not an isolated problem within the legal system (Suyuti et al., 2023). This gap between normative provisions and practical implementation shows that the regulation governing the MKN still requires refinement to ensure its effectiveness within the judicial system.

The status and function of the Notary Honorary Council within Indonesia's judicial system still need to be clarified. Although the MKN has been regulated in legislation, understanding of this institution's role and authority still varies among law enforcement officers and notaries themselves. The MKN's function as an institution that supervises notaries and grants approval for investigative purposes is often understood differently, creating uncertainty in the implementation of its duties. Effective coordination across the various levels of an organization is generally recognized as a determining factor for the sustainability and success of the system as a whole (Ramle et al., 2022). The MKN's hierarchical organizational structure, spanning the central and regional levels, also requires study of how effectively coordination and supervision are carried out across the country. Institutional development supported by continuous innovation can likewise help sharpen the clarity of an institution's role and strengthen coordination across its various levels (Mardikaningsih & Wardoyo, 2024). This lack of clarity regarding the MKN's status and function risks undermining its role as a filter in judicial processes involving notaries (Muhjad & Muhjad, 2025). A thorough understanding of the MKN's status and function is a prerequisite for optimizing this institution's role within the judicial system.

The procedures for summoning a notary, granting approval, and submitting documents have been regulated in detail; in practice, however, obstacles of both a procedural and a substantive nature frequently arise. The 30-day period given to the MKN to respond to an investigator's request often cannot be met for various reasons, resulting in delays to the investigation process. Such delays could potentially be reduced through technology-based systems capable of recording and tracking the process transparently and accountably (Darmawan et al., 2025). The requirement that a notary appear in person for examination, with no possibility of representation, is also problematic when the notary is unable to attend for legitimate reasons. A mechanism of continuous evaluation among the parties involved could help identify such obstacles early and gradually improve the implementation of the procedure (Warin & Darmawan, 2024). The parameters that must be satisfied to obtain MKN approval, as set out in the ministerial regulation, still give rise to differing interpretations, particularly regarding whether they must be fulfilled cumulatively or alternatively. This lack of clarity in both procedure and parameters creates legal uncertainty detrimental to notaries and law enforcement officers alike.

Article 322 of the Criminal Code imposes criminal sanctions on a notary who discloses confidential information from the office, but this provision includes an exception where the disclosure is made on the basis of MKN approval

(Adi & Yusa, 2024). The tension between the confidentiality obligation and the needs of law enforcement places notaries in a difficult position, since an error in decision-making can result in either criminal sanctions or ethical sanctions. Inadequate understanding of the boundaries of this exception to the confidentiality obligation often causes notaries to act either too cautiously or, conversely, too permissively when responding to law enforcement requests. The unclear relationship between Article 322 of the Criminal Code and the provisions of the Notary Office Law also remains a subject of debate among academics and legal practitioners. Clarity regarding the boundaries of the confidentiality obligation and its exceptions is therefore essential to providing legal protection for notaries in the performance of their duties.

A further problem lies in the still-suboptimal enforcement of criminal law against notaries and the lack of clarity regarding the parameters for MKN approval. The investigation process involving a notary has its own particularities, given the obligation to obtain MKN approval before summoning a notary or seizing documents. The parameters underlying the MKN's approval or rejection still give rise to differing interpretations, particularly concerning whether they are cumulative in nature. In addition, some law enforcement officers still disregard the obligation to request MKN approval, on the grounds that such action falls within the investigative authority set out in the Criminal Procedure Code. An approach such as restorative justice, which emphasizes settlement outside a purely punitive framework, may also be worth considering as an alternative when disputes over compliance with this procedure arise (Wijaya et al., 2022). Non-compliance with MKN procedure risks rendering an investigation legally flawed and unable to be defended in court. Clarity of parameters and consistent enforcement of MKN procedure are therefore prerequisites for achieving legal certainty in the criminal-law enforcement process against notaries.

This study aims to analyze the position and function of the Notary Honorary Council in the Indonesian judicial system as well as the problems that arise in its implementation. This research also aims to examine the procedure for examining notaries by the Examining Council, including the authority, time limits, and parameters used in granting approval to law enforcement officials. Furthermore, this study aims to examine the tension between the notary's obligation of confidentiality and criminal provisions related to the disclosure of official secrets, as well as the exceptions provided through the MKN approval mechanism. The final objective of this study is to analyze criminal law enforcement against notaries and the parameters of approval by the Notary Honorary Council, as well as to identify obstacles and solutions in optimizing the role of the MKN in the judicial system. The tangible contribution of this research is to provide a more comprehensive understanding of the Notary Honorary Council approval mechanism for law enforcement officials, notaries, and academics in the field of notary law. The results of this study are also expected to serve as a consideration for policymakers in improving regulations regarding the Notary Honorary Council to ensure legal certainty and the effectiveness of law enforcement involving notaries.

B. METHOD

This research is normative legal research that focuses on reviewing written legal norms governing the Notary Honorary Council, the notary's obligation of confidentiality, and the procedure for examining notaries in the Indonesian judicial system. The sources of legal materials used consist of primary legal materials including the Law on the Notary Position, the Criminal Code, the Criminal Procedure Code, Regulation of the Minister of Law and Human Rights Number 17 of 2021, and other statutory regulations related to notaries and the judicial process. Secondary legal materials used include notary law literature, scientific journals, articles in law journals, legal dictionaries, and other official documents discussing the Notary Honorary Council, confidentiality obligations, and law enforcement against notaries. The collection of legal materials was conducted through library research by tracing various relevant written legal sources, originating from both physical libraries and electronic sources with academic credibility (Rohman et al., 2024).

The approach used in this research is a statutory approach that analyzes provisions in statutory regulations governing the Notary Honorary Council and its examination procedures, as well as a conceptual approach that examines legal concepts related to official confidentiality, the authority of the MKN, and legal protection for notaries. The analysis of legal materials was carried out using legal interpretation methods,

particularly grammatical interpretation to understand the literal meaning of each article and phrase in the statutory regulations, as well as systematic interpretation to connect these provisions with the overall applicable legal system. Qualitative analysis methods were used to examine in depth the legal norms governing the Notary Honorary Council, with a focus on identifying problems, obstacles, and the potential for regulatory improvement. The results of the analysis are presented in an analytical descriptive manner to provide a clear and comprehensive picture of the position, function, and role of the Notary Honorary Council in the Indonesian judicial system as well as its implications for criminal law enforcement involving notaries.

C. RESULTS AND DISCUSSION

The Position and Function of the Notary Honorary Council in the Judicial System

The Notary Honorary Council is an institution established to carry out guidance for notaries and to grant approval or rejection of requests from investigators, public prosecutors, or judges related to obtaining photocopies of minute deeds and summoning notaries. Provisions regarding the MKN are regulated in Article 66A paragraph (3) of the Law on the Notary Position, which stipulates that further provisions regarding duties and functions, requirements and procedures for appointment and dismissal, organizational structure, working procedures, and the budget of the MKN shall be regulated by a Ministerial Regulation. This provision indicates that the lawmakers grant authority to the Minister to technically regulate the Notary Honorary Council. Based on this article, the regulation of the MKN is elaborated through Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning the Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organizational Structure, Working Procedures, and Budget of the Notary Honorary Council. This delegative regulation reflects that the MKN is under the coordination and guidance of the Ministry of Law and Human Rights (Muhjad & Muhjad, 2025).

The concept of the Notary Honor Council (Majelis Kehormatan Notaris/MKN) under Article 1 paragraph (1) of the Regulation of the Minister of Law and Human Rights No. 17 of 2021 refers to a body authorized to carry out the guidance of Notaries and obligated to grant approval or rejection, for the purposes of investigation and judicial process, regarding the copying of the minuta of deeds and the summoning of Notaries to appear in examinations related to deeds or the Notary Protocol under a Notary's custody. MKN functions as an institution bridging the confidentiality obligation of the notarial profession with the interests of law enforcement, making its existence essential to maintain a balance between protecting the confidentiality of notarial deeds and the needs of the judicial process. The guidance function carried out by MKN is preventive in nature, aiming to prevent violations before they occur, so that notaries possess an adequate understanding of the boundaries of their duties and rights in carrying out their office. This understanding is essentially a form of internal legal consciousness, which according to Da Silva and da Cruz (2026) is shaped through the internalization of moral values within an individual's socialization environment, so that compliance with professional norms grows from personal awareness rather than mere external enforcement. The establishment of MKN reflects the state's recognition of the distinct nature of the notarial profession, which requires separate supervision and guidance outside the general oversight mechanism. MKN functions as a filter that ensures requests to disclose notarial confidentiality are made solely for legitimate law enforcement interests and not for other purposes unrelated to the judicial process (Hartono et al., 2025).

MKN consists of the Central MKN (MKNP), established by the Minister and located in the capital of the Republic of Indonesia, and the Regional MKN (MKNW), established by the Director General on behalf of the Minister and located in each provincial capital. MKNP carries out guidance toward Notaries, and in guiding MKNW, MKNP performs the function of conducting socialization and briefing for notaries regarding the duties and functions of MKN, as well as supervising and monitoring the implementation of MKNW's duties and functions. MKNP is chaired by the Chairperson of MKNP, who may represent MKNP both inside and outside court; the Chairperson grants approval to members to carry out supervisory functions, has the authority to request monthly reports from MKNW on its performance related to the guidance function at the regional level, may sign administrative correspondence issued by MKNP, and has the authority to coordinate

the members and secretariat of MKNP. The performance of these duties inevitably depends on the individual capacity of the officeholder, since, as explained by Darmawan (2017), personality traits are proven to influence work performance, meaning the effectiveness of the MKNP chairperson in coordinating and supervising is also shaped by personal characteristics beyond formal authority alone. The hierarchical organizational structure of MKN between the central and regional levels indicates a tiered supervisory system intended to ensure consistency in the implementation of MKN's duties and functions throughout Indonesia. MKNW carries out the function of guidance to maintain the dignity and honor of notaries in performing their office, serving as a mitigation step against violations or inconsistencies with the notary's professional responsibilities. This guidance function is closely related to how notaries carry out their professional obligations in good faith, since, as stated by Irfansyah, Darmawan, and Hardyansah (2024), the implementation of the good faith principle in fulfilling obligations demands consistency between a party's actions and the trust placed upon them. MKNW also provides guidance concerning the protection of notaries in relation to their obligation to keep the contents of deeds confidential.

Procedure for Examining Notaries by the Examining Council

Based on Article 26 of Regulation of the Minister of Law and Human Rights Number 17 of 2021, the Examining Council is authorized by the Regional MKN to conduct an examination of the notary, request documents needed to support the examination process, and make minutes for the examination process and the handover of such documents which will ultimately be discussed and decided in a plenary meeting by the MKN. The Examining Council is authorized to summon the notary upon a request submitted by an investigator, public prosecutor, or judge. The summons is carried out through a letter signed by the Chairperson of the MKNW. If the notary has been summoned by the Examining Council, it cannot be represented and must be present. If absent twice consecutively, the Examining Council may make a decision on the investigator's request. The provision requiring the notary to be present personally and not be represented emphasizes that the examination conducted by the Examining Council is personal and cannot be delegated to other parties, considering that the information requested relates directly to the execution of the concerned notary's office (Candra & Hoesin, 2025).

Based on Article 28 of the Regulation of the Minister of Law and Human Rights No. 17 of 2021, investigators, public prosecutors, or judges may request approval to obtain a photocopy of the minuta of a deed or notarial protocol, and to summon a notary to appear in an examination related to a deed or notarial protocol held in the notary's custody, which request is submitted to MKNW according to the working area of the notary concerned. The request must be made in writing in Indonesian, with a copy given to the notary whose statement is sought. The response, whether in the form of approval or rejection, is given by the Chairperson of MKNW no later than 30 days after the request is received. The Examining Council grants approval or rejection after obtaining direct testimony from the notary concerned, and that testimony must be set out in an examination report. The 30-day time limit set out in this provision provides legal certainty for the parties requesting approval, while also preventing improper delay in the judicial process (Rahayu et al., 2025). This time limit can also be read as an indicator of institutional effectiveness, since Darmawan (2024) explains that an organization's effectiveness is largely determined by how well its key internal factors are managed and distributed, so a firm and measurable deadline reflects how MKNW organizes its administrative function.

If the Examining Council grants approval for the request from an investigator, public prosecutor, or judge, the notary concerned is obliged to provide the required documents, such as a photocopy of the minuta of the deed or letters, through a handover report signed by the investigator, public prosecutor, or judge, the notary, and two witnesses. The requirement to prepare a handover report signed by the parties and witnessed by two people constitutes a form of procedural accountability that ensures the process of obtaining a photocopy of the minuta of the deed is carried out transparently and can be held accountable (Izzati & Surrahmad, 2025). This procedure reflects the principle of legal certainty and the protection of the rights of the parties involved in the judicial process. The presence of witnesses in the document handover also serves as a form of public control over the course of the law enforcement process involving the notary. The notary's consistency in fulfilling this documentation obligation

essentially reflects a form of professional commitment, and Eddine et al. (2023) show that such commitment tends to be stronger when it is backed by proper knowledge management and a good quality of work life, meaning the notary's diligence in this procedure is also connected to the working environment surrounding the profession.

Based on Article 32 paragraph (1) of the Regulation of the Minister of Law and Human Rights No. 17 of 2021, an investigator, public prosecutor, or judge may request a photocopy of the minuta of a deed and/or letters if there is an alleged criminal offense related to the minuta of the deed and/or letters attached to the minuta of the deed or notarial protocol held in the notary's custody; the right to prosecute has not lapsed under the statute-of-limitations provisions in criminal law legislation; there is a denial of the validity of a signature by one or more parties; there is an alleged reduction or addition to the minuta of the deed; or there is an alleged backdating by the notary. The parameters set out in Article 32 paragraph (1) are cumulative and must be fulfilled together, so that not every request from an investigator, public prosecutor, or judge can automatically be granted by MKN. These parameters should be adjusted to the alleged criminal offense, not merely based on procedure, because MKNW must be able to identify exceptions to the obligation to keep professional secrets, such as alleged forgery, tax court cases, or corruption. These exceptions are reasonable considering that offenses of this kind fall into the category of serious crimes that demand a strong law enforcement response; as noted by Ferdinanta et al. (2024), stricter legal measures are often justified specifically to counter serious crimes, which explains why MKN cannot treat such requests the same way as ordinary cases. This exception requires MKNW to issue approval for disclosing the minuta of the deed and to request a statement from the notary concerned, and the investigator must also satisfy two pieces of evidence regarding the alleged criminal offense. The principle of proportionality in granting approval by MKN requires that a request from an investigator, public prosecutor, or judge not be assessed solely from a formal procedural aspect, but also from the substance of the alleged criminal offense concerned, so that the interest of law enforcement truly becomes the main consideration (Pratista et al., 2025). This proportionality is essentially a form of caution in exercising authority, and Hidayat et al. (2024) explain that the precautionary principle requires a careful assessment before a decision with significant legal consequences is taken, so MKN's approval process should likewise weigh the risks before allowing access to a notary's confidential documents.

The approval of MKNW serves three functions. First, it becomes the basis of authority for investigators to conduct an examination, such as summoning the notary, obtaining photocopies of deeds and letters, and taking the minuta of the deed. Second, it becomes the legal justification for the notary to disclose professional secrets without being subject to sanctions. Third, it applies at the prosecution and trial stages. These three functions show that MKN's approval has broad legal consequences, not only at the investigation stage but also at the prosecution and trial stages, so that MKN's decision becomes an important document throughout the entire judicial process involving the notary. This broad legal effect also gives the notary a sense of security in performing the profession, and Hariani and Putra (2024) explain that this kind of psychological capital, formed through a sense of protection and certainty, functions as strategic capital that can improve a person's work performance, so the legal protection from MKN's approval indirectly supports how well the notary carries out professional duties. Normatively, this MKN approval mechanism reflects a balance between the interest of law enforcement, which requires access to confidential information, and the interest of protecting notarial confidentiality, which is part of the client's basic right to legal protection of personal information. This balance can only be maintained consistently if the institution managing it also operates effectively, and Abdullah et al. (2021) note that innovation in managing an organization's human resources strengthens an institution's overall capability, so MKN's credibility in maintaining this balance also depends on how well the institution itself is managed. This mechanism also serves as a form of legal protection for the notary so as not to be subject to criminal sanctions under Article 322 of the Indonesian Penal Code when disclosing professional secrets for the purposes of the judicial process.

The Notary's Obligation of Confidentiality and Related Criminal Provisions

In terms of the notary office, there is a requirement to maintain confidentiality, namely

information and minute deeds as stated in the oath or promise as written in Article 4 paragraph (1) and (2) of the Law on the Notary Position that the notary will carry out their obligations in accordance with the professional code of ethics, honor, dignity, and responsibility, and will keep the contents of the deed and information obtained in the execution of their office secret. It is also written in the notary's obligation under Article 16 paragraph (1) letter f of the Law on the Notary Position that the notary is obliged to keep secret everything regarding the deed they make and all information obtained for the sake of making the deed in accordance with the oath or promise of office, unless the law determines otherwise. This confidentiality obligation is one of the main pillars in the notary office aimed at protecting the interests of the parties who use notary services, because public trust in the notary heavily depends on the notary's ability to maintain the confidentiality of their client's information. This confidentiality obligation is also an implementation of the notary's oath of office taken at the time of appointment, which binds the notary morally and legally throughout their tenure (Candra & Hoesin, 2025). Violations of this confidentiality obligation can result in criminal sanctions, civil sanctions, administrative sanctions, and code of ethics sanctions in accordance with the provisions of applicable laws and regulations (Saldi et al., 2025).

This seems contradictory when information is needed to facilitate and clarify the investigation process of a criminal case. Article 322 paragraph (1) of the Indonesian Penal Code states that anyone who intentionally discloses a secret they are obliged to keep because of their present or former office or profession is threatened with a maximum prison sentence of nine months or a maximum fine of nine thousand rupiah. Disclosing a secret means providing information that is not known by everyone, or is limited and not intended for just anyone. The manner of disclosing a secret varies, whether through oral statements, letters, recordings, showing something, and so forth (Dewi & Sidharta, 2022). A secret protected by law may be disclosed for the purpose of clarifying the investigation process of a case. This provision of Article 322 of the Penal Code constitutes a criminal threat for notaries who breach their confidentiality obligation, but this provision has an exception if the disclosure of the secret is carried out based on a statutory provision that permits it, such as in the case of MKN approval. Such a statutory exception cannot function properly without adequate enforcement management, since Nuraini et al. (2021) explain that effective law enforcement depends heavily on how the enforcement process itself is administered, meaning MKN's approval mechanism only works as intended when it is carried out in an orderly and consistent manner.

In carrying out their office, a notary must be accountable for the product and the office they hold. A notary must be legally accountable for a legal act. The notarial office is not immune from law, and sanctions can still be imposed if the notary violates or fails to act as required. A notary may be subject to civil and administrative sanctions, as well as sanctions under the code of ethics and criminal sanctions. Criminal sanctions are governed by the Penal Code, while this matter also needs to be regulated under the Notary Position Law (UUJN) so that it can be applied effectively and enforce justice for members of the public harmed as a result of an authentic deed made by a notary. This need reflects a legal and an ethical dimension inherent to the notarial office at once; Khusna et al. (2025) show that a notary's responsibility in preparing a deed carries both dimensions together, so sanctions against a notary should be assessed from both sides simultaneously. The regulation of criminal sanctions in the UUJN constitutes a form of lex specialis that provides legal certainty regarding criminal offenses that may be committed by a notary in carrying out their office, so that not all criminal provisions in the Penal Code can be applied directly without considering the special nature of the notarial office. The criminal sanctions imposed on a notary must also take into account the principles of proportionality and legal certainty, given that the notarial office has characteristics different from other general positions. This need for proportional regulation resembles how any profession must keep adjusting its standards to new demands; Oluwatoyin and Mardikaningsih (2024) note that professional development constantly faces new challenges requiring continuous adjustment, so the provisions governing the notarial office must likewise be able to keep pace with the growing complexity of cases.

In terms of accountability for their product and office, a notary may be asked for information or a photocopy of the minuta of the deed during the investigation process of a criminal case, whether the notary acts as a witness or is alleged to have assisted in committing the offense (Uyuni et al.,

2025). This difference in role or capacity can affect how a notary responds when information is requested; Khayru et al. (2025) find that a person's employment status can moderate how actively they participate in fulfilling an obligation, so a notary's response as a witness may differ from their response when their own conduct is the one being examined. In disclosing the secret of an authentic deed, a notary must obtain the approval of a council called MKN. An investigator may submit a request to MKN so that the notary concerned can be summoned to provide information. This MKN approval mechanism constitutes a form of exception to the notary's confidentiality obligation, while also serving as legal protection for the notary so as not to be subject to criminal sanctions under Article 322 of the Penal Code when disclosing professional secrets for the purposes of the judicial process. This mechanism also guarantees that a notary's confidentiality obligation is not absolute, but may be set aside if there is a higher law enforcement interest that has gone through the procedure set out in applicable regulation. This exception is essentially a way of distributing the burden fairly between the parties involved; Issalillah and Mardikaningsih (2022) explain that a fair outcome is achieved when the burden placed on one party is proportionate to the protection given to another, so the exception to notarial secrecy should likewise not place an unfair burden on either the client or the interest of law enforcement. This exception reflects a balance between protecting the rights of the notary's clients and the public interest in law enforcement.

If a criminal offense is suspected, an investigator, judge, or public prosecutor has the right to summon and request information, but the position is different for a notary. This authority seems to conflict with the notary's obligation to maintain the confidentiality of both the subject and the object of the deed they prepared (Pratista et al., 2025). Reconciling these two positions requires both sides to keep adjusting to one another over time; Kurniawan and Darmawan (2021) explain that this kind of adaptive understanding develops gradually at both the individual and collective level, so the working relationship between investigators and notaries also becomes more attuned to procedure through repeated practice. The role of MKNW is not to obstruct the investigation process; rather, a decision from MKNW can strengthen the investigator's position in carrying out the examination and also serves as justification for the notary to disclose that information. MKN's decision functions as a legal instrument that gives the notary certainty that the act of disclosing a professional secret does not violate Article 322 of the Penal Code, while also giving legitimacy to the investigator to examine the notary and obtain documents related to the notarial deed. This certainty is easier to achieve when the decision rests on properly organized information; Mardikaningsih and Darmawan (2025) show that well-managed data analysis can improve an organization's decision-making, so MKN's approval process also benefits from being based on complete and well-documented case information. Without MKN's approval, an investigator's act of summoning a notary and obtaining a photocopy of the minuta of the deed can be considered unlawful and may render the investigation null and void. Therefore, the MKN approval mechanism is an absolute procedural element that must be fulfilled in a judicial process involving a notary.

Criminal Law Enforcement Against Notaries and MKN Approval Parameters

The Indonesian criminal law enforcement process against notaries involves the stages of investigation and inquiry as well as the role of investigators, public prosecutors, or judges in processing the examination of notaries or requesting authentic deeds made by notaries. Based on Article 1 number 5 of the Criminal Procedure Code, the definition of an inquiry is a series of actions by an investigator to seek and find an event suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the manner regulated in this law. Those authorized to conduct inquiries are investigators, namely police positions authorized to conduct inquiries (Agustining, 2024). An inquiry is the initial stage in the pre-judicial criminal justice process, where at this stage there is no clear suspect yet and the actions taken are exploratory to find whether an event is worthy of being elevated to the investigation stage. The inquiry precedes other actions, namely arrest, detention, search, seizure, document examination, summons, examination actions, resolution, and submission of case files to the public prosecutor.

After the preliminary inquiry is carried out, it is followed by the investigation stage. Based on Article 1 point 2 of the Criminal Procedure Code, an investigation is a series of actions taken by an investigator, in the manner regulated by this law, to search for and collect evidence that clarifies

the criminal offense that occurred and to identify the suspect. The preliminary inquiry is the initial process before an investigation begins. During the investigation, all efforts are directed toward finding evidence that can clarify the alleged criminal offense, both its motive and the identity of the suspect. The investigation is judicial in nature because at this stage a suspect has already been identified, and the actions taken are directed toward collecting evidence for the purposes of prosecution (Azwir et al., 2024). Reaching this level of clarity depends heavily on how the investigating institution itself operates, and Irfan et al. (2024) explain that an organization's performance is closely tied to the working culture within it, so the thoroughness of an investigation also reflects the working culture of the investigating body. An investigator is a police official or a civil servant official granted the authority to conduct investigations. In the preliminary inquiry and investigation process, a minimum of two valid pieces of evidence must be collected. This requirement of at least two valid pieces of evidence is an application of Article 184 of the Criminal Procedure Code, which stipulates that a judge cannot impose a criminal sentence on a person unless, with at least two valid pieces of evidence, the judge is convinced that a criminal offense truly occurred and that the defendant is the one who committed it (Sulmainingsih, 2025).

Article 1 paragraph (1) of Law No. 48 of 2009 on Judicial Power states that judicial power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of realizing Indonesia as a state governed by law. Judicial power is independent, meaning there is no intervention from any party. In the examination process, the Supreme Court and the courts under it have the right to search for and clarify an alleged criminal offense. The independence of judicial power as referred to in Article 24 paragraph (1) of the 1945 Constitution guarantees that a judge cannot be intervened by any other power in carrying out their function, including in examining and adjudicating cases involving a notary. This kind of independent authority is not unique to the judiciary; Mahmud et al. (2023) show that firm law enforcement is also required in other legal areas, such as against perpetrators of environmental pollution, indicating that consistent and independent enforcement is a general requirement across different branches of law, not only in cases involving notaries. This principle of judicial independence also forms the basis for a judge to request information and documents from a notary in the context of examining a case, though it must still go through the MKN approval mechanism.

Article 7 paragraph (1) of the Criminal Procedure Code stipulates that an investigator, by virtue of their duty, has the authority to receive reports or complaints from a person regarding a criminal offense; take the first action at the scene; order a suspect to stop and check the suspect's identification; carry out arrest, detention, search, and seizure; conduct examination and seizure of correspondence; take fingerprints and photograph a person; summon a person to be heard and examined as a suspect or witness; bring in an expert needed in connection with the examination of a case; discontinue an investigation; and take other actions according to responsible legal procedure. The investigator's authority as regulated in Article 7 of the Criminal Procedure Code is broad and covers various actions needed for investigative purposes, but this authority cannot be applied absolutely to a notary without going through the MKN approval mechanism, because of the special nature of the notarial office protected by law. This limitation exists because a notary's confidentiality obligation is closely tied to the client's right to privacy, and Issalillah and Hardyansah (2024) explain that privacy protection is part of a person's basic human rights, so restricting an investigator's broad authority over a notary is also a way of protecting the privacy rights of the notary's clients. This limitation on the investigator's authority over a notary is a form of legal protection granted by law to the notarial profession in carrying out its duties. An investigator who forces their will without regard to the MKN mechanism may be subject to sanctions under the applicable laws and regulations.

The parameters used by MKNW to grant approval or rejection are set out in Article 32 paragraph (1) of the Regulation of the Minister of Law and Human Rights No. 17 of 2021, namely: an alleged criminal offense related to the minuta of a deed and/or letters attached to the minuta of the deed or notarial protocol held in the notary's custody; the right to prosecute has not lapsed under the statute-of-limitations provisions in criminal law legislation; a denial of the validity of a signature by one or more parties; an alleged reduction or addition to the minuta of the deed; or an alleged backdating by the notary. These parameters are limitative and must be fulfilled cumulatively, so MKN cannot grant approval if

even one parameter is not met. Applying these parameters consistently while still weighing the specific circumstances of each case requires a flexible approach, and Mardikaningsih and Darmawan (2022) note that this kind of situational strategy helps an institution manage change and maintain good performance, so MKN's evaluation of each request also needs this kind of case-by-case judgment rather than a rigid, one-size-fits-all approach. These parameters serve as guidance for MKN in deciding whether a request from an investigator, public prosecutor, or judge deserves to be granted or rejected. This provision also serves as a form of protection for a notary against being arbitrarily asked for information and documents without a strong legal basis. This kind of legal boundary on when information must be disclosed resembles the disclosure obligations found in other areas of law, and Mamesah et al. (2024) show that an obligation to disclose data to the public is only triggered under specific legal conditions, so MKN's approval parameters likewise function to ensure a notary's confidential documents are only opened under conditions clearly justified by law. In this way, the MKN approval mechanism becomes one of the important pillars in maintaining a balance between the interest of law enforcement and the protection of notarial confidentiality within Indonesia's judicial system.

D. CONCLUSIONS

The Notary Honorary Council has a strategic position as an institution that bridges the interests of law enforcement and the protection of the confidentiality of the notary office. The procedure for examining notaries by the Examining Council has been regulated in detail, but its implementation still faces obstacles related to time limits, approval parameters, and the compliance of law enforcement officials. The tension between the notary's obligation of confidentiality and the criminal provisions in Article 322 of the Criminal Code requires an exception through MKN approval, which serves as legal protection for the notary. The MKN approval parameters, which are cumulative in nature, provide legal certainty, but still require socialization and uniform understanding among law enforcement officials.

Policymakers need to consider improving regulations regarding the time limit for granting MKN approval to prevent undue delays in the judicial process. The formulation of more detailed technical guidelines regarding MKN approval parameters and notary examination procedures can be a strategic step to enhance legal certainty and application consistency. Strengthening coordination between the Central MKN and the Regional MKN needs to be carried out to ensure the effectiveness of supervision and guidance over notaries as well as consistency in decision-making by the MKN throughout Indonesia.

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