

**THE ESSENCE OF THE AUTHORITY OF THE NOTARY'S  
HONOR ASSEMBLY IN THE ENFORCEMENT OF CRIMINAL  
LAW AGAINST NOTARY CONSUMERED CRIMINAL ACTS IN  
IMPLEMENTING ITS POSITION**

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**Abstract**

One of the new provisions in Law 6/2014 is the presence of the Notary Honorary Council. There are a) it is necessary to take a photocopy of the Minutes of Deed and/or the letters attached to the Minutes of Deeds or Protocols of Notary in the Notary's deposit; and b) call the Notary to be present of the examination related to the Notary Deed or Protocol is in the Notary's custody, it must be with the permission of the Notary Honorary Council. It creates a dilemma in society and it is considered a form of impunity for notaries. The formulation of this research are First, what is the classification of criminal acts committed by a notary whose examiner requires the approval of an Honorary Maejis and Second, what is the essence of the authority of the Notary Honorary Council as regulated in Article 66 of Law 2/2014? This research is a legal research with a statute approach and conceptual approach. The result of this research are First, the classification of criminal acts committed by notaries whose examiner requires approval from the Honorary maejis is related to the deed or Notary Protocol is in the notary's repository. Second, the essence of the authority of the Notary Honorary Council as regulated in Article 66 UU 2/2014 is to

provide legal protection for Notaries, Parties who make deeds, and of course third parties (society) who are litigating.

**Keywords:** *Notary Honorary Council, Notary, Criminal Law Enforcement,*

## **INTRODUCTION**

### **A. Background of the Research**

Initially, the notary was a profession was qualified as a noble profession (*officium nobile*) and honored by trusted people (*vertrouwens person*).<sup>1</sup> During its creation, the title of “noble profession” given to the notary began to fade.<sup>2</sup> This is due to the fact that notaries are just no longer be considered to have the qualifications and skills of a notary.<sup>3</sup> One of the main reasons for this was that leaders at the time easily gave notary positions to people on the grounds, due to a lack of money at the time, rules gave notary positions to people regardless of whether or not. They had sufficient qualifications and abilities in the field of notarial, so long as they have money, the ruler will give them the position<sup>4</sup>

The large number of notaries who appear to have the necessary qualifications and abilities in the area of notary causes havoc in the office of a notary and many losses in society.<sup>5</sup> In this regard, Lumban G.H.S. Tobing stated, that:<sup>6</sup> “The declaration was obtained from those who feel wronged by the notary *stultitia notariorum mundus perit*, this suggests that the planet will be destroyed as a result of the notaries ignore.” As a result, the public loses faith in the notary, and the noble but legitimate career to county clerk disappears

The public perception of the notary position deteriorating, a legal framework was created to ensure that the notary office is carried out in compliance with established standards and it no longer causes public harm.

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<sup>1</sup> Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia-Perspektif Hukum dan Etika*, Yogyakarta: UII Press, 2009, h.6.

<sup>2</sup> Tengku Erwinsyahbana, 2018, “Kewenangan dan Tanggung Jawab Notaris Pengganti setelah Pelaksanaan Tugas dan Jabatan Berakhir”, *Lentera Hukum*, Volume 5, Issue 2, July, h. 324-325.

<sup>3</sup> Nasichin, “Kajian Yuridis Perkembangan Baitul Mal Wattanwil Setelah Keputusan Menteri Negara Koperasi Dan Usaha Kecil Dan Menengah No. 104.1/KEP/M.KUKM/X/2002 Dan Perubahan Anggaran Dasar Koperasi No. 01/PER/M.KUKM/I/2006 (Studi Kasus di Kabupaten Semarang)”, *Tesis*, Fakultas Hukum, Universitas Diponegoro, Semarang, 2011, h.128.

<sup>4</sup> *Ibid.*

<sup>5</sup> Elvi Sandriyani, “Pelaksanaan Kewenangan Majelis Pengawas Daerah Notaris Dalam Pemeriksaan Protokol Notaris Di Kota Padang”, *Tesis*, Fakultas Hukum, Universitas Andalas, Padang, 2016, h.1.

<sup>6</sup> Lumban G.H.S. Tobing , *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 1999, h.10.

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According to the theory of Lawrence M. Friedman, the legal system is made up of 3 (three) sub-systems, are legal substance, legal structure, and legal culture.<sup>7</sup> Based on this legal system theory, countries form a legal structure, legal substance, and legal culture which ensure the notaries that exist are of high quality and are no longer harmful to the public.<sup>8</sup>

In Indonesia, efforts to create a legal system which incidentally consists of a legal structure, legal substance, and legal culture that aim to produce quality notaries that do not harm the public.<sup>9</sup> In terms of legal structure, a County clerk Honor Committee as well as a County clerk Supervisory Council can be seen, all of which have the responsibility of nurturing and supervising notaries.<sup>10</sup> In term of legal substance, Indonesia already has Law Number 30 in 2004 About Role of Notary Public (Law 30/2004), as amended by Law Number 2 in 2014 (Law 2/2014) as well as many other notary related regulations<sup>11</sup> In term of legal culture, Indonesia has been shaped by education, both internally and externally legal culture.<sup>12</sup>

In legal system theory, Lawrence M. Friedman regulates that “legal structure” is a machine, “legal substance” refers to what the machine creates or does “legal culture” refers to how or whatever chooses to turn the machine on and off and how it is used.<sup>13</sup> According to Lawrence M. Friedman, it can be seen that the important thing of “legal structure” which happens to be a computer, and without a machine to manufacture it, nothing

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<sup>7</sup> Febrian *et.al.*, 2018, “The Implementation of Friedman’s Theory in the Context of the Legal System in Indonesia”, *International Journal of Psychosocial Rehabilitation*, Volume 24, Issue 6, May, h. 10.362-10.371

<sup>8</sup> Ratnawati *et.al.*, 2017, “Law Enforcement in Indonesia: A Review from Legal Apparatus Roles”, *Journal of Law, Policy and Globalization*, Volume 58, Issue 1, May, h. 59-60.

<sup>9</sup> Basyarudin, 2021, “Budaya Hukum Notaris Dalam Menjalankan Jabatan”, *Maleo Law Journal*, Volume 5, Issue 1, April, h. 80-82.

<sup>10</sup> Evi Apita Maya, 2017, “Kedudukan Dan Kewenangan Majelis Kehormatan Notaris Dalam Pembinaan Terhadap Notaris”, *Jurnal Ius Kajian Hukum dan Keadilan*, Volume 5, Issue 2, August, h. 246-247.

<sup>11</sup> I Gusti Agung Oka Diatmika, 2017, “Perlindungan Hukum Terhadap Jabatan Notaris Berkaitan Dengan Adanya Dugaan Malpraktek Dalam Proses Pembuatan Akta Otentik”, *Jurnal Ilmiah Prodi Magister Kenot ariatan*, Volume 2, Issue 1, April, h. 151-152.

<sup>12</sup> Intan Puspita Sari, “Budaya Hukum Notaris Dalam Implementasi Undang-Undang Jabatan Notaris Di Daerah Istimewa Yogyakarta”, *Tesis*, Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta, 2018, h.265.

<sup>13</sup> Lawrence M. Friedman, *Sistem Hukum: Perspektif Ilmu Sosial*, (terjemahan M.Khozim), Cetakan ke-6, Bandung: Nusa Media, 2018, h.14-15.

could be created or switched on or off.<sup>14</sup> It means that the Notary Honorary Council, which is one of the legal systems, plays an important role in interpreting and establishing a legal framework that can produce quality notaries while avoiding damage to the public.<sup>15</sup>

Related to the Notary Honorary Council, it can be said that it is a fairly new institution in Indonesia, because its existence has only existed in 2014 based on the mandate of Law 2/2014.<sup>16</sup> Regarding the existence of this Notary Honorary Council, its authority is regulated in Article 66 UU 2/2014 and regarding its institution is regulated in Article 66A Law 2/2014. Regarding the authority of this Honorary council, it can be seen in Article 66 paragraph (1) Law 2/2014, are: “For the purposes of judicial proceedings, investigators, public prosecutors, or judges **with the approval of honorary council** authorized Notary: a. Take a photocopy of the Minuta deed and/or letters attached to the Minuta Deed or Notary Protocol in the Notary’s deposit; and b. Calling the Notary Public to be present in the examination related to Notary Deed or Protocol is the Notary’s custody (thickening of the author).” From the provisions in Article 66 paragraph (1) Law 2/2014, it can be understood that about these 2 (things), there must be prior approval from the honorary assembly.<sup>17</sup> It means that based on a *contra rio* it can be understood **if it is not permitted by the honorary council, then these two things cannot be done.**

The authority of the Notary Honorary Council in terms of giving approval related to the photocopy of the Minuta Deed and/ or correspondence added to a Minuta Deed or Notary’s summons sparked debate, as it seemed as if the notary was accused of performing a criminal act. With the place, he has the incentive to request shelter inside the Honorary Council. Moreover, in Law 2/2014 and in other technical provisions, such as Regulation of the Minister of Law and Human Rights Number 7 in 2016 about the Notary Honorary Council, **there is no classification regarding the types of crimes committed by a notary**

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<sup>14</sup> Erma Rusdiana, 2017, “The Effectiveness Of Law Enforcement In Combating Food Hoarding Crimes In Indonesia”, *Proceeding of International Conference on Food Sovereignty and Sustainable Agriculture (FoSSA)*, July, h. 56.

<sup>15</sup> Dahlan, 2018, “Kewenangan Majelis Kehormatan Notaris Terkait Aspek Pidana Dibidang Kenotariatan”, *Kanun: Jurnal Ilmu Hukum*, Volume 8, Issue 1, April, h. 44-47.

<sup>16</sup> Herdy Laban Nariwo Pihang, Rachmad Safaat, Sucipto, 2016, “Peran Majelis Kehormatan Notaris Dalam Memberikan Persetujuan Kepada Penegak Hukum Ketika Memeriksa Notaris Yang Diduga Melakukan Pelanggaran Hukum Pidana Saat Menjalankan Jabatannya Sebagai Notaris (Studi Kasus Di Majelis Kehormatan Notaris, Jakarta)”, *Jurnal Hukum*, Volume 2, Issue 1, April, h. 5.

<sup>17</sup> Winda Ayu Swastika, 2016, “Politik Hukum Pembentukan Majelis Kehormatan Notaris”, *Lex Renaissance*, Volume 2, Issue 1, Juli, h. 197-198.



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**whose examiner must obtain prior approval from the Honorary Council.** This is as if the Notary Honorary Council can provide impunity for the Notary.

Furthermore, many parties believe that Notary Honorary Council, with its authority as outlined in Article 66 Law 2/2014 holds a higher position than other law enforcers, such the police, prosecutors, and even judges, since the concept is permission (*vergunning*) which is typically granted by a subject in a higher position to a subject in a lower position.<sup>18</sup> This seems to demonstrate that **Notary Honorary Council is a superior organization to current law enforcement.**

## **B. Problem Formulation**

Based on the foregoing background, the research question is **First**, what is the classification of criminal acts committed by notaries whose examiners need Honorary approval, and **Second**, what is the nature of the Notary Honorary Council's jurisdiction as governed in Article 66 Law 2/2014?

## **C. Method of Research**

This research is a legal research. According to Irwansyah, legal research is a collection of practices that employ the scientific method to seek the truth in a rigorous, rigorous, and consistent manner.<sup>19</sup> According to Jonaedi Effendi and Johny Ibrahim, legal research is divided into 2 (two) types, normative legal research/doctrinal research to discover *inconcreto* laws that can be applied to solve specific legal cases, and social legal research to discover theories about the occurrence and operation of law.<sup>20</sup> This research is doctrinal research, because the object is to find the law, specifically the classification of crimes committed by a notary whose examiner needs the approval of the Honorary Maejis and *ratio legis* for the authority of the Notary Honorary Council as regulated in Article 66 Law 2/2014.

There are 2 (two approaches used in this legal research), are statue approach and conceptual approach. Statute approach method is based on an

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<sup>18</sup> Dahlan, 2018, "Kewenangan Majelis Kehormatan Notaris Terkait Aspek Pidana Dibidang Kenotariatan", *Kanun: Jurnal Ilmu Hukum*, Volume 8, Issue 1, April, h. 44-47.

<sup>19</sup> Irwansyah, 2020, *Penelitian Huku: Pilihan Metode&Praktik Penulisan Artikel*, Edisi Revisi, Cetakan ke-3, Yogyakarta: Mirra Buana Media, h.65.

<sup>20</sup> Jonaedi Efendi dan Johnny Ibrahim, 2016, *Metode Penelitain Hukum Normatif dan Empiris*, Jakarta: Kencana, h. 123-154.

examination of the laws and regulations that govern these legal issues.<sup>21</sup> The rules and regulations studied in this legal study are those pertaining to the classification of crimes committed by notaries whose examiners need the approval of the Honorary Majis, and it also *ratio legis* for the authority of the Notary Honorary Council, as outlined in Article 66 Law 2/2014. The second approach is using a design framework to interpret legal materials in order to understand the context of current legal words and principles.<sup>22</sup> In this legal research, the legal concept analyzed is the legal concept related to the classification of crimes committed by a notary whose examiner requires the approval of the Honorary Maejis and *ratio legis* for the authority of the Notary Honorary Council as regulated in Article 66 Law 2/2014.

## **DISCUSION**

### **Classification of Crime Committed by Notary Public Examiner requires Notary Honor Council Approval**

*Het recht is er, doch het moet woerden gevonden* (even if the rule exists, it must be discovered)<sup>23</sup> is a phrase coined by Paul Scholten that essentially implies that, even though the law already exists/ is available, its significance must be discovered at all times. If it comes to seeking sense in the law, the most common approach is to use legal interpretation.<sup>24</sup> According to Aharon Barak, legal interpretation is a reasoned practice that involves giving meaning to “legal text”, which may be a general text (constitution, statute, court order, custom), or individual text (contract or will), or unenforced text (oral or contract implied in the facts).<sup>25</sup>

According to H.M. Fauzan, there are at least 14 (fourteen) different types of legal interpretation, such as 1) subsumption interpretation, 2) grammatical interpretation, 3) systematic interpretation, 4) historical interpretation, 5) teleological interpretation, 6) comparative interpretation, 7) futuristic interpretation 8) restrictive interpretation, 9) extensive interpretation, 10) authentic interpretation, 11) disciplinary interpretation, 12) multidisciplinary interpretation, 13) interpretation in agreement, and 14)

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<sup>21</sup> Peter Mahmud Marzuki, 2016, *Penelitian Hukum*, Edisi Revisi, Jakarta: Kencana, Cetakan ke-12, h. 136.

<sup>22</sup> Bambang Sungono, 2009, *Metodologi Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, h. 189.

<sup>23</sup> Shidarta, 2013, *Hukum Penalaran dan Penalaran Hukum: Buku 1 Akar Filosofis*, Yogyakarta: Genta Publishing, , h. 188.

<sup>24</sup> Dyah Ochterina Susanti, A’an Efendi, 2019, “Memahami Teks Undang-Undang dengan Metode Interpretasi Eksegetikal”, *Kertha Partika*, Volume 41, Issue 2, August, h.143.

<sup>25</sup> Aharaon Barak, 2005, *Purposive Interpretation in Law*, Princenton: Princenton University Press, h. 4.

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multidisciplinary interpretation.<sup>26</sup> To determine which type of interpretation is prioritized, it can be referred to the opinion of Claire M. Germain who stated that:<sup>27</sup> “When a text is clear, it should be applied and not interpreted, unless an absurd result would follow.” Based on the opinion, it can be understood that the first interpretation that should be used is grammatical interpretation, unless the meaning is not clear.<sup>28</sup> This opinion, it can be said that logic, because in general first thing in analyzing a rule of law, it is usually the first thing a jurisprudence does is to understand it from any term that exists, and once understood, it is not necessary to use interpretation. It also adheres to a well-known legal principle, ais:<sup>29</sup> “*interpretatio cessat in claris* (if freely translated means: if the text was plain, the interpretation comes to an end.)”

According to Afif Khalid, grammatical interpretation is an interpretation which emphasizes the meaning of the text in a legal law based on the grammar structure.<sup>30</sup> In simple terms, this interpretation is:<sup>31</sup> “what does it linguistically mean?”. This means which grammatical interpretation is the process of interpreting sentences from a legal rule.<sup>32</sup>

If we were using grammatical interpretation as the first step in interpreting a rule of law by determining the classification of crimes committed by notaries whose examiners need the approval of the notary honorary council, the first thing we can do is look up Law 2/2014 which is *lex specialis* on regulation. A notary public is a person who has been sworn

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<sup>26</sup> Fauzan, 2014, *Kaidah Penemuan Hukum Yurisprudensi Bidang Hukum Perdata*, Jakarta: Kencana, h.53.

<sup>27</sup> Claire M. Germain, 2003, “Approaches to Statutory Interpretation and Legislative History in France”, *Duke Journal Of Comparative & International Law*, Volume 13, Issue 3, July, h.201-202.

<sup>28</sup> Febrian Dirgantara *et.al.*, 2020, “Akibat Hukum Tidak Dilakukannya Pemeriksaan Setempat Dalam Gugatan Dengan Objek Sengketa Tanah: Apakah Ada?”, *Jurnal IUS Kajian Hukum dan Keadilan*, Volume 8, Issue 3, December, h.608-609.

<sup>29</sup> Febrian Dirgantara *et.al.*, 2020, “Akibat Hukum Tidak Dilakukannya Pemeriksaan Setempat Dalam Gugatan Dengan Objek Sengketa Tanah: Apakah Ada?”, Volume 8, Issue 3, December, h.609.

<sup>30</sup> Afif Khalid, 2014, “Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia”, *Al-Adl: Jurnal Hukum*, Volume 6, Issue 11, Januari, h.12.

<sup>31</sup> *Ibid.*

<sup>32</sup> Xavier Nugraha, 2020, “Analisis Terhadap Ketua Yayasan yang Rangkap Jabatan Di Indonesia: Sebuah Potensi Konflik Kepentingan”, *Doktrina: Journal Of Law*, Volume 3, Issue 2, November, h. 169.

in.<sup>33</sup> However, a grammatical analysis reveals that there is no single arrangement related to the classification of crimes committed by notaries whose examiners need the notary honorary council's approval. The only thing stated in Article 66 paragraph (1) Law 2/2014, is that: "for the purposes of judicial proceedings, investigators, public prosecutors, or judges with the approval of the Notary Council are authorized to a. Take a photocopy of the Minuta Deed and/ or letters attached to the Minuta Deed to the Minuta Deed or Notary Protocol in the notary's deposit; and b. Summon the Notary to be present in the examination related to the Notary Deed or Protocol that is in the Notary's custody." From these provisions, with a grammatical interpretation, there is actually "indication", that the classification of crimes committed by a notary whose examiner requires the approval of the notary honorary council is **related to the deed or notary protocol that is in the notary's custody**.

Several illegal actions that may be committed by a notary and relevant to a Notary deed or Protocol in the Notary's care have been restricted, although this arrangement is beyond the scope of Law 2/2014. A formal legal interpretation may be used to synthesize many exiting legal arrangements. A form of interpretation known as systematic legal interpretation interprets legislative regulations about other legal regulations (other laws) or the entire legal system<sup>34</sup>

The example of capital committed by a notary which in related to the notary's deed or protocol is in the Notary's custody which is outside of Law 2/2014, is the criminal act of Falsification of Authentic Deeds (*vide* Article 263 paragraph (1) jo. Article 264 paragraph (1) of criminal code). Related to the criminal act of forgery of authentic deeds, this is a criminal act regulated in Chapter XII of the Criminal Code on Forgery of Letters. In event that this notary commits forgery of an authentic deed, he may be subject to criminal sanctions, as regulated in Article 263 paragraph 1 Criminal Code jo. Article 264 paragraph (1) of the Criminal Code.

In Article 263 paragraph (1) Criminal Code, regulated that: "Anyone who makes a false certificate or falsifies a letter that can give rise to a right, an agreement or release of debt, ow which is intended as evidence of something with the intent to use or order someone else to use the letter as if the contents are true and not falsified, shall be punished if such use may

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<sup>33</sup> Mardiyah, I Ketut Rai Setiabudhi, Gede Made Swardhana, 2017, "Sanksi Hukum Terhadap Notaris Yang Melanggar Kewajiban Dan Larangan Undang-Undang Jabatan Notaris", *Acta Comitatus*, Volume 2, Issue 1, April, h.119.

<sup>34</sup> Josef M Monteiro, 2018, "Teori Penemuan Hukum Dalam Pengujian Undang-Undang Dan Peraturan Pemerintah Pengganti Undang-Undang", *Jural Hukum Prioris*, Volume 6, Issue 3, February, h.272..



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result in losses due to falsification of documents, with maximum imprisonment of 6 years.” Related to the criminal provisions stipulated in Article 264 paragraph 1 Criminal Code is a *lex specialis* of the criminal provision stipulated in Article 263 paragraph (1) the Criminal Code which in fact is a criminal act of letter forgery with qualifications, is a forgery of documents: 1. Authentic deeds; 2. Debt securities or bond certificates issued by a country or a section of it, or through a government entity; 3. A sero or a debt certificate or a sero a debt certificate and a base, a corporation, and an airline; 4. Talon, proof of dividends or interest from one of the letters described in 2 and 3, or evidence issued as a substitute for the letters; 5. Letters of credit or trade letters destined for circulation. From the provisions in Article 263 paragraph (1) Criminal Code jo. Article 264 paragraph (1) for-1 of the Criminal Code, it can be understood that, if the notary falsifies the authentic deed which in fact the contents of the deed do not match the exiting truth, the notary may be subject to criminal sanctions.<sup>35</sup>

### **Ratio Legis The Authority of the Notary Honorary Council in Article 66 Law 2/2014**

*Ad recte docendum oportet primum inquirere nomina, quia rerum cognition a nominibus rerum dependet.*<sup>36</sup> A legal postulat states that in order to understand something, one must also know its name in order to gain correct knowledge.<sup>37</sup> In the context of understanding the *ratio legis* authority of the notary honorary council as regulated in Article 66 Law 2/2014, the definition of *ratio legis* will be elaborated.

There are the definition of *ratio legis*:

- 1) Satjipto Rahardjo  
*ratio legis* is a method of trying to figure out what a law means by raising a general theory to a a higher degree of withdrawal, one can gain a deeper, more general meaning that the original.<sup>38</sup>
- 2) Peter Mahmud Marzuki  
*Ratio legis* is the rationale for constitutional provisions.<sup>39</sup>

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<sup>35</sup> Mohamad Syafrizal Bashori, 2016, “Pertanggung Jawaban Pidana Bagi Notaris Yang Melakukan Tindak Pidana Pemalsuan Surat Dalam Pembuatan Akta Otentik”, *Jural Supremasi*, Volume 6, Issue 2, February, h.30.

<sup>36</sup> Xavier Nugraha, Agung Jaya Kusuma, 2019, “Analisa Pengawasan Pertunjukan Seni Melalui Youtube oleh KPI:: Sebuah Tinjauan Terhadap Ius Constitum”, *Senakreasi: Seminar Nasional Kreativitas Dan Studi Sen*, August, h.35-48.

<sup>37</sup> Eddy Oemar Sharif Hiariej, 2010, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahya Atma Pustaka, h.3.

<sup>38</sup> Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: PT Citra Aditya Bakti, h.46-47.

<sup>39</sup> Peter Mahmud Marzuki, 2020, *Teori Hukum*, Jakarta: Kencana, h. 22.

3) Dictionary of Legal Terms Fockema Andrea

The object of a rule, which is most often used for interpretation, differs from the rule's literal or extended context.<sup>40</sup>

From these various definitions, it can be concluded that *ratio legis* is the basis of thought which becomes the reason for the birth of a provision in the law. Thus, it can be said that by **analyzing *ratio legis* of a provision in law, the essence of a provision can be understood.**

The function of analyzing the *ratio legis* of a provision in the law is to understand the essence of that provision, so in order to better understand the essence of the authority of a notary honor council in implementing criminal law against notaries who are accused of committing crimes while performing their duties (*in casu* Article 66 Law 2/2014), the *ratio legis* of Article 66 Law 2/2014 will be analyzed. To ensure that this legal article is systematic or cites Ter Heide, B. Arief Sidharta stated that type of argumentation in legal reasoning must be "systematized problematic thinking (*gesytermatiseerd probleemdenken*)"<sup>41</sup>, then, from drawing the *ratio legis* of Article 66 Law 2/2014 to discovering the substance of such provisions, the flow of legal reasoning arguments will be represented.

**Diagram 1. Steps in Legal Reasoning to Determine the Purpose of Article 66 of Law 2/2014**

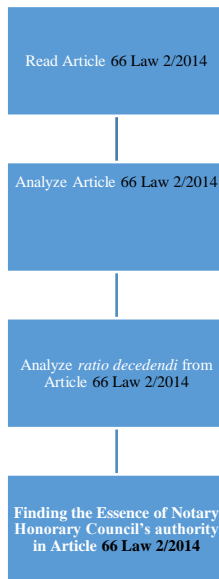
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<sup>40</sup>Fockema Andreae, 1983, *Kamus Istilah Hukum (Terjemahan saleh Adiwinata, et, al.,*, Bandung: Bina Cipta, h.442.

<sup>41</sup> B. Arief Sidharta, 2000, *Refleksi tentang Struktur Ilmu Hukum: Sebuah Penelitian tentang Fondasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Bandung: Mandar Maju, h.163.



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Source: Result of Author Management

In Article 66 Law 2/2014, regulated that:

- 1) For the purposes of the judicial process, investigators, or judges with the approval of the authorized Notary Honorary Council:
  - a. take a photocopy of the Minuta Deed and/ or correspondence connected to the Minuta Deed and Notary Protocol with the notary; and
  - b. call the Notary to appear at the review of a Notary Deed or Protocol as in Notary's custody.
- 2) Taking photocopies of Minuta Deeds or letters as referred to in paragraph (1) letter a, an official report of submission is made.
- 3) The Notary Honorary Council with 30 (thirty) working days from the receipt of the request for approval as referred to in paragraph (1) is obliged to provide an answer to accept or reject the request for approval.
- 4) If the Notary Honorary Council does not respond within the time frame specified in paragraph (3), the application for authorization is considered to have been received by the Notary Honorary Council.

For the provisions in Article 66 Law 2/2014, related to the authority of the Notary Honorary Council, if analyzed, it can be understood that:

- 1) The Notary Honorary Council has the authority to give investigators, public prosecutors, or judge's permission to a) take a photocopy of the Minuta Deed and/or letters attached to the Minuta Deed or Notary Protocol in the Notary's taking, and b) call the Notary to be present at the examination relating to the Notary Deed or Protocol that is held in Notary's custody **only in the case of a criminal investigation**. Thus, on a *contra rio*, it can be interpreted that if it is not related to the judicial process, the investigator, public prosecutor or judge cannot take a photocopy of Minuta Deed and/or letters attached to the Minuta Deed or Notary Protocol in the Notary's custody and/or call the Notary Public to be present in the examination is related to the Notary Deed or Protocol that is in the Notary's custody.
- 2) Related to the Notary Call, which must be obtain permission **from the Notary Honorary Council, only in the case of a Notary Deed or Protocol that is in the Notary's custody**. Thus, on a *contra rio*, it can be interpreted that if this call is not related to the Notary Deed or Protocol that is in the Notary's custody, the permission of the Notary Honorary Council is not necessary. If the notary commits the crime of murder, then of course the summoner does not require permission from the Notary Honorary Council.
- 3) Taking photocopies of Minuta Deeds or letters as referred to in paragraph (1) letter a, an official report of delivery is made. Thus, in a *contra rio* **it can be interpreted that if an official report is not made, photocopies of the Minutes of Deed or documents as referred to in paragraph (1) cannot be taken.**<sup>42</sup>
- 4) **It can be understood that there is a positive fictitious principle**, related to the application a) to take a photocopy of the Minuta Deed and/or the letters attached to the Minuta Deed or Notary Protocol in the Notary's deposit and b) call the Notary to be present at the examination related to the Deed or Notary Protocol which is in the Notary's storage. This can be seen from the provision which stipulates that if a rejection is not given within 30 (thirty) days, it will automatically be deemed accepted.
- 5) There is an explanation in 66 paragraph (3) which states: "Rejection in this provision is accompanied by reasons that are in accordance with the law and the provisions of statutory regulations". From the

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<sup>42</sup> Andi Nurfaejri Riandini Arief, Syukri Akub, Syamsuddin Muchtar, 2019, "Persetujuan Majelis Kehormatan Notaris Wilayah Dalam Pengambilan Minuta Akta Dalam Proses Peradilan", *Jurnal Al-Adalah: Jurnal Hukum dan Politik Islam*, Volume 4, Issue 1, January, h.60.

explanation of Article 66 paragraph (3) Law 2/2014, it can be seen that **there must be clear reasons for the Honorary Council to reject the request of an investigator, public prosecutor or judge** in terms of begging for a) take a photocopy of the Minuta Deed and/or correspondence connected to a Minuta Deed or Notary's deposit; and b) call the Notary to the investigation relating to the Notary Deed or Protocol in the Notary's custody.<sup>43</sup>

From the analysis, it can be understood that the *ratio legis* of the existence of Article 66 Law 2/2014 is:

- 1) The authority given to the Notary Honorary Council as referred to in Article 66 Law 2/2014 actually a form of legal protection for notaries and parties who make deeds related to the confidentiality of deeds made by notaries. Through this Notary Honorary Council, it will be assessed that in relation to the confidentiality of the deed it is really necessary to disclose it for the sake of the existing judicial process. In fact, in the absence of this authority, the meaning of the principle of "secret" in a notarial deed seems to be a mere figurative. This is also consistent with the Constitutional Court's reasoning in Decision Number 16/PUU-XVIII/2020 which state that: "moreover, the provisions of a *quo* article are intended to provide security to notaries as public officials in the performance of their duties, especially protecting the presence of minuta as confidential state documents."
- 2) The existence of a positive fictitious concept is followed, as stated in Article 66 paragraph (4) Law 2/2014, in order to prevent to Notary Honorary Council from acting arbitrarily. This is also consistent with the judges' considerations throughout the Constitutional Court Decision Number 22/PUU-XVII/2019 which state: "The existence of MKN does not aim to complicate the investigation process or the need for examination of notaries because it has been anticipated by the provision of Article 66 paragraph (3) which state, that MKN is within 30 (thirty) working days from the receipt of the letter requesting approval. As referred to in paragraph (1) it must provide an answer to accept or reject the request for approval. Then it is reaffirmed in Article 66 paragraph (4) which state, "In the event that the Notary Honorary Council does not provide an answer within the

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<sup>43</sup> Anang Alfiansyah, 2019, "Peran Majelis Kehormatan Notaris Terhadap Terbukanya Rahasia Jabatan Notaris Dalam Menjalankan Jabatan Publik", *Otentik's: Jurnal Hukum Kenotariatan*, Volume 1, Issue 1, January, h.6.

period referred to in paragraph (3), the Notary Honorary Council shall be deemed to have accepted the request for approval.”

From *ratio legis* Article 66 paragraph Law 2/2014 which has been described and which is coherent with the consideration of the Constitutional Court Decision Number 22/PUU-XVII/2019 and the Constitutional Court Decision Number 16/PUU-XVIII/2020, it can be understood that the essence of the existence of The authority of the Notary Honorary Council as regulated in Article 66 paragraph Law 2/2014 is to provide legal protection for Notaries, Parties who make deeds, and of course third deeds, and of course, third parties (society) who are litigants. The existence of legal security for the notary in question is to shield him from his duty to keep secret deeds made as specified in the Notary’s oath, as governed in Article 4 Law 2/2014 and also verified in Article 16 paragraph (1) letter f Law 2/2014. The presence of legal safeguards for the parties involved inside the deed is to safeguard the right to the confidentiality of information obtained from the deed. The existence of legal protection for the third party (community) with a case in question is if the deed made or the notary in carrying out his obligations violated the law and provisions of the legislation, then the photocopy of the Minuta Deed and/or the letters attached to Minuta. The Notary Deed or Protocol in the Notary’s storage is taken and the Notary concerned can be called.

The following is described in tabular form to make it easier for readers to understand the findings of the Essence of Article 66 law 2/2014 from the legal calendar process carried out.

**Table 1. The Result of Essence of Article 66 Law 2/2014 from the Legal Reasoning Process**

Number	Procedure	Result
1.	The content of Article 66 UU 2/2014	1) For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the authorized Notary Honorary Council: c. Take a photocopy of the Minuta Deed and/ or correspondence addressed to the Minuta Deed or

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		<p>Notary Protocol; and</p> <p>d. Call the Notary to appear at the review of the Notary Deed or Protocol in the Notary's possession.</p> <p>2) Taking photocopies of Minuta Deeds or letters as referred to in paragraph (1) letter a, an official report of submission is made.</p> <p>3) The Notary Honorary Council must respond within 30 (thirty) working days of receiving the request for approval referred to in paragraph (1) either accepting or rejecting the request.</p> <p>4) If the Notary Honorary Council does not respond within the time frame specified in paragraph (3), the application of authorization is considered to be received by the Notary Honorary Council.</p>
2.	Analysis of Article 66 UU 2/2014	<p>1) The investigator, public prosecutor, or judge can only a) request that a photocopy of the Minuta Deed and/or letters attached to the Minuta Deed or Notary Protocol be placed in the Notary's deposit, and b) call the Notary to appear at the Deed or Protocol</p>

		<p>inspection. Notaries who are only held in the custody of the Notary during a legal phase</p> <ol style="list-style-type: none"><li>2) In connection with a Notary calling, which must obtain permission from the Notary Honorary Council, only in the case of a Notary Deed or Protocol is in the Notary's Custody</li><li>3) Taking photocopies of Minuta Deeds or letters as referred to in paragraph (1) letter a, an official report of the submission is made.</li><li>4) It is indeed evident that application a) to take a photocopy of the Minuta Deed and/or the letters attached to Minuta Deed or Notary Protocol in the Notary's deposit and b) to call the Notary to be present at the review related to the Deed or Notary Protocol in the Notary's storage is centered on positive false theory.</li><li>5) There must be a compelling reason for the Honorary Council to refuse an application from investigators, public prosecutors, or judges to a) take a photocopy of the Minuta Deed and/or letters attached to the Minuta Deed or Notary Protocol in the Notary's custody, and b) call the Notary to be present</li></ol>
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		in the examination related to the Notary Deed or Protocol is in the Notary's custody.
3.	<i>Ratio legis</i> Article 66 UU 2/2014	<ol style="list-style-type: none"> <li>1) The authority conferred on the Notary Honorary Council through Article 66 Law 2/2014 is essentially a form of legal security for notaries and parties who render deeds relating to the confidentiality of notarial deeds.</li> <li>2) The existence of a positive fictitious concept is followed, as stated in Article 66 paragraph (4) Law 2/2014 in order to prevent the Notary Honorary Council from acting arbitrarily.</li> </ol>
4.	The essence of the Notary Honorary Council's authority, as defined in Article 66 Law 2/2014	The essence of the Notary Honorary Council's authority as defined in Article 66 paragraph Law 2/2014 is to provide legal security to Notaries, Parties who make deeds, and, of course, third parties (society) who are litigants.

## CONCLUSION

The classifications of crimes committed by notary whose examiner needs the Honorary Maejis' approval is linked to the notary deed or procedure in the notary's possession. The Notary Honorary Council's authority, as specified in Article 66 UU 2/2014 is to provide legal security to Notaries, Parties who make deeds, and, of course, third parties (society) who are litigants.

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