

Legal Implications of Examining Notarial Original of the Deed in Corruption Cases: Procedural Analysis and Barriers to Law Enforcement

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Abstract

This article aims to analyze the application of Article 36 of Law Number 31 of 1999 concerning the Original of the deed as evidence in corruption criminal cases and the legal implications if investigators fail to obtain permission from the Honorary Council of Notaries to examine the Original of the deed. This study employs a normative juridical research method, using both the statute approach and the conceptual approach. The legal materials consist of primary legal sources, which include Article 66 of Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notary and Article 36 of Law Number 31 of 1999 on the Eradication of Corruption Crimes, as well as secondary legal sources, including relevant publications related to the issues raised in this study. These legal materials are analyzed using a perspective analysis, employing grammatical and systematic interpretation methods. The research findings indicate that, based on Article 36 of Law Number 31 of 1999 on the Eradication of Corruption Crimes, which regulates investigations and prosecutions of corruption offenses, there is no legal certainty in its application due to the involvement of the Indonesian Prosecutor's Office and the Honorary Council of Notaries or sectoral ego within each institution. The legal implication of failing to grant investigators permission to examine the Original of the deed of the Honorary Council of Notaries is that it prevents the achievement of perfect proof, as the Original of the deed holds a perfect evidentiary value in proving the alleged corruption crime.

Keywords: *Criminal Act of Corruption; Legal Implications; Notary Honorary Council; Original of the deed*

INTRODUCTION

Indonesia is a nation that upholds the values of Pancasila, as well as other principles enshrined in the legal foundation of our state, namely the 1945 Constitution of the Republic of Indonesia (S, 2018). The principle of the rule of law ensures legal certainty, order, and protection, which are based on truth and justice. This legal certainty, order, and protection can be observed in the legal dynamics of societal life, as law plays a crucial role in all aspects of community life (Karsayuda et al., 2023). The meaning and purpose of societal life fundamentally revolve around achieving and seeking harmony, characterized by orderly and proper interactions among members of society. This creates an orderly social environment. To achieve such orderly social interactions, one of the essential steps that must be taken is the enforcement of legal order and certainty in all aspects of life in accordance with the agreed-upon legal norms and values (Harahap, 2008).

The function of law and law enforcement officers generally aims to create a harmonious relationship between the state and its citizens. The law enforced by each law enforcement officer must ensure legal certainty to achieve justice in societal life (Rumadan, 2017a). A notary, as one of the law enforcement officers, holds a central role in upholding the law in Indonesia in their capacity as a public official. The notary profession is considered a noble profession (*nobile officium*) because it is closely related to humanity. Deeds prepared by notaries can serve as the legal basis for the status of property, rights, and obligations of individuals. Errors in notarial

deeds can result in the deprivation of someone's rights or impose obligations on an individual (Salamah & Iriantoro, 2022).

A notary is a public official who plays a central role in ensuring the legality of legal acts conducted by the public through the preparation of authentic deeds (Adjie, 2008). In the Indonesian legal system, authentic deeds carry significant evidentiary value, both in civil disputes and in the criminal domain. However, challenges arise when notarial products, such as Original of the deed, are used as evidence in criminal cases, particularly in corruption cases (Simanjuntak, 2019). The role of a notary extends beyond the mere drafting of deeds and can potentially include involvement in investigations and inquiries conducted by law enforcement officers.

In corruption cases, Original of the deed often serve as a crucial source of evidence used to uncover the modus operandi of criminal acts. However, the process of examining these Original of the deed does not always proceed smoothly. One of the primary obstacles is the obligation for investigators to obtain permission from the Notary Honorary Council, as stipulated in Article 66 of Law Number 2 of 2014 concerning the Notary Position (UUJN). On the other hand, Article 36 of Law Number 31 of 1999 on the Eradication of Corruption Crimes mandates that anyone, including officials, required to maintain professional confidentiality, must provide the necessary information during legal proceedings.

The inconsistency between these two provisions often creates a legal dilemma for both investigators and notaries. This obstacle can lead to delays in the investigation process, thereby affecting the effectiveness of corruption eradication in Indonesia. The issue becomes even more pertinent amid public demands for fair and transparent law enforcement while maintaining the independence of the notary profession.

This study aims to analyze how Article 36 of Law Number 31 of 1999 is applied regarding Original of the deed as evidence in corruption cases. Additionally, it examines the legal implications if investigators fail to obtain permission from the Notary Honorary Council to examine the Original of the deed. The research objectives are to analyze the legality of using Original of the deed as evidence in corruption cases, the challenges faced by investigators in examining notarial Original of the deed, and the legal implications if the Notary Honorary Council denies the permission.

This study positions itself within the academic and practical debates concerning the relationship between the authority of the Notary Honorary Council and the necessity of criminal law enforcement in combating corruption. Previous studies have explored legal aspects related to the protection of the notary profession and the authority of the Notary Honorary Council, such as:

The first study, titled “Examination and Confiscation of Notarial Deeds for the Purpose of Criminal Law Enforcement without Approval from the Notary Honorary Council”, published in the *De Jure Journal*, examines the legal immunity of notaries in disclosing professional confidentiality without the approval of the Notary Honorary Council. The study concludes that law enforcement officials in criminal cases (police, prosecutors, and judges) may examine notaries under specific conditions, namely with special permission from the Chief of the local District Court, the consent of directly concerned parties, or approval from the Notary Honorary Council, as regulated under Article 43 of the Indonesian Criminal Procedure Code (KUHAP) in conjunction with Article 66 paragraph (1) of the UUJN. However, this study does not specifically address the context of corruption crimes (Saifulloh, 2022).

The second study, titled “The Authority Towards Minute’s Confiscation as Evidence in Criminal Cases”, presented as a thesis at Hasanuddin University, highlights the authority of the Notary Honorary Council in the confiscation of the Original of the deed as evidence in criminal cases. The findings reveal that the authority to seize Original of the deed and notarial protocols is regulated under Article 26 of the Minister of Law and Human Rights Regulation Number 7 of

2016, which outlines five requirements that must be met by investigators, prosecutors, and judges before conducting or ordering the confiscation of Original of the deed. If these five requirements are not fulfilled, the Notary Honorary Council will reject the request for confiscation. Since originals of the deed are prepared by notaries, notaries are expected to adhere strictly to the Notary Position Law, maintaining honesty and diligence to avoid future claims of unlawful conduct. This study focuses on the procedural aspects of confiscation without delving into its impact on the investigation of corruption cases (Ibrahim, 2020).

The third study, titled “Legal Protection for Notaries in the Investigation Process (A Study of Constitutional Court Decision Number 16/PUU-XVIII/2020)”, published in the *Indonesia Notary Journal*, evaluates the authority and limitations of the Notary Honorary Council in investigations based on Constitutional Court Decision Number 16/PUU-XVIII/2020. The findings indicate that the Constitutional Court's decision affirms the Notary Honorary Council's authority to approve or reject notary summonses, considering the urgency of the summons. The limitations on this authority are set out in Article 66 paragraphs (3) and (4) of Law Number 2 of 2014, which specify a maximum time frame for granting approval for such summonses. While this study provides a strong legal foundation, it does not specifically examine the role of Original of the deed in combating corruption (Priandhana, 2021).

Based on the above, this article offers a new contribution by integrating an analysis of the legality of Original of the deed as evidence in corruption cases and the implications for investigations if permission from the Notary Honorary Council is denied. Accordingly, this study aims to provide solutions to the conflict between legal protection for the notary profession and the need for law enforcement in corruption cases.

RESEARCH METHODS

This study adopts a normative juridical approach, focusing on written norms contained in legislation or norms prevailing in society (Marzuki, 2019). This approach is employed because the research emphasizes binding written legal norms, with an analysis specifically directed at Article 66 of Law Number 2 of 2014 concerning Amendments to Law Number 30 on the Notary Position and Article 36 of Law Number 31 of 1999 on the Eradication of Corruption. The study employs a Statute Approach, examining and analyzing legal regulations, particularly Article 66 of Law Number 2 of 2014 and Article 36 of Law Number 31 of 1999. In addition to the Statutory Approach, a Conceptual Approach is used, based on views and principles developed within the legal field. The legal materials utilized in this research consist of: Primary Legal Materials, including Law Number 2 of 2014 concerning Amendments to Law Number 30 on the Notary Position and Law Number 31 of 1999 on the Eradication of Corruption. Secondary Legal Materials, comprising relevant publications related to the issues raised by the author, such as journal articles, theses, news, and other printed or mass media sources. These legal materials are analyzed using a perspective analysis technique through Grammatical Interpretation and Systematic Interpretation (Sonata, 2015). This approach is expected to provide a comprehensive understanding of the application and legal implications related to the issues discussed in this study.

RESULT AND DISCUSSION

Original of the Deed as Evidence in Corruption Cases

Corruption is one of the most destructive crimes for the state and society. It typically occurs when individuals with power or authority abuse their positions for personal or group gain,

resulting in significant losses to both the state and society (Mahmud, 2020). In Indonesia, corruption offenses are clearly regulated under Law Number 31 of 1999, as amended by Law Number 20 of 2001, which prescribes strict penalties to create a deterrent effect. Corruption, encompassing bribery, embezzlement, extortion, and budget misappropriation, is highly detrimental as it undermines a country's economic, social, and governmental systems.

In alignment with this article's sub-topic, Article 36 of Law Number 31 of 1999 on the Eradication of Corruption mandates that “any person, including those bound by professional confidentiality, is required to provide relevant information or data in legal proceedings.” In this context, notarial Original of the deed can serve as crucial evidence for investigators to establish the occurrence of corruption offenses. However, the enforcement of this provision faces obstacles from Article 66 of the Notary Position Law (UUJN), which requires permission from the Notary Honorary Council before Original of the deed can be examined or confiscated. This creates a normative conflict between the provisions of the Corruption Law and the Notary Position Law, both of which are considered *lex specialis* (Hika Deriya Fajar Rizki Asril Putra, 2022).

Specifically, Original of the deed, which are legally valid instruments in the legal domain, can also be perceived as tools of crime in corruption offenses. These deeds, often containing official agreements or transactions, can be misused to harm the state or other parties when created for purposes of deviation or manipulation (Saifulloh, 2022). Notarial Original of the deed play a crucial role in the planning or execution of criminal acts, as they are official documents with strong evidentiary value. They may be used to record unlawful transactions or to legitimize transactions involving the illegal diversion of state funds (SALSABILA et al., 2018). The normative conflict between Article 36 of the Corruption Law and Article 66 of the UUJN creates loopholes that are often exploited to hinder investigative processes.

Original of the deed are often used in corruption cases involving public officials who create or sign a deed that does not comply with legal provisions. For example, if a public official falsifies a deed or uses it to conceal a corrupt transaction, the Original of the deed can become a critical piece of evidence. However, as previously mentioned, if these Original of the deed are to be seized, the provisions of the Notary Position Law (UUJN) do not allow for the direct confiscation of the Original of the deed. Instead, permission must first be obtained from the Notary Honorary Council, followed by a request for consent from the notary who created the Original of the deed. It is important to note that the notary also has the right to refuse, which is a duty they bear in their position, as well as the responsibility of maintaining public trust by keeping the content of the deed confidential from any party outside those involved in the deed. (Widhasani & Latumeten, 2022).

As a public official entrusted with safeguarding confidentiality, a notary is obligated to protect the secrecy of the Original of the deed. This obligation is clearly regulated under Article 66, paragraph (1) of the Notary Position Law, which stipulates: “For the benefit of investigators, public prosecutors, or judges, with the approval of the Regional Supervisory Council, they are authorized to: (a) take photocopies of the Original of the deed and/or documents attached to the Original of the deed or notarial protocols in the notary’s custody; and (b) summon the notary to appear for an examination related to the deed they created or the notarial protocol in the notary’s custody.” Therefore, to take photocopies of Original of the deed or documents attached to the Original of the deed and summon the notary for an examination regarding the deed they created, approval from the Notary Honorary Council, which can be through the Regional Supervisory Council, is required (Fara Difah et al., 2021).

In light of Article 39 of the Criminal Procedure Code, which regulates the authority of investigators regarding the seizure of evidence during an investigation, this article states that investigators may seize items suspected of being used in the commission of a crime or that are the result of a crime. The purpose of this seizure is to preserve evidence that may be used in legal

proceedings. The article reads: "Seizure of items used to commit a crime or items derived from a crime shall be conducted by the investigator with a valid order, and the items shall then be stored for the purposes of proof."

Based on the wording of the article, Original of the deed can be seized by investigators if the deed is involved in the crime being investigated. In the context of corruption offenses, Original of the deed can become part of the evidence used to strengthen the charges against the defendant, especially if the deed contains information showing illegal transactions or agreements. However, there are provisions regarding the seizure of Original of the deed in the investigation process, where Original of the deed can be considered legitimate evidence that can be seized by investigators for the purpose of proving the case in court. For instance, in a corruption case, the Original of the deed could record illicit fund transfers or transactions involving parties connected to the corruption. As evidence, the Original of the deed can serve as a basis for the prosecutor to prove that certain transactions or actions did indeed take place and have legal consequences. Therefore, the seizure of Original of the deed is an important step to ensure that the evidence is not lost or manipulated during the investigation and trial.

In this case, Article 39 of the Criminal Procedure Code (KUHAP) provides the legal basis for investigators to seize Original of the deed considered relevant to the criminal case being handled. This applies to both general criminal offenses and specific offenses, such as corruption. The seizure is carried out for the purpose of proof and to ensure that the deed related to the criminal offense is not lost or falsified by interested parties. Seizure can be conducted on deeds held by the notary, third parties, or individuals involved in the transaction recorded in the deed. Additionally, there are requirements that must be met for the seizure of Original of the deed. Seizure of Original of the deed cannot be carried out arbitrarily. Under Article 39 of the KUHAP, the seizure must be based on a valid seizure order issued by the investigator. This order must clearly detail the evidence to be seized, along with the reasons why the evidence is considered relevant to the investigation. The investigator must also demonstrate a connection between the Original of the deed to be seized and the criminal offense being investigated. Seizure of Original of the deed carried out arbitrarily or without a strong legal basis may risk violating the rights of the party who owns the deed, including property and privacy rights.

Furthermore, Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Position of Notaries (UUJN) also regulates the notary's obligation to maintain the confidentiality of the contents of the deed they create, including the Original of the deed (Junita Sari, 2022). However, in the context of criminal investigations, Article 66 of the UUJN provides an exception to this obligation, stating that Original of the deed may be taken or seized for the purposes of legal proceedings, particularly in criminal cases. In this regard, investigators must still respect the applicable legal procedures, including the obligation to seek approval from the Notary Honorary Council (Ardianta et al., 2023). The seizure of Original of the deed also involves the relevant parties, such as the notary or the party holding the deed. In this case, the notary or the party possessing the deed is required to grant access to the investigator to carry out the seizure, but must still adhere to the applicable legal provisions, especially concerning the confidentiality outlined in the UUJN.

The application of Article 36 of Law No. 31 of 1999, which relates to Original of the deed as evidence, can be concluded based on the provisions in Article 66(1) of the UUJN, which are mandatory, meaning they apply without exception in criminal cases, both general and specific. This article governs the approval that must be granted by the Notary Honorary Council before investigators, public prosecutors, or judges can examine Original of the deed or notarial protocols in the notary's custody. However, the author argues that in cases of specific crimes such as corruption, this provision should not be applied absolutely. This is because corruption is an extraordinary crime that has long undermined Indonesia's financial and legal systems, and thus it must be addressed with extraordinary measures. Corruption, as a crime closely related to

public interests, requires a faster and more efficient approach. Therefore, based on Article 36 of Law No. 31/1999 and Law No. 20/2001 on the Eradication of Corruption, the obligation to provide testimony also applies to those required to maintain confidentiality, including notaries.

In this case, the notary is required to provide testimony if needed in criminal cases, including corruption cases, without the need for approval from the Notary Honorary Council. Therefore, permission can only be granted with notification to the Notary Honorary Council, which has now been replaced by the Notary Honorary Council. This regulation demonstrates a conflict between the UUJN (Law on the Position of Notaries) and the Law on Eradication of Corruption, as both have different provisions regarding the examination of Original of the deed. Based on the principle of *lex specialis derogat legi generalis* (a specific law overrides a general law), the Law on Eradication of Corruption should take precedence, as corruption is an extraordinary crime that requires special handling. In this context, the Law on Eradication of Corruption contains more specific provisions related to the notary's obligation to provide testimony, while the UUJN is more general regarding the protection of the notary profession.

Based on these provisions, in the case of corruption crimes, the regulations under the Law on Eradication of Corruption are more relevant and should take precedence over the UUJN. This is particularly related to the obligation to provide testimony and the examination of Original of the deed by investigators or public prosecutors in the legal process. In this regard, the Notary Honorary Council does not have the authority to obstruct the examination conducted by law enforcement officials if it pertains to a corruption crime, as efforts to combat corruption require extraordinary measures. This can be seen as a form of legal disharmony that impacts the effectiveness of combating corruption. In a normative framework, the provisions of Article 36 should be implemented with priority given to public interest and law enforcement. Conversely, the protection provided by Article 66 of the UUJN should be revised or adjusted to ensure that the confidentiality of the notarial office does not become an obstacle in uncovering corruption crimes.

Legal Implications of Investigators Not Obtaining Approval for the Examination of Original of the deed from the Notary Honorary Council

Legal Implications When Approval for the Examination of Original of the deed is Not Granted by the Notary Honorary Council, When approval for the examination is not granted by the Notary Honorary Council, the investigator loses access to crucial evidence that could support the prosecution of a corruption case. This creates a risk of failing to prove the commission of a crime, even in the presence of strong indications. Normatively, this also contradicts the principle of legal certainty as stipulated in Article 36, which aims to ensure that all relevant parties contribute maximally to the legal process. In other words, if investigators are not granted permission by the the Notary Honorary Council to examine the Original of the deed in a criminal case, this may lead to a series of complex legal implications. Article 66 paragraph (1) of the Notary Office Law explicitly regulates that for the examination of Original of the deed stored by a notary in a criminal case, permission from the Notary Honorary Council is mandatory (Permanasari & Khisni, 2018). This provision is designed to protect the notary profession and maintain the confidentiality of information recorded in notarial deeds. This is particularly important as the notary profession is involved in the creation and storage of deeds that may carry significant legal value and are related to the privacy and confidentiality of the parties involved (Junita Sari, 2022).

However, in the context of corruption crimes, often referred to as extraordinary crimes, there is a different perspective regarding the application of this provision. Corruption not only undermines the country's financial aspects but also creates social injustice and erodes public trust in state institutions. Therefore, combating corruption requires faster and more decisive actions. In this regard, if the Notary Honorary Council refuses to grant permission to the investigator to examine the Original of the deed, the investigation process may face significant obstacles. The

inability to examine the deed that contains evidence related to the corruption crime could result in an inadequate investigation and delay the resolution of the case. Consequently, in practice, many argue that in corruption cases, the provision requiring permission from the Notary Honorary Council should be more flexible, given the importance of speed in handling major cases that involve public interests.

On the other hand, the applicable Criminal Procedure Law also provides clear provisions regarding the obligation of every individual to provide relevant testimony in the disclosure of criminal cases, including notaries. Article 36 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Corruption Crimes states that every person, without exception, including notaries, is obliged to provide testimony in criminal cases, even when the testimony contains confidential information. In this context, if the Notary Honorary Council refuses to grant permission to examine the Original of the deed, it could be seen as an obstruction to the legal obligation to provide the necessary testimony to uncover corruption crimes (Fidhira et al., 2021). This could potentially hinder the judicial process, ultimately leading to injustice for the parties harmed by corruption.

Furthermore, while the Notary Honorary Council plays a supervisory role in maintaining the integrity of the notary profession, in cases of corruption that harm the state and society, there is a higher legal principle that prioritizes the disclosure of the facts in the case. Article 22 of the Corruption Eradication Law clearly aims to facilitate the investigation and uncovering of corruption cases. If the Notary Honorary Council continues to refuse to grant permission, it could be considered an obstruction of justice, hindering the judicial process that should proceed without administrative barriers. Based on Article 21 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, any person who intentionally prevents or obstructs an investigation, prosecution, or examination of a criminal case, particularly in relation to corruption, may face criminal sanctions (Rumadan, 2017b). In this regard, although the Notary Honorary Council has the authority to grant permission, withholding such permission could lead to unlawful actions, as it may obstruct the process of uncovering crimes that harm the state.

If the Notary Honorary Council refuses to grant permission, investigators or public prosecutors still have an alternative option to proceed with the investigation, which is by filing a request with the court. In this case, the court has the authority to decide whether the investigator can continue the examination of the Original of the deed without waiting for permission from the Notary Honorary Council. The court, in this regard, serves to balance the protection of the notary profession and the public interest in criminal justice proceedings, especially in corruption cases. In this submission, the investigator must demonstrate the urgency and significant public interest underlying the need to examine the deed in order to uncover the corruption crime being investigated. Therefore, despite the obstruction from the Notary Honorary Council, the court can provide an adequate solution by granting permission for the examination or establishing policies more in line with the urgent legal needs in uncovering corruption cases.

Based on this, the refusal of permission for the examination of the Original of the deed by the Regional Supervisory Council can create significant obstacles in the investigation process, particularly in corruption cases. In this context, speed in legal proceedings is crucial to uncover the facts of crimes that harm the state and society. Therefore, the investigator or public prosecutor may take legal steps to submit a request to the court, which can decide that the examination may proceed even if permission from the Notary Honorary Council has not been obtained. This underscores the importance of flexibility in applying legal provisions related to the notary profession, particularly in the context of combating corruption, which requires swift and decisive actions to achieve justice. The refusal of permission to examine the Original of the deed by the Notary Honorary Council in corruption cases can create significant obstacles in the investigation process, potentially delaying the uncovering of legal facts and postponing justice. While there is a need to protect the integrity of the notary profession, in the context of extraordinary crimes

such as corruption, the public interest and the urgency to uncover crimes that harm the state must take precedence. Therefore, flexibility in the application of legal provisions, including providing an option for investigators to file a request with the court, becomes an essential step in ensuring that the legal process proceeds effectively, swiftly, and fairly.

CONCLUSION

Based on Article 36 of Law Number 31 of 1999 concerning the Eradication of Corruption, which regulates the investigation and prosecution of corruption offenses, it fails to provide legal certainty due to its implementation, particularly involving the Indonesian Attorney General's Office and the Notary Honorary Council, or sectoral ego within each institution. This creates a normative conflict between special laws (*lex specialis*), but when considering public interest, the eradication of corruption should take precedence, while still maintaining confidentiality among the parties involved in the creation of the Original of the deed by the notary. The legal implication of not granting permission to investigators to examine the Original of the deed by the Notary Honorary Council is that it would prevent the presentation of a complete proof, as Original of the deed possess full evidentiary value in proving the allegations of corruption. Therefore, there is a need for synergy between state institutions, including the police, the attorney general's office, and the notary honorary council. Additionally, flexibility in the application of legal provisions related to the notary profession is crucial, particularly in the context of corruption eradication, which requires swift and decisive action to achieve justice.

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