

Constitutionality of Approval of The Notary Honorary Council in The Process of Investigation of Criminal Actions: A Constitutional Disobedience

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ABSTRACT

Article 66 paragraph (1) of Law No. 2 of 2014 requires law enforcement officers to obtain approval from the Notary Honor Council in the process of investigating criminal cases involving notaries. This provision is criticized for failing to reflect the principle of equality before the law and is substantively similar to Article 66 paragraph (1) of Law No. 30 of 2004, which was annulled by Constitutional Court Decision No. 49/PUU-X/2012. The Constitutional Court has rejected challenges, citing the decision as an implementation of Constitutional Court Decision No. 49/PUU-X/2012, creating an apparent paradox. This normative legal research employs statutory, conceptual, and case approaches to address two issues: (1) the legal-political context of MKN approval arrangements in criminal investigations, and (2) whether requiring MKN approval constitutes constitutional disobedience. The study finds: (1) there has been a shift in legal policy regarding MKN approval, from requiring MPD (Regional Supervisory Council) permits, to not requiring permits, and back to requiring MKN approval under Article 66 of Law No. 2 of 2014, reinforced by Constitutional Court rulings; and (2) the revival of MKN approval authority under Article 66 of Law No. 2 of 2014 contradicts Constitutional Court Decision No. 49/PUU-X/2012, prolonging the pursuit of justice.

Keywords: constitutional disobedience; judicial review; the honorary council of notary; constitutional court; legal policy.

INTRODUCTION

In their book entitled *On Law, Politics, and Judicialization*, Martin Shapiro and Alec Stone states the importance of judicial review with the expression¹: *"The fact that judicial review managed to survive and even spread to more systems is important evidence of its functionality in the contemporary world. The court has successfully influenced the policy processes and outcomes of its polity."* Furthermore, Martin Shapiro and Alec Stone stated that judicial review plays a significant role in influencing the formation of public law policies.² This influence is in the framework of ensuring the enforcement of a country's rule of law principles is realized. Scott E. Lemieux and David J. Watkins explained that the judicial review contributes to democracy, namely, the success of advancing rights and minimizing domination which is a joint effort carried out by various institutions and political actors.³ This view of Lemieux and Watkins emphasizes that judicial review has constructive implications for protecting citizens' constitutional rights and preventing abuse of power.

One of the *judicial reviews* that were realized by the framers of the 1945 Constitution of the Republic of Indonesia was so important and must exist in Indonesia was a constitutional review

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¹ Martin Shapiro and Alec Stone Sweet, *On Law, Politics, and Judicialization*, Oxford, New York: 2002, p. 145.

² *Ibid.*

³ Scott E. Lemieux and David J. Watkins, "Counter Majoritarian Difficulty: Lessons from Contemporary Democratic Theory", *Polity Journal*, Vol. 41 No.1, January 2009, p. 62.

conducted by the Constitutional Court.⁴ This can be seen in the comprehensive text of the 1945 Constitution of the Republic of Indonesia: "The need for Law 2/2014 juncto Law 30/2004 to form a Constitutional Court in the 1945 Constitution is very important and urgent to uphold the *constitutionality of the law*." The existence of Constitutional Court's authority to review laws against the 1945 Constitution of the Republic of Indonesia, or it can also be called the constitutionality test of this law (UU), exists to ensure that the constitutional rights of the people remain protected. Therefore, one of the epithets of the Constitutional Court is "*The Guardian of Constitutional Rights*".⁵

One example of the Constitutional Court's decision that was declared unconstitutional, namely the Constitutional Court Decision No. 49/PUU-X/2012 and the article being tested by the applicant, is Article 66 paragraph (1) of Law Number 30 of 2004 concerning the Office of a Notary (UU 30/2004) which stipulates: "In the interest of the judicial process, investigators, public prosecutors, or a judge with the approval of the competent Regional Supervisory Council:

- a. Take a photocopy of the Minutes of the Deed and/or the letters attached to the Minutes of the Deed or the Notary Protocol in the Notary's safekeeping; And
- b. Summon the Notary to attend the examination relating to the deed he made or the Notary Protocol, which is in the Notary's custody".

According to the petitioners, the existence of the phrase: "with the approval of the Regional Supervisory Council" in this article is contrary to the principle of *equality before the law*, which is a constitutional right of citizens, as stipulated in Article 27 paragraph (1) and Article 28D paragraph (1) of the Constitution of the Republic of Indonesia 1945. On this request, the Constitutional Court stated that the phrase "with the approval of the Regional Supervisory Council" in Article 66 paragraph (1) of Law 30/2004 was contrary to the 1945 Constitution of the Republic of Indonesia with one of the main legal considerations of the panel of judges (*ratio decidendi*) of the Constitutional Court, namely the article contrary to the principle of *equality before the law* as stipulated in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.⁶

Over time, the Legislature conducted a *legislative review* of Law 30/2004 to become Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Concerning the Office of a Notary (UU 2/2014), but instead of including the substance contained in Constitutional Court Decision No. 49/PUU-X/2012, in fact, the legislators again included norms with a similar substance in Article

⁴ Berdasarkan Pasal 24 UUD NRI 1945, di Indonesia ada 2 (dua) klasifikasi *judicial review*, yaitu pengujian undang-undang terhadap peraturan di bawahnya yang dilakukan oleh Mahkamah Agung dan pengujian undang-undang terhadap undang-undang dasar oleh Mahkamah Konstitusi yang disebut juga *constitutional review*. Selengkapnya lihat Jimly Asshiddiqie, *Model-model Pengujian Konstitusional di Berbagai Negara*, Cetakan Pertama, Sinar Grafika, Jakarta: 2010.

⁵ Janedjri M. Gaffar, "Peran Putusan Mahkamah Konstitusi dalam Perlindungan Hak Asasi Manusia terkait Penyelenggaraan Pemilu", *Jurnal Konstitusi*, Vol. 10, No.1, March 2013, p. 12-14.

⁶ Septinierco Agraperta, "Anotasi Putusan Mahkamah Konstitusi Nomor 49/PUU-X/2012 Tentang Uji Materil Pasal 66 Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris", *Repertorium: Jurnal Ilmiah dan Kenotariatan*, Vol. 5, No. 1, May 2016, p. 149-51.

66 paragraph (1) of Law 30/2004.⁷ For this reason, Article 66 of Law 2/2014 is being tested again at the Constitutional Court, for example, seen in the case with registration number 22/PUU-XVII/2019 with the main argument that the substance of the article has been tested and related to the phrase 'with the approval of the Regional Supervisory Council' stated contrary to the 1945 Constitution of the Republic of Indonesia, but the Constitutional Court stated that it could not be accepted with the main argument that the changes and additions to the norms in the Notary Office Law were appropriate and did not conflict with the intent of the Constitutional Court's decision, as well as the addition of Article 66 namely paragraph (3) and paragraph (4) aims to avoid obstacles to investigation by the Notary Honorary Council (MKN).

The revival of arrangements related to the need for the approval of the Notary Honorary Council if it is necessary to photocopy the Minutes of the Deed and/or letters attached to the Minutes of the Deed or the Notary Protocol in the Notary's repository and to summon the Notary to attend the examination relating to the Deed or the Notary Protocol which is in the notary storage in the process of examining this crime even though it was stated by the Constitutional Court not to contradict the previous Constitutional Court Decision, of course, it raises legal issues related to the contradiction of Article 66 paragraph (1) Law 30/2014 with Constitutional Court Decision No. 49/PUU-X/2012, because when analyzed, although there are differences in institutions (formerly MPD, now a Notary Honorary Council), in substance, it is the same as Article 66 paragraph (1) of Law 30/2004 which requires an application to an institution first.⁸ In addition, regarding the Constitutional Court's argument in the Constitutional Court Decision Number 22/PUU-XVII/2019 regarding the existence of Article 66 paragraph (3) and 66 paragraph (4) of Law 2/2014 it is irrelevant because what is tested is related to "application for approval," not related to the "testing period." *Quod non* (even if true) the existence of Article 66 paragraph (3) and 66 paragraph (4) of Law 2/2014 is considered an article that aims to avoid obstacles to investigations by MKN, then that is, of course also irrelevant, because that period can still be allowed MKN to reject an application in the examination of a criminal case, which impedes a criminal process.

Based on the description above, it can be seen that of course, there is a dichotomy, namely, **the first** view, which considers that because there has been a Constitutional Court Decision, the approval of the Notary Honorary Council in the process of examining a criminal act is constitutional and **the second** view which considers that the approval arrangement of the Notary Honorary Council in the process of examining this crime is substantially the same as the Constitutional Court Decision No. 49/PUU-X/2012 so that by rearranging it is a form of non-compliance with the Constitutional Court Decision itself or also called by Louis Michael Seidman as *constitutional disobedience*.⁹ Based on the description of the background above, the formulation of the problem in this article is, **first**, how is the legal politics of regulating the approval of an honorary notary council in the criminal investigation

⁷ Edwar, Faisal A. Rani, Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau dari Konsep Equality Before the Law", *Jurnal Hukum & Pembangunan*, Vol.49, No. 1, March 2019, p. 181.

⁸ Jamin Ginting, Helfinsi Raportina, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 16/PUU-XVIII/2020 Terhadap Notaris Sebagai Saksi Dalam Kasus Pidana", *Law Review*, Vol. 21, No. 1, November 2021, p. 219-220.

⁹ Louis Michael Seidman, *On Constitutional Disobedience*, Oxford University Publishing, New York: 2012, p. 162.

process? **Second** is the approval of the honorary panel of notaries in the process of examining a criminal act constitutes a *constitutional disobedience*?

In this article, the author ensures that there is *novelty* being studied, so several similar articles will be described, and the differences will be explained in this article:

1. The article entitled "Authorities of the Notary Supervisory Council of Regions (MPD) in Oversight of the Notary Code of Ethics after the Constitutional Court Decision Number: 49/PUU-X/2012" written by Wahdan Ahnaf Al-Azizi et al. in Logic: Kuningan University Research Journal Vol. 13, No. 01, January 2022. The article's subject matter is normatively descriptive, outlining the duties and powers of the MKN based on Law 2/2014 to grant permits in terms of examinations related to minutes of deed, witnesses, and/or notary protocols in the notary's custody. The difference with this article describes **historically, normatively, and descriptively regarding the legal politics of regulating MKN approvals in the process of examining criminal acts, and it will be analyzed whether this is constitutional or not.**
2. The article entitled "Inconsistency in the Constitutional Court's Decision No. 49/PUU-X/2012 and MK Decision No. 22/PUU-XVII/2019 Regarding Notary Position Regulations" written by Yunita Mahendrawati in Acta Comitas: Journal of Notary Law Vol. 4 No. 3, December 2019. The main discussion of the article is the legal implications of the inconsistency of MK No.49/PUU-X/2012 and the Constitutional Court Decision No.22/PUU-XVII/2019 regarding the material review of Article 66 UUD and Article 66 UUD so that it can causing legal uncertainty and reducing public trust in the Constitutional Court of the Republic of Indonesia. The differences in this article are **historical, normative, and descriptive analysis related to the legal politics of setting the approval of the notary council of honor in the process of examining criminal acts, and this article describes 2 (two) solutions that can be carried out based on the *tempus* in perfecting to achieve *das sollen*, namely from the short term and long term in connection with the process of examining criminal acts so that they do not become a constitutional disobedience policy.**

METHODS

The research used doctrinal (*normative*) legal research with the main focus on systematically analyzing the application of certain regulations, analyzing the relationship between rules, explaining and studying legal issues accompanied by an argumentation/legal consideration made by law enforcement and an interpretation of the enactment of the law.¹⁰ Normative (doctrinal) legal research aims to provide a structured explanation of a particular set of norms to then examine the correlation between norms or legal provisions, which allows future legal developments to be carried

¹⁰ M.V. Hoecke, *Legal Doctrine: Which Method(S) for What Kind of Discipline?*, Oxford: Hart Publishing, 2011, p.4.

out.¹¹ The types of data used were: (1) Primary data, namely obtained from laws and court decisions; (2) Secondary data, obtained from library materials still relevant to this research. From these data will be obtained the results of analysis using deductive logic analysis techniques.¹²

DISCUSSION

Legal Politics Arrangements for the Approval of the Notary Honorary Council in the Process of Investigating a Criminal Act

Etymologically, the term legal politics is a Dutch legal term, namely *rechtspolitiek* which is formed from 2 (two) words, namely *recht* and *politiek*.¹³ As for before independence, religious elements in Indonesian law appeared in customary law and legal politics of the Dutch East Indies government.¹⁴ However, in his development, Isharyanto explained that legal politics is a series of concepts, principles, basic policies, and statements of the will of state authorities in which the politics of law formation, law determination politics, and implementation politics, as well as law enforcement, are contained therein. Which concerns the function of the institution and the development of law enforcers in determining the direction, form, and content of the law to be formed, the law that applies in its territory, and regarding the direction of development of the law that is built and to achieve the goals of the state.¹⁵ One theory that has developed in the field of legislation is *legisprudence*, which incidentally seeks to balance politics and law. The legislative process is considered to be very complex, and this is because, in addition to formulating norms to be poured into a legal text by the authorities, it also reaches the participation of socio-political forces, so this is what is stated in the process is very broad.¹⁶

Legal politics is a discipline of law that regulates how to change *ius constitutum* (positive law) to *ius constituendum* (new law).¹⁷ Legal politics gives birth to positive legal products such as decisions (*beschikking*) or regulations (*regeling*) made by authorized state administration agencies or officials or those who obtain mandates or delegates from authorities entitled to issue these legal products. In essence, the positive law that is born must go through stages of testing and harmonization based on legal principles by considering social phenomena, community rights, and previously applicable legal rules so that they can provide benefits and there is no overlap. In line with Pancasila and the 1945

¹¹ David Tan, "Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi dalam Menyelenggarakan Penelitian Hukum", *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, Vol. 8, No. 8, 2021, p. 2469.

¹² Philipus M. Hadjon dan Tatiek Sri Djatmiati, *Argumentasi Hukum*, Cetakan Ketujuh, Yogyakarta: Gadjah Mada University Press 2016, p. 22-24.

¹³ Cecep Cahya Superna, "Analisis Historis Tentang Pembaharuan Politik Hukum Nasional Indonesia di Awal Era Reformasi", *Moderat: Jurnal Ilmiah Ilmu Pemerintahan*, Vol. 5, No. 4, 2019, p. 552.

¹⁴ Bagir Manan, Ali Abdurahman, and Mei Susanto, "Pembangunan Hukum Nasional yang Religius: Konsepsi dan Tantangan dalam Negara Berdasarkan Pancasila", *Jurnal Bina Mulia Hukum*, Vol. 5, No. 2, March 2021, p. 184

¹⁵ Isharyanto, *Politik Hukum*, Cetakan Pertama, Surakarta: CV Kekata Group, 2016, p. 11.

¹⁶ M. Ilham F. Putuhena, "Politik Hukum Perundang-Undangan dalam Upaya Meningkatkan Kualitas Produk Legislasi", *Jurnal Rechtsvinding*, Vol.1, No. 3, December 2012, p. 351-352.

¹⁷ Mia Kusuma Fitriana, "Peranan Politik hukum dalam Pembentukan Peraturan Perundang-Undangan di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara", *Jurnal Legislasi Indonesia*, Vol. 12, No. 2, June 2015, p. 24.

Constitution of the Republic of Indonesia, legal politics has a big contribution to achieving the goals of the state.¹⁸

The process of forming laws and regulations is regulated in Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation through approval of the President and the House of Representatives. Furthermore, reviewing the Law (UU) against the 1945 Constitution of the Republic of Indonesia (*constitutional review*) is a form of the authority of the Constitutional Court as stipulated in the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law as a reflection of the *negative role of the legislator*, namely removing or canceling norms.¹⁹ The public has the right to submit a request for material or formal review of the law to the Constitutional Court with the touchstone of the 1945 Constitution of the Republic of Indonesia. Materials subject to judicial review in the Constitutional Court are verses, articles, and/or parts of the law against the 1945 Constitution of the Republic of Indonesia to prove whether there is a conflict in the material of a law is against the 1945 Constitution of the Republic of Indonesia.²⁰

A law can give certain authorities to state officials, this is necessary as a basis for officials to carry out their authorities and obligations, according to the principle of *legaliteit beginsel*.²¹ As Law 30/2004 stipulates that a notary as a public official has the authority to make authentic deeds and other obligations attached to a notary, namely guaranteeing the certainty of the date of doing the deed, keeping the deed, providing Grosse, copies, and excerpts of the deed (as long as the making of the deed is not delegated to other officials or other people stipulated by law).

The authority of a notary requires supervision carried out by the judiciary and the government, not only for the benefit of the notary but also considering the presence of the community being served.²² Since the promulgation of Law 30/2004, the MPD has carried out direct supervision within the scope of the notary profession to administer and examine administrative protocols and alleged violations of the notary's code of ethics as stipulated in Articles 68-70 of Law 30/2004. If you look at the provisions of Article 66 of Law 30/2004, the MPD also has special authority, namely to approve

¹⁸ Faizal Kurniawan *et.al.*, "The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia", *Lex Scientia Law Review*, Vol. 6, No. 1, June 2022, p. 127.

¹⁹ Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah dengan Undang-Undang Nomor 8 Tahun 2011 tentang Perubahan Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, Undang-Undang Nomor 1 Tahun 2013 Tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi Menjadi Undang-Undang, dan Undang-Undang Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (UU Mahkamah Konstitusi), selebihnya lihat Xavier Nugraha, Risdiana Izzaty, Alya Anira, "Constitutional Review di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 48/PUU-IX/2011: Dari Negative Legislator Menjadi Positive Legislator", *RechIdee*, Vol. 15, No.1, June 2020, p. 2.

²⁰ Sopiani and Zainal Mubaroq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan", *Jurnal Legislasi Indonesia*, Vol. 17, No.2, June 2020, p. 152.

²¹ Ivan Zairani Lisi *et.al.*, "The Nature of Criminal Responsibility on Distribution Policy of Social Assistance Awarding for the Society in East Kalimantan", *Journal of Law, Policy and Globalization*, Vol. 30, No.1, 2017, p. 33.

²² Ria Trisnomurti dan I Gusti Bagus Suryawan, "Tugas dan Fungsi Majelis Pengawas Daerah dalam Menyelenggarakan Pengawasan, Pemeriksaan, dan Penjatuhan Sanksi Terhadap Notaris", *Jurnal Notariil*, Vol. 2, No. 2, November 2017, p. 128.

connection with the need for requests for evidence in the judicial process, which is considered overpowering. The results of this MPD examination are in the form of a decree stating whether to give or refuse the request of the investigator, public prosecutor, or judge. The difficulty in maintaining objectivity arises because some members of the MPD are also notaries, which can lead to the emergence of *esprit de corps* which is a sense of professional solidarity that may influence decisions in a non-objective manner. Therefore, the decision-making process in examining a notary may become less impartial and more influenced by internal interests rather than purely objective legal considerations.

This process is likely to be highly biased, as producing a fair, cooperative, and transparent hearing is potentially difficult. The qualifications of a notary to examine a notary who is suspected of committing a crime as an object of examination allows, in the end, to participate in or assist in the occurrence of a crime²³ and the potential conflict of interest potentially arise. Ultimately, this could lead to a situation where MPD members who are also notaries participate in or even assist in the commission of a crime, further blurring the line between legal enforcement and professional interests.

Regarding the regulation of the authority to issue approvals/permits by the MPD, Article 66 paragraph (1) of Law 30/2004 was submitted for a judicial review to the Constitutional Court for the first time in 2012 (*vide* Constitutional Court Decision No. 49/PUU-X/2012) due to losses and the problem experienced by the applicant in the investigation process in connection with the alleged crime of making false statements into an authentic deed. The investigators did not obtain approval from the MPD, even though in the investigation process, they needed to hear the notary's testimony as the witness who did the authentic deed, which contained false information. In this position, the applicant feels that his constitutional rights have been impaired.

According to the author, the phrase "with the approval of the Regional Supervisory Board" does not need to be applied to guarantee certainty, order, and legal protection. Examination of Notary Deeds, Notaries, Experts/Witnesses, and Suspects involved in a Criminal Act is sufficient with an MKN notification/notification (formerly MPD). In order to be able to recover the constitutional losses suffered by the Petitioner and make it possible for other justice-seeking citizens, the phrase "with the approval of the Regional Supervisory Board" Article 66 paragraph (1) of Law 30/2004 by the Court was declared contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia so that it does not have binding legal force/is declared repealed. Considering that the law enforcement process at all stages must be treated equally before the public and pay attention to the principle of independence, upon implementing this MPD agreement, a process of upholding justice will be protracted and lead to a denial of justice itself; *Justice delayed justice denied*.

After the ratification of Law 3/2014, looking back at Article 66, which had been conducted a *judicial review* by the Constitutional Court, the Legislators instead heeded the decision of the

²³ Dwikky Bagus Wibisono dan Umar Ma'ruf, "Peranan Majelis Pengawas Daerah (MPD) Terhadap Pengawasan Pelaksanaan Jabatan Notaris di Kabupaten Tegal", *Jurnal Akta*, Vol. 5, No. 1, March 2018, p.184.

Constitutional Court to amend Article 66 paragraph (1); as Article 10 paragraph (2) of Law Number 12 of 2011 confirms that the follow-up to the Constitutional Court's decision is carried out by the House of Representatives or the President, meaning that both the legislature and the executive must heed the Constitutional Court's decision in the form of laws or other regulations; but instead reiterates the sound of the article which is similar to Law 30/2004 and adds 2 (two) paragraphs as follows:

Table 1. Differences in Article 66 before and after the amendment

Before (Law 30/2004)	After (Law 2/2014)
Article 66 paragraph (1) <i>In the interests of the judicial process, investigators, public prosecutors, or judges, with the approval of the Regional Supervisory Council, have the authority to: ...</i>	Article 66 paragraph (1) <i>In the interests of the judicial process, investigators, public prosecutors, or judges, with the approval of the Honorary Council of Notaries, are authorized to: ...</i>
It hasn't been set	Article 66 paragraph (3) <i>Honorary Council of Notaries, within a maximum period of 30 (thirty) working days from the receipt of the request for approval as referred to in paragraph (1), shall provide an answer accepting or rejecting the request for approval.</i>
It hasn't been set	Article 66 paragraph (4) <i>In the event that the Honorary Council of Notaries does not respond within the period referred to in paragraph (3), the Honorary Council of Notaries shall be deemed to have accepted the request for approval.</i>

Source: Law no. 2/2014 and Law no. 30/2004

If the Constitutional Court has issued a decision declaring to abolish/cancel the norm, then it becomes the right and authority of the legislature to revise the law. The legislature, namely the House of Representatives, will study the relevant Constitutional Court decisions to be re-incorporated into legislation or not included because of the *ratio decidendi* and the rulings of Constitutional Court judges' decisions. Logically, the nature of Constitutional Court decisions in influencing other legislation is very strong. The decision of the new Constitutional Court must later be in sync with the previous decision.²⁴

The issue of incompatibility of Article 66 (1) Law 2/2014 with the Constitutional Court's decision No. 49/PUU-X/2012, which was petitioned for review again on 18 July 2014 (*vide* Constitutional Court Decision No. 72/PUU-XII/2014). Whereas the applicant is an Advocate who realizes that the substance of Article 66 paragraph (1) after the amendment is still the same as before the amendment, and the addition of paragraphs (3) and (4) contain differences in treatment that contradict the principle of equal protection as guaranteed by Article 27 paragraph (1) and Article 28 paragraph (3) of the 1945

²⁴ Mukhlis *et al*, "Kekuatan Hukum Putusan Mahkamah Konstitusi Terhadap Pencabutan Larangan Keterlibatan Mantan Narapidana Sebagai Pejabat Publik", *Syah Kuala Law Journal*, Vol. 3, No. 2, August 2019, p. 275-278.

Constitution of the Republic of Indonesia; then it must be declared contrary to the 1945 Constitution of the Republic of Indonesia so that it does not have binding law. The *ratio legis* of the existence of Article 66 of the Notary Office Law is an effort to enforce the implementation of the obligation to refuse and the right to refuse a Notary; this becomes the standard for the legal protection of a Notary, so the Court stated that the *quo petition* could not be accepted because the applicant did not have legal standing to file the application.

In 2019 another application was filed (*vide* Constitutional Court's Decision No. 22/PUU-XVII/2019) with a different touchstone, in which the applicant stated that he had suffered material and immaterial losses due to irregularities and misuse of a fake blank deed of sale and purchase of land rights and deed sale and purchase made by a Notary, and the application of Article 66 paragraph (1) and paragraph (4) ultimately has an impact on the investigation process which is not in accordance.²⁵ The Attorney General's Office considered that there were irregularities in the investigation process into this case because the Notary Honorary Council (MKN) in the area had concluded (through a letter of response) that a crime had been committed, whereby through these answers, MKN had stepped over and taken over the role of *dominus litis/prosecutor* law enforcement²⁶, as well as the role of the judge in determining the material truth of the crime being handled. The case has not yet been examined in a trial process open to the public to reveal material truth. Due to MKN's refusal to summon a Notary as a witness, neither the Investigators nor the Prosecutor's Office can make any efforts.

Changing the phrase MPD to MKN in paragraph (1) is not a solution, so it must still be declared unconstitutional, and the addition of Article 66 paragraph (3) and paragraph (4) is irrelevant because the positive fictitious concept has been regulated in the Administration Law, the substance of the phrase "honorary assembly of notaries is deemed to have received a request for approval" is *redundancy*. The *ratio decidendi* in the Constitutional Court Decision No. 22/PUU-XVII/2019, Notary Honorary Council (MKN) approval is considered to facilitate the investigation process or the need to examine a notary because this has been anticipated and confirmed by the provisions of Article 66 paragraph (3) and paragraph (4). This affirmation is intended to provide protection to notaries as public officials in carrying out their duties, in particular to protect the existence of the minuta (in this case, the contents of the minuta) as a confidential state document.²⁷ Even though the Court knew that a similar article had previously been carried out in a *judicial review* in 2012, it still confidently stated that the changes and additional norms in Law 2/2014 were appropriate and did not conflict

²⁵ Pemohon mengajukan permohonan praperadilan atas diterbitkannya surat ketetapan penghentian penyidikan (SP3), namun permohonan tersebut ditolak berdasarkan Putusan Praperadilan. Tidak ada lagi upaya yang dapat ditempuh oleh pemohon untuk meninjau kembali putusan praperadilan tersebut berdasarkan Pasal 45A ayat (2) UU Mahkamah Agung mengenai larangan kasasi terhadap putusan praperadilan dan Perma No. 4 Tahun 2016 tentang Larangan Peninjauan Kembali Terhadap Praperadilan.

²⁶ Dedy Chandra Sihombing *et al*, "Penguatan Kewenangan Jaksa Selaku Dominus Litis sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif", *Locus: Jurnal Konsep Ilmu Hukum*, Vol. 2, No. 1, April 2022, p.3.

²⁷ Tirta Arista Kumara, "Menilai Kedudukan Hukum Saksi instrumenter sebagai Saksi Akta Notaris di Pengadilan", *Jurnal Hukum dan Kenotariatan*, Vol. 6, No. 2, May 2022, p. 827.

with the intent of the Constitutional Court's decision. As a result, the judge stated that the application could not be accepted because it had no legal basis.

One year later, another *judicial review* was carried out (vide MK Decision No. 16/PUU-XVIII/2020, in essence, the Court stated that the quo petition could not be accepted. Meanwhile, one of the considerations was that it examined the same constitutionality issues as the previous Decision in 2019. The norm in the phrase "with the approval of the Notary Honorary Council (MKN)" is not to complicate the investigation process or the need to examine a notary, and with the addition of Article 66 paragraph (3) and paragraph (4) will create fair legal certainty against the limits of MKN's authority to approve investigators, public prosecutors, and judges when summoning a notary or examining other documents for judicial purposes, remember the Court's *ratio decidendi*.

Table 2. Flow of Judicial Review Article 66 of the Notary Office Law

Constitutional Court Decision No. 49/PUU-X/2012 (Law No. 30 of 2004 concerning the Position of Notary)	
<p>Material Test: Article 66 paragraph (1) of Law No.30/2004 concerning the authority of the MPD in granting permission or not for a deed to be examined by investigators and/or the presence of a notary as a witness in a criminal act.</p> <p>Test Stone: 1) Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; And 2) Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.</p>	<p>Judge's Decision</p> <ul style="list-style-type: none"> - Stating the phrase "with the approval of the Regional Supervisory Council" in Article 66 paragraph (1) of Law no. 30/2004 contradicts the 1945 Constitution of the Republic of Indonesia; - Stating the phrase "with the approval of the Regional Supervisory Council" in Article 66 paragraph (1) of Law no. 30/2004 does not have binding legal force.
Constitutional Court Decision No. 72/PUU-XII/2014 (Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary)	
<p>Material Test: Article 66 paragraph (1) of Law No.30/2004 and Article 66 paragraph (3) and paragraph (4) of Law No.2/2014 concerning the affirmation of protecting notaries as public officials in carrying out their duties, in particular protecting the existence of minuta as documents secret country.</p> <p>Test Stone: 1) Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 2) Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; And 3) Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia;</p>	<p>Judge's Decision</p> <ul style="list-style-type: none"> - Declare the Petitioner's application is unacceptable. <p>Notes: The Constitutional Court concluded that the Petitioner did not have <i>legal standing</i>, and the subject matter of the petition was not considered.</p>

Constitutional Court Decision No. 22/PUU-XVII/2019

<p><i>Material Test:</i> Article 66 paragraph (1), paragraph (4) of Law No.2/2014; Article 75 letter a, Article 79 juncto UU 30/2004</p> <p><i>Test Stone:</i></p> <ol style="list-style-type: none"> 1) Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 2) Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 3) Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia; And 4) Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia 	<p>Judge's Decision</p> <ul style="list-style-type: none"> - Declare that the Petitioner's application is unacceptable; - Rejecting the Petitioner's application for other than the rest. <p>Notes:</p> <ol style="list-style-type: none"> 1. The Constitutional Court concluded that the Applicant lacked legal standing to submit the petition. Furthermore, the Applicant's petition concerning Articles 66(1) and 66(3) of the Notary Position Law was deemed legally unfounded. 2. The author has only reviewed Article 66 (1) and its additions, namely paragraphs (3) and (4) of the Notary Office Law, which is still a continuation of the Constitutional Court Decision No. 72/PUU-XII/2014.
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Constitutional Court Decision No. 16/PUU-XVIII/2020

<p>Material Test: Article 66 paragraph (1) Law 2/2014 in conjunction with Law 30/2004</p> <p>Test Stone:</p> <ol style="list-style-type: none"> 1) Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia; 2) Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 3) Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 4) Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia 	<p>Judge's Decision</p> <ul style="list-style-type: none"> - Petitioner I, Petitioner III, Petitioner IV and Petitioner V have no legal standing to file the a quo petition; - Petitioner II has a legal standing so that he can submit the a quo petition; - The legal considerations in Case Number 22/PUU-VXII/2019 apply mutatis mutandis to the a quo petition; - The principal of the petition is groundless according to law. <p>Notes:</p> <p>The Constitutional Court concludes that the Petitioner does not have <i>legal standing</i> to submit the petition, the Petitioner's petition concerning the Law on Judicial Powers and Article 75 letter a and Article 79 of the Notary Office Law is <i>obscuur</i>, the Petitioner's petition relates to Article 66 paragraph (1) and paragraph (3) The Law on the Position of Notary Public is groundless according to law.</p>
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Source: Constitutional Court Decision No. 49/PUU-X/2012, MK Decision No. 72/PUU-XII/2014, Constitutional Court Decision No. 22/PUU-XVII/2019, and Constitutional Court Decision No. 16/PUU-XVIII/2020

Changes in the ratio *decidendi* of the Court as an authorized official in examining norms in Article 66 paragraph (1) as well as the additions, namely Article 66 paragraph (3) and paragraph (4) in Law 2/2014, shows that in a series of processes the establishment of legal systems and instruments

will be enforced in In Indonesia there is the influence of various political factors, at this moment the will of the Notary as a public official who has the authority from the government to certify authentic deeds can influence the direction of the policies of the drafters/formers of laws and other law enforcement agencies. Through this study of legal politics, it becomes one way to understand how a rule of law that will be enforced (in this case, the Notary Office Law and the Constitutional Court Decision) can all achieve the goals of the state as mandated by the 1945 Constitution of the Republic of Indonesia.

Approval of the Notary Honorary Council in the Process of Investigating Criminal Acts as a Form of Constitutional Disobedience

The constitution is basically the embodiment of the ideas and ideals of the nationality of a nation.²⁸ The existence of the Constitutional Court has an important meaning in the administration of state administration in Indonesia because it is a state institution that functionally functions as the guardian of the constitution in Indonesia so that it is run fully and responsibly.²⁹ The authority of the Constitutional Court is regulated in Article 24 C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia and is further specifically derived in Article 10 of the Constitutional Court Law as follows:

- a. Examine the Act against the 1945 Constitution of the Republic of Indonesia;
- b. Deciding disputes over the authority of state institutions whose powers are granted by the 1945 Constitution of the Republic of Indonesia
- c. Deciding the dissolution of political parties;
- d. Deciding disputes about election results.
- e. The Constitutional Court is obligated to render a decision on the Opinion of the DPR that the President and Vice President are suspected of having violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or no longer fulfill the requirements as President and/or Vice President as referred to in the 1945 Constitution of the Republic of Indonesia.

According to Jimly Asshiddiqie, the authority to examine the constitutionality of laws is the most important authority of the Constitutional Court.³⁰ This happens because our Constitution has been amended four times, so the function of reviewing laws cannot be avoided from its application in the Indonesian constitutional system under the 1945 Constitution.³¹ The decision of the

²⁸ Franko Johner, Indra Perwira, and Susi Dwi H., "Negara Bangsa Pos Kolonial sebagai Basis dalam Menentukan Identitas Konstitusi Indonesia: Studi Terhadap Undang-Undang Dasar 1945", *Jurnal Bina Mulia Hukum*, Vol. 2, No.2, March 2018, p.139.

²⁹ Xavier Nugraha *et.al.*, "An Analysis of The Offense of Unpleasant Action in Article 335 Paragraph (1) of The Indonesian Criminal Code", *Jurnal Hukum Vollkgeist*, Vol. 5, No. 2, May 2021, p. 153.

³⁰ Jimly Asshiddiqie, "Mahkamah Konstitusi dan Pengujian Undang-Undang", *Jurnal Hukum*, Vol. 11, No. 27, September 2004, p. 2-3.

³¹ *Ibid.*

Constitutional Court is final and binding, as stated in Article 10 (1) of the Constitutional Court Law so that no legal action can be taken after the Constitutional Court reads out its decision in court.³²

As an institution carrying out the duties and functions of upholding the values of the Indonesian constitution, it is appropriate that every decision of the Constitutional Court must be obeyed and implemented by the parties related to the decision, including the obedience of all elements of the nation to the decision. Because building loyalty and obedience to the Constitution can be done by obeying the Constitutional Court Ruling.³³ A contrario, disobedience to the Constitutional Court's decision, is seen as a form of disloyalty and defiance against the Constitution itself, known as constitutional disobedience. Acts of defiance against the Constitutional Court's decision (constitutional disobedience) occur when the party being responded to in a case decided by the Constitutional Court, both in reviewing a law against the 1945 Constitution of the Republic of Indonesia, as well as in other disputes that fall under the authority of the constitutional court, disobeys the Constitutional Court's decision by disobeying and not implementing the said decision. The rationale for this arises because the Constitutional Court functionally carries out the task of upholding constitutional values as contained in the 1945 Constitution of the Republic of Indonesia so that decisions issued by the Constitutional Court are a reflection of the ongoing constitution.³⁴ Acts of defiance of the Constitutional Court's decision will result in a situation and constitutional condition that collapses systemically because the Constitutional Court's decision is meant to uphold the values of the Indonesian constitution and is binding and final from the moment the decision is read.³⁵ Thus, defiance of the Constitutional Court's decision means defiance of the constitution itself (constitution disobedience), unless the Constitutional Court presents new grounds or circumstances that would justify the annulment of the prior ruling..

The form of constitutional disobedience occurs in Constitutional Court Decision No. 49/PUU-X/2012. In the ruling, the Court decided to grant the request in its entirety that Article 66 paragraph (1) of Law 30/2004 was unconstitutional because the phrase "with the approval of the Regional Supervisory Council" was considered contrary to the principle of equality before the law as stipulated in Article 27 paragraph (1) and Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and is declared to have no binding legal force. After the Constitutional Court Decision No. 49/PUU-X/2012, law enforcement officials no longer need to submit applications and wait for MPD approval to summon a notary and take photocopies of minuta deed and documents attached, which are in the Notary's custody. Law enforcement officers can write letters to the Notary concerned by sending a copy to the MPD.

³² Gede Aditya Pratama, Nina Zainab, and Heru Siswanto, "Legal Remedies Againsts Bankruptcy Decision Following Constitutional Court Decision No 23/PUU-XIX/2021, *Jurnal Bina Mulia Hukum*, Vol. 7, No. 2, March 2023, p. 223

³³ Novendri M. Nggilu, "Menggagas Saksi atas Tindakan *Constitution Disobedience* terhadap Putusan Mahkamah Konstitusi", *Jurnal Konstitusi*, Vol. 16, No. 1, March 2019, p. 51.

³⁴ Fajar Laksono Soeroso, "Pembangkangan terhadap Putusan Mahkamah Konstitusi", *Jurnal Yudisial*, Vol. 6, No. 3, December 2013, p. 237.

³⁵ Fajar Laksono *et al.*, "Implikasi dan Implementasi Putusan Mahkamah Konstitusi Nomor 5/PUU-X/2012 tentang SBI atau RSBI", *Jurnal Konstitusi*, Vol. 10, No. 4, November 2013, p. 733.

Defiance occurred after the abolishment of the MPD's authority; the Ministry of Law and Human Rights formed a new institution which was also regulated in Law 2/2014. In this law, the MPD's authority was revived through Article 66 paragraph (1) of Law 2/2014 by establishing an MKN with the same authority as the MPD. In this case, the Government is considered as if it "tricked" the decision by changing the name from MPD to MKN, which functionally, the duties of MKN are the same as those of MPD but only added a time limit for MKN to provide answers to requests by law enforcement officials maximum 30 days. The authority of the MPD and MKN are equally an obstacle for law enforcement officials when carrying out their duties and authority to uphold the law in criminal cases.³⁶

MKN's authority in Article 66 of Law 2/2014 gives rise to dualism; that is, from the point of view of those who disagree with this authority, they consider that MKN's authority is contrary to the principle of judicial independence. It is as if the MKN acts as a judge who can determine that the actions of a notary are not criminal acts. Ironically, the MKN decision is final, without any other legal remedies like the judicial process in general, namely appeal and cassation. MKN has once again been transformed into an institution of impunity for notaries. That's why MKN can release or exclude a notary who is suspected of committing a crime or simply being a witness by taking refuge under the auspices of MKN so that he can avoid the legal obligations inherent to every citizen.³⁷ The existence of MKN approval arrangements is considered to hamper the performance of law enforcement officials and also other parties who feel disadvantaged as a result of the actions of the notary. In practice, the application of Article 66 of Law 2/2014 is considered not uniform.

MKN implements several practices with regard to requests for inspections or documents from authorized authorities: **firstly**, it is not uncommon for MKN to refuse any request by investigators to examine a notary related to a deed made by a notary. **Secondly**, some MKNs grant investigators' requests to examine a notary. **Thirdly**, MKN looks at the main problem first, then considers this before deciding on an application for a Notary examination permit by the Investigator.³⁸ If this is allowed, then law enforcement officials will continue to experience problems in carrying out their obligations, and the sense of justice and legal certainty will not be fulfilled for the parties who feel harmed by the actions of unscrupulous notaries.

On the other hand, the view that agrees with the provisions of Article 66 Law 2/2014 is **first**, and the article reflects the protection of the Notary's position. The position of Notary is an honorable position given by the State through laws to people he trusts, considering that the position of Notary cannot be placed in the executive, legislative, or judicial institutions. The profession of a notary is prone to dealing with legal issues because his work is always in the shadows and vortex of disputes

³⁶ I Made Sena dan I Wayan Novy Purwanto, "Inkonsistensi Putusan Mahkamah Konstitusi Dalam Membatalkan Majelis Pengawas Daerah Dan Majelis Kehormatan Notaris", *Jurnal Kertha Semaya*, Vol. 9, No. 8, 2021, p. 1284.

³⁷ Reda Manthovani, 2020, "Membedah Arah Uji Materiil UU Jabatan Notaris", <https://www.hukumonline.com/berita/a/membedah-arrah-uji-materiil-uu-jabatan-notaris-lt5ef18a492da0c>, (accessed on 28 March 2023).

³⁸ Hendry Julian Noor, "Pasal 66 Ayat (1) Undang-Undang Jabatan Notaris dan Tindak Pidana Korupsi", *Jurnal Komunikasi Hukum*, Vol. 2, No.1, February 2016, p. 22-23.

between the parties. It can be seen in various civil cases in court, where notaries are often on the side of the defendant or co-defendant. As a position that has important duties and functions to guarantee legal certainty and order in the legal system in Indonesia, a notary needs to receive legal protection as a form of respect for the position of a notary, not a notary as an individual.³⁹

Second, the legal product produced by a notary is in the form of a notary deed which incidentally is an authentic deed, namely a deed drawn up in the form determined by law by or before public officials who have the power to do so, at the place where the deed was made (*vide* Article 1868 *Burgerlijk Wetboek*). The notary deed has strong legal force in proof because the perfection of the notary deed as evidence must be seen as it is, and does not need to be assessed or interpreted otherwise, other than what is written in the deed.⁴⁰ In doing an authentic deed, a notary is required to be careful and thorough in accordance with the data provided by his appearers, bearing in mind that the responsibility of a notary as a public official is very large and binding for the rest of his life.⁴¹ Judging from the viewpoint above, the Law categorizes notarial deeds as state archives and places notaries as public officials so that in carrying out their practice, notaries must receive legal protection because after the Constitutional Court Decision No. 49/PUU-X/2012 the procedures used to examine notaries either as witnesses or suspects with the approval of the MPD are no longer valid. As a result, there is no protection for a notary as a public official authorized to do authentic deeds because investigators can summon a notary at any time for examination. Even though the Minuta of the Notary Deed is part of the Notary Protocol as a state document, the Notary has an obligation to keep everything confidential about the deed he has made.⁴²

According to the author, the revival of MKN's authority in giving approval based on Article 66 of Law 2/2014 shows constitutional disobedience has occurred. In reality, not all Constitutional court decisions are followed up by formal amendments to laws. Even though the Constitutional Court's decision has binding legal force, if it is based on the principle of legality, law enforcers will still base their actions on the applicable law, not on the Constitutional Court's decision.⁴³ Thus, concerning Article 66 of Law 2/2014, there are 2 ((two) suggestions that the Author can give based on the time of submission, namely the **first** for the short term so that a *judicial review* can be submitted again to the Constitutional Court using a different constitutional benchmark (UUD NRI 1945) than in the previous decision. **Second**, for the long term, the author provides suggestions for doing a legislative review (change in the law by the executive and legislative body) of the provisions of Article 66 paragraph (1) of Law 2/2014. As a middle road solution related to the existence of MKN as an

³⁹ Sriwati, "Problematika Penerapan Pasal 66 Undang-Undang Jabatan Notaris terhadap Penegakan Hukum Pidana", *Jurnal Reformasi Hukum*, Vol. XXVI, No. 1, January-June 2022, p. 70-72.

⁴⁰ Komang Ayu Septianingsih and I Nyoman Putu Budiarta, "Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata", *Jurnal Analogi Hukum*, Vol. 2, No. 3, 2020, p. 337-338.

⁴¹ Felix The, and Endang Sri Kawuryan, "Perlindungan Hukum Atas Kriminalisasi Terhadap Notaris", *Al-Daulah: Jurnal Hukum dan Perundangan Islam*, Vol. 7, No. 2, October 2017, p. 468.

⁴² Jayanti Puspitaningrum, "Konstitusionalitas Jabatan Notaris dan Persetujuan Majelis Kehormatan Notaris dalam Pemeriksaan Notaris", *Legal Pluralism*, Vol. 11, No. 1, January 2021, p. 13-14.

⁴³ Widiati Wulandari *et al*, "Putusan Mahkamah Konstitusi: Dampaknya terhadap Perubahan Undang-Undang dan Penegakan Hukum Pidana", *Jurnal Konstitusi*, Vol. 18, No. 3, September 2021, p. 4.

institution that supervises notaries, the main substance is that in carrying out examinations of notaries, law enforcement officials only need to provide notifications/ notifications to MKN.

This is because if permission is requested from MKN, it implies that MKN, as an institution, holds a position of authority superior to that of the Police, thereby creating an impression that MKN plays a role in the criminal process. This would undermine the role of MKN as an ethical oversight body and blur the line between its function in regulating the professional conduct of notaries and involvement in criminal proceedings. Such a situation could lead to potential conflicts of interest and confusion regarding the jurisdictional boundaries of law enforcement and professional regulatory bodies, which could ultimately hinder the proper enforcement of the law and compromise the independence of both the criminal justice system and the professional ethical standards for notarie

Then, if formally the notification meets the requirements, the MKN is obliged to give approval to law enforcement officials to be able to conduct an examination, and legal remedies can be taken against the MKN's decision so that, in this case, the MKN does not become an institution of impunity for the notary profession. Furthermore, it is hoped that there will be rules governing sanctions against constitutional disobedience because if a decision of the Constitutional Court does not have clear legal consequences, it will have an impact, namely the decision of the Constitutional Court has no authority and seems to make the law lose its essence, as something that must be obeyed by society.⁴⁴

For example, in the future, of the sanctions for constitutional disobedience for constitutional judge is dismissal. This will be imposed by the Honorary Council of the Constitutional Court. The regulation governing this can be found either in the law or in the Constitutional Court's internal regulations. The essence of law as something that must be respected parallels the opinion of Neculai Bobica:⁴⁵ *"dura lex, sed lex is precisely the saying invoked for the observance of the law in a state law. What this saying implies is that even though it may be tough the law must be respected because it is just and fair. Therefore, this saying may be completed in the following way: Dura lex, sed justa est."*

CLOSING

The legal politics underlying the regulation requiring approval from the Notary Honorary Council (Majelis Kehormatan Notaris, MKN) in the criminal investigation process reflects a regressive legislative trajectory. Despite the Constitutional Court Decision No. 49/PUU-X/2012 annulling a similar provision that required prior approval from the Regional Supervisory Council (Majelis Pengawas Daerah, MPD), the legislature reintroduced a substantively identical requirement under Article 66 paragraph (1) of Law No. 2 of 2014. This legislative revival undermines the principle of constitutional supremacy and reveals a legal-political orientation that privileges institutional

⁴⁴ Anna Triningsih, Achmad Edi Subiyanto, and Nurhayati, "Kesadaran Berkonstitusi bagi Penegak Hukum terhadap Putusan Mahkamah Konstitusi sebagai Upaya Menjaga Kewibawaan Peradilan", *Jurnal Konstitusi*, Vol. 18, No. 4, December 2021, p. 7-8.

⁴⁵ Neculai Bobica, "The State Law and the Multi-Party System", *Acta Universitatis Danubius Juridica*, Vol. 6, No. 3, November 2010, p. 9-10.

protection of the notarial profession over the broader interests of justice, legal certainty, and equality before the law in criminal proceedings.

The requirement for MKN approval in the investigation of notaries constitutes a form of constitutional disobedience. While the institutional nomenclature has changed—from MPD to MKN—the substantive function remains the same, thereby directly contravening the Constitutional Court’s earlier ruling. This provision violates the principle of equality before the law as enshrined in Articles 27(1) and 28D(1) of the 1945 Constitution of the Republic of Indonesia, and effectively obstructs law enforcement efforts by introducing undue procedural barriers. In doing so, it opens space for impunity and erodes public confidence in the rule of law.

To resolve the constitutional issue embedded in Article 66 paragraph (1) of Law No. 2 of 2014, this study proposes two concrete and operationally actionable measures. First, in the short term, a new constitutional review should be filed with the Constitutional Court, employing different constitutional benchmarks than those previously used—such as the principles of judicial independence, due process of law, and the right to access justice. This strategy must be carefully structured to avoid procedural obstacles such as lack of legal standing or rejection based on the principle of *res judicata*. Second, in the long term, a legislative review is necessary to amend the problematic provision by replacing the phrase “with the approval of the Notary Honorary Council” with “upon notification to the Notary Honorary Council.” Under this revised framework, the role of MKN would be strictly administrative and informational, rather than adjudicative or obstructive. Furthermore, once a notification satisfies formal requirements, MKN should be legally obliged to facilitate the investigative process, and its decisions should be subject to judicial remedies. Such reforms are essential to ensure that the Council does not become an instrument of impunity for the notarial profession and that the law remains aligned with constitutional mandates and the rule of law.

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