

IMPLICATIONS OF THE CONSTITUTIONAL COURT'S DECISION NUMBER 16/PUU-XVIII/2020 ON LEGAL PROTECTION FOR NOTARY POSITIONS

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Abstract: Starting from the Judicial Review submission by the Indonesian Prosecutor's Association as applicant I, and applicant II, III, IV, V who are prosecutors in this case related to Article 66 paragraph (1) which is a request for judicial review to the Constitutional Court. The Petitioners think that Article 66 paragraph (1) in this case is related to the approval of the Notary Honorary Council regarding the deed it has made, or the summons of a Notary, has eliminated constitutional rights in the law enforcement process. Prior to the amendment to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, there was also Decision Number 49/PUU-X/2014 which granted the abolition of Article 66 paragraph (1) regarding the Approval of the Regional Supervisory Council in the event that Notary summons. However, after the amendment to the Law, the phrase "with approval" again appeared, but it became the authority of the Notary Honorary Council which became a problem, because the decision afterwards was rejected by the Constitutional Court.

Key Words: Implication, Notary, Constitutional Court, Legal Protection.

1. INTRODUCTION:

The Constitutional Court (MK) is an institution whose existence greatly influences Indonesia's state administration. This opinion is supported by the fact that several decisions of the Constitutional Court have created political and constitutional "shaking" which often becomes a discourse.[1] As one of the institutions holding judicial power, the Constitutional Court is tasked with protecting constitutional values which are often ignored by state administrators. The application which was submitted under Article 66 paragraph (1) of Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning the Position of Notary (UJUN-P) for material review was made several times and was rejected by the Constitutional Court. First, the Constitutional Court Decision Number 72/PUU-XII/2014 The applicant is an advocate, with his petition stating that the phrase "with the approval of the Notary Honorary Council", paragraph (3) and paragraph (4) of the UJUN-P contradicts the 1945 Constitution and has no binding legal force. Then, the decision of the Constitutional Court with a statement if the application cannot be accepted with the consideration that the Petitioner does not have a legal standing so that it cannot be considered.

2. THEORITICAL FRAMEWORK:

- a. Justice Theory
Theory of Legal Certainty
According to Gustav Radbruch justice and legal certainty are fixed parts of the law.[2]
- b. Theory Legal Protection
According to Philipus M Hadjon legal protection is about the dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness.[3]

3. LITERATURE REVIEW:

The position of the Constitutional Court is at the same level as the Supreme Court as an independent Judicial Power in the Indonesian constitutional system. In exercising its authority, which includes reviewing laws against the Constitution, the Constitutional Court also interprets the constitution so that the Constitutional Court is referred to as *The Sole Interpreter of the Constitution*. The existence of the Constitutional Court is understood as a constitutional guardian to strengthen the basics of constitutionalism in the 1945 Constitution. Notaries are institutions in society and arise because of the need for community members who carry out legal actions that require the strongest evidence to prove. Departing from these reasons, community members need a notary to make an authentic deed.[4]

5. **METHOD:** The method used in this research is a normative juridical approach, namely through a legal approach and a conceptual approach.

6. DISCUSSION:

The Constitutional Court is tasked with protecting the public from "reckless" legislative and executive actions in carrying out the constitutional mandate. So far, *judicial review* of laws is often submitted to the Constitutional Court rather than the other Courts' powers. In addition, the Constitutional Court has the authority to decide *impeachment*, authority disputes between state institutions, election disputes and the dissolution of political parties.[5] The position of the Constitutional Court is at the same level as the Supreme Court as an independent Judicial Power in the Indonesian constitutional system. In exercising its authority, which includes reviewing laws against the Constitution, the Constitutional Court also interprets the constitution so that the Constitutional Court is referred to as *The Sole Interpreter of the Constitution*. The existence of the Constitutional Court is understood as a guardian of the constitution to strengthen the basics of constitutionalism in the 1945 Constitution.

7. ANALYSIS:

A. Legal Considerations of the Constitutional Court Regarding the Decision of the Constitutional Court Number 16/Puu-Xviii/2020 Regarding *Judicial Review* Article 66 Paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary

The petitioner's argument has no legal basis. According to Mr. Muhidin, in Decision Number 16/PUU-XVIII/2020 dated June 23, 2020, it was stated that the consideration of Decision Number 22/PUU-XVII/2019 was *mutatis mutandis* due to the same constitutional issues, so based on this the application was groundless according to law. Thus, the decision stated that the applications of Petitioners I, III, IV, V could not be accepted and rejected the Application of Petitioners II for other than that and the rest.

B. Implications of the Decision of the Constitutional Court Number 16/Puu-Xviii/2020 on Legal Protection for Notary Positions

With the existence of Article 66 paragraph (1) of the UUDN-P, it automatically makes law enforcers in this case have the obligation to ask permission from the Notary Honorary Council (MKN). Notary Honorary Council is a body that has the authority to carry out Notary development and the obligation to give approval or rejection for the purposes of the investigation and judicial process, for taking a photocopy of the minutes of the deed and summoning a Notary to attend an examination related to the deed or Notary Protocol which is in the Notary's custody. . Not long after the changes to the law regarding the position of a Notary, someone has submitted a *Judicial Review* of the law.

8. CONCLUSION :

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The consideration of the judges of the Constitutional Court in Decision Number 16/PUU-XVIII/2020 rejected the petition of the Petitioners.
- 2) The decision of the Constitutional Court Number 16/PUU-XVIII/2020 has implications for the UUDN-P to become stronger, with implications for law enforcement or for parties who object to Article 66 paragraph (1) of the UUDN-P. The existence of a decision Number 16/PUU-XVIII/2020 resulted in the Petitioner or those who are related to the rules of Article 66 paragraph (1) UUDN-P must comply with the rules that have been set. The Constitutional Court assessed that in Decision Number 16/PUU-VXIII/2020 there was a lack of understanding from law enforcement regarding the urgency of Article 66 paragraph (1), including the authority of the Notary Honorary Council.

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