

## Constitutionality of Freedom of Association Notary Organization in Indonesia

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### ABSTRACT

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This research was motivated by the Law Test to the Constitutional Court, namely the test of the Notary Office Law (UUJN), especially Article 82 regarding Notary Organizations, the petitioners asked for a quo test because the provision has limited the freedom of association for Notaries to form Notary professional organizations. This restriction is considered to have violated the human rights of Notaries, especially the rights to association, assembly, and expression of opinions as the constitutional guarantee referred to is affirmed in the Constitution of the Republic of Indonesia Year 1945 (UUD 1945). The existence of the Indonesian Notary Association (INI) as the only Notary professional organization was further strengthened after passing constitutional review in the Constitutional Court. The Constitutional Judge in Constitutional Court Decision Number 009-014 / PUU-III / 2005 and reaffirmed by Constitutional Court Decision Number 63 / PUU-XII / 2014 that the Constitutional Court decision is an organization of the Indonesian Notary Association that is recognized for its existence, but also that its ruling that dissolves organizations other than the Indonesian Notary Association, thus the existence of INI as the only single notary organization regulated in the UUJN does not contradict the 1945 Constitution. Instead of being impressed as an attempt to ignore the value of Human Rights (HAM), Freedom in Notary organizations is only based on ethical freedom which refers to the good or bad of an action measured by the extent to which it provides protection for freedom and expansion of capabilities, which in this case is the capability in carrying out its profession as a Notary and Single Container is a must.

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## 1. INTRODUCTION

Notaries in carrying out their profession have been regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN). UUJN is a norm that is deliberately made to regulate Notaries in terms of what is required and what things are prohibited, as well as control the duties and authorities of Notaries in carrying out their positions such as Notary work areas, Notary leave, to rules regarding Notary organizations.

The Indonesian Notary Association (INI) is a Notary organization that is known so far. This is even explicitly regulated in Article 82 paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. The article stipulates that:

*"The Notary Organization, referred to in paragraph (1), is the Indonesian Notary Association."*

The only recognized organization is INI, founded on July 1, 1908, as a legal entity. The INI organization functions to reduce the occurrence of violations committed by Notaries in the implementation of their duties and positions, so it is necessary to have a Notary organization as a Notary forum to issue their aspirations related to the role of Notary. With the presence of a Notary organization, violations can be minimized because Notaries carry out their positions and exchange information about actions that may or may not be done while exercising their authority.<sup>1</sup>

The polemic that arises is that there is more than one Notary organization that exists, namely the Indonesian Notary Association (HNI), the Reform Notary Association (PERNORI), and the Indonesian Notary Association (ANI), which are considered as a counterpoint to this. This

leads to social conflicts between them and restrictions on freedom of association for notaries to form a notary professional organization.

The consequence of the above is that in carrying out supervision over the code of ethics, the Notary Public authorized is the INI organization. Control of the Notary profession applies to enforcing legal rules for Notaries. The goal is that Notaries do as much as possible and do not violate the requirements that the UUJN and the code of ethics for the Notary Office have stipulated. The supervision mechanism of the profession as a Notary is regulated in laws and regulations and is one aspect that must be considered and implemented in supervising the admission.<sup>2</sup>

The Constitutional Court, as a State Institution, is the fulcrum of public expectations that want improvements in law enforcement. The Constitutional Court has proven to be a *reliable and honored* legal institution in Indonesia. This can be verified by the many decisions of the Constitutional Court that are very progressive and can be a legal reference for accelerating reform in Indonesia. Some findings of the Constitutional Court contain monumental and fundamental decisions in upholding the Constitution of the Republic of Indonesia Year 1945 (UUD 1945), where the decision in question is commonly referred to as a *landmark decision*. The authority of the Constitutional Court is *strict* in that it is authorized to test laws against the Constitution (*constitutional review*).

The constitutionality test, in its implementation in Indonesia and various countries, is based on a *legal standing* that the law tested has harmed the constitutional rights and authority of constitutional review applicants, which is first formulated as "rights and authorities," where constitutional

<sup>1</sup>Ida Ayu Kade Rienda Cintya Dewi, *Notary Membership in the Indonesian Notary Association: Mandatory Vs Voluntary*, Journal of Notarial Law Acta Comitas, Vol. 03, Number 02 October 2018.

<sup>2</sup>Stephanie and Endang Pandamdari, "The Role of the Indonesian Notary Association (INI) on Notary Supervision in the Implementation of Notary Office

Duties in DKI Jakarta Province", *Adigama Law Journal*, 2018, p. 6.

<sup>3</sup>See in Book Drafting Team, *Landmark Decision of the Constitutional Court 2014-2016*, Registrar and General Secretariat of the Constitutional Court, Jakarta, 2017, p. viii.

authority is more related to the power of state institutions that are also entitled to request constitutional *review* Against the law if a law is judged to be contrary to the Constitution, and secondly that constitutional rights are closer to guaranteeing the protection of human rights for citizens. In the context of the relationship between the protection of citizens' constitutional rights and the Constitutional Court, constitutional rights are interpreted to mean rights guaranteed or contained in the 1945 Constitution. In a broader sense, these constitutional rights include human rights and the constitutional rights of citizens. The birth of the Constitutional Court after the ratification of the <sup>456</sup>1945 Constitution, a third amendment, has a role not only as the guardian of the Constitution and the final interpreter of the Constitution but also as the guardian of *democracy*, the *protector of the citizen's constitutional rights* Sera is the protector of human *rights*.<sup>7</sup>This is a consequence of the supremacy of the Constitution as the highest law that regulates the administration of the state based on democratic principles.<sup>8</sup>

Law Number 30 of 2004 concerning Notary Positions is even "aged" one year since its promulgation (October 6, 2004). For the first time, a party submits an application (March 7, 2005) to test the law and *a quo* to the Constitutional Court, even the application for review both formally and materially. Where the application *a quo* has been resolved as referred to in Constitutional Court Decision Number 009-014 / PUU-III / 2005.<sup>9</sup>*The constitutional review* is specifically in Article 82 paragraph (1) regarding the organization of the Notary and reaffirmed in Constitutional Court Decision Number 63 / PUU-XII / 2014.

<sup>4</sup> Ida Ayu Kade Rienda Cintya Dewi, *Loc Cit.*

<sup>5</sup>According to the Black Law Dictionary 7 edition, p. 307 means "A *Right Guaranteed by a constitution*". The term is also interpreted by Abdul Mukthie Fadjar, *Constitutional Law and Constitutional Court*, (Jakarta, KonPress, 2006, p. 140.

<sup>6</sup>Jimly Asshiddiqie, *Towards a Democratic State of Law*, Jakarta, Secretariat General and Registrar of the Constitutional Court, 2008, pp. 547-548.

<sup>7</sup>The Constitutional Court of the Republic of Indonesia, *Towards a Modern & Reliable Judiciary*, in

The provisions of Article 82 paragraph (1) of Law Number 30 of 2004 seem to force all Notaries to gather in one organizational forum. Still, there is not a single word in Law Number 30 of 2004, both in the articles and in its explanation, that mentions notary organization forums to allow the existence of Notary who gather in various organizational meetings Notary, which will undoubtedly bring consequences to the code of ethics that applies to each of its members.

Then, in 2014, after the promulgation of Law Number 2 of 2014 concerning Amendments to Law Number 2 of 2004 concerning Notary Positions (UUJN), it turned out that there were parties who submitted an application dated June 9, 2014, testing the law to *the* Constitutional Court. Where *the application for a quo* has been resolved as referred to in Constitutional Court Decision Number 63 / PUU-XII / 2014, the constitutional test is especially the provisions in Article 82 paragraph (1), section (2), and paragraph (3), that the only recognized Notary organization is INI, as contained in Article 82, namely:

1. Notaries gather in one Notary Organization;
2. The Notary Organization, as referred to in paragraph (1), is the Indonesian Notary Association;
3. The Notary Organization, as referred to in paragraph (1), is the only free and independent Notary professional forum formed to improve the quality of the Notary profession.

The above applications were resolved to the Constitutional Court regarding Notary organizations they applied for because the provision has restricted the freedom of

Annual Report of the Constitutional Court of the Republic of Indonesia, Secretariat General of the Constitutional Court, Jakarta, 2006, p. 28.

<sup>8</sup> Jimly Asshiddiqie, *Heading Country... Op.Cit*, p.478.

<sup>9</sup>Iskandar Muda, *Legal Logic of Constitutional Court Decisions Regarding the Constitutional Test of Notary Office Law*, Constitutional Journal, Vol. 17, No. 2, June 2020.

association for Notaries to form Notary professional organizations and join organizations other than INI. This restriction is considered to have violated the human rights of Notaries, especially the rights to association, assembly, and expression of opinions, as the constitutional guarantee is especially emphasized by the provisions in Article 28E verse (3) of the 1945 Constitution, which reads as follows: "10everyone has the right to freedom of association, assembly, and expression."

It is also affirmed in Article 24 of Law Number 39 of 1999 concerning Human Rights (Human Rights Law) that:

- (1) Everyone has the right to assemble, express, and associate for peaceful purposes;
- (2) Every citizen or community group has the right to establish a political party, non-governmental organization, or other organization to participate in the running of government and state administration in line with the demands for the protection, enforcement, and promotion of human rights by the provisions of laws and regulations.

Such principles, both affirmed in the 1945 Constitution and the Human Rights Law, directly and unequivocally guarantee freedom of association, assembly, and expression), not only for every Indonesian citizen, but also for everyone, including foreigners in Indonesia. Until the existence of the Constitutional Court Decision Number 009-014 / PUU-III / 2005 and the reaffirmation of the Constitutional Court Decision Number 63 / PUU-XII / 2014, the existence of INI as the only Notary organization was further strengthened after passing the application for *the constitutional review* in question.

Based on the treatment received by the petitioners, namely from individual Notaries and members of Notary associations other than INI (non-INI), the petitioners feel aggrieved by the closure of the opportunity

for the Petitioners to establish a Notary Organization forum as a manifestation of the right to freedom of association and assembly which is their constitutional right as an Indonesian citizen.

Based on the background described above, the author limits the scope of research with the following problem formulation:

1. How is the Regulation of Notary Organization in Indonesia?
2. What is the meaning of the constitutional right to freedom of association for the Indonesian Notary Association organization as a single forum?

## 2. METHODS

The type of research used in writing this thesis is in the form of juridical-normative legal research for the procedure for collecting these research sources, namely using literature that uses qualitative analysis and approach methods in the form of historical approaches, legislative approaches, and conceptual approaches (conceptual approach) applied because it identifies existing principles with the problems of Notary Organizations namely INI as an organization that uses a single container as regulated in UUJN.

## 3. RESULTS AND DISCUSSION

### 3.1 *The Existence of Notary Organization Arrangements in Indonesia*

The Dutch notarial law, the result of the "refinement" of the French law, was not adopted into Indonesian law when the Dutch colonized Indonesia. Instead, what applies is the old rules used by the Dutch before being colonized by France. Only in 1860, regulations that were "in line" with Dutch notary regulations (*Notarywet*) came into effect with the issuance of the Notary Department Regulation (PJN) on July 1, 1860. So, when analyzed, the notarial law that applies in Indonesia now used to come from the French notarial regulations in force in the

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<sup>10</sup>The Constitutional Court of the Republic of Indonesia, *Considers Violation of Freedom of Association, Single Container of Notary Organization Sued*, Retrieved

June 13, 2022, at 16:12 WIB, <https://www.mkri.id/index.php?page=web.Berita&id=10143#>

Netherlands, which were later perfected. The Notary Office Regulations are *copies* of the articles in *Notary Public* in detail in the Netherlands.<sup>11</sup>

After Indonesia's independence on August 17, 1945, the government did not immediately develop a new regulatory concept related to the existence of Notaries in Indonesia. The presence of Notaries in Indonesia is still recognized based on the provisions of Article 2 of the Transitional Rules (AP) of the 1945 Constitution, namely, "all existing laws and regulations remain in force as long as no new ones have been held according to this Constitution." Based on the provisions in Article 2 of the Transitional Rules (AP) of the 1945 Constitution, the *Reglement op Het Notary Arnbt in Nederlands Indie* (Stbl. 1860: 3) remains in effect, so that the Notary Office Regulation in force since 1860 continues to be used as the only law regulating notarial affairs in Indonesia until 2004, while in various aspects the regulation notary position is no longer by the times. Compared to its parent regulation, the Notary Public has changed several times to adjust to legal and business developments in the Netherlands. Hence, changes to the Notary Law regulations are inevitable.<sup>12</sup>

The Regulation of Notary Law is still colonial and not well codified. Hence, the code of Notaries in the aforementioned laws and regulations is no longer by the development and legal needs of the Indonesian people. Therefore, it is necessary to update and reorganize thoroughly one law that regulates the position of Notary so that a legal unification can be created that applies to all residents in all regions of the Republic of Indonesia. To realize the merger of law in the field of notary office, Law Number 30 of 2004 concerning Notary Positions was formed, where the law *a quo*<sup>13</sup> consists of 13 chapters and 92 articles, which was promulgated on

October 6, 2004, and entered into force on the date of postponement. In the law, a *quo* is regulated in detail about the general position held by a Notary, so it is expected that an authentic deed made by or before a Notary Public can guarantee certainty, order, and legal protection.<sup>14</sup>

According to Ghansham Anand in his book, *Characteristics of Notaries Position in Indonesia*, it has been explained that professionals are grouped in an organization according to the expertise of the branch of science mastered. A professional group is a *moral community* that has shared values. Professional groups have their own powers and unique responsibilities. As a profession, this group has a reference called the professional code of ethics.<sup>15</sup>

Abdulkadir Muhammad argued that the profession of law includes Notary, who are qualified professionals who have mastered law in Indonesia, can analyze legal problems in society, can use the law as a means to solve concrete issues wisely, based on legal principles, master the scientific basis to develop legal and legal science, recognize and are sensitive to mass justice and social problems.<sup>16</sup>

Article 1 number 5 of the Amendment Law states that a notary Organization is a notary office professional organization in the form of a legal entity. Then, notary professional organizations are also regulated in Article 82 of the Amendment Law and 83 of the UUJN, which reads:

Article 82 of the Amendment Law reads:

1. Notaries gather in one notary organization.
2. The notary organization, as referred to in paragraph (1), is the Indonesian Notary Association.
3. The notary organization, as referred to in paragraph (1), is the only free and independent notary professional forum

<sup>11</sup> *Ibid.*

<sup>12</sup> A.A. Andi Prajitno I, *Practical Knowledge of What and Who is Notary in Indonesia according to UUJN Number 2 of 2014*, Media Officer Nusantaram Surabaya, 2015, pp. 13-14.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Ghansham Adnan, *Characteristics of Notary Offices in Indonesia*, Zifatama Jawara, Sidoarjo: 2014, pp.13-14.

<sup>16</sup> *Ibid.*

formed to improve the quality of the notary profession.

4. Provisions regarding the objectives, duties, authorities, work procedures, and organizational structure are stipulated in the Articles of Association and Bylaws of notary organizations.
5. Ministerial Regulation regulates provisions regarding notary organizations' establishment, guidance, and supervision. Article 83 of the UUJN reads:
  1. Notary organizations establish and enforce the Notary Code of Ethics.
  2. Notary organizations have a register book of members, copies of which are submitted to the Minister and the Supervisory Council.

The provisions of Article 82 of the Amendment Law have affirmed that the notary organization forums INI and is the only free and independent organization that aims to improve the quality of the notary organization.

This is progress, where Article 82 of the UUJN does not affirm the name of the single entity of professional organizations, only obliges the N to gather in a single forum, but the substance of the article is interpreted to mean that Article 82 paragraph (1) of the UUJN intends to refer to the discussion of professional organizations Notary which has existed so far, namely INI.

In a written statement from the House of Representatives of the Republic of Indonesia (DPR) to the Constitutional Court in the case mentioned above, it was affirmed that the provision of a notary organization as in the conditions of Article 82 paragraph (1) of the UUJN in principle is to create certainty and legal order in the Notary organization itself, so that in its implementation facilitate administrative arrangements in terms of appointment of a person to be a notary (Article 2 and Article 3), dismissal of a notary (Articles 8, 9, 10, 12, 13, and 14), provision of Notary leave (Article 11, Articles 25 to Article 32), and placement and formation of notaries in one territory (Article 18 to Article 24).

In addition to the things mentioned above, with the existence of a Notary

organization forum, the community of Notary service users can also be legally protected (in the form of *punishment* against Notary who commit violations) because of the supervision and enforcement by one organization Notary, which becomes complicated when there is more than one notary organization. Therefore, Article 1 paragraph (5) *junto* Article 82 paragraph (1) does not contradict the principle of *Bhineka Tunggal Ika* contained in Article 22 A *junto* Article 36 A of the 1945 Constitution. Thus, the provisions of Article 5 paragraph (1) *junto* Article 82 paragraph (1) of the UUJN cannot be said to contradict Article 22 A *junto* Article 36 A of the 1945 Constitution.

That in the decision of the Constitutional Court, the person referred to *legally competes with* professional organizations other than THIS is recognized because it is an application of the provisions of Article 28 E paragraph (3) of the 1945 Constitution, but is not intended as an organization together those who carry out their duties as Notary. Thus, such an organization's position is considered a Notary organization that gathers those with a common interest in the notary field.

### ***3.2 Constitutional Interpretation of the Right to Freedom of Association for the Single Organization of the Indonesian Notary Association***

Jimly Asshidiqie explained in his book *Freedom of Association, Dissolution of Political Parties and the Constitutional Court*, published by the General Secretariat and the Constitutional Court Decree, that even though the amendment to the 1945 Constitution did not touch Article 28 but adopted a new norm in Article 28E paragraph (3) because Article 28 was considered not to contain human rights guarantees that should be the content of the Constitution of a democratic country. Therefore, the reloading of the rights of association, assembly, and expression of opinions in Article 28E paragraph (3) of the 1945 Constitution is to affirm it as one of the human rights that is a constitutional right, and which is the obligation of the state, especially the

government, to protect, respect, promote and fulfill it.

In line with that, Article 24 paragraph (2) of Law Number 39 of 1999 concerning Human Rights (Human Rights Law) states: "Every citizen or community group has the right to establish a Political Party, Non-Governmental Organization, or other organization to participate in the running of government and state administration in line with the guidance of protection, enforcement, and promotion of human rights by the provisions legislation."

This provision means that Notaries are given an active role in state administration through notary organizations in INI organizations to achieve nation-building. The INI organization, in its activities, can supervise or correct if government policies are not in line with community conditions. This is a form of community participation and is a form of people's sovereignty. After seeing the human rights arrangements guaranteed in the 1945 Constitution and the Human Rights Law, there should be no need for regulations to be made by law to ensure independence or freedom for everyone to organize within Indonesian territory.

Regarding Notary organizations in Indonesia, INI shows that as a single organization, which means that only one organization is recognized. Instead of being impressed as an effort to ignore human rights values such as freedom of association, assembly, and expression, in this context, it is mandatory to apply so that supervision of the course of the Notary profession can be realized semantically. Article 1 point 5 of the Amendment Law states that a Notary Organization is a professional organization of Notary positions as a legal entity. This means that the Notary organization's implementation is not necessarily aimed at exercising freedom of association, assembly, and opinion but is directed to guarantee

rather than a code of ethics for the course of the Notary profession.

It is further elaborated in Article 83, which also states that Notary Organizations establish and enforce the Notary Code of Ethics and have a list book of members and copies submitted to the Minister and the Supervisory Council. The article shows more clearly that the Notary Organization is a professional organization that is serious about upholding the notary professional code of ethics, not just to channel expression as guaranteed to human rights in the 1945 Constitution.

This is the basis that Article 82, paragraphs (1), (2) and (3) of the Amendment Law states as follows:

1. Notaries gather in one notary organization;
2. The notary organization, as referred to in paragraph (1), is the Indonesian Notary Association (INI), and
3. The notary organization, as referred to in paragraph (1), is the only free and independent notary professional forum formed to improve the quality of the notary profession.

Based on the provisions of Article 82, paragraphs (1), (2), and (3) of the Amendment Law, it shows that the Notary organization is far from being an organization that focuses on fulfilling associations, gatherings, and expressing opinions. A Notary Organization is not a forum to guarantee aspirations which, in this case, are strongly related to socio-political interests, so freedom in notary organizations is only based on ethical space, which refers to the good or bad of an action measured in the extent to which the action provides protection of liberty and expansion of capabilities, which in this case is the power in carrying out its profession as a Notary and the Single Container is must.<sup>17</sup>

So, organizations such as HNI, PERNORI, and ANI cannot be said to be Notary Organizations, but only Community

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<sup>17</sup>Habib Adjie, Rusdianto Sesung, *Tafsir, Explanation, and Comments on the Notary Position Law*, Refika Aditama, Bandung, 2020, p. 5

Organizations (CSOs) and not legal entities, and only as a forum for Notaries to exercise freedom of association, assembly, and opinion simply because to make such organizations do not need to have legal entity status.

### 3.3 Application of Originalism to the Interpretation of the Constitution, Constitutional Court Judges Decide INI as a Single Container

Regarding the interpretation of the Constitution, in deciding INI as a single forum in terms of constitutional review of the UUJN in question, the Constitutional Judge applies the understanding of *regionalism*, especially *originalism moderate*. It has been explained earlier that *originalism* is an attempt to treat the text of the Constitution authoritatively, but in certain circumstances, a more open meaning is needed. On the other hand, although the Constitutional Judge refers to the provisions in Article 28E paragraph (3) of the 1945 Constitution, even so, the Constitutional Judge sees the general purpose in terms of the intention for its formulation.

It is known that Article 28E paragraph (3) of the 1945 Constitution states that "Everyone has the right to freedom of association, assembly, and expression," and Article 82 paragraph (1) of the UUJN which says, "Notaries gather in one notary organization" which in this case is THIS, seems contradictory. However, this is precisely where the Constitutional Judges carry out the application of *originalism moderate* and argue as follows:

*"The status of a notary organization's legal entity as a forum for Notaries who function as general officials is indeed formed so that the organization is independent. Thus, conflicts between the interests of the organization and the interests of the management and members of the organization can be minimized so that their performance will be more objective, authoritative, and reliable."*

It is evident that applying a single forum to notary organizations is still carried out, and in the Amendment Law, especially in Article 82, paragraph (2) states that INI is the only

recognized Notary organization. As for HNI, Pernori and ANI are still remembered, not as Notary organizations, but as community organizations because. They are solely not legal entities.

### 3.4 Follow-up of the State Institution Forming the Law on Legal Messages (Advice) Constitutional Court Decision No.009-014/PUU-III/2005 and No. 63/PUU-XII/2014

According to Iskandar Muda in his journal entitled *Follow-up of the Law-Forming State Institution to the Legal Message of the Constitutional Court Decision*, when a case occurs in the legal examination, there are at least two types of legal messages of the Constitutional Court in its decision to the House of Representatives and the President as the state institution forming the law, including the legal notice (order) which is expressly mentioned in the ruling. There is a legal message in the form of advice, which is implied in the legal consideration of the decision.<sup>18</sup>

As there is a Constitutional Court Decision Number 009-014 / PUU-III / 2005 with an examination of Law No. 30 of 2004 concerning Notary Positions, especially Article 82 paragraph (1), which was reaffirmed by the Constitutional Court Decision Number 63 / PUU-XII / 2014 especially against the provisions of Article 82 paragraph (1), paragraph (2) and section (3) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions, Both judgments declaring the petitioners' application rejected, which states Article *a quo* is contrary to the 1945 Constitution and has no binding legal force. Likewise, decision No.009-014/PUU-III/2005, in its legal considerations, implicitly gives the following legal message:

*"That Article 82 paragraph (1) of the JN Law does not prohibit any person who carries out or carries out the profession of Notary Office to assemble, associate, and express opinions. However, to exercise the right of association, they must gather in one notary organization. Notaries are general officials appointed by the state, given specific duties and*

<sup>18</sup>Iskandar Muda "Follow-up of Law-Forming State Institutions on Legal Messages of Constitutional Court Decisions, Constitutional Journal, Vol. 20, March 2023.



*authorities to serve the community's interests, namely, making authentic deeds. The powers and responsibilities granted by the form must be carried out appropriately and adequately because if an error, especially misuse, is committed by a Notary, it can disrupt legal certainty and other losses that should not have occurred. Therefore, an effort is needed to develop, guide, and supervise continuously so that all notaries improve public service quality. For this reason, only a single notary organization with one code of ethics and one public service standard is needed.*<sup>19</sup>

Based on legal considerations of the Constitutional Court decision mentioned above that the legal message (advice) of the Constitutional Court Decision Number 009-014 / PUU-III / 2005, as it turns out that the law-forming institution has implemented the legal message (advice) as well as legal considerations of *a quo* decision, with the need for a single forum Notary Organizations can actually facilitate the government's task in coaching, developing and especially in terms of supervision of Notaries, by recognizing and certifying the existence of INI as a single organization, then in terms of implementing the right to freedom of association which has been mandated by the provisions in the 1945 Constitution against the existence of Notary Organizations, they must gather in one notary organization in accordance with UUJN because Notary as a profession or department in which part of the authority of the State (Government) is embedded must be able to provide legal certainty to the community and must provide uniformity of laws and codes of ethics to members of the association.

## CONCLUSION

The existence of the Notary organization from the Dutch East Indies era until now has experienced a dynamic in which the notarial law from the Dutch era became the result of the refinement of French law. This is inseparable from the development of Dutch law adopted from French law so that the Concordance Principle was applied in the

Dutch East Indies (now Indonesia). This is shown in the Dutch East Indies era there were laws and regulations related to this Notary, namely Staatsblad 1860 Number 3 concerning the Regulation of Notary Positions in Indonesia (Reglement op het Notary-ambit in Indonesia), in Article 1 of Staatsblad 1860 Number 3 concerning Regulation of Notary Public in Indonesia (*Reglement op het Notary-ambit in Indonesia*). Furthermore, the development of laws and regulations related to Notaries, namely Law Number 30 of 2004 concerning Notary Positions (UUJN).

The existence of the Indonesian Notary Association as the only notary professional organization was further strengthened after passing a constitutional *review* in the Constitutional Court. The Constitutional Judge in the Constitutional Court Decision Number 009-014 / PUU-III / 2005 reaffirmed the Constitutional Court decision Number 63 / PUU-XII / 2014, stating that the existence of INI as the only Notary organization regulated in the UUJN does not contradict the 1945 Constitution. This is because by considering the status of a legal entity, the Notary organization as a forum for Notaries who function as general officials is indeed formed so that the organization is independent. Thus, conflicts between the interests of the organization and the interests of the management and members of the organization can be minimized so that their performance will be more objective, authoritative, and reliable.

In the UUJN, it is expressly stated that there is an article related to the existence of INI as the only single forum, namely because in a professional organization or department in which part of the authority of the State (Government) is embedded, it must be able to provide legal certainty to the community and must provide uniformity in laws and regulations and codes of ethics for members of the association.

With the Constitutional Court ruling stating that INI is a recognized organization,

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<sup>19</sup> Constitutional Court Decision Number 63/PUU-XII/2014.

but not that it dissolves organizations other than INI, it is basically that the Notary organization cannot be said to be similar to other organizations referring to the provisions of Article 28E paragraph (3) of the Constitution 1945, because if there is a professional organization implementing a *multibar system* that has more than one State authority, it will result in non-uniformity about laws and codes of ethics.

Therefore, the theory of constitutional interpretation used by Constitutional Judges in the Constitutional Court Decree Number 009-014 / PUU-III / 2005 and reaffirmed by Constitutional Court Decision Number 63 / PUU-XII / 2014, The Constitutional Judge in interpreting the Notary Organization as a single-container organization and justifying it is because it applies the interpretation of *regionalism*, more specifically known as *the originalism moderate*. The Constitutional Judge used this because although Article 82 paragraph (1) of the UUJN seemed to contradict Article 28E paragraph (3) of the 1945 Constitution, the Constitutional Judge made an effort to apply the text authoritatively but with the need for a more open meaning, which was proven to give the opinion that: "The status of a notary organization's legal entity as a forum for Notaries who function as public officials is indeed formed so that the organization is independent. Thus, conflicts between the interests of the organization and the interests of the management and members of the organization can be minimized so that their performance will be more objective, authoritative, and reliable."

Therefore, the Constitutional Judge decided the Notary Organization was a single-container organization ideally. The Constitutional Court Decision Number 009-014 / PUU-III / 2005 and reaffirmed the Constitutional Court Decision Number 63 / PUU-XII / 2014 do not negate or contradict the provisions of Article 28E paragraph (3) of the Constitution because the *Notaris Organizationis*, not a forum to guarantee aspirations which in this case are strongly related to socio-political interests, so that

freedom in the organization Notary is only based on ethical release which refers to the good or bad of an action measured by the extent to which it provides protection for freedom and expansion of capabilities, which in this case is the capability in carrying out its profession as a Notary and Single Container is a must. The government does not prohibit the freedom of association, assembly, and expression. Still, it is a guarantee of human rights that focuses on the socio-political realm. At the same time, the Notary Organization is specific to the professional organization of Notaries where, in principle, Notaries are State officials.

## REFERENCES

- [1] Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notary.
- [2] Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notary.
- [3] Ida Ayu Kade Rienda Cintya Dewi, *Keanggotaan Notary Dalam Organisasi Ikatan Notary Indonesia: Mandatory Vs Voluntary*, Jurnal Hukum
- [4] Stephanie dan Endang Pandamdari, "Peranan Ikatan Notary Indonesia (INI) terhadap Pengawasan Notary dalam Pelaksanaan Tugas Jabatan Notary di Provinsi DKI Jakarta", *Jurnal Hukum Adigama*, 2018.
- [5] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- [6] *Putusan Landmark Mahkamah Konstitusi 2014-2016*, Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, Jakarta, 2017.
- [7] Black Law Dictionary 7 edition, "A Right Guaranteed by a constitution".
- [8] Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008.
- [9] Iskandar Muda, *Perkembangan Kewenangan Konstitusional Mahkamah Konstitusi*, Surakarta: CV Kekata Group, 2020.
- [10] Mahkamah Konstitusi RI, *Menuju Peradilan Modern & Terpercaya*, dalam Laporan Tahunan Mahkamah Konstitusi RI, Sekretariat Jenderal Mahkamah Konstitusi, Jakarta, 2006.
- [11] Iskandar Muda, *Logika Hukum Putusan Mahkamah Konstitusi Terkait Uji Konstitusional Undang-Undang Jabatan Notary*, Jurnal Konstitusi, Vol. 17, No. 2, Juni 2020.
- [12] Mahkamah Konstitusi Republik Indonesia, *Anggap Langgar Kebebasan Berserikat, Wadah Tunggal Organisasi Notary Digugat*, Diakses pada tanggal 13 Juni 2022, Pukul 16.12 WIB, <https://www.mkri.id/index.php?page=web.Berita&id=10143#>
- [13] Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia
- [14] Ghansham Adnan, *Karakteristik Jabatan Notary Di Indonesia*, Zifatama Jawara, Sidoarjo: 2014.
- [15] Habib Adjie, Rusdianto Sesung, *Tafsir, Penjelasan, Dan Komentar Atas Undang- Undang Jabatan Notary*, Refika Aditama, Bandung, 2020.
- [16] Putusan Mahkamah Konstitusi Nomor: 009-014/PUU-III/2005
- [17] Iskandar Muda, *Tindak Lanjut Lembaga Negara Pembentuk Undang-Undang Terhadap Pesan Hukum Putusan Mahkamah Konstitusi*, Vol. 20, Issue 1, Maret 2023.
- [18] Putusan Mahkamah Konstitusi Nomor 63/PUU-XII/2014