

## **The Notaries Continuity In The Constitutional Court Decision Number 84 Of 2024**

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### **Abstract**

*The Law Number 2 of 2014 relating to the Office of Notary (UUJN) contains the rights and obligations of the Notaries as public officials who have important authority to make authentic deeds and keep legal documents that have legal evidentiary power. On the other hand, Notaries also have rights including the authority to make authentic deeds, maintain the confidentiality of client data, and obtain legal protection. Legal protection is the most important thing for notaries in carrying out their duties and functions in the community. However, this legal protection is restricted by a fairly short age limit for Notaries in carrying out their role as a public official. In response to this, a judicial review was submitted through the Constitutional Court regarding the age limit issue. This fact raises the issue: why is it necessary to extend the retirement age limit for Notaries in Indonesia and to what extent this age limit can provide legal protection for Notaries. This research is a normative juridical research with qualitative data that emphasizes secondary data through the application of norms, rules in positive law, and statutory approaches. The research results show that: First, the extension of the retirement age limit for Notaries in Indonesia is needed to maximize the function of Notaries so that they have more time to fulfill the necessities of their life and carry out their functions in society; Secondly, the age limit can provide a longer period of statutory legal protection for Notary to perform their duties and functions in the community, improving the livelihood of themselves, their children, wives and families through their role in the Indonesian legal repertoire.*

**Keywords:** *Legal Protection, Notary, Retirement Age*

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## **INTRODUCTION**

As a formal official, Notaries have a very important position in their role of society. When carrying out their duties and obligations, a Notary is required to be responsible in carrying out their duties. In Indonesia, Notaries are one part of the parties that help enforce the law in society. The Notary is also an extension of the Government where the state has given trust to the Notary to carry out some of the affairs or duties of the state, especially in the field of civil law (Kholidah et al., 2024).

The definition of the Notaries as a public or formal official are stated on the Article 1868 of the Civil Code Of Indonesia, that the Notary is a public official with the authority to make an authentic deed regarding agreements, civil actions, agreements, as well as arrangements and the specifications that are needed as the general guidelines by interested persons and the general guidelines by interested persons and need to be stated in the authentic (Supriyadi & Handoko, 2023).

In addition, in the Law Number 2 of 2014 at the amendment to the Law of Notary position Nom 30/ 2004, also clearly that regulates provides The Notaries the authority to prepare the authentic deeds. Thus, it is clear that the Notaries are the public official with the authority to make the authentic deeds and the other authorities as referred to in the existing laws and the regulations.

The Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary (UUJN) clearly authorize Notaries to make authentic deeds. Thus, Notary is a public official who authorized to make authentic deeds and other authorities as referred to in the law.

Even Notaries, who previously only had the primary responsibility of authenticating physical documents, now have to deal with the complexity of electronic transactions and the application of information and communication technology in the practices performed by Notaries (Damayanti, 2024). So, Notaries in carrying out their duties and functions in society still have to adapt the technological advance from time to time.

Notaries have their own functions and authorities compared to other law enforcers. Notary is a person who because of his position must be carried out in a trustworthy manner, uphold honesty, be careful, thorough, independent, not bound to depend on other parties, neutral, and his position can be carried out professionally. Notary is an office that must provide services and assistance to the public wholeheartedly based on equitable legal certainty (Kholidah et al., 2024).

Meanwhile, Tedjosaputro and Liliana, as cited by Andriani et al., explain that in performing their duties, notaries are required to act professionally, grounded in integrity, and in compliance with the professional code of ethics. In this regard, notaries are expected to uphold professional conduct that encompasses several key elements, including strong moral integrity, honesty toward both clients and themselves as a reflection of intellectual honesty, awareness and respect for the limits of their authority, and the avoidance of financial considerations as the sole basis for their actions (Andriani et al., 2024).

However, in performing their duties and responsibilities, notaries are subject to certain limitations. One such limitation concerns the age requirement for notarial tenure, which is capped at 67 years. Consequently, notaries may exercise their authority only until reaching this age threshold. In practice, extending the notarial term of office could be advantageous if the maximum age limit were set beyond 67 years (Defega, 2025).

Therefore, it is necessary to improve the regulatory regarding the age limit of Notary to ensure administrative order and certainly along with legal protection. In addition, the age limit for the Notary retirement through the extension of the Notary position does need to be set more specifically to make sure that the Notaries can perform his/ her duties and obligations well through the maximum of the legal protection in carrying out their duties. So, a judicial review through the Constitutional Court was conducted in relation to the issue of the retirement age limit for Notaries.

Thus, bases on the descriptions that have been briefly stated in the previous section, the problems that will be discussed can be formulated as to why it is necessary to extend the retirement age limit for Notaries in Indonesia and to what extent the age limit can provide the legal protection for Notaries.

## **RESEARCH METHODS**

This research utilizes a normative juridical research type with qualitative data that emphasizes secondary data on the application of the norms, rules in positive law and the results of the scholarly works (Irwansyah, 2021). This research also utilizes the statutory approach related to the legal issue being addressed (Peter M. M., 2016).

## **RESULT AND DISCUSSION**

The Legal Protection is the right of all citizens including the Notary itself. This legal protection also includes the continuity of every citizens to provide for their families. Broadly speaking, the legal protection consists of the preventive and repressive legal protection.

The preventive legal protection provides an opportunity for the people to file an objection (*inspraak*) to their opinion before the government decision takes a definitive form. Thus, this type of the

legal protection aims to disputes from occurring and has great meaning for the government actions based on the freedom of action. This type of the legal protection aims to prevent disputes and has a great significant for the government actions that are based on the freedom of action (Purba et al., 2024).

Meanwhile, the functions of the repressive legal protection itself are to resolve the disputes. Indonesia currently has various bodies that partially handle legal protection for the people, which are grouped into two bodies, namely courts within the scope of the General Court; and Government Agencies which are administrative appeal institutions (Purba et al., 2024).

At this point, the Notary is guided by the preventive legal protection. Because, it is anticipatory and an opportunity for Notary in the continuity of carrying out their duties and obligations. This anticipation and prevention related to the continuity of the Notary term in perform their function and duties which is limited by the retirement age. For this reason, the Notaries take certain legal steps as a form of manifestation of preventive legal protection for each Notary through the Constitutional Court.

The legal actions related to the retirement age of Notaries to the Constitutional Court is done through *the judicial review*. This *judicial review* is the one of the steps to fill and perfect a legal vacuum. The submission of this *judicial review* is carried out to the Constitutional Court. With the mechanism and the procedure in accordance with the applicable law, the steps above are certainly expected to be effective for the legislation improving in Indonesia.

As is known, the existence of the Constitutional Court (MK) was initiated by the adoption of the idea of a constitutional court through a constitutional amendment by the People's Consultative Assembly (MPR) in 2001 as formulated the provisions of the Articles 24 paragraph (2), Article 24 C, and 7 B of the Constitution. The third amendment to the 1945 Constitution was passed November 9, 2001. This, the position of the Constitutional Court as a perpetrator of judicial power is parallel to the other institution namely the Supreme Court (MA) and also equal to other institutions of State power according to the branching of State power in accordance with the principles of State law and the sovereignty of the people (Malik et al., 2020).

The Constitutional Court itself has several duties and authorities that it carries out in the realm of the judiciary. This authority is regulated through the Article 24 C paragraph (1) of the 1945 constitution. Based on this article, the duties and the authority of the Constitutional Court are to examine laws against 1945 Constitution, to decide disputes over the authority of the state institutions whose authority is granted by the 1945 Constitution, decide for the dissolution of political parties and disputes over the election results. So, when a statutory regulation is issued, every party has the right to take steps to conduct a judicial review or request to test the regulation. Including the regulation about the retirement age limit for the Notaries in UUJN.

Meanwhile, Simamora in Malik et al briefly also stated that, in the concept of judicial review, it is necessary to understand the term *judicial review*, which means reviewing, assessing, or re-examining, derived from the words *re* and *view*. Thus, *judicial review* is the act of the testing of a statutory regulation whose authority is limited to the judicial power institution, and does not include testing by the legislature and executive (Malik et al., 2020).

In other words, based on the brief description above, the judicial review was the step of testing existing laws and regulation. Where the test will generally then be further considered with the presence or absence of the harmony in the formulation of provisions in the 1945 Constitution. When there is a discrepancy between the regulation and the 1945 Constitution, it is likely that the provisions of the article being judicial reviewed will be amended or adjusted.

On the other hand, as briefly mentioned in the previous section, the Notary community has indeed taken such legal steps in relation to the retirement age of Notaries. The formulation of the retirement age limit in the UUJN is considered not to provide maximum legal protection for Notaries.

This legal action was carried out by Notary Anisitis Amanat, S.H., aka Anisitus Amanat Gaham, S.H. As the Applicant, Anisitus filed a petition for judicial review of the legal norms regarding the extension of the Notary position the Article 8 paragraph (2) of the Law Number 30 of 2004 concerning The Notary Position which has been amended by Law Number 2/2014 concerning Amendments to Law Number 30/2004 of the Notary Position, State Gazette of the Republic of Indonesia of 2014 Number 3 (UUJN). This regulation regulates the extension of the term of the office of Notary until the age of 67 (sixty seven) years by considering the health of the person concerned is based on the examination of the several articles at the 1944 Constitution as below:

1. The Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which declare that every citizen has the right to work and a livelihood worthy of humanity;
2. The Article 28C paragraph (1) of the 1945 Constitution of The Republic of Indonesia which declare that everyone has the right to develop themselves through the fulfillment of their basic needs, the right for the education and to benefit from science and technology, arts and culture, in order to improve the quality of their lives and for the welfare of mankind;
3. The Article 28D paragraph (1) of the 1945 Constitution of The Republic of Indonesia, which declare that every person is entitled to the recognition, guarantees, protection and the certainty of law with the equal treatment of law;
4. The Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which declare that every person has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy environment, and to receive health services;
5. The Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which declare that every person has the right to be free from discriminatory treatment on any basis and to receive protection against such discriminatory treatment (The Constitutional Court Decision Number 84/PUU-XXII/2024).

The retirement age of the Notaries are 65 years old, which can only be extended for a maximum 2 (two) years, so that the entire working age limit of Notary is 67 years according to the Article 8 of UUJN. After the Notary enters retirement, he is no longer allowed to carry out his duties and authority anymore (The Constitutional Court Number 84/PUU-XXII/2024).

This fact is further compounded by the provisions of the Article 69 of the Regulation of the Minister of Law and Human Rights Number 19 of 2019 about the Procedures for Appointment, Leave, Transfer, Dismissal, and Extension of the Term of Office of Notary (Permenkumham Number 19 of 2019) show that, the Notaries who quit because they are 65 (sixty-five) years old are not authorized to carry out their positions as of the age of 65 (sixty-five) years (Musarofah & F.X. Arsin Lukman, 2023). Unless, he submits an extension of up to 2 years or until he is 67 years old.

As stated in the previous section above, the UUJN regulates the extension of the term of the office of Notary only up to the age of 67 (sixty seven) years by considering the health of the person concerned. However, this provision is considered to be unable to provide maximum legal protection for Indonesian Notaries.

Meanwhile, the existing reality has shown that, the age threshold of the Indonesian Notary can be honorably dismissed from the office at the age of 65 (sixty five) years, and can only be extended up to the age of 67 (sixty seven) years with considering the health of the person concerned. When compared to the retirement age threshold of other Notaries abroad, it can be said that the legal norms regarding the retirement age threshold of Indonesian Notaries are very behind. As a comparison, for example, the Notaries in the Netherlands retire only at the age of 70 years, Austria at the age of 70 years, Colombia 70 years Korea 70 years, Japan 70 years, Italy 70 years and Spain 72 years (Constitutional Court Decision Number 84/PUU-XXII/2024).

Based on the above facts, the Applicant then has the following assessment: that the legal norm that limits the opportunity for Notaries to exercise their profession at a maximum age of 67 (sixty-seven) years is not only behind the retirement age threshold for Notaries in other countries mentioned above but is diametrical to the basic norms of the Article 27 paragraph (2) of the 1945 Constitution on the right to work and a decent livelihood for the humanity, Article 28 C paragraph (1) which declare the right of every persons to develop themselves through the fulfillment of their basic needs and the right to benefit from the science for the sake the humanity, in order to improve the quality of his/ her life and for the welfare of mankind, and the Article 28 D paragraph (1) which regukates that evey person is entitled to recognition, guarantees, protection and the legal certainty, as well as equal treatment before the law (equality before the law).

The main point of the content above relates to a request for the amend of the legal norm regarding the extension of the term of office of a Notary after notarization until the age of 67 (sixty-seven) years by considering the health of the person concerned. The Applicant objects to the application of the norm in Article 8 paragraph (2) of UUJN to the Applicant's person as a Notary which will commence on April 17, 2025 because the Applicant does not receive a pension from the State or other parties. Thus, the Applicant's are only hope to be able to live a decent and reasonable life as a human being in the general

of the old age is to continue working as a Notary to make money until the health level proves medically that the Applicant as a Notary is no longer healthy to work.

On the other hand, the Applicant also compared the age restriction with Advocates. The legal norm regarding the age threshold of Notaries are honorably discharged from their position and the profession only at the age of 65 years old which can only be extended to the age of 67 years old by considering his/her health, while the Advocate has no norm regarding the age limit to be honorably dismissed from his profession (Constitutional Court Decision Number 84/PUU-XXII/2024).

The above section also declare the evidence of unequal treatment before the law between notaries and advocates, which is contrary to the basic norm contained at the Article 28D paragraph (1) of the 1945 Constitution regarding the right of every person to obtain recognition, guarantees, protection, and the certainty of law and the equal treatment before the law (The Constitutional Court Decision Number 84/PUU-XXII/2024).

Therefore, the age of restriction only reach a maximum of 67 years is considered not to provide maximum legal protection for Notaries. In addition, it is also not in the line with the provisions of the Article 27 paragraph (2), Article 28C paragraph (1) and the Article 28D paragraph (1) of the 1945 Constitution. This is considered to hamper the Notary's right to earn a living in order to support himself, his children, and his family in the future.

Based on the descriptions that have been briefly stated above, the Applicant has the stance that, the norms regarding the age threshold for Notary to be dismissed with honorably at the age 65 years old which can only be extended to the age of 67 years old by considering his/ her health as mentioned in the Article 78 paragraph (1) letter (b) and paragraph (2) if the Law No. 30/ 2004 jom Law No. 2/ 2014, are contrary to the 1945 Constitution and therefore deserve to be declared as having no legal force. And therefore deserves to be declared to have no binding legal force, unless Interpreted as, "the Notary is honorable discharged from office after the age of 65 (sixty five) years and can be extended every 5 (five) years as long as the person concerned is still physically and/ or mentally health bases on a doctor's certificate appointed by the State (The Constitutional Court Decision Number 84/PUU-XXII/2024).

This interpretation is considered to provide more legal protection than the previous age extension limit. Thus, the extension of the age extension limit or retirement age up to 70 years will give Notary more maximum flexibility in carrying out its duties, functions, and role in Indonesian law.

The Constitutional Court Decision also declare that, the extension of the age limit to 70 years will provide more legal protection for the Notaries. Where, it will become a legal shields for Notaries in carrying out their duties and functions so as to avoid losses such as:

1. No longer able to work for making the income from the authority to make and sign authentic deeds needed by interested members of the general public;
2. Unable to earn from the work of providing legal advice or counseling to members of the general public who need it in relation to the making of deeds;
3. Cannot get the results of the work of donating services, energy, thoughts and time for the benefit of the state to administer and pay taxes to the state treasury related to the transfer of land rights;
4. No opportunity to help the state absorb labor and participate in helping the state improve the welfare of the people;
5. Not being able to earn income from making deeds relating to the transfer of land rights and property rights over flats which is the authority of the Applicant who is also as a PPAT;
6. Unable to obtain the results of deeds granting mortgages and granting powers to encumber mortgages which are the authority of the Applicant who concurrently holds the position of PPAT;
7. Unable to generate the revenue from the business building permit process service, the administering service registration of the tranfer of the land rights, and the land mortgage registration of service as a collateral for the bank loans (The Constitutional Court Decision Number 84/PUU-XXII/2024).

Therefore, it can be understood that, the provisions regarding of the age limit and the extension of the age limit of Notaries are one of the foundation than can be affect the continuity of the legal protection for the Notaries in the perform of their duties and obligation.

## CONCLUSION

The extension for the retirement age limit of the Notaries in Indonesia is very necessary to maximize the function of the Notaries to perform their duties and obligation in Indonesia without being bound by the minimum age limit of 65 (sixty five) years which can only be extended to the age of 67 (sixty seven) years. Through the extension of the age limit to 70 years old, Notaries will have more time to fulfill their needs through their work as Notaries until the age of 70 as long as they are still physically and mentally healthy to carry out their functions in the society.

Thus, the age limit can provides a longer period of the legal protection for the Notaries in carrying out their duties and functions in the community, and can maximize the efforts of Notaries in improving the livelihood of themselves, children, wife and family. In addition, the extension of this age limit will provide the additional time for the Notaries to continue their perform in the role of the legal repertoire of Indonesia itself.

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