

Regulation Of Legal Protection For Notaries In Performing Official Duties To Ensure Legal Certainty And Justice

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Abstract

Notaries, as public officials authorized to draw up authentic deeds, hold a strategic position in the Indonesian legal system. However, in practice, notaries frequently encounter legal problems arising from the performance of their duties, including issues in criminal, civil, and professional ethics domains. This study aims to analyze the regulation of legal protection for notarial duties and to propose a normative reconstruction that aligns with the principles of legal certainty and justice. The research employs a normative juridical approach through the analysis of laws and regulations, legal doctrines, and relevant case studies. The findings reveal that the legal protection framework for notaries under Law Number 2 of 2014, which amends Law Number 30 of 2004 concerning the Notary Position, remains partial and has not yet provided comprehensive protection. The lack of clear and integrated protection norms has resulted in legal uncertainty and increased vulnerability of notaries to criminalization, civil liability, and ethical disputes. Therefore, regulatory reconstruction is required through the strengthening of legal protection norms, including clearer provisions on notarial responsibility, the establishment of fair and proportional supervision mechanisms, and explicit limitations on law enforcement intervention. This study concludes that normative reconstruction of notarial regulation is essential to ensure balanced legal protection that safeguards notaries while maintaining professional accountability. The implications of this research are both theoretical and practical. Theoretically, it contributes to the development of legal doctrine on professional legal protection. Practically, it provides a reference for legislators and policymakers in reformulating notarial regulations to enhance legal certainty, professional independence, and public trust in Indonesia's legal system.

Keywords: notary, legal protection, legal certainty, justice, public office.

INTRODUCTION

Notaries are public officials (*openbaar ambtenaar*) who are authorized by the state to make authentic deeds and carry out other authorities as stipulated in laws and regulations (Aisyiah & Wisnuwardhani, 2022). As a public official, notaries carry out some of the state's functions in the field of legal services, especially in creating legal certainty for the public through authentic documents that they make (Adjie, 2023). The existence of a notary is a bridge between society and the formal legal system that demands orderly administration and legality (Triantari & Purwadi, 2019). However, in practice, the position of notary is often in a dilemmatic position (Gunawan, Djaja, & Sudirman, 2025). On the one hand, notaries are obliged to act independently, impartially, and ensure the formal truth of the deed made (Muhammad, Wahyuningsih, & Maerani, 2022). On the other hand, when there is a dispute in the future, the notary is often the party who is summoned, examined, and even criminalized by law enforcement officials because they are considered to be responsible for the content of the deed they make. This raises serious problems in the context of legal protection of the notary position (Bondarieva, 2019).

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN), has regulated a protection mechanism through the provisions of Article 66 which requires investigators, public prosecutors, or judges to obtain the approval of the Notary Honorary Council (MKN) before summoning a notary. But in practice, this

provision is often ignored (Hordern, 2021). Law enforcement officials immediately summoned without going through the procedures as regulated, thus causing legal uncertainty for the notary (Krismen, 2019). In a number of cases that occurred in various regions, notaries were summoned and examined by investigators only because the deed he made became the object of dispute between the parties (Eshafia, Masykur, & Susilo, 2024). In these conditions, notaries are no longer seen as officials who carry out their duties, but are considered as parties who contribute to the occurrence of unlawful acts. In fact, according to the theory of office responsibility (*ambtelijke aansprakelijkheid*), public officials can only be held legally accountable if there is an element of abuse of authority or *mens rea*.

This condition shows that legal protection for notaries still has not reached a balance between professional accountability and legal certainty guarantees (Putra, Pandamdari, & Sihombing, 2025). Therefore, it is necessary to conduct an in-depth study of the regulation of legal protection for the duties of the notary office by reviewing the aspects of legal theory, legislative norms, and implementation practices in the field (Bingyuan & Zhaoxun, 2025).

METHOD

This study employs a normative juridical research approach, emphasizing the examination of positive legal norms, legal principles, and legal doctrines relevant to the protection of notarial officeholders. Normative legal research focuses on written norms contained in statutory regulations as well as legal concepts that have developed within literature and notarial practice in Indonesia. In addition, this study adopts a conceptual approach to analyze the principles of justice, legal certainty, and legal protection that serve as the foundation for the establishment and implementation of the Notary Office Law (UUJN).

The study integrates four main approaches. The statute approach examines legal provisions regulating the notarial profession, such as Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Notary Office and its derivative regulations, including the Minister of Law and Human Rights Regulation No. 15 of 2020 concerning Procedures for Examination by the Notary Honorary Council. The conceptual approach explores legal theories related to public official protection, including the theory of legal protection (Philipus M. Hadjon), legal certainty (Hans Kelsen), and justice (Gustav Radbruch). The case approach reviews real cases in which notaries were investigated by law enforcement authorities for deeds they executed, without revealing identities, to analyze the implementation of legal protection mechanisms. Lastly, the comparative approach is applied in a limited manner to compare the system of notary legal protection in countries with similar civil law traditions, such as the Netherlands and France.

This study employs three types of legal materials. Primary legal materials include Law No. 2 of 2014 on Notary Office, Law No. 12 of 2011 on the Establishment of Legislation, Ministerial Regulation No. 15 of 2020 on Examination Procedures of the Notary Honorary Council, and Constitutional Court Decision No. 49/PUU-X/2012 on the Examination of Notaries by Investigators. Secondary legal materials consist of legal literature, prior studies, scholarly journal articles, expert opinions, and relevant books on the legal protection of public officials. Tertiary legal materials comprise reference tools that clarify primary and secondary materials, such as legal dictionaries, encyclopedias, and legislative indexes.

Legal materials were collected through library research, involving the inventory of statutory regulations and relevant literature. The analysis applied a descriptive-qualitative method, describing legal provisions and linking them to principles of justice and legal certainty. The analytical process consisted of four stages: (1) inventorying legal norms related to notary protection; (2) classifying legal issues based on normative and practical aspects; (3) evaluating the effectiveness of legal regulation; and (4) formulating recommendations for reconstructing regulations to strengthen notarial legal protection. The analytical framework rests on the causal relationship between the notary's official duties and the legal protection inherent in such duties, recognizing that notarial acts are public legal acts subject to *lex specialis* principles through authorization by the Notary Honorary Council (MKN). The study further aligns the normative structure of the UUJN with theories of justice and legal certainty to propose a proportional, just, and applicable model of legal protection for notaries.

RESULT AND DISCUSSION

Regulation of Legal Protection Regulations for Notaries in the Law on Notary Positions

Legal protection of the position of notary is normatively regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN). Several articles in it show the state's efforts to provide legal guarantees for the implementation of notary duties. One of the most crucial articles is Article 66 of the UUJN, which states that the summoning of a notary by investigators, public prosecutors, or judges must first obtain permission from the Notary Honorary Council (MKN).

This provision is a form of preventive legal protection, which is protection provided before legal action against the notary. This mechanism aims to ensure that every examination process of notaries is carried out proportionately, not arbitrarily, and still maintains the independence of the notary position as a public official. In addition, legal protection also comes from the Notary Code of Ethics set by the Indonesian Notary Association (INI), where the code of ethics emphasizes that notaries are obliged to be independent, honest, and responsible in every deed they make. Thus, the responsibility of a notary is not only administrative but also moral-professional. However, reality shows that the legal protection referred to in the UUJN often does not work effectively. Many cases show that law enforcement officials call notaries directly without going through the MKN, or even place the notary as a suspect in civil cases between the parties. This indicates that there is a gap between *das sollen* (what should be according to law) and *das sein* (what happens in practice).

Implementation and Problems in the Field

Although the provisions in Article 66 of the UUJN are clear, its implementation still faces serious obstacles. Based on the report of the Regional Supervisory Council (MPD) in several provinces, many notaries have been summoned directly by investigators without the approval of the MKN. In fact, the main purpose of the existence of the MKN is for every legal process against notaries to go through ethical and professional mechanisms first. Some of the factors that cause the weak implementation of the regulation are the lack of understanding of law enforcement officials on the characteristics of the notary position as a public official, the absence of administrative or criminal sanctions for officials who violate the procedure for

summoning notaries without MKN permission and the need for coordination and transparency between MKN, MPD, and MPW in handling notary examination cases.

In practice, many investigators consider notaries as parties who help and participate in the occurrence of disputed legal acts. In fact, juridically, the notary is only responsible for the formal truth of the documents he makes, not the material truth of the legal acts of the parties. In other words, the notary is not obliged to examine the substantial truth of the content of the transaction, but rather to ensure that the deed is made in accordance with the procedures and will of the parties legally. When these roles and limits of responsibility are not understood by law enforcement officials, notaries risk being criminalized for acts that are actually part of the duties of the position. This causes fear among notaries, which ultimately has the potential to lower the quality of public legal services.

Case Study: Notary Examination in Land Ownership Disputes

To illustrate the problems that occur, here are examples of actual cases that are of concern in the world of notary in Indonesia (without mentioning the names of individuals or specific locations). In one case, the notary makes a sale and purchase bond based on a land history certificate (letter C) submitted by the parties. The notary has checked the completeness of the documents, presented witnesses, and ensured that the deed was legally signed in his presence. A few years later, a third party emerged who claimed that the land belonged to his family based on old evidence that was not recorded in the village. The third party then reported the parties and the notary to the police with allegations of forgery and unlawful acts.

Cases like this reflect the weak protection of notaries, in this case notaries should be protected because they have acted in accordance with the formal procedures of their position. In this context, the Notary Honorary Council should serve as an "ethical shield" that ensures that any summons or examination of a notary is carried out objectively, taking into account whether the notary's actions are carried out in the capacity of his office or beyond the authority of the law.

Reconstruction of Legal Protection Regulations for Notaries

Based on the results of normative analysis and empirical cases, it is necessary to reconstruct the regulation of legal protection for notaries. The reconstruction is not only a formal revision of the law, but also a paradigm shift in the function and position of notaries in the national legal system. The reconstruction can be carried out in three main dimensions, including:

Normative Dimension

The need to affirm the norm that every act of a notary carried out in order to exercise the authority of his office cannot be criminally charged unless it is proven that there is mens rea (malicious intent) or abuse of authority.

Institutional Dimension

The Notary Honorary Council (MKN) needs to be strengthened both structurally and authoritatively and not only administratively and the need to revise the UUJN to give the MKN the position as a semi-judicial institution that has the authority to issue final and binding decisions in terms of notary examinations.

Dimensions of the Monitoring Mechanism

The supervision system for notaries must be directed to supervision that is coaching, not repressive. Layered supervision by the Regional Supervisory Council (MPD), Regional

Supervisory Council (MPW), and Central Supervisory Council (MPP) needs to be synergized with the MKN so that they do not overlap and weaken each other's supervisory functions. Thus, regulatory reconstruction must ensure a balance between public accountability and legal protection.

Integration of the Principles of Justice and Legal Certainty in Notary Protection

In the perspective of Gustav Radbruch's legal theory, good law must contain three fundamental values: justice (*gerechtigkeits*), utility (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*). In the context of legal protection of notaries, these three values must be integrated proportionately. Justice demands that notaries be treated objectively in accordance with the intention and capacity of their position, not as a guilty party just because they are the makers of the deed. The benefits require that the existence of a notary still provide a sense of security and legal order for the community. Legal certainty ensures that legal protection procedures (such as MKN permits) are strictly enforced without exception.

Philipus M. Hadjon's theory of legal protection teaches that legal protection for citizens (including public officials) should include two main forms: preventive protection (through permitting, regulation, and coaching mechanisms) and repressive protection (through fair justice mechanisms). The application of this theory in the position of notary means that the state is obliged to ensure that every act of examination, summons, or law enforcement against notaries always pays attention to the principles of due process of law and the presumption of legality, namely the presumption that officials act correctly until proven otherwise. Thus, the regulation of legal protection of notaries must be directed to create a fair and certain legal system, not just an administrative procedure without substantive meaning.

CONCLUSION

Based on the results of the analysis of normative regulations, empirical practices, and relevant legal theories, the following can be concluded: 1). The regulation of legal protection of the position of notary is regulated in the Law on the Notary Position (Law No. 30 of 2004 jo. Law No. 2 of 2014) but still contains several weaknesses, namely the protection of protocol and office secrets, and there is no legal assistance for notaries. Existing legal norms tend to be multi-interpreted, weak in application, and do not contain adequate legal protection mechanisms and legal abuse of the notary office which makes the position of notary vulnerable to criminalization. 2). Implementation of Regulations The legal protection of the notary position in the Law on the Notary Position (UUN) has not been maximized, is still a formality and has not reached substantial legal protection, as provisions related to the protection of notary protocols have not been regulated, there is no integration of the supervision system between related institutions, such as the Notary Honorary Council (MKN), the Regional/Central Supervisory Council (MPD/MPP), professional organizations of the Notary Association Indonesia (INI), as well as law enforcement officials, the absence of a common Standard Operating Procedure (SOP) that binds all parties to coordinate when notaries face legal proceedings, so that they cannot fully guarantee legal certainty and justice for the duties of the Notary's office. 3). The reconstruction of legal protection regulations for the notary office needs to be carried out immediately by updating clear legal norms by adding several articles in the Law such as the affirmation of the limits of notary responsibility, the establishment of legal

assistance institutions, and the application of the principle of *lex specialis* to the notary profession, as well as the need to regulate the strengthening of procedures and SOPs for summons and examinations, regulations for the protection of ethics and rehabilitation of good names, and the strengthening of honorary councils Notaries in the implementation of Article 66 of the UUJN, strengthening the protection of notaries, strengthening the notary profession through the professional insurance mechanism, strengthening ethics and protection of the notary profession through strengthening institutions and supervision reform and the need to strengthen the professional judiciary to ensure legal protection with legal certainty and justice in the implementation of notary duties.

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