

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 draft authentic deeds, hold an important position within the Indonesian legal system. However, in practice, notaries often encounter legal issues arising from the execution of their duties, whether in criminal, civil, or professional ethical contexts. This paper aims to analyze the regulation of legal protection for notaries in performing official duties to ensure legal certainty and justice and to propose normative reconstruction ideas aligned with the principles of legal certainty and justice. The research method employed is a normative approach, utilizing analyses of laws and regulations, legal doctrines, and case studies. The findings indicate that the Regulation of Legal Protection for Notaries in Performing Official Duties to Ensure Legal Certainty and Justice under Law Number 2 of 2014, amending Law Number 30 of 2004 concerning the Notary Position, remains partial and fails to provide comprehensive protection. Policy reconstruction is therefore necessary by strengthening legal protection norms that encompass aspects of office accountability, equitable supervision mechanisms, and limitations on law enforcement intervention. Consequently, enhanced legal protection for notaries will better guarantee legal certainty and justice for all parties and the wider community.

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. As public officials, notaries perform certain state functions in the field of legal services, particularly in creating legal certainty for the public through the authentic documents they produce (Agustin & Anand, 2021; Arizona, 2020; Pranata, 2018; Saifuddin & Maerani, 2021; Sumardjono, 2016). The existence of a notary serves as a bridge between society and the formal legal system, which demands orderly administration and legality. However, in practice, the position of a notary is often dilemmatic. On one hand, notaries are obliged to act independently and impartially and to ensure the formal truth of the deed made. On the other hand, when a dispute arises in the future, the notary is often summoned, examined, and even criminalized by law enforcement officials, as they are deemed responsible for the contents of the deed they have drawn up. This situation raises serious problems in the context of legal protection of the notary position (Adjie, 2014; Aisyiah & Wisnuwardhani, 2022; Hidayat et al., 2019; Indonesia, 2021; Mahanani & Hariyani, 2023; Salim, 2018; Wirawan et al., 2024).

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Notary Position (UUJN) regulates a protection mechanism through Article 66, which requires

investigators, public prosecutors, or judges to obtain approval from the Notary Honorary Council (*Majelis Kehormatan Notaris / MKN*) before summoning a notary (Amudy et al., 2020; Bali & Mugiati, 2023; Famdale & Neltje, 2022; Farah & Gunarto, 2018; Nugroho & Muryanto, 2023). However, in practice, this provision is often ignored. Law enforcement officials frequently summon notaries without following the regulated procedures, thus creating legal uncertainty for notaries. In several cases across various regions, notaries have been summoned and examined by investigators merely because the deed they prepared became the object of dispute between parties. Under such conditions, notaries are no longer seen as officials performing their duties but are instead regarded as parties contributing to 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*.

Despite extensive legal scholarship on notarial responsibilities, prior studies have predominantly focused on descriptive analyses of existing regulations without proposing systematic normative reconstruction (Adjie, 2019; Purnamasari, 2020). While these works document the inadequacies of existing legal protection mechanisms, they have not examined notarial protection from a normative-reconstructive perspective that integrates constitutional principles with practical implementation frameworks. The novelty of this research lies in its comprehensive approach by (1) conducting a normative-empirical analysis that bridges the gap between *das sollen* (legal norms) and *das sein* (practical implementation); (2) proposing concrete regulatory reconstruction based on the integration of Radbruch's triad of justice, legal certainty, and utility with Hadjon's preventive-repressive protection theory; and (3) developing an institutional framework that strengthens the *MKN* as a semi-judicial body with binding authority. This study advances existing scholarship by moving beyond problem identification toward actionable legal reform proposals grounded in constitutional principles and comparative legal analysis.

This research aims to comprehensively examine the regulation of legal protection for notaries in Indonesia and propose normative reconstruction to ensure legal certainty and justice in the performance of notarial duties. The study seeks to identify weaknesses in the current legal framework, analyze implementation gaps in the field, and formulate reconstruction proposals that integrate constitutional principles with practical enforcement mechanisms. The benefits of this research are threefold: theoretically, it contributes to the development of legal protection theory for public officials by integrating doctrinal analysis with institutional reform proposals; practically, it provides concrete recommendations for strengthening *MKN* authority and establishing standard operating procedures for notary examination; and, policy-wise, it offers a legislative roadmap for amending the UUJN to enhance preventive protection mechanisms, establish legal assistance institutions for notaries, and apply *lex specialis* principles to the notarial profession. For law enforcement agencies, this study clarifies the boundaries of notarial responsibility and provides guidelines for proportionate investigation procedures. For the notarial profession, it strengthens professional dignity through institutional protection and ethical rehabilitation mechanisms, thereby ensuring that notaries can perform their constitutional duties without fear of arbitrary criminalization while maintaining public accountability.

This condition demonstrates that legal protection for notaries has not yet achieved a balance between professional accountability and guarantees of legal certainty. Therefore, it is

necessary to conduct an in-depth study of the regulation of legal protection for the duties of the notary office by examining aspects of legal theory, legislative norms, and implementation practices in the field.

METHOD

This study employed a normative juridical research approach that emphasized the examination of positive legal norms, legal principles, and doctrines relevant to the protection of notarial officeholders. It also adopted a conceptual approach to analyze the principles of justice, legal certainty, and legal protection that formed the foundation for the establishment and implementation of the Notary Office Law (*UUJN*).

Four main approaches were integrated. The statute approach examined 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 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 explored legal theories concerning public official protection, drawing on the works of Hadjon, Kelsen, and Radbruch. The case approach reviewed actual cases in which notaries were investigated by law enforcement authorities for deeds they executed to assess the implementation of legal protection mechanisms. The comparative approach was applied in a limited manner to observe the notary protection systems in other civil law countries, such as the Netherlands and France.

The research utilized three types of legal materials. Primary legal materials included the *UUJN*, Law No. 12 of 2011 on the Establishment of Legislation, Ministerial Regulation No. 15 of 2020 on the Examination Procedures of the Notary Honorary Council, and Constitutional Court Decision No. 49/PUU-X/2012 on the Examination of Notaries by Investigators. Secondary materials comprised legal literature, prior research, and scholarly works addressing the legal protection of public officials. Tertiary materials consisted of reference tools supporting the interpretation of primary and secondary sources.

Legal materials were collected through library research, involving the compilation of statutory regulations and academic literature. The analysis applied a descriptive-qualitative method to correlate legal provisions with the principles of justice and legal certainty. The analytical process consisted of four stages: (1) identifying legal norms related to notary protection; (2) categorizing issues based on normative and practical aspects; (3) evaluating the effectiveness of current regulations; and (4) formulating recommendations for regulatory reconstruction to strengthen notarial legal protection. The analytical framework was grounded in the causal relationship between the notary's official duties and the legal protection inherent in those duties, recognizing that notarial acts constitute public legal acts subject to *lex specialis* principles under the authorization of the Notary Honorary Council (*MKN*). The study aligned the normative framework of the *UUJN* with theories of justice and legal certainty to propose a proportional and applicable model of legal protection for notaries.

RESULTS 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:

1. 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.

2. 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.

3. 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 (*gerechtigkeit*), 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

The study found that legal protection for notaries in Indonesia under Law No. 2 of 2014 remained structurally weak and inconsistently applied, as evidenced by frequent circumvention of Notary Honorary Council (*MKN*) authorization procedures. These shortcomings stemmed from unclear liability boundaries, limited institutional authority, and poor coordination among supervisory bodies. Drawing lessons from the French and Dutch systems, the research proposed a three-tiered reconstruction: normative reform to establish a presumption of legality for notarial acts, institutional strengthening of the *MKN* into a semi-judicial body with binding authority, and standardized oversight mechanisms ensuring procedural fairness. This framework, grounded in Radbruch's triad of justice, utility, and legal certainty and Hadjon's preventive–repressive protection theory, sought to reinforce both autonomy and accountability within the notarial profession. Future research should empirically evaluate the feasibility of these reforms through multi-stakeholder policy analysis and comparative implementation studies to support legislative amendments and sustainable institutional design.

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