

# Proliferation of Policies on Notarial Supervisory Institutions Based on Justice



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## ABSTRACT

The current regulatory framework governing notarial responsibility demonstrates normative inconsistency and insufficient grounding in principles of justice, particularly in fraud-related cases; meanwhile, law enforcement practices continue to impose disproportionate legal liability on notaries. This study examines the principle of justice in assessing the legal responsibility of notaries in the execution of authentic deeds, especially in cases involving allegations of malicious intent (mens rea). It further analyzes deficiencies within the existing regulatory framework and proposes a reconstruction of justice-based regulation to ensure balanced legal protection for both notaries and deed signatories. The study adopts a constructivist paradigm with a sociological juridical approach, supported by doctrinal analysis and theoretical review. It employs a descriptive-analytical research design and is grounded in theories of justice, legal system functionality, and progressive law. The findings demonstrate, first, significant normative disharmony between Article 1 Number 6 and Articles 66A and 67 of the Notary Law, particularly concerning overlapping authority between the Notary Supervisory Board and the Notary Honorary Council, which creates institutional ambiguity in supervision and guidance. Second, these regulatory inconsistencies lead to procedural neglect in law enforcement practice and generate legal uncertainty for notaries, particularly during investigation and prosecution processes. Third, the study proposes regulatory reconstruction through amendments to Articles 15, 16, and 17 to strengthen justice-oriented legal protection while maintaining professional accountability. This reconstruction is essential to ensure legal certainty, institutional coherence, professional independence, and balanced protection for all parties.

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## 1. Introduction

The office of a Notary constitutes a public or state office because a Notary is appointed and dismissed by the government, performs state functions, and produces authentic deeds whose original minutes constitute state documents.<sup>1</sup> A public official is an individual appointed and dismissed by state authority and

<sup>1</sup> Clive Seddon, 'TMT Contracts: Avoiding Termination and Achieving Positive Realignment: How Legal Counsel Can Make a Difference - A UK Perspective', *Computer Law & Security Review*, 27.6 (2011), 641–46 <https://doi.org/https://doi.org/10.1016/j.clsr.2011.09.010>

entrusted with specific powers and obligations to serve the public interest, thereby exercising the authority of the state.<sup>2</sup> Nevertheless, although Notaries are appointed and dismissed by the government, they do not hold the status of civil servants and do not receive salaries from the state. Accordingly, the provisions of Law Number 8 of 1974 on the Fundamentals of Civil Service do not apply to Notaries.<sup>3</sup>

This legal status places Notaries in a position of significant responsibility to guarantee the validity and authenticity of the deeds they execute as legally binding instruments. Therefore, Notaries are required to uphold high standards of integrity and prudence in the performance of their duties.<sup>4</sup> Notarial responsibility extends beyond the mere drafting of deeds and includes the obligation to ensure that each deed is free from legal defects that could prejudice the parties involved. In addition, Notaries are legally bound to maintain the confidentiality of all information obtained in the course of exercising their office. Consequently, integrity and due diligence constitute fundamental principles in the notarial profession to ensure that every deed complies with applicable laws and regulations and legitimately reflects the true intentions of the parties.<sup>5</sup>

A Notary functions as a public official authorized by the State to serve the public in civil law matters, particularly in the preparation of authentic deeds. By virtue of this authority, the Notary occupies a central position within the Indonesian legal system. The legal status, functions, and powers of the Notary are expressly regulated under Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary. From this statutory framework, it is evident that the authority of a Notary to draw up authentic deeds is general in nature, while the authority of other officials constitutes a statutory exception, limited strictly to specific acts expressly delegated by law. The enactment of Law Number 2 of 2014 aims to ensure legal protection not only for the public but also for Notaries as professional legal service providers. Within society, the Notary continues to hold a respected position as a trusted public official from whom individuals may obtain reliable legal advice.<sup>6</sup>

<sup>2</sup> Roksana Moore, 'Principles of the Law of Software Contracts – The Way Forward?', *Computer Law & Security Review*, 26.4 (2010), 427–31 <https://doi.org/https://doi.org/10.1016/j.clsr.2010.05.004>

<sup>3</sup> Richard Jones and Dalal Tahri, 'Online Selling and Contracting: An Overview of EU Rules', *Computer Law & Security Review*, 27.4 (2011), 402–6 <https://doi.org/https://doi.org/10.1016/j.clsr.2011.05.001>

<sup>4</sup> Reinhard Steennot, 'Rules of Jurisdiction and Conflict Rules Relating to Online Cross-Border Contracts Concerning Touristic Services Provided to Consumers', *Computer Law & Security Review*, 32.3 (2016), 482–94 <https://doi.org/https://doi.org/10.1016/j.clsr.2016.01.004>

<sup>5</sup> Simon Geiregat, 'Cryptocurrencies Are (Smart) Contracts', *Computer Law & Security Review*, 34.5 (2018), 1144–49 <https://doi.org/https://doi.org/10.1016/j.clsr.2018.05.030>

<sup>6</sup> Mark Giancaspro, 'Is a "Smart Contract" Really a Smart Idea? Insights from a Legal Perspective', *Computer Law & Security Review*, 33.6 (2017), 825–35 <https://doi.org/https://doi.org/10.1016/j.clsr.2017.05.007>

The legal statements and determinations contained in a notarial deed carry a presumption of correctness; consequently, the Notary serves as an authoritative producer of legal documents in judicial proceedings. In performing this function, the Notary bears institutional responsibility to provide legal services and consultations that guarantee legal certainty for the community.<sup>7</sup>

Historically, based on Article 1 of the Notarial Position Regulation published in the State Gazette of 1860, the Notary was designated as the sole public official authorized to draw up authentic deeds concerning all legal acts, agreements, and legal stipulations required by law or requested by interested parties to be embodied in authentic form. This authority ensured legal certainty of date and safeguarded the issuance of grosse, copies, and official extracts, and it was not attributed to other officials or private individuals. R. Tresna conceptualizes a deed as a signed written instrument containing information regarding an event or legal act arising from rights or agreements, thereby constituting the written expression of a legal act.<sup>8</sup> In relation to notarial deeds, Salim HS and Abdullah emphasize that Notaries must ensure the provision of legal certainty for individuals utilizing notarial services. Likewise, Andi Prajitno asserts that a notarial deed qualifies as an authentic instrument possessing binding legal force and perfect evidentiary value as written proof, which does not require supplementary evidence and binds the judge in judicial proceedings. The legal acts embodied in a notarial deed therefore enjoy perfect evidentiary weight, in contrast to private deeds. As products of the notarial office, authentic deeds constitute an indispensable legal instrument for the realization of legal certainty in society. Their function as the strongest and most complete form of written evidence plays a fundamental role in various legal relationships, including commercial transactions, land affairs, banking activities, social relations, and other essential aspects of daily life.<sup>9</sup>

In the performance of their official duties, Notaries may be summoned and examined by the courts and, in certain circumstances, may face criminal, administrative, and civil liability despite acting in a neutral capacity. In principle, a Notary merely records and formalizes the intentions of the parties (*constatering*). Nevertheless, the imposition of civil, administrative, ethical, and criminal sanctions is expressly regulated under Articles 16 and 17 of the Notary Law. From a moral and ethical perspective, the exercise of the notarial office constitutes an

<sup>7</sup> T J de Graaf, 'From Old to New: From Internet to Smart Contracts and from People to Smart Contracts', *Computer Law & Security Review*, 35.5 (2019), 105322 <https://doi.org/https://doi.org/10.1016/j.clsr.2019.04.005>

<sup>8</sup> Clare Sullivan and Eric Burger, 'E-Residency and Blockchain', *Computer Law & Security Review*, 33.4 (2017), 470-81 <https://doi.org/https://doi.org/10.1016/j.clsr.2017.03.016>

<sup>9</sup> Ricky Utama and Benny Djaja, 'Legal Consequences Against Notary with Convicted Status by Court Decisions', *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 655.Ticash 2021 (2022), 1035-39 <https://doi.org/10.2991/assehr.k.220404.163>

independent and impartial public service carried out for the public interest and grounded in respect for human dignity and professional integrity.<sup>10</sup>

Notaries play a strategic role in resolving legal issues within society through the production of written legal evidence in the form of authentic deeds. They are responsible for maintaining the confidentiality of information and upholding legal ethics and professional dignity in the execution of their duties.<sup>11</sup> In addition, Notaries are strictly bound by the Notary Code of Ethics adopted at the Extraordinary Congress of the Indonesian Notary Association in Banten in 2015 and are required to comply with all applicable laws and regulations. Violations of statutory obligations or prohibitions may result in civil, administrative, ethical, or criminal sanctions. However, sanctions are not imposed automatically. The law provides a graduated system of disciplinary measures, ranging from written warnings to temporary suspension and dismissal, which are imposed following an examination by the competent Supervisory Councils.<sup>12</sup>

Article 1 point 6 of the Notary Law constitutes the principal legal basis governing the supervision of Notaries and serves as a normative guideline for notarial responsibility in the performance of official duties. This provision defines the Supervisory Council as an institutional body vested with both the authority and the obligation to conduct guidance and supervision over Notaries.<sup>13</sup> Accordingly, following the enactment of the Notary Law, all supervisory functions over Notaries fall under the jurisdiction of the Supervisory Council. The primary objective of supervision is to ensure that every right, authority, and obligation granted to a Notary is exercised consistently within the legal framework and in accordance with moral values and professional ethics, thereby guaranteeing legal protection and legal certainty for the public. At the same time, supervision also functions as a preventive mechanism to protect Notaries in the lawful execution of their office as public officials.<sup>14</sup>

<sup>10</sup> Melyana Melyana and Ariawan Ariawan, 'Entrusted Money Embezzlement by the Notary on the Making of Cooperation Agreement', *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 655.Ticash 2021 (2022), 158–65 <https://doi.org/10.2991/assehr.k.220404.025>

<sup>11</sup> Melyana and Ariawan.

<sup>12</sup> Billy Samuel, 'Analysis of Legal Protection and Responsibilities of Notary Officials for Authentic Deeds Made', *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 655.Ticash 2021 (2022), 733–39 <https://doi.org/10.2991/assehr.k.220404.115>

<sup>13</sup> I Gusti Ngurah Muliarta, 'The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary', *Community Service Journal of Law*, 1.1 (2022), 44–48 <https://doi.org/10.55637/csjl.1.1.4477.44-48>

<sup>14</sup> R. Rahaditya and Eka Aprilia, 'The Notary's Responsibility for Unlawful Acts of Counterfeiting the Selling Power of Attorney in the Sale and Purchase Deed (Case Study of Tangerang District Court Decision Number 1443/Pid.B/2018/PN.Tng)', *Proceedings of the 3rd Tarumanagara International*

Supervision is indispensable to ensure that Notaries consistently uphold the dignity, integrity, and authority of their profession. This obligation requires Notaries to maintain professional conduct, attitudes, and actions that reflect the honor and credibility of the notarial office. Institutionally, supervision of Notaries was initially carried out by the Minister and subsequently delegated to the Supervisory Council, which consists of representatives from the government, the Notary professional organization, and academic experts. Furthermore, the law establishes a tiered system of supervision comprising the District, Regional, and Central Supervisory Councils, each operating at different administrative levels to ensure effective oversight and institutional accountability.<sup>15</sup>

The most strategic and fundamental contribution of the Notary Law lies in the institutionalization of the Notarial Professional Judiciary, which is implemented through a hierarchical Notary Supervisory Council based on its respective functions and authorities. This council serves as a professional judicial body because it is legally empowered to conduct hearings, examinations, issue binding decisions, and impose disciplinary sanctions on notaries who violate statutory norms or the Notarial Code of Ethics. Through this mechanism, professional accountability and legal discipline within the notarial institution are formally safeguarded.<sup>16</sup>

The position of a notary possesses a distinctive legal character and institutional status that makes it difficult to define in rigid professional terms. Nevertheless, the practical application of the Supervisory Council's authority provides a concrete reflection of the legal status, function, and responsibility of notaries, as well as the evidentiary value of the deeds they produce.<sup>17</sup> Rapid social development, accompanied by increased economic activity and heightened public legal awareness, has significantly expanded the scope and complexity of legal relations in society, thereby intensifying the role of notaries in civil transactions. As public officials appointed by the Minister of Law and Human Rights, notaries function as state organs authorized to provide legal services to the public, particularly in the preparation of authentic deeds that serve as instruments of conclusive legal proof.

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*Conference on the Applications of Social Sciences and Humanities (TICASH 2021), 655.Ticash 2021 (2022), 341-47* <https://doi.org/10.2991/assehr.k.220404.053>

<sup>15</sup> Grace Natalia H Famdale and Jeanne Neltje, 'Juridical Review of the Form of the SKMHT Deed Which Is Made by a Notary According to Article 38 of Law Number 2 of 2014 Concerning Amendment to Law Number 30 of 2004 Concerning Notary Position', *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021), 655.2* (2022), 1138-44 <https://doi.org/10.2991/assehr.k.220404.180>

<sup>16</sup> I Wayan Ana and others, 'Translating Indonesian Notarial Documents into English: Issues and Its Strategies', *166.Prasasti* (2018), 495-500 <https://doi.org/10.2991/prasasti-18.2018.90>

<sup>17</sup> Helen Eenmaa-Dimitrieva and Maria José Schmidt-Kessen, 'Creating Markets in No-Trust Environments: The Law and Economics of Smart Contracts', *Computer Law & Security Review*, 35.1 (2019), 69-88 <https://doi.org/https://doi.org/10.1016/j.clsr.2018.09.003>

Authentic deeds ensure legal certainty, protect the rights and obligations of the parties, and support effective and efficient dispute resolution.<sup>18</sup>

The principal purpose of public engagement with a notary is to obtain an authentic deed, which serves as the most complete and conclusive form of written legal evidence. An authentic deed possesses binding probative force both between the parties and against third parties, as the legal acts and statements recorded therein cannot be disregarded without compelling proof to the contrary submitted before a court of law. In this context, the notary, as a public official, assumes a distinctive role comparable to that of a judge, namely in formalizing legal relationships through written instruments that meet statutory requirements.<sup>19</sup>

The state to serve public legal interests, a notary must demonstrate comprehensive legal competence to ensure that the rights and obligations of the parties are proportionally and fairly allocated. The forward-looking nature of notarial services demands a high level of professional independence, technical proficiency, and ethical discipline. In addition to formal education and mandatory apprenticeship, a notary must consistently uphold the oath of office, the professional code of ethics, and universally accepted moral standards.<sup>20</sup> Nevertheless, empirical practice reveals that notarial performance does not always reflect these professional ideals. Cases of professional negligence, ethical violations, and deeds that generate legal disputes continue to emerge. This reality highlights the critical importance of strengthening ethical compliance and institutional supervision to ensure that notarial services effectively guarantee legal certainty and prevent future legal conflicts.<sup>21</sup>

Previous scholarly works consistently affirm that the institutional design of notarial supervision must achieve a balanced relationship between professional independence and the realization of substantive justice. Shaw's analysis of the Polish notarial system illustrates that excessive and weakly coordinated supervisory mechanisms tend to erode professional autonomy without necessarily strengthening proportional accountability. In a similar vein, Martynenko underscores that effective professional supervision depends on a clearly

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<sup>18</sup> Siena Anstis, 'Government Procurement Law and Hacking Technology: The Role of Public Contracting in Regulating an Invisible Market', *Computer Law & Security Review*, 41 (2021), 105536 <https://doi.org/https://doi.org/10.1016/j.clsr.2021.105536>

<sup>19</sup> Gizem Alper, 'Contract Law Revisited: Algorithmic Pricing and the Notion of Contractual Fairness', *Computer Law & Security Review*, 47 (2022), 105741 <https://doi.org/https://doi.org/10.1016/j.clsr.2022.105741>

<sup>20</sup> Michael Mitsopoulos and Theodore Pelagidis, 'Does Staffing Affect the Time to Dispose Cases in Greek Courts?', *International Review of Law and Economics*, 27.2 (2007), 219–44 <https://doi.org/https://doi.org/10.1016/j.irle.2007.06.001>

<sup>21</sup> Sauro Mocetti, Lucia Rizzica and Giacomo Roma, 'Regulated Occupations in Italy: Extent and Labour Market Effects', *International Review of Law and Economics*, 66 (2021), 105987 <https://doi.org/https://doi.org/10.1016/j.irle.2021.105987>

demarcated division of authority between state regulatory bodies and professional self-governing institutions in order to prevent overlaps of competence and normative inconsistencies. Empirical findings by Engström et al. further reveal that a significant disparity between ethical standards and their actual enforcement persists where supervisory bodies lack institutional strength, allowing professional misconduct to continue despite the existence of comprehensive ethical codes. From a regulatory governance perspective, Ige demonstrates that multi-tiered supervisory arrangements frequently generate fragmentation, conflicts of role, and uneven law enforcement, thereby weakening the principle of justice in professional accountability. Moreover, Bassan emphasizes that the rapid development of digital notarization requires adaptive supervisory policies to maintain legal certainty and procedural fairness. Taken together, these studies confirm that the unchecked proliferation of supervisory institutions, in the absence of a coherent and justice-oriented regulatory framework, tends to produce overlapping authority, legal uncertainty, and disproportionate sanctions within the system of notarial supervision.

This study aims to analyze the proliferation of policies governing notarial supervisory institutions from a justice-based perspective. It seeks to assess regulatory coherence, overlapping authority, and their implications for legal certainty, professional independence, and proportional accountability, while formulating a fair and balanced model for notarial supervision.

## 2. Research Method

This study applies a descriptive-analytical legal research design to examine critically the proliferation of policies governing notarial supervisory institutions through the perspective of justice-based regulation.<sup>22</sup> The research utilizes a socio-legal approach, which combines normative legal analysis with empirical inquiry in order to capture both the doctrinal structure of the law and its practical operation within society. Through this approach, the study analyzes not only the formulation of supervisory norms but also their actual enforcement and institutional dynamics. The research relies on primary and secondary data sources.<sup>23</sup> Primary data are collected through in-depth, semi-structured interviews with practicing notaries, members of the Regional Notary Supervisory Council (MPD), and other relevant legal stakeholders in Tegal City, Central Java. These interviews aim to obtain first-hand insights into supervisory practices, institutional coordination, and legal challenges encountered in practice. Secondary data consist of statutory regulations, judicial decisions, academic books, and peer-

<sup>22</sup> Anis Mashdurohatun and others, 'Combating Digital Defamation: Regulations, Challenges and Protecting Reputation', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.3 (2025), 486–514 <https://doi.org/10.53955/jsderi.v3i3.147>

<sup>23</sup> Anis Mashdurohatun, I Made Dwi Jayantara, and others, 'Delayed Justice in Protecting Emergency Medical Workers', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.2 (2025), 347–71 <https://doi.org/10.53955/jsderi.v3i2.116>

reviewed journal articles related to notarial supervision, legal accountability, and professional ethics. In addition, tertiary legal materials, including legal dictionaries, government reports, and official institutional publications, are employed to reinforce conceptual clarity and normative interpretation.<sup>24</sup> Data analysis is conducted using a qualitative analytical method, beginning with data reduction to filter relevant information, followed by systematic data classification and thematic interpretation. Normative legal analysis is performed by assessing the consistency, coherence, and hierarchical validity of statutory provisions regulating notarial supervision.<sup>25</sup> Empirical findings are examined to identify recurring patterns of enforcement, institutional overlap, regulatory fragmentation, and practical constraints affecting supervisory effectiveness. The mechanism of legal issue analysis follows a structured process of legal norm identification, problem formulation, normative interpretation, and empirical validation, which together support the formulation of a justice-oriented regulatory reconstruction of notarial supervisory policies.<sup>26</sup>

### 3. Results and Discussion

#### *Proliferation of Policies on Notarial Supervisory Institutions*

The notarial profession constitutes one of the oldest legal institutions in human civilization and has played a fundamental role in ensuring legal certainty in civil relations. In its earliest phase, notaries emerged to assist societies with limited literacy by recording agreements, documenting legal acts, and authenticating important transactions. Notaries formalized the intentions of the parties in written form and validated these documents through specific marks or seals, thereby granting them probative value. Over time, two principal models of notarial function developed within different legal traditions. In common law systems, such as those of the United Kingdom, the United States, and several Southeast Asian countries, the notary primarily serves as a verifier and legalizer of documents. By contrast, in civil law systems, including those of Indonesia, France, and the Netherlands, the notary holds a more strategic role as a public official authorized to produce authentic deeds with full evidentiary force in private legal relations.<sup>27</sup>

<sup>24</sup> Anis Mashdurohatun, Deny Arly Asmara, and others, 'The Independence of Civil Servant Investigators in Indonesian Immigration: A Fiqh Siyasah Perspective', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 12.1 (2025), 345 <https://doi.org/10.29300/mzn.v12i1.5120>

<sup>25</sup> Muhammad Azam and others, 'Harmonizing Contemporary International Commercial Law with Sharia-Based National Legal Systems: A Comparative Study of Pakistan, Turkey, Indonesia, Malaysia, and Saudi Arabia', *MILRev: Metro Islamic Law Review*, 4.2 (2025), 1074–96 <https://doi.org/10.32332/milrev.v4i2.11334>

<sup>26</sup> Mashdurohatun, Asmara, and others.

<sup>27</sup> Joëlle Noailly and Richard Nahuis, 'Entry and Competition in the Dutch Notary Profession', *International Review of Law and Economics*, 30.2 (2010), 178–85 <https://doi.org/https://doi.org/10.1016/j.irle.2009.11.001>

Historically, the existence of notarial functions can be traced back to ancient Babylon through the Code of Hammurabi, which dates to approximately 2000 BCE and regulates legal documentation and contractual relations. During the Roman era, the notarius served as a state-appointed recorder responsible for documenting official statements, contracts, judicial proceedings, and administrative acts. This role expanded significantly during the medieval period and the Renaissance in Europe, particularly in Italy, France, Germany, and Spain, alongside the growth of commerce and the increasing demand for legal certainty in economic activities.<sup>28</sup> A major institutional transformation occurred when notaries were gradually detached from ecclesiastical authority and reconstituted as a secular public profession. In France, a series of royal reforms in the fifteenth and sixteenth centuries established the foundations of the modern notarial system. These reforms required notarial acts to be drafted in the national language, imposed ethical and moral qualifications on notaries, and prohibited the exercise of notarial functions by members of the judiciary, military, or clergy. The objective of these reforms was to ensure professional independence, integrity, and public accountability.<sup>29</sup>

The modern consolidation of the notarial profession reached its apex during the Napoleonic era in the early nineteenth century. The state reorganized notarial jurisdictions, limited the number of notaries, and introduced rigorous selection mechanisms to guarantee professional competence. From that period onward, the notary was firmly established as a public legal professional entrusted with safeguarding legal certainty, preventing disputes, and protecting the civil rights of citizens. This historical evolution demonstrates that the notarial institution continuously adapts to social, political, and economic transformations while preserving its core function as a guardian of legal authenticity and private legal order.<sup>30</sup>

The development of the notarial profession in England followed a trajectory similar to that of France, particularly in its early institutional formation under ecclesiastical authority. In the medieval period, notaries in England were initially selected and appointed by the Church, primarily by the Archbishop of Canterbury acting as the papal representative. In Ireland, several notaries were appointed by the Archbishop of Armagh. Since the thirteenth century, these notaries were

<sup>28</sup> Raymond de Roover, 'The Cambium Maritimum Contract According to the Genoese Notarial Records of the Twelfth and Thirteenth Centuries', *Explorations in Economic History*, 7.1 (1969), 15–33 [https://doi.org/https://doi.org/10.1016/0014-4983\(69\)90042-4](https://doi.org/https://doi.org/10.1016/0014-4983(69)90042-4)

<sup>29</sup> BERNARD SAINT-PIERRE and JOCELYN PELLETIER, 'From Microfilm to Computer: 15th Century Cadastral and Notarial Archives', in *Medieval Studies and the Computer*, ed. by Anne Gilmour-Bryson (Pergamon, 1979), pp. 165–75 <https://doi.org/https://doi.org/10.1016/B978-0-08-024677-2.50023-5>

<sup>30</sup> Antonio Ibarra, 'Economic Data and Social Network. Reflections on the Theory of Networks Applied to Historical Analysis on a Regional Scale: The Colonial Markets of Nueva España', *New Techno Humanities*, 3.1 (2023), 15–22 <https://doi.org/https://doi.org/10.1016/j.techum.2023.06.003>

entrusted with recording agreements and authenticating documents serving the administrative interests of both the Crown and the Church. The presence of notarial functions in England is also reflected in literary sources, most notably in the works of William Shakespeare. His play *The Merchant of Venice* illustrates the social importance of written contracts and legally binding agreements in early modern English society.<sup>31</sup>

Over time, notarial authority in England and Wales expanded in line with legal and commercial development. *Encyclopaedia Britannica* records that notaries in these jurisdictions often also practiced as solicitors and were authorized to authenticate signatures and commercial documents for domestic and international purposes. Their professional activities included legal consultation in matters of property, mortgages, and commercial contracts. Documents authenticated by notaries acquired evidentiary value in judicial proceedings and were therefore directly used for law enforcement. In Ireland, the authority to appoint notaries was transferred to the state in 1920 and reorganized following national independence in 1924. Since then, notarial jurisdiction has been determined by legal administrative authorities according to prevailing political and legal frameworks.<sup>32</sup> In Spain, the historical role of notaries assumed a strategic function in territorial expansion through military conquest. Spanish military expeditions regularly involved notaries to document acts of submission, negotiations, and territorial claims. During the conquest of Mexico in 1519 under Hernan Cortes, a notary identified as Diego de Godoy accompanied the expedition to record military actions, geographic conditions, and the formal transfer of authority. These records formed the documentary basis of Spanish colonial claims and demonstrate that notarial documentation functioned as a central instrument for legitimizing power under law.<sup>33</sup>

Melchior Kerchem is recognized as the first notary in Indonesia, serving during the Dutch colonial era as secretary to the College van Schepenen and as an official of the Verenigde Oost Indische Compagnie in Batavia. At that time, the colonial government placed notarial practice under strict administrative control to prevent abuse of authority. All notarial deeds required approval from the Governor General. In 1625, the colonial administration formally separated the notarial

<sup>31</sup> Maidolis Labañino Barrera, José Karel Fernández Martell and Blanca Nieves Marcheco Rey, 'El Requerimiento Notarial y Su Contestación Como Título Ejecutivo Del Crédito: La Confesión Extrajudicial de La Deuda\*\*Artículo Recibido El 17 de Junio de 2013 y Aceptado El 28 de Marzo de 2014', *Boletín Mexicano de Derecho Comparado*, 47.141 (2014), 909–33 [https://doi.org/https://doi.org/10.1016/S0041-8633\(14\)71179-2](https://doi.org/https://doi.org/10.1016/S0041-8633(14)71179-2)

<sup>32</sup> Laurens Bakker, 'Custom and Violence in Indonesia's Protracted Land Conflict', *Social Sciences & Humanities Open*, 8.1 (2023), 100624 <https://doi.org/https://doi.org/10.1016/j.ssaho.2023.100624>

<sup>33</sup> Martin Roestamy and others, 'A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest', *Land Use Policy*, 120 (2022), 106275 <https://doi.org/https://doi.org/10.1016/j.landusepol.2022.106275>

institution from the judicial secretariat and issued the first official instruction for notaries, introducing mandatory professional examinations and oaths of office.<sup>34</sup>

After the collapse of the VOC, the colonial government implemented formal civil and criminal law systems, which strengthened the legal function of notaries in regulating private legal relations. Notaries became responsible for issuing authentic deeds concerning transactions, inheritance, marriage, and contractual agreements. Subsequent regulations imposed further restrictions. In 1632, notaries were prohibited from issuing conveyance deeds and wills without government authorization, and by 1650 the number of notaries in Batavia was strictly limited. Regulatory consolidation culminated in the Notary Regulation of 1860, which comprehensively governed appointment and discipline but did not yet regulate formal education. Institutionalized notarial education later developed through postgraduate programs. The rise of nationalist movements enabled greater participation of indigenous notaries, while the late twentieth century marked the standardization of education through the Master of Notarial Law program.<sup>35</sup>

The legal policy concerning the protection of the notarial profession must begin with a comprehensive mapping of the normative framework governing the position of notaries as witnesses and as parties involved in the authentication of legal evidence. This legal framework encompasses Law Number 2 of 2014 on the Position of Notaries and its implementing regulations, including Ministerial Regulations of the Ministry of Law and Human Rights, Constitutional Court decisions, as well as provisions in the HIR, RBg, Criminal Procedure Code, and Civil Code. These regulations emerged within specific social configurations, rendering the analysis of their underlying social context essential to understanding the trajectory of legal protection afforded to notaries.<sup>36</sup>

Normatively, notaries are bound by obligations and prohibitions stipulated in the Law on the Position of Notaries and the Code of Ethics for Notaries. Violations of these provisions incur civil, administrative, and professional-ethical sanctions. The law, however, explicitly excludes criminal penalties against notaries. In practice, actions related to the preparation of authentic deeds are sometimes reclassified under criminal law, particularly when interpreted as involving falsification or abuse of authority. Legal doctrine presents divergent views on this issue. Habib Adjie asserts that criminal liability is only applicable when

<sup>34</sup> Rebecca Meckelburg and Agung Wardana, 'The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia', *Land Use Policy*, 137 (2024), 107017 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.107017>

<sup>35</sup> Indah Dwi Qurbani, Raphael J Heffron and Arrial Thoriq Setyo Rifano, 'Justice and Critical Mineral Development in Indonesia and across ASEAN', *The Extractive Industries and Society*, 8.1 (2021), 355–62 <https://doi.org/https://doi.org/10.1016/j.exis.2020.11.017>

<sup>36</sup> Martitah Martitah and others, 'Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia', *Heliyon*, 10.14 (2024), e33719 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e33719>

intentional falsification of deeds occurs after the application of administrative and civil sanctions. Conversely, Widhi Handoko maintains that the Law on the Position of Notaries does not intersect with criminal law, emphasizing that notarial regulation historically falls within civil and administrative law, consistent with the colonial legal system's strict separation of the Criminal Code and the Civil Code.<sup>37</sup>

Furthermore, the doctrinal perspective of the legal science tree affirms that criminal law, civil law, and administrative law have distinct characteristics and are non-interchangeable. Therefore, a notary's accountability in performing official duties must be addressed within the framework of civil and administrative law unless personal criminal intent is evident. Articles 50 and 51 of the Criminal Code provide a foundation for legal protection for notaries acting in good faith within the scope of their official authority. Consequently, the legal protection of notaries derives from their role as public officials executing state functions in civil law evidence administration.<sup>38</sup>

Legal protection for notaries in performing their duties as public officials is regulated under Law Number 30 of 2004 on the Position of Notaries (UUJN) and its amendment, Law Number 2 of 2014. The latter explicitly safeguards notaries in the preparation of authentic deeds, mandating confidentiality of the contents and information obtained during official duties, as stated in Article 4(2) and reinforced in Article 16(1)(f). Notaries, acting on behalf of the state, are obliged to maintain client confidentiality as a core professional responsibility rather than a privilege, and they remain accountable for violations through civil, administrative, or ethical sanctions. Criminal liability does not apply to notaries executing their duties in accordance with statutory regulations, as affirmed in Article 51(1) of the Criminal Code, which protects individuals from prosecution when performing actions mandated by law. Effective legal protection for notaries requires law enforcement authorities to understand comprehensively notarial roles, statutory mandates, and professional standards to prevent misclassification of lawful notarial actions as criminal conduct.<sup>39</sup>v

Regulatory frameworks further define the responsibilities and legal safeguards of notaries, encompassing Articles 50–51 of the Criminal Code, Article 170 of the

<sup>37</sup> Atikah Mardhiya Rohmy, Hartiwiningsih and I Gusti Ayu Ketut Rachmi Handayani, 'Judicial Mafia and Ecological In-Justice: Obstacles to Policy Enforcement in Indonesian Forest Management and Protection', *Trees, Forests and People*, 17 (2024), 100613 <https://doi.org/10.1016/j.tfp.2024.100613>

<sup>38</sup> Aan Widodo, Wa Ode Sitti Nurhaliza and Moh Rifaldi Akbar, 'Virtual Criminal Trials in Indonesia: Communication Inequalities, Power Dynamics, and the Challenges of Justice', *Social Sciences & Humanities Open*, 12 (2025), 102272 <https://doi.org/https://doi.org/10.1016/j.ssaho.2025.102272>

<sup>39</sup> João Rosa, Cláudio Teixeira and Joaquim Sousa Pinto, 'Risk Factors in E-Justice Information Systems', *Government Information Quarterly*, 30.3 (2013), 241–56 <https://doi.org/https://doi.org/10.1016/j.giq.2013.02.002>

Criminal Procedure Code, Articles 1320–1321 and 1335–1337 of the Civil Code, and Articles 66 and 84 of UU No. 2/2014. These provisions clarify the scope of notarial authority in authenticating deeds, maintaining procedural compliance during judicial processes, and ensuring accountability for defective deeds while preserving public trust. The legal system thus positions notaries as public officials executing state functions in civil law, balancing their accountability with statutory protections. This framework ensures that notaries can fulfill their duties with professional integrity and legal certainty, supporting the broader objective of safeguarding civil law transactions and protecting the public interest.<sup>40</sup>

The UUJN, particularly Articles 38, 39, and 40, establishes the criteria and standards for authentic deeds, with Article 41 stipulating that violations of these provisions reduce a deed's evidentiary value to that of a private document. Notaries possess the authority to draft authentic deeds, and this authority is expanded to accommodate societal demands for notarial services. Article 15 of UUJN (Law No. 30/2004 and its amendment Law No. 2/2014) outlines these functions, including drafting authentic deeds for legally mandated or voluntary purposes, ensuring date certainty, maintaining deeds, issuing copies and excerpts, and providing legal counsel related to deed creation. Additional powers include authenticating signatures, recording private documents, certifying copies, offering legal advice, and drafting deeds related to land and auction proceedings. According to Lumban Tobing, the notary's authority is limited to certain deeds, specific clients, designated territorial jurisdictions, and authorized time periods, ensuring that the deeds produced comply with legal standards and maintain public trust. Unauthorized actions outside these parameters reduce the legal status of a deed from authentic to private.<sup>41</sup>

Despite these comprehensive regulations, certain provisions in UUJN, such as Article 17(1)(b), which prohibits notaries from leaving their jurisdiction for more than seven consecutive days, have become outdated in the context of technological advancement. Modern digital tools, including mobile devices and internet-based platforms, enable notaries to perform their duties effectively without being physically present in their offices, rendering rigid territorial restrictions increasingly irrelevant. Continued enforcement of such provisions limits operational flexibility and efficiency, contradicting the jurisprudential principle that laws should anticipate future societal developments. Therefore, regulatory adaptation is necessary to reconcile notarial responsibilities with technological innovation, enabling notaries to maintain professional accountability while

<sup>40</sup> Wendy Davies, 'Judges and Judging: Truth and Justice in Northern Iberia on the Eve of the Millennium', *Journal of Medieval History*, 36.3 (2010), 193–203 <https://doi.org/https://doi.org/10.1016/j.jmedhist.2010.07.001>

<sup>41</sup> Przemysław Banasik, Sylwia Morawska and Agata Austen, 'The Community Involvement of Courts: An Action Research Study in the Context of the Polish Justice System', *Social Responsibility Journal*, 18.6 (2021), 1209–25 <https://doi.org/https://doi.org/10.1108/SRJ-09-2020-0367>

optimizing service delivery, thereby ensuring that the legal framework remains relevant, functional, and responsive to the demands of contemporary civil law practice.<sup>42</sup>

The restriction on notaries leaving their designated jurisdiction, as stipulated in Article 17(1)(b) UUJN, contradicts the constitutional objectives of justice and welfare outlined in the fourth paragraph of the Preamble to the 1945 Constitution. This provision limits notaries' ability to engage in long-term collaborations with external parties, including those outside their city or country, potentially exceeding seven consecutive days. Such constraints not only impede professional opportunities but also reduce potential income, particularly since notaries are not salaried public officials. Furthermore, the territorial limitation conflicts with Article 15(2)(e) UUJN, which grants notaries the authority to provide legal counseling in relation to deed creation. Restricting mobility hinders notaries from delivering legal services across regions, thereby undermining both client access and the notaries' capacity to generate remuneration necessary for their livelihood. Modern technological tools, including internet-enabled communication and mobile applications, enable notaries to perform their duties effectively regardless of physical location, highlighting the need for legal reform to reconcile territorial restrictions with contemporary practice.<sup>43v</sup>

Additionally, the obligation for notaries to read deeds aloud, as mandated in Article 16(1)(m) UUJN and reinforced in Article 44(1) UUJN, ensures the authenticity and legal certainty of notarial acts. This procedure guarantees that all parties understand the content of the deed, verify that it aligns with their intentions, and prevent future disputes regarding its clauses. Physical presence of the notary during the reading and signing process, accompanied by witnesses, secures evidentiary value and reinforces the notary's role in legal advocacy. Concurrently, the notary's right and obligation to maintain confidentiality, as provided in Articles 16(1)(f) UUJN, 170(1) KUHAP, 1909(3) KUHPerdata, and other relevant statutes, protect sensitive client information while balancing legal obligations to testify in judicial proceedings. Exceptions exist in cases of overriding legal interests, such as corruption investigations under Law No. 20/2001, illustrating a conditional limitation on this confidentiality. Collectively, these provisions underscore the dual responsibility of notaries: to uphold the integrity of authentic deeds while safeguarding the rights and interests of parties

<sup>42</sup> Henrik Wiig and Paola García-Reyes, 'Bread or Justice - Land Restitution and Investments in Montes de María, Colombia', *Land Use Policy*, 91 (2020), 104380 <https://doi.org/https://doi.org/10.1016/j.landusepol.2019.104380>

<sup>43</sup> Huang-Chih Sung, 'Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China', *Computer Law & Security Review*, 39 (2020), 105461 <https://doi.org/https://doi.org/10.1016/j.clsr.2020.105461>

involved, demonstrating the importance of harmonizing notarial duties with contemporary legal and technological developments.<sup>44</sup>

Notaries in Indonesia occupy a crucial role as public officials entrusted with drafting authentic deeds, a function governed by Law Number 30 of 2004 concerning the Position of Notaries (UUJN 2004) and its amendment, Law Number 2 of 2014 (UUJN 2014). These legal provisions empower Notaries to create documents that carry legal certainty, enforceability, and protection for the parties involved. Notaries exercise their authority independently and are not compensated by the state, distinguishing them from other public administrative officials. They must comply with statutory regulations, professional codes of ethics, and related supervisory frameworks to ensure that their acts meet the standards of legality and reliability. Any violation of these duties, whether due to negligence or intentional misconduct, subjects Notaries to administrative, civil, ethical, and criminal accountability. Consequently, the legal framework not only regulates their professional conduct but also preserves public trust in the notarial function by safeguarding the authenticity and enforceability of legal documents.<sup>45</sup>

To reinforce accountability, Indonesia has established a structured supervisory system for the notarial profession under UUJN 2014. The *Majelis Kehormatan Notaris* (MKN) supervises Notaries' professional conduct, including access to notarial records and adherence to ethical standards in legal proceedings. This system emerged following the Constitutional Court decision in Case No. 49/PUU X/2012, which annulled previous provisions that limited regional supervisory authority and reaffirmed the constitutional requirement for comprehensive oversight. By combining preventive and corrective mechanisms, the supervisory framework ensures compliance with ethical and legal obligations while protecting the dignity of the notarial office. It enhances the reliability of authentic deeds, strengthens legal certainty, and maintains public confidence in notarial acts. Therefore, the regulatory and supervisory system positions the notarial profession within a secure legal and ethical environment, facilitating both professional integrity and societal trust in the execution of authentic legal documents.<sup>46</sup>

<sup>44</sup> Arjan C Widlak and Rik Peeters, 'A Theory of the Infrastructure-Level Bureaucracy: Understanding the Consequences of Data-Exchange for Procedural Justice, Organizational Decision-Making, and Data Itself', *Government Information Quarterly*, 42.2 (2025), 102021 <https://doi.org/https://doi.org/10.1016/j.giq.2025.102021>

<sup>45</sup> Letícia Stevanato Rodrigues and others, 'Urban Political Ecology from the Margins: Peripheral Youth and Everyday Agency for Environmental Justice in the Global South', *Geoforum*, 166 (2025), 104419 <https://doi.org/https://doi.org/10.1016/j.geoforum.2025.104419>

<sup>46</sup> B R Carniello, 'The Rise of an Administrative Elite in Medieval Bologna: Notaries and Popular Government, 1282–1292', *Journal of Medieval History*, 28.4 (2002), 319–47 [https://doi.org/https://doi.org/10.1016/S0304-4181\(02\)00039-8](https://doi.org/https://doi.org/10.1016/S0304-4181(02)00039-8)

### ***Impact of Proliferation of Policies in Notarial Supervisory Institutions on Justice***

This study examines several provisions within the UUJN, that are frequently neglected or misaligned with contemporary notarial practice. A key provision under scrutiny is the restriction that prohibits notaries from leaving their assigned jurisdiction for seven consecutive days, as regulated in Article 17, paragraph 1, letter b of the UUJN. From the perspective of modernization and technological advancement, this restriction appears incompatible with current professional practice. The era of Industry 4.0 and the extensive use of information technology enable notaries to perform their duties effectively and efficiently without maintaining constant physical presence in their offices or designated regions. Digital devices such as smartphones and laptops facilitate communication and document management from any location, rendering the restriction on territorial mobility less relevant.<sup>47</sup>

Furthermore, Article 17, paragraph 1, letter b limits professional mobility, particularly for notaries whose residences are located outside their jurisdiction. Modern legal principles, as reflected in the concept of jurisprudence, derived from the terms “*ius*” meaning law or right and “prudence” meaning foresight, require legal rules to be adaptive and applicable over extended periods. Technological tools allow notaries to enhance productivity while remaining flexible in their work location. The restriction also conflicts with the legal political objectives of the notarial profession as outlined in the fourth paragraph of the Preamble of the 1945 Constitution, which emphasizes fairness and professional welfare. Limiting mobility prevents notaries from engaging in collaborations outside their jurisdiction or abroad, especially for activities exceeding seven consecutive days. As a result, notaries who do not receive government salaries risk losing legitimate professional income. The restriction contradicts Article 15, paragraph 2, letter e of the UUJN, which obligates notaries to provide legal guidance related to document preparation. Limiting notaries to specific regions reduces public access to legal services and restricts professional opportunities. Therefore, Article 17, paragraph 1, letter b requires comprehensive evaluation and revision to align with technological progress and the demands of modern notarial practice, ensuring legal regulations facilitate efficiency and professional welfare.<sup>48</sup>

Notaries have the obligation to read all deeds aloud, as stipulated in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 regarding the Position of Notaries. This provision mandates that a notary reads a deed before the appearing parties in the presence of at least two witnesses, or four witnesses for a will made underhand, and the

<sup>47</sup> Gisela Shaw, ‘Return to Europe – A Double-Edged Sword for Notaries? The Case of Poland and Hungary’, *Communist and Post-Communist Studies*, 42.3 (2009), 395–422 <https://doi.org/https://doi.org/10.1016/j.postcomstud.2009.07.002>

<sup>48</sup> Muneer M Alshater and others, ‘Fintech in Islamic Finance Literature: A Review’, *Heliyon*, 8.9 (2022), e10385 <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e10385>

deed must be signed immediately by the appearing parties, witnesses, and the notary. Article 1868 of the Indonesian Civil Code defines an authentic deed as a deed made in a legal form by or before an authorized official at the location where the deed is created. Reading a deed constitutes a part of the formalization process, including the official reading and signing of the deed. According to Lumban Tobing, when a notary personally reads a deed, the appearing parties are assured that they sign exactly what they have heard, while both the parties and the notary are confident that the deed reflects the parties' intentions.<sup>49</sup>

The reading of a deed by a notary represents a prerequisite for its authenticity and constitutes a fundamental duty of the notary. Article 44 of the Law on the Position of Notaries reiterates that immediately after the deed is read, it must be signed by all appearing parties, witnesses, and the notary, unless a party is unable to sign for a stated reason. The reading and signing of a deed constitute an inseparable process of its formalization. Notably, the deed must be read by the notary who drafted it and cannot be delegated to assistants or staff. This process ensures that the parties understand the clauses of the deed, can verify that its contents match their intentions, and are guaranteed that the signed deed corresponds exactly to what was read. Consequently, reading a deed directly relates to the function of an authentic deed as perfect evidence, safeguarding all parties, including the notary, in potential future disputes.<sup>50</sup>

Law Number 2 of 2014 also includes exceptions in Article 16 paragraph (7), permitting notaries to create a deed without reading it aloud if they personally understand and comprehend its contents. However, this provision does not explicitly address the role of notarial staff in reading deeds before the parties, a point often cited by notaries as justification for omitting the reading. Explanations of Article 16 paragraphs (1) and (8) further clarify that notaries must physically attend, read, and sign deeds before the appearing parties and witnesses. Reading a deed actively fulfills the notary's advocacy role by ensuring clarity and preventing misinterpretation.<sup>51</sup>

Furthermore, the reading of deeds serves multiple purposes. First, it conveys the accuracy and truthfulness of the deed's contents to the parties. Second, it ensures that the parties confirm the deed's clauses reflect their intentions. Third, it provides assurance that the signed document corresponds precisely to what was read aloud. The legal framework requires the notary to perform these duties,

<sup>49</sup> Karto Iskandar, Christianto and Maria Grace Herlina, 'Property Selling System with Support for Validation and Verification Process', *Procedia Computer Science*, 216 (2023), 186–93 <https://doi.org/https://doi.org/10.1016/j.procs.2022.12.126>

<sup>50</sup> Jaap Zevenbergen and others, 'Pro-Poor Land Administration: Principles for Recording the Land Rights of the Underrepresented', *Land Use Policy*, 31 (2013), 595–604 <https://doi.org/https://doi.org/10.1016/j.landusepol.2012.09.005>

<sup>51</sup> Mário Hiraoka, 'Land Use Changes in the Amazon Estuary', *Global Environmental Change*, 5.4 (1995), 323–36 [https://doi.org/https://doi.org/10.1016/0959-3780\(95\)00066-W](https://doi.org/https://doi.org/10.1016/0959-3780(95)00066-W)

emphasizing that the deed becomes effective and binding only after reading and signing. The supervisory system of notaries, particularly through the Regional Supervisory Board (*Majelis Pengawas Daerah*), ensures that notaries perform their duties in compliance with the law and professional code of ethics. The MPD monitors the preparation and execution of deeds, evaluates adherence to applicable laws and ethical standards, and reports findings to higher supervisory authorities, including the Regional Supervisory Council (*Majelis Pengawas Wilayah*) and the Central Supervisory Council (*Majelis Pengawas Pusat*). These supervisory mechanisms protect both the notaries and the public by preventing professional misconduct and ensuring accountability. The system includes preventive and corrective supervision, encompassing a priori measures such as legal counseling and awareness-raising, and a posteriori measures such as post-violation investigations and remedial actions.<sup>52</sup>

Despite the regulatory framework, MPD oversight faces challenges. Internal constraints include limited funding, insufficient infrastructure, and irregular coordination among members. External constraints encompass incomplete record-keeping of notarial protocols, unprepared notaries during inspections, and low public awareness regarding reporting mechanisms.<sup>53</sup> Therefore, effective supervision requires systematic planning, clear performance standards, timely reporting of deviations, and corrective actions to align practice with established regulations. By implementing these measures, MPD ensures the protection of parties' legal rights, reinforces notarial accountability, and upholds public trust in notarial services. The active reading of deeds by notaries is a legally mandated obligation that guarantees authenticity, protects the rights of all parties, and enhances legal certainty. Simultaneously, robust supervisory structures, including MPD, MPW, and MPP, operationalize preventive and corrective oversight, ensuring that notaries execute their duties ethically, professionally, and in full compliance with the law. This dual mechanism of procedural duty and institutional oversight embodies the principles of legal protection and justice, aligning with the broader framework of distributive, legal, and corrective justice in Indonesia.<sup>54</sup>v

The weaknesses of the legal structure in enforcing the notary profession are evident in the limited understanding of notaries' duties, authority, and

<sup>52</sup> Hassan F Gholipour and others, 'On Real Estate Market Transparency: The Relationship with ICT Trade and Investment', *Land Use Policy*, 133 (2023), 106846 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.106846>

<sup>53</sup> Cesar Casiano Flores and others, 'Governance Assessment of the UAVs Implementation in Rwanda under the Fit-for-Purpose Land Administration Approach', *Land Use Policy*, 99 (2020), 104725 <https://doi.org/https://doi.org/10.1016/j.landusepol.2020.104725>

<sup>54</sup> Joseph Feyertag and others, 'How Does Gender Affect the Perceived Security of Land and Property Rights? Evidence from 33 Countries', *Land Use Policy*, 104 (2021), 105299 <https://doi.org/https://doi.org/10.1016/j.landusepol.2021.105299>

responsibilities among law enforcement officers.<sup>55</sup> Law enforcement personnel including police officers, prosecutors, judges, advocates, and correctional officers frequently lack adequate competence regarding notarial authority, resulting in unprofessional execution of their tasks. This situation disrupts the proper course of law enforcement, creates operational level obstacles, and increases the risk of errors in cases involving notaries as victims or witnesses. Contributing factors include insufficient legal knowledge, weak adherence to the principle of the right person in the right position, low commitment to law enforcement, the absence of an integrated and modern legal mechanism, political interference within legal institutions, and allegations of corruption or judicial mafia practices. Poor coordination among law enforcement officers further diminishes effectiveness, although effective coordination constitutes a primary factor in legal empowerment for society.<sup>56</sup>

The internal structure of the professional organization, similar weaknesses are observed in the Indonesian Notary Association (*Ikatan Notaris Indonesia*,-INI). According to Articles 7 and 8 of the INI Articles of Association, the organization aims to uphold truth, justice, and the dignity of the notary office while enhancing members' competence through training, education, and seminars. Nevertheless, supervision and legal protection for members remain suboptimal. Numerous legal cases involving notaries do not receive adequate support due to INI's limited resources and the absence of consistent standard procedures for legal advocacy. Supervision by the Regional Supervisory Council (MPD) tends to be reactive, formalistic, and inefficient. The lack of unannounced inspections, clear evaluation standards, and inter MPD coordination results in sporadic supervision that fails to accurately identify notarial violations or errors.<sup>57</sup>

Interviews with MPD officials in Tegal City and Central Java indicate that notary supervision remains constrained in terms of procedures, facilities, and human resources. MPDs face internal challenges, including insufficient communication among members and limited understanding by notaries regarding MPD's role as a legal protection mechanism. Consequently, some notaries perceive MPD supervision negatively, reducing its effectiveness. Ideal supervision should follow a systematic approach, including establishing control standards, measuring performance, comparing outcomes with established benchmarks, and

<sup>55</sup> Md. Abdul Halim, 'Does Crowdfunding Contribute to Digital Financial Inclusion?', *Research in Globalization*, 9 (2024), 100238 <https://doi.org/https://doi.org/10.1016/j.resglo.2024.100238>

<sup>56</sup> Damiano Di Francesco Maesa and Paolo Mori, 'Blockchain 3.0 Applications Survey', *Journal of Parallel and Distributed Computing*, 138 (2020), 99–114 <https://doi.org/https://doi.org/10.1016/j.jpdc.2019.12.019>

<sup>57</sup> Jian Chen and others, 'Cross Trust: A Decentralized MA-ABE Mechanism for Cross-Border Identity Authentication', *International Journal of Critical Infrastructure Protection*, 44 (2024), 100661 <https://doi.org/https://doi.org/10.1016/j.ijcip.2024.100661>

correcting identified deficiencies. Applying these four steps is essential to ensure supervision generates effective, credible, and accountable results.<sup>58</sup>

Furthermore, notary competence development through periodic certification is crucial to ensure knowledge of updated regulations, relevant technology, and professional ethics. Sustained and collaborative supervision and training conducted jointly by MPD and INI, along with an independent, proportional, and transparent disciplinary mechanism, will enhance notaries' professionalism. This approach aligns with legal protection theory, which emphasizes certainty of rights and obligations for legal subjects, and general justice theory, which highlights compliance with laws for the public interest. The UUJN provides the legal basis for protecting the notary profession, including the establishment of the Supervisory Council. By implementing supervision that is effective, transparent, and standardized, notary service quality improves, error risks decrease, and public trust in the notary profession is maintained.<sup>59</sup>

### *Proliferation of Policies on Notarial Supervisory Institutions Based on Justice*

Notaries perform a critical function in the legal system as public officials authorized to draft authentic deeds and guarantee legal certainty in civil transactions. Contemporary social and technological developments compel the reconstruction of notarial authority theory to enhance its adaptability to modern societal needs. Applying a progressive law framework transforms notarial authority into a system that is flexible, just, and technologically aligned.<sup>60</sup> Progressive law, as articulated by Satjipto Rahardjo, conceptualizes law as a social instrument oriented toward substantive justice rather than rigid formalism. Within the notarial context, this framework emphasizes that legal authority should serve human interests by enabling notaries to produce authentic deeds that act as reliable evidence for public benefit, social welfare, and legal certainty. Progressive law further requires legal practitioners, including police, prosecutors, and judges, to interpret and apply law dynamically and contextually. Indonesian legislation on the UUJN attributes authority directly to notaries, prohibiting delegation,

<sup>58</sup> María Mercedes Di Virgilio, Mercedes Najman and Denise Brikman, 'The Sustainability of Social Housing Policies in Buenos Aires, Argentina: The Importance of Social, Economic, and Institutional Considerations', *Cities*, 168 (2026), 106451 <https://doi.org/https://doi.org/10.1016/j.cities.2025.106451>

<sup>59</sup> Sophie Gloeckler and others, 'An International Comparison of Psychiatric Advance Directive Policy: Across Eleven Jurisdictions and alongside Advance Directive Policy', *International Journal of Law and Psychiatry*, 101 (2025), 102098 <https://doi.org/https://doi.org/10.1016/j.ijlp.2025.102098>

<sup>60</sup> Uzodinma Yurriens Ezenduka and Debarati Halder, 'Operationalising the Right to Refuse Treatment: Karnataka's 2025 Response to the 2023 Order', *Perioperative Care and Operating Room Management*, 41 (2025), 100557 <https://doi.org/https://doi.org/10.1016/j.pcorm.2025.100557>

thereby ensuring accountability, consistency, and uniformity in executing official duties.<sup>61</sup>

In practice, the exercise of notarial authority encounters challenges such as uneven workloads between urban and rural notaries, limited integration of digital technologies including electronic signatures, and insufficient supervisory mechanisms that create risks of misuse or error. Progressive law provides solutions by advocating regulatory flexibility, strengthening supervision and accountability through technological applications, and expanding notaries' roles in civil mediation to prevent disputes and reduce judicial burdens. Reconstructing notarial authority theory requires integrating digital tools, implementing robust oversight systems, and empowering notaries to resolve legal disputes proactively.<sup>62</sup> These reforms enable notaries to respond effectively to evolving legal, social, and technological environments while maintaining professional ethics, accountability, and public trust. Aligning notarial practice with progressive law principles ensures that notaries continue to deliver justice, legal certainty, and social benefit, thereby adapting the profession to the complexities of modern civil law and the expectations of contemporary society.<sup>63</sup>

The prohibition preventing notaries from leaving their office for more than seven consecutive days, as outlined in Article 17 paragraph (1) letter b of the UUJN, no longer reflects the practical or societal needs of modern Indonesia. Empirical and theoretical analysis indicates that this regulation conflicts with the principles of progressive law, which emphasize utility, human-centered legal functions, and adaptability to technological advancements in Society 5.0. By mandating that notaries remain physically present in their offices, the rule restricts their ability to collaborate effectively with clients or institutions outside their jurisdiction, despite the availability of online communication tools, including email, messaging applications, and cloud-based platforms.<sup>64</sup> Furthermore, this limitation undermines Good Governance principles, as mandated by Law Number 30 of 2014, which require professionalism, transparency, accountability, and efficiency in public service. Comparative legal evaluation reveals that similar professional frameworks governing advocates and medical practitioners in Indonesia do not impose equivalent restrictions, highlighting the unnecessary and

<sup>61</sup> Luca Fantacci and Marcella Lorenzini, 'Technology versus Trust: Non-Bank Credit Systems from Notarized Loans in Early Modern Europe to Cryptolending', *Structural Change and Economic Dynamics*, 69 (2024), 83–95 <https://doi.org/https://doi.org/10.1016/j.strueco.2023.11.010>

<sup>62</sup> Alberto Riva and others, 'The Personal Internetworked Notary and Guardian', *International Journal of Medical Informatics*, 62.1 (2001), 27–40 [https://doi.org/https://doi.org/10.1016/S1386-5056\(00\)00136-2](https://doi.org/https://doi.org/10.1016/S1386-5056(00)00136-2)

<sup>63</sup> James M Murray, 'Failure of Corporation: Notaries Public in Medieval Bruges', *Journal of Medieval History*, 12.2 (1986), 155–66 [https://doi.org/https://doi.org/10.1016/0304-4181\(86\)90020-5](https://doi.org/https://doi.org/10.1016/0304-4181(86)90020-5)

<sup>64</sup> Alsoudi Dua and others, 'Security and Privacy in Permissioned Blockchain Interoperability: A Systematic Review', *Computers, Materials and Continua*, 85.2 (2025), 2579–2624 <https://doi.org/https://doi.org/10.32604/cmc.2025.070413>

counterproductive nature of the UUJN provision. Theoretically, the regulation fails to satisfy the justice values embedded in Pancasila, as emphasized by Yudi Latif, because it impedes notaries from pursuing professional welfare, maintaining equitable practices, and fostering systemic cohesion within the profession. Additionally, according to Lawrence M. Friedman's legal system theory, effective law requires interconnected sub-systems that provide mutual benefits, a condition clearly violated by this rigid restriction.<sup>65</sup>

Article 16 of the UUJN mandates that notaries read deeds in the presence of parties appearing before them. This regulation reflects an outdated understanding of notarial responsibilities and fails to adapt to the technological and societal developments inherent in the era of Society 5.0. First, the legislative process underlying this provision demonstrates inadequate comprehension and research by the law-making institution, specifically the Indonesian House of Representatives (DPR).<sup>66</sup> Effective lawmaking should involve thorough study, historical contextualization, and careful consideration of the notary profession to ensure that legal regulations serve practical societal needs. Progressive law theory, as applied in this dissertation, emphasizes the primacy of utility over strict legal certainty, suggesting that legal provisions should be created primarily to benefit both the profession and society, consistent with Fuller's principle of legality.<sup>67</sup>

Notaries perform a public function imbued with high philosophical significance, upholding dignity, honor, and professional integrity. Regulations that restrict their operational flexibility risk undermining these values and create ambiguity regarding the role and positioning of notaries within the state apparatus.<sup>68</sup> From the perspective of Pancasila justice theory, the state must protect and promote the welfare of all citizens, including professionals like notaries, who facilitate legal certainty in private and public transactions. Notaries contribute to the enforcement of agreements, land transactions, and corporate governance, thereby supporting both individual citizens and governmental

<sup>65</sup> N M Davidson, 'Notaries and Legal Professionals', in *International Encyclopedia of Housing and Home*, ed. by Susan J Smith (San Diego: Elsevier, 2012), pp. 131–35 <https://doi.org/https://doi.org/10.1016/B978-0-08-047163-1.00456-2>

<sup>66</sup> Philip T Hoffman, Gilles Postel-Vinay and Jean-Laurent Rosenthal, 'Entry, Information, and Financial Development: A Century of Competition between French Banks and Notaries', *Explorations in Economic History*, 55 (2015), 39–57 <https://doi.org/https://doi.org/10.1016/j.eeh.2014.04.002>

<sup>67</sup> Xiaohua Wu and others, 'A Distributed Cross-Chain Mechanism Based on Notary Schemes and Group Signatures', *Journal of King Saud University - Computer and Information Sciences*, 35.10 (2023), 101862 <https://doi.org/https://doi.org/10.1016/j.jksuci.2023.101862>

<sup>68</sup> V.V. Yarkov and I.G. Rents, 'Notariat and Mediation: New Opportunities of Information Technology in the Context of Competition of Legal Frameworks', 420.Ick (2020), 156–60 <https://doi.org/10.2991/assehr.k.200321.103>

functions. Therefore, laws regulating notarial duties must balance obligations with the professional welfare of notaries.<sup>69</sup>

The current requirement to read deeds physically also conflicts with principles of good governance, particularly efficiency and effectiveness, as outlined in this dissertation. Using Lawrence M. Friedman's legal system theory, this rule fails to adapt to evolving legal culture and technological advancements, especially digital communication tools such as Zoom and Google Meet. The COVID-19 pandemic further highlighted the necessity of online notarial practices, as social distancing requirements made physical attendance impractical.<sup>70</sup> Meanwhile, general legislation, including the Limited Liability Company Law (UU PT) and the Electronic Information and Transactions Law (UU ITE), already recognizes the legality of electronic documents and online approvals. The persistent insistence on physical presence under UUJN thus creates a conflict between *lex specialis* (UUJN) and *lex generalis* (UU ITE), undermining societal trust and professional efficiency. The strict adherence to Article 16(1)(m) may erode public confidence in notaries and incentivize the adoption of alternative solutions, such as fully electronic deeds or automated notarization platforms.<sup>71</sup> To maintain the relevance and integrity of the notary profession, legislative reform is necessary. This reform should integrate digital tools, align with principles of good governance, uphold Pancasila justice values, and reflect the realities of Society 5.0, ensuring that notaries can continue fulfilling their essential public functions effectively and sustainably.<sup>72</sup>

Article 15 of Law Number 2 of 2014, which amends Law Number 30 of 2004 concerning the Notary Profession, delineates the authorities and duties of notaries. Despite regulating professional responsibilities, the law does not explicitly grant legal protection to notaries who execute their duties in good faith, leaving them exposed to potential liability and undermining equitable safeguards. Legal scholars contend that, as public officials, notaries require protection analogous to Articles 50–51 of the Indonesian Criminal Code (KUHP), which stipulate that any individual performing acts to implement orders from an authorized official shall

<sup>69</sup> Alejandro Fernández, Marietta Haffner and Marja Elsinga, 'When Land Is Not Enough: Drawing in Private Investment to Increase Social Rental Housing in Spain', *Cities*, 159 (2025), 105720 <https://doi.org/https://doi.org/10.1016/j.cities.2025.105720>

<sup>70</sup> Eun Hak Lee and Ho-Chul Park, 'Publicness in Highway Projects: A Multi-Criteria Decision-Making Approach to Public-Private Partnerships', *Socio-Economic Planning Sciences*, 98 (2025), 102154 <https://doi.org/https://doi.org/10.1016/j.seps.2025.102154>

<sup>71</sup> Rachel B Wickenheiser, 'Profits over People: The Dangers of Privatizing Space Colonization', *Futures*, 169 (2025), 103592 <https://doi.org/https://doi.org/10.1016/j.futures.2025.103592>

<sup>72</sup> Candy Paula Adventia Haezera and Tjempaka, 'Responsibility of a Notary Public Towards a Forged Deed of Decision of the Shareholders Meeting (Example of the Cases of Banten High Court Number 9/PID/2019/PT.BTN)', 478.Ticash (2020), 822–25 <https://doi.org/10.2991/assehr.k.201209.129>

not incur criminal liability.<sup>73</sup> In accordance with Article 1(1) of UUJN, notaries function as public officials empowered to draft authentic deeds and exercise other statutory authorities, positioning them within the framework of public trust and state mandate. From an Islamic legal perspective, this obligation aligns with QS. An-Nisa' (4:58), which instructs individuals to deliver trusts to their rightful recipients and adjudicate with justice. Islamic jurisprudence reinforces that persons executing legitimate orders in good faith from authorized authorities (*wali al-amr*) bear no criminal responsibility, with accountability resting upon the issuing authority. Therefore, incorporating a protective provision in Article 15 as paragraph (2) would shield notaries from criminal prosecution, enhance justice, support good governance, and strengthen the integrity, professional dignity, and societal trust in the notary profession within Indonesia's legal system.<sup>74</sup>

The study demonstrates that the reconstruction of regulatory provisions concerning notarial responsibilities is imperative, as several clauses in the UUJN have become misaligned with contemporary technological developments and the demands of modern professional practice. Specifically, Article 17 paragraph (1) letter b, which prohibits notaries from leaving their designated jurisdiction for more than seven consecutive days, no longer offers practical benefits within the current context of notarial services. Advancements in digital technology enable notaries to perform their duties effectively using laptops and internet connectivity, rendering physical presence in a specific jurisdiction a non-essential determinant of service continuity. Client interactions can be conducted efficiently through online platforms, including email, instant messaging, and cloud-based document management systems. Consequently, the amendment of this provision should recognize notaries as lawfully performing their duties when demonstrating verifiable activity via digital media, independent of rigid geographic constraints.<sup>75</sup>

Furthermore, the study identifies that Article 16 letter m fails to accommodate the societal realities of Indonesia 5.0, which require the integration of technology into public services. While the in-person reading of deeds before clients and witnesses safeguards document authenticity, this requirement has not adapted to video conferencing technologies. Platforms such as Zoom and Google Meet allow all parties to participate remotely without compromising procedural transparency or legal reliability, particularly benefiting clients located in other cities or islands.

<sup>73</sup> Lina Maulidiana, Rendy Renaldy and Muhamad Rusjana, 'Dialectics Method in Completion of Notary & PPAT Service Capacity Issues with Lecturers as Social Problems in the Legal Education Scope', 140.Icleh (2020), 401-5 <https://doi.org/10.2991/aebmr.k.200513.079>

<sup>74</sup> Kurniawan Budi Santoso, *Notary Legal Protection Related to Notary Summons in the Notary Audit Process Post the Decision of the Constitutional Court Number 16/Pu-Xviii/2020* (Atlantis Press SARL, 2023) [https://doi.org/10.2991/978-2-38476-024-4\\_67](https://doi.org/10.2991/978-2-38476-024-4_67)

<sup>75</sup> Vincentius Simon Suyanto, 'AHU-Online as a Means of Notary Performance Assistance and Responsibility of Documents Produced', 140.Icleh (2020), 529-36 <https://doi.org/10.2991/aebmr.k.200513.103>

Reforming this provision to permit virtual deed reading would increase notarial flexibility, expand public access to services, and maintain the authenticity and integrity of notarial deeds.<sup>76</sup>

In addition to procedural shortcomings, the research highlights a fundamental deficiency in Article 15, which governs notarial authority without ensuring adequate legal protection. As public officials, notaries bear substantial responsibility in drafting authentic deeds, yet current regulations fail to guarantee immunity for actions performed in good faith.<sup>77</sup> The absence of legal protection exposes notaries to potential criminalization, contradicting the principles enshrined in Articles 50–51 of the Indonesian Criminal Code, which exempt officials executing lawful duties from prosecution. Therefore, reconstructing Article 15 should explicitly incorporate legal safeguards for notaries acting professionally and impartially, thereby ensuring legal certainty while preserving their independence in executing state-mandated functions.<sup>78</sup>

International comparisons underscore the necessity of such regulatory reform. The United States has implemented Remote Online Notarization (RON), enabling notaries to operate remotely and providing qualified immunity for officials performing authorized duties. Similarly, Brazil, under Law No. 8.935/1994, grants notaries legal protection and authorizes digital reading and signing of deeds. These practices demonstrate that modernizing notarial regulations enhances service efficiency while strengthening the legal position of notaries as protected public officials.<sup>79</sup> By adopting analogous principles, Indonesia can develop a more adaptive, equitable, and responsive notarial system. Reforming these three core articles will foster progressive governance in notarial practice, harmonizing with digital-era demands without compromising deed authenticity or the professional authority of notaries.<sup>80</sup>

<sup>76</sup> Sri Nurdiana Purwaningsih, 'Organ Transplant Agreement Between Donor and Recipient by Notary', 140.Icleh (2020), 626–32 <https://doi.org/10.2991/aebmr.k.200513.119>

<sup>77</sup> Joan Clay and Elvis C Stephens, 'Union Organizers' Access to Hotels' Private Property', *The Cornell Hotel and Restaurant Administration Quarterly*, 36.2 (1995), 4–28 [https://doi.org/https://doi.org/10.1016/0010-8804\(95\)93840-Q](https://doi.org/https://doi.org/10.1016/0010-8804(95)93840-Q)

<sup>78</sup> Yukun Zheng and others, *A Cross-Chain Scheme Combining Notary with Linkable Ring Signature and Hash Time Lock Contract* (Atlantis Press International BV, 2024) [https://doi.org/10.2991/978-94-6463-419-8\\_28](https://doi.org/10.2991/978-94-6463-419-8_28)

<sup>79</sup> Harsanto Nursadi Wigati Pujiningrum, Rosa Agustina, 'Civil Disputes Between Government and Individuals: A Comparative Study of Indonesia and French Legal System', *Jurnal Hukum UNISSULA*, 40.2 (2024), 110–33 <https://doi.org/http://dx.doi.org/10.26532/jh.v40i2.39388>

<sup>80</sup> Billy Hutomo Kaspar and Mella Ismelina Farma Rahayu, 'Legal Perspective of the Role of Notary in Legalizing Underhand Lease Agreements in Indonesia', *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 655.Ticash 2021 (2022), 972–79 <https://doi.org/10.2991/assehr.k.220404.154>

## 4. Conclusion

The study concludes that the current regulatory framework governing notarial responsibilities in drafting binding deeds requires significant reconstruction to align with principles of justice, technological developments, and professional practice. First, existing regulations inadequately reflect the principle of fairness. Notaries, as neutral public officials, should not be held liable for the malintent or fraudulent acts of parties executing a deed. Legal and procedural safeguards must ensure that authentic deeds retain full evidentiary power unless compelling evidence demonstrates procedural errors, thereby balancing the rights of the parties with the duties of the notary. Furthermore, inconsistencies persist between Article 1(6), Article 66A, and Article 67 of the UUJN, leading to overlapping authority between the Notary Supervisory Council and the Honorary Council, which generates legal uncertainty in supervision and professional guidance. Second, the study identifies substantive, structural, and cultural weaknesses in the current regulations. Substantively, provisions such as Article 17(1)(b) and Article 16(m) fail to accommodate digital communication and remote interactions, rendering strict territorial and in-person reading requirements obsolete in the era of Indonesia 5.0. Structurally, enforcement gaps and the limited advocacy role of the Indonesian Notary Association (INI) expose notaries to legal vulnerability, particularly in cases of misdirected prosecution. Culturally, bureaucratic practices and societal compromise norms undermine professional conduct, creating a perception of non-compliance that negatively affects notarial credibility. Third, the study recommends a systematic reconstruction of Articles 15, 16, and 17 of the UUJN. Proposed amendments include recognizing remote notarization as legally valid, permitting online reading of deeds with witnesses, and explicitly providing legal protection for notaries who perform their duties honestly, impartially, and in accordance with state authority. Such reforms will enhance access, efficiency, and justice in notarial services, safeguard notarial independence, and strengthen public trust in the profession while preserving the authenticity and integrity of legal deeds.

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