

THE IMPLEMENTATION OF NOTARY INCLUSIVE RIGHTS IN THE FRAME OF LAW ENFORCEMENT AS A PUBLIC OFFICIAL

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Abstract

This article describes the implementation of a notary's inclusive rights within the framework of carrying out his duties as a public official. The granting of attribution authority to a notary as a public official is a special assignment that is made based on laws and regulations comprising certain roles, functions, and authorities to provide legal services (law enforcement) to the public who need authentic written evidence and the other civil laws authorities, along with inclusive legal protection rights in the enforcement of duties of a notary. The research method used is juridical normative, which analyzes the legal rules and legal events that occur, and it is followed by the comparative study between the several countries that govern it too in practice. This study aims to find out what and how the legal protection of the notary position as a public official is. The results showed that the form of legal protection that is inclusive of notaries as general officials have been sufficiently regulated in the rules of the Notary Commission as well as the right and obligation of notaries. In addition, the existence of the Notary Honorary Council and Notary Supervisory Board as a tool for the organization of the Indonesian Notary Association has strengthened the position of an inclusive notary through preventive measures in the context of fostering and supervising the ethics of notary behavior and the practice of carrying out the duties of the notary commission under the rules in UUJN and UUJN-P.

Keywords: *Inclusive Rights of Notary; Law Enforcement; Legal Protection; Public Official*

1. INTRODUCTION

The existence of notaries in Indonesia has been known for a long time which can be noticed from various laws and regulations governing the position of a Notary as a relic of the colonial era of the Dutch East Indies. It is known as Regalements Op Het Notary Ambt in Indonesia as contained in the ordinance dated January 11, 1860. It has promulgated in Staatsblad 1860 No.3 which entered into force dated July 1, 1860, as last amended in the Statue Book of 1954 No. 101 hereinafter referred to as the Notary Office

Regulation Staatsblad 1860 No. 3 (abbreviated: PJN Stb. 1860/3). It essentially regulates who the Notary is, the form of the Notarial deed, the conditions for its creation, the witnesses, the supervision of notaries, the storage of their protocols, and other rules related to the implementation of duties of the notary position. It is also known as the Ordinance of September 16, 1931, concerning the Honorarium of Notaries, and after the independence of the Republic of Indonesia then known as Act no. 33 of 1954 concerning Deputy Notaries and Temporary Notary Representatives (Statue Book of 1954 Number 101, additional to Statue Book Number 700) and Act no. 8 of 2004 concerning Amendments to Act no. 2 of 1986 related to the General Judiciary (Statue Book of the Republic of Indonesia of 2004 Number 34, Supplement to the Statue Book Number 4379) and Government Regulation Number 11 of 1949 concerning Oaths of the Notary Position. Various provisions in these laws and regulations no longer follow the development and legal needs of Indonesian society, so they are declared repealed and not valid as of the date of promulgation Act no. 30 of 2004 concerning the position of Notary (hereinafter abbreviated: UUJN).

UUJN has carried out a comprehensive renewal and reorganization of one law, regulating the position of a notary to create a legal unification that applies to all residents in all regions of the Republic of Indonesia in the field of notarial law. However, as time passed by, some provisions in Act no. 30 of 2004 concerning the position of a notary are no longer under the legal developments and the needs of society. It requires amendment Act no. 2 of 2014 concerning amendments to Act no. 30 of 2004 concerning the position of Notary is not relevant anymore with the legal development and social needs. It requires amendments through Act no. 2 of 2014 concerning Amendments to Act no. 30 of 2004 concerning the position of notary (hereinafter abbreviated as UUJN-P) promulgated in Jakarta on January 15, 2014, in the State Gazette of the Republic of Indonesia of 2014 no.3.

Thus, based on the UUJN and UUJN-P, it has provided reinforcement related to the attribution authority granted by the constitution to a notary, and among the notary's powers which are regulated based on the provisions in Article 15 Paragraph (1) of the UUJN-P which gives the notary the authority to make a deed, authentic documents relating to all necessary deeds, agreements, and provisions¹. The basic authority of a notary has been regulated in a limited manner by laws and regulations, and the duties of a notary include formulating the intentions and wills that need to be included by interested parties in an authentic deed, guaranteeing the certainty of the date of making deed, keeping the minutes of the deed, providing grossed, copies and the quotation on the deed and all that during the making of the deed it is not delegated or excluded to

¹ Ibireina Saulisa Agitha Pandia, M. Fajri Mekka Putra, and Widodo Suryandono, "Tanggung Jawab Notaris Terhadap Pelanggaran Jabatan Terkait Kelalaian Notaris Dalam Memenuhi Perjanjian yang Mengikat Notaris (Studi Kasus: Putusan Majelis Pengawas Pusat Notaris Nomor: 09/B/MPPN/XI/2018)," *Indonesian Notary* 1, no. 3 (2019): 1-23, <http://notary.ui.ac.id/index.php/home/article/view/434>.

other officials as determined by law. The main task of the notary is to affirm or express the wishes and desires of the parties who need his/her services into an authentic deed. Notaries in carrying out their duties when making authentic deeds cannot be separated from errors or mistakes caused by inappropriate behavior of the parties or even due to bad or unprofessional behavior from the notary himself.

The biggest temptation of a notary in carrying out his/her position is often faced with problems such as making an authentic deed based on a piece of false information or falsified data by the parties to achieve personal goals. The lack of accuracy and professionalism applied by a notary such as taking sides, adding, subtracting, or making and falsifying a deed of things can plunge the notary himself into big trouble. Negligence in carrying out their duties in making a notary deed in addition to causing the revocation of the rights of one party or the donor, the notary can be prosecuted as a result of legal liability by applying administrative sanctions, and civil and criminal sanctions.

The position of a notary that is inclusive will always uphold moral and ethical values such as nobility and dignity by carrying out his official duties which must be following applicable laws and regulations so as not to cause mistakes that will bring risks to the notary himself and emerge public harm. Likewise, the Notary profession in carrying out his position is also required to be neutral and impartial, and act sincerely, carefully, completely, and accurately. Moreover, they must provide the same legal protection and certainty to the parties². Basically, Act no. 2 of 2014 concerning amendments to Act no. 30 of 2004 concerning a notary position (UUJN-P) are legal umbrella and signs for notaries in the performance of their duties. If the notary is proven to have violated the provisions contained in the UUJN and UUJNP, the notary concerned will be subject to law enforcement in the form of sanctions according to the type of violation that has been committed. Notaries in Carrying out their positions as public official, if they are not doing it carefully, can violate the provisions of the legislation ethics, or even be ensnared in criminal acts.

In addition, a notary in carrying out his duties with the attribution authority must also have sufficient scientific insight into the field of a notary with personal integrity that is trustworthy, honest, and impartial. Secondly, they have to provide a guarantee of legal certainty over authentic written evidence regarding actions, agreements, stipulations, and legal events made before or by a notary. Before carrying out their position, based on the provisions of article 4 paragraphs (1) and (2) of the UUJN, a notary is required to take an oath/promise according to their belief in front of the minister or an appointed official. This taking oath process is a form and responsibility attached to a person. Notaries are based on their respective religions and belief as a form of nobility and

² Pandia, Putra, and Suryandono, "Tanggung Jawab Notaris Terhadap Pelanggaran Jabatan," *Indonesian Notary* 1, no. 3 (2019): 1–23, <http://notary.ui.ac.id/index.php/home/article/view/434>

dignity of a notary with a crown of office as a public official and which basically reads as an oath:

1. Notaries will obey and be loyal to the state of the Republic of Indonesia, Pancasila, and the 1945 constitution of the Republic of Indonesia, the law on Notary positions, and other laws and regulations.
2. Notaries will carry out their position in a trustworthy, honest, though, independent, and just.
3. The notary will maintain his attitude, and behavior, and will carry out his obligations under the professional code of ethics, honor, dignity, and responsibilities as a notary.
4. The notary will keep the contents of the deed and information obtained in the execution of his office confidential.
5. Notary to be appointed in this position, either directly or indirectly, under any name of pretext, has never and will not give or promise anything to anyone.

In carrying out his duties as a notary, of course, needs legal protection. The form of legal protection for notaries in the act of notary positions is provided by the Notary Supervisory Council and Notary Honorary Council³. The honorary council is divided into three, according to its level (regional, state, and central) as a complement, the organization of the Indonesian Notary Association. It only has the authority to resolve various types of internal violations. If the carrying out of the duties of a notary position is suspected of harming the interests of the community, it becomes the authority of the Notary Supervisory Council (MPDN, MPWN, and MPPN). Guidance and supervision are preventive steps in the practice of carrying out the protocol of duties functions, obligations, authorities, and behavior of a notary under the rules in UUJN and UUJN-P. If in its implementation there has been a violation of both UUJN and UUJNP, the Notary who is in the process of being examined by the Notary Regional Supervisory Council (MPDN) and the Territory Honorary Council (MKNW) is given the widest opportunity to file self-defense with reasons justified by law. The establishment of the Notary Regional Supervisory Council (MPDN) and the notary territory Honorary council (MKNW) to provide legal protection for notaries and put the problem in its share. Therefore, based on the above explanation, the author intends to examine the legal protection in implementing the inclusive rights of a Notary in the framework of implementing law enforcement duties as a public official. The method of the research used is juridical normative, which analyzes the legal rules and legal events that occur, and it is followed by the comparative study between the several countries that govern it too in practice. This study aims to find out what and how the legal protection of the notary position as a public official is.

³ Entin Sholikhah and Jawade Hafidz, "Perlindungan Hukum Terhadap Jabatan Notaris Yang Diduga Melakukan Malpraktek Dalam Proses Pembuatan Akta Otentik," *Jurnal Akta* 4, no. 1 (March 2017): 47, <https://doi.org/10.30659/akta.v4i1.1570>.

2. Analysis and Discussion

The Republic of Indonesia, as a legal state based on Pancasila and the 1945 constitution guarantees certainty, order, and legal protection for citizens. That is also referred to the philosophical considerations for the issuance of the UUJN-P. in the part of the explanation of the UUJN-P states: to ensure certainty, order, and legal protection, authentic written evidence is needed regarding legal acts, agreements, stipulations, and events made before or by a notary. It confirms that the philosophical basis for the issuance of the UUJN emphasized ensures certainty, order, and legal protection which is the essence of truth and justice. The general explanation of the UUJN states that the principle of the rule of law guarantees certainty, order, and legal protection based on truth and justice. Certainty, order, and legal protection are also demanding some other things such as; legal traffic in people's lives requiring evidence that determines the rights and obligations of a person as a legal subject in society.

2.1. The Position of a Notary as a Public Official

An inclusive position of a notary is a manifestation of the notary's obligation to keep the contents of the deed and information obtained in the execution of his office confidential and at the same time in carrying out duties as a notary is obliged to carry out his position in a trustworthy, honest, thorough, independent and just. The Notary Honorary Council is to provide supervision to the notary so that the notary continues to work as a professional who has a form of legal protection when the notary has acted according to the law and notary ethics, and the notary is not allowed to attend or be examined either as a witness or as a suspect⁴. The regional Supervisory Council and the regional Honorary Council will provide a preliminary assessment (examination) of the suspected notary⁵. If the Notary Supervisory Council and the Notary Honorary Council state that the Notary has carried out his work by the rules (right on the track) according to UUJN and UUJNP law, it can be ascertained that the Supervisory Council and the Honorary Council will provide maximum protection to the concerned notary. On the other hand, MPD and MKN will not protect notaries who do not carry out their duties under the provisions of the UUJN and UUJNP.

The position of a notary as a public official is a field of work or assignment that is intentionally made based on laws and regulations for certain functions and authorities and is sustainable as a permanent work environment. Article 1 number 1 of act no. 2 of 2014 concerning the position of a notary, states that the notion of a notary is a public official who is authorized to make authentic deeds and has other authorities

⁴ Theo Anugrah Pakarti and Daly Erni, "Jabatan Notaris dan Kode Etik Notaris: Bagaimana Peran dan Fungsi Dewan Kehormatan Notaris?," *Kertha Semaya : Jurnal Ilmu Hukum* 10, no. 7 (June 11, 2022): 1663, <https://doi.org/10.24843/KS.2022.v10.i07.p17>.

⁵ Ria Trisnomurti and I Gusti Bagus Suryawan, "Tugas Dan Fungsi Majelis Pengawas Daerah dalam Menyelenggarakan Pengawasan, Pemeriksaan, dan Penjatuhan Sanksi Terhadap Notaris," *Jurnal Notariil* 2, no. 2 (2017): 127-40, <https://doi.org/10.22225/jn.2.2.353.127>.

as referred to in other legislations. Taking into account the description of article 1 of the act on notary positions, it can be explained that Notaries are: 1) Public officials, 2) authorized to make a deed, 3) authentic, 4) determined by the constitution⁶. A Notary is a state official/public official who can be appointed by the state to carry out the state's duties in legal services to the community to achieve legal certainty as an official who makes authentic deeds.

A notary is a public official, in particular (the only one) authorized to make authentic deeds regarding all actions, agreements, and decisions required by general laws and regulations to be desired by the person concerned which is outlined in an authentic deed guarantees the date, keeps the deeds, issuance of grosses, copies (derivatives) and quotations, all of which were at the time of making the deeds or dedicated to officials or other individuals⁷. In the interest of a Notary and for the benefit of the Indonesians, the government on October 6, 2004, ratified the regulation on the position of a Notary called Act no. 30 of 2004 concerning the position of a Notary.

2.2. Position, Rights, and Obligations of a Notary

Notaries have rights and obligations in carrying out their duties in their fields. Regarding the rights and obligations of a notary, Satjipto Rahardjo⁸ stated that these rights and obligations are based on the law. Notary rights are regulated in the law on Notary Positions related to the right to disengage. The term right to deny is a translation

⁶ Edwar Edwar, Faisal A.Rani, and Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before The Law," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 2 (July 2019): 207, <https://doi.org/10.24843/JMHU.2019.v08.i02.p05>. agreements and stipulations that are required for those concerned to be stated in an authentic deed that if legal problems occur by a notary then the inspection must be obtained from the Honorary Board of Notary. which resulted in the examination contradicting principle equality before the law. After the issuance of Act No. 2 of 2014 Notary Position, notary publication by law enforcers must obtain permission from MKN which creates legal discrimination. The problem examined is how the position of the notary as a witness is related to the deed or letter under the hand made by him to the judicial process. The aim is finding out how the position of the Notary a witness is related to the deed or letter under his hand made against the judicial process. The results his research were the position of the notary a witness related to the deed he made based on the Notary Position Law resulting in legal proceedings being hampered due to waiting for permission from the Honorary Board of Notaries. In connection with the above procedure, it is indicated that the calling of a notary by law enforcers must be licensed by the Honorary Board of Notaries not in accordance with the concept of equality before the law. Notaris memiliki suatu kewenangan dalam membuat akta otentik serta memiliki wewenang dalam pembuatan, perjanjian serta penetapan yang diwajibkan bagi yang berkepentingan yang dinyatakan dalam akta otentik yang apabila terjadi permasalahan hukum yang dilakukan oleh notaris maka untuk pemeriksaannya harus izin dari Majelis Kehormatan Notaris. yang mengakibatkan pemeriksaan tersebut tidak sesuai dengan equality before the law. Setelah keluarnya Undang-Undang Jabatan Notaris Nomor 2 Tahun 2014, pemanggilan notaris oleh aparat hukum ada izin dari MKN yang menimbulkan diskriminasi hukum. Permasalahannya yang dikaji adalah Bagaimanakah kedudukan notaris sebagai saksi terkait dengan akta atau surat dibawah tangan yang dibuatnya terhadap proses peradilan. Tujuannya adalah Untuk mengetahui bagaimana kedudukan Notaris sebagai saksi terkait dengan akta atau surat dibawah tangan yang dibuatnya terhadap proses peradilan. Hasil penelitiannya adalah kedudukan notaries sebagai saksi terkait dengan akta yang dibuatnya berdasarkan Undang-Undan Jabatan Notaris mengakibatkan proses hukum terhambat akibat menunggu izin dari Majelis Kehormatan Notaris. Sehubungan dengan prosedur tersebut diatas menunjukkan b...,"author":{"dropping-particle":"","family":"Edwar","given":"Edwar","non-dropping-particle":"","parse-names":false,"suffix":""},{dropping-particle":"","family":"A. Rani","given":"Faisal","non-dropping-particle":"","parse-names":false,"suffix":""},{dropping-particle":"","family":"Ali","given":"Dahlan","non-dropping-particle":"","parse-names":false,"suffix":""},"container-title":"Jurnal Magister Hukum Udayana (Udayana Master Law Journal)

⁷ Asuan and Susi Yanuarsi, "Kontribusi Jabatan Notaris dalam Perjanjian Kredit Bank," *Solusi* 20, no. 3 (2022): 387–404, <https://doi.org/https://doi.org/10.36546/solusi.v20i3.706>.

⁸ Luthvi Febryka Nola, "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (Tki)," *Negara Hukum* 7, no. 1 (2016): 40.

of *verschonningsrecht* which means the right to be freed from giving testimony as a witness in civil or criminal cases. This right is an exception to the general principle that everyone who is called a witness is obliged to give that testimony.

Besides the right, there is an obligation of a notary to keep everything confidential regarding the deed he made, and all information obtained for the making of the deed because of his position as a public official, even though it is not mentioned in the deed. The technically juridical understanding of the notary's obligation to keep confidentially is not limited to the formulation of the sentence that is confirmed as stated in the contents of the deed. However, it also includes all information that is notified or submitted-documents to the notary. Thus, the obligation to keep everything confidential regarding the deed he made and all information obtained for the making of the deed are stipulated in the provisions of article 16 paragraph (1) letter F of the Act on Notary positions. The notary is obliged to keep everything about the deed he made and all information obtained for the making of the deed confidential under the oath of office, otherwise stipulated by law. Unless ordered by the constitution the Notary is not obligated to keep secrets and the Notary must provide the necessary information/statements relating to the deed making. Or specifically, only the law can order a notary to disclose the contents of the deed and the information/statement notified by the notary relating to the making of the deed.

The notary can acts as an impartial official witness on the identity, understanding, intent, and signature of the person who appears before the notary for certain purposes. The person may take an oath, give oral or written testimony, or acknowledge signatures on legal documents. In each instance, the notary proves that certain formalities have been complied with. The law of Montana defines certain "Notary Powers" that a notary can possess. Notaries must always be aware that every act of a notary affects the legal rights of others. Carelessness or negligence of a notary can harm these rights. After being proven to have violated these rights, a notary can be punished as determined by the constitution⁹. Notaries must work professionally by appealing the necessary rules and requirements by the forms and procedures specified in Article 38 of the UUJN and subsequently formulating, reading, and formalizing the deed whose results can be used as perfect (authentic) evidence.

The existence of the deed made by the Notary will later be used as authentic evidence and has the main purpose of preventing fraud, creating a legal certainty over the legal relationship that occurs between the parties as outlined in the form of an agreement or other forms required by the community. Every notarial deed made by a notary is carried out under the oath of office along with its statement on every

⁹ Kunni Afifah, "Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya," *Jurnal Lex Renaissance* 2, no. 1 (January 2017): 147, <https://doi.org/10.20885/JLR.vol2.iss1.art10>.

notarial deed completed¹⁰. An authentic deed has the value of perfect and binding evidentiary power as long as it fulfills the birth, formality, and material power (*Volledig bewijskracht, bindende beijskracht*). The power of birth proof means the strength of proof based on the circumstances of the birth of the deed itself, and as a principle applies the deed was born. It appears as an authentic deed until proven otherwise (*acta publica probant sese ipsa*). In addition, the power of formal evidence refers to what is stated and included in the deed which is true and in the form of a description of the parties' willingness. An authentic deed made before a notary will guarantee the correctness of the date, signature, comparability, and place where the deed was made. Thus the birth of an authentic deed is a deed made by an official who is authorized to do so. It should also base on the provisions that have been determined either with or without the assistance of the interested party along with its demand. The power of proof of an authentic deed is perfect, as referred to in article 1870 KUHP. It states that the authentic deed provides perfect proof between the parties including the heirs or the person who own the rights from the parties about what has been done/stated in this deed must be judged to be true before it can be proven untruth. Thus, whoever declares an authentic deed seems fake, and then he must prove the falsity of the deed.

One form of state service to the public is to provide facilities to obtain evidence or legal documents related to civil law. The authority for that is given by the state to a public official whose profession is known in Indonesia as a notary. In its development, Notaries have a very large role in supporting the wheels of the national economy and structuring non-governmental organizations and political parties. This is in line with Indonesia entering the era of the industrial revolution 4.0 which is visible with the implementation of a large-scale and comprehensive internet network system in almost all sectors to facilitate access to internal information in ministries and institutions. The purpose of this digital bureaucracy is of course to simplify business processes to make them easier, faster, and cheaper.

So that Notaries are required to play an effective role in supporting Government policies in electronically integrated services, to realize Indonesia 4.0.¹¹ Even though the notary has been careful and under the laws and regulations in carrying out his job duties, he can still face legal challenges that can bring him to be examined by law enforcement officers, whether it is investigators or ordinary people. In this case, the prosecutors, or judges, are acting as a condition on behalf of the continuation of the judicial process. Based on data obtained from the Central Board of the Indonesian Notary Association, up to 2016, the number of Notaries who were sentenced to prison was 137 notaries. However, there are many cases where the plaintiffs criticize the mistake

¹⁰ Ahda Budiansyah, "Notary Responsibility Who Has Ended His Tenure on Notary's Protocol and Deed," *Jurnal IUS Kajian Hukum dan Keadilan* 4, no. 1 (November 2016): 45, <http://dx.doi.org/10.12345/ius.v4i1.289>.

¹¹ Betty Ivana Prasetyawati and Paramita Prananingtyas, "Peran Kode Etik Notaris Dalam Membangun Integritas Notaris Di Era 4.0," *Notarius* 15, no. 1 (April 2022): 310–23, <https://doi.org/10.14710/nts.v15i1.46043>

of the notary just to seek profit from the case. This is detrimental to the notary both morally and materially.

The position of a notary as a public official (*openbare ambttenaren*) with attribution authority from the law is an honorable position based on the nobility of the dignity of his/her position (*officium nobile*). The attribution has an inherent obligation as of carrying out his oath of office related to keeping all obtained contents and information confidential in the process of making the original deed followed by the obligation to keep it as a part of the notary protocol following the provisions of article 4 paragraph (2) jo, article 16 paragraph (1) letter f jo, and article 16 paragraph (1) letter b UUJN. Notaries, in carrying out their duties, have the authority that has been regulated in a limitative manner in article 15 paragraphs (1), (2), and (3) for making authentic deeds. They are obliged to follow the forms and procedures that have been determined for that purpose, including formulating the intentions of the related parties. Party (*constatir*) which is followed by inaugurating the deed (*verlijden*) whose purpose is that the deed has perfect legal force (authentic) which contains outward, formal and material truths. The obligation of a notary is imperative to follow the forms and procedures that have been determined and the legal consequences of violating the provisions as referred to in article 38, article 39, and article 40. This form emerges the deed only having the power of proof as a private deed, and this is under the provisions of article 41 UUJN.

The difference between Indonesia and other countries such as the Netherlands and Belgium in terms of the position of a notary in making the deed is the technology used. In Indonesia, notaries still carry out the conventional system which requires the making of a notary deed concerning the personal meeting between parties to reach the deal. However, the Netherlands has previously implemented a rule that the making of a deed can be done using a two-way audiovisual communication facility for the prevention of COVID-19, while Belgium has implemented a digital power of attorney to make it easier for parties to use the deed by notary services.¹²

The development of virtual meeting technology at this time cannot be utilized in the mechanism of the meeting of the parties in the framework of making the deed. This inability happened because of the provisions that require the notary to be able to read the deed in front of the parties and require the witnesses physically. In virtual meetings, although the shape is virtually recognizable, the description of physical presence precludes the use of existing virtual meeting services. However, the development of virtual meeting technology can be utilized in the context of efficiency and reducing the intensity of meetings during the COVID-19 Pandemic. Virtual meetings have often been applied in the workplace, even in educational institutions; the resource person believes that the notary can conduct this virtual meeting without violating the laws and regulations.

This utilization is carried out using virtual meeting technology which is conducted only in the context of discussing the contents of the deed and greatly assisting the

¹² N Kuijpers and B Vollaard, "Liberalisation of the Dutch Notary Profession; Reviewing Its Scope and Impact," 2005, <https://ideas.repec.org/p/cpb/docmnt/93.html> %5Cn<http://www.cpb.nl/nl/pub/cpbreeksen/document/93/doc93.pf>.

preparation of the deed during the COVID-19 pandemic. Only using virtual meetings in the context of discussing the first stage of the agreement draft until the last meeting to sign the deed, can be done to reduce physical contact between the parties, witnesses, and the notary which can increase efficiency in the deed-making process.

It should be noted also that the concept of an electronic notary is very popular. As noted by Sukhovenko electronic forms are the main choice of every notary service and the electronic notary system. As a new social institution, electronic forms are the main choice of notary services in terms of data quality, availability and security. In combination with the move to electronic form, this trend has become mainstream. For example, this includes personal income, online mode for public officials, etc. Based on the above-mentioned, it is clear that in different countries, the legal status of a notary and its power and authority are different. Owing to that, the problem of legal defense of the rights and interests of individuals and legal entities arises. For this reason, research on the notary system is seen as essential.

2.3. Legal Protection Rights of Notary

Article 65 of the law on the position of notary states that Notaries are considered to carry out personal and lifelong duties so that there is no time limit for accountability. Therefore the inherent responsibility is attached to a former notary wherever he is.¹³ This article has confirmed a notary is a legal profession that needs to be protected by law in its position as a profession, not only as a notary but also as a person. The law on Notary positions has provided legal protection, but it is not enough to protect notaries. There is still notary summons by law enforcement officers, even by agencies/institutions for things that are sometimes irrelevant. The nature of an authentic deed is sufficient to provide evidence without the need to present a notary who made the deed. Even if the notary has carried out his/her duties by the laws and regulations, it is not uncommon for the notary to become a defendant accompanied by a claim for compensation.

Relating to the authorized authentic deed maker, another authorized profession that shares a common job is Conveyancer (hereinafter called PPAT). These two professions (Notary and Conveyancer) have fundamental differences, especially in terms of their authority. The definition of a notary is contained in the UUJN which states that a Notary is an official authorized to make authentic deeds and other types of deeds (article 1 point 1 UUJN). A conveyancer (PPAT) is a general officer who is authorized to make an authentic deed regarding certain legal actions which specifically focus on land rights or ownership right on flat units (article 1 point 1 government regulation of the Republic of Indonesia number 37 of 1998 juncto regulation of the minister of state

¹³ Erlan Ardiansyah, Mohammad Saleh, and Rahmia Rachman, "Batasan Tanggungjawab Notaris Terhadap Akta Autentik Yang Dibuatnya," *Recital Review* 4, no. 2 (June 2022): 432–51, <https://doi.org/10.22437/rr.v4i2.18867>. which is carried out by examining legal materials, such as research on positive law. This research uses three legal approaches, namely the legal approach, the conceptual approach and the case approach. The legal materials used in this research are primary legal materials, secondary legal materials and tertiary materials. Analysis of legal materials is carried out by interpreting all laws and regulations. This research concludes that PPAT can be held accountable individually and legally. Legal responsibilities are in the form of civil and administrative responsibilities. PPAT civil liability can be held accountable for returning the status of ownership rights in administrative responsibility in accordance with the PPAT Code of Ethics may be imposed in the form of reprimands, warnings, temporary dismissals from members as contained in article 7 paragraph (1

agrarian affairs/Head of the National land agency Number 4 of 1999 concerning the regulation of the position of the Conveyancer PP number 37 of 1998. It is concerning the regulation of the position of the Conveyancer in its development, amended by government regulation number 24 of 2016. Usually, this position is held concurrently by a notary who is qualified to become a PPAT.

Within the implemented civil law rights, the notary system is one of the most successful forms of exercising rights and obligations and some of the best and cheapest forms of defense and prevention of delinquency. The issue of legal status, especially notaries and their responsibilities, has become the subject of research by various scientists in various countries. Emily Burns points out that in the United States, a government notary is a civil servant assigned by the government executive and his function is the management of legal transactions, submission of acknowledgments to provide document reliability, and other responsibilities prescribed by law. Examining the legal status of notaries in Indonesia, they concluded that notaries, in terms of responsibility, are acting as a civil servants because they are assigned by the government to meet the public's need for the legalization of legal documents. In carrying out routine tasks, the notary seems passive since he/she waits when the public will visit them.

In Mexico, the notary as a civil servant is responsible for carrying out the original deed that can be used as proof of the legality of the operation¹⁴. At the same time, in Mexico, notaries act as agents of the state and natural persons who provide services. They carry out various and important types of activities which are identified as a responsibility of the subject of power and authority, for example, real estate agents, depository offices, and insurance companies around the world. In Belarus, as noted by Irena Kirvel, the possibility of carrying out the usual responsibilities as a mediator between the parties during the resolution of conflicts is considered by a notary.

In Croatia, as stated by Uzelac, the act of a notary executing an order is an instrument of a certain post-civilization process in Yugoslavia where the balance between an effective system of liquid debt certification is currently a concern. In Croatia where a notary has European consumer protection standards play a significant role. In Montenegro,

¹⁴ Faisal Santiago, "Implementation of the Role of Notary through Capital Market in the ERA of Asean Economic Community," *International Journal of Civil Engineering and Technology* 8, no. 8 (2017): 1054-1059, <http://iaeme.com/Home/issue/IJCIET?Volume=8&Issue=8> from limited functions as an instrument to meet the needs of local communities, to the new function as a controller of community life order on both national and global scale. One of the government effort in the field of economic is to pursue development in capital market, which required support mainly by parties related to the capital market. Therefore, the institutional performance of capital market is sustained by various professional device regulated by legislation, in order to provide legal certainty to all parties involved in capital market activities. Herein is notary registered in the institutional capital market. Notary is a public official who is responsible to make authentic deed which could be the evidence of certain legal actions. The notary deed is an authentic document and the legal proof for parties in a variety of business relationships. The need of legal certainty in a variety of economic and social relations, both nationally, regionally and globally, given the role and functions of notary proficiency level. Similarly, to meet the Asean Economic Community goals, the notary has the strategic function to provide protection and legal certainty through deeds, as well as part of the legal system in business contract establishment." "author": [{"dropping-particle": "", "family": "Santiago", "given": "Faisal", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "International Journal of Civil Engineering and Technology", "id": "ITEM-1", "issue": "8", "issued": {"date-parts": [{"2017"}]}, "page": "1054-1059", "title": "Implementation of the role of notary through capital market in the ERA of asean economic community", "type": "article-journal", "volume": "8", "uris": [{"http://www.mendeley.com/documents/?uuid=e0b1837a-aff7-418b-ba28-fd7b65cd-95d3"}]}, "mendeley": {"formattedCitation": "Faisal Santiago, \"Implementation of the Role of Notary through Capital Market in the ERA of Asean Economic Community,\" <i>International Journal of Civil Engineering and Technology</i> 8, no. 8 (2017)

a Velibor Kora shows a notarial deed for every legal transaction that obtains a public document and under certain conditions, can obtain an administrative case.

Although a person may be eligible to hold the notary commission, the person might not be disqualified from his/her acting in certain cases on behalf of a specific interest. To state the rule broadly: if a notary is a party to and financially interested in a transaction, this person is incapable of taking legal action in that case¹⁵. For instance, a notary who is a grantee or mortgagee in a conveyance is disqualified from taking acknowledgment from the deceased; as well as a notary who is the trustee of the deed. The notary who is acting as a grantor is not allowed to take his/her acknowledgment. Notaries who have a beneficial interest in distribution through collateral are therefore not authorized to receive recognition from the instrument itself.

The position of a notary as an inclusive public official begins when he takes the oath of his office. It is based on the nobility of the notary's dignity and his/her position as a public official who is obliged to maintain his/her attitude, behavior, and practice that have to be in line with the professional code of ethics. So, a notary as an inclusive legal officer should indeed get legal protection in his position as a public official, and also as a person. Besides that, in practice, there are various types of internal violations that should be resolved by the I.N.I association's organizational equipment, namely the Honorary Council according to its level (regional or headquarter). Likewise, in carrying out the duties of a notary position that harms the interests of societies, it frequently occurs in various districts/cities in Indonesia that the existence of the Notary Supervisory Panel (regional or headquarters) is less utilized by the people. A rising problem might always be handled by law enforcement investigators, and public prosecutors through requests for approval of assessment to the Regional Notary Honorary Assembly.

3. CONCLUSION

A notary is a public official who is authorized to make an authentic deed as long as the making of a deed is not intended for other public officials. Based on UUJN, a notary is a public official who gets attribution authority given by a notary and does not come from an institution. As the implementation of the inclusive rights of a notary in the framework of carrying out law enforcement duties as a public official is a field of work and duties that are intentionally made based on laws and regulations for certain functions and authorities which is sustainable as a steady work environment. A notary as an inclusive legal officer should indeed get legal protection in his position as a public official, and also as a person. The law on Notary Positions has provided legal protection, but it is not enough to protect inclusive notaries. There is still notary summons by law enforcement officers, even by agencies/institutions for things that are sometimes

¹⁵ Ida Bagus Paramaningrat Manuaba, I Wayan Parsa, and I Gusti Ketut Ariawan, "Prinsip Kehati-hatian Notaris dalam Membuat Akta Autentik," *Acta Comitatus* 3, no. 1 (April 2, 2018): 59, <https://doi.org/10.24843/AC.2018.v03.i01.p05>.

irrelevant. The nature of an authentic deed is sufficient to provide evidence without the need to present a notary who made the deed. Even if the notary has carried out his duties under the laws and regulations. It is not uncommon for the notary to become a defendant or a co-defendant accompanied by a claim for compensation.

It needs to be strengthened by empowering institutions by the Notary Supervisory Council and the Honorary Council as a form of legal protection for the position of a notary as a public official as fully regulated in the law on Notary Positions. Empowerment of the Honorary Council is the most appropriate policy step that must be taken as a preventive measure in supervising and fostering the daily practice of notaries in carrying out the protocol of duties, functions, obligations, authorities, and behavior of notaries by the rules in UUJN and UUJP.

REFERENCES

- Afifah, Kunni. "Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya." *Jurnal Lex Renaissance* 2, no. 1 (January 2017): 147. <https://doi.org/10.20885/JLR.vol2.iss1.art10>.
- Anugrah Pakarti, Theo, and Daly Erni. "Jabatan Notaris dan Kode Etik Notaris: Bagaimana Peran dan Fungsi Dewan Kehormatan Notaris?" *Kertha Semaya : Journal Ilmu Hukum* 10, no. 7 (June 2022): 1663. <https://doi.org/10.24843/KS.2022.v10.i07.p17>.
- Ardiansyah, Erlan, Mohammad Saleh, and Rahmia Rachman. "Batasan Tanggungjawab Notaris Terhadap Akta Autentik Yang Dibuatnya." *Recital Review* 4, no. 2 (June 2022): 432–51. <https://doi.org/10.22437/rr.v4i2.18867>.
- Asuan, and Susi Yanuarsari. "Kontribusi Jabatan Notaris dalam Perjanjian Kredit Bank." *Solusi* 20, no. 3 (2022): 387–404. <https://doi.org/https://doi.org/10.36546/solusi.v20i3.706>.
- Budiansyah, Ahda. "Notary Responsibility Who Has Ended His Tenure on Notary's Protocol and Deed." *Tanggung Jawab Notaris Yang Telah Berakhir Masa Jabatannya Terhadap Akta Dan Protokol Notaris IV*, no. November 2011 (2016): 45.
- Edwar, Edwar, Faisal A.Rani, and Dahlan Ali. "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before The Law." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 2 (July 2019): 207. <https://doi.org/10.24843/JMHU.2019.v08.i02.p05>.
- Kuijpers, N, and B Vollaard. *Liberalisation of the Dutch Notary Profession; Reviewing Its Scope and Impact*, 2005.
- Nola, Luthvi Febryka. "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (Tki)." *Negara Hukum* 7, no. 1 (2016): 40.
- Pandia, IbreinaSaulisa Agitha, M. Fajri Mekka Putra, and Widodo Suryandono. "Tanggung Jawab Notaris Terhadap Pelanggaran Jabatan Terkait Kelalaian Notaris Dalam Memenuhi Perjanjian Yang Mengikat Notaris (Studi Kasus: Putusan Majelis Pengawas Pusat Notaris Nomor : 09/B/MPPN/XI/2018)." *Indonesian Notary* 1,

no. 3 (2019): 1–23.

Paramaningrat Manuaba, Ida Bagus, I Wayan Parsa, and I Gusti Ketut Ariawan. “Prinsip Kehati-hatian Notaris dalam Membuat Akta Autentik.” *Acta Comitatus* 3, no. 1 (April 2018): 59. <https://doi.org/10.24843/AC.2018.v03.i01.p05>.

Prasetyawati, Betty Ivana, and Paramita Prananingtyas. “Peran Kode Etik Notaris Dalam Membangun Integritas Notaris Di Era 4.0.” *Notarius* 15, no. 1 (April 2022): 310–23. <https://doi.org/10.14710/nts.v15i1.46043>.

Santiago, Faisal. “Implementation of the Role of Notary through Capital Market in the ERA of Asean Economic Community.” *International Journal of Civil Engineering and Technology* 8, no. 8 (2017): 1054–59.

Sholikhah, Entin, and Jawade Hafidz. “Perlindungan Hukum Terhadap Jabatan Notaris Yang Diduga Melakukan Malpraktek Dalam Proses Pembuatan Akta Otentik.” *Jurnal Akta* 4, no. 1 (March 2017): 47. <https://doi.org/10.30659/akta.v4i1.1570>.

Trisnomurti, Ria, and I Gusti Bagus Suryawan. “Tugas Dan Fungsi Majelis Pengawas Daerah Dalammenyelenggarakan Pengawasan, Pemeriksaan, Dan Penjatuhan Sanksi Terhadap Notaris.” *Jurnal Notariil* 2, no. 2 (2017): 127–40. <https://doi.org/10.22225/jn.2.2.353.127>.