

Reconstruction of Legal Protection for The Notary in Criminal Proceedings: An Analysis of the Harmonization of the UUJN and the National Criminal Code

Daddy Ramdhan¹⁾ & Gunawan Djajaputra²⁾

¹⁾Faculty of Law, Universitas Tarumanagara (UNTAR), Indonesia, E-mail: daddy.217242003@stu.untar.ac.id

²⁾Faculty of Law, Universitas Tarumanagara (UNTAR), Indonesia, E-mail: gunwandiawan.dj@gmail.com

Abstract. *The criminalization of the Notary profession in Indonesia shows a worrying trend, where civil disputes are often forcibly dragged into the criminal realm. This study aims to analyze the limits of notary liability and its legal protection when designated as a suspect within the framework of legal harmonization between the Notary Position Act (UUJN) and the National Criminal Code (KUHP). The research method used is normative legal research with a statutory and case approach. The results indicate that the determination of suspect status for Notaries often ignores the nature of formal job responsibility. A reconstruction of norms is needed to synchronize the authority of the Notary Honorary Council with criminal procedural law to ensure legal certainty for public officials.*

Keywords: *Criminal Code; Legal Protection; Notary; Suspect; UUJN.*

1. Introduction

As a rechtsstaat (rule of law state), Indonesia mandates the state to guarantee legal certainty for every citizen. Within the structure of civil law, a Notary occupies a central position as a public official holding attributed authority to create authentic deeds. Such deeds are not merely formal documents, but legal instruments possessing absolute evidentiary value (volledig bewijskracht), serving as a pillar of economic stability and business transactions in Indonesia. (Adjie, 2008) However, this strategic standing of Notaries has reached a nadir due to the rising phenomenon of professional criminalization, which often originates from private disputes forcibly dragged into the realm of criminal law by law enforcement agencies.

The urgency of this research is rooted in the fact that Notaries are frequently designated as suspects for alleged crimes of document forgery or providing false statements (Articles 263 and 266 of the Indonesian Criminal Code), even though the Notary's actions are limited to recording the statements of the appearing parties (partij akte). This condition creates a juridical imbalance; on one hand, a Notary is obligated to maintain the confidentiality of the deed's contents and is only formally responsible, yet on the other hand, the Notary is forced to bear material responsibility that should rightfully rest upon the parties appearing before them. This indicates a failure by law enforcement to understand the doctrines of official liability and personal liability. (Anand, 2022) Normatively, Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Notary Profession (UUJN) has not yet provided adequate protection clauses for Notaries holding suspect status. Although Article 66, paragraph (1) of the UUJN regulates protection through the approval of the Notary Honorary Council (MKN) for the process of obtaining copies of the minuta (original deed) and the summoning of Notaries, this mechanism is often viewed as an administrative hurdle by investigators and is frequently ignored once suspect status is established. A clear legal gap exists during the pro justitia process; it is as if Notaries lose their professional shield when faced with the coercive powers of investigators. (Adjie, 2021d) Furthermore, the enactment of Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional) adds a new layer of complexity. While the National Criminal Code introduces a paradigm of balance between legal certainty and justice, it has not explicitly regulated operational harmonization with the UUJN as *lex specialis*. This inconsistency potentially triggers broader legal disharmony, where Notaries can easily be ensnared as accomplices (Article 55 of the Criminal Code) without rigorous proof of *mens rea*.

If legal protection for Notaries is not reconstructed, a phenomenon of "professional phobia" will emerge, where Notaries become hesitant or fearful of exercising their authority due to the shadow of being named a suspect. Systemically, this will erode public trust in authentic deeds and hinder the investment climate, which requires legal certainty. (Kurniawan, 2021) Although many studies on the legal protection of Notaries have been conducted, the majority of previous literature tends to focus on the protection of Notaries at the witness stage or the summoning procedures by investigators via the MKN mechanism. Research specifically dissecting the vulnerable position of Notaries after being designated as suspects especially in anticipation of the implementation of the new National Criminal Code remains very limited. The novelty of this research lies in the effort to reconstruct legal protections that synchronize the constitutional rights of the Notary profession with the sentencing paradigms of the National Criminal Code. This is crucial to fill the normative vacuum and provide guidance for law enforcement so that the designation of suspect status no longer serves as a tool of criminalization that paralyzes the authority of public officials.

2. Research Methods

This normative (doctrinal) legal research focuses on the analysis of written legal norms through three primary approaches: the statute approach, to systematically review the UUJN (Notary Profession Law), the Criminal Code (KUHP), and the Criminal Procedure Code (KUHAP); the conceptual approach, by referencing Philipus M. Hadjon's doctrine of legal protection and Gustav Radbruch's theory of legal certainty; and the case approach, which examines recent court decisions involving Notaries as suspects to delve into the judges' ratio decidendi. (Marzuki, 2021) All secondary data are subsequently processed using normative qualitative analysis and in-depth legal interpretation techniques to formulate an ideal concept of legal protection.

3. Results and Discussion

3.1. The Limits of Notary Liability within Attributed Authority: Between Formal and Material Responsibility

The existence of the Notary office within the Indonesian legal system is an embodiment of society's need for legal certainty, order, and preventive legal protection. A Notary serves as a public official holding attributed authority power granted directly by law, specifically through Article 1, point 1 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Notary Profession (UUJN). This attributed authority provides an exclusive mandate to Notaries to create authentic deeds regarding all acts, agreements, and stipulations required by regulations or desired by interested parties. From the perspective of administrative law, attribution is the creation of new authority granted to a specific legal subject; in this case, the Notary is positioned as an extension of the state to provide public services in the civil sector. However, this significant mandate carries complex juridical

consequences, particularly when faced with the dichotomy between formal and material responsibility in the deed-making process, which often serves as an entry point for professional criminalization.(Adjie, 2022b)

Doctrinally, the primary duty of a Notary is that of an attester (*pengonstatir*), namely recording or formulating the wishes of the appearing parties into an authentic deed while adhering to applicable legal rules. Traditionally, a Notary's responsibility is limited to formal truth (*formele waarheid*), which includes certainty regarding the identity of the appearing parties (legal subjects), their physical presence before the Notary, the authenticity of signatures, and the consistency of the time and place of the deed's creation as stated therein. This formal truth provides *formele bewijskracht* (formal evidentiary value), whereby the deed guarantees that the parties truly stated what is written in the deed before a public official at that specific time. This is an implementation of the law of evidence, which positions an authentic deed as the strongest and most complete evidence that cannot be challenged unless proven otherwise through a court decision with permanent legal force.(Anshori, 2020)

A crucial issue arises when the limits of this responsibility shift toward the material realm, where Notaries are often held accountable for the truth of the contents or substance of the parties' statements. Material truth concerns whether the events or facts stated by the parties actually correspond to empirical reality outside the deed. In criminal justice practice, Notaries are frequently dragged into cases of document forgery or providing false statements because the contents of the deed they drafted were based on forged supporting documents or false information provided by the appearing parties. A lack of understanding among law enforcement officers regarding the boundaries of a Notary's attributed authority often triggers an equalization of administrative negligence with criminal intent (*mens rea*), despite the fact that Notaries lack the investigative authority to conduct in-depth inquiries into the veracity of documents submitted by the parties.(Latumeten, 2020)

This doctrine of formal responsibility has been consistently reaffirmed in Supreme Court jurisprudence. A classic precedent is Supreme Court Decision Number 702 K/Sip/1973, which explicitly states that a Notary's function is merely to record (*konstatir*) what is stated or expressed by the parties appearing before them. The Notary is neither required nor granted the material authority to investigate the absolute truth of the statements or documents submitted by the parties. The spirit of this jurisprudence continues in the modern legal landscape, as seen in Supreme Court Decision Number 432 K/Pid/2022. This decision re-emphasizes the demarcation that as long as a Notary has complied with the formal procedures of deed creation in accordance with the UUJN, the liability for false statements or fictitious documents shifts entirely to the criminal responsibility of the appearing parties and cannot be imposed upon the Notary as a form of complicity.

Within the framework of Indonesian positive law, the harmonization between the UUJN as *lex specialis* and the Criminal Code (KUHP) as *lex generalis* has become urgent, especially

following the enactment of Law Number 1 of 2023 concerning the National Criminal Code. Article 391 of the National Criminal Code a transformation of Article 263 of the old Code regarding document forgery now expands its scope to include electronic documents while still requiring an intent to mislead or cause harm to others. Similarly, Article 392 of the National Criminal Code, which regulates aggravated penalties for the forgery of authentic deeds with a maximum prison sentence of eight years, places the integrity of a Notary's product in a crucial yet vulnerable position. The urgency of reconstructing legal protection for Notaries lies in affirming that criminal liability must be based on fault-based liability that is clearly proven, rather than mere absolute liability for the outcome of their professional product.(Khairandy, 2021)

Current data indicates that the phenomenon of Notary criminalization in Indonesia has continued to rise over the last five years, often involving land disputes and corporate cases. One significant jurisprudence providing a clear demarcation line is Supreme Court Decision Number 20 PK/Pid/2020. In this case, a Notary was initially given a heavy sentence for allegedly aiding a crime through a deed they created. However, at the Judicial Review (Peninjauan Kembali) level, the Supreme Court overturned the decision and acquitted the defendant of all legal charges (ontslag van alle rechtsvervolging), considering that the Notary's error was merely administrative negligence in verifying documents, not a criminal act. This decision reinforces the principle of ultimum remedium, asserting that criminal law should be a last resort only if administrative and civil oversight mechanisms within the UUJN are no longer adequate, and only if there is evidence of actual malicious intent (dolus).(Athira & Hoesin, 2022)

However, protection for Notaries is not absolute or without limits. Supreme Court Decision Number 933 K/Pid/2023 presents a different perspective, emphasizing the urgency of the due diligence principle within attributed authority. In that case, Notary Endah Sri Wahyuni was sentenced to prison because she was proven to have intentionally created a new deed based on problematic certificates, despite knowing of a prior Sale and Purchase Agreement (PPJB) that had not been canceled and ignoring official verification from the National Land Agency (BPN) stating the certificate was not issued by the competent authority.(R. Prasetyo, 2023) This case demonstrates that material responsibility arises when a Notary engages in willful blindness or when their actions clearly violate the minimum standard of service regulated in Article 16, paragraph (1), letter a of the UUJN regarding the obligation to act in a trustworthy, honest, thorough, independent, and impartial manner.

The integration of function-based liability is key to reconstructing the legal protection of the Notary office. A Notary must be understood as an official performing a formal function; thus, as long as they comply with the deed-making procedures from identity verification and reading the deed before witnesses to simultaneous signing they should be protected from criminal charges related to deed contents that turn out to be false.(Sinaga et al., 2024) This aligns with Article 50 of the National Criminal Code (and Article 51 of the old Code), which states that

individuals executing a professional order or a statutory provision cannot be criminalized. However, if a Notary abuses their power, opportunity, or the means provided to them by virtue of their office to commit a crime, the criminal penalty may be increased by one-third, as regulated under the general provisions of criminal law.

The shift from formal truth toward demands for material truth in modern legal practice is triggered by the rise of white-collar crime and the use of authentic deeds as instruments for money laundering. This requires Notaries to conduct deeper verification, such as identifying beneficial owners and cross-checking documents with relevant agencies. However, this verification obligation must have clear limits so as not to hinder public service or criminalize Notaries for sophisticated conspiracies carried out by the parties.(Adjie, 2022a) If a Notary has carried out verification procedures but is nonetheless deceived by documents that closely resemble originals, the fault lies within the realm of material responsibility of the parties who provided false information, which in the National Criminal Code is regulated under Article 394 regarding false statements in an authentic deed.

Harmonizing the UUJN and the National Criminal Code must also consider the position of the Notary Honorary Council (MKN) and the Notary's right of privilege (*hak ingkar*). Based on Article 66 of the UUJN, summoning a Notary for criminal examination and obtaining copies of the *minuta* (original deed) must receive MKN approval. This protection is not a form of legal immunity but rather a mechanism to safeguard professional confidentiality, which is a pillar of public trust in Notaries.(Adjie, 2021e) Article 322 of the old Criminal Code and the professional secrecy framework in the National Criminal Code provide sanctions for anyone who discloses professional secrets without a valid legal basis, strengthening the Notary's position to remain independent and professional without pressure from any party.

In facing the digital era, the reconstruction of legal protection for Notaries also touches upon LegalTech transformation. Although a Notary's attributed authority is beginning to include the legalization of digital documents, the basic principle of responsibility remains rooted in verifying the presence and intent of the parties. Legal uncertainty regarding the meaning of a "bankrupt Notary" or the limits of authority in high-value property transactions often creates loopholes for disproportionate legal claims. Therefore, the application of administrative sanctions in the UUJN ranging from oral warnings to dishonorable discharge must be positioned as the primary corrective mechanism before reaching the criminal realm, in order to maintain a balance between protecting public interests and safeguarding the dignity of the honorable profession (*officium nobile*). (Adjie, 2021c)

Often, Notaries include exoneration clauses in their deeds, stating that all information and foundational documents are the responsibility of the parties, and that the parties release the Notary from all legal claims. While these clauses provide civil protection between the parties, in public (criminal) law, they do not grant absolute immunity if there is proof of intentional assistance in a crime. True protection for a Notary lies not in release-of-liability clauses, but in

personal integrity and absolute compliance with the UUJN and the Notary Code of Ethics. High moral standards serve as the final bastion separating professional error from criminal collaboration.(Adjie, 2021a)

This reconstruction of legal protection also demands a clear separation between a Notary's liability for the deed and responsibility for actions taken outside their official capacity.(Adjie, 2021b) For example, in the case study of Medan District Court Decision Number 693/Pdt.G/2021/PN Mdn, the legal risk is evident when a Notary accepts the safekeeping of documents that are not part of the Notary's protocol. Acts outside of attributed authority place the Notary in a vulnerable personal position without professional protection; thus, liability becomes entirely personal (*personalle foutes*). These limits of responsibility must be clearly understood by Notaries: all actions within the corridors of the UUJN are protected by the professional shield, but actions outside that scope are individual responsibilities subject purely to general law.

Substantively, the limits of Notary liability within attributed authority must be placed at a point of equilibrium where justice for society meets certainty for the public official. The authentic deed, as the "crown" of the Notary office, must not be easily degraded into a private deed due to minor administrative errors, nor should it be used as a tool to legalize crime. Proving the criminal act of deed forgery by a Notary must pass a rigorous test of the *mens rea* element, where a Notary's ignorance of the falsity of supporting documents provided they have carried out reasonable verification procedures must be recognized as an excusable or justifying reason.(Nugraha & Amaliah, 2025)

Harmonizing the UUJN and the National Criminal Code through an Integrative Legal System approach will provide a new direction for law enforcement in Indonesia that is more civilized and professional. By clarifying the boundary between procedural formal responsibility and substantive material responsibility, the criminalization of Notaries can be minimized. This not only protects Notaries in the performance of their duties but also ensures that authentic deeds maintain high trust in the eyes of the public as legal instruments capable of providing certainty and protection for all parties involved in civil legal relations in the country.(Sriwati, 2022)

It is also important to note that a Notary's responsibility is often split between their duty to the state as a public official and their duty to the client as a service provider. In this context, formal truth is a form of public accountability, whereas material truth is more often related to the private relationship of the parties. Should a dispute arise regarding the contents of a deed, the mechanism of deed cancellation through civil court should be the primary priority to prove a defect of will or false statements before bringing the matter to a criminal court. Criminal processes forced without a civil court decision canceling the deed often violate the principle of *presumptio iustae causa* the principle that a Notary deed must be considered valid until there is a court decision stating otherwise.

3.2. Relevance and Implications of the National Criminal Code (Law No. 1 of 2023) on the Legal Standing of Notaries

The enactment of Law Number 1 of 2023 concerning the Criminal Code, widely known as the National Criminal Code, has triggered a fundamental transformation in the architecture of Indonesian criminal law. This shift is not merely a replacement of regulatory text, but a profound philosophical reorientation, moving from the colonial-legacy legal positivism which tended to be retributive and emphasized punishment toward a paradigm of corrective, rehabilitative, and restorative justice that is more aligned with the values of Pancasila. In this new landscape, a criminal offense is no longer viewed solely as a violation of the sovereign's command, but as a disruption of social equilibrium requiring restoration. However, for the Notary profession, which stands as a primary pillar in the creation of authentic evidence, this paradigm shift carries highly complex implications and demands serious attention regarding legal protection in the performance of public duties. As public officials exercising state functions within the realm of civil law, Notaries bear a significant responsibility to guarantee legal certainty, order, and public protection through the deeds they create. (Rahardjo, 2022)

The relevance of the National Criminal Code to the legal standing of Notaries is crucial because an authentic deed is a legal instrument possessing absolute evidentiary value in court; consequently, any interference with the integrity of such a deed is often immediately dragged into the criminal realm. Articles concerning document forgery, specifically those regulated in Articles 391 and 392 of the National Criminal Code, remain a tangible threat to Notaries if not accompanied by interpretive guidelines harmonized with the Notary Profession Law (UUJN). Without careful synchronization, the National Criminal Code risks becoming a new instrument for the criminalization of administrative actions performed by Notaries within their official scope. This is perilous as it could weaken the dignity of the Notary office as an *officium nobile* and the primary pillar of civil legal certainty in Indonesia. Therefore, a reconstruction of thought is required to position the Notary as legally protected while fulfilling statutory obligations, consistent with the spirit of justice championed by the new national criminal law. (Nugraha & Amaliah, 2024)

The National Criminal Code serves a grand mission of recodification, democratization, consolidation, and adaptation to modern legal developments. The primary implication of this mission for the Notary office is the need for synchronization between general criminal norms and specific professional norms. (Saraswati, 2022) Notaries, in exercising their authority under Article 15 of the UUJN to create authentic deeds regarding all acts, agreements, and stipulations, are often vulnerable to manipulation by dishonest parties. The National Criminal Code, through Articles 1 and 2, maintains the principle of legality stating that no act may be punished except by virtue of existing legislation yet it also begins to grant limited recognition to living law (*hukum yang hidup*). This implies that standards of professionalism and propriety in notarial practice must be primary considerations in assessing whether an administrative act contains criminal elements or is merely a procedural error.

The sociological implications of the National Criminal Code also pertain to public trust. An authentic deed is a protected legal product designed to guarantee public trust in the truth of a document's contents. If criminal law enforcement against Notaries is conducted haphazardly without understanding the nature of the office, public trust in the civil evidence system will collapse. As explained in Gustav Radbruch's Theory of Legal Certainty, law must be capable of providing protection for those executing statutory mandates.(Wijayanti et al., 2024) Notaries performing their duties in accordance with Article 16 of the UUJN acting trustworthily, honestly, and thoroughly should receive full protection from criminal prosecution via Article 31 of the National Criminal Code, which affirms that persons committing acts to implement statutory provisions shall not be punished. Harmony between the UUJN as *lex specialis* and the National Criminal Code as *lex generalis* is an absolute prerequisite to ensure that intended corrective justice does not instead devolve into legal uncertainty for public officials.

The focus regarding criminal threats to Notaries in the National Criminal Code centers on Articles 391 and 392, which regulate document forgery. Article 391, paragraph (1), stipulates that anyone who falsely creates or forges a document that may give rise to a right, an obligation, or a release of debt, with the intent to use or have others use it as if the contents were true, faces a maximum prison sentence of six years. For Notaries, the phrase "falsely creates" is often misinterpreted by law enforcement when data discrepancies are found in a deed, without discerning whether the discrepancy stems from the false statements of the appearing parties or the Notary's own intentional act.(Sisca, 2024) This underscores the urgency of sharpening interpretive criteria to separate a Notary's administrative responsibility from the malicious intent to forge documents.

Furthermore, Article 392, paragraph (1), provides aggravated penalties for the forgery of authentic deeds, with a maximum prison sentence of eight years. While this aggravation reflects the importance of authentic deeds in the national legal system, it simultaneously increases the legal risk for the Notaries who issue them. Under the new Code, forging an authentic deed is considered a serious violation of public trust. However, the juridical implication is that a Notary should not automatically be designated a suspect if the forgery was committed by another party (the appearing party) who submitted forged documents to the Notary. A Notary can only be convicted if it is proven beyond a reasonable doubt that they possessed *mens rea* or malicious intent to collaborate with the principal perpetrator. Without such proof, applying Article 392 to a Notary constitutes a deviation from the principle of *nulla poena sine culpa* (no punishment without fault), explicitly recognized in Article 36 of the National Criminal Code.

The most fundamental implication of the National Criminal Code for notarial practice is the need to sharpen the criteria for intent (*dolus*) in any alleged criminal act involving a public official. Article 36, paragraph (1), of the National Criminal Code affirms that a person can only be held liable for a crime committed intentionally or through negligence. In the context of the Notary office, "intent" must not be assumed solely from procedural errors, such as a lack of

thoroughness in verifying an ID card. Negligence or lack of caution (*culpa*) in performing administrative duties should be resolved through administrative sanctions as regulated in Article 85 of the UUJN, which includes oral warnings, written warnings, temporary suspension, or dishonorable discharge.

This writing argues that a Notary's status as a suspect under the National Criminal Code should not be established without strong evidence that the Notary obtained unlawful personal gain or shared a common intention with the principal perpetrator. The doctrine of common intention, regulated in Article 20 of the National Criminal Code regarding complicity, requires a shared internal will among the actors. If a Notary merely performs their duty to attest to the parties' wishes without knowing those parties harbor criminal intent, the Notary cannot be categorized as an accomplice. Sharpening this criterion is essential to prevent investigators from using forgery articles as a shortcut to entrap Notaries in disputes that are essentially civil or administrative in nature.

From the perspective of Gustav Radbruch's Theory of Legal Certainty, there are three basic legal values that must coexist: justice, utility, and legal certainty. Justice demands that everyone be treated according to their rights and obligations, while legal certainty requires that legal rules remain stable and predictable to provide security for citizens. For Notaries, legal certainty is realized when they execute the mandates of the UUJN without fear of criminalization. The National Criminal Code implicitly supports this view through Articles 31 and 32, which state that persons performing acts to implement statutory provisions or professional orders shall not be punished. The relevance of this theory becomes evident when a Notary is accused of a crime because a deed contains inaccurate data. If the Notary has fulfilled all formal procedures identity verification, reading the deed, and signing before witnesses then they have executed a statutory mandate. In such circumstances, Radbruch's legal certainty requires the state not to criminalize the Notary, even if it is later discovered that the parties engaged in fraud. Failure to protect those implementing the law will result in systemic legal uncertainty, where Notaries become hesitant to serve the public in complex transactions due to the criminal risks overshadowing every administrative step.(Lestari, 2023)

The disharmony between the UUJN and the National Criminal Code can trigger a phenomenon of criminalization detrimental to the integrity of public service. The urgency of harmonization includes several crucial aspects, one of which is professional secrecy. Article 16, paragraph (1), letter f of the UUJN obligates Notaries to keep the contents of deeds confidential, a duty now reinforced by criminal sanctions in Article 443 of the National Criminal Code for anyone disclosing professional secrets. However, during criminal investigations, Notaries are often pressured to reveal such secrets. Without a clear harmonization mechanism between the Notary's right of privilege (*hak ingkar*) and investigative powers, the Notary faces a dilemma: being prosecuted for leaking secrets or for obstructing an investigation. Harmonization is also needed to clarify the role of the Notary Honorary Council (MKN) in the criminal justice process. Under Article 66 of the UUJN, any summoning of a Notary or seizure of deed originals (*minuta*)

requires MKN approval. In the context of the National Criminal Code's spirit of restorative justice, the MKN should be positioned as a filtering institution that assesses whether there are actual criminal indicators or merely administrative-civil disputes before legal proceedings advance to the investigation stage. Without strong recognition of MKN procedures within the new national criminal justice system, legal protection for Notaries will remain fragile and easily ignored by law enforcement in pursuit of case targets.

The National Criminal Code introduces detailed regulations on complicity in Article 20, covering those who commit the act themselves, order the act, participate in the act, or incite others. For Notaries, the implications are broad, especially when a crime is committed by staff or assistants. Historically, there has been a tendency to impose criminal liability on Notaries for the acts of their employees based on a lack of supervision. However, in the modern criminal law perspective adopted by the National Criminal Code, criminal liability is personal and based on individual fault. A Notary cannot be punished for the errors of another unless a clear criminal agreement is proven. Furthermore, Article 20, letter d, concerning "inciting others" by abusing power or dignity, warrants caution. A Notary as a public official holds high professional dignity; if that dignity is used to facilitate a crime, the penalty is severe. Conversely, their status as a public official must also be viewed as a shield when the Notary is a victim of the parties' deception. Reconstructing legal protection must ensure that the Notary's official status is not used as a reason to aggravate punishment without evidence of active involvement in the crime.(R. Pratama, 2021)

The criminalization of a Notary's administrative actions systematically weakens the dignity of the office as a pillar of civil legal certainty. If Notaries are perpetually haunted by the threat of imprisonment for administrative errors, the integrity of authentic deeds as the strongest evidence will erode. The impact is felt not only by Notaries personally but by the public at large, who rely on Notarial deeds for the certainty of their civil rights. Deeds created under pressure or fear lose objectivity and quality, ultimately increasing the frequency of social disputes. In a civil law system like Indonesia, an authentic deed is the instrument that legitimizes economic and social transactions. The National Criminal Code, aimed at creating public order, should not instead create turmoil in the notarial sector through repressive enforcement. The dignity of the Notary office must be maintained as an independent and professional *officium nobile*.(Kusumo & Cahyaningsih, 2024) Consequently, harmonization must be directed toward strengthening internal oversight through the Notary Supervisory Council (MPN) and the MKN, ensuring that professional violations are handled hierarchically and proportionately before entering the realm of criminal law.

3.3. Analysis of Court Decision Phenomena: Reflections on Judicial Considerations Regarding Notary Criminalization

The legal dynamics surrounding the Notary profession in Indonesia are currently at a crucial nadir, where the Notary's position as a public official is frequently caught in the vortex of

criminal disputes rooted in purely civil disagreements. This phenomenon of criminalization is not merely a sectoral issue but represents the tension between the legal certainty of authentic deeds and criminal law enforcement that sometimes overlooks the characteristics of public office. An in-depth analysis of court decision trends over the last three years (2022 to late 2024) reveals a fluctuating yet critically interesting pattern. On one hand, there is significant pressure from law enforcement to pull Notaries into the realm of complicity; on the other hand, a counter-current is emerging from the judiciary, showing a shift toward more moderate protection based on the specific characteristics of the Notary office as regulated in the UUJN.(Lim, 2025)

This judicial paradigm shift is significantly visible in Supreme Court Decision Number 1047 K/Pid/2022, which has become a primary reference in discussions on the limits of Notary criminal liability. In this decision, the Supreme Court provided a fundamental ratio decidendi, stating that a Notary cannot be automatically qualified as an accomplice (as per Article 56 of the old Criminal Code) if their actions were limited to performing administrative professional duties. The Justices carefully distinguished between acts based on malicious intent for criminal conspiracy and acts that are purely the fulfillment of a professional obligation to record the parties' wishes into an authentic deed. This view solidifies the doctrine that Notaries act passively regarding the material statements of the appearing parties; thus, the untruth of such statements cannot be attributed to the Notary as a criminal fault, provided formal procedures were fully followed.

The implications of Decision No. 1047 K/Pid/2022 are vast, providing juridical protection so Notaries are not used as "shields" or easy targets in cases involving fraud by appearing parties. Judges are beginning to realize that a Notary is not an investigator or a detective obligated to absolute material truth-seeking, but an official ensuring legal formalities are met for the creation of valid evidence. If a Notary has verified identities, read the deed, and signed it before witnesses in accordance with Article 16, paragraph (1), letter m of the UUJN, then any manipulation by the parties outside the Notary's knowledge is the parties' personal responsibility. This trend signifies judicial courage in viewing the UUJN as *lex specialis* whose jurisdictional boundaries must be respected by general criminal law.

Another prominent phenomenon is the increased use of pre-trial (*praperadilan*) proceedings by Notaries to challenge the validity of their designation as suspects. The pre-trial institution, expanded through Constitutional Court Decision Number 21/PUU-XII/2014, has become the first bastion against arbitrary or unprofessional investigation processes. Analysis of several 2023 pre-trial decisions shows that judges are applying stricter evidentiary standards for police investigators. Judges emphasize that suspect status must not be based solely on a deed whose content is materially problematic, but must be supported by at least two direct pieces of evidence linking the Notary to intent (*mens rea*). This is vital to prevent "automatic criminalization" simply because a Notary's name appears on a deed subject to a criminal dispute.(Nisa & Gozali, 2025)

A landmark in Notary legal protection through pre-trial occurred in late 2024 with South Jakarta District Court Decision Number 128/Pid.Pra/2024/PN Jkt.Sel, which annulled the suspect status of Senior Notary Wahyudi Suyanto. In this case, Sole Judge Imelda Herawati Dewi Prihatin provided a sharp consideration on how law enforcement should treat the Notary office. The judge stated that the designation of the suspect by the Criminal Investigation Department (Bareskrim) of the National Police was procedurally flawed because it ignored the minimum threshold for preliminary evidence and bypassed the Notary Honorary Council (MKN) licensing mechanism. The decision highlighted how investigators often rush to designate suspects without providing a proper opportunity for the Notary to provide substantive clarification in their capacity as a public official. Furthermore, in the Wahyudi Suyanto case, the court found that investigators proceeded with a case expose (gelar perkara) and designated the suspect even while the request for permission from the East Java Regional MKN was still pending. The judge viewed this as a disregard for the MKN's statutory authority (Indonesia, 2024). The legal implication is powerful: it affirms that the procedure in Article 66, paragraph (1) of the UUJN is not a mere administrative formality but a constitutional requirement in the investigation process. Without MKN approval or response, investigators may not perform coercive acts or designate a suspect, except in strictly limited circumstances.

The role of the MKN is no longer viewed dismissively by the judiciary. Although formally under the Ministry of Law and Human Rights, recent court decisions use MKN examination results as significant material in assessing the presence of criminal fault. This indicates a shift in Indonesian jurisprudence toward a more protective stance, where professional integrity is guarded by a dual filter: a professional filter (MKN) and a judicial filter (the court). Judges are increasingly aware that assessing violations in deed creation requires the specialized expertise possessed by professional peers or experts. (R. A. Pratama, 2023) The integration of the UUJN and the new National Criminal Code is also a crucial aspect. While the new Code is fully effective in 2026, its spirit regarding justifying reasons for those executing statutory or professional orders (Articles 31 and 32 of Law 1/2023) is already being internalized by practitioners and judges. Notaries performing their authority under Article 15 of the UUJN are viewed as executing a statutory mandate to provide public service; thus, such acts should not be criminalized unless they exceed statutory boundaries.

The progressive stance of Pre-trial Judges in annulling flawed suspect designations finds strong constitutional footing in Constitutional Court Decision Number 16/PUU-XVIII/2020. Through this decision, the Court explicitly rejected challenges alleging that MKN authority constitutes "obstruction of justice." Instead, the Court underlined that MKN approval for summoning is a manifestation of due process of law to protect professional secrecy and guarantee legal certainty. Disregarding MKN recommendations is not a simple administrative flaw, but a violation of the constitutional legal order, rendering the suspect designation legally invalid.

This protection dynamic is also influenced by Constitutional Court decisions affirming the Notary's strategic role as a public official. Judges often refer to the principle that the Notary

office demands high precision and integrity; thus, human or administrative errors should not be immediately categorized as crimes. Excessive criminalization is feared to create a "professional phobia" that could hinder social legal traffic. Therefore, recent decisions favor a balanced approach between enforcement and professional dignity. Empirical data shows many cases involving Notaries stem from the parties' inability to fulfill agreements, which are then dragged into criminal court as forgery or fraud. In these situations, pre-trial judges in 2023 and 2024 have shown a more critical stance, examining whether the dispute is purely civil. Judges emphasize that a Notarial deed has absolute evidentiary value and must be presumed valid (*presumptio iustae causa*) until a civil court declares otherwise. By prioritizing this principle, judges limit the use of criminal instruments as tools to pressure Notaries.(Hukumonline, 2024b)

The application of Articles 55 and 56 of the old Criminal Code (and their counterparts in the new Code) regarding complicity has often been a trap for Notaries. However, the trend over the last three years shows judges demanding proof of actual conspiracy before declaring a Notary an accomplice. Judges understand that a Notary's "presence" in deed-making is a legal obligation, not active assistance in a crime. As long as the Notary verifies documents according to the duty of care, even if those documents are forged, they cannot be blamed as they lack the authority for forensic laboratory testing of every document received. This clarification of the Notary's duty limit is a vital pillar in reconstructed legal protection. Judicial courage was also seen in a 2024 Bandung District Court pre-trial decision, where the judge emphasized investigator professionalism and compliance with SOPs, sending a strong message that legal processes must not ignore human rights and official professional rights.(B. Prasetyo, 2023)

Moving forward, challenges will become more complex with the discourse on cyber notary and digital deed-making. Judicial views express concern over proving intent in an automated digital environment. Judges emphasize that while technology changes, the basic principles of professional protection remain consistent: the need for evidence of actual intent and respect for professional procedures. Harmonization between the UUJN, the National Criminal Code, and the Electronic Information and Transactions (ITE) Law is an absolute requirement for future jurisprudence. Reflection on recent decisions also shows that protection depends on the Notary's ability to prove that all UUJN stages were performed honestly and thoroughly. Judges will not provide protection if a Notary consciously violates ethics or commits planned gross negligence for personal gain. Thus, ideal protection is based on professional integrity, with the judge acting as a guardian of legal morality and a protector against baseless criminalization.(Sona, 2023)

Substantively, the analysis of court trends over the last three years indicates that Indonesian judicial power is maturing in its understanding of public office. Judges no longer accept a singular narrative from investigators but delve into the essence of the Notary as a servant of the law. This reconstruction is not a form of immunity, but enforcement based on procedural and substantive justice. The MKN's increasing recognition in pre-trial marks the end of an era

where investigators could freely designate suspects without professional oversight. This aligns with the spirit of professional autonomy and a healthy separation of powers. With clear standards that suspect designation must follow adequate examination and MKN approval, the potential for criminalization can be significantly minimized. Ultimately, robust protection for Notaries contributes to national economic stability and legal certainty, as authentic deeds produced by Notaries who feel secure in their duties serve as the backbone of business and social transactions in Indonesia.(ND & Putra, 2023)

In criminal enforcement, judges are also applying a more specific *mens rea* principle in notarial cases. Administrative errors are increasingly sorted into the domain of administrative or civil law. Judges affirm that forging an authentic deed requires proof of a conscious intent to alter facts, not just inaccuracy in the verification process handled by staff. This shift provides security for Notaries handling thousands of deeds annually with human administrative risks. Furthermore, recent cassation decisions emphasize the causality between the Notary's actions and the resulting loss. Judges look at whether the loss arose directly from the Notary's error or from the unlawful acts of the appearing parties outside the deed-making process. If the loss stems from false statements by parties that the Notary could not have known to be untrue, judges tend to acquit the Notary. This shows a deeper application of common sense and justice.(Hukumonline, 2024a)

The harmonization efforts through Supreme Court Decision No. 1047 K/Pid/2022 and the 2024 Wahyudi Suyanto Pre-trial Decision reflect a major judicial movement to restore the dignity of the Notary office. Judges are realizing that without adequate protection, the Notary office will lose its function as a provider of legal certainty. This protective trend is a necessary response to the overlapping regulations that have historically disadvantaged good-faith public officials. Finally, this phenomenon affirms that judicial courage to look beyond the text toward the essence of professional justice is the key to Notary legal protection. By positioning the UUN as the primary guide for official behavior and the Criminal Code as an instrument for public order, the judiciary has successfully created a healthier and more balanced legal discourse. The future of Notary legal protection now rests with judges who understand that every signed deed is a state mandate to be guarded against criminalization that would damage national justice.

4. Conclusion

The reconstruction of legal protection for Notaries in criminal proceedings must be grounded in a synchronous harmonization between the UUN (Notary Profession Law) as *lex specialis* and the National Criminal Code (Law No. 1 of 2023) by strengthening liability boundaries based on the doctrine of formal responsibility (formal truth). The research concludes that criminalization frequently occurs due to the failure of law enforcement agencies to distinguish between administrative negligence and malicious intent (*mens rea*); consequently, there is a need for explicit recognition of the Notary Honorary Council (MKN) as a constitutional filtering

body that must grant authorization before the designation of suspect status. The implication is that ideal legal protection must adopt the corrective justice paradigm found in the National Criminal Code, which positions a Notary's actions within the corridor of executing statutory mandates (Article 31) as a ground for criminal exemption, while respecting the principle of *presumptio iustae causa*, whereby an authentic deed must be legally presumed valid until proven otherwise through a final and binding civil court decision.

5. References

Journals:

- Athira, A. B., & Hoesin, S. H. (2022). Eksistensi dan Peran Lembaga Majelis Kehormatan Notaris dalam Memberikan Perlindungan Hukum bagi Notaris. *Palar / Pakuan Law Review*, 8(1).
- Hukumonline, R. (2024a). Hakim Mulai Bedakan Kesalahan Administratif dan Tindak Pidana Notaris. *Hukumonline Magazine*.
- Hukumonline, R. (2024b). Tren Praperadilan 2024: Pembatasan Kriminalisasi Notaris dalam Sengketa Perdata. *Hukumonline*.
- Kurniawan, M. W. (2021). Prinsip Kepastian Hukum Jatuh Pailit terhadap Notaris. *Jurnal Rechtsens*, 10(2).
- Kusumo, M. D. M. B., & Cahyaningsih, D. T. (2024). Efektivitas Majelis Pengawas Daerah Notaris dalam Pengawasan Prinsip Kehati-hatian. *Journal of Policy*.
- Lim, D. (2025). Shifting Paradigm of Notary Criminal Liability in Southeast Asia. *Asia Law Review*, 21(1).
- Nisa, S. K., & Gozali, D. S. (2025). Notaris Sebagai Terpidana dalam Sengketa Para Pihak atas Akta Perjanjian. *Jurnal Kolaboratif Sains*.
- Nugraha, D. P., & Amaliah, K. (2024/2025). Pemalsuan Akta Otentik oleh Notaris: Analisis Normatif Berdasarkan KUHP dan UU Jabatan Notaris. *Notary Law Research*, 7(1).
- Prasetyo, B. (2023). Liability of Notary in Criminal Participation under Indonesian Criminal Law Reform. *Indonesia Law Review*, 13(2).
- Prasetyo, R. (2023). Prinsip Due Diligence Notaris dalam Pembuatan Akta Autentik terhadap Sengketa Sertifikat Tanah. *Jurnal RechtsVinding*, 12(2).
- Pratama, R. (2021). Tanggung Jawab Pidana Notaris atas Perbuatan Pegawai: Analisis Hukum Pidana Indonesia. *Jurnal Hukum Ius Quia Iustum*, 28(3).
- Rahardjo, S. (2022). Perlindungan Hukum terhadap Notaris sebagai Pejabat Umum. *Jurnal Notarius*, 15(2).
- Saraswati, N. L. P. A. (2022). Sinkronisasi Hukum Pidana dengan Kewenangan Jabatan Notaris dalam Era KUHP Nasional. *Jurnal Hukum dan Kenotariatan Indonesia*, 6(2).

- Sinaga, A. K., et al. (2024). Pertanggungjawaban Notaris terhadap Keterangan Palsu dalam Akta Autentik. *Jurnal Intelek Insan Cendikia*, 1(9).
- Sisca, K. A. (2024). Penegakan Hukum Notaris yang Menggunakan Data Pribadi Orang Lain dalam Akta. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 13(1).
- Sona, M. N. (2023). Penerapan Cyber Notary di Indonesia dan Kedudukan Hukum Akta Notaris Berbasis Cyber Notary. *Officium Notarium*, 2(3).
- Sriwati. (2022). Problematika Penerapan Pasal 66 Undang-Undang Jabatan Notaris terhadap Penegakan Hukum Pidana. *Reformasi Hukum*, 26(1).
- Wijayanti, M. A., et al. (2024). Kepastian Hukum Akta Autentik yang Dibuat di Hadapan Notaris Terkait Adanya Keterangan Palsu Penghadap. *Yustisi: Journal of Law*, 13(1).

Books:

- Adjie, H. (2008). *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004*. Refika Aditama.
- Adjie, H. (2021a). *Etika dan Tanggung Jawab Profesi Notaris dalam Menjalankan Jabatan*. Refika Aditama.
- Adjie, H. (2021b). *Hukum Notaris Indonesia di Era Kontemporer*. Refika Aditama.
- Adjie, H. (2021c). *Perlindungan Hukum Bagi Notaris dan Pejabat Pembuat Akta Tanah di Era Digital*. Refika Aditama.
- Adjie, H. (2021d). *Perlindungan Hukum Bagi Notaris dan PPAT di Indonesia*. Refika Aditama.
- Adjie, H. (2021e). *Rahasia Jabatan Notaris dan Perlindungan Hukum*. Refika Aditama.
- Adjie, H. (2022a). *Hukum Notaris Indonesia di Era Digital*. Refika Aditama.
- Adjie, H. (2022b). *Hukum Notaris Indonesia: Tafsir Tematik terhadap Undang-Undang Jabatan Notaris (Revisi)*. Refika Aditama.
- Anand, G. (2022). *Karakteristik Jabatan Notaris di Indonesia*. Prenadamedia Group.
- Anshori, A. G. (2020). *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*. UII Press.
- Khairandy, R. (2021). *Hukum Profesi dan Tanggung Jawab Jabatan*. FH UII Press.
- Latumeten, P. E. (2020). *Pertanggungjawaban Hukum Profesi Notaris dalam Pembuatan Akta*. Mitra Wacana Media.
- Lestari, D. (2023). *Kepastian Hukum dalam Jabatan Notaris di Indonesia Berdasarkan UUJN*. Sinar Grafika.
- Marzuki, P. M. (2021). *Penelitian Hukum (Revisi)*. Kencana.
- ND, M. F., & Putra, A. (2023). *Rekonstruksi Perlindungan Hukum Jabatan Notaris dalam Sistem Hukum Indonesia*. Rajawali Pers.



Jurnal Daulat Hukum
Volume 9 No. 2, June 2026
ISSN: 2614-560X
SINTA 3 Decree No.
0547/ES/DT.05.00/2024
Dated May 15, 2024

Reconstruction of Legal Protection ...
(Daddy Ramdhan & Gunawan Djajaputra)

Pratama, R. A. (2023). *Hukum Kenotariatan dalam Sistem Peradilan Modern*. Penerbit Citra Hukum.