

The Comparative Study of Notary in Indonesia & Malaysia with Two Differences Law System (Civil Law & Common Law)

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Abstract. *This research aims to know the comparison of law system of notary in Indonesia and Malaysia with two differences system both are civil law and common law and also to know notary's authorized to make authentic deeds regarding all actions, agreements and provisions required by the laws and regulations and/or that the interested party wants to be stated in the authentic deed, guarantees the certainty of the deed creation date, keeps the deed, provides grosse, copies and excerpts of the deed, all of them as long as the deeds are drawn up, they are not assigned or exempted from other officials or other people as stipulated by law. Therefore, the general power (openbaar gezaag) based on the law assigns the officer concerned to produce written evidence as desired by the parties with authentic power. The approach method used in this study is primarily a descriptive analysis approach with legal comparison methods. This means that all notaries must comply with the Notary Code of Ethics. What is stated in the notary code of ethics made by the INI organization which is the only notary organization that is legally incorporated in accordance with UUJN. The result means that all notaries must comply with the Notary Code of Ethics. While starting January 5, 2015 the Embassy in Kuala Lumpur requires appointments for all notarial services. Please bring your appointment confirmation sheet and arrive at the embassy 10 minutes before the appointment time. It can provide most of the same notarial services that a public notary is authorized by law to perform within the United States. Services are similar available as in U.S. and to foreign nationals with documents intended for use within the U.S. By following to the ACS Unit when requesting notary services: The documents to be notarized, including attachments, if any. The passport and one other photo identification. Witnesses, if required. (Consular staff are not allowed to serve as witnesses.) \$50.00 or the equivalent in Malaysian ringgit for each seal. Notary fees can be paid in cash or by credit card.*

Keywords: Civil; Code; Common; Comparison; Notary.

1. INTRODUCTION

The government of Indonesia through law is assigned and entrusted with the Notary and vice versa the public must also believe that the Notary Deed was made provide

legal¹ certainty for its citizens, according to the sound Article 15 paragraph 1 of Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning Position Notary Public². In Article 4 of Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning the Position of Notary Public, it is stated that before carrying out his position, the Notary is obliged to take an oath, among others, to carry out his position in a trustworthy, honest manner, maintain attitude, behavior and carry out obligations in accordance with the code of professional ethics, honor, dignity and responsible as a Notary Public, thus the behavior of Notary X as mentioned above is very contrary to the content of the article stated³.

The Notary Code of Ethics is made to maintain the honor and dignity of the notary office which contains moral principles that must be adhered to by every member of the association which has been regulated, either in *Staatsblad* 1860 No. 3 or in Article 89 of the Law on Notary Position No. 30 of 2004 concerning the following Notary Positions the sanctions that will be given if a member commits a violation. The existence of a code of ethics aims to make a profession run professionally with motivation and orientation towards intellectual skills and to argue rationally and critically and uphold moral values. Notary services as part of service to the community must run parallel to the development of society in the future. Accuracy, speed and proficiency of notaries, not only based on a formalistic perspective, but must be based on a professionalism perspective, so that efforts to improve the quality of notary services actually bring positive results for society⁴.

In Malaysia, notary (notary public or public notary=same) use the common law as a public officer constituted by law to serve the public in non-contentious matters usually concerned with estates, deeds, powers-of-attorney, and foreign and international business. A notary's main functions are to administer oaths and affirmations, take affidavits and statutory declarations, witness and authenticate the execution of certain classes of documents, take acknowledgments of deeds and other conveyances, protest notes and bills of exchange, provide notice of foreign drafts, prepare marine or ship's protests in cases of damage, provide exemplifications and notarial copies, and perform certain other official acts depending on the jurisdiction. Any such act is known as a notarization. The term notary public only refers to common-law notaries and should not be confused with civil-law notaries⁵.

All blank spaces (other than signatures) must be adequately filled in before the document can be notarized. It has blank affidavit and acknowledgement forms available for the use, but cannot provide any advice on wording any document or

¹ Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

² Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

³ Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning the Position of Notary Public

⁴ Ibid

⁵ Hai, Jeong Chun; Naw, Nor Fadzlina (2007). *Principles of public administration: an introduction*. Shah Alam, Selangor: Karisma Publications.

completing any forms. Be advised that it cannot certify any civil documents (e.g., birth, marriage and death certificates) or any documents issued by government authorities in Malaysia or the U.S. (e.g., drivers licenses) except through authentication, which is a complicated and time-consuming process. It also cannot certify any educational documents, e.g., diplomas and transcripts⁶.

Notaries are appointed by a government authority, such as a court or lieutenant governor, or by a regulating body often known as a society or faculty of notaries public. For lawyer notaries, an appointment may be for life, while lay notaries are usually commissioned for a briefer term, with the possibility of renewal⁷.

In most common law countries, appointments and their No. for a given notarial district are highly regulated. However, since the majority of American notaries are lay persons who provide officially required services, commission are not regulated, which is part of the reason why there are far more notaries in the United States than in other countries (4.5 million vs. approx. 740 in England and Wales and approx. 1,250 in Australia and New Zealand). Furthermore, all U.S. and some Canadian notarial functions are applied to domestic affairs and documents, where fully systematized attestations of signatures and acknowledgment of deeds are a universal requirement for document authentication. By contrast, outside North American common law jurisdictions, notarial practice is restricted to international legal matters or where a foreign jurisdiction is involved, and almost all notaries are also qualified lawyers⁷.

For the purposes of authentication, most countries require commercial or personal documents which originate from or are signed in another country to be notarized before they can be used or officially recorded or before they can have any legal effect. To these documents a notary affixes a notarial certificate which attests to the execution of the document, usually by the person who appears before the notary, known as an appearer or constituent (U.S.). In places where lawyer notaries are the norm, a notary may also draft legal instruments known as notarial acts or deeds which have probative value and executory force, as they do in civil law jurisdictions. Originals or secondary originals are then filed and stored in the notary's archives, or protocol.

2. RESEARCH METHODS

The approach method used in this study is primarily a descriptive analysis approach with legal comparison methods. Descriptive analysis is research that describes an analysis of existing findings. The analytical descriptive approach in this study is an approach in terms of Legislation and Legal Norms in accordance with existing problems.

3. RESULTS AND DISCUSSION

3.1. Notary in Indonesia

⁶ Chooi, Clara. "Putrajaya Reports Increase in Non-Bumiputeras in Civil Service". The Malaysian Insider, p. 45

⁷ Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

A. Notary Profession

Notaries who have a role and activities in the pre-profession of law cannot be separated from the fundamental problems related to the function and role of the law itself, where law is defined as the rules that govern all the life of the community, more broadly the law functions as a tool for community reform⁸.

Indonesia as a developing and developing country, the role and function of the law for a legal preamble is not easier than in a developed country, because there are various limitations that not only reduce the smoothness of the legal process in an orderly and definite manner but also require approaches and ideas thoughts that lead to an adaptive legal construction that can balance various existing interests steadily³.

There is an ability to uphold the legal profession which requires personal integrity and professional skill and that can be described;

- a. In depth, the ability to be responsive and uphold public interests, namely upholding professional standards as a good and responsive legal servant behave individually. able to show the characteristics and actions that are suitable for a good servant of law,
- b. The ability to be responsive to the development of society and its environment, uphold the interests of the general public, be able to accommodate, adapt and develop legal norms and their application in accordance with the demands of the development of society and technology.

B. Notary History

The history of the notary institute dates back to the 11th or 12th century in the Central Italian trade area. In the 13th century the notarial institution reached the peak of its development, after that in the 14th century there was a decline in the notarial field, this was due to the actions of the rulers at that time who seemed to sell Notary positions to people named *Notarius* regardless of whether the person had expertise or not, causing a lot of complaints from the public. At the beginning of the 19th century, this notarial institution expanded to the surrounding countries and even to other countries. At the peak of its development and after the institutionalization of the *notariat*, this institution was brought by the Dutch with two imperial decrees, namely on November 8, 1810 and March 1, 1811 which were valid throughout the Netherlands.

The legislation of the French *notariat* that was enacted in the Netherlands did not immediately disappear even though the country had been released from French rule, after repeated pressure from the Dutch people to form a national legislation in accordance with the aspirations of the people in the field of *notariat*, then on July 9, 1842, a Law on the Position of Notary was issued, namely the Netherlands Staatblad

⁸ Nofita S., Putri, Chalim, Munsharif A., & Setyawati. (2020). Legal Protection Against Substitute Notary in Semarang Based on Act No. 2 of 2014 Amendment Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning Notary. *JURNAL AKTA*: Vol.7, No. 2, 195-200. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7901>

No. 20⁹. The historical development of the *notariat* in the Netherlands is very important for the *notariat* institution in Indonesia. The *notariat* in the Republic of der verenigde Nederlanden began to enter Indonesia at the beginning of the 17th century.

In 1860 the regulations regarding the position of a Notary in Indonesia were adjusted to the laws in force in the Netherlands with the enactment of Staatblad No. 3 Concerning Rules for the Position of Notary Public on January 26, 1860 which came into effect on July 1, 1860, with the promulgation of "Notary Public Reglemen ", then a strong foundation is laid for the institutionalization of the *notariat* in Indonesia.

In line with the changing times and the legal needs of the Indonesian people, the various provisions in the laws and regulations mentioned above are no longer appropriate, it is necessary to carry out a comprehensive renewal and rearrangement in one law regulating the position of a Notary, so that a legal unification can be created which applies to all residents throughout the territory of the Republic of Indonesia. In order to realize the legal unification in the notary field, on October 6, 2004, Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning the Position of Notary was enacted.

C. Notary Code of Ethics

Notaries who practice in Indonesia join in an organizational association, namely the Indonesian Notary Association (INI). THIS is a continuation of *De Nederlandsch-Indische Notarieele Vereeniging*, which was previously established in Batavia on 1 July 1908 which was approved as a legal entity with the *Gouvernements Besluit* (Government Declaration) dated 5 September 1908 No. 9. The Dutch name was later changed or changed to The Indonesian Notary Association, which until now is the only forum for professional organizations in Indonesia.

Then it received approval from the government based on the Decree of the Minister of Justice of the Republic of Indonesia on January 23, 1995 No. C2-1011.HT.01.06 of 1995, and it was announced in the State Gazette of the Republic of Indonesia dated April 7, 1995 No. 28 Supplement No. 1/P-1995, therefore as and is a Notary organization as referred to in UUJN No. 30 of 2004 jo. Act No. 4 of 2014 concerning the Position of Notary which is promulgated in the State Gazette of the Republic of Indonesia of 2004 No. 117. According to Article 1 No. (5) UUJN, it states that the Notary Organization is a professional organization for the position of a Notary which is formed by an association law¹⁰.

D. Notary Personality Ethics

As a general official, a notary must:

- a. Have a Pancasila spirit;
- b. Obey the law, oath of office and the Notary Code of Ethics;
- c. Speak good Indonesian.
- d. As professionals, Notaries must:

⁹ Abdulkadir Muhammad. (1997). *Etika Profesi Hukum*. Bandung: Citra Aditya Sakti. p.45

¹⁰ Komar Andasmita. (1983). *Masalah Hukum Perdata Nasional Indonesia*. Bandung: Alumni. p. 81

- e. Have a professional behavior;
- f. Participating in national development in the field of law;
- g. Upholding the honor and dignity of the Notary.

Professional behavior is defined as fulfilling the following elements:

- a. Skills that are supported by high knowledge and experience;
- b. Moral integrity means avoiding something that is not good even though the reward for services is high, the implementation of professional duties is aligned with societal values, courtesy and religion;
- c. Be honest not only with the second party or third party, but also to yourself;
- d. Not only consideration of money, but also dedication, does not distinguish between people who are able and unable;
- e. The professional code of ethics because it defines all the behaviors that must be possessed by a Notary, including in perfect Indonesian.
- f. Ethics¹¹ for performing job duties Notary as a general official in performing his/her job duties must:
- g. Be aware of their obligations, work independently, are honest, impartial, and full of responsibility;
- h. Using one office that has been designated in accordance with the law, does not hold a representative branch office, and does not use intermediaries;
- i. Not using mass media that is promotional in nature;
- j. Must put up a nameplate according to the prevailing size.

Ethics of service to clients, as a general official, a notary must:

- a. Providing legal services to people who need the best possible services;
- b. Completing the deed until the registration stage at the District Court and the announcement in the State Gazette, if the client in question clearly says that he will submit the arrangement to the Notary concerned and the client has met the necessary requirements;
- c. Notifying the client regarding the completion of registration and announcement, and or sending to or ordering to take the registered deed or the State Gazette that has been finished printing by the client concerned;
- d. Providing legal education so that people are aware of their rights and obligations as citizens and members of society;
- e. Providing services to underprivileged members of society for free;
- f. It is prohibited to hold someone's file with the intention of forcing that person to make a deed to the notary who is holding the file;
- g. It is prohibited to become an instrument of another person or party to solely sign a deed made by another person as a deed made by the Notary concerned;
- h. It is forbidden to send minuta to the client or clients to be signed by the client or clients concerned;
- i. It is prohibited to induce or in any way force the client to make deeds to him, or persuade someone to move from another notary;
- j. It is prohibited to form groups within the Indonesian Notary Association with the aim of serving the interests of an agency or institution specifically/exclusively, let alone closing the possibility of other members from participating.

¹¹ Suhrawardi K. Lubis. (1993). *Etika Profesi Hukum*. Jakarta: Sinar Grafika. p. 55

- k. Ethics of relations among Notary colleagues, As fellow public officials, a Notary must:
- l. Mutual respect in a family atmosphere;
- m. Not doing competition that is detrimental to fellow Notaries, both morally and materially;
- n. Must protect and defend the honor and good name of the Notary Corps on the basis of solidarity and constructive help.

Supervision Ethics, ethical supervision of Notaries through the implementation of the Notary Code of Ethics is carried out by the Regional Honor Council and/or the Central Honorary Council of the Indonesian Notary Association;

- a. The procedures for implementing the code of ethics, sanctions and execution are regulated in separate regulations;
- b. Without prejudice to the provisions regarding the procedure or imposition of levels of sanctions in the form of warnings and warnings, violations⁶ which the Central Executive must absolutely be subject to temporary dismissal as a member of the Indonesian Notary Association accompanied by a proposal by the Central Executive to the Congress to dismiss the member concerned are violations mentioned in the Notary Code of Ethics and the Position of Notary Public which resulted in the member being found guilty based on a court decision that has obtained permanent legal force.

E. Law Enforcement Code of Ethics of Notary Public

The definition of law enforcement can be formulated as an effort to implement the law properly, supervise its implementation, and if there is a violation, restore the law so that it is re-enforced. Law enforcement is carried out by law enforcement according to the following sequence¹²:

- a. Warning to stop the violation and don't do it again
- b. Imposing certain obligations (compensation, fines)
- c. Allowance or exclusion (deprivation of certain rights)
- d. Imposition of corporate sanctions (imprisonment, death penalty) in carrying out law enforcement duties, law enforcers are obliged to obey established norms.

Enforcement of the Notary's code of ethics is an effort to implement the Notary's code of ethics properly, to supervise its implementation so that there is no violation, and if there is a violation restoring the violated code of conduct so that it is re-enforced. Law enforcement of the Notary Code of Ethics is listed in Chapters IV and V, namely from Article 6 to Article 13. Which includes: "Sanctions, Supervision, Examination and Imposition of sanctions, Examination and Imposing of Sanctions at the First, Appeal and Last Level, Execution of sanctions in violation of the Code of Ethics".

¹² Jaya, Hendro K., & Purnawan, Amin. (2020). Review Of The Implementation Process Of Completion Of Juridical Code Violations Of Notary In Kendari. *JURNAL AKTA*: Vol.7, No. 2, 169-176. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7881>

F. Supervision

It is hoped that the authorization of the Notary Position Law will serve as a guidance institution so that Notaries in carrying out their positions can further improve the quality of service to the public. In Article 67 paragraph (5) UUJN, what must be monitored is the Behavior of Notary Public and Implementation of Notary Position.

Notary supervision is regulated in Articles 67-81 of the UUJN, in which the supervision is carried out by the Minister and in carrying out such supervision the Minister shall appoint the Supervisory Council, which consists of the Regional Supervisory Council, the Regional Supervisory Council and the Central Supervisory Council. The Supervisory Council consists of 3 elements, namely elements from the Government, Notary organizations and academics⁷.

a. Regional Supervisory Council (MPD)

MPD conducts regular supervision every 6 months by checking the Notary's protocol⁸, giving permission to leave for 6 months and examining reports or complaints from the public against Notaries. If there is a complaint from the public against a Notary who violates the code of ethics or violation of the Law on the position of Notary Public, the MPD has the authority to hold a closed session for the public, the MPD will examine and hear the reporter's statement, the reported response, examine the evidence submitted by the reporter and the reported, then the results examination is contained in an examination report (BAP) and must be given to the Regional Supervisory Committee within 30 days with a copy to the notary concerned, the regional management of the Indonesian Notary Association and the Central Supervisory Council.

b. Regional Supervisory Council (MPW)

MPW has the authority to grant leave for 6 months to 1 year. Based on the BAP that has been given to MPW through MPD, MPW has the authority to conduct a Closed Examination Session for the public and a Decision Making Session which is open to the public. If the MPW Netarts examination session is not proven to have committed a violation, the BAP report is rejected and the notary is rehabilitated. If the notary is proven to have violated the decision, the decision must contain sufficient reasons and considerations which are used as the basis for making the decision.

MPW prepares an official report on every decision to impose sanctions, which is then submitted to the Minister, Reporters, Terrorists, MPD, MPP and the board of the Indonesian Notary Association. If the reported Notary has objected to the MPW trial decision, the Notary may file an appeal at the Central Supervisory Council level¹³.

c. Central Supervisory Council (MPP)

¹³ Liliana Tedjosaputro. (1995). *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*. Yogyakarta: Bigraf Publishing. p. 12-13, see Fuditia, Megacaesa., & Mashdurohatun, Anis. (2020). Protection Against Recipients Notary Deed That Allegedly Protocol To The Legal Issue In Semarang. *JURNAL AKTA*: Vol.7, No. 2, 177-182. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7888>

Authorized to grant notary leave for a period of more than 1 year. Following up on Notary who made an appeal submitted through MPW. MPP is obliged to conduct an Examination Session and Decision-Making Session which are open to the public.

G. Violation of the Notary Code of Ethics

Some examples of violations against UUJN committed by notary persons in making Notary deeds, namely:

- a. The deed was drawn up without the presence of the witnesses, even though the deed itself was mentioned and stated "with witnesses present"
- b. The deed in question was not read by the notary
- c. The deed concerned is not signed in the presence of the Notary, even the minimum Deed is brought by another person and signed by and at a place unknown to the Notary concerned.
- d. The notary makes the deed outside of his/her area of office, but the Notary concerned includes it in the deed as if it was administered in the jurisdiction of his/her jurisdiction or as if it was carried out at the domicile of the Notary.
- e. A Notary opens a branch office by way of every branch in. at the same time carry out and produce Notary deeds as if all of the deeds were made before the Notary concerned.

The legal consequence of a deed made by a Notary who has violated the Law on the Position of Notary, namely, the said Notary is not authentic and the deed only has the power of a deed made under hand when signed by the parties concerned. Violations of the UUJN as exemplified above, which have resulted in losses to the public or users of Notary services, can be submitted by the public to the Regional Supervisory Council. Which then adjusted the mechanism to UUJN. The UUJN stipulates the sanctions in Articles 84 and 85 for violating the position of a notary public. The notary code of ethics which is regulated by the Notary organization, namely the Indonesian Notary Council (IN!) Is one of the recognized professional organizations for the position of Notary and has branches throughout Indonesia. Violations according to the Notary Code of Ethics are regulated in Article 1 No. (9), namely: Violation is an act or action taken by an association or other person holding and carrying out a zeroaris position that violates the provisions of the Code of Ethics and/or organizational discipline.

H. Penalty

Sanctions in the Code of Ethics are listed in article 6:

- a. Imposed on members who violate the Code of Ethics can be in the form of:
 - 1) warning
 - 2) instruction

- 3) *schorsing* (temporary dismissal) from association membership
- 4) *onzetting* (dismissal) of association membership
- 5) Disrespectful dismissal from membership of the Association

b. The imposition of the witnesses as described above against members who violate the code of ethics shall be adjusted to the quality of the violations committed by members.

Referred to as sanctions is a punishment that is meant as a means, effort and means of enforcing obedience and discipline for members of an association as well as other people who take and carry out the position of a Notary in enforcing the code of ethics and organizational discipline. The imposition of sanctions on members who violate the Notary's code of ethics is carried out by the Honorary Council which is a tool for the association which is authorized to examine violations of the code of conduct including imposing sanctions on violators in accordance with their respective authority (contained in Article B). Notary violations are carried out by the Notary organization, namely the Indonesian Notary Association (INI), of its members, which directly control Notaries by the Honorary Council, which is in Article 1 point (8) of the Notary Code of Ethics. Honorary Council is a tool of equipment of the Association as; an agency or institution that is independent and free from partiality in the Association which is assigned to:

- a. carry out coaching, guidance, supervision, and arrangement of members in upholding the Code of Ethics,
- b. examine and make decisions on suspected violations of the provisions of the code of ethics which are internal in nature or which have no direct connection with public interests
- c. provide suggestions and opinions to the Supervisory Board regarding the alleged budget for the code of ethics and the position of a Notary

The Honorary Council examines and makes decisions on alleged violations of the provisions of the code of ethics which are "internal" in nature or which do not have direct connection with the interests of the community (article 1 paragraph 8 part a)

The examination and imposition of sanctions at the first level are carried out by the Regional Honorary Council which will only determine its decision regarding whether or not a violation of the code of ethics is proven or not and the imposition of sanctions against the violator, after hearing the statement and self-defense of that need. If the verdict of the regional honor council is proven to have violated the code of ethics, then the trial will simultaneously "determine sanctions" against the violators. (Article 9 paragraph (5). In the case of temporary dismissal as stipulated in article 13. In the case of the imposition of sanctions for temporary dismissal (*schorsing*) as well as sanctions *onzetting* or disrespectful dismissal as a member of the association for violations as referred to in Article 13 above, the Central Executive shall notify the Supervisory Council. Regions (MPD) and a copy thereof submitted to the Minister of Law and Human Rights.

3.2. Public Notary Services In Malaysia

A. Basic Notary Law in Malaysia

If the people should require Public notary services for any of the matters listed below please feel free to call up for an appointment:

- a. Scope of Public notary's Role extracted from Act 115 on Public notary Act 1959 Section 4 on Privileges of Public notary¹⁴:

4. (1) Every public notary shall have and may exercise within his place of practice all the poitrs and functions which are ordinarily exercised by public notary in England: Provided that, except for the purposes of and to the extent necessary to give effect to subsection (2), such poitrs shall not include poitr to administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed for the purpose of being used in any court or place within Malaysia, or to take or attest any such affidavit or statutory declaration.

4. (2) Without prejudice to the generality of the functions conferred by subsection (1), a public notary may: (a) administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed:

- for the purpose of confirming or proving the due execution of any document;
- by any master or member of the crew of any vessel in respect of any matter concerning that vessel; or note on the poitrs and functions ordinarily exercised by public notary in England is to be found at page 1119 of Vol. 23 of the 3rd Edition of Halsbury's Statutes of England⁸.
- for the purpose of being used in any court or place outside Malaysia, and may take or attest any such affidavit or statutory declaration; and
- have and exercise such other poitrs and functions as may be prescribed.

Public notary's Role in Authenticating Poitr of Attorney extracted from Act 424 Poitrs of Attorney Act 1949, Section 3 on Authentication of Poitrs of Attorney:

3. (1) No instrument purporting to create a poitr of attorney executed after the commencement of this Act shall have any validity to create such poitr within Peninsular Malaysia unless.

- if executed within Peninsular Malaysia, the instrument is executed before, and is authenticated in the appropriate form set out in the First Schedule hereto by: (i) a Magistrate; (ii) a Justice of the Peace; All references to "Itst Malaysia" shall be construed as reference to "Peninsular Malaysia") (iii) a Land Administrator; (iv) a Public notary; (v) a Commissioner for Oaths; (vi) an advocate and solicitor; or (vii) an officer,

¹⁴ Chooi, Clara. "Putrajaya Reports Increase in Non-Bumiputeras in Civil Service". The Malaysian Insider, p. 45

acting in the course of his employment, of a company carrying on the business of banking in Peninsular Malaysia and incorporated by or under any written law in force in Peninsular Malaysia; or

- if executed outside Peninsular Malaysia, the execution of such instrument is authenticated, in such form as may be accepted by the Registrar, by:- (i) a Public notary; (ii) a Commissioner for Oaths; (iii) any Judge; (iv) a Magistrate; (v) a British Consul or Vice-Consul; (vi) a representative of Her Britannic Majesty; (vii) on and after Merdeka Day, any Consular Officer of Malaysia; (viii) in the case of an instrument executed in the Kingdom of Saudi Arabia, the Malaysian Pilgrimage Commissioner; or (ix) in the case of an instrument executed in the Republic of Singapore' an advocate and solicitor of the Supreme Court of the Republic; or an officer, acting in the course of his employment, of a company carrying on the business of banking in the Republic and incorporated by or under any written law of the Republic.

3. (2) Notwithstanding anything to the contrary contained in any written law in force at the commencement of this Act, an instrument purporting to create a power of attorney duly executed and authenticated in accordance with this section shall be deemed to be properly and validly executed and attested for all or any of the purposes for which a power of attorney may be used under any such written law⁹.

Role of Commissioner For Oath and Public notary in respect Statutory Declaration (Extract from Act 13- Statutory Declaration Act 1960) Section 2:

2. It shall be lawful for any Sessions Court Judge, Magistrate, or Commissioner for Oaths or, subject to section 4 of the Public notary Act 1959 [Act 115], any public notary appointed under the Public notary Act 1959, to take and receive the declaration of any person voluntarily making the same in Malay or English in the form in the Schedule¹⁵.

B. A brief List of Public notary services pursuant to the Public notary Act 1959

- witnessing/ attesting any official documents intended for overseas use;
- the administration of oaths intended for overseas use;
- affirmations of affidavits and statutory declarations intended for overseas use:
 - in respect of any courts matters;
 - for proving due execution of any document;
 - for matters pertaining to a sea vessel.
- This Act may be cited as the Notaries Public Act 1959.

¹⁵ http://exfacie.com/?q=notaries_halsburys_laws_of_england_1st_edition, Accessed on 15th February 2021

- In this Act, unless the context otherwise requires "Bar Council" means the central council of the Malaysian Bar established under section 47 of the Legal Profession Act 1976 [Act 166]; "notary public" means a person who has been appointed as a notary public under section 3 but does not include any person whose appointment has been revoked under section 5; "place of practice" means the territory or part thereof within which a person is appointed to practise as a notary public under section 3; "prescribed" means prescribed by or under this Act; "State Attorney General" means the State Attorney General, Sabah, or the State Attorney General, Sarawak, as the case may require.

In its application to Sabah and Sarawak•see L.N. 98/1965. 6 Laws of Malaysia ACT 115 Appointment of notaries public

1. (1) Subject to subsection, the Attorney General may, from time to time, appoint fit and proper persons to be notaries public to practise within Peninsular Malaysia or Sabah or Sarawak or such part of those territories for such period as may be specified in the appointment.

(1A) Notwithstanding any other law to the contrary, where any person has been appointed to be a notary public before the coming into force of this subsection and no period is specified in that appointment, the appointment shall cease to have effect upon the expiry of the period of two years from the date of coming into force of this subsection.

(1B) Nothing in subsection (1A) shall be construed as preventing the reappointment under subsection (1) of any person whose appointment has ceased to have effect by virtue of subsection (1A), and every such reappointment shall be deemed to be a new appointment.

(2) No person shall be appointed to be a notary public unless he is a practising advocate or a pleader licensed under the Pleaders and Petition Writers Enactment of the State of Terengganu [Tr. 59 of 1356] and who was so licensed before 1 January 1956: Provided that in any place in which a suitable advocate is not available for appointment, the Attorney General may, in his discretion, appoint a public officer to be a notary public, and any fees received by a public officer so appointed in respect of his functions as a notary public shall be paid into the Consolidated Fund. (3) The Attorney General shall not make any appointment under this section without consulting the Bar Council or, in relation to Sabah or Sarawak, without consulting the State Attorney General. (4) In making any appointment under this section the Attorney General shall have regard to the No. of notaries public already practising in the place where the applicant proposes to practise and to the convenience of the inhabitants of such place, but, subject as aforesaid, the Attorney General shall have absolute discretion in making or refusing to make any such appointment and there shall be no appeal from his decision.

(5) If it shall appear to the Attorney General or, where the place of practice is in Sabah or Sarawak, to the State Attorney General, that any notary public is about to be absent from his place of practice for a period exceeding one month, the Attorney General or the State Attorney General, may appoint any person, being a practising advocate, to be a notary public temporarily during the absence of that notary public.

(6) No temporary appointment of a notary public shall have effect for a longer period than twelve months and any such appointment shall lapse on the death or on the return to his place of practice of the notary public on account of whose departure the appointment was made.

(7) Every appointment under subsection (1) or (5) and the lapse of every temporary appointment under subsection (6) shall be published in the Gazette.

C. Privileges of notaries public

2. (1) Every notary public shall have and may exercise within his place of practice all the powers and functions which are ordinarily exercised by notaries public in England:

Provided that, except for the purposes of and to the extent necessary to give effect to subsection (2), such powers shall not include power to administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed for the purpose of being used in any court or place within Malaysia, or to take or attest any such affidavit or statutory declaration. (2) Without prejudice to the generality of the powers and functions conferred by subsection (1), a notary public may-- (a) administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed-- (i) for the purpose of confirming or proving the due execution of any document; (ii) by any master or member of the crew of any vessel in respect of any matter concerning that vessel; or (iii) for the purpose of being used in any court or place outside Malaysia, and may take or attest any such affidavit or statutory declaration; and (b) have and exercise such other powers and functions as may be prescribed.

Misconduct of notaries public

3. If it shall appear to the Attorney General or in the case of a temporary appointment in Sabah or Sarawak, to the State Attorney General, that any person being a notary public; (a) has been struck off the roll of advocates or ceased to be licensed as a pleader in the State of Terengganu, as the case may be; or (b) has exercised any of the functions of a notary public outside his place of practice, the Attorney General or the State Attorney General, as the case may be, shall, by order under his hand, revoke the appointment of that person and shall cause the order to be published in the Gazette.

4. Penalty for exercise of functions of notary public by unauthorized persons

Any person who exercises, within Malaysia, any of the functions of a notary public otherwise than in accordance with this Act shall be guilty of an offence and shall on conviction before a Sessions Court in Semenanjung Malaysia or the Court of a Magistrate of the First Class in Sabah and Sarawak be liable to fine not exceeding five hundred ringgit.

5. Rules

7. (1) The Rules Committee in respect of Peninsular Malaysia and the Chief Judge of

the High Court in Sabah and Sarawak after consultation with the State Attorney General concerned in respect of Sabah and Sarawak may make rules-- (a) for the guidance and control of persons entitled to exercise the functions of a notary public under this Act; (b) to fix the fees payable to notaries public; (c) to fix the fees payable by any person on appointment as a notary public: Provided that no such rule shall require any fee to be paid in respect of any appointment as a notary public deemed to have been made by virtue of subsection 8(1); and (d) prescribing the powers and functions of notaries public. (2) All rules made under this section shall be published in the Federal Gazette or the Sabah or the Sarawak State Gazette, as the case may be.

8. (1) Any person who immediately before the commencement of this Act was lawfully entitled to practise as a notary public within Peninsular Malaysia or any part thereof (other than a person entitled to practise as a notary public in the State of Johore by virtue of section 4 of the Notaries Public Ordinance 1947 [Ord. 47 of 1947]) shall be deemed to have been appointed a notary public in accordance with this Act to practise as a notary public within Peninsular Malaysia or (if he was entitled to practise only within a part of Peninsular Malaysia) within such part as the case may be. (2) (Omitted), (3) The name of every person who has been deemed to have been appointed a notary public by virtue of subsection (1) shall, within three months of the coming into force of this Act, or such longer period as the Attorney General may in any particular case permit, be published in the Gazette; and such publication shall be conclusive evidence of the right of every such person to practise as a notary public under this section.

9. (1) The Notaries Public Ordinance 1947 is repealed. (2) Notwithstanding the repeal of the said Ordinance any rules made thereunder and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with this Act, be deemed to have been made under this Act, and shall continue in force until revoked or repealed by rules made under this Act, and shall, unless the context otherwise requires, apply and have effect throughout Peninsular Malaysia.

D. Legal Services: Commercial Law

The corporate and commercial department provides services in all aspects of corporate finance, mergers and acquisitions, corporate restructuring, agency and commercial agreements, competition, business and asset transfers, directors' duties, partnership and private limited company structuring, intellectual property, joint ventures and private equity financing. Advice is also given in relation to contentious and non-contentious employment matters. The team has a strong reputation for a sensible approach to getting the job done¹⁶.

- Dispute Resolution

Dispute resolution has qualified advocates within the department. The firm adopts a proactive approach to dispute management. The litigation team works closely with a No. of national commercial clients and provides specialist advice on commercial disputes, shareholder conflict and indemnity claims, company disputes, partnership and

¹⁶ Boo, Cheng Hau. *"Isn't a One-race Civil Service a Form of Apartheid?"*. The Malaysian Insider. Archived from the original on 21 June 2011.

private limited company issues, professional negligence and property litigation. The department also provides advice to insolvency practitioners.

- Conveyancing¹⁷

There is strength and depth in the commercial and residential property teams across all three of the firm's offices. Commercial work is undertaken for a No. of national name clients with property portfolios across the capital city. The work includes property redevelopment, leasing, acquisitions, disposals and compulsory base. Probate, trusts and tax purchase. The department also provides a specialist residential property service. It are also involved in the preparation of Islamic Loan documentation with product such as *Bai' Bil Taman Ajil* and *Musharakah Mutanaqisah* for with various bank such as Public Islamic Bank Bhd, Hong Leong Islamic Bank, Maybank Islamic Bhd, Bank Islam Bhd and Standard Chartered Islamic Bank Bhd.

- Private Client Services

C.K.Leong & Nurbaya maintains an enviable and long established private client planning work is dealt with by the regionally recognised wealth preservation team, and specialist advice and planning is given for corporate and private property investment clients. Family law is a recognised area of regional expertise and encompasses complex financial affairs¹⁸, arrangements

- Intellectual Property and Information Technology:

- Trade and Service Marks, Patents, Designs and Copyrights, Licensing and Franchising;
- Corporate Administration and Secretarial Services;
- International Business Transactions, Tax Practice and Planning, Securities and Loans;

E. Apostille and Legalisation

- Apostille

An Apostille is a certificate issued by the Department of Foreign Affairs of some countries verifying the genuineness of the signature and/or seal of a public officer e.g. a Public notary, on a public document and the capacity in which he or she has acted. The Apostille certificate may be stamped on or attached to the public document required to be apostilled. It is obtained by presenting the document at the Department of Foreign Affairs. The Apostille procedure applies in lieu of Legalisation between countries that have signed and ratified or acceded to the Hague Convention of 5 October 1961. Other countries in which the Apostille procedure applies may be checked on the Hague Convention website, where a list of countries adhering to the

¹⁷ Lau, A., *A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement*, Times Academic Press, Singapore, 1998.

¹⁸ Crouch, H., *Government and Society in Malaysia*, Allen and Unwin, Australia, 1966, Chapters 1 and 2.

Apostille system abolishing the need for legalisation, and also those countries not Hague Convention Countries Adhering.

- Legalisation

Legalisation is an internationally recognised procedure for certifying the authenticity of official signatures and/or official seal applied to a public document. It operates by means of an unbroken chain of verifying signatures commencing with that of the first signatory to the document and ending with the signature of the diplomatic or consular representative of the state in which the document is to be produced and acted upon. The legalisation procedure usually commences with the attestation by a Public notary of the signature of a person to a formal document. After the Public notary has subscribed the signatory's name and affixed his or her official seal to the document by way of notarial act, the document shall be sent to the Ministry of Foreign Affairs which in Kuala Lumpur, its site at Ministry of Foreign Affairs of Malaysia Wisma Putra, No 1, Jln. Wisma Putra, Precinct 2, 62602 PUTRAJAYA Phone: +603-8000 8000 / Email: itbmaster@kln.gov.my and paying the appropriate consular fee, normally RM 20.00 per document - for the purpose of having the Notary's signature and official seal verified. The document is then produced at the diplomatic or consular representative or embassy in Kuala Lumpur of the foreign country in which it is intended to be used. The document shall be produced for the purpose of having the Ministry of Foreign Affairs signature legalised. When all the foregoing steps have been completed, the document is said to have been legalised. Other countries in which the Apostille procedure applies may be checked on the the Hague Convention its site, where a list of countries adhering to the Apostille system abolishing the need for legalisation, and also those countries not Hague Convention Countries Adhering¹⁹.

F. Notaries by the Numbers

Notaries are appointed to act in a specific territory only, either a state or one of the federal territories. Here is the breakdown of where notaries practice in Malaysia²⁰: Kuala Lumpur: 133, Selangor: 40, Penang: 36, Johor: 26, Sarawak: 22, Sabah: 13, Perak: 12, Negeri Sembilan: 6, Melaka: 6, Kedah: 5, Pahang: 4, Labuan: 3, Putrajaya: 2, Kelantan: 2, Terengganu: 1, Perlis: 0.

Since notaries are appointed from practising lawyers, the No. of notaries in a state or FT will tend to reflect the No. of lawyers practising there. The size of each state Bar is in turn influenced by the level of local legal and economic activity.

It is therefore no surprise the largest No. of notaries, some 43%, are found in Kuala Lumpur. It does feel a little sorry for anyone in Perlis who needs the services of a notary. It supposes it is a short hop over to Kedah, where they have all of five to choose from.

¹⁹ Puthuchery, M., *The Politics of Administration: The Malaysian Experience*, Oxford University Press, Kuala Lumpur, 1978, p. 11.

²⁰ The data are taken from the Attorney General's Chambers' its site and the total is 311.

In 2013, there are 15,331 advocates & solicitors in Peninsula Malaysia. Only practitioners with more than 15 years' experience are eligible for appointment²¹. The estimate there are about 6,000 who have reached this milestone in their professional lives. The 276 notaries in Peninsula Malaysia therefore constitute about 4.6% of all eligible lawyers in this part of the country.

Are there too few or too many notaries? Certainly it is easier to find a lawyer than to find a notary. However, I think the Number regulate themselves. All 6,000 senior lawyers could have applied for appointment but they did not, I suspect, because apart from a lack of interest in this field of law, there is little financial incentive to do so. Notarial fees are prescribed by law, and they have not increased in decades. So lawyers who do take up notarial work are that odd species who either feel the fees justify the effort or, as a fellow notary told me, because they feel it is a form of public service. For myself, both these factors play a role but I also find it quite interesting to meet a wide spectrum of people. It certainly breaks up the monotony of my usual office work.

4. CONCLUSION

In Indonesia the Notary's Code of Ethics is a further explanation of what is regulated in the Law on Notary Office, considering that Notaries in carrying out their positions must submit to and obey all the provisions in the Law that govern their positions based on Civil Law System. What is stated in the notary code of ethics made by the INI organization which is the only notary organization that is legally incorporated in accordance with UUJN. This means that all notaries must comply with the Notary Code of Ethics. In Malaysia, Public notary services for any of the matters listed below the Public notary Act 1959 based on Common Law System. The corporate and commercial department provides services in all aspects of corporate finance, mergers and acquisitions, corporate restructuring, agency and commercial agreements, competition, business and asset transfers, directors' duties, partnership and private limited company structuring, intellectual property, joint ventures and private equity financing. The Public notary subscribed the signatory's name and affixed his or her official seal to the document by way of notarial act, the document shall be sent to the Ministry of Foreign Affairs which in Kuala Lumpur, its site at Ministry of Foreign Affairs of Malaysia Wisma Putra, No 1, Jln. Wisma Putra, Precinct 2, 62602 PUTRAJAYA Phone: +603-8000 8000 / Email: itbmaster@kln.gov.my and paying the appropriate consular fee, normally RM 20.00 per document - for the purpose of having the Notary's signature and official seal verified.

5. REFERENCES

Journals:

Ambe J. Njoh, Liora Bigon, Erick O. Ananga, Richard A. Ayuk-Etang, Institutional, economic and socio-cultural factors accounting for gender-based inequalities in land title procurement in Cameroon, *Journal of Public Transportation*, p. 116-125, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

²¹ Dreseen, H., *A short history of the Malay College*, MCKK Golden Jubilee Brochure 1905–1955, cited in Puthuchery, 1978, p.10.

- Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>
- Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>
- E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>
- Fuditia, Megacaesa., & Mashdurohatun, Anis. (2020). Protection Against Recipients Notary Deed That Allegedly Protocol To The Legal Issue In Semarang. *JURNAL AKTA*: Vol.7, No. 2, 177-182. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7888>
- Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.
- Jaya, Hendro K., & Purnawan, Amin. (2020). Review Of The Implementation Process Of Completion Of Juridical Code Violations Of Notary In Kendari. *JURNAL AKTA*: Vol.7, No. 2, 169-176. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7881>
- Laura Notess (WRI) , Peter Veit (WRI), Iliana Monterroso (WRI), Andiko (WRI), Emmanuel Sulle (WRI), Anne M. Larson (WRI), Anne-Sophie Gindroz (WRI), Julia Quaedvlieg (WRI) and Andrew Williams (WRI) - July 2018, The Scramble for Land Rights, Reducing Inequity between Communities and Companies, <https://wri-indonesia.org/en/publication/scramble-land-rights>
- Nofita S., Putri, Chalim, Munsharif A., & Setyawati. (2020). Legal Protection Against Substitute Notary in Semarang Based on Act No. 2 of 2014 Amendment Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning Notary. *JURNAL AKTA*: Vol.7, No. 2, 195-200. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7901>
- Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>
- Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

Books:

- Boo, Cheng Hau. *"Isn't a One-race Civil Service a Form of Apartheid?". The Malaysian Insider*. Archived from the original on 21 June 2011.
- Chooi, Clara. *"Putrajaya Reports Increase in Non-Bumiputeras in Civil Service"*. The Malaysian Insider.
- Crouch, H., *Government and Society in Malaysia*, Allen and Unwin, Australia, 1966, Chapters 1 and 2.
- Dreseen, H., *A short history of the Malay College*, MCKK Golden Jubilee Brochure 1905–1955, cited in Puthucherry, 1978.
- Hai, Jeong Chun; Nawi, Nor Fadzlina (2007). *Principles of public administration: an introduction*. Shah Alam, Selangor: Karisma Publications.

Lau, A., *A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement*, Times Academic Press, Singapore, 1998.

Puthucheary, M., *The Politics of Administration: The Malaysian Experience*, Oxford University Press, Kuala Lumpur, 1978.

Regulation:

Act 115

Act 14/1960 Notaries Public (Amendment) 30-05-1960 Act 1960

Act 160 Malaysian Currency (Ringgit) 29-08-1975

Act 1975

Act 1980

Act 1994

Act 1997 of Malaysian Federation

Act 7/1961 Notaries Public (Amendment) 01-06-1961 Act 1961

Act A501 Notaries Public (Amendment) 01-08-1991

Act A885 Constitution (Amendment) 24-06-1994

Act A992 Notaries Public (Amendment) 27-06-1997

Act No. 30 of 2004 jo. Act No. 4 of 2014 concerning the Position of Notary Public

Constitution of 1945 Republic of Indonesia

L.N. 98/1965 Modification of Laws (Notaries 18-03-1965 Public) (Extension and Modification) Order 1965

Notaries Public Act 1959

P.U. (A) 357/1980 Subordinate Courts Act 01-06-1981 (Extension) Order 1980

Internet:

http://exfacie.com/?q=notaries_halsburys_laws_of_england_1st_edition, Accessed on 15th February 2023