



LICS 2026

Topic: Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children

Reconstruction of The Regulation of Notary Responsibilities in Making Binding Deeds Based on The Values of Justice

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Abstract. *The malicious intent or fraudulent behavior (mens rea) of one party in a deed executed by a notary must be assessed through the lens of justice for all parties involved. The signatories of the deed should have comprehensively understood its contents and provided their consent willingly. Consequently, any denial following the execution of the deed may be deemed unjust if it implies wrongdoing on the part of the Notary, who serves solely as a neutral party (constantir), unless substantiated by compelling evidence. This writing method uses a constructivist paradigm, namely a paradigm with a relativism ontology, a socio-legal juridical approach method, and data obtained from qualitative. The research results found that DPR and President need reconstructing Article 17 paragraph (1) letter b, reconstructing Article 16 letter m, and reconstructing by adding paragraph (2) in Article 15 of Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notaries.*

Keywords: *Accountability; Jurisprudence; Notary Public; Oversight and Direction.*

1. Introduction

The position of Notary is a general or public position because Notaries are appointed and dismissed by the government, Notaries carry out state duties, and the deeds they make, namely minutes (original deeds) are state documents. Public officials are officials who are appointed and dismissed by general authority (government) and are given the authority and obligation to serve the public in certain matters, therefore they participate in carrying out the authority of the government. (Soesanto,1982) Although a Notary is a public official appointed and dismissed by the government, he/she is not a government



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

employee who receives a salary from the government. Law Number 8 of 1974 concerning the principles of civil service does not apply to Notaries.

It is clear that a notary public has a significant responsibility to ensure the validity and authenticity of the deeds they create, which are legally binding. Therefore, the integrity and prudence of a notary in carrying out their duties are crucial. A notary's responsibility extends beyond the creation of the deed, but also encompasses ensuring integrity and prudence in every action they take. A notary must ensure that the deeds they create are free from legal defects that could harm the parties involved. Furthermore, a notary must maintain the confidentiality of information obtained in the course of their duties. Therefore, a notary's integrity and prudence are fundamental aspects in carrying out their duties, ensuring that the deeds they create comply with applicable laws and regulations and legitimately reflect the wishes of the parties.

Law Enforcement Officers (APH) in law enforcement, wrongful arrests are often made as in cases involving Notaries as victims of wrongful arrest, such as Notary Paul Christian from Grobogan, Notary victim of defamation by Nirina, Notary colleagues in Tegal whose investigation files did not reach the Prosecutor's Office until P-21 and The Indonesian Notaries Association (INI) is further optimizing the role of this organization in providing advocacy and legal protection to its members.

2. Research Methods

This writing method uses a constructivist paradigm with ontology. Relativism that is view reality as a construction human mentality/intellectuality is relative, pluralistic, and diverse. The form and content depend on the adherents/holders, and can change to become more informed and/or sophisticated, humanistic. (Guba & Lincoln, 2009) The socio-legal approach method, namely first, the legal research aspect, namely the object of research remains in the form of law in the sense of "norms" of statutory regulations, and second, socio research, namely the use of social science methods and theories about law to help researchers in conducting analysis. According to the author, this approach remains within the legal realm, only the perspective is different. The nature of the research is legal prescriptive. (Nawawi, 1992) that is a research approach that aims to provide recommendations or suggestions for concrete actions to overcome problems or achieve certain goals. The data analysis method used to describe and process the data collected in this study was qualitative analysis. Qualitative analysis was used in this study because the primary data used were not in the form of numbers that could be measured. (Waluyo, 1991)



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

3. Results and Discussion

3.1. Regulations on Notary Responsibilities in Making Binding Deeds Are Not Yet Based on Justice Values

Bad faith/fraud (*mens rea*) by one of the parties to a deed drawn up by a notary must be viewed from the perspective of fairness for all parties involved. The parties signing the deed should have fully understood its contents and given their consent voluntarily. Therefore, denial after the deed is signed can be considered unfair and be considered a crime against the notary, even though the notary is merely a neutral party (*men-constantir*). This is unfair if not based on strong reasons.

Fairness in the presentation of evidence must balance the rights of the parties and the obligations of the notary. An authentic deed prepared by a notary should remain legally binding unless there is strong evidence indicating an error in the deed's preparation.

There is a disharmony between Article 1 Number 6 and Articles 66A and 67 of the UUJN. Article 1 Number 6 of the UUJN stipulates that the Notary Supervisory Board has the authority and obligation to carry out guidance and supervision of Notaries. Meanwhile, Article 66A stipulates that the Notary Honorary Board has the authority to guide Notaries, and Article 67 stipulates that the Notary Supervisory Board has the authority to supervise Notaries. Articles 66A and 67 as a result of the amendment to the UUJN have clearly differentiated the authority between the Notary Supervisory Board and the Notary Honorary Board. However, Article 1 Number 6, both before and after the amendment, creates legal uncertainty regarding the authority of Notary guidance, due to the overlapping authority of the guidance between the Notary Supervisory Board and the Notary Honorary Board.

There is an overlap in the authority of the Notary Honorary Council and the Notary Supervisory Council as regulated by the Minister of Law and Human Rights Regulation No. 7 of 2016 (specifically Article 1 Number 1) and Article 1 Number 6 of the UUJN, that the Notary Honorary Council has authority in terms of guidance, as does the Notary Supervisory Council.

3.2. Weaknesses in Current Regulations on Notary Responsibilities in Making Binding Deeds

a. Substantial weakness:

1) Researchers see that Article 17 paragraph (1) letter b Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notary This does

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

not provide any use/benefit for Notaries. Why not remove/reconstruct the regulation because with the difference in location between Notaries and clients, it is sufficient to communicate using the internet, either WhatsApp, or Facebook, or email, or Google Cloud. So that Notaries who are not in a permanent location are considered able to complete the work of deeds because the laptop device can be taken anywhere, to any city, to any country, so there is no reason for the use/benefit whatsoever from the regulation "leaving the area of his office for more than 7 (seven) working days".

2) Researchers see that Article 16 letter Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notary, The notary is obliged to read the deed in front of the audience failed to adapt to the development of life in the 5.0 era in Indonesia, which has been explained above what the 5.0 era is in the discussion of the previous sub-chapter, the essence of which is demanding adaptation from humans to the development of internet technology, because with the convenience of the internet, reading Notary deeds with the parties (clients) from outside the island or outside the area of office is no longer impossible and is sufficient via the internet using facilities such as zoom or google meeting without having to sacrifice other Notary work by taking the trouble for the Notary to come physically to meet his client.

3) Article 15 Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notary The law only regulates the authority and duties of a Notary, however, legal protection for Notaries has not been regulated either in the Law or other Notary regulations, thus causing a lack of justice for Notaries. Notaries should receive legal protection as stipulated in Article 50-51 of the Criminal Code which states, "Anyone who carries out an act to carry out an official order given by an authorized authority shall not be punished.", because a Notary as a public official carries out an official order as regulated in Article 1 number 1 of the UUDN, namely "A notary is a public official..." the article continues with the following text: "...who has the authority to make authentic deeds and has other authority as referred to in this law or based on other laws."

b. Structural weaknesses: The weakness in terms of legal structure here is that law enforcers in this research study are parties who are directly or indirectly involved in law enforcement in cases involving Notaries as wrongful arrests (victims) such as Notary Paul Christian from Grobogan, Notary victims of defamation by Nirina, Notary colleagues in Tegal whose investigation files did not reach the Prosecutor's Office until P-21, where one of the parties should have denied and become a witness to the authentic evidence of Notary deeds, especially from investigators, public prosecutors and examiners (Police, Prosecutors, Judges).



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Apart from that, the organizational weakness of the Indonesian Notaries Association (INI) is that one of INI's main weaknesses is that the role of this organization in providing advocacy and legal protection to its members is not yet optimal. Many cases involving notaries, such as lawsuits or conflicts related to the performance of their duties, are not always fully supported by INI because the organization's function is only to provide assistance, not to act as a true legal protector. This is often due to INI's limited resources or the lack of consistent standard procedures for providing legal assistance. INI's oversight and guidance of its members is often ineffective. One of the important functions of professional organizations is to supervise members to ensure they carry out their duties in accordance with the code of ethics and applicable regulations. However, in practice, this oversight remains reactive, rather than proactive. Many notaries who violate the code of ethics or make errors in carrying out their duties do not receive adequate sanctions or guidance. Understanding and application of the notarial professional code of ethics among INI members is not uniform. Some members may understand and apply the code of ethics well, while others may have less understanding or even violate its provisions. This lack of uniformity creates negative perceptions among the public and weakens the organization's position in effectively protecting its members. Not all notaries have easy access to legal assistance or training provided by INI. Especially in areas far from the central government, access to these facilities and resources is limited. This situation leaves many notaries ill-prepared to deal with legal issues that arise in the course of their duties.

c. Cultural weaknesses: In law enforcement on the duties of a Notary's authority by investigators, public prosecutors and judges, there is often overlap, especially the neglect of the provisions of Article 66A UUJN, namely regarding the need for permission from the Notary Honorary Council (MKN). The purpose of the permit is actually to ensure that the Notary carries out his duties in accordance with statutory regulations. Not to determine a legal act for a criminal violation because it is inappropriate to shift the duties of a Notary's authority in private law and state administration towards forced criminal law. The position of Notary is a public office as regulated in Law Number 25 of 2009 concerning public services and the Civil Code in the realm of private law, even the position of Notary is given authority originating from Law Number 24 of 2009 concerning the authority to use the state symbol stamp, meaning that the Notary has limited legal authority and power in private law and state administration so that it is given the privilege of the authority to use the state symbol (the Garuda stamp).

In fact, cultural factors are similar to societal factors. However, cultural factors place greater emphasis on the value systems within society. Within societal factors, it is said that the level of public compliance with societal regulations

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

remains low. This is due to the culture of compromise that is often prevalent in Indonesian society. In reality, there is a cultural tendency for society to circumvent existing regulations, especially bureaucratic ones. Furthermore, this culture of compromise has fostered corruption, including extortion and bribery. At this level, it appears to have become a habit within the Indonesian bureaucracy. Notaries, as public officials who are directly involved in agreements, contracts, permits, and land registration (especially for notaries), naturally significantly influence their work methods and perspectives. Many notaries have been caught up in legal issues related to bureaucratic services, and many notaries have become victims of bureaucratic practices. Then, starting from this bureaucracy, notaries ultimately disregard the code of ethics. Even though quite a few understand and are aware of the problem of falsifying data or documents, they still do it intentionally. Although the number of notaries who commit deviations is still very small, or can be counted on the fingers of one hand, in reality, this has changed the perspective of law enforcement in the realm of notarial duties, "negative thinking," as if all notaries commit deviant acts.

3.3. Reconstruction of the Regulation of Notary Responsibilities in Making Binding Deeds Based on Justice

Results of a comparative study with the United States States like Virginia and Texas, in particular, have implemented Remote Online Notarization (RON), allowing notaries to work remotely online and remain legally valid. This demonstrates that traditional geographic boundaries are no longer relevant if notarial functions are still performed through an integrated and recorded digital system.

Notaries in Brazil can take 7 consecutive days off online without the need for physical presence, adopting a provision of the National Council of Justice (CNJ) that ensures the continuity of remote notarial services. The researcher sees that this regulation is also related to the responsibility of the Notary to always be present at the Notary's office and not to be allowed to leave the city (outside his/her area of office) for 7 (seven) consecutive days. According to the researcher, this regulation is not in accordance with developments. the 5.0 era in Indonesia, so it is necessary to reconstruct Article 17 paragraph (1) letter b of Law Number 2 of 2014 amends Law Number 30 of 2004 concerning the Position of Notary which previously read "leaving the area of his/her office for more than 7 (seven) consecutive working days without a valid reason", to "leaving the area of his/her office for more than 7 (seven) consecutive working days without valid evidence unless there is still evidence of carrying out his/her work online does not include leaving the area of his/her office."

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Researchers see that Article 16 is also related to responsibility, namely related to regulations. The notary is required to read the deed in front of the parties appearing, researchers see this regulation failed to adapt to the development of life in the 5.0 era in Indonesia, so it is necessary to reconstruction of Article 16 letter m of Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning the Position of Notary, which previously read "reading the deed before the appearer in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, and signed at that time by the appearer, witnesses, and notary" becomes "reading the deed before the appearer in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, either face to face physically or may be done by a Notary facing the appearer online and signed at that time by the appearer, witnesses, and notary."

Reconstructing by adding paragraph (2) in Article 15 of Law Number 2 of 2014, amendment to Law Number 30 of 2004 concerning the Position of Notary which previously read "Notaries are authorized to make authentic deeds regarding all actions, agreements and determinations required by statutory regulations and/or which are desired by the interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copies and extracts of the deed, all of which are as long as the making of the deed is not also assigned or excluded to another official or other person determined by law." Added in the next paragraph namely "Notaries who have carried out their authority and responsibilities honestly and without siding with any party as in paragraph (1) are deemed to have carried out the official orders given by the authorized authority (Ministry of Law and Human Rights), and therefore receive legal protection and cannot be punished."

4. Conclusion

The research results confirm There is a disharmony between Article 1 Number 6 and Articles 66A and 67 of the UUJN. Article 1 Number 6 of the UUJN stipulates that the Notary Supervisory Board has the authority and obligation to carry out guidance and supervision of Notaries. Meanwhile, Article 66A stipulates that the Notary Honorary Board has the authority to provide guidance to Notaries, and Article 67 stipulates that the Notary Supervisory Board has the authority to supervise Notaries. Researchers see that there are weaknesses in Article 15, Article 16 letter m, and Article 17 paragraph (1) letter b. Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notary, In law enforcement regarding the duties of a Notary's authority by investigators, public prosecutors and judges, there is often overlap, in particular the neglect of the provisions of Article 66A UUJN, namely regarding the need for permission from



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

the Notary Honorary Council (MKN), and reconstructing Article 17 paragraph (1) letter b, reconstructing Article 16 letter m, and reconstructing by adding paragraph (2) in Article 15 of Law Number 2 of 2014, amendments to Law Number 30 of 2004 concerning the Position of Notary.

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LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

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