

Legal Protection of Notary Employees as Instrumental Witnesses in Case Examinations

Sandy

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, Email:
Sandyysannn0011@gmail.com

Abstract. *This study aims to analyze the legal protection of Notary employees as instrumental witnesses in the examination of cases related to Notarial deeds. This study uses a normative legal research method with a statutory, conceptual, and case approach. Legal materials were obtained through literature studies and analyzed qualitatively using prescriptive methods. The results of the study indicate that Notary employees as instrumental witnesses are in a position to witness the implementation of the formalities of the deed inauguration, specifically the presence, reading, and signing of the deed. Employees are not responsible for the substance of the deed, which is the will of the parties and is within the authority of the Notary. In the examination of the case, employees can provide information based on facts known and witnessed directly. Legal protection is needed in preventive and repressive forms. Preventive protection is carried out through clarity regarding the position, rights, obligations, limits of information, and limits of responsibility. Repressive protection is needed if during the examination there is pressure, intimidation, or violation of the witness's rights. Therefore, certainty is needed regarding the limits of the position and legal protection for Notary employees as instrumental witnesses.*

Keywords: *Employee; Instrumental; Legal; Protection; Witness.*

1. Introduction

A notary public is a public official with a crucial role in providing legal services to the public. One of their primary responsibilities is to create authentic deeds concerning acts, agreements, and determinations as required by the parties or as required by law. This position places the notary public as a crucial element in providing certainty, order, and legal protection to the public through written evidence that has absolute evidentiary force as long as it is prepared in accordance with applicable law.¹ Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as

¹Nico, Responsibilities of Notaries as Public Officials (Center for Documentation and Studies of Business Law, 2003).

UUJN) requires Notaries, among other things, to keep confidential everything regarding the deeds they make and all information obtained for the purpose of making the deed and to read the deed before the person appearing in the presence of at least two witnesses and signed at that time by the person appearing, witnesses, and Notary (Law of the Republic of Indonesia Number 2 of 2014, 2014).²

The presence of witnesses in the process of making and formalizing a deed is part of the formalities stipulated by the UJUN. Article 40 paragraph (1) of the UJUN stipulates that every deed read by a Notary must be attended by at least two witnesses, unless statutory regulations stipulate otherwise. These witnesses must meet certain requirements, including being at least 18 years old or married, being competent to perform legal acts, understanding the language used in the deed, being able to sign and initial, and not having a specific relationship with the Notary or the parties as stipulated by law (Law of the Republic of Indonesia Number 2 of 2014, 2014).³

In practice, witnesses present at the deed formalization process are known as instrumental witnesses and are generally employees working in a notary's office. Instrumental witnesses serve to witness the formalities of the deed formalization process, particularly the reading and signing of the deed. The involvement of employees as instrumental witnesses raises questions regarding their status and the limits of their responsibilities. As employees, they are within the notary's work environment and obtain information related to the deed's creation. However, as instrumental witnesses, their function is essentially limited to witnessing the formal deed formalization process.⁴

The issue becomes more complex when a deed drawn up by or before a notary becomes the subject of an examination in a case. Employees acting as instrumental witnesses may be summoned to provide information regarding the deed-making process. In such circumstances, it is necessary to clearly define the limits of the information the employee can provide and the extent of their responsibility for the deed under examination.⁵

Previous research indicates that the legal status and protection of instrumental witnesses remains problematic. Research by Tirta Arista Kumara and M. Saleh discusses the legal status of instrumental witnesses in the judicial process.

²Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 16 paragraph (1) letter f and Article 16 paragraph (1) letter m.

³Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 40.

⁴Kumara, TA, & Saleh, M. (2022). Assessing the legal standing of instrumental witnesses as witnesses to notarial deeds in court. *Journal of Law and Notary Affairs*, 6(2), 823–834

⁵Nugraha, PP, & Bagiastra, IN (2022). Legal protection of notary employees as witnesses of authentic deeds in legal proceedings related to the confidentiality of authentic deeds. *Kertha Semaya: Journal of Legal Sciences*, 10(7), 1540–1549.

Research by Putu Putri Nugraha and I Nyoman Bagiastra examines the legal protection of notary employees as witnesses to authentic deeds in judicial processes related to the confidentiality of deeds. Meanwhile, research by Tomi Aidil Putra, Yetniwati, and Taufik Yahya shows that legal protection for notary employees has not yet fully provided certainty because there are no regulations that explicitly regulate the status and protection of employees when carrying out their role as instrumental witnesses.⁶

This issue demonstrates a gap between the need for legal protection for notary employees as instrumental witnesses and the existing legal provisions. The Notary Law stipulates the obligation of notaries to maintain the confidentiality of all matters relating to deeds and information obtained during the preparation of deeds. However, this regulation does not specifically address the confidentiality obligations of notary employees who function as instrumental witnesses. This situation raises questions regarding the basis for the obligation to maintain confidentiality, the limits of information provided, and the form of legal protection for notary employees.⁷

The examination of instrumental witnesses must still take into account the witness's function and limits of knowledge. The obligation to provide information cannot be interpreted as an obligation to be accountable for the entire contents of the deed. Instrumental witnesses may only provide information regarding facts they actually know, saw, or witnessed during the deed's preparation and formalization process.⁸

Based on these conditions, identifying issues regarding the status, obligations, limits of information, and legal protection of Notary employees as instrumental witnesses is important to provide legal certainty while preventing the expansion of liability that is not in accordance with the function and involvement of employees in the deed-making process. Based on this, this study aims to analyze the legal protection for Notary employees who act as instrumental witnesses in the examination of cases related to Notary deeds.

2. Research Methods

This research uses a normative legal research method with prescriptive research specifications. The approaches used are the legislative approach, the conceptual

⁶Kumara, TA, & Saleh, M. (2022); Nugraha, PP, & Bagiastra, IN (2022); Putra, TA, Yetniwati, & Yahya, T. (2022). Legal protection for notary employees who serve as witnesses in notarial deeds. *Soumatra Law Review*, 5(1), 12–20.

⁷Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 16 paragraph (1) letter f; Nugraha, PP, & Bagiastra, IN (2022).

⁸Kumara, Tirta Arista., & Saleh, M. (2022). "Assessing the Legal Status of Instrumental Witnesses as Witnesses to Notarial Deeds in Court." in *Journal of Law and Notary Affairs*, Volume 6 Number 2, pp. 823–834.

approach, and the case approach.⁹The collection of legal materials is carried out through literature studies by examining primary legal materials, secondary legal materials, and tertiary legal materials that are relevant to the research problem.¹⁰The legal materials are analyzed qualitatively using prescriptive methods through inventory, classification, systematization, interpretation, and legal argumentation to formulate the position and legal protection for Notary employees as instrumental witnesses.¹¹

3. Results and Discussion

3.1. Legal Status and Obligations of Notary Employees as Instrumental Witnesses

The role of instrumental witnesses cannot be separated from the formalities of notarial deed preparation. The UUJN stipulates that a deed read by a notary must be attended by at least two witnesses, unless otherwise stipulated by law. Witnesses must also meet the specified requirements, and their identity and authority must be expressly stated in the deed (Law of the Republic of Indonesia Number 2 of 2014, 2014).¹²

These provisions indicate that instrumental witnesses have a different legal function from notaries. Notaries are public officials authorized to draw up authentic deeds, while instrumental witnesses are those present during the deed formalization process and witness the formal stages of deed creation. The presence of instrumental witnesses relates to the reading and signing of the deed and other facts directly occurring during the formalization process. Therefore, instrumental witnesses obtain knowledge based on what they directly see and witness.¹³

Notary employees may act as instrumental witnesses if they meet the requirements stipulated in the regulations concerning the position of Notary. As instrumental witnesses, employees do not have the authority to determine the contents of the deed or the wishes of the parties. The contents of the deed are the statements or wishes of the parties, as outlined in the deed by the Notary based on their authority as a public official.

Consequently, a notary's staff, acting as an instrumental witness, is not responsible for the substance or material accuracy of the entire contents of the deed. The instrumental witness's responsibility relates to the formal function they perform in the deed formalization process. Staff may be held accountable for their

⁹Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017).

¹⁰Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali Pers, 2010).

¹¹Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017).

¹²Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 40.

¹³Tirta Arista Kumara & M. Saleh, "Assessing the Legal Position of Instrumental Witnesses as Witnesses to Notarial Deeds in Court," *Journal of Law and Notary Affairs*, 6(2), 823–834 (2022).

own actions and roles, but they cannot automatically be held responsible for the actions of the parties or the substance of the deed.¹⁴

These limitations become important when a deed is examined in court. Notary employees may be called to testify as witnesses if they have knowledge of facts relevant to the case. However, the information provided must be limited to facts that are actually known and witnessed directly.¹⁵

Thus, an instrumental witness can testify as to whether the deed was read, whether the parties were present, whether the deed was signed, and other formal facts within his or her knowledge. Conversely, an instrumental witness cannot be held accountable for the entire substance of the deed if that substance does not fall within the scope of his or her knowledge and duties.

These limitations are necessary to prevent the examination process from extending the witness's responsibilities in a manner inconsistent with their position. The examination of instrumental witnesses must be conducted with due regard to their distinct status from that of a notary as a public official and from that of the parties making statements or providing wills in the deed.

Obligation to Maintain Confidentiality

Another important issue concerns the obligation to maintain confidentiality. The Notary Law mandates that notaries maintain the confidentiality of all deeds they execute and all information obtained during the execution of the deed. However, this regulation does not specifically stipulate the obligation to maintain confidentiality for notary employees acting as instrumental witnesses.¹⁶

This situation cannot be interpreted as meaning that employees are free to disseminate information they obtain while working at a notary's office. Employees obtain information through their employment relationship and involvement in the notary's professional environment. Therefore, such information must remain confidential based on the working relationship, trust, and the principle of propriety in carrying out their work.¹⁷

However, an employee's obligation of confidentiality cannot be equated absolutely with the obligation of professional confidentiality directly imposed on a notary. A notary has an obligation of confidentiality based on the terms of his or her position, while the basis for an employee's obligation must be analyzed based

¹⁴Kumara & Saleh, "Assessing the Legal Position of Instrumental Witnesses as Witnesses to Notarial Deeds in Court."

¹⁶Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 16 paragraph (1) letter f

¹⁷Putu Putri Nugraha., & I Nyoman Bagiastra. (2022). "Legal Protection of Notary Employees as Witnesses of Authentic Deeds in Judicial Processes Related to Confidentiality of Authentic Deeds." in Kertha Semaya: Journal of Legal Science, Volume 10 Number 7, pp. 1540–1549.

on their position as a worker and a party receiving information within the notary's office.

When an employee is called to testify in a legal proceeding, it is necessary to separate information relating to formal facts known to the witness from information that constitutes the confidential substance of the deed. The employee must provide information in accordance with legal obligations and in accordance with the facts known to him, but the examination process must still take into account the limits of the witness's function and the nature of the information obtained within the scope of the notary's office.¹⁸

Thus, the obligation to maintain confidentiality cannot be used to waive the obligation to testify as a witness. Conversely, the obligation to testify cannot be used as a justification for expanding the examination to include all information beyond the direct knowledge and function of an instrumental witness. A balance is required between the interests of law enforcement, the obligation to testify, and the protection of the confidentiality of information related to the deed.

3.2. Forms of Legal Protection for Notary Employees as Instrumental Witnesses

Legal protection is a crucial aspect for notary employees who act as instrumental witnesses. Their involvement in the preparation of deeds can result in them being summoned and questioned in a case. In such circumstances, employees must have certainty regarding their rights, obligations, and the limits of their responsibilities.

Legal protection theory distinguishes between preventive and repressive legal protection. Preventive protection is provided before a dispute or violation occurs with the aim of preventing legal problems. Repressive protection is provided after a violation or dispute occurs to resolve the problem and provide redress for violated rights.

Preventive Legal Protection

Preventive protection for notary employees as instrumental witnesses can be achieved through clear regulations regarding the status and function of instrumental witnesses. This clarity is necessary so that employees understand that the function of instrumental witnesses is related to the formalities of deed formalization.¹⁹

Furthermore, there needs to be certainty regarding the limits of the information a witness can provide. Employees must understand that information is based on

¹⁸Tirta Arista Kumara., & M. Saleh. (2022). "Assessing the Legal Status of Instrumental Witnesses as Witnesses to Notarial Deeds in Court." in *Journal of Law and Notary Affairs*, Volume 6 Number 2, pp. 823–834

¹⁹Philipus M. Hadjon, *Legal Protection for the People in Indonesia* (Surabaya: Bina Ilmu, 1987)

directly known facts and should not be expanded upon to include unknown information.²⁰

Preventive protection can also be realized through guidance provided by the Notary to employees. Employees need to gain an understanding of the procedure for making a deed, the function of an instrumental witness, the obligation to safeguard information obtained during work, and the attitude that must be taken when called upon during an examination process.²¹

As the person who leads the office and carries out the duties, the notary can provide guidance to employees regarding the boundaries of their duties and responsibilities. This guidance can prevent misunderstandings regarding the role of instrumental witnesses.

Preventive protection also relates to the summons and examination process. Law enforcement officials must consider the status of instrumental witnesses to ensure that examinations are conducted in accordance with evidentiary requirements and do not place employees solely responsible for all issues related to the deed.

Clarity of position, limits of information, and limits of responsibility are important forms of protection because they can prevent excessive burdens of responsibility on Notary employees.

Repressive Legal Protection

Repressive protection is necessary when legal issues or violations of a witness's rights arise. During an examination, repressive protection may be necessary if a witness experiences pressure, intimidation, threats, or other actions that interfere with their freedom to testify.²²

A witness must be able to testify freely and factually. Therefore, the examination process must ensure that testimony is given without coercion. This protection is necessary to maintain the objectivity of the evidentiary process and protect the witness's rights.

For notary employees acting as instrumental witnesses, repressive protection is also necessary if there is an attempt to impose responsibility for the substance of

²⁰Tirta Arista Kumara., & M. Saleh. (2022). "Assessing the Legal Status of Instrumental Witnesses as Witnesses to Notarial Deeds in Court." in *Journal of Law and Notary Affairs*, Volume 6 Number 2, pp. 823–834.

²²Philipus M. Hadjon, *Legal Protection for the People in Indonesia* (Surabaya: Bina Ilmu, 1987).

a deed beyond their function and knowledge. Assessment of responsibility must be based on the actual actions and involvement of the employee concerned.²³

Repressive legal protection can be provided through available legal mechanisms in the event of a violation of witness rights. Employees have the right to receive treatment in accordance with legal provisions during the examination process.

Thus, legal protection for notary employees extends beyond physical protection or security, but also encompasses certainty regarding legal standing and limits of liability. This protection is necessary so that employees can carry out their witnessing function without feeling that all legal risks associated with the deed automatically fall on them.

3.3 Notarial Deeds in Accordance with the Provisions of Statutory Regulations

A Notarial Deed is an authentic deed whose formation must meet the requirements regarding the authority of the official, the form of the deed, the identity and competence of the parties appearing, as well as the procedures for making and formalizing the deed. UUJN stipulates that a Notary has the obligation to read the deed before the parties appearing in the presence of at least two witnesses and to sign the deed at that time together with the parties appearing and the witnesses (Law of the Republic of Indonesia Number 2 of 2014, 2014)²⁴

The structure of a notarial deed consists of a deed head, a deed body, and a deed closing. This structure is not merely an administrative matter, but rather part of the formalities related to the deed's authenticity. Compliance with these formalities is crucial because violating certain provisions regarding the form and procedures for making a deed can affect the deed's status as an authentic deed.²⁵

In the deed formalization process, the instrumental witness has a position directly related to the formalities. The witness is present to witness the reading and signing of the deed. Therefore, the witness's presence and signature serve as proof of the implementation of the formal stages they witnessed.²⁶

This position does not make the instrumental witness responsible for the entire contents of the deed. The witness does not have the authority to determine the will of the parties or guarantee the material truth of any statement contained in

²³Tirta Arista Kumara., & M. Saleh. (2022). "Assessing the Legal Status of Instrumental Witnesses as Witnesses to Notarial Deeds in Court." in Journal of Law and Notary Affairs, Volume 6 Number 2, pp. 823–834.

²⁴Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 1 number 1, Article 16 paragraph (1) letter m, and Article 40.

²⁵Sjaifurrachman., & Habib Adjie. (2011). Aspects of Notary Accountability in Making Deeds. Bandung: Mandar Maju.

²⁶Tirta Arista Kumara., & M. Saleh. (2022). "Assessing the Legal Status of Instrumental Witnesses as Witnesses to Notarial Deeds in Court." in Journal of Law and Notary Affairs, Volume 6 Number 2, pp. 823–834.

the deed. Therefore, when the deed is examined in a case, the testimony of the instrumental witness is principally directed at the facts related to the process they witnessed. However, the presence of an instrumental witness does not make the witness responsible for the entire substance of the deed. An instrumental witness only serves as witness to the formalities that occur directly. A deed in accordance with statutory provisions must be drawn up by an authorized official, meet the requirements regarding the parties, contain the appropriate deed structure, and undergo the required reading and signing procedures. If the presence of a witness is required, the witness must meet the requirements and perform his or her function in accordance with his or her position as an instrumental witness.²⁷ The relationship between the formalities of the deed and the position of the instrumental witness indicates that the witness's function is part of the process of establishing an authentic deed. Therefore, witness testimony during the examination process can be used to explain the implementation of formalities, but cannot be extended to include responsibility for the entire substance of the deed.

Thus, there is a close relationship between fulfilling the deed's formalities and the position of the instrumental witness. Fulfilling the formalities provides certainty regarding the deed's formalization process, while limiting the scope of testimony provides certainty regarding the employee's liability. These two aspects must be balanced to ensure the deed's evidentiary function remains protected without making the notary employee bear all legal risks related to the deed.

4. Conclusion

Notary employees who act as instrumental witnesses have a limited function to witnessing the formalities of the deed's formality, particularly regarding the presence, reading, and signing of the deed. Employees are not responsible for the substance of the deed or the material truth of the will of the parties. In the examination of the case, employees may be asked for information based on facts that are truly known and witnessed directly. Legal protection for Notary employees as instrumental witnesses is required in the form of preventive and repressive protection. Preventive protection is carried out through clarity regarding the position, rights, obligations, limits of information, and limits of responsibility, while repressive protection is required in the event of pressure, intimidation, or violation of the witness's rights. In addition, the Notary deed must meet the requirements regarding form, parties, substance, reading, presence of witnesses, and signing so that the formalities of its formation are fulfilled. Notaries need to provide guidance to their employees regarding the duties, confidentiality, and limits of responsibility as instrumental witnesses, and provide assistance when necessary during the examination process. Notary employees need to understand their position and provide testimony based on facts they truly know. Law

²⁷Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 1 number 1, Article 16 paragraph (1) letter m, Article 38, and Article 40.

enforcement officials need to pay attention to the limits of the position and scope of testimony from instrumental witnesses to avoid being burdened with responsibilities that exceed their functions. Furthermore, organizations and institutions related to notaries need to provide clearer guidance and guidelines regarding legal protection for notary employees who function as instrumental witnesses.

5. References

Journals:

- Kumara, Tirta Arista., & Saleh, M., Menilai Kedudukan Hukum Saksi Instrumenter sebagai Saksi Akta Notaris di Pengadilan., *Jurnal Hukum dan Kenotariatan*, Vol. 6, No. 2, 2022. page. 823–834.
- Noor Farhan, Amanullah Muhammad., Analisis Tanggung Jawab Saksi Instrumenter dalam Hal Ikut Serta Menjaga Kewajiban Notaris Melindungi Kerahasiaan Isi Akta Otentik., *Cessie: Jurnal Ilmiah Hukum*, Vol. 4, No. 1, 2025. page. 9–27.
- Nugraha, Putu Putri., & Bagiastra, I Nyoman., Perlindungan Hukum Pegawai Notaris sebagai Saksi Akta Autentik dalam Proses Peradilan Terkait Kerahasiaan Akta Autentik., *Kertha Semaya: Journal Ilmu Hukum*, Vol. 10, No. 7, 2022. page. 1540–1549.
- Oktavianti, Puteri Chintami., Kedudukan Saksi Instrumenter dalam Merahasiakan Akta Otentik dan Perlindungan Hukum Bagi Saksi Instrumenter., *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol. 6, No. 5, 2021. page. 2389–2403.
- Pita., Kewajiban untuk Menjaga Kerahasiaan Akta oleh Notaris dan Karyawan Notaris dalam Perspektif Hukum., *Jurnal Hukum dan Kenotariatan*, Vol. 5, No. 1, 2021.
- Putra, Tomi Aidil., Yetniwati., & Yahya, Taufik., Perlindungan Hukum Karyawan Notaris yang Menjadi Saksi dalam Akta Notaris., *Soumater Law Review*, Vol. 5, No. 1, 2022. page. 12–20.

Books:

- Hadjon, Philipus M. (1987). *Perlindungan Hukum bagi Rakyat di Indonesia*, Surabaya: Bina Ilmu.
- Marzuki, Peter Mahmud. (2017). *Penelitian Hukum*, Jakarta: Kencana.
- Nico. (2003). *Tanggung Jawab Notaris Selaku Pejabat Umum*, Center for Documentation and Studies of Business Law.
- Sjaifurrachman., & Adjie, Habib. (2011). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Bandung: Mandar Maju.

Regulation:

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.