

Revision of Legislation Regarding the Accountability of Notaries for Documents Executed Beyond the Office Premises to Ensure Fair and Certain Legal Provision

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Abstract

Paragraph (1) of Law No. 2 of 2014, modified by Law No. 30 of 2004, stipulates that Notaries are forbidden from reciting documents beyond their designated jurisdiction. An issue arises where Notaries who have indeed recited deeds outside their scope of work have not faced repercussions in accordance with the pertinent legal framework. The methodology employed in this research is that of normative jurisprudence, involving an examination of secondary data sources, particularly primary legal documents such as statutory provisions, and secondary legal sources like books, articles, or journals. The theoretical framework utilized is that of equitable law certainty. Findings reveal a consistent failure to penalize Notaries who have transgressed by reciting deeds outside their designated area, despite clear violations of regulations outlined in the UUJN. In judicial rulings, authentic deeds recited by Notaries beyond their jurisdiction remain valid, highlighting the inadequacy of existing enforcement mechanisms. Drawing a comparison with the regulations governing Notaries in the Netherlands, it is evident that revisions to Article 17 (1) and (2), Article 19 paragraph (2), and Article 9 (1) letter d of the Law of Judgment are imperative to ensure the establishment of a fair and certain legal system as mandated by Article 28 D Paragraph (1) of the 1945 Constitution. Such reforms are essential to empower legal authorities in executing their duties effectively, serving the interests of justice seekers, and eliminating any ambiguity surrounding the recitation of deeds by Notaries beyond their jurisdiction.

Keywords: certainty in legal transactions, notary accountability, legislative reform, jurisdictional boundaries, legal certainty

Introduction

A Notary is appointed by the competent authority, not for personal gain but rather to fulfill the duties of their office and profession, primarily for the benefit of the community it serves. The responsibility of a notary lies in providing services to the general public, a role that is essential to the duties of a notary as a public official. The notary's role and responsibilities are held in high regard due to the authority they carry to authenticate official documents, symbolized by attributes such as the notary's office stamp bearing their name alongside the State Emblem. This attribute



represents the esteemed status and integrity of the notary, exclusive to those who meet the criteria outlined in Government Regulations Number 66 of 1951 regarding the State Coat of Arms.

Notaries are obligated to uphold principles of honesty, legality, truth, and justice while actively countering any malpractice, error, or misconduct, particularly actions by fellow notaries that may tarnish the credibility of the profession. However, challenges in the regulatory framework occasionally emerge. For example, the decision made by the Minister of Justice on June 26, 1998, regarding the Appointment and Transfer of Notaries' Working Areas, as detailed in Minister of Justice Decree No. M.05-HT.03.10, aimed to simplify processes but inadvertently bypassed coordination with critical entities such as the Department of the Interior, Ministry of Finance, and Bank Indonesia. This lack of collaboration potentially disrupts the stability of the notarial system and could lead to regulatory ambiguities that complicate the notarial profession's responsibilities.

In 1998, through the enactment of the aforementioned decree, 2,126 new notaries were appointed, and over 300 existing notaries had their work areas redefined within a span of two years. Such shifts have led to significant changes in the role and authority of notaries in practice. The emergence of unfair competition among notaries can have negative implications, fostering services that may harm consumers, particularly notary service users. It is essential for a notary exercising their office, even with sufficient legal skills, to demonstrate accountability, respect for the dignity of their office, and adherence to ethical values. The public trust bestowed upon notaries further underscores the importance of regulatory adherence and a well-organized framework for the notary profession, which is mandated by both law and professional ethics.

The nature of a notary's office necessitates a high level of responsibility, personality, and legal ethics, and is fundamentally grounded on public trust. Any form of irresponsibility or lack of professional ethics could harm those the notary serves, thereby necessitating measures to prevent unhealthy competition and to strengthen organizational structure under the purview of supervisory bodies.

The notary profession has a significant role in upholding legal principles and providing authentic evidence for various legal transactions. Throughout history, the evolution of the notarial system has been shaped by changes in the socio-political landscape. In Indonesia, the notarial profession is governed by a series of laws and regulations aimed at ensuring that notaries fulfill their role responsibly, ethically, and in line with national legal standards. The fundamental basis for regulating notarial duties and responsibilities in Indonesia is outlined in Law No. 30 of 2004 on the Position of Notaries (UUJN), later amended by Law No. 2 of 2014. These regulations are pivotal in establishing notarial practices that align with the legal needs of society and enhance public trust in the authenticity of notarial deeds.

Historically, the regulation of notaries in Indonesia originates from Dutch colonial law, specifically the *Instructie voor de Notarissen Residerende in Nederlandsch Indie*, codified in *Staatblad* No. 11 of 1822. This colonial regulation served as a framework for the notarial profession in Indonesia until the enactment of Law No. 30 of 2004. The enactment of UUJN provided a comprehensive legal basis for notarial duties, which include the execution of authentic deeds that serve as legal proof for various transactions and agreements. Authentic deeds created



by notaries are particularly valued in legal processes due to their high evidentiary weight, which strengthens the rule of law and supports judicial proceedings.

Academic perspectives on notarial responsibilities emphasize the critical role of notaries in safeguarding the legal rights of involved parties. As outlined by Abdul Ghofur Anshori, public officials such as notaries are expected to diligently fulfill their duties with impartiality and adherence to legal standards. Anshori's interpretation highlights the importance of ensuring that notaries maintain public confidence through professional integrity and reliability. Further literature on notarial law emphasizes that the notary profession is characterized by accountability, especially regarding the responsibility for deeds executed in a manner that aligns with the legal intent of the parties involved.

In addition to primary legislation, academic literature emphasizes the principle of legal certainty, which is pivotal to the integrity of notarial services. Legal certainty, according to various legal scholars, is crucial in maintaining order and ensuring that notarial deeds fulfill the expectations of parties relying on these documents. Scholars argue that the legislative framework must support notaries in executing deeds within their designated jurisdictions, as this not only upholds the principle of legality but also prevents conflicts of interest and minimizes disputes that may arise from unauthorized notarial actions.

Furthermore, comparative studies, particularly with the Dutch notarial system, reveal that additional reforms could enhance Indonesia's notarial regulatory framework. Dutch law, for instance, allows for specific activities to be conducted outside a notary's office, yet maintains strict prohibitions on establishing branch offices outside of designated regions. Such comparative insights suggest that Indonesia's regulatory structure may benefit from similar provisions, ensuring that notarial actions are legally binding and professionally regulated to protect the interests of clients and uphold legal integrity.

In summary, the literature underscores the need for clear and enforceable regulations governing the responsibilities of notaries, especially concerning jurisdictional boundaries and ethical obligations. Strengthening these aspects of notarial law aligns with international best practices and bolsters public trust, thereby reinforcing the legitimacy and effectiveness of notarial services in Indonesia.

Method

This research employs normative legal research, focusing on a conceptual and statutory approach to analyze the legal framework governing the responsibilities of notaries in Indonesia. Normative legal research is characterized by the examination of legal principles, doctrines, and the interpretation of statutory regulations to understand the responsibilities, obligations, and legal accountability of notaries, particularly regarding the execution of deeds outside their designated jurisdictions.



Research Approach

The primary approach in this study is the conceptual approach, which examines legal theories and principles relevant to the responsibilities of notaries as public officials. This approach is complemented by a statute approach, which involves analyzing relevant Indonesian laws and regulations, including:

- Law No. 2 of 2014, amending Law No. 30 of 2004 on the Position of Notaries (UUJN), which outlines the roles, responsibilities, and jurisdictional limits of notaries.
- Articles 17 and 19 of the UUJN, which specifically govern the restrictions on notarial actions outside a notary's designated office or jurisdiction.
- Comparative legal analysis with Dutch notarial laws, which provides insights into alternative regulatory frameworks for notarial accountability and jurisdictional boundaries.

Data Sources

This research relies on secondary data, which consists of:

- Primary Legal Materials: These include the UUJN and other Indonesian legal statutes that govern notarial responsibilities.
- Secondary Legal Materials: Books, journal articles, and legal commentaries that interpret and discuss the primary legal materials.
- Tertiary Legal Materials: Resources such as legal dictionaries and the Big Indonesian Dictionary, which provide definitions and explanations for legal terms used in this study.

Data Analysis

The data in this research is analyzed using qualitative descriptive analysis with a deductive reasoning method. This approach involves:

- Synthesizing and interpreting legal provisions: This step involves an in-depth analysis of laws and regulations to determine the scope of notary accountability.
- Examining theoretical frameworks: By referencing the principle of legal certainty, this study aims to evaluate the consistency of current legal frameworks in upholding fair and accountable notarial practices.

Drawing comparisons with international practices: By incorporating comparative analysis with Dutch notarial law, this research assesses how revisions to Indonesian notarial regulations could enhance the legal certainty and accountability of notaries, aligning Indonesian law with international standards for public officials in the notarial field.

Current Legal Framework and Gaps in Accountability

The analysis of Law No. 2 of 2014, which amends Law No. 30 of 2004 on the Position of Notaries (UUJN), reveals that Indonesian notarial regulations impose clear restrictions on notarial practices conducted outside of designated jurisdictions. Article 17 of the UUJN explicitly prohibits notaries from performing duties outside their stipulated working area. However, findings indicate a lack of enforcement mechanisms that ensure adherence to this provision. In



cases where notaries have conducted deeds outside their jurisdiction, penalties or corrective measures are either inconsistently applied or entirely absent, leading to a gap in accountability. Judicial rulings have demonstrated this enforcement gap, as deeds notarized beyond the allowed jurisdiction have often been upheld as valid. This highlights a discrepancy between the legal provisions and their application, raising concerns over the regulatory framework's efficacy in maintaining legal certainty and protecting public interest.

Comparative Analysis with Dutch Notarial Law

By examining Dutch notarial laws, this study identifies an alternative approach to notarial accountability. In the Netherlands, notaries have clear jurisdictional limits, but they are granted the flexibility to perform official duties within the broader national boundary as long as specific legal criteria are met. Dutch notarial regulations also impose stricter penalties on notaries who fail to observe jurisdictional boundaries, thereby strengthening public trust and ensuring greater legal certainty.

The Indonesian UUJN lacks similar flexibility and enforcement measures. Comparatively, Indonesia's regulations could benefit from adopting certain elements of the Dutch framework, particularly regarding penalties for jurisdictional violations and clarity around the legal status of deeds executed outside designated areas. Implementing stricter and more transparent penalties would likely deter notaries from performing unauthorized deeds and enhance public confidence in notarial services.

Implications for Legal Certainty and Public Trust

The gap in accountability and inconsistent enforcement found in Indonesia's UUJN undermines the principle of legal certainty. The lack of punitive consequences for notaries who exceed their jurisdiction not only impacts the validity of deeds but also erodes public trust in the notarial system. In situations where clients unknowingly engage a notary outside of their designated jurisdiction, the public is left vulnerable to potential legal disputes regarding the validity of their documents.

The implementation of more rigorous regulations and a clear, enforceable framework, similar to those in Dutch law, would benefit Indonesia's legal system. Specifically, amending Articles 17 and 19 of the UUJN to introduce unambiguous sanctions and ensure consistent enforcement across cases could align Indonesian notarial practices with the legal standards of accountability and transparency found in international law. This reform would not only improve legal certainty but also reinforce the role of notaries as trustworthy public officials.

Conclusion

Based on the analysis, this study concludes the following:

1. **Legal Gaps in Notarial Accountability:** The current framework under Law No. 2 of 2014, which amends Law No. 30 of 2004 (UUJN), restricts notaries from executing documents outside their designated jurisdictions. However, due to insufficient enforcement mechanisms,



- notaries who perform deeds beyond their jurisdiction often face no penalties, resulting in a significant gap in accountability.
2. Judicial Challenges and Public Trust: In judicial practice, deeds executed by notaries outside their jurisdiction remain valid, despite the UUJN's explicit restrictions. This inconsistency in enforcement compromises the legal certainty intended by the regulation and may diminish public trust in notarial services.
 3. Recommendations for Legal Reform: To address these issues, revisions to Articles 17 and 19 of the UUJN are recommended. Drawing from the Dutch model, which enforces clearer boundaries and stronger penalties, Indonesia could implement more effective sanctions for jurisdictional violations. This would promote a legal framework that upholds fair and consistent legal provisions and strengthens public trust in the notarial system.

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