

LEGAL PROTECTION FOR NOTARIES INVOLVED IN CRIMINAL CASES IN THE DRAFTING OF AUTHENTIC DEEDS

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Abstract

A legal uncertainty faced by Notaries when they are summoned or charged in criminal proceedings related to their official duties will be something that worries them. As public officials, Notaries often become suspects in cases involving authentic deeds that were made under lawful authority. Many of these cases arise not from intentional wrongdoing, but from misinterpretations of professional acts as criminal offenses. The main legal issue lies in the ineffective protection mechanism stipulated in Article 66 of the Notary Law. The concept of automatic approval (fictitious positive consent) by the Notary Honorary Council (MKN) creates a serious gap in safeguarding the Notary's position. Additionally, the lack of substantive assessment standards in the MKN's review process reduces the meaningful protection of Notaries' legal rights. This research uses a normative juridical approach, analyzing legal protection theory and the concept of justice in professional accountability. The findings suggest the need for regulatory reform, including amendments to the notarial law and institutional strengthening of MKN's authority. A significant recommendation is the formation of a legal assistance unit within the notarial professional organization to represent and defend notaries under legal threat. The ethical independence of Notaries must be preserved, especially when facing undue pressure from clients, state actors, or law enforcement. Legal protection should not only focus on procedures but also uphold the integrity and neutrality of the notarial profession. These legal improvements are essential to prevent the misuse of criminal law against Notaries and to support a more just legal framework.

Keywords: Notary, Legal Protection, Criminal Cases

INTRODUCTION

The role of Notaries holds significant importance within Indonesia's civil law system, especially in drafting authentic deeds that carry perfect evidentiary power before the courts. Authentic deeds serve not only as binding legal instruments for the parties involved but also as valid evidence recognized by law, as stipulated in Article 1868 of the Indonesian Civil Code and Article 1 point 7 of Law Number 2 of 2014 concerning the Position of Notary (UUJN).

Nevertheless, in practice, the status of Notaries as public officials exercising state authority often becomes a source of legal issues, particularly when the deeds they draft are misused by certain parties for illegal purposes. Notaries frequently face criminal proceedings due to the deeds they produce being exploited for crimes such as fraud, forgery, embezzlement, or even corruption (Faishal, 2023).

Normatively, a Notary's responsibility is to ensure that all formal requirements for drafting a deed are fulfilled, without having the duty to verify the material truth behind the statements provided by the parties (Mispanasyah, 2023). However, many law enforcement officers and members of the public still lack a full understanding of this limitation, leading to situations where Notaries are implicated in criminal acts committed by others.

This legal uncertainty causes considerable concern among Notaries regarding their professional safety and legal protection (Suprpto, 2021). In most cases, their involvement in criminal cases is not due to malicious intent or active participation, but rather administrative negligence or misinterpretations of their role and responsibilities.

Several real-life cases illustrate the varying patterns of Notary involvement in criminal matters. For instance, in a case tried at the Bandung District Court, a Notary was scrutinized for negligence in verifying land ownership status prior to drafting a sale and purchase deed. Similarly, in Makassar, a Notary became entangled in a legal dispute after issuing a power of attorney linked to a fictitious loan transaction. These examples highlight how easily a Notary's role can be misinterpreted by law enforcement (Erliyani, 2022).

The complexity increases due to overlapping boundaries between administrative errors, ethical violations, and criminal offenses. Ideally, administrative or ethical breaches by Notaries should first undergo evaluation by the Supervisory Council or the Notary Honorary Council (MKN) before escalating to criminal proceedings. Unfortunately, this procedural step is often neglected, resulting in Notaries being subjected to criminal investigations without prior ethical review (Sjahdeini, 2021).

The Notary Law, particularly Article 66 of the UUJN, stipulates mechanisms for protecting Notaries, including the requirement for written approval from MKN before they can be summoned or examined by investigators, prosecutors, or judges concerning their deeds or notarial protocols (UU, 2014). However, this legal safeguard has proven ineffective in practice, especially due to the implementation of the "positive fictitious consent" principle, which allows examinations to proceed if MKN fails to respond within 30 days (Hadjon, 1987).

This principle creates a legal loophole that undermines the protection intended for Notaries. Consequently, Notaries may still be subjected to investigations without thorough ethical assessment by MKN, leading to legal uncertainty and potential criminalization of Notaries who merely perform their duties in accordance with regulations (Amriaty, 2022).

This situation directly impacts the sense of security within the Notarial profession and erodes public trust in authentic deeds as reliable legal evidence. When Notaries can easily be criminalized without clear procedural safeguards, the quality of legal services provided by Notaries inevitably declines (Arief, 2008).

In light of these issues, this research aims to explore in greater depth the forms of Notary involvement in criminal cases related to the drafting of authentic deeds in Indonesia

(Halim, 2022). Furthermore, the study seeks to assess the effectiveness of the current legal protection system for Notaries and propose recommendations to enhance the system and ensure its consistent application.

It is expected that this research will provide both academic and practical contributions, particularly in supporting the development of a fair, proportional, and legally certain protection mechanism for Notaries. Ultimately, this would prevent the criminalization of Notaries and strengthen public confidence in Notaries as integral components of Indonesia's legal system.

RESEARCH METHODS

This study employs a normative juridical approach, focusing on the study of legal norms contained in statutory regulations and how those norms are implemented in real-world legal cases. The purpose of this research is to examine both the structure and effectiveness of legal protections available to Notaries, especially those who face criminal charges in connection with authentic deed drafting.

Two approaches form the basis of this study: the statutory approach and the conceptual approach. The statutory approach is used to analyze laws that regulate the position and responsibilities of Notaries, including Law Number 2 of 2014 concerning the Position of Notary, the Indonesian Penal Code (KUHP), and other related provisions. The conceptual approach is applied to explore theoretical perspectives on legal protection and the limits of criminal accountability for Notaries.

The legal materials for this research include primary sources, such as legislation and judicial decisions, and secondary sources, such as scholarly articles, legal literature, and expert opinions. The collected data is analyzed using qualitative descriptive methods to explain how legal protections for Notaries function in practice.

This study specifically reviews the implementation of Article 66 of the Notary Law, which regulates the role of the Notary Honorary Council (MKN) in providing prior approval before a Notary can be examined in a criminal process. Several court cases are also analyzed to assess the consistency of legal interpretations regarding Notary involvement in criminal matters.

RESULT AND DISCUSSION

Forms of Criminal Liability Involving Notaries

Notaries serve a fundamental role within Indonesia's legal framework as public officials authorized to prepare authentic deeds, which serve as legal evidence (Hadjon, 1987). However, these deeds are at times exploited by individuals seeking to commit fraud or other crimes, creating legal vulnerability for Notaries, even when their role is strictly administrative.

One of the most frequent offenses associated with Notaries is document forgery, particularly as governed under Article 263 of the Criminal Code. Law enforcement often implicates Notaries in cases where a deed is suspected of containing falsified information or signatures, despite the Notary's obligation being limited to recording the statements provided by the parties involved (Purwaningsih, n.d.).

In addition to forgery, Notaries are often entangled in fraud cases, notably in transactions concerning loans, land sales, and powers of attorney. When dishonest data is presented and formalized in a deed, Notaries may be accused of facilitating the crime, even though their legal duty is to verify administrative, not material, truth (Nathanael, 2025).

Cases involving embezzlement or misuse of deeds are also prevalent, where documents drafted by Notaries are used to guarantee assets that do not lawfully belong to the presenting party. Such cases often result in Notaries facing legal action, despite lacking the

capacity to thoroughly validate ownership status (Maulana, 2023).

Involvement in banking crimes, fictitious loan schemes, or company formations later connected to corruption also increases Notaries' legal risks (Yusvira, 2025). Many Notaries process these deeds based on formal requirements without being privy to manipulative schemes concealed by the parties involved.

These vulnerabilities often stem from weak institutional verification mechanisms and fragmented data systems. Notaries rely heavily on documents from other institutions, such as land certificates or inheritance statements, which, if falsified, may still expose the Notary to legal consequences.

Another contributing factor is the limited understanding among the public and law enforcement regarding the boundaries of Notarial duties. The incorrect assumption that Notaries guarantee the substantive truth of deed contents often leads to their unjust criminalization.

There must be a distinction between administrative errors and active participation in criminal offenses. Mistakes such as incomplete documentation or procedural lapses should not be equated with deliberate intent to commit a crime (Simanjuntak, 2023).

Indonesian court decisions demonstrate inconsistent treatment of Notaries. In some instances, courts have ruled against Notaries for deeds related to disputed assets, despite their reliance on formal verification. Other decisions reveal a failure to differentiate between administrative negligence and intentional complicity (Diana, 2017).

Cases involving inheritance disputes further highlight Notaries' exposure to legal challenges. Allegations of signature forgery in inheritance deeds have led to Notaries facing criminal accusations, even when they conducted standard identity verification procedures.

The potential for criminalization also arises in cases where deeds of establishment for companies are misused for corruption or money laundering, positioning Notaries as facilitators of the crimes, even though their involvement was purely administrative (Suhaimi, 2023).

The absence of uniform legal interpretation and clear boundaries for Notarial liability has resulted in legal uncertainty. Some Notaries are acquitted due to compliance with procedural requirements, while others face convictions without conclusive proof of criminal intent (Diantha, 2017).

Differentiating between genuine administrative mistakes and deliberate involvement is essential to upholding fairness in legal proceedings against Notaries. Minor procedural errors should be addressed through administrative or ethical channels, rather than criminal prosecution.

Strengthening legal protections requires improved coordination between institutions, public education on Notarial functions, and clear differentiation between levels of liability. With these measures, Notaries can fulfill their duties without disproportionate fear of facing criminal charges (Rukmana, 2023).

Legal Protection for Notaries in Criminal Cases

Guaranteeing legal protection for Notaries is an essential aspect of Indonesia's legal system, particularly considering that Notaries are entrusted with exercising part of the state's authority in producing authentic deeds that serve as strong evidence in civil matters. Authentic deeds produced by Notaries not only create binding legal relationships between parties but also carry full evidentiary power before the courts. Therefore, the credibility and legitimacy of the deed-making process must be safeguarded through effective legal protections so that Notaries can perform their duties without the constant threat of unjust criminalization.

The legal foundation for protecting Notaries is primarily derived from Law Number 2

of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary (UUJN). Article 66 of this law stipulates that Notaries may only be summoned by investigators, prosecutors, or judges for matters related to deeds they have drafted or concerning Notarial protocols, after obtaining prior written approval from the Notary Honorary Council (Majelis Kehormatan Notaris or MKN). This mechanism is designed to ensure that Notaries are not subjected to arbitrary legal processes without preliminary ethical review (Rosanti, 2025).

To simplify the understanding of this legal protection mechanism, the concept can be illustrated in the following chart:

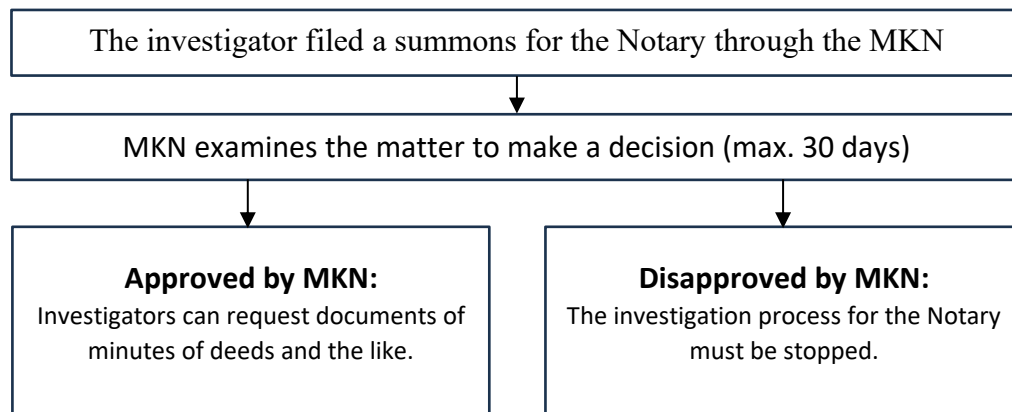


Figure 1. Legal Protection Mechanism from Article 66 of UUJN (Source: Analysis Results by Author)

The Notary Honorary Council (MKN), as an ethical supervisory body, plays a strategic role in determining whether allegations against a Notary fall within administrative, ethical, or criminal domains. Thus, MKN's function is vital to ensuring procedural justice for Notaries (Permenkumham, 2016). Additionally, repressive legal protections must also be guaranteed to Notaries, including their right to legal representation, the presumption of innocence, and protection of Notarial protocols from arbitrary seizure (Susanto, 2019). A Notary cannot be subjected to criminal liability unless proven to possess malicious intent or actively contribute to a crime.

In practice, not just like in some other country however, legal protection for Notaries in Indonesia remains ineffective (Sriwulan, 2023). Article 66 of the UUJN, intended as a safeguard, is often bypassed through the "positive fictitious" principle, which assumes MKN approval is granted if no response is provided within 30 days. Consequently, Notaries may be summoned without undergoing ethical review, reflecting procedural gaps and undermining MKN's authority as an ethical filter.

Therefore, legal protection for Notaries cannot solely rely on normative formalities but must also encompass ethical, procedural, and constitutional safeguards. Reinforcing these protections requires clarifying the boundaries of Notarial authority, enhancing MKN's institutional capacity, and improving law enforcement's understanding of Notarial duties. Without comprehensive understanding and consistent application, legal protections risk becoming symbolic rather than substantive.

Substantive legal protection goes beyond formalities; it embodies the extent to which legal mechanisms genuinely uphold justice, legal certainty, and safeguard Notaries' rights in performing their professional responsibilities (Hadjon, 1987). Although statutory provisions such as the UUJN exist, their practical enforcement encounters numerous obstacles, including institutional limitations, interpretative discrepancies, and insufficient understanding among

criminal law enforcement officials regarding the Notary's function (Sriwati, 2023).

One notable challenge lies in the disconnect between legal protection principles and investigative practices. In many instances, investigators prematurely associate problematic authentic deeds with direct Notary involvement in crimes, without thoroughly assessing elements of criminal liability (Ripandi, 2022). Notaries frequently face interrogation or even suspect designation simply due to deeds being misused by parties, highlighting the lack of substantive legal protection as an integral part of law enforcement culture.

The ineffective enforcement of Article 66 of the UUJN further exacerbates this issue. Authorities often disregard the requirement for prior MKN approval by citing urgency or exploiting the "positive fictitious" provision (Diantha, 2017). Consequently, Notaries are examined without the procedural safeguards to which they are entitled, representing a clear departure from substantive protection and allowing injustice to be perpetuated under the guise of legal process (Rachman, 2024).

Another issue stems from the limited understanding among investigators and prosecutors regarding the formal truth principle governing Notarial duties. Notaries merely document declarations provided by parties, without verifying material truth (Mulyanto, 2022). Consequently, deceit by appearing parties cannot automatically be attributed to the Notary. Without correcting these misconceptions, substantive protection will remain compromised by flawed assumptions within the justice system.

The lack of institutional synergy among key stakeholders which are MKN, Supervisory Councils, professional organizations, and law enforcement further impedes effective protection. Poor coordination, absence of integrated information systems, and limited communication mechanisms cause Notaries to face legal challenges without adequate institutional support.

Professional organizations, such as the Indonesian Notary Association (INI), often fail to provide consistent legal advocacy for members facing investigations or criminal reports. In reality, professional bodies should lead protection efforts through legal assistance, advocacy, and defense against Notary criminalization. Without such support, substantive protections remain mere formalities without tangible impact.

From a procedural standpoint, the absence of standardized operating procedures (SOP) for summoning, examining, and questioning Notaries further weakens protections. Law enforcement officers employ varying approaches, resulting in inconsistencies even in similar cases. The lack of uniform national standards undermines equal treatment before the law.

Another persistent challenge is the weak legal culture that fails to appreciate the Notary's role within Indonesia's civil justice system. The public and even some officials mistakenly believe that Notaries bear responsibility for all deed contents and consequences, including those stemming from parties' deceit (Ummah A., 2022). In fact, Notaries are only liable when proven to possess knowledge of or participate in fraudulent acts. The absence of a fair legal culture diminishes substantive protections.

Meaningful substantive protection requires reform across three dimensions: institutions, legal comprehension, and procedural mechanisms (Faishal, 2023). First, MKN and professional bodies must be strengthened through increased authority and resources to fulfill their protective functions. Second, law enforcement requires continuous education on the Notary's role and limits of liability. Third, Indonesia needs national guidelines detailing legal protections for Notaries, serving as a unified reference for authorities. Without these reforms, substantive protections will remain theoretical rather than practical.

Given the various obstacles to effective Notary protection, reformulating the existing system is an urgent necessity. Genuine legal protection depends not only on written statutes but on practical implementation and adaptability to evolving realities. Reformulation entails institutional restructuring, strengthening professional organizations, and developing

comprehensive, sustainable protection mechanisms.

An essential reform entry point is revising Article 66 of the UUJN, particularly the "positive fictitious" provision. This clause weakens MKN's position and provides loopholes for bypassing ethical review. Instead, administrative sanctions should be imposed on MKN for delayed responses, without compromising Notaries' protections.

To show the grand idea of new legal protection mechanism, the concept can be illustrated in the following chart:

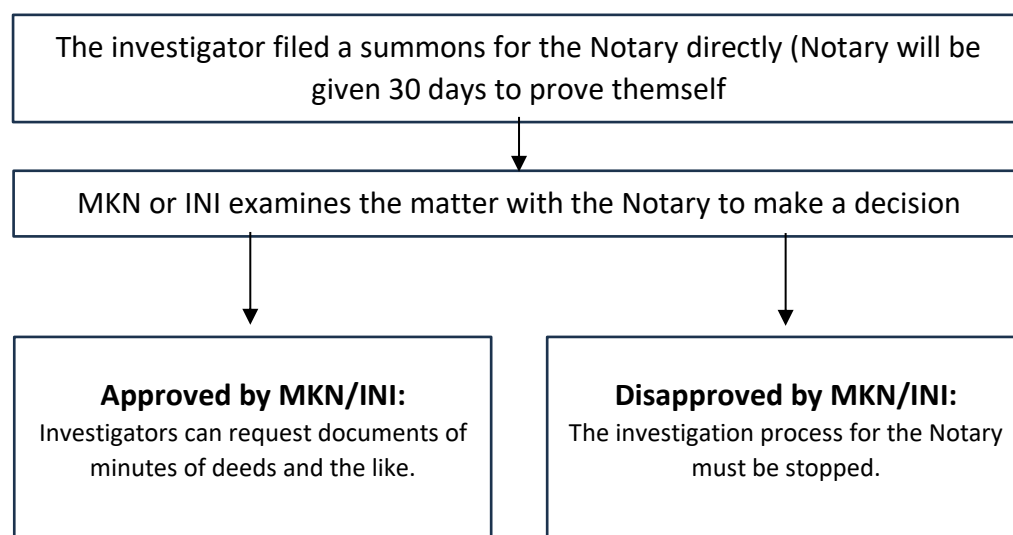


Figure 2. (New) Legal Protection Mechanism from Article 66 of UUJN (Source: Analysis Results by Author)

Reform efforts should also clearly delineate administrative, ethical, and criminal errors. Indonesia requires national regulations or guidelines distinguishing these categories. Administrative mistakes, such as minor procedural inaccuracies, should not escalate to criminal proceedings without prior verification by Supervisory Councils or professional bodies.

Equally important, enhancing public awareness is vital to creating a legal culture that respects the Notary profession. Many people misunderstand the function of a Notary, assuming they guarantee the truth of every statement in a deed. Public education campaigns are needed to ensure society understands the limits of Notarial responsibilities and the protections they deserve.

Finally, sustainable legal protection requires long-term collaboration between institutions, professional organizations, and the academic community. Universities and legal scholars must contribute through research, training, and policy recommendations that support fair and proportional treatment of Notaries. Only with shared responsibility can substantive legal protection become a reality.

Furthermore, clarity from the judiciary is critical in ensuring uniform application of the law concerning Notarial liability. Supreme Court guidelines or binding jurisprudence are needed to avoid inconsistencies in interpreting the role of Notaries in legal proceedings (Harahap, 2013). Such judicial leadership will enhance legal certainty and prevent unwarranted criminalization.

CONCLUSIONS

The involvement of Notaries in criminal cases often happens due to administrative mistakes or negligence, not intentional wrongdoing. Many Notaries face legal problems like

forgery or fraud because their authentic deeds are misused by others. A Notary's duty is limited to formal verification, not examining the substance of the parties' statements. Sadly, this is often misunderstood by law enforcement, resulting in criminal charges against Notaries who simply performed their administrative tasks. Legal protections, such as Article 66 of the UUJN, have not worked effectively, worsened by the weak role of the Notary Honorary Council (MKN) and the "positive fictitious" rule. Therefore, legal protection for Notaries must be improved through clearer regulations and stronger institutions. Article 66 of the UUJN should be revised to eliminate the positive fictitious clause and ensure the Notary itself, MKN, and INI gives timely decisions. It is also important to separate administrative, ethical, and criminal violations. The ethical process must come first before criminal investigation. Professional organizations should also provide legal aid and regular training for Notaries. These steps are needed to ensure Notaries feel protected, legal certainty is upheld, and public trust in authentic deeds remains strong.

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