

## RECONSTRUCTING INDONESIA'S NOTARY LAW TO REALIZE A BALANCED RIGHTS–DUTIES FRAMEWORK AND STRENGTHEN THE NOTARY'S CORE AUTHORITY OVER AUTHENTIC DEEDS

### RECONSTRUINDO A LEI DO NOTARIADO DA INDONÉSIA PARA CONCRETIZAR UM QUADRO EQUILIBRADO DE DIREITOS E DEVERES E FORTALECER A AUTORIDADE CENTRAL DO NOTÁRIO SOBRE OS ATOS AUTÊNTICOS

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#### Abstract

This article presents a normative and reform-oriented argument for revising Indonesia's Notary Office Law (Undang-Undang Jabatan Notaris/UUJN) to establish a "balanced-value basis" between notaries' rights and obligations, while enhancing the notary's primary authority to produce authentic deeds. Building on doctrinal analysis and the dissertation's conceptual critique, the study shows that the current framework tends to maximize legal certainty for service users but leaves notaries exposed to asymmetrical burdens (administrative, civil, ethical, and potentially criminal risks) without a commensurate guarantee of justice and utility. The article proposes a legislative reconstruction agenda consisting of targeted amendments: first, recalibrating clauses that enable the transfer/exclusion of authentic-deed authority to other officials; second, harmonizing sectoral regulations that fragment notarial authority; and third, strengthening protections, funding, and institutional design for notarial supervision. The reform is grounded in constitutional commitments and a legal-philosophical priority

#### Resumo

O artigo propõe a reconstrução da Lei Indonésia do Notariado (Undang-Undang Jabatan Notaris/UUJN) para incorporar uma base axiológica de equilíbrio entre direitos e deveres do notário e, simultaneamente, reforçar sua autoridade principal na lavratura de escrituras públicas autênticas. Com base em análise dogmática e na crítica conceitual desenvolvida na pesquisa de doutorado, sustenta-se que o modelo vigente maximiza a certeza jurídica para os usuários do serviço, porém impõe ao notário encargos assimétricos e riscos (administrativos, civis, éticos e, em determinadas hipóteses, penais) sem garantias equivalentes de justiça e utilidade. Propõe-se uma agenda de reconstrução legislativa: i) reequilíbrio das cláusulas que permitem a transferência/exclusão da competência notarial para outros agentes; ii) harmonização de normas setoriais que fragmentam a autoridade do notário; e iii) fortalecimento de proteções, financiamento e desenho institucional da supervisão notarial. A proposta é ancorada em compromissos constitucionais e na prioridade



for justice, particularly when rigid legality results in disproportionate harm. The article contributes a structured legislative roadmap to improve legal coherence, professional accountability, and public trust in authentic instruments.

**Keywords:** Notary. UUJN. Authentic Deed. Legal Harmonization. Rights–Duties Balance. Legislative Reconstruction.

*da justiça quando a legalidade rígida produz danos desproporcionais.*

**Palavras-chave:** Notário. UUJN. Escritura Autêntica. Harmonização Normativa. Equilíbrio Direitos–Deveres. Reconstrução Legislativa.

## 1 INTRODUCTION

In civil-law jurisdictions, the notary occupies a distinctive institutional position as a public legal officer entrusted with the authority to confer authenticity (public faith) upon private legal acts. Through the issuance of authentic deeds, notaries perform a preventive-justice function by enhancing legal certainty, safeguarding party autonomy, and reducing transaction costs and litigation risks (Kunitsina, 2025; Tesic, 2025). The classical civil-law conception of the notary thus situates the office at the intersection of public authority and private-law transactions, where institutional trust is translated into legally reliable documentation (Delmas, 2023).

In Indonesia, the enactment of the Law on Notarial Office (Undang-Undang Jabatan Notaris – UUJN) was intended to modernize the inherited colonial notarial regime and to unify the governance of the notarial profession under a single national framework. Normatively, UUJN affirms the notary's status as a public official and recognizes the authentic deed as a cornerstone of civil evidentiary law. From the perspective of service users, this framework has largely succeeded in promoting legal certainty and predictability in private transactions (Kristianto et al., 2026; Holidi, 2023).

However, contemporary regulatory developments reveal a growing structural tension within the UUJN regime. On the one hand, the scope of notarial obligations has expanded through layered administrative requirements, supervisory mechanisms, and professional compliance duties, including gatekeeper-style obligations linked to financial integrity and transaction monitoring (Zabyelina & Thachuk, 2023). On the other hand, the notary's core authority over authentic deeds has increasingly been fragmented, as sectoral regulations distribute or divert authentic-deed functions to other officials and professions operating outside the notarial system (Gultom et al., 2020; Lubis et al., 2025).

This dual development has produced a regulatory configuration in which notaries are simultaneously burdened with escalating duties and exposed to multi-track liability regimes, such as administrative, civil, ethical, and, in certain circumstances, criminal, while their institutional authority is progressively diluted. Judicial practice further demonstrates this tension, as courts have increasingly scrutinized notarial acts and, in some cases, degraded their evidentiary value or imposed liability for procedural deficiencies (Tripipo et al., 2025; Fransiska, 2021; Hidayat, 2023). As a result, UUJN appears to generate legal certainty for the public, yet fails to ensure substantive justice and proportional utility for notaries performing a public office within the private-law domain.

The urgency of reconstructing Indonesia's notary law lies not merely in technical inconsistencies, but in a normative imbalance that threatens the sustainability of the notarial institution itself. When a public office is subjected to expanding obligations and liability exposure without a commensurate reinforcement of authority and legal protection, the result is a distortion of the very logic that justifies the delegation of public trust to that office (Kunitsina, 2025; Quist, 2024).

From a systemic perspective, the fragmentation of authentic-deed authority undermines the coherence of civil evidentiary law and risks eroding public confidence in the reliability of formal legal instruments (Holidi, 2023; Kristianto et al., 2025). From a professional perspective, disproportionate responsibility coupled with weakened authority fosters legal uncertainty for notaries and encourages defensive practices that ultimately impair service quality and access to justice (Testic, 2025).

Against this background, the chosen title reflects a deliberate focus on reconstruction, rather than mere amendment or interpretation of UUJN. The concept of reconstruction aligns with a justice-oriented legal philosophy that views legal certainty as meaningful only when integrated with justice and proportionality (Radbruch, 1946, *in* Kurniawan & Ezzerouali, 2024; Manullang, 2022). In this sense, the reconstruction of UUJN is framed not as deregulation but as a normative recalibration of authority, responsibility, and protection.

The problems addressed in this article are: First, the imbalance of Rights and Duties.

The current UUJN framework prioritizes accountability and public protection but provides insufficient safeguards to ensure proportional legal protection for notaries as public officials (Kunitsina, 2025; Quist, 2024). Second, Fragmentation of Authentic-Deed Authority.

Sectoral delegation and regulatory exclusions have weakened the notary's principal role in producing authentic deeds, generating regulatory incoherence and uncertainty in civil evidentiary practice (Gultom et al., 2020; Lubis et al., 2025). Third, Disproportionate Liability Exposure. Judicial trends indicate an increasing tendency to impose liability or degrade the probative value of notarial acts based on formal or procedural shortcomings, raising concerns about over-criminalization and erosion of institutional trust (Tripipo et al., 2025; Fransiska, 2021).

This article aims to: Analyze the extent to which the current UUJN framework fails to operationalize a balanced rights–duties structure for notaries (Kunitsina, 2025); Examine how sectoral delegation or exclusion of authentic-deed authority weakens the notary's core institutional role and creates regulatory incoherence (Gultom et al., 2020); and propose a structured reconstruction agenda for UUJN grounded in legal certainty, justice, and proportionality (Radbruch, 1946 *in* Kurniawan & Ezzerouali, 2024; Manullang, 2022).

Theoretically, this study contributes to civil-law scholarship by integrating legal certainty theory with an authority–responsibility framework for public legal professions (Radbruch, 1946 *in* Kurniawan & Ezzerouali, 2024; Manullang, 2022). Practically, it provides a policy-oriented reconstruction model for harmonizing notarial authority, liability regimes, and sectoral regulations, thereby strengthening institutional trust and preserving the authentic deed as a reliable legal instrument (Kristianto et al., 2025; Holidi, 2023).

Prior studies have predominantly examined notarial law from fragmented perspectives: liability and discipline (Kunitsina, 2025; Tripipo et al., 2025), evidentiary strength and judicial review of authentic deeds (Fransiska, 2021; Holidi, 2023), and sectoral implications such as land registration and economic development (Gultom et al., 2020). Comparative research has highlighted governance and professional-structure issues within notarial systems but has rarely addressed the cumulative effect of authority fragmentation and disproportionate responsibility (Delmas, 2023; Tesic, 2025).

This article fills the gap by offering a holistic reconstruction framework that treats the imbalance of rights and duties and the weakening of authentic-deed authority as interrelated structural problems, thereby advancing a justice-forward reform agenda for Indonesia's notarial law.

## 2 RESEARCH METHODS

This article adopts normative legal research (doctrinal legal research) with a reform-oriented legislative design approach. Normative legal research is appropriate because the core inquiry concerns the internal coherence, normative balance, and justice-orientation of statutory regulation, rather than empirical behavior or socio-legal measurement (Sonata, 2014; Soekanto & Mamudji, 2015; Marzuki, 2017).

The research design is explicitly reconstructive, drawing from the dissertation of Gultom, O. B., which frames the Law on Notarial Office (UU Jabatan Notaris – UUJN) not merely as a positive legal instrument to be interpreted, but as a normative structure capable of producing imbalance and disproportionate burden when applied rigidly (Gultom et al., 2020). Accordingly, the study moves beyond descriptive doctrinal analysis toward a prescriptive *ius constituendum* orientation, aimed at proposing normative reconstruction aligned with justice and proportionality.

The study relies on three categories of legal materials:

1. Primary legal materials, consisting of: Law No. 30 of 2004 on the Notarial Office and its amendment, Law No. 2 of 2014 (UUJN); Sectoral statutes and implementing regulations that allocate or delegate authentic-deed functions to other officials or institutions, including land deed officials (PPAT) and other specialized regimes that intersect with notarial authority.
2. Secondary legal materials, comprising: Scholarly writings on notarial law, authentic deeds, and professional liability; Academic analyses of judicial decisions concerning the degradation, cancellation, or evidentiary strength of notarial deeds (Tripipo et al., 2025; Fransiska, 2021; Hidayat, 2023; Kristianto et al., 2025); Comparative and theoretical works on notarial governance, professional accountability, and public legal offices (Kunitsina, 2025; Delmas, 2023; Tesic, 2025).

3. Tertiary materials, including legal dictionaries, encyclopedias, and methodological texts, are used to clarify legal concepts and interpretive frameworks (Marzuki, 2017).

The analysis is informed by a critical conceptual framework articulated in Gultom's dissertation, which acknowledges both the utility and the limitations of legal positivism. While positivism emphasizes legal certainty through strict adherence to statutory norms, the dissertation argues that law is not value-neutral and is often shaped by political, institutional, and sectoral interests (Gultom et al., 2020).

Accordingly, this study adopts a justice-priority stance when the rigid application of statutory norms produces disproportionate harm to notaries as public office-holders. This stance draws on: Radbruch's formula, which holds that extreme injustice negates the binding force of positive law (Radbruch, 1946 in Kurniawan & Ezzerouali, 2024; Manullang, 2022); The classical maxim *summum ius, summa iniuria*, emphasizing that excessive legality may result in profound injustice; and contemporary proportionality-oriented legal reasoning, which seeks to balance legal certainty with fairness and institutional legitimacy (Kurniawan & Ezzerouali, 2024; Manullang, 2022). Within this framework, notaries are conceptualized as public legal officers operating in the private-law domain, whose authority must be accompanied by commensurate legal protection to preserve both justice and public trust.

The method of legal reasoning employed in this article consists of four interrelated steps: First, systematic statutory interpretation, applying a text-context-purpose approach to the provisions of UUJN, in order to identify the intended scope of notarial authority and responsibility (Marzuki, 2017). Second, identification of normative inconsistencies, including: Internal inconsistencies within UUJN that produce overlapping obligations or unclear standards of liability; and External inconsistencies between UUJN and sectoral regulations that fragment authentic-deed authority or dilute the notary's core institutional role (Gultom et al., 2020; Lubis et al., 2025).

Third, doctrinal evaluation of judicial practice, examining court decisions that cancel or degrade notarial deeds to assess how statutory imbalance manifests in adjudication and affects legal certainty in civil litigation (Tripipo et al., 2025; Fransiska, 2021). Fourth, normative reconstruction and harmonization, whereby the study proposes targeted reconstruction clauses and harmonization measures designed to: restore a

balanced rights–duties framework for notaries; reinforce the notary’s principal authority over authentic deeds; and ensure coherence between notarial law, sectoral regulation, and constitutional principles of justice and proportionality.

The overall analytical orientation of this study is deductive–normative, beginning with general principles of legal certainty, justice, and proportionality, and applying them to the specific regulatory configuration of Indonesia’s notarial law. Conclusions are drawn through normative reasoning aimed at producing legislatively actionable recommendations, rather than abstract theoretical critique.

### **3 RESULTS AND DISCUSSION**

#### **3.1 Imbalance of Notaries’ obligations and rights under the UUJN**

Indonesia’s Notary Position Act (UUJN) imposes extensive duties on notaries while affording relatively few corresponding rights or protections. Article 16(1) UUJN (as amended in 2014) lists numerous obligations, including acting impartially and carefully, drafting and preserving authentic deeds, attaching required documents and fingerprints, providing copies, maintaining a seal, reading the deed aloud before the parties, and even accepting notary interns. These duties have only expanded with the 2014 amendment – for example, the law added the obligation for notaries to receive apprentice notary candidates and stricter requirements for reading and storing deeds. Failure to fulfill these formal duties can carry severe consequences. For instance, notaries must read the deed to the appearers (parties) before signing (Article 16(1)(m)); if the notary omits this without a lawful exception, the deed loses its authentic status and is treated as a private deed (Tripipo et al., 2025).

In Supreme Court Decision No. 351 PK/Pdt/2018, a notary’s failure to read the deed aloud (in violation of Article 16(1)(m) UUJN) led the court to declare that the deed had only the evidentiary force of an underhand agreement (Tripipo et al., 2025). In other words, a procedural lapse by the notary resulted in the degradation of the deed’s legal status. The notary in that case was deemed to have committed a breach of duty and faced sanctions – the UUJN provides for administrative penalties (ranging from written warnings to suspension or even dismissal) for such violations, and the injured party

gained grounds to sue the notary for civil damages (Tripipo et al., 2025). This exemplifies how notaries bear increasing obligations with high stakes, as even minor non-compliance can trigger disproportionate consequences.

While the UUJN rigorously enforces notaries' duties, it provides comparatively limited rights and protections for notaries. The Considering clauses of the 2014 amendment acknowledge that notaries, as public officials providing legal services, "need to receive protection and guarantees in order to achieve legal certainty". In practice, however, protective provisions have been inadequate or ineffectively implemented. Article 66 UUJN is a key safeguard intended to protect notaries from arbitrary legal pressure: it requires that investigators, prosecutors, or judges obtain approval from the Notary Honorary Council (*Majelis Kehormatan Notaris*, MKN) before summoning a notary for examination or obtaining documents in a case (Randomis, 2025).

This mechanism is meant to maintain the notary's independence and the confidentiality of the deed, serving as a check against frivolous or excessive inquiries (preventive legal protection). Additionally, the Notary Code of Ethics (through the Indonesian Notary Association, INI) underlines that notaries must act honorably and independently, implicitly promising that as long as notaries uphold these standards, their professional role will be respected. In theory, these provisions strike a balance by shielding notaries from undue legal harassment while they carry out mandatory duties. However, the reality diverges from the law's intent. Law enforcement authorities have frequently bypassed the MKN approval process – many notaries have been summoned, investigated, or even named as suspects in cases without the required MKN permission (Randomis, 2025).

There are reported instances of notaries being treated as defendants in what are essentially civil disputes between the deed parties, blurring the line between a notary's neutral role and the parties' own responsibilities. Such practices indicate a *gap between* das Sollen (what the law prescribes) and das Sein (the reality) in notary legal protection (Randomis, 2025). The absence of effective enforcement or sanctions against officials who ignore Article 66 has rendered this notary "right" more illusory than real, leaving notaries exposed despite the formal rules.

From a theoretical standpoint, this lopsided expansion of duties over rights is problematic. Gustav Radbruch's classical legal theory posits that a sound legal system

must harmonize three fundamental values: *justice*, *utility (expediency)*, and *legal certainty* (Randomis, 2025). The current UUJN regime, heavily tilted toward formalistic compliance, emphasizes legal certainty (through strict procedural requirements and sanctions) and the utility of authentic deeds for the public, but it arguably does so at the expense of justice for the notaries themselves. Justice, in Radbruch's sense, demands fairness and proportionality in the law – treating like cases alike and not placing excessive burdens on one party without corresponding safeguards (Radbruch, 1946 *in* Kurniawan & Ezzerouali, 2024; Manullang, 2022; Randomis, 2025).

Here, the imbalance between notaries' escalating obligations and their minimal protections suggests a normative inequity. Notaries are subjected to exacting duties (backed by potent sanctions), but when they seek the law's protection (for instance, against unreasonable summons or liability for matters beyond their control), the law often falls short. This condition has led to what one scholar calls *increased vulnerability of notaries to criminalization, civil liability, and ethical disputes* under the current framework (Randomis, 2025).

In Radbruch's terms, the formal legality of UUJN (positive law) is in tension with the idea of justice. Indeed, Radbruch famously argued that extreme injustice in a law can rob it of its legal character – “*gesetzliches Unrecht*” (Radbruch, 1946 *in* Kurniawan & Ezzerouali, 2024; Manullang, 2022). While UUJN's imbalance is not a case of egregious injustice comparable to Radbruch's historical examples, it does raise concerns that legal certainty has been overemphasized to the point of undermining fairness. A rigidly positivist approach that heaps ever more duties on notaries “because the law says so,” without ensuring equitable rights, risks what Radbruch and other natural law critics caution against: the divorce of law from justice.

In sum, the UUJN's lack of a balanced rights–duties framework is not only practically unsustainable but theoretically unsound. A more just approach would recalibrate the law to grant notaries reasonable protections (procedural safeguards, immunity for good-faith errors, etc.) in proportion to their heavy responsibilities. This aligns with Radbruch's triad by injecting the value of justice into a regime currently dominated by certainty and public interest, and it heeds the critique of legal positivism by looking beyond the black-letter obligations to the broader fairness of the legal order.

### 3.2 Fragmentation of authentic-deed authority by sectoral regulations

Notaries are by law the general authority for making authentic deeds – documents that serve as conclusive evidence of legal acts. Under Article 15 UUJN, a notary, as a public official (*pejabat umum*), is empowered to make authentic deeds regarding all acts, agreements, and determinations that are required by legislation or desired by the interested parties, as long as they are not assigned to another official by law. In an ideal setting, this provision would make the notary the central "one-stop" authority for authentic instruments, supporting the legal certainty and order envisioned by the statute's drafters.

However, Indonesia's legal system features *sectoral regulations* that carve out portions of this authority to other officials, resulting in a fragmented landscape. Various laws and regulations designate specific public officials, besides notaries, to draw up certain types of authentic deeds. Land law provides the clearest example: Government Regulation No. 24 of 1997 on Land Registration appoints Land Deed Officials (Pejabat Pembuat Akta Tanah, PPAT) to exclusively handle authentic deeds for land conveyances (transfer of land rights, mortgages, etc.). By design, a PPAT – often a separate public official under the National Land Agency – is the only authority that can execute a land sale and purchase deed (Akta Jual Beli tanah) or mortgage deed, even though these are fundamentally civil contracts (Dewi, 2025).

This creates a normative conflict with the UUJN: the UUJN's general rule grants notaries broad authority, but the land regulations *lex specialis* take precedence for land transactions, excluding notaries from that domain (Dewi, 2025). As Dewi (2025) observes, there is an overlap and even *tension* between the notary's general authority and the PPAT's specialized authority, especially in the making of land transfer deeds. The result is a lack of clarity over boundaries of competence, which can confuse the public and practitioners about which official's deed is required, thus undermining legal certainty (Dewi, 2025).

Land law is not the only area of fragmentation. Other sectoral rules likewise delegate authentic deed-making to different functionaries. For example, civil registry officials (at local Civil Registry Offices) issue authentic certificates of births, deaths, and marriages – effectively authentic deeds of civil status, outside the notarial system.

Similarly, religious affairs officers register marriages for Muslims with an official marriage certificate (*akta nikah*) that is considered an authentic act. Auction officers authorized by the state can produce auction minutes (*risalah lelang*) that are authentic deeds for the sale of goods by auction. In some remote areas lacking notaries, a sub-district head (*Camat*) may be appointed as a temporary land deed official to handle simple land transactions.

These examples illustrate a sectoral allocation of authentic deed authority across various offices. Each of these officials acts under different ministries or regulatory regimes, often with their own procedural rules. Such decentralization has led to a fragmented framework in which the notary's "core" authority is no longer exclusive or comprehensive. From the perspective of legal doctrine, authentic deeds are meant to guarantee a high standard of veracity and formality, regardless of which official issues them. Yet with multiple actors involved, inconsistencies can arise in practice. The formalities required of notarial deeds (*e.g.*, rigorous identity checks, reading the deed aloud, archiving protocols) may not be identical to those in, say, civil registry or PPAT procedures, potentially resulting in uneven standards for authenticity. The prestige and reliability historically associated with notarial deeds can be diluted when other officials' acts, which might be less scrutinized, carry a similar status.

This fragmentation undermines the notary's core legal function and raises questions of policy and principle. The notary's role, as conceived by the UUJN, is to serve the public by creating a *trusted legal instrument* that provides certainty and prevents disputes. If too many exceptions and overlaps exist (each justified by sector-specific needs), the unity of the legal system suffers. In practical terms, it has led to jurisdictional disputes and uncertainty. For instance, consider a scenario involving land: a party might sign a notarial sale-purchase agreement (*akta Pengikatan Jual Beli*, often used as a preliminary contract) with a notary, but the actual transfer must be executed in a PPAT deed. If a dispute arises, questions emerge about which document governs and which official bears responsibility. In one Supreme Court case (illustrative is Supreme Court No. 2377 K/Pdt/2016), a notarial *sale and purchase binding agreement* was later voided by the Court for being in conflict with the required land transfer process (Fransiska, 2021).

The Supreme Court declared the notarial deed null and without legal force, even though it was formally valid, because the proper legal act of transfer had not been done

via a PPAT deed. This case highlights how the multiplicity of deed authorities can create legal complications: the notary's deed, perfectly authentic on its face, became ineffectual once the court assessed the overall transaction. Such outcomes not only erode the authority of the notary but also potentially diminish public confidence in authentic deeds if their finality can be so easily upset by sectoral technicalities.

From a theoretical vantage point, the fragmentation reflects a classic problem of legal positivism in a pluralistic regulatory environment. Each sectoral rule was created to serve a specific policy – *e.g.*, specialized land officials for agrarian management – *positing* its own norms without fully harmonizing with the general legal structure. The Indonesian legal system, with its many statutes and regulations, sometimes lacks horizontal integration, leading to what Gustav Radbruch might term a conflict between *Rechtssicherheit* (certainty/order) and *Zweckmäßigkeit* (practical expediency). The proliferation of special authorities aims at utility (making processes more expedient or specialized) but can sacrifice certainty and coherence.

In Radbruch's framework, law should strive for justice as well – in this context, justice might mean a coherent, non-arbitrary allocation of authority so that officials and citizens clearly understand “who does what” and outcomes do not depend on a maze of regulations unknown to laypeople. The current fragmentation undermines that fairness, as parties could be prejudiced simply by choosing the wrong instrument or official. Moreover, the situation calls for harmonization under the *lex specialis* principle – as noted by legal scholars, the tension between UUJN and, for example, land law needs resolution by either clarifying that land matters are out of notaries' hands or by better integrating notaries into those processes (Dewi, 2025).

A reconstruction of notary law should consider legislative reform to resolve norm conflicts and reinforce the notary's central role where appropriate. By reducing overlaps (or at least clearly delineating them), the law can enhance legal certainty. This would be in line with Radbruch's idea that *legal certainty* is a core value – currently, that value is undermined by fragmentation. Likewise, a more unified regulatory approach would answer critiques of positivist fragmentation by emphasizing the *systemic integrity* of the law over siloed rules. Ultimately, restoring the notary's core authority (for instance, reasserting notarial involvement or oversight in sectoral deeds) could strengthen the authentic deed regime as a whole, ensuring that the high evidentiary quality and trust of

authentic acts are consistent across the board. Such harmonization would serve the public interest without the unintended consequence of marginalizing notaries or confusing the legal process.

### **3.3 Exposure of notaries to multi-track liability: administrative, ethical, civil, and criminal**

A significant concern for the notarial profession is the multi-track liability to which notaries are exposed. When something goes awry with a deed or a notary's conduct, the notary may simultaneously face administrative sanctions, ethical discipline, civil lawsuits, and even criminal prosecution. This multiplicity of potential liabilities is rooted in the notary's unique position at the intersection of public authority and private law transactions. Unlike most other professionals, a notary's single act (the execution of an authentic deed) engages various legal domains: it is a public document subject to administrative regulation and professional ethics, a foundation for private rights and obligations (civil law), and, if misused or falsified, an object of criminal law. The UUJN and related regulations provide for administrative and ethical oversight of notaries.

For example, the Regional Supervisory Council (*Majelis Pengawas Daerah*) and higher supervisory boards can examine breaches of duty and impose administrative sanctions under UUJN, ranging from warnings and suspensions to honorable discharge or dishonorable discharge from office (Tripipo et al., 2025). Such sanctions are typically invoked for violations of the Notary Act or failure to follow prescribed procedures (e.g., not reading a deed to the parties, as seen above). In addition, the Indonesian Notary Association (INI) enforces a Code of Ethics, so a notary who violates ethical standards (such as breaching confidentiality or engaging in conflict of interest) might face professional disciplinary actions, like reprimand, temporary debarment from the association, or recommendations for formal sanctions (Randomis, 2025). These administrative and ethical tracks are meant to uphold the integrity of the notary's office and are handled outside of court (by executive bodies or professional tribunals).

Simultaneously, notaries may be held civilly liable to clients or third parties who suffer losses due to an act or omission of the notary. Indonesian civil law (rooted in the *KUH Perdata* and reinforced by UUJN provisions) recognizes that if a notary's

negligence or error in deed-making causes harm, the injured party can sue for damages on the basis of a tort or breach of legal duty (Tripipo et al., 2025). Indeed, UUJN Article 16(11) explicitly notes that a violation of certain notarial duties (such as improperly executing a deed) can be a ground for the harmed party to claim compensation from the notary.

The courts have not hesitated to entertain civil suits against notaries. As seen in Supreme Court ruling No. 773 PK/Pdt/2019, parties brought a lawsuit challenging the validity of a notarial deed (minutes of an extraordinary shareholders' meeting) and included the notary as a co-defendant. In that case, the Supreme Court ultimately declared the notarial deed null and void *ab initio* because the deed's contents violated corporate law provisions – effectively, the notary had drafted a deed for an unlawful corporate act (Hidayat, 2023). The notary was found to have committed an unlawful act (*perbuatan melawan hukum*) in civil law terms by facilitating a deed that contravened the law.

Although the court's order in that decision did not impose a separate penalty on the notary beyond nullifying the deed, the case illustrates the risk of civil liability: the notary's deed was the object of dispute, and the notary had to answer in court proceedings, potentially facing claims of damages from the parties. Another example is the earlier mentioned case No. 351 PK/Pdt/2018, where the notary's failure to follow formalities (reading the deed) enabled one party to successfully have the deed downgraded in evidentiary value; the notary, in turn, could be held liable for any losses the party incurred due to the deed's diminished status (Tripipo et al., 2025). These cases demonstrate that notaries can be drawn into protracted civil litigation and may bear financial liability if a court finds their act or omission caused harm to a client or a third party.

Most dauntingly, notaries may face criminal liability under various provisions of the Indonesian Penal Code (KUHP) if their deed or conduct involves elements of criminal wrongdoing. The KUHP contains specific offenses related to authentic deeds – notably forgery of an authentic document (Article 264 KUHP) and making false statements in an authentic deed (Article 266 KUHP). A notary who intentionally fabricates a false deed, or knowingly inserts false information provided by parties, can be prosecuted under these provisions, which carry significant prison terms (up to 8 years for authentic deed forgery, per Article 264). Indonesian courts in recent years have seen a rise in prosecutions of notaries or their collaborators for deed-related fraud. For instance, in Supreme Court

Decision No. 933 K/Pid/2023, a notary was found to have *participated in the forgery* of a Sale and Purchase Binding Agreement deed and a Power of Attorney to sell, by knowingly attesting to untrue information. The Supreme Court convicted the notary under Article 264(1) KUHP for authentic deed forgery and sentenced him to 5 years imprisonment (a severe criminal sanction) (Lubis, M. F. et al. 2025).

In addition, reflecting the multi-track repercussions, the notary in that case also faced administrative and civil consequences: his notarial license was revoked by the authorities (through the Ministry of Law and INI), and he was held liable to pay compensation to the injured party (Lubis, M. F. et al. 2025). This case is a striking example of the *cumulative liability* that can befall a notary – criminal punishment, professional/administrative expulsion, and civil damages all arising from the same egregious act. Other criminal cases have involved notaries being prosecuted for colluding with clients in fraudulent deeds (for example, assisting in back-dating documents or certifying land sales using fake identities).

In such scenarios, notaries stand not only to lose their profession but also their liberty. Even short of direct fraud, notaries have been treated as criminal suspects when deeds they produced were used to defraud others. Law enforcement agencies sometimes interpret a notary's formal role in creating the document as participation in the offense, particularly if the notary is thought to have been negligent or willfully blind to the parties' illicit aims (Esahfia et al., 2024). This trend of criminalizing notarial acts has instilled a sense of alarm in the notary community, as routine professional activities can unexpectedly entangle them in criminal investigations.

The exposure to liability on four fronts – administrative, ethical, civil, criminal – creates a precarious environment for notaries and may have a chilling effect on the exercise of their duties. Ideally, each track of liability has its own scope: ethical and administrative sanctions address internal and procedural compliance, civil liability addresses harm to private interests, and criminal law addresses deliberate law-breaking that harms public order. In practice, however, these tracks often overlap in a single incident. A notary caught up in a contentious transaction might simultaneously face an ethics inquiry by INI, an administrative hearing by the Supervisory Council, a civil lawsuit from a client, and a criminal probe by the police. From the standpoint of justice and fairness (in line with Radbruch's emphasis on *Gerechtigkeit*), one must ask whether

the law provides adequate safeguards to prevent *double jeopardy*-like situations or disproportionate blame on notaries for others' wrongdoing. As noted in the *Introduction*, notaries are meant to guarantee the formal correctness of deeds, not the underlying truth of the statements made by the parties (Randomis, 2025).

A notary's duty is to ensure the proper procedure and documentation (formal truth) – the material truth of the transaction (e.g., whether the land seller actually has a good title, or the company shareholders' meeting was conducted without coercion) is beyond the notary's official scope and lies with the parties. Yet, judicial practice in Indonesia sometimes blurs this line: *when a dispute or fraud later surfaces, the notary is frequently treated as if they guaranteed the transaction's substance*, leading to being “summoned, examined, and even criminalized” for the content of the deed (Randomis, 2025).

The Supreme Court and other judicial bodies have started grappling with these issues. In some decisions, the MA has drawn boundaries – for example, distinguishing a notary's *administrative lapse* from a crime. In one precedent, the Court opined that a notary's technical violation of deed formalities should not be conflated with criminal intent, suggesting that such matters belong to administrative sanction, not imprisonment (*see*. MA Decision No. 20 PK/Pid/2020, where the Court rejected a criminal review by emphasizing the availability of administrative remedies) (Penny & Dianti, 2022).

Similarly, the Constitutional Court has upheld the necessity of MKN approval before notaries can be investigated, indirectly affirming that notaries should not be treated as ordinary suspects without due process befitting their office (Randomis, 2025). These views echo a *critique of overzealous positivism*: mechanically applying criminal statutes to notarial conduct without regard to the unique position of notaries can yield unjust results. In Radbruch's terms, an overemphasis on the letter of the law (legal certainty and strict liability) may defeat the law's purpose if it leads to outcomes that offend the sense of justice. A notary who acted in good faith, following all procedures, might still be hauled into court because one party lied to them – a scenario that challenges basic fairness.

Doctrinal legal research and commentary in Indonesia have highlighted the need for a more balanced approach to notary liability. Scholars argue, Devi & Sirait (2025) that notarial accountability should be proportionate and track-specific: truly criminal acts (like intentional forgery or corruption) should be punished criminally, but professional or

procedural mistakes should be confined to administrative/ethical correction, and civil liability should require clear causation of actual loss (*e.g.* Adjie, 2009; Pratiwi et al., 2022; Rossulliati et al., 2023; de Castro, 2024; Lubis et al., 2025; Werik et al. 2025). This would prevent the piling-on of liabilities for a single deed. It also aligns with broader legal theory.

The idea of *Ambtelijke aansprakelijkheid* (official accountability) in civil law tradition holds that a public official is liable to private parties only upon proof of a clear fault (misconduct) in exercising their office, not simply for an undesired outcome. If applied, this principle would shield notaries from being scapegoated in private disputes unless they clearly breached their duty. Likewise, the Radbruchian value of legal certainty is actually undermined if notaries constantly fear unpredictable legal attacks – they may become overly cautious or refuse legitimate transactions, which in turn hurts the public’s ability to rely on authentic deeds.

There is thus a strong argument for *reconstructing the legal framework of notary liability* to delineate boundaries between the various tracks and ensure notaries are not punished multiple times for the same basic failing. The law might, for example, institute rules that a notary already sanctioned administratively for a certain lapse should not simultaneously be charged criminally unless aggravating factors exist (a form of *ne bis in idem* principle across regimes).

Additionally, strengthening the role of the Honorary Council and Supervisory Boards to filter and handle minor infractions could reduce the reflex of police investigators to criminalize notaries for technicalities. By recalibrating the system in this way, Indonesia would address the Radbruchian balance: upholding legal certainty and order (through enforcement of notarial standards), but also ensuring justice (by protecting individuals from excessive or duplicative sanctions) and utility (by maintaining public trust in notarial services).

In conclusion to this discussion, it is apparent that the current Notary Law framework requires careful reconstruction to achieve a more equitable and effective balance. The three issues examined – imbalance of rights and duties, fragmentation of authority, and multi-track liability – are interrelated symptoms of a legal regime that has evolved in a piecemeal, positivist fashion without sufficient regard to overarching principles of justice and coherence. A normative realignment is needed. As classical

theory suggests, *positive law* should not be static or immune to change when it no longer meets the needs of justice.

Gustav Radbruch's insight that *law without justice is empty* resonates here: the UUJN and its implementation must be reformed so that notaries are neither oppressed by their obligations nor immunized from accountability, but rather placed in a fair equilibrium of rights and duties. Concretely, this means providing stronger legal protections for notaries (enforcing Article 66's requirements, clarifying notaries' immunity for good-faith acts, etc.), while also streamlining their authority (resolving conflicts with PPAT and others to reinforce the notary's core function in authenticating legal acts). It also means refining the liability regime to be proportional and one-track-at-a-time, ensuring that notaries answer for wrongdoing in the appropriate forum without double or triple punishment.

Such reforms would advance the rule-of-law values of legal certainty and justice for all stakeholders. Indeed, recent scholarship concludes that a "normative reconstruction" of the notary regulations is essential to ensure a balanced legal protection that safeguards notaries' rights while maintaining their professional accountability to society (Randomis, 2025). By heeding these lessons – and the wisdom of both doctrinal analyses and classical legal theory – Indonesia can strengthen the institution of the notary in a way that ultimately bolsters public trust in authentic deeds and the legal system at large.

#### 4 CONCLUSION

The doctrinal review reveals three core weaknesses in Indonesia's notarial legal regime. First, UUJN imposes extensive obligations on notaries without proportional legal protections, creating a structural imbalance that exposes notaries to high compliance burdens and procedural pitfalls. Second, the fragmentation of authentic deed authority caused by overlapping sectoral regulations, such as those governing PPAT, dilutes the notary's core function and undermines legal certainty. Third, notaries face multi-track liability (administrative, civil, criminal, ethical), where a single misstep can trigger concurrent sanctions across legal domains. Together, these issues form a legal

environment that burdens notaries disproportionately, fragments institutional authority, and risks inconsistent accountability.

To address this, a legislative reconstruction of the UJUN is urgently required, guided by Radbruch's values of justice, legal certainty, and proportionality. Reforms must rebalance rights and obligations, harmonize overlapping authorities, and streamline liability structures to avoid over-penalization. The notary's role as a public legal official demands coherent protections, clear jurisdictional mandates, and fair enforcement mechanisms. By aligning statutory duties with institutional safeguards and clarifying notarial authority, Indonesia can restore the integrity of authentic deeds and strengthen the rule of law in private legal transactions.

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All authors contributed equally to the development of this article.

### Data availability

All datasets relevant to this study's findings are fully available within the article.

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