



TECHNIUM
SOCIAL SCIENCES JOURNAL

www.techniumscience.com



Vol. 78/2025
A New Decade for Social Changes

PLUS
COMMUNICATION P



International
Communication & PR

Legal Protection by the Notary Honorary Council for Notaries in the Execution of Notarial Duties

Gentur Cahyo Setiono, Made Warka, Endang Prasetyawati, Rosalinda Elsina L

Fakultas Hukum Universitas 17 Agustus 1945 Surabaya

gentur@unik-kediri.ac.id, made@untag-sby.ac.id, endangpras@untag-sby.ac.id,
rosalindael@untag-sby.ac.id

Abstract. In a state governed by the rule of law, every action taken by state officials as well as members of society must be grounded in law to achieve legal certainty, justice, and utility. The notary, as a public official regulated under the Notary Office Act (UUJN), holds an essential role in realizing these principles. Article 15 of the UUJN explicitly grants authority to notaries to draw up authentic deeds concerning all acts, agreements, and determinations desired by the parties or required by law. With this authority, notaries do not merely function as “deed-makers,” but also as guarantors of legal certainty because the authentic deeds they produce possess perfect evidentiary value in civil procedural law. This study employs normative juridical research by analyzing legislation governing the authority of the Notary Honorary Council in the execution of notarial duties. The approaches used include the statutory approach and the conceptual approach. This study aims to identify the meaning and qualifications of “good and correct law” that should underlie legal protection for the notarial profession. The Notary Honorary Council holds an important authority in providing legal protection to notaries in performing their duties. However, this protection is not yet optimal because the MKN does not hold the authority to impose administrative sanctions; such authority lies with the MPN. Therefore, the MKN must be granted authority to submit its examination results to the MPN as recommendations for administrative sanctions, ensuring institutional coordination between the MKN and MPN. Such regulation would actualize legal protection and legal certainty for notaries, consistent with Gustav Radbruch’s theory of legal certainty and Philipus M. Hadjon’s theory of legal protection, enabling notaries to perform their *officium nobile* with safety, independence, and professionalism.

Keywords. legal; notary; execution

Introduction

In a state governed by the rule of law, every action taken by state officials as well as members of society must be grounded in law to achieve legal certainty, justice, and utility. The notary, as a public official regulated under the Notary Office Act (UUJN), holds an essential role in realizing these principles. Article 15 of the UUJN explicitly grants authority to notaries to draw up authentic deeds concerning all acts, agreements, and determinations desired by the parties or required by law. With this authority, notaries do not merely function as “deed-makers,” but also as guarantors of legal certainty because the authentic deeds they produce possess perfect evidentiary value in civil procedural law (Adjie 2008).

A notary is a public official vested with authority by the state to prepare authentic deeds and to perform other duties as stipulated by legislation. In the context of a rule-of-law state, the position of a notary is not only that of a drafter of legal documents, but also as a guarantor of legal certainty in various civil law transactions. Therefore, integrity, professionalism, and accountability become crucial aspects in supporting public trust in the national legal system (Napitupulu 2025). A notary is a public official authorized to draw up authentic deeds as regulated in Law No. 2 of 2014 amending Law No. 30 of 2004 on the Notary Office (UUJN). Article 15(1) of the UUJN affirms that a notary is authorized to prepare authentic deeds concerning all acts, agreements, and stipulations required by legislation and/or desired by the interested parties to be stated in an authentic deed. This position places the notary as an executor of the state's function in civil law, particularly in matters of evidence. However, in practice, many notaries become entangled in legal disputes because the deeds they draft become objects of dispute or are linked to allegations of legal violations.

Problems arise when no adequate mechanism for legal protection exists, making notaries vulnerable to being designated suspects or defendants even when their actions have been carried out according to procedure. Legal protection becomes urgent because it concerns two fundamental values of law according to Gustav Radbruch, namely justice (*gerechtigkeid*) and legal certainty (*rechtssicherheit*) (Romli SA et al. 2014). How can the authority of the Notary Honorary Council (MKN) be optimized in providing legal protection for the implementation of the notarial office?

Literature review

According to Philipus M. Hadjon, legal protection is always related to power—both governmental and economic power. In relation to government power, legal protection concerns the protection of the governed against the governing (Philipus M. Hadjon 1987). In relation to economic power, legal protection serves to protect the weaker party against the stronger, such as workers against employers.

The Theory of Legal Protection explains how the state, through its legal apparatus, safeguards citizens against potential violations of rights, whether committed by other parties or by state authorities. Satjipto Rahardjo defines legal protection as efforts to protect legal subjects from actions that harm or violate their rights (Firdaus 2024). Legal protection consists of:

1. Preventive protection: prevention before disputes or violations occur.
2. Repressive protection: legal enforcement after a violation occurs.

Gustav Radbruch is a prominent figure in legal philosophy whose thoughts emphasize that law should not be regarded merely as a collection of formal rules, but also as an instrument for achieving fundamental societal values (Julyano & Sulistyawan 2019). Radbruch's theory highlights three core elements: justice, legal certainty, and utility.

The Theory of Legal Certainty emphasizes that law must provide clarity, order, and predictability so that the public knows its rights and obligations and can anticipate the consequences of legal actions. Van Apeldoorn views legal certainty as a condition in which the law operates in an orderly, stable, and predictable manner (Julyano & Sulistyawan 2019). Legal certainty requires regulatory frameworks ensuring that law is applied consistently and does not cause harm to anyone. Law must guide, protect, and safeguard society from various forms of wrongdoing or violations of individual or collective rights. The Theory of Authority in constitutional and administrative law posits that every action of a state organ must be based on legitimate authority granted through legislation. Philipus M. Hadjon stresses that all authority

within a rule-of-law state must derive from statutory provisions (*legaliteitsbeginsel*) (Munaf 2023).

Authority may originate from three sources: attribution, delegation, and mandate. Attributed authority is typically determined through constitutional arrangements, while delegated and mandated authority stem from transfer of powers (Philipus M. Hadjon 1987).

Research methodology

This study employs normative juridical research by analyzing legislation governing the authority of the Notary Honorary Council in the execution of notarial duties. The approaches used include the statutory approach and the conceptual approach. This study aims to identify the meaning and qualifications of “good and correct law” that should underlie legal protection for the notarial profession. The statutory approach is used to examine the justification, qualification, and legal construction of proper legal protection for notaries by the MKN, while the conceptual approach is used to analyze the qualifications of “good and proper law” in assessing the authority of the MKN.

Results and discussion

A notary is a public official appointed and authorized by the state to prepare authentic deeds and carry out other functions as stipulated in the UUJN. The notary’s role is crucial in ensuring legal certainty, order, and protection in civil legal activities. Hence, the notary is associated with the principle of *officium nobile*, a noble, independent position that bears public trust.

In practice, however, notaries often face legal problems in both civil and criminal matters because the deeds they produce may be used as evidence in court. This exposes notaries to the risk of being held liable, even though they merely record the statements of the parties in authentic deed form.

Notaries also bear special responsibilities such as maintaining strict confidentiality of all deeds and supporting documents. Without adequate legal protection, notaries may be vulnerable to undue pressure or interference from law enforcement officials, which can threaten their independence and erode public trust in the notarial institution.

To prevent such situations, the UUJN establishes the Notary Honorary Council (MKN), responsible for assessing and deciding on requests for the extraction of deed minutes or for summoning notaries for investigative, prosecutorial, or judicial processes. The MKN thus acts as a professional filter, ensuring that access by law enforcement is granted only when legally valid while preventing abuses of power that could undermine a notary’s oath to maintain confidentiality. The existence of the MKN not only strengthens the state’s commitment to due process of law but also ensures that notaries can perform their duties without being influenced by pressures contrary to their oath of confidentiality and the principle of independence. However, the protection provided remains limited. MKN decisions are often administrative in nature and are not binding on law enforcement authorities. This causes MKN decisions to be frequently disregarded. To strengthen notarial legal protection, regulatory reconstruction is needed:

1. Expansion of MKN Authority. The MKN should not only grant permission for summons but also be authorized to conduct substantive verification of disputed deeds.
2. Institutional Synergy. Examination results by the MKN must be conveyed to the Notary Supervisory Council (MPN) as recommendations for administrative sanctions. This

ensures that MKN decisions do not end merely with approval or rejection but also serve as substantive input for notarial supervision.

Currently, MKN's authority is limited to granting or refusing permission. Without sanction mechanisms, MKN decisions risk becoming merely formalities. Strengthening MKN authority and linking its findings to MPN sanctions will enhance supervision and improve legal certainty for all stakeholders. The effectiveness of MKN authority must be recognized within the national legal system. A clear coordination mechanism between MKN and law enforcement—police as investigators, prosecutors as public prosecutors, and courts as adjudicators—must be established. Every legal process involving notaries should pass through the MKN, and its examination results must be formally recognized as recommendations to the MPN.

Conclusion

The Notary Honorary Council holds an important authority in providing legal protection to notaries in performing their duties. However, this protection is not yet optimal because the MKN does not hold the authority to impose administrative sanctions; such authority lies with the MPN. Therefore, the MKN must be granted authority to submit its examination results to the MPN as recommendations for administrative sanctions, ensuring institutional coordination between the MKN and MPN.

Such regulation would actualize legal protection and legal certainty for notaries, consistent with Gustav Radbruch's theory of legal certainty and Philipus M. Hadjon's theory of legal protection, enabling notaries to perform their *officium nobile* with safety, independence, and professionalism.

References

- [1] Adjie, Habib. 2008. *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik* (Refika Aditama)
- [2] Firdaus, Febrian Hilmi. 2024. 'Perlindungan Dan Kepastian Hukum Bagi Pengendali Data Pribadi Di Masa Depan', *Masalah-Masalah Hukum*, 53.2, pp. 135–44, doi:10.14710/mmh.53.2.2024.135-144
- [3] Hakim, Abdul. 2017. 'Measuring the Sense of Justice in Civil Judge Decision Based on Pancasila State Law', *Jurnal Hukum Dan Peradilan*, 6.1, pp. 361–78
- [4] Julyano, Mario, and Aditya Yuli Sulistyawan. 2019. 'PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM', *Jurnal Crepido*, 01, pp. 13–22 <<https://ejournal2.undip.ac.id/index.php/crepido/>>
- [5] Munaf, Yusri. 2023. *Hukum Administrasi Negara Sejarah Hukum Administrasi Negara*, in *Hukum Administrasi Negara*
- [6] Napitupulu, Richard Manuel/. 2025. 'Peran Notaris Sebagai Profesi Penunjang Pasar Modal Dalam Menjamin Kepastian Hukum Dan Keterbukaan Informasi', *Causa: Jurnal Hukum Dan Kewarganegaraan*, 12.12, pp. 1–10 <<https://ejournal.cahayailmubangsa.institute/index.php/causa/article/view/414>>
- [7] Philipus M. Hadjon. 1987. *Perlindungan Hukum Bagi Rakyat Indonesia* (Bina Ilmu)
- [8] Philipus M. Hadjon. 1987. *Perlindungan Hukum Bagi Rakyat Indonesia* (, Bina Ilmu)
- [9] Romli SA, and Dkk. 2014. *Perlindungan Hukum*, in *Paper Knowledge . Toward a Media History of Documents*, no. 2, vii