

The Concept Of Liability As Legal Protection For Notaries Exercising Authority In Indonesia

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ABSTRACT

This research examines the legal protection for notaries in exercising their authority, especially when there are allegations of errors in making deeds that can have an impact on criminal or civil lawsuits. The phenomenon of increasing lawsuit cases against notaries indicates the existence of legal uncertainty in this profession, which encourages the urgency of formulating a clearer concept of legal protection. Using the theory of liability, this research analyses the limits of notary responsibility as well as the concept of legal protection that can provide prevention against unfounded claims. This research uses normative legal research methods with statutory, case, and conceptual approaches. The results show that notaries need legal protection that can balance their duties and authorities, especially in relation to the limits of liability and the application of liability. The proposed concept of legal protection covers two aspects, namely preventive and repressive, to ensure that notaries can perform their duties independently and are safe from excessive legal threats. The conclusion of this research is expected to contribute to the formation of legal policies that strengthen protection for notaries and clarify the role of the state in providing guarantees to the integrity of the notary profession in Indonesia.

Keywords: Legal Protection, Notary, Authority, Liability, Indonesia

Introduction

In Indonesia, the role of notaries is indispensable in creating authentic deeds that assure legal certainty, especially in civil agreements. Authentic deeds prepared by notaries are legally recognized as having the highest evidentiary power, meaning that what is stated within is accepted as true by default unless contested. These deeds provide a clear and formal record of legal acts, supporting stability and predictability in civil matters such as property transactions, business agreements, and family-related agreements (Arben & Shandy Utama, 2024). The formal requirements for an authentic deed involve stringent adherence to legal standards. For example, notaries must verify the identities of parties, ensure proper documentation of the deed's contents, and follow standardized procedures for signatures and the recording of facts. Such protocols enable these deeds to serve as strong legal proof of the actions documented, contributing significantly to legal clarity (Maskanah & Oktavia, 2020; Melinda Oktavia, 2021). Additionally, notaries offer a form of legal counseling to parties, providing guidance on the legal implications of their agreements. This advisory role ensures that all parties fully understand the contents and effects of the deed, thereby minimizing potential disputes. This combination of counseling and documentation underscores the notary's function not just as a document provider but as a key figure in the enforcement of legal norms within the Indonesian civil law framework (Yuanitasari, 2017).

The urgency of this research lies in the importance of creating a more comprehensive and balanced legal protection system for notaries so that they can perform their duties without being threatened by unfounded lawsuits. Despite the existence of regulations such as Law No. 30/2004 on the Office of Notary (which was revised in 2014), there are still weaknesses in terms of providing complete protection, both in terms of notaries' immunity rights and clear limitations on their responsibilities. This challenge points to a research gap in notarial law

literature that has not comprehensively examined the application of the concept of liability as a legal protection mechanism for notaries. Most of the previous studies have focussed more on administrative and ethical aspects, while studies that relate the aspect of liability as a form of in-depth legal protection for notaries are still limited.

This research aims to identify and develop a comprehensive concept of legal protection for notaries using a liability approach. This approach will help clarify the boundaries of notaries' liability and provide a foundation for effective preventive and repressive measures in preventing excessive or unfounded lawsuits. The contribution of this research is expected to enrich the notarial law literature in Indonesia and provide a practical policy basis for policy makers in creating a fairer and more balanced legal system for notaries. The results of this study are also expected to strengthen the legal position of notaries and mitigate the risk of lawsuits, which in turn increases public confidence in the legal system in Indonesia. The purpose of this research is to analyze and formulate the concept of effective legal protection for notaries in exercising their authority, especially when facing allegations of errors in deed making. By understanding the boundaries of notaries' responsibilities and liabilities, this research aims to find solutions that protect notaries from unfounded lawsuits, so that they can carry out their duties safely and in accordance with procedures. Furthermore, this research seeks to clarify the role of the state in providing legal guarantees through a liability approach that includes preventive and repressive aspects. The results of the research are expected to provide applicable recommendations for policy makers in strengthening the notarial legal system in Indonesia, which thoroughly provides legal certainty for notaries while increasing public confidence in the notarial profession.

Methods Research

The research method used in this research is normative legal research method. The approaches used include statute approach, case approach, and conceptual approach (Tyler, 2017). The statutory approach aims to analyze applicable regulations related to the authority and responsibility of notaries, including Law Number 30/2004 on the Office of Notary and its amendments, as well as other relevant regulations. The case approach is used to examine court decisions that regulate and provide precedents in the application of liability for notaries, in order to understand how legal norms are applied in real cases. The conceptual approach is used to deepen the understanding of the concept of legal protection and liability in the notary profession, particularly in the context of responsibility and immunity rights. The data used is secondary data, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations governing the office of notary, secondary legal materials in the form of literature and previous research related to notarial law, and tertiary legal materials such as legal dictionaries and encyclopedias. Data was collected through a literature study that included inventorying, identifying, and analyzing legal materials. The data analysis technique used is the normative qualitative analysis method, which aims to interpret the data in depth and relate it to relevant legal theories, to formulate a comprehensive concept of legal protection for notaries in Indonesia.

Result and Discussion

The research identifies that legal protection for notaries in Indonesia remains insufficient, especially regarding their accountability in creating authentic deeds. Notaries are susceptible to civil and criminal lawsuits if the deeds they produce are found to contain errors or discrepancies. Although they hold significant authority to create authentic deeds, the current legal framework does not provide robust protections in instances where notaries are accused of errors in their work. This vulnerability often stems from the notary's lack of

responsibility to verify the material truth of the parties' statements in deeds, leading to potential legal repercussions if these statements are later contested (Noor et al., 2024).

Legal reforms have been suggested to introduce clearer protections similar to the immunity granted to advocates, which would protect notaries from certain liabilities unless gross negligence or malicious intent is proven. Improved legal safeguards for notaries in Indonesia are essential to help them carry out their duties without the constant risk of litigation, especially concerning errors in drafting authentic deeds. Current research underscores that while notaries are mandated to act independently and with caution, the legal framework still exposes them to potential civil and criminal liability if their deeds are later contested. This lack of adequate protection can hinder notaries from confidently executing their duties, impacting their role in ensuring legal certainty and upholding the validity of civil agreements (Zaki & Saidin, 2024). Studies advocate for strengthened legal protections, possibly through immunity provisions similar to those for advocates, which could protect notaries from liability unless intentional misconduct is proven. Such measures would not only minimize legal risks but also reinforce the notary's function as a trusted public official, contributing to legal stability and certainty in civil transactions across Indonesia (Setiawati et al., 2023).

This phenomenon arises due to several factors, among which is the lack of clarity regarding the regulation of the limits of notary responsibility in Law No. 30/2004 on the Office of Notary. Often, Notaries in Indonesia often face lawsuits related to deeds created based on the information and statements provided by the parties involved in the transaction, not due to the notary's own actions or errors. These lawsuits arise because the law requires notaries to produce deeds that reflect the intentions of the involved parties without necessarily verifying the material truth of the statements made. This situation exposes notaries to potential liability even when they have fulfilled their responsibilities according to professional and legal standards (Zaki & Saidin, 2024). Legal protections for notaries remain insufficient, as there are limited safeguards against claims arising from discrepancies in the parties' declarations. Researchers suggest that an immunity framework, similar to those provided for other legal professionals, could help reduce the risk of unjust lawsuits. This would strengthen the position of notaries, allowing them to focus on their duties without undue litigation threats, thus reinforcing their critical role in upholding legal certainty in civil matters (Yustia Nerissa Arviana et al., 2024). As a result, the role of notaries in providing legal certainty is threatened by the lack of regulations governing immunity rights and strict limits of authority. This phenomenon indicates an urgent need to formulate clearer limits of liability and comprehensive legal protection, given the importance of the notary's position as an official who guarantees the validity of legal documents.

In the context of the theory of the rule of law, this study highlights that legal protection for notaries in Indonesia serves as a fulfillment of the state's responsibility to guarantee legal certainty and equitable protection for public officials, including notaries. As public officials empowered to create authentic deeds, notaries play a crucial role in ensuring that civil agreements are documented with high legal integrity. This protection is essential because it enables notaries to perform their duties confidently, safeguarding them from potential legal repercussions due to the statements provided by the parties involved in these deeds, rather than their own actions (Zaki & Saidin, 2024). The Indonesian legal framework seeks to support this function by establishing protections that align with the principles of legal certainty and fairness. Nonetheless, research indicates that current protections for notaries could be strengthened, as they still face significant legal risks, particularly in cases involving disputes or allegations of errors in the deeds they draft based on third-party information. Expanding these protections, possibly through enhanced immunity provisions or clearer regulatory

guidelines, would allow notaries to uphold their roles effectively without facing undue legal vulnerability, thus reinforcing their trustworthiness as impartial public officials (Rahim et al., 2022). This analytical knife shows that the existence of regulatory gaps that cause legal uncertainty for notaries must be filled by strengthening legal protection. This strengthening is necessary so that notaries can exercise their authority safely without the threat of adverse laws due to the unclear boundaries of their responsibilities. Using legal development theory, this research views law as a tool to adjust to the dynamics of society's needs and the development of an increasingly complex legal profession (Liu, 2013). Based on case analysis, it is found that excessive lawsuits against notaries often arise from ignorance or misunderstanding of the role and limits of notaries' authority, indicating the need for more responsive and adaptive regulations. This gap can be addressed by strengthening immunity rights and regulating more specific responsibilities, so that notarial law can develop in line with its function as an instrument of legal protection for the public.

The theory of liability is used in this study to identify the ideal concept of liability for notaries, which is selective liability and only applies to acts outside of lawful authority (Pardosi, 2022). The analysis found that the concept of liability provides legal protection that is appropriate to the notary's role as an official who records the statements of the parties to the transaction, not as a party who has a share or responsibility in the content of the statement. This theory supports the need for preventive protection through the granting of immunity rights for notaries who perform their duties according to procedures, and repressive protection for notaries to be free from unfounded lawsuits. Overall, the results of this study show that the existing gaps in legal protection for notaries can be addressed by strengthening the regulations. Based on the three analytical knives used, this study suggests comprehensive legal protection, including preventive mechanisms to prevent unfounded claims and repressive mechanisms that protect notaries from liability beyond their authority. This stronger legal protection is expected to address the phenomenon of increasing lawsuits and increase public trust in the notary profession in Indonesia.

Conclusion

The conclusion of this research shows that legal protection for notaries in exercising their authority is still inadequate and requires significant strengthening. The lack of clarity of regulations regarding the limits of notary's liability, especially in the face of claims for alleged errors in making authentic deeds, results in legal uncertainty that has a negative impact on the notary profession. Based on analyses using the theory of the rule of law, the theory of development law, and the theory of liability, this study asserts that the state needs to provide legal certainty through regulations that are adaptive and responsive to the needs of the notary profession. The concept of liability proposed in this research provides ideal protection through preventive and repressive approaches, ensuring that notaries have the right to immunity for actions taken in accordance with their authority as well as protection from unfounded lawsuits. Thus, the results of this research are expected to serve as a foundation for the formulation of a more fair and balanced legal policy, which will strengthen the integrity and stability of the notary profession in Indonesia.

Suggestion And Recommendation

Based on the results of this study, the government and policy makers need to immediately conduct a comprehensive revision of Law No. 30/2004 on the Position of Notary, especially regarding the limitation of responsibility and immunity rights of notaries in exercising their authority. This revision needs to clearly define the scope of notary authority, as well as provide legal certainty that allows notaries to perform their duties without fear of

unfounded lawsuits. It is also important for the government to develop practical guidelines for notaries, particularly covering procedures for the performance of duties and the application of the right of recusal, so that notaries have a strong legal basis in cases of dispute. It is also recommended that there should be regular training and socialization for law enforcers and notaries regarding the understanding and exercise of notarial authority, which includes obligations, rights of recusal, and limits of liability. This socialization is expected to reduce misunderstandings in the field and ensure legal protection for notaries in accordance with professional standards. As part of a more comprehensive legal protection recommendation, it is necessary to establish preventive and repressive protection mechanisms that include direct legal protection procedures for notaries when facing disputes related to their duties. This mechanism could include stricter supervision of notarial practices and easier access for notaries to legal aid in cases of disputes related to the deeds they produce. These reform efforts are expected to enhance the integrity and stability of the notarial profession, as well as boost public confidence in the legal system and the notarial profession in Indonesia. With comprehensive legal protection, notaries will have a strong foundation to carry out their role as public officials who maintain legal certainty in society.

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