

Study of legal nomenclature on the status of notaries as public officials in relation to the concept of profession

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Abstract

This research is motivated by a conflict in legal nomenclature regarding the status of a notary; while the Law on the Office of Notary (Undang-Undang Jabatan Notaris or UUJN) explicitly defines a notary as a public official, the Minister of Finance Regulation Number 168 of 2023—concerning guidelines for tax withholding on income related to the work, services, or activities of individuals—classifies notaries as experts engaged in independent practice. This conceptual issue stems from the inherently independent nature of the notary profession. Such discrepancies in terminology create potential ambiguity regarding a notary's status, position, function, and legal characteristics; therefore, a comprehensive study from the perspective of notarial law is required to ensure legal certainty and a uniform understanding.

Keywords: Legal nomenclature, notary, public official, profession

Introduction

The "Considering" clause (Letter a) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary (commonly referred to as UUJN) states that Indonesia, as a state based on the rule of law, guarantees legal certainty, order, and legal protection for every citizen. In the life of the nation and state, it is crucial to ensure legal certainty, order, and legal protection for the public to prevent arbitrary treatment of Indonesian citizens. One such area is private (civil) law, which has given rise to legal provisions governing the process of legalizing or authenticating transactions between members of the public.

Historically, within private (civil) law, the process of legalization or authentication has been carried out by public officials and embodied in an authentic deed, as stipulated in Article 1868 of the Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata). The term "public official" refers to a position held by—or conferred upon—individuals authorized by law to execute authentic deeds.

Fundamentally, a deed is a written document intentionally created to serve as evidence of an event and duly signed.^[1]

An authentic deed is a deed drawn up in the form prescribed by law, executed by or in the presence of a public official authorized to do so at the place where the deed is made.^[2]

Any authority granted to an office must be grounded in legal regulations.^[3] Consequently, the state has established regulations regarding public officials who possess the authority—granted by statute—to draft authentic deeds and to legalize or certify transactions or agreements entered into by the public.

Article 1, Point 1 of the UUJN explicitly defines a notary as a public official authorized to draft authentic deeds and to exercise other powers as stipulated in said Law or other legislation.

The primary authority of a notary is to draft authentic deeds concerning all acts, agreements, and determinations required by legislation or desired by interested parties to be embodied in an authentic deed; to guarantee the certainty of the deed's execution date; to keep the deeds in custody; and

to issue "grosses" (executory copies), certified copies, and extracts of the deeds—provided that the drafting of such documents is not reserved for other officials or persons designated by law.^[4]

An authentic deed resulting from the recording process performed by or before a notary possesses perfect evidentiary value. Such a record clearly defines rights and obligations, ensures legal certainty, and is intended to prevent the occurrence of disputes.^[5] Therefore, authentic deeds play a crucial role in legal practice.

In their official capacity, a notary essentially constitutes an institution that, through the deeds they draft, creates written evidence possessing an authentic nature (and evidentiary force); this evidence serves as valid and robust proof of a legal event, thereby fostering greater legal certainty ("rechtszekerheid").^[6]

A notary is required to be normatively guided by the legal regulations governing any actions to be taken and subsequently embodied in a deed.^[7] These regulations are significant not only for the notary but also for the public—who are legal subjects interacting with the notary—as this relationship gives rise to specific rights and obligations.^[8]

In performing their duties, a notary must comply with and be bound by relevant regulations, namely the UUJN, the KUHPerdata, the Notary Code of Ethics, and other applicable laws.^[9]

Notaries are also expected to uphold high moral standards; such morality ensures they do not abuse their authority, thereby preserving their dignity as public officials who provide services in accordance with prevailing regulations without tarnishing the profession's image,^[10] thus affirming the notary profession as a noble one.^[11]

Consequently, in their capacity as public officials, notaries must consistently act in accordance with applicable regulations and the principle of prudence, as well as principles of neutrality and professionalism grounded in noble character, to guarantee legal certainty, order, and legal protection for interested parties.

This status as a public official indicates that a notary exercises a portion of the state's functions, particularly

within the realm of civil law. From a legal perspective, the concept of a "public official" refers not merely to a profession, but to an office conferred by the state, carrying specific authority to perform public functions.

In essence, a notary occupies a unique position characterized by a dual nature: acting as a public official exercising authority attributed by the state, while simultaneously functioning as a legal professional who provides legal services to the public in accordance with statutory regulations.

In carrying out their public functions, notaries earn income—referred to as an honorarium—for the legal services they provide to the public within the scope of their authority. Although notaries are public officials appointed and dismissed by the government, they are not government employees or civil servants who receive a salary from the state.^[12]

This conceptually distinguishes the notary from other professions, yet regarding income generation, it shares similarities with professions such as advocates, consultants, and accountants—occupations generally classified as independent practices. Furthermore, there is ambiguity regarding the designation and classification of the notary profession within other legal frameworks.

Under Article 3 (2), letter a of the Minister of Finance Regulation (Permenkeu) No. 168 of 2023, notaries are categorized as "experts performing independent work" (*tenaga ahli yang melakukan pekerjaan bebas*), alongside lawyers, accountants, architects, doctors, consultants, Land Deed Officials (PPAT), and actuaries.

An "Expert" (*Tenaga Ahli*) is defined as a person possessing expertise in a specific field of knowledge.^[13] Consequently, the term "Expert Performing Independent Work" refers to an individual who practices a specific profession or activity autonomously—unbound by an employment relationship—and earns income by providing services based on specialized expertise.

This classification places the notary, within a conceptual framework, as a subject practicing an independent, expertise-based profession. This raises questions regarding the theoretical and juridical justification for classifying notaries as experts performing independent work, as well as the implications of this classification for the interpretation of the notary's status as both a public official and a legal professional.

In this context, the distinction between the terms "public official" and "expert performing independent work" is not merely a matter of wording; rather, it reflects a fundamental difference in paradigms between a public office and a private profession. If not examined in depth, this difference in nomenclature has the potential to give rise to ambiguity and inconsistency in the understanding of the status of the notary profession.

Furthermore, this issue relates to the conceptual distinction between an "office" (*jabatan*) and a "profession" in legal science. An office is fundamentally tied to a public function exercised based on authority granted by the state, whereas a profession emphasizes individual expertise exercised independently for private interests.

Moreover, this reflects an inconsistency in the labeling or categorization of a legal subject within legislation. It also suggests potential differences in approach across other legal regulatory sectors regarding the status and position of a notary.

Therefore, examining legal nomenclature is crucial; conceptual issues regarding the designation or classification of a legal subject are not merely terminological but carry legal implications for the status, position, and legal recognition attached to that subject.

Thus, this research is relevant for critically analyzing—from the perspective of notarial law—the legal nomenclature defining a notary's status as a public official in relation to their designation and classification as a professional providing independent expert services, as well as for establishing a precise conceptual basis for definitively understanding the notary's professional status.

Research Methods

This study employs a normative-juridical research method. According to Johnny Ibrahim, normative legal research is a scientific procedure for discovering truth based on the logic of legal science from a normative perspective. The scientific logic in normative research is constructed upon the scientific discipline and the working methods of normative legal science.^[14]

Normative legal research treats law as a system of norms. This system of norms encompasses principles, norms, and rules derived from legislation, court decisions, agreements, and legal doctrines.^[15]

The research approach employed in this study is the statutory approach, which involves examining all legislation relevant to the legal issue under investigation. This approach is used to analyze the legal foundations that serve as the basis for further study of the research problem.

In addition, a conceptual approach is utilized by examining views and doctrines within legal science relevant to the issue at hand. This allows for the identification of ideas concerning legal concepts, principles, and definitions pertinent to the research topic. This approach serves to elucidate the conceptual comparison regarding the notary's status—as a public official and a legal professional—and its relevance within the private professional sector as an expert engaged in independent practice from a notarial perspective. The sources of legal material used in this study consist of secondary data. In normative juridical research, secondary data—data obtained indirectly through legislation, books, and other documents—constitutes the primary data source for normative (doctrinal) legal research. These legal materials comprise primary, secondary, and tertiary sources. Data collection was conducted through a literature review, involving the examination of widely published written information regarding the law from various sources. This literature review aimed to gather secondary data by undertaking a series of documentary study activities: reading and citing literature; collecting and analyzing materials on the issue from diverse sources (such as books, journals, the internet, legislation, and government regulations); and understanding, studying, noting, classifying, and incorporating the information into the analysis of the problem.

The data obtained were subsequently verified for completeness, clarity of meaning and language, and internal consistency among the various materials.

Subsequently, legal interpretation is conducted to clarify the normative meaning; this is followed by the formulation of legal arguments and the drawing of conclusions based on legal logic. Finally, the findings are organized systematically to present the results of the research based on the gathered legal materials.

Data analysis in this study employs a prescriptive analysis method, intended to provide arguments regarding the research findings. These arguments serve to offer a perspective or assessment of the research results.

Normative legal research is prescriptive in nature, as the object of legal science lies in the coherence between legal norms and legal principles, between legal rules and legal norms, and between individual conduct and legal norms.

Results and Discussion

The Notary Profession as an Expert Performing Independent Professional Work from the Perspective of Notarial Law

1. An Expert Performing Independent Professional Work

According to the Great Dictionary of the Indonesian Language (KBBI), an "Expert" is defined as a person possessing expertise aligned with their specific field of study or discipline. According to the Law Insider Dictionary,^[16] an Expert is a member of personnel possessing expertise, qualifications, and experience in a particular field.

An expert is an individual possessing specialized expertise who, in providing services based on that expertise, is not bound by an employment relationship (i.e., engaging in independent work or providing professional services); examples include accountants, actuaries, doctors, notaries, lawyers, tax consultants, designers, architects and so forth.^[17]

Experts often require advanced formal education or specialized training to develop their knowledge and skills. They possess a deep understanding of the theories, principles, and concepts relevant to their fields and are capable of effectively applying this knowledge in professional practice.^[18]

Experts are generally required in fields such as science, technology, medicine, law, accounting, and others. Their expertise serves as a source of knowledge and a reference for others within the same or related fields. Experts typically play significant roles and make important contributions in work environments—such as providing professional advice, conducting in-depth analysis, delivering complex solutions, driving performance and innovation, and enhancing efficiency in achieving work objectives.

According to Permenkeu No. 168 of 2023, Article 1, Point 8, "Independent Work" is work performed by an individual possessing specialized expertise as a means of earning income, without being bound by an employment relationship.

Thus, the term "Expert Engaging in Independent Work" refers to an individual who practices a specific profession or activity autonomously—unbound by an employment relationship—and earns income through the provision of services based on specialized expertise. The professions classified as experts performing freelance work under the regulation include doctors, accountants, consultants, lawyers, architects, notaries, land deed officials, appraisers, and actuaries.

Consequently, classifying the notary profession as a category of experts engaged in independent practice raises a significant conceptual question. This is because notaries possess characteristics distinct from other professions—specifically, their status as public officials appointed and dismissed by the state, charged with performing a public

service function through the drafting of authentic deeds. As service providers, while they must heed the dictates of their conscience, the paramount requirement is upholding professional integrity.^[19]

In general, independent practice entails full autonomy in the exercise of professional expertise, including the selection of clients, the setting of service fees, and the determination of the scope of services. However, the nature of a notary's work is not entirely independent, as it is bound by statutory regulations governing the office, the code of ethics, and the obligation to report activities to Supervisory Boards at both regional and central levels.

2. Analysis of the Notary Profession as an Expert Engaged in Independent Practice from the Perspective of Notarial Law

In general, the law recognizes and protects the autonomy of certain professions through professional ethics and codes of conduct. Some aspects of this recognition—specifically regarding professional autonomy—have been explicitly codified in legislation, such as the Law on Medical Practice, the Law on Advocates, the UUJN and others.

Professions that distinctively embody the field of legal practice include judges, advocates, and notaries. Regardless of the specific role held, a legal professional must—in the execution of their duties—always align with the law's objective: to provide protection to every individual by establishing order grounded in justice and respect for human dignity.^[20]

In the context of the legal profession examined in this study—namely that of the notary—there are distinct characteristics that set it apart from other professions. A notary does not merely practice as a legal professional but also holds the status of a public official exercising a portion of state authority.

The office of a notary is established pursuant to statutory provisions to provide assistance and legal services to the public by producing authentic written evidence of particular circumstances, events, or legal acts. As such, the notarial office is a public institution established by the State.^[21]

As a legal profession, notaries perform an essential function within the Indonesian legal system. Acting as public officials, they are vested with the authority to execute authentic deeds concerning legal acts, agreements, and determinations that are either prescribed by law or requested by parties with a legitimate interest.^[22]

In practicing their profession, notaries must adhere to various established legal provisions and professional ethical standards. The UUJN comprehensively regulates notary professional ethics through provisions governing the obligations, prohibitions, and responsibilities of notaries.^[23]

The classification of a notary as an "expert performing freelance work"—as stipulated in the provisions of the Permenkeu No. 168 of 2023—requires careful analysis from the perspective of notarial law. This is because the legal construct of the notary office within the Indonesian legal system cannot be separated from its primary character as a public official who derives authority through attribution based on the UUJN.

According to Notary Teuku Abdurrahman, classifying a notary as an "expert performing freelance work" is unjustifiable and must be rectified. This designation may have arisen due to a lack of consultation with the notarial sector; professionally, the label is incorrect, particularly

when viewed through the lens of the UUJN.^[24] Concurring with this view, Notary Ahmad Rifqi Nurilmi states that while an "expert" is defined as someone possessing specific expertise, the UUJN explicitly designates the notary as a public official; therefore, any regulation, institution, or agency defining the notary in terms other than those found in the UUJN creates a conflict. While a taxation perspective might view a notary as an expert performing freelance work—given the absence of fixed time limits, employment contracts, or government/private sector salaries—the true definition is established in Article 1 point 1 of the UUJN, and this definition must be strictly adhered to.^[25]

Normatively, the UUJN explicitly defines a notary as a public official authorized to draft authentic deeds and exercise other powers as stipulated by law. This formulation demonstrates that the basis for a notary's existence is not a private contractual relationship between a service provider and a client, but rather the exercise of state authority vested in the office (*ambt*) itself. Consequently, the legal product generated by a notary—the authentic deed—possesses the character of conclusive evidence (*alat bukti sempurna*) and embodies authenticity, as it originates from the official authority delegated by the state.

From the perspective of legal certainty theory, this classification of a notary as an expert performing freelance work must be understood within its specific regulatory context to avoid interpretations that conflict with the established legal construct of the notary office. According to the theory of legal certainty as articulated by Utrecht, the law must provide clarity regarding the rights, obligations, and status of legal subjects, ensuring that everyone has certainty concerning applicable norms. Similarly, according to Sudikno Mertokusumo, legal certainty serves as a safeguard for society, guaranteeing that the law is applied consistently and does not give rise to arbitrariness.

If tax regulations are interpreted to mean that the notary profession is identical to other professions involving independent practice, such an interpretation could create legal uncertainty. This is because the legal status of a notary as a public official is explicitly affirmed in Article 1, point 1 of the UUJN. Consequently, the provisions within the (Permenkeu) cannot be construed as altering the notary's legal status; rather, they serve merely as an administrative classification for the purpose of fulfilling tax obligations.

Furthermore, based on the hierarchy of laws and regulations—as stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations (as last amended by Law Number 13 of 2022)—a Ministerial Regulation, acting as an implementing regulation, cannot alter or override norms established by a statute. Therefore, the legal construct of the notary as a public official retains its binding force as the primary basis for determining the notary's legal status. The provisions in the Permenkeu apply solely within the scope of tax administration and do not alter the fundamental nature of the notary office under notarial law.

When examining the element of "independent practice" ("pekerjaan bebas") as defined in tax regulations, several key characteristics emerge: freedom in practicing the profession, the absence of a permanent employment relationship, and a focus on providing services based on expertise. In the context of notaries, the criterion regarding the absence of a permanent employment relationship is indeed met, as notaries do not hold the status of State Civil

Apparatus (ASN) or employees of specific institutions. However, the element of freedom in practicing the profession cannot be interpreted in absolute terms, given that notaries are subject to strict limitations derived from public law.

These limitations are reflected, among other things, in the notary's obligation to act honestly, impartially, independently, and diligently, while safeguarding the interest of the parties involved in the deed (Article 16 (1) of the UUJN). Furthermore, a notary is required to perform their duties within a designated jurisdiction, cannot refuse to draft a specific deed provided that formal and material requirements are met, and must comply with the supervisory mechanisms of the Notary Supervisory Board. Consequently, the scope of a notary's activity is not entirely unrestricted in the manner of a "freelance" or independent profession as understood in economic or fiscal terms.

Based on the foregoing, it can be concluded that while the notary profession entails professional expertise that positions the practitioner as a specialist, it cannot be categorized as a "freelance" expert profession within the substantive legal framework governing notaries. A notary remains a public official exercising public authority derived from statutory attribution; thus, their primary character is that of an agent executing state functions within the realm of civil law, rather than merely an independent professional service provider typical of the private sector.

Conclusion

The legal construction of the notary's designation as a public official—viewed through the historical evolution of notarial law—demonstrates a consistent recognition of the notary's status as such. From the inception of the notarial institution in Roman times and the Latin Notariat system in Continental Europe, through the "Reglement op het Notaris Ambt in Nederlands-Indie" (Stb.860 No. 3), to the enactment of the UUJN, the designation of the notary as a public official has never undergone fundamental change. Changes have been limited to aspects of office organization, authority, guidance, supervision, and liability, without altering the notary's legal character as a public official.

Conceptually, the notary holds an office that derives its authority directly from statute ("attribution") to perform public functions within the realm of civil law through the drafting of authentic deeds. Although the notary also possesses the character of an independent legal professional, this professional nature is a dimension inherent in the exercise of the office, rather than a standalone status. Thus, the notary's position is "sui generis", combining a public function—as a public official—with the demands of professionalism in the exercise of authority.

Suggestions and Recommendations

Legislators and regulators—particularly the government—should ensure that any regulations concerning the notary profession consistently respect the legal construction of the office of notary as established in the Law on the Office of Notary. Any use of specific terminology or classifications regarding notaries in sectoral regulations should be accompanied by adequate explanations to prevent multiple interpretations concerning the notary's status as a public official.

The Indonesian Notary Association (INI), academics, and legal practitioners are encouraged to continue analyzing and

developing ideas regarding the notary's status as a public official with a "sui generis" character, thereby fostering a more comprehensive understanding of the relationship between the public office dimension and notary professionalism within the Indonesian legal system. Future research is expected to further examine the legal implications of classifying notaries as professionals engaged in independent practice across various sectoral regulations—particularly regarding taxation, professional liability, and the harmonization of laws and regulations—thereby contributing to the development of notarial law in Indonesia.

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