

The Complexity of Notarial Law in Indonesia: Application of the Concordance Principle

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Abstract

This research aims to examine the urgency of implementing the concordance principle in the complex practice of notarial practice in Indonesia. The research method uses a thematic analysis approach, which is carried out by carefully examining a number of previous research documents and other relevant sources of information. To facilitate in-depth analysis, this study used Nvivo 12 Plus data analysis software. This research reveals that the application of the concordance principle in notarial practice in Indonesia has a significant impact. This principle creates legal certainty, protects public interests, increases efficiency, and supports harmonization with international standards. This also helps prevent legal conflicts, improve notary professionalism, and establish a strong and fair notarial system. By integrating diverse legal sources, the concordance principle maintains the continuity of quality notarial practice in Indonesia while enabling the country to remain in harmony with the demands of the international community in the areas of law and human rights.

1. Introduction

Legal aspects and development are crucial in the community (Ghapa & Asuhaimi, 2022; Makhtar & Ab Kadir, 2019; Razak et al., 2021). This also includes notarial law, which is an important part. Notary law in Indonesia is an integral part of a complex legal system and is very relevant in people's lives (Hartini, 2021; Keumala, 2023). A notary is a public official whose job is to create, ratify, and store various deeds and legal documents that have significant legal impacts, such as deeds of agreements, wills, or property sale and purchase deeds (Alincia & Sitabuana, 2021a; Noviana, 2021). In this important scope, the legal principle of concordance plays a crucial role. In the context of notarial law, the principle of concordance is important because notarial law does not stand alone but is closely related to various other legal

sectors (Almansyah & Putra, 2022).

Notaries must understand and apply various relevant notarial regulations, property law, contract law, and company law (Abdillah, 2023). The principle of concordance helps ensure that documents produced by a notary not only comply with notarial regulations but are also in harmony with other legal provisions that may be related to the transaction (Milton, 2012; Situmeang & Fajar, 2020). Legal complexity in Indonesia is also complicated by cultural diversity and customary law in various regions (Ekowati et al., 2023; Yusuf & Yuslem, 2023). The principle of concordance helps integrate these aspects into notarial practice to ensure that every legal transaction is recognized and respected in accordance with local norms.

In addition, the application of the concordance principle also supports the protection of public interests (Belackova et al., 2017; Witte, 2019). Notaries act as independent supervisors who ensure that every legal transaction is carried out legally and transparently, thereby protecting the rights and interests of the parties involved (Delmas, 2023; Palazzo, 2021). Thus, the principle of concordance, in this case, helps prevent practices that can harm society (Ramos, 2014). Legal certainty is also an important element that is supported by the principle of concordance in notarial law. The parties involved in legal transactions need to have confidence that the documents produced by the notary will be recognized and valid in accordance with the law (Alincia & Sitabuana, 2021b; Gusarov et al., 2023). This principle helps prevent future conflicts and disputes.

In general, the principle of concordance in law refers to efforts to integrate and harmonize various sources of law that apply in a jurisdiction (Halliday, 2015). This principle aims to create harmony and consistency in the legal system so that various rules, regulations, and legislation do not conflict with each other or result in detrimental conflicts. The concordance principle supports the creation of legal certainty, where individuals, businesses, and institutions can understand and comply with the law clearly without ambiguity or uncertainty (Halliday, 2015; Pahuja, 2011).

The application of the concordance principle becomes very important in situations where the applicable law has various sources, such as national law, international law, customary law, and others (Ben-Josef Hirsch & Dixon, 2021; Fasseur, 2007). This principle helps bridge differences and conflicts between these legal sources, thereby creating a coherent and integrated legal framework (Fasseur, 2007). Thus, the principle of concordance not only supports respect for legal provisions but also supports justice, efficiency, and stability in a country's legal system.

Currently, there has been much research that discusses each related topic. However, there still needs to be more study results that specifically and simultaneously link the complexity of notarial law in Indonesia with the application of the concordance principle. Especially in assessing and studying the complexity of notarial law in Indonesia, studies that combine these two

aspects still need to be found. Therefore, the main aim of this research is to fill this research gap, with the hope of making an important contribution to the understanding of how the complexity of notarial law can be overcome through the application of the principle of concordance, which in turn can increase efficiency, fairness, and legal certainty in notarial practice in Indonesia.

2. Research Method

This research method uses a thematic analysis approach, which is carried out carefully, examining a number of previous research documents and other relevant sources of information. This approach is often used to examine and map analytical sources from relevant documents, thereby helping researchers reduce bias (Ibrahim et al., 2023). To facilitate in-depth analysis, this study used Nvivo 12 Plus data analysis software. The data obtained from various sources was then transferred into the Nvivo analysis tool for the coding process. The unit of analysis used is case classification, which allows researchers to organize data more systematically and identify patterns or themes that emerge from the data.

The results of this analysis are then visualized, which helps in describing the research findings more clearly and in-depth. This approach provides a powerful framework for exploring the relationship between the complexity of notarial law in Indonesia and the application of the concordance principle, which can provide valuable insights in further understanding this topic. Validity in this research is guaranteed through various strict steps and strategies. First, the use of Nvivo 12 Plus as an analysis tool helps minimize the risk of human error in data coding and analysis. Furthermore, to ensure the quality of the data entered into the analysis tool, periodic checks have been carried out.

In addition, the selection of a representative sample of research documents and information sources also contributes to the validity of this research. The analysis results obtained have been compared with existing theories and concepts in the literature as well as with previous research findings to ensure consistency and accuracy of interpretation. Thus, these efforts together maintain the validity of this research and ensure that the findings obtained can be relied upon as a meaningful contribution to the understanding of the complexities of notarial law and the application of the concordance principle in Indonesia.

3. Results and Discussion

3.1. Application of the Concordance Principle in Legal Aspects

The application of the concordance principle is a crucial aspect of complex legal systems, especially in countries with a variety of applicable legal

sources (Halliday, 2015; Sornarajah & Wang, 2019). This principle aims to create harmony and consistency by integrating various legal sources that may conflict or overlap (Halliday, 2015). The application of the concordance principle has a major role in ensuring that the law operates efficiently and fairly. The following are the five main roles of applying the concordance principle:

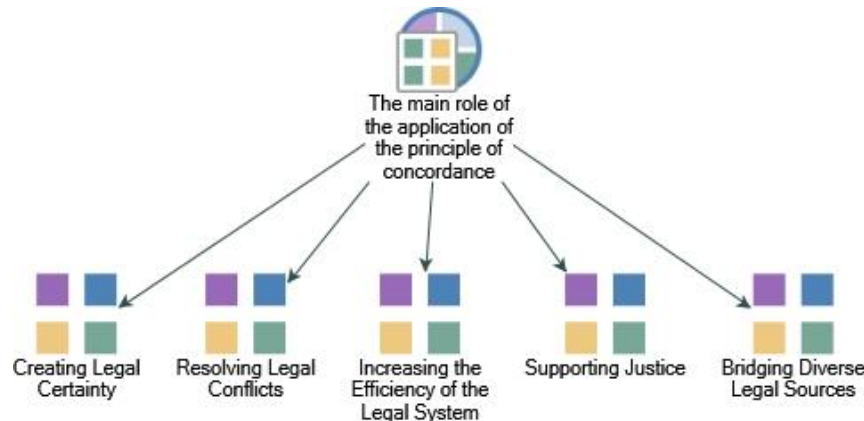


Figure 1. The main role of applying the concordance principle

Source: Processed by researchers using Nvivo 12 Plus, 2023

The application of the concordance principle has very important implications for maintaining the integrity and sustainability of the legal system (Fasseur, 2007; Sornarajah & Wang, 2019). One of its main roles is to create legal certainty, which is the foundation of a well-functioning society. By harmonizing various applicable legal sources, the concordance principle provides clear guidance for individuals, businesses, and institutions in understanding their rights and obligations (Fasseur, 2007; Gunlicks, 2001; Sornarajah & Wang, 2019). This avoids situations where different interpretations of various legal sources can cause confusion and uncertainty in decision-making. For example, when someone wants to carry out business or property transactions, a clear understanding of the applicable laws is essential to avoid risks and conflicts in the future.

Apart from that, the principle of concordance also plays a role in dealing with legal conflicts that may arise in complex legal systems. In some cases, various legal sources can conflict with each other, leading to potentially costly legal disputes. This principle helps identify these differences and tries to integrate these legal sources to reach consistent solutions (Fasseur, 2007; Sornarajah & Wang, 2019). This is an important step in maintaining fairness in the legal system, avoiding abuse of the law, and protecting individual rights.

Furthermore, the principle of concordance also has an impact on the efficiency of the legal system as a whole (Fasseur, 2007; Halliday, 2015; Sornarajah & Wang, 2019). In practice, an efficient legal process is very important to prevent unnecessary delays and additional costs in dispute resolution (Sarabdeen, 2023; Yeon, 2021). By harmonizing various legal sources, the legal process becomes more structured and easier to understand for the parties involved. This, in turn, reduces the time required to resolve legal

cases and saves costs associated with legal proceedings (Glukh et al., 2022; Janigová, 2023).

Furthermore, supporting justice is one of the most important aspects of implementing the concordance principle (Gattinara, 2015). This principle helps ensure that the law is applied consistently to all individuals without favoring or harming any particular party. This maintains the integrity of the legal system and gives people confidence that they will be treated fairly in the legal process. The existence of the concordance principle is very important in preventing potential abuse of law and discrimination.

In addition, the principle of concordance bridges the various legal sources that apply in the modern legal system. This includes national laws, regional regulations, international law, and customs that may apply at various levels. This principle acts as a tool that connects these legal sources, thereby creating harmony in the legal system as a whole (Fasseur, 2007; Halliday, 2015). Thus, the principle of concordance is not only a tool to avoid conflict but also to create a strong foundation for laws that function well in society.

Overall, the application of the concordance principle in the legal system has very significant implications for maintaining legal certainty, fairness, and efficiency. These principles create a framework that enables harmonization between diverse sources of law, avoids conflict, and resolves ambiguity. It provides clear guidance for individuals and legal entities in understanding their rights and obligations, which is essential in making informed decisions. In addition, the principle of concordance also supports efficiency in the legal process, preventing abuse of the law, protecting individual rights, and integrating different legal sources into one cohesive whole. Thus, the principle of concordance not only maintains the integrity of the legal system but also provides significant benefits for society in living its legal life.

3.1. Urgency of Implementing the Principle of Concordance in Indonesian Notary Affairs

Notaries in Indonesia have a very important role in creating legal certainty and protecting individual rights and interests in various legal transactions (Abdillah, 2023; Abdillah & Sahindra, 2022). However, amidst the diversity of legal sources and the complexity of the legal system in Indonesia, the application of the concordance principle is becoming increasingly urgent. Some of these exigencies are described as follows:

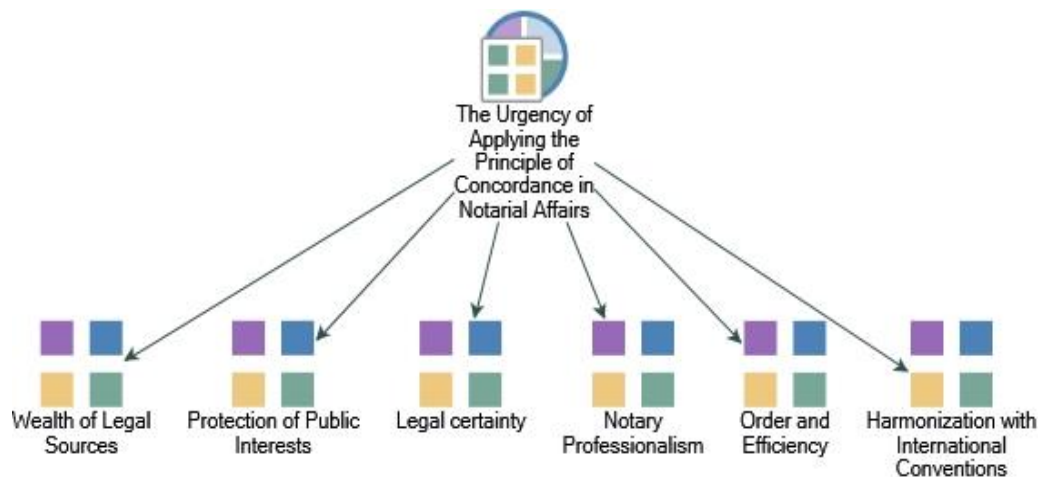


Figure 2. The Urgency of Implementing the Principle of Concordance in Indonesian Notary Affairs

Source: Processed by researchers using Nvivo 12 Plus, 2023

The application of the concordance principle in Indonesian notarial law has a very significant impact, which can be described in several interrelated aspects. First, the complexity of notarial law in Indonesia involves various legal sources, including notarial regulations themselves, property law, contract law, company law, and other legal regulations (Haidar Fitri & Khisni, 2018; Kelly, 2004; Koos, 2023). This creates challenges in maintaining harmony and consistency in notarial practice. The principle of concordance serves as a tool that allows combining these various elements into a cohesive whole. This, in turn, increases legal certainty in notarial practice, minimizes the risk of discrepancies, and facilitates the process of completing legal transactions.

Furthermore, the importance of protecting public interests in notarial practice must be addressed (Iryadi et al., 2021). Notaries act as independent supervisors who ensure that all parties in legal transactions are protected fairly and that the legal process proceeds in accordance with applicable regulations (Begichev et al., 2016). The principle of concordance helps notaries not only comply with notarial regulations but also integrate other relevant legal aspects into the transaction. This avoids potential abuse and protects the interests of the people involved in the agreement, creating greater trust in notarial practice.

Furthermore, in terms of order and efficiency, the application of the concordance principle helps build a more orderly structure in the preparation of notarial deeds and the legal agreement process. This makes notarial practice more efficient and minimizes the possibility of errors. Additionally, a unified framework helps ensure that each step in the process runs smoothly, which, in turn, results in better outcomes for all parties involved. In addition, in the context of harmonization with international conventions, the application of the concordance principle helps Indonesia fulfill its obligations in complying with international standards in the notarial sector. This is important because the country is involved in various international agreements governing human

rights and cross-border transactions. By applying the principle of concordance, notarial practices in Indonesia can be more aligned with international standards, enabling better recognition in the global community and increasing trust in international transactions.

Overall, the urgency of implementing the concordance principle in Indonesian notarial law becomes increasingly apparent when considering various aspects of the legal complexity involved, including protection of public interests, legal certainty, notary professionalism, efficiency, and harmonization with international standards. This principle is not only an important tool for bridging differences between various sources of law but also a foundation for building a stronger and fairer notarial system in Indonesia.

However, several obstacles need to be overcome in implementing the principle of concordance in Indonesian notarial law. This is related to the issue of awareness and understanding of the principle of concordance among notaries and related stakeholders. Many notaries may need to fully understand the benefits and relevance of this principle in their practice. Therefore, it is necessary to carry out more intensive training and outreach regarding the principle of concordance so that notaries can implement it better.

Apart from that, another challenge is the aspect of monitoring and enforcing the concordance principle. It is important to ensure that the implementation of these principles is not just a formality but is also carefully monitored. An effective supervisory institution and a fair dispute resolution mechanism are needed if there is a violation of the concordance principle. Next is the issue of cultural change in notarial practice. Applying the principle of concordance may require changes in patterns of thought and action that have long been ingrained in notarial practice. Therefore, efforts are needed to change the culture and mindset of notaries so that they are more open to the integration of various legal sources.

To overcome these obstacles, there needs to be a joint commitment from the government, notary institutions, academics, and other stakeholders. Training and outreach on the principles of concordance need to be intensified. The government must also be active in ensuring strict supervision of notarial practices involving the principle of concordance. In addition, regular research and monitoring need to be carried out to measure the impact of implementing the concordance principle in notarial practice and identify areas that need improvement. With commitment and joint action, these obstacles can be overcome, and the application of the principle of concordance in Indonesian notaries can become more effective and sustainable.

4. Conclusion

In the context of Notarial Affairs in Indonesia, the application of the concordance principle is essential to deal with the complexity of the legal system, which involves a variety of diverse legal sources. This is advantageous

in several important aspects. First, this principle creates legal certainty, which is especially important in legal transactions involving significant rights and obligations. This legal certainty avoids uncertainty in decision-making and the risk of conflict in the future. Second, the protection of the public interest is a top priority in notarial practice, and the principle of concordance helps maintain the integrity of this process by integrating various relevant legal aspects. This ensures that all parties to a legal transaction are protected fairly. In addition, this principle improves order and efficiency in notarial practice and helps Indonesia fulfill its international commitments in terms of protecting civil and legal rights. The application of the concordance principle is an important step in building a notary system that is strong, fair, and in line with the demands of legal complexity in Indonesia.

By integrating disparate legal sources, the principle of concordance creates a solid foundation for efficient and effective notarial practice. This contributes to the prevention of detrimental legal conflicts, increasing the professionalism of notaries, and harmonization with international standards. Therefore, the application of the concordance principle not only supports the interests of individuals and legal entities involved in transactions but also contributes to the progress of the Indonesian notarial system as a whole. In an increasingly connected world, the concordance principle also enables Indonesia to remain aligned with the international community in meeting relevant obligations and standards. Thus, the urgency of implementing the concordance principle in Indonesian notarial practice must be addressed, and steps to implement it need to be increased to maintain the continuity of quality notarial practice in this country.

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