

The Optimization of the Notary's Role Based on the Value of Justice in Achieving Legal Certainty of Banking Credit

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Article Info

Received: 2024-1-13

Revised: 2024-2-21

Accepted: 2024-3-31

Keywords:

Role of Notaries; Value of Justice; Legal Certainty; Authentic Deed; Banking Credit; Notary Responsibility

Abstract

Notaries have a moral and professional responsibility to ensure the validity of banking documents and to prevent future disputes. In the context of economic development, the authentic deeds created by notaries play a crucial role in establishing legal order through strong evidence. This research focuses on optimizing the role of notaries in creating justice and legal certainty in the drafting of banking credit deeds. The aim is to examine the role of notaries based on justice values in this process and to provide recommendations for enhancing notaries' responsibilities and legal protection. This study employs a normative research method with a juridical approach, referring to relevant laws and legal literature. The findings indicate that the role of notaries is essential in ensuring the validity of banking credit documents and preventing future disputes. However, ethical challenges and pressures from certain parties often affect this role. The main recommendation of this study is the need for strengthened oversight and improved competence of notaries to support professional integrity and substantive justice in notarial practice.

I. Introduction

According to Article 1, Article 15 paragraph (1), and Article 15 paragraph (2) of Law Number 30 of 2004 on Notary Position, a notary is a public official authorized to create authentic deeds and other powers as stipulated in the Notary Position Law. These powers include creating authentic deeds for all actions, agreements, and decisions required by laws and regulations or requested by interested parties to be stated in an authentic deed, ensuring the certainty of the date of creation, storing the deeds, and providing copies, excerpts, and certified copies of the deeds, all of which are not assigned to or excluded from other officials or individuals appointed by law.

The progress of a nation can be achieved through national development efforts, one aspect of which is economic development. Economic development drives the achievement of national goals as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. The element of order in civil legal relations requires written evidence that can provide legal certainty among the parties involved, in the form of authentic deeds. Notaries have a moral and professional responsibility to educate clients about the contracts or agreements they create to ensure legal protection for the parties involved, as the formation of such agreements involves the contribution of notaries (Sjaifurrachman, 2011). The role of a notary as a public official is to ensure fairness in the agreements made by clients, which requires notaries to have a deep understanding of the products, forms of deeds, and clauses that meet their clients' needs. This helps to minimize legal issues in notarial practice (Saragih & Djaja, 2023; Sjaifurrachman, 2011; Wardantik & Prawesthi, 2023). In practice, notaries must seek solutions to the issues faced by their clients and ensure that no disputes arise in the future between the bank, the client, and the notary.

According to Article 4 paragraph (2) of the Notary Position Law concerning the oath/pledge of notaries, it can be concluded that in carrying out their duties, notaries must be accountable to: First, God Almighty, in accordance with the oath or pledge made based on their respective religions, meaning that every action taken by the notary in performing their duties will be accountable before God. Second, the state and society, meaning that the state has entrusted notaries with national duties in the field of civil law, particularly in the creation of authentic evidence with perfect legal force, and to society which relies on notaries to articulate their intentions into notarial deeds and maintain the confidentiality of all information or

statements provided before them.

Deeds created by notaries play a crucial role in establishing legal certainty in every legal relationship because notarial deeds are authentic and serve as the strongest and most complete form of evidence in all matters related to the notarial deed (Sudjono et al., 2024). In various business contexts, such as banking, land transactions, social activities, and others—whether local, regional, or national—the demand for authentic deeds as evidence continues to grow (Hartanto & Sulaksono, 2019). Authentic deeds clearly define rights and obligations, ensuring legal certainty and minimizing disputes. Even if disputes are unavoidable, authentic deeds, as the strongest and most complete form of evidence, significantly contribute to resolving matters quickly and cost-effectively.

The strength of a notarial deed as evidence lies in the unique character of its creator—the notary, a public official granted special authority to create deeds. Essentially, every individual appointed as a notary is a public official authorized to create authentic deeds. An authentic deed contains formal truth, based on what the parties have communicated to the notary. Therefore, the notary must ensure that the content of the deed is fully understood and aligns with the intentions of the parties by reading it aloud, clarifying the contents, and providing access to relevant information, including applicable laws and regulations. This allows the parties to freely decide whether to agree or disagree with the content of the notarial deed.

The value of justice in notarial practice plays a crucial role in maintaining legal certainty and protecting the rights of the parties involved in the creation of deeds. As a profession that is strictly regulated, notaries are required to perform their duties based on the principle of justice, which not only ensures equality but also takes into account the specific rights and needs of each individual.

Regulations implemented by the Central Supervisory Council of the Indonesian Notary Association, such as the limit of 20 deeds per day, are designed to prevent malpractice and maintain the quality standards of notarial work. Kartikosari and Sesung (2017) mention that this limitation aims to prevent excessive workloads for notaries, which could impact the integrity of their work. By imposing this restriction, notaries can ensure that each deed they create meets the established legal and fairness standards.

According to the "Value-Based Equilibrium Balance" theory proposed by Bachrudin (2019), it is crucial to maintain a balance between the rights of notaries

as professionals and the rights of the individuals they serve. In drafting deeds, notaries must position themselves as guardians of justice, considering all factors affecting each party. For example, in the context of inheritance deeds, ensuring fair distribution among heirs is one of the greatest challenges notaries must face (Kanna et al., 2022).

Justice cannot be simply translated as equality, but rather involves a deeper interpretation of the conditions of each individual or party. Notaries are required to understand the specific legal needs of their clients, whether in the context of civil law, business, or inheritance, to ensure that their actions reflect the principle of justice. However, justice as a principle is often abstract and presents challenges in its application. Makhsuda (2022) emphasizes that the complexity in interpreting and applying justice in practice can create opportunities for injustice, whether intentional or unintentional. This ambiguity presents challenges for notaries in balancing legal certainty with the substantive justice they are required to uphold.

The practice of drafting deeds by notaries is often at stake in the context of future legal disputes. According to Marvin and Latumeten (2022), notaries must exercise caution in drafting legally binding deeds to protect their clients from potential disputes down the line. Overall, while justice is a core value in notarial practice, its application frequently encounters challenges, especially when regulations lack clear guidance or when interpretations of justice vary from case to case. Therefore, it is crucial for notaries to continually enhance their understanding of the principles of justice in order to provide services that not only comply with the law but also protect the rights of all parties fairly and prudently.

The optimization of the notary's role in creating authentic banking credit deeds is crucial to ensuring legal certainty and justice. This involves overcoming various limitations in notarial practice, enhancing supervisory authority, and adapting to technological advancements. Notaries must adhere to strict ethical standards and follow the existing legal framework to guarantee the authenticity of every deed they produce. Violations, such as performing activities outside their designated jurisdiction, can jeopardize the legal validity of the deeds they create (Kotyi & Djajaputra, 2023). Additionally, a notary's responsibility includes verifying the identity and intent of the parties involved in credit agreements, which is vital for ensuring legal certainty (Iswandari, 2023).

On the other hand, the current framework for supervising notaries is still considered to lack sufficient authority to impose sanctions, which ultimately

weakens accountability and justice in notarial practice (Armaini & Gunarto, 2023). Therefore, a reconstruction of supervisory authority is necessary to enhance oversight and ensure adherence to ethical standards. Technological advancements also present both opportunities and challenges for the notarial profession. The emergence of cyber notaries, for instance, offers efficiency in the deed creation process, but it remains crucial for notaries to be physically present during important transactions to maintain the authenticity of the deeds created (Putri et al., 2024).

Based on the background outlined above, this study offers novelty in the form of policy recommendations that prioritize the value of justice as a foundation for reforming regulations related to the notarial profession, thereby providing better legal protection for all parties involved in banking transactions. The aim is to examine the role of notaries based on justice values in the process and to provide recommendations for enhancing notaries' responsibilities and legal protection.

2. Research Method

This research employs a normative research method with a juridical approach. Normative research focuses on literature review related to legislation, legal theory, and relevant legal doctrines. The approaches used are the statutory approach and the conceptual approach. The statutory approach is employed to examine legal norms governing the role of notaries in creating banking deeds, particularly based on Law Number 2 of 2014 on Notarial Positions. Meanwhile, the conceptual approach is used to understand and analyze the concepts of justice and legal certainty applied in the creation of authentic deeds.

The data sources for this research consist of secondary data, which includes primary, secondary, and tertiary legal materials. Primary legal materials encompass applicable laws and regulations, such as the Civil Code (KUHPerdata) and Law Number 2 of 2014 on Notarial Positions. Secondary legal materials include scholarly literature, journals, and articles discussing the role of notaries and theories of justice, while tertiary legal materials comprise encyclopedias and legal dictionaries relevant to support the study. Data collection is conducted through library research, gathering legal materials from various relevant written sources.

The analysis method used is qualitative analysis, where the collected data is analyzed descriptively by explaining, understanding, and interpreting relevant legal concepts. In this process, data analysis is conducted with reference to legal

theories and applicable regulations to provide a comprehensive understanding of how notaries perform their roles based on justice and legal certainty in the creation of banking deeds. The results of this analysis are expected to provide recommendations related to optimizing the role of notaries and the legal protections needed to maintain integrity and professionalism in notarial duties.

3. Results and Discussion

The Role of Notaries Based on the Value of Justice in Ensuring Legal Certainty in the Creation of Banking Credit Deeds

In the process of creating banking credit deeds, the role of notaries as public officials is crucial for ensuring the validity of documents, protecting the rights of all parties, and preventing potential disputes that may arise in the future. This role becomes even more critical given that banking credit transactions involve significant assets and financial responsibilities that impact economic stability. Therefore, optimizing the role of notaries must be based on a deep understanding of the law, the application of high ethical standards, and a commitment to both substantive and procedural justice.

As part of the legal system, notaries play a key role in ensuring that every legal transaction, including those in the context of banking credit, is conducted legally and according to regulations. The creation of authentic deeds by notaries provides greater legal certainty compared to documents signed privately, as authentic deeds have perfect evidentiary force in the eyes of the law. Nugroho and Muryanto (2023) emphasize that notaries are responsible for ensuring the validity of the parties' identities, the accuracy of the document's content, and the validity of signatures in banking credit agreements. This means that the notary's responsibility is not merely administrative but also normative, as they must ensure that the rights and obligations of all parties are clearly and fairly stated in the deed.

Additionally, notaries must ensure that the deeds they create meet the requirements for the validity of agreements as outlined in Article 1320 of the Civil Code, which includes mutual consent of the parties, legal capacity, a specific object, and a lawful cause. Iswandari (2023) underscores the importance of the notary's verification process to ensure that all parties involved fully understand the contents of the agreement and that the agreement is made without coercion or fraud. In other words, notaries must act as moral guardians to ensure that banking transactions are conducted fairly and transparently.

The role of notaries also includes a crucial ethical dimension. One of the main challenges faced by notaries in performing their duties is ensuring that they remain impartial and are not subject to pressure from certain parties, including banks, which may have more dominant interests in credit transactions. Bachrudin (2019) highlights that intense competition among notaries can lead to unethical practices, where notaries might prioritize the interests of banks over providing fair services to all parties involved. In this regard, notaries must balance their professional responsibilities with strong personal integrity, ensuring not only textual compliance with the law but also adherence to a broader essence of justice.

Honesty, independence, and impartiality are ethical values that notaries must uphold in performing their duties (Nugroho & Muryanto, 2023). This means that in every banking transaction, notaries must always prioritize legal interests and justice over financial gains or pressure from more powerful parties. By adhering to these ethical guidelines, notaries play a crucial role in fostering a transparent and fair transactional environment, which ultimately enhances public trust in the banking and legal systems as a whole.

However, the role of notaries is not without challenges, particularly when dealing with practices that exceed their jurisdiction or violations of established legal procedures. Kotyi and Djajaputra (2023) highlight cases where notaries have been involved in practices outside their jurisdiction, which can ultimately undermine the validity of the deeds they create. This not only affects the validity of the documents but also impacts the notary's reputation as a guarantor of legal certainty. When notaries fail to perform their duties in accordance with the correct legal procedures, it can open the door to prolonged legal disputes that disadvantage all parties involved.

Another challenge that frequently arises is related to document misuse. Munandar (2023) emphasizes the importance for notaries to clearly clarify their legal position and responsibilities in each transaction to prevent potential corruption and deviations that could undermine banking integrity. When notaries optimally fulfill their role in this process, they not only protect the interests of banks and clients but also strengthen the banking system by ensuring that all transactions are conducted legally and transparently.

Optimizing the role of notaries in the banking context cannot be separated from the principle of justice, which underpins all legal actions. The theory of justice as articulated by Aristotle and developed by modern philosophers such as Josef Pieper

and St. Thomas Aquinas underscores the importance of justice in all aspects of social life, including economic and legal transactions (Ramadhani, 2021). In notarial work, this justice must be reflected in every deed created, ensuring that all parties involved are treated fairly and equally.

According to corrective justice theory, the role of the notary is to rectify imbalances that may arise in transactions, particularly when one party has more power than the other. This is highly relevant in the context of banking credit, where banks often have stronger bargaining positions compared to clients. By applying the principles of corrective justice, notaries can ensure that the client's rights are not overlooked and that every term and condition outlined in the deed genuinely reflects a fair agreement between both parties.

In cases related to banking credit agreements, a meticulous notary who ensures that all terms and conditions are clearly articulated and verified can successfully prevent disputes later on. Detailed examination and transparent attitudes in deed creation provide reassurance to both parties that the document is legitimate and fair. Conversely, there are cases where a notary's negligence in performing their duties has led to legal disputes, which eventually require judicial intervention to resolve. This demonstrates that the notary's role is crucial in ensuring that every document they create is not only legally valid but also fair and reflective of the intentions of all involved parties. Therefore, optimizing the role of notaries in ensuring justice and legal certainty in banking credit deeds is not just about fulfilling administrative functions but also about upholding justice, ethics, and professional integrity, ultimately contributing to public trust in the legal and banking systems.

The Responsibility of Notaries in the Creation of Defective Deeds and Recommendations for Legal Protection for Notaries

Notaries play a crucial role in the legal system as creators of authentic deeds. They hold a pivotal position in ensuring the accuracy and validity of legal documents, which requires a high level of accuracy and legitimacy (Hilmiafami & Dewi, 2024). Their responsibilities include creating authentic deeds by ensuring correct information, which is essential to avoid formal or material defects. Accountability is also a major aspect, where failure to perform their duties can result in administrative, civil, or criminal sanctions, including fines or imprisonment (Kamran et al., 2024; Nabilah et al., 2024).

In addressing these challenges, legal protection for notaries is vital. The implementation of the Principle of Legal Assumption, which can provide defense

against fraud claims, is one recommended step to strengthen the legal position of notaries (Hilmiafami & Dewi, 2024). Additionally, establishing a clear regulatory framework, especially for complex transactions, can also enhance legal protection and ensure compliance (Ranti & Adam, 2024). However, it is important to remember that notaries often find themselves in vulnerable positions due to their critical role in validating legal documents, making sustained legal protection and clarity in regulations essential.

The authority of notaries is regulated under Law No. 2 of 2014, which provides the legal basis for creating authentic deeds and electronic transactions (Putri et al., 2024). Notaries are required to adhere to applicable laws and ethical codes to ensure high legal standards and provide certainty to the parties involved (Kamran et al., 2024). Additionally, the principle of caution in identity verification is an important preventive measure to prevent fraud and potential invalidation of actions (Safitri, 2024). Failure to conduct due diligence can result in administrative sanctions and legal liability for notaries (Rahma et al., 2024).

In terms of accountability, notaries bear civil, criminal, and administrative responsibilities for the deeds they authenticate. If a deed is declared void by law, notaries may be held liable for any damages caused (Nurshinta & Gunardi, 2023; Rahma et al., 2024). Administrative sanctions, such as written warnings or dismissal, as well as criminal sanctions for malpractice, are designed to enforce professional standards and protect public trust (Furqani et al., 2024; Tunggeling, 2024).

Legal harmonization and regulatory clarity are key to enhancing legal protection for notaries. The lack of alignment between notarial and criminal law creates vulnerabilities that require harmonization to provide adequate protection (Setiawati & Adjie, 2023). Efforts to update the legal framework to match the evolving nature of notarial duties can reduce the risk of malpractice (Merietta & Djunaedi, 2022). Clarity in rules and procedures for notarial actions can also improve accountability and reduce the likelihood of malpractice, as seen in consular institutions that have improved their performance with structured guidelines (Kuzmenko et al., 2023).

The Principle of Legal Assumption serves as an additional safeguard, ensuring that notarial authentic deeds are recognized in disputes (Hilmiafami & Dewi, 2024). Support from professional organizations can provide additional education and support for notaries, strengthening their legal protection (Merietta & Djunaedi,

2022). However, excessive regulation can complicate processes and hinder public accessibility, highlighting the need for a balance between protection and operational efficiency.

Overall, improvements in legal protection and regulatory clarity are crucial for supporting notaries in performing their duties effectively. Legal harmonization, regulatory clarity, and professional support are key steps to ensuring security and integrity in notarial practice. With significant responsibility, notaries are often exposed to legal risks. Therefore, strengthening legal protection and regulatory clarity is vital to support them in performing their duties effectively and safely. Continuous enhancement in these aspects can help create a safer and fairer environment for notaries and strengthen the integrity of the legal system as a whole.

4. Conclusion

Based on the research findings, it can be concluded that the role of notaries is crucial in ensuring legal certainty, particularly in banking transactions involving substantial assets and high financial responsibilities. Authentic deeds created by notaries serve as valid proof and have strong legal power, providing protection for all parties involved in credit agreements, including both banks and customers. In practice, notaries have a significant responsibility to ensure that the essential conditions of agreements—such as mutual consent, capacity, specific objects, and lawful causes—are met. Furthermore, notaries face various challenges, including pressures from certain parties that may lead to unethical practices. This is especially true in the context of banking transactions, where banks often have greater negotiating power. Therefore, the role of notaries as guardians of justice must be supported by strong moral integrity, ensuring that every deed they create is not only legally valid but also fair to all parties involved.

Recommendations from this study include the need to strengthen the authority of notarial oversight to prevent malpractice and enhance accountability. Additionally, notaries should continuously update their competencies, particularly in response to technological advancements that may affect the deed creation process, such as through training on cyber notaries. To ensure a balance between legal certainty and substantive justice, notaries must adhere to ethical and moral principles in every transaction they handle. Finally, efforts should be made to improve legal protection for notaries through clearer harmonization of regulations between notarial and criminal law, to mitigate risks arising from legal uncertainties. It is hoped that the role of notaries in creating justice and legal certainty in banking transactions can be optimized more effectively.

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