

# **Regulation of the Limits of Authority of a Notary Undergoing Detention Without Temporary Suspension**

**Anggie Natasia Theis<sup>1\*</sup>, Alfons Zakharia<sup>1</sup>, Fathul Laila<sup>1</sup>**

<sup>1</sup>Faculty of Law, Brawijaya University Malang, Indonesia

\*Corresponding Author E-mail [anggienatasia@student.ub.ac.id](mailto:anggienatasia@student.ub.ac.id)

**Article History: Received: February 17, 2025; Accepted: April 28, 2026**

## **ABSTRACT**

Existing studies on notarial authority in Indonesia, such as analyses of the Law on Notarial Office (UUJN), have addressed general supervisory mechanisms and temporary suspensions but overlook the critical transitional period when a Notary faces detention (e.g., house arrest or city detention) without formal suspension. This gap leaves unresolved tensions between a Notary's persisting administrative authority and factual restrictions on liberty, potentially undermining the independence, objectivity, and validity of authentic deeds core to their role as public officials producing instruments with full evidentiary force. Addressing this novelty, this study analyzes the urgency of regulating limits on a detained Notary's authority who has not yet been temporarily suspended and formulates a regulatory model to ensure legal certainty and public protection. Employing a normative legal method with statutory and conceptual approaches, the research reveals that UUJN and its regulations lack operational boundaries for this scenario: normatively, authority persists, yet factually it cannot be exercised optimally, breeding legal uncertainty. The proposed model innovatively differentiates administrative status from functional eligibility, mandating temporary transfer of authority to a Substitute Notary.

**Keywords:** Notary Authority Limitation, Detention, Legal Certainty, Authentic Deed, Notary Regulation.

## **1. INTRODUCTION**

The Indonesian legal system is designed as an instrument to ensure legal certainty, order, and the protection of citizens' rights. Within this framework, the existence of valid legal evidence plays a fundamental role in affirming legal relationships among legal subjects, thereby ensuring that rights and obligations are juridically protected. One form of evidence possessing perfect evidentiary value is the authentic deed, which is drawn up by or before an authorized public official as stipulated in Article 1868 of the Indonesian Civil Code. In practice, such authority is vested in notaries, who perform a strategic function in providing legal certainty through the creation of authentic deeds.

The existence of the notarial institution in Indonesia is rooted in the adoption of the Continental European legal system, which has developed since the Dutch colonial period. Along with the evolution of national law, the regulation of the notarial office has been updated through Law Number 30 of 2004 concerning Notary Office, as amended by Law Number 2 of 2014. Under these provisions, a notary is defined as a public official authorized to draw up authentic deeds and to exercise other authorities as prescribed by law. Accordingly, a notary not only functions as a recorder of legal acts but also as a guardian of legal certainty in societal legal relations.



In the development of notarial law studies, scholarly attention has generally focused on issues of notarial liability, the validity of authentic deeds, and legal protection for the parties involved. Several studies indicate that ambiguity in defining the limits of a notary's authority may give rise to legal risks for both notaries and service users (Adjie, 2018). Other research highlights that law enforcement practices involving notaries often encounter obstacles due to the absence of comprehensive regulations governing specific conditions in the exercise of notarial duties (Hernoko, 2015). Furthermore, recent studies have begun to address issues of normative disharmony and legal gaps within the Notary Office Law, particularly in relation to extraordinary circumstances that may affect the exercise of notarial authority.

Nevertheless, there remains a lack of studies that specifically examine the limits of notarial authority in situations where a notary is undergoing detention in a criminal process but has not yet been administratively suspended. This indicates a significant research gap in notarial legal scholarship, namely the absence of a clear normative construction governing the status of a notary's authority under such circumstances, as well as the legal implications for the deeds produced.

This issue becomes increasingly complex as the Notary Office Law does not explicitly regulate the limits of a notary's authority during a period of detention prior to any formal suspension decision. This normative gap creates the potential for multiple interpretations in practice, affecting notaries, clients, and law enforcement authorities alike. From the perspective of legal certainty theory, a legal norm must be formulated clearly and definitively in order to provide reliable guidance in its application (Radbruch, 1946). The incompleteness of norms in this context may instead generate legal uncertainty and potentially harm the interests of parties associated with notarial deeds.

In light of these conditions, this study explicitly positions itself as an effort to address the normative gap by constructing a legal framework concerning the limits of notarial authority during detention. This research differs from previous studies in that it does not merely examine notarial liability or the general validity of authentic deeds, but specifically focuses on detention as a legal variable affecting the existence of notarial authority. Accordingly, this study lies at the intersection of notarial law, administrative law, and criminal law.

Based on the foregoing, the research problems addressed in this study are: (1) how the legal framework regulates the limits of authority of a notary who is undergoing detention but has not been temporarily suspended, and (2) what legal implications arise concerning the authority and legal products issued by the notary under such conditions. This study aims to analyze the



normative regulation governing the limits of notarial authority during detention and to formulate an ideal legal construction to address the existing normative gap.

The expected contributions of this study are both theoretical and practical. Theoretically, it aims to contribute to the development of notarial legal scholarship, particularly regarding the concept of public official authority under exceptional circumstances. Practically, it is expected to provide guidance for notaries, lawmakers, and law enforcement officials in understanding and applying the limits of notarial authority appropriately. Furthermore, this study may serve as a basis for the formulation of more comprehensive legal policies to ensure legal certainty and protection for users of notarial services.

## **2. RESEARCH METHODS**

This study employs a normative legal research method (doctrinal legal research), which focuses on the examination of legal norms, principles, and doctrines through the analysis of statutory regulations and relevant legal literature. In this context, law is conceptualized as a set of norms embodied in statutory regulations (law in the books) as well as a normative framework governing behavior in society. This method is selected because the primary objective of the study is to analyze the regulatory gap concerning the limitation of a notary's authority during a period of detention when the notary has not yet been temporarily suspended. This research adopts two approaches, namely the statutory approach and the conceptual approach. The statutory approach is conducted by systematically examining and analyzing relevant laws and regulations, with particular emphasis on key provisions governing the office and authority of notaries. In this regard, the analysis focuses on provisions of the Law on Notary Office, including Article 15, which regulates the authority of notaries in executing authentic deeds; Article 16, which stipulates the obligations of notaries in performing their duties; and Article 17, which outlines prohibitions imposed on notaries. In addition, Article 9 and Article 12 concerning temporary suspension and dismissal with dishonor are analyzed to identify the normative boundaries of a notary's status under certain conditions. Furthermore, this approach includes an examination of the Criminal Procedure Code, particularly Article 21, which regulates the legal grounds and requirements for detention, in order to assess the implications of detention status on a notary's ability to exercise their authority. Additionally, provisions of the Civil Code, especially Article 1868 concerning the definition of an authentic deed and Article 1320 regarding the validity requirements of agreements, are analyzed to evaluate the legal validity of deeds executed by a notary under detention. The analysis of these provisions aims to identify the construction of legal norms, uncover regulatory gaps or vague norms, and examine potential disharmony among legal provisions that may result in



legal uncertainty. Meanwhile, the conceptual approach is employed to address legal issues that are not explicitly regulated in statutory provisions. This approach is carried out by examining legal doctrines, theories, and scholarly opinions to construct a comprehensive conceptual framework, particularly concerning the concepts of authority, the position of notaries as public officials, the validity of notarial deeds, and the principle of legal certainty in situations where a notary is under detention but has not been temporarily suspended. This study utilizes three types of legal materials: primary, secondary, and tertiary legal materials. Primary legal materials constitute the main focus of this research, consisting of statutory regulations and official legal documents, particularly key provisions that directly regulate notarial authority (Article 15 of the Notary Law), obligations (Article 16), prohibitions (Article 17), and mechanisms of suspension and dismissal (Articles 9 and 12), as well as provisions concerning detention under Article 21 of the Criminal Procedure Code and the validity of authentic deeds under Article 1868 of the Civil Code. Secondary legal materials include legal literature, academic journal articles, and scholarly opinions that provide interpretation and analysis of legal norms. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to support and clarify the understanding of legal concepts. The collection of legal materials is conducted through library research by identifying, classifying, and systematically documenting relevant legal sources. The analysis of legal materials is carried out using qualitative juridical analysis, which involves interpreting and evaluating legal norms, principles, and doctrines, with particular emphasis on grammatical, systematic, and teleological interpretation of key provisions, in order to formulate coherent and logically structured legal arguments and conclusions.

### **3. RESULTS AND DISCUSSION**

#### **The Urgency of Regulating the Limits of Authority of Notaries Under Detention but Not Yet Temporarily Suspended**

The research findings indicate a discrepancy between the normative and factual aspects concerning the authority of a Notary who is undergoing a period of detention but has not yet been temporarily suspended. Normatively, based on the Law on Notary Position (UUJN), the authority of a Notary constitutes attributive authority derived directly from statutory provisions and remains attached as long as there has been no decision of temporary suspension issued by the Minister of Law and Human Rights (Hadjon, 1987). Thus, from a juridical standpoint, a Notary who has not been temporarily suspended retains the authority to perform their official duties.

However, empirical findings based on interviews with a Member of the Regional Notary Honorary Council of East Java and the Head of the Regional Supervisory Council of Malang City



reveal a different condition. A Notary undergoing detention whether in the form of house arrest, city detention, or detention in a state detention facility faces significant limitations in exercising their authority. These limitations include restricted freedom of movement, psychological pressure, and diminished independence in decision-making. Furthermore, although certain types of detention, such as house arrest and city detention, theoretically still allow the performance of professional activities, the findings demonstrate that, substantively, such conditions continue to hinder the optimal exercise of authority.

This study reveals a gap between *das sollen* (normative expectations) and *das sein* (empirical reality). Normatively, the authority of the Notary remains attached due to the absence of administrative action in the form of temporary suspension. This aligns with the concept of attributive authority in administrative law, which emphasizes that authority is inherently attached to an office as long as it remains legally valid (Hadjon, 1987).

Nevertheless, from a functional perspective, authority should not be understood merely as formal legitimacy but also as a means to effectively carry out public functions. Ridwan HR asserts that authority must be examined in relation to the capacity of a public official to perform governmental functions optimally (Ridwan HR, 2016). In this context, detention conditions render a Notary unable to meet the standards of professionalism, independence, and objectivity that are fundamental to the notarial office. Moreover, within the framework of public office function theory, a Notary, as a public official, is obligated to act honestly, independently, impartially, and in the best interests of the parties, as stipulated in Article 16 of the UUJN. In reality, detention conditions hinder the fulfillment of these principles; consequently, although authority legally persists, its exercise becomes functionally inappropriate.

This condition demonstrates that the existence of normative authority without corresponding factual capability in its implementation generates legal problems. This is consistent with the methodological view that legal analysis must explain not only what occurs, but also why such phenomena arise (Nawawi, 2008). The root of the problem identified in this research lies in the incompleteness of legal norms that do not explicitly regulate the operational limits of a Notary's authority under detention. This normative gap creates legal uncertainty, as authority is formally recognized on one hand, while on the other hand its implementation fails to meet professional standards.

The implications of this condition include the emergence of dilemmas for various stakeholders, including the Notary concerned, supervisory institutions, and the public as service users. Therefore, a clear regulatory framework is required to define the limits of a Notary's authority during detention, in order to ensure legal certainty, protect public interests, and maintain



the integrity and credibility of the notarial office as a public institution. Accordingly, the urgency of such regulation is not merely normative but also constitutes a practical necessity to harmonize the aspects of legality and functionality in the administration of the notarial office

**The Ideal Regulation Concerning the Limits of Authority of a Notary Undergoing Detention Without Temporary Suspension to Ensure Legal Certainty and Protection for the Public Using Notarial Services**

The findings of this study reveal a problematic condition in the regulation of the authority of notaries who are undergoing detention but have not yet been temporarily suspended. Normatively, such notaries remain legally active, as there has been no formal decision of temporary suspension issued by the Minister of Law and Human Rights. However, factually, the notary is unable to exercise their official authority due to physical and administrative constraints during the period of detention.

The research data further indicate the existence of a dualism between legal status (*de jure*) and factual condition (*de facto*). *De jure*, the authority of the notary remains attached to the office, whereas *de facto*, such authority cannot be exercised in practice. This condition creates a discrepancy between legal norms and empirical realities in the field. Moreover, it is found that statutory regulations do not explicitly govern the limits of notarial authority in this transitional condition. Existing regulations primarily focus on the mechanism of temporary suspension, without anticipating situations in which a notary has been detained but not yet formally suspended. This reflects the existence of a normative gap within the legal framework governing the notarial office.

In addition, there is no automatic mechanism for the transfer of authority under such circumstances. The absence of such a mechanism results in the disruption of legal services to the public, particularly in the execution of authentic deeds. On the other hand, there is also potential legal uncertainty concerning the validity of legal actions associated with a detained notary. Another finding indicates that the current legal framework has not integrated aspects of criminal procedural law with notarial office law. Detention is regulated under general criminal procedural law without considering its implications for specific public offices, including that of notaries. These findings point to a fundamental issue when viewed from the perspective of the theory of legal certainty. Legal certainty requires norms that are clear, consistent, and effectively enforceable. When legal norms fail to comprehensively regulate concrete situations, they give rise to multiple interpretations that may lead to legal conflicts (Nawawi, 2008).

The dualism between the *de jure* and *de facto* status of a detained notary reflects the failure of legal norms to accommodate empirical realities. Conceptually, the authority of an office should



not merely be understood as a normative attribute but must also take into account the factual capacity to exercise such authority. In this context, detention substantively eliminates the notary's ability to perform official functions; therefore, it is reasonable that such authority should be limited.

The absence of regulation concerning the limits of notarial authority during detention also demonstrates the low effectiveness of legal norms. A norm that fails to anticipate concrete conditions loses its functional relevance (law in action), even if it remains formally valid (law in books). This strengthens the argument that the normative gap in this case is not merely technical but structural within the legal system. From a legal system perspective, this condition arises due to the lack of harmonization between criminal procedural law and notarial office law. Criminal procedural law, through the Criminal Procedure Code, regulates detention as an instrument for restricting individual liberty but does not consider its implications for public office. Meanwhile, the Law on Notarial Office focuses more on administrative aspects without anticipating intervention from other legal regimes. This lack of integration creates a regulatory vacuum that leads to legal uncertainty.

Furthermore, this condition can also be analyzed through the principle of proportionality. Detention as a restriction of rights should not produce excessive consequences for other interests, including public interests. In the context of notaries, the impact of detention is not merely individual but also disrupts public access to legal services. Therefore, the absence of regulation on the limits of authority in such circumstances has the potential to violate the principle of legal protection for the public.

Based on this analysis, the reconstruction of legal norms becomes an urgent necessity. Such reconstruction should encompass several key aspects. First, there must be a clear affirmation that detention automatically limits the authority of a notary to perform official duties, thereby eliminating ambiguity between status and the exercise of authority. Second, a mechanism for temporary suspension must be established that is swift, responsive, and not dependent on prolonged administrative processes. Third, a lawful mechanism for the transfer of authority to a substitute notary must be provided to ensure the continuity of legal services to the public.

With a more comprehensive and integrated regulatory framework, legal certainty can be achieved not only in a formal sense but also substantively. Moreover, such regulation serves to protect public interests and to maintain the integrity and professionalism of the notarial office as a public institution.



#### **4. CONCLUSION**

The regulation concerning the limitation of authority of a notary who is under detention but has not yet been temporarily dismissed is necessary to address a normative vacuum that creates legal uncertainty during the transitional period. This condition reflects a lack of synchronization between the notary's formal legal authority and the factual limitations arising from detention, which in turn leads to legal uncertainty and may potentially disrupt the validity of notarial deeds as well as the protection of the public interest.

Ideally, a regulatory framework is required that distinguishes between the administrative status and the functional eligibility of a notary, so that the exercise of authority is suspended upon the commencement of detention and delegated to a substitute notary. Such a restriction should be temporary until there is legal certainty regarding the notary's status, and should be further regulated through implementing regulations to ensure legal certainty, public protection, and the integrity of the notarial office.

#### **REFERENCE**

- Adjie, H. (2018). *Hukum notaris Indonesia: Tafsir tematik terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris* (edisi revisi). Bandung: Refika Aditama.
- Harahap, M. Y. (2012). *Pembahasan permasalahan dan penerapan KUHAP*. Jakarta: Sinar Grafika.
- Hernoko, A. Y. (2015). *Modul ajar kuliah hukum jaminan (materi kuliah Magister Kenotariatan)*. Universitas sejenis, tidak diterbitkan secara komersial.
- Hadjon, P. M. (n.d.). *Perlindungan hukum bagi rakyat di Indonesia* (edisi lanjutan atau versi jurnal). Jakarta: Bina Ilmu.
- Nawawi, H. (2008). *Metodologi penelitian bidang sosial*. Jakarta: Ghalia Indonesia.
- Notodisoerjo, R. S. (1993). *Hukum notariat di Indonesia*. Jakarta: RajaGrafindo Persada.
- Radbruch, G. (1946). *Teori tujuan hukum: Konsep keadilan, kepastian hukum, dan kemanfaatan*.
- Ridwan, H. R. (n.d.). *Hukum administrasi negara (edisi lanjutan)*. Jakarta: RajaGrafindo Persada.
- Sjaifurrachman, & Adjie, H. (2011). *Aspek pertanggungjawaban notaris dalam pembuatan akta*. Bandung: Mandar Maju.

