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The meaning of the phrase “Protecting the interests of related parties” in depositing certificates with notaries

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Abstract

Notaries are following the legislation and the Code of Ethics. One of these obligations is to guard the interests of the relevant parties, which may include the deposit of certificates. However, depositing certificates is not explicitly part of the notary duties but rather a means of protecting the interests of the concerned parties. Consequently, there is a normative ambiguity in Article 16 Paragraph 1 letter h of the Notary Law. The study took a normative legal approach, using primary, secondary and tertiary legal materials to analyse this inconsistency. The study aimed to provide legal certainty regarding the notary obligation in depositing certificates. The findings indicated that, at present, notaries do not have legal protection when accepting the deposit of ownership certificates as a means of safeguarding the interests of the related parties. According to Gustav Radbruch's theory, this causes legal uncertainty, which necessitates legal reform to ensure protection for notaries and to clarify each of their obligations. The absence of clear legal provisions creates a risk for notaries, as they may face legal consequences despite acting in good faith to protect the interests of the involved parties. Furthermore, this ambiguity can cause inconsistent interpretations of notarial duties, affecting both notaries and the parties relying on their services. Therefore, it is necessary to introduce legal reforms that provide explicit regulations regarding the deposit of certificates by notaries. Such reforms would establish a clear framework for notaries to operate within, ensuring their protection while maintaining their

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professional responsibilities. A more comprehensive legal framework would enhance legal certainty and ensure that notaries can fulfil their duties without fear of legal repercussions, ultimately reinforcing the integrity of the notarial profession

Keywords:

validity of digital agreements; legal relationships; legal uncertainty; e-commerce; imbalance of legal positions

Introduction

Notaries are substantial in the legal system of Indonesian society, especially regarding compilation and ratification of authentic deeds related to land rights. From time to time, the need for notary services continues to increase along with the development of the property sector and increasing public awareness of the importance of legality in land transactions (Soraya, 2020). In this case, a notary acts as a public official who has the authority to make authentic deeds and provide legal protection for the parties to the transaction (Praminda Yona Mandela, 2019). In every transaction of buying and selling land, houses, apartments, shophouses, and other properties, a notary is central in ensuring that the entire process runs following applicable legal provisions (Saida Flora, 2021). One of the important stages in making a certificate of ownership is the sale and purchase agreement that must be conducted before the certificate can be issued. If the payment has not been paid in full, the certificate of ownership will usually be entrusted to a notary until all obligations are met. This is done to protect the interests of all parties involved in the transaction (Rizkia & Fardiansyah, 2022). Depositing a certificate with a notary is not an obligation explicitly regulated in laws and regulations, but rather a form of moral and professional responsibility of a notary in safeguarding the interests of the parties involved in a sale and purchase agreement. In this context, the phrase “protecting the interests of related parties” as regulated in Article 16 paragraph (1) of Law No. 30 of 2004 “On the Position of Notary”¹ becomes relevant, as it reflects the function of a notary as a party who acts neutrally and ensures that no party is harmed in a transaction.

T. Morina Ramadi (2022) identified that such deposits are used when buyers fail to fulfil obligations agreed upon in the sales contract. The study highlights that the process of certificate deposition involves cooperation with the National Land Agency (BPN) as part of the name transfer procedure. Furthermore, it evaluates the legal implications based on Articles 1694, 1706, and 1708 of the Indonesian Civil Code². Emphasising that notaries or notaries act solely as custodians, holding

the certificates as per agreement of parties without assuming ownership or additional obligations. Research conducted by N.M. Putri & H. Marlyna (2021) stated that notaries committing fraud, forgery, and violation of office bear the legal consequences and sanctions.

R. Amirullah (2021) explored the notary responsibility for the transfer of land title certificates deposited by prospective sellers to another notary at the request of prospective buyers. The study investigated the accountability of notaries in such transfers and the legal protection available to certificate owners. The study determined that notaries can be subject to administrative sanctions, such as warnings under Article 16 (1) of the Notary Law³ and may also face civil liability for unlawful acts under Article 1365 of the Civil Code⁴. Legal protection for certificate owners includes these sanctions and compensation for any losses incurred. D. Triani (2019) stated that notary cannot be held criminally responsible as there are buyer rights that must be protected in the deed of sale and purchase agreement. When the certificate is deposited, the notary makes a receipt for the parties. However, the notary must also be trustworthy in conducting the transfer of land rights, as the notary could be held administratively or civilly responsible because there is a seller who feels disadvantaged due to the legal actions conducted by the notary. S. Wulan *et al.* (2023) discussed the reasons for depositing certificates at a notary as the legal process has not been completed and the payments in the sale and purchase agreement were not fulfilled.

Based on the previous research above, there are differences in the current research that will be conducted. Previous studies did not discuss the meaning of the phrase of the notary obligation according to Article 16 Paragraph 1⁵ regarding guarding the interests of related parties. While this study aimed to examine the explanation of “safeguarding the interests of related parties” and the need for legal reform in the Notary Law⁶. As notarial practices evolve and legal transactions become increasingly complex, research on the meaning of the phrase “protecting the interests of related parties” in

¹ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

² Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

³ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

⁴ Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

⁵ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

⁶ Ibidem, 2014.

Article 16(1) of the Notary Law in the context of certificate deposit is crucial.

Materials and Methods

The normative legal research used in this study was based on an analysis of applicable legal norms, with a focus on the conceptual framework underlying certain regulations. This study used secondary data that included primary, secondary, and tertiary legal materials. Legal research had several approaches in research methods. The approach was used to obtain information from various sources regarding the legal issues that were answered. Normative legal research was used, therefore several approaches could be used as well, such as the statute approach and the conceptual approach (Marzuki, 2010). Primary legal materials consisted of laws and regulations as sources of law that had binding force. Primary legal materials in this study were related to the meaning of the phrase "Protecting the interests of parties who had special relationships" in the deposit of deeds with a Notary. Secondary legal materials, such as books and journals, were used to provide theoretical perspectives and support an understanding of legal politics and workers' rights.

The statutory approach was used as the main method, where the Law of the Republic of Indonesia "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary"¹, Civil Code of the Republic of Indonesia² and Government Regulation No. 18 "On Management Rights, Land Rights, Apartment Units and Land Registration"³ were analysed. In addition, a conceptual approach in this study was used to identify and define the ideas and basic principles that underlay the formation of the legal norms being studied. With this approach, the research not only focused on the content of the regulations but also on the concepts that underlay the formation of these regulations, such as justice, legal certainty, and the protection of workers' rights. This approach described the relationship between applicable legal norms and the legal objectives that were to be achieved in the context of legal politics and workers' rights so that the research results could provide theoretical and practical contributions to understanding and developing related legal policies. The theoretical foundation of this study was based on G. Radbruch's (1961) theory, which emphasised legal certainty as a fundamental objective of law, alongside justice and expediency. G. Radbruch's (1961) perspective on the necessity of clear, accessible, and predictable legal norms provided a critical framework for

analysing notarial responsibilities, particularly in guarding legal documents. The emphasis on stability and consistency in the application of laws aligned with the study's clarification of notarial duties to prevent disputes and enhance trust in the legal system. Thus, theory underpinned the conceptual approach of this research, guiding the examination of legal norms related to notarial practices and their role in ensuring legal certainty.

Results and Discussion

The phrase "protecting the interests of related parties" in the context of depositing a certificate with a notary must be defined as a form of legal protection provided to the parties so that no one is harmed due to negligence or abuse of authority. With the deposit of a certificate, the buyer is confident that the certificate will not be handed over before payment is complete, while the seller gets certainty that the ownership rights remain safe until the transaction is completed. This reflects the strategic role of a notary in creating legal balance in a sale and purchase agreement.

However, along with the increasing need for notary services, various challenges regarding legal protection for notaries. Notaries must account for the limitations of their authority in storing certificates so that they are not misused by one party. In addition, the provisions in the Notary Law⁴, the obligations of notaries in protecting the interests of related parties are still general and require further interpretation so as not to cause multiple interpretations in practice. Therefore, research on the phrase "protecting the interests of related parties" in depositing certificates with notaries is necessary. Notaries must obtain legal certainty regarding their limitations and obligations in storing certificates so that they do not face legal risks in the future. In addition, this research will also help in providing a deeper understanding of the role of notaries as protectors of the legal interests of the parties in land transactions.

With clarity regarding the duties and obligations of notaries in the context of depositing certificates, a better legal certainty could be created for all parties involved in land and other property sales transactions. This legal certainty will not only protect the interests of buyers and sellers but will also provide stronger legal protection for notaries. Therefore, the formulation of more stringent and comprehensive rules regarding the responsibilities of notaries in storing certificates is an urgent need to support a better land law system.

The obligations of a notary are comprehensively regulated under Notary Law and the Indonesian Notary

¹ Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

² Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

³ Government Regulation of the Republic of Indonesia No. 18 "On Management Rights, Land Rights, Apartment Units and Land Registration". (2021, February). Retrieved from <https://peraturan.bpk.go.id/Details/161848/pp-no-18-tahun-2021>.

⁴ Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

Code of Ethics¹. A notary is entrusted with upholding integrity and trustworthiness in their professional duties, as mandated by Article 16(1) of the Notary Law². This requires them to act honestly, impartially, and independently when dealing with legal documents and acts, ensuring that the interests of all related parties are protected. Their role as a public official necessitates neutrality, preventing conflicts of interest and maintaining public trust. Furthermore, notaries are prohibited from engaging in self-promotion or advertising, as stipulated in Article 4 of the Indonesian Notary Code of Ethics³. This restriction guards the dignity and credibility of the profession, ensuring that notaries remain impartial and committed to legal service rather than personal gain. A crucial responsibility of a notary is maintaining notary protocols, which involve securely storing original documents to prevent loss or damage. This obligation, outlined in Article 16(1) of the Notary Law, reinforces the importance of record-keeping and document preservation. Additionally, notaries must provide copies and extracts of deeds to those with legitimate interests, ensuring transparency in legal documentation. However, despite this duty to facilitate access to legal records, notaries are also bound by strict confidentiality requirements. They are obligated to safeguard all information obtained in the course of the duties, with legally mandated exceptions. This balance between accessibility and confidentiality reflects the delicate nature of the notary role in maintaining legal order. Another fundamental duty of a notary is ensuring that the deeds they draft comply with formal and material legal provisions. According to Article 16(1) of the Notary Law⁴, notaries must meticulously verify that each deed meets legal standards, thereby safeguarding the validity of legal transactions. This responsibility extends to providing comprehensive explanations to the parties involved, ensuring that they fully understand the contents and legal consequences of the documents they sign. By doing so, notaries minimise disputes and potential legal conflicts. Moreover, they are expected to reject any requests to draft deeds or perform legal acts that contravene the law, morality, or public interest, further emphasising commitment to legal integrity.

Notaries are also required to adhere to professional standards that promote fairness and equal access to legal services. Article 3 of the Indonesian Notary Code

of Ethics⁵ explicitly mandates that notaries provide services without discrimination based on ethnicity, religion, race, social class, or background. This ensures that all individuals receive equitable legal assistance, reinforcing the principles of justice and impartiality. Furthermore, notaries are permitted to operate only within their designated jurisdiction, as stipulated in Article 18 of the Notary Law. Any violations of this territorial restriction may lead to legal sanctions, thereby maintaining order and accountability in notarial practice. Lastly, a notary bears full responsibility for the deeds they draft, ensuring both their content and legal validity align with the law. Their accountability extends beyond mere document creation, encompassing the broader duty of legal compliance and protection of public interest. To fulfil this obligation, notaries are expected to engage in continuous legal education and training, staying updated with legal developments as required by Article 16(1) of the Notary Law⁶. Additionally, strict adherence to both the Notary Law and the Indonesian Notary Code of Ethics is imperative, as non-compliance may result in administrative, criminal, or ethical sanctions. Through these professional obligations, notaries uphold the integrity of the legal system and reinforce public confidence in legal transactions.

In civil law practice in Indonesia, notaries are strategic as public officials who are authorised by law to make authentic deeds. One of the important functions of a notary is to receive and store important documents, including land certificates, which is part of his/her duties to ensure legal certainty. This is regulated in Article 16 paragraph (1) letter a of Notary Law⁷, which states that notaries are required to safeguard the interests of parties related to the deeds they make. The development of the era has made society more aware of the importance of evidence, this is indicated by the increasing need for notaries, especially in making authentic deeds. Article 1868 of the Civil Code⁸ defines an authentic deed as writing whose form is determined by law and is made before a public official following the power of attorney held. Authentic deeds, in addition to being evidence, also protect and verify ownership rights so that they do not become a problem. Not only that, but authentic deeds can also function as a legal basis for an asset that has the rights and obligations of the owner of the rights (Rahman, 2019).

¹ Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.

² Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

³ Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.

⁴ Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

⁵ Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.

⁶ Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

⁷ Ibidem, 2014.

⁸ Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

Article 1 of the Notary Law¹ defines a notary as a professional whose main task is to do deeds and several other tasks following the Notary Law and the code of ethics. A notary is a profession that primarily provides services to the community related to their property, one of which is land. In Indonesia, land is the most complex thing because it is the source of every aspect of human life on earth. The problems related to land currently continue to occur along with the development and progress of development. Land rights can be obtained through sales transactions, leases etc. According to Article 1457 of the Civil Code², buying and selling is a process conducted by two or more people entering an agreement to pay and hand over goods that were mutually agreed upon. The buying and selling process is conducted by any goods transacted including land, if the land transfer process has been done, the buyer will receive proof in the form of a certificate of ownership. According to Article 32 Paragraph 1 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration³, a certificate of ownership is a valid proof of physical data and legal data following the original measurement letter and land book. A certificate does not guarantee that someone will avoid disputes, but it can minimise the occurrence of thereof. Moreover, as noted by M. Dolynska (2023), the process of digitalisation in notarial activities is central in land transactions. The Unified State Electronic Notary System ensures secure registration and verification of ownership documents, thereby minimising disputes related to land ownership. The author emphasised that although having a certificate does not guarantee immunity from disputes, it significantly reduces their probability via digital technologies and unified registers, which act as reliable sources of information for both buyers and state authorities. Blockchain technology may be another option for solving the problems associated with escrow (Yao & Hui, 2021). Instead of physically storing certificates with a notary, documents could exist as digital assets on the blockchain (Dias Menezes *et al.*, 2023). Given the global trends, there is potential for blockchain to increase transparency and security in notarial processes. The use of blockchain in the notary sector can provide immutability of records, transparency of transactions and process automation using smart contracts to automatically fulfil the terms of agreements. All this reduces the need for physical deposit of certificates with notaries, but as of 2025, such projects have not yet become widespread. In Sweden and Georgia, where land cadastres are well-developed and digitised, private blockchains are used as

a complementary technology to support existing registration systems while maintaining public engagement. In addition to land management and cadastral services, Ukraine has introduced a decentralised system of electronic real estate auctions. In Estonia, it has been incorporated into the e-government building system since 2008, completing the overall blockchain public service system for state digital assets (Park & Noe, 2022).

Before the sale and purchase of land is carried out before an authorised Land Titles Registrar, the parties must first make a deed of land sale and purchase agreement before a notary. The sale and purchase agreement is concluded as there are requirements that were not met to conduct the sale and purchase process. This agreement is intended as a preliminary agreement of the main intention of the parties to transfer land rights to the parties. According to R. Ramadhani (2022) opinion, sale and purchase agreement is a preliminary agreement, therefore, a binding sale and purchase agreement usually contains promises of the parties that contain terms or conditions that if all such terms or conditions are fulfilled, the sale and purchase of the land rights agreed upon in the binding sale and purchase agreement may be completed. The agreement to bind the sale and purchase of land rights includes an innominate agreement (an unnamed agreement) which is then purchased. In principle, the agreement for binding a sale and purchase is subject to the provisions of Article 1313 of Book III of the Civil Code⁴, which states that "An agreement is an agreement by which one or more persons bind themselves to one or more other persons".

A certificate of ownership is an important document and a vital state document owned by a person. The certificate of ownership can be issued by a designated institution, namely the National Land Agency. In addition to individuals, certificates of ownership can also be given to legal entities domiciled in the territory of Indonesia to provide legal certainty and their rights as users and utilise the land. In addition, the rights obtained are to resell, inherit, grant, transfer or charge. In the buying and selling process, of course, it begins with an Agreement. The agreement includes price, payment procedures, land area and dispute resolution between the two. Then from this agreement an agreement is born, in this case, the agreement in question is a land sale and purchase agreement. The agreement to bind the sale and purchase of land in general in the practice of contract, often occurs by storing the Land Rights Certificate related to the deed that is concluded in front of it, or the Building Rights which is then called Ownership Rights.

¹ Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

² Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

³ Government Regulation of the Republic of Indonesia No. 18 "On Management Rights, Land Rights, Apartment Units and Land Registration". (2021, February). Retrieved from <https://peraturan.bpk.go.id/Details/161848/pp-no-18-tahun-2021>.

⁴ Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

This deposit occurs based on an agreement between the two parties who entered into a land rights sale and purchase agreement. The storage of this certificate by a notary is usually to provide a guarantee of legal certainty to the parties. In this case, the notary must always fulfil professional mandate and must be following the Notary's Professional Code of Conduct. The notary is obliged to guard the certificate that is deposited, with a sense of responsibility for the trust given by the parties who entered into a land rights sale and purchase agreement and there is no bias towards one of the parties. As an authorised official, a notary has a great responsibility to ensure legal certainty in every legal action taken. Article 16 paragraph (1) letter a of the Notary Law¹ stipulates that a notary must act in a trustworthy, honest, thorough, independent, impartial manner, and protect the interests of the parties involved. Although the Notary Law² does not provide an explicit definition of the meaning of "trustworthy" and "protecting the interests of the related parties", this principle is an ethical and legal guideline that must be adhered to by a notary. This principle shows the importance of integrity and neutrality in conducting the duties of a notary, especially in protecting important documents entrusted by the parties.

In practice, the trust vested in a notary often manifests through the act of depositing land title certificates. This process typically occurs following an agreement between parties, such as in land sale or purchase transactions or preliminary agreements. When the buyer cannot pay the agreed land price, the land certificate is frequently deposited with a notary to ensure its safekeeping until the transaction is finalised. This highlights the notary role as a neutral custodian tasked with safeguarding documents from potential conflict or misuse (Hamda *et al.*, 2021). Depositing certificates with a notary involves not only legal considerations but also a significant element of trust among the parties. As a neutral third party, the notary bears the responsibility of maintaining the security of documents, remaining unbiased, and ensuring the protection of rights of all parties. In this context, the principle of "protecting the interests of related parties" forms a vital foundation, which must be defined to avoid multiple interpretations that could erode public trust in the notary profession.

The phrase "protecting the interests of related parties" fundamentally reflects the fiduciary role of a notary as a guardian of trust. In the context of certificate deposits, this phrase carries critical legal, ethical, and professional implications. Notaries are not only required to ensure the physical safety of documents but also to consider the legal consequences of breaches of trust or conflicts of interest that may harm the

parties involved. However, the deposit of certificates is not explicitly stipulated as a legal obligation under the Notary Law³. Land certificates do not form part of the notary protocol, such as deed minutes, and thus, certificate deposits are an additional service developed through customary practice. Despite this, when accepting such deposits, the notary remains morally and legally accountable for ensuring the security and integrity of documents, acting in a trustworthy manner, and safeguarding the interests of related parties. Challenges arise from the absence of detailed provisions on the phrase "interests of related parties" within the Notary Law or its implementing regulations. This regulatory gap creates room for varying interpretations among legal practitioners. Depositing land certificates with notaries occurs in multiple contexts, such as sales transactions, inheritance distribution, or dispute resolution. In such situations, notaries are expected to act with neutrality and objectivity. However, instances of misuse or negligence in certificate deposits can lead to new disputes, such as allegations of abuse of authority or failure to safeguard interests of parties (Kamran *et al.*, 2024).

One recurring issue is when notaries are perceived to have failed to protect the interests of related parties due to negligence, conflicts of interest, or abuse of authority. Such cases not only harm the affected parties but also damage the credibility of the notary institution, which is intended to uphold trust within the legal system. This situation underscores the pressing need for clearer definitions and regulations on the scope of "protecting the interests of related parties" in certificate deposit practices.

The analysis of the phrase "protecting the interests of related parties" is substantial in the context of the need to guarantee legal certainty for all parties involved. This is particularly relevant in safeguarding the rights of parties following the principles of prudence and trust within civil law. Moreover, this research could contribute to the development of technical regulations on the procedure for depositing certificates with notaries. In a broader legal context, this study is also pertinent to supporting the enhancement of notary accountability in performing their duties. By defining the boundaries and scope of notary obligations in protecting the interests of related parties, it is possible to achieve a balance between the rights of the parties and the professional responsibilities of notaries.

From a civil law perspective, an obligation of the notary to protect the interests of related parties should be regarded as part of the principles of prudence and good faith. Notaries bear legal, moral, and ethical responsibilities to safeguard the rights of parties relying

¹ Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

² Ibidem, 2014.

³ Ibidem, 2014.

on the entrusted documents. Therefore, all notarial actions must adhere to the principle of justice to prevent future legal uncertainties. The absence of detailed regulations regarding this phrase also creates the potential for multiple interpretations in its application. For instance, the phrase “related parties” in Article 16(1) of notary law¹ concerning Notarial Positions include parties explicitly mentioned in the deed and may also involve third parties with legal interests in the document. Accurate interpretation of this phrase is necessary to ensure legal certainty, protect the rights of all parties, and uphold the accountability of notaries in performing their duties. Addressing this ambiguity is essential to prevent potential conflicts in practice.

The obligations outlined above emphasise that notary duties include more than administrative functions, as they are also entrusted with significant moral and legal responsibilities. Notaries are crucial in ensuring justice by acting impartially, upholding the integrity of the legal documents they handle, and protecting the interests of all parties involved. Their actions must be guided by a strong sense of ethical duty, as their work directly impacts the legal rights of individuals and the stability of legal transactions. Furthermore, notaries contribute to maintaining public trust in the notarial profession by demonstrating professionalism, accountability, and adherence to the law. These combined obligations ensure that notarial services remain reliable and respected, fostering confidence in the legal system.

A notary is a public official governed by notary law. One of the fundamental principles in the execution of their duties is the obligation to safeguard the interests of the related parties, as stipulated in Article 16(1) of the Notary law.² This phrase reflects the ethical and legal responsibility of a notary to act with integrity, honesty, and impartiality, particularly in circumstances involving the safekeeping of documents such as land certificates. However, the interpretation of this phrase often becomes a topic of discussion, particularly concerning the principle of legal certainty. According to H. Adjie (2023), the duties and authorities of a notary are closely related to agreements, actions, and other formalities that give rise to rights and obligations between the parties, providing guarantees or evidence regarding such actions, agreements, and formalities so that the parties involved can obtain legal certainty. They must exercise caution to avoid errors in the deed, as they may be held liable under civil, administrative, or criminal law.

The phrase “safeguarding the interests of the relevant parties” can be interpreted as the notary duty to protect the legal interests of all parties involved in a particular legal act or document. This includes aspects of document protection, conflict prevention, and ensuring fairness among the parties. In the context of safeguarding land certificates, a notary not only physically stores the document but also bears the responsibility to ensure that the document is not misused or used against any party. The phrase “Safeguarding the interests of the relevant parties” is a fundamental principle that notaries must adhere to in their role as public officials. This principle encompasses the obligation to act neutrally, and fairly, and to ensure that the rights and interests of all parties involved in a legal act are equally protected. In this context, a notary acts as a custodian of the trust placed in them by the parties, whether through the creation of authentic deeds or in the safekeeping of important documents such as land certificates.

Although the meaning of “safeguarding the interests of the relevant parties” is not explicitly defined in the Notary Law, it can be defined as the notary responsibility to prevent potential losses or misuse of documents entrusted to them. Therefore, a notary must ensure that every action taken does not harm any party or violate applicable legal provisions. In fulfilling the obligations, notaries are required to adhere to principles of professionalism, as stipulated in Article 16(1) of the Notary Law³. Among these obligations are integrity, honesty, diligence, independence, impartiality, and safeguarding the interests of all concerned parties. This principle is also reflected in Article 4 of the Code of Ethics for Indonesian Notaries⁴, which emphasises that notaries must carry out their duties with full responsibility and uphold the dignity of the profession.

The obligation to safeguard the interests of relevant parties also includes the duty to act transparently. Notaries must provide clear and comprehensive explanations to the parties regarding the content, legal consequences, and impact of the deeds they execute. This aims to ensure that the parties understand the implications of their legal actions, thereby avoiding potential disputes in the future (Fariyansa, 2016). In addition, notaries must maintain the confidentiality of information obtained in the course of their duties. Article 16(1) of the Notary Law⁵ stipulates that notaries must keep confidential the contents of deeds and all information obtained concerning their creation, except as otherwise provided by law. This obligation

¹ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

² Ibidem, 2014.

³ Ibidem, 2014.

⁴ Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.

⁵ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

is part of the principle of safeguarding the trust of the parties while ensuring that their legal interests remain protected. The principle of “safeguarding the interests of relevant parties” also requires notaries to exercise care and caution in storing important documents, such as land certificates. Notaries must ensure that entrusted documents are kept securely, not damaged, lost, or used for purposes contrary to the interests of parties. In this regard, notaries bear the responsibility to provide legal protection for the entrusted document (Okaviany *et al.*, 2022).

G. Radbruch's (1961) theory identifies legal certainty as one of the fundamental objectives of the law, alongside justice and expediency. Legal certainty ensures that laws are clear, accessible, and predictable, allowing individuals to understand their rights and obligations and to anticipate the legal consequences of their actions. According to the author, legal certainty also demands stability and consistency in the application of laws to foster trust in the legal system and maintain societal order. In the context of a notary's role, particularly regarding the safekeeping of documents such as land certificates, legal certainty is crucial. However, the absence of explicit regulations addressing this responsibility creates ambiguity, potentially leading to disputes and risks for both the notary and the parties involved. Without clear legal provisions, notaries may face liability for loss, damage, or misuse of entrusted documents, even when acting in good faith. This lack of clarity undermines the principle of legal certainty and increases the potential for conflicts. G. Radbruch's (1961) emphasised that clear and detailed laws are essential to prevent disputes, protect the rights of all parties, and ensure the proper functioning of legal institutions. In this case, the development of precise rules governing notarial duties and liabilities would strengthen legal certainty, reduce the risk of misunderstandings, and enhance public trust in the legal system.

The safekeeping of land certificates with notaries often occurs in land sale and purchase transactions, particularly when the buyer has not yet completed the payment or when the documents need to be held until the legal process is finalised. In such situations, the notary acts as a document custodian, serving to prevent the misuse of documents by any party. This safekeeping has legal implications, as notaries must ensure that their actions do not violate agreements or cause harm to any party (Borman, 2019). According to G. Radbruch's (1961) theory of legal certainty, it is one of the primary objectives of law, alongside justice and utility. Legal certainty aims to provide predictability in the

application of the law so that individuals can understand their rights and obligations.

In the absence of clear regulations regarding the safekeeping of land certificates, notaries are in a vulnerable position due to the lack of legal guidelines protecting their actions in storing such documents. For instance, in cases of disputes between parties who entrust certificates or claims from third parties, notaries may be held liable for losses or misuse of the documents, even if they have acted following general professional principles. Research indicates that there are no specific legal provisions that explicitly regulate the obligation of notaries to store or accept the safekeeping of certificates from parties. The role of notaries under the Notary Law¹ is essentially limited to the creation of authentic deeds and providing certain legal services as requested by the parties. However, the practice of entrusting certificates to notaries has become a customary practice in society as a means of ensuring the security of documents and preventing misuse. This practice is based on trust in notaries as independent and credible public officials.

Nevertheless, this customary practice lacks a clear legal foundation, creating potential legal issues, such as the notary's liability in cases of loss or damage to untrusted certificates. This lack of clarity in regulations can cause legal uncertainty for both notaries and the parties entrusting their certificates. Therefore, more specific regulations are needed to govern the authority and responsibilities of notaries in accepting the safekeeping of certificates to provide better legal certainty and protection for all parties. The concept of safekeeping, or depositaries, is governed by Articles 1694 to 1739 of the Indonesian Civil Code.² Safekeeping is defined as an agreement in which a person hands over an item to another party who agrees to receive the item for safekeeping and to return it in the same condition. Article 1694 states that safekeeping is a legal act involving trust, wherein the party receiving the item (depositaries) is obligated to safeguard the item with care and return it as agreed.

In the context of land certificate safekeeping with notaries, the Civil Code³ provides a legal basis to ensure that certificates are securely stored and used only as agreed. However, the notary's role in safekeeping is unique because, in addition to being subject to the Civil Code, notaries also have ethical and professional obligations under the Notary Law, requiring them to act with integrity and safeguard the interests of relevant parties (Wulan *et al.*, 2023). The phrase “safeguarding the interests of relevant parties” in the Notary Law⁴ implies that notaries, as public officials, must perform their

¹ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

² Civil Code of the Republic of Indonesia. (1847, April). Retrieved <https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869>.

³ Ibidem, 1847.

⁴ Law of the Republic of Indonesia No. 2 “On Amendments to Law Number 30 of 2004 Concerning the Position of Notary”. (2014, January). Retrieved from <https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014>.

duties while considering the legal interests of the parties using their services in a fair, objective, and professional manner. This includes ensuring that all documents and information related to the creation of authentic deeds are thoroughly examined and comply with applicable legal provisions. Providing additional clarification to Article 16(1)(a) of the Notary Law, particularly concerning the safekeeping of certificates, would enhance legal certainty and offer balanced protection for notaries and the parties concerned.

Conclusions

The obligations of the notary position were regulated in Article 16 paragraph 1 of the notary law and the notary code of ethics. One of the obligations is to "protect the interests of the related parties". Notaries are responsibility for authenticity of deeds and legal protection for the parties involved in an agreement. One of the practices that often occurs in the process of buying and selling land, houses, apartments, shophouses, and other properties is the deposit of certificates with a notary. However, depositing certificates with a notary is not an obligation that is explicitly regulated in laws and regulations. This practice is more a part of the customs that have developed in the notary world as a form of protection for the rights of interested parties.

The ambiguity of the legal norm in the phrase "protecting the interests of the related parties" in Article 16 paragraph (1) of the notary law was one of the main problems in the study. This phrase is often interpreted

broadly, leading to the assumption that depositing certificates is part of the notary obligations. As a result, notaries do not have adequate legal protection in the event of a dispute or legal risk related to the deposit of the certificate. The lack of studies discussing aspects of notarial law reform causes uncertainty for notaries in carrying out their duties. Therefore, it is necessary to conduct a clearer and more comprehensive legal reform regarding the phrase "protecting the interests of related parties". With the existence of specific limitations and classifications regarding the responsibilities of notaries in the deposit of certificates, legal certainty will be created for all parties involved as well as stronger protection for notaries in carrying out their duties as public officials. With the existence of stricter regulations, it is possible to provide legal certainty for all parties involved in the sale and purchase transaction and provide stronger protection for notaries in carrying out their duties as public officials. This legal clarity will also prevent potential disputes and ensure that the role of notaries remains following the principles of justice and legal certainty. Further research on the topic could identify and codify best practices for notaries working with certificates of deposit, minimising the potential for disputes.

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Conflict of Interest

None.

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Поняття «захист інтересів пов'язаних осіб» у контексті посвідчення договорів у нотаріуса

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Анотація

Нотаріуси мають обов'язки, викладені в законодавстві й Етичному кодексі нотаріуса. Одним із таких зобов'язань є захист інтересів відповідних сторін, що може охоплювати депонування сертифікатів. Однак зберігання сертифікатів не є прямою частиною обов'язків нотаріуса, а швидше засобом захисту інтересів зацікавлених сторін. Отже, наявна нормативна невизначеність у пункті «h» частини 1 статті 16 Закону «Про нотаріат». У цьому дослідженні застосовано нормативно-правовий підхід з використанням первинних, вторинних і третинних юридичних матеріалів для аналізу цієї неузгодженості. Воно було спрямоване на забезпечення правової визначеності щодо обов'язку нотаріуса зберігати свідоцтва. Результати дослідження засвідчили, що нотаріуси не мають правового захисту під час прийняття в депозит свідоцтв про право власності як засобу захисту інтересів зацікавлених осіб. Згідно з теорією Густава Радбруха, така ситуація призводить до правової невизначеності, що зумовлює необхідність проведення правової реформи для забезпечення захисту нотаріусів і роз'яснення їхніх обов'язків. Відсутність чітких правових норм створює ризик для нотаріусів, оскільки вони можуть постати перед правовими наслідками, попри те, що діють добросовісно, захищаючи інтереси залучених сторін. Крім того, невизначеність може призвести до непослідовного тлумачення нотаріальних обов'язків, що впливає як на нотаріусів, так і на сторони, які покладаються на їхні послуги. Тому необхідно провести правову реформу, яка передбачала б чіткі правила зберігання нотаріусами нотаріальних свідоцтв. Такі реформи встановлять чіткі межі для діяльності нотаріусів, забезпечать їх захист, водночас зберігаючи їхні професійні обов'язки. Комплексна правова база підвищить правову визначеність і гарантуватиме, що нотаріуси зможуть виконувати свої обов'язки, не побоюючись правових наслідків, що зрештою забезпечить добросовісність нотаріальної професії

Ключові слова:

зобов'язання; власність; відповідальність; публічний службовець; договір про надання послуг