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THE OBLIGATION OF “SAKSAMA” IN ARTICLE 16 OF THE LAW ON NOTARY POSITIONS: A PERSPECTIVE ON THE PRINCIPLE OF DILIGENCE IN PARTIJ DEED

This study analyzes the implementation of the principle of “due care” as stipulated in Article 16 of Law No. 2 of 2014 concerning the Position of Notary. This principle requires notaries to act with high levels of diligence, honesty, and integrity in carrying out their duties. The objective of this research is to explore the normative, substantive, and practical meanings of the principle of “due care” and to identify challenges in its implementation. Employing normative legal research methods, this study integrates a statutory approach to understand the normative framework of the regulation and a hermeneutic approach to interpret the social context and legislative intent. The analysis technique used is content analysis of legal documents, academic literature, and relevant court decisions. The findings reveal that the implementation of the principle of “due care” faces challenges such as the lack of operational definition, limited technical competence of notaries, and weaknesses in supervisory mechanisms. These issues can lead to varying interpretations and risks of violations by notaries. This study recommends regulatory reforms to clarify the legal boundaries of the “due care” principle, the development of continuous training to enhance notary competence, and the strengthening of technology-based supervision and periodic audits. In conclusion, reforms in regulation, education, and supervision are necessary to ensure the consistent application of the principle of “due care”. This research provides practical and theoretical contributions by offering strategic steps to strengthen the integrity of the notary profession and increase public trust in Indonesia’s legal system.

Keywords: *due care principle, notary position, hermeneutic approach, legal regulation, supervision mechanisms, legal system, public trust.*

Original article

INTRODUCTION. A notary is a public official entrusted with specific legal authority, particularly in drafting authentic deeds. Appointed by the state, a notary bears the responsibility of ensuring that the deeds they prepare comply with legal requirements, provide legal certainty, and protect the rights of the involved parties (Kamelia, 2017). In accordance with Law Number 2 of 2014 on Notary Positions, the principle of diligence serves

as one of the fundamental principles that notaries must uphold. This principle mandates notaries to act with care, thoroughly examine documents, and ensure that the content of the deed reflects the legitimate and genuine intentions of the parties (Sibuea, 2010). Article 16, paragraph (1), letter a of the Law on Notary Positions explicitly requires notaries to act diligently. This obligation includes verifying the validity of legal requirements, ensuring

clarity in the content of deeds, and preventing ambiguous interpretations that might lead to future legal disputes (Nurwulan, 2018).

Notaries are responsible for ensuring the formal validity of the deeds they draft, which includes verifying the identity and legal capacity of the parties involved and ensuring the completeness of the required documents. The principle of diligence acts as a critical foundation that ensures notarial duties are executed in alignment with professional standards and applicable legal provisions (Sundari, 2015). Despite this, the practical application of “diligence” often leads to multiple interpretations, creating legal ambiguities that may be exploited in disputes. For example, when a deed prepared by a notary is deemed legally defective, it is not unusual for the notary to be named as a defendant, even when their actions adhere to established procedures (The, Kawuryan, 2018).

Cases such as the annulment of a sale and purchase deed in Supreme Court Decision Number 89/Pdt.G/2023/PN Tlg underscore the critical importance of adhering to the principle of diligence at every stage of deed drafting. In this ruling, the notary was found negligent in verifying the validity of the documents submitted by the transacting parties, resulting in the deed being declared legally invalid. The principle of diligence, as articulated in the Law on Notary Positions, plays a vital role in ensuring legal protection for notaries while simultaneously providing legal certainty for the public (The, Kawuryan, 2018).

A notary is a public official authorized to draft authentic deeds under the mandate of Law Number 2 of 2014 on Notary Positions. Among the key obligations outlined in Article 16 paragraph (1) letter a is the requirement to act “trustworthy, honest, diligent, independent, impartial, and to safeguard the interests of the parties involved in legal actions”. However, the regulation does not provide a clear and explicit definition or scope of the term “diligent”. This regulatory gap has resulted in varying interpretations within legal practice, particularly when determining the extent of a notary’s responsibility for the deeds they prepare. For instance, in the context of drafting a *partij* deed, the notary’s role is limited to recording the statements made by the appearing parties and does not extend to verifying the substantive accuracy of those statements (Kamelia, 2017). Despite this, notaries are frequently held liable in legal disputes over deeds deemed defective or procedurally noncompliant, highlighting the need for clearer regulatory guidelines.

The absence of clear boundaries regarding the meaning of “diligence” significantly affects its application as a fundamental principle in notarial

duties. Without explicit guidelines, the principle of diligence is prone to subjective interpretation, which can burden notaries legally and create legal uncertainty for the public (Anand, Syafruddin, 2016). This highlights the need for a thorough analysis to identify gaps in current regulations and to formulate more comprehensive policies that protect notaries’ roles while enhancing legal certainty.

As public officials, notaries are mandated to act diligently, as stipulated in Article 16 paragraph (1) letter a of Law Number 2 of 2014 on Notary Positions. This principle not only ensures the formal validity of deeds but also serves as a moral and legal foundation to protect parties involved in *partij* deeds. However, the lack of a clear definition for “diligence” often leads to varying interpretations among legal practitioners and academics (Paramaningrat Manuaba, Parsa, Ketut Ariawan, 2018). This ambiguity increases the risk of disputes, particularly regarding the validity of authentic deeds.

This study seeks to provide a clearer understanding of the application of the principle of diligence and to advocate for more specific regulations. The findings aim to strengthen legal certainty while enhancing public protection, particularly for parties involved in *partij* deeds. Cases of annulled deeds due to alleged negligence in preparation underline the urgency of defining operational boundaries for the principle of diligence (Adjie, 2008). Cases of annulment of authentic deeds due to a lack of diligence in their preparation emphasize the need for further study to establish clear and practical boundaries for this principle. Notaries, as public officials, are tasked not only with recording and drafting the intentions of the parties but also with ensuring document validity and compliance with legal procedures. This research aims to explore how the concept of “diligence” in Article 16 can be practically applied in drafting *partij* deeds and its implications for legal protection for all parties. The findings are expected to strengthen legal certainty and uphold the integrity of the notarial profession.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The purpose of this research is to analyze the principle of “due care” as stipulated in Article 16 of Law No. 2 of 2014 concerning the Position of Notary, focusing on its normative, substantive, and practical dimensions. The study aims to achieve a comprehensive understanding of the challenges associated with the implementation of this principle in notarial practices and to propose actionable recommendations for its improvement. The ultimate scientific result expected from this research is the formulation of reform

strategies that strengthen the regulatory, educational, and supervisory frameworks necessary for enhancing the integrity and effectiveness of notarial functions in Indonesia.

This research explores the normative framework of the “due care” principle as outlined in current legal regulations while interpreting its substantive meaning through a hermeneutic approach. This interpretation considers both the legislative intent and the broader social context in which the principle operates. Furthermore, the study examines gaps and challenges in the current application of this principle within notarial practices, highlighting areas where improvements are urgently needed. Based on these findings, the research proposes recommendations to clarify regulatory definitions, enhance training programs for notaries, and reinforce supervisory mechanisms.

By addressing these dimensions, the study contributes to a more consistent and effective application of the principle of “due care”, ultimately fostering greater public trust in the notary profession and enhancing the reliability of the legal system in Indonesia.

METHODOLOGY. This study adopts a normative legal research method, relying on the analysis of legal texts and official documents as its primary sources (Irwansyah, 2020). A statutory approach is applied to examine various related regulations, including Law Number 2 of 2014 on Notary Positions, its implementing regulations, and other relevant legal instruments. The main objective of this approach is to explore the normative framework underlying the principle of “diligence” and evaluate the extent to which existing regulations provide adequate guidelines for its implementation.

As a complement, the study employs a hermeneutic approach to delve deeper into the meaning of the principle of “diligence”. This approach considers the historical context, legislative intent, and social conditions in which the principle is applied (Phelps, Pitts, 1984). Through the hermeneutic approach, the research goes beyond textual analysis of the law to assess the substantive and ethical dimensions embedded in the principle. This enables the identification of gaps between legal norms and practices in the field and offers guidance for the application of the principle of “diligence” in the notarial profession.

For its analytical techniques, the study employs content analysis, systematically analyzing legal documents, academic literature, and relevant court decisions (Krippendorff, 2018). This analysis aims to identify patterns, key themes, and data related to the application of the principle of “diligence”, its normative interpretation, and its

implications for notarial practices. This approach enables the disclosure of regulatory gaps and generates recommendations based on legal theory and professional ethics. Consequently, the study is expected not only to have academic value but also to provide practical contributions to the development of Indonesia’s legal system.

RESULTS AND DISCUSSION. The discussion in this analysis will utilize a hermeneutic approach, a method that emphasizes the process of interpreting legal texts, contexts, and legislative intent. Hermeneutics provides a framework that enables a deep interpretation of the principle of “diligence” as stipulated in Article 16 of the Law on Notary Positions, considering the literal, historical, and teleological meanings of the provision. Through this approach, the discussion not only focuses on the normative aspects of the legal text but also explores the substantive intent behind its application and how this principle is understood in practice.

The hermeneutic approach is relevant for addressing ambiguities arising from the absence of an operational definition of the principle of “diligence” in the current regulations. By delving into the social, cultural, and legal contexts in which the law was formulated, this analysis aims to uncover the true purpose of this principle while providing a stronger argumentative foundation for recommending regulatory improvements. Additionally, this approach facilitates the exploration of ethical and moral values embedded in the principle of “diligence”, ensuring its consistent application in upholding the professionalism and integrity of notaries. Hermeneutics also opens the possibility of comparing the application of this principle in other legal systems, offering additional insights for developing a more adaptive and responsive legal system to contemporary challenges.

The hermeneutic approach in legal studies emphasizes the importance of interpreting legal texts while considering their historical, cultural, and legislative contexts. According to Gadamer, legal understanding cannot be separated from an interpretative process involving a dialogue between the text and its reader (Gadamer, 2013). In the context of notarial practice, this approach allows for an in-depth analysis of the principle of “diligence” in Article 16 of the Law on Notary Positions, considering how the principle is applied in practice and understood by legal professionals. For instance, research by Smith demonstrates that applying hermeneutics in legal interpretation can uncover more complex layers of meaning relevant to contemporary situations (Sherman, 1988). Thus, the hermeneutic approach not only aids in understanding legal texts more holistically

but also encourages critical reflection on existing legal practices.

The Legal Framework of Diligence

The principle of “diligence” constitutes a cornerstone in the legal framework governing the duties of notaries, as mandated by Law Number 2 of 2014 on Notary Positions. This principle underlines the notary’s obligation to ensure that every authentic deed they draft adheres to legal norms, safeguards the interests of the parties involved, and provides legal certainty. Article 16, paragraph (1), letter a of the law explicitly requires notaries to act trustworthy, honest, diligent, independent, impartial, and to safeguard the interests of the parties involved in legal actions (Salamah, Iriantoro, 2022). This mandate reflects the legislative intent to establish diligence not only as a procedural requirement but also as a moral and ethical standard that upholds the credibility of the notarial profession.

The normative structure of the principle of diligence emphasizes thoroughness in examining the authenticity and validity of documents, the legal capacity of the parties, and the procedural correctness in drafting deeds. Acting “diligently” demands notaries to align their actions with legal provisions, including ensuring that the deeds prepared are free from ambiguities and are drafted in clear, precise language to prevent future disputes (Anand, Syafruddin, 2016). This principle is integral to maintaining public trust in the notarial profession as a pillar of legal reliability and protection.

Historically, the principle of diligence in notarial practice is rooted in the Continental European legal system, specifically the Dutch legal tradition, which heavily influences Indonesia’s legal framework. The concept of due care, as derived from Roman legal principles, has been adapted into modern regulations to ensure that legal actions are performed with precision and responsibility. In the context of notarial law, this principle ensures the validity of authentic deeds and fortifies the rights of parties engaged in legal transactions.

By embedding the principle of diligence into notarial duties, the law not only delineates the procedural boundaries for notaries but also reinforces the fundamental values of justice and legal certainty. This framework establishes diligence as a critical mechanism for ensuring professional accountability, mitigating risks of legal defects, and enhancing the integrity of Indonesia’s legal system (Koo, 2023). In notarial law, this principle aims to uphold the validity of authentic deeds and protect the rights of parties involved in legal transactions.

From the perspective of professional ethics, the principle of “diligence” is closely tied to the

moral obligation of a notary to ensure integrity and honesty in every document they draft. This principle is reflected in various codes of ethics requiring notaries to thoroughly examine all documents, understand the intentions of the parties, and ensure that no elements could lead to legal disputes in the future (Adjie, 2011). Internationally, this principle of caution is widely applied in various legal systems, such as in *notarial acts* in England and *akte van notarissen* in the Netherlands, which provide more specific operational guidelines compared to regulations in Indonesia.

Domestically, Article 16 of Law Number 2 of 2014 emphasizes the notary’s obligation to act diligently. However, the absence of an explicit definition of this term often leads to differing interpretations in legal practice (Catur, 2023). This highlights the need for further research to formulate clearer operational guidelines for implementing this principle in Indonesia, thereby providing legal certainty for the public and strengthening the integrity of the notarial profession.

The principle of “diligence” in the notarial profession serves not only as a legal principle but also as an ethical foundation guiding professional behavior in all aspects of a notary’s duties. This principle is implicitly reflected in the Indonesian Notary Code of Ethics, which underscores the importance of honesty, responsibility, and meticulousness as core values that a notary must uphold. The code of ethics mandates that notaries thoroughly verify the validity of documents, ensure the accuracy of party information, and maintain confidentiality as part of professional integrity (Wagner, 2023). When this principle is properly applied, notaries not only maintain public trust but also prevent potential conflicts that could damage the reputation of the profession.

The integration of the principle of “diligence” with values of professionalism also acts as a deterrent against potential ethical violations in notarial practice. For example, negligence in verifying the validity of documents or indifference to the interests of the parties involved can be deemed serious violations, leading to ethical or legal sanctions. In some cases, notaries who fail to act diligently face legal lawsuits as they are held responsible for legal defects in the deeds they prepare. These consequences not only affect the parties involved but also tarnish the reputation of the notarial profession as a whole.

To mitigate such risks, the principle of “diligence” must be consistently applied through strengthening competencies and ethical understanding within the notarial profession. Continuous education emphasizing the importance of integrity and thoroughness can serve as a strategic

step in ensuring that every notary performs their duties in accordance with the expected standards of professionalism.

The application of the principle of “diligence” in Indonesia’s notarial profession shares several similarities with practices in countries with Continental legal systems, such as the Netherlands and Germany. In the Netherlands, the principle of notarial caution is explicitly regulated under the *Wet op het notarisambt* (Law on Notarial Positions), which provides specific guidelines regarding the notary’s duties to examine documents, ensure the validity of party statements, and maintain neutrality in executing their tasks (Catur, 2023). Similarly, in Germany, notaries are required to undergo rigorous training and are subject to strict oversight by the *Notarkammer* (Chamber of Notaries) to ensure high-quality services and optimal application of the principle of caution (Wagner, 2023).

Conversely, the implementation of the principle of “diligence” in Indonesia still faces challenges, particularly due to the lack of clear operational guidelines. The regulation in Law Number 2 of 2014 only outlines this principle in general terms without providing technical guidance to assist notaries in applying it in practice. This lack of clarity often results in multiple interpretations, both among notaries themselves and in the legal enforcement process (McCorquodale et al., 2017). Additionally, differences in supervisory mechanisms between Indonesia and those countries also influence the effectiveness of implementing the principle of “diligence”. In Indonesia, oversight of notaries is conducted by the Regional Supervisory Council (*Majelis Pengawas Daerah*, MPD), which often faces resource constraints.

Although there are differences in the level of regulatory specificity and oversight, the shared foundational principles remain a bridge between Indonesia’s legal system and those of other countries. To improve the implementation of the principle of “diligence”, Indonesia can draw inspiration from the Netherlands and Germany in designing more detailed operational guidelines and strengthening oversight through better-organized institutions. By doing so, the principle of “diligence” can be applied more consistently to enhance public trust in the notarial profession.

As discussed earlier, this principle serves as the foundation for notaries to ensure the validity of documents, the accuracy of party statements, and compliance with legal procedures. However, its application in Indonesia still faces challenges, particularly due to the lack of an explicit operational definition in the legislation. This creates the potential for multiple interpretations, which can

disadvantage both notaries and the parties relying on the validity of authentic deeds.

Comparisons with practices in countries such as the Netherlands and Germany show that the regulation of the principle of caution can be more detailed to provide clear technical guidelines for notaries. A stronger supervisory system, like that of the Chamber of Notaries in Germany, also ensures consistency in the application of this principle. Therefore, strengthening regulations and oversight mechanisms in Indonesia is an urgent step to optimize the implementation of the principle of “diligence”.

In conclusion, the principle of “diligence” is an essential element that must be consistently applied in the notarial profession to maintain public trust and prevent legal disputes. Further study is needed to formulate clearer operational guidelines, enhance professional training for notaries, and strengthen oversight by authorized institutions. The next subsection will focus on analyzing cases involving violations of the principle of “diligence” to identify legal implications and practical solutions for improving its implementation within Indonesia’s legal framework.

Challenges in Interpreting Diligence under Article 16 of the Notary Law

The ambiguity surrounding the term “diligence” complicates its consistent application in notarial practice, leaving room for subjective interpretations among practitioners and regulatory bodies. This lack of clarity not only places an undue burden on notaries but also risks undermining public trust in the profession. Without a concrete definition, the principle is susceptible to being interpreted differently depending on the context, leading to potential inconsistencies in legal proceedings and oversight.

A well-defined concept of “diligence” is essential for creating a standardized framework that guides notaries in fulfilling their duties responsibly and in accordance with legal provisions. For example, the requirement to “act diligently” should explicitly include verifying the authenticity and legality of documents, ensuring that the parties involved have the legal capacity to act, and drafting deeds in a manner that eliminates ambiguities and legal uncertainties. These elements must be clearly outlined in the regulatory framework to prevent varying interpretations and ensure the principle’s effective application.

The absence of clear normative boundaries also challenges the enforcement of accountability when disputes arise. Law enforcement officials and the Regional Supervisory Council (MPD) often face difficulties in assessing whether a notary has acted diligently, as the standard of diligence

remains undefined. This situation highlights the urgency for regulatory reform to incorporate a detailed and operational definition of “diligence”, enabling notaries, supervisory bodies, and legal practitioners to operate within a unified framework that upholds the integrity of notarial practice.

A concrete example of the implications of this weakness is the annulment of an authentic deed in the Bandung District Court Decision Number 89/Pdt.G/2023/PN BDG, where a notary was accused of negligence for failing to thoroughly verify documents. Although there was no evidence of procedural violations, the court ruled that the responsibility remained with the notary, who was deemed insufficiently “diligent” in performing their duties. This case highlights how the lack of operational guidelines places notaries in a vulnerable position against legal claims, even when they have attempted to comply with formal procedures. The interpretation of “diligence” can be derived from in-depth exploration, including the following points:

1. Normative Meaning

In a normative context, the principle of “diligence” in Article 16 of the Law on Notary Positions can be interpreted as a legal obligation requiring notaries to act with a high degree of caution and meticulousness in performing their duties. This includes verifying the validity of documents, identities, and the legal capacity of the parties before drafting an authentic deed. The principle aims to ensure that every deed prepared by a notary possesses legal force and protects the rights of all parties involved in the legal action. Strict adherence to legal procedures is also part of the interpretation of “diligence”, such as ensuring that supporting documents are complete, valid, and in accordance with the provisions of the applicable laws and regulations.

Additionally, the principle of “diligence” is intended to prevent legal irregularities that could harm the parties or create legal conflicts in the future. In practice, this action reflects the notary’s responsibility to integrate the principle of caution with compliance with the law. For instance, in a land sale and purchase deed, a notary is not only responsible for ensuring the validity of the land documents but also for verifying that the transaction does not violate prevailing agrarian laws. With this normative understanding, the principle of “diligence” provides a strong foundation for notaries to perform their duties with integrity and full responsibility while ensuring legal certainty for the public.

2. Practical Meaning

In legal practice, the principle of “diligence” requires notaries to perform their duties with a

high level of caution, involving both technical and substantive verification of documents. This principle includes verifying the validity of documents, such as land certificates or powers of attorney, used in drafting authentic deeds. Notaries must also ensure that the parties involved fully understand the contents of the deed and provide their consent without coercion or undue pressure. This highlights the importance of being sensitive to the interests of the parties as part of the application of the principle.

The principle also demands that notaries use clear and unambiguous legal language when drafting deeds. Clarity in formulation is essential to prevent misunderstandings or legal conflicts in the future. For instance, in a land sale and purchase agreement, notaries must ensure that all provisions, including the price, conditions of the object being sold, and the timeline for execution, are explicitly stated in the deed. By applying the principle of diligence, notaries not only fulfill their legal duties but also protect the legal interests of the parties who rely on the deed.

3. Ethical Meaning

The principle of “diligence” in the notarial profession not only has a legal dimension but also holds significant ethical importance in maintaining public trust in the integrity of the deeds produced. In practice, this principle requires notaries to act with honesty, caution, and impartiality in every stage of the deed-making process. Its practical implications are evident in the concrete steps a notary must take, such as thoroughly verifying the completeness of documents, ensuring the accuracy of data, and providing clear explanations to the parties about the contents of the deed before they give their consent. Thus, notaries serve not only as document drafters but also as guardians of justice, ensuring a balance of interests among the parties.

Moreover, the principle of “diligence” ethically requires notaries to avoid any conflicts of interest that could compromise their objectivity. For instance, if a notary has a personal or professional relationship with one of the parties, they must decline to handle the case to maintain neutrality. Violations of this principle can have serious consequences, such as diminished public trust or even legal and ethical sanctions that could jeopardize the notary’s career.

In the context of public service, the ethical dimension of the principle of “diligence” lies in the moral and professional responsibility of the notary to ensure that every deed drafted provides optimal legal certainty. By acting diligently, notaries ensure that all processes are conducted transparently and accurately, thereby not only

protecting the rights of the parties involved but also enhancing the reputation of the notarial profession as a fair and trustworthy institution.

Holistic Recommendations for Optimizing the Principle of “Diligence”

The application of the principle of “diligence” in the notarial profession requires integrated improvements in the areas of regulation, competency, and oversight to ensure legal certainty and protect the integrity of the profession.

The following diagram illustrates the process of applying the principle of “diligence”, highlighting the key stages in preparing an authentic deed. Each step reflects the notary’s role in maintaining the integrity of the legal process and providing legal protection for all involved parties. By understanding this flow, it is essential for notaries to adhere not only to technical standards but also to integrate caution as a foundation of ethics and professionalism in their duties.

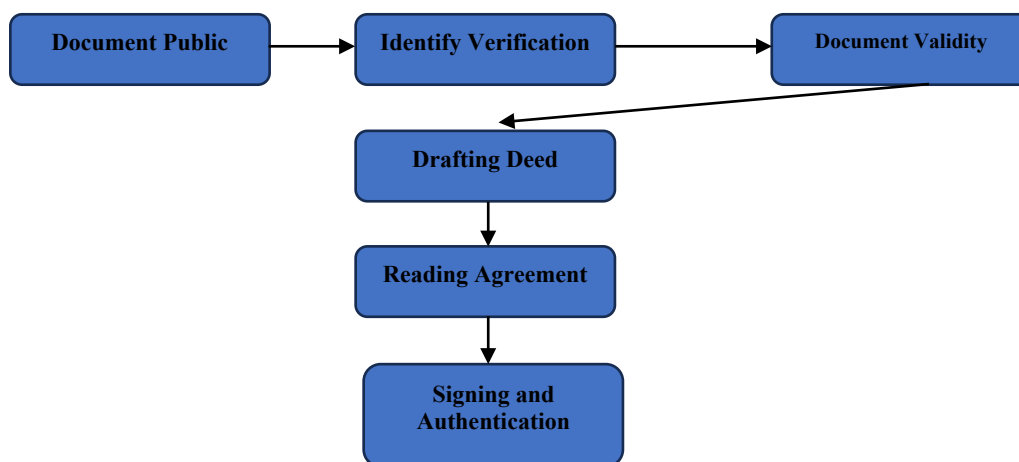


Table 1. *Process of Applying The Principle of Diligence in Authentic Deed Preparation* (source: processed by author)

First, formulating clearer legal boundaries regarding this principle is a top priority to reduce the potential for interpretive abuse. Currently, Article 16 of the Law on Notary Positions only generally mentions the principle of “diligence” without an explicit operational definition, which often creates challenges in interpretation for both notaries and law enforcement officials. This gap creates a loophole that complicates notaries’ efforts to determine the extent of the due care required, placing them at risk of legal claims even when they have acted in accordance with formal procedures.

More specific regulations are needed to provide detailed technical guidelines, including concrete steps such as document verification, testing the legal capacity of parties, and drafting deeds that are clear and unambiguous. For instance, the Dutch legal system, through the *Wet op het notarisambt*, includes detailed notarial obligations, including the procedures required to ensure the validity of documents and the intentions of the parties. With such regulations, Dutch notaries have a clear framework to avoid procedural errors that could lead to legal violations.

Furthermore, detailed guidelines help build public trust in the notarial profession. The public needs assurance that deeds created through a

notary are not only legally valid but also reflect fair and transparent treatment. Therefore, an operational definition of the principle of “diligence” is crucial not only to protect notaries but also to strengthen the legitimacy of the legal system as a whole. Without regulatory revisions, the principle of “diligence” risks losing its effectiveness as an essential foundation for performing notarial duties.

Second, enhancing notarial competencies through continuous training is a strategic step to optimize the application of the principle of “diligence”, particularly in addressing the increasingly complex challenges of legal practice. This training should not only focus on the technical aspects of deed preparation, such as drafting documents in accordance with legal procedures, but also include the development of a deep understanding of the principles of caution, neutrality, and professional ethics. Additionally, it is important to incorporate real-case simulations that focus on complex situations, such as disputes over deed validity, allegations of neutrality violations, or conflicts of interest in the creation of authentic deeds.

In Germany, for instance, the notary training model includes advanced education designed to address complex cases through practice-based

simulations. Prospective notaries are required to undergo competency assessments that evaluate not only their technical skills but also their ethical understanding and decision-making based on the principle of diligence. This approach not only enhances professionalism but also helps prospective notaries understand the legal and moral implications of their actions.

Indonesia could adopt this model by designing a structured training program that integrates legal, ethical, and oversight aspects. For example, the introduction of specialized modules on dispute resolution and case-based learning could help notaries identify potential risks in drafting deeds. Moreover, this training should be supported by consistent supervision and performance evaluation through recertification processes, ensuring that notaries continuously adhere to professional standards. With such continuous training, the application of the principle of “diligence” can be better guaranteed, and public trust in the notarial profession can be further strengthened.

Third, the oversight mechanism for implementing the principle of “diligence” must be strengthened to ensure notaries’ adherence to standards of professionalism and integrity. Currently, supervision by the Regional Supervisory Council (*Majelis Pengawas Daerah*, MPD) faces significant challenges, such as budget constraints, a lack of expert personnel, and the absence of standardized evaluation guidelines. These conditions result in oversight of the implementation of the principle of “diligence” being less effective and often reactive, conducted only after violations or legal disputes arise. In contrast, systematic proactive supervision is needed to prevent violations at an early stage and to protect the reputation of the notarial profession.

A more structured oversight approach could refer to practices in the United Kingdom, where the Notaries Society routinely conducts periodic audits of documents and deeds produced by notaries. These audits aim to ensure compliance with the principle of due care and detect potential violations before they have widespread consequences. Supervision in the UK also includes additional training based on audit results, enabling notaries to understand and rectify mistakes in their practices. This model could be adapted in Indonesia by introducing a self-audit mechanism conducted by the MPD, supported by periodic reports from each notary.

To strengthen this mechanism, the government must allocate sufficient resources to the MPD, including funding and training for supervisors. Adding expert personnel who understand the dynamics of the notarial profession is also an urgent need. Furthermore, technology-based evaluation systems, such as online monitoring applications, could be implemented to streamline the oversight and reporting processes. With more targeted supervision, the implementation of the principle of “diligence” can become more consistent, reduce the potential for violations, and enhance public trust in the notarial profession.

CONCLUSIONS. The principle of “diligence” in Article 16 of the Law on Notary Positions is a fundamental principle that requires notaries to act with caution, honesty, and high integrity in performing their duties. However, the implementation of this principle faces significant challenges due to the lack of a clear operational definition, limited technical and ethical competence among some notaries, and ineffective supervisory mechanisms. Ambiguity in regulations leads to the potential for interpretive misuse, both by notaries and involved parties, thereby undermining public trust in authentic deeds.

To improve the application of the principle of “diligence”, comprehensive reforms encompassing three main pillars are necessary.

First, more specific regulations must be formulated to provide clear technical guidelines for notaries, as seen in countries with advanced legal systems.

Second, enhancing notarial competence through continuous training, including case simulations and ethical understanding, is a strategic step to ensure professional quality.

Third, the supervisory mechanism by the Regional Supervisory Council (*Majelis Pengawas Daerah*, MPD) must be strengthened through periodic audits, technology-based supervision, and adequate resource allocation.

With these measures, the principle of “diligence” can be applied consistently, not only to protect the parties involved but also to uphold the integrity of the notarial profession and enhance public trust in the legal system. These reforms are not only relevant in the Indonesian context but also contribute to the development of a more equitable, transparent, and reliable legal system.

REFERENCES

1. Adjie, H. (2008). *Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 on Notary Office*. Refika Aditama.
2. Adjie, H. (2011). *Weaving Thoughts in the World of Notaries & PPAT*. CV Citra AdityaBakti. <http://repository.narotama.ac.id/id/eprint/1295>.

3. Anand, G., & Syafruddin, S. (2016). *Supervision of Notaries in Relation to Compliance in Performing Duties*. *Lambung Mangkurat Law Journal*, 1(1). <https://doi.org/10.32801/lamlaj.v1i1.10>.
4. Catur, R. (2023). *Comparison of Legal Systems Related to the Implementation of Cyber Notary in Indonesia with Common Law and Civil Law Systems*. *Jurnal Hukum Bisnis Bonum Commune*, 6(1), 41–52. <https://doi.org/10.30996/jhbbc.v6i1.7108>.
5. Gadamer, H.-G. (2013). *Truth and method*. A&C Black.
6. Irwansyah, I. (2020). *Legal Research: Method Choices & Article Writing Practices*. Mirra Buana Media. https://opac.fhukum.unpatti.ac.id/index.php?p=show_detail&id=8111.
7. Kamelia, M. (2017). *The Role of Notaries in Drafting Credit Agreement Deeds in the Perspective of Positive Law and Islamic Law*. *Jurnal Akta*, 4(4). <https://doi.org/10.30659/akta.v4i4.2500>.
8. Koos, S. (2023). The Digitization of Notarial Tasks – A Comparative Overview and Outlook of ‘Cyber Notary’ In Indonesia and Germany. *The Indonesian Journal of Socio-Legal Studies*, 2(2). <https://doi.org/10.54828/ijsls.2023v2n2.1>.
9. Krippendorff, K. (2018). *Content analysis: An introduction to its methodology*. Sagepublications.
10. McCorquodale, R., Smit, L., Neely, S., & Brooks, R. (2017). Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises. *Business and Human Rights Journal*, 2(2), 195–224. <https://doi.org/10.1017/bhj.2017.2>.
11. Nurwulan, P. (2018). *Sharia Banking Contracts and Their Application in Notary Deeds According to the Notary Office Law*. *Jurnal Hukum Ius Quia Iustum*, 25(3). <https://doi.org/10.20885/iustum.vol25.iss3.art10>.
12. Paramaningrat Manuaba, I. B., Parsa, I. W., & Ketut Ariawan, I. G. (2018). *The Principle of Prudence for Notaries in Drafting Authentic Deeds*. *Acta Comitas*, 3, 241–261. <https://doi.org/10.24843/AC.2018.v03.i01.p05>.
13. Phelps, T. G., & Pitts, J. A. (1984). Questioning the text: The significance of phenomenological hermeneutics for legal interpretation. *Louis ULJ*, 29. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/stlulj29&div=23&id=&page=>.
14. Salamah, S., & Iriantoro, A. (2022). *The Principle of Prudence and Notary Responsibility in Drafting Deeds Based on Article 16 Paragraph (1) Letter A of the Notary Office Law (Case Study of Decision Number 457 PK/Pdt/2019)*. *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan*, 1(2), 550–574.
15. Sherman, B. (1988). Hermeneutics in law. *The Modern Law Review*, 51(3), 386–402.
16. Sibuea, H. P. (2010). *The Principles of the Rule of Law, Policy Regulations, and General Principles of Good Governance*. Erlangga. <https://simpus.mkri.id/opac/detail-opac?id=9603>.
17. Sundari, E. (2015). *Class Action Practices in Indonesia*. Cahaya Atma Pustaka. <https://balaiyanpus.jogjaprov.go.id/opac/detail-opac?id=297339>
18. The, F., & Kawuryan, E. S. (2018). *Legal Protection Against Criminalization of Notaries*. *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, 7(2), 466–487. <https://doi.org/10.15642/ad.2017.7.2.466-487>.
19. Wagner, P. (2023). *Mind the Gap(s): Moral Philosophy, International Law, and Interpretative Historical Sociology*. *European Journal of Social Theory*, 26(4), 527–535. <https://doi.org/10.1177/13684310231164258>.

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**ОБОВ'ЯЗОК НАЛЕЖНОЇ РЕТЕЛЬНОСТІ У СТАТТІ 16 ЗАКОНУ ПРО ПОСАДУ
НОТАРІУСА: ПЕРСПЕКТИВА ПРИНЦИПУ РЕТЕЛЬНОСТІ У ЗДІЙСНЕННІ
НОТАРІАЛЬНИХ ДІЙ**

У цьому дослідженні проаналізовано реалізацію принципу належної ретельності, передбаченого ст. 16 Закону про посаду нотаріуса від 2014 року № 2. Цей принцип вимагає від нотаріусів діяти з високим рівнем старанності, чесності та добросовісності при виконанні своїх обов'язків. Метою цього дослідження є вивчення нормативного, змістовного та практичного значення принципу належної ретельності та виявлення проблем у його реалізації. За допомогою нормативно-правових методів дослідження інтегровано статутний підхід для розуміння нормативної бази регулювання та герменевтичний підхід для інтерпретації соціального контексту та законодавчого наміру. У роботі використано метод контент-аналізу нормативно-правових документів, наукової літератури та відповідних судових рішень. Результати показують, що реалізація принципу належної ретельності стикається з такими проблемами, як відсутність операційного визначення, обмежена технічна компетентність нотаріусів і слабкість наглядових механізмів. Ці проблеми можуть призвести до різного тлумачення та ризиків порушень з боку нотаріусів. Рекомендовано провести нормативні реформи для уточнення правових меж принципу належної ретельності, розвивати безперервне навчання для підвищення компетентності нотаріусів, а також посилити технологічний нагляд і періодичний аудит. Таким чином, для забезпечення послідовного застосування принципу належної ретельності необхідні реформи у сфері регулювання, освіти та нагляду. Це дослідження робить практичний і теоретичний внесок, пропонуючи стратегічні кроки для зміцнення добросовісності нотаріальної професії та підвищення довіри громадськості до правової системи Індонезії.

Ключові слова: принцип належної ретельності, посада нотаріуса, герменевтичний підхід, правове регулювання, механізми здійснення контролю, правова система, суспільна довіра.

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