



Harmonization of Criminal Sanctions against Notaries: A Comparative Analysis between Indonesian Positive Law and the Concept of Jarimah Takzir in Islamic Law

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Abstrak

The notarial profession in Indonesia occupies a strategic position as a public official authorized to create authentic deeds with complete evidentiary force; however, the phenomenon of notarial involvement in criminal acts has experienced a significant increase that threatens professional integrity and public trust in the notarial institution. At least 137 notaries have been implicated in criminal cases, with the majority involving document forgery, fraud, and embezzlement, while the regulation of criminal sanctions in Law Number 2 of 2014 concerning Notarial Positions remains limitative and creates legal uncertainty. This research aims to comprehensively analyze the legal implications of imposing sanctions on notaries who commit criminal acts by integrating perspectives from positive law and Islamic law, identifying juridical and non-juridical factors causing notaries to receive criminal sanctions, analyzing the harmonization of supervision systems and sanction imposition mechanisms, and examining the concept of jarimah takzir as an educative and rehabilitative alternative to punishment. The research employs a normative juridical method with statutory and conceptual approaches, analyzing primary legal materials consisting of legislation and court decisions, secondary legal materials comprising scholarly literature, and tertiary legal materials, through library research techniques and qualitative data analysis using descriptive-analytical methods and deductive reasoning. The research findings indicate that juridical factors in the form of normative vacuums in criminal sanctions and non-juridical factors in the form of moral integrity degradation constitute the primary determinants; the supervision system necessitates coherent harmonization among administrative, civil, ethical code, and criminal sanctions by applying the principle of ultimum remedium, while the Islamic law perspective through the concept of jarimah takzir offers a philosophical alternative emphasizing educative and rehabilitative dimensions by classifying deed forgery as a manifestation of falsehood and breach of trust that contradicts Islamic principles of justice. This research contributes

Introduction



The notarial profession in Indonesia occupies a strategic position within the national legal system as a public official authorized to create authentic deeds, which serve as perfect evidence in the civil law evidentiary system. The existence of notaries is inseparable from society's need for legal certainty in every transaction or legal act requiring formal documentation with strong evidentiary power before the courts. However, in contemporary notarial practice, there exists a concerning phenomenon involving the participation of numerous notaries in criminal acts that not only undermine professional integrity but also threaten public trust in the notarial institution as a whole. Recent data indicate that criminal cases involving notaries have experienced a significant increase in recent years. According to records from the Central Board of the Association of Land Deed Officials (PP IPPAT), at least 137 PPATs who also serve as notaries are currently incarcerated, with the majority of cases related to document forgery, fraud, and embezzlement committed in the course of performing their official duties.¹

This phenomenon becomes increasingly alarming when, in 2024, the Criminal Investigation Agency of the Indonesian National Police (Bareskrim Polri) designated a former notary from Surabaya as a suspect in a fraud and embezzlement case with losses reaching Rp 1.67 billion based on Decree Number S.Tap/S-4/63/VIII/2024/Dittipidum/Bareskrim (Suara Surabaya, 2024).² Similar cases continue to emerge in various regions, ranging from the falsification of authentic deeds that resulted in prison sentences, as evidenced in Decision Number 1362/Pid.B/2019/PN.Jkt.Utr, which imposed a one-year prison sentence on a notary proven to have falsified statements in a deed (Damayanti, 2024),³ to cases of notarial protocol violations discovered by the Regional Supervisory Council of Notaries in Batam City during protocol examinations in 2023-2024, which revealed numerous violations of the provisions of the Notary Position Law (Kemenkumham Kepri, 2024).⁴

The fundamental problem arising from this phenomenon is the lack of clarity and incompleteness of regulations concerning criminal sanctions for notaries in Law Number 30 of 2004, as amended by Law Number 2 of 2014 concerning Notary Position. This law only explicitly regulates civil and administrative sanctions, while criminal sanctions are not expressly stated in its substance, although in judicial practice notaries can be charged under criminal provisions in the Criminal Code (KUHP), such as Article 263 concerning document forgery, Article 264 concerning falsification of authentic deeds, Article 266

¹ Hukumonline, "Waspada! Ini Pasal-pasal yang Sering Menjerat Profesi Notaris dan PPAT," diakses 25 Juli 2016, <https://www.hukumonline.com/berita/a/waspada-ini-pasal-pasal-yang-sering-menjerat-profesi-notaris-dan-ppat-1t5795e599691ec/>

² Suara Surabaya, "Bareskrim Tetapkan Mantan Notaris Asal Surabaya sebagai Tersangka Kasus Penipuan dan Penggelapan," diakses 7 November 2024, <https://www.suarasurabaya.net/kelanakota/2024/bareskrim-tetapkan-mantan-notaris-asal-surabaya-sebagai-tersangka-kasus-penipuan-dan-penggelapan/>

³ Dwi Kartika Damayanti, "Tanggung Jawab Pidana Terhadap Notaris yang Telah Memalsukan Keterangan dalam Akta Autentik (Studi Kasus Putusan Nomor 1362/Pid.B/2019/PN.Jkt.Utr)," *Jurnal Ilmu Hukum, Humaniora dan Politik* 4, no. 4 (2024): 930-935, <https://doi.org/10.38035/jihhp.v4i4.2112>

⁴ Kementerian Hukum dan Hak Asasi Manusia Kepulauan Riau, "Penegakan Hukum di Bidang Kenotariatan, Komitmen MPD Notaris Kota Batam Tindak Tegas Notaris yang Tidak Tertib Protokol," diakses 30 September 2024, <https://kepri.kemenkum.go.id/berita-utama/penegakan-hukum-di-bidang-kenotariatan-komitmen-mpd-notaris-kota-batam-tindak-tegas-notaris-yang-tidak-tertib-protokol>

concerning ordering the insertion of false statements into authentic deeds, and articles related to money laundering offenses (Cahyanti, 2018).⁵ This condition creates legal uncertainty both for notaries performing their professional duties and for the public utilizing notarial services. Several previous studies have examined aspects of notarial accountability but tend to be fragmented in their focus. Ariyanto and Sudarto (2024) analyzed the criminal liability of notaries who assist in ordering the placement of false statements into authentic deeds but have not comprehensively explored the legal implications of various types of criminal acts that can be committed by notaries.^[5] Pramono (2020) identified the ambiguity in regulations concerning public officials in criminal proceedings, which creates uncertainty regarding detention procedures and legal protection for notaries.⁶ Pramono (2020) identified the ambiguity in regulations concerning public officials in criminal proceedings, which creates uncertainty regarding detention procedures and legal protection for notaries,⁷ while Winata (2021) found unclear regulations regarding the detention of public officials, which impacts the execution of notarial duties.⁸ On the other hand, studies from an Islamic law perspective concerning sanctions for notaries who commit criminal acts remain very limited, whereas Indonesia, with its Muslim majority population, requires an integrative legal approach between positive law and Islamic law in understanding the concepts of sanctions and rehabilitation for criminal offenders, including notaries.

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⁵ Nur Cahyanti, "Sanksi Terhadap Notaris yang Melakukan Tindak Pidana Menurut Peraturan Perundang-undangan di Indonesia," *Jurnal Akta* 5, no. 1 (2018): 285-296, <http://jurnal.unissula.ac.id/index.php/akta/article/view/2617>.

⁶ Trio Ariyanto dan Sudarto, "Pertanggungjawaban Pidana Notaris dalam Tindak Pidana Membantu Menyuruh Menempatkan Keterangan Palsu Kedalam Akta Otentik," *IBLAM Law Review* 4, no. 3 (2024): 153-157, <https://doi.org/10.52249/ilr.v4i3.514>.

⁷ Agus Pramono, "Ambiguitas Pengaturan Pejabat Umum dalam Proses Pidana," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 34-47

⁸ Eka Winata, "Ketidakjelasan Pengaturan Penahanan Terhadap Pejabat Umum: Studi Kasus Notaris," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 167-183

⁹ Nur Cahyanti, "Sanksi Terhadap Notaris yang Melakukan Tindak Pidana Menurut Peraturan Perundang-undangan di Indonesia," *Jurnal Akta* 5, no. 1 (2018): 285-296, <http://jurnal.unissula.ac.id/index.php/akta/article/view/2617>.

implications of various types of criminal acts that can be committed by notaries.^[5] Pramono (2020) identified the ambiguity in regulations concerning public officials in criminal proceedings, which creates uncertainty regarding detention procedures and legal protection for notaries.¹⁰ Pramono (2020) identified the ambiguity in regulations concerning public officials in criminal proceedings, which creates uncertainty regarding detention procedures and legal protection for notaries,¹¹ while Winata (2021) found unclear regulations regarding the detention of public officials, which impacts the execution of notarial duties.¹² On the other hand, studies from an Islamic law perspective concerning sanctions for notaries who commit criminal acts remain very limited, whereas Indonesia, with its Muslim majority population, requires an integrative legal approach between positive law and Islamic law in understanding the concepts of sanctions and rehabilitation for criminal offenders, including notaries.

The identification of research gaps indicates that studies analyzing holistically and systematically the legal impacts of imposing sanctions on notaries who commit criminal offenses through the integration of positive law and Islamic sharia perspectives are still unavailable. Previous studies have generally been fragmentary in exploring particular aspects such as civil liability (Raihan & Hertanto, 2024),¹³ code of ethics sanctions (Ayuningtyas, 2020)¹⁴ or supervisory mechanisms (Nadia et al., 2021),¹⁵ without exploring in depth how the Indonesian legal system should respond when a notary commits an act that fulfills the elements of a criminal offense in exercising their authority to create deeds. Furthermore, studies regarding the factors that cause notaries to be subject to criminal sanctions and how the harmonization between administrative, civil, code of ethics, and criminal sanctions within one coherent system remains an area that has not been optimally addressed. This void becomes increasingly crucial when associated with the principle of ultimum remedium in criminal law that positions criminal sanctions as a last resort, yet in the context of notaries as public officials who carry public trust, clarity is needed regarding when and under what conditions criminal sanctions become a necessity to be applied.

Based on the empirical phenomena and research gaps that have been described, this research aims to comprehensively analyze the legal implications of imposing sanctions on notaries who commit criminal offenses, with primary focus on three fundamental aspects.

¹⁰ Trio Ariyanto dan Sudarto, "Pertanggungjawaban Pidana Notaris dalam Tindak Pidana Membantu Menyuruh Menempatkan Keterangan Palsu Kedalam Akta Otentik," *IBLAM Law Review* 4, no. 3 (2024): 153-157, <https://doi.org/10.52249/ilr.v4i3.514>.

¹¹ Agus Pramono, "Ambiguitas Pengaturan Pejabat Umum dalam Proses Pidana," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 34-47

¹² Eka Winata, "Ketidakjelasan Pengaturan Penahanan Terhadap Pejabat Umum: Studi Kasus Notaris," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 167-183

¹³ Irfan Raihan dan Hertanto, "Pertanggungjawaban Notaris Terhadap Pemalsuan Tanda Tangan Penghadap Atas Akta Kuasa Jual Beli," *Unes Journal of Swara Justisia* 8, no. 1 (2024): 42-56, <https://swarajustisia.unesp padang.ac.id/index.php/UJSI/article/view/475>

¹⁴ Putri Ayuningtyas, "Sanksi Terhadap Notaris dalam Melanggar Kode Etik," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 9, no. 2 (2020): 141-156, <https://journal.fh.unsri.ac.id/index.php/repertorium/article/view/637>.

¹⁵ Nadia Nadia, Rizanizarli, dan Rahmat Yanis, "Faktor-Faktor yang Mempersulit Proses Penegakan Hukum Terhadap Notaris yang Melakukan Pelanggaran Kode Etik Notaris," *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 2 (2021): 307-320, <https://jurnalius.ac.id/ojs/index.php/jurnalius/article/view/786>.

First, identifying and analyzing juridical and non-juridical factors that cause a notary to be subject to criminal sanctions in relation to their authority to create authentic deeds, including exploring the types of criminal offenses most frequently committed by notaries and their modus operandi. Second, analyzing the supervisory system and mechanism for imposing sanctions on notaries based on applicable laws and regulations, by examining the harmonization between administrative sanctions regulated in the Notary Position Law (UUJN), civil sanctions based on the Civil Code (KUH Perdata), code of ethics sanctions from professional organizations, and criminal sanctions based on the Criminal Code (KUHP) or special criminal laws. Third, examining the Islamic law perspective on sanctions for notaries who commit criminal offenses, particularly the concept of jarimah takzir as an alternative punishment that is educative and rehabilitative in nature, to subsequently formulate an ideal model for applying sanctions that not only provides a deterrent effect but also opens space for improvement and maintains the integrity of the notary profession.

This research is expected to provide significant theoretical contributions to the development of notarial law science, particularly in enriching the discourse on criminal liability of public officials and harmonization of sanction systems in Indonesian notarial law. Theoretically, this research will strengthen the theory of positional criminal liability (positieer) that distinguishes between the liability of individual notaries as persons and liability related to the position they hold, as well as provide a conceptual framework regarding the principle of *ultimum remedium* in the context of legal professions that require special protection while remaining accountable. Furthermore, the integration of Islamic law perspectives through the concept of jarimah takzir will enrich the treasury of contemporary Islamic criminal law thought in responding to criminal offense issues committed by certain professions, as well as provide a philosophical alternative regarding the purpose of punishment that is not only retributive but also rehabilitative and restorative. From a practical aspect, this research is expected to serve as a reference for policymakers in formulating revisions to the Notary Position Law that are more comprehensive in regulating criminal sanctions while maintaining the principles of legal certainty, justice, and legal protection for both notaries and the public using notary services. For the Notary Supervisory Council, the results of this research can serve as guidelines in developing standard operating procedures for examination and imposition of sanctions that are more measured and proportional, as well as for the Indonesian Notary Association professional organization in strengthening the code of ethics and its enforcement mechanism as the first bastion of preventing criminal offenses by notaries. Equally important, this research is also expected to increase the legal awareness of notaries regarding the boundaries of authority, obligations, and prohibitions in carrying out their positions, so as to minimize the potential for violations that lead to criminal liability that not only harms themselves but also injures the dignity of the notary profession as a whole.

Method

This research employs a normative juridical method, namely library legal research conducted by examining library materials or secondary data solely to study the internal

aspects of positive law¹⁶ The approaches used are the statutory approach (statute approach) by examining Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Notary Position, the Criminal Code (KUHP), and other related laws and regulations, as well as the conceptual approach (conceptual approach) to analyze the concept of criminal liability of notaries and the concept of jarimah takzir in Islamic law¹⁷ The data sources used in this research consist of primary legal materials in the form of laws and regulations governing the notary position, the Criminal Code (KUHP), and relevant court decisions; secondary legal materials in the form of books, scientific journals, legal articles, and previous research results related to criminal liability of notaries; as well as tertiary legal materials in the form of legal dictionaries and encyclopedias¹⁸ Data collection techniques are conducted through library research by studying, examining, and analyzing various legal literature, legal documents, and other library sources relevant to the subject matter.¹⁹ Data analysis is carried out qualitatively with a descriptive-analytical method, namely by describing and elaborating the collected data to then be analyzed systematically, logically, and juridically in order to obtain comprehensive conclusions regarding the legal implications of imposing sanctions on notaries who commit criminal offenses viewed from the perspective of Indonesian positive law and Islamic law.²⁰ Drawing conclusions is carried out using the deductive method, namely by thinking that departs from general matters in the form of legal rules, theories, and principles to then draw specific conclusions in accordance with the issues examined in this research.²¹

Results and Discussion

Legal Implications of Imposing Sanctions on Notaries Who Commit Crimes

The presence of notarial institutions in Indonesia cannot be separated from the historical traces of the colonial era that brought the European legal order to the archipelago.²² As documented in the notarial literature by GHS Lumban Tobing, the notarial institution first set foot on Indonesian soil in the early 17th century, coinciding with the operation of the Vereenigde Oost Indische Compagnie (VOC), which controlled the trade routes in this region.²³ The existence of the VOC not only brought spice

¹⁶ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: RajaGrafindo Persada, 2001), hlm. 13-14

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, (Jakarta: Kencana Prenada Media Group, 2017), hlm. 133-137

¹⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 2010), hlm. 51-52

¹⁹ Bambang Sunggono, *Metodologi Penelitian Hukum*, (Jakarta: PT RajaGrafindo Persada, 2003), hlm. 113-114

²⁰ Muhammad Abdulkadir, *Hukum dan Penelitian Hukum*, (Bandung: PT Citra Aditya Bakti, 2004), hlm. 101-103

²¹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), hlm. 249-250.

²² Anand, G. (2018). *Karakteristik Jabatan Notaris Di Indonesia*. Prenada media Group. http://library.upnvj.ac.id/index.php?p=show_detail&id=22128

²³ Widianingrum, A. C., & Badriyah, S. M. (2025). Peran dan Tanggung Jawab Notaris dalam Penyelesaian Sengketa Perdata di Indonesia Melalui Akta Notaris. *Khatulistiwa*, 5(3), 127-139. <https://doi.org/10.55606/khatulistiwa.v5i3.6593>

commodities and agricultural products but also introduced an orderly legal documentation system through notarial deeds in every commercial transaction. This tradition subsequently took root and developed into an integral part of the modern Indonesian legal system, where notarial deeds became a vital instrument in providing legal certainty for the community. The long journey of the notarial institution from the colonial era to independence demonstrates how essential the role of this public official is in maintaining the stability of legal relationships among legal subjects, both in the civil and commercial spheres.

The enactment of Law Number 30 of 2004 concerning the Position of Notary marked a new chapter in the development of Indonesian notarial law that is more comprehensive and adaptive to the dynamics of the times. This regulation does not merely govern the technical aspects of the position but significantly expands the authority of notaries as public officials who possess special authority in the creation of authentic deeds. Article 1 paragraph (1) of the law explicitly states that a notary is a public official authorized to create authentic deeds and other authorities as referred to in this law, which constitutes a concrete implementation of the provisions of Article 1868 of the Civil Code.²⁴ This definition provides a solid juridical foundation for the existence of notaries within the national legal system, while simultaneously affirming that deeds made before or by notaries possess perfect evidentiary force before the courts. This expansion of authority naturally brings logical consequences in the form of greater responsibility, where notaries are not only required to master the technical aspects of deed creation but must also understand the legal substance underlying every document they produce.²⁵

Nevertheless, when we scrutinize the legal construction governing sanctions for notaries, there exists a rather conspicuous void in the Law on the Position of Notary. This regulation only explicitly governs civil and administrative sanctions, while criminal sanctions are not expressly mentioned in its substance. This situation raises a fundamental question: how should the legal system respond when a notary commits an act that fulfills the elements of a criminal offense in the execution of their duties? It is true that in criminal law theory, criminal sanctions constitute *ultimum remedium* or a last resort that is only applied when other sanctions are no longer effective in providing a deterrent effect or reformation.²⁶ This principle aligns with the subsidiary character of criminal law, where state intervention through the threat and imposition of punishment is only implemented when other legal means are no longer adequate to protect the violated legal interests. However, the absence of explicit provisions regarding criminal sanctions in the special law does not automatically exempt notaries from criminal liability, considering that certain

²⁴ Anindita, P., & Priyono, E. A. (2025). Problematika dan Tanggung Jawab Profesi Notaris kepada Masyarakat demi Tercapainya Kepastian Hukum. *Legal Standing*, 9(3), 695-702. <https://doi.org/10.24269/ls.v9i3.11276>

²⁵ Kano, M. F., & Yaqin, K. (2024). Sejauhmana Tanggung Jawab Notaris terhadap Surat Dibawah Tangan yang di Daftarkan pada Buku Khusus Notaris (Waarmering). *Concept*, 3(2), 111-116. <https://doi.org/10.55606/concept.v3i2.1209>

²⁶ Nurwansyah, M. E., & Rahaditya, R. (2023). *Analysis of The Application of Sanctions Against Notaries Who Forgery Deeds of Transferring Land Rights (Study of Supreme Court Decision Number 139 K/Pid/2016)*. <https://doi.org/10.59188/devotion.v4i11.603>

acts committed by notaries may fulfill the formulation of offenses in the Criminal Code or other special criminal laws.²⁷

This research is presented with a clear and focused objective, namely to systematically analyze the application of sanctions for violations of the notarial professional code of ethics and to identify the factors that may lead to a notary being subjected to criminal sanctions in relation to their authority to create deeds. The approach employed is through an in-depth analysis of various legal instruments related to the notarial code of ethics within the Indonesian legal system, without neglecting the practical aspects of its implementation in the field. It must be understood that notaries bear a heavy mandate as trusted public officials (openbaar ambtenaar), where every deed they create can serve as evidence possessing perfect evidentiary force in the event of a legal dispute in court.²⁸ This exceptionally high public trust necessitates an effective mechanism of supervision and law enforcement to ensure that every notary executes their duties and authorities in accordance with the applicable legal corridors. When this trust is violated through actions that are contrary to law, firm and proportional sanctions become imperative to maintain the integrity of the profession and protect the interests of the public who utilize notarial services.

In the juridical context, the analysis of sanctions for notaries cannot be separated from an understanding of the supervisory system that has been established by the legislators. The supervisory function carried out by the Notary Supervisory Council should be based on clear and detailed regulations, so that preventive measures can be implemented optimally in accordance with their purpose, namely the control of notarial behavior to remain within the boundaries of lawful authority. A sound legal system possesses certain characteristics that guarantee the effectiveness of law enforcement, including: first

²⁹ the system constitutes a complexity of interrelated elements; second³⁰, each element is connected within a coherent unity; third, the unity of these elements forms a larger unity with a clear function; fourth, the system determines the characteristics of each part so that there is no overlapping of authorities; fifth, the elements cannot be separated from one another as they mutually support each other; and sixth, the system operates dynamically following the development of society's legal needs. These characteristics should be reflected in the supervisory system and the imposition of sanctions for notaries,

²⁷ Riswadi, R., & Situngkir, R. R. (2024). Legal Protection Of The Notary In The Production Of A Notarial Deed. *Jurnal Indonesia Sosial Sains*. <https://doi.org/10.59141/jiss.v5i1.940>

²⁸ Werik, B., Sriono, S., & Siahaan, N. (2025). Legal Responsibility Of Notaries In Making Authentic Deeds Based On The Civil Code. *International Journal of Humanities Education and Social Sciences*, 4(6). <https://doi.org/10.55227/ijhess.v4i6.1671> , Hariawan, K., & Adjie, H. (2022). Kedudukan Hukum Notaris, Akta Notaris Dan Saksi Akta Sebagai Alat Bukti Perkara Perdata. *Jurnal Hukum Magnum Opus*, 5(2), 269-279. <https://doi.org/10.30996/jhmo.v5i2.7039> Wahid, A. I., Mahka, Muh. F. R., & Sufriaman, S. (2024). Responsibilities of Notaries as a Public Official in Making Authentic Deeds. *JIHAD: Jurnal Ilmu Hukum Dan Administrasi*, 6(2). <https://doi.org/10.58258/jihad.v6i2.6936>

²⁹ Grishin, O. (2024). The concept and features of the legal system of society as a dynamic and non-linearly developing structure. *Юридическая Наука и Практика*, 2024(3), 277-282. <https://doi.org/10.36511/2078-5356-2024-3-277-282>

³⁰ Spigelman, J. (2003). The Rule of Law and Enforcement. *University of New South Wales Law Journal*, 26(1), 200. http://www.unswlawjournal.unsw.edu.au/sites/default/files/9_rule_of_law_spigelman_2003_0.pdf

so that legal vacuums or ambiguities that could harm both the notaries themselves and the communities they serve do not occur.

The issue becomes more complex when we are confronted with concrete cases, for instance, a notary who loses the minuta (original deed) that should be their responsibility to store and maintain. Sanctions for notaries who lose minuta deeds should be firmly regulated by the institution authorized to supervise notaries, considering that such conduct not only violates administrative obligations but also potentially harms the parties with an interest in the deed. If the law does not explicitly regulate or there exists ambiguity in the interpretation of relevant articles, then there should appropriately be implementing regulations or derivative regulations from the law that provide more detailed operational guidance. The existence of these implementing regulations is crucial to guarantee legal protection for the execution of notarial duties, while simultaneously providing legal certainty regarding the consequences to be faced should violations occur. In this context, the Minister of Law and Human Rights or the Notary Supervisory Council possesses the authority to issue technical regulations or circulars that specifically prohibit notaries from losing the minuta deeds they create, complete with clear and measurable sanctions if such violations are proven to have been committed

Furthermore, harmonization between the provisions in the Law on the Position of Notary and implementing regulations becomes key in creating a just and proportional sanctions system. If it is proven that a notary has lost minuta deeds, then the sanctions imposed must refer to the provisions that have been regulated in the law concerning the obligation to store minuta, taking into consideration the gradation of violations and the resulting impact.³¹ Administrative sanctions such as written warnings, temporary dismissal, or even dishonorable discharge can serve as effective instruments to provide a deterrent effect.³² Nevertheless, under certain conditions where the act of losing minuta deeds is committed intentionally and causes significant harm to other parties, it is not impossible to apply criminal sanctions based on general provisions in the Criminal Code, such as articles concerning the loss or destruction of important documents.³³ This multi-layer approach in imposing sanctions reflects the principle of justice that not only examines the formal aspect of violations but also considers the substance and legal consequences arising from such conduct.

Ultimately, the discourse regarding the legal implications of imposing sanctions on notaries who commit criminal offenses presents a profound reflection on how the Indonesian legal system balances professional protection with the protection of public interests. Notaries as the frontline in creating legal certainty through authentic deeds must have their integrity safeguarded through a supervisory system that is stringent yet remains just. The absence of explicit provisions regarding criminal sanctions in the special

³¹ Kewenangan Majelis Pengawas Notaris Terhadap Notaris yang Terbukti Membuat Akta Secara Berpihak [Authority of Notary Supervisory Council Towards Notary Proven in Making Deeds that are not Impartial]. (2023). *Notary Journal*, 3(1), 16. <https://doi.org/10.19166/nj.v3i1.6278>

³² Halim, A. (2022). Tanggung jawab notaris dalam menjaga minuta akta. *Fenomena*. <https://doi.org/10.36841/fenomena.v20i2.2402>

³³ Lestari, A. T. W. (2023). *Tanggung jawab notaris terhadap penyimpanan minuta akta apabila terjadi keadaan overmacht*. 4(2), 50. <https://doi.org/10.56444/nlr.v4i2.4124>

law does not mean granting immunity to notaries from criminal liability, but rather demands a more holistic approach in examining the relationship among the various existing legal instruments. The professional code of ethics, administrative sanctions, civil sanctions, and criminal sanctions must be viewed as a unified system that complements one another, not as separate entities. Effective law enforcement against notaries who commit violations requires solid coordination among the Notary Supervisory Council, professional organizations, and law enforcement apparatus, while continuing to uphold the principles of due process of law and presumption of innocence. Only in this manner can public trust in the notarial institution continue to be maintained, while simultaneously providing space for improvement and learning for notaries who may stumble in carrying out their professional duties. This research is expected to contribute ideas toward perfecting the legal framework of notarial law in Indonesia, so that a proportional balance is created between extensive authority and clear responsibility, for the realization of notarial professional governance that is integrity-based and accountable.

Islamic Legal Perspective on Sanctions for Notaries Who Commit Criminal Offenses

In the treasury of Islamic law, acts that violate norms and rules established by Sharia are known by the terms "Jinayah" and "Jarimah," two terminologies that possess different nuances of meaning yet are closely interrelated in the construction of Islamic criminal law. Islamic jurists define jinayah as the limitation of law that Allah has established for His servants, where every violation of these boundaries will bring forth firm legal consequences.³⁴ Jinayah reflects the vertical dimension of human relationships with their Lord, where every prohibition and command that is disregarded constitutes a form of defiance against Divine will, which in turn will be subject to ta'zir punishment as a form of ta'dib or spiritual education. Meanwhile, jarimah in the Arabic-Indonesian dictionary carries the meaning of sin and disobedience,³⁵ which places greater emphasis on the moral and spiritual aspects of conduct that contradicts divine values. Both concepts form an important foundation in understanding how Islamic law views criminal offenses committed by certain professions, including notaries who bear the mandate as public officials in Indonesia's positive legal system.

The mechanism of jarimah falsification in the perspective of Islamic law operates through two primary means, namely by altering part or all of the substance of a document, as well as falsifying the existence of objects that should not exist or do not correspond with reality. This conduct is not merely viewed as a technical administrative violation, but rather as a form of betrayal of the trust and confidence that has been placed in a person. The legal foundation concerning jarimah ta'zir can be traced from the saying of Prophet Muhammad SAW narrated by Aisyah radhiyallahu anha, which states: "Lighten the punishment for people who have never committed crimes for their actions, except in jarimah hudud." This hadith provides important enlightenment that in Islamic law there exists a principle of proportionality and differentiation in the imposition of sanctions, where first-time offenders or those who commit errors for the first time are given leniency, except for crimes whose punishments have been definitively determined by religious texts

³⁴ Abdul Qadir Audah, *At-tasyri' Al-Jindi Al-Islami*, (Beirut: Ar-Risalah, 2008), Cet. 14. Hlm. 66.

³⁵ Mahmud Yunus, *Kamus Bahasa Arab Indonesia*, (Jakarta: PT Hidakarya Agung, 2008) hlm. 92

such as hudud. This principle is highly relevant when we discuss sanctions for notaries who commit criminal offenses, where the context, intention, and impact of such conduct must be comprehensively considered before rendering a legal verdict.

Jarimah ta'zir etymologically carries the meaning of "giving a lesson," which indicates that the essence of this sanction is not merely punishment, but rather education and character development. Terminologically, Al Mawardi in his works explains that jarimah ta'zir constitutes legal consequences that have not been definitively imposed in the texts of Sharia and its nature is to provide guidance to perpetrators so they do not repeat their actions.³⁶ What is interesting about the concept of ta'zir is its flexibility, where its final resolution is delegated to the ruler or government with the aim and purpose of managing the interests of the ummah more broadly. This opens space for ijтиhad for authority holders to determine the type and degree of sanctions most appropriate to the conditions, time, place, and social impact of the conduct committed. The existence of ta'zir law has a noble purpose, namely to keep perpetrators of jarimah from committing the same mistakes in the future and to provide an educative deterrent effect, not a destructive one.³⁷ This philosophy is highly humanistic because it does not close the door to repentance and self-improvement, while simultaneously providing protection to society from the potential for similar crimes in the future.

When we examine various classical and contemporary literature in the treasury of Islamic scholarship, we will find the interesting fact that Islamic law has not yet explained in detail and explicitly the classification and specific legal consequences of jarimah falsification of correspondence or other criminal offenses committed by a notary in their capacity as a public official. This void does not mean that Islamic law is incapable of responding to contemporary issues, but rather demonstrates the elastic and dynamic nature of Islamic Sharia that provides space for legal development in accordance with the evolution of the times. The clarity that can be used as a foundation in analyzing this issue is by understanding that jarimah falsification possesses the same concept as acts of trickery, dishonesty, and fraud committed with the intention of misleading others and seeking personal gain in achieving certain objectives that contradict the truth. This essential similarity enables us to classify jarimah falsification of documents or deeds into the category of jarimah ta'zir, considering that this conduct has not been explained in detail either from the aspect of the elements of the criminal offense or the type and measure of its punishment in the texts of the Qur'an and Hadith textually.

The word of Allah SWT in Surah al-Nahl verse 116 provides a strong theological foundation regarding the prohibition of lying and fabricating falsehoods, which reads: "And do not say about what your tongues assert of untruth, 'This is lawful and this is unlawful,' to invent falsehood about Allah. Indeed, those who invent falsehood about Allah will not succeed." This verse provides a stern warning to anyone who deliberately manipulates truth and confuses what is lawful with what is unlawful, what is true with

³⁶ Muhammad Sibawaihi et al., "Rereading Al- Rijāl Qawwāmūn 'Alā Al- Nisā'; Feminist Interpretations Of Surah Al- Nisā' (34) In Contemporary Muslim Households Hilmi Ridho Sulhani Afif Sabil Fact , in Indonesia , There Are Organizations or Groups Defending Gender Equality , Su" 14, no. 1 (2025): 1–16, <https://doi.org/10.15548/ju.v13i1.9687>.

³⁷ A. Djazuli, *Fiqh Jinayah (upaya menanggulangi kejahatan dalam islam)*, (Jakarta: PT. Raja Grafindo Persada, 2000). 165

what is false, merely for the sake of fleeting worldly interests. The context of this verse is highly relevant to the conduct of notaries who falsify the contents of deeds or manipulate documents, because in essence notarial deeds are instruments for establishing truth and legal certainty in a transaction or legal act. When notaries betray this trust by falsifying or manipulating facts, they have lied not only to the parties involved, but also to the legal system and ultimately to Allah SWT who has commanded mankind to act honestly and justly in every matter. The threat that those who fabricate falsehoods will not succeed (*la yuflihuun*) demonstrates that the consequences of deceitful conduct are not only worldly sanctions, but also misfortune and loss in the hereafter that is far more eternal and severe.

From the exposition of this verse, a comprehensive conclusion can be drawn that acts of deception constitute reprehensible conduct that is ignoble and harms all parties, both materially and spiritually. In the context of this discussion, falsification of the contents of notarial deeds means lying in including information that should correspond with facts into the contents of the deed, so that a deed that should serve as authentic evidence transforms into an instrument of fraud. Jarimah falsification of deed contents can thus be categorized as the criminal offense of fraud (*tadlis*) which in Islamic law is viewed as conduct that damages the social and economic order of society. Acts of deception are very easily encountered in various transactions of daily life, especially in buying and selling activities and commerce. There is a hadith narration that tells of a time when the Messenger of Allah SAW was walking through the market and approached a food merchant. After examination, it turned out that the food being sold was no longer fit for consumption because its condition was no longer fresh, yet the merchant continued to sell it without informing buyers of its actual condition.³⁸ The Messenger of Allah SAW then rebuked the merchant and stated that the act of concealing defects in merchandise is a form of fraud prohibited in Islam. This case becomes an important analogy that every form of information manipulation or concealment of facts in transactions, including in the creation of notarial deeds, is a form of betrayal that contradicts the principles of transparency and honesty taught by Islam.

Acts of deception are fundamentally a form of injustice (*zhulm*) which means placing something not in its proper place or taking the rights of others unlawfully. This injustice will cause many people to feel treated unjustly and can plunge both perpetrators and victims into acts prohibited by Allah SWT. The word of Allah in Surah Al-Baqarah verse 279 provides a firm warning to perpetrators of injustice: "And if you do not [desist], then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged." Although this verse specifically addresses the prohibition of usury, its basic principle is highly universal, namely the prohibition of committing injustice (*tazhlimun*) and being subjected to injustice (*tuzhlmun*) in every transaction and relationship among people. The phrase "*la tazhlimun wa la tuzhlmun*" (you do no wrong, nor are you wronged) becomes a fundamental principle in the Islamic economic and legal system that demands justice, transparency, and honesty in every interaction. Notaries who falsify deeds have violated this principle because they commit injustice against parties who are harmed as a result of

³⁸ Said Agil Husin Munawwar, MA dan Abdul Mustaqim, M. Ag, *Asbabul Wurud (Studi Kritis Hadis Nabi Pendekatan Sosio Kontekstual)*, (Yogyakarta: Pustaka Pelajar, 2001), Cet. 1, h. 125

the falsification, and at the same time place themselves in a position where they will be subjected to injustice through legal sanctions that will be imposed upon them

Based on the exposition regarding the concept of jarimah ta'zir above, the sanctions that can be imposed on perpetrators of jarimah falsification, including notaries who falsify deeds, are classified into the category of jarimah ta'zir. This classification is chosen because jarimah ta'zir possesses a scope that corresponds with the characteristics of jarimah falsification, whether it be falsification of signatures, falsification of seals, or falsification of the contents of letters and deeds. The flexibility in determining the type and measure of ta'zir sanctions enables judges or authorities to consider various aspects such as the perpetrator's intent, the impact of harm caused, the presence or absence of remorse and willingness to rectify the error, as well as the social and psychological conditions of the perpetrator. Thus, cases of jarimah falsification of deed contents by notaries will be subject to ta'zir punishment for the parties involved, both the notary as the primary perpetrator and other parties who assist or encourage the occurrence of the falsification. This approach reflects substantive justice that not only examines the formal aspect of the conduct but also considers the broader context and impact of the criminal offense committed.

Ta'zir punishment constitutes sanctions that have not been rigidly established by Sharia and are transferred entirely to the local government or authorized institution in implementing their determination. This differs from hudud and qisas, which have been firmly determined in type and measure in the texts of the Qur'an and Hadith. Another opinion from earlier scholars explains that jarimah ta'zir constitutes punishment that is simultaneously the right of Allah and the right of mankind, intended for all manner of transgressions that do not have specific sanction limits in the texts and for which there is no predetermined kafarah (atonement). This characteristic grants authority to ulil amri (holders of power) to exercise ijtihad in determining the most appropriate and proportional sanctions in accordance with the objective conditions of society and the level of danger posed by the conduct committed. In the modern context, this authority can be exercised by judicial institutions, professional supervisory bodies, or law enforcement agencies that possess legitimacy to punish perpetrators of crimes. An important principle that must be maintained is that ta'zir punishment must remain within the corridor of maqashid al-Shariah (the objectives of Sharia), namely protecting religion, life, intellect, lineage, and property, and must not exceed the boundaries of humanity and justice.

Ta'zir punishment can be classified into four major categories based on the object and impact it produces. First, ta'zir punishment that impacts fundamental rights and individual freedom, which includes imprisonment (al-habs) and banishment (al-nafy or at-taghrih).³⁹ Imprisonment aims to restrict the movement of the perpetrator so that they cannot repeat their conduct and have time to reflect and reform themselves. Meanwhile, banishment is intended to distance the perpetrator from the environment that encourages or facilitates the occurrence of crime, while simultaneously providing the perpetrator with

³⁹ Maftei, C.-V. (2010). *The sanctions of the islamic criminal law. aspects regarding penalties of the criminal law of the islamic republic of iran. religion and tradition vs. observing human rights.* 42, 139-148. <https://ideas.repec.org/a/pmu/cjurid/v42y2010p139-148.html>

an opportunity to begin a new life elsewhere.⁴⁰ Second, ta'zir punishment related to property or material matters, which encompasses fines (gharamah), confiscation of proceeds from crime, forfeiture of part of one's property as compensation, and destruction of goods used to commit crimes or that are prohibited by Sharia. This type of punishment is highly relevant for cases involving economic dimensions, including falsification of deeds that is typically committed to obtain unlawful financial gain.⁴¹ Third, ta'zir punishment related to the body or physical members, such as capital punishment for extremely serious crimes that endanger public security, as well as flogging (whipping) that must not exceed the limits determined in hudud.⁴² Fourth, other punishments that have been established by the government or authorities for the benefit of society, such as revocation of certain rights, dismissal from office, or moral sanctions in the form of public announcement of wrongdoing.

In accordance with the exposition regarding the various types of jarimah ta'zir sanctions that have been explained, the most relevant legal action to be imposed on notaries who commit jarimah falsification of documents and deed contents is flogging punishment and banishment, taking into consideration the level of seriousness of the violation committed. The basis for determining such punishment can be traced from historical precedent during the time of Caliph Umar bin Khattab radhiyallahu anhu, a leader known for his justice and firmness in upholding the law. It is narrated that Caliph Umar once imposed sanctions on Mu'an bin Zaidah who had committed jarimah falsification of the seal of Baitul Maal (the Islamic state treasury institution) with a flogging punishment of one hundred lashes. This case became an important jurisprudence in Islamic law that falsification of official documents, especially those related to state finances or important documents that affect the rights of many people, must be dealt with firmly. The falsification of the Baitul Maal seal in that era can be analogized with the falsification of notarial deeds in the present day, because both constitute official documents that possess legal force and serve as the basis for important transactions. This precedent from Caliph Umar demonstrates that Islamic law does not tolerate even the slightest form of manipulation of official documents, considering that the resulting impact can be very broad and harmful to many parties.

The implementation of ta'zir punishment for notaries who commit the criminal offense of deed falsification in the context of Indonesia's contemporary legal system certainly requires careful adaptation and contextualization. The flogging punishment applied during the time of Caliph Umar may need to be translated into forms of sanctions more appropriate to the social and cultural conditions of Indonesian society, such as administrative sanctions in the form of dismissal from office, revocation of practice licenses, or significant fines.⁴³ Meanwhile, banishment can be interpreted as a prohibition

⁴⁰ Nurra'ida, F. Z., & Fatkhirrozi, M. A. (2023). Perlindungan Hak Narapidana (Sajin): Studi Komperatif al-Madzahi al-Arbaâ€TMah dan UU Nomor 22 Tahun 2022 Tentang Pemasyarakatan. *Ijtihad: Jurnal Hukum Dan Ekonomi Islam*, 17(1), 109-129. <https://doi.org/10.21111/ijtihad.v17i1.8918>

⁴¹ Nurra'ida, F. Z., & Fatkhirrozi, M. A. (2023). Perlindungan Hak Narapidana (Sajin): Studi Komperatif al-Madzahi al-Arbaâ€TMah dan UU Nomor 22 Tahun 2022 Tentang Pemasyarakatan. *Ijtihad: Jurnal Hukum Dan Ekonomi Islam*, 17(1), 109-129. <https://doi.org/10.21111/ijtihad.v17i1.8918>

⁴² Efendi, S. (2024). Analisis Sanksi Pidana dalam Hukum Islam Pendekatan Teoritis dan Pustaka. *Maqasidi*, 151-162. <https://doi.org/10.47498/maqasidi.v3i2.3524>

⁴³ Sunaryo, P. (2015). *Pertanggungjawaban Pidana Notaris dalam Pemalsuan Akta Otentik (Studi Tentang Putusan Pidana yang dikuatkan oleh Mahkamah Agung Republik Indonesia Nomor: 1014K/Pid/2013)*.

from practicing the notarial profession in certain regions or for certain periods of time. What is most important is that the sanctions imposed must fulfill several basic principles: first, proportional to the level of wrongdoing and the impact caused; second, providing a deterrent effect not only for the perpetrator but also for other notaries who might be tempted to commit similar acts; third, providing the perpetrator with an opportunity to repent and reform; and fourth, protecting the interests of the wider community from potential harm due to deed falsification. By understanding the Islamic legal perspective on sanctions for notaries who commit criminal offenses, it is hoped that a just, firm, and humane sanctions system can be formed, one that not only punishes but also educates, not only provides a deterrent effect but also opens the door to reform, so that integrity and accountability are created in the notarial profession, which in turn will strengthen public trust in the legal system as a whole.

Conclusion

This research affirms that the legal implications of imposing sanctions on notaries who commit criminal offenses represent structural complexity in the harmonization of Indonesia's legal system that dialectically integrates the paradigm of positive law and Islamic law. First, the determinants causing notaries to be subjected to criminal sanctions can be classified into juridical factors that encompass normative voids in the regulation of criminal sanctions in Law Number 2 of 2014 concerning the Position of Notary, which only accommodates administrative and civil sanctions in a limitative manner, as well as non-juridical factors in the form of degradation of moral integrity and ineffectiveness of the preventive function of the Notary Supervisory Council, where the dominant manifestations of criminal offenses include falsification of authentic deeds (Articles 263-264 of the Criminal Code), fraud, and embezzlement that cause substantive harm to communities using notarial services as a consequence of betrayal of public trust. Second, the supervisory system and mechanism for imposing sanctions on notaries necessitate coherent harmonization among administrative sanctions, civil sanctions, professional code of ethics, and criminal sanctions by implementing the principle of *ultimum remedium*, where criminal sanctions are positioned as subsidiary instruments after other sanctions fail to provide adequate deterrent effects; however, in judicial practice notaries can still be held criminally accountable based on general provisions in the Criminal Code despite not being explicitly regulated in special notarial legislation, which indicates the urgency of legislative reformulation to fill this legal vacuum. Third, the Islamic legal perspective through the concept of *jarimah ta'zir* offers a humanistic philosophical alternative in the punishment of notaries by emphasizing the educative and rehabilitative dimensions alongside the retributive function, where deed falsification is categorized as *jarimah ta'zir* whose sanction determination is delegated to *ulil amri* to be adapted to the sociological context and the level of *mafsadah* (harm) caused, considering that document falsification constitutes a manifestation of falsehood (*kidzb*) and betrayal of trust (*khiyanah al-*

amanah) that contradicts the Islamic principle of justice "la tazhlimun wa la tuzhlmun" as enshrined in the Qur'an, Surah al-Baqarah verse 279 and al-Nahl verse 116, which affirms the prohibition of committing injustice and being subjected to injustice in every legal transaction. Thus, law enforcement against notaries who commit criminal offenses requires a multi-dimensional approach that integrates the hierarchy of sanctions in a proportional and just manner, supported by a rigid supervisory system that nevertheless continues to uphold the principles of due process of law and presumption of innocence, as well as opening space for moral and professional restoration in order to maintain the integrity of the notarial profession and strengthen the legitimacy of public trust in the notarial institution within the framework of Indonesia's national legal system that is just and humane.

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