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The Authority of Notaries in Executing Deeds Beyond Their Official Jurisdiction: A Study of the Principle of Territoriality and Legal Certainty

Khayan Abrori^{1*}, Habib Adjie²

¹Fakultas Hukum, Universitas Narotama, Surabaya, Indonesia, abrorikhayan@gmail.com

²Fakultas Hukum, Universitas Narotama, Surabaya, Indonesia, syhba6170@gmail.com

*Corresponding Author: abrorikhayan@gmail.com

Abstract: This study aims to analyze the authority of Notaries in executing deeds outside their official jurisdiction based on the principles of territoriality and legal certainty. The issue arises because, in practice, some Notaries draft deeds beyond their designated jurisdiction as determined in their appointment decree, which normatively contradicts Article 18 of Law No. 2 of 2014 concerning Notary Office. This situation raises legal concerns regarding the validity of the deed and the accountability of the Notary as a public official. This research employs a normative juridical method with statutory, conceptual, and case approaches. The statutory approach examines the relationship between the territorial principle and the implementation of notarial authority. The conceptual approach explores theories of competence and legal certainty, while the case approach reviews several Supreme Court decisions addressing the overreach of notarial jurisdiction. The findings indicate that executing a deed outside the official jurisdiction constitutes an *ultra vires act*, reducing the authenticity of the deed and potentially rendering it void. Therefore, strengthening regulations and supervisory mechanisms by consistently applying the territorial principle is essential to ensuring legal certainty and protecting good-faith parties.

Keyword: Notary, Authority, Territorial Jurisdiction, Territoriality Principle, Legal Certainty.

INTRODUCTION

A notary is a public official authorized to draft authentic deeds in various civil legal matters. The existence of notaries serves as an essential pillar to ensure legal certainty, order, and protection for society. As a public officeholder, a notary's authority is not unlimited but confined to a specific jurisdiction as stipulated in *Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 on the Office of Notary* (UUJN). Accordingly, a notary may only exercise their authority to execute deeds within the territorial boundaries determined by the Minister of Law and Human Rights through an official appointment decree.

Although this provision appears clear in its textual formulation, practical reality reveals a different picture. In practice, notaries occasionally execute deeds outside their designated jurisdictions, motivated by proximity to the parties, convenience, or a lack of understanding

regarding administrative boundaries. Such conduct raises legal concerns as it violates the principle of territoriality and potentially triggers disputes concerning the validity of the deeds produced.

The issue becomes more complex when deeds executed beyond jurisdiction affect third parties acting in good faith. Once the validity of the deed is challenged in court, the parties involved may lose their legal protection due to the administrative fault of the public official. This situation illustrates that exceeding territorial authority is not merely an ethical violation but has direct legal implications on the protection of citizens' rights.

From an administrative law perspective, every public official possesses *attributive authority*—powers conferred directly by statutory provisions. Any act performed beyond such authority constitutes an *ultra vires act*, which is invalid and produces no legal consequences. Therefore, when a notary executes a deed outside their official jurisdiction, such an act can be regarded as an excess of authority contrary to the principle of legality.

Beyond administrative considerations, violations of territorial boundaries also undermine the principle of legal certainty. According to Gustav Radbruch, legal certainty (*Rechtssicherheit*) represents one of the essential pillars of justice within a legal system. Without legal certainty, public trust in legal institutions cannot be sustained. In the context of notarial practice, the certainty of law is inherently tied to the validity of authentic deeds, which depend not only on their form and content but also on the lawful authority of the notary who creates them.

Furthermore, Utrecht's *theory of authority* emphasizes that authority comprises two dimensions: *bevoegdheid* (power) and *verantwoordelijkheid* (responsibility). When a notary acts beyond their designated territorial authority, they exercise power without legitimate responsibility, thereby disturbing the balance between rights and duties inherent in public office. Consequently, this issue must be examined not only through legislative interpretation but also from the theoretical foundation governing public authority.

Based on these considerations, this study focuses on analyzing the authority of notaries in executing deeds beyond their official jurisdiction by examining the implementation of the principle of territoriality and legal certainty. This research further seeks to identify the legal implications of such acts and propose normative recommendations for improving regulations and supervisory mechanisms. Ultimately, the findings are expected to contribute academically to the enhancement of legal certainty and the professionalism of notarial practice in Indonesia.

METHOD

This study employs a normative juridical method, focusing on the analysis of written legal norms (*law in books*) rather than their practical application (*law in action*). The purpose of this method is to examine and interpret the scope of notarial authority concerning the principle of territoriality as regulated in the *Law on Notary Office (UUJN)* and its relationship with the principle of legal certainty within the Indonesian legal system. The research utilizes three approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to analyze the synchronization between the *Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Office of Notary* and related administrative regulations issued by the Ministry of Law and Human Rights. The conceptual approach elaborates on theories of authority, legality, and legal certainty as developed by legal scholars such as Hans Kelsen, Gustav Radbruch, and Utrecht. Meanwhile, the case approach is applied to review several Supreme Court decisions addressing the issue of notaries acting beyond their jurisdiction and the legal consequences thereof. The data used in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include statutory provisions and court decisions; secondary materials consist of textbooks, academic journals, and scholarly papers; while tertiary materials comprise legal

dictionaries and relevant encyclopedias. All data were collected through library research and analyzed qualitatively using a deductive reasoning process, beginning with general legal principles to derive specific conclusions concerning the authority of notaries within their territorial jurisdiction.

RESULTS AND DISCUSSION

The Normative Foundation of Notarial Authority and the Principle of Territoriality

The authority of notaries as public officials is established by law to ensure the authenticity of legal acts and provide legal certainty for the public. In Indonesia, the notarial office is regulated by *Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 on the Office of Notary (UUJN)*, which stipulates that every notary is appointed for a specific jurisdiction determined by the Minister of Law and Human Rights. Within that jurisdiction, the notary holds the exclusive authority to create authentic deeds as regulated under Article 15 of the UUJN. This legislative framework reflects the delegation of state authority in the civil law domain through the function of public authentication (*openbare ambtenaren*).

The limitation of territorial jurisdiction, as provided in Article 18 of the UUJN, embodies the principle of territoriality (*territorialiteitsbeginsel*), which ensures that each notary exercises authority only within their designated region. This principle serves to prevent administrative overlap, maintain order in the distribution of authority, and uphold accountability in public service. However, despite the clarity of this provision, practical deviations often occur when notaries execute deeds outside their appointed regions, thereby violating both the administrative order and the spirit of territorial limitation embedded in the law.

In administrative law theory, every public official's authority originates from attribution, delegation, or mandate. Notaries obtain their authority through attribution, directly conferred by law. Consequently, any action taken beyond the scope of such authority constitutes an *ultra vires act*—an act performed without legal power. As a result, deeds executed outside the notary's jurisdiction may be deemed invalid or lose their authenticity, depending on the extent of the violation. This perspective aligns with the fundamental principle of legality (*wetmatigheid van bestuur*), which requires all public acts to be grounded in the law.

From a doctrinal viewpoint, the principle of territoriality is also an instrument for upholding legal certainty and protecting the integrity of public authority. The concept ensures that every public act is traceable to a legitimate source of power, thereby reinforcing the predictability and reliability of legal processes. When a notary disregards territorial boundaries, they not only undermine administrative order but also erode public confidence in the legal system, as the authenticity of the deed becomes legally questionable.

Therefore, the normative foundation of the notarial office is inseparable from the territorial limits established by law. The restriction of jurisdiction is not merely administrative but substantive, forming part of the legitimacy and accountability of public authority. Compliance with the principle of territoriality thus reflects adherence to the principle of legality and ensures that the authenticity of deeds retains its full evidentiary value. Upholding this principle is essential to maintaining legal certainty, justice, and professional ethics within notarial practice in Indonesia.

Judicial Interpretation of Territorial Jurisdiction in Notarial Practice

Building upon the theoretical foundation of notarial authority and the principle of territoriality discussed in the previous section, it is necessary to examine how these concepts are interpreted and enforced in judicial practice. The Supreme Court's decisions play a pivotal role in defining the practical limits of notarial jurisdiction and in clarifying whether the violation of territorial boundaries merely constitutes an administrative irregularity or a substantive breach of authority.

The jurisprudence of the Supreme Court reveals that territorial jurisdiction is not a mere formality but an essential component of notarial legitimacy. For instance, in Supreme Court Decision No. 2569 K/Pdt/2019, the Court annulled a sale and purchase deed executed by a notary outside their authorized region, affirming that such conduct undermines the validity of the deed. The Court's reasoning underscores that territorial boundaries are integral to the structure of legal authority and, when disregarded, lead to the degradation of the deed's authenticity.

A consistent position can be observed in Supreme Court Decision No. 1615 K/Pdt/2020, where the Court emphasized that territorial compliance forms part of the procedural integrity of the notarial function. Even when the deed fulfills formal elements, its legal force is nullified if the notary acted beyond their jurisdiction. This illustrates that in notarial law, *where* an act is performed can be as decisive as *how* it is performed.

More nuanced reasoning emerged in Supreme Court Decision No. 3200 K/Pdt/2015, in which the Court adopted a more equitable approach by considering the interests of good-faith parties. Although the notary exceeded their territorial mandate, the Court prioritized the protection of innocent parties who relied on the deed in good faith. This reasoning reflects an evolving judicial balance between formal legality and substantive justice within Indonesian jurisprudence.

The variety of judicial reasoning across these cases demonstrates a tension between the formal rigidity of territorial law and the flexible demands of justice. Some panels of judges strictly apply the law, declaring all out-of-jurisdiction deeds void, while others adopt a contextual interpretation that weighs procedural violations against the principle of fairness. This diversity in judgment creates interpretive uncertainty, highlighting the need for a more unified legal stance.

Doctrinally, these decisions affirm that territorial jurisdiction represents the spatial expression of state-delegated authority. The notary's legal identity is inseparable from the territorial scope of their appointment. Acting beyond that scope not only violates administrative regulations but also distorts the concept of lawful authority itself. Upholding territorial integrity, therefore, is vital to ensuring predictability, legal certainty, and the institutional credibility of notarial practice.

The jurisprudence ultimately reveals the necessity of stronger coordination between the Ministry of Law and Human Rights and the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) in supervising notarial practice. Without consistent administrative oversight, judicial interpretation will continue to vary. A harmonized regulatory mechanism would reinforce territorial discipline and promote uniformity in judicial reasoning, thereby enhancing public confidence in the notarial institution.

Implications for Legal Certainty and Protection of the Parties

The issue of notaries executing deeds beyond their territorial jurisdiction directly affects the principle of legal certainty, which serves as a cornerstone of the Indonesian legal system. Legal certainty ensures predictability and stability in legal relations, enabling citizens to rely on the authenticity of public documents. When a notary acts outside their appointed region, the deed's legitimacy becomes questionable, leading to confusion regarding its legal force. Such uncertainty undermines not only the credibility of the notarial institution but also public trust in the legal system as a whole.

The absence of clear and consistent enforcement of territorial boundaries has created a systemic vulnerability, where the parties who act in good faith may suffer the consequences of administrative errors committed by public officials. Purchasers, lenders, or beneficiaries who rely on deeds prepared by notaries assume that the document is legally valid. However, when jurisdictional violations occur, they risk losing legal protection through no fault of their own.

This situation challenges the state's responsibility to uphold justice and protect bona fide parties within the framework of administrative law.

From a legal theory perspective, the tension between formal legality and substantive fairness becomes evident. On one hand, the principle of legality requires that every official act adhere strictly to statutory authority. On the other, the principle of justice demands that innocent parties not be penalized for errors committed by state officials. Balancing these two principles is essential to prevent the rigid application of law from resulting in injustice, particularly in notarial practice where public reliance on authenticity is fundamental.

In practical terms, the uncertainty arising from territorial violations burdens both the judiciary and the public administration. Disputes over the validity of deeds not only prolong litigation but also consume institutional resources that could otherwise be directed toward improving notarial services. Moreover, inconsistent rulings by the courts create a fragmented legal landscape, leaving notaries uncertain about the limits of their lawful operation. This fragmentation ultimately weakens the legal infrastructure that supports property and contractual transactions in Indonesia.

Therefore, ensuring legal certainty and protection for bona fide parties requires a systemic approach that combines regulatory clarity, consistent judicial interpretation, and proactive administrative supervision. Territorial jurisdiction should be reaffirmed as a legal safeguard that preserves the integrity of public authority without sacrificing fairness to those acting in good faith. Only by aligning these principles can Indonesia sustain a notarial system that is both legally sound and socially just.

Normative and Policy Solutions

Addressing the problem of territorial overreach by notaries requires a comprehensive normative response. The first step involves harmonizing regulations between the *Law on Notary Office (UUJN)* and administrative policies under the Ministry of Law and Human Rights. A joint regulation or ministerial decree defining clearer territorial boundaries, enforcement mechanisms, and sanctions for violations would provide a stronger legal foundation for the consistent application of the principle of territoriality. Such harmonization would also minimize interpretive gaps that often lead to conflicting judicial outcomes.

Beyond regulatory reform, there must be a strengthening of institutional supervision over notarial practice. The existing system of monitoring, primarily administrative in nature, should evolve into a coordinated mechanism involving both the Ministry of Law and Human Rights and the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN). Integrating notarial data, standardizing regional reporting procedures, and establishing transparent accountability systems would ensure compliance with territorial mandates and reinforce public confidence in notarial integrity.

From a broader policy perspective, safeguarding territorial discipline is not solely about administrative order but about preserving legal certainty and professional ethics. Territorial boundaries define the legitimate scope of a notary's public function, and adherence to them reflects respect for the rule of law. Therefore, reforms must not only clarify regulations but also instill an ethical awareness that jurisdictional compliance is an expression of professionalism. Through consistent enforcement, regulatory synergy, and ethical strengthening, Indonesia can establish a notarial system that operates with both procedural discipline and substantive justice.

CONCLUSION

This study demonstrates that the authority of notaries is inherently territorial, as prescribed by *Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Office of Notary (UUJN)*. The principle of territoriality functions not merely as an administrative boundary but as a fundamental legal safeguard ensuring that every public act is performed

within the limits of legitimate state-delegated authority. When a notary executes a deed beyond their appointed jurisdiction, the act constitutes a breach of lawful competence and undermines the authenticity and legal certainty of the deed.

The analysis of Supreme Court decisions reveals a developing judicial interpretation of territorial violations. While the Court generally maintains that such acts are invalid, a shift toward balancing formal legality with substantive fairness has emerged, particularly to protect parties acting in good faith. This demonstrates the judiciary's evolving role in aligning legality with equity.

To ensure coherence between law and practice, it is necessary to harmonize the *UUJN* with administrative regulations and strengthen institutional supervision between the Ministry of Law and Human Rights and the Ministry of Agrarian Affairs and Spatial Planning. Territorial discipline must be reinforced not only through sanctions but also through ethical and professional awareness among notaries. Upholding the territorial boundaries of notarial authority is essential to sustaining legal certainty, public trust, and the integrity of the Indonesian legal system.

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