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## Legal Protection of Notary Employees As *Instrumental Witnesses* In The Making of Notary Deeds

**Hais Subaga Athazada<sup>1\*</sup>, Nuzulia Kumala Sari<sup>2</sup>, Iwan Rachmad Soetijono<sup>3</sup>**<sup>1</sup>Magister Kenotariatan, Fakultas Hukum, Universitas Jember, Indonesia, [haisubagaathazada@gmail.com](mailto:haisubagaathazada@gmail.com)<sup>2</sup>Magister Kenotariatan, Fakultas Hukum, Universitas Jember, Indonesia, [nuzulia@unej.ac.id](mailto:nuzulia@unej.ac.id)<sup>3</sup>Magister Kenotariatan, Fakultas Hukum, Universitas Jember, Indonesia, [iwan.fh@unej.ac.id](mailto:iwan.fh@unej.ac.id)Corresponding Author: [haisubagaathazada@gmail.com](mailto:haisubagaathazada@gmail.com)

**Abstract:** The existence of notaries as public officials plays an important role in the drafting of authentic deeds, which function as perfect legal evidence in legal relationships within society. In the process of drafting authentic deeds, the presence of instrumental witnesses constitutes a formal requirement that must be fulfilled to maintain the authenticity of the deed. In notarial practice, instrumental witnesses are generally notary employees because they are considered to understand the procedures and technical aspects of deed Preparation. Problems arise when disputes concerning notary deeds occur, while legal protection for notary employees acting as instrumental witnesses have not been explicitly regulated under the Law on Notarial Office. This study aims to analyze the legal protection of notary employees acting as instrumental witnesses, the limits of their legal liability, and future legal arrangements regarding such protection. This research employs a normative legal method using statutory, conceptual, and case approaches. The results of the study indicates that the absence of explicit legal regulation concerning the protection of instrumental witnesses creates legal uncertainty in notarial practice. The legal responsibility of notary employees acting as instrumental witnesses is principally limited to formal aspects of deed execution rather than the substantive content of the deed. Therefore, a more comprehensive legal reform is necessary to provide legal certainty and protection for notary employees acting as instrumental witnesses.

**Keyword:** Legal Protection; Notary Employees; Instrumentary Witnesses; Notarial Deeds.

### INTRODUCTION

A notary is a public official with a crucial position in the Indonesian legal system, particularly in civil law. The public needs a notary to provide legal certainty through the creation of authentic deeds with full evidentiary force (Notodisoerjo, 1993). Authentic deeds prepared by a notary serve not only as written evidence but also provide legal protection for the rights and interests of parties engaging in legal acts. Therefore, the office of notary is closely linked to the public's need for certainty, order, and legal protection in everyday life (Ananda, 2018).

The position of a notary as a public official is affirmed in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, which states that a notary is a public official authorized to make authentic deeds and has other authorities as referred to in the law. As a public official, a notary is given attributive authority by the state to express the will of the parties in the form of an authentic deed in accordance with applicable legal provisions. This authority makes notaries one of the legal professions that has a high level of public trust. In exercising their authority, notaries are required to comply with the requirements and procedures for making deeds as stipulated in the Notary Law. Fulfillment of these formal requirements is very important because it determines the validity and authenticity of a deed. One important element in making a notarial deed is the presence of an instrumental witness. The presence of an instrumental witness is a formal requirement that must be met so that the deed made remains authentic (Adjie, 2009). Without an instrumental witness, a notarial deed can lose its authentic power and only have the evidentiary power of a private deed (Tobing, 1992).

Instrumental witnesses are essentially witnesses present to attest that the deed creation and formalization process has been carried out in accordance with applicable legal provisions. The presence of an instrumental witness includes witnessing the reading of the deed by the notary, the presence of the parties, and the signing of the deed before the notary (Tobing, 1992). In notarial practice in Indonesia, instrumental witnesses generally come from the notary's own employees. This is done because the notary's employees are considered to have a good understanding of the administrative and technical procedures for creating deeds, thus facilitating the implementation of the notary's duties in daily practice. The presence of notary employees as instrumental witnesses This has become a common practice in notarial activities. However, the role of notary employees as instrumental witnesses raises its own legal issues, particularly when disputes arise regarding notarial deeds. In various civil and criminal cases related to notarial deeds, notary employees act as instrumental witnesses. are often called in during the examination process to provide information regarding the deeds being prepared (Kohar, 1984). This situation indicates that notary employees are in a vulnerable position because they occupy two roles simultaneously: as workers in the notary's office and as part of the formalities of preparing authentic deeds.

The problem becomes increasingly complex because the Notary Law does not yet explicitly regulate the legal protection of notary employees as instrumental witnesses. The provisions in the Notary Law only explain the requirements to become a witness to a deed as stipulated in Article 40 of the UUN, but do not provide provisions regarding the rights, obligations, limits of responsibility, or forms of legal protection for instrumental witnesses. This lack of norms ultimately creates legal uncertainty in notarial practice.

The ambiguity of these regulations has the potential to cause harm to notary employees as instrumental witnesses. In practice, it is not uncommon for instrumental witnesses to be considered jointly responsible for problems arising in a deed, even though in essence, instrumental witnesses are only responsible for the formal aspects of the deed's preparation and do not have authority over the substance of the deed's contents (Arief, 1978). The contents of the deed are entirely the will of the parties, which are expressed by the notary in the form of an authentic deed. Therefore, imposing material responsibility on instrumental witnesses is inconsistent with the principle of authority in notarial practice. This problem can be seen in several cases in Indonesia, one of which is the Semarang District Court Decision Number 773/ Pid.B /2021/PN Sng concerning alleged forgery of signatures in a notarial deed. In this case, the instrumental witness was also questioned during the examination process because he was deemed to have knowledge of the deed's preparation process. This situation indicates that the position of notary employees as instrumental witnesses carries real legal risks in practice.

Furthermore, the lack of clear regulations regarding legal protection for instrumental witnesses also results in the absence of clear boundaries regarding the legal responsibilities of notary employees in the event of a dispute regarding a deed. This condition can create fear and uncertainty for notary employees in carrying out their duties as instrumental witnesses. In fact, legal protection is an important element in realizing legal certainty and justice in a legal system (Marzuki, 2021). According to the theory of legal protection, every legal subject who exercises their rights and obligations based on legal provisions should receive protection from the state (Rahardjo, 1979). Therefore, notary employees as instrumental witnesses who carry out their duties based on the provisions of the Notary Law should also receive adequate legal protection. This protection is important to ensure that notary employees are not burdened with responsibilities that exceed their authority. On the other hand, legal protection for notary employees as instrumental witnesses is also necessary to maintain the stability and professionalism of notarial practice. If there are no clear regulations regarding the position and responsibilities of instrumental witnesses, this can create uncertainty in the practice of making notarial deeds. As a result, public trust in authentic deeds and the notary office may decline (Adjie, 2009).

Based on this description, it can be understood that the issue of legal protection for notary employees as instrumental witnesses is an important issue that requires in-depth study. This research not only discusses the form of legal protection for instrumental witnesses but also examines the limits of notary employees' legal liability and the concept of future legal regulations that can provide legal certainty, legal protection, and justice in notarial practice.

## **METHOD**

This research is a normative legal research conducted by examining legal norms, legal principles, and legal concepts related to the legal protection of notary employees as instrumental witnesses. Normative legal research is used because this research focuses on the study of laws and legal concepts related to notarial practice (Efendi, Susanti, Tektona, 2019).

The approach used in this research consists of a statutory approach (statute approach), conceptual approach (conceptual approach), and case approach (case approach). The legislative approach is carried out by examining the Notary Law and other regulations related to witness protection and legal responsibility. The conceptual approach is used to analyze the theory of legal protection, the theory of responsibility, and the theory of legal certainty. Meanwhile, the case approach is carried out by examining court decisions related to notarial deed disputes and the involvement of instrumental witnesses in the judicial process (Marzuki, 2021).

The legal materials used in this research consist of primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of books, journals, and previous research results that are relevant to the research object (Marzuki, 2021).

## **RESULTS AND DISCUSSION**

The existence of notaries in the Indonesian legal system holds a crucial position because notaries are authorized by the state to create authentic deeds that have perfect evidentiary force. Authentic deeds are not merely viewed as ordinary written documents, but as evidence that holds the highest status in civil evidence law. Therefore, every notarial deed creation process must be carried out in accordance with the requirements and procedures stipulated in the Notary Law to ensure that the resulting deed maintains its authenticity and provides legal certainty to the public. One of the formal requirements that must be met in the process of creating an authentic deed is the presence of an instrumental witness (Adjie, 2009).

An authentic deed made by a public official, in this case a Notary, does not stand alone but is formed through a procedure that has been strictly regulated, including the presence of an *instrumental witness* as part of the formalities of forming the deed. The *instrumental witness* plays an important role as a companion in the deed-making process to ensure that the deed has been made in accordance with all formal requirements as stipulated in the Law. According to Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the notary is required to present two witnesses in every deed-making. These witnesses are known as *instrumental witnesses*, namely witnesses who not only witness the signing process, but also guarantee that the deed is made in accordance with applicable legal provisions, as well as provide formal guarantees for the process of creating the authentic deed (Soeroso, 2003).

*Instrumental witnesses* as an integral part of the structure of an authentic deed legally places them in a crucial position. They are not merely parties who sign the deed, but also legal subjects who help guarantee the validity of the deed from a legal perspective. formality. Matter This in accordance with provision Chapter 1868 Civil Code which states that an authentic deed is deed Which made in form Which determined Constitution by or before a public official authorized to do so at the place where the deed was made (Subekti, 2002).

The existence of *instrumental witnesses* has legal implications for the evidentiary power of authentic deeds. Authentic deeds have the power proof Which perfect (*volledigbewijs*) on content Which contained therein as long as it has not been proven otherwise (*tegenbewijs*). This evidentiary force includes three aspects, namely certainty regarding the date of the deed's creation, certainty regarding the identity of the parties, and the content or substance of the agreement or information in the deed. These three aspects are highly dependent on the existence and validity of *instrumental witnesses* who state that the deed was signed in their presence following all legal procedures.

The legal status of *instrumental witnesses* also needs to be understood from the perspective of legal responsibility and the ethics of the notary profession. Although *instrumental witnesses* are not public officials, because of their involvement in the drafting of a deed, which carries significant evidentiary weight, any negligence or inconsistency in the performance of their role can seriously impact the validity of the deed itself (Adjie, 2009).

*instrumental witnesses* are regulated in Article 40 of Law Number 2 of 2014 concerning the Position of Notary Public, which stipulates that every deed read by a notary public must be attended by at least two witnesses, unless otherwise stipulated by statutory regulations. This provision indicates that the presence of *instrumental witnesses* is a mandatory element in the deed formalization process. If this requirement is not met, the deed made by the notary public may lose its authentic nature and be reduced to a private deed (Notodisoerjo, 1993). Therefore, the presence of *instrumental witnesses* cannot be separated from the process of making an authentic deed.

In Indonesian notarial practice, *instrumental witnesses* are generally notary office employees. The use of notary employees as *instrumental witnesses* has become a common practice and has been passed down through generations in the notary world. This occurs because notary employees are considered to have a better understanding of administrative procedures, deed-making procedures, and the working mechanisms of a notary's office than other parties outside the notary's office (Kohar, 1984). Furthermore, the use of notary employees as *instrumental witnesses* is also considered more effective and efficient because it simplifies the implementation of notary duties in daily practice.

However, the use of notary employees as *instrumental witnesses* raises its own legal issues, particularly regarding their status and the limits of their responsibilities in the preparation of notarial deeds. This issue arises because the Notary Law currently does not provide clear regulations regarding legal protection for notary employees as *instrumental*

witnesses. Existing regulations are limited to the formal requirements for becoming witnesses, without explaining in detail the rights, obligations, limits of authority, or forms of legal protection that can be provided to instrumental witnesses when facing legal challenges (Adi, 2020).

This lack of norms ultimately creates legal uncertainty in practice. In various cases related to notarial deed disputes, notary employees act as instrumental witnesses. are often summoned during investigations by law enforcement officials. In some cases, instrumental witnesses are not only questioned as witnesses but are also implicated in the legal process because they are presumed to know the entire contents and process of the deed (Nadiyon, 2023). This situation demonstrates that in practice, there is still a misunderstanding regarding the role of instrumental witnesses in the preparation of notarial deeds.

Essentially, an instrumental witness is only responsible for the formalities of the deed's creation, not for the substance of its contents. An instrumental witness does not have the authority to verify the material veracity of the documents presented by the parties or to assess the veracity of the statements made by the parties before the notary (Arief, 1978). The contents of the deed are entirely the will of the parties, which the notary then transcribes into an authentic deed. Therefore, the responsibilities of an instrumental witness cannot be extended to include material responsibility for the contents of the deed.

According to GHS Lumban Tobing, an instrumental witness essentially only testifies to the fulfillment of formal requirements for the preparation of an authentic deed (Tobing, 1992). This testimony includes the presence of the parties before a notary, the reading of the deed by the notary, and the signing of the deed by the parties and the notary. Therefore, if a dispute arises regarding the contents of the deed, the instrumental witness cannot be held responsible for the substance agreed upon by the parties. However, in practice, the boundaries of this responsibility are often blurred. When allegations of forged signatures, the use of forged documents, or disputes regarding the contents of the deed arise, law enforcement officials often assume that the instrumental witness is aware of the entire process and contents of the deed because their name is listed on the deed as a witness (Bastian, 2019). As a result, notary employees as instrumental witnesses are in a vulnerable position because they must face legal proceedings for something that is actually beyond their authority.

This vulnerability is evident in several cases in Indonesia, one of which is Semarang District Court Decision Number 773/ Pid.B /2021/PN Smg, which concerns alleged forgery of signatures in notarial deeds. In this case, instrumental witnesses were also questioned regarding the deed-making process because they were deemed to have knowledge of the legal events that occurred. This situation indicates that the position of instrumental witnesses in practice has not received adequate legal protection, even though their duties and authorities are limited only to the formalities of deed-making. This problem cannot be separated from the lack of clear regulations regarding the position of instrumental witnesses in the Notary Law . The Notary Law only regulates the requirements for becoming a witness but does not regulate the limits of legal responsibility of instrumental witnesses in the event of a dispute regarding a notarial deed. This lack of regulation gives rise to multiple interpretations in law enforcement practices and results in the position of notary employees as instrumental witnesses being under-protected.

From the perspective of the theory of authority, a person's legal responsibility should be limited by the authority they possess (HR, 2018). A person cannot be held accountable for anything beyond the scope of their authority. In the context of instrumental witnesses , their authority is only related to witnessing the formalities of making a deed. Therefore, imposing responsibility for the substance of the deed on an instrumental witness is a form of expansion of responsibility that is inconsistent with the principle of authority in administrative law and notarial law. Furthermore, from the perspective of the theory of legal protection, the state

should provide protection to every legal subject who carries out their duties based on applicable legal provisions. Notary employees as (Rahardjo, 1979) instrumental witnesses essentially carry out the duties mandated by the Notary Law as part of the formal requirements for making an authentic deed. Therefore, notary employees should receive legal protection when carrying out their duties as instrumental witnesses as long as they act in accordance with legal provisions.

In practice manufacturing deed authentic, notary No work individually, but rather involving party others who have role certain in support process One of the parties with an important role is a notary employee who acts as an *instrumental witness*. The presence of an *instrumental witness* is a formal requirement in the creation of an authentic deed as regulated in the Notary Law (UUJN) . The *instrumental witness* serves to ensure that the deed has been read, understood, and signed by the parties before the notary in accordance with the specified procedures (Budiono, 2013). Thus, legally, the *instrumental witness* has a significant role in guaranteeing the validity of an authentic deed.

Despite their important role, the provisions regarding *instrumental witnesses* in the UUJN are still limited to formal aspects, namely regarding the requirements for witnesses, without being accompanied by comprehensive provisions regarding the legal status, rights, obligations, and legal protection for *instrumental witnesses*. This limited regulation creates a legal vacuum *that has an impact on legal uncertainty in notarial practice. Under certain conditions, notary employees as instrumental witnesses* can be summoned in court proceedings to provide information regarding the deeds they have made, without any clarity regarding the limits of responsibility and the legal protection they should receive.

This situation indicates an imbalance in the notarial legal system. On the one hand, notaries, as public officials, have certain protection mechanisms through supervisory and honorary bodies, such as the Notary Supervisory Board and the Notary Honorary Council. On the other hand, notary employees, as *instrumental witnesses* who play a role in the deed-making process, have not received adequate legal protection. This imbalance has the potential to lead to injustice, particularly when notary employees are held legally accountable for actions exceeding their capacity and authority. This situation also indicates the failure to fulfill the principle of legal certainty, which demands clear norms and proportional protection for every legal entity (Radbruch, 2000).

The making of the deed must be based on legal regulations relating to the procedure for making notarial deeds, so that the position of Notary as a Public Official no longer needs to be given another title relating to the notary's authority. The position of notary is stated in Article 1 of the Notary Law which states that: A notary is a public official who is solely authorized to make authentic deeds regarding all acts, agreements and stipulations required by a general regulation or by an interested party desired to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, and provide the grosse , copies and extracts, all as long as the making of the deed by a general regulation is not also assigned or excluded to another official or person. A notary is a public official who is solely authorized to make authentic deeds regarding all acts, agreements and stipulations required by a general regulation or by an interested party desired to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide the grosse , copies and extracts, all as long as the making of the deed by a general regulation is not also assigned or excluded to another official or person (Maulana, 2015).

In the series of deed formalization processes, there are 2 (two) important points, namely the reading and signing of the deed involving the witnesses of the deed. Every Notarial deed must be read by the Notary concerned to the parties/appearing parties in the presence of at least 2 (two) witnesses, or 4 (four) witnesses in the case of making a private will deed (as regulated in Article 16 paragraph (1) letter m of the Notary Law ). The presence

of witnesses in the reading of the deed plays a role in verifying that the Notary and the parties/appearing parties have truly obtained certainty that the deed is in accordance with the will and wishes of the parties/appearing parties, the Notary's duty is only to formulate the will and wishes in the deed.

UUJN basically does not regulate who is meant as a witness to a deed, but in practice, usually the witnesses to a deed in the making of a deed are notary employees who are administrative staff. The provisions relating to witnesses to a deed in the Notary Position Law only concern the Notary's obligation to read the Notary's deed in front of the witnesses to the deed, the existence of witnesses to the deed within the framework of the Notary's deed and the obligation to attend the reading of the deed along with the legal requirements to be a witness as stipulated in Article 16 paragraph (1) letter m, Article 38 paragraph (4) letter c and Article 40 of the Notary Position Law . Article 16 paragraph (1) letter m of the Notary Law regulates the obligation of a Notary to read a deed before the person appearing in the presence of witnesses to the deed and then continue with the signing of the deed, that: "In carrying out his/her position, a Notary is obliged to: read the deed before the person appearing in the presence of at least 2 (two) witnesses or 4 (four) witnesses specifically for the making of a private will, and signed at that time by the person appearing, witnesses, and the Notary". Article 38 paragraph (4) letter c of the Notary Law stipulates that: "The end or closing of the deed contains: full name, place and date of birth, occupation, position, status, and residence of each witness to the deed". Article 40 of the Notary Law is a provision that regulates the obligation to attend the reading of the deed and the legal requirements for witnesses to the deed.

From the perspective of legal protection theory, every legal subject who carries out legal functions based on statutory orders should receive adequate legal protection. Philipus M. Hadjon states that legal protection is an effort to provide guarantees for the rights of legal subjects, both through preventive and repressive mechanisms (Hadjon, 2011). In the context of *instrumental witnesses* , preventive legal protection is needed to prevent violations or abuse of authority in the legal process, while repressive protection is needed to provide protection when *instrumental witnesses* are faced with legal disputes.

The lack of clear legal protection for instrumental witnesses can create fear and uncertainty in notarial practice. Notary employees may feel anxious about carrying out their duties as instrumental witnesses due to the potential for legal action if a dispute arises regarding the deed. If this situation persists without clear regulations, it could impact the effectiveness of the notary's office and diminish the quality of legal services provided to the public (Marzuki, 2021).

On the other hand, legal protection for instrumental witnesses is also crucial to maintaining the professionalism and stability of notarial practice. The office of notary is fundamentally a position of trust that relies heavily on legal certainty and integrity in its implementation. Therefore, every element involved in the process of creating an authentic deed, including instrumental witnesses , needs legal certainty regarding their position and the limits of their responsibilities (Adjie, 2009). With clear regulations, notarial practice can proceed more orderly and professionally, and provide balanced legal protection for all parties involved.

*Instrumental* witnesses have the responsibility to fulfill the formalities stipulated by law, namely, that the person appearing has indeed appeared before the Notary and the person appearing's identity is in accordance with the description read by the Notary, that the deed before being signed by the parties is first read by the Notary to the persons appearing, and then signed by the parties concerned, all of which is done by the Notary and the parties in front of the witnesses.

In this regard, the future formulation is that the *instrumental witness* in the officialization of the deed is a very important part in assisting the performance of the Notary that the formalities determined by the law have been fulfilled, namely, that the person appearing has been present before the Notary and the identity of the person appearing is in accordance with the description read by the Notary, that the deed before being signed by the parties is first read by the Notary to the persons appearing, and then signed by the parties concerned, all of which are carried out by the Notary and the parties in front of the witnesses, therefore it is advisable that in Law Number 2 of 2014 concerning the Position of Notary, an article regarding the power of evidence and the responsibility of the *instrumental witness* which is currently not in the Law should be added. Notaries as one of the legal professions are more selective in choosing witnesses whose names will be included in the deed, so that the witnesses in the deed can understand the responsibilities that must be fulfilled in the officialization of the deed, so that it can assist the performance of the Notary profession.

Success from effort this is also very determined by existence reformulation more settings comprehensive, capable explain clearly about position law, limits of liability answer, and mechanism protection for witness *instrumentair*. Clear and systematic arrangements will reduce potential difference interpretation in practice, so that capable strengthen consistency in implementation This condition is an important prerequisite for realizing legal certainty as expected in a modern legal system.

Direction update this is the end No only implications for protection witness *instrumentation*, but also on strengthening system notary as a whole. A system that is capable of give balanced protection will push every party For operate its role optimally, so that produce deed authentic quality and can trusted.

Based on this description, it can be understood that the position of notary employees as instrumental witnesses is essentially only related to the formal aspects of creating authentic deeds. However, the lack of clarity in regulations regarding the limits of responsibility and legal protection for instrumental witnesses has led to legal uncertainty in notarial practice. Therefore, a more comprehensive legal regulatory update is needed to provide legal certainty, legal protection, and proportional limits of responsibility for notary employees as instrumental witnesses in the creation of notarial deeds.

## CONCLUSION

Legal protection for notary employees as instrumental witnesses in the preparation of notarial deeds is not yet explicitly regulated in the Notary Law (UUJN). Instrumental witnesses function to fulfill the formal requirements for the validity of authentic deeds, namely ensuring that the deed has been read, attended, and signed by the parties. However, this regulation does not provide a comprehensive affirmation regarding the legal status of instrumental witnesses related to the limits of their authority and responsibilities. This can be seen from the provisions of Article 16 paragraph (1) letter f of the UUJN which only regulates the notary's obligation to keep the contents of the deed confidential, as well as Article 40 of the UUJN which only regulates the requirements for witnesses without providing regulations regarding legal protection for instrumental witnesses. In addition, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims does provide general protection for witnesses, but has not specifically accommodated the position of notary employees as instrumental witnesses in the notarial context. As a result, there is a normative vacuum (*rechtvacuum*) which has an impact on the lack of legal certainty and adequate protection for notary employees in carrying out their functions.

The legal responsibility of notary employees as instrumental witnesses is normatively limited to the formal aspects of making a deed, as reflected in the provisions of Article 16 paragraph (1) letter m jo. Article 44 and Article 40 UUJN, namely regarding the presence of

the parties, reading the deed, and signing the deed. However, in some cases, notary employees even have the potential to be held legally accountable beyond their capacity, even though in principle they are only responsible for the formal truth of the deed, notary employees are often positioned as parties who are also asked for information and even have the potential to be dragged into legal disputes, both civil and criminal. This shows a discrepancy between legal norms and empirical practice, thus expanding the responsibility of instrumental witnesses beyond the limits of their formal authority, which should not include the substance of the contents of the deed.

Future regulations regarding the legal protection of notary employees as instrumental witnesses require reformulation of norms in the UUJN. Currently, in the UUJN there are only limited regulations, the provisions of Article 40 of the UUJN only regulate the requirements to become a witness and there are no regulations regarding the rights, protection, or limits of responsibility of instrumental witnesses. According to the author, future regulations should be formulated explicitly in the form of new norms, this includes adding provisions that notary employees as instrumental witnesses are only responsible for the formal aspects of making a deed and cannot be held responsible for the substance of the contents of the deed, as long as they act in accordance with legal procedures, provide limited immunity rights to instrumental witnesses, namely they cannot be sued civilly or criminally for the deed made, unless there is evidence of intent or abuse of authority and regulate the obligations of the state through the notary supervisory agency to provide legal protection if instrumental witnesses are summoned in the judicial process.

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