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## Article Title

### **Criminal Liability of a Notary as a Co-Perpetrator in Embezzlement of Entrusted Funds in Land Transactions**

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## ABSTRACT

*This study examines the outer limits of the shift in a Notary's official responsibility from the administrative sphere to criminal liability for an act beyond authority (ultra vires), namely holding land transaction funds in a personal account through an unauthorized escrow arrangement. This study aims to dogmatically analyze the transformation of procedural malpractice into co-perpetration in embezzlement, examine the proof of trial facts at first instance, and critically evaluate the correction of enforceable custodial sanctions by the High Court and the Supreme Court. This study employs doctrinal legal research using the statute approach, the conceptual approach, and complete legal chain analysis across three judicial levels. The results show that the Defendant's failure to comply with the protocol requiring the physical presence of appearers in drawing up a power of attorney to sell constituted an act of commission that served as an enabling factor for the commission of the substantive offence. The Defendant's unilateral control over the settlement funds and fabrication of backdated receipts were qualified as active acts satisfying all elements of embezzlement in the form of co-perpetration (medeplegen). This study concludes that the conditional sentence imposed by the Jombang District Court exceeded the proper limits of judicial discretion. This error was properly corrected by the Surabaya High Court and affirmed by the Supreme Court, which imposed a seven-month enforceable custodial sentence to uphold general deterrence and restore public trust. The policy implication of this study confirms that the Defendant's dishonourable dismissal from the office of Notary must be pursued through the operation of Article 12 letter c of Law Number 30 of 2004 upon the proposal of the Central Supervisory Council, because the Defendant's conduct was proven to degrade the dignity of the office.*

**Keywords:** *Authentic Deed; Embezzlement of Entrusted Funds; Escrow Account; Notary; Representation without Authority.*

## INTRODUCTION

The existence of the notarial institution within the national legal system is founded on the fundamental principle of public trust, which ensures legal certainty, legal order, and legal protection for members of society who perform civil-law acts. This public trust constitutes an ethical-normative foundation that confers ethical and juridical legitimacy on Notaries as public officials vested with delegated authority from the State to produce authentic written evidence. In essence, the law bears a social responsibility to maintain security and order within legal relations in a society that continues to develop dynamically. This position aligns with [Rahardjo \(1983\)](#), who asserts that the functioning of law must be directed toward establishing legal certainty and legal protection grounded in truth and objective justice. Therefore, in performing their duties, Notaries are required to possess high moral integrity and professional due care to prevent violations of the professional code of ethics that may impair the honour of the office ([Prakoso & Sukirno, 2023](#)). [Andasasmita \(1981\)](#) cautions that every Notary must place honesty, sincerity, and impartiality as the principal foundations in drafting and preparing deeds, so that every legal document produced may provide legal assurance for the parties concerned.

However, subsequent developments reveal a sociological reality in which deviations from the function of office have occurred, exceeding the limited scope

of authority prescribed by Law Number 30 of 2004. Based on the doctrine of administrative law formulated by [Hadjon \(1997\)](#), every formal power delegated by the State to a public official is limited in nature and must comply with the principle of legality so that the action taken is not characterized as an act beyond authority. A fundamental normative conflict arises when a Notary exceeds the limits of official authority by acting beyond authority (*ultra vires*) through active involvement as an intermediary in the financial circulation of third parties outside the principal duty of drawing up authentic deeds. One form of such excess of authority is holding land transaction funds from the buyer through the Notary's personal bank account without authorization, namely an unauthorized escrow arrangement. The unilateral provision of a service for holding land transaction funds constitutes an act exceeding official competence because the Law has never granted Notaries independent authority to hold transaction security funds ([Putri & Purwanto, 2024](#)). The excess of official authority by placing third-party funds in a Notary's personal account creates substantial legal risk and serves as a principal determining factor in professional notarial malpractice that results in actual financial loss to members of society.

The deviation in the function of holding funds is causally linked to violations of administrative procedures in deed-making, rendering the underlying civil-law obligation invalid. Under the Civil Code, an agreement must satisfy the elements of consent between the parties and a lawful cause. When a Notary issues a power of attorney to sell without the parties, as the lawful landowners, being physically present before the Notary, the Notary has committed an act of commission that violates the principle of due care, as compliance with the deed-signing protocol is an absolute requirement for maintaining legal certainty ([Adam et al., 2024](#)). In the dimension of civil law, the misuse of a power of attorney to sell for a second transaction by an unauthorized representative (*onbevoegde vertegenwoordiger*) renders the second transaction void from the outset (*void ab initio*) ([Amelia et al., 2025](#); [Retnaningsih & Setiawan, 2025](#)). The juridical consequence of the obligation being void from the outset is that, under civil law, the settlement funds remain the lawful property of the buyer, thereby placing the buyer as the direct victim of the offence of embezzlement, while the heirs suffer indirect loss because physical control over their land is transferred without authorization.

The emergence of material losses suffered by members of society as a result of notarial malpractice requires robust public law enforcement through the operation of personal criminal liability. In national criminal law dogmatics, as discussed by [Moeljatno \(2008\)](#), criminal liability is based on the principle of no punishment without fault, which clearly distinguishes the unlawful act from the offender's subjective blameworthiness (*mens rea*). The Notary's conscious act of transferring transaction funds belonging to the buyer from the Notary's personal account to an intermediary who had no legal entitlement, despite knowing with certainty that the intermediary

had no formal legal basis over the land, establishes the material intent required to satisfy the element of unlawfulness. This juridical boundary confirms that the conscious abuse of official authority to benefit another party cannot be protected by the justificatory ground of a purely civil-law relationship or be resolved as an ordinary civil default, where the unauthorized abuse of representative authority constitutes a concrete form of manipulation of circumstances (Iriantoro, 2022; Detiandri et al., 2026).

The urgency of examining this professional-office crime is strengthened by the disparity in judicial interpretation across three levels of court in the Notary criminal case in Jombang. At first instance, the Jombang District Court held that the Notary had been proven guilty of co-perpetration (*medeplegen*) in the offence of embezzlement. However, the court granted leniency in the form of a conditional sentence with a probationary period under Law Number 1 of 1946. Conversely, the Surabaya High Court made a far-reaching legal correction by eliminating the leniency of the conditional sentence, converting the sanction into an enforceable custodial sentence, and ordering the actual detention of the Notary. This indicates a consistent judicial trend of imposing custodial sentences on Notaries who misuse client funds (Sembiring, 2024). This appellate ruling was subsequently fully affirmed by the Supreme Court at the cassation level, which dismissed all cassation petitions filed by the defendant.

Previous studies on the legal responsibility of Notaries have been conducted by scholars, but most remain general and fragmented. Conventional scholarly studies generally limit their analysis to the responsibility of Notaries in cases involving the drawing up of deeds based on false statements by appearers (Wiradiredja, 2015), administrative sanctions for violations of the professional code of ethics (Prakoso & Sukirno, 2023), and the threshold of criminal fault in the falsification of physical deed documents (Detiandri et al., 2026). In addition, several other studies have begun to address the misuse of the function of receiving funds by Notaries, but their discussions remain limited to the field of embezzlement of land transaction tax payments, such as income tax and duty on the acquisition of land and building rights (Utami et al., 2022; Putri & Purwanto, 2024; Sembiring, 2024; Husnawati et al., 2025; Yolanda et al., 2025). Although two early scholarly publications have examined the judgment in the Jombang case (Zaqiyyah & Masriani, 2025; Daulay et al., 2026), neither study has comprehensively analyzed the chain of judgments across the three levels of court. This scientific gap is addressed by the present study, which systematically analyzes how the accumulation of a Notary's administrative negligence decisively transformed into *medeplegen* in the embezzlement of principal transaction funds held in a personal account.

This study specifically aims to theoretically and dogmatically analyze the boundaries of the transition from a Notary's administrative responsibility to criminal

liability arising from excess of official authority in land transactions. Furthermore, this study is directed toward objectively examining the basis for the panel of judges at first instance in the Jombang District Court's finding of legal facts and proof of the elements of embezzlement. The ultimate objective of this study is to critically evaluate the judges' reasons for decision (*ratio decidendi*) at the appellate level before the Surabaya High Court and at the cassation level before the Supreme Court in imposing an enforceable custodial sentence on the Notary. By achieving these objectives, this study is expected to provide theoretical benefits by enriching the scholarship on administrative criminal law regarding the parameters of professional-office crime. In practical terms, this study is expected to make a concrete contribution by providing guidance to law enforcement authorities on applying sanctions consistently and serving as a prudential reference for the notarial profession in Indonesia to preserve the dignity and honour of the public offices they hold.

## **METHOD**

This study employs doctrinal legal research, conceptually understood as normative legal research (Qamar & Rezah, 2020). This methodological choice is based on the academic need to examine law from an internal perspective, treating written legal norms, legal principles, and public-law doctrines as the primary objects of analysis. This doctrinal approach is highly relevant for analyzing the extreme boundary at which the official responsibility of a Notary shifts from the domain of notarial administrative law and civil law to the domain of substantive criminal law. Through this type of research, the analysis is not directed toward empirical sociological observation in the field, but instead focuses intensively on the consistency of statutory interpretation and final and binding court judgments. Accordingly, this method is capable of producing prescriptive and coherent legal arguments to address public-law issues concerning the abuse of professional office.

To analyze the legal issues comprehensively, this study integrates two complementary initial approaches, namely the statute approach and the conceptual approach. The statute approach is used to critically examine the normative alignment between the limited authority of Notaries under Law Number 30 of 2004 and the formulation of the offence of embezzlement and the doctrine of criminal participation under Law Number 1 of 1946. Through this approach, the researcher can identify normative conflicts and regulatory gaps concerning administrative responsibility that transform into criminal liability. Meanwhile, the conceptual approach is used to build a solid theoretical foundation by drawing on public-law doctrines. These doctrines include the theory of official authority, the concept of *ultra vires* acts, the concept of normative fault, and the doctrine of criminal participation (*deelneming*), particularly *medeplegen*, which will later serve as the theoretical framework in the discussion section.

The third approach applied in depth in this study is the case approach, presented through a complete legal chain analysis. Unlike conventional legal studies, which often limit their examination to first-instance court judgments, the case approach in this study examines the dynamics of shifts in judicial interpretation across three levels of court in a single concrete case. The analysis focuses on the fact-finding process in Jombang District Court Decision Number 150/Pid.B/2023/PN Jbg. To achieve a comprehensive analysis, Surabaya High Court Decision Number 858/Pid/2023/PT Sby and Supreme Court Decision Number 1379 K/Pid/2023 are identified as the controlling primary legal materials that guide the entire course of the case analysis and fully map the dynamics of judicial interpretation of criminal sanctions. The application of this complete chain-of-judgments analysis is crucial for evaluating the consistency of law application and for understanding the shift in the Supreme Court Justices' judicial paradigm in excluding the leniency of a conditional sentence for perpetrators of professional-office crimes.

In accordance with the nature of doctrinal legal research, the research materials used in this study are rigidly classified into two groups, namely primary legal materials and secondary legal materials (Sampara & Husen, 2016). The primary legal materials consist of written legal documents that have binding force under public law, including the Civil Code, Law Number 1 of 1946, Law Number 30 of 2004, and three official court judgments at different judicial levels, which constitute the case study's object. By contrast, the secondary legal materials comprise scholarly publications that provide theoretical explanation and analysis of the primary legal materials. These secondary legal materials include authoritative legal treatises in substantive criminal law and administrative law, as well as contemporary reputable journal articles that specifically examine the misuse of escrow accounts for land transaction funds and the legal responsibility of the notarial profession.

All identified legal materials are collected through documentary study as the sole valid data-collection technique in normative legal research. The documentary study is conducted through a series of systematic stages, including the inventory of relevant laws and regulations, the tracing of official court judgment documents, and the review of contemporary scholarly literature. After all legal materials are collected, a strict classification and categorization process is conducted based on the scope of relevant public-law issues, including abuse of official authority, formal defects in deeds, and enforceable criminal sentences. This process of collecting and classifying materials entirely excludes field data collection in order to maintain the methodological purity of normative legal research and to avoid non-legal informational bias.

The final stage of this research design involves applying qualitative-doctrinal analysis through deductive syllogistic reasoning (Irwansyah, 2020). The analysis is conducted by juxtaposing the major premise, comprising positive legal rules and

public-law doctrines concerning the limits of official authority, with the minor premise, comprising concrete legal facts, evidence, legal considerations, and the operative parts of court judgments across the three judicial levels. The result of this logical confrontation between the major and minor premises produces a new conclusion of a prescriptive-normative character. This analytical technique is systematically designed to address the three research objectives comprehensively and to serve as the reasoning link that ensures the accuracy of the results and discussion sections without causing premature repetition of analysis.

## **RESULTS AND DISCUSSION**

### **A. Dogmatic Transformation of Notarial Administrative Malpractice into Criminal Participation in Embezzlement in Land Transactions**

The existence of a Notary's official authority within the national administrative legal order is founded on a strict and absolute principle of legality. Under Article 15 section (1) of Law Number 2 of 2014, the principal competence delegated by the State to Notaries lies purely within the limits of drawing up authentic deeds concerning all acts, agreements, and stipulations intended by the appearers. In testing the limits of this competence, the doctrine of [Hadjon \(1997\)](#) of public authority must be applied with the necessary legal adjustments (*mutatis mutandis*). A Notary, as a public official (*openbaar ambtenaar*), is not an administrative body (*bestuursorganen*) vested with authority to issue a unilateral administrative decision (*beschikking*) (*eenzijdig*). However, because the power to produce evidence with authentic outward, formal, and material evidentiary force derives purely from the delegation of public power by the State, the legality limits of public authority remain absolutely binding on the official acts of a Notary.

A fundamental deviation from the limits of such delegated authority occurs when a Notary actively provides a service for holding land transaction funds from the buyer by using the Notary's personal bank account without authorization. The collection of land payment funds amounting to IDR 650 million in the Defendant's personal account constitutes an unauthorized excess of official authority through an unauthorized escrow arrangement. [Putri and Purwanto \(2024\)](#) affirm that there is no juridical basis in Law Number 30 of 2004 that legitimizes the function of a Notary as an independent holder or distributor of land transaction security funds. The misuse of a personal account undermines the essence of public office because it places the Notary in a position vulnerable to ownership disputes and obscures the boundary between the role of a deed-making public official and that of an officially licensed financial intermediary. Consequently, the Notary's control over entrusted funds outside the formal limits of competence creates professional-office malpractice that nullifies the legal immunity attached to that official position.

The excess of administrative authority through the use of a personal bank account theoretically causes a defect of authority that vitiates the legality of the Defendant's act as a public official. [Hadjon \(1997\)](#) explains that an official act that deviates from the original purpose for which the legislator conferred authority is strictly characterized as an act beyond authority (*ultra vires*) and a misuse of power (*détournement de pouvoir*). The Defendant's active decision to act as the holder of land settlement funds outside the deed-documentation function constitutes a clear act without authority (*onbevoegdheid*). This act not only violates the principle of due care but also deliberately undermines the basic principles of public-law legality, which require a strict separation between civil documentation matters and the circulation of transaction funds. Therefore, the administrative invalidity of this unauthorized fund-holding arrangement constitutes the principal basis for the loss of notarial legal protection and the main determining factor in the emergence of personal criminal liability.

The Defendant's administrative-office malpractice was further compounded by a violation of the procedure for drawing up the first power of attorney to sell, which failed to comply with the signing protocol. Under Article 16 section (1) letter m of Law Number 2 of 2014, a Notary is under an absolute obligation to read the deed before the appearers in the presence of at least two witnesses and to have it signed at that same time. The failure to physically present the 19 heirs, as the lawful landowners, before the Defendant in the making of the Power of Attorney to sell dated September 3, 2021 constitutes a fatal procedural omission. [Adam et al. \(2024\)](#) explain that compliance with the physical signing by appearers before a public official is a fundamental instrument for verifying the genuine consent of the parties while preserving the authenticity of the legal document produced. In the dimension of substantive criminal law, this procedural failure must not be misclassified as an offence by passive omission, but rather as an act of commission deliberately undertaken as part of a series of acts to create a facilitating instrument that enabled the unlawful transfer of the victim's ownership rights.

The juridical implication of the violation of the obligation to read and sign the deed before the physically present appearers is rigidly regulated under Article 16 section (9) of Law Number 2 of 2014. This violation rendered the first Power of Attorney to sell issued by the Defendant inoperative, leaving it with only the force of a private deed. This degradation of evidentiary force resulted in the loss of notarial legal protection and confirmed the existence of a serious procedural defect. [Wiradiredja \(2015\)](#) explains that a Notary cannot claim legal protection for official acts where it is legally proven that the Notary committed an administrative deviation contrary to the principle of due care in verifying the identity and physical presence of the appearers. The reduction of an authentic deed to a private deed

formally proves that the Defendant relinquished the legal protection of the office from the outset. Accordingly, all consequences of loss arising from the misuse of the defective deed were fully shifted into the Defendant's personal legal responsibility before public law.

The validity of the power-of-attorney document must be evaluated against the objective requirements for the validity of an agreement under Article 1320 *juncto* Article 1337 of the Civil Code. In fact, the first Power of Attorney to sell, dated September 3, 2021, was a valid document under civil law for processing the first sale transaction. However, when the same power-of-attorney document was reused to process a second sale transaction with a new buyer without the consent of the 19 heirs, the act was characterized as representation without authority (*onbevoegde vertegenwoordiger*). Under Article 1799 *juncto* Article 1815 of the Civil Code, a legal act performed by an unauthorized agent is strictly not binding (*niet bindend*) on the heirs as the lawful landowners. [Sulaiman et al. \(2026\)](#) affirm that the instrument of a power of attorney to sell in land-related civil-law relations must be based on honesty and ethical compliance so that it is not misused as a means of circumventing land law. The Defendant's act of allowing the unauthorized representation document to be used for a second time confirms the absence of good faith accompanied by criminal intent (*mens rea*).

The civil-law defect in the land transfer became more severe from a dogmatic perspective when assessed under the provisions on termination of authority in Article 1813, Article 1814, and Article 1816 of the Civil Code. As a matter of the law of obligations, a power of attorney to sell automatically terminates by operation of law once the principal matter agreed upon, namely the first sale of the land to the initial buyer, has been materially completed. [Retnaningsih and Setiawan \(2025\)](#) explain that the reuse of a power of attorney whose term has expired or which has terminated by operation of law constitutes an act without right and is characterized as a purely civil unlawful act. The sale of another person's land by a party lacking lawful representative authority is void from the outset under the principle that no one can transfer more rights than they possess (*nemo plus iuris*), as regulated under Article 1471 of the Civil Code. The Defendant's active acquiescence in processing the second transaction by using an expired power of attorney proves an extreme deviation from professional due care.

The accumulation of financial loss suffered by the lawful landowners due to the loss of control over 2,660 square meters of land clearly satisfies the elements of an unlawful act (*onrechtmatige daad*) under Article 1365 of the Civil Code. [Amelia et al. \(2025\)](#) explain that a civil unlawful-act claim is commonly used as a legal instrument for victims to seek the annulment of authentic deeds that violate the

absolute rights of heirs and to claim material compensation for the professional negligence of a public official. Although the Defendant had paid personal funds amounting to IDR 350 million to the landowners out of fear after the offence was exposed, that act did not automatically eliminate the remaining loss suffered by the victims. Nevertheless, the existence of civil responsibility in the form of an obligation to compensate material damage belongs to a separate remedial sphere within private law and has no legal capacity to negate the criminal unlawfulness that had already occurred.

Based on these legal limits, the Defendant's defence seeking release from all legal charges (*ontslag van rechtsvervolging*) on the ground that the dispute falls solely within the civil-law sphere or constitutes an ordinary civil default must be rejected. [Iriantoro \(2022\)](#) emphasizes that the juridical boundary between a civil default and a substantive criminal offence lies in the existence or absence of bad faith in the form of deceit or manipulation of circumstances designed from the outset before or at the time the transaction occurred. The Defendant's abuse of office by issuing a procedurally invalid power of attorney to sell and by holding settlement funds in a personal bank account constitutes a series of manipulations of circumstances that exceed the limits of an ordinary civil dispute. Civil default presupposes initial good faith that later encounters obstacles in performance, whereas in this case the circulation of documents and funds was unilaterally designed to conceal the transfer of money to an intermediary. Accordingly, the fulfilment of all elements of the substantive criminal offence excludes the applicability of release from legal charges on civil-law grounds.

The proof of the Defendant's personal criminal fault was further tested through an internal inquiry into the existence of intent (*mens rea*) as the foundation of criminal liability. [Moeljatno \(2008\)](#) conceptualizes criminal liability as based solely on the principle of no punishment without fault (*geen straf zonder schuld*), which requires proof that the offender's state of mind can be held criminally accountable for the act committed. In the formulation of Article 372 of Law Number 1 of 1946, the element of unlawfulness (*wederrechtelijk*) is rigidly positioned as an essential element of the offence (*bestanddeel van het delict*) that must be formally proven at trial, not merely as a general element of the offence (*element van het delict*). Unlawfulness as a *bestanddeel* was formally proven when the Defendant intentionally transferred settlement funds amounting to IDR 650 million from the Defendant's personal bank account to Eko Wahyudi without the lawful landowners' authorization. Intent as purpose (*opzet als oogmerk*) was fully established because the Defendant knew with certainty that Eko Wahyudi was not the lawful recipient authorized to receive the settlement funds, yet still intended the unlawful transfer of control over those funds.

The element of jointness in realizing the material offence of embezzlement was proven through the doctrine of criminal participation (*deelneming*) in the form of *medeplegen*. [Remmelink \(2003\)](#) formulates that the existence of co-perpetration does not require each offender to execute all physical elements of the offence independently. Rather, it is based on two cumulative parameters: close and conscious cooperation (*nauwe en bewuste samenwerking*) and actual physical cooperation (*fysieke samenwerking*). Because embezzlement is an offence that requires an act of commission, the Defendant's physical cooperation was established by the active fabrication of nine receipts bearing the Defendant's Notary/Land Deed Official (PPAT) office's logo and the assignment of backdated entries to January 2022. The active act of instructing Bajuri to sign the fabricated, backdated receipts was intended to create the administrative impression that the settlement funds had been received by the authorized agent gradually over time. This fabrication of receipts proves the Defendant's physical contribution, which was actively coordinated with the intermediary to conceal the actual embezzlement of transaction funds.

Through this in-depth dogmatic examination, the functional separation of a Notary's criminal liability for professional-office crime becomes transparent and beyond dispute. Failure to comply with the protocols of administrative due care in the office is no longer viewed as ordinary administrative negligence. Instead, it is decisively transformed into criminal participation in embezzlement when the administrative act is misused as an enabling factor to deprive another person of material rights ([Detiandri et al., 2026](#)). Every public official who disregards the principle of professional due care and acts beyond the limits of official authority must bear firm public-law sanctions in order to uphold the honour, integrity, and dignity of the notarial legal profession ([Prakoso & Sukirno, 2023](#)). A comprehensive understanding of the dogmatic boundary marking the transition from administrative responsibility to criminal liability provides a solid basis for examining how the series of legal facts was subsequently found, proven, and adjudicated by the court of first instance, the Jombang District Court.

## **B. Analysis of the Construction of Legal Facts and Proof of Criminal Elements at First Instance before the Jombang District Court**

The fact-finding process at the first instance before the Jombang District Court established a crucial factual basis for confirming the deviation in the flow of funds in the principal land transaction. Based on mutually corroborating evidence presented at trial, the payment funds for 2,660 square meters of land owned by 19 heirs, totaling IDR 650 million, were proven to have been transferred gradually from October 21, 2021 to December 21, 2021 into the Defendant's personal bank account, namely BCA Account Number 0500490993 under the name Merisa Virda

Silfani. The receipt of such a substantial amount of funds by the Defendant was carried out on the Defendant's own initiative, as if the Defendant were a lawful holder of payment funds for the purpose of securing the transfer of land rights. [Ardhita and Yunanto \(2023\)](#) explain that Notaries must apply a high degree of professional due care and prudence in handling land administration matters in order to prevent future disputes over ownership rights. The Defendant's failure to deliver the settlement funds to the lawful landowners, and the unilateral transfer of those funds to an intermediary instead, proved the collapse of the notarial duty of due care from the outset of the fund circulation.

The Defendant's transfer of the settlement funds to the intermediary, Eko Wahyudi, was subsequently concealed by the fabrication of nine backdated payment receipts. The trial facts proved that the receipts bearing the logo of the Notary/Land Deed Official (PPAT) office of Merisa Virda Silfani were physically prepared by the Defendant only in January 2022, but were backdated to create the impression that the money had been delivered gradually to Bajuri, as the first authorized agent to sell, since mid-2021. In criminal law dogmatics, this post-offence fabrication of receipts must not be misconstrued as an act of execution (*uitvoeringshandeling*) of the embezzlement itself, because the embezzlement of the money had already been fully completed (*voltooid*) when all funds were actually transferred to the intermediary's account on December 21, 2021. [Adam et al. \(2024\)](#) explain that falsification of signatures or misuse of administrative evidentiary documents in authentic deeds or their supporting files necessarily results in evidentiary invalidity and undermines the legal certainty of the parties. The Defendant's fabrication of backdated receipt evidence after the offence had been completed served purely as material evidence confirming the existence of conscious cooperation (*bewuste samenwerking*) that had been designed from the beginning of the transaction, while also refuting the claim that the legal relationship was an ordinary civil-law relationship.

The juridical analysis of Jombang District Court Decision Number 150/Pid.B/2023/PN Jbg begins by examining the fulfilment of the element of "any person" as the subject of substantive criminal law. This element requires proof of the Defendant's internal capacity and personal legal status before the court in order to ensure the absence of mistaken identity (*error in persona*). At trial, the Defendant was lawfully identified as Merisa Virda Silfani, S.H., M.Kn., a public official holding an active Notary office, who was mentally sound and intellectually competent. The Defendant's intellectual capacity and psychological maturity confirmed the full legal capacity to be held responsible for all criminal consequences arising from the Defendant's official acts. Accordingly, the Defendant was qualified as an independent subject of criminal law and had no psychological excuse that would release the Defendant from public-law blameworthiness.

The determination of legal facts then proceeded to the proof of the element that the property was under the Defendant's control "not as a result of a crime", which distinguishes embezzlement from theft. The trial facts lawfully proved that the Defendant's control over IDR 650 million originated from voluntary transfers made by the buyer, Hj. Sadarestuwati, into the Defendant's personal bank account, based on trust in the Defendant's position as the Notary handling the legality of the land. [Jayanti et al. \(2024\)](#) emphasize that placing funds with a Notary before the signing of a sale-and-purchase binding agreement is a practice grounded in protecting the parties' rights through the moral integrity of the public official. Under the dogmatic framework of civil law, because the principal land sale and purchase transaction was deemed void by operation of law due to the misuse of representative authority without authorization (*onbevoegde vertegenwoordiger*), ownership of the settlement funds was never legally transferred to the heirs and remained the lawful property of the buyer. Therefore, the element of "belonging to another" under Article 372 of Law Number 1 of 1946 precisely refers to the ownership right of Hj. Sadarestuwati. The money was under the Defendant's control by lawful voluntary transfer and was free of any initial deceit, thereby satisfying the criterion that the property came into the Defendant's possession not as the proceeds of a criminal act.

The shift in the status of control over the funds from a purely civil-law relationship to a criminal act occurred when the element of intentionally and unlawfully appropriating the property was materially fulfilled. In substantive criminal law, the element of appropriation (*toe-eigenen*) requires proof that the offender acted as if exercising absolute ownership (*zich als heer en meester gedragen*) over the property. This element was lawfully proven when the Defendant unilaterally transferred IDR 583,850,000 and handed over IDR 75 million in cash from the personal account holding those security funds to the intermediary, Eko Wahyudi, without seeking confirmation from the lawful owner of the funds. The Defendant's act of moving entrusted payment security funds into the intermediary's financial circulation constituted an internal manifestation of conduct as if the Defendant were the absolute owner, free to determine the disposition of those third-party funds. This directly violated the Defendant's legal status as the holder of entrusted security funds under an escrow-like arrangement. The Defendant's argument that the Defendant merely followed the instruction of a "client" must be rejected because, under the principle of notarial independence, a Notary is strictly prohibited from submitting to unilateral instructions that violate the law. Such blind compliance therefore remains classified as intentional and unlawful appropriation in material terms.

The qualification of *medeplegen* under Article 372 *juncto* Article 55 section (1) point 1 of Law Number 1 of 1946 was proven through close coordination of

active physical acts among the offenders at trial. The internal cooperation between the Defendant and the intermediary had existed since the Defendant agreed to serve as the personal financial intermediary for the transaction security funds upon the intermediary's instruction, without ever confirming the legality of land ownership with the original heirs, who were the lawful landowners. [Arthawan et al. \(2024\)](#) explain that the legal responsibility of a Notary must be strictly imposed where the Notary is proven to have processed the circulation of land documents based on unlawful or manipulative evidence in order to facilitate the transfer of another person's ownership rights. Actual physical cooperation was completed through the Defendant's act of commission, namely the transfer of the entrusted settlement funds from the Defendant's personal account to an intermediary who lacked lawful authority. All of these active acts constituted a single unit of embezzlement jointly initiated with the intermediary as the principal offender.

Although proof of all elements of *medeplegen* in the embezzlement offence had been lawfully and convincingly established, the panel of judges at first instance before the Jombang District Court committed a fundamental theoretical error in the sentencing aspect (*strafstoemeting*). The panel imposed a custodial sentence of four months while granting leniency in the form of a conditional sentence with a one-year probationary period under Article 14a section (1) of Law Number 1 of 1946. The application of a conditional sentence to a criminal offence qualified as a professional crime constitutes a dogmatically defective abuse of judicial discretion. The court's decision to grant a probationary period was based on humanitarian grounds, as the Defendant had paid IDR 350 million of personal funds to the landowners as partial compensation after the offence was exposed. This consideration is academically flawed because partial restitution, motivated by fear of criminal prosecution, serves merely as a mitigating factor in determining the severity of the sanction. It has no legal authority to suspend the physical execution of a sentence of imprisonment for a public official who has betrayed public trust.

The leniency of a conditional sentence for a Notary who committed a professional-office crime ultimately undermines legal certainty, public authority, and the community's sense of justice. The suspension of the physical execution of imprisonment for a public official proven to have jointly abused official power disregards the character of general deterrence in substantive criminal law, which should operate as a deterrent instrument for the broader notarial ecosystem. This lenient probationary sanction creates legal uncertainty and weakens the protection of community property rights against the threat of professional-office crimes in land matters. The first-instance court's error in interpreting the appropriate sanction demonstrates a shallow understanding of the essence of criminal law enforcement in official crimes. This error ultimately triggered a firm

legal correction by the public prosecutor at the appellate level before the Surabaya High Court, which then continued to the cassation level before the Supreme Court in order to restore the dignity of public law.

### **C. Evaluation of Sentencing Decisions and Legal Consistency at the Appellate Level before the Surabaya High Court and the Cassation Level before the Supreme Court**

The dynamics of criminal law enforcement at the appellate level, as reflected in Surabaya High Court Decision Number 858/Pid/2023/PT Sby, marked a progressive step in correcting the theoretical error in the conditional sentence imposed by the court of first instance. The appeal lodged by the Jombang Public Prosecutor opened the way for the appellate court, in its fact-finding capacity, to exercise its full authority to re-examine the propriety, fairness, and adequacy of the sanction imposed for a professional-office crime committed by a Notary. [Rahmawati and Zuhdi \(2022\)](#) explain that appellate review does not merely repeat the formalities of trial proceedings; rather, it must conduct an in-depth evaluation of the accuracy of legal interpretation and sentencing to ensure consistency and restore legal certainty. This appellate review prioritized the protection of public rights over individual leniency toward the offender, thereby positioning the High Court as a forum for judicial correction of the court of first instance's failure to grasp the essence of sentencing in official crimes.

The principal corrective measure taken by the panel of judges of the Surabaya High Court was to set aside entirely the conditional sentence under Law Number 1 of 1946 that had previously been applied by the Jombang District Court. The exclusion of probationary punishment was based on the legal consideration that the procedural negligence and misuse of a personal account committed by the Defendant constituted professional fault with a high degree of social blameworthiness. The conditional sentence imposed at first instance was considered dogmatically flawed because it was dominated by a special-deterrence orientation centered on partial loss recovery and the Defendant's personal subjective circumstances. Based on the integrative theory of punishment, the Surabaya High Court shifted the focus of sentencing toward general deterrence to restore public trust and uphold the integrity of the notarial legal profession more broadly. [Yolanda et al. \(2025\)](#) affirm that the conduct of a public official who damages the integrity of the legal administration system in order to facilitate illegal financial circulation cannot be resolved through the suspension of physical punishment.

In place of the conditional sentence, the Surabaya High Court imposed a custodial sentence of seven months and ordered that the Defendant be immediately detained at the State Detention Centre. This order for physical execution reflected

a shift in the sentencing paradigm from the compromise-oriented approach adopted at first instance to an authoritative enforcement of custodial punishment at the appellate level, thereby balancing the objectives of retributive and preventive justice. Sembiring (2024) explains that the imposition of an actually enforceable prison sentence is the only effective law-enforcement measure to stop the trend of abuse of official authority by notarial actors in land-related legal relations. This requirement of physical detention is supported by Husnawati et al. (2025), who state that the effectiveness of criminal sanctions for professional-office crimes depends heavily on the certainty of immediate custodial execution without opportunities for suspension. This actual execution serves as a concrete restoration of the authority of the State entrusted to the Defendant through the Defendant's oath of office.

The policy of tightening the application of custodial sanctions is also closely related to the rationale of substantive justice in restoring the financial loss suffered by the victim, namely the land buyer who deposited IDR 650 million into the Defendant's account. The substantial nominal value of the loss demonstrates the significant harmful character of the official crime, which cannot be remedied merely by partial repayment after the offence has been committed. Utami et al. (2022) explain that the embezzlement of entrusted land transaction funds by a Notary does not merely impair the individual economic position of the victim, but also destabilizes public trust in the legal certainty of the circulation of land transaction funds at a systemic level. The Defendant's failure to preserve the full amount of the entrusted funds resulted in significant social loss, making the seven-month custodial sentence the minimum appropriate sanction to reflect the severity of the socio-economic harm.

The consistency of the appellate court's legal correction obtained definitive juridical legitimacy and final and binding legal force (*inkracht van gewijsde*) through Supreme Court Decision Number 1379 K/Pid/2023, which dismissed the cassation petitions filed by both the Defendant and the Public Prosecutor. The Supreme Court panel at the cassation level affirmed that the appellate court had not erred in applying substantive criminal law in deciding the case. The Supreme Court expressly stated that the series of acts committed by the Defendant in actively transferring land-payment security funds from the Defendant's personal account to an unauthorized intermediary had fully satisfied all characteristics of the offence of embezzlement within the framework of criminal participation. This cassation-level affirmation confirms that no civil-law interpretive avenue remained available for the Defendant to escape public criminal liability.

In its legal considerations, the Supreme Court also reaffirmed the absolute competence boundary between a court of law review (*judex juris*) at the cassation

level and courts of fact (*judex facti*) at lower levels in determining the severity of criminal sanctions. Under Article 253 section (1) of Law Number 8 of 1981, the Supreme Court, as the *judex juris*, examines whether there has been a violation of law, an error in the application of law, or an excess of authority by the lower courts. The dismissal of the Defendant's cassation petition proves that the seven-month custodial sentence imposed by the Surabaya High Court was free from any defect in the application of law and remained entirely within the lawful limits of judicial authority. [Ridha et al. \(2024\)](#) explain that this limitation aims to preserve the consistency of the Supreme Court's function as guardian of the unity of law application (*rechtseenheid*) and to prevent disparities in normative interpretation that may undermine national legal certainty. The rejection of the objection to the sanction establishes that the seven-month custodial sentence imposed by the Surabaya High Court rested on an unimpeachable legal foundation.

The Supreme Court also set aside the Defendant's defence, which sought legal exculpation on the ground that the transfer of money was carried out solely in obedience to the intermediary's circulation instructions as the client. Under the framework of substantive criminal law, obedience to a private contractual instruction is never recognized as a ground for excluding criminal liability (*strafuitsluitingsgronden*), whether as a justificatory ground or an excuse, because only an official order issued by a competent authority can exclude fault. The Supreme Court's rejection of this argument was based on the duty to uphold the principle of notarial independence, which requires a Notary to refuse any unlawful or deviant instruction, even when it comes from a client who pays for the legal service. [Budiman et al. \(2026\)](#) highlight that blind compliance by a Notary with deviant instructions from an appearer or intermediary constitutes serious administrative malpractice that nullifies the preventive supervisory function of the notarial office.

This final and binding cassation decision had a strong professional deterrent effect across the entire Indonesian notarial ecosystem. The firmness of the Supreme Court sends a clear message to public officials that they must never misuse their authority or facilitate the circulation of transaction security funds through personal bank accounts. [Daulay et al. \(2026\)](#) explain that custodial sentencing jurisprudence against Notaries in cases involving the misuse of personal accounts serves as a preventive instrument that compels practitioners to return to disciplined compliance with the protocols of Law Number 30 of 2004. This deterrent effect is essential to preserve the dignity of the notarial profession, prevent its involvement in organized crime in the land sector, and restore the noble function of the Notary as a guarantor of legal certainty in civil-law relations within society.

In addition to the enforceable custodial sanction, this cassation decision also resulted in severe administrative consequences for the Defendant's continued status as a Notary. Article 13 of Law Number 30 of 2004 provides that a Notary shall be dishonourably dismissed by the Minister if sentenced to imprisonment by a final and binding court judgment for committing a criminal offence punishable by imprisonment of five years or more. Since the Defendant was convicted under Article 372 of Law Number 1 of 1946, which carries a maximum penalty of only four years' imprisonment, dishonourable dismissal cannot be imposed automatically by operation of law (*ipso jure*) under Article 13 of Law Number 30 of 2004. Nevertheless, the Defendant may still be dishonourably dismissed by the Minister of Law under Article 12 letter c of Law Number 30 of 2004 upon the proposal of the Central Supervisory Council, because the embezzlement of entrusted transaction funds is morally characterized as conduct that degrades the honour and dignity of the Notary office. [Zaqiyyah and Masriani \(2025\)](#) explain that dishonourable dismissal is the logical consequence of the loss of the moral fitness and professional integrity that must attach to every public official.

The final synthesis of this complete chain-of-judgments analysis confirms that the consistent imposition of an enforceable custodial sentence is the principal instrument for restoring the dignity, authority, and public trust of the notarial legal profession in Indonesia. Firm and uncompromising public-law enforcement proves that the State provides no tolerance for any form of professional-office malpractice that intersects with organized crime in the land sector. [Rahmawati \(2025\)](#) concludes that strengthening enforceable criminal liability is essential to establish firm legal certainty in national land-related legal relations and to provide maximum protection for the broader community's property rights. Through the consistency of sentencing decisions across judicial levels, the dogmatic boundary between pure administrative violation and criminal participation in embezzlement has been firmly settled, thereby closing any route to impunity for public officials who abuse their oath of office.

## **CONCLUSIONS AND SUGGESTIONS**

The analytical synthesis of the entire research demonstrates dogmatically that the extreme boundary marking the transition from a Notary's administrative responsibility to personal criminal liability in land-related legal relations is determined by the fulfilment of criminal intent (*mens rea*) intersecting with an act of commission. The *ultra vires* act of unilaterally providing a service for holding entrusted land transaction funds through the Notary's personal bank account, namely an unauthorized escrow arrangement, constitutes an act without authority (*onbevoegdheid*) that removes the legal protection attached to the office. When a Notary consciously issues a power of attorney to sell without physically presenting the heirs as the lawful landowners, that

act of commission degrades the evidentiary force of the deed into that of a private deed and serves as an enabling factor for the commission of the substantive offence. The reuse of a power-of-attorney document that had expired or had fulfilled its purpose for a second transaction qualifies as representation without authority (*onbevoegde vertegenwoordiger*), rendering the obligation void from the outset (*void ab initio*) under the principle of *nemo plus iuris*. This accumulation of deliberate procedural deviations fully transforms into *medeplegen* in the offence of embezzlement because it involves conscious cooperation and an active physical contribution in fabricating backdated receipt evidence to conceal the intermediary's crime, while the element of unlawfulness was lawfully proven as an essential element of the written offence (*bestanddeel van het delict*).

The findings of the court of first instance in its fact-finding capacity at the Jombang District Court concretely confirmed the circulation of funds amounting to IDR 650 million in the Defendant's personal bank account. Since the principal land sale and purchase transaction was deemed void by operation of law due to the misuse of representative authority without authorization, the ownership of the settlement funds under civil law remained vested in the buyer as the direct victim, thereby satisfying the element of control over property belonging to another that was obtained not as a result of a crime, but based on a lawful voluntary transfer. The unlawful nature of appropriation (*toe-eigenen*) was materially manifested when the Defendant acted as if exercising absolute ownership over the entrusted funds (*zich als heer en meester gedragen*) by unilaterally transferring them to the intermediary without seeking confirmation from either the buyer or the lawful landowners. Although all elements of embezzlement within the framework of criminal participation were lawfully and convincingly proven, the decision of the panel of judges at first instance to impose a conditional sentence in the form of a probationary period constituted an error in sentencing interpretation amounting to an abuse of judicial discretion. The first-instance judges committed a theoretical error by treating partial post-offence restitution as a basis for suspending the execution of a custodial sentence for a professional-office crime.

The firm and progressive legal correction made by the Surabaya High Court, subsequently affirmed by the Supreme Court, restored the direction of criminal law enforcement to the protection of public trust. The complete exclusion of the conditional sentence at the appellate level was based on the understanding that gross negligence by a public official does not warrant legal leniency, given the high degree of professional fault. Through a paradigm shift from special deterrence to an orientation dominated by general deterrence under the integrative theory of punishment, the imposition of a seven-month enforceable custodial sentence constitutes the minimum appropriate sanction to remedy the socio-economic harm suffered by the victim and to provide certainty in law enforcement for the broader notarial ecosystem. The

Supreme Court's cassation-level affirmation confirms that the High Court's decision was free of any defect in the application of law and rejects the defence of obedience to private client instructions, upholding the principle of notarial independence. This final and binding judgment also entails a severe administrative consequence in the form of the Defendant's dishonourable dismissal from the office of Notary, which must be pursued by the Minister of Law through the operation of Law Number 30 of 2004 upon the proposal of the Central Supervisory Council, because the Defendant's conduct was proven to degrade the honour and dignity of the office.

Based on these conclusions, this study formulates several academic recommendations, policy implications, and concrete follow-up measures as a comprehensive solution for preventing future professional-office crimes committed by Notaries. Academically, this study recommends reconceptualizing legal higher education curricula and notarial professional education by strengthening the teaching of criminal law on official crimes and the functional mapping of the transition from administrative violations to criminal liability. As a policy implication, the Ministry of Law, together with the Indonesian Notary Association, must formulate progressive regulations that strictly prohibit the use of Notaries' personal accounts to hold land transaction funds in any form and promote the formal operation of an escrow system integrated with licensed banking institutions to ensure transparency in financial circulation. Concrete follow-up measures should be directed to the Regional Supervisory Councils to strengthen periodic preventive supervision through physical audits of Notarial repertoires, strict verification of compliance with the obligation to read deeds before appearers in actual presence, and firm action against every indication of administrative malpractice before it crosses the boundary into a substantive offence. Finally, law enforcement authorities are urged to consistently apply uniform standards of professional due care in investigating and prosecuting organized crime in the land sector, while rejecting any argument seeking release from criminal charges by invoking a contractual civil-law relationship as a justification for criminal intent.

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