



## Normative Disharmony in Notary Summoning Procedures: Analyzing the Conflict Between Law No. 2 of 2014 on the Position of Notary and the 2025 Criminal Procedure Code

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### Abstract:

**Background.** The enactment of Indonesia's 2025 Criminal Procedure Code (KUHAP 2025) has created a critical normative conflict with Law No. 2 of 2014 on the Position of Notary (UUJN), specifically regarding procedures for summoning notaries and seizing their deeds. While the UUJN mandates prior approval from the Notary Honorary Council (MKN) as a procedural safeguard, KUHAP 2025 introduces emergency seizure provisions that potentially bypass this requirement, undermining legal certainty and professional integrity.

**Purpose.** This article aims to analyze this normative disharmony, assess its impact on fundamental legal principles, and propose a harmonization model.

**Methods.** Employing a normative legal research methodology, the study finds that the conflict erodes legal certainty, justice, legal protection, and transparency, placing notaries in an untenable "double bind."

**Conclusion.** It concludes that a comprehensive reconstruction—encompassing legislative amendments to reinforce *lex specialis*, institutional collaboration, and technological modernization of evidence handling—is imperative.

**Implication.** The implication is that such multi-dimensional solutions are essential to reconcile effective law enforcement with the protective safeguards necessary for the notarial profession and the rule of law in Indonesia.

**Keywords:** Notary Summoning, Normative Conflict, MKN Approval, Legal Certainty, *Lex Specialis*



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### INTRODUCTION

Notaries in Indonesia hold a pivotal position as public officials entrusted by the state with the authority to create authentic deeds (Budiono, et al., 2023). These instruments are fundamental to the Indonesian legal system, providing a high degree of legal certainty and serving as perfect evidence in judicial proceedings (Arsono, et al., 2023; Essiva, et al., 2021).

The original copies of these deeds, known as *minuta*, are classified as state archives,

demanding stringent protection and specific procedures for their access or seizure (Wulandari, et al., 2025). This strategic role, however, places notaries in a precarious position, subject to a paradox of dual obligations. On one hand, they are bound by a strict duty of confidentiality, often referred to as the right of denial (*Hak Ingkar*), as mandated by Article 16 paragraph (1) letter f of Law No. 2 of 2014 concerning the Position of Notary (UUJN) (Uyuni & Mispansyah., 2025). This obligation is the bedrock of public trust and professional integrity (Widya Chandra & Novy Purwanto, 2024). On the other hand, the state has a legitimate and compelling interest in enforcing criminal law, a process that often requires access to notarial deeds or the testimony of notaries themselves (Erliyani & Ratomi, 2018).

The tension between the procedural protections afforded to the notarial profession under the UUJN and the imperatives of criminal law enforcement under the Criminal Procedure Code (KUHAP) is a long-standing polemic (Riziq, 2024). This issue has been reignited and has reached a new critical juncture with the recent enactment of the new Criminal Procedure Code of 2025 (KUHAP 2025) (Suseno, et al., 2025). This new legislative regime, which significantly expands the authority of investigators and relaxes the requirements for seizure in urgent circumstances, creates a direct normative collision with the protective mechanisms established in Article 66 of the UUJN (Devi & Gunadi, 2024). This provision specifically requires the approval of the Notary Honorary Council (*Majelis Kehormatan Notaris* or MKN) before a notary can be summoned or their deeds seized for judicial purposes (Finalo & Gettari, 2024). The resulting normative disharmony threatens the foundational principles of the Indonesian legal system, including legal certainty, justice, and the rule of law.

This article seeks to dissect this complex legal issue by addressing three core research questions. First, how does the normative conflict between Article 66 of the UUJN, which mandates MKN approval, and the new provisions for urgent seizure and investigation in KUHAP 2025 impact the application of the *lex specialis derogat legi generali* principle? Second, what are the tangible impacts of this normative disharmony on the fulfillment of fundamental legal principles—namely legal certainty, justice, legal protection, and transparency—at each stage of the criminal justice process, from investigation and prosecution to trial? Third, what comprehensive legal reconstruction model, encompassing normative, institutional, and technological dimensions, can be proposed to harmonize these

conflicting legal frameworks, thereby safeguarding the integrity of the notarial profession while simultaneously supporting the effective administration of criminal justice?

## LITERATURE REVIEW

The conflict surrounding the summoning of notaries is deeply rooted in fundamental legal concepts and the hierarchical structure of Indonesia's legal system. A thorough understanding of the nature of authentic deeds, the principle of *lex specialis derogat legi generali*, and the constitutional jurisprudence shaping notarial practice is essential to fully grasp the complexities of the current normative disharmony (Bingyuan & Zhaoxun, 2025; Faizeh & Latumahina, 2024).

### The Nature of Authentic Deeds and Notary Protocols

An authentic deed, as defined by Indonesian law, is an instrument created by or before a public official, in this case, a notary, in the form and manner prescribed by law. Its primary legal function is to provide perfect evidentiary force (*uitstekende bewijskracht*) (Meester & Slooten, 2021; Gusarov, et al., 2023; Pratama & Astariyani, 2025), meaning it is considered conclusive proof of the actions and agreements it documents, unless and until proven otherwise in a court of law (Cornelius, 2021). This high evidentiary value is the cornerstone of legal certainty in civil and commercial transactions (Saepullah, 2022). However, the notary's responsibility is primarily formal; they are tasked with ensuring the procedural correctness of the deed's creation, not with verifying the material truth of the statements made by the parties appearing before them (Jamus, et al., 2024). Consequently, a notary's criminal liability is generally limited to instances where they are proven to have intentionally and knowingly participated in a fraudulent scheme related to the formal aspects of the deed, rather than being held accountable for the veracity of the information provided by their clients (Panduwinata, et al., 2022).

Furthermore, the original notarial deeds, or *minuta*, are collectively known as the notary's protocol and are legally classified as state archives. This designation imposes a stringent duty upon the notary to preserve and protect these documents (Miftahurrahman, et al., 2021). The status of these protocols as state archives necessitates a higher threshold for access by third parties, including law enforcement (Kridawidyani, et al., 2023). Legal doctrine and judicial precedent have consistently held that only a copy of the *minuta*, not the original, should be presented in legal proceedings, underscoring the protected status of the

original documents (Passalacqua & Costamagna, 2023). Any seizure of the entire protocol, whether in physical or digital form, is considered a significant breach of the notary's custodial duty and a potential threat to the integrity of the state's legal infrastructure (Donald Lbn Toruan, 2022).

### **The *Lex Specialis* Principle in Legal Hierarchy**

The Indonesian legal system, like many civil law jurisdictions, relies on established principles to resolve conflicts between laws. One of the most critical of these is *lex specialis derogat legi generali* (d'Aspremont & Tranchez, 2013), which dictates that a specific law governing a particular subject matter overrides a general law that might also apply. The UUJN, which contains detailed provisions specifically regulating the summoning of notaries and the seizure of their deeds, is unequivocally a *lex specialis* in this context. Article 66 of the UUJN was deliberately crafted to provide a specialized procedural safeguard for the notarial profession, recognizing the unique confidentiality requirements inherent in their duties.

The enactment of KUHAP 2025, however, introduces a potential conflict based on another principle: *lex posterior derogat legi priori* (a later law repeals an earlier one) (Dewitz, et al., 1994). Law enforcement agencies, prioritizing the efficiency of criminal investigations, may argue that the newer, more general provisions for urgent seizures in KUHAP 2025 supersede the older, more specific requirements of the UUJN. This interpretive clash lies at the heart of the current normative disharmony. A failure to correctly apply the *lex specialis* principle in this context risks delegitimizing the specific protections afforded to the notarial profession and creating significant legal uncertainty (Olgiatei, 1994).

### **Constitutional Protection: MKN Authority and Jurisprudence**

The procedural protection for notaries is not merely statutory; it has been repeatedly affirmed and strengthened by the Indonesian Constitutional Court. The Court's decisions, most notably in Case No. 16/PUU-XVIII/2020, have solidified the constitutional basis for the role of the Notary Honorary Council (MKN) as a crucial procedural filter (Santoso & Hamid, 2025). The Court has upheld the constitutionality of Article 66 of the UUJN, emphasizing that the requirement for MKN approval is not an obstruction of justice but a necessary mechanism to balance the needs of law enforcement with the fundamental right to confidentiality and the protection of the notary's professional integrity.

The MKN functions as a vital check and balance on the power of investigators. Its role is to assess the legitimacy and proportionality of a request to summon a notary or seize a deed, ensuring that such actions are directly relevant to a specific criminal investigation and not a "fishing expedition" (Subrin, 1987). The legal framework provides a clear timeline for this process: the MKN must provide a written response—either approval or rejection—within 30 working days. Crucially, if no response is given within this timeframe, the request is deemed approved. This "deemed approval" mechanism ensures that the MKN cannot indefinitely delay a legitimate investigation, thereby addressing concerns about procedural efficiency while maintaining the essential safeguard of independent review (Santoso, 2023). This constitutionally-backed jurisprudence establishes a clear procedural boundary that should not be easily circumvented by general provisions in other laws.

## **METHOD**

Employing a normative legal research methodology (Taekema, 2018), this study conducts a systematic doctrinal analysis of the normative conflict between the Law on the Position of Notary (UUJN) and the 2025 Criminal Procedure Code (KUHAP 2025), utilizing a tripartite analytical framework. This framework integrates a statute approach to dissect the contradictory legislative texts, a jurisprudential approach to interrogate foundational Constitutional Court rulings, and a conceptual approach to deconstruct the impact on overarching legal principles (Jhaveri, 2019). The analysis is grounded in primary legal materials, including the UUJN and KUHAP 2025, and is critically enriched by secondary sources such as academic scholarship and judicial precedents, thereby ensuring a multidimensional examination of the legal disharmony and its systemic implications.

The statute approach forms the primary analytical layer, involving a meticulous comparative analysis of the relevant legislative texts. This includes a detailed examination of Article 66 of the UUJN, which mandates prior approval from the Notary Honorary Council (MKN), and the contrasting emergency seizure provisions within KUHAP 2025. The analysis extends to principles of legal hierarchy, such as *lex specialis derogat legi generali* and *lex posterior derogat legi priori*, to assess the formal standing and potential supremacy of one law over the other. This textual and hierarchical analysis is foundational for identifying the precise points of legal collision.

Complementing the statute approach, the jurisprudential approach examines pertinent judicial interpretations, particularly the landmark decisions of the Indonesian Constitutional

Court. Key rulings, such as in Case No. 16/PUU-XVIII/2020, which affirmed the constitutionality and necessity of the MKN's role, are analyzed to understand how the judiciary has historically balanced notarial confidentiality with law enforcement needs. This approach provides critical insight into the constitutional foundations of the existing procedural safeguards and informs the assessment of whether the new provisions in KUHAP 2025 conflict with established constitutional jurisprudence.

Finally, the conceptual approach is applied to deconstruct and evaluate the impact of the normative conflict on overarching legal principles, including legal certainty, justice, legal protection, and transparency. This theoretical lens allows the study to transcend a mere technical comparison of articles and assess the broader systemic consequences. The methodology is further reinforced by the use of comparative framework tables and visualizations, which synthesize the findings to clearly illustrate the philosophical divergences, procedural conflicts, and cascading risks across different stages of the criminal justice process, thereby providing a holistic and structured analysis.

## **DISCUSSION**

### **Normative Conflict Analysis: UUJN vs. KUHAP 2025**

The enactment of the 2025 Criminal Procedure Code (KUHAP 2025) has brought the latent tension between procedural safeguards for notaries and the demands of criminal investigation into sharp, unavoidable conflict. This section analyzes the specific points of friction between the protective framework of the UUJN and the new, efficiency-oriented provisions of KUHAP 2025, highlighting the erosion of established legal protections.

#### ***The Protective Framework of UUJN (Article 66)***

Article 66 of the UUJN serves as the primary legal bastion protecting the integrity of the notarial profession and the confidentiality of the deeds they produce. This provision establishes a clear and mandatory procedural gateway: for the purpose of a judicial process, investigators, public prosecutors, or judges can only summon a notary to testify about a deed they created or take a copy of a deed from the notary's protocol after obtaining written approval from the Notary Honorary Council (MKN). This requirement is not a mere formality but a substantive safeguard. It ensures that any intrusion into the confidential relationship between a notary and their client is justified, proportional, and directly relevant

to a specific legal case. The MKN acts as an independent arbiter, filtering requests to prevent arbitrary or overly broad investigations that could compromise the notary's duty of confidentiality, encapsulated in their right of denial (*Hak Ingkar*). This right allows a notary to refuse to provide information obtained in their professional capacity, a privilege that can only be waived under the specific legal conditions outlined in Article 66.

### ***The Emergency Provisions of KUHAP 2025***

In contrast to the deliberate, measured process mandated by the UUJN, KUHAP 2025 introduces provisions designed to maximize the speed and efficiency of criminal investigations, reflecting a shift towards a crime control model of justice. The most significant of these are the new rules governing seizure and search in "urgent" or "emergency" situations. These provisions grant investigators expanded authority to conduct seizures without prior approval from the head of the local district court, a traditional prerequisite. The rationale is to prevent the loss or destruction of evidence in fast-moving criminal cases.

Furthermore, KUHAP 2025 is the first legislative instrument in Indonesia to explicitly regulate the seizure of electronic evidence (*Alat Bukti Elektronik* or ABE). While this modernization is necessary, the broad and vaguely defined conditions for "urgent" seizure, when applied to electronic data, create a significant new threat. The law potentially allows investigators, under the pretext of an emergency, to bypass the MKN approval process entirely and seize not just a single deed but entire digital archives, servers, or cloud storage accounts belonging to a notary.

### ***Points of Direct Conflict***

The collision between these two legal regimes manifests in several critical areas. *First*, there is a temporal and hierarchical conflict. While the UUJN is the *lex specialis* (specific law) for notaries, KUHAP 2025 is the *lex posterior* (newer law). Law enforcement may argue that the newer law implicitly supersedes the older one, effectively nullifying the MKN's authority in any situation they deem "urgent." This creates a direct conflict in the legal hierarchy that, without clarification, will be resolved inconsistently in practice.

*Second*, there is a substantive and procedural conflict. The two laws present fundamentally different procedural philosophies. The UUJN prioritizes due process and professional protection through a mandatory approval mechanism. KUHAP 2025, in its emergency provisions, prioritizes crime control and investigative efficiency, treating

procedural safeguards as potentially cumbersome obstacles. This creates a substantive clash between the state's interest in protecting the integrity of a public office and its interest in prosecuting crime.

*Third*, there is a digital evidence conflict. The risk of "fishing expeditions" is exponentially magnified in the digital realm. Whereas a physical seizure might be limited to a specific file or document, the seizure of a notary's server or hard drive could expose the confidential information of hundreds or thousands of clients unrelated to the investigation. KUHAP 2025's ABE provisions, combined with its emergency seizure powers, lack the necessary granularity to prevent such disproportionate intrusions, placing the entire digital protocol of a notary at risk.

### ***Practical Implications and the Notary's Dilemma***

In practice, this normative conflict places notaries in an untenable "double bind." If an investigator demands the seizure of a deed or digital protocol under the emergency provisions of KUHAP 2025 without MKN approval, the notary faces a difficult choice. Complying with the investigator's demand means violating their statutory and ethical duty of confidentiality under the UUJN, exposing them to potential civil lawsuits from clients and disciplinary action from the MKN. Refusing to comply, however, risks being charged with obstruction of justice under KUHAP 2025, a serious criminal offense.

In this scenario, the only available legal remedy for the notary is a reactive one: filing a *Praperadilan* (pre-trial) motion to challenge the legality of the seizure. However, this is a weak and inadequate form of protection. A *Praperadilan* hearing occurs *after* the seizure has already taken place and the confidentiality of the client's information has been breached. It shifts the burden onto the notary to challenge the state's actions, rather than requiring the state to justify its intrusion beforehand. This reliance on an *ex post* (after the fact) remedy effectively dismantles the *ex-ante* (before the fact) protection that the MKN was designed to provide, leaving the notary and their clients vulnerable.

### **Impact on Fundamental Legal Principles**

The normative friction between the UUJN and KUHAP 2025 is not a mere technicality; it sends disruptive shockwaves through the core of the Indonesian legal system, undermining four fundamental principles: legal certainty, justice, legal protection, and

transparency. The erosion of these principles has profound consequences at every stage of the criminal justice process, from the initial investigation to the final verdict in court.

### ***The Erosion of Legal Certainty (Kepastian Hukum)***

Legal certainty is the first and most immediate casualty of this normative conflict. The existence of two contradictory legal mandates—one demanding strict procedural adherence to MKN approval and the other permitting its circumvention in "urgent" situations—creates a state of profound ambiguity. Notaries are left without a clear, predictable, and consistent set of rules to govern their conduct when faced with a demand from law enforcement. This operational ambiguity forces them to make high-stakes decisions with uncertain legal consequences, undermining the very predictability that the rule of law is meant to provide.

This uncertainty extends into the courtroom. Evidence obtained through a seizure that violates the procedural requirements of Article 66 of the UUJN is legally tainted. Its admissibility can be challenged during trial, potentially leading to the exclusion of critical evidence and the collapse of a prosecution. If a court rules that the procedural breach was fundamental, it could even invalidate the evidentiary power of the authentic deed itself for that specific case. This creates uncertainty not only for the notary but also for the integrity of the judicial process, as the reliability and legality of evidence become subjects of protracted debate rather than established fact.

### ***The Compromise of Justice***

The principle of justice, both procedural and substantive, is severely compromised by the "double bind" imposed on notaries. It is a profound procedural injustice to place a public official in a position where they are forced to choose between violating their professional oath of confidentiality and facing criminal charges for obstruction of justice. This dilemma imposes an unfair and disproportionate burden of risk on notaries, who are caught in the crossfire of a legislative conflict they did not create. This situation can lead to what is known as an "internal shock," where the ethical and psychological pressure on the notary becomes immense, threatening their ability to act with the independence and impartiality that their office demands.

Substantive justice is also at risk. The purpose of criminal law is to assign culpability based on intent (*mens rea*). If a notary is criminalized merely for upholding their statutory duty of confidentiality by refusing an improper seizure, the focus shifts from punishing criminal intent to penalizing procedural compliance. This represents a dangerous deviation

from the principles of substantive justice, where legal professionals could be punished for acting ethically. Justice demands that the legal framework be clear and equitable, not a source of unavoidable legal jeopardy for those acting in good faith.

### ***The Dilution of Legal Protection***

The most direct impact of the conflict is the dilution of legal protection for notaries and the public they serve. The MKN approval process was specifically designed as an *ex ante* (preventive) form of legal protection. It provides a crucial, upfront review to ensure that any intrusion into notarial confidentiality is lawful and necessary. The emergency provisions of KUHAP 2025 effectively dismantle this preventive shield, replacing it with a far weaker *ex post* (remedial) mechanism: the *Praperadilan* motion.

This shift is a significant regression in legal protection. A *Praperadilan* is a reactive measure that can only be initiated after the notary's protocol has been seized and confidentiality has been breached. It is a costly, time-consuming process that places the burden of proof on the notary to demonstrate the illegality of the state's actions. This is a fundamental reversal of the proper order of legal protection, where the state should bear the burden of justifying its actions *before* infringing on protected rights. The risk of a forced summons or seizure, without the prior filter of MKN review, leaves notaries exposed and their clients' sensitive information vulnerable.

### ***The Paradox of Transparency***

The principle of transparency in the notarial profession is already recognized and regulated, particularly through the obligation to implement Know Your Customer (KYC) principles, known in Indonesia as *Prinsip Mengenal Pengguna Jasa* (PMPJ), to prevent money laundering and terrorism financing. This demonstrates that the notarial profession is not shielded from legitimate demands for transparency. However, this transparency must be balanced with the duty of confidentiality and the principle of proportionality.

The MKN plays a critical role in maintaining this balance. By reviewing requests, the MKN ensures that the scope of any disclosure is limited to the specific information relevant to the case at hand. This prevents "fishing expeditions" and protects the privacy of countless other clients whose information is held by the notary. If the emergency seizure provisions of KUHAP 2025 are applied without the MKN filter, especially in the context of digital evidence, the result is not responsible transparency but a wholesale breach of confidentiality.

This paradoxically undermines public trust and reduces, rather than enhances, the kind of targeted, lawful transparency that a well-functioning legal system requires.

### Comparative Framework Tables and Visualizations

**Table 1. Comparative Framework of UUJN Article 66 vs. KUHAP 2025 Emergency Provisions**

Feature	Law No. 2 of 2014 on the Position of Notary (UUJN)	2025 Criminal Procedure Code (KUHAP 2025)
<b>Primary Goal</b>	Protection of professional integrity and client confidentiality.	Efficiency and speed of criminal investigation.
<b>Core Principle</b>	Due Process Model: Emphasizes procedural safeguards and rights protection.	Crime Control Model: Prioritizes suppression of criminal conduct.
<b>Key Mechanism</b>	<b>Article 66:</b> Mandatory written approval from the Notary Honorary Council (MKN) before summoning a notary or seizing a deed.	<b>Emergency Provisions:</b> Allows investigators to conduct seizures without prior judicial or external approval in "urgent" situations.
<b>Procedural Nature</b>	<i>Ex Ante</i> (Preventive): Approval is required <i>before</i> any action is taken, acting as a protective filter.	<i>Ex Post</i> (Remedial): Actions are taken first, with legality potentially challenged <i>after the fact</i> through a <i>Praperadilan</i> motion.
<b>Scope of Seizure</b>	Limited and specific. The MKN reviews the request to ensure it is proportional and relevant to the case.	Potentially broad and undefined, especially concerning electronic evidence (ABE), risking "fishing expeditions."
<b>Authority Figure</b>	Notary Honorary Council (MKN): An independent professional body that acts as a gatekeeper.	Investigator ( <i>Penyidik</i> ): Holds primary discretionary power to declare a situation "urgent."
<b>Timeline</b>	Deliberate: MKN has up to 30 working days to respond, with a "deemed approval" clause if no response is given.	Immediate: Designed for rapid action to prevent the loss of evidence.
<b>Legal Conflict</b>	Represents the <i>lex specialis</i> (specific law) governing the notarial profession.	Argued to be the <i>lex posterior</i> (newer law) that could supersede older legislation.
<b>Risk for Notary</b>	Low risk if procedure is followed. Protection is institutionalized.	High risk due to the "double bind": face criminal charges for obstruction or civil/ethical liability for breach of confidentiality.

Source: Research Data

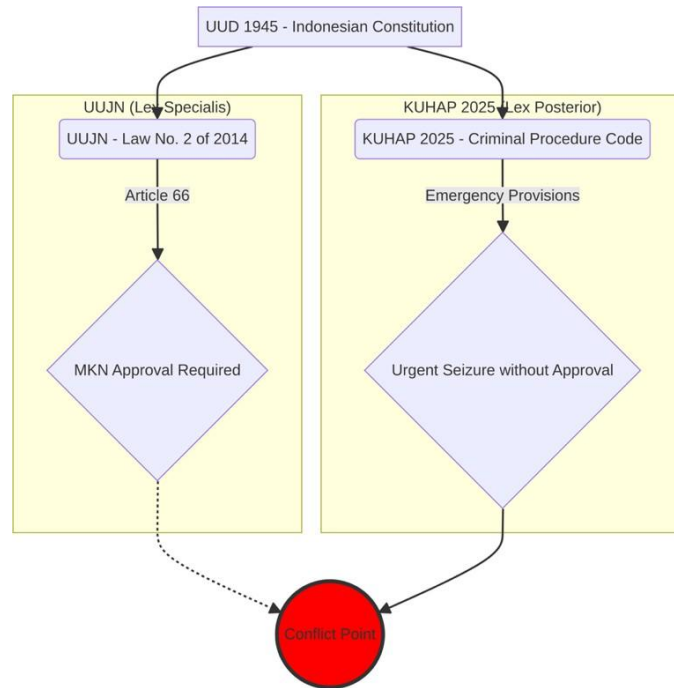
Table 1 illustrates the fundamental philosophical and procedural divergences between the two legal frameworks. The UUJN establishes a system of checks and balances designed to protect a specific public office, while KUHAP 2025 prioritizes the state's investigative powers, creating a direct and unresolved conflict.

**Table 2. Impact of Normative Conflict on Four Legal Principles Across Criminal Procedure Phases**

Legal Principle	Investigation Phase	Prosecution Phase	Trial Phase
<b>Legal Certainty</b>	Ambiguity for investigators on correct procedure (UUJN vs. KUHAP). Uncertainty for notaries on whether to comply with a summons/seizure without MKN approval.	Prosecutors receive potentially tainted evidence, creating uncertainty about the strength and admissibility of the case.	Judges face challenges in ruling on the admissibility of evidence obtained through conflicting procedures. Risk of inconsistent court rulings.
<b>Justice</b>	Notaries face the unjust "double bind" dilemma. Investigators may resort to coercive measures, undermining procedural fairness from the outset.	Prosecutors may build a case on a foundation of procedural injustice, potentially leading to wrongful prosecution of a notary who was acting ethically.	The court may be forced to evaluate a notary's conduct based on ambiguous law, risking a miscarriage of justice. The focus shifts from the primary crime to the procedural conflict.
<b>Legal Protection</b>	The <i>ex ante</i> protection of the MKN is nullified. Notaries and their clients are left vulnerable to overly broad seizures and breaches of confidentiality.	Notaries lack institutional protection and must prepare for personal legal battles (e.g., <i>Praperadilan</i> ) rather than relying on established safeguards.	The notary's right of denial ( <i>Hak Ingkar</i> ) is weakened, and they may be compelled to testify based on improperly obtained summons, eroding professional privilege.
<b>Transparency</b>	Leads to disproportionate "fishing expeditions," especially with digital evidence, violating the privacy of uninvolved clients. This is false transparency.	The basis for the prosecution may be opaque if the evidence was gathered through legally questionable "emergency" measures.	The court record may be filled with evidence whose origin is procedurally flawed, undermining the transparency and integrity of the judicial process.

Source: Reseach Data

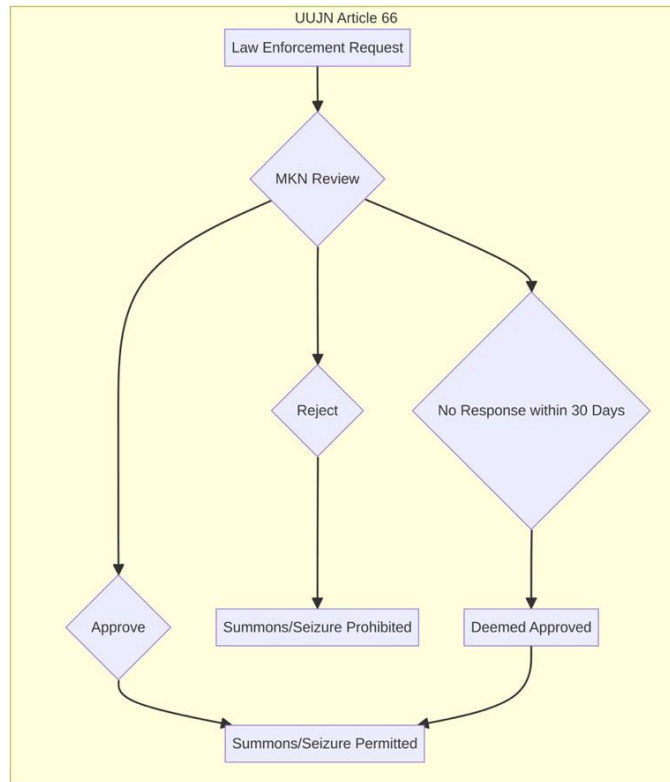
**Table 2** demonstrates that the impact of the normative conflict is not isolated to a single event but creates a cascade of negative consequences that permeate every stage of the criminal justice system, systematically weakening the foundational principles of the rule of law.



Source: Authors' analysis

**Figure 1. Normative Hierarchy and Conflict Points**

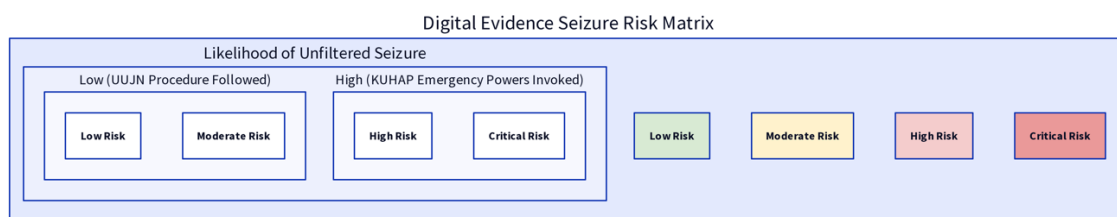
Figure 1 illustrates the hierarchical relationship between the Indonesian Constitution (UUD 1945), the UUJN as a *lex specialis*, and KUHAP 2025 as a *lex posterior*. The critical conflict point occurs where the emergency seizure provisions of KUHAP 2025 potentially override the mandatory MKN approval requirement of UUJN Article 66. This visualization underscores the fundamental tension between two competing legal frameworks that lack explicit clarification of their hierarchical relationship.



Source: Authors' analysis

**Figure 2. MKN Approval Process and Timeline**

Figure 2 depicts the procedural pathway established by UUJN Article 66 for the MKN approval process. Law enforcement submits a request, which the MKN reviews and either approves, rejects, or leaves unanswered. The critical feature is the "deemed approval" mechanism: if the MKN does not respond within 30 working days, the request is automatically approved. This timeline ensures that legitimate investigations are not indefinitely delayed while still maintaining the essential safeguard of independent review. The diagram emphasizes the balance between efficiency and due process that the UUJN seeks to achieve, a balance that is threatened by KUHAP 2025's emergency provisions.



Source: Authors' analysis

**Figure 3. Digital Evidence Seizure Risk Matrix**

Figure 3 is risk matrix, illustrates the varying levels of risk associated with different combinations of seizure likelihood and impact scope. The matrix shows that when UUJN procedures are followed (low likelihood of unfiltered seizure), the risk remains manageable even if the impact is broad. However, when KUHAP 2025 emergency powers are invoked (high likelihood of unfiltered seizure), the risk escalates significantly, reaching a "critical"

level when combined with the seizure of entire digital protocols. This visualization emphasizes the particular vulnerability created by the intersection of emergency seizure authority and digital evidence, where the potential for disproportionate intrusion is greatest.

### **Legal Reconstruction and Harmonization Solutions**

The acute normative conflict between the UUJN and KUHAP 2025 demands more than just judicial interpretation; it requires a deliberate and comprehensive legal reconstruction. To bridge the gap between the state's need for effective law enforcement and its duty to protect the integrity of public office, a multi-faceted approach is necessary. This reconstruction should be built on three pillars: normative solutions to clarify the law, institutional solutions to reform practices, and technological solutions to modernize procedures. This integrated model aims to create a harmonized legal ecosystem that supports both the due process model, which protects individual rights, and the crime control model, which ensures public safety.

#### ***Normative Solutions: Reinforcing the Lex Specialis Through Legislative Action***

The most fundamental and durable solution lies in legislative correction. The ambiguity that fuels the current conflict must be eliminated through clear, explicit, and targeted amendments to the relevant statutes.

*First*, there must be a declaration of an explicit non-derogation clause. The most critical normative step is to amend the UUJN to include a *clausula non-derogasi* (non-derogation clause). This clause would explicitly state that the emergency seizure and search provisions of KUHAP 2025, or any other general criminal procedure law, do not apply to the summoning of notaries or the seizure of their protocols (both physical and digital) without the prior written approval of the MKN. Such a declaration would definitively reaffirm the UUJN as the *lex specialis* and eliminate any legal basis for circumventing the MKN process under the pretext of "urgency." This would restore the intended legal hierarchy and provide unequivocal legal certainty for notaries, law enforcement, and the judiciary.

*Second*, there must be synchronization of procedural timelines. A common justification for bypassing the MKN is the perception that its procedures are too slow and cumbersome for time-sensitive investigations. To neutralize this argument, the procedural timeline for MKN approval must be synchronized with the needs of modern law enforcement. The UUJN or its implementing regulations should be revised to establish an

expedited track for urgent requests, mandating a response from the MKN within a much shorter timeframe, such as 24 to 48 hours. By creating a rapid but still rigorous review process, the law can accommodate the needs of investigators for speed without sacrificing the essential safeguard of independent oversight. This makes the "delay" rationale for invoking emergency powers obsolete.

*Third*, there must be specific regulation of electronic evidence (ABE) seizure. The digital era requires a more sophisticated approach to evidence collection than simply seizing hardware. The UUJN must be updated to include specific regulations governing the seizure of electronic evidence from notaries. These regulations should mandate the use of forensic techniques that are targeted and proportional, such as the creation of a forensic image (*mirroring*) of only the specific data relevant to the investigation, rather than the physical seizure of entire servers or computers. The law should establish clear protocols for data extraction, hash value verification to ensure data integrity, and a strict chain of custody for digital evidence. This would prevent disproportionate "fishing expeditions" and protect the confidentiality of uninvolved clients, thereby balancing investigative needs with privacy rights.

### ***Institutional Solutions: Shifting from Confrontation to Collaboration***

Beyond legislative changes, a paradigm shift is needed in the institutional relationship between the notarial profession and the state's law enforcement apparatus. The current dynamic is often adversarial, but it can and should be transformed into a collaborative partnership focused on upholding the rule of law.

*First*, there should be adoption of a collaborative relationship model. The state should formally recognize the role of notaries not as potential obstacles to investigation but as partners in ensuring legal certainty and preventing crime. Notaries already play a crucial role in anti-money laundering efforts through their PMPJ obligations. This partnership should be expanded. Joint protocols should be developed between the National Police, the Attorney General's Office, and the MKN to streamline communication, clarify procedures, and establish a clear understanding of each institution's roles and responsibilities. This fosters a relationship built on mutual respect and a shared commitment to justice.

*Second*, there should be implementation of integrated legal education. Misunderstanding and a lack of awareness are significant drivers of the current conflict. To address this, a program of integrated and continuous legal education is essential. This

program should bring together investigators, prosecutors, judges, and members of the MKN for joint training sessions. The curriculum should focus on the constitutional status of the notarial office, the legal basis for the duty of confidentiality, the proper procedures for summoning notaries under the UUJN, and the specific limitations on seizure powers. Conversely, notaries must receive ongoing training on their obligations in criminal proceedings, the proper use of the right of denial, and their role in preventing illegal activities. This shared educational foundation would reduce friction and promote consistent application of the law.

### ***Technological Solutions: Modernizing for Security and Efficiency***

Technology, which is currently a source of new risks, can also be harnessed to provide innovative solutions that enhance both security and efficiency.

*First*, there should be development of a secure digital notarial infrastructure. The government, in collaboration with the national notary association (Ikatan Notaris Indonesia), should invest in the development of a secure, centralized digital infrastructure for notarial protocols. Such a system could be designed with robust access controls, encryption, and audit trails built in from the ground up. This would allow for secure storage and management of digital deeds, making it easier to implement granular, rights-managed access for law enforcement when legally authorized. A centralized system would provide greater security and control than the current fragmented landscape of individual notary servers.

*Second*, there should be a transition to data-specific seizure protocols. With a secure digital infrastructure in place, the paradigm of evidence collection can shift from the seizure of physical devices to the targeted extraction of specific data. When a seizure is authorized by the MKN, investigators would be granted secure, time-limited access to retrieve only the specific deed or data set relevant to their case. This surgical approach ensures that the investigation can proceed efficiently while the notary's operations are not disrupted and the confidentiality of other clients is not compromised. This method embodies the principle of proportionality and represents a modern, responsible approach to digital forensics.

**Table 3. Proposed Reconstruction Solutions: Normative, Institutional, and Technological Dimensions**

Dimension	Objective	Key Actions	Expected Outcome
<b>Normative</b>	To eliminate legal ambiguity and reaffirm the supremacy of <i>lex specialis</i> .	<ol style="list-style-type: none"> <li><b>Amend UUJN:</b> Insert a non-derogation clause explicitly exempting notaries from KUHAP 2025 emergency seizure provisions without MKN approval.</li> <li><b>Synchronize Timelines:</b> Legislate a mandatory 24-48 hour response time for MKN in urgent cases.</li> <li><b>Regulate ABE Seizure:</b> Define strict, proportional protocols for seizing electronic notarial evidence.</li> </ol>	Clear, unambiguous legal hierarchy is restored. The "urgency" loophole is closed. Digital privacy is protected. Legal certainty is achieved.
<b>Institutional</b>	To transform the relationship between law enforcement and notaries from adversarial to collaborative.	<ol style="list-style-type: none"> <li><b>Develop Joint Protocols:</b> Create binding Standard Operating Procedures (SOPs) for inter-agency communication (Police, Prosecutor's Office, MKN).</li> <li><b>Implement Integrated Training:</b> Conduct mandatory, joint legal education on UUJN and KUHAP for all stakeholders.</li> <li><b>Establish Collaborative Model:</b> Formally recognize notaries as state partners in upholding legal certainty.</li> </ol>	Reduced procedural friction and conflict. Increased mutual understanding and respect. Consistent and uniform application of the law across jurisdictions.
<b>Technological</b>	To modernize notarial practice for enhanced security and efficiency in evidence handling.	<ol style="list-style-type: none"> <li><b>Build Secure Digital Infrastructure:</b> Develop a national, centralized, and encrypted system for digital notarial protocols.</li> <li><b>Mandate Data-Specific Seizure:</b> Shift from physical device seizure to the forensically sound extraction of specific, relevant data.</li> <li><b>Implement Digital Audit Trails:</b> Ensure all access to digital protocols is logged, auditable, and secure.</li> </ol>	Enhanced security for state archives. Minimized disruption to notarial services during investigations. Proportionality in evidence collection is guaranteed.

Source: Authors' analysis

Table 3 presents a comprehensive framework for resolving the normative conflict through a coordinated, multi-dimensional approach. By addressing the problem at the levels of law, institutional practice, and technology, this framework offers a sustainable and holistic solution that can harmonize the competing demands of law enforcement and professional protection.

### **Summary of Key Findings**

This analysis confirms that the conflict is not merely a technical dispute but a fundamental clash of legal philosophies. The UUJN, as the *lex specialis*, establishes a due process-oriented framework centered on the *ex ante* protective filter of the MKN, a mechanism repeatedly validated by the Constitutional Court. In stark contrast, the emergency provisions of KUHAP 2025 promote a crime control model that, under the guise of *lex posterior*, threatens to nullify these established safeguards. This places notaries in an untenable "double bind," forcing a choice between their ethical duty of confidentiality and the risk of criminal prosecution for obstruction of justice.

The impact of this disharmony is severe and systemic. It dismantles legal certainty by creating procedural ambiguity for all parties. It compromises justice by imposing an unfair burden on notaries and shifting the focus from criminal intent to procedural compliance. It dilutes legal protection by replacing a robust preventive mechanism (MKN) with a weak and reactive one (*Praperadilan*). Finally, it creates a paradox of transparency, where the pursuit of evidence leads to disproportionate breaches of confidentiality, undermining public trust.

### ***Recommendations for Harmonization***

To restore balance and ensure the coherent development of the rule of law, a multi-pronged reconstruction is imperative. We recommend the following strategic actions:

*First*, there must be immediate legislative action. The highest priority is to amend the UUJN to include an explicit non-derogation clause that unequivocally affirms its supremacy over the general provisions of KUHAP 2025 regarding notaries. This amendment must also introduce specific, technologically-informed protocols for the seizure of electronic evidence and establish an expedited timeline for MKN approval in urgent cases.

*Second*, there must be institutional reform. A paradigm shift from confrontation to collaboration is needed. This can be achieved by establishing joint operational protocols and implementing integrated, mandatory legal education for law enforcement, prosecutors, judges, and notaries to foster mutual understanding and consistent application of the law.

*Third*, there must be technological implementation. The government and the notary profession must jointly invest in a secure national digital infrastructure for notarial acts. This will enable a transition from the invasive seizure of physical devices to the targeted, forensically-sound extraction of specific data, thereby protecting client confidentiality while still meeting the legitimate needs of law enforcement.

### ***Future Outlook***

The resolution of this conflict is a test of the Indonesian legal system's ability to adapt and modernize in a balanced and principled manner. The path forward requires a commitment from the legislature to provide clarity, from the executive and judicial branches to respect established procedural safeguards, and from the notarial profession to embrace technological advancement. Continuous monitoring of the implementation of these reforms will be essential, and the Constitutional Court will undoubtedly play a crucial role in interpreting the boundaries of these laws in the years to come. By taking these decisive steps, Indonesia can harmonize the imperatives of justice and legal certainty, ensuring that the notarial office remains a trusted pillar of the state and that the rule of law prevails.

### **CONCLUSION**

In conclusion, this analysis confirms that the normative conflict between the protective framework of the UUJN and the emergency provisions of KUHAP 2025 constitutes a fundamental clash between the due process and crime control models of justice, creating a legal hierarchy crisis where the *lex posterior* argument threatens to nullify the constitutionally-backed *lex specialis* status of notarial safeguards. This disharmony systematically erodes the core principles of legal certainty, justice, legal protection, and transparency, placing notaries in an untenable "double bind" that jeopardizes both professional integrity and the efficacy of criminal investigations. To resolve this, a comprehensive, tripartite reconstruction is imperative: normative action must reinforce the supremacy of UUJN through a non-derogation clause and expedited MKN timelines; institutional reform must foster collaboration through joint protocols and integrated education; and technological modernization must enable secure, proportional digital evidence handling. Ultimately, only through such a harmonized approach can Indonesia uphold the rule of law, ensuring that the notarial office remains a trusted pillar of legal certainty while supporting the legitimate demands of effective law enforcement.

### **IMPLICATION**

The implications of this publication extend across multiple spheres: for the academic world, it provides a critical case study in normative conflict resolution, legal hierarchy, and

the application of *lex specialis* principles, enriching comparative legal methodology and socio-legal studies. For society, it underscores the vital need to balance public trust in notarial confidentiality with legitimate law enforcement access, directly impacting citizens' rights to privacy and legal certainty. For the nation and state, it presents an urgent governance challenge, testing Indonesia's ability to harmonize legislation, uphold constitutional safeguards, and modernize its justice system without compromising the rule of law or the integrity of public offices. For the international community, particularly civil law jurisdictions, it offers a forward-looking framework for reconciling professional privileges with digital-era criminal procedure, contributing to global dialogues on legal reform, technological adaptation, and the protection of foundational legal institutions.

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