

## Justice-Oriented Law Enforcement Against Notarial Embezzlement of Entrusted Investment Funds

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### *Abstract*

*This study aims to analyze law enforcement against Notaries who commit embezzlement of entrusted investment funds and to formulate a justice-oriented enforcement model. The problem arises from recurring cases of abuse of trust by Notaries that not only cause financial losses to investors but also reveal a gap between normative legal provisions and their fragmented implementation in practice. Previous studies tend to address notarial liability in a partial manner by separating criminal, civil, and administrative aspects, thereby failing to offer an integrated framework of enforcement. This research employs a normative legal method using statutory, conceptual, and case approaches, with secondary legal materials analyzed qualitatively through deductive reasoning. The findings demonstrate that embezzlement of entrusted funds by a Notary constitutes aggravated embezzlement when linked to professional authority, reflecting an abuse of public trust that extends beyond ordinary contractual violations. More importantly, the study finds that the core weakness of current law enforcement lies in the lack of integration among criminal sanctions, civil restitution, and administrative supervision, resulting in inadequate protection for investors. The novelty of this research lies in developing a justice-oriented law enforcement model that integrates punitive, restorative, and regulatory mechanisms into a coherent system, ensuring not only punishment but also restitution and preventive supervision. This model provides a more balanced approach to achieving legal certainty, investor protection, and professional accountability in notarial practice.*

**Keywords:** *Embezzlement of Entrusted Funds; Investment Cooperation Agreement; Justice; Law Enforcement*

### 1. INTRODUCTION

A Notary is a public official who holds a strategic position within the Indonesian civil law system, particularly in ensuring legal certainty through the preparation of authentic deeds.<sup>1</sup> Pursuant to Article 1 point 1 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary (UUJN), a Notary is required to act honestly, prudently, independently, impartially, and to safeguard the interests of the parties involved in legal acts. In the context of investment activities, the role of the Notary extends beyond merely drafting agreements to functioning as a trusted public officer responsible for mitigating legal risks, including the management of entrusted funds arising from investment cooperation agreements.<sup>2</sup>

However, the empirical reality demonstrates a deviation from this normative framework. In recent years, there has been a growing number of legal cases involving Notaries who misuse entrusted funds, particularly in investment-related transactions. Such practices not only result in significant financial losses for investors but also undermine public trust in the integrity of the notarial institution. The increasing occurrence of disputes and criminal cases related to the embezzlement of entrusted funds indicates that this issue is not incidental but reflects a

<sup>1</sup> Nur Solikin, *Hukum, Masyarakat Dan Penegakan Hukum* (Pasuruan: CV. Penerbit Qiara Media, 2019).

<sup>2</sup> D Pramono, "Peran Notaris Pada Perjanjian Kerja Sama Badan Usaha Milik Daerah Dengan Mitra Kerja Dalam Perspektif Kepastian Hukum" (Universitas Islam Sultan Agung (Indonesia), 2024), <https://repository.unissula.ac.id/eprint/33487>.

systemic problem in the supervision and enforcement of notarial conduct.<sup>3</sup> This phenomenon highlights the urgency of examining the effectiveness of law enforcement mechanisms in addressing such misconduct.

From a normative legal perspective, the embezzlement of entrusted funds constitutes an unlawful act punishable under Article 372 of the Indonesian Criminal Code (KUHP). In addition to criminal liability, a Notary may also be subject to civil liability in the form of compensation and administrative sanctions pursuant to the UUJN. Nevertheless, in practice, these legal instruments tend to be applied in a fragmented and uncoordinated manner. Criminal proceedings often proceed independently from administrative sanctions and civil remedies, resulting in a lack of comprehensive legal protection for affected investors. This condition raises fundamental questions regarding whether existing law enforcement mechanisms are capable of delivering substantive justice.

Several recent studies have examined the legal responsibility of Notaries in relation to entrusted funds, yet they exhibit certain limitations.<sup>4</sup> Argue that when a Notary receives entrusted funds, the Notary effectively acts outside the scope of official authority and assumes the position of a trustee. The strength of this study lies in its clear delineation between notarial authority and personal legal responsibility. However, the study does not comprehensively address how law enforcement mechanisms should be structured to ensure integrated accountability and investor protection.

Halil et al emphasize that entrusted funds in investment transactions create a distinct legal relationship that strengthens the basis for criminal liability and may even degrade the evidentiary value of authentic deeds.<sup>5</sup> While this study contributes important doctrinal insights, its analysis remains primarily focused on evidentiary implications and does not extend to evaluating the effectiveness of law enforcement frameworks from a justice-oriented perspective.

Aurellia and Winanti examine the validity of binding agreements executed before a Notary and highlight the importance of legal protection for economically vulnerable parties.<sup>6</sup> Although their research underscores the central role of Notaries in safeguarding entrusted interests, it does not specifically address the issue of criminal accountability or the integration of sanctions in cases involving the embezzlement of entrusted funds.

Based on these studies, it can be observed that prior research tends to approach notarial liability in a segmented manner, separating criminal, civil, and administrative dimensions without offering an integrated framework of law enforcement. This creates a clear research gap, particularly in relation to how these mechanisms can be harmonized to achieve substantive

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<sup>3</sup> C N Amah, "Problematika Hukum Atas Perjanjian Kerjasama Antara Bank Dengan Notaris Di Indonesia: Perspektif Teori Keadilan Bermartabat," *Supermasi Hukum* 19, no. 02 (2023): 64–77, <https://doi.org/10.33592/jsh.v19i02.3366>.

<sup>4</sup> Ni Nyoman Tri Jayanti, Dr. Putu Ayu Sriasih Wesna, and Dr. I Nyoman Alit Puspadma, "Legal Consequences Of Deposited Funds To Public Notary Before Preparation Of Sales And Purchase Agreement," *Journal of Law Theory and Law Enforcement*, September 6, 2024, 14–25, <https://doi.org/10.56943/jlte.v3i3.607>.

<sup>5</sup> E A Halil, D Djumardin, and H Hirsanuddin, "Notary Responsibility for Security Deposit in Sale and Purchase of Land for Investment," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 4 (2025): 2355–64, <https://doi.org/10.38035/rrj.v7i4.1619>.

<sup>6</sup> Clara Sabrina Aurellia and Atik Winanti, "Validity of Sale and Purchase Binding Agreement in Pre-Project Selling Transaction," *Jurnal Ius Constituendum* 9, no. 2 (2024): 306–19, <https://doi.org/10.26623/jic.v9i2.9133>.

justice for investors. Furthermore, existing literature has not sufficiently examined law enforcement against Notaries from a justice-oriented perspective that emphasizes not only punishment but also restoration and protection of victims' rights.<sup>7</sup>

The novelty of this research lies in its attempt to construct an integrative and justice-oriented law enforcement model that connects criminal sanctions, civil liability, and administrative enforcement into a coherent framework. This study positions the Notary not merely as a legal functionary, but as a key component of a public trust system that must be protected through consistent and accountable legal mechanisms.

Based on the background described above, the research problems in this study can be formulated as follows: (1) How is law enforcement currently implemented against Notaries who commit embezzlement of entrusted funds in investment cooperation agreements? (2) How can a justice-oriented law enforcement model be formulated to overcome the limitations of existing enforcement practices?

Accordingly, this study aims to analyze the current application of law enforcement against Notaries involved in the embezzlement of entrusted funds and to formulate a justice-oriented enforcement model capable of providing comprehensive legal protection for investors. The results of this research are expected to contribute both to the theoretical development of notarial law and to the practical improvement of law enforcement policies in Indonesia.

## 2. METHOD

This research employs a normative legal research method with a prescriptive character. The selection of this method is based on the nature of the research problem, which focuses on examining the adequacy of legal norms governing law enforcement against Notaries who commit embezzlement of entrusted funds within investment cooperation agreements. Normative legal research is particularly relevant for analyzing inconsistencies between existing legal provisions and their implementation in practice, as well as for formulating legal arguments and recommendations aimed at achieving justice-oriented law enforcement.<sup>8</sup>

The approaches applied in this study consist of the statute approach, the conceptual approach, and the case approach, each of which is selected based on its relevance to the formulated research problems. The statute approach is used to identify and analyze the legal framework governing Notarial conduct and criminal liability, particularly Law Number 2 of 2014 concerning the Office of Notary and the provisions of the Indonesian Criminal Code relating to embezzlement. This approach is essential to assess whether the existing regulatory framework provides sufficient legal basis for imposing sanctions on Notaries who misuse entrusted funds.

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<sup>7</sup> Satrio Abdillah, Norhasliza Ghapa, and Maheran Makhtar, "A Comparative Study Between Indonesia and Malaysia on the Role of Notaries and Advocates," *Jurnal USM Law Review* 6, no. 3 (2023): 943–56, <https://doi.org/10.26623/julr.v6i3.7853>.

<sup>8</sup> Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Prenadamedia Group, 2016); Rusdin Tahir et al., *Metodologi Penelitian Bidang Hukum: Suatu Pendekatan Teori Dan Praktik* (Jambi: PT. Sonpedia Publishing Indonesia, 2023); Suyanto, *Metode Penelitian Hukum: Pengantar Penelitian Normatif, Empiris Dan Gabungan*, ed. Suyanto (Unigres Press, 2023).

The conceptual approach is employed to examine legal doctrines and theoretical frameworks relevant to law enforcement and justice. This approach is necessary to address the second research problem concerning the formulation of a justice-oriented law enforcement model. In this context, the study adopts Aristotle's theory of corrective justice, which emphasizes the restoration of losses suffered by victims, as well as the concept of dignified justice as a normative foundation for balancing legal certainty, fairness, and utility in the enforcement of sanctions. Through this approach, the research evaluates whether current law enforcement practices reflect substantive justice or merely formal compliance with legal norms.

Furthermore, the case approach is utilized to analyze judicial decisions that have obtained permanent legal force, particularly those involving Notaries accused of embezzlement of entrusted funds. The purpose of this approach is to examine how legal norms are interpreted and applied by judges in practice, as well as to identify patterns of judicial reasoning, inconsistencies in sanctioning, and the extent to which court decisions accommodate the interests of victims. This approach directly supports the analysis of the first research problem concerning the current implementation of law enforcement.

The specification of this research is descriptive-analytical. It seeks not only to describe the existing legal norms regulating Notarial responsibilities but also to critically analyze their application in law enforcement practices. This specification enables the study to identify gaps between law in books and law in action, particularly in relation to the protection of investors as parties who suffer losses due to notarial misconduct.

The data used in this research consist entirely of secondary legal materials. Primary legal materials include statutory regulations and court decisions relevant to the issue of embezzlement and Notarial accountability. Secondary legal materials consist of scientific journal articles, legal textbooks, and prior research findings that provide doctrinal and theoretical explanations. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify legal terminology and support conceptual understanding. The selection of these materials is carried out systematically to ensure that the analysis is comprehensive and grounded in authoritative legal sources.

Data collection is conducted through a library research method, which involves identifying, classifying, and organizing legal materials relevant to the research topic. In this process, primary legal materials serve as the main basis for normative analysis, while secondary materials function to interpret and critique the application of these norms. Tertiary materials support the clarification of legal concepts used throughout the analysis.

The analysis of legal materials is carried out using qualitative methods with a deductive reasoning approach.<sup>9</sup> This approach begins with general legal principles and theories of justice, which are then applied to analyze specific legal issues related to the liability and sanctioning of Notaries who commit embezzlement of entrusted funds. Through this method, the study not only examines the consistency of law enforcement practices with positive law but also evaluates their alignment with the principles of substantive justice.

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<sup>9</sup> Amad Sudiro et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Untuk Penulisan Akademis Dan Praktis* (Purbalingga: CV. Diva Pustaka, 2025).

By integrating statutory analysis, conceptual frameworks, and judicial practice, this methodological design ensures that the research is systematic, coherent, and capable of producing normative recommendations. These recommendations are expected to contribute to the development of a more integrated and justice-oriented model of law enforcement, particularly in enhancing legal protection for investors and strengthening accountability within the Notarial profession.

### 3. RESULTS AND DISCUSSION

#### 3.1 Juridical Qualification of Embezzlement of Entrusted Funds by a Notary

Based on a normative analysis of statutory regulations and fundamental principles of Indonesian criminal law, the embezzlement of entrusted funds constitutes an unlawful act classified as a crime against property. Article 372 of the Indonesian Criminal Code (KUHP) defines embezzlement as an act whereby a person intentionally and unlawfully appropriates property belonging wholly or partly to another person, which was originally under their control, not as a result of a criminal act. This formulation emphasizes a crucial element of embezzlement, namely the existence of lawful initial control that subsequently transforms into unlawful possession.

However, in the context of notarial practice, the juridical qualification of embezzlement cannot be understood solely through a textual interpretation of Article 372 KUHP. It must also be analyzed within the broader framework of criminal law theory, particularly the doctrine of abuse of trust (*misbruik van vertrouwen*), which constitutes the philosophical foundation of embezzlement as a criminal offense. Embezzlement is not merely an act of unlawful appropriation, but fundamentally represents a betrayal of legally recognized trust, where the perpetrator violates a fiduciary obligation arising from a relationship of confidence.<sup>10</sup>

In the case of a Notary, this element of trust is significantly intensified. The receipt of entrusted funds by a Notary does not arise from an ordinary private arrangement, but from a professional relationship grounded in public authority and institutional legitimacy. A Notary, as a public official, is entrusted with the duty to ensure legal certainty and to act impartially in safeguarding the interests of all parties. Consequently, when investors entrust funds to a Notary, such trust is not merely personal but institutional in nature, reflecting the public character of the notarial office.<sup>11</sup>

From the perspective of criminal liability, this condition creates a heightened standard of responsibility. The theory of criminal accountability requires not only the fulfillment of objective elements (*actus reus*), but also the presence of subjective elements (*mens rea*), particularly intent (*dolus*). In cases of embezzlement by a Notary, the element of intent is manifested in the transformation of the Notary's position from a trustee into a *de facto* owner of the entrusted funds. This transformation is reflected in the concept of *animus sibi habendi*, namely, the intention to treat another person's property as one's own.<sup>12</sup>

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<sup>10</sup> Mia Amalia et al., *Asas-Asas Hukum Pidana* (Jambi: Sonpedia Publishing Indonesia, 2024).

<sup>11</sup> Salim HS, *Peraturan Jabatan Notaris* (Jakarta: Sinar Grafika, 2018).

<sup>12</sup> Alvi Syahrin, Martono Anggusti, and Abdul Aziz Alsa, *Dasar-Dasar Hukum Pidana: Suatu Pengantar: Buku Kesatu Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana* (Medan: Merdeka Kreasi, 2023).

This distinction is critical in differentiating embezzlement from a mere breach of contract. A contractual breach may arise from negligence, inability to perform, or disputes regarding contractual interpretation, without necessarily involving criminal intent. By contrast, embezzlement involves a conscious and deliberate act of misappropriation, where the perpetrator intentionally deviates from the agreed purpose of the entrusted property. When a Notary diverts entrusted funds for personal use or for purposes unrelated to the agreed transaction, such conduct fulfills the subjective element of criminal liability and cannot be reduced to a civil dispute.

Furthermore, the qualification of embezzlement by a Notary must also be examined in relation to Article 374 KUHP, which regulates aggravated embezzlement. This provision applies when embezzlement is committed by a person who controls the property due to employment, profession, or remuneration. The distinction between Article 372 and Article 374 lies in the existence of a professional or occupational relationship that serves as the basis for the control of property.

In the case of a Notary, the application of Article 374 KUHP is particularly relevant. The entrusted funds are received not in a private capacity, but by virtue of the Notary's professional position as a public official. This means that the element of "control due to profession" is inherently present. The abuse of such control constitutes not only a violation of property rights but also an abuse of office (abuse of authority), thereby justifying the imposition of heavier criminal sanctions.<sup>13</sup>

The distinction between ordinary embezzlement and aggravated embezzlement is therefore not merely technical, but reflects a deeper normative judgment within criminal law. Aggravated embezzlement recognizes that certain positions, particularly those involving public trust, carry a higher degree of responsibility. When such positions are abused, the resulting harm extends beyond individual victims and affects broader societal interests, including trust in legal institutions.

This perspective is reinforced by the legal status of the Notary as a public official. Unlike private actors, Notaries derive their authority from the state and are bound by statutory obligations to uphold legal certainty, impartiality, and integrity. Consequently, misconduct by a Notary cannot be treated as an ordinary private wrongdoing. It constitutes a breach of public trust and undermines the legitimacy of the legal system itself.

Judicial practice further supports this interpretation. In several cases involving the embezzlement of entrusted funds by Notaries, courts have emphasized that the professional capacity of the Notary is inseparable from the criminal act. The fact that the entrusted funds were obtained through the authority of the notarial office serves as a basis for applying aggravated embezzlement under Article 374 KUHP. Courts have consistently rejected

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<sup>13</sup> Melyana Melyana and Ariawan Ariawan, "Entrusted Money Embezzlement by the Notary on the Making of Cooperation Agreement," in *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)* (Atlantis Press, 2022), 158–65, <https://doi.org/10.2991/assehr.k.220404.025>.

arguments that attempt to reframe such conduct as purely civil disputes, recognizing instead that the abuse of professional trust constitutes a distinct form of criminal wrongdoing.<sup>14</sup>

Moreover, as noted by Dakris, embezzlement committed within the scope of notarial duties involves multidimensional legal violations, encompassing criminal, civil, and administrative aspects simultaneously.<sup>15</sup> This reinforces the view that the conduct cannot be compartmentalized within a single legal domain. Rather, it reflects a systemic failure in the exercise of professional responsibility, which justifies a comprehensive legal response, including criminal sanctions with aggravating elements.

From a theoretical standpoint, the application of Article 374 KUHP to Notaries also aligns with the principle of equality before the law. While Notaries hold a privileged position as public officials, such status does not exempt them from criminal liability. On the contrary, it imposes a higher standard of accountability. The law thus functions not only as a mechanism of punishment but also as a means of preserving public trust by ensuring that those entrusted with legal authority are held to stricter standards.

Accordingly, the embezzlement of entrusted funds by a Notary must be qualified as aggravated embezzlement when it is committed by virtue of the notarial position. This qualification reflects the convergence of several elements: the existence of trust, the abuse of professional authority, the presence of criminal intent, and the broader impact on public confidence. Such a comprehensive understanding is essential to avoid the mischaracterization of criminal conduct as a mere civil dispute and to ensure that law enforcement adequately addresses the seriousness of the offense.

In conclusion, the juridical qualification of embezzlement by a Notary is not limited to the formal elements of Article 372 KUHP, but must be interpreted in conjunction with Article 374 KUHP, the doctrine of abuse of trust, and the theory of criminal responsibility. This integrated approach provides a stronger normative basis for imposing aggravated sanctions and reinforces the role of criminal law in protecting both individual property rights and the integrity of public institutions.

### **3.2 Legal Status of Entrusted Funds in Investment Cooperation Agreements**

An examination of civil law principles demonstrates that entrusted funds within investment cooperation agreements do not constitute the principal object of the contractual relationship. Instead, such funds function as ancillary instruments intended to facilitate the execution of agreed obligations or to serve as a temporary safeguard in ensuring transactional certainty. The principal object of an investment cooperation agreement lies in the exchange of rights and obligations relating to capital participation, profit-sharing, and business development, rather than in the transfer of ownership of the entrusted funds themselves.<sup>16</sup> This distinction is

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<sup>14</sup> M A Yolanda, T Y Chandra, and M Ismed, "Penegakan Hukum Terhadap Notaris Pelaku Tindak Pidana Penggelapan Uang Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB)," *CENDEKIA: Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 2 (2025): 251–61, <https://doi.org/10.62335/cendekia.v2i2.959>.

<sup>15</sup> Sukirman Dakris, "Tindak Pidana Penggelapan Oleh Notaris Yang Melaksanakan Putusan Perdamaian Terkait Adanya Pembatalan Jual Beli" (Universitas Hasanuddin, 2022), <http://repository.unhas.ac.id:443/id/eprint/23611>.

<sup>16</sup> A Rahim, *Dasar-Dasar Hukum Perjanjian: Perspektif Teori Dan Praktik* (Makassar: Humanities Genius, 2022).

essential in determining the legal status of the funds and the extent of authority exercised by parties involved in their management.

From a doctrinal perspective, ownership of entrusted funds remains vested in the investor or is specifically allocated for a designated third party. The transfer of funds to a Notary does not result in a transfer of ownership (*eigendomsoverdracht*), but merely establishes a legal relationship characterized by custody and trust. In this context, the Notary acts not as an owner, but as a custodian (*bewaarhouder*) who holds the funds temporarily for a specific legal purpose. Consequently, the Notary does not acquire any proprietary rights over the funds and is strictly limited to managing them in accordance with the agreed purpose.

This legal construction becomes clearer when analyzed through the fundamental principles of contract law. The principle of good faith requires that all parties perform their obligations honestly, fairly, and in accordance with the expectations arising from the agreement. In the context of entrusted funds, good faith imposes a strict obligation on the Notary to ensure that the funds are neither misused nor diverted from their intended purpose. Any deviation from this obligation constitutes not only a contractual violation but also a breach of legal and ethical responsibility.

In addition, the principle of trust plays a central role in defining the legal status of entrusted funds. Unlike ordinary contractual relationships, the involvement of a Notary introduces a higher degree of trust based on professional authority and public legitimacy. The investor's decision to entrust funds to a Notary is not merely based on personal confidence, but on institutional trust in the notarial office as a guarantor of legal certainty. This elevates the relationship into what may be characterized as a fiduciary or trust relationship, where the Notary is bound by a duty of loyalty, care, and accountability toward the party entrusting the funds.

The fiduciary nature of this relationship implies that the Notary must prioritize the interests of the investor above any personal or third-party interests. The Notary is therefore prohibited from exercising discretionary control over the funds beyond the limits explicitly agreed upon. This aligns with the broader principle of legal certainty, which requires that legal relationships be predictable, transparent, and enforceable. Allowing a Notary to exercise uncontrolled discretion over entrusted funds would create legal uncertainty and undermine the protective function of notarial services.

A more systematic understanding of the legal status of entrusted funds requires an analysis of the tripartite legal relationship between the investor, the business partner, and the Notary. First, the relationship between the investor and the business partner is governed by the investment cooperation agreement, which establishes rights and obligations concerning capital contribution, risk allocation, and profit-sharing. This relationship constitutes the principal contractual framework.

Second, the relationship between the investor and the Notary arises when the investor entrusts funds to the Notary. This relationship is distinct from the investment agreement and is based on a custodial and fiduciary arrangement. The Notary assumes a personal obligation to safeguard the funds and to disburse them in accordance with the investor's instructions and the

terms of the underlying transaction. Importantly, this relationship is independent and does not depend on the legal validity of the investment agreement itself.

Third, the relationship between the Notary and the business partner is generally indirect and does not create contractual obligations unless explicitly agreed. The Notary's role remains limited to facilitating legal certainty and managing entrusted funds in accordance with the agreed structure. This means that the Notary cannot justify the use or transfer of entrusted funds based on instructions from the business partner unless such instructions are consistent with the investor's mandate.

This tripartite construction highlights a critical legal issue: the position of the Notary as a recipient of entrusted funds often arises outside the formal scope of notarial authority as defined by statutory law. The primary function of a Notary is to create authentic deeds, not to act as a financial intermediary or fund manager. Therefore, when a Notary accepts entrusted funds, such action may fall within a grey area that is not explicitly regulated by the Law on the Office of Notary.

This condition creates a potential legal risk, as the Notary effectively assumes responsibilities that extend beyond the formal boundaries of the profession. In such situations, the Notary's liability becomes personal rather than institutional. This means that any misuse of entrusted funds cannot be justified by reference to the Notary's official capacity, but must be assessed based on personal legal responsibility arising from the fiduciary relationship.

The implications of this construction are significant. First, it reinforces the principle that entrusted funds are legally insulated from misuse and must be treated as a separate legal object distinct from the Notary's personal assets. Second, it establishes that the Notary's responsibility is absolute and non-delegable. The Notary cannot transfer responsibility to employees, colleagues, or third parties, nor can internal office arrangements be invoked as a defense against liability.

Normatively, the misuse of entrusted funds cannot be justified by invoking contractual autonomy. While parties are free to determine the terms of their agreement, such freedom is limited by mandatory legal norms and public order considerations. Consent to invest does not imply consent to misappropriation. Allowing contractual consent to excuse misuse of entrusted funds would undermine the principles of good faith, trust, and legal certainty, which form the foundation of civil law.

Judicial reasoning in cases involving entrusted funds consistently reflects this understanding. Courts tend to emphasize that the Notary's obligation to safeguard entrusted funds is independent, absolute, and rooted in professional responsibility. Even in situations where disputes arise between the investor and the business partner, the Notary remains obligated to maintain the integrity of the entrusted funds and cannot unilaterally determine their allocation.

This approach confirms that entrusted funds occupy a distinct legal status within investment cooperation agreements. They are neither part of the Notary's property nor subject to discretionary use, but constitute a protected legal interest that must be managed with the highest degree of care and accountability. Any unauthorized use of such funds therefore constitutes a

breach of trust that may give rise to civil liability, administrative sanctions, and criminal responsibility.

In conclusion, the legal status of entrusted funds within investment cooperation agreements is shaped by a combination of civil law principles, fiduciary obligations, and the unique position of the Notary as a public official. The integration of the principles of good faith, trust, and legal certainty provides a strong normative basis for protecting entrusted funds from misuse. At the same time, the recognition of the fiduciary relationship clarifies the heightened responsibility borne by the Notary. This comprehensive understanding is essential to support effective law enforcement and to ensure that investor interests are adequately protected within the framework of notarial practice.

From a comparative legal perspective, the relationship between a professional holding entrusted property and its beneficial owner may be understood within the framework of fiduciary obligation and constructive trust. In such a framework, the entrusted party is not regarded as the owner of the property, but as a fiduciary bound by duties of loyalty and accountability, where any misuse of the entrusted asset may trigger proprietary consequences in addition to personal liability.<sup>17</sup>

### **3.3 Legal Status of Entrusted Funds in Investment Cooperation Agreements**

An analysis of Indonesia's positive legal system demonstrates that a Notary who commits embezzlement of entrusted funds is subject to cumulative legal consequences encompassing criminal, civil, and administrative liability. This tripartite responsibility reflects the hybrid legal position of the Notary as a public official who simultaneously operates within the sphere of private legal relations and exercises delegated public authority. Consequently, misconduct committed by a Notary cannot be adequately addressed through a single legal framework, but requires a comprehensive and integrated approach that ensures both legal certainty and substantive justice.

From a criminal law perspective, the primary basis for liability lies in Article 372 of the Indonesian Criminal Code governing ordinary embezzlement, and Article 374 concerning aggravated embezzlement. As elaborated by Syahrin et al., the aggravating element under Article 374 is not merely technical or formal, but reflects a deeper normative judgment that the abuse of professional trust constitutes a more serious threat to social order than ordinary property crimes.<sup>18</sup> In the context of notarial practice, entrusted funds are received precisely because of the Notary's official capacity and the public trust inherent in that position. Therefore, when embezzlement is committed in connection with notarial duties, the application of Article 374 KUHP becomes not only legally justified but normatively necessary.

Judicial practice increasingly affirms this interpretation. Courts have emphasized that Notaries cannot invoke their professional status as a shield against criminal liability. On the contrary, such status serves as an aggravating factor that intensifies accountability. As noted by Yolanda et al., law enforcement against Notaries involved in embezzlement carries both punitive and

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<sup>17</sup> Weiming Tan, "The Law at an Intersection: A Meeting of Attribution, Criminal Law, and the Constructive Trust," *The Modern Law Review* 86, no. 2 (2023): 536–50, <https://doi.org/https://doi.org/10.1111/1468-2230.12763>.

<sup>18</sup> Syahrin et al. (2023)

symbolic functions, reinforcing the principle that no public official is above the law.<sup>19</sup> This reflects a broader commitment to the principle of equality before the law and plays a crucial role in maintaining public trust in legal institutions.

However, criminal sanctions alone are insufficient to address the full scope of harm caused by embezzlement of entrusted funds. From a civil law perspective, liability arises under the doctrine of unlawful acts as stipulated in Article 1365 of the Indonesian Civil Code. The conduct of a Notary who misappropriates entrusted funds fulfills all elements of civil liability, including fault, loss, causation, and unlawfulness. The resulting obligation to compensate the injured party is not merely a consequence of wrongdoing, but a mechanism aimed at restoring the investor to their original position prior to the occurrence of the unlawful act.

Importantly, civil liability operates independently of criminal proceedings. This dual-track system ensures that victims are not deprived of compensation simply because criminal proceedings are delayed or fail to result in conviction. Nevertheless, in practice, the lack of coordination between criminal and civil processes often results in inefficiencies, where victims must pursue separate legal actions to obtain restitution. This fragmentation highlights the need for a more integrated approach that aligns criminal punishment with mechanisms of restitution and recovery.

The need for an integrated law enforcement approach is also reflected in broader legal studies addressing trust-based violations. Research on complex abuse cases demonstrates that misconduct involving abuse of trust often requires coordinated responses across criminal, civil, and administrative frameworks, rather than isolated enforcement mechanisms.<sup>20</sup> This perspective reinforces the argument that fragmented enforcement is structurally inadequate to address the multidimensional harm caused by notarial embezzlement.

Administrative liability constitutes the third dimension of legal consequences. Under the Law on the Office of Notary (UUJN), Notaries who violate their professional obligations may be subject to disciplinary sanctions imposed through the notarial supervisory system. These sanctions range from written warnings and temporary suspension to dismissal with or without honor. The purpose of administrative sanctions is not only to punish misconduct, but also to preserve the dignity of the profession and to prevent recurrence.

Within this framework, the role of the Notary Supervisory Council becomes central. This institution is responsible for overseeing the conduct of Notaries, examining alleged violations, and imposing disciplinary measures. In theory, the supervisory mechanism is designed to function as a preventive and corrective instrument within the broader system of law enforcement. By ensuring that ethical and professional standards are upheld, administrative supervision serves as the first line of defense against abuse of authority.

However, the effectiveness of this supervisory system remains subject to critical evaluation. As observed by Dakris, administrative enforcement in practice often suffers from procedural

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<sup>19</sup> Yolanda, Chandra, and Ismed, "Penegakan Hukum Terhadap Notaris Pelaku Tindak Pidana Penggelapan Uang Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB)."

<sup>20</sup> Sarah Dion et al., "Developing a Rigorous, Systematic Methodology to Identify and Categorize Elder Mistreatment in Criminal Justice Data," *Journal of Elder Abuse & Neglect* 32, no. 1 (2020): 27–45, <https://doi.org/10.1080/08946566.2020.1733725>.

delays, overlapping authority, and inconsistent application of sanctions.<sup>21</sup> These weaknesses reduce the deterrent effect of administrative measures and create gaps in enforcement that may allow misconduct to persist. In some cases, disciplinary proceedings are not synchronized with criminal investigations, leading to situations where Notaries continue to practice despite ongoing allegations of serious misconduct.

This condition reveals a fundamental problem in the current enforcement structure, namely the lack of integration between criminal, civil, and administrative mechanisms. While each form of liability operates within its own legal domain, the absence of coordination among them undermines the overall effectiveness of law enforcement. Criminal proceedings may focus on punishment without ensuring restitution, civil proceedings may provide compensation without addressing professional accountability, and administrative sanctions may be imposed without sufficient linkage to judicial findings.

From a normative perspective, these three forms of liability should not be treated as separate or isolated mechanisms, but as interconnected components of a unified enforcement system. Criminal law serves to punish and deter, civil law functions to restore and compensate, while administrative law operates to regulate and prevent. When properly integrated, these mechanisms can complement each other in achieving comprehensive justice.

In this regard, an effective enforcement model requires institutional coordination among law enforcement agencies, courts, and the Notary Supervisory Council. Criminal investigations should be accompanied by parallel administrative examinations to ensure that professional sanctions are imposed promptly. Similarly, civil claims for compensation should be facilitated within the criminal process, for example through mechanisms of restitution or compensation orders, in order to reduce the burden on victims.

Furthermore, the supervisory role of the Notary Supervisory Council must be strengthened both structurally and functionally. Structurally, clearer procedures and timelines are needed to ensure that disciplinary actions are conducted efficiently and transparently. Functionally, the Council must adopt a more proactive approach, including regular monitoring, risk assessment, and early detection of potential violations. Without such reforms, administrative supervision risks becoming reactive rather than preventive.

Another critical aspect is the need to reinforce professional ethics as part of the enforcement system. Ethical norms should not be viewed as secondary or supplementary, but as integral to legal accountability. Violations of ethical obligations often serve as early indicators of more serious legal breaches, including criminal misconduct. Therefore, strengthening ethical enforcement mechanisms can contribute significantly to preventing the misuse of entrusted funds.

Ultimately, the cumulative legal consequences faced by Notaries who commit embezzlement reflect the seriousness of the offense and the multifaceted nature of the harm caused. The

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<sup>21</sup> Dakris, "Tindak Pidana Penggelapan Oleh Notaris Yang Melaksanakan Putusan Perdamaian Terkait Adanya Pembatalan Jual Beli."

misuse of entrusted funds not only results in financial loss for investors but also undermines the credibility of the notarial profession and erodes public trust in legal institutions.

Accordingly, law enforcement must move beyond a fragmented approach toward a more integrated and justice-oriented model. Such a model should ensure that criminal sanctions are accompanied by effective restitution, that civil remedies are supported by strong enforcement mechanisms, and that administrative supervision functions as both a preventive and corrective tool. Only through this integrative framework can the legal system provide comprehensive protection for investors and maintain the integrity of the notarial profession as a public institution grounded in trust.

The findings of this study resonate strongly with prior scholarly analyses that highlight the fragmented nature of law enforcement against Notaries involved in the embezzlement of entrusted funds. Koto asserts that Notaries who commit embezzlement may simultaneously bear criminal, civil, and administrative responsibility.<sup>22</sup> However, Koto also emphasizes that legal protection for clients remains inadequate due to the lack of coordination among enforcement mechanisms. This observation corroborates the present study's conclusion that fragmented enforcement constitutes the principal weakness in addressing notarial misconduct.

Jayanti et al further argue that when a Notary receives entrusted funds before or during the drafting of an agreement, the Notary effectively steps outside the scope of official authority and assumes the position of a trustee.<sup>23</sup> This conceptualization reinforces the argument advanced in this study that notarial status cannot be invoked to evade criminal liability. On the contrary, professional authority heightens responsibility and reinforces the expectation of ethical conduct. Jayanti et al.'s contribution lies in clarifying the boundary between official authority and personal legal accountability, although their analysis does not fully explore the justice-oriented implications of enforcement fragmentation.

The expansion of criminal liability for Notaries in cases involving abuse of authority is also evident in recent judicial practice, where the falsification or misuse of authentic deeds has been consistently treated as a serious criminal offense that undermines public trust in notarial institutions.<sup>24</sup> This multidimensional form of accountability reflects the doctrinal view that a Notary's responsibility may simultaneously arise in civil, criminal, and administrative domains when unlawful conduct occurs in the performance of official duties.<sup>25</sup>

Similarly, Halil et al demonstrate that the receipt of entrusted funds in investment transactions creates an independent legal relationship that may even degrade the evidentiary value of

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<sup>22</sup> Rini Rahmalia Koto, "Perlindungan Hukum Terhadap Klien Serta Tanggung Jawab Atas Tindak Pidana Penggelapan Yang Dilakukan Oleh Notaris (Studi Putusan Pengadilan Negeri Tangerang Nomor 1461/Pid.B/2019/PN.Tng)," *Indonesian Notary* 4, no. 2 (2022): 1–15, <https://scholarhub.ui.ac.id/notary/vol4/iss2/30>.

<sup>23</sup> Jayanti, Wesna, and Puspadma, "Legal Consequences of Deposited Funds to Public Notary before Preparation of Sales and Purchase Agreement."

<sup>24</sup> D E O Rahmawati, "The Legal Liability of a Notary for the Criminal Act of Forging an Authentic Deed They Created (Judge's Verdict Number 248/Pid.B/2022/PN.Jkt.Bar)," *Eduvest - Journal of Universal Studies* 5, no. 12 (2025): 14230–45, <https://doi.org/10.59188/eduvest.v5i12.52037>.

<sup>25</sup> J Eddy and A Sudiro, "Notary Liability Examined by Investigators in Criminal Actions of False Information on Authentic Deed," *Influence: International Journal of Science Review* 4, no. 2 (2022): 334–46.

authentic deeds produced by the Notary.<sup>26</sup> This finding aligns with the present study's conclusion that embezzlement of entrusted funds constitutes a structural violation that undermines both investor protection and the reliability of authentic legal instruments. Halil et al.'s work contributes significantly to understanding the doctrinal consequences of notarial misconduct, yet remains focused primarily on evidentiary implications rather than broader enforcement reform.

Additional insight is provided by Wandayani et al, who analyze weaknesses within the Notary Code of Ethics and their impact on disciplinary enforcement.<sup>27</sup> Their study reveals that normative ambiguities and outdated ethical provisions often result in inconsistent sanctions and reduced deterrent effects. This condition parallels the findings of the present study, which indicate that ethical and administrative sanctions, when applied in isolation, are insufficient to address serious violations such as embezzlement of entrusted funds. Ethical norms must therefore be integrated into a broader enforcement framework that includes criminal and civil dimensions.

Izzati and Surrahmad emphasize the need to reconstruct notarial accountability through an integrative framework that combines administrative, civil, and ethical dimensions to achieve legal certainty and substantive justice.<sup>28</sup> Their findings confirm that vague procedural standards and fragmented supervision create opportunities for abuse of authority. This observation directly supports the present study's argument that comprehensive accountability mechanisms are essential to restoring public trust in notarial practice and preventing recurrent misconduct.

Taken together, these studies reinforce the conclusion that fragmented enforcement remains the central weakness in addressing notarial embezzlement. While each study contributes valuable insights, none fully articulates a justice-oriented enforcement model that integrates all dimensions of legal responsibility. The present study seeks to fill this gap by proposing an integrated framework that prioritizes investor protection and professional integrity. The vulnerability of notarial practice to abuse of trust is further intensified by normative tensions between the obligation to maintain confidentiality and broader duties related to transparency and reporting of suspicious transactions.<sup>29</sup>

Recent studies also emphasize that criminal sanctions imposed on Notaries must be proportionate and aligned with the principles of justice and legal certainty, particularly where professional authority is misused for personal gain.<sup>30</sup> Judicial analysis of entrusted money

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<sup>26</sup> Halil, Djumardin, and Hirsanuddin, "Notary Responsibility for Security Deposit in Sale and Purchase of Land for Investment."

<sup>27</sup> Sari Dewi Adhistya Wandayani, Emmy Latifah, and Anjar Sri Ciptorukmi Nugraheni, "Rekonstruksi Kode Etik Notaris: Menjawab Dilema Publikasi Dan Promosi Jabatan Di Era Digital," *Jurnal USM Law Review* 8, no. 3 (2025): 1710–42, <https://doi.org/10.26623/julr.v8i3.12790>.

<sup>28</sup> Aulia Putri Izzati and Surrahmad Surrahmad, "Reconstructing Notary Accountability for Unilateral Amendments of Authentic Deeds in the Context of Legal Certainty and Justice," *Jurnal USM Law Review* 8, no. 3 (2025): 2715–29, <https://doi.org/10.26623/julr.v8i3.13084>.

<sup>29</sup> Ni Komang Arini Styawati, I Nyoman Sumardika, and Ni Made Puspasutari Ujianti, "Problems of the Obligation to Keep Information Confidential in Making a Notarial Deed with the Principle of Recognizing Notary Service Users," in *Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)* (Atlantis Press, 2023), 678–88, [https://doi.org/10.2991/978-2-494069-93-0\\_80](https://doi.org/10.2991/978-2-494069-93-0_80).

<sup>30</sup> Saiful Harun Alhakim Hafid and B F Sihombing, "Assessing the Proportionality of Criminal Sanctions Imposed on Notaries and Land Deed Officials (PPAT) in Document Forgery Cases," *Jurnal Ilmu Hukum Dan Kenotariatan (JIHK)* 7, no. 2 (2026): 818–31, <https://doi.org/10.46924/jihk.v7i2.347>.

embezzlement further confirms that when a Notary receives funds by virtue of professional trust, any misappropriation should be legally qualified as aggravated embezzlement rather than an ordinary property offense.<sup>31</sup>

The effectiveness of sanctions imposed on Notaries who embezzle entrusted funds must be assessed not only in terms of legal compliance but also in terms of deterrence and restorative impact. Yusuf & Hoesin argue that although the payment or management of entrusted funds is not a core obligation of a Notary, acceptance of such funds nonetheless generates full legal responsibility.<sup>32</sup> Their analysis highlights a critical tension within law enforcement practice, namely the tendency to focus on criminal punishment while neglecting restitution for victims.

This punitive orientation undermines the realization of substantive justice. Criminal sanctions alone may satisfy retributive objectives, but fail to restore investor losses or address systemic vulnerabilities. As noted by Amalia et al, effective deterrence requires a balance between punishment and restitution,<sup>33</sup> ensuring that offenders are held accountable while victims receive meaningful redress. Without such a balance, sanctions risk becoming symbolic rather than transformative.

Fitri further observes that administrative sanctions imposed on deed officials involved in embezzlement often fail to produce a meaningful deterrent effect.<sup>34</sup> The persistence of similar offenses suggests that sanctions are either insufficiently stringent or inadequately enforced. This observation is echoed by Khoirunnisa, who contends that embezzlement of entrusted funds constitutes a grave breach of notarial ethics and the oath of office.<sup>35</sup> Despite this severity, ethical enforcement mechanisms are frequently treated as supplementary rather than central instruments of accountability, rendering them ineffective as preventive measures. The misuse of entrusted authority by a Notary is doctrinally classified as an abuse of trust, giving rise to administrative, criminal, and moral accountability toward parties suffering legal and economic losses.<sup>36</sup>

A comparative perspective strengthens this analysis. Abdillah et al reveal that while Notaries in Indonesia and Malaysia share similar functions in legalizing and validating legal documents, significant differences exist in supervisory structures and professional accountability frameworks.<sup>37</sup> In jurisdictions where oversight is clearer and sanctions are applied consistently, professional misconduct tends to be lower. This comparative insight supports the argument that strengthening institutional controls and clarifying enforcement mechanisms can enhance deterrence and reduce recurrent abuses of entrusted authority.

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<sup>31</sup> Melyana and Ariawan, "Entrusted Money Embezzlement by the Notary on the Making of Cooperation Agreement."

<sup>32</sup> Maulana Yusuf and Siti Hajati Hoesin, "Pertanggungjawaban Pidana Terhadap Notaris Yang Melakukan Tindak Pidana Dikarenakan Kelalaian Notaris PPAT Dalam Membayarkan Pajak (Studi Kasus Putusan Nomor 300/Pid.B/2015/PN.Dps)," *The Juris* 5, no. 2 (2021): 226–34, <https://doi.org/10.56301/juris.v5i2.300>.

<sup>33</sup> Amalia et al., *Asas-Asas Hukum Pidana*.

<sup>34</sup> Fitri (2021)

<sup>35</sup> Khoirunnisa (2024)

<sup>36</sup> V F Aryani and M S Pulungan, "Accountability of a Notary as a Land Deed Making Official for Misuse of Trust Related to Embezzlement of Certificates," *Al-Ishlah: Jurnal Ilmiah Hukum* 24, no. 2 (2021): 256–80, <https://doi.org/10.56087/aijih.v24i2.285>.

<sup>37</sup> Abdillah, Ghapa, and Makhtar, "A Comparative Study Between Indonesia and Malaysia on the Role of Notaries and Advocates."

Deterrence, therefore, cannot be achieved through isolated sanctions. It requires a systemic approach that aligns criminal punishment, civil compensation, and administrative discipline within a coherent enforcement strategy. Only through such alignment can sanctions function effectively to prevent future misconduct and restore confidence in the notarial profession.

Law enforcement against Notaries who commit financial crimes also serves a symbolic function, affirming that holders of public office are subject to the same criminal accountability as ordinary citizens in order to preserve institutional legitimacy. From the perspective of corrective justice as articulated by Aristotle, law enforcement should aim not only to punish offenders but also to restore the balance disrupted by unlawful conduct. In cases of embezzlement of entrusted funds, this balance is disrupted not only by financial loss but also by the erosion of trust in legal institutions. The findings of this study indicate that law enforcement against Notaries who embezzle entrusted funds remains predominantly punitive, while restitution and recovery of investor rights receive insufficient attention.

Nadine emphasizes that a Notary's liability for unlawful acts committed within the scope of professional duties is personal and non-transferable.<sup>38</sup> This principle reinforces the argument that justice for investors can only be achieved when enforcement mechanisms place victim interests at the core of legal accountability. Criminal convictions that do not result in restitution fail to address the primary harm suffered by investors and risk perpetuating systemic injustice.

The relevance of legal certainty for parties relying on notarial services is further illustrated by the study of <sup>39</sup>, which emphasizes that binding agreements executed before a Notary must provide effective legal protection for vulnerable parties. Although their research focuses on pre-project selling transactions, the underlying principle is equally applicable to investment cooperation agreements involving entrusted funds. When legal instruments fail to protect entrusted interests, substantive justice is compromised, and public confidence deteriorates.

Accordingly, a justice-oriented enforcement model must integrate criminal sanctions, civil compensation, and effective administrative measures. Such integration ensures that offenders are punished proportionately, victims are restored meaningfully, and professional standards are upheld consistently. This model not only enhances investor protection but also preserves the dignity and integrity of the notarial profession as a public office grounded in trust.

Ultimately, the pursuit of justice in cases of notarial embezzlement demands more than formal compliance with legal norms. It requires a normative commitment to restoring trust, protecting vulnerable parties, and ensuring that public office remains a vehicle for legal certainty rather than a source of systemic risk. The findings of this study, therefore provide a foundation for rethinking law enforcement strategies in a manner that aligns legal accountability with the fundamental values of justice.

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<sup>38</sup> Magnalia Devita Nadine, "Perlindungan Dan Pertanggung Jawaban Hukum Bagi Notaris Atas Penyalahgunaan Tugas Oleh Pegawai Notaris" (Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/44884>.

<sup>39</sup> Aurellia and Winanti Aurellia & Winanti, (2024)

#### 4. CONCLUSION

Based on the research objectives and findings, this study concludes that law enforcement against Notaries who commit embezzlement of entrusted funds in investment cooperation agreements must be understood as a multidimensional legal process encompassing criminal, civil, and administrative liability. Juridically, such conduct fulfills the elements of embezzlement under Article 372 of the Indonesian Criminal Code and may be qualified as aggravated embezzlement under Article 374 when committed by virtue of the notarial position, thereby affirming that misuse of entrusted funds constitutes an abuse of professional trust rather than a mere contractual breach. The study further finds that entrusted funds retain their legal status as property of the investor or designated third party, creating a fiduciary and custodial obligation for the Notary that gives rise to personal liability across all legal domains when violated. The principal problem identified is the fragmented nature of law enforcement, where criminal sanctions, civil remedies, and administrative supervision operate independently and fail to provide comprehensive protection for investors. Accordingly, this research offers a theoretical contribution by formulating an integrative, justice-oriented law enforcement model that aligns the functions of punishment, restitution, and professional discipline within a coherent legal framework. Practically, the findings imply the need to strengthen coordination among law enforcement institutions, optimize the role of the Notary Supervisory Council, and develop mechanisms that integrate criminal proceedings with restitution and administrative enforcement. Such reforms are essential to enhance legal certainty, reinforce investor protection, and ensure the integrity of the notarial profession as a public office grounded in trust within the Indonesian legal system.

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