



LEGAL CERTAINTY AND DISTRIBUTIVE JUSTICE IN THE AGE LIMITATION OF NOTARY OFFICE TENURE FOLLOWING CONSTITUTIONAL COURT DECISION NUMBER 84/PUU-XXII/2024

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Abstract

Constitutional Court Decision Number 84/PUU-XXII/2024 constitutes a constitutional milestone in the judicial review of Article 8 paragraph (2) of Law Number 30 of 2004 concerning the Office of Notary, which regulates the extension of a notary's term of office up to the age of 67 years subject to the notary's health condition. The Panel of Constitutional Court Justices partially granted the petition and declared the provision contrary to the 1945 Constitution of the Republic of Indonesia, particularly Article 28D paragraph (1) concerning the right to legal protection and fair legal certainty. This study aims to: (1) identify and analyze the legal reasoning of the Constitutional Court in the aforementioned decision; (2) examine its implications for the fulfillment of the principle of distributive justice between the continued professional practice of senior notaries and the regeneration of younger notaries; and (3) assess the reconstruction of regulations governing the notarial profession following the decision in order to provide fair legal certainty and strengthen the notarial institution in Indonesia. This research employs a normative legal research method using statutory, case, and conceptual approaches. Data were collected through document studies of relevant legislation, Constitutional Court decisions, theories of distributive justice, and academic literature, and were subsequently analyzed using a descriptive-qualitative method. The findings indicate that the Constitutional Court determined that the term of office of a notary may be extended until the age of 70 years, subject to annual medical examinations conducted at a central government hospital, a regional public hospital, or a hospital designated by the Minister responsible for legal affairs. In reaching this conclusion, the Court set aside the principle of the open legal policy doctrine on the grounds that the challenged provision contained irrationality and intolerable injustice. Regulatory reconstruction is therefore necessary to ensure that professional protection balances the interests of senior notaries with the need for professional regeneration, while simultaneously strengthening legal certainty in the sustainable administration of Indonesia's notarial institution.

Keywords: *Legal certainty, distributive justice, notary, age limit of office.*

INTRODUCTION

The existence of notaries within the Indonesian legal system as public officials exercising a portion of state functions in the field of civil law. Law Number 30 of 2004 concerning Notary Office as amended by Law Number 2 of 2014 (hereinafter referred to as UUJN) affirms that notaries are authorized to execute authentic deeds pursuant to Article 1 number 1 of the UUJN.¹ The authentic deeds produced carry the force of perfect evidence (*volledig bewijs*), such that notaries serve as instruments of the state in guaranteeing legal certainty and protection for the public as ensured by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution).

¹ Cipto Soenaryo, *Kewenangan dan Tanggung Jawab Notaris dalam Konteks Pelayanan Hukum di Indonesia* (Medan: USU Press, 2023), 28.

Such a strategic position is, however, not accompanied by the provision of salary or pension benefits from the state, notwithstanding that the appointment and dismissal of notaries remain within the authority of the minister as regulated under Article 2 of the UUJN.² The income of notaries derives entirely from honoraria for deed-drafting services pursuant to Article 36 of the UUJN.³ This provision renders the regulation of the age limitation of notary office tenure directly implicated in the sustainability of notaries' livelihoods, professional regeneration, and legal certainty.

Article 8 paragraph (1) letter b of the UUJN stipulates that a notary shall be honorably discharged upon attaining the age of 65 years, while Article 8 paragraph (2) permits extension until the age of 67 years, contingent upon the notary's health condition. This provision was previously subjected to judicial review through Constitutional Court (hereinafter referred to as the CC) Decision Number 52/PUU-VIII/2010, wherein the petition was rejected on the grounds that such age limitation falls within the domain of the open legal policy (hereinafter referred to as open legal policy) of the legislature.⁴ Demographic developments and comparative legal studies have prompted a petition for re-examination of the same provision. Data from the Central Statistics Agency (hereinafter referred to as BPS) indicates that the average Life Expectancy (hereinafter referred to as UHH) of the Indonesian population has reached 73.93 years, whereas the notarial tenure age limit remains below jurisdictions imposing a threshold of 70 years or above, including the Netherlands, Colombia, Japan, Italy, Spain, and South Korea.⁵ Such disparity constitutes a compelling ground to argue that the restriction up to the age of 67 years is irrational, inconsistent with prevailing demographic conditions, and productive of intolerable injustice.⁶

The petition for constitutional review of Article 8 paragraph (2) of the UUJN was resubmitted on the grounds that it is irrational and contrary to the guarantee of fair legal certainty as provided under Article 28D paragraph (1) of the 1945 Constitution.⁷ The petitioner argued that the maximum age limit of 67 years for notaries is disproportionate in comparison to the professions of advocates, physicians, curators, and public accountants, which are not subject to age restrictions in their practice, as well as Supreme Court justices and Constitutional Court justices, who may serve until the age of 70 years and receive salary and pension from the state. In response to the petition, the CC through Decision Number 84/PUU-XXII/2024 declared Article 8 paragraph (2) of the UUJN

² Supriyadi dan Widhi Handoko, "Tinjauan Yuridis terhadap Notaris Selaku Pejabat Formal," *Notarius* 16, no. 1 (2023): 132.

³ Apriliana Putri Anjulika, "Penegakan Kode Etik Notaris oleh Dewan Kehormatan terhadap Pelanggaran Besaran Honorarium Notaris di Kabupaten Kutai Timur" (Skripsi, Universitas Islam Indonesia, 2023), 66.

⁴ Iskandar Muda, "Logika Hukum Putusan Mahkamah Terkait Uji Konstitusional Undang-Undang Jabatan Notaris," *Jurnal Konstitusi* 17, no. 2 (2020): 344, <https://doi.org/10.31078/jk1725>.

⁵ Meidya Utama Prayoga, Agus Riewanto, dan Anjar Sri Ciptorukmi Nugraheni, "The Impact of Constitutional Court Decision Number 84/PUU-XXII/2024 on the Retirement Age Limit for Notaries from the Perspective of Justice and Legal Certainty," *Siber International Journal of Advanced Law (SIJAL)* 3, no. 1 (2025): 205, <https://doi.org/10.38035/sijal.v3i1>.

⁶ Zena Dinda Defega, "Urgensi Perpanjangan Masa Jabatan Notaris di Indonesia Dikaitkan dengan Prinsip Rasionalitas," *Ensiklopedia of Journal* 7, no. 3 (2025): 364–365.

⁷ Raden Ziljjan Ibadillah dan Iswandi, "Analisis Putusan Mahkamah Konstitusi Nomor 84/PUU-XXII/2024 tentang Perpanjangan Usia Jabatan Notaris," *Journal of Constitutional Law* 6, no. 1 (2026): 136.

conditionally constitutional, insofar as it is interpreted to mean that a notary may obtain an annual extension of tenure up to the age of 70 years based on the results of periodic health examinations at hospitals designated by the Minister of Law of the Republic of Indonesia.⁸

CC Decision Number 84/PUU-XXII/2024 marks a shift by placing the regulation of notary office tenure age outside the protection of open legal policy (hereinafter referred to as OLP) through the construction of conditionally constitutional. Referring to CC Decision Number 22/PUU-XV/2017 and Number 112/PUU-XX/2022, the CC affirmed that OLP may be overridden when it is contrary to rationality, morality, and gives rise to intolerable injustice.⁹ However, the extension of notary tenure up to the age of 70 years potentially reduces the availability of notary office formations as regulated under Article 22 paragraph (1) of the UUJN in conjunction with Article 8 letter c of the Regulation of the Minister of Law and Human Rights Number 19 of 2021 concerning Notary Office Formation and Determination of Regional Categories, thereby potentially restricting the opportunities of junior notaries to enter the notary office and generating tension between the protection of senior notaries' rights and intergenerational justice.¹⁰

Based on the foregoing description, this study aims to analyze the legal considerations of the CC in Decision Number 84/PUU-XXII/2024 concerning the overriding of the OLP doctrine and the application of the conditionally constitutional construction to Article 8 paragraph (2) of the UUJN, to examine its implications for the fulfillment of distributive justice between senior notaries and junior notaries within the notary office formation system, and to formulate a regulatory reconstruction of notary office tenure following the decision in order to ensure that the extension of notary office tenure subsequent to CC Decision Number 84/PUU-XXII/2024 remains consistent with legal certainty, distributive justice, and the regeneration of the notarial profession.

LITERATURE REVIEW

Legal certainty is a fundamental principle of the rule of law (*rechtsstaat*).¹¹ Article 1 paragraph (3) of the 1945 Constitution affirms Indonesia as a state based on the rule of law, such that legal norms must be certain, consistent, and predictable. Gustav Radbruch affirmed justice and legal certainty as essential components of legal theory, while Lon Fuller emphasized that a legal rule must be formulated in a rational and consistent manner and must provide certainty for society.¹² Article 28D paragraph (1) of the 1945 Constitution underscores every person's right to "fair legal

⁸ Syahreza Ali Akbar Marali, Erman I Rahim, dan Ahmad, "Penerapan Batas Kewenangan Mahkamah Konstitusi dalam Memutus Norma yang Bersifat *Opened Legal Policy*," *Legal Advice Journal Of Law* 2, no. 2 (2025): 67.

⁹ Alendra Nauval Mufti Rayhan, "Konsep Keadilan John Rawls dalam Praktik Pengujian *Open Legal Policy* oleh Mahkamah Konstitusi," *The Republic: Journal of Constitutional Law* 4, no. 1 (2026): 129, <https://doi.org/10.55352/The>.

¹⁰ Mahkamah Konstitusi Republik Indonesia, "Risalah Sidang Perkara Nomor 14/PUU-XXII/2024" (Jakarta, 2024), 9, https://www.mkri.id/public/content/persidangan/risalah/11039_Risalah-pdf_PERKARA_NOMOR_14.PUU-XXII.2024.

¹¹ Teguh Satya Bhakti, "Kepastian Hukum dalam Pengujian Formil Undang-Undang oleh Konstitusi di Indonesia Terkait Inkonsistensi Putusan, Batas Waktu Pengujian, dan Implikasi Pembatalan Undang-Undang," *Jurnal Ilmiah Global Education* 6, no. 4 (2025): 2860, <https://doi.org/10.55681/jige.v6i4.4693>.

¹² Christopher Elia Julio dan Irwan Triadi, "Analisis Filsafat Hukum terhadap Asas Keadilan dalam Putusan Hakim di Indonesia," *Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 4 (2025): 171, <https://doi.org/10.5281/zenodo.17576982>.

certainty," while simultaneously reinforcing legal certainty as the primary pillar of public trust in the judicial system.

The concrete manifestation of the principle of legal certainty is evident in the notarial profession, which serves as an instrument of the state in guaranteeing legal certainty in the field of civil law.¹³ Article 1 number 1 of the UUJN defines a notary as a public official (*openbare ambtenaar*) authorized to execute authentic deeds with the force of perfect evidence (*volledig bewijs*).¹⁴ In view of such strategic function, the regulation of notary office, including the age limitation of tenure, must be grounded in rational considerations and be consistent with the principles of legal certainty and distributive justice as mandated by the 1945 Constitution.

The regulation of age limits for various legal professions in Indonesia reflects significant disparity. Article 8 paragraph (1) letter b and paragraph (2) of the UUJN establish the active age of notaries up to 65 years, extendable to 67 years on the basis of health considerations. In contrast, Law Number 18 of 2003 concerning Advocates stipulates only a minimum age of 25 years without a maximum age limit. On the other hand, Law Number 7 of 2020 concerning the CC and Law Number 3 of 2009 concerning the Supreme Court (hereinafter referred to as the SC) set the age limit of 70 years for constitutional justices and supreme court justices. Furthermore, civil servant physicians and public accountants may also obtain extensions of tenure up to the age of 65 to 70 years.

Such inconsistency becomes increasingly apparent when a substantive comparison is conducted across professions. Notaries, who do not receive a salary from the state, are restricted up to the age of 65 to 67 years, whereas judges, who do receive a salary from the state, may serve until the age of 70 years. Furthermore, advocates, who likewise do not receive a state salary, are not subject to any maximum age limit whatsoever. It is precisely this disparity that subsequently prompted the constitutional review through CC Decision Number 84/PUU-XXII/2024, which explicitly highlighted the inconsistency of treatment across legal professions as a matter of distributive justice.

The constitutional review in question cannot be separated from the OLP doctrine, namely the authority of the legislature to regulate matters not expressly governed by the 1945 Constitution.¹⁵ Norms originating from OLP are regarded as falling within the legislative policy domain, such that the CC has traditionally lacked the authority to review their substance. This is reflected in CC Decision Number 52/PUU-VIII/2010, which rejected the review of the notary retirement age limit on the grounds that it constitutes an OLP that cannot be categorized as

¹³ Ade Yuliany Siahaan dan Aida Nur Hasanah, "Peran Notaris sebagai Pembuat Akta Otentik dalam Proses Pembuktian di Pengadilan," *Jurnal Al-Ahwal As-Syakhsyah* 11, no. 1 (2023): 23.

¹⁴ Indah Ayu Silvyana, Umar Hasan, dan Meri Yarni, "Pertanggungjawaban Hukum Notaris atas Pembuatan Akta di Luar Wilayah Jabatan dalam Perspektif Kepastian Hukum," *Jurnal Riset Ilmiah* 5, no. 3 (2026) : 2485–2486, <https://doi.org/10.55681/sentri.v5i3.5896>.

¹⁵ Gardha Galang Mantara Sukma, "Open Legal Policy Peraturan Perundang-Undangan Bidang Politik dalam Putusan Mahkamah Konstitusi (Studi Terhadap Putusan MK Bidang Politik Tahun 2015-2017)," *Lex Renaissance* 5, no. 1 (2020): 6.

unconstitutional.¹⁶ A doctrinal shift began to emerge in CC Decision Number 22/PUU-XV/2017, which affirmed that OLP may be invalidated when it violates morality, rationality, and gives rise to intolerable injustice, and was reaffirmed in CC Decision Number 112/PUU-XX/2022.¹⁷

The paradigm shift in OLP proceeded in tandem with the development of the typology of CC decisions, particularly the model of conditionally constitutional decisions, whereby a norm is declared to remain constitutional provided that certain conditions are fulfilled. This model first emerged in 2008 through case Number 10/PUU-VI/2008.¹⁸ The intersection of the OLP doctrine and such instrument is concretely evident in CC Decision Number 84/PUU-XXII/2024, which declared Article 8 paragraph (2) of the UUDN constitutional insofar as it is interpreted to mean that a notary's tenure may be extended up to 67 years subject to a health examination and further extended annually up to 70 years,¹⁹ as further affirmed by Prof. Ni'matul Huda.²⁰

Ibadillah and Iswandi (2026) noted that this decision shifts the regulatory paradigm from a rigid age-based system to a capacity-based system, although the provisions concerning the procedural standards for health examinations have not yet been regulated in detail.²¹ Existing studies remain focused on juridical aspects and normative certainty, and have therefore not yet explored its implications for office formation and the regeneration of the notarial profession. Furthermore, the suboptimal documentation of the knowledge and experience of senior notaries necessitates the establishment of a knowledge management system to ensure the sustainable transfer of expertise.²²

The theoretical foundation for analyzing such a shift rests upon the concept of distributive justice. Aristotle regarded distributive justice as the proportional distribution of rights, resources, and opportunities based on the merits and contributions of individuals.²³ John Rawls subsequently developed this concept through two principal principles in his work *A Theory of Justice*, namely

¹⁶ Mahkamah Konstitusi Republik Indonesia, "Ahli: Batas Usia Pensiun Notaris, Kebijakan Hukum Terbuka," Mahkamah Konstitusi Republik Indonesia, 2024, <https://www.mkri.id/berita/ahli:-batas-usia-pensiun-notaris,-kebijakan-hukum-terbuka-21676>.

¹⁷ Hamzah Fansur Hidayat, Rusnan, dan Ashari, "Inkonsistensi Mahkamah Konstitusi dalam Memutus Perkara yang Bersifat *Open Legal Policy*," *Jurnal Diskresi* 4, no. 2 (2025): 254–55.

¹⁸ Herlina Rahmawati, "Politik Hukum Kenotariatan terhadap Larangan Notaris Merangkap Jabatan PPAT diluar Wilayah Jabatannya," *Jurnal Hukum dan Kewarganegaraan* 15, no. 2 (2025): 3–4.

¹⁹ MGD/GrosseTV, "Perpanjangan Masa Usia Notaris Jadi 70 Tahun, Berkah atau Musibah bagi Notaris di Tahun 2025?" (Depok, 2025), <https://www.majalahgrossedigital.com/2025/01/perpanjangan-masa-usia-notaris-jadi-70.html>.

²⁰ Fakultas Hukum Universitas Islam Indonesia, "FH UII dan PP INI Gelar Seminar Nasional Merespon Putusan Mahkamah Konstitusi tentang Batas Usia Maksimal Jabatan Notaris," *Fakultas Hukum Universitas Islam Indonesia* (Yogyakarta, 2025), <https://law.uui.ac.id/blog/2025/02/13/fh-uui-dan-pp-ini-gelar-seminar-nasional-merespon-putusan-mahkamah-konstitusi-tentang-batas-usia-maksimal-jabatan-notaris/>.

²¹ Ibadillah dan Iswandi, "Analisis Putusan Mahkamah Konstitusi Nomor 84/PUU-XXII/2024 tentang Perpanjangan Usia Jabatan Notaris," 138.

²² Fadhil Yusuf Malkany, Hasim Purba, dan Suprayitno, "Analisis Efektivitas Kewajiban Peningkatan Ilmu Pengetahuan yang Dibuat oleh Ikatan Notaris Indonesia dalam Rangka Meningkatkan Profesionalisme (Studi pada Ikatan Notaris Indonesia Wilayah Sumatera Utara)," *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)* 5, no. 3 (2025): 1874, <https://doi.org/10.38035/jihhp.v5i3>.

²³ Tiara Salman dan Arrie Budhiartie, "Analisis Konsep Keadilan dalam Pandangan Filsafat Hukum Aristoteles dan Relevansinya di Indonesia," *Jurnal Nalar Keadilan* 4, no. 2 (2024): 53.

the equality of basic rights for every person and the justification of socio-economic inequalities insofar as they benefit the least advantaged and guarantee equal opportunity.²⁴

Distributive justice is relevant to notarial regeneration concerning the extension of senior notaries' tenure. Notary office formation pursuant to Article 22 of the UUJN is determined by population size, business activity intensity, and the average number of deeds executed, rendering formations limited in number. Tenure extension may consequently narrow junior notaries' opportunities to access available formations, particularly where positions are occupied by notaries whose productivity has declined.²⁵ Academics and public policy experts have assessed that extension of the retirement age limit potentially impedes office rotation and adversely impacts regeneration of the notarial profession.²⁶

Civil law tradition countries predominantly set the notary retirement age at 70 years or above, considerably higher than Indonesia's prevailing limit.²⁷ This disparity is consistent with Indonesia's life expectancy, which reached 73.93 years in 2023.²⁸ Approximately 38% of active notaries are above 60 years of age, with 82% remaining in good health and meeting professional standards, indicating sustained productivity, such that extension of the retirement age to 70 years is considered capable of supporting continuity of notarial services.²⁹

National legal literature concerning the notary retirement age limit largely focuses on normative juridical aspects and the legal certainty of norms. In reality, however, the notary age limit is not solely concerned with the physical condition of the individual, but also pertains to professional regeneration and the distribution of employment opportunities within the limited notary office formation. Therefore, a more comprehensive examination of the CC's considerations in this decision is required, including its impact on distributive justice between senior notaries and junior notaries.

CC Decision Number 84/PUU-XXII/2024 concerning the extension of notary office tenure age accordingly does not merely give rise to issues of legal certainty at the implementation level, but also generates a structural dilemma between the protection of senior notaries' rights and the need for professional regeneration. This condition necessitates an evaluation of the regulation of notary office tenure age that transcends considerations of individual health and productivity, by also taking into

²⁴ Muhammad Taufik, "Filsafat John Rawls tentang Teori Keadilan," *Jurnal Studi Islam Mukaddimah* 19, no. 1 (2013): 51.

²⁵ Herlina Rahmawati, "Politik Hukum Kenotariatan terhadap Larangan Notaris Merangkap Jabatan PPAT di Luar Wilayah Jabatannya," *Jurnal Hukum dan Kewarganegaraan* 15, no. 2 (2025): 3–4.

²⁶ Jessica Carolina Widodo, "Ketiadaan Norma Minimum Produktivitas Notaris sebagai Bentuk Lemahnya Profesionalisme Jabatan Menimbulkan Ketidakadilan bagi Calon Notaris," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 3 (2026): 4036.

²⁷ Humas Mahkamah Konstitusi Republik Indonesia, "Kabul Sebagian, Batas Umur Notaris Maksimal 70 Tahun" (Jakarta, 2025).

²⁸ Erlina Fury Santika, "Umur Harapan Hidup Penduduk RI Sebesar 73,93 Tahun Pada 2023" (Jakarta, Indonesia: Databoks – Katadata Media Network, 2023).

²⁹ Alni Avasyah R.A Patongai, Kurniati, dan Adriana Mustafa, "Pertimbangan Hakim dalam Putusan Mahkamah Konstitusi Nomor/PUU-XXII/2024 tentang Batas Usia dan Perpanjangan Masa Notaris Perspektif Siyasa Syar'iyah," 3933.

account the principles of distributive justice, professional sustainability, and the fulfillment of the community's need for legal services. This study is presented to fill that gap.

METHOD

This study constitutes a normative legal research that relies entirely on the analysis of library materials by understanding law as a prescriptive system (*das sollen*), such that the analysis conducted is not merely descriptive in nature but also argumentative in systematically examining legal norms, principles, and doctrines.³⁰ This method was selected on the grounds of its relevance to the research objectives, namely to analyze the normative structure, principles, and legal doctrines contained in the legislation governing the notarial field, particularly with respect to the implications of CC Decision Number 84/PUU-XXII/2024 on the regulation of notary office in Indonesia.

Three mutually complementary approaches are integrated in this study in order to address the research problems comprehensively. First, the statute approach is applied to analyze the UUJN concerning Notary Office along with related regulations through the examination of normative texts in order to identify the content and structure of applicable norms. Second, the conceptual approach is employed to examine legal concepts, theories of justice, doctrines, and legal principles that serve as the foundation for the interpretation of notarial norms.³¹ Third, the case approach is applied to analyze CC Decision Number 84/PUU-XXII/2024 as constitutional jurisprudence in order to understand the interpretation and application of notarial legal norms by the constitutional judicial institution. The legal materials employed in this study comprise primary, secondary, and tertiary sources. Primary legal materials include the Law on the Office of Notary (UUJN), related regulations, and Constitutional Court Decision Number 84/PUU-XXII/2024 as the main object of analysis. Secondary legal materials consist of legal textbooks, scholarly journal articles, and relevant research findings used to support the analytical framework and theoretical interpretation. Tertiary legal materials include legal dictionaries and encyclopedias utilized to clarify and verify legal terminology.

The collection of legal materials was conducted through library research (library research), namely a systematic activity of collecting, processing, and drawing conclusions from various library sources in order to address the research problems.³² This process was undertaken through three stages, encompassing the inventorying of all legal documents and relevant literature including legislation, court decisions, and notarial scholarly works; the classification of materials into primary, secondary, and tertiary categories based on their level of authority, relevance, and in-depth critical examination of the substance of each document in order to capture the meaning of norms, identify tensions between norms, and record information relevant to the analytical purposes.

³⁰ Bintang Adi Putra dkk., "Metodologi Penelitian Hukum Normatif dalam Perspektif Konsep dan Teknik Analisis dalam Kajian Yuridis," *Jurnal Kajian Ilmiah Multidisipliner* 10, no. 4 (2026): 99.

³¹ Wilma Silalahi dan Kesya Swietenia Maharani Imanto, "Problematika Tumpang Tindih Peraturan Perundang-Undangan di Indonesia dan Upaya Harmonisasinya," *Indonesian Journal of Law and Justice* 3, no. 3 (2026): 3, <https://doi.org/10.47134/ijlj.v3i3.5677>.

³² Milya Sari dan Asmendri, "Penelitian Kepustakaan (*Library Research*) dalam Penelitian Pendidikan IPA," *Itian Bidang IPA dan Pendidikan IPA* 6, no. 1 (2020): 52.

The collected legal materials were subsequently analyzed using a qualitative-descriptive method with an inductive approach in order to understand the meaning and purpose of notarial legal norms. This method is commonly employed in normative legal research due to its capacity to describe social phenomena in a systematic and in-depth manner. Its application aims to map the normative shifts following CC Decision Number 84/PUU-XXII/2024 and to examine its implications for justice and the legal principles underlying the regulation of notary office in Indonesia.

RESULTS AND DISCUSSION

A. Legal Considerations of the Constitutional Court in Decision Number 84/PUU-XXII/2024: The Overriding of the Open Legal Policy (OLP) Doctrine and the Application of the Conditionally Constitutional Construction to Article 8 Paragraph (2) of the UUJN

Black's Law Dictionary defines policy as the general principles that guide the government in managing public affairs and serve as the foundation for the legislature in establishing policies.³³ Within Indonesian constitutional law, this concept has evolved into OLP, namely the authority of the legislature to determine legal policy choices with respect to matters not specifically and explicitly regulated by the constitution.³⁴ This doctrine holds significant importance in the discussion of CC Decision Number 84/PUU-XXII/2024 as it relates to the limits of the CC's authority in reviewing norms that fall within the legislative policy domain.

Consistent with such doctrine, the CC regards the regulation of office tenure age limits as part of OLP, thereby falling entirely within the authority of the legislature, and accordingly, differences in the determination of retirement age are in principle not automatically unconstitutional.³⁵ This is reflected in CC Decision Number 52/PUU-VIII/2010, which rejected the review of Article 8 paragraph (2) of the UUJN on the grounds that the notary age limit was considered to fall within the domain of OLP. Nevertheless, this doctrine is not absolute in nature, as the CC retains the capacity to intervene where a norm is contrary to morality, rationality, or gives rise to intolerable injustice.

A significant development occurred when the CC began to apply a more adaptive approach to the OLP doctrine. Through CC Decision Number 22/PUU-XV/2017, subsequently reaffirmed in CC Decision Number 112/PUU-XX/2022, the CC declared that although age limits and tenure periods are fundamentally legislative policy, such norms may nonetheless be reviewed where they are proven to cumulatively violate aspects of morality, rationality, and intolerable injustice. This approach reflects a shift from a previously deferential stance toward OLP to a more substantive review through the balancing of legislative freedom and the protection of constitutional rights.

This approach was fully applied in CC Decision Number 84/PUU-XXII/2024, which reviewed the constitutionality of Article 8 paragraph (2) of the UUJN concerning the age limit for the honorable discharge of notaries at the age of 65 years, extendable to 67 years by taking into

³³ TLD Staff, "Policy" (The Law Dictionary, November 2011), <https://thelawdictionary.org/policy/>.

³⁴ Radita Ajie, "Batasan Pilihan Kebijakan Pembentuk Undang-Undang (*Open Legal Policy*) dalam Pembentukan Peraturan Perundang-Undangan Berdasarkan Tafsir Putusan Mahkamah Konstitusi," *Jurnal Legislasi Indonesia* 13 (2016): 112, <http://www.djpp.kemendikham.go.id/htn-dan-puu/1299-legislasi-semu->.

³⁵ Dwiky Arief Darmawan, "Teori *Open Legal Policy* dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Gorontalo Law Review* 7, no. 1 (2024): 112.

account the health condition of the notary concerned.³⁶ The review was conducted with reference to the guarantee of fair legal certainty as regulated under Article 28D paragraph (1) of the 1945 Constitution. The rationality of the norm was assessed based on BPS data indicating that the life expectancy of the Indonesian population has reached approximately 73 years, such that the age limit of 67 years was considered to no longer be fully consistent with the current productive conditions of Indonesian society.

The morality of the norm was evaluated by taking into account the position of notaries as a profession that exercises its office independently without receiving salary or pension from the state. Such a condition differs from that of state apparatus who receive welfare guarantees upon retirement. The restriction of office tenure that terminates the notary's right to practice without an equivalent guarantee was considered to potentially diminish the protection of the right to work and to receive fair treatment as guaranteed under Article 28D paragraph (2) of the 1945 Constitution.

Intolerable injustice was analyzed through comparison with other professions, wherein advocates, private physicians, curators, and public accountants are not subject to retirement age restrictions provided they fulfill licensing requirements, while supreme court justices and constitutional court justices who receive state salary and pension entitlements may serve until the age of 70 years.³⁷ Such differential treatment was deemed inconsistent with the principle of equality before the law and non-discrimination under Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution, whereupon the CC concluded that the three parameters limiting OLP had been cumulatively fulfilled, rendering the age limit of 67 years under Article 8 paragraph (2) of the UUJN constitutionally unsustainable.

The CC applied the conditional constitutional construction as a decision model that declares a statutory provision to be not contrary to the constitution insofar as it is interpreted in accordance with the requirements determined by the CC.³⁸ This provision was first prominently applied through CC Decision Number 10/PUU-VI/2008, wherein the CC did not annul the norm in its entirety but instead added supplementary conditions in order for the norm to remain constitutional.

Following the same pattern, CC Decision Number 84/PUU-XXII/2024 declared Article 8 paragraph (2) of the UUJN to be conditionally contrary to the 1945 Constitution, namely insofar as it is interpreted to mean that a notary may continue to serve until the age of 70 years subject to the condition of undergoing annual health examinations at central government hospitals, regional general hospitals, or hospitals designated by the Minister of Law of the Republic of Indonesia. Through this decision, the CC did not annul the norm under review, but instead added new conditions through judicial interpretation in order for the norm to remain constitutionally applicable, thereby functioning to a certain extent as a positive legislator. This ruling provides protection and legal certainty for senior notaries, yet simultaneously gives rise to normative issues, as the standards and procedures for the required annual health examinations have not yet been regulated in detail under the UUJN or its implementing regulations.

³⁶ Roudlatul Jannah, "Prinsip Rasionalitas Perpanjangan Masa Jabatan Notaris Berdasarkan Putusan Mahkamah Konstitusi Nomor 84/PUU-XXII/2024" (Universitas Narotama, 2025), 122.

³⁷ Novianto Murti Hantoro, "Periode Masa Jabatan Hakim Konstitusi dan Implikasinya Kemandirian Kekuasaan Kehakiman," *Jurnal Negara Hukum* 11, no. 2 (2020): 192, <https://doi.org/10.20885/iustum.vol21.iss4.art2>.

³⁸ David Aprizon Putra, "Tinjauan terhadap Klausula *Conditionally Constitutional* dalam Putusan Mahkamah Konstitusi," *Surya Keadilan* 3, no. 1 (2019): 181.

Such a condition creates a normative vacuum requiring immediate legislative resolution. A conditionally constitutional decision may strengthen constitutional rights in principle, however absent prompt legislative revision, legal uncertainty in implementation remains unavoidable. CC Decision Number 84/PUU-XXII/2024 thus constitutes not merely the conclusion of a constitutional review process, but equally the starting point of legislative responsibility to harmonize the UUJN with the CC's newly established interpretation. This decision simultaneously demonstrates that the CC increasingly advances a comprehensive approach encompassing social data, inter-professional comparisons, and substantive justice in assessing the constitutionality of norms previously protected under the open legal policy (hereinafter referred to as OLP) doctrine.

B. Implications of Decision Number 84/PUU-XXII/2024 on Distributive Justice Between Senior Notaries and Junior Notaries Within the Notary Office Formation System

Distributive justice in the context of CC Decision Number 84/PUU-XXII/2024 may be analyzed through two principal philosophical frameworks. Black's Law Dictionary defines justice as "the fair and proper administration of law," encompassing the proportional distribution of rights and obligations.³⁹ This understanding is consistent with the view of Satjipto Rahardjo, who affirmed that the balance of rights and obligations can only be realized through a legal mechanism that substantively determines which actions are permissible and which are not.⁴⁰

The notary office formation system is zero-sum in nature, as the number of formations is strictly determined pursuant to Article 22 paragraph (1) of the UUJN in conjunction with the Regulation of the Minister of Law and Human Rights Number 19 of 2021, such that the extension of senior notaries' tenure up to the age of 70 years as implied by CC Decision Number 84/PUU-XXII/2024 directly withholds formation slots for an additional three years per notary, worsens the appointment backlog, and deepens the inequality in the distribution of professional opportunities for junior notaries, which ultimately runs contrary to the principle of distributive justice as the legal mechanism in fact widens the intergenerational gap in access to notary office.

The intergenerational tension becomes increasingly pronounced when examined within the framework of distributive justice. From the Aristotelian perspective, the right of senior notaries to the continuity of office based on experience and health condition should be proportional to the contribution of junior notaries to professional renewal; however, within a zero-sum system such balance is difficult to achieve and difficult to fully justify. From the Rawlsian perspective, the extension of senior tenure may only be justified where it provides tangible benefits to junior notaries, for instance through mentoring programs or improvements in the quality of public services; yet in practice this tends to be intolerable in nature as it impedes the younger generation's access to economic opportunities and violates the principle of fair equality of opportunity. This condition is further compounded by the disparity in treatment across legal professions in Indonesia,

³⁹ Akintunde Adebayo dan Anthonia Ugowe, "Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act," *Brawijaya Law Journal* 6, no. 2 (2019): 141, <https://doi.org/10.21776/ub.blj.2019.006.02.02>.

⁴⁰ Program Studi Magister Ilmu Hukum UMA, "Analisa Konsep Aturan Keadilan, Kepastian, dan Kemanfaatan dalam Penegakan Hukum Tindak Pidana Pertambangan di Indonesia," November 2023, <https://mh.uma.ac.id/analisa-konsep-aturan-keadilan-kepastian-dan-kemanfaatan-dalam-penegakan-hukum-tindak-pidana-pertambangan-di-indonesia/>.

wherein advocates are not subject to a maximum age limit, while judges and prosecutors are subject to different retirement regulations as well.

The ratio decidendi of the CC considered the extension of the notary age limit to 70 years solely from the standpoint of the protection of the constitutional right to work and to obtain a decent livelihood as guaranteed under Article 28D paragraph (2) of the 1945 Constitution, taking the position that an excessively strict age restriction potentially violates such right for as long as the notary continues to fulfill health and competency requirements. The CC did not explicitly consider the systemic impact of such extension on junior notaries' access to office formations, such that the absence of intergenerational distributive justice considerations constitutes a significant argumentative gap, as the issue was viewed solely from the perspective of the individual rights of senior notaries without weighing its structural implications on the professional ecosystem as a whole.

International comparative analysis provides a useful perspective while simultaneously opening avenues for reform in Indonesia. In various civil law countries such as France, the Netherlands, and Germany, the notary age limit commonly reaches 70 years or above, yet is invariably accompanied by balancing mechanisms such as dynamic formation quotas, early retirement programs, periodic competency evaluations, and data-driven formation increases in order to ensure that access remains open for the younger generation. The intergenerational tension within the notarial profession is accordingly not a phenomenon unique to Indonesia; however, those countries have already developed regulatory instruments capable of accommodating the rights of senior notaries while simultaneously opening fair opportunities for junior notaries.

Proceeding from the entirety of the foregoing discussion, there exists an urgent need for implementing regulations following CC Decision Number 84/PUU-XXII/2024 that accommodate intergenerational distributive justice through three reform measures. First, the revision of the Regulation of the Minister of Law and Human Rights concerning notary office formation with a dynamic quota mechanism that makes the number of active notaries above the age of 67 years a variable for the addition of new formations. Second, the obligation of senior notaries to mentor junior notaries as a condition for tenure extension. Third, periodic competency evaluations for notaries aged 67 years and above encompassing aspects of health and legal knowledge updating. CC Decision Number 84/PUU-XXII/2024 strengthens legal certainty for senior notaries; however, the distributive justice challenges it generates can only be resolved through a comprehensive, balanced regulatory response oriented toward the equalization of intergenerational opportunities within the notarial profession.

C. Regulatory Reconstruction of Notary Office Tenure Following Decision Number 84/PUU-XXII/2024 in the Interest of Legal Certainty, Distributive Justice, and the Sustainability of Professional Regeneration

According to B.N. Marbun (2013:469), reconstruction is the process of reassembling a condition based on existing elements in order to restore it to its original state.⁴¹ Regulation constitutes a written provision containing legal norms of general applicability established by a competent institution or official in accordance with the procedures for the formation of

⁴¹ Nisa Fadhilah, "Proses Rekonstruksi dalam Upaya Mengungkap Tindak Pidana (Studi Pada Polres Lampung Utara)," *Legalita* 4, no. 2 (2022): 226.

legislation.⁴² Accordingly, regulatory reconstruction constitutes an effort to reorganize norms that are no longer adequate, coherent, or that contain legal vacuums, in response to court decisions, social changes, or lacuna legis, while remaining guided by the hierarchy of legislation in order to realize legal certainty, justice, and utility.

CC Decision Number 84/PUU-XXII/2024 declared Article 8 paragraph (2) of the UUJN to be conditionally constitutional, namely constitutional insofar as it is interpreted to mean that notary office tenure may be extended up to the age of 70 years subject to the condition of undergoing periodic annual health examinations. The decision provides room for senior notaries to continue exercising their office after reaching the previous retirement age limit. Nevertheless, this decision also gives rise to a regulatory vacuum that requires reconstruction in order to ensure that its implementation continues to guarantee legal certainty, distributive justice, and the sustainability of notarial professional regeneration.

The normative vacuum following the decision is fundamental, as the phrase "periodic annual health examinations" lacks provisions concerning the mechanism, evaluating institution, health standards, administrative consequences, and professional capacity evaluation. The absence of synchronization with the Regulation of the Minister of Law and Human Rights Number 19 of 2021 concerning notary office formation potentially freezes formations and impedes junior notaries' access, while the absence of derivative regulations opens space for subjective interpretation undermining the principle of equality before the law.

Regulatory reconstruction must address legal certainty, distributive justice, and professional regeneration. Legal certainty demands clear and measurable norms. Distributive justice requires protection of senior notaries' rights while ensuring fair access to formations for junior notaries. Professional regeneration guarantees knowledge transfer and human resource renewal, ensuring notaries remain adaptive to technological developments, legal dynamics, and societal needs

Amendment of Article 8 paragraph (2) of the UUJN must be directed toward operational norms, regulating tenure extension up to 67 years and annually thereafter until 70 years, conditioned upon health examination results from a designated hospital, professional performance evaluation by the Central Notary Supervisory Council, written submission to the Minister, and a formation protection clause through branch office establishment or notary intern recruitment, thereby providing procedural certainty while filling the normative vacuum left by CC Decision Number 84/PUU-XXII/2024.

The adjustment of the Regulation of the Minister of Law and Human Rights Number 19 of 2021 is pursued through two principal measures. The formation formula needs to be revised by adding a reducing variable in the form of the number of active elderly notaries, so that new formations reflect the balance between actual needs based on population and regional gross domestic product and the presence of still-active senior notaries. Standard health examination benchmarks need to be established through a separate Ministerial Regulation containing minimum physical, cognitive, and mental standards, followed by the designation of examining institutions, appeal mechanisms, and graduated administrative sanctions up to and including dismissal. Both measures render the CC decision technically and accountably implementable.

⁴² Badan Pembinaan Ideologi Pancasila, "Regulasi" (Jakarta Pusat: JDIH BPIP, 2023), <https://jdih.bpip.go.id/kamus/view?id=30>.

The guarantee of intergenerational justice requires a layer of concrete institutional mechanisms. Notaries whose tenure is extended are obliged to supervise at least one to two notary intern candidates or to serve as mentors in professional organization programs for a minimum of two years, so that tenure extension directly contributes to structured knowledge transfer. The Notary Supervisory Council needs to have its authority strengthened to conduct annual evaluations encompassing deed quality and integrity, not merely health aspects, while in regions with a high ratio of senior notaries, priority additional formations or accelerated appointments for junior notaries need to be provided. Through these mechanisms, the extension of notary office tenure transforms from a potential impediment to regeneration into an instrument for strengthening professional sustainability through structured and responsible intergenerational synergy.

CONCLUSION

The Constitutional Court (CC) departed from the open legal policy doctrine on the ground that the limitation of notarial tenure to the age of 67 years was cumulatively found to violate the parameters of rationality, morality, and tolerable justice when compared with the retirement arrangements applicable to other legal professions. Through a conditional constitutional interpretation, the Court held that a notary's tenure may be extended annually until the age of 70 years, subject to periodic health examinations conducted at hospitals designated by the Minister of Law. Nevertheless, given the zero-sum nature of the notarial office formation system, such an extension directly reduces available formation quotas, exacerbates the backlog of appointments, and restricts professional opportunities for junior notaries. The Court did not expressly address these systemic intergenerational consequences, resulting in a gap in distributive justice considerations that must be remedied through implementing regulations. Consequently, the Decision has created a normative vacuum that necessitates the revision of Article 8 paragraph (2) of the Law on the Office of Notary (UUJN), the adjustment of Regulation of the Minister of Law and Human Rights Number 19 of 2021 through the adoption of a dynamic formation formula, and the establishment of standardized health assessment criteria encompassing physical, cognitive, and mental capacities. In addition, a requirement for senior notaries to mentor at least one prospective notary intern as a condition for tenure extension should be introduced, thereby transforming the extension of the retirement age into an instrument for promoting structured and sustainable professional regeneration within the Indonesian notarial system.

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