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The Implications of the Implementation of the ASEAN Framework Agreement on Services (AFAS) on Notarial Territorial Jurisdiction: A Comparative Study of Indonesia and Malaysia

Implikasi Pemberlakuan Ketentuan ASEAN Framework Agreement on Services (AFAS) terhadap Wilayah Jabatan Notaris: Studi Komparatif Indonesia dan Malaysia

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Abstract

Economic integration within ASEAN through the ASEAN Framework Agreement on Services (AFAS) has promoted the liberalization of professional services across member states; however, legal scholarship remains limited in examining its implications for professions that embody public authority, particularly notaries operating under different legal systems. This study aims to analyze the implications of AFAS on notarial territorial jurisdiction through a comparative analysis of Indonesia and Malaysia. Employing a normative juridical method with statutory, conceptual, and comparative approaches, this research examines the regulatory frameworks governing notarial authority in both countries. The findings reveal that AFAS produces asymmetric implications for the notarial profession. In Indonesia, notaries function as public officials whose authority is strictly territorial and grounded in state sovereignty, thereby restricting the application of service liberalization. In contrast, Malaysian notary public operate as private legal professionals with administrative functions, enabling greater flexibility in cross-border service provision. The novelty of this study lies in its argument that service liberalization under AFAS cannot be uniformly applied to professions with public functions, necessitating a differentiated legal harmonization model to ensure legal certainty while preserving national sovereignty within the ASEAN integration framework.

Keywords: ASEAN Framework Agreement on Services (AFAS); notaries; territorial jurisdiction; legal certainty; ASEAN legal harmonization.

Abstrak

Integrasi ekonomi ASEAN melalui ASEAN Framework Agreement on Services (AFAS) telah mendorong liberalisasi jasa profesional lintas negara, namun kajian hukum mengenai implikasinya terhadap profesi notaris yang memiliki karakter publik masih sangat terbatas, khususnya dalam konteks perbedaan sistem hukum antara negara civil law dan common law. Penelitian ini bertujuan untuk menganalisis implikasi penerapan AFAS terhadap yurisdiksi teritorial notaris melalui studi perbandingan antara Indonesia dan Malaysia. Penelitian ini menggunakan metode yuridis normatif

dengan pendekatan perundang-undangan, konseptual, dan komparatif. Hasil penelitian menunjukkan bahwa penerapan AFAS menimbulkan implikasi yang bersifat asimetris. Di Indonesia, notaris sebagai pejabat umum terikat pada prinsip legalitas dan pembatasan yurisdiksi teritorial yang ketat berdasarkan UU Jabatan Notaris, sehingga liberalisasi jasa tidak dapat diterapkan secara langsung. Sebaliknya, notary public di Malaysia memiliki karakter administratif dan fleksibel, sehingga lebih adaptif terhadap mobilitas jasa lintas negara. Kebaruan penelitian ini terletak pada temuan bahwa liberalisasi jasa tidak dapat diberlakukan secara seragam terhadap profesi yang menjalankan fungsi kedaulatan negara, sehingga diperlukan pendekatan harmonisasi hukum yang bersifat diferensiatif untuk menjaga kepastian hukum dan kedaulatan negara dalam kerangka integrasi ASEAN.

Kata Kunci: ASEAN Framework Agreement on Services (AFAS); notaris; jurisdiksi teritorial; kepastian hukum; harmonisasi hukum ASEAN.

1. INTRODUCTION

ASEAN, as a regional organization established through the Bangkok Declaration in 1967, has experienced rapid development over more than five decades (Widiastuti, 2022). In its early years, ASEAN focused primarily on political stability and regional security, with cooperation initially limited to non-economic dimensions. The geopolitical conditions of Southeast Asia at the time, marked by the tensions of the Cold War, prompted its founding members to establish a platform for diplomacy and mutual trust to maintain regional stability (Az-zahra, 2024). However, the rapidly changing global dynamics, the economic growth of major countries, and the need to enhance regional competitiveness led ASEAN to gradually shift its focus toward deeper economic integration. This shift in orientation gave rise to various legal instruments and policy frameworks aimed at facilitating the movement of goods trade, investment flows, and services among member states.

One of the most important instruments marking ASEAN's commitment to economic integration is the ASEAN Framework Agreement on Services (AFAS). This agreement was first adopted in 1995 and has been progressively refined through a series of commitment packages, reaching the 10th Package in 2018 (Silitonga & Sadiawati, 2021). AFAS was designed as a framework for the liberalization of trade in services, providing opportunities for service providers from member states to gain broader market access, reduce regulatory barriers, and promote the alignment of standards among countries. Through AFAS, ASEAN member states agreed to open more service sub-sectors as a commitment to liberalization (Hanifah et al., 2021). By the 10th Package, over 100 service sub-sectors had been opened, covering professional services such as law, accounting, engineering, healthcare, and notarial services.

The liberalization of professional services brings several important consequences. On the one hand, it enhances the mobility of professionals across borders, expands the labor market, and creates opportunities for the exchange of expertise within the region. On the other hand, it raises questions regarding the applicability of jurisdiction, professional standards, and the status of authority in professions that vary across member states. The notarial profession is one of the professions significantly impacted due to its differing roles between countries, especially in relation to national legal structures.

In this context, Indonesia and Malaysia present two countries that are interesting for comparative analysis. Both countries share geographical proximity and strong historical ties, yet their legal systems differ fundamentally. Indonesia follows the civil law system, while Malaysia adheres to the common law system. This difference in legal systems directly influences the structure of authority, the character of the profession, and the scope of duties of notaries in each country.

In the civil law tradition, as followed by Indonesia, notaries hold the status of public officials granted authority by the state to create authentic deeds (Poetra et al., 2024). An authentic deed is a piece of evidence with full probative value, which can only be created by an official appointed by law (Rahmadhani, 2020). Because notaries perform public functions, the scope of their authority is strictly regulated by the Notary Office Law (UUJN). One of the most significant provisions is the limitation of territorial jurisdiction: notaries are only authorized to exercise their duties within the province where they are appointed. This provision is based on the concept that the authority of a notary is a delegation from the state, and therefore, its implementation must occur within the designated jurisdiction. A

violation of territorial jurisdiction may result in the deed being considered invalid or merely a private deed. This limitation indicates that the authority of notaries in Indonesia is closely tied to the concept of the sovereignty of state law.

In contrast, within the common law system followed by Malaysia, the role of the notary public is very different. A notary public in Malaysia is not a public official in the sense of performing state functions; rather, they are a legal professional, typically a solicitor, granted limited authority to certify documents, administer oaths, provide legalization, and perform certain administrative actions (Poetra et al., 2024). A notary public does not have the authority to create authentic deeds as notaries do in the civil law system. Therefore, their role is more administrative than judicial. Since the authority of a notary public is not directly related to the state's function of ensuring legal certainty, their jurisdiction is not as strictly limited as in Indonesia (Ningsih et al., 2022). A notary public in Malaysia can provide services more flexibly according to the client's needs, including services for documents intended for use abroad. This flexibility makes Malaysia more adaptable in responding to the developments of service liberalization brought about by AFAS.

The emergence of AFAS has transformed the pattern of relations between ASEAN member states in the provision of professional services. With the commitment to liberalization, service providers from member states have gained opportunities to operate in other countries through various modes of service delivery, such as the movement of natural persons, cross-border supply, and commercial presence (Silitonga & Sadiawati, 2021). However, an important question arises: can the principle of liberalization in AFAS be directly applied to the notarial profession, which has distinct characteristics in each country?.

In Indonesia, notaries are bound by strict principles of legality. As public officials, notaries' authority cannot exceed the jurisdictional limits set by the UUJN. Although AFAS provides opportunities for professionals to move across countries, this provision does not automatically resolve the limitations of the notary's jurisdiction, which are explicitly regulated. Thus, even though AFAS opens up the possibility of liberalization, Indonesia remains constrained by the principle of national legal sovereignty in notarial matters.

In contrast, Malaysia has a more flexible structure. Since the notary public does not hold a sovereignty-based public function, Malaysia is more prepared to adapt to commitments for the liberalization of services. Malaysian notaries public can provide services accessible to clients from other ASEAN countries without violating national legal provisions. This condition indicates that Malaysia has better structural readiness to face the demands of professional mobility and cross-border service demands. Therefore, AFAS creates an asymmetric impact: Indonesia faces greater regulatory challenges compared to Malaysia.

First, the difference in the basic structure of the notary profession between the two countries also has implications for the mechanisms of oversight and accountability. In Indonesia, notaries are supervised by the Majelis Pengawas, which holds administrative and ethical authority in accordance with the UU Jabatan Notaris. This oversight system is built on the assumption that notaries hold a public role and produce documents that have a direct impact on legal certainty (Ardini, 2024). Meanwhile, in Malaysia, the supervision of notary public is entirely within the context of the private legal profession and is subject to the disciplinary mechanisms of solicitors. This makes Malaysia more adaptable in accepting foreign professionals, as its oversight standards can be adjusted through professional mechanisms without the need to change regulations related to national sovereignty.

Second, the disparity in roles between Indonesian notaries and Malaysian notary publics also intersects with the issue of cross-border qualification recognition. Within the framework of AFAS, the mutual recognition arrangement (MRA) becomes an important instrument for recognizing professional qualifications across ASEAN countries (Isnarti et al., 2021). However, since the functions and authority of notaries in Indonesia are tied to the civil law system, the qualifications of Indonesian notaries cannot be directly equated with those of the Malaysian notary public, who only performs administrative functions. This creates structural barriers in designing the MRA for notarial services (Abdillah et al., 2023). Malaysia is relatively more open because the role of the notary public does not lie at the level of public officials, whereas Indonesia must ensure that the recognition of qualifications does not undermine the principles of legality and the validity of authentic deeds as legal instruments of the state.

Third, these fundamental differences also create challenges related to jurisdiction and the validity of documents. Authentic deeds made by Indonesian notaries carry full evidentiary power because the state grants direct authority through legislation. These public documents cannot be

produced by foreign officials without a delegation of authority from the Indonesian state. In contrast, documents legalized by Malaysian notary publics do not have implications for the sovereignty of any state, making them more easily accepted in cross-border transactions. This asymmetry makes the mobility of notarial services in Indonesia far more limited than in Malaysia, while also demonstrating that the liberalization of services cannot always be equally applied to professions with a public character.

The implications of these differences are crucial in the context of policy harmonization within the ASEAN region. As economic integration deepens, the need to align professional standards will increase. However, harmonizing the notary profession cannot be done simply due to the fundamental differences in legal systems. Indonesia may need to undertake reforms or adjust certain provisions if it intends to actively participate in the liberalization of notarial services. Such reforms could include revisiting jurisdictional boundaries, adjusting regulations related to the recognition of foreign professional qualifications, or developing collaborative mechanisms with other ASEAN member states. Meanwhile, Malaysia is positioned to be more prepared to seize these opportunities due to its more adaptable professional character.

Overall, the comparative study between Indonesia and Malaysia reveals different challenges and opportunities in facing AFAS. Indonesia faces structural constraints due to the notary profession's status as a public official with strict jurisdictional limits. Malaysia, on the other hand, has a more flexible professional structure, making it more compatible with regional service liberalization. Therefore, research on the implications of AFAS on the notarial jurisdiction is crucial for understanding the need for reforms, harmonization opportunities, and the legal consequences that may arise if professional mobility becomes more open in the future.

2. METHOD

This research uses a normative juridical method, focusing on the study of legislation, doctrine, and legal principles related to the notary profession and the provisions of service liberalization in the ASEAN Framework Agreement on Services (AFAS). The approach used includes a statute approach to analyze the UU Jabatan Notaris in Indonesia, the Notaries Public Act in Malaysia, and the AFAS instruments; a conceptual approach to understand the differences in the characteristics of the notary profession within the civil law and common law systems; and a comparative approach to compare the structure of authority, jurisdiction, and functions of notaries in Indonesia and Malaysia. The data used consists of primary, secondary, and tertiary legal materials, which are analyzed qualitatively through a descriptive-analytical method to explain the legal conditions in each country and draw conclusions regarding the implications of AFAS on notarial authority within the ASEAN regional context.

3. RESULT AND DISCUSSION

a. Implication Of AFAS On The Notary's Jurisdiction In Indonesia and Malaysia

The ASEAN Framework Agreement on Services (AFAS) is one of the key instruments used by ASEAN to deepen regional economic integration through the liberalization of the services sector. Since its establishment in 1995 until the adoption of the 10th Package in 2018, AFAS has opened hundreds of sub-sectors of services, including professional services such as law, accounting, engineering, healthcare, and notarial service (La, 2021). Although it does not specifically regulate the notary profession, AFAS has significant implications for the mobility of professional labor and the flow of cross-border services, which ultimately affects how the jurisdiction of certain professions, including notaries, can be exercised in ASEAN member states. In this context, Indonesia and Malaysia are two countries that are particularly interesting to analyze due to their fundamental differences in legal systems, the structure of the notary profession, and the regulation of authority and jurisdiction. These differences directly influence how each country can adapt to the service liberalization introduced by AFAS.

Indonesia, as a country that follows the civil law tradition, positions the notary as a public official authorized by the state to create authentic deeds as legal instruments with full evidentiary power (Hadirman & Munandar, 2025). A notary in the civil law system is not merely a private service provider, but an extension of the state in upholding legal certainty in the civil domain (Akbar & Yazid, 2021). Therefore, the authority of a notary is closely tied to the principle of legality and exists within the structure of public law. One of the consequences of this position is the limitation of jurisdictional scope.

According to UUJN (Undang-Undang Jabatan Notaris), a notary can only exercise their authority within a designated jurisdiction, which is one province (Melinda & Djajaputra, 2021). The creation of a deed outside the jurisdictional area is considered beyond the authority and may cause the deed to lose its authentic nature, thereby only having the status of an underhand deed. This strict limitation indicates that the authority of notaries in Indonesia is highly territorial and closely related to the jurisdiction of the state.

In contrast, Malaysia, which follows the common law system, has a vastly different profession structure. A notary public in Malaysia is not a public official in the civil law sense, but rather a solicitor with limited authority to authenticate documents, administer oaths, and perform certain administrative actions (Anand et al., 2024). Because they do not create authentic deeds like notaries in Indonesia, the position of notary public in Malaysia does not touch upon aspects of national sovereignty. Therefore, the jurisdiction of a notary public is not strictly limited; they are not bound by administrative jurisdiction as notaries in Indonesia are. This flexibility makes Malaysia better prepared to face the liberalization of the services mechanism in ASEAN, as the notary public services in Malaysia are private and can be provided to clients in various countries without causing jurisdictional issues.

In the context of AFAS, the fundamental differences in the professional characteristics between Indonesian notaries and Malaysian notary publics give rise to highly significant implications. AFAS provides opportunities for service providers to expand across borders through four modes of service supply, namely cross-border supply, consumption abroad, commercial presence, and movement of natural persons. Among these modes, movement of natural persons and commercial presence are the most relevant to the notarial profession. However, because Indonesian notaries hold the status of public officials, they are not permitted to exercise their authority outside the territorial jurisdiction granted by the state. This condition implies that, although AFAS facilitates professional mobility, an Indonesian notary is legally unable to provide notarial services in other ASEAN countries, even in the presence of market demand or client requests. Such practice would not only constitute a violation of UUJN but also potentially raise issues concerning the legal validity of notarial deeds and infringe upon the principle of state sovereignty.

By contrast, Malaysia is positioned in a considerably more flexible manner. As the notary public is regarded as a private legal professional, they are permitted to provide services to foreign clients, including nationals of other ASEAN countries, either directly or through the cross-border supply mode (Sophar Maru Hutagalung, 2022). Malaysian notary publics are also permitted to establish offices or engage in cooperation with legal entities in other countries without exceeding the limits of their authority, provided that such activities do not encroach upon the domain of public deeds, which remains under the legal jurisdiction of the respective state. This flexibility enables Malaysia to be more adaptive in capitalizing on the liberalization of notarial services within ASEAN. This differentiation gives rise to an asymmetric condition, in which Indonesia is highly constrained by legal restrictions, whereas Malaysia enjoys greater freedom to adjust to the demands of the regional legal services market.

The first implication of this distinction concerns professional supervision. Since the functions of Indonesian notaries fall within the public domain, supervision is exercised through the Majelis Pengawas Notaris established by the government. This supervisory mechanism ensures that notaries perform their public functions in accordance with the law, thereby preventing any expansion of authority without legislative amendment. In contrast, the supervision of notary public in Malaysia is carried out by the solicitor professional body, rather than by the state in its capacity as a public authority (Moulay, 2023). Consequently, Malaysia possesses a broader regulatory space to adapt professional standards to market dynamics, including cross-border demands within the AFAS framework. Indonesia, by contrast, must maintain a sovereignty-based supervisory structure, such that even minor adjustments require legislative amendment.

The second implication concerns the cross-border recognition of professional qualifications. AFAS allows for the implementation of a Mutual Recognition Arrangement (MRA) for certain professions, such as architects, accountants, and engineers. However, the notarial profession is difficult to incorporate within the MRA framework due to the fundamental differences between civil law notaries and common law notary public. The qualifications of Indonesian notaries encompass an in-depth understanding of civil law as well as the exercise of public authority in the preparation of authentic deeds, whereas Malaysian notary public primarily focus on document legalization and legal formalities. If an MRA were implemented without due consideration of these differences, an imbalance would arise that could disadvantage Indonesia, as professionals from Malaysia would gain easier access to the

Indonesian market, while the reverse would not apply. Accordingly, AFAS generates the potential for structural asymmetry that must be addressed through policy harmonization.

The third implication lies in the realm of jurisdiction and the legal validity of documents. Authentic deeds prepared by Indonesian notaries are valid only within national jurisdiction and are grounded in a state mandate. Such deeds cannot be produced outside Indonesia by foreign officials. By contrast, documents legalized by a Malaysian notary public may be used internationally, including through apostille mechanisms or diplomatic legalization. This advantage positions Malaysia as more prepared to enter the regional legal services market, as its documents possess higher legal mobility. Indonesia, on the other hand, must preserve authentic deeds as an integral component of national legal sovereignty, rendering them unsuitable for indiscriminate liberalization.

Moreover, the implications of AFAS also extend to the competitive landscape of legal services. In the future, as the ASEAN market becomes increasingly open, Malaysian notarial services are likely to gain a competitive advantage due to their greater flexibility. Foreign service providers may utilize a Malaysian notary public to facilitate cross-border transactions, including banking, corporate, and investment activities. Indonesia, by contrast, risks falling behind, as notarial services cannot be provided on a cross-border basis without legal reform. Indonesia also faces the risk of losing a portion of the document legalization market, as foreign clients may prefer services offered by more flexible jurisdictions such as Malaysia or Singapore. This situation indicates that AFAS has the potential to exacerbate disparities in the competitiveness of the legal services sector within the ASEAN region (Meher et al., 2024).

In light of these various implications, Indonesia is confronted with an increasingly urgent need for legal reform if it seeks to adapt to the liberalization of services within ASEAN. Such reform does not necessarily require the removal of the notary's status as a public official, but may instead take the form of regulatory harmonization in certain areas. For instance, Indonesia could develop bilateral cooperation schemes with ASEAN countries concerning the recognition of document legalization functions without directly expanding notarial authority. Indonesia may also consider the establishment of a new category of legalization officers who do not possess the authority to produce authentic deeds, but who serve cross-border administrative needs, similar to the role of a notary public in common law systems. In addition, Indonesia could strengthen the role of embassies in providing notarial services to facilitate the needs of its diaspora, thereby avoiding the need to relax territorial limits on notarial jurisdiction.

Malaysia, by contrast, does not face the same structural constraints and is therefore better positioned to adapt to service liberalization. With the more flexible status of a notary public, Malaysia is able to design policies that support the regional expansion of legal services. This approach has the potential to enhance Malaysia's competitiveness in the legal services sector, increase foreign investment flows, and broaden professional opportunities for its legal practitioners.

Accordingly, it can be concluded that the implications of AFAS for the territorial jurisdiction of notaries are inherently asymmetric. Indonesia remains bound by a legal structure that positions notaries as public officials with clearly defined territorial limits, whereas Malaysia operates under a more adaptive professional framework that is not constrained by public jurisdiction. This divergence not only affects the mobility of legal professionals but also determines the respective readiness of each country to engage in ASEAN economic integration. To participate optimally in service liberalization, Indonesia must formulate a policy harmonization strategy that preserves the principles of state sovereignty while allowing sufficient flexibility to respond to regional dynamics.

b. Legal Certainty Of Notaries in Extraterritorial Jurisdiction

Legal certainty constitutes one of the fundamental principles of a state governed by the rule of law (rechtsstaat), affirming that every action undertaken by public officials and legal professions must be grounded in prevailing laws and regulations and must not be exercised arbitrarily. In the context of the notarial profession, the principle of legal certainty plays a particularly crucial role, as the legal product issued by notaries, namely authentic deeds, possesses perfect evidentiary value and is binding upon the parties. However, the issue becomes more complex when notarial activities are linked to extraterritorial jurisdiction, particularly within the framework of service liberalization in the ASEAN region through the ASEAN Framework Agreement on Services (AFAS). Cross-border mobility of

professional labor creates new opportunities, yet it also generates legal risks if not accompanied by legal certainty for notaries in exercising their authority beyond national jurisdiction.

Normatively, the position of notaries in Indonesia is explicitly regulated under Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris as amended by UU Nomor 2 Tahun 2014 (UUJN). Article 1 point 1 of UUJN stipulates that a notary is a public official (openbaar ambtenaar) authorized to draw up authentic deeds and to exercise other authorities as prescribed by law (Ningsih et al., 2022), Holding the status of a public official means that a notary performs certain public functions representing the state in the field of civil law. As notaries are vested with a portion of the state's attributed authority, their scope of work, limits of authority, and jurisdiction must be strictly regulated in order to preserve legal order. In this regard, Article 18 of UUJN expressly provides that a notary's territorial jurisdiction is limited to a single province, and that the notary is required to be domiciled and to exercise their authority within that designated territory (Putri & Marlyna, 2021). This territorial limitation constitutes a direct implementation of the principle of legal certainty, as it clearly defines the spatial scope within which a public official's authority is legally valid.

When linked to the issue of extraterritoriality, Indonesian notaries are legally prohibited from exercising their authority outside their provincial jurisdiction, let alone beyond the territory of the Republic of Indonesia. Exceeding these limits would render the notary's actions ultra vires, resulting in deeds that lack evidentiary force as authentic deeds and possess legal value only as private documents. This condition demonstrates that the principle of legal certainty under UUJN is inherently territorial in nature, whereby the authority of public officials is valid solely within the territorial scope of the applicable national law. Such territoriality is consistent with a fundamental principle of international law, namely that a state's authority cannot be exercised beyond its territory without the consent of another state. Accordingly, the territorial limitation of notarial jurisdiction is not merely an administrative requirement, but is intrinsically linked to the principle of state legal sovereignty.

Within the context of AFAS, the liberalization of professional services creates opportunities for service providers, including legal professionals from ASEAN countries, to engage in cross-border activities through various modes of service supply. However, it must be emphasized that AFAS does not automatically eliminate the limits of national legal jurisdiction. AFAS commitments are non-binding in nature and continue to allow member states to maintain domestic regulations concerning public functions and state sovereignty (Kaneko, 2023). Accordingly, despite the opportunities for cross-border mobility of legal professions, Indonesian notaries remain bound by UUJN and are not permitted to exercise notarial authority in other countries. This is where the issue of legal certainty becomes critically important: would Indonesian notaries enjoy legal certainty if they were requested to provide notarial services for documents intended for use abroad? The answer must remain anchored in domestic norms, namely that notarial authority is valid only within the territory of Indonesia.

Extraterritorial jurisdiction also intersects with the concept of inter-state recognition of deeds. Deeds drawn up by Indonesian notaries possess legal force only within Indonesia, provided that they are executed within the scope of the notary's lawful authority. When such deeds are intended for use abroad, what applies is not an extension of notarial authority, but rather mechanisms of legalization and apostille in accordance with the principles of private international law. Indonesia has ratified the Apostille Convention through Peraturan Presiden Nomor 2 Tahun 2021, enabling Indonesian documents to be used in other contracting states after obtaining an apostille. However, this mechanism does not confer new authority upon notaries to act beyond their jurisdiction; it merely alters the administrative process of document recognition. In this sense, the principle of legal certainty is realized through document verification mechanisms, rather than through an expansion of official authority.

By contrast, Malaysia, which adheres to the common law system, adopts a more flexible professional structure for notary public. In Malaysia, notary public are not public officials in the civil law tradition, but legal professionals granted limited authority to perform legalization, authentication, and formal execution of documents. Notary public do not possess the authority to produce authentic deeds as Indonesian notaries do. Because the functions of notary public are not directly linked to the exercise of state sovereignty, their jurisdiction is less rigid and not strictly confined by territorial boundaries. Malaysian notary public may exercise their authority for documents intended for domestic or international use, insofar as such activities comply with domestic regulations and client needs. This more flexible legal structure provides a different degree of legal certainty in the extraterritorial context, enabling Malaysia to respond more effectively to regional market demands without violating the principle of territoriality.

In addition to differences in the conceptualization of the notarial office, the regulatory frameworks of Indonesia and Malaysia also exhibit fundamental divergences in the regulation of authority and jurisdictional limits. In Indonesia, notarial provisions are comprehensively regulated under Undang-Undang Nomor 30 Tahun 2004 jo. Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris, particularly Article 15, which stipulates the authority of notaries to draw up authentic deeds, and Article 18, which affirms the limitation of notarial jurisdiction to a single province. By contrast, Malaysia regulates the profession of notary public through the Notaries Public Act 1959, which confers authority of an administrative nature, such as document authentication and the witnessing of signatures (Anand et al., 2024).

In addition, the Rules of the High Court 1980 and the provisions of the Evidence Act 1950 further reinforce the role of a notary public as an authorized actor in providing document legalization for both domestic and international purposes (Mohamad et al., 2023). No provision under Malaysian law that territorially restricts the scope of work of a notary public in the manner prescribed by Article 18 of UUJN, as notary publics are not public officials but legal professionals authorized by the High Court of Malaya. This regulatory divergence demonstrates that Indonesia centers legal certainty on strict limitations of public authority, whereas Malaysia achieves legal certainty through a more flexible framework of authority that is not tied to state sovereignty.

Accordingly, a fundamental difference in legal certainty emerges between Indonesian and Malaysian notaries in the context of extraterritorial jurisdiction. Indonesia, due to the characterization of notaries as public officials, applies the principle of territoriality in a strict manner. For Indonesian notaries, legal certainty entails absolute compliance with jurisdictional boundaries: authority is valid only within the province and does not extend beyond national borders. By contrast, Malaysia provides legal certainty through flexibility; the authority of a notary public is not linked to the exercise of public state functions, thereby avoiding jurisdictional issues in extraterritorial contexts. This divergence produces direct implications within the framework of service liberalization in the ASEAN region.

From the perspective of legal certainty, Indonesia faces greater challenges in aligning itself with the liberalization of notarial services. Legal certainty for Indonesian notaries may, in fact, be undermined if domestic regulations are not adapted to the dynamics of regional integration. Misalignment between national rules and international commitments may generate legal uncertainty, both for notaries and for service users. For instance, when service users from other countries request Indonesian notarial services for documents intended for cross-border use, notaries must strictly observe the limits of their authority in order to avoid producing legally defective deeds. In the absence of clear regulatory guidance, there is a tangible risk of legal disputes, rejection of deeds in foreign jurisdictions, or the imposition of administrative sanctions by domestic authorities.

To safeguard legal certainty in this context, Indonesia needs to strengthen its regulatory framework governing the use of notarial documents in cross-border relations. One possible approach is to refine UUJN, particularly the provisions concerning territorial jurisdiction and mechanisms for notarial cooperation with foreign countries. Indonesia should consider the development of mutual recognition arrangements (MRA) for the notarial profession within the ASEAN region, or at least establish administrative harmonization mechanisms without altering the status of notaries as public officials (Ridwan, 2025). In addition, Indonesia may strengthen regulations concerning legalization, apostille, and inter-notarial collaboration in cross-border transactions. Such reforms are not intended to expand notarial jurisdiction, but rather to provide greater legal certainty in international transactions.

On the other hand, from the perspective of international law, there exists the principle of comity, which entails voluntary respect for the jurisdiction of other states without diminishing sovereignty (Rombot et al., 2023). This principle is relevant in cross-border legal relations among notaries. For instance, Indonesian deeds intended for use in Malaysia may be recognized insofar as they comply with the formal requirements of the receiving state. However, such recognition does not imply that Indonesian notaries are entitled to act within Malaysian jurisdiction. The principle of comity may serve as a basis for administrative cooperation, but not as a justification for the conferral of extraterritorial authority. Furthermore, the principle of legal certainty requires that legal professions operate within clearly defined boundaries in order to avoid ambiguity that could be detrimental to the public. In this context, Indonesian notaries must strictly observe their limitations and refrain from providing services that could be legally construed as notarial practice in another jurisdiction. In other words, in extraterritorial settings, notaries may only engage in general legal consultation or assist with document

administration, but are not authorized to produce authentic deeds with cross-border legal effect. Such clarity in the delineation of roles constitutes a concrete manifestation of the principle of legal certainty.

In Malaysia, legal certainty is realized through a different approach: the functional flexibility of the notary public enables the provision of cross-border services without generating jurisdictional conflicts. Malaysia is therefore better positioned to derive greater benefits from service liberalization, as it can offer services of an administrative nature rather than exercises of public authority, thereby avoiding encroachment upon the sovereignty of other states (Fathurrahman, 2024). Accordingly, legal certainty in extraterritorial jurisdiction cannot be understood uniformly across countries with different legal systems. Indonesia upholds legal certainty by imposing strict territorial limits on authority to preserve the validity of authentic deeds and state authority. Malaysia, by contrast, achieves legal certainty through the functional flexibility of a profession with an administrative character. Within the AFAS framework, this divergence produces asymmetric effects. Indonesia must undertake regulatory adjustments to avoid lagging in the competition for professional services, while Malaysia is structurally better positioned to accommodate the mobility of professional labor within the ASEAN region.

Ultimately, strengthening legal certainty in the extraterritorial context for Indonesian notaries requires careful regulatory reform that remains aligned with the principle of state sovereignty. Policy harmonization, refinement of legalization and apostille mechanisms, and the development of regional cooperation are key to ensuring that Indonesia can preserve the integrity of the notarial profession while simultaneously adapting to the dynamics of ASEAN economic integration. Without such measures, Indonesia risks facing tensions between national regulations and international realities, which may ultimately undermine the very principle of legal certainty that the legal framework seeks to uphold.

4. CONCLUSION

This study demonstrates that the implementation of the ASEAN Framework Agreement on Services (AFAS) generates fundamentally asymmetric implications for the notarial profession in Indonesia and Malaysia due to their divergent legal traditions and institutional constructions of notarial authority. By placing Indonesian notaries within the framework of public office grounded in state sovereignty and territorial legality, AFAS encounters structural limitations that cannot be resolved solely through market-based liberalization. In contrast, Malaysia's characterization of the notary public as a private legal professional enables greater adaptability to cross-border service provision without encroaching upon public authority or jurisdictional sovereignty.

The primary scientific contribution of this research lies in its conceptual clarification that service liberalization under AFAS cannot be uniformly applied to professions that embody public authority. Unlike previous studies that focus on economic integration or professional mobility in general terms, this research reveals that the notarial profession occupies a unique position at the intersection of public law, private international law, and regional economic integration. The findings confirm that liberalization mechanisms such as mutual recognition arrangements (MRA) are structurally incompatible with civil law notaries whose authority derives directly from the state, thereby necessitating differentiated regulatory approaches rather than uniform harmonization.

Through a comparative synthesis, this study further establishes that legal certainty operates through distinct normative logics in Indonesia and Malaysia. Indonesia upholds legal certainty through strict territorial jurisdiction and the preservation of authentic deeds as instruments of state authority, whereas Malaysia achieves legal certainty through functional flexibility and administrative professionalism. This divergence underscores that legal certainty is not a monolithic concept but is deeply shaped by the constitutional position of legal professions within each legal system. Consequently, attempts to extend notarial services beyond national borders without acknowledging these foundational differences risk undermining both legal validity and public trust.

From a policy perspective, the research highlights that Indonesia's challenge is not the inevitability of liberalization, but the need for carefully calibrated regulatory adaptation. Rather than dismantling the public character of the notarial office, Indonesia must pursue alternative harmonization strategies, including strengthened apostille mechanisms, inter-state administrative cooperation, and differentiated roles for document legalization that do not compromise state sovereignty. Such an approach allows Indonesia to remain engaged in ASEAN economic integration while safeguarding the integrity of its legal system.

In conclusion, the implications of AFAS for notarial territorial jurisdiction reaffirm that regional integration in ASEAN must respect the constitutional identities of member states' legal professions. Sustainable integration cannot be achieved through uniform liberalization, but through nuanced legal differentiation that balances economic openness with the preservation of legal certainty and sovereignty. This study thus contributes a critical legal framework for understanding the limits of service liberalization and offers a principled pathway for harmonization that remains faithful to the rule of law in a pluralistic ASEAN legal order.

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