

CHAPTER IV RESEARCH FINDINGS AND DISCUSSIONS

A. Research Findings

The purpose of this research is to present an overview of the Latin Style Notary in comparison to the Anglo Saxon notaries public profession, therefore in this chapter, the researcher aim to answer the following questions:

- What is the main characteristic and the implementation of the Latin Notary Profession in civil law?
- What is the main characteristic and the implementation of the Anglo Saxon Notaries Public in common law?
- What are the comparison of the Latin Style Notary based in Indonesia and the Notary Public of Singapore?

1. The Latin Notary

a. Main Characteristic

In this chapter, the researcher presents the implementation of Latin Notaries Profession in civil law, by closely analysing the specific characteristics of the Latin style notary.

The Latin Notary Profession is unique and occupy a special

position among other legal practitioners, such as attorney, court bailiffs, and tax advisors. The Latin notary Is a private legal professional who advises and drafts legal documents for private parties, maintains a permanent record of the transactions and has the

authentication power of the state delegated to him/her. Certain legal acts require notarisation by law.

Most countries with a civil law tradition have a Latin notary profession. The civil law notary is an impartial legal expert, whose drafted documents are admissible in court without the need of further proof of authenticity. In contrast, countries in which common law prevails like the United States and Singapore have a system of notary

public, is generally less qualified than its civil law notary and enjoy less statutory power. Thus, the notary in civil law countries has a more dominant position than a notary public in common law countries.

A Latin Notary is a publicly appointed official charged by law, with drawing up authentic deeds and other duties. A notary has a duty to observe confidentiality. Like some other professionals, the notary also has a corresponding right in court, for example: the notary may refuse to give evidence or refuse to answer certain questions about information that has come to his attention, in his capacity of notary.

Given the important role the notary has, in legal structure of countries which having a Latin system, it is not surprising that there is a stringent regulation. The important position of the notary justifies the fact that the notary profession is often highly regulated in civil law countries.

All notaries are law graduates. Notary earn undergraduate law degrees and Master degree in notarial law for which specializations exist. After a long and serious legal training and a number of years work placement, he/she are allowed to become a member of the professions and are then entitled to use the reserved title of notary.

Latin notaries are in all cases nominated by the government.

An analysis of the function of Latin notaries reveal that the public service of the Latin notary has been enacted in the law. In several countries, governments have made the mediation¹ of the Latin notary mandatory for certain transactions. The common denominator of these transactions is that the notary tend to have a substantial influence not only on the parties involved, but also for third parties or the society in general. Examples include the acquisition of real estate and marriage contracts. Through the mandatory mediation of a Latin notary, the government aims at minimising the risk that transactions cause legal uncertainty, and thus attempts to minimise the negative effects on welfare.

The key characteristic of this public function is the impartiality of the Latin notary. The Latin notary must be free of bounds and independent of the respective parties. The Latin notary acts as a

¹Mediation means a neutral party, an attempt to bring about a peaceful settlement.

compliance officer who will exert an *ex ante*² control of the quality of the transactions. Obviously, this will not only creates benefits for the parties involved but also society as whole and reduce the number of potential disputes on legal transactions.

The Latin notary also, as part of his public function, acts as a registrar of official documents, he/she carries the obligation to undertake the necessary steps for the recording and registration of the

documents he authenticates in a wide variety of legal matters. Above that, Latin notaries commonly have and are forced by law to have own large archives, in which official documents are stored and made available to certain individuals. Therefore, the civil law Latin Notary system provide information for archives held by public authorities.

Latin notaries are subject to a number of general deontological rules such as the obligation to act neutrally and impartially, the duty of professional secrecy safe certain legal exceptions, and the obligation not to take part in transactions in which they have a conflict of interest.

In the researcher's view, what distinguishes Latin notaries from these other providers is the fact that the Latin notary, for some aspects of his activity, can be regarded as executing a public task.

²*Ex ante* translated from Latin means before the event. A term that refers to future events, such as future returns or prospects of a company. Using *ex ante* analysis helps to give an idea of future movement in price or the future impact of a newly implemented policy.

The Latin notary, when drafting and authenticating acts, as following:

1. Notary has to check the legality of these acts, advise the parties involved of the consequences thereof and refuse to co-operate in drafting and authenticating illegal acts. Firstly, this flows from the fact that notary has to advise the parties to a transaction of the possible consequences thereof. This effect is enhanced by his/her duty to act as a neutral, impartial advisor to all parties appearing before him/her and to avoid any conflict of interest. Through his/her advice, the Latin notary will ensure that all parties are well aware of the contents and effects of the transaction they are planning. This will not only save these parties the burden of trying to gather this information themselves or obtain similar advice through their own advisors, and thus save transaction costs. It may also prevent any misunderstandings that could later lead to conflicts.

2. Notary grants an official character to these acts which gives them a specific evidentiary power and the character of an execution instrument. Secondly, legal certainty is enhanced by the duty of the Latin notary to check the legality of the acts he authenticates and to refuse any cooperation to illegal acts. In doing so, he/she acts as a gatekeeper who contributes to the enforcement of the law.

Through this *ex ante* control on transactions, the risk of litigation on the validity of certain acts at a later stage is eliminated or at least reduced.

3. Notary acts as a registrar of official documents and has to keep archives of the acts that have been authenticated by him/her; Thirdly, legal certainty is enhanced by the particular evidentiary power of Latin notary acts and the fact that the Latin notary is obliged to keep archives of all acts authenticated by him. These official documents will be easily available when any discussion arises on a transaction that was guided by him/her and will, because they deliver evidence of what has been said and agreed before him/her, diminish the risk of contradictory views and interpretations.

4. In some cases, Notary has the duty to provide legal certainty services on behalf of the tax authorities. Fourthly, enhanced legal certainty will result from the role of the Latin notary act as an execution instrument. This allows for an execution without the intervention of any judicial body and thus leads to a quicker enforcement at a lower cost of certain contractual obligations in case of a dispute. This means that the existence and contents of rights will be established sooner and legal peace will be restored in

a more efficient manner than through the course of sometimes lengthy and cumbersome judicial procedures.

Another important is the fact that, through some aspects of his/her activity, the Latin notary contributes to a more effective and efficient collection of taxes. An effective task collection is characterised by the fact that all due taxes are paid and that tax evasion is eliminated.

A Latin notary may contribute to this through his obligation, in some countries, to check whether the seller of real estate has tax debts and, if so, to withhold the amount of these taxes from the selling price and transfer this amount to the tax authorities. His obligation to gather and transfer certain information on taxable transactions will also contribute to this. As far as the gathering of information on taxable transactions is concerned, it can be argued that the Latin notary, as a close witness to the transaction, will be able to gather this information than the tax authorities who, as third persons, are not themselves involved in it. In the foregoing, the researcher has indicated how the Latin notary can also contribute to an effective and efficient collection of taxes to the benefit of the government and society as a whole. That way, the Latin notary operates at the source and can probably

function in a more effective and efficient manner than the tax authorities.

It has to be pointed out that these beneficial effects would quite probably not be realised without the mediation of a Latin notary as a neutral and impartial actor. Through his role as an impartial actor and gatekeeper, the Latin Notary substantially prevents the number of disputes on these matter and thus contribute to a stable society. The

Latin notary does not merely record or register official documents but, as indicated above, also controls the validity of the property title and informs the parties of all other relevant legal issues.

When advising on marriage contracts and partnership agreements, wills and acts of gift, the Latin notary, as an impartial advisor, will inform the party or parties thereto of all possible legal implications. The same will be true when he/she acts as a mediator in family law matters, for example at the occasion of a divorce with mutual consent. Contrary to common law notary public which is recognized as a lawyers, he acts for both parties which may not only lead to reductions in direct costs but may also speed up procedures.

Above that, through notary role as a gatekeeper in civil law, he/she will ensure the conformity of all acts he authenticates with all binding laws and regulations. Through his role in inheritance matters, his mediation will also warrant a correct settlement of inheritances.

Here too, the Latin notary will through his mediation contribute to legal certainty concerning the rights and duties of the parties involved and will therefore reduce the number of potential disputes. While at first glance all this would seem to work to the exclusive benefit of these parties, this legal certainty on rights and duties can benefit certain third parties and society as a whole.

By doing this, the notary draws up a contract with clear and precise legal terms, with clear contents, leaving as little room as possible to doubts, disputes and lawsuits. This duty of the notary requires the utmost impartiality. Impartiality is strictly imposed by law and any violation is severely sanctioned. As the judge and differently from a lawyer, the notary is an impartial third party, who has the role to make sure of the results looked for, advise on the consequences and highlight any risk or danger for all the parties.

Finally, the notary has also a duty to properly preserve the original deeds or minute in his office for future consultation or issue of certified copies. The originals deed cannot leave his office unless he receives a Court order. The second main function assigned to a Latin notary is meant to guarantee the achievement of the desired results.

As a matter of fact, as far as the content of the contract is concerned, it is a specific duty of the notary to understand exactly the

results that the parties want to achieve and translate them into legal terms, giving the parties the safest and most effective services.

b. Quality of Latin Style Notary

Since the notary fulfils an important public task, he/she has to be accessible for everyone. Notary authenticate what clients want and have agreed upon, thus guaranteeing the legal validity of the transactions. The quality services provided by Latin notaries has two

(two) dimensions, namely:

1. Integrity such as impartiality and trustworthiness;

The Latin notary must not only take account of the interests of his/her clients. The duty of care of the Latin Notary also extend to the interest of the counterparties to the transactions, as well as to the interest of third parties and society at large.

2. Legal quality such as quality of the notarial acts.

As a result of legal certainty, the notarial act as authentic deed, is

granted:

- Privileged Evidentiary Strength;

In the civil law trial, substantially based on written evidence, the content of an authentic deed must be considered legally true and trustworthy by the judge, until impeached for falsity with a special procedure.

- Priviledged Enforceability; Authentic deed enjoys the enforceability of a definitive judgement. The civil law notaries main service is drawing up authentic deeds. By authenticating agreements or documents, the notary gives a special value, as an authentic form of evidence and as regards their enforceability.
- Almost exclusive entry into public register.

Only authentic deed by notaries can be entered into public registers, such as the company registry, land registry. This means that can be guaranteed at least up to a certain extent that notaries' records are legally and trustworthy, which have a special legal reliability and certainty.

c. Duty of Latin Style Notary

The notary's duties³ can be divided into legal and extralegal duties. Certain legal transactions require a notarial deed, as people have no choice but to go to the notary. A notarial deed is an authentic document, drawn up by a notary. The difference with other official documents is that only a notary has the authority to draw up a notarial deed. A notary is also allowed to draw up other official documents, except if a public servant has the exclusive authority to do so.

³Duty refers to something that should or ought to do.

There are some legal transactions for which a notarial deed is not officially required to make it legally valid. People are free to lay down their agreement in a notarial deed rather than in a private document. Doing so has a number of benefits:

1. After the notary has signed the document, the date of the document is definite for all parties. It becomes also a fact that the persons mentioned are indeed the signers of the document.
2. A certified copy can be drawn from a notarial deed. If someone has acknowledged in a notarial deed that he has a debt, and he does not fulfil his obligations, the party in possession of the certified copy can turn to sale under distress without judicial intervention;
3. A notary is an impartial expert in legal transactions, who represents all parties involved in the making of the notarial deed.

d. Task of The Latin Style Notary

Notaries have an information advantage over their client. Most clients have little to no legal knowledge. Clients are free to choose their notary and the latter may not refuse them to his/her services. Clearly, most people cannot build up experience with notarial service since most people visit a notary only a few times in their life.

Latin notaries provide a varied and complex number of services. The exact scope of Latin notary activities may vary from one country to another. However, these services can generally be grouped

into two main categories of services.

On the one hand, the Latin notary is entrusted by the government with the task⁴ of drafting and authenticating documents, of undertaking certain steps to ensure the recording and registration of these documents, and of keeping archives of all the documents that were authenticated by him/her. This is the notary's main task. Apart from that, the Latin notary in subsidiary order offers legal advice on a wide variety of legal issues.

The Latin notary's main task in relation to authentic documents can be divided further in three categories and will most commonly include the following services:

1. Services relating to the transfer of real estate property, namely:
 - Drafting and authenticating contracts relating to the transfer of real estate property;
 - Drafting, authenticating and registering mortgages;
 - Organising public sales (by auction) of real estate;
 - Dividing property rights, for example: dividing the property rights to a certain estate into apartment rights;
 - Drafting and authenticating lease contracts;
 - Providing advice on these issues;

⁴Task means a job of work, something that someone has set for you to do

When guiding the transfer of property rights to real estate and authenticating the acts relating to this, the Latin notary will be obliged to control whether the seller is actually the rightful proprietor. He/she will further have to establish what other rights can be exercised in relation to the sold property and which persons are the beneficiaries of these rights. In doing so, he/she will have to retrace any transactions relating to the sold property that have been executed during a substantial period in the past.

Apart from that, the Latin notary will, as a part of his duty to offer impartial advice, also inform the parties to the transaction of any obligations that may be based on a variety of laws and regulations, for example certain mandatory requirements imposed by environmental laws.

It is clear that, in doing so, the Latin notary contributes to legal certainty concerning the property rights to real estate and the existence of other rights and obligations. His mediation will therefore reduce the number of potential disputes on these rights. This will in the first place be to the benefit of the parties to the transaction. However, it is clear that the Latin notary's mediation can also benefit a number of third parties and society as a whole. As indicated above, this will alleviate the burden on the judicial system and thus benefit the whole of society.

Furthermore, certainty on the existence and exact scope of property rights is crucial in ensuring the good functioning of the real estate market. Since uncertainty surrounding these property rights could destabilise this market, it is obvious that a wide range of actors involved in this market benefit from the Latin notary system. This is particularly true for financial institutions who provide mortgage loans. A house will often be the largest and most valuable asset of families. In conclusion, the function of the Latin notary act as an execution instrument may simplify and thus lower the costs of an execution procedure.

2. Services relating to family practice, namely:

- Drafting or modifying marriage contracts and partnership contracts;
- Drafting or modifying and authenticating wills;
- Acting as a mediator in family law matters, for example: divorces with mutual consent;
- Settlement of inheritances;
- Drafting and authenticating acts of gift;
- Ensuring that the rights of minors or legally incapacitated persons are guaranteed in transactions effectuated with his assistance.

When advising on marriage contracts and partnership agreements, wills, and acts of gift, the Latin notary. As an impartial advisor, will inform the party or parties thereto of all possible legal implications. The same will be true when he acts as a mediator in family law matters, for example at the occasion of a divorce with mutual consent. Contrary to other advisors in common law, such as lawyers, he acts for both parties which may not only lead to reductions in direct costs but may also speed up procedures. Above that, through Notary role as a gatekeeper, he/she will ensure the conformity of all acts he/she authenticates with all binding laws and regulations.

Through his/her role in inheritance matters, his mediation will also warrant a correct settlement of inheritances. Here too, the Latin notary will through his mediation contribute to legal certainty concerning the rights and duties of the parties involved and will therefore reduce the number of potential disputes.

Marriage contracts and partnership agreements will obviously not only affect the interests of the partners to the agreement, but will also affect the legal position of family members that are dependent on them and, in the first place, the children of both or either one of the partners.

Further, such agreements may also affect the interests of the creditors of one or both partners. For example, when one of the partners is a merchant, he/she will vouch for his commercials debts with his private assets. When he marries under a system of separation of goods, it is in the interest of his/her creditors that this separation of goods is not effectuated in breach of the law and that they are informed of this agreement. These interests may then be protected by the mediation of the Latin notary as a gatekeeper.

Wills and the settlement of inheritances can also affect a wide number of persons. First of all, it is necessary that a notary as an impartial authority establishes which persons are entitled to the whole or parts of an inheritance, taking account of any existing wills. Some of these persons may never have been involved in any transactions relating to the planning of the inheritance and have no knowledge thereof. Furthermore, it is important that the beneficiaries of a will or inheritance can obtain an official declaration from a notary as an impartial authority on their rights to be able to claim their part.

This declaration is particularly more important when some of the assets of the testator are under control of third parties, for example accounts with financial institutions, since they will only be able to transfer these assets when they are assured that the

person claiming any rights thereto can prove this on the basis of such official declaration. Lastly, for obvious reasons, a correct settlement of inheritances and obtaining knowledge thereof can also benefit creditors of the testator or the beneficiaries of his estate.

Acts of gifts likewise generate certain effects for third parties that are not involved. For example, a gift may affect the rights of legal heirs that have not been involved in the act. It is therefore crucial that there exists some legal control as to the validity of gifts and that these gifts can be recorded in an official document to create certainty on the existence and exact contents of it for future use.

Apart from the fact that a wide range of third parties are affected by these transactions in the area of family law, society as a whole may also benefit from the mediation of a Latin notary. As indicated, through his gatekeeper function and the fact that, a notary as an impartial advisor, he/she informs all parties of the legal consequences of the transactions they are engaging into. The Latin notary will reduce the number of disputes and thus alleviate the burden on the judicial.

In most countries where the Latin notary profession is recognised, there exists a consensus that family relations, no

matter between which persons they are established and what legal form they may assume, are still the cornerstone of society.

Through his/her role as an impartial advisor and gatekeeper, the Latin notary substantially prevents the number of disputes on these matters and thus contributes to a stable society.

Finally, in inheritance, wills and gifts matters the Latin notary has the duty to inform the tax authorities of the existence and value of the transactions he/she is settling. That way, for the same reasons as described, he/she can contribute to an effective and efficient collection of taxes and duties on successions and gifts.

3. Services provided for enterprises and businesses, namely:

- Establishing and modifying the articles for corporations;
- Establishing and modifying the articles for foundations, trust and associations;
- Offering guidance for the transfer and creation of shares;
- Offering guidance for mergers and scissions of corporations;
- Providing advice on shareholder's agreements.

Through Notary role as a gatekeeper, the Latin notary further ensures that legal persons are being established in line with all legal provisions. The same goes for mergers and scissions or all

other structural transactions for which his/her mediation is mandatory. That way, his/her mediation is likely to reduce the number of potential disputes.

Mediation by a Latin notary is mandatory for certain business transactions in several countries. Most of these relate to the establishment of corporations, foundations, trusts and associations or any structural changes thereof, like issuing shares, capital increases, mergers and scissions. These transactions require a document which is authenticated by a Latin notary. Here too, the Latin notary will have to exercise control over the legality of the acts he/she authenticates and thus function as a gatekeeper.

In some countries, the establishment of a limited liability company requires providing a financial plan which the Latin notary has to keep in his archives. This financial plan may play a role in assessing the liability of the founders of the company in future disputes.

Such transactions will obviously not only generate effects on the parties involved, but also on third parties. When a new legal person is created or its characteristics are modified, it is necessary that third parties are informed of this and also obtain certain basic information on the identity and characteristics of this legal person.

Shareholders, directors, clients and suppliers and all other creditors

and, finally, the tax authorities all have a clear interest in this. The financial plan, kept under the custody of the Latin notary, will not only affect the position of the founders of the company, but also future creditors. Thus, the Latin notary's services may benefit a large number of persons and society as a whole.

As said, next to these three main areas of activity, a Latin notary can also provide legal advice on a wide variety of legal issues, including:

1. Providing advice on taxation issues;
2. Providing advice on estate planning;
3. Providing advice on different types of contracts;
4. General legal advice, both on national and international law issues.

e. Notarial Act

Notarial acts is a legal documents of writing prepares by civil law notaries. They also require unusual solemnity, being written with notarial wording according to strict prescribed formalities of language and often form precedents. A notarial act is self authenticating and endowed with executory force, direct and primary evidentiary status, and probative value at civil law.

This value amounts to the fact that, when a civil law notaries

drafts or signs his/her name to a document, the result in virtually all

civil law jurisdictions is a nearly conclusive presumption that the document is a true record of the facts asserted or recorded within.

Most importantly, the acts that have been authenticated by Latin notaries and the circumstances under which this takes place possess certain specific characteristics:

1. The Latin notary is obliged to check the legality of the acts he/she authenticates and has to advise the parties thereto of the implications and consequences to which they submit themselves.

He/she has to refuse his/her cooperation in drafting and authenticating acts of an illegal nature.

2. Secondly, acts that have been authenticated by a Latin notary possess specific evidentiary power and deliver proof of what has been declared by the Latin notary. Since they also have an official character, they can be registered in certain public registers. They can often also serve as an execution instrument, meaning that they can form the basis of (forced) execution of contractual obligations without any further intervention of a judicial body being needed.

3. Thirdly, Latin notaries will be obliged to keep archives of the acts that have been authenticated by them. That way, they act, to a certain extent, as a registrar of official documents.

Authentic acts and/or Notarial Act are open to rebuttal, but a contesting party bears the burden of bringing a collateral attack against

the authenticity of the act, and must prove the instrument's invalidity by full, clear and strong evidence. This comes from the fact that a notary is expected to verify the facts, assertions, or events mentioned in his/her act, thereby assuming responsibility for its contents, giving warrant to its authenticity, and entitling it to full faith and credit in law. To ensure this, a notarial act is in authentic or public form when it is signed by the parties to the act, instrumentality witnesses, and the attesting notary.

Traditionally, notarial acts are first noted as minutes, originally known as protocols, as memoranda or rough drafts. The fair minutes constituted a minute copy, which was filed and archived in a notary's protocol, thereafter known as the protocol copy. The particulars of the act, namely: appearer, fees, subject matter, witnesses, date, and so forth, were recorded in a register or logbook and the original briefs were inserted into minute books.

From the protocol copy the notary extends a fully engrossed execution copy, known as an engrossment, which serves for all intents and purposes as the genuine document, since it contains not only the transactional details but also the formulaic language and wording of notarial acts. It is also the only copy that has fresh signatures and seals on it. The engrossed copy is issued to the client or clients, referred to as an appearer or appearers.

However, appearers are generally only entitled to one full endorsed execution copy, so any other copy issued thereafter is an exemplified notarial copy, which does not contain the appearer's fresh signatures and lacks an enactment clause and anything else that would make it valid in the eyes of the law. Exemplifications are therefore only for reference purposes. In contrast, acts are in public form with the minute being the protocol copy, are retained or recorded by a notary. Minutes, which are in many cases illegible and incomplete, are deemed firsthand proof of an act and are considered to be originals, whereas the engrossment is not. The minute is therefore the authenticum, or original instrument of writing, as distinguished from the copy with executory force, or *instrumentum*. Notarial instruments also cannot be altered or overridden by preexisting or subsequent private documents.

In some cases, acts are drawn up in private form, that is, only an execution copy is produced and issued to the appearer, and the notary does not retain a protocol copy of any kind. This applies to private instruments intended for a single party, having short term legal effect, and not producing third party benefits, such as certificates of good standing, powers of attorney, promissory notes, covenants, notarial affidavits and attestations, rent and pay receipts, and pension and annuity arrears documents.

2. Notary Public

a. Role of A Notary Public

The historical origins of the civil law notary and the common law notary public are the same. However, the two occupations have developed along very different lines. Common law notary public is a person of very slight importance, whereas the civil law notary is a person of considerable importance.

The notary in the typical civil law country serves several principal functions, as follow:

1. First, civil law notaries draft important legal instruments such as wills, contracts, corporate charters and conveyances of land. The notary do most of his/her work in civil law countries/nations.
2. Second, the civil law notary authenticates instruments which, called a notarial act or an authentic act, has special evidentiary effects. It conclusively establishes that the instrument itself is genuine and that what it recites accurately represents what the parties said and what the notary saw and heard. Evidence that contradicts statements in a notarial act is not admissible in an ordinary judicial proceeding. One who wishes to attack the authenticity of a notarial act must institute a special action for the purpose and such an action is rarely brought.

3. Third, the notary acts as a kind of public record office, therefore the notary is required to retain the original of every instrument he/she prepares and furnish authenticated copies on request. An authenticated copy usually has the same evidentiary value as the original.

In contrary, the Anglo Saxon notaries public has a very different role. Common law notary only represents only one party in a legal transaction. He/she does not have to look after the interests of other parties involved in the transactions or the interests of third parties. He/she thinks partially, is partial and wants to be partial.

Given its common law system, which has a different type of notary, hereinafter notary public is relatively loosely regulated than in civil law notaries which is tightly and highly regulated. The Anglo Saxon notary public does not have the Latin notary function and duties.

Before the researcher launch into a discussion of the differences between the Latin notary and the Anglo Saxon notaries public, the researcher will first look into the function and duties of notary public.

The task of Latin notaries clearly contrast with the limited tasks of a notary public in the Anglo Saxon system. In a common Law countries, the law is developed through judgements. Jurisprudence is

the most important source of law. The adversarial approach can be found in all aspects of the common law system. For instance, when buying a house, the buyer and the seller can seek independent judicial advice, whereas under the Civil Law system both parties are advised by one notary, who is independent and impartial.

b. Not A Legal Professional

In Common Law jurisdictions, lawyers are the only legal professionals. The task of a legal professional in the common law involves both giving legal advice and representing clients in Court.

However, the notary public is not a legal professional. He is not a person who practices law. Therefore he or she is strictly prohibited to give legal advice and draw up documents, unless he/she is also an attorney. In contrast, in civil law jurisdictions the legal profession is divided in two groups; only lawyers have the authority to represent clients in Court, other legal experts merely give advice.

Given the important role of the Latin notary, the Latin notary is a legal professional. The Latin notary is responsible for the legality of the transactions, has to balance the interests of all parties involved,

need to be independent and impartial. In contrary, the notary public is not a legal professional, therefore the Anglo Saxon notary public is not able to achieve comparable benefits with respect to increasing legal certainty. In addition, also an effective and efficient collection of taxes

is not guaranteed by the notaries public in the Anglo Saxon system.

As we will see, many differences between the Latin notary

and the Anglo Saxon notary public can be explained by the fact that
the Latin notary is a legal professional and the Anglo Saxon notary

public is not.

c. Function And Duties

Several state officials, including the governor, judges and

county clerks can appoint a notary public. The requirements one has to
meet to become an Anglo Saxon notary public vary between states, as
each state has its own notary law.

In general, someone who wants to become a notary public has
to meet the following requirements, such as: to become a notary
public, a candidate must complete several steps as follow:

1. be at least 18 years old;
2. A resident of the Stat;
3. Candidate must fill out an application and submit it to the
appropriate government agency;
4. Not be a convicted felon;
5. Be able to read and write English.

Some states which adopted common law system, require
potential notaries to pass an exam as part of the application process.

These exams are not comparable to the high requirements for Latin

notaries. The required education of a Latin notary is more comparable to the required background of an attorney in the common law countries. After a notary is appointed, he is authorised to provide his notarial services throughout the state in which he is appointed. He is not allowed to offer his services outside his own state.

The Latin notary is a legal professional like an attorney in Anglo Saxon system, who also prepares documents on behalf of both sides in a transaction and ensures that these documents meet the legal requirements of the appropriate jurisdiction. Giving legal advice and making up notarial deeds is the most important function of the Latin notary whereas Anglo Saxon notary public is strictly prohibited to give legal advice and draw up documents unless he is also an attorney.

An Anglo Saxon notary public is a public official whose main powers and duties include administering oaths and attesting to signatures, both important and effective ways to minimize fraud in legal documents with high moral character and integrity. The notary public is legally empowered to witness and certify the validity of documents and take attestations and depositions. However, the notary public is not impartial and independent like the Latin notary.

The main function of the Anglo Saxon notary public is to deter fraud. Notary public have two main duties that remain consistent from state to state which is attesting to signature on a documents as the most

important duty. The signature attestation must be done with the notary and the signatory in a face to face procedure helps to ensure the authenticity of the signature. Clearly, it aids in minimizing fraud.

In a case of notarizing a signature by notary public, the client who wants his/her signature notarized must present sufficient evidence to prove his/her identity, as the notary public has to determine the identity of the person requesting the notarization, and then sign the

necessary document with the notary public as a witness to the signing.

The notary public completes the process by stamping or sealing and signing the documents. The notary has to affix his notary seal to every notarised document, which ensures the integrity and authenticity of the signature on the document. The notary may not notarise a signature of a person who has not appeared before him/her.

For many documents, the law requires notarisation. Certain affidavits, deeds and powers of attorney may have no force of law,

unless they are properly notarised. If notarisation is not required by law, clients can involve a notary to strengthen a document's validity and protect it from fraud. Only if the Notary Public is uncertain of a

signer's identity, willingness or general competence or when he/she has a good reason to suspect fraud, he/she can refuse to notarise a document.

Notary Public can only be held liable for actions they take while performing the notary function. Although notary public are responsible for attesting to the validity of a signature, the notary public are not responsible for the validity of the documents or contents.

Unlike the Latin Notary, the Anglo Saxon notary public is not responsible for the accuracy or legality of the documents he notarises. The notary certifies the identity of the signers, who are responsible for

the content of the document.

Is not possible to the notary public to draw up a private act in a form of a public act, because the role of the notary public in common law countries does not correspond to the notary in civil law countries. The notary public only legalizes signature. Furthermore, A document of an Anglo Saxon notary public has little probative value in Court, while a document of a Latin notary has strong probative value.

In conclusion, the Anglo Saxon notary public's primary services are as follow:

1. Taking oaths and declarations regarding the truth of material statements contained within documents that require such an act;
2. Attesting or acknowledging acts by witnessing the signing of a document; the notary verifies the signer's identity, checks the validity of the signature, countersigns and seals the document;

3. Certification by warranting the truth of a fact, above the mere act of witnessing a signature. The notary can certify a copy of a document for example by comparing it to an original.

B. Discussion

1. The Implementation of a Latin Style Notary In Indonesian

There are at least three distinct branches of legal professionals in Indonesian such as notaries, advocates and legal consultants. Indonesian have the Latin Notary system, which has an exclusive right.

Under the civil law system, both parties are advised by one notary, who is independent and impartial. Therefore, Indonesian notary has to balanced the interest of all parties involved in a legal transaction, including the interests of third parties.

a. The Integrity And Legal Quality

An Indonesian notary is a legally and highly trained civil law notary, who is appointed by the decree of the Minister of Law and Human Rights of Republic of Indonesia.⁵ Given the important role of Indonesian Notary which is having the Latin system, it is not surprising that there is a stringent regulation. Several policy instrument are aimed to support the provisions of high quality notarial services in Indonesian.

⁵hereinafter refers to Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia.

With the introduction of the new Act No. 30 Year 2004

concerning the status of Notary (hereinafter referred to as "Undang-Undang Tentang Jabatan Notaris"), which was ratified by the President of Republic Indonesia, dated 6th October 2004, the following

laws and regulations below become null and void:

1. *Reglement op het Notaris-ambt in Indonesie (Staatblaad 1860:3)*, which was lastly amended in the Official Gazette Year 1945 No. 101;
2. *Ordonantie* concerning the Notary Honour, dated 16th September 1931.
3. Act No. 33 of the Year 1954 regarding the Assistant Notary and Assistant Temporary, which was lastly amended in the Official Gazette Year 1945 No. 101, Supplement Official Gazette Number 700;
4. Article 54 Act No. 8 Year 2004 concerning the Amendment of the Act No. 2 Year 1986 regarding the General Court, which was lastly amended in the Official Gazette of Republic of Indonesia Year 2004 No. 34, Supplement Official Gazette Republic of Indonesia Number 4379;
5. Government Regulation No. 11 Year 1949 regarding the Sworn or Promise of The Notary Position.

According to Article 1 of UUJN, a notary is a general officer who has the authority to draft, draw up, and make an authentic deeds and other authority as mentioned in this UUJN. Indonesian notary is entrusted by the government with the task of drafting and authenticating documents. This effect is enhanced by the latin notary system to acts as a neutral, impartial advisor to all parties appearing before him/her and to avoid any conflict of interest.

According to Article 15 of UUJN, this is the Indonesian notary's main task. A notary has the authority to draft and make authentic deeds, certify and legalise a signatory, certify a true copies of the originals, and providing legal advice.

An authentic deed is an authentic document drawn up by a notary in civil law countries. Certain legal transactions require an authentic deed, therefore people have no choice but to go to the civil law notary. The researcher provide an overview of the most important transactions for which a notarial deed is required, such as real property services⁶, family services⁷, and corporate services⁸. The difference with other official documents is that only a Latin notary has the authority to draw up a notarial deed.

⁶Real estate services such as conveying real property, creating or cancelling mortgages.

⁷Family services such as drawing up marriage contracts and partnership agreements, drawing up or altering wills.

⁸Corporate services such as establishing foundations and associations, incorporating public and limited liability companies.

On the one hand, the Indonesian notary undertaking certain steps to ensure the recording and registration on the documents and of keeping achieves of all the documents that were authenticated by him/her which have the Latin notary system. There are some legal transaction for which a notarial deed is not officially required to make it legally valid. People are free to lay down their agreement in a notarial deed than in a private document.

There are a number of benefits when people lay down their agreement in a notarial deed. People are given the choice to go to the Latin notary for legalization, rather than in private documents. After the notary has signed the document, the date of the document is definite for all parties. The notary has to determine the identity of the person requesting the notarization. The notary may not notarize or legalize a signature of a person who has not appeared before him/her, which ensures the integrity and authenticity of the signature on the documents. It becomes also a fact that the persons mentioned are indeed the signers of the document.

The Indonesian notary acts as a kind of public record. The notary is required to retain the original copy of every instrument he/she prepares. A certified copy can be drawn from a notarial act/deed. An authenticated copy usually has the same evidentiary value as the original.

Apart from that, the Indonesian notary in subsidiary order offers legal advice on a wide variety of legal issues. The Indonesian notary is an impartial expert in legal transactions, who represents all parties involved in the making of the notarial deed. Therefore, the Indonesian notary must not only take account of the interests of his/her clients. The duty care of the notary also extends to the interests of the counterparts to the transactions, as well as to the interests of third parties. In this way, most important public good services provided by the Latin notary profession is legal certainty.

In particular, the Indonesian notaries provide certain services that not only benefit the parties to a certain transaction, but also a wide variety of third person and society as a whole and thus increases legal certainty. In this way, the quality of the services provided by Indonesian notary has three dimensions according to Article 16 of UUJN, such as integrity, legal quality and service or commercial quality. In this respect, the Indonesian Notary which is adopted Latin system, acts as a neutral, impartial professional and has to avoid any conflict of interest. Implies that the Indonesian notary must be free of bounds and independent of the respective parties.

First of all, there are a number of rules related to entry to the Indonesian notarial profession, according to Article 3 of UUJN namely:

1. Candidates for notarial positions must ordinarily be graduates of university law school;
2. Required master in notarial law;
3. Required on the job training or work placement;
4. Be at least 27 years old;
5. The oath that every notary has to take upon his/her appointment;
6. Must serve an apprenticeship be at least 12 months in notary's office.

Next to regulation of entry to the Indonesian notarial profession, regulatory oversight should guarantee compliance with the ethnic code of a notary and its character which contains five articles. This additional regulation was ratified by Commission D, in the field of Ethnic Code of the organization notary Indonesia during the Congress of the organization Notary Indonesia, which was held in Bali, dated 26th October 1990.

Most importantly, the Indonesian notary is responsible for the legality of the transactions, criminally liable for committing fraud and subject to disciplinary sanctions for professional mistakes. Lastly, acts that have been authenticated by an Indonesian notary, possess specific evidentiary power and deliver proof of what have been declared by him/her. This extends to the authenticity of the statements made by the parties and the facts seen, heard and verified by the notary. The

notarial act also makes the contract immediately enforceable. This allows for an execution without the intervention of any judicial body and thus leads to a quicker enforcement at a lower cost of certain contractual obligations in case of a dispute.

Consequently, the existence and contents of right may be established sooner and legal peace may be restored in a more efficient manner than through the course of sometimes lengthy and cumbersome judicial procedures.

The duties and functions of Indonesian notaries are more than just the clerical and administrative functions associated with the creation of legal documents, but notaries provide an important contribution across a broad spectrum of social activities as noted above ensuring that notaries are an integral party of the Indonesian legal profession.

2. The Implementation of an Anglo Saxon Notary Public in Singapore

Singapore law, which has its root in English law, has now evolved into a distinctive jurisprudence. It continues to absorb and modify the common law as well as best practices from other mature legal systems.

The common law system in Singapore bears material differences from some Asian countries which have imbibed the civil law tradition such as the legal profession.

The common law is one important strand of Singapore politico legal fabric. Singapore has inherited the English common law tradition as a part of Anglo Saxon countries and thus enjoys the attendant benefits of stability, certainty and internationalization inherent in the British system.

Singapore shares similar English common law roots with some neighbours, such as Malaysia, Brunei, India and Myanmar through the details of the application and implementation will differ according to each country's specific needs and policies, same goes to the legal professional they are adopted.

a. Legal Profession in Singapore

Unlike the legal profession in England which is divided into barristers⁹ and solicitors, the Singapore legal profession is a fused profession with each lawyer who is called to the bar known as an advocate and solicitor¹⁰, with the exclusive right of audience to appear

⁹Barristers means an advocacy specialist; a lawyer whose main work is directed towards the courtroom. In England and some other Commonwealth jurisdictions, a legal distinction is made between barristers and solicitors, solicitors are the main providers of oral or written advice, and barristers conduct litigation in the court, although the distinctions are increasingly becoming blurred. Nevertheless, in England and Wales, barristers and solicitors work together: the solicitor would typically make the first contact with a client and if the issue cannot be resolved and proceeds to trial, the solicitor would transfer the case to a barristers for an opinion or advocacy in the courts. Lawyers in other countries sometimes use the title "barristers and solicitor" because there is no legal distinction between the roles. In the USA all lawyers are referred to as "attorneys". In the UK a lawyer cannot be both a solicitor and barrister.

¹⁰Solicitor means a lawyer who gives legal advice drafts documents such as contracts and wills, and arranges the purchase and sale of land and property. A solicitor's main work would not, typically, involve regular attendance at court for advocacy. His/her involvement in litigation is usually confined to the pre-hearing stages.

before all courts of justice in Singapore. The Singapore lawyer may act as both an advocate¹¹ as well as a solicitor.

As an advocate and solicitor of the supreme court of Singapore, he/she has the right to appear and plead before the Singapore court of justice. The opportunities of a Singapore lawyer are fairly varied, he/she may, for example, wish to serve as a legal or judicial officer in the Singapore legal service, an in house counsel of a company or practise law in a local or international law firm. In the local set up, the lawyer may handle litigation, corporate work, real estate and intellectual property work. Outstanding litigators, practitioners, and law academics have been appointed as senior counsel in recognition of their lofty professional standards.

To be admitted as an advocate and solicitor of the supreme court of Singapore, a lawyer must be a qualified person according to the Singapore Legal Profession Act. Before a qualified person can be admitted to the Singapore bar as an advocate and solicitor, he/she must also satisfy the other requirements of the act which are be at least 21 years old.

To be a qualified person, an inspiring lawyer can either graduate with at least a Bachelor of Law as a second class lower honours from National University of Singapore, or graduate with at

¹¹ Advocate means a lawyer, appearing in a court of law.

least a second class upper honours or equivalent law degree from approved universities in the United Kingdom, Australia or New Zealand and obtain the Graduate Diploma in Singapore Law. Meaning, to be admitted to the Singapore bar, as aspirant has to first attain the status of a qualified person by obtaining a law degree from the National University of Singapore or the SMU (Singapore Management University), or from one of the approved overseas universities of the United Kingdom, United States, Canada, Australia, and New Zealand.

In addition to the LL.B Programme, Singapore Management University offers a Juris Doctor (J.D.), program for graduates with a first degree from other disciplines as well as law graduates from civil law jurisdictions and non gazette universities in common law jurisdictions. Apart from a four year LL.B. program, National University of Singapore also offers a three year graduate of LL.B. program for graduates with a first degree.

With the increased internationalization of legal services, legal education in Singapore has placed greater emphasis on the need for law undergraduates to acquire knowledge of and exposure to foreign legal systems and international law. To ensure Singapore lawyers keep abreast of significant legal developments, a mandatory continuing professional scheme, likely to apply initially to young lawyer with less

than 5 years experience. The government of Singapore also reviews the supply of lawyers periodically to ensure that the supply of lawyer meets the growing demand for legal talent.

b. The Role of Lawyer and Notary Public

Singapore with a common law tradition have an Anglo Saxon notary profession. Countries in which common law prevails like Singapore have a system of “notary public”. By contrast, in civil law

countries, the notary has a more dominant position and considerable importance than in common law countries. The task of Latin notaries clearly contrast with the limited tasks of a public notary in the Anglo

Saxon system. This can be explained by the fact that the Latin notaries in Indonesia is a legal professional and the Anglo Saxon notary public in Singapore is not.

Given the role the notary public has in the legal structure of countries having the Anglo Saxon system, it is not surprising that the

Singapore notary public is not a legal professional. Obviously, he or she is strictly prohibited to give legal advice and draft documents, unless he/she is also an advocate as well as a solicitor of the Supreme

Court of Singapore. In addition, the notary public is not impartial and independent like the Latin notary.

The Singapore notary profession is a typical example of the

Anglo Saxon notary public system, which is have a very different role

in comparison to the Latin style notary. The type of notary public represents only one party in a legal transaction and does not have to look after the interests of other parties involved in the transaction or the interests of third parties. Therefore, in the Anglo Saxon notarial profession is more or less comparable with a lawyer.

In common law jurisdiction, lawyers are the only legal professional and which this implementation is adopted by Singapore according to the country's specific needs and policies. The task of a legal professional in Singapore involves both giving legal advice and representing clients to court. Every lawyer or advocate in Singapore has the authority to represent clients in court. In contrast, in civil law jurisdiction the legal profession is divided in two groups. Only lawyers have the authority to represent clients in court and other legal experts merely give advice. The Latin notary is a legal professional but he is not allowed to represent clients in court. The Singapore notary public is not a legal professional.

Notary public means a person who has been appointed as a notary public by the Senate of the Singapore Academy of Law and be described as an officer of the court. According to Notaries Public Act Chapter 208 under section 3(2), stated that no person shall be appointed as a notary public unless he/she is practicing advocate and solicitor in Singapore and has so practiced for not less than seven

years. The Notaries Public Act Chapter 208, expressly provides that every notary public shall have and may exercise within Singapore all powers and functions, which are ordinarily exercised by notaries public in England.

c. Background and History

The merger of Singapore with Malaysia on 27 May 1961, in order to prevent a communist take over Singapore. However, the merger proved to be short lived. Singapore was separated from the rest of Malaysia on 9 August 1965 and became a sovereign, democratic and independent nation.

When Singapore was part of Malaysia, notaries public were appointed by the Attorney General of Malaysia under the notaries public ordinance 1959.

After independence, notaries public were appointed by virtue of the Notaries Public Act by the Attorney General of Singapore. By 1995, the notaries public Act was significantly amended in that, the power of appointing a notary public became vested in the Senate of the Singapore Academy of Law.

The functions of a notary public practicing in Singapore have not been defined by any statutory provision. But generally speaking, notary public shall have and may exercise within Singapore all powers and functions, which are ordinarily exercised by notaries public in

England. A notary public in England may be described as an officer of law appointed by the court of faculties. With the introduction of Brooke's Book on Notaries, 12th Edition page 19, the notary public's primary services are as follow:

"Whose public office is to draw, attest, or certify under his/her official seal, for use anywhere in the world, deeds and other documents, including wills or other testamentary documents, conveyances of real and personal property and power of attorney;

To authenticate such documents under documents under his/her signature and official seal in such a manner as to render them acceptable, as proof of the matters attested by him/her, to the judicial or other public authorities in the country where they are to be used, whether by means of issuing a notarial certificate as to the due execution of such documents or by drawing them in the form of public instruments;

To keep a protocol containing originals of all instruments which he/she makes in the public form and to issue authentic copies of such instruments;

To administer oaths and declarations for use in proceedings in England and elsewhere;

To note or certify transactions relating to negotiable instruments, and to draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as the carriage of cargo in ships."

d. Function and Power

There exist some Acts and rules affecting notaries public, that regulate the entry into the Singapore Notary Public, such as: The Notarial Public Act; The Singapore Academy of Law Rules; and The Notaries Public Rules.

According to Notaries Public Act Chapter 208 under section 4, stated that, without prejudice to the generality of the powers and functions, the practical functions of a notary public follow those applicable in England, with some variations and are principally as follow:

1. Administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed:

- For the purpose of confirming or proving the due execution of any documents;
- By any master or member of the crew of any vessel in respect of any matter concerning the vessel; or
- For the purpose of being used in any court or place outside Singapore

2. Take or attest any affidavit or statutory declaration referred to in paragraph a.

3. Have an exercise such other powers and functions as may be prescribed.

These shall not include the power to administer oaths or affirmation in connection with any affidavit or statutory declaration which is executed for the purpose of being used in any court or place within Singapore. Unlike commissioners for oaths, a notary public is

in a position to witness a document signed in front of him/her which is in a foreign language. A notary public's duty is to attest deeds, contracts, and other instruments that are to be used abroad and to give a certificate of the due execution of such documents duly authenticated by his signature and notarial seal.

A notary public in Singapore is usually a practicing lawyer and has been appointed by the Singapore Academy of Law in accordance with the Notaries Public Act and its internal guideline. Notarisation is the act of a notary public authenticated by his/her signature and official seal, certifying or attesting the due execution in his/her presence of a document such as a deed, agreement or other writing or verifying some fact or thing.

e. Commissioner of Oath

Notary Public and Commissioner of Oath are two services that show differences between them when it comes to their functions and duties. One has to understand the difference between the commissioner of oath and a notary public.

A commissioner of oath has to be the officer of court who can give an oath to make sure people tell the truth during the proceedings of the court. He/she is appointed by the court. In short, a commissioner for oaths is a solicitor authorized to administer an oath to a person making an affidavit.

On the contrary a notary public is a person authorized to perform certain legal formalities especially to attest deeds, contracts and other instruments that are to be used abroad. A notary public can notarize signatures for documents and notarial seal. Unlike commissioners for oaths, a notary public is in a position to witness a document signed in front of him/her.

One of the main differences between a commissioner of oath and a notary public is that although both are authorized servants of the government, the notary public is authorized to certify, whereas a commissioner of oath is authorized to administer an oath or to verify the truth behind the statements made in the affidavit filed by a person. It is generally believed that the job of a notary public is easier when compared to the job of a commissioner of oath. This is due to the fact that the commissioner of oath is expected to go into the details of the affidavit and to verify the veracity of the statements made therein.

Commissioners for Oaths who are Advocates and Solicitors are, as at date of appointment to have no fewer than 10 years experience in active legal practice and/or legal service, and be at least 35 years old. As a general rule, if there have been disciplinary proceedings against an advocate and solicitor which resulted in the imposition of penalties, the application will be rejected.

By virtue of Section 11 of an Oaths and Declaration Act (Cap 211), the form of declaration to be given by the declarant before a commissioner for oaths shall be:

“..... I (here insert name, address and occupation of person making the declaration), do solemnly and sincerely declared (here insert matter declared to where the matter is long, add the words “as follows” and then set out the matter in numbered paragraphs).

..... And I make this solemn declaration by virtue of the provisions of the Oaths and Declaration Act (Cap 211), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.”

(signature of person making the declaration)

Declared at _____ this _____ day of _____

Before me,

(signature of person before whom the declaration is made)

(here insert title of person before whom the declaration is made)

f. Practising In Singapore

Picture 4.1

An Example of a Notary Public Practising in Singapore



MOEY and YUEN was formed on 8 April 1995 in Singapore

by Michael Moey and Susan Yuen. Michael Moey has been in practice for more than 20 years. Susan Yuen was an in house counsel for a statutory board and a local bank for 5 years before she commenced practice in 1991.

Mr. Michael Moey Chin Woon has been appointed as a notary public since 1 October 2002. He graduated from National University of Singapore, Bachelor of Laws (LLB) Hons since 1986. Admitted as an advocate and solicitor of the Republic of Singapore since 1987. He has been appointed as a Commissioner for Oaths since 1 April 1996.

1. Notary Public

As a notary public, Mr. Michael Moey Chin Woon offers

several services, as follow:

- a. Documents which need to be used overseas are often required to be notarized in one way or another. Received numerous enquiries for Notarial services and some have requested for an organisation's requirement or foreign authority. Notarisation is normally relevant for documents that are intended for use in other countries. Documents for use abroad may need to go through a process of Legalisation.
- b. When in doubt, it is important to confirm with the overseas party who requires the notarized documents, what exactly is required by them so as to avoid mistakes being made and time wasted on incorrectly notarized documents. A document need to be signed in the presence of a notary public who witnesses the signature.
- c. Sometimes, all that is required for a document to be certified as a true copy by a notary public. In such a case, the original document must be provided to the notary public for him to make a copy and to certify it.
- d. The document may also require the notary public to affix his seal on a special notarial certificate to be attached to the signed and notarized document.
- e. In some cases, the signature of the notary public must also be authenticated by the Singapore Academy of Law, the

documents may have to be sent to the Singapore Ministry of Foreign Affairs for further verification, and may require to be sent to the Embassy of the foreign country for legalization.

- Legalisation by Embassy

Firstly, the agency may require legalization or authentication by the Embassy located in the country of the Notary Public, of the country in which the document is to

be used. For example, it is the official attestation of the origins of a documents. if a document are intended for use other countries such as in France, would be legalized by the French Embassy in Singapore.

- Authentication by the Singapore Academy of Law

Secondly, for document before a Notary Public for use in a foreign country, the foreign agency may require the authority and signature of the Notary Public be sent to the Singapore Academy of Law for authentication.

- Legalisation of Government Documents

For documents that required to be legalized by the government, have to be sent to the Singapore Ministry of Foreign Affair for further verification.

2. Commissioner of Oaths

Furthermore, as a Commissioner of Oaths, a lawyer or other appointed person who is authorized to witness the affirmation or swearing of formal documents such as affidavits or statutory declarations, Mr. Michael Moey Chin Woon has been appointed as a Commissioner for Oaths since 1 April 1996. The main services offered by a Commissioner for Oaths, as follows:

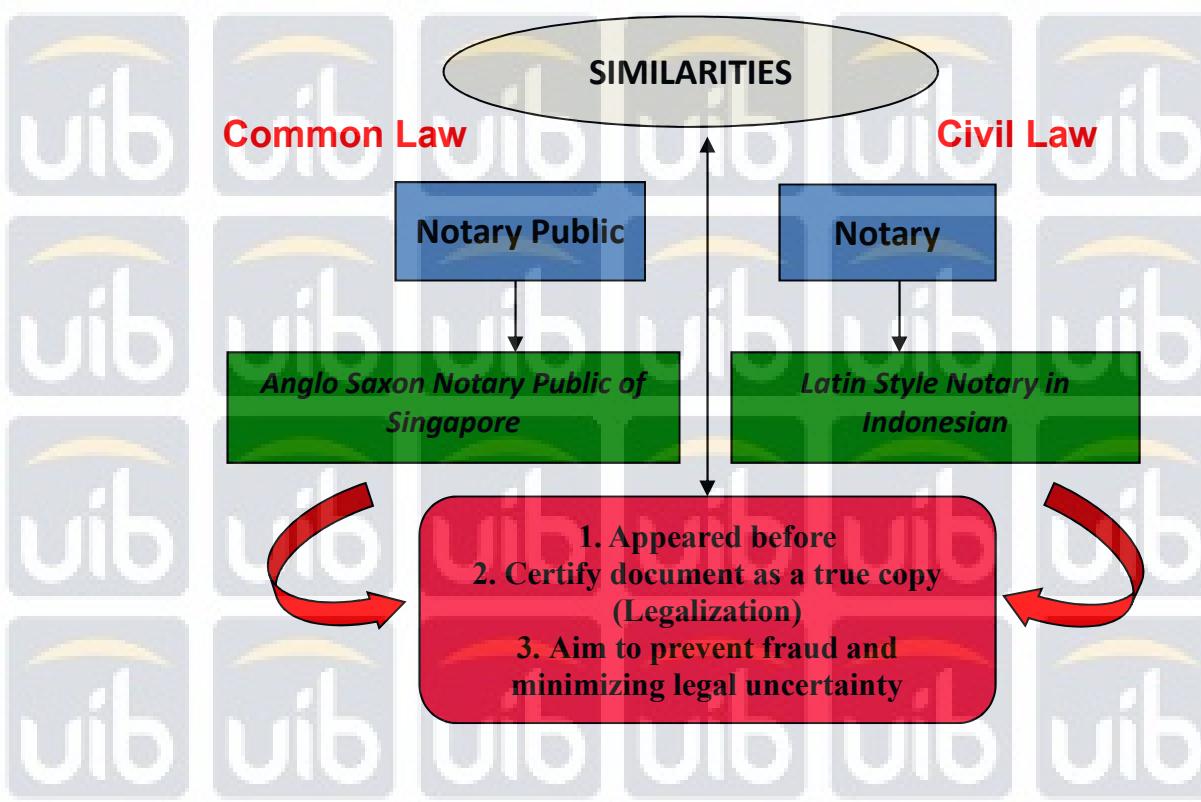
1. On taking an affidavit or affirmation before an advocate and solicitor who is appointed as a commissioner for oaths;
2. On taking or retaking an affidavit or a declaration within Singapore, of an affidavit or a declaration or an acknowledgment for each person making the same;
3. On taking or receiving a statutory declaration.

In conclusion, Singapore notary public which under common law system, is not possible to draw up a private act because the role of the notary public in these countries does not correspond to the role of civil law notary, as the notary public only legalizes signature and notarial seal.

3. Latin Style Notary Based in Indonesian in Comparison to the Notaries Public of Singapore

a. The Similarities

Picture 4.2



From the table above, the researcher see a few point upon the

similarities of the Latin Notary in the comparison to the Anglo Saxon

Notaries Public Profession. The Latin Notary can be compared with

the Anglo Saxon Notary Public, but the conclusion will always be that

in the final analysis there is no great deal of similarity.

1. The Notary and Notary Public may not notarize or legalize a signature of a person who has not appeared before him/her, which ensures the integrity and authenticity of the signature on the documents. In other words, the signature must be done with the notary and the signatory in a face to face procedure, helps to ensure the authenticity of the signature. The client who wants to notarize a document by a notary or legalize a signature by notary public, must provide sufficient evidence to prove his/her identity.

This means that the notary or notary public has to determine the identity of the person requesting the notarization and legalization.

It becomes also a fact that the persons mentioned are indeed signers of the document.

2. Anglo Saxon Notaries Public and Latin Notary are given the same authority to offer services such as certify or legalize a documents.

In some cases, the document are required to be certified as a true copy by a notary. Therefore, the original document must be provided to the notary to make a copy and certify it. The notary verifies the signer's identity, check the validity of the signature and seals the document.

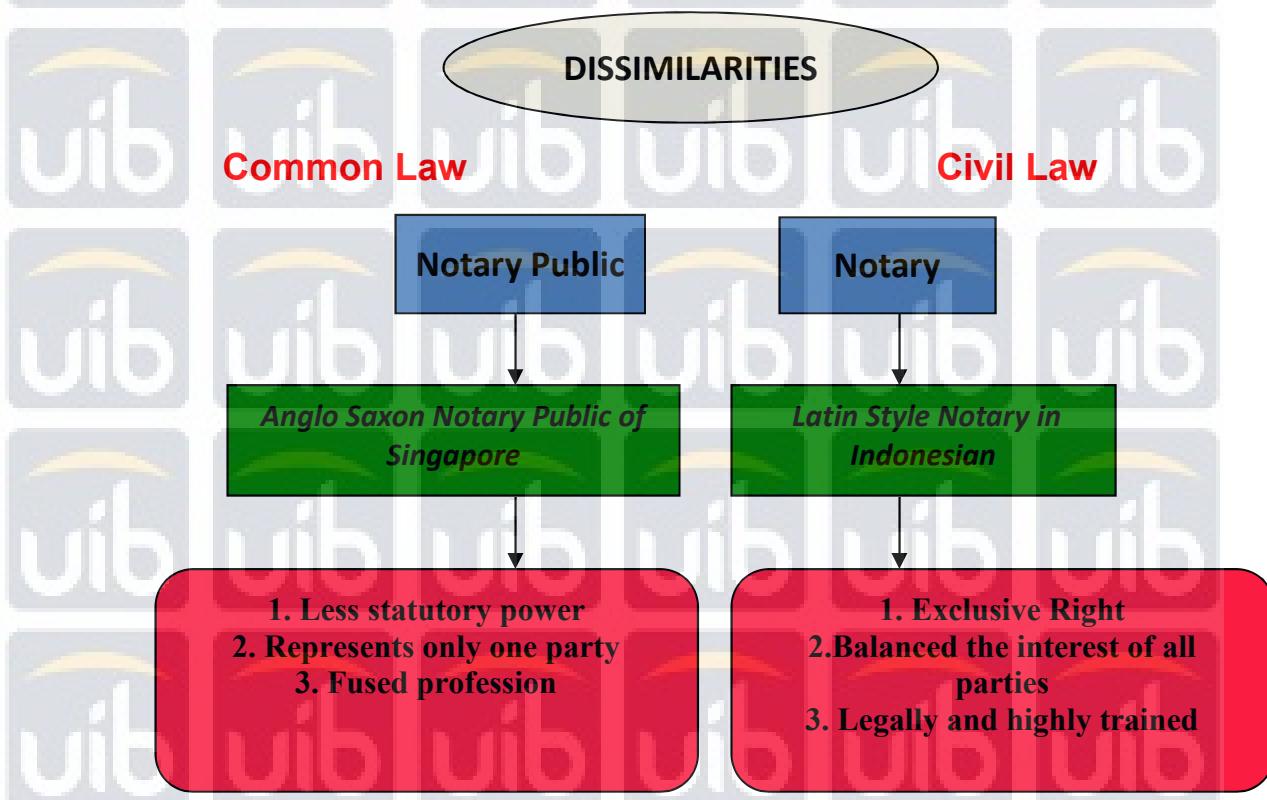
3. The main function of the Anglo Saxon Notaries Public is to deter fraud and clearly, it aids at minimizing fraud. The Latin Notary

share the same similarities with the Anglo Saxon Notary Public,

aims at minimizing the risk that transactions cause legal uncertainty, and thus attempts to minimize the number of disputes on a legal transactions. With clear and precise legal terms, leaving as little room as possible to lawsuits, disputed and doubts.

b. The Differences

Picture 4.3



From the overall discussion above, the researcher see the

difference in the implementation of the Latin Notary Style in comparison to the Anglo Saxon Notaries Public Profession.

1. The Latin Notary system has an exclusive right whereas The Anglo Saxon Notaries Public enjoy less statutory power and generally less qualified. Latin Notary is an impartial legal expert whose drafted documents are admissible in court without the need of further proof of authenticity. Acts that have been authenticated by Latin notary, possess specific evidentiary power and deliver proof of what have been declared by him/her.

Clearly, giving legal advice and making up notarial deeds is the most important function of the Latin Notary. Most importantly, Latin notary is responsible for the legality of the transactions, criminally liable for committing fraud, and subject to disciplinary sanctions for professional mistakes. Thus, the Latin notary has more dominant position and considerable importance than a notary public in common law countries.

Contrary to Anglo Saxon notary public, clearly contrast with the limited tasks of a notary public. The Anglo Saxon notary public does not have the Latin notary power and duties. Under common law system, which have the Anglo Saxon notaries public,

the adversarial approach can be found in all aspects as in common law system, the law is developed through judgement and jurisprudence is the most important source of law. Therefore,

Anglo Saxon notary public is prohibited to give legal advice and

draw up documents unless he/she is an attorney. Notary public whose function to certify the identity of the signers, are only responsible for attesting to the validity of a signature and not responsible for the content of the document. Furthermore, The Notary public are not responsible for the accuracy or legality or validity of the documents.

2. Latin notaries provide public good like services, which generate

benefits not only for their clients but also for the counterparties involved in the transactions, third parties and society as a whole. Under Latin Style Notary, parties are advised by one notary who is impartial and independent, therefore the Latin Notary has to balance the interest of all parties involved in a legal transaction, including the interests of third parties, to prevent the number of disputes on these matters. The need for impartiality is the main reason why Latin notary have the authority to draw up and verify or certify the legality or accuracy of certain legal documents.

Contrary to Anglo Saxon Notary public which is more or less comparable as a lawyer, he/she acts for one party, only represents one party in a legal transaction and does not have to look after the interests of other parties involved in the transactions or the interests of third parties. Since the lawyer is more prominent to take and defend certain viewpoint of a certain party, there are a

risk that a lawyer would take sides in the control on the legality of documents, as lawyers are not such a well defined group and lack the necessary impartiality characteristic. Given the role, the Anglo Saxon notary public could not be given the authority to draw up or to control the legality of certain legal documents.

3. Given the important role the Latin notary has, there is a stringent regulation which is tightly and highly regulated. In the civil law countries which have the Latin system, several policy instruments are aimed to support the provisions of high quality notarial services. The Latin notary is a unique and occupy special position among other legal practitioners. The Latin notary has the authentication power of the state delegated to him/her as the Latin notary is a legal profession in contrary to the Anglo Saxon Notary public as a fused profession and is not a legal profession. Lawyer are the only legal professional who practices law, giving legal advice and representing clients in the court. No one shall be appointed as a Notary Public unless he/she is an attorney or lawyer.

c. Best Practices

An analysis of the similarities and the differences between the Latin Notaries and Anglo Saxon Notaries Public, reveals that the implementation of the Latin Style Notary is the best practices.

In countries where no Latin notaries are active, no comparable level of legal certainty may be achieved and parties will have to resort to other protection mechanisms, which may be more expensive such as they have to seek a lawyer in order to have a legal advice. In other words, also transaction costs tend to be higher in countries without Latin notaries. The researcher taking the example, of a house sale transaction, the differences between the services provided by Latin notaries and public notaries in the Anglo Saxon system can be made clear, as follow:

1. First, Latin notaries provide information and advice to prospective buyers and sellers about the legal aspects of the transaction and the formalities to be arranged. In this respect, the Latin notary acts as a neutral, impartial professional and has to avoid any conflict of interest. The intervention by the Latin notary will not only save the parties the burden of trying to gather this information themselves or obtain similar guidance through their own advisors and thus save transaction costs, and it may also prevent any misunderstandings that could later lead to conflicts.

2. Second, Latin notaries draft a public document or notarial act/deed, which can be seen as a transformation of the preliminary sales agreement, into a document enjoying higher legal status. The Latin notary has to check the legality of the acts he or she authenticates,

and must refuse any cooperation to illegal acts. In doing so, the Latin notary acts as a gatekeeper, who contributes to the enforcement of the law.

Even though there are some differences across civil law countries, as to the precise extent of the notary's gatekeeper duties, the tasks of the Latin notary normally include controls, as to whether the seller is entitled to sell the house, the existence of mortgages and the compliance with environmental and urban planning regulations. The Latin notary is therefore responsible for the legality of the transaction, criminally liable for committing fraud and subject to disciplinary sanctions for professional mistakes.

3. Third, the notarial act has evidentiary power, which extends to the authenticity of the statements made by the parties and the facts seen, heard and verified by the notary. The notarial act also makes the contract immediately enforceable. This allows for an execution without the intervention of any judicial body, and thus leads to a quicker enforcement at a lower cost of certain contractual obligations in case of a dispute. Consequently, the existence and contents of rights may be established sooner and legal peace may be restored in a more efficient manner, than through the course of sometimes lengthy and cumbersome judicial procedures.

4. Fourth, Latin notaries register the act of transfer of property in a public register and provide information on concluded transactions.

Moreover, the Latin notary keep archives of the documents that have been authenticated by he/she. These official documents will

be easily available when any discussion arises on a transaction and will, because they deliver evidence of what has been said and agreed, diminish the risk of contradictory views and interpretations.

5. Fifth, Latin notaries perform several fiscal examinations and collect taxes. In some countries, they are obliged to check whether

the seller has unpaid tax debts and, if so, withhold the amount of these taxes from the selling price and transfer it to the tax authorities. The state may greatly profit from the duty of Latin

notaries to cooperate with the tax authorities. For example, there are no arrears in the collection of real estate taxes, in contrast with

other taxes, such as corporate taxes. By carrying out all these tasks, the Latin notaries contribute to decreased transaction costs and a high level of legal certainty.

In contrary to the Implementation of Anglo Saxon Notaries Public, which is can not the best practices in comparison with the Latin Notary. Clearly, the tasks of Latin notaries contrast with the limited tasks of a public notary in the Anglo Saxon system. The Anglo

Saxon notary public is not a legal professional and is strictly prohibited to give legal advice and draw up documents, unless he or she is also an attorney. Moreover, In the Anglo Saxon system, parties to real estate transactions wishing to obtain the necessary information and to be protected from mistakes and illegalities must seek assistance from their own lawyers and must assure their ownership by taking title insurance. It may be doubted that the Anglo Saxon system is able to achieve comparable benefits with respect to reducing transaction costs and increasing legal certainty.

Obviously, the Anglo Saxon notary public is not impartial and independent like the Latin notary. In the case of a transfer of property, the notary public verifies the signer's identity, checks the validity of the signatures, countersigns and seals the sales agreement with a stamp. The deed issued by a public notary is disputable and does not serve as an execution instrument.

In addition, also an effective and efficient collection of taxes is not guaranteed by the Anglo Saxon notaries public. Under a registration system parties will have to seek advice from their own

lawyers and insure themselves against the risk of invalid property titles. Before it can be concluded that a registration system is cheaper than the intervention by the Latin notary, the costs of legal advice by lawyers and the title insurance must be added to the costs of

registration. This fee may be too high for potential buyers who expect minor legal problems, so that only buyers who expect serious legal problems will find it interesting to buy title insurance. This may lead to a process of adverse selection, leaving insurance companies only with the high risks and causing further increases of the insurance premium.

A mandatory intervention by a Latin notary can be seen as a compulsory insurance against legal problems with ownership. Latin notary mediation is likely to reduce the number of legal procedures that will be initiated as mandatory intervention of a Latin notary provides more legal security. Such information seems crucial for assessing the desirability of reserved tasks for Latin notaries. Therefore, in the researcher point of view and by doing this research, the implementation of the Latin Notary system is the best practices in comparison to the Anglo Saxon notary public. In conclusion, Latin Notary Profession turn out to be different from other profession with high degree of integrity and characterized by direct or fiduciary relations with clients or whole parties.