

## Legal Implications of Notary's Responsibility for Unlawful Acts in The Making of Authentic Deeds

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**Abstract.** *Notaries as public officials are legally authorized to provide public services to the community, especially in the preparation of valid deeds that serve as flawless evidence. Article 1868 of the Civil Code stipulates that an authentic deed is a deed made in a form determined by law by or before a public official authorized for that purpose at the place where the deed was made. This thesis aims to determine the legal considerations of a Notary's unlawful acts in making authentic deeds and to determine the implications of notary liability for unlawful acts in making authentic deeds (Civil Case Study No. 259/Pdt.G/2020/PN Gin). The approach method used in this research is a normative juridical approach. The research specifications used are descriptive analysis, primary and secondary data sources, and qualitative analysis. This paper analyzes the problem with the theory of legal certainty and the theory of legal responsibility. Based on the research results in this study, the Gianyar District Court delegation Number 259/Pdt.G/2020/PN Gin emphasized that notaries as public officials have full responsibility for the accuracy of the form and content of the deeds they make. In this case, the notary was deemed negligent because he made several deeds used to legalize the "borrowed name" agreement between a foreign citizen and an Indonesian citizen, which is clearly prohibited by Article 26 paragraph (2) of the UUPA. Although the deed met the formal requirements, its substance was contrary to the law so that it was null and void and lost its authenticity. This negligence fulfills the elements of an unlawful act based on Article 1365 of the Civil Code and violates the obligations of office in Law Number 2 of 2014 concerning the Position of Notary. This decision emphasizes that notaries can be held accountable for civil, administrative, and criminal matters when the deeds they make cause losses and are contrary to the law. Therefore, notaries are obliged to uphold the principles of caution, honesty, and integrity to ensure that every deed is formally and substantially valid, so as to be able to realize legal certainty and justice for the community.*

**Keywords:** *Accountability; Authentic; Notary.*

## **1. Introduction**

Indonesia is a country governed by the rule of law. Therefore, all actions and deeds must be governed by Indonesian regulations. A nation's progress is largely determined by the government's ability to implement national development. Development, as a planned process of change, encompasses all aspects of society.<sup>1</sup>

A notary is a public official appointed by the government to assist the general public in making agreements that exist or arise in society.<sup>2</sup>

Based on the Notary Law, it is stated that an authentic deed basically contains formal truths submitted by the parties to the Notary.<sup>3</sup> A notary public is required to ensure that the contents of the notarial deed are fully understood and align with the wishes of the parties by reading and explaining the contents before signing. Furthermore, the notary public is required to provide relevant explanations, including those regarding the legal implications of the deed's contents, in accordance with applicable laws and regulations.<sup>4</sup>

However, in practice, it is not uncommon to find problems where notaries are suspected of committing irregularities or negligence in making authentic deeds, which can cause losses for the interested parties.<sup>5</sup>

Civil Case Number 259/Pdt.G/2020/PN Gin is a concrete example of a notary being sued for alleged unlawful conduct in the preparation of an authentic deed. In this case, the plaintiff claimed to have suffered a loss due to the deed allegedly being prepared without meeting the formal and material requirements stipulated in the Notary Law (UUJN). This incident is relevant for further examination regarding the limits of a notary's legal liability and the legal consequences that may arise from their actions.

This research is based on the importance of in-depth understanding of the concept of notary legal liability if proven to have committed an unlawful act, as well as

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<sup>1</sup>Ira Alia Maerani and Muhammad Ulil Absor Law Enforcement Against Perpetrators of Village Fund Corruption Crimes in Kudus Regency (Case Study at Kudus Police), *Sultan Agung Scientific Journal* Volume II, 2024 Pg. 220

<sup>2</sup>Law Number 2 of 2014 concerning the position of notary.

<sup>3</sup>Putri, NM, & Marlyna, H. (2021). Violations of Office and Unlawful Acts Committed by Notaries in Exercising Their Authority. *ACTA DIURNAL Journal of Notary Law*, 5(1), 63-77.

<sup>4</sup>Putri, NM, & Marlyna, H. (2021). Violations of Office and Unlawful Acts Committed by Notaries in Exercising Their Authority. *ACTA DIURNAL Journal of Notary Law*, 5(1), 63-77.

<sup>5</sup>Mahadewi, IGAIL, & Purwanto, IWN (2021). The Responsibilities of Substitute Notaries Who Commit Unlawful Acts in the Preparation of Authentic Deeds (Doctoral dissertation, Udayana University).

describing the legal considerations of a notary's unlawful act in making an authentic deed and the implications of notary liability for unlawful acts in making an authentic deed (Case Study of Civil Case No. 259/Pdt.G/2020/PN Gin).

## **2. Research Methods**

The author used a normative juridical approach in compiling this journal. The research specification used in this study is descriptive analysis. In this study, the author used two types of data sources: primary data and secondary data., and secondary data, namely library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines. The data collection method used for primary and secondary data is literature study. The method used is qualitative analysis, so conclusions can be drawn from the collected data, both primary and secondary, which will appear in the form of words, based on applicable laws or legal norms.

## **3. Results and Discussion**

### **3.1. Judge's considerations regarding the unlawful acts of a notary in making authentic deeds (case study of Civil Case No. 259/Pdt.G/2020/PN Gin)**

Notaries often act carelessly and inattentively in carrying out their duties and positions, this can certainly give rise to legal problems, both in the civil and criminal legal realms.<sup>6</sup>An authentic deed is regulated in Article 165 HIR, which has the same text as Article 285 Rbg, which is a deed made by or before an authorized official, in this case a notary is an official authorized to make deeds. The notary's responsibilities as a public official include the notary's professional responsibilities related to the deed, including the notary's criminal liability for the deed he or she makes.<sup>7</sup>

Based on decision number 259/Pid.G/2020/PN.Gin, the analysis carried out on the notary for unlawful acts in making authentic deeds in agreements made by the Notary where the contents of the notarial deed are contrary to the terms of the agreement as per Article 1320 of the Civil Code and contrary to statutory regulations as per Article 1365 of the Civil Code so that the Defendant's actions do not constitute an Unlawful Act.

This decision shows that the annulment of a deed is not only based on formal errors, but also on violations of the notary's normative obligations as stipulated in Article 16 paragraph (1) letter a of the UUJN, which requires notaries to act

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<sup>6</sup>Agus Toni Purnayasa, Legal Consequences of the Degradation of Notarial Deeds that Do Not Meet the Requirements for Making Authentic Deeds, Vol.3, No.3, Notary Law Journal accessed September 29, 2025, Vol. 339.

<sup>7</sup>Risa Hermawati, Forgery of Authentic Deeds by Notaries (Case Study of Decision Number 1003 K/PID/2015), Otentik's: Jurnal Hukum Kenotariatan, Vol.2, No.2 (July 2020), p.164.

honestly, carefully, independently, impartially, and protect the interests of the parties, and Article 15 paragraph (1) of the UUJN which grants the authority to make authentic deeds but contains limitations that this authority must be used in accordance with the law. In this case, the notary should have known that the nominee agreement made by the parties was an agreement that was contrary to agrarian law and fell into the category of an agreement with an invalid cause as referred to in Article 1335 in conjunction with Article 1337 of the Civil Code, so that according to Article 1320 of the Civil Code, the objective requirements regarding a lawful cause were not met and as a result the agreement was null and void. In addition, when a deed was made to provide benefits to a foreign party through the use of the name of an Indonesian citizen, this also contradicts Article 1317 of the Civil Code regarding promises to third parties, because the purpose of the agreement did not contain a valid legal interest. From the perspective of Soerjono Soekanto's law enforcement theory, the notary's inaccuracy in identifying the unlawful intent indicates a weak legal structure. The judge's decision to annul the deed represents a correction for the failure to meet the legal substance requirement (the deed's material is in conflict with the law) and an attempt to restore the legal culture that requires notaries to adhere to ethical norms and exercise prudence. Therefore, the judge's consideration aligns with the principle that an authentic deed is only legally binding if it meets the material requirements and does not contain any legal irregularities.

Furthermore, if analyzed further, the notary's actions in continuing to make nominee agreements indicate that the notary is not carrying out the legal screening function as required by the UUJN. The obligation to reject deeds that are contrary to the law is a manifestation of Article 16 paragraph (1) letter a of the UUJN. When a notary continues to make a deed that is contrary to the prohibition of the UUPA, he fails to fulfill the due diligence that is the standard of his profession. From the perspective of the Civil Code, the nominee agreement is invalid because it does not fulfill the objective requirements in Article 1320 of the Civil Code, especially a lawful cause. Even further, Article 1335 in conjunction with 1337 of the Civil Code emphasizes that agreements made for a prohibited reason or contrary to public order are null and void. This strengthens the judge's assessment that there is no material authentic value in the deed, despite its formal form.

On the other hand, in the context of Article 1317 of the Civil Code, granting land rights to a foreign party through an agreement made in the name of an Indonesian citizen constitutes a form of legal smuggling that illegally transfers benefits to a third party. This reflects that the agreement is not only defective in causa but also fails to meet the criteria for a legally binding agreement involving a third party. Therefore, notaries should be aware that the deed they draft not only violates agrarian regulations but also fundamental principles of civil law.

When linked to Soerjono Soekanto's theory of law enforcement, this case demonstrates an imbalance between the three pillars of law enforcement. The judge's ruling in this case serves as a judicial correction to this imbalance and a reminder that notaries must uphold professional integrity.

### **3.2. Implications of notary liability for unlawful acts in making authentic deeds (Civil Case Study No. 259/Pdt.G/2020/PN Gin.**

The Gianyar District Court Decision Number 259/Pdt.G/2020/PN Gin is a concrete example of how a notary's responsibility can be linked to unlawful acts (*onrechtmatige daad*) in the creation of authentic deeds. In its legal considerations, the panel of judges deemed that the agreement between the parties had an invalid cause, because it aimed to smuggle the law by circumventing the prohibition on ownership of property rights by foreign nationals. The judge emphasized that although the deeds formally fulfilled the requirements for an authentic deed made before a notary, in the presence of the parties and witnesses, materially the deeds contained an unlawful purpose.

From the perspective of notary responsibility, this case provides important implications that notaries are not only sufficient to pay attention to the formal-procedural aspects of making a deed, but are also obliged to consider the material aspects related to the purpose and legal consequences of the deed made. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) emphasizes that notaries must act honestly, carefully, independently, impartially, and protect the interests of the interested parties. If the notary knows or should have known that the agreement to be written into the deed is used to smuggle the law, then the notary can be considered to have committed negligence or participated in an unlawful act as regulated in Article 1365 of the Civil Code.

The legal implications for notaries in cases like this can include three forms of liability: civil, administrative-professional, and criminal. Civil liability arises when a notary's actions or omissions cause harm to another party, allowing them to be sued for damages based on an unlawful act. Administrative or professional liability can be imposed by the Notary Honorary Council if the notary is proven to have violated the code of ethics, failed to act independently, or failed to perform their duties with due care. Criminal liability can arise if there is evidence of intent in assisting or facilitating an unlawful act, such as document falsification or fraud.

Thus, the case study of Decision Number 259/Pdt.G/2020/PN Gianyar demonstrates that the role of a notary cannot be viewed solely as a maker of authentic documents, but also as a public official with a moral and legal obligation to ensure that the deeds they create are not used for unlawful purposes. This case provides an important lesson that the function of an authentic deed as strong

evidence in civil law will only have value if it is created based on the principles of honesty, truth, and compliance with laws and regulations.

Furthermore, this case reinforces the understanding of notaries' legal liability, which is not only formal but also material, as stipulated in Article 16a and Article 15a of the UUJN, which emphasize the notary's obligation to safeguard the interests of the parties and act independently. From the perspective of the Civil Code, the deed made is contrary to Article 1320 concerning the validity of agreements, as well as Article 1335 in conjunction with 1337, which regulates good faith and the balance of rights and obligations of the parties, indicating an element of unlawful action. Notary civil liability can arise if there is a loss due to negligence or intent, while administrative responsibility is outlined in the sanction mechanism of the Notary Honorary Council. This analysis is in line with the theory of law enforcement which emphasizes that the law functions not only to establish norms, but also to provide legal certainty and a deterrent effect, so that legal officials such as notaries must act ethically and professionally to achieve justice for all interested parties. Thus, an authentic deed is only valid if it meets the formal and material principles, and the notary has a legal and moral obligation to refuse to make a deed that is used for unlawful purposes.

Case Decision Number 259/Pdt.G/2020/PN Gianyar clearly illustrates the application of the theory of legal responsibility in notarial practice. According to the theory of legal responsibility, every public official, including notaries, has a dual obligation: a formal obligation to comply with legal procedures and a material obligation to ensure that their actions or documents are not used to violate the law. In a civil context, a notary can be held liable if their negligence or intentional actions cause harm to another party.

From a professional administration perspective, the theory of legal accountability emphasizes that legal officials must act honestly, thoroughly, independently, and impartially, as mandated in Articles 15a and 16a of the UUJN. If a notary neglects this obligation, the Notary Honorary Council has the authority to impose administrative or ethical sanctions, which serve as a preventive instrument and enforce professional discipline.<sup>8</sup>Analytically, this shows that legal accountability is not only reactive in nature to repair losses, but also preventive in nature to maintain the integrity of legal officials.

The theory of legal responsibility emphasizes the principle of the relationship between mistakes (*schuld*) and legal consequences, where any negligence or deliberate act by a legal official that causes harm to another party requires accountability.<sup>9</sup>In this case, even though the notary did not directly have the

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<sup>8</sup>Mahadewi, IGAIL, & Purwanto, IWN (2021). The Responsibilities of Substitute Notaries Who Commit Unlawful Acts in the Preparation of Authentic Deeds (Doctoral dissertation, Udayana University).

<sup>9</sup>Andi Hamzah, Legal Dictionary, Ghalia Indonesia, Bogor, 2005 p. 26.



intention to harm a particular party, not refusing to make a deed that was clearly against the law indicates a failure to meet the standard of professional care, which according to legal theory gives rise to civil, administrative and potentially criminal liability.<sup>10</sup>.

Furthermore, this case demonstrates that a notary's legal responsibility is not only formal but also material, as emphasized in the theory of legal responsibility, which emphasizes that every public official is obliged to act in accordance with legal norms and professional ethics. In this context, the negligence or deliberate act of a notary who is aware of the existence of an unlawful purpose in an authentic deed can give rise to civil, administrative, and even criminal liability. Civilly, a notary can be sued for damages if his actions cause losses to another party, in line with Article 1365 of the Civil Code. Administratively and professionally, the Notary Honorary Council can impose sanctions if there is evidence of a violation of the code of ethics or non-compliance with the principle of prudence as stipulated in Articles 16a and 15a of the UUJN.

Thus, the application of the theory of legal responsibility to this case confirms that the law functions not only as a formal norm, but also as a tool of social control and an educational mechanism, providing legal certainty, a deterrent effect, and protecting the interests of the community and the integrity of the notarial profession. This case study, therefore, sets an important precedent for notarial practice in Indonesia, emphasizing the need for caution, integrity, and moral responsibility in every legal action taken.

#### **4. Conclusion**

Based on the research results and discussions outlined in chapter 3 (three), it can be concluded that the Gianyar District Court Decision Number 259/Pdt.G/2020/PN Gin confirms that notaries have full responsibility for the form and content of the deeds they make. In this case, the notary was deemed negligent because he made a deed that legalized the practice of "borrowing names" between foreign citizens and Indonesian citizens, which is prohibited by Article 26 paragraph (2) of the UUPA. These deeds were declared null and void and have no binding force. The notary's negligence fulfills the elements of an unlawful act and violates the obligations of his office under the Notary Law, thus giving rise to civil, administrative, and criminal liability. This ruling confirms that the authenticity of a deed is determined not only by formal requirements, but also by its substance and compliance with the law. Therefore, notaries are required to act honestly, carefully, and with integrity so that every deed they create has valid evidentiary force.

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<sup>10</sup>Hans Kalsen, *Pure Legal Theory*, Nusamedia, Bandung, 2008, p.136.

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