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The Principle of Presumption of Validity as Immunity and Legal Protection for Notaries in Making Authentic Deeds

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Abstract. *This study aims to determine and analyze the principle of presumption of legality as immunity and legal protection for notaries in making authentic deeds. The type of research is normative legal research using the statute approach, case approach, and conceptual approach derived from secondary data sources containing primary legal materials, secondary legal materials, and tertiary legal materials. Based on the research, it is concluded that the Principle of Presumption of Validity (Presumptio Lustae Causa) means that a Notarial deed must be considered valid and binding on the parties until a party declares the deed invalid by filing a civil lawsuit with a general court. The Notarial Deed remains valid and binding on the parties or anyone interested in the deed, during and throughout the course of the lawsuit until a court decision has permanent legal force (inkrah). The parties who file a lawsuit with the court for the invalidity of the Notarial deed must be able to prove the invalidity of the Notarial deed from its external, formal, and material aspects. Preventive steps that must be adhered to and carried out by a notary in making an authentic deed so that they are free from civil sanctions and administrative sanctions are by complying with and implementing the provisions in the Notary Law.*

Keywords: *Authentic Deed; Notary; Protection.*

1. Introduction

A notary is a public official who accommodates the public's interests in authentic deeds that guarantee and provide legal certainty for the public and has other authorities regulated by law.[1]A deed as a product of a notary is the strongest, most perfect and binding evidence for the parties.[2]Statutory regulations specifically regulate the duties, authorities, and obligations of Notaries who are authorized to create authentic deeds or other authorities regulated by law. Concrete evidence of the existence of regulations for the implementation of Notary duties is the enactment of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary. This regulation of Legal Norms is very urgent for Notaries and the public considering that Notarial deeds can guarantee certainty and provide legal protection for parties in conducting legal relations.[3]The purpose of making a deed before a notary is as strong evidence if at some point a dispute arises between the parties or there is a civil lawsuit or criminal claim from another party.[4]In relation to the authority and obligations of a Notary, the Notary Law provides guidelines on the form and nature of the creation of deeds which must follow the provisions of Article 38 of the UUJN, and the procedures for authentic deeds must comply with the provisions of Articles 38-53 of the UUJN.[5]In addition to the form and nature of the deed which must comply with the provisions in Article 38 UUJN, Article 16 letter (a) of the Notary Position Law provides a description of the position of a Notary who must act professionally, honestly, carefully, independently, impartially and also protect the interests of the parties involved in legal acts.[6]

[1]Article 1 paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.
[2]Indra, I. D. (2019). *Penerapan Asas Praduga Sah Terhadap Akta Notaris Dengan Adanya Figur Palsu (Studi Kasus Putusan Pengadilan Tinggi Banda Aceh Nomor 43/Pdt/2017/Pt. Bna)* (Doctoral dissertation, Tesis). accessed on 20 June 2026, at 11.29 pm.
[3]Efendi, Y., & Sesung, R. (2021). Menilai Kedudukan Hukum Akta Berkaitan Dengan Nilai Otentisitas Ditinjau Dari Asas Praduga Sah. *Jurnal Hukum dan Kenotariatan*, *5*(3), 365-372. accessed on 21 June 2025 at 13.55 pm.
[4]Oddang Y, & Susiana D. (2018). Perlindungan Hukum Terhadap Notaris Atas Pembuatan Akta Oleh Penghadap Yang Memberikan Keterangan Palsu. *Jurnal Narotama.*ac.id. accessed on 22 June 2025 at 14.33 pm.
[5]Habib Adjie I, (2014), *Hukum Notaris Indonesia Tafsir Tematik terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris,* Bandung : Refika Aditama, (Selanjutnya disingkat Habib Adjie I).
[6]Article 16 paragraph 1 letter a of the Notary Position Law

An authentic deed is a deed whose form follows the rules of law and is ratified by an authorized official,[7]in line with the opinion of Philipus Mandiri Hadjon that an authentic deed is a deed made by an authorized official and its form is in accordance with the law.[8] There are three evidentiary forces in an authentic deed: first, proof that the parties have provided an explanation, which is stated in the deed, which constitutes formal evidentiary force. Second, proof that the parties are the object of the event mentioned in the deed, which constitutes material evidentiary force. Third, proof that the parties and a third party appeared before a notary on the date stated in the deed, which constitutes binding evidentiary force.[9]

A Notarial Deed is an authentic deed that has special privileges in the realm of civil law, this privilege is in the form of the principle of presumption of validity (Vermoeden van Rechtmatigheid or Presumptio Iustae Causa) which means that a notarial deed is valid and valid until a party can prove the invalidity and incorrectness of the Notarial deed by filing a civil lawsuit with the General Court. The Notarial Deed remains valid and binding on the parties at the time and during the lawsuit process until a court decision is made that has permanent legal force (inkrah).[10]Notarial Deeds must be seen as they are as evidence of the external aspects,[11]and the benchmark for the authenticity of a notarial deed is found in the notary's signature which is stated in the minutes of the deed and its copy.[12]

Notaries are governed by the Notarial Law and a code of ethics in carrying out their duties. Applying the principles of accuracy and caution before drafting an agreement can help protect notaries from errors in drafting the deed.[13]The Notary Law regulates administrative and civil sanctions. The implications of civil and administrative sanctions are related to the committed act and are reparatory, corrective, and regressive in nature. Reparatory or corrective sanctions aim to improve the situation and serve as a preventative measure to prevent recurrence, either for the notary in question or for other notaries. Regressive sanctions refer to a method of returning to the situation before the error

[7]Richard dan Suyanto, (2021), *Teknik Pembuatan Akta Edisi Lengkap (TPA I,II,III),* Bandung : Cendekia Press
[8]Philipus M. Hadjon, *Formulir Pendaftaran Tanah Bukan Akta Otentik,* Surabaya Post, 31 January 2001. accessed on 31 May 2024 at 10.00 am.
[9] Retnowulan Sutantio and Iskandar Oeripkartawinata, 1979, Civil Procedure Law in Theory and Practice, Mandar Maju, Bandung, p. 67.
[10] Retnowulan Sutantio dan Iskandar Oeripkartawinata, 1979, *Hukum Acara Perdata Dalam Teori dan Praktik***,** Bandung : Mandar maju
[11] Habib Adjie II, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik,* Bandung : Refika Aditama, (Selanjutnya disingkat Habib Adjie II)
[12] Habib Adjie I, *Op. Cit*, p. 26.
[13]Oemar Moechthar, 2024, *Hukum Kenotariatan Teknik Pembuatan Akta Notaris dan PPAT*, Jakarta : Kencana, p. 23.

occurred.[14]Administrative sanctions are imposed directly by the authorized agency, namely the Notary organization, while civil sanctions are imposed based on a legally binding court decision that imposes a penalty on the Notary in the form of paying costs, interest, and compensation to the injured party. Civil sanctions and administrative sanctions aim to provide correction, reparation, and regression for negligence committed by the Notary.[15]

2. Research Method

This research uses a normative research type.[16]with the statute approach, case approach and conceptual approach by examining statutory regulations, legal cases, views and doctrines that have developed in legal science related to legal problems (legal issues) which can be the basis for building an argument to resolve the legal issues faced.[17] The types and sources of data use secondary data sources containing primary legal materials, secondary legal materials and tertiary legal materials.[18] The data collection method is through literature study by reviewing law books, writings by legal experts, legal journals, legal scientific works and literature related to the research problem, as well as document study by reviewing various official documents in the form of laws and agreements related to the research problem. The data obtained is analyzed using qualitative descriptive methods.[19]

[14]Habib Adjie I, (2014), *Op. Cit,* p. 222.
[15]*Ibid*
[16]Ariawan K. (2013). Metode Penelitian Hukum Normatif. *Kertha Widya Jurnal Hukum,* Vol. 1 No. 1 Desember 2013. accessed on 24 June 2025 at 14.15 pm.
[17]Irwansyah. Ahsan Yunus, (2023), *Penelitian Hukum Pilihan Metode Dan Praktik Penulisan Artikel,* Yogyakarta : Mirra Buana Media, p. 133-147.
[18]Mezak, M. H. (2006). Jenis metode dan pendekatan dalam penelitian hukum. academia.edu. accessed on 27 June 2025 at 16.53 pm.
[19]Bambang Waluyo, (1996), *Penelitian Hukum Dalam Praktek*, Sinar Gafika, Jakarta, p. 76-77 dan Lexy J. Moleong, (2002), *Metodologi Penelitian Kualitatif*, Bandung : Remaja Rosdakarya, p. 103

3. Results and Discussion

3.1. The Presumption of Validity as Immunity and Legal Protection for Notaries in Making Authentic Deeds

Principle of Legal Presumption (Vermoeden Van Rechtmatigheid)[20]or Presumptio Lustae Causa[21] This means that the assessment of a notarial deed must be considered valid and binding on the parties until a party declares the deed invalid by filing a civil suit with a general court. The notarial deed remains valid and binding on the parties or anyone interested in the deed, during and throughout the lawsuit until a court decision is issued that has permanent legal force (inkrah).[22]The parties who file a lawsuit in court for the invalidity of a Notarial deed must be able to prove the invalidity of the Notarial deed from its external, formal and material aspects. If it turns out that the parties cannot prove the invalidity of the Notarial deed from its external, formal and material aspects, then the Notarial deed remains valid and binding on the parties and anyone who has an interest in the deed. The principle of presumption of validity (Presumptio Lustae Causa) is contained in the general explanation of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.[23]

The principle of presumption of validity applies to the provisions, if the Notarial deed is not filed for cancellation by the interested party to the general court and has been final (there has been a general court decision that has permanent legal force) or the Notarial deed is degraded as a deed under hand or the Notarial deed is null and void by law or the Notarial deed is canceled by the parties with another Notarial deed, then the cancellation of the other Notarial deed is no longer valid. The provisions of the principle of presumption of validity only apply if the Notarial deed has never been canceled by the parties to the general court.[24]and has been

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[20]Berdasarkan pendapat Philipus Mandiri Hadjon, dengan asas praduga sah atau *vermoeden van rechtmatigheid,* maka setiap tindakan pemerintah selalu dianggap *rechtmatig* sampai ada pembatalannya. Philipus Mandiri Hadjon *Pemerintah Menurut Hukum (wet-en Rechtmatig Bestuur),*Cetakan Pertama, Surabaya : Yuridika, 1993, p. 5.
Istilah *Rechtmatigheid* mengandung makna keabsahan. Philipus Mandiri Hadjon, *Fungsi Normatif Hukum Administrasi dalam Mewujudkan Pemerintah yang Bersih,* Pidato pada peresmian penerimaan jabatan Guru Besar dalam Ilmu Hukum – Fakultas Hukum Universitas Airlangga, Surabaya, 10 Oktober 1994, p. 6.

[21]Berdasarkan asas ini, maka suatu Keputusan Tata Usaha Negara harus dianggap sah selama belum dibuktikan sebaliknya, sehingga pada prinsipnya harus selalu dapat segera dilaksanakan, Paulus Efendi Lotulung, *Beberapa Sistem Tentang Kontrol Segi Hukum Terhadap Pemerintah – Sesi Ke-1: Perbandingan Hukum Administrasi dan Sistem Peradilan Admonistrasi (edisi Ke II dengan revisi),* Bandung : Citra Aditya Bakti, 1993, p. 118.

[22]Habib Adjie II, *Op. Cit*. p. 79-82.

[23]https://123dok.com/article/pemberlakuan-asas-praduga-sah-dalam-menilai-akta-sah.yjkv9wpq. accessed on 5 July 2025 at 9.15 pm.

[24]The cancellation can also be done based on the decision of the Religious Court or based on the appeal decision of the High Religious Court, if the cancellation is submitted is a Notary deed as an application of Islamic Law, such as a deed of inheritance distribution according to Islamic inheritance law (Farid/Fiqh Mawaris), Grants, Marriage Agreements, Sharia Economics, or Notary

legally binding or the notarial deed is not degraded as a private deed or the notarial deed is not invalid by law or the notarial deed has never been canceled by the parties. With these provisions, the application of the presumption of validity principle for notarial deeds can only be done on a limited basis.

The legal force of a notarial deed as an authentic deed is strengthened by the provisions in Article 1868 of the Civil Code which states that an authentic deed is a deed whose form has been determined by law, made by or by an authorized official.Article 1870 of the Civil Code states that the contents of an authentic deed constitute valid and perfect evidence and have a certain value for the parties and their heirs as well as the parties who have rights to the deed.

The evidentiary value of a notarial deed as an authentic deed[25]lies on:
1. Outward Aspects (Uitwendige Bewijskracht)
The external evidentiary value of a Notarial deed can be proven by the deed it self as an authentic deed that must be seen "as it is and not seen as something else." The external evidentiary value of an authentic deed means that the authentic deed does not need to be compared with other evidence.[26]The outward appearance of a notarial deed is the force that can provide proof of its validity as an authentic deed (acta publica probant sese ipsa). This means that the notarial deed, in its outward appearance or external form, complies with the legal requirements for an authentic deed.

The parameters of the authenticity of a Notarial deed lie in the Notary's signature contained in the minutes of the deed and its copy as well as the form and nature of the Notarial deed in accordance with the provisions in Article 38 of the Notary Law. A Notarial Deed is valid and binding on the parties until there is a party who is able to prove otherwise that the Notarial deed is not an authentic deed and in its appearance or appearance does not comply with legal regulations so that it does not meet the requirements for a valid deed. Parties who deny the authenticity of a Notarial deed and consider that the Notarial deed does not outwardly meet the requirements as an authentic deed are required to prove that the denied deed is not outwardly an authentic deed and the burden of proof lies with the party who makes the denial/rejection by filing a civil lawsuit in a general

deeds made in the field of Muamalat. This is based on the authority of the Religious Court as stated in Article 49 and Article 50 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts.

[25]R. Soegondo Notodisoerjo, *Op. Cit*. p. 55. G.H.S. lumban Tobing, *Op. Cit.* p. 54-65. Sudikno Mertokusumo, 1988, *Hukum Acara Perdata Indonesia,* Liberty, Indonesia, p. 123. R. Subekti, 1989, *Hukum Acara Perdata,* Bandung : Bina Cipta, p. 93-94.

[26]Septianingsih, K. A., Budiartha, I. N. P., & Dewi, A. A. S. L. (2020). Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata. *Jurnal Analogi Hukum*, *2*(3), 336-340. accessed on 30 June 2025 at 17.01 pm.

court.[27]

2. Formal Aspects (Formele Beweijskracht)
The value of formal evidence lies in ensuring the truth and certainty of the day, date, month, year, time (time) of the parties appearing before the Notary, the initials and signatures of the Notary, the parties, and witnesses and proving the truth of the legal event regarding what was seen, heard and witnessed by the Notary himself in the deed of release/official deed and recording the information/statements of the parties to be included in the deed in the deed of partij/party deed. When the parties come to the Notary so that their will is formulated into a deed and then the Notary makes the deed at the request or desire of the parties, then in this case it provides a basis for the Notary and the parties to have a legal relationship.[28]If the parties dispute the formal aspects of the Notarial deed, then the parties are obliged to prove the inaccuracy of the day, date, month, year and time the parties appeared before the Notary. The parties who dispute the deed are also obliged to be able to prove the inaccuracy of: The parties who appeared, the inaccuracy of what the Notary saw, heard and witnessed himself, the inaccuracy of the information or statements of the parties submitted to the Notary, the inaccuracy of the signatures of the Notary, the parties and witnesses and prove the inaccuracy of the procedures in making the deed that are not in accordance with the Notary Law.[29]

Parties who deny/deny the formal aspects of the Notarial deed are required to provide "reverse proof" by filing a lawsuit in a public court and the plaintiff is required to prove that there are formal aspects that were violated by the Notary in his deed.[30]If the parties are unable to provide "reverse proof", then the notarial deed must be accepted as is by the parties.

3. Material Aspects (Materiele Bewijskracht)
The material aspect of a Notarial deed is the certainty that the material contained in the deed can be valid evidence for the parties who made the deed and for the parties interested in the Notarial deed, unless the deed can be proven otherwise (tegenwebijs). This means that anything stated in the deed must be considered true by the parties for both partij and relaas deeds. The information/statements/words of the parties stated by the Notary in a deed must be considered true and valid, but if at a later date it turns out that the information/statements/words of the parties are not true then this becomes the

[27]Habib Adjie II, *Op. Cit*. p. 72-73.
[28]Putra, D. P. (2020). Implikasi Hukum Terhadap Notaris Yang Memberikan Jasa Kenotariatan Di Luar Kewenangannya. *Lex Renaissance*, *5*(1), 179-192. accessed on 3 Juli 2025 at 16.35 pm.
[29]Sasauw, C. (2015). Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris. *Lex Privatum*, *3*(1). accessed on 3 July 2025 at 17.18 pm.
[30]*Ibid*

responsibility of the parties themselves and the Notary is free from such responsibility.

If the parties want to prove the Notary's deed from its material aspects, they must be able to prove that what is written in the deed does not match the statements of the parties and that in the deed the Notary did not explain or state the truth. The parties who stated before the Notary that they were right to say what they said were not true, so that to deny the material aspects of the Notary's deed, the parties must carry out reverse evidence.[31]

The external, formal, and material aspects constitute the perfection of a notarial deed as an authentic deed that is binding on the parties and serves as the perfect, strongest, and most complete evidence. If any of the external, formal, or material aspects are not met, then the notarial deed's evidentiary force is only as a private deed or is degraded as a private deed, but must be proven by filing a civil lawsuit in a general court.[32]

The external, formal, and material aspects are an inseparable whole in the creation of an authentic deed. In proving the authenticity of a notarial deed, these three aspects must be viewed as a whole, and must be considered in criminal and civil court decisions relevant to these three aspects.[33]

3.2. Preventive Steps That Must Be Adhered To and Carried Out By Notaries In Making Authentic Deeds So as To Be Free From Civil Sanctions and Administrative Sanctions

Notaries in carrying out their duties can be caught up in cases due to unlawful actions in making authentic documents, whether in the form of civil, administrative or ethical code violations that are contrary to the Notary Law, considering that Notaries in carrying out their duties and positions are required to submit to and comply with the Notary Law, so if they commit violations in carrying out their duties, Notaries are threatened with sanctions as stated in the Notary Law.[34] A Notarial Deed is a deed made by (door) or in the presence (ten overstaan) of a public official, namely a Notary.[35]The contents of the deed constitute the

[31]Fikri A.R,. (2018). Akta Notaris Sebagai Akta Otentik. *Mengenal Para Penghadap*, *48*. dspace.uii.ac.id. accessed on 5 July 2025 at 17.32 pm.
[32]Habib Adjie II, *Op. Cit*. p. 74.
[33]Adiamara, F., Novianto, W. T., & Husodo, J. A. (2023, November). Kekuatan Pembuktian Akta Otentik Yang Dibuat Oleh Notaris Dalam Perkembangan Hukum Perdata Nasional. In *Proceeding of Conference on Law and Social Studies* (Vol. 4, No. 1). accessed on 6 July 2025 at 08.32 am
[34]Rifa'i, A., & Iftitah, A. (2018). Bentuk-bentuk pelanggaran Hukum dalam pelaksanaan jabatan Notaris. *Jurnal supremasi*, 4-4. accessed on 8 July 2025 at 10.01 am.
[35]Article 165 HIR (Article 285 Rbg, Article 1868 BW) it can be concluded that authentic deeds can be divided into two: (1) deeds made by officials (acte ambtelijk, procesverbaal akte) and (2) deeds made by the parties (partij akte).

wishes of the parties so that it applies as law to the parties in the deed.[36]A Notarial Deed has perfect evidentiary value if the procedures/procedures and conditions for making the deed are in accordance with the Law on the Position of Notaries, however, if the deed can be proven otherwise by the parties in a civil lawsuit before the general court and has entered into law, then the Notarial Deed can be cancelled.[37]The source of authenticity for notarial deeds is found in Article 1868 of the Civil Code, which serves as the legal basis for the existence of notarial deeds. Article 38 of the Notarial Law systematizes the nature and form of deeds, but does not specify their nature.[38]

There are three stages that must be carried out by a Notary in making a deed, namely the pre-deed stage, the deed-making stage and the post-deed stage. What must be considered before making a deed is the conditions experienced by the parties, whether in making the deed there was pressure/intimidation either from the parties themselves or from others that caused the parties to be under psychological pressure or whether the deed was made at the will/will of the parties themselves. If it is proven that there was pressure/intimidation from the parties or others then the deed can be canceled.[39]The clauses desired by the parties are negotiated during the pre-deed stage. The second stage is the procedure for drafting the deed, which must be carried out in accordance with Article 38 of the Notary Law. The final stage is post-deed, which involves completing the minutes of the deed, making copies, and inserting them into the recorder, the clasp, and the deed bundling.[40]

The framework for a Notarial deed that is in accordance with the provisions of Article 38 of the Law on the Position of Notaries is:

1. The head of the deed or beginning of the deed contains:

a. Title of the deed;
b. Deed number;
c. Time, day, date, month and year;

[36]Article 1338 paragraph (1) of the Civil Code.
[37]Habib Adjie IV, *Penerapan Pasal 38 UUJN-P dalam Pelaksanaan Tugas Jabatan Notaris,* Yogyakarta : Bintang Surya Madani,. p. 20-21. (Selanjutnya disingkat Habib Adjie IV)
[38]As a comparison in Wet op het Notarisamb (1999) Article 37. 1. it is regulated and emphasized that Notarial Deeds are in the form of Partij akte and Proces verbaal akte.
[39]In accordance with Article 1321 of the Civil Code, which states that if it can be proven that a contract/deed was agreed upon under duress or threats that caused fear in the threatened person so that the person had no other choice but to sign the contract/deed, then the contract/deed can be canceled. According to Subekti, it is described as spiritual coercion or physical coercion in the form of threats in the form of unlawful acts, for example in the form of violence that causes fear. Subekti, 1990, Contract Law, Intermasa, Jakarta, p. 23
[40]Habib Adjie IV, *Op. Cit*. p. 18-20.

d. Full name and domicile of the Notary, area of office of the Notary;[41]
e. Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;
f. Information regarding the acting position of the facing person;[42]

2. Body of the deed
The wishes and wishes of the interested parties are stated or explained before a Notary and the Notary sets them out in the body of the deed. The body of the deed may also contain statements from the Notary regarding matters seen, heard and witnessed by the Notary himself at the request of the parties.[43]

3. The closing or end of the deed, contains:
a. Explanation regarding the reading of the deed as intended in Article 16 paragraph (1) letter l and Article 16 paragraph (7);
b. Description of the signing and place of signing or translation of the deed, if any;
c. Full name, place of residence, date of birth, occupation, position, position and place of residence of the witnesses;
d. Description of whether or not there are changes that occur in the making of the deed, such as additions, deletions or replacements.

A notarial deed is an authentic deed whose form has been determined by law and is made by an authorized official.[44]The authenticity of a notarial deed can provide perfect proof to the parties and their heirs or those who receive rights regarding what is contained in the deed.[45]A Notarial Deed is a perfect evidence as long as the deed is made according to the procedures and methods regulated in the Notary Law. However, if the deed is made according to procedures that are not in accordance with the Notary Law and can be proven in court, then the Notarial Deed can be degraded as an underhand deed and its evidentiary value is submitted to the judge.[46]

There are 2 (types) of sanctions in the Notary Law, namely civil sanctions and

[41]Notaries are domiciled in the Regency or City area (Article 18 paragraph (1) UUJN, and have a provincial area of office from their domicile (Article 18 paragraph (2) UUJN)
[42]Tindakan menghadap dalam bentuk : untuk diri sendiri, selaku kuasa, selaku orang tua yang menjalankan kekuasaan orang tua untuk anak yang belum dewasa, selaku wali, selaku pengampu, kurator (kepailitan), dalam jabatannya.
[43]The contents of the body of the deed must be in accordance with the adage that one authentic deed only contains one legal act. A notarial deed that contains more than one legal act, such as (1) acknowledgment of debt, (2) power to sell land, then such a notarial deed does not have executorial title ex Article 244 HIR and is invalid (Supreme Court of the Republic of Indonesia Decision Number 1440 K/Pdt/1996, dated June 30, 1998), M. Ali Boediart, Op. Cit. p. 152.
[44]Article 1868 of the Civil Code
[45]Article 1870 of the Civil Code.
[46]Habib Adjie IV, *Op. Cit*. p. 11-13.

administrative sanctions.

1. Civil sanctions

Civil sanctions are regulated in Article 84 of the Notary Law. There are two types of civil sanctions under Article 84 of the Notary Law: a notarial deed is deemed to be an unlawful deed (having the evidentiary power of an unlawful deed) and a notarial deed is declared null and void. The determination of a notarial deed as an unlawful deed is determined by:

a. The contents of certain articles in the Notary Law provide direct confirmation regarding Notaries who commit violations which result in their deeds being degraded as private deeds.

b. If it is not stated directly in the article as a deed that is degraded as a private deed, then other articles that violate the provisions in Article 84 UUJN are included in deeds that are void by law.

The Law on the Position of Notaries strictly regulates in certain articles that if it is violated by a Notary, the Notary's deed is degraded to a private deed, namely if the Notary violates the provisions of Article 16 paragraph (1) letter i UUJN,[47]violates Article 16 paragraph (7) and paragraph (8),[48]violating Article 41 by linking Article 39 and Article 40, violating Article 52 of the Notary Law.[49]

Based on Article 1869 of the Civil Code, a notarial deed will be degraded to a private deed if:

a. The deed is made by an official who has no authority;

b. The public official is incapable or incompetent;

c. The deed contains defects in its form.[50]

The second civil sanction is a deed that is void by law, which results in the agreement being able to be canceled. Agreements made by the parties can basically be canceled if the implementation of the agreement is detrimental to one

[47]Signing by the parties, witnesses, and the notary is mandatory. For parties unable to sign due to a physical disability or an inability to read or write, the notary is required to state these circumstances at the end of the deed.

[48]The provisions of Article 16 paragraph (7) and paragraph (8) of the UUJN do not apply to the making of a will (Article 16 paragraph (9) UUJN). The substance of this article does not need to be linked to the form of will as regulated in Article 931 BW, that there are 3 (three) forms of will, namely: (1) open or general, (2) holographic, and (3) closed or secret. Of the three forms of will, the substance or content of the will is made before a Notary, only a general will. Thus, the provisions of Article 16 paragraph (9) UUJN only apply to the making of a general will, so that even if the person appearing reads it himself, the Notary is obliged to read it again in front of the person appearing, and then the witnesses.

[49]The provisions of Article 52 paragraph (2) of this UUJN do not apply if the Notary himself is a participant in public sales, public rentals or public chartering, or is a member of a meeting whose minutes are drawn up by another Notary. In this case the person concerned is not seen in his position as a Notary, but as a person or party in the legal action in question.

[50]Soebagyo, S. A., & Gunarto, G. (2017). Akibat Hukum Akta Otentik Yang Terdegradasi Menjadi Akta Dibawah Tangan. *Jurnal Akta*, *4*(3), 323-330. accessed on 8 July 2025 at 11.00 am.

of the parties, both the party bound by the agreement and a third party outside the agreement. Agreements made can be canceled both before the performance is carried out, or after the performance is carried out. The requirements for the validity of an agreement are regulated in Article 1320 of the Civil Code. According to Prof. Subekti, the agreement made by the parties must meet the requirements for the validity of an agreement, both subjective and objective requirements, namely:

a. Agree those who bind themselves
b. Competent in making agreements
c. There are certain things
d. Because it is halal.[51]

If the objective conditions of an agreement are not met, the agreement is void by law. The objective conditions of an agreement are due to the existence of a prohibited cause or the absence of a specific object. Article 1333 of the Civil Code states that an agreement must have an object or principal item whose type and quantity can be determined. Article 1335 of the Civil Code explains that an agreement has no legal force or is invalid if it is made without a cause or made because of a cause prohibited by law or because of a false cause. Article 1336 of the Civil Code stipulates that an agreement must be made because of a lawful cause. If the agreement does not state a cause but there is a lawful cause or another reason that has been agreed upon and does not conflict with the law, the agreement remains valid. Article 1337 of the Civil Code states that a prohibited cause is if it is contrary to the law, or contrary to morality and public order.[52]

The agreement is null and void if:

a. The object is undefined (has no object);
b. There are reasons that are prohibited by law or because they are contrary to morality and public interest.

A notarial deed is null and void by law if the notary violates the provisions of: Article 16 paragraph (1) letter l UUJN,[53]violates article 16 paragraph (1) letter k,

[51]Astuti, N. K. (2016). Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum. *to-ra*, *2*(1), 279-286. accessed on 8 July 2025 at 07.45 pm

[52]Civil Code.

[53]Submission or reporting to the Central Register of Wills (DPW) applies to all Indonesian citizens who make a will in any form with a notarial deed. The purpose of this submission or reporting is to protect the final wishes of the testator and the rights of the prospective testator. Currently, there is only one DPW, namely at the Ministry of Law and Human Rights (HAM) of the Republic of Indonesia. Upon request from parties to determine the existence or absence of a will, the DPW still does this manually, which is time-consuming. To shorten the time and facilitate the provision of services to the public, the government, in this case the Ministry of Law and Human Rights, will immediately make changes by making requests for the existence or absence of a will online.
Such delivery or reporting does not regulate the online creation of a will without the involvement of a notary or an oral will confirmed by witnesses. Even if no delivery or reporting is made, such a will remains binding as long as no one files an objection or challenge to it.

violates article 44, violates article 48, violates article 49, violates article 50, and violates article 51 of the Notary Position Law.

The Notary Law does not stipulate reimbursement of costs, compensation and interest for notaries whose deeds are degraded as private deeds or deeds that are legally void. There is only one article in the Notary Law, namely Article 52 paragraph (3).[54]which confirms the obligation for a Notary to pay fees, compensation and interest if his deed is degraded as a private deed or a deed that is null and void by law. It is an external sanction for a Notary if his deed is degraded to a private deed or a deed that is null and void by law because the Notary does not carry out his duties in accordance with the Notary Law which results in the deed being made causing losses to the parties.[55]

A notary's civil liability is responsibility for the material truth of a deed in the construction of an unlawful act. Unlawful acts can be either active or passive. Active means committing an act that causes harm to another party. Passive means not committing an act that is required, so that another party is harmed suffer losses. So the elements of an unlawful act are the existence of an unlawful act, the existence of an error, and the existence of losses incurred.[56]

2. Administrative Sanctions
Philipus Mandiri Hadjon defines administrative sanctions as a means of public law applied by the authorities in response to non-compliance with administrative law norms.
not through the judicial process because the application of this sanction is the authority of from the executive branch as an organ of government. A government organ is a legal entity whose existence is based on public law and possesses public powers. Based on its authority, the government, in this case the Minister of Law and Human Rights, can create positive laws in the form of Ministerial Regulations and can also impose administrative sanctions on violators. The government organ authorized to impose administrative sanctions is the Minister of Law and Human Rights.[57]

[54]The provisions of Article 84 UUJN, although similar to the provisions of Article 60 PJN, have differences. Namely in Article 60 paragraph (1) PJN, which emphasizes that if there is a violation of all articles in PJN, if not specified otherwise, the Notary will be subject to a fine of a certain amount of money, except for articles that are expressly stated as a violation of provisions such as Article 60 paragraph (1) PJN which are not regulated in Article 84 UUJN.
[55]Habib Adjie II, *Op. Cit*. p. 97-99.
[56]Afifah, K. (2017). Tanggung jawab dan Perlindungan Hukum bagi Notaris secara Perdata terhadap Akta yang dibuatnya. *Lex Renaissance*, *2*(1), 10-10. accessed on 8 July 2025 at 10.51 am.
[57]Nasution, B. J. (2020). Penerapan Sanksi Administratif Sebagai Sarana Pengendali Pembatasan Terhadap Kebebasan Bertindak Bagi Notaris. *Recital Review*, *2*(1), 1-13. accessed on 9 July 2025 at 8.47 pm.

Administrative sanctions have 2 (two) advantages compared to other sanctions in terms of their mechanism because:
a. The process of implementing and imposing administrative sanctions takes relatively less time/does not require a long time;
b. Administrative sanctions do not take place through litigation, but can be imposed directly by authorized officials or agencies.[58]

There are 5 (five) types of administrative sanctions regulated in Article 85 of the Notary Law,[59]namely:
a. Verbal warning;
b. Written warning;
c. Temporary suspension from the position of Notary;
d. Honorable discharge;
e. Dishonorable discharge.

Administrative sanctions apply in stages, starting from verbal warnings to the most severe sanction, namely dishonorable dismissal. Notaries are subject to administrative sanctions if: Notaries violate Article 7 of the UUJN, Notaries violate their obligations as stipulated in the provisions of: Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d,[60]Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i,[61]Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k,[62]The notary violates Article 17, violates the provisions of Article 20, violates Article 27, violates the provisions of Article 32, violates the provisions of Article 37, violates the provisions of Article 54, violates the provisions of Article 58, violates the provisions of Article 59, violates Article 63 of the Notary Law. Sanctions

[58]Habib Adjie II, *Op. Cit*. p. 97-99.
[59]Wendra, C. (2023). *Pengenaan Sanksi Administrasi Terhadap Notaris Yang Melakukan Pelanggaran Undang-Undang Jabatan Notaris* (Doctoral dissertation, Kenotariatan). accessed on 9 July 2025 at 9.02 pm.
[60]According to GHS Lumban Tobing (Op. Cit. p. 98-99) examples of reasons for refusing to provide assistance include: The Notary is unable to attend due to illness or other work, The notary does not know the person appearing or their identity cannot be explained to the notary, The parties cannot clearly explain their wishes to the notary, The parties want something that is contrary to the law, There is a reason for the notary to make a deed for the parties to actually violate Article 20 and 21 of the PJN. Article 20 and Article 21 of the PJN are the same as the provisions of Article 52 and Article 53 of the UUJN, so the reason for the refusal could be "if because of this the notary will commit an act that is contrary to Article 52 and Article 53 of the UUJN"
[61]The sanctions provisions stated in Article 84 and Article 85 of the UUJN include cumulative sanctions, meaning that for the same act two different sanctions are imposed, namely the provisions of Article 16 paragraph (1) letter i, (in addition to the deed being made before a Notary being null and void by law, administrative sanctions as stated in Article 85 of the UUJN can also be imposed.
[62]The same thing also applies to Article 16 paragraph (1) letter k UUJN.

against notaries who violate the provisions of Article 85 of the Notary Law are a form of internal sanctions,[63]which means that the sanctions are a series of regulations regarding the orderly implementation of the duties of a Notary so that the Notary carries out his duties in accordance with his obligations.[64]

A verbal warning is the first sanction listed in Article 85 of the Notary Law. This serves as a warning to the notary from the Supervisory Board that failure to comply will result in a written warning.[65]If the notary does not comply with these sanctions, the notary concerned will be subject to tiered sanctions.[66]

The sanction of temporary dismissal from office is the next step after a verbal warning and a written warning. The imposition of a temporary dismissal from office as a notary is a form of suspension, a waiting period before the implementation of government-mandated sanctions.[67]The purpose of the temporary dismissal sanction is to prevent the Notary from carrying out his/her official duties for a while, before the Notary is given the sanction of honorable dismissal or dishonorable dismissal.[68]This temporary suspension sanction ends with the Notary's reinstatement to his/her position or is followed up with an honorable or dishonorable dismissal. A temporary suspension sanction means that the Notary temporarily loses his/her authority to perform his/her position and cannot make any deeds.[69]The purpose of the Notary not being able to carry out his/her duties during the imposition of the temporary suspension sanction is to wait for the results of the examination by the Supervisory Board so that the Notary's fate is not left hanging (status quo), therefore the time/length of the

[63]Internal sanctions and external sanctions to determine whether or not there is cumulative sanctions against the Notary.
[64]Nabila, M. S., & Latumeten, P. E. (2023). Penerapan Sanksi Administratif Terhadap Notaris Yang Melakukan Pelanggaran Terhadap Jabatannya (Studi Putusan Pengadilan Tata Usaha Negara No. 235/G/2019/PTUN. KT). *UNES Law Review*, *6*(2), 5274-5282. accessed on 9 July 2025 at 10.07 pm.
[65]Based on Article 73 paragraph (1) letters e and f of the UUJN, the MPW has the authority to impose sanctions in the form of verbal warnings and written warnings and to propose sanctions against Notaries to the MPP in the form of temporary dismissal for 3 (three) to 6 (six) months or dishonorable dismissal.
[66]Sihite, C. F. (2023). Akibat Hukum Bagi Notaris Yang Dijatuhi Sanksi Administratif Oleh Majelis Pengawas Notaris. *Jurnal Notarius*, *2*(1). accessed on 9 July 2025 at 10.14 pm.
[67]*Ibid*
[68]Based on Article 77 letter c and letter d of UUJN, the MPP has the authority to impose sanctions in the form of temporary dismissal, propose the imposition of sanctions in the form of dishonorable dismissal to the Minister.
[69]Article 80 paragraph (1) of the UUJN stipulates that while a Notary is temporarily suspended from his position, the MPP will propose a temporary official to the Minister. The provisions of this article are not in accordance with the principle that an official who is temporarily suspended from his position does not have any authority or an official cannot transfer his position or appoint another person to replace his position at the time the person concerned is temporarily suspended from his position.

sanction must be determined to provide certainty to the Notary.[70]

The Notary Law in principle regulates the authority, obligations, prohibitions, and sanctions for Notaries as public officials. These sanctions include civil sanctions/external sanctions (Article 84 of the Notary Law) and administrative sanctions/internal sanctions (Article 85 of the Notary Law), but criminal sanctions are not explicitly regulated in the Notary Law. The concept of Notary accountability is not included in the Notary Law, even though in practice, notaries often encounter violations of the law related to deeds that are classified as criminal acts. Because the Notary Law does not explicitly regulate criminal sanctions, investigators, public prosecutors, and judges generally apply articles in the Criminal Code (KUHP) to impose sanctions on Notaries caught in criminal offenses. Law enforcers apply articles in the KUHP because the Notary Law does not contain any criminal sanctions for Notaries.[71]

Given that the Notary Law does not have criminal sanctions, its implementation is based solely on moral ethics. It is a policy measure in the use of penal measures in the form of criminal sanctions to regulate society through legislation. Considering the various limitations and weaknesses of criminal law, the use of penal measures should be carried out more carefully, precisely, economically, selectively, and limitedly. The imposition of criminal sanctions on Notaries can be carried out with limitations, namely if:
a. There are formal aspects that are violated in the form of certainty of the day, date, month, year and time of appearing, there is an agreement between the Notary and the parties planning the deed to commit a crime.
b. Deeds made by/or before a Notary are not in accordance with the Notary Public Law.
c. The notary in making the deed did not comply with the statutory provisions.[72]

Penal measures, including drafting clauses in accordance with the law, serve as a preventative measure for notaries to avoid criminal acts. If a crime occurs, the notary must bear the legal consequences of the violation. The Notary Law is expected to serve as a guide for notaries, as all regulations concerning the notary's position are contained in the UUJN. The Notary Law serves as a shield that can protect notaries and provide a defense for notaries in the event of legal problems,

[70]Article 73 paragraph (1) letter f number 1 UUJN states that the MPW proposes the imposition of sanctions against Notaries to the MPP in the form of temporary suspension for 3 (three) to 6 (six) months.
[71]Heriyanti, *Pertanggungjawaban Pidana Notaris Dalam Kedudukannya Sebagai Pejabat Umum Terhadap Akta Otentik Yang Terindikasi Tindak Pidana.* Surakarta : Yuma Pustaka. p. 15-16.
[72]Muhammad Abdul Kadir. (1997). *Etika Profesi Hukum*. Bandung : Citra Aditya Bakti. p. 86

thereby freeing them from criminal sanctions.[73]

4. Conclusion

The principle of presumption of validity means that the assessment of a Notarial deed must be considered valid and binding for the parties until a party declares the deed invalid by filing a civil lawsuit with a general court. The Notarial Deed remains valid and binding on the parties or anyone interested in the deed, during and throughout the course of the lawsuit until a court decision has permanent legal force (inkrah). The parties who file a lawsuit with the court for the invalidity of the Notarial deed must be able to prove the invalidity of the Notarial deed from its external, formal and material aspects. However, if the parties cannot prove the invalidity of the Notarial deed from its external, formal and material aspects, the Notarial deed remains valid and binding on the parties and anyone who has an interest in the deed. The principle of presumption of validity has been recognized in the explanation of the general section of the Notary Law preventive measures that must be adhered to and implemented by a Notary in carrying out his/her duties to avoid civil sanctions and administrative sanctions, namely by complying with, obeying and implementing the Notary Law, especially in Article 38 regarding the form and nature of the deed, because Article 38 of the Notary Law is a specific character of a Notary deed. The Notary Law only regulates civil sanctions and administrative sanctions, while criminal sanctions are not explicitly regulated in the Notary Law. The suggestion that the author conveys to Notaries in particular as well as the government and society in general is that the government, in this case the House of Representatives, the Ministry of Law and Human Rights in collaboration with the Indonesian Notaries Association and academics, should reconstruct the Notary Law into a more perfect form.so that the Notary Law will contain all regulations relating to the authority, obligations, and sanctions for violations committed by Notaries, whether in the form of civil sanctions, administrative sanctions, criminal sanctions, or sanctions under the code of ethics. Notaries, as public officials, should always comply with, obey, and implement all provisions contained in the Notary Law and the Notary Code of Ethics in carrying out their duties. They should adhere strictly to laws and regulations, social norms, religious norms, and morality. They should carry out their duties with a full sense of responsibility and caution. It is recommended that parties requiring Notary services be honest in providing the information and data required for the preparation of deeds in accordance with the legal events that occur so that problems do not arise in the future.

[73]Cahyanti, N., Raharjo, B., & Wahyuningsih, S. E. (2018). Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia. *Jurnal Akta*, *5*(1), 288-294. accessed on 9 July 2025 at 9.28 pm.

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