

Accountability and Legal Protection Against Notaries for Legally Defective Deeds (Study of Decision Number 65/Pdt.G/2020/PN Kdi)

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Abstract. *This study discusses the responsibilities and legal protection of notaries as public officials against defective deeds according to the Notary Law (UUJN). Notaries have a strategic role as public officials who are authorized by the state to make authentic deeds that have perfect evidentiary power. However, in practice it is not uncommon to find deeds that are defective both formally and materially, resulting in legal consequences, both for the parties and for the notary himself. The purpose of this study is to analyze the form of notary responsibility for defective deeds and the form of legal protection provided to notaries according to the provisions of the UUJN. This study employs a normative juridical legal research method with a statute approach and a conceptual approach. This study employs the Theory of Legal Certainty, the Theory of Legal Responsibility, and the Theory of Legal Protection as analytical tools. Data were obtained from primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature, books, and legal journals. The research results show that a notary's liability for legally flawed deeds can take the form of civil and administrative liability, depending on the level of error and the consequences. On the other hand, legal protection for notaries is regulated in the UUJN, specifically through the Notary Honorary Council (MKN) mechanism as stipulated in Article 66 of the UUJN, which functions as a form of preventive and repressive protection for notaries in carrying out their duties. A balance between responsibility and legal protection is necessary to ensure legal certainty and maintain the integrity of the notary profession in Indonesia.*

Keywords: Defective; Legal; Notary; Protection; Responsibility.

1. Introduction

A notary is a public official appointed by the state to make authentic deeds and has other authorities as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN).

Notaries as public officials are different from other legal professions, because their authority comes directly from the law, not solely from the profession regulated by an organization.¹ Thus, notaries have an important public function, namely providing legal certainty, order, and legal protection for the community through the creation of authentic deeds.

An authentic deed is written evidence that has perfect evidentiary power in civil procedural law.² A deed has three evidentiary powers, namely formal evidentiary power, material evidentiary power, and external evidentiary power.

The notary's position as a public official means that he or she exercises some of the state's authority in the field of civil law, particularly in the preparation of authentic deeds. Authentic deeds have perfect evidentiary force in civil procedural law, as stipulated in Article 1868 of the Civil Code (KUHPerdara). Therefore, the notary's responsibility in preparing deeds is crucial to maintaining their validity. Notaries are obligated to ensure that deeds are prepared in accordance with the formal provisions of the UUJN, starting from the presence of the parties, reading the deed, and signing the deed.³ In practice, it is not uncommon for deeds drawn up by notaries to be declared legally flawed, both formally and materially. Formal flaws can arise from violations of the requirements and procedures for drawing up a deed as stipulated in Article 38 of the UUJN, while material flaws arise from a discrepancy between the wishes of the parties and the contents of the deed.⁴

Deed defects can be classified into two categories: formal defects and material defects. Formal defects relate to the deed's drafting procedures that do not comply with the provisions of the UUJN, for example, the parties are not signed, witnesses are not present, or the deed is not read aloud before the parties. Meanwhile, material defects relate to the substance of the deed that does not

¹Habib Adjie, 2008, Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary, Refika Aditama, Jakarta, p. 10.

²Subekti, 2005, Law of Evidence, Pradnya Paramita, Jakarta, p. 25.

³Habib Adjie, Op. Cit., p. 45.

⁴Rachmadi Usman, 2016, Legal Aspects of Notarial Deeds and Notary Responsibilities, Kencana, Jakarta, p. 45.

reflect the true intentions of the parties, for example, the presence of elements of fraud, coercion, or errors in the content of the agreement.⁵

From a civil law perspective, the validity of an agreement depends on the fulfillment of four valid conditions for an agreement as regulated in Article 1320 of the Civil Code, namely:

- 1) Agree those who bind themselves;
- 2) The ability to make a contract;
- 3) A certain thing; and
- 4) A legitimate reason.

If any of these conditions is not met, the agreement is considered legally invalid and can be cancelled or void. In the Kendari case, the defective deed occurred because the elements of agreement and certain matters were not met, thereby rendering the agreement contained in the deed void.

From a legal perspective, a notary's liability can arise from civil, criminal, or administrative matters, depending on the type of violation committed. Meanwhile, legal protection for notaries is also necessary to ensure independence and legal certainty in carrying out their duties.⁶

This situation raises questions regarding the notary's responsibility for defective deeds and the legal protection afforded to notaries in carrying out their duties as public officials. One case that reflects this issue is Kendari District Court Decision Number 65/Pdt.G/2020/PN Kdi, in which a land sale and purchase deed drawn up by a notary was declared legally flawed because it did not meet formal and material requirements. In this case, the deed was drawn up in the absence of one of the parties and contained information that did not correspond to the facts. Therefore, the panel of judges declared the deed lacked full evidentiary force and gave rise to legal liability for the notary in question.⁷ This case demonstrates that even though a notary acts within the law, they can still be held legally accountable for their actions. However, notaries often face a dilemma. On the one hand, they are formally responsible for the deeds they draft. On the other hand, they cannot guarantee the material accuracy of the deed's contents, as these represent statements from the parties outlined in the deed.⁸ Therefore, the author takes the theme of the thesis entitled ACCOUNTABILITY AND LEGAL

⁵Tan Thong Kie, 2018, *Notary Studies and the Ins and Outs of Notary Practice*, Ichtiar Baru Van Hoeve, Jakarta, p. 312.

⁶Philipus M. Hadjon, 1987, *Legal Protection for the Indonesian People*, Bina Ilmu, Surabaya, p. 12.

⁷Kendari District Court Decision Number 65/Pdt.G/2020/PN Kdi, accessed October 17, 2025.

⁸Salim HS, 2010, *Development of Theory in Legal Science*, Rajawali Pers, Jakarta, p. 128.

PROTECTION OF NOTARIES FOR LEGALLY DEFECTIVE DEEDS (Study of Decision Number 65/Pdt.G/2020/PN Kdi).

2. Research Methods

The research method used in compiling this thesis is normative legal research (normative legal research method). The normative legal research method is library legal research conducted by examining library materials or secondary data alone. By using deductive thinking method (a way of thinking in drawing conclusions drawn from something general that has been proven to be true and the conclusion is intended for something specific).⁹ The method for collecting legal materials in this research was library research. This study involved searching, reading, recording, and classifying relevant legal materials.¹⁰ Primary legal materials are collected by accessing applicable laws and regulations. Secondary legal materials are obtained through books, journals, and legal articles. Tertiary legal materials are obtained through legal dictionaries and encyclopedias.

3. Results and Discussion

3.1. Legal Responsibility of Notaries for Authentic Deeds that are Legally Defective in Decision Number 65/Pdt.G/PN Kdi

A notary's legal liability arises when the deed he makes causes losses or does not comply with the provisions of the Notary Law (UUJN).¹¹ As a public official, a notary has moral, administrative and legal responsibility for every deed made before him.¹²

According to Article 16 paragraph (1) letter a of the UUJN, notaries are required to act honestly, carefully, independently, impartially, and protect the interests of the parties. If these provisions are violated, the notary can be held accountable on the basis of negligence in carrying out the authority of his position.¹³

The forms of notary accountability can be divided into three:

1) Civil Liability

⁹Sedarmayanti & Syarifudin Hidayat, 2002, *Research Methodology*, Mandar Maju, Bandung, p. 23.

¹⁰Soerjono Soekanto and Sri Mamudji, 2001, *Normative Legal Research: A Brief Review*, Raja Grafindo Persada, Jakarta, p. 15.

¹¹Habib Adjie, 2025, *Notary Law Enforcement in the Perspective of UUJN and Job Ethics*, Refika Aditama, Bandung, p. 47.

¹² Peter Mahmud Marzuki, 2023, *Introduction to Legal Science*, Kencana, Jakarta, p. 47.

¹³R. Soegondo Notodisoerjo, 2024, *Notarial Law in Indonesia: An Explanation*, Raja Grafindo Persada, Jakarta, p. 38.

If the deed made causes losses to the interested party due to the notary's negligence, a lawsuit can be filed based on Article 1365 of the Civil Code concerning unlawful acts.¹⁴

2) Criminal Liability

This applies if the notary intentionally makes a deed containing false information, as regulated in Article 266 of the Criminal Code.¹⁵

3) Administrative and Ethical Accountability

Applies if the notary violates the procedures of office, code of ethics, or provisions of the UUJN which can be subject to sanctions in the form of a warning, temporary or permanent dismissal.¹⁶

Factors Causing Notarial Deeds to Become Legally Defective Based on the results of a review of legal documents and case studies, a notarial deed can be declared legally defective if the following elements are present:

- 1) Administrative Errors, such as the identity of the party not matching the original document;
- 2) Absence of the Authorized Party, even though they are listed as present in the deed;
- 3) Violation of the Deed Making Procedure, for example, not being present as required by Article 40 UUJN;
- 4) The notary's carelessness in checking the authenticity of the document.¹⁷

These factors indicate that legal defects in deeds are often not due to the notary's malicious intent, but rather administrative negligence, so that the resulting liability is more professional than criminal.¹⁸

3.2. Legal Protection for Notaries for Authentic Deeds that are Legally Defective in Decision Number 65/Pdt.G/PN Kdi

Legal Protection Against Mistakes in Deeds Made by Notaries. A public official who has the authority to make authentic deeds is called a Notary. The legal

¹⁴Ahmad Maulana, 2025, "Qualitative Approach in Normative Legal Research", Lex Renaissance, Vol. 9, No. 1, pp. 12–22.

¹⁵ Habib Adjie, 2024, Notary Law in Indonesia: Thematic Interpretation of UUJN, Refika Aditama, Bandung, p. 183.

¹⁶Bambang Sunggono, 2022, Legal Research Methodology, Raja Grafindo Persada, Jakarta, p. 97.

¹⁷Retno Wahyuningrum, 2025, "Notary's Accountability for Defective Deeds from the Perspective of UUJN", Jurnal Lex et Societatis, Vol. 12, No. 3, p. 205.

¹⁸Muhammad Yasin, 2025, "Legal Protection for Notaries in Carrying Out Their Official Duties", Lex Renaissance, Vol. 9, No. 1, p. 39.

product made by a notary is a notarial deed. A notarial deed is an authentic deed whose requirements, procedures and must be made before an authorized public official in this case, namely a notary, are explained in the Notary Law Article 1. Of course, in making the deed, the notary is required to know the content, purpose and method of making it. A notary in making his deed must pay attention to the content, type and method of making it. This is because a notarial deed is formed from/because of the will of the parties.

In connection with notarial deeds regarding agreements, various agreements between the parties regarding a particular object constitute the contents of the deed which are binding on the parties themselves.¹⁹

Legal protection for notaries aims to maintain professional independence and ensure fairness in the performance of their duties. This protection includes:

- 1) Preventive Protection, in the form of laws and codes of ethics that regulate the procedures for carrying out the position;
- 2) Repressive Protection, in the form of the right to self-defense when a notary is accused of committing a legal violation;
- 3) Procedural Protection, through the Notary Honorary Council (MKN) before a notary can be questioned or named a suspect.²⁰

Preventive legal protection is provided to notaries so they can carry out their duties independently, without pressure from any party. This is regulated in Article 66A of the UUJN, which states that "In carrying out their duties, notaries have the right to receive legal protection from the state for actions taken in accordance with statutory provisions." This provision is intended to allow notaries to work professionally without fear of lawsuits, as long as they act in accordance with applicable legal procedures.²¹ Meanwhile, repressive legal protection is provided when a notary faces legal problems due to the deeds they have drawn up, either in the form of a civil lawsuit or a criminal report. In the Kendari District Court Decision Number 65/Pdt.G/2020/PN Kdi, the judge emphasized that "The notary cannot be held criminally liable because there is no evidence of intent, but rather negligence in carrying out the deed administration procedures." Thus, repressive protection is provided through a judicial mechanism that upholds the principles of justice and proportionality of responsibility.²² On the other hand, the Regional

¹⁹Suryanto, S & Ningsih, AS, 2020, "Unilateral Cancellation of Agreements According to Article 1320 Paragraph (1) of the Civil Code Concerning Agreement as a Condition for the Validity of an Agreement", *Jurnal Pro Hukum: Journal of Legal Research*, University of Gresik, pp. 3-4.

²⁰Habib Adjie, 2025, *Notary Law Enforcement from the Perspective of UUJN and Professional Ethics*, Refika Aditama, Bandung, p. 101.

²¹Republic of Indonesia, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 66A.

²²Kendari District Court Decision Number 65/Pdt.G/2020/PN Kdi, decision, page 24.

Supervisory Council (MPD) of Notaries plays a crucial role in providing administrative protection. Based on Article 67 paragraph (1) of the UUJN, the MPD has the authority to provide guidance, supervision, and inspections of notaries. If administrative violations are found, the sanctions imposed will be in the form of guidance, not punishment. This aligns with the principle of professional protection, which prioritizes improving professional ethics, not merely criminalization.²³ From a legal justice perspective, protection for notaries is an implementation of the principle of "audi et alteram partem," which is the right of every person to be heard before being subjected to sanctions. Legal protection also reflects the values of justice in Islamic law, particularly the principles of al-'adl (justice) and amanah (trust). A notary acts as amin al-'ummah—a guardian of the community's trust in legal agreements—thus, the state is obligated to ensure that the responsibilities imposed on them remain in line with the principles of proportionality and justice.²⁴

The relationship between accountability and legal protection is complementary, not mutually exclusive. Notaries, as public officials, can still be held accountable, but they must be provided with protection to prevent the criminalization of the profession.²⁵ Legal protection must be balanced with legal accountability so that the notary profession continues to carry out its duties safely, honestly, and professionally.²⁶ This balance is also a form of implementation of the principles of justice and legal certainty as mandated in Pancasila and Article 28D paragraph (1) of the 1945 Constitution.²⁷

1) Legal Protection Based on UUJN

According to Article 66 of Law Number 2 of 2014, the examination of a notary in a judicial proceeding must first obtain approval from the Notary Honorary Council (MKN). The purpose of this provision is to provide legal protection for notaries so that they are not easily summoned or prosecuted in the performance of their duties. In the Kendari case, the MKN for the Southeast Sulawesi Region provided protection by ensuring that notaries could only be questioned after obtaining written permission from the MKN. This demonstrates that preventive legal protection has been implemented.²⁸

2) Preventive and Repressive Legal Protection

Legal protection for notaries can be divided into two:

²³Republic of Indonesia, UUJN, Article 67 paragraph (1).

²⁴Ahmad Mujahidin, 2023, *Islamic Law in the National Legal System*, RajaGrafindo Persada, Jakarta, p. 119.

²⁵Satjipto Rahardjo, 2023, *Legal Science: An Introduction*, Genta Press, Jakarta, p. 141.

²⁶Hans Kelsen, 2024, *General Theory of Law and State*, Nusa Media, Bandung, p. 213.

²⁷Bambang Waluyo, 2023, *Legal Research in Practice*, Sinar Grafika, Jakarta, p. 89.

²⁸*Ibid.*, Article 66.

- a. Preventive (prevention): carried out through MKN supervision and the procedural obligations of notaries to comply with the code of ethics and UUJN.
- b. Repressive (after a violation occurs): carried out through an inspection mechanism by the MKN and the imposition of proportional administrative sanctions without directly criminalizing the notary.²⁹

In the Kendari case, a form of repressive protection was provided through a MKN decision which only issued a written warning, not criminal punishment, because it was proven that the Notary acted without malicious intent.

3) Balance between Accountability and Protection

Conceptually, the responsibility and legal protection of notaries must be balanced. Notaries are obligated to be responsible for negligence in drafting deeds, but the state is also obligated to protect notaries from criminalization when carrying out their duties in good faith. The Kendari case illustrates this balance: a notary was reprimanded for negligence, but was still protected by the National Civil Service Law (MKN) in accordance with the principle of *lex specialis derogat legi generali*, namely the UUJN as a special regulation above general law.

4. Conclusion

Based on research resultsKendari District Court Decision No. 65/Pdt.G/2020/Kdi indicates that a notary can be held civilly liable if the deed they made is declared legally flawed due to failure to fulfill the formal and material requirements for making a deed as regulated in the UUJN. A flawed deed causes the notary to be considered negligent (*culpa*) in carrying out his authority as a public official so that the deed loses its evidentiary force as an authentic deed. Based on Kendari District Court Decision No. 65/Pdt.G/2020/Kdi, a deed proven to be legally flawed is downgraded to a private deed, thereby weakening its evidentiary force. This has an impact on disputes between the parties, where the deed no longer has an authentic character and cannot be used as perfect evidence as regulated in Article 1868 of the Civil Code. Notaries receive preventive legal protection through normative provisions in the UUJN, which provide guidelines for carrying out their duties, such as the obligation to read deeds, verify the identities of the parties, and maintain the principle of prudence. Furthermore, notaries receive repressive legal protection when involved in judicial proceedings, namely through the Notary Honorary Council (MKN) mechanism, which determines the eligibility of notaries to be summoned as witnesses or defendants, so that notaries cannot be immediately positioned as guilty parties without a strong legal basis. Suggestion : Based on the research results and discussion, several things can be concluded as follows: To the Notary: Notaries should be more careful in verifying

²⁹Sjaifurrachman, 2020, Aspects of Notary Accountability in Making Deeds, Mandar Maju, Bandung, p. 112.

the identity and presence of the parties, and understand all the provisions in the UUJN so as not to cause legal defects in the deeds they make. To Professional Organizations (INI & MKN): It is hoped that this will strengthen the mechanisms for fostering and supervising notaries, as well as providing legal assistance to members facing legal problems related to the implementation of their positions. To the Government and Lawmakers: It is necessary to revise the UUJN to define clear boundaries between administrative negligence and criminal misconduct in the notary profession, in order to prevent the criminalization of the profession.

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