

Legal Consequences of Violations of Notary Caution in Making Authentic Deeds

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Abstract. *This study aims to analyze the legal consequences of notary violations of the principle of prudence in making authentic deeds based on Decision Number 366/Pid/2025/PT SMG. The study uses a normative legal research method with a statutory approach, a case approach, and a conceptual approach. The results of the study indicate that violations of the principle of prudence can result in the deed losing its authentic evidentiary power and give rise to legal liability for the notary, both administratively, civilly, and criminally. In Decision Number 366/Pid/2025/PT SMG, the notary was proven to have made a Deed of Minutes of the GMS that did not comply with the legal facts and made changes to the minutes of the deed without legal procedures. The decision emphasizes that the application of the principle of prudence is a fundamental obligation of a notary in ensuring legal certainty and protection for the parties.*

Keywords: *Consequences; Legal; Notary; Precautionary.*

1. Introduction

A notary is a public official authorized by the state to create authentic deeds as evidence with absolute probative force in civil legal relations. The notary's position plays a crucial role in providing legal certainty for every legal act undertaken by the public through authentic deeds.¹

In exercising their authority, notaries are required to apply the principle of prudence as stipulated in Article 16 paragraph (1) of the Notary Law. This principle requires notaries to act honestly, independently, carefully, thoroughly, and impartially in examining the identities, documents, and legal facts submitted by the parties.²

However, in practice, violations of the precautionary principle are still found,

¹ Habib Adjie. (2018). Indonesian Notary Law. Bandung: Refika Aditama, p. 78.

² Sjaifurrachman & Habib Adjie. (2020). Aspects of Notary Accountability in Making Deeds. Bandung: Mandar Maju, p. 45.

resulting in legal disputes. One example is found in Decision Number 366/Pid/2025/PT SMG concerning the preparation of the Deed of Minutes of the GMS of PT Mutiara Arteri Property. In this case, the deed was prepared as if the meeting had taken place, even though the facts of the trial showed that the meeting never took place as stated in the deed.³

These violations not only impact the validity of authentic deeds but also give rise to legal liability for the notary. Deeds executed without meeting formal and material requirements can lose their evidentiary force and even become the basis for civil lawsuits or criminal proceedings against the notary.⁴

Based on the description, this study aims to analyze the legal consequences of violations of the notary's principle of prudence in making authentic deeds based on Decision Number 366/Pid/2025/PT SMG.

2. Research Methods

This research is a normative legal study that focuses on the study of legal norms in legislation, doctrine, and court decisions. The approaches used include the statute approach, the case approach, and the conceptual approach.⁵

Primary legal materials consist of the Notary Law, the Civil Code, the Criminal Code, the Notary Code of Ethics, and Decision Number 366/Pid/2025/PT SMG. Secondary legal materials were obtained from books, scientific journals, and relevant research results, while tertiary legal materials came from legal dictionaries and official legal sources. The analysis was conducted qualitatively using deductive reasoning methods to draw conclusions regarding the research problem.⁶

3. Results and Discussion

3.1. Legal Consequences of Violations of the Notary's Principle of Prudence in Making Authentic Deeds

Implementing the principle of prudence is a fundamental obligation that a notary must apply in every authentic deed. This obligation extends not only to verifying the parties' identities but also includes document verification, authority to act, and ensuring that the legal events outlined in the deed actually occurred. The application of this principle aims to provide legal certainty and legal protection

³ Semarang High Court Decision Number 366/Pid/2025/PT SMG.

⁴ Munir Fuady. (2020). *Theory of Civil and Criminal Evidence Law*. Bandung: Citra Aditya Bakti, p. 11

⁵ Peter Mahmud Marzuki. (2021). *Legal Research*. Jakarta: Kencana, p. 35.

⁶ Soerjono Soekanto & Sri Mamudji. (2015). *Normative Legal Research: A Brief Review*. Jakarta: RajaGrafindo Persada, p.

for the parties.⁷

Decision Number 366/Pid/2025/PT SMG found that the Deed of Minutes of the GMS was prepared without the meeting being held as stated in the deed. Furthermore, the witness who signed the deed was unaware of the meeting, thus rendering the deed inconsistent with the actual legal facts. This situation indicates a violation of the notary's principle of prudence.⁸

The legal consequences of such violations impact the validity of authentic deeds. Deeds that fail to meet formal and material requirements may lose their evidentiary validity and potentially become underhand deeds or even be declared null and void if proven to violate statutory provisions.⁹

Violations of the principle of prudence also give rise to legal liability for notaries as public officials. Under the Notary Law, notaries can be subject to administrative sanctions through the oversight mechanism of the Notary Supervisory Board if they are proven to have violated their official obligations. Furthermore, notaries can also be held civilly liable for damages if their actions result in losses for other parties.

Under certain circumstances, such violations can also lead to criminal liability if the notary intentionally creates or includes false information in an authentic deed. Therefore, the notary's liability does not stop at the administrative aspect but can extend to the criminal realm if the necessary elements are met.

Analysis based on the theory of legal responsibility shows that every official exercising public authority is responsible for actions that violate the law. In this case, the notary was deemed to have failed to fulfill his duty of care, resulting in legal losses for another party.

3.2. Analysis of Decision Number 366/Pid/2025/PT SMG

Decision Number 366/Pid/2025/PT SMG stems from a dispute concerning PT Mutiara Arteri Property regarding the drafting of the Deed of Minutes of the GMS. The trial revealed that the general meeting of shareholders, which served as the basis for the deed, was never held as stated in the deed. The notary continued to draft the deed as if the meeting had taken place and asked witnesses to sign the deed even though the witnesses were unaware of the event.¹⁰

The panel of judges considered that the notary's actions violated the obligation to act diligently, thoroughly, and honestly in carrying out his or her duties.

⁷ Habib Adjie, *Indonesian Notary Law* (Bandung: Refika Aditama, 2018), p. 78.

⁸ Decision Number 366/Pid/2025/PT SMG.

⁹ Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 2019), p. 95.

¹⁰ Decision Number 366/Pid/2025/PT SMG.

Furthermore, the changes to the minutes of the deed without the approval of the company's organs were also deemed inconsistent with applicable legal procedures.

Based on the theory of legal certainty, an authentic deed can only provide legal certainty if it is made based on correct facts and fulfills all procedures for making it. If this procedure is violated, the purpose of the authentic deed as perfect evidence is lost and creates legal uncertainty for the parties.¹¹

This decision serves as a reminder that notaries are not only tasked with expressing the wishes of the parties, but also ensuring that all legal facts contained in the deed are in accordance with reality and fulfill the provisions of the Notary Law in force in Indonesia.

4. Conclusion

Based on the research results, violations of the principle of prudence by notaries in making authentic deeds have legal consequences for both the deed and the notary as a public official. Deeds made without fulfilling the formal and material requirements as stipulated in the Notary Law have the potential to lose their authentic evidentiary power, can be canceled, or even be declared null and void if they conflict with statutory provisions. On the other hand, notaries can be held legally accountable in the form of administrative, civil, or criminal sanctions according to the level of violation committed. Decision Number 366/Pid/2025/PT SMG affirms that the principle of prudence is a fundamental obligation in the performance of a notary's office. In this case, the notary was found guilty of drafting a Deed of Minutes of a General Meeting of Shareholders (GMS) that did not comply with the legal facts and of amending the minutes of the deed without proper procedures. The judge's legal reasoning indicates that every authentic deed must be based on accurate facts, comply with established procedures, and be executed carefully and thoroughly to provide legal certainty and protection.

5. References

Books:

- Adjie, H. (2018). *Hukum Notaris Indonesia*. Bandung: Refika Aditama.
- Adjie, H. (2019). *Sanksi Perdata dan Administratif terhadap Notaris*. Bandung: Refika Aditama.
- Anshori, A. G. (2009). *Lembaga Kenotariatan Indonesia*. Yogyakarta: Ull Press.
- Fuady, M. (2020). *Teori Hukum Pembuktian Perdata dan Pidana*. Bandung: Citra Aditya Bakti.
- Kelsen, H. (2018). *General Theory of Law and State*. New York: Routledge.

¹¹ Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 2019), p. 97.

- Lumban Tobing, G. H. S. (1999). *Peraturan Jabatan Notaris*. Jakarta: Erlangga.
- Marzuki, P. M. (2021). *Penelitian Hukum*. Jakarta: Kencana.
- Mertokusumo, S. (2019). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty.
- Salim HS. (2019). *Teknik Pembuatan Akta Notaris*. Jakarta: Sinar Grafika.
- Sjaifurrachman, & Adjie, H. (2020). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Bandung: Mandar Maju.
- Kurniawan. (2021). "Akibat Hukum Akta Notaris yang Mengandung Cacat Formil dan Materiil." *Jurnal Hukum Kenotariatan*.
- Pratama. (2024). "Pertanggungjawaban Notaris atas Akta yang Menimbulkan Sengketa." *Jurnal Hukum dan Kenotariatan*.
- Sari, & Rachman. (2023). "Pertanggungjawaban Pidana Notaris dalam Pembuatan Akta Autentik." *Jurnal RechtsVinding*. Republic of Indonesia. (2014).

Regulation:

- Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.
- Semarang High Court. (2025). Decision Number 366/Pid/2025/PT SMG.