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Notary's Responsibility for Formal Defects in Bank Credit Agreement Deeds

Dyna Fabiola
Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: dynafabiola.std@unissula.ac.id

Abstract. *This study aims to analyze the legal liability of notaries for formal defects in bank credit agreements and the legal consequences that arise on the deed's position and evidentiary power. The study uses a normative legal research method with a statutory approach. The legal materials used are primary, secondary, and tertiary legal materials obtained through literature studies and analyzed prescriptively. The results of the study indicate that in the case being studied, the debtor used a false identity and the notary did not conduct a thorough verification because he relied too much on the results of the creditor survey. This negligence is seen as a violation of the obligations of objectivity, independence, and the principle of prudence in carrying out the notary's office. The responsibilities discussed include civil liability under Article 1365 of the Civil Code, potential criminal liability under Article 266 of the Criminal Code, and administrative sanctions in accordance with the provisions of the notary's office. These formal defects have implications for the degradation of authentic deeds into private deeds so that their evidentiary power is no longer equal to that of authentic deeds. This condition results in creditors losing a strong evidentiary basis for collecting debts in default.*

Keywords: *Agreement; Credit; Defects; Legal; Protection.*

1. Introduction

Authentic deeds hold a crucial position in legal relations because they are intended to provide certainty regarding the events and legal statements contained therein. In notarial practice, the validity of such deeds depends heavily on the fulfillment of legal requirements and the notary's diligence in exercising their authority. Research on notary liability for legally flawed deeds confirms that non-compliance with deed-making procedures can impact their evidentiary standing and validity (Arsy et al., 2021). Therefore, an authentic deed is not simply a matter of fulfilling its physical form; its creation process must also be carried out carefully and professionally.

In banking practice, a credit agreement deed is a crucial instrument providing the legal basis for the relationship between creditors and debtors. A notary plays a key role in documenting the agreement and ensuring that the deed-making process meets the requirements of the notary's office. This role demands neutrality and independence, as notaries must not prioritize the interests of one party over the other. Sari and Gozali (2025) emphasize the importance of notary neutrality in drafting credit agreement deeds, particularly as the notary's position relates to the interests of parties with differing legal interests.

Problems arise when the data used to create the deed turns out to be incorrect. Formal defects can occur if the requirements or procedures required for creating the deed are not met. In the context of credit deeds, these problems become more serious if the debtor's identity is false. Research on credit agreements with false identities shows that the use of false identities can raise questions about the validity and legal consequences of the deed (Prananda et al., 2025). Therefore, verifying the identities of the parties is a crucial part of preventing banking disputes.

This problem was evident in the case under study. The debtor had used a false identity from the outset, which was then incorporated into the credit deed. The creditor had previously conducted a field survey, but when the notary deed was drawn up, they did not conduct a thorough re-examination and relied solely on the debtor's ID card. After the debtor defaulted, it was discovered that the address listed on the identity card did not reflect the actual situation. This situation resulted in losses for the creditor and difficulties in collecting the debt.

Normatively, notaries have an obligation to perform their duties objectively, independently, and diligently. This obligation does not waiver simply because the bank has conducted a previous survey or inspection. In fact, when the data is to be incorporated into an authentic deed, the notary must ensure that the identities and statements of the parties are verifiable. The principle of prudence in drafting an authentic deed is a crucial tool for preventing legal flaws and future disputes (Andrianto et al., 2022).

The formal flaw in this case also relates to the deed's function as an instrument of legal certainty and protection. An authentic deed should provide a strong evidentiary basis for the parties in the event of a default. However, when the deed is degraded to a private deed, the creditor no longer has the same evidentiary force. This situation demonstrates a gap between the authentic deed's ideal function as a means of legal certainty and the reality when procedures and verification are inadequately implemented.

Based on the above description, the research problem identification lies in the limits of notary liability when formal defects in credit agreements arise from the use of false identities by debtors that are not detected due to negligence in notary verification. This issue is important to study in order to provide a clearer measure of notary liability while ensuring legal certainty and protection for both creditors and debtors. This study aims to analyze notary liability for formal defects in bank credit agreements based on the case studied.

2. Research Methods

This study uses normative legal research with a statute approach. The research specifications are descriptive-analytical with a focus on provisions regarding the position of notary, authentic deeds, credit agreement deeds, formal defects, and notary accountability. The legal materials used include primary legal materials in the form of laws and court decisions, secondary legal materials in the form of books, journals, and relevant scientific works, and tertiary legal materials in the form of legal dictionaries and supporting sources. The collection of legal materials is carried out through literature studies. Legal materials are analyzed qualitatively and prescriptively to obtain answers to research problems and formulate legal consequences and relevant recommendations.

3. Results and Discussion

3.1. Notary's Responsibility for Formal Defects in Bank Credit Agreement Deeds

The case under study demonstrates the relationship between the debtor's use of false identification and the notary's negligence in the verification process. The debtor used fraudulent identity documents and collaborated with other parties present as witnesses. The false identity was only discovered after the debtor failed to fulfill his loan repayment obligations. Prior to the deed's issuance, the bank had conducted a field survey, leading the notary to assume the survey results were valid without conducting adequate re-examination. As a result, the document used in the deed relied solely on the ID card, which did not reflect the actual situation (Dyna Fabiola's Thesis, 2026).

In carrying out their duties, notaries should not use the results of a party's examination as a substitute for their own professional obligations. Bank surveys and notarial verifications have different functions. Banks conduct surveys for credit analysis, while notaries are responsible for the deed preparation process and fulfilling formal requirements related to the parties and the formal content of the deed. Therefore, the existence of a bank survey does not eliminate the notary's obligation to be objective and independent.

This obligation becomes even more crucial because the identity of the person appearing is part of the deed's structure. Previous research has stated that the person's identity must be stated completely and in accordance with the documents used to identify the parties present. When such information is found to be derived from forged documents and the notary fails to conduct adequate verification, the problem goes beyond mere administrative errors and can also impact the formal validity of the deed. This aligns with studies on notary accountability for legally flawed deeds, which place procedural accuracy as a crucial element in the performance of their duties (Arsy et al., 2021).

From a professional ethics perspective, a notary's overly trusting actions also demonstrate a problem of objectivity. Notaries should not rely on certain parties, including creditors with whom they have long collaborated. Repeated professional relationships can build trust, but such trust should not replace the obligation to verify. Notary professional ethics require that notaries remain independent and free from conflicts of interest (Sipayung & MS, 2025).

In this case, the notary's trust in the bank led him to fail to request other supporting documents, such as comparative identity documents, and to fail to further verify the debtor's actual circumstances. The thesis suggests that this step opened the door to the use of false identities and ultimately rendered the credit deed incapable of providing the legal protection it intended. Notaries should be able to exercise their authority to request necessary supporting documents when there is reason to verify the authenticity of an identity.

The principle of prudence is an important basis for assessing such actions. This principle does not mean that a notary must conduct unlimited investigations of every party, but rather that the notary must take reasonable steps to ensure that the identity and information contained in the deed are reliable. In the case studied, reliance on a single identity document and reliance on a bank survey indicate that prudence has not been optimally implemented. Andrianto et al. (2022) also place the application of the principle of prudence as part of the process of creating an authentic deed.

This negligence has consequences for civil liability. The thesis analyzes that parties who suffer losses due to notary negligence can claim compensation by referring to Article 1365 of the Civil Code. The elements emphasized are the existence of an unlawful act, error or negligence, loss, and a causal relationship. In this case, the creditor's losses are related to the debtor's default and the bank's inability to collect effectively because the identity and address used in the deed do not match the actual situation.

Civil liability does not automatically mean that all losses arising from the debtor's default become the notary's responsibility. The causal relationship must still be assessed. Based on the thesis, the basis for the notary's liability is based on negligence in document examination, which allowed false data to be included in the deed. Therefore, the focus of liability lies in the notary's negligence's contribution to the loss, not in shifting the debtor's entire fault to the notary.

In addition to civil law, the thesis also discusses the potential for criminal liability under Article 266 of the Criminal Code due to the inclusion of false information in an authentic deed. However, criminal liability essentially requires proof of the elements of the crime in accordance with applicable provisions. In the thesis analysis, the notary is deemed liable because the deed contains false information that causes losses, even though the notary was initially unaware that the documents provided by the debtor were forged. This discussion demonstrates the need to distinguish between professional negligence and the fulfillment of the element of intent in criminal liability.

The thesis also examines administrative sanctions as a form of accountability that can arise if a notary violates their professional obligations and code of ethics. The types of sanctions discussed include verbal or written warnings, temporary dismissal, and honorable or dishonorable discharge, as determined by the notary's position. From a professional development perspective, administrative sanctions serve to maintain the integrity of their profession and encourage notaries to carry out their duties professionally.

This accountability can be understood through the theory of legal certainty. Legal certainty requires clear, consistent rules that can serve as a basis for prediction for legal subjects. An authentic deed should be an instrument that allows banks to predict and enforce their rights in the event of a debtor's default. When a deed loses its authentic evidentiary force due to formal defects, this legal certainty function is not achieved.

The theory of legal protection also reinforces the assessment that notaries must provide balanced protection. Preventive protection is implemented before a dispute arises, including through verification of the parties' identities, authority, and documents. Repressive protection operates once a dispute has already occurred, primarily through the existence of a deed that can be used as evidence. In this case, the omission of verification undermines both functions because the bank lacks the necessary evidentiary instruments when the debtor defaults.

Interestingly, the thesis shows that the notary in this case still read the deed and provided explanations for terms the client found difficult to understand. This means that not all of the notary's obligations were ignored. The main issue lies in the identity check and independence during the verification process. This distinction is important so that the assessment of the notary's responsibility is not overly focused, but rather focused on the obligations that were specifically violated.

Thus, the notary's liability in this case can be understood in three areas. First, the civil realm relates to losses arising from negligence and can form the basis for a claim for compensation. Second, the criminal realm relates to the fulfillment of the elements of a crime regarding false information in a deed. Third, the administrative and ethical realm relates to violations of official obligations, objectivity, independence, and the principle of prudence. These three must be distinguished based on their respective elements and mechanisms.

3.2. Legal Consequences of Formal Defects in the Credit Agreement Deed

The formal flaw in this case stems from the discrepancy between the identity stated in the deed and the actual situation. When appearing before the debtor, he provided information consistent with the ID card he submitted. The problem was that the ID card turned out to be fake, and the address listed did not reflect the actual situation. Because the identity was included in the deed, the formal information that was part of the deed no longer accurately reflected the parties involved.

Conceptually, an authentic deed has strong evidentiary force because it is drawn up by or before an authorized public official and meets the requirements of the law. If these formal requirements are not met, the deed's status may be degraded. This thesis relates this condition to Article 1869 of the Civil Code and concludes that a defective deed can lose its authenticity and be treated as a private deed.

This degradation has consequences for evidentiary value. Private deeds can still have evidentiary value, but they do not have the same evidentiary power as authentic deeds. In banking cases, this distinction is crucial because banks require instruments that can provide a strong evidentiary basis when the debtor defaults. Research comparing the evidentiary power of authentic and private deeds also shows that this change in status impacts the evidentiary standing of the parties involved (Fauziannor et al., 2025).

The immediate consequence of the case was the bank's difficulty in collecting debt. The address listed in the documents and deeds turned out to be the wrong address, so when the debtor defaulted, the bank lacked information that could effectively contact or collect debt. The thesis described this situation as a material loss and a failure of the deed to provide legal certainty.

Formal defects also impact the deed's preventive function. Before a dispute arises, the deed should provide certainty regarding the identity of the parties, what was agreed upon, and how rights and obligations will be enforced. If the identity is incorrect, one of the foundations of this certainty is weakened. The deed can no longer optimally fulfill its preventive function because the data that should form the basis of the legal relationship is unreliable.

From the perspective of repressive legal protection, the degradation of the deed also reduces the effectiveness of protection once a dispute has arisen. While banks can still pursue legal action using other evidence, the credit deed, originally intended to be authentic evidence, no longer holds the same standing.

This thesis explicitly links this degradation to the deed's loss of validity as authentic evidence in the face of a debtor's default.

This issue demonstrates that legal certainty is determined not only by the existence of rules, but also by the consistency of procedural implementation. The theory of legal certainty used in this thesis emphasizes that rules must be clear, reliable, and have calculable consequences. In the context of the notary profession, verification procedures are part of the effort to ensure the public's trust in the notary's work.

The principle of legal protection also requires that the interests of creditors and debtors be considered equally. Notaries should not solely consider the interests of the bank, as the bank is the party requesting or providing the draft credit agreement. Instead, notaries must ensure that the deed preparation process is conducted independently. In this case, the weakness in protection is primarily felt by the bank, as it does not obtain the evidentiary benefits that would otherwise arise from an authentic deed.

Nevertheless, the fact that the debtor intended to use a false identity from the outset remains a significant factor. The debtor committed an act that was the primary source of the fraud against the creditor. Therefore, an analysis of the notary's liability must be placed within the framework of each party's contribution. This thesis does not eliminate the debtor's fault, but rather assesses that the notary's negligence allowed the act to slip through the deed-making process.

In the context of prevention, notaries should thoroughly examine submitted documents. This can be done by requesting supporting or comparative documents when necessary. The thesis provides examples of Family Cards or passports as supporting documents to ensure data consistency, and notaries can seek the assistance of authorized officials or verification facilities when necessary.

If there are discrepancies between the documents and the actual situation, the notary should seek clarification from the party appearing and should not immediately include the questionable information in the deed. Under certain circumstances, the notary may also refuse to execute the deed if the required requirements or documents cannot be verified. This approach is both a concrete manifestation of the principle of prudence and a preventive protection mechanism.

The duty of care becomes increasingly relevant in credit transactions because the economic value can be substantial and the consequences of default can be long-lasting. A single error in data, particularly identity and address information, can make it difficult for a bank to enforce its rights. Therefore, a notary cannot assume that a bank audit is sufficient to replace notarial verification.

From a professional perspective, this case also provides a lesson regarding the long-term collaborative relationship between notaries and banks. A good relationship should not develop into a dependency that diminishes independence. Notaries must maintain their position as public officials who serve the parties objectively. Research on notary neutrality in credit agreements places this independence as a crucial element in maintaining trust in the deed (Sari & Gozali, 2025).

Thus, the primary legal consequence of the formal defect in this case is the loss of the deed's status as an authentic deed and its degradation to a private deed. Subsequent consequences include reduced evidentiary power, suboptimal legal protection for creditors, collection difficulties due to false identities, and the emergence of a basis for liability against the notary if negligence is proven to be causally related to the loss.

The broader implication is the importance of clearly delineating the boundaries between administrative errors, ethical violations, civil liability, and criminal liability for notaries. The thesis recommends that legislators and the government clarify these boundaries when regulating the notary profession. Clarity about the limits of liability is necessary to ensure public protection without neglecting the principle of prudence in imposing liability on public officials.

4. Conclusion

The notary's liability in the case under study arose due to negligence in examining and verifying the debtor's identity, allowing forged documents to be used as the basis for the credit agreement. This negligence demonstrates the suboptimal application of the principles of objectivity, independence, and prudence. Based on the thesis, liability can encompass civil law under Article 1365 of the Civil Code, potential criminal liability under Article 266 of the Criminal Code if criminal elements are proven, and administrative sanctions in accordance with the provisions of the notary's office. This formal defect also resulted in the deed being degraded into a private deed and losing the evidentiary force inherent in authentic deeds. Notaries are advised to conduct more thorough identity and document verification, not to rely solely on the results of a party's survey, and to maintain objectivity and independence in every credit deed drafting process. Professional organizations need to strengthen guidance and oversight regarding the application of the principle of prudence, while lawmakers and the government need to clarify the boundaries between administrative errors, ethical violations, civil liability, and criminal liability for notaries. These steps are necessary to ensure that authentic deeds truly serve as a means of legal certainty and protection for all parties.

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