

Legal Responsibility of Instrumental Witnesses in the Process Making Authentic Deeds

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Abstract. *This study aims to analyze: 1) the legal certainty of instrumental witnesses in the process of making authentic deeds. 2) the legal responsibility that can be imposed on instrumental witnesses if there is a discrepancy or untruth in the contents of the authentic deeds made. This type of research is normative legal research. The approach method in this research is the Statute approach. The type of data in this research is secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses library techniques (study documents). The analysis in this research is prescriptive. The results of the study conclude: 1) The legal certainty of instrumental witnesses in the process of making authentic deeds is the main pillar in guaranteeing the formal validity and perfect evidentiary value of deeds made by notaries. Legal certainty demands that every authentic deed must be formed in accordance with the provisions of applicable laws, including the requirement for the presence of two instrumental witnesses as regulated in Article 16 paragraph (1) letter m and Article 40 paragraph (1) UUJN. These provisions are imperative and must be fulfilled, because without the presence of a valid instrumental witness, the deed made by a notary does not fulfill its formal elements and cannot be qualified as an authentic deed. 2) The legal responsibility that can be imposed on the instrumental witness if there is a discrepancy or untruth in the contents of the authentic deed made lies in the formal aspects of the formation of the deed, not in the substance or content of the deed. This responsibility can be in the form of civil liability if the act results in loss to another party (through an unlawful act), criminal liability if proven to be consciously involved in forgery, providing false information, or stating to be present when not present during the process of reading and signing the deed, and administrative or ethical liability if there is a violation of notarial procedures and rules.*

Keywords: Accountability; Authentic Deed; Instrumental Witness.

1. Introduction

The position of an authentic deed as the main evidence in the Indonesian legal system is not solely based on formal power, but rather reflects the philosophical values of law as a means to realize justice and truth.¹ The presence of witnesses in an authentic deed reflects the principles of honesty and openness, two principles deeply embedded in civil law. The witness's function is to safeguard the validity of the will of the parties to the agreement and to confirm the authenticity of the deed's contents. When substantive justice values are used as the basis for evaluation, the presence of instrumental witnesses becomes part of the effort to achieve justice that is not only normative but also oriented toward fair outcomes for the community.²

The ethics of the legal profession, including notarial practice, require that legal actors not only adhere to procedural standards but also uphold moral principles. Notaries and witnesses have an ethical obligation to ensure that the deeds they create truly reflect the facts and the wishes of the parties. The mere presence of witnesses who serve only symbolic purposes without understanding the substance of the deed demonstrates a degradation of moral values within the legal system and diminishes the ethical legitimacy of the authentic deed itself.³ An authentic deed must be created not only based on procedure but also contain substance that is fair, correct, and ethical. In this context, the actual presence of instrumental witnesses is essential as proof that the deed-making process was carried out in good faith and without manipulation.⁴

The existence of instrumental witnesses, from a notarial perspective, is also closely linked to the ethics of the legal profession, particularly in ensuring the validity of deeds and protecting the parties. Witnesses are not merely present as "spectators" during the signing process, but rather as part of the legal evidence system, carrying moral and legal responsibilities. If this function is ignored, the principle of prudence in the preparation of authentic deeds will be compromised, which ultimately has the potential to lead to injustice and undermine public trust in notary institutions.⁵ The role of instrumental witnesses in the creation of authentic deeds has an important normative basis in the Indonesian civil evidence system. According to Article 1868 of the Civil Code (KUHP), an authentic deed is a deed made by or before an authorized public official, in a form prescribed by law. One of the formal requirements for validating a deed as authentic is the

¹Habib Adjie, (2009), *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Bandung : Refika Aditama, p. 68.

²Sudikno Mertokusumo, (2003), *Penemuan Hukum: Sebuah Pengantar*, Yogyakarta : Liberty, p. 16.

³M. Yahya Harahap, (2005), *Hukum Acara Perdata*, Jakarta : Sinar Grafika, p. 305.

⁴Yuni Pratiwi & Anggraeni Ramadhani, (2022), "Implementasi Hukum Progresif dalam Penegakan Etika Profesi Notaris terhadap Akta yang Cacat Formil", *Jurnal Akta*, Vol. 9 No. 3, p. 755.

⁵Lilis Suryani, (2020), Etika Profesi Notaris dalam Pembuatan Akta Otentik yang Berkeadilan", *Jurnal Hukum & Kenotariatan*, Vol. 2 No. 1, p.58.

presence of two witnesses who also witness the signing process and affix their signatures to the deed.⁶ The obligation to present instrumental witnesses is stipulated in Article 40 of Law Number 30 of 2004 concerning the Position of Notary Public, as amended by Law Number 2 of 2014 (UUJN). However, the provisions in this article only mention the obligation of a notary public to present two witnesses without further regulating the legal responsibility of instrumental witnesses in the event of errors or disputes related to the deeds they sign.⁷ The signatures of witnesses on a deed constitute a form of attestation that they were present and witnessed the signing of the deed by the parties. If this presence is merely formal or even fictitious, the deed may lose its authentic force.⁸

The Notary Law (UUJN) does not comprehensively regulate the evaluation mechanism for the quality of instrumental witness testimony, as it only stipulates administrative requirements, such as a minimum age limit and not being under guardianship, without emphasizing the substantial aspects of the witness's role and legal responsibilities. This opens up opportunities for notaries to use passive witnesses who are not fully familiar with the contents or process of deed preparation, thus creating loopholes for ethical and legal violations.⁹ The legal responsibility of witnesses is not only moral but also legally binding. Another study confirmed that allowing the use of fictitious witnesses in the preparation of deeds can undermine public trust in notarial institutions and undermine the evidentiary function of authentic deeds.¹⁰ Therefore, from a legal aspect, the existence and legal responsibility of instrumental witnesses must be seen as an integral part in guaranteeing the validity, legal force, and protection of the parties in making authentic deeds. Sociologically, the phenomenon of using fictitious instrumental witnesses or administrative formalities reflects a gap between legal norms and prevailing social practices. In practice, many notaries use employees or office staff as instrumental witnesses who are unfamiliar with the deed's contents or are not even present during the signing process. This degrades the legal function of witnesses, who should serve as guardians of the deed's validity and integrity.¹¹ Furthermore, parties harmed by problematic deeds lack adequate legal protection. In this regard, regulatory strengthening and increased legal understanding among notaries and the public regarding the crucial role of

⁶Jonaedi Efendi, (2018), *Metode Penelitian Hukum Normatif dan Empiris*, Jakarta : Prenada Media Group, p. 2.

⁷Habib Adjie, (2009), *Meneropong Khazanah Notaris dan PPAT Indonesia*, Bandung : Citra Aditya Bakti, p. 73.

⁸Siti Fatimah, (2020), "Kekuatan Pembuktian Akta Notaris yang Tidak Dihadiri Saksi Instrumentair", *Jurnal Akta*, Vol. 7 No. 3, UNISSULA, p. 456.

⁹Ani Nuraeni & Salma Safira, (2023), "Pertanggungjawaban Hukum Notaris dan Saksi Instrumentair dalam Pembuatan Akta Fiktif", *Jurnal Akta*, Vol. 10 No. 1, UNISSULA, p. 128.

¹⁰Dwi Rachmawati, (2021), "Kedudukan Saksi Instrumentair dalam Mewujudkan Akta Otentik yang Berkekuatan Hukum", *Jurnal Akta*, Vol. 8 No. 2, UNISSULA, p. 311.

¹¹Devi Kusumaningrum, "Analisis Yuridis Terhadap Peran Saksi Instrumentair dalam Pembuatan Akta Otentik Notaris", *Jurnal Repertorium*, Vol. 8 No. 2, 2021, p. 122–125.

instrumental witnesses in ensuring the validity and legal force of deeds are needed.¹²

2. Research Methods

This research is normative legal research. The approach used is a statute approach. The data used is secondary data sourced from primary, secondary, and tertiary legal materials. The data collection method uses library research (document study). The analysis used is prescriptive.

3. Results and Discussion

3.1. Legal Certainty of Instrumental Witnesses in the Process of Making Authentic Deeds

The principle of a state based on the rule of law guarantees certainty, order, and legal protection, based on truth and justice. To protect human interests, the law must be enforced. However, this implementation must proceed normally, orderly, and effectively. If a violation of the law occurs, enforcement efforts must be taken by the authorized apparatus.¹³ The important role of notaries in helping to create certainty and protect the public is more of a preventative measure, specifically to prevent legal issues from occurring. Notaries, under the Law on Legal Entities (UUJN), are obligated to provide legal services to the public. These services consistently provide legal certainty resulting from legal acts between parties, as documented in a deed. A notary is a public official who is authorized to make a deed, appointed by the Government and the Law which is based on the Decree of the Ministry of Law and Human Rights.¹⁴

The position of a notary as an official who makes authentic deeds is stated in Article 2 Paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Authentic deeds made by or before a notary according to the form and procedures stipulated in the law.¹⁵ The Notary has the obligation to make an authentic deed whose

¹²Yeni Dwi Lestari, "Sosiologi Hukum dan Etika Profesi Kenotariatan", *Jurnal Hukum dan Kenotariatan*, Vol. 4 No. 1, 2022, p. 88.

¹³Tiara Sanitra, Pertanggungjawaban Notaris dan Akibat Hukum Pengesahan Pendirian Perseroan Terbatas Melalui Sistem Administrasi Badan Hukum, *Jurnal Lex Renaissance*, No. 1 Vol. 4 January 2019, p.146

¹⁴Komang Ayuk Septianingsih, I Nyoman Putu Budiarta & Anak Agung Sagung Laksmi Dewi, (2020), Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata, *Jurnal Analogi Hukum*, volume 2 Nomor 3], p. 337.

¹⁵Nawaaf Abdullah & Munsyarif Abdul Cpim, (2017), Kedudukan Dan Kewenangan Notaris Dalam Membuat Akta Otentik, *Jurnal Akta*, Vol. 4 No. 4, p.658

contents contain the formal truth in accordance with what the parties have notified to the Notary, and ensure that what is contained in the notarial deed is truly understood and in accordance with the wishes of the parties.¹⁶

According to Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, a notary is required to present two witnesses in every deed being made. These witnesses are known as instrumental witnesses, namely witnesses who not only witness the signing process, but also guarantee that the deed is made in accordance with applicable legal provisions, as well as provide formal guarantees for the process of creating the authentic deed.¹⁷

The legal status of instrumental witnesses as an integral part of the authentic deed structure places them in a position that cannot be underestimated. They are not merely parties who sign the deed, but rather legal subjects who also guarantee the validity of the deed from a formal aspect. This is in accordance with the provisions of Article 1868 of the Civil Code (KUHP), which states that an authentic deed is a deed made in a form determined by law by or before an authorized public official at the place where the deed is made.¹⁸

Instrumental witnesses serve as a guarantee that the person signing the deed is indeed the person named in the deed, and that the signing was carried out consciously, without coercion, and in a legally valid atmosphere. Without the presence of two instrumental witnesses, a notarial deed cannot fulfill the formal elements of an authentic deed, so it has the potential to only be an underhand deed from a legal evidentiary perspective.¹⁹

In practice, the position of instrumental witnesses is also linked to the principle of formalism in Indonesian civil law. This principle requires that certain legal documents be drafted in a specific format to obtain legal force. In this context, instrumental witnesses become part of the formal security system that ensures that the deed is truly valid according to applicable regulations.²⁰ Therefore, even though instrumental witnesses are not the main parties in the substance of the deed, their role is strategic in terms of the legality of the deed as a whole.

The existence of instrumental witnesses has legal implications for the evidentiary power of authentic deeds. Authentic deeds have perfect evidentiary power (*volledig bewijs*) for their contents, as long as the contrary cannot be proven

¹⁶Fakta Andony, Anita Afriana, & Indra Prayitno, (2020), Kedudukan Pegawai Notaris Sebagai Saksi Dalam Akta Otentik Pada Proses Penyidikan Dan Peradilan Ditinjau Undang-Undang Jabatan Notaris, *ADHAPER: Jurnal Hukum Acara Perdata*, p. 6 Nomor 2, p.83.

¹⁷R. Soeroso, (2003), *Perjanjian dalam Hukum Perdata*, Jakarta : Sinar Grafika, p. 116.

¹⁸Subekti, (2002), *Hukum Pembuktian*, Jakarta : PT Pradnya Paramita, p. 38.

¹⁹Yahya Harahap, (2005), *Hukum Acara Perdata*, Jakarta : Sinar Grafika, p. 163.

²⁰Sudikno Mertokusumo, (2010), *Penemuan Hukum*, Yogyakarta : Liberty, p. 44.

(tegenbewijs). This evidentiary power encompasses three aspects: certainty regarding the date of the deed's creation, certainty regarding the identities of the parties, and the content or substance of the agreement or information contained within the deed.²¹ These three aspects are highly dependent on the existence and validity of instrumental witnesses who state that the deed was signed in their presence following all legal procedures.

The legal status of instrumental witnesses also needs to be understood from the perspective of legal responsibility and the ethics of the notary profession. Although instrumental witnesses are not public officials, because of their involvement in the drafting of a deed, which carries significant evidentiary weight, any negligence or inconsistency in the performance of their role can seriously impact the validity of the deed itself.²²

The provision regarding the requirement for the presence of two witnesses is stated in Article 40 paragraph (1) of the UUJN, which states that every deed read by a Notary must be attended by at least two witnesses, except in certain cases regulated otherwise by law. The presence of these witnesses must be real and active, meaning that the witnesses know that a legal act is being carried out and is set out in the form of an authentic deed, and they directly witness the reading of the deed by the Notary and the signing by the parties.

In notarial practice, these witnesses are generally employees or staff of the relevant Notary's office. However, even if the witnesses come from within the Notary's work environment, legal requirements regarding competence, age, ability to understand the language of the deed, and independence from family relationships must still be met. If the deed is not attended by two witnesses as required, the deed loses its authenticity and can no longer be considered an authentic deed under the law. The presence of witnesses is a constitutive element that determines the validity or otherwise of a deed's authentic status.

As stated by Gustav Radbruch in his theory, which states that law must fulfill three fundamental values, namely justice (*gerechtigheit*), utility (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*).²³ If the instrumental witness does not understand or does not actually witness the signing process of the deed, then the aspect of legal certainty as a legal objective will not be achieved. Gustav Radbruch believes that legal certainty does not only mean that the law must be written and its application can be predicted, but also that it must be enforced consistently. In this context, the lack of seriousness in carrying out the role of instrumental

²¹Habib Adjie, (2011), *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Bandung : Refika Aditama, p. 52.

²²G.H.S. Lumban Tobing, (1992), *Peraturan Jabatan Notaris*, Jakarta : Erlangga, p. 69.

²³Gustav Radbruch, (2006), *Legal Philosophy*, Translated by Kurt Wilk, New York : Oxford University Press, p. 12.

witnesses can reduce the quality of the law, because it makes the deed a mere formality without substantive meaning. As a result, the law no longer functions as a tool for social engineering or guarantee of legal protection, but instead becomes an arena for procedural manipulation.²⁴

The existence of an instrumental witness in the making of an authentic deed by a notary plays a role that is not only administrative, but also concerns the legal aspects that determine the formal validity of a deed as an authentic deed as referred to in Article 1868 of the Civil Code. An authentic deed is written evidence that has perfect evidentiary power (*volledig bewijs*), so that its validity must meet the formal and material requirements determined by statutory regulations. In this case, the involvement of an instrumental witness cannot be separated from the basic principles of evidentiary law, one of which is the principle of legal certainty (*rechtssicherheit*).

Based on the analysis of Radbruch's theory of legal certainty above, it shows that the presence of instrumental witnesses in the process of making an authentic deed by a notary is not merely an administrative formality, but is a substantial part in guaranteeing the legal validity of the deed. Provisions regarding instrumental witnesses have been expressly regulated in laws and regulations, particularly in the Notary Law and the Civil Code, so that their fulfillment is a consequence of the principle of positive law. The function of instrumental witnesses must be carried out based on objective and real facts, namely by directly witnessing the process of signing the deed and ensuring that the deed is signed by the parties in a conscious state and without coercion.

3.2. Legal Responsibilities That Can Be Imposed on Instrumental Witnesses If There Is a Discrepancy or Inaccuracy in the Contents of the Authentic Deed Made

An authentic deed made by a notary is perfect evidence of what is contained therein (*volledig bewijs*).²⁵ A notary's authority to create an authentic deed must be based on the request of the parties. The notary is required to listen to the parties' statements without favoring either party. These statements are then incorporated into a notarial deed that reflects the parties' wishes. After the deed has been read aloud and approved by the parties, the parties sign the deed before the notary, and the deed must comply with Article 38 of the UUJN.²⁶

An instrumental witness is an individual presented by a notary during the authentic deed creation process to directly witness the reading and signing of the

²⁴Satjipto Rahardjo, (2006), *Hukum Progresif: Hukum yang Membebaskan*, Jakarta : Kompas, p.24.

²⁵Christin Sasauw, (2015), Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris, *Jurnal Lex Privatum*, volume 3 Nomor (1), p.102.

²⁶I Ketut Tjukup, dkk. 'Akta Notaris (Akta Otentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata, 2016, *Jurnal Acta Comitatus; Jurnal Hukum Kenotariatan*, volume 2, p.181

deed by the parties. The primary function of this witness is to act as a procedural control tool for the formal validity of a deed. Without the presence of an instrumental witness, a deed cannot be considered an authentic deed, as stipulated in Article 1868 of the Civil Code.

As stated by Salim HS, the existence of instrumental witnesses is a constitutive requirement in the creation of an authentic deed which has perfect evidentiary power in the Indonesian legal system.²⁷ Instrumental witnesses are required to understand the contents of the deed, directly witness the signing process, and sign the minutes of the deed together with the notary and the parties. If they simply sign the deed as a formality without fulfilling these substantive elements, then the act can be classified as negligence or even a violation of the law. When there is a discrepancy or inaccuracy in the contents of an authentic deed, the position of the instrumental witness becomes important to examine from the perspective of legal responsibility. Whether the witness contributed to the inaccuracy, either directly or indirectly, will determine whether they can be held legally accountable.

Based on the Indonesian positive legal framework, legal responsibility for instrumental witnesses can take the form of:

1. Civil liability, if the result of his actions causes loss to one of the parties. From a civil law perspective, liability arises due to an unlawful act (*onrechtmatige daad*) or breach of contract that causes loss to another party. An instrumental witness as a notary public employee who co-signs a deed, cannot be held civilly responsible for the contents of the deed, because his position is limited to fulfilling the formal requirements of a notarial deed as regulated in Article 40 and Article 44 of the UUJN. However, if an instrumental witness intentionally gives false testimony, or states that he was present at the reading of the deed when he was not present, then this can be sued civilly on the basis of an unlawful act, as regulated in Article 1365 of the Civil Code. In this case, the witness is considered negligent or has violated his obligations as the executor of the deed formalities, so that it can cause loss to one of the parties.

2. Criminal liability, if the act contains elements of a crime, such as providing false information or assisting in falsifying documents. Doctrinally, criminal liability can only be requested if a person has fulfilled the elements of a criminal act as determined by criminal law. In this context, an instrumental witness can be asked for criminal liability not for the material content of the deed, but if he is consciously and actively involved in engineering or falsifying the formalities of the deed, such as stating that he is present when he is not present when the deed is read or signed (*verlijden*), or participating in the affixing of a false signature. A notary employee who acts as an instrumental witness can be asked for criminal liability because he is consciously aware of the existence of false documents or

²⁷Salim Hs, (2016), *Teknik Pembuatan Akta Satu*, Jakarta : Raja Grafindo Persada, p.30

identities used in the deed-making process and still affixes his signature as a witness without verifying the truth of the required formalities. This can be subject to Article 266 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code if there is evidence of active cooperation with the notary in inserting false information into the authentic deed. However, if the instrumental witness was merely negligent, or unaware of the false information contained in the deed, and did not have intent (*dolus*), then they cannot be held criminally liable. This is in line with Hans Kelsen's theory of legal responsibility, which states that criminal liability requires an element of fault (*schuld*), which includes knowledge and intent to commit the crime (*culpa/dolus*). Without this element, criminal liability cannot be imposed.²⁸

3. Administrative or ethical liability, if the witness's actions violate the notary's professional code of ethics or other applicable laws and regulations. Administrative liability for instrumental witnesses arises in the context of violations of the code of ethics or violations of internal regulations in the notary's office. Because the majority of instrumental witnesses are notary employees or staff, administrative liability is usually imposed through internal mechanisms by the notary as their direct superior, for example through disciplinary sanctions, reprimands, dismissal, or reports to the Regional Notary Supervisory Board if they are found to have committed procedural violations. However, the UUJN does not explicitly regulate administrative sanctions for instrumental witnesses, so normatively, the imposition of administrative sanctions can only be carried out based on the policies of the notary or professional association if the employee is officially registered as support staff. In the context of Kelsen's theory, this can be categorized as individual liability based on administrative errors, if there is proven negligence or formal procedural violations in the deed verification process.²⁹

Proving the legal responsibility of an instrumental witness in a court proceeding certainly requires sufficient evidence and shows a causal relationship between the witness's actions and the loss or discrepancy in the contents of the deed. In a study by M. Yahya Harahap, it was stated that the formal force of a deed is only valid if all formal elements, including the presence of a valid instrumental witness, are fully fulfilled.³⁰ As emphasized by Sudikno Mertokusumo, witnesses as part of an authentic deed, not only serve as a complement but also have a legitimizing function regarding the formality of the deed.³¹ Therefore, any action by an instrumental witness that violates the formality provisions can have a serious impact on the validity of the deed.

²⁸Hans Kelsen, (1945), *General Theory of Law and State*, Translated by Anders Wedberg, Harvard University Press, p. 367

²⁹Salim Hs, (2016), *Teknik Pembuatan Akta Satu*, Jakarta : Raja Grafindo Persada, p. 30

³⁰Yahya Harahap, (2005), *Pembahasan Permasalahan dan Penerapan KUHPerdata*, Jakarta : Sinar Grafika, p.142

³¹Sudikno Mertokusumo, (2003), *Hukum Acara Perdata Indonesia*, Yogyakarta : Liberty, p. 112

Normatively, the legal responsibility of instrumental witnesses can also be analyzed through the prudential principle and the due diligence principle. A good witness must carry out his duties with great care, not merely as an administrative formality. This principle requires that the witness be aware of the consequences of his signature on a legal document. The witness's responsibility is also inseparable from the principle of liability based on fault as explained by Hans Kelsen. If the witness affixes his signature without verifying the truth of the facts stated in the deed, then the error constitutes a form of negligence that can be subject to accountability.

According to Subekti, the evidentiary power of an authentic deed depends on the fulfillment of legal formal procedures, including the presence of two witnesses who witnessed it directly.³² If a witness is negligent or lies, the evidentiary force can be undermined, opening the door for contradictory evidence. Meanwhile, ethically, the existence of instrumental witnesses must adhere to legal morality. In notarial ethics, although witnesses have no direct legal relationship with the parties to the deed, their ethical responsibility is significant because it concerns the protection of the legal interests of the public at large.

The existence of instrumental witnesses is a requirement of UUJN in order to provide authentic value to notarial deeds.³³ In notarial practice, instrumental witnesses have a significant legal responsibility, namely to provide honest and accurate testimony regarding the truth of the facts stated in the deed. Notary office employees appointed as instrumental witnesses are required to ensure that all data, statements, and information included in the deed are in accordance with the actual facts. Inaccuracies or errors in the testimony provided can threaten the formal validity of the authentic deed. Instrumental witnesses are not only physically present but also must thoroughly understand the process. They play a role in ensuring that all parties present understand the content and legal consequences of the statements included in the deed. The presence of instrumental witnesses is an essential part of fulfilling the formal requirements for an authentic deed as stipulated in the Notary Law (UUJN). The responsibilities of instrumental witnesses also include verifying the identities of the parties present, ensuring the parties' psychological condition and consciousness at the time of signing the deed, and ensuring that all required legal procedures are met. Therefore, they are required to carry out their duties with integrity, caution, and good faith.

³²Subekti, (1984), *Hukum Pembuktian*, Jakarta : Intermasa, p. 52

³³I. Komang Sujanayasa, Ibrahim R., & I. Gusti Ketut Ariawan, (2016), Status Hukum Saksi Instrumentair Terkait Pembuatan Akta Notaris Serta Relevansinya Terhadap Ketentuan Pasal 16 Ayat (1) Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, *Acta Comitatus; Jurnal Hukum Kenotariatan*, volume 2, p. 283.

4. Conclusion

The legal certainty of instrumental witnesses in the preparation of an authentic deed is very important because it determines the formal validity of the deed. According to Article 1868 of the Civil Code and the UUJN, a deed is only considered authentic if witnessed by two witnesses who are actually present, competent, and have no conflict of interest. Without valid witnesses, the deed loses its evidentiary force. Therefore, a notary is obliged to ensure the presence of witnesses in accordance with the rules to maintain the validity and legal protection for the parties. The legal responsibility of instrumental witnesses arises if there is a formal discrepancy, such as not being present when the deed is signed or providing false information. Although not responsible for the contents of the deed, witnesses can be held civil, criminal, or administratively liable if they are negligent or fraudulent in carrying out their duties. Therefore, caution and integrity must be maintained to ensure the validity of an authentic deed.

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