

Legal Status of Authentic Deeds Made by a Notary and Proposed to be Dishonorably Dismissed (Study of Decision Number: 200 Pk/Tun/2022)

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Abstract. *This study aims to analyze criminal violations that may serve as the basis for dishonorable dismissal of a Notary, the relationship between such violations and the administrative aspects of the notarial office, the dismissal procedure, and the legal standing of authentic deeds made by a Notary proposed for dishonorable dismissal. The research method employed is normative legal research with statutory and conceptual approaches, using literature review and documentation, and analyzed qualitatively. The findings indicate that criminal violations committed by a Notary may lead to dishonorable dismissal as they undermine the dignity of the profession and affect the administrative aspects of the notarial office. The dismissal procedure is carried out through recommendations from the Central Supervisory Council and finalized by the Minister of Law and Human Rights. Authentic deeds made by a Notary during the period of proposed dismissal remain valid and possess full evidentiary strength as long as they meet formal and material requirements, as affirmed in Supreme Court Decision No. 200 PK/TUN/2022. However, the study also reveals normative ambiguities among the Notary Office Act, Bankruptcy Act, Civil Code, and Criminal Procedure Code, which result in multiple interpretations and legal uncertainty. Therefore, reformulation and harmonization of legislation are necessary to ensure legal certainty, strengthen the integrity of the notarial profession, and protect public interests.*

Keywords: *Dishonorable Dismissal; Legal Standing of Authentic Deeds; Notary.*

1. Introduction

Since Indonesia's independence was proclaimed on August 17, 1945, this country has asserted itself as a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution. The concept of a state based on law places law as the primary foundation in the organization of national and state life. In this context, the existence of Notaries as public officials has a strategic role in ensuring legal certainty through authentic deeds. Previous research confirms that authentic deeds made by Notaries have the highest evidentiary power in the Indonesian legal system, thus becoming an important instrument in maintaining legal certainty in society (Putri, Rahayu, & Putri, 2023). The position of a Notary as a public official is regulated in Law Number 30 of 2004 concerning the Position of Notary Public, which has been amended by Law Number 2 of 2014. Notaries are authorized to make authentic deeds that cover various legal acts, such as deeds of establishment of limited liability companies, wills, and powers of attorney. Previous research has shown that the authority of a Notary to make authentic deeds is a concrete form of the principle of legal certainty, because these deeds have perfect evidentiary power in court (Abdullah & Chalim, 2024).

However, in practice, there are dynamics that give rise to legal issues. One example is when a notary public is undergoing the process of dishonorable dismissal but continues to create an authentic deed. Research by Fransiska (2021) shows that an authentic deed can experience a decline in evidentiary value if there are material errors or procedural violations in its creation. This raises fundamental questions regarding the validity of deeds created by a notary public during the dismissal process (Fransiska, 2021). A concrete case highlighting this issue is Supreme Court Decision Number 200 PK/TUN/2022, which concerns the dishonorable dismissal of a notary. Research by Walidain and Noor (2025) confirmed that there was procedural ambiguity in the dismissal process, resulting in legal uncertainty regarding the deeds drawn up by the notary during the examination period (Walidain & Noor, 2025).

The gap between legal norms affirming the validity of authentic deeds and the reality of the practice of dismissing notaries creates inconsistencies in the legal system. This has the potential to undermine the principle of legal certainty and legal protection for the public using notary services. Research by Musthofa (2025) emphasizes that dishonorable dismissal of a notary has serious implications for the validity of the deeds they produce, necessitating in-depth study to provide both academic and practical solutions (Musthofa, 2025).

Based on this description, it is important to identify issues regarding the legal standing of authentic deeds drawn up by Notaries undergoing dishonorable discharge proceedings. This identification is crucial for strengthening legal certainty, maintaining the integrity of the notarial profession, and protecting the interests of the public who use notarial services. Therefore, this study aims to analyze the legal standing of authentic deeds drawn up by Notaries during dishonorable discharge proceedings, based on Supreme Court Decision Number 200 PK/TUN/2022.

2. Research Methods

The research method in this study is systematically structured using a statute approach and a conceptual approach. The chosen research specification is normative juridical, because this research focuses on the analysis of laws and legal doctrines relevant to the position of authentic deeds made by Notaries in the context of dishonorable discharge. Research data is obtained through a literature study utilizing primary, secondary, and tertiary legal materials sourced from laws and regulations, court decisions, literature, and legal dictionaries. Furthermore, the collected data is analyzed using prescriptive analysis, namely providing legal arguments based on the facts found to produce a prescription or assessment regarding the right or wrong of a legal event according to applicable provisions.

3. Results and Discussion

3.1. Notaries who commit criminal offenses can be dishonorably dismissed and the relationship between criminal offenses and the administrative aspects of the notary position.

A notary is a public official appointed and dismissed by the Minister of Law and Human Rights with special authority to make authentic deeds. Based on the theory of authority explained in the previous chapter, authority is a legal action regulated and granted to a position based on applicable laws and regulations. According to Philipus M. Hadjon, authority consists of at least three components, namely the influence component, the legal basis component, and the conformity component. The influence component is intended so that the use of authority can control the behavior of legal subjects. The legal basis component emphasizes that every authority must have a valid legal basis. Meanwhile, the conformity component contains the meaning that authority must have standards, both general standards for all types of authority and specific standards for certain types of authority.

The authority standard is very important. The authority of a Notary is strictly regulated in the Notary Law and other regulations, so that Notaries may not abuse their authority. This standard serves as a guideline for Notaries to carry out their duties in accordance with applicable legal provisions. If a Notary violates this authority, sanctions must be imposed as a form of accountability for the position

they hold. Therefore, the responsibility of a Notary arises from obligations that must be obeyed, while prohibitions are limitations that must not be violated. The position of a Notary is different from other legal professions because the nature of their appointment is state, not simply a license to practice. Therefore, any criminal violation committed by a Notary not only impacts the individual, but also the public office attached to him.

The Notary Law states that a Notary can be dishonorably dismissed if he/she commits an act that demeans the honor and dignity of his/her position, commits a serious violation of the obligations and prohibitions of his/her position, or is sentenced to imprisonment for more than five years based on a court decision that has permanent legal force.

The relationship between criminal violations and administrative aspects of the Notary profession is close and interdependent. A criminal verdict declaring a Notary guilty serves as the legitimate basis for the Notary Supervisory Board to propose administrative sanctions in the form of dishonorable dismissal. Criminal sanctions aim to punish the perpetrator for their crime and provide a deterrent effect, while administrative sanctions aim to uphold the dignity of the Notary profession and protect the public interest from legally flawed deeds. Therefore, a criminal violation committed by a Notary will almost certainly trigger an administrative process that culminates in dismissal, either temporary or permanent, depending on the severity of the violation.

A notary can be dishonorably dismissed if he carries out the actions referred to in Article 12 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the article reads as follows:

"A notary is dishonorably dismissed from his position by the Minister upon the recommendation of the Central Supervisory Board if."

Declared bankrupt based on a court decision that has obtained permanent legal force.

Being under continuous guardianship for more than 3 (three) years.

Committing acts that demean the honor and dignity of the position of Notary.

Committing serious violations of obligations and prohibitions from office.

Serious violations of the obligations and prohibitions of the position as referred to in Article 12 letter d of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, is one of the main reasons for dishonorable dismissal. The obligations of a Notary are regulated in detail in Article 16 of Law Number 2 of 2014 concerning Amendments to Law Number 30

of 2004 concerning the Position of Notary, including acting honestly, independently, impartially, and reading deeds before the parties. Meanwhile, the prohibitions of Notaries are regulated in Article 17 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the same Position of Notary, for example, the prohibition of carrying out positions outside the area of position, holding concurrent positions that conflict with interests, or committing disgraceful acts that demean the dignity of the profession. If a Notary violates these obligations or prohibitions seriously, then the violation is categorized as a serious violation that can have implications for dishonorable dismissal.

The case of Notary A in Central Kalimantan is a real example of a Notary who was sentenced to three months in prison for participating in placing false information in an authentic deed based on the Decision of the Palangkaraya District Court Number 69/Pid.B/2016/PN Plk. Although the sentence was less than five years, the Regional Supervisory Board still proposed dishonorable dismissal, which was then confirmed by the Central Supervisory Board and finally determined by the Minister of Law and Human Rights through Decree Number AHU-1.AH.02.04 of 2018. The problem arose because during the process of the proposed dismissal, Notary A still had time to make several authentic deeds. This raises a legal question as to whether the deeds made during that period remain valid and binding, or lose their evidentiary power due to the Notary's position status being questioned.

Based on Philipus M. Hadjon's theory of authority, a notary's authority remains intact until a legally binding dismissal decision is issued. This means that deeds drawn up before the Ministerial Decree is issued remain formally valid. However, from a legal protection perspective, the lack of norms regarding criminal penalties under five years raises doubts and has the potential to harm the public. Legal certainty demands that dismissal procedures be carried out with clear, transparent, and hierarchical regulations. Unclear regulations actually weaken the legitimacy of the notary's office and undermine public trust in authentic deeds.

It is emphasized that criminal violations committed by Notaries have dual consequences, namely criminal and administrative. In the case of Notary A in Central Kalimantan, the violation of participating in placing false information in an authentic deed clearly falls into the category of serious violations of official obligations. Notaries are supposed to ensure the formal truth of the parties' statements, but when this obligation is violated, the deed created has the potential to be legally flawed and detrimental to the public. Therefore, even though the penalty imposed is only three months' imprisonment, this action can still be used as a basis for the Supervisory Board to recommend dishonorable dismissal for having harmed the integrity of the Notary's office.

Based on this, the implementation of Article 12 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, letter d, is important to maintain the dignity of the Notary office. Dishonorable dismissal based on serious violations is not only a form of administrative sanction, but also an instrument of legal protection for the public so that they are not harmed by defective deeds. On the other hand, this also serves as a warning for Notaries to always exercise their authority in accordance with the provisions of the law, maintain the honor of the profession, and avoid all forms of abuse of office.

In the old Criminal Code, provisions regarding the crime of document forgery were regulated in Articles 263–266. These articles stipulated that anyone who creates or uses a forged document that could give rise to rights, obligations, or debt relief could be punished with a maximum prison sentence of six years. This provision has long been the basis for law enforcement against Notaries found to have falsified deeds. In notarial practice, authentic deeds prepared by Notaries have perfect evidentiary force, so if the deed is falsified, the consequences are very serious both for the parties and for the Notary's office itself.

With the enactment of the new Criminal Code through Law Number 1 of 2023, the scope of the crime of forgery has been expanded. The new Criminal Code not only regulates the forgery of written documents but also covers electronic documents. This is relevant to technological developments and modern notarial practices, which are beginning to utilize electronic systems for deed preparation. The criminal penalties in the new Criminal Code are also more severe, up to eight years in prison, especially if the crime is committed by a public official who abuses their authority. This change demonstrates increased legal protection for the public and emphasizes the responsibility of public officials, including notaries, to maintain the integrity of their profession.

"A notary is dishonorably dismissed by the Minister because he has been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal act that is punishable by imprisonment for a maximum of five years or more."

Notaries sentenced to less than five years in prison still have the opportunity to return to their positions. This is because, when sanctions are imposed, whether in the form of a written warning or temporary suspension, notaries are still given the opportunity to defend themselves before being dishonorably discharged by the Minister.

The absence of regulations regarding sanctions for notaries sentenced to less than five years in prison can create unintentional uncertainty for the Supervisory Board when proposing dishonorable dismissal to the Minister. This occurs because the

Notary Law only regulates dishonorable dismissal if a notary is sentenced to less than five years in prison, but does not specifically regulate the sanction mechanism for sentences under five years. As a result, there is room for varying interpretations in practice, which has the potential to create legal uncertainty and harm both notaries and the public who use notarial services.

In the case of Notary A in Central Kalimantan, this is evident. The notary was sentenced to three months in prison, which is normally below the five-year threshold. However, the Supervisory Board still recommended dishonorable dismissal on the grounds that the actions committed constituted a serious violation of official obligations, namely participating in placing false information in an authentic deed. This decision was then confirmed by the Minister of Law and Human Rights through a Decree on dishonorable dismissal. This case demonstrates that although the law does not explicitly stipulate sanctions for imprisonment under five years, supervisory practice still interprets serious violations of official obligations as grounds for dishonorable dismissal.

This situation creates a legal dilemma. On the one hand, dishonorable dismissal is necessary to maintain the integrity of the notary's office and protect the public from legally flawed deeds. However, on the other hand, the lack of clear regulations regarding criminal penalties under five years has the potential to create legal uncertainty for the notary in question. This could give the impression that the dismissal decision is based more on the subjective interpretation of the Supervisory Board than on firm legal norms.

This case also highlights the issue of the status of authentic deeds made by a Notary during the dismissal process. The deed made by Notary A before the legally binding dismissal decision remains formally valid, as the Notary's authority remains until a final administrative decision is issued by the Minister. However, sociologically, the deed may raise doubts among interested parties, as the Notary's official status is under question. This demonstrates that the lack of norms impacts not only the Notary's official status but also the legitimacy of the authentic deeds produced.

Based on the theory of authority that has been explained in the previous chapter regarding the theoretical framework, authority is a legal action that is regulated and given to a position based on the applicable laws and regulations that regulate the position in question.¹ According to Philips M. Hadjon, authority consists of at least 3 (three) components, including:

¹Habib Hadjie, Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary, Reflika Aditama, Bandung, 2008, p. 77.

The component of influence is the use of authority intended to control the behavior of legal subjects.

The basic component of law, namely authority, must have a valid legal basis.

The conformity component, namely authority must have standards²

3.2. Procedures for Dishonorable Dismissal of a Notary in the Concept of Legal Certainty

The procedure for dishonorably dismissing a notary for the sake of legal certainty is regulated in Law Number 30 of 2004 concerning the Position of Notary Public and its implementing regulations. This process begins with an examination by the Supervisory Board, which aims to provide the notary with an opportunity to defend himself, and ends with a decision by the Minister of Law and Human Rights as the final authority, especially if the violation committed constitutes a criminal offense with a penalty of five years or more. The imposition of sanctions cannot be carried out unilaterally, but must go through a tiered examination process.

The inspection process begins with the Regional Supervisory Council (MPD) receiving a report from the public or interested parties. The Regional Supervisory Council then summons and examines the Notary in question. However, the Regional Supervisory Council does not have the authority to impose sanctions; it only submits the inspection results to the Regional Supervisory Council (MPW). After receiving the inspection results, the Regional Supervisory Council has the authority to impose a light administrative sanction in the form of a written warning, which can be given up to three times with a 14-day deadline each. To prevent arbitrary sanctions from being imposed, the principle of legal certainty is the primary foundation for regulating inspection procedures and the application of sanctions. Legal certainty requires clear rules, a consistent mechanism, protection of Notary rights, and predictable decisions based on applicable norms.

The inspection process usually begins with a report from the public, law enforcement officials, or a direct finding by the Regional Supervisory Board regarding alleged violations committed by a notary. The inspection process by the Regional Supervisory Board is as follows:

- a. Administrative review of reports;
- b. Notary Summons;

²Philips M. Hadjon, Sri Soemantri M., Sjaran Basah, Bagir Manan, Laila Marzuki, ten Berge, Van Buuewn, Stroink, Introduction to Indonesian Administrative Law, Gadjah Mada University Press, Yogyakarta, 2011, p. 135

- c. As well as examination of deeds, minutes, protocols and statements from related parties.

The results of the examination are stated in the Examination Report (BAP) and forwarded to the Regional Supervisory Board if the alleged violation falls into the moderate or serious category. The authority of the Regional Supervisory Board, MPW, and Central Supervisory Board (MPP) in dishonorably dismissing a Notary is formed in stages in accordance with the provisions of the law and its implementing regulations.³

Restrictions or prohibitions on Notaries are established to protect Notaries in carrying out their practices and of course to be more responsible for all duties and obligations and to guarantee the interests of the community who require Notary services.⁴

3.3. Legal Status of Authentic Deeds Made by Notaries and Proposed to be Dishonorably Dismissed (Study of Decision Number 200 PK/TUN/2022)

In the Indonesian civil law system, an authentic deed is written evidence that has perfect evidentiary power. This provision is stated in Article 1868 of the Civil Code, which states that an authentic deed is a deed made in a form determined by law and made by or before an authorized public official at the place where the deed was made. Article 1866 of the Civil Code states the types of evidence, namely:

1. Written evidence
2. Evidence with witnesses
3. Suspensions
4. Confession
5. Oath

Written or letter evidence is not only important as evidence in civil law cases, but is also required and/or has an important position in criminal cases as stated in Article 184 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), namely:

³M. Lutfhan Hadi Darus, Notarial Law and the Responsibilities of the Notary Position, : UII Press, Yogyakarta, 2017, P.28

⁴Ade Yuliany Siahaan, Aida Nur Hasanah, The Role of Notaries as Authentic Deed Makers in the Evidence Process in Court, Darma Agung University & UIN North Sumatra, 2021.

1. Witness testimony
2. Expert testimony
3. Letter
4. Instruction
5. Suspect's statement

When comparing Article 1866 of the Civil Code with Article 184 of the Criminal Procedure Code, there is a striking difference regarding the priority of the evidence used. In civil law, as stated in Article 1866 of the Civil Code, the main evidence is written evidence because the purpose of proof in civil law is to seek formal truth which is always proven in written evidence. This is different from the purpose of proof in criminal law, as described in Article 184 of the Criminal Procedure Code, which seeks material truth which does not lie in written evidence, but in other evidence as mentioned above.

According to Sudikno Mertokusumo, a letter or written evidence is anything that contains reading signs that are intended to express one's feelings or to convey one's thoughts and is used as a means of proof.⁵M. Yahya Harahap explains in detail and in detail about the meaning of a letter from a legal perspective which must contain the following conditions:

1. Letters must contain punctuation marks or characters.
2. Arranged in the form of sentences as statements.
3. Written on writing material.
4. Signed by the party making it.
5. Photos and maps are not text.
6. Include the date⁶.

The position of letters as evidence in civil cases is highly prioritized, in contrast to criminal cases where the main evidence is testimony. However, in criminal cases or processes, the principle of *Unus testis nullus testis* applies, which means that one

⁵Sudikno Mertokusumo, in Teguh Samudra, *Law of Evidence in Civil Procedure*, Bandung, Alumni, 2004, p. 36

⁶M. Yahya Harahap, *Civil Procedure Law Concerning Lawsuits, Trials, Confiscation, Evidence and Court Decisions*, second edition, Jakarta, Sinar Grafika, 2005, pp. 559-560.

piece of evidence alone is not enough, at least 2 (two). Evidence where the main evidence is testimony can be supplemented in written form or letters. The definition of a letter in this case is all kinds of letters that can be made by hand, typed or using a printing press. Letters as written evidence can be distinguished between deeds and non-deeds, which can then be distinguished into authentic deeds and private deeds. According to Retnowulan Sutanto and Oeripkartawinata, the law of evidence recognizes three types of letters, namely:

1. Authentic Deed
2. Private deed
3. Letter is not a deed⁷

According to the provisions of Article 1868 of the Civil Code, in order for a deed to have an authentic stamp, the requirements specified in this article must be met, namely:

1. The deed must be made by or before a public official
2. The deed must be drawn up in the form prescribed by law
3. The public official by or before whom the deed is made must have the authority to make the deed.⁸

Subakti explained that a deed is a written document deliberately created to serve as evidence of an event and signed. The most important elements of a deed are the intention to create written evidence and the signature of that document.⁹Article 165HIR stipulates that an authentic deed is sufficient evidence for both parties and their heirs and all persons who receive rights thereto, regarding what is stated therein regarding the main issue, and also regarding what is referred to as mere notification, if the latter has a direct relationship with the main issue.¹⁰Article 1868 of the Civil Code provides a different definition of an authentic deed, namely a deed in a form determined by law, made by or before a public official authorized to do so at the place where the deed is made.

⁷Retnowulan Sutanto and Iskandar Oeripkartawinata, *Civil Procedure Law in Theory and Practice*, Bandung, Alumni, 1983, p. 58.

⁸Syaiful Rahman and Habib Adjie, *Aspects of Notary's responsibility in making deeds*, first edition, Bandung, Mandar Maju, 2011, p. 123.

⁹Herlina Basri, *The Legal Power of Evidence by Authentic Deeds Reviewed from Article 1868 of the Civil Code in Civil Dispute Processes in Court*, *Rechtsregel Journal of Legal Studies*, Vol. 4 No. 2, December 2021.

¹⁰Octavianus M. Momuat, *Written Evidence in Civil Case Examination*, *Journal of Legal Studies*, 2020.

A notarial deed, as an authentic deed, is a deed drawn up before a public official or a party appointed by law, one of which is a notary. A notarial deed drawn up before a public official, usually referred to as a deed of parties, is passive in the sense that it waits until another party needs it to draw up the deed. Therefore, a notary does not automatically draw up a deed without being called upon. A deed of parties also does not merely contain statements from the parties, but also contains statements from the notary himself.

Legally, a notarial deed as an authentic deed will not have the power of evidence, if in accordance with Article 1869 of the Civil Code:

1. The deed is not valid or does not fulfill the formal requirements as an Authentic deed or also called a Ptentik Deed, therefore it cannot be treated as an Authentic Deed.
2. However, such a deed has the power value of a private deed provided that the deed is signed by the parties.

According to Sudarsono, evidence or means of proof is something that states the truth or an event, real information, witnesses and things that are signs.¹¹ Proving according to Sudikno Mertokusumo is referred to in the legal sense as providing sufficient grounds to the judge examining the case in question to provide certainty about the truth of the events presented. Meanwhile, Subekti states that proving is convincing the judge about the truth of the arguments or arguments put forward in a dispute. The act must be carried out by someone who can be accounted for, meaning that he can be blamed for committing the act. According to Pompe, a criminal act or strafbaar feit is a violation of norms (disruption of legal order) which is a criminal act.¹²

4. Conclusion

Based on the results of research and discussion regarding the legal status of authentic deeds made by Notaries who are proposed to be dishonorably dismissed (Study of Decision Number 200 PK/TUN/2022), it can be concluded that criminal violations committed by Notaries can be the basis for dishonorable dismissal through a tiered supervisory mechanism by the Supervisory Board until the decision of the Minister of Law and Human Rights as the final authority, which aims to maintain the integrity of the position and protect the public, and that the decision to dismiss is a State Administrative decision whose validity can be tested by the State Administrative Court; however, as long as there is no final and binding decision to dismiss, the Notary concerned legally still has the authority as a public

¹¹Sudarsono, Legal Dictionary, fourth edition, Jakarta, Rineka Cipta, 2005, p. 61

¹²Satochid Kartanegara, Criminal Law, Collection of Lectures, Book One, Jakarta Student Lecture Hall, no year, p. 65

official, so that the authentic deeds he makes remain valid and have perfect evidentiary force as long as they meet the formal and material requirements in accordance with the provisions of laws and regulations. Based on these conclusions, the author submits several suggestions, namely the Government needs to clarify regulations regarding sanctions for Notaries sentenced to less than five years in order to avoid differences in interpretation, strengthen legal certainty, and increase public trust in authentic deeds. Notaries should always maintain integrity, professionalism, and compliance with the provisions of the position, because every criminal or administrative violation has serious implications for their position, and the public is expected to be more critical as users of notarial services by ensuring that deeds are made according to procedures and actively reporting suspected Notary violations to the Supervisory Board.

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