

## Notary's Responsibility for the Contents of Authentic Deeds That Do Not Match the Facts (Study of Makassar District Court Decision Number 52/Pdt.G/2023/PN Pal)

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**Abstract.** *This study aims to analyze the notary's liability for the contents of authentic deeds that do not comply with legal facts and the forms of liability that can be imposed based on the Palu District Court Decision Number 52/Pdt.G/2023/PN Pal. This study is normative legal research using a statute approach and a case approach. The legal materials used consist of primary, secondary, and tertiary legal materials obtained through literature studies, then analyzed qualitatively to obtain conclusions regarding the notary's liability for the contents of authentic deeds that do not comply with legal facts. The results of the study indicate that the notary's liability includes civil, administrative, and criminal liability, as well as limitations of job responsibilities. Civil liability arises when the notary commits negligence that results in losses for other parties, such as in the case of the release of land rights without the consent of the wife as the joint owner of the property. Administrative liability relates to violations of the Notary Law and the professional code of ethics, while criminal liability can be imposed if there is an element of intent in the creation of a deed that does not comply with legal facts. The forms of liability that can be imposed include compensation for unlawful acts, degradation of the evidentiary power of the deed to a private deed, cancellation of the deed by the court, as well as administrative and ethical sanctions. This study confirms that notaries are not only formally responsible for the creation of deeds, but are also required to ensure the conformity of the contents of the deed with the legal facts in order to guarantee legal certainty, justice, and legal protection for the parties.*

**Keywords:** Accountability; Contents; Facts; Notary.

### 1. Introduction

Notaries in carrying out their duties and authorities for the sake of implementing service functions and achieving legal certainty in providing services to the community have been regulated in Article 1 number 1 of Law No. 30 of 2004 concerning the position of notary which has been amended by Law No. 2 of 2014

concerning amendments to the Law on the Position of Notary which is hereinafter referred to or both referred to as UUJN, it is stated 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."

The enactment of the Notary Law is expected to ensure that authentic deeds made by/or before a notary are able to guarantee certainty, order and legal protection. The Notary Law regulates the Authority of Notaries in Article 15 paragraph (1) of the UUJN, which states the following matters.

"A notary has the authority to make authentic deeds regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed. All of this as long as the making of the deed is not also assigned or excluded to other officials or other persons as determined by law"

The duty of a notary is to prepare the evidence required by the parties for a particular legal action. Notaries prepare deeds at the request of the parties. They prepare deeds based on evidence, information, or statements from the parties stated, explained, or shown to the notary. Notaries also play a role in providing legal advice to the parties regarding existing problems. Any advice a notary provides to the parties, which is then incorporated into the deed in question, remains the wishes and information of the parties, not the notary's statement or statement. Regarding the profession, in practice, it is often found that a notarial deed is often disputed by the parties appearing before the notary or other third parties. Notaries are also frequently called as witnesses or suspects in investigations. In fact, it is not uncommon for a notary to become a defendant or co-defendant in civil litigation. A common problem is the discrepancy between the contents of the deed and the facts. This problem arises from the notary's lack of thoroughness in preparing an authentic deed. In this case, the notary acts passively when drafting an agreement or deed.

Various errors experienced by notaries in drafting a deed can be caused by the notary himself. This can also be caused by parties who are dishonest in providing information or providing false information, resulting in losses for one of the parties. This can even result in losses for the notary who drafted the agreement. This requires the notary to be held accountable for his actions, in the form of civil sanctions, administrative sanctions, and criminal sanctions. This can lead to the assumption that the notary, together with the parties, drafted the deed with the intention of carrying out an act that violates applicable provisions. If the notary is proven to have committed such an act, he must be subject to sanctions.

Tafsir Hanzalah bin Qais an Sari explains that Allah Almighty ordered someone to

write down a debt agreement to an expert. Hanzhalah bin Qais al-Ansari asked Rafi' bin Khadij about the law of renting out fields with rent in the form of gold and silver. So Rafi' bin Khadij answered, "It doesn't matter. In the past, during the time of Rasulullah Sallallahu 'alaihi wa sallam, people rented out fields with rent in the form of the produce from the part of the field that was close to the ditch or river, and some parts of the crops. And then when the harvest came, this part of the field was damaged, while the other part was saved, or this part was saved, but the other part was damaged. At that time there was no renting of fields other than this way.<sup>1</sup>

Furthermore, authority in the concept of legal obligations is closely related to legal responsibility (liability).<sup>2</sup> According to Hans Kelsen's view, a person who is legally responsible for certain actions can be subject to sanctions if his actions are contrary to/against the law.<sup>3</sup> On the other hand, to ensure the implementation of the Notary's authority, a Notary Supervisory Board has been formed, which is primarily tasked with supervising the Notary's performance to ensure that it remains within the scope of the Notary's code of ethics.<sup>4</sup>

A notary is a public official authorized to make authentic deeds and has other authorities as regulated in Article 1 number 1 of Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014. This authority aims to provide certainty, order, and legal protection for the public through authentic deeds that have perfect evidentiary power. In carrying out his/her position, a notary is obliged to act honestly, independently, impartially, carefully, and be guided by the provisions of laws and regulations and the Notary Code of Ethics so that every deed made reflects the actual legal situation.

However, in practice, disputes often arise from authentic deeds containing content that does not align with the legal facts. These problems can arise due to a lack of care on the part of the notary in examining the identity, authority, and documents submitted by the parties, or due to inaccurate information from the parties that is then included in the deed. This situation has the potential to cause losses to the parties, reduce the evidentiary power of the deed, and even result in the notary being held accountable under civil, administrative, or criminal law if proven to have violated the provisions of the notary's office.

One concrete example of this problem is found in the Palu District Court Decision Number 52/Pdt.G/2023/PN Pal, which adjudicated a dispute regarding a deed of

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<sup>1</sup>Hadith of Muslim 1547

<sup>2</sup> Fina Agustina Suhyana, Sigid Suseno, & Tasya Safiranita Ramli (2021). Illegal Transactions Using ATM Cards Belonging to Others. *SIGn Journal of Law, CV. Social Politic Genius (SIGn)*, 2(2), p. 153

<sup>3</sup> Jimly Asshiddiqie & Muchamad Ali Safa'at. (2006). *Hans Kelsen's Theory of Law*. Jakarta: Konstitusi Press, p. 61.

<sup>4</sup> Muhammad Tiantanik Citra Mido., I Nyoman Nurjaya., & Rachmad Safa'at. (2018). *Civil Liability Notary on Deeds Read by Notary Staff in Front of Applicants*. Lentera Hukum, University of Jember, 5(1), p. 165

release of land rights drawn up without the consent of the wife as the owner of the joint property rights. In this case, the deed became the object of dispute because its contents did not reflect the actual legal facts, thus raising questions regarding the limits of the notary's responsibility in ensuring formal accuracy and the legal consequences if the deed contained discrepancies with the facts.

Many studies have been conducted on notary responsibilities, but most of them discuss notary responsibilities in general based on the Notary Law or focus on the cancellation of deeds. Research specifically analyzing notary accountability for the contents of authentic deeds that do not conform to the facts based on the Palu District Court Decision Number 52/Pdt.G/2023/PN Pal is still very limited. Therefore, this study is important to analyze the form of notary accountability for the contents of deeds that do not conform to the legal facts and the legal consequences arising from this decision, so that it can contribute to the development of notarial science and the practice of notary office.

## **2. Research Methods**

This study uses a normative juridical legal research method with a statute approach and a conceptual approach to analyze the validity of electronic signatures in the making of notarial deeds based on Indonesian positive law. The data used are secondary data consisting of primary legal materials, such as the 1945 Constitution, the Civil Code, the Notary Law, and the Electronic Information and Transactions Law; secondary legal materials in the form of books, scientific journals, research results, and expert opinions; and tertiary legal materials in the form of dictionaries and other supporting sources. Data collection was carried out through library research by reviewing various relevant legal documents and literature. Furthermore, the data were analyzed prescriptively to provide legal arguments and assessments regarding the issue of the validity of electronic signatures in the making of notarial deeds.

## **3. Results and Discussion**

### **3.1. Notary's Responsibility for the Contents of Authentic Deeds He Made based on decision 52/Pdt.G/2023/PN Pal**

As a public official, a notary public has the authority to draft authentic deeds with full evidentiary force. Therefore, a notary public is obliged to carry out their duties in accordance with legal provisions, the principle of prudence, and the professional code of ethics. In Palu District Court Decision Number 52/Pdt.G/2023/PN Pal, an issue arose regarding a deed of release of land rights drawn up without the consent of the wife, who is entitled to the joint property. The notary's responsibility for the contents of the authentic deed can be explained as follows:

## Civil Liability

A notary can be held civilly liable if the deed they draft results in losses for the parties. In the ruling, the deed of relinquishment of rights to the joint property was drafted without the wife's consent, thus theoretically containing legal defects. If the notary fails to confirm this consent, they may be deemed negligent and potentially subject to a lawsuit for unlawful conduct.

The Notary's civil liability in the *a quo* case is rooted in the failure to fulfill the obligation to verify the legal subject's capacity when issuing the Deed of Release of Rights Number 44 and Number 45 of 1995. The position of a public official imposes the burden of authentication obligations on each appearing party to ensure the legal certainty of the issued documents. The neglect of the Defendant's marital status, which has been legally married since 1992, based on Exhibit P-1, is a form of professional negligence. The absence of written consent or the presence of the legal wife as the holder of rights to joint property creates a legal defect in the aspect of authority to act.

The construction of unlawful acts as regulated in Article 1365 of the Civil Code is the basis for a claim for compensation against the Notary. The Plaintiff's material loss element is real in the form of loss of control rights over land objects with Ownership Rights Certificates Number 00323 and Number 00324. The Notary should have realized that the repayment of land during the marriage period causes the object to be transformed into joint property according to the mandate of Article 35 of the Marriage Law. The act of processing the transfer of rights without the involvement of the legal wife is a form of violation of the principle of prudence of public officials.

The authentic deed's full evidentiary value in this case was diminished due to the parties' violation of the subjective requirements of authority. The deed, drawn up before a notary, lost its authenticity and should therefore be declared null and void. In its *posita* (positive argument), the plaintiff asserted that the notary's inaccuracy in verifying the origin of the assets was the primary cause of the ownership dispute. The validity of a legal act of relinquishing rights requires unanimous agreement from both parties, the owners of the partnership assets, to fulfill the legal requirements of the agreement.

The *Niet Ontvankelijke Verklaard* (NO) decision handed down by the Panel of Judges due to the Defendant's lack of evidence does not eliminate the essence of the Notary's malpractice. The trial facts through the testimony of witnesses Salahuddin and Obeth J. Kapitta confirmed the unilateral transfer of rights without the Plaintiff's knowledge. The formal inadmissibility of the lawsuit only postpones the examination of the main case regarding the Notary's civil liability in material terms. The violation of Article 16 of the Notary Law regarding the obligation to act diligently remains a strong basis for the potential for a re-suit in the future.

The Co-Defendant's position as Notary Johnny Soriton's protocol holder binds him to administrative responsibility for restoring the Plaintiff's civil rights. The protocol holder's legal obligations include implementing court orders regarding the minutes of the deed in his or her possession. Although personal responsibility does not shift to the protocol holder, the obligation to provide a cancellation note in the protocol book is absolute. This is crucial to restore the legal status of the disputed object to its original state in accordance with the principle of justice for the legal wife as the owner of joint property.

### **Administrative Responsibilities**

Notaries also have administrative responsibilities under the Notary Law and the professional code of ethics. Notaries are required to ensure the presence and consent of all parties involved in the drafting of deeds. Violation of this obligation can result in administrative sanctions, as it demonstrates a failure to adhere to the principle of prudence in carrying out their duties.

The Notary's administrative responsibility in the a quo case is based on violations of formal procedures and the principle of prudence as stipulated in the Notary Law (UUJN). Public officials have an absolute obligation to verify the identity and authority of the parties before formalizing legal acts in an authentic deed. Notary Johnny Soriton's actions in processing Deeds of Release of Rights Number 44 and Number 45 of 1995 without ensuring the consent of the legal wife constitutes a form of disregard for Article 16 paragraph (1) letter a of the UUJN. Violation of this obligation to act diligently provides the basis for the imposition of administrative sanctions from professional organizations and the Notary Supervisory Board.

The Prudent Principle requires a Notary to refuse to draw up a deed if the parties do not meet the subjective requirements for authority to act. The joint property status of land titles SHM No. 00323 and No. 00324 requires permission from the husband and wife, as mandated by Article 36 of the Marriage Law. The Notary should have checked population documents and marriage certificates to ensure the legal status of the parties at the time of drawing up the deed. Failure to factually verify the ownership status of the property reflects a failure to carry out the functions of the position professionally and responsibly.

The Co-Defendant's position as the holder of the protocol carries the burden of administrative responsibility in managing authentic documents left behind by the previous Notary. The legal obligations of the protocol holder include maintaining the minutes of the deed and providing copies of the deed to legally interested parties. In the context of this case, the Co-Defendant's provision of a copy of the deed to the Defendant serves as the Plaintiff's entry point for knowledge of the unilateral legal action. This administrative responsibility ensures the continuity of the Notary's office even after the official's death.

Violations of the professional code of ethics are also a crucial aspect of a notary's

administrative responsibility. Notaries are required to uphold moral values and honesty in every official action to maintain the dignity of the profession. The practice of drafting deeds without the presence of those entitled to joint property constitutes a violation of the integrity of the public official's office. Although administrative sanctions are internal and professional in nature, their impact on the validity of authentic deeds is far-reaching, as they undermine the credibility of legal products issued by the state.

In its legal considerations, the Panel of Judges emphasized the need for thoroughness on the part of Notaries/PPATs, as officials formalizing legal acts of transferring land rights. Failure by the parties to perform legal acts can result in the deed being legally void. Notaries have an administrative responsibility to ensure that all rights transfer mechanisms are carried out in accordance with applicable law. Neglecting the procedure for verifying the consent of the legal spouse constitutes negligence that violates the principle of legal certainty within the Indonesian notarial system.

### **Criminal Responsibility**

Under certain circumstances, a notary can be held criminally liable if there is an element of intent in the creation of a deed that does not comply with the legal facts. Creating a deed without the presence or approval of an authorized party can be categorized as a violation of the law and may even constitute the crime of forgery of an authentic deed.

A notary's criminal liability arises if, during the process of drafting Deeds of Release of Rights Numbers 44 and 45 of 1995, an element of deliberate misrepresentation is found in the authentic deed. The provisions of Articles 264 and 266 of the Criminal Code are the primary legal instruments for prosecuting public officials who abuse their authority. The act of processing the transfer of joint property rights without the consent of the legal spouse can be classified as a criminal act of intellectual forgery. Notaries are strictly prohibited from recording statements that contradict the actual legal facts regarding the capacity and authority of the parties.

The element of intent in the criminal realm is fulfilled if the Notary knew the Defendant's marital status but still facilitated the unilateral transfer of the disputed object. Based on the trial facts, the marriage of the Plaintiff and Defendant has been officially registered with the Office of Religious Affairs since 1992. The neglect of authentic proof of population indicates malicious intent (*mens rea*) to benefit one of the parties. The absence of the Plaintiff's signature on the minutes of the deed is physical evidence of manipulation of the notarial document authentication procedure.

Abuse of office in issuing legally flawed deeds has the potential to implicate a notary as an accomplice in a criminal act. Article 55 of the Criminal Code regulates

complicity in a criminal act if the notary knowingly collaborates with the defendant to deprive the wife of her rights to joint property. Authentic documents resulting from criminal acts are not legally binding and must be declared null and void by a court decision. Legal certainty in the land system depends heavily on the notary's integrity in carrying out their function of controlling the legality of documents.

A notary's position as an instrumental witness requires the veracity of statements regarding the parties' presence before a public official. Drafting a deed without the plaintiff's presence, but including statements as if all parties had given consent, constitutes a serious criminal offense. This action undermines public trust in the notarial institution, a pillar of civil law enforcement. Enforcing criminal law against notaries aims to provide a deterrent effect and guarantee legal protection for the legitimate owners of joint property.

Criminal liability is personal and cannot be transferred to the Co-Defendant as the holder of the protocol. Although Notary Johnny Soriton has passed away, the criminal implications of the deed he issued remain grounds for cancellation of the document through the courts. The fact that the Defendant admitted never having issued a waiver of rights before the Notary as stated in point 9 of the lawsuit's *posita* strengthens the indication of a criminal act of forgery. Investigation of crucial criminal elements is carried out to uncover the material truth behind the issuance of the deed of waiver of rights that is detrimental to the Plaintiff's interests.

### **Limitation of Notary Liability**

In principle, a notary is only responsible for the formal accuracy of a deed, not the material accuracy derived from the parties' statements. However, if a notary knows of a legal flaw but still prepares the deed, their liability can extend to both civil and criminal matters.

The Notary's responsibility in the *a quo* case is based on the obligation to establish formal truth without being burdened with proving the material truth of the statements of the parties. Public officials are tasked with authentically recording what is stated by the parties in accordance with the supporting documents submitted. The Notary is not obligated to conduct investigations beyond administrative documents to seek the ultimate truth regarding property ownership. However, this limitation is waived if there is evidence of a violation of the principle of accuracy in verifying population documents that indicate the legal wife's rights to joint property.

The Notary's responsibility ends with the formalities of deed preparation as long as all procedures stipulated in the Notary Law have been fully fulfilled. If the Defendant provides false information regarding the marital status or origin of the SHM land titles No. 00323 and No. 00324, then legal responsibility rests entirely with the party appearing. The Notary is exempt from claims for compensation if

the Plaintiff's losses arise purely from the Defendant's bad faith in concealing the fact of the marriage. However, this limitation does not apply if the Notary knowingly ignores the certificate evidence showing that the land was paid off during the marriage.

Legal protection for notaries lies in their position as passive recipients of information. Notaries are solely responsible for formalizing legal acts in the form of authentic deeds, as stipulated in Article 1868 of the Civil Code. This limitation protects notaries from legal risks arising from ownership disputes arising later due to ignorance of external facts. However, the obligation to provide legal counsel to the parties requires notaries to explain the legal consequences of transferring joint property without the consent of the spouse.

The Co-Defendant's position as the protocol holder limits legal responsibility to the scope of document management and storage only. The protocol holder cannot be held responsible for professional errors committed by the previous Notary when drawing up the 1995 deed. The Co-Defendant's responsibility is limited to complying with the court's order to take administrative action against the minutes of the deed if it is declared invalid. This separation of responsibilities is crucial to ensure legal certainty for public officials who receive the transfer of protocols in accordance with notarial regulations.

The determination of the limits of liability in Decision Number 52/Pdt.G/2023/PN Pal is closely related to the fulfillment of the cumulative requirements for the withdrawal of the litigants. The Panel of Judges considered that responsibility for control of the disputed object rests with the buyer, as the party with actual physical control of the land. The notary is not responsible for the physical return of the disputed object, but only for the validity of the documents that form the basis for the transfer of rights. Thus, the limits of responsibility of public officials remain grounded in the administrative-juridical corridor and do not extend to the realm of material control of the land object.

In my opinion as a researcher, the notary's responsibility for the authentic deeds he/she makes cannot be viewed merely as a formal administrative responsibility, but also reflects a professional responsibility that demands accuracy, caution, and compliance with legal norms and professional ethics, so that any negligence in ensuring the legitimacy of the parties or the completeness of legal requirements has the potential to give rise to broad legal consequences, whether in the form of civil, administrative, or criminal liability.

### **3.2. Forms of Responsibility That Can Be Imposed on a Notary for the Contents of an Authentic Deed That Do Not Conform to the Facts based on decision 52/Pdt.G/2023/PN Pal**

The Notary Institution plays a central role in creating legal certainty through its legal product, an authentic deed. As a public official, a Notary Public not only

serves as a recorder of the parties' wishes but also bears the responsibility of ensuring that the contents of the deed align with the actual legal facts and do not violate applicable laws and regulations. If a Notary Public issues a deed whose contents do not conform to material reality—such as ignoring the status of joint property in the transfer of assets—then the deed is not only legally flawed but also has the potential to cause real harm to third parties.

The Palu District Court's decision No. 52/Pdt.G/2023/PN Pal provides a vivid illustration of the dynamics of notary accountability in joint property disputes. In this case, the disregard for the wife's consent requirement in the Deed of Relinquishment of Rights became the crux of the issue, dragging the notary (through the protocol holder) into a legal dispute. By analyzing this decision, we can examine the extent of a notary's civil and administrative responsibilities when an authentic deed is proven to have arisen from an inaccurate verification process of the legal facts on the ground.

### **Civil Liability on the Basis of Unlawful Acts**

The first form of liability that can be imposed on a Notary is civil liability through a lawsuit for Unlawful Acts (PMH) as regulated in Article 1365 of the Civil Code. In the context of this decision, Notary Johnny Soriton has included a statement in the Deed of Release of Rights as if the Defendant had independent authority, even though the object is joint property which in fact legally requires the wife's consent. A Notary who is negligent in verifying the marital status and legal capacity of the person appearing can be punished by paying compensation in the form of costs, material losses, and interest to the injured party. This liability arises because the Notary is deemed to have failed to implement the principle of professional diligence which resulted in the loss of subjective rights of third parties to assets transferred unilaterally.

Based on the analysis of Decision Number 52/Pdt.G/2023/PN Pal, the research results show that the construction of the Notary's civil liability begins with the alleged Unlawful Act (PMH) as regulated in Article 1365 of the Civil Code. In the trial facts, it was revealed that Notary Johnny Soriton included a statement in the Deed of Release of Rights which gave the impression that the Defendant had full authority to act alone regarding the disputed object. However, materially, this action contradicts the legal reality because the land object was obtained during a legal marriage, so the Notary is considered to have facilitated a legal act that violated the subjective rights of the Plaintiff as a wife who has rights to joint property.

The discussion of this negligence further points to the Notary's failure to apply the principle of due diligence when verifying the legal capacity of the person appearing. As a public official, a Notary is obligated to examine supporting documents such as Marriage Certificates or Family Cards to ascertain the ownership status of the assets to be transferred. The Notary's neglect of the fact

of a marriage that has taken place since 1992 indicates a weakness in the material verification procedure. This negligence is not merely an ordinary administrative error, but a violation of professional standards that causes the contents of the authentic deed to be out of sync with the provisions of Article 36 of the Marriage Law.

The impact of inaccuracy in drafting the deed creates legal consequences in the form of an obligation for the Notary to bear the burden of compensation for the injured party. In civil law doctrine, this compensation includes legal costs, material losses due to loss of control of assets, and interest arising from a prolonged dispute. The Notary cannot absolve themselves from responsibility by simply recording the testimony of the parties, because their position requires responsibility to guarantee the material truth of the deed. Therefore, any financial loss suffered by the Plaintiff can be legally claimed from the Notary as compensation for the loss of legal protection that they should have provided.

This civil liability is closely related to the Notary's position as a central figure who provides formal legitimacy to a legal act. The issuance of the procedurally flawed Deed of Release of Rights became the primary means for the Defendant to transfer assets to a third party without significant administrative obstacles. Here, a clear causal relationship is seen between the Notary's error in issuing the deed and the losses suffered by the Plaintiff. If the Notary had acted proactively by refusing to draw up the deed without the wife's presence, the detrimental transfer of rights would never have occurred, making the Notary's negligence a very strong basis for the judge to impose civil sanctions.

Although the lawsuit in the Palu District Court was ultimately declared inadmissible (*Niet Ontvankelijke Verklaard*) due to the formality of the lack of parties being named as defendants, this does not substantially eliminate the essence of the Notary's civil liability for the contents of deeds that do not correspond to the facts. This decision provides a valuable lesson in notarial practice that authentic deeds that are not based on primary legal facts will always be at risk of cancellation and claims for compensation. Therefore, the Notary's civil liability remains a vital legal instrument for restoring the rights of victims injured by manipulative state documents, as well as serving as a reminder for public officials to always prioritize the principle of prudence in carrying out their official functions.

### **Administrative Accountability and Sustainability of Notary Protocols**

Even though the Notary who made the deed has died, administrative responsibility remains attached to the position through the protocol custodian mechanism, as is the position of the Co-Defendant in this case. The protocol custodian bears the responsibility to ensure that the minutes of the deed under his supervision maintain the integrity in accordance with the court's decision which has permanent legal force. If the judge declares a deed does not correspond to the

facts, the protocol custodian is obliged to take administrative action such as adding a marginal note (*kanttekening*) to the minutes of the deed. This proves that the responsibility of the Notary is not merely personal, but rather an official responsibility that continues to flow to the replacement official or protocol custodian for legal certainty.

An analysis of Decision Number 52/Pdt.G/2023/PN Pal shows that the administrative responsibility of a Notary has a unique dimension, especially when the official concerned has passed away. Although Notary Johnny Soriton as the original deed maker has passed away, the administrative responsibility for his legal product is not immediately removed, but rather transferred to the protocol custodian as Notary Roosye Evitina Soriton's position as Co-Defendant. This proves that the Notary protocol is a state archive whose integrity must be maintained, where any legal defects in the contents of the deed remain the responsibility of the custodian official to be managed in accordance with court orders or applicable statutory provisions.

The discussion regarding the continuity of this protocol emphasizes that the responsibility of a Notary is institutional and inherent in the position, not merely personal. The person who holds the protocol bears the burden of ensuring that the minutes of the deed under their supervision remain in sync with the latest legal facts, including if a judge's decision declares the deed invalid. In this case, the involvement of the Co-Defendant as a party brought to trial aims to ensure the court's decision has administrative binding force, so that if the deed's cancellation is granted, the person who holds the protocol has a legal obligation to record or change the deed's status in the protocol book.

This administrative responsibility also includes a public service function in providing accurate information regarding the validity of an authentic document. The protocol holder is responsible if the issued copy of the deed (*grosse*) still contains information that does not correspond to the primary legal facts that have been decided by the court. In the context of this research, the failure of the previous Notary to verify the status of joint property becomes an administrative burden for the protocol holder to make corrections so that the document no longer misleads the public in legal traffic. This strengthens the theory that the Notary is a guarantor of legal certainty whose responsibility extends beyond the official's lifetime.

This administrative accountability serves as a mechanism for restoring legal status through marginal notation (*kanttekening*) on the minutes of the deed. If it is proven in court that the Deeds of Release of Rights Numbers 44 and 45 of 1995 arose from a flawed procedure due to the wife's lack of consent, then the protocol holder is obliged to affix a note regarding the cancellation. This action is a form of real accountability to stop the legal force of the manipulative deed, so that no other party can use the deed for the purpose of transferring rights in the future, which directly protects the public interest from misleading legal information.

Although the judge's decision at the Palu District Court ultimately declared the lawsuit inadmissible due to formality issues, the position of the protocol holder remains an important pillar in upholding the Notary's responsibility. The Plaintiff's failure to attract the recipient of the rights resulted in the administrative process of restoring this protocol being hampered, but this does not eliminate the essence of the Notary's protocol as a permanent accountability instrument. Thus, this study confirms that supervision of the Notary's protocol by the holder official is the last line of defense in maintaining the dignity of the Notary's office from the contents of deeds that do not correspond to the actual legal facts.

### **Degradation of the evidentiary power of deeds to be underhand**

Another legal liability that can befall a notary is the reduction or degradation of the evidentiary power of the authentic deeds they create. Based on the Notary Law, a deed whose contents are proven to be inconsistent with legal facts or violate material verification procedures can be declared to have only the evidentiary power of a private deed. This is a form of official sanction in which the deed loses its authenticity due to the notary's inaccuracy in ensuring the accuracy of supporting data, such as a marriage certificate or family card. As a result, the deed no longer has complete evidentiary power in court, which directly undermines the notary's primary function as an official trusted by the state to guarantee the accuracy of legal acts.

The decision shows that one of the most crucial forms of official accountability for a Notary is the risk of degradation or reduction in the evidentiary power of the deeds they create. In this case, the Deed of Release of Rights Numbers 44 and 45 of 1995 issued by Notary Johnny Soriton was argued to contain material defects because it ignored the wife's rights to joint property. Legally, if an authentic deed is proven to not meet objective and subjective requirements—especially regarding the authority to act as a witness—then the deed loses its authentic status and its power is reduced to only comparable to a private deed.

This degradation of evidentiary power refers to the principle that the privilege of an authentic deed lies in the state's guarantee of the truth of its procedures and contents. When a Notary fails to verify the fact that the object of the dispute is property acquired during a marriage since 1992, the Notary indirectly violates the integrity of the document he signed. In this context, an authentic deed that should have perfect and binding evidentiary power (*volledig bewijskracht*) becomes ineffective, because the truth of the information contained therein is no longer supported by a valid legal basis, namely the agreement of both parties as stipulated in Article 36 of the Marriage Law.

The demotion of this deed constitutes an automatic legal form of official accountability to protect justice for the injured party. A deed that has been degraded to a private deed requires the party wishing to use the deed to prove its contents themselves in court, as it no longer has the privilege of being considered

legally correct. For the Plaintiff, this demotion provides a way to invalidate the Defendant's claim, as the deed can no longer be used as the sole valid evidence for transferring land rights in Toinasa Village without other supporting documents.

The impact of this degradation reflects the failure of the Notary in carrying out his function as a public official entrusted with providing legal certainty. The Notary is professionally responsible for ensuring that every deed born from his hand cannot be denied the truth; however, with the proven absence of the wife's consent, the deed becomes a source of uncertainty. This shows that the Notary's accountability is not only assessed by the presence of the parties before him, but also by the validity of the substance he contains, where inaccurate verification results in his legal product losing its dignity as a public document with external, formal, and material evidentiary force.

Although the Palu District Court was unable to proceed further in examining the subject matter due to formalities, the principle of the degradation of evidentiary power remains a real threat to the credibility of Notaries. The results of this study confirm that any deed made without complying with family law facts will always be vulnerable to a decline in legal status. Therefore, this accountability serves as a warning to every Notary official that without careful synchronization of field facts with the contents of the deed, they not only harm the parties but also destroy the legal force of the authentic deeds they themselves produce.

### **Responsibility for Legal Defects Leading to the Cancellation of a Deed**

Notaries also bear material responsibility that can lead to the cancellation of the deed in its entirety by the court if its contents are proven to contain legal defects. In this case, the lack of the wife's consent resulted in the Deed of Release of Rights Numbers 44 and 45 of 1995 being deemed to have a prohibited cause because it violated Article 36 of the Marriage Law. In theory, a Notary is responsible for refusing legal actions that have the potential to violate the rights of others; however, if the deed is still issued, the cancellation of the deed by the judge is a form of responsibility to restore the legal situation. Although in this decision the judge declared the lawsuit inadmissible due to the lack of formalities by the parties, the essence of the Notary's responsibility remains to ensure that the legal product he signed does not contain defects that could invalidate the agreement.

An analysis of Decision Number 52/Pdt.G/2023/PN Pal reveals that a Notary bears significant material responsibility if the legal product they issue contains legal defects. The legal defects in this case occurred because the Deeds of Release of Rights Numbers 44 and 45 of 1995 were made based on legal acts that violated the provisions of Article 36 of the Marriage Law and Article 92 of the Compilation of Islamic Law. As an official authorized to formalize legal acts, a Notary is responsible for ensuring that all material requirements have been met; however, by ignoring the wife's rights to joint property, the deed became a legally defective product from birth because it was based on prohibited causes or incorrect

information.

In a more in-depth discussion, this legal flaw has implications for demands for the annulment of the deed by law through a court decision. A notary is professionally responsible for preventing the issuance of deeds that conflict with public order and the human rights of others, but in this case, the notary actually legalized the unilateral transfer of assets. The judge's annulment of the deed constitutes a form of material responsibility to restore the land ownership status in Toinasa Village back to its original state as joint property. This confirms that any negligence by the notary in verifying primary legal facts will lead to the deed being declared legally ineffective by the courts.

The Notary's responsibility regarding legal defects also includes the obligation to act as a proactive legal filter in detecting any manipulation of facts by the plaintiff. If the Defendant claims full rights to the land, the Notary should cross-validate with proof of ownership and marital identity to avoid legal defects in the deed to be drawn up. When the Notary fails to carry out this preventive function, he is deemed to have neglected his responsibility for legal protection for third parties. As a result, the authentic deed no longer functions as a protector of rights, but instead becomes an instrument detrimental to the Plaintiff, so that cancellation is a logical consequence to eliminate all legal impacts that have arisen.

This analysis shows that the Notary's material liability remains despite formal obstacles in the trial process. Although the panel of judges in this case issued a *Niet Ontvankelijke Verklaard* (NO) decision due to the lack of parties being named as defendants, this does not diminish the fact that the deed in question contains fatal legal defects. The NO decision only delays the enforcement of the Notary's material liability in reality, but the moral and professional burden that the deed is materially invalid remains attached to the Notary's reputation. This proves that authentic deeds that do not conform to the facts on the ground will always be the object of dispute as long as their legal defects are not remedied.

Research confirms that deed cancellation is the most extreme form of liability experienced by a notary due to inaccuracy in relation to family law facts. Notaries cannot simply focus on formal truth on paper without considering the material truth of the status of the object of the agreement. Any deed containing legal defects due to neglect of the wife's rights will always carry the risk of cancellation, which can undermine the dignity of the notary's office as a whole. Therefore, accuracy in synchronizing legal facts with the substance of the deed is an absolute requirement for notaries to avoid demands for cancellation that undermine legal certainty in society.

### **Accountability for Job Ethics and Professional Discipline**

Finally, a notary's actions in providing information that is inconsistent with the facts or ignoring mandatory documents when drafting a deed constitute a serious

violation of the Notary Code of Ethics. Accountability in this aspect is imposed by the Notary Supervisory Board (MPN), which has the authority to investigate any elements of dishonesty in carrying out their duties. Sanctions that can be imposed range from verbal warnings to permanent dismissal from office if the notary is proven to have intentionally assisted the person appearing to manipulate legal facts. This Palu District Court ruling serves as a reminder that a notary's moral and professional responsibility is to be at the forefront of protecting the public from false information contained in state documents, thereby maintaining the credibility of public officials.

An analysis of Decision Number 52/Pdt.G/2023/PN Pal shows that a Notary's responsibility for the contents of an authentic deed also encompasses the fundamental dimensions of professional ethics and job discipline. As a public official entrusted with the state, Notary Johnny Soriton is morally and ethically bound by the principles of honesty, thoroughness, and independence in carrying out his duties. When legal facts regarding the status of joint property are ignored in the preparation of a Deed of Relinquishment of Rights, this is not merely a procedural failure, but rather a disregard for ethical values that require the Notary to act in the interests of all entitled parties, including providing legal protection for his wife (the Plaintiff) even though she is not present before the Notary.

This discussion of ethical aspects refers to the Notary's responsibility to maintain the dignity of his office by meticulously verifying every witness's testimony. A Notary who allows false information to be included in an authentic deed without validating supporting documents is deemed to have violated his oath of office. From a professional discipline perspective, such behavior can be categorized as a gross violation, allowing the Notary Supervisory Board (MPN) to impose administrative or disciplinary sanctions. This emphasizes that every word contained in a deed has moral consequences, requiring the Notary to reject any form of manipulative action that harms the rights of the family.

Furthermore, this ethical responsibility serves as a protective barrier for the public against abuse of authority by public officials. Notaries are responsible for not being used as a tool by one party (the Defendant) to harm another party through the legality of an authentic deed. The failure of a Notary to detect factual discrepancies in the deed indicates a decline in professional standards that should be upheld. Through this research, it is clear that ethical responsibility is the basis for enforcing discipline by professional organizations to ensure that Notaries remain trusted figures in maintaining the purity of legal facts in every document they produce.

The impact of this disregard for professional ethics also harmed the collective credibility of the notary institution in the public eye. The emergence of a legal dispute years later, stemming from the notary's negligence in 1995, created a perception of legal insecurity among the public. Notaries bear a social responsibility to ensure that every legal product they produce is free from moral

and material defects; if not, disciplinary sanctions ranging from verbal warnings to temporary dismissal are important instruments to restore public trust. This demonstrates that responsibility for the contents of deeds is not only a matter of compensation, but also a matter of professional integrity that must be maintained throughout.

This study confirms that ethical responsibility and professional discipline are the primary safeguards to ensure that authentic deeds remain in line with the actual legal facts. Although procedural legal constraints resulted in the lawsuit in the Palu District Court being inadmissible, ethically the Notary remains in a guilty position for failing to protect the Plaintiff's legal interests. Therefore, the reconstruction of Notary responsibilities must always involve strengthening ethical values in field practice to minimize the emergence of manipulative deeds. By upholding the code of ethics, Notaries not only avoid civil lawsuits and deed cancellations, but also carry out their sacred role as public servants with integrity.

In my opinion as a researcher, the form of responsibility that can be imposed on a notary for an authentic deed that does not comply with legal facts reflects the existence of a professional obligation that does not only stop at the formality aspect, but also includes substantive responsibility to ensure the conformity between the contents of the deed and the actual legal reality, so that if there is negligence in the verification process such as ignoring the status of joint property, the notary can be subject to civil liability through a lawsuit for unlawful acts, administrative and ethical sanctions, to legal consequences in the form of degradation of the evidentiary power of the deed or even cancellation of the deed, as a form of recovery for the rights of the injured party and maintaining the integrity of the notary's position as a guarantor of legal certainty.

#### 4. Conclusion

Based on the results of research on joint property disputes in Decision Number 52/Pdt.G/2023/PN Pal, it can be concluded that the Notary's responsibility is of an official nature (*ambtelijk*) and is inherent in the exercise of his authority in making authentic deeds. Notaries are required to apply the principle of prudence by carefully examining and verifying supporting documents, including ensuring the status of joint property in accordance with Article 36 of the Marriage Law. If the deed is made not in accordance with material legal facts and causes losses, the Notary may be held civilly liable under Article 1365 of the Civil Code, subject to official sanctions in the form of reduced evidentiary power or cancellation of the deed, and disciplinary sanctions by the Notary Supervisory Board. In the event of the Notary's death, the person who keeps the protocol has administrative responsibility for the Notary's protocol in accordance with the provisions and court decisions that have permanent legal force. Notaries are advised to increase their accuracy and prudence, particularly in drafting deeds related to the transfer of land and joint property rights, by verifying the marital status and documents of the parties. The Notary Supervisory Board and professional organizations need to

improve their supervision, guidance, and understanding of the responsibilities of notaries and protocol administrators regarding problematic deeds. Meanwhile, the public, as users of notary services, needs to be more active in protecting rights to joint property by ensuring that every legal act obtains the consent of the entitled party and taking appropriate legal action by involving all interested parties to ensure legal certainty and justice.

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