

Notary's Responsibility for the Accuracy of the Contents of the Deed as Perfect Evidence for Incorrectness in the Parties' Statements

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Abstract. *Notaries, as public officials, are authorized to make authentic deeds that have perfect evidentiary power. In carrying out their duties, notaries are required to apply the principles of prudence, independence, and compliance with statutory provisions. However, in practice, authentic deeds containing false information are still found, which can give rise to legal problems, including the possibility of legal liability for notaries. This study aims to analyze the form of legal liability of notaries for authentic deeds containing false information and to analyze the form of legal protection provided to notaries. This study uses a normative legal research method with a statutory approach, a case approach, and a conceptual approach. The legal materials used consist of primary, secondary, and tertiary legal materials which are analyzed descriptively qualitatively. The results of the study indicate that notaries can be held accountable for administrative, civil, or criminal matters if proven to have violated their official obligations, committed negligence, or actively participated in the making of deeds containing false information. Conversely, if a notary has exercised his or her authority in accordance with legal provisions, the principle of prudence, and professional standards, then the notary is entitled to legal protection, both juridical, procedural, and professional. This protection is not absolute and can be waived if there is evidence of deliberate or active involvement of the notary in a criminal act. Therefore, strengthening the application of the principle of prudence, verifying the identity of the parties and supporting documents, and optimizing the mechanisms for supervision and professional protection are important steps to ensure legal certainty, prevent abuse of office, and avoid criminalization of notaries.*

Keywords: *Authentic; Legal Protection; Principle; Responsibility.*

1. Introduction

A notary is a public official authorized by the state to create authentic deeds as evidence with perfect evidentiary force in the field of civil law. This position places

the notary as a crucial instrument in realizing legal certainty, order, and legal protection for the community by formulating various legal acts into an authentic deed. This authority not only requires mastery of the normative aspects regulated in the Notary Law, but also requires integrity, independence, professionalism, and adherence to the professional code of ethics. As an *officium nobile*, the notary's position entails that every action taken must reflect the principles of prudence, honesty, and responsibility so that the resulting deed can guarantee legal certainty for the parties.¹ Identification of the limits of a notary's responsibility in exercising his/her authority is important to avoid differences in interpretation regarding the scope of the notary's official responsibilities.

Authentic deeds hold a special position in the Indonesian legal evidence system because they provide perfect evidentiary force for what is formally explained and stated before authorized public officials. This evidentiary force makes authentic deeds the primary instrument for ensuring the certainty of legal relations in the civil sector, whether in agreements, the establishment of legal entities, the transfer of rights, or various other legal acts.² Perfect evidentiary power does not mean that all the substance stated in the deed is the absolute responsibility of the notary, because basically the notary pours the will and statement of the parties into a form determined by statutory regulations. In notarial practice, this condition still gives rise to debate regarding the boundary between the notary's obligation to guarantee the formal aspects of the deed and the demand that the notary also ensure the substantial truth of the statement given by the parties.³ Identification of the relationship between the evidentiary power of authentic deeds and the scope of a notary's responsibilities is an important issue to be studied academically.

The increasingly complex development of legal relations in society also influences the dynamics of the implementation of the notary's office. The increase in civil transactions, the use of information technology, and the development of various forms of legal relationships require notaries not only to understand normative provisions but also to be able to apply the principle of prudence in every deed-making process. The application of this principle includes verifying the identity of the parties, examining the completeness of documents, ensuring the appropriateness of their authority to act, and ensuring that the legal acts outlined in the deed do not conflict with statutory provisions. On the other hand, notaries remain limited by their authority as public officials who do not have the investigative function that law enforcement officers do. This condition indicates

¹Adjie, H. (2022). *Indonesian Notary Law: A Thematic Interpretation of the Notary Law*. PT Refika Aditama.

²Prasetyo, A., & Gunarto. (2017). Obligations of Notaries in Implementing the Principles of Good and Professional Notary Office Governance (Good Corporate Public Notary) According to the Notary Law. *Jurnal Akta*, 4(3), 441–448. DOI: <https://doi.org/10.30659/akta.v4i3.1819>.

³Sabrina, N., & Musyafah, AA (2024). Notary Liability for Mistakes in Making Deeds. *Notarius*, 17(2), 731–748. DOI: <https://doi.org/10.14710/nts.v17i2.54095>.

that the balance between the obligation of prudence and the limits of notary authority still requires conceptual clarity, making identification of these issues crucial as a basis for the development of notarial law.⁴

The issue of notary accountability for the contents of a deed is fundamentally rooted in the distinction between the concepts of formal truth and material truth in the law of evidence. Normatively, a notary is responsible for the formal aspects of the deed, namely ensuring the identity of the parties, their authority to act, fulfillment of formal requirements, and that the deed-making procedures are in accordance with the provisions of the Notary Law. Conversely, the material truth of the facts and information provided by the parties is, in principle, the responsibility of the parties. Nevertheless, developments in notarial doctrine and practice indicate that notaries are still required to apply the principle of caution (duty of care) in assessing the reasonableness of documents and information provided by the parties, so that they do not immediately include every statement in an authentic deed if there is an indication of non-compliance with the law. This development indicates a shift in public expectations regarding the role of notaries, who are no longer seen merely as recorders of the parties' wishes, but also as guardians of legal certainty. This condition shows that there is still uncertainty regarding the limits of a notary's responsibility for the truth of the contents of an authentic deed, so that identification of the scope of this responsibility is important to obtain legal certainty.⁵

The dynamics of notarial accountability are also closely related to legal protection for the public and the notarial profession as a public official. On the one hand, the public expects authentic deeds to provide legal certainty because they have perfect evidentiary power. On the other hand, notaries require certainty regarding the limits of their authority and responsibilities to avoid being burdened with obligations that exceed the functions assigned by law. The balance between legal protection for users of notarial services and protection for the notarial profession is a determining factor in achieving legal certainty in notarial practice. Therefore, strengthening the principles of professionalism, prudence, and compliance with statutory provisions is an inseparable requirement from the implementation of the notarial office. However, various studies still show differing views regarding the extent to which the principle of prudence can expand the scope of notarial accountability regarding the contents of deeds. Therefore, identifying these issues is important as a basis for developing a concept of notarial accountability that provides a balance between legal certainty, justice, and legal protection.⁶

⁴Utama, IA, Kusriyah, S., & Handoko, W. (2021). Notary Responsibilities in Making Authentic Deeds for the Interest of Community from Progressive Law Perspective. *Sultan Agung Notary Law Review*.

⁵Permatasari, E., & Hanim, L. (2017). The Role and Responsibilities of Notaries in Implementing the Registration of Limited Liability Companies through an Online System. *Jurnal Akta*, 4(3), 401–406. DOI: <https://doi.org/10.30659/akta.v4i3.1814>.

⁶Salim HS. (2021). *Techniques for Creating Business Entity Deeds in the Digital Era*. Sinar Grafika.

The notary's responsibility for the truth of the contents of a deed remains a developing issue in notarial law because it is related to the position of an authentic deed as evidence that has perfect evidentiary power, the application of the principle of prudence, and legal protection for the parties and the notary. Various previous studies generally discuss the notary's responsibility from an administrative, civil, or criminal aspect separately, while studies regarding the relationship between the perfect evidentiary power of an authentic deed and the limits of the notary's responsibility for the inaccuracy of the parties' statements still require a more comprehensive analysis. This gap indicates the importance of research to clarify the limits of notary responsibility from a notarial law perspective so that it can contribute to the development of notarial theory and practice. Based on the background above, this study aims to analyze the notary's responsibility for the truth of the contents of the deed as a perfect proof of the truth of the parties' statements.

2. Research Methods

This research uses a normative juridical approach with descriptive-analytical research specifications. The approaches used include a statutory approach and a conceptual approach to analyze regulations regarding notary accountability for the truth of the contents of deeds as evidence that has perfect evidentiary power. The research object is focused on legal norms contained in the Civil Code, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, as well as doctrines and literature related to notary law. The data collection method was conducted through a literature study using primary legal materials, secondary legal materials, and tertiary legal materials obtained from laws and regulations, books, scientific journals, and relevant legal documents. Furthermore, all legal materials were analyzed qualitatively using descriptive, evaluative, and prescriptive analysis to obtain legal arguments regarding the limits of notary accountability for the truth of the contents of deeds and to provide recommendations for the development of notary law in Indonesia.⁷

3. Results and Discussion

3.1. Notary's Liability for Authentic Deeds Containing Incorrect InformationProtection

A notary is a public official who is granted the authority by the state to create authentic deeds with full evidentiary force, as stipulated in the Civil Code and the Notary Law. This position demonstrates that notaries not only perform administrative functions but also legal functions oriented towards creating legal certainty, order, and protection for the community. Therefore, every deed created

⁷Marzuki, PM (2021). Legal Research (Revised Edition). Kencana.

by a notary must meet both formal and material requirements as stipulated in laws and regulations, thereby ensuring legal certainty for all interested parties.⁸

From a notarial law perspective, notary accountability is a legal consequence of the authority granted by the state. This authority embodies the principle that every performance of the office must be carried out professionally, independently, honestly, thoroughly, autonomously, impartially, and based on the principle of prudence. This principle serves as both an ethical and legal basis that limits the scope of notaries in exercising their authority. Therefore, notary accountability cannot be separated from the obligation to ensure that all deed-making procedures are carried out in accordance with the provisions of the Notary Law and the Notary Code of Ethics. Notary professionalism is a primary requirement for realizing good corporate public notary governance, as the quality of the resulting deed is largely determined by the notary's compliance with legal norms and professional ethics.⁹

A common issue in notarial practice is the extent of a notary's responsibility for the contents of an authentic deed. Theoretically, a notary is responsible for the formal aspects of a deed, namely ensuring that the deed is drawn up in accordance with the procedures prescribed by law, that the parties are present or legally represented, that the identities of the parties have been verified, and that the parties' wishes are correctly reflected in the authentic deed. On the other hand, the substance or material truth of the information provided by the parties is, in principle, the responsibility of the party providing the information. This concept demonstrates that a notary is not the party that guarantees the absolute truth of the entire contents of a deed, but rather that the deed-making process meets applicable legal requirements.¹⁰ The development of notarial practice shows that the distinction between formal truth and material truth is not always easy to apply. The complexity of legal relationships and the increasing variety of civil transactions require notaries to apply the principle of prudence optimally at every stage of deed preparation. The application of this principle is not intended to transform the notary's function into an investigative apparatus, but to ensure that the documents and information used as the basis for preparing the deed do not contain any indication that is clearly contrary to the law. Therefore, the application of the principle of prudence must be understood as a professional obligation aimed at maintaining the quality of authentic deeds while protecting the legal interests of the parties.

This principle of prudence is reflected in various preventive measures undertaken by notaries, including identifying the parties, checking their legal capacity, examining their authority to act, verifying the suitability of supporting documents,

⁸Radiansyah. (2024). Notary's Responsibility in Making Authentic Deeds Containing False Statements by The Parties with Much Knowledge. Tabelius: Journal of Law.

⁹Prasetyo, A., & Gunarto. (2017). Akta Journal (Unissula).

¹⁰Adjie, H. (2022). Indonesian Notary Law: A Thematic Interpretation of the Notary Law.

providing explanations regarding the legal consequences of the actions to be taken, and ensuring that the will of the parties is truly expressed freely without any coercion, error, or fraud. These measures are part of the professional standards that must be implemented by every notary to ensure that the deeds they create meet the principles of legal certainty, benefit, and justice. The quality of notarial services is determined not only by fulfilling administrative requirements, but also by the notary's ability to consistently apply the principle of prudence in every deed-making process.¹¹

In the doctrine of the law of evidence, an authentic deed has three evidentiary powers: external, formal, and material, making it a perfect means of proof until proven otherwise through legal mechanisms. However, this power does not mean that a notary is unlimitedly responsible for the entire contents of the deed, because the notary's responsibility is limited to his authority as a public official in the deed-making process. The material evidentiary power relates to the truth of the legal relationship and the information provided by the parties, while the notary is responsible for ensuring that the deed is made in accordance with legal provisions, the principle of prudence, and applicable procedures. Therefore, the notary's responsibility must be understood proportionally based on the authority, obligations, and errors that can be proven legally, so as to create a balance between legal protection for the public and protection for the notary profession as a provider of legal services with integrity.¹²

3.2. Legal Protection for Notaries for Authentic Deeds Containing Incorrect Information

An authentic deed is written evidence made by or before an authorized public official in a form determined by law as stipulated in Article 1868 of the Civil Code. In civil law, an authentic deed has perfect evidentiary power as stipulated in Article 1870 of the Civil Code, which means that what is stated in the deed is binding on the parties as long as it is not proven otherwise. However, the concept of perfect evidentiary power cannot be understood absolutely in all areas of law. In criminal law, an authentic deed only has the status of written evidence as stipulated in Article 184 paragraph (1) letter c of the Criminal Procedure Code, so that its evidentiary value must be assessed together with other evidence based on the principle of criminal proof which requires the existence of at least two valid pieces of evidence and the conviction of the judge.

The differences in the evidentiary characteristics of civil law and criminal law indicate that criminal judges not only assess the formal aspects of a deed's existence, but also the material facts underlying its creation and use. Therefore, a deed that formally meets the requirements of an authentic deed does not automatically preclude the possibility of a criminal act if it is proven to contain false

¹¹Permatasari, E., & Hanim, L. (2017). Akta Journal (Unissula).

¹²R. Subekti. Law of Evidence. Jakarta: Pradnya Paramita, 2015.

information, the use of forged documents, or the involvement of certain parties in the process of its creation. However, in the context of the notary's office, a distinction must be made between responsibility for the deed-making process and responsibility for the substance of the statements made by the parties. The notary is, in principle, responsible for the formal aspects of the deed, while the material truth of the statements of the parties is the responsibility of the party providing the information.¹³.

Legal protection for notaries is granted due to their position as public officials who carry out part of the state's function of providing legal certainty through authentic deeds. This protection aims to prevent notaries from being easily criminalized simply because of legal issues arising from the legal relationship between the parties. The Notary Law stipulates that notaries have an obligation to carry out their duties based on the principles of prudence, independence, and compliance with legal provisions. Therefore, as long as the notary has exercised their authority in accordance with procedures, verified the identities of the parties, and is not aware of any material inaccuracies in the statements, the primary responsibility rests with the party providing the information.¹⁴.

Legal protection for notaries is not essentially a form of legal immunity, but rather protection provided as long as the notary carries out his/her position in accordance with his/her authority, the principle of prudence, and the provisions of laws and regulations. Notaries are not absolutely responsible for all material truths conveyed by the parties, but can be held accountable if proven to know of untruths, ignore circumstances that clearly give rise to doubt, or play a role in the issuance of deeds containing false information. In this case, the principle of prudence (duty of care) becomes a parameter for assessing whether the notary's actions are still within the limits of his/her official authority or have developed into a form of negligence or abuse of authority that can be legally accounted for. The existence of the Notary Honorary Council (MKN) as a procedural protection mechanism based on Article 66 of the Notary Law is not intended to provide immunity to notaries, but rather to ensure that the law enforcement process against notaries remains carried out objectively while still respecting the confidentiality of his/her position. Therefore, the notary's responsibility for the accuracy of the contents of the deed must be understood proportionally, taking into account the notary's position as a public official, the evidentiary power of authentic deeds, and the principle of guilt in criminal law. This approach is in line with the view that the notary's responsibility must be limited based on the authority and obligations of the position to prevent criminalization of the

¹³Sabrina, RR, & Musyafah, AA (2024). Notary liability for errors in deed preparation. *Notarius*, 17(2), 731–748. <https://doi.org/10.14710/nts.v17i2.54095>.

¹⁴Utama, K., Kusriyah, S., & Handoko, W. (2021). Notary Responsibilities in Making Authentic Deeds Based on the Notary Law. *Journal of Deeds*, Sultan Agung Islamic University.

profession, while still providing legal protection for the public who need legal certainty and justice.¹⁵

4. Conclusion

A notary's liability for an authentic deed containing false information must be determined based on errors in the exercise of their official authority, not solely due to problems with the substance of the deed. Notaries are, in principle, responsible for the formal truth and compliance with the deed-making procedures in accordance with the Notary Law, while the material truth of the information provided by the parties is the responsibility of the party providing the information. However, legal protection for notaries is not absolute if it is proven that the notary knew of the untruth, ignored the principle of prudence, or played a role in the creation of a deed used for criminal purposes. The protection mechanism through the Notary Honorary Council is a form of procedural protection to maintain the independence of the office and ensure a fair law enforcement process, not as a form of immunity from the law. Therefore, a balance between the evidentiary power of an authentic deed, the notary's professional obligations, and the principle of legal responsibility is an important basis in determining the limits of notary responsibility so that legal certainty for the public remains assured without neglecting protection for the notary profession.

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¹⁵Wijayanto, A. (2018). Legal Protection Against Criminalization of Notaries in Carrying Out Their Duties and Functions as Public Officials Based on Law Number 2 of 2014 Concerning the Position of Notary. Jurnal Akta, 5(1).

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