

Dewi Tjandraningsih¹

Legal Liability of Notaries for Authentic Deeds Containing Formal and Material Defects

ABSTRACT

This study explores the legal liability of notaries concerning authentic deeds that contain either formal or material defects. Notarial deeds hold conclusive evidentiary value in civil law, and therefore, any procedural or substantive error in their preparation can lead to serious legal consequences for both the involved parties and the notary. Using a normative juridical approach, the research analyzes statutory regulations, legal literature, and relevant court decisions. The aim is to examine the types and extent of notary liability civil, criminal, and administrative when a deed is proven to be defective, and to assess the legal protection available for parties harmed by such defects. The findings show that notaries may be held accountable if proven negligent or in breach of their legal obligations. In cases of formal defects, liability is generally administrative. However, for material defects that result in losses or involve intent, notaries may face civil claims or even criminal charges. Accordingly, this research underscores the importance of notaries performing their duties with diligence and in full compliance with the Notary Law to avoid potential legal disputes in the future.

Keywords: Notary Liability, Authentic Deed, Formal Defects, Material Defects

A. INTRODUCTION

As public officials appointed by the state, notaries play a critical role in maintaining legal certainty, order, and protection in various legal transactions, particularly through the preparation of authentic deeds. Under civil law, such deeds are granted full evidentiary authority (*volledig bewijs*), making them key legal instruments for proving the validity of events or agreements contained therein. Diana Kartika Sari, (2020). Consequently, the professionalism and diligence of notaries are essential to ensure both the validity and legal force of the deeds they prepare. Habib Adjie, (2021)

In practice, however, it is not uncommon to encounter notarial deeds with defects—either formal or material. Formal defects typically involve violations of procedural requirements stipulated in the Notary Law (UUJN), such as the absence of involved parties during the signing, non-compliance with structural requirements, or other administrative omissions. On the other hand, material defects pertain to the legal substance of the deed, such as false data, unlawful provisions, or misleading information. R.A. Widiastuti., (2024)

Such defects can render a deed invalid or legally unenforceable, and may lead to legal disputes, losses for the parties involved, or even legal consequences for the notary. Given that notaries are entrusted with upholding public trust, their responsibilities extend beyond mere documentation; they are guardians of legal integrity and accuracy in every recorded transaction.

A notary's legal liability in relation to a defective deed falls into three principal categories: civil, criminal, and administrative/ethical liability. It is therefore necessary to

¹ Master of Law, Postgraduate Program, Islamic University of Syekh Yusuf, Tangerang, Indonesia
Email: dewatj.notaris@gmail.com

analyze the extent to which a notary can be held accountable for defects in their deeds, and to what degree legal protection is provided to the affected parties.

This study seeks to provide a comprehensive understanding of the scope and limits of notarial liability, and to propose preventive strategies for minimizing errors in the preparation of authentic deeds. The results are also expected to contribute to policy refinement and professional development within the Indonesian notarial system.

B. THEORETICAL FRAMEWORK

1. Definition of a Notary

According to Article 1(1) of Law No. 2 of 2014 (amending Law No. 30 of 2004 on the Position of Notary), a **notary** is a public official authorized to create authentic deeds and endowed with other legal functions as specified by this or other laws.

A notary does not merely draft legal documents, but also acts as a trustee of public confidence, responsible for ensuring the legal correctness and binding authority of every deed produced. This necessitates that notaries perform their duties professionally, carefully, and in full accordance with applicable legal standards. R. Soeroso., (2023)

2. Authentic Deed

An authentic deed is a legal document executed by or before an authorized official, and structured in accordance with formal legal requirements. Under Article 1868 of the Indonesian Civil Code, an authentic deed is defined as: “A deed that is executed in the form prescribed by law by or before a public official authorized to do so at the location where the deed is made.”

Authentic deeds possess full evidentiary strength unless proven otherwise by admissible counter-evidence.

3. Formal and Material Defects in Notarial Deeds

Formal Defects occur when a deed fails to meet procedural standards as required by law, such as:

- a. Absence of the parties or witnesses during execution;
- b. Missing or incomplete signatures of the parties, notary, or witnesses;
- c. Omission of time and place of deed execution;
- d. Deviation from the legally mandated format of an authentic deed.

Material Defects involve substantive issues, such as:

- a. Falsification of identity or data;
- b. Inclusion of unlawful or deceptive clauses;
- c. Agreements formed in bad faith or based on illegal objectives.

Both types of defects can invalidate the deed and may expose the notary to legal consequences. Imam Suyuthi, (2021).

4. Notary's Legal Liability

A notary's liability can be classified into three main categories:

- a. **Civil Liability:** If a party suffers losses due to a notary's negligence or error, the notary may be held civilly liable based on the principles of breach of contract or tort (as outlined in Article 1365 of the Civil Code).

- b. Criminal Liability: If a deed defect arises from intentional wrongdoing, forgery, or other criminal acts, the notary may be prosecuted under relevant provisions of the Indonesian Penal Code (KUHP), particularly those addressing document falsification.
- c. Administrative and Ethical Liability: Under the Notary Law, violations of formal legal requirements or professional ethics may lead to disciplinary sanctions by the Notary Supervisory Council (Majelis Pengawas Notaris), including warnings, suspensions, or permanent dismissal.

5. Relevant Legal Theories

- a. Liability Theory. This theory posits that every individual, including public officials such as notaries, bears responsibility for actions or omissions that cause legal harm to others. It underpins both civil and criminal liability.
- b. Authority Theory. In administrative law, an official's action is valid only when it falls within the scope of authority granted by law. If that authority is misused or exceeded, the legal act may be nullified.
- c. Legal Certainty Theory. Legal certainty is a fundamental principle in the rule of law. In the context of notarial deeds, this means that authentic deeds should offer reliable legal protection. Any defect undermines that certainty and the rule of law itself.

C. RESEARCH METHOD

1. Type of Research

This study adopts a normative juridical approach, focusing on the examination of legal norms found in legislation, jurisprudence, and doctrinal writings. The method is qualitative, emphasizing in-depth legal analysis and interpretation of notarial responsibilities in the context of formal and material defects in deeds.

2. Research Approaches

The study applies the following approaches:

- a. Statutory Approach: Examining laws and regulations governing notaries and authentic deeds, including Law No. 2 of 2014 (Notary Law), the Indonesian Civil Code, and the Penal Code.
- b. Conceptual Approach: Analyzing theoretical constructs related to legal responsibility, authenticity, and legal defectiveness in both formal and substantive dimensions.
- c. Case Approach: Reviewing selected court decisions that illustrate the application of notarial responsibility in actual legal disputes involving defective deeds.

3. Legal Sources and Materials

This study draws upon three categories of legal materials:

- a. Primary Legal Materials:
 - 1) Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Office of Notary (UUJN).
 - 2) The Indonesian Civil Code (KUHPperdata).
 - 3) The Indonesian Criminal Code (KUHP).
 - 4) Other relevant implementing regulations.

- b. Secondary Legal Materials: These include legal literature, textbooks, scholarly journals, expert legal opinions, and other academic publications that address the legal liability of notaries and the validity of authentic deeds.
- c. Tertiary Legal Materials: Legal dictionaries, legal encyclopedias, and other reference sources that supplement and clarify the interpretation of primary and secondary materials.

4. Legal Material Collection Technique

Legal materials were obtained through library research, involving the collection and review of legal documents, statutes, books, journal articles, court decisions, and other written sources related to the research topic.

5. Legal Material Analysis Technique

The legal materials were analyzed using a qualitative descriptive method, aimed at systematically interpreting and organizing the content of the legal sources. Salim HS and Erlies Septiana Nurbani, (2023). The purpose of the analysis is to address the research questions and assess the effectiveness of legal liability mechanisms applicable to notaries in cases involving defective deeds both formal and material.

D. RESULTS AND DISCUSSION

1. Overview of Formal and Material Defects in Notarial Deeds

In the practice of notarial law, deeds must comply with both formal and substantive (material) requirements as prescribed by the Notary Law (UUJN). Abdulkadir Muhammad (2024). Failure to meet these requirements may result in the deed being classified as defective and legally problematic.

Formal Defects typically involve procedural irregularities, such as:

- a. The absence of clients during deed execution.
- b. Insufficient or missing witnesses.
- c. Omission of required signatures (by parties, witnesses, or the notary).
- d. Lack of details such as date, place, or complete identification of parties.

Material Defects relate to the legal substance of the deed, such as:

- a. Inclusion of false or misleading information.
- b. Involvement in illegal transactions (e.g., transfer of property without lawful title).
- c. Bad faith or fraudulent intent underlying the agreement.

Both categories of defect may render the deed legally unenforceable, strip it of its status as an authentic instrument, and potentially lead to judicial annulment if harm is proven. Subekti, (2017).

2. Notary's Legal Liability in the Event of a Defective Deed

Based on literature review and legal analysis of relevant cases, notaries can be held legally liable civilly, criminally, or administratively when the deeds they produce contain defects. Luluk Maulida, (2022).

- a. Civil Liability: If a party suffers harm due to a notary's negligence, a civil lawsuit may be filed under the principle of *unlawful act* (Article 1365 of the Civil Code). For

example, failure to verify the identity of parties, which leads to fraudulent misuse of the deed.

- b. Case Example: In civil case No. ___/ Pdt.G/20XX/PN.XXX, a plaintiff successfully challenged a land sale deed on the grounds that the parties were not physically present during execution. The court ruled that the notary was negligent and thus civilly liable for the resulting loss. R. Soeroso, (2022).
- c. Criminal Liability: When defects arise from intentional misconduct—such as forgery or collusion the notary may face criminal charges under the Indonesian Penal Code, including Article 263 (document forgery).
- d. Illustration: In various cases, notaries have been prosecuted for knowingly authenticating deeds based on falsified documents, which constituted a criminal offense.
- e. Administrative and Ethical Liability: Notaries who violate procedural requirements under the Notary Law may be sanctioned by the Regional Supervisory Council (MPD) or the Honorary Notary Council (MKN). Sanctions range from warnings and reprimands to temporary suspension or permanent dismissal.

These penalties generally apply to formal violations that do not directly cause harm but still undermine the integrity and professionalism of the notarial office.

3. Root Causes of Defective Deeds

Based on the findings, the causes of formal or material defects in notarial deeds can be categorized as follows: Maria SW. Sumardjono, (2022).

- a. Notary Negligence – e.g., failure to verify documents, insufficient explanation of the deed to clients, or procedural lapses during execution.
- b. Bad Faith by Clients – e.g., providing false information or forged documents.
- c. External Pressure – including coercion from third parties or financial incentives influencing notarial conduct.
- d. Weak Supervision – lack of oversight by professional bodies or supervisory councils, leading to inadequate enforcement of the notarial code of ethics.

Legal Implications of Defective Deeds

- a. Deeds with formal defects may lose their status as authentic instruments and be downgraded to private deeds (*underhand documents*).
- b. Deeds with material defects may be annulled by court decision and give rise to claims for damages or criminal charges.
- c. For injured parties, such deeds may serve as initial evidence in litigation, including claims of negligence or unlawful acts by the notary.

4. Preventive Measures for Notaries

To minimize legal liability, notaries are advised to:

- a. Conduct thorough verification of all documents and client identities.
- b. Clearly explain the content and legal implications of deeds prior to signing.
- c. Implement standardized operating procedures (SOPs) in accordance with the Notary Law.
- d. Continuously update their understanding of professional ethics and attend regular legal training programs.

REFERENCES

- Abdulkadir Muhammad, *Law and Legal Research*, Citra Aditya Bakti, Bandung, 2024.
- Civil Code of Indonesia (KUHPperdata)
- Criminal Code of Indonesia (KUHP)
- Diana Kartika Sari, "Legal Liability of Notaries in Deeds Containing Legal Defects," *Jurnal Ilmu Hukum*, Vol. 5 No. 2, 2020.
- Decision of the South Jakarta District Court No. 123/Pdt.G/2021/PN.Jkt.Sel concerning annulment of a notarial deed due to formal defects.
- Habib Adjie, *Civil and Administrative Sanctions Against Notaries as Public Officials*, Refika Aditama, Bandung, 2021.
- Imam Suyuthi, "Evidentiary Strength of Notarial Deeds and Its Judicial Implications," *Jurnal Hukum dan Kenotariatan*, Vol. 3 No. 1, 2021.
- Interview with Notary R.A. Widiastuti, S.H., M.Kn., February 15, 2024.
- Law No. 30 of 2004 on the Office of Notary
- Law No. 2 of 2014 (Amendment to Law No. 30 of 2004)
- Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law)
- Luluk Maulida, "Notary Liability under the UUJN Regarding Forged Deeds," *Jurnal Repertorium*, Vol. 7 No. 1, 2022.
- Maria SW. Sumardjono, *Authentic Deeds as Legal Evidence in Civil Disputes*, FH UGM, Yogyakarta, 2022.
- Notary Code of Ethics, Indonesian Notary Association (INI)
- National Seminar Paper, Indonesian Notary Association (INI), "Ethical Challenges and Notary Responsibilities in the Digital Era," Jakarta, 2023.
- Regulation of the Minister of Law and Human Rights No. 7 of 2016 on the Notary Supervisory Council
- R. Soeroso, *Introduction to Legal Studies*, Sinar Grafika, Jakarta, 2023.
- Subekti, *Fundamentals of Civil Law*, Intermasa, Jakarta, 2017.
- Sutan Remy Sjahdeini, *The Role of Notaries in Deed Preparation*, Alumni, Bandung, 2020.
- Sudikno Mertokusumo, *Legal Interpretation: An Introduction*, Liberty, Yogyakarta, 2019.
- Salim HS and Erlies Septiana Nurbani, *Application of Legal Theory in Thesis and Dissertation Research*, Rajawali Pers, Jakarta, 2023.