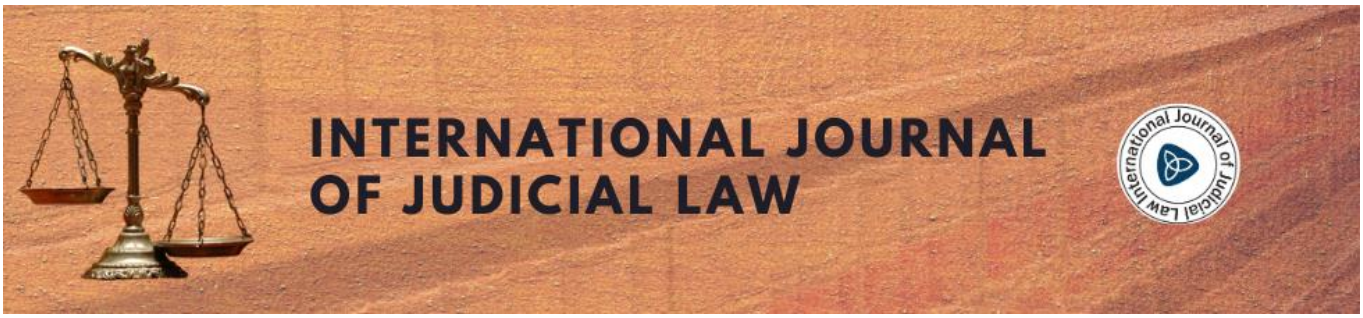




Legal Liability of a Civil Law Notary for Notarial Deeds Containing Legal Defects

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Abstract

This study aims to analyze the legal consequences of notarial deeds containing legal defects and to examine the forms of legal liability of a notary public regarding such defective deeds. The legal issues raised are the legal consequences of a legally defective notarial deed and the forms of legal liability of a notary for a deed containing legal defects. This study is a normative legal research employing a statute approach and a conceptual approach. The results indicate that a notarial deed containing legal defects can lead to two distinct legal consequences. First, it may be downgraded to a private deed (underhand deed) if it fails to fulfill the formal requirements stipulated in the Law on Notary Positions. Second, it becomes null and void by law (void ab initio) if it does not meet the material requirements under Article 1320 of the Indonesian Civil Code, particularly regarding a specific subject matter and a lawful cause. Consequently, the validity of a notarial deed is strictly determined by the fulfillment of both formal and material requirements during its drafting. Furthermore, the forms of legal liability imposed on a notary for a defective deed encompass civil, administrative, criminal, and ethical liabilities. Civil liability is grounded on tort or unlawful acts (Article 1365 of the Indonesian Civil Code), which may result in an obligation to pay damages, costs, and interest. Administrative liability manifests in oral warnings, written warnings, temporary suspension, or honorable/dishonorable discharge. Lastly, criminal liability may be enforced if criminal elements are met, including document forgery, alongside potential sanctions derived from the Notary Code of Ethics.

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Introduction

Generally, in the business world, society engages in various legal actions that necessitate the services and role of a Civil Law Notary. This engagement is driven by the fundamental need for written evidence to ensure legal certainty, order, and protection. Herein lies the essential role of the notary: to fulfill these societal needs by drafting and providing authentic deeds as conclusive evidence, which are expected to offer comprehensive legal protection to the holders and all interested parties. ^[1]

The Law on Notary Positions stipulates that a notary is a public official authorized to draw up authentic deeds and possesses other authorities as mandated by the Law on Notary Positions or other legislations (Article 1, paragraph (1) of the UUJN). Furthermore, Article 15, paragraph (1) of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning Notary Positions explains that:

¹ Ali Arben and Andrew Shandy Utama, "Kedudukan Akta Notaris sebagai Akta Autentik dalam Hukum Perdata berdasarkan Undang-Undang Jabatan Notaris," *Jurnal Hukum* 3, no. 1 (June 2024): 89.

"A notary has the authority to make authentic deeds regarding all actions, agreements, and stipulations required by statutory regulations and/or desired by interested parties to be stated in an authentic deed, to guarantee the certainty of the deed's creation date, to keep the deed, to issue *grosse*, copies, and excerpts of the deed, provided that the creation of such deed is not otherwise assigned or exempted to other officials or persons specified by law."

In executing their office, notaries must strictly adhere to Article 16, paragraph (1), letter a of Law No. 2 of 2014, which explicitly states: "*A notary is obliged to act honestly, thoroughly, independently, impartially, and to safeguard the interests of the parties involved in a legal action.*" This provision underscores that a notary must act thoroughly meaning meticulous, precise, and cautious in discharging their duties so that the deeds produced do not contain legal defects that could inflict financial or legal injury upon the parties or the notary themselves.

Moreover, notaries must comply with various provisions set out in both the UUJN and the Notary Code of Ethics. Notaries and their products can be interpreted as a state mechanism designed to create legal certainty and protection for members of society.^[2] The office of a notary is noble, honorable, and beneficial, provided that it is exercised in accordance with prevailing laws and ethical codes, and as long as the public utilizing their services trusts that their deeds and interests are safeguarded by instruments constituting absolute and conclusive evidence.^[3]

In practice, however, not all deeds drafted by notaries are free from legal flaws. Certain conditions may strip a deed of its authenticity or even render it null and void by law. One of the primary catalysts for such legal defects is negligence (*culpa*) or intent (*dolus*) committed by the notary in exercising their authority.^[4]

Legal defects arising from negligence surface when a notary fails to uphold the requisite standards of prudence, thoroughness, and caution during the deed-drafting process. This negligence may manifest as a failure to verify the identity of the appearing parties (*penghadap*), failure to read the deed aloud in their presence, substantive typographical errors, or failure to verify formal and material requirements against applicable laws. This reality highlights that the integrity of a notarial deed relies heavily on the notary's professionalism and diligence.^[5]

Conversely, a notarial deed may also be legally defective due to intentional misconduct, where a notary consciously breaches statutory provisions for specific motives. Examples include favoring one party, forging data or statements, executing a deed without the physical presence of the parties, or manipulating documents. Such intentional violations not only jeopardize the contracting parties but also dismantle the institutional integrity of the notary as a guardian of public trust.

Both negligence and intent carry severe ramifications, including disrupting the function of the deed as an authentic

instrument, instigating legal disputes, and exposing the notary to administrative, civil, or criminal sanctions. Consequently, a comprehensive understanding of the factors causing legally defective notarial deeds is paramount to foster professionalism, integrity, and service quality among public officials.^[6]

Executing notarial duties demands precision and accuracy, not only in the administrative mechanics of deed formation but also in applying complex statutory provisions within the substance of the deed, alongside a robust mastery of notary-specific sciences and law in general. The creation of certain authentic deeds is mandatory under statutory regulations to establish legal certainty, order, and protection. The statements embedded in the commencement and conclusion of a deed, for which the notary assumes responsibility, are expressions that must reflect the objective truths at the time of the deed's execution. Thus, it is imperative for a notary to internalize the code of ethics, which governs conducts whose violation triggers disciplinary sanctions.

The notary's profession in drafting deeds is inextricably linked to legal liability. This liability spans from the inception of the drafting phase until long after the authentic deed has been formalized. Principally, a deed executed by a notary stands as an authentic instrument. Yet, in practice, it can be downgraded to a private deed (*akta di bawah tangan*) due to specific statutory non-compliances. When a court declares an authentic deed invalid due to unmet legal conditions, thereby causing losses to the parties, the notary can be held legally accountable.

As public officials authorized to issue authentic deeds that provide legal certainty, notaries face a challenging landscape where legally defective deeds both formal and material still emerge, sparking litigation and financial injury. This issue poses crucial questions regarding the boundaries and mechanisms of a notary's legal liability. The current provisions within the Law on Notary Positions do not explicitly classify legal defects or correlate them systematically with administrative, civil, or criminal liabilities. This regulatory ambiguity creates a penumbra of norms, leading to legal uncertainty in judicial enforcement and liability determination.

This vacuum underscores the urgency of a profound study regarding the legal liability of civil law notaries toward legally defective deeds. This research is expected to clarify the forms and limits of notary liability under statutory frameworks and judicial precedents, thereby contributing to the strengthening of legal certainty, party protection, and professionalism within the Indonesian notary public office.^[7] Based on the context outlined above, the author is compelled to examine "Legal Liability of a Civil Law Notary for Notarial Deeds Containing Legal Defects." This study is crucial to provide a clear understanding of the parameters of liability and to proffer legal remedies for disputes arising from defective deeds.

Accordingly, this research addresses two primary legal

² G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris* (Jakarta: Erlangga, 2009), 90.

³ Habib Adjie, *Etika Profesi Notaris: Kode Etik Notaris dan Kode Etik Pejabat Pembuat Akta Tanah* (Bandung: Refika Aditama, 2009), 11–12.

⁴ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, 115.

⁵ Habib Adjie, *Hukum Notariat di Indonesia-Tafsiran Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008), 102.

⁶ Habib Adjie, *Sanksi Perdata dan Administratif Terhadap Notaris sebagai Pejabat Publik* (Bandung: Refika Aditama, 2013), 47–59.

⁷ Vina Akfa Dyani, "Pertanggungjawaban Hukum dan Perlindungan Hukum bagi Notaris dalam Membuat Party Acte," *Renaissance* 2, no. 1 (January 2017): 79.

questions:

1. What are the legal consequences of a notarial deed that contains legal defects?
2. What are the forms of legal liability imposed on a civil law notary regarding a legally defective deed?

Research Method

This study employs a normative legal research method. Normative research conceptualizes law as what is written in statutory regulations (*law in books*) or as a set of principles and norms serving as a prescriptive benchmark for appropriate human behavior.^[8]

Normative legal research functions as an approach conducted primarily by analyzing theoretical materials concerning legal concepts, perspectives, legal doctrines, statutes, and legal systems. It relies heavily on secondary data, which encompasses principles, norms, and legal regulations found within legislation and other regulatory instruments. This is achieved by comprehensively evaluating books, statutory regulations, judicial decisions, and other documents closely related to the research topic.^[9]

To facilitate an orderly exploration, analysis, and comprehension of the identified legal issues, this study utilizes three distinct methodological approaches:

1. **Conceptual Approach:** This approach departs from the views and doctrines developed within legal science. The selection of this approach is vital to uncover answers to the core legal issues. Thus, the compatibility between the chosen approach and the specific legal issue remains the paramount consideration.^[10]
2. **Statute Approach:** This approach is conducted by reviewing and analyzing all relevant statutes and regulations directly intersecting with the legal issues under investigation.
3. **Case Approach:** This approach is carried out by reviewing past court decisions that have attained binding legal force (*inkracht van gewijsde*). The primary object of study in a case approach is the *ratio decidendi* or the legal reasoning employed by the judiciary to arrive at a judgment. Whether for practical needs or academic inquiry, this *ratio decidendi* serves as a critical reference for structuring legal arguments to resolve the core legal issues.

To gather the necessary legal materials, the researcher utilizes a literature study technique (*legal research library*). This technique involves compiling and evaluating library resources consisting of statutory regulations, treatises, and scholarly opinions relevant to the subject matter. Furthermore, the researcher incorporates digital legal materials, including academic law journals and legal essays sourced online. Key excerpts that correlate with the core problem are extracted and analyzed systematically from each collected resource.

The analysis of legal materials in this normative legal research is performed by prioritizing systematization. This process begins with selecting and classifying the gathered resources based on the taxonomy of legal materials. These materials are then structured into a logical framework to yield

comprehensive, coherent results. The analytical framework applied is qualitative-interpretive, which involves interpreting the processed legal materials in depth. Throughout this analytical phase, the researcher formulates objective arguments tailored to the research topic, which are then integrated into the discussion section to address the established legal questions.

Discussion

1. Legal Consequences of Notarial Deeds Containing Legal Defects

To ensure legal certainty, the government formulates explicit regulations governing the legal actions of its citizens. This is realized through the enactment of statutory regulations, reflecting the fundamental principle that Indonesia is a constitutional state (*rechtsstaat*). This system demonstrates the state's commitment to providing legal certainty within social, national, and state interactions. The principle of a constitutional state guarantees certainty, order, and legal protection rooted in truth and justice. Consequently, the public's need for security and predictability demands concrete, written evidence that clearly defines individual rights and obligations as legal subjects.

To guarantee clarity, public order, and legal protection, authentic written instruments are indispensable. These instruments record the formation of legal relationships, agreements, provisions, and legal events drafted before or by an authorized official. Within this framework, a civil law notary serves as a public official authorized to provide legal services to the general public.

The notary office possesses a dual nature: on one hand, it functions as a state-sanctioned institution; on the other hand, it operates as a private profession. Despite this duality, both facets share a singular objective: to manage and formalize written legal relationships between parties upon their explicit request, particularly when aiming for an amicable settlement. As society evolves, the demand for legal certainty within public service sectors intensifies. The notary public operates prominently within private law to meet this demand. The profession of a notary, alongside that of a Land Title Registrar (*Pejabat Pembuat Akta Tanah / PPAT*), belongs to a category of noble professions (*officium nobile*). The unique character of this office lies in its service-oriented nature toward individuals and society. Therefore, while practitioners derive their livelihood from this profession, its core essence dictates that financial gain must never be the primary motivation.

Furthermore, the state establishes legal professions to assist citizens who may not fully comprehend complex legal procedures, thereby enhancing public awareness of the law. According to the Great Dictionary of the Indonesian Language (*Kamus Besar Bahasa Indonesia / KBBI*), a notary is an individual who receives authority from the government by virtue of an official decree to provide legal services in validating and witnessing various agreements, wills, deeds, and other legal instruments.^[11] As public officials, notaries hold the power to draw up authentic documents, provided that the creation of such specific documents is not explicitly reserved for other public officials.^[12]

⁸ Amirudin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 9th ed. (Depok: PT. Rajagrafindo Persada, 2016), 118.

⁹ Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: PT. Raja Grafindo Persada, 2006), 87.

¹⁰ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 57.

¹¹ Kamus Besar Bahasa Indonesia (KBBI), s.v. "Notaris," accessed January 16, 2026, <https://kbbi.web.id/notaris>.

¹² Indonesia Legal Center Publishing, *Himpunan Peraturan Perundang-Undangan Jabatan Notaris & PPAT* (Jakarta: Karya Gemilang, 2008), 37.

With rapid contemporary advancements, the services of a notary have become increasingly vital. The public relies on notaries to fulfill prerequisites for executing legal actions under private law. The primary authority of a notary to draft authentic deeds is explicitly derived from Article 15, paragraph (1) of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning Notary Positions (UUJN), which states:

“A notary has the authority to make authentic deeds regarding all actions, agreements, and stipulations required by statutory regulations and/or desired by interested parties to be stated in an authentic deed, to guarantee the certainty of the deed's creation date, to keep the deed, to issue *grosse*, copies, and excerpts of the deed, provided that the creation of such deed is not otherwise assigned or exempted to other officials or persons specified by law.”

Authentic deeds drawn up by or before a notary hold a paramount position within the legal framework of society because they serve as written evidence possessing conclusive proof (*volledig bewijskracht*). Notarial deeds guarantee legal certainty across various transactions, spanning private agreements, corporate business, land matters, inheritance, and other legal relations requiring strong, credible evidence.^[13]

This absolute evidentiary weight is a direct consequence of the notary's status as a public official exercising a portion of the state's authority in legal administration. Consequently, all statements embedded within a notarial deed must be presumed legally true until proven otherwise through a final judicial mechanism. The existence of an authentic deed provides robust legal protection for the contracting parties while proactively preventing future litigation.^[14]

However, the privileged status of a notarial deed is not absolute. A deed only acquires and maintains its authenticity if it is meticulously drafted in accordance with prevailing statutory provisions. During the drafting process, the notary must comply with all requirements mandated by the UUJN. These encompass the structural form of the deed, procedural steps, the physical presence of the appearing parties (*penghadap*), the presence of witnesses, the reading aloud of the instrument, the affixing of signatures, and the underlying substance of the legal act itself.^[15]

These requirements are fundamentally categorized into formal and material criteria. Formal criteria pertain to the mandatory procedures of deed formation as regulated by the Law on Notary Positions. Material criteria concern the intrinsic substance and validity of the legal act forming the basis of the deed. Both criteria carry equal weight, as they collectively dictate whether a deed remains valid and whether it preserves its status as an authentic instrument.

In notary practices, deeds occasionally surface with procedural errors, statutory violations, or elements that contradict public policy. Such anomalies create what is known as a legally defective deed (*civil law deed defect*). A legal defect refers to a condition where a deed fails to satisfy mandatory statutory requirements, whether formally or

materially. These defects can stem from a notary's oversight or negligence, procedural non-compliance, fraudulent data provided by the parties, or a contractual substance that directly breaches overriding laws.

The existence of a legal defect fundamentally threatens the standing of the deed. The more deep-seated the violation, the more severe the legal consequences imposed on the instrument. Hence, the law imposes specific sanctions on non-compliant deeds to preserve overarching legal certainty, safeguard public interest, and ensure that every deed used as evidence strictly aligns with the rule of law.^[16]

Generally, the legal consequences targeting a legally defective notarial deed manifest in two distinct forms:

1. **Downgrading of Evidentiary Value:** The authentic deed loses its absolute authenticity and is downgraded to hold the evidentiary weight of a private deed (*akta di bawah tangan*). This consequence occurs primarily when formal procedures stipulated under the UUJN are breached.
2. **Nullity by Law:** The deed may be declared null and void (*void ab initio / batal demi hukum*) if the underlying legal act fails to fulfill the material conditions required by contract law. In this situation, the legal relationship embedded within the deed is deemed never to have existed from the outset, yielding no enforceable legal rights or obligations for the parties involved.

The dichotomy between these two legal consequences proves that the validity of a notarial deed depends not merely on the identity of its author, but rigorously on full compliance with the statutory laws governing its formation and content. Therefore, a profound analysis of the legal consequences affecting defective deeds is crucial to understanding how the law shields the interests of contracting parties and maintains the integrity of authentic instruments as flawless tools of proof.

A. Authentic Deeds Downgraded to Private Deeds

An authentic deed possesses conclusive evidentiary value (*kekuatan pembuktian sempurna*) because it is drawn up by or before a Notary as an authorized public official. However, to maintain its status as an authentic deed, its execution must satisfy the formal requirements stipulated under Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning Notarial Profession (*Undang-Undang Jabatan Notaris* hereinafter "UUJN"). If these formal requirements are not met, the notarial deed loses its authenticity and is downgraded to a private deed (*akta di bawah tangan*), as provided under Article 41 of the UUJN.^[17]

One critical formal requirement is the form and composition of the deed as regulated in Article 38 of the UUJN. This article requires a notarial deed to comprise a preamble (*kepala akta*), the body of the deed (*badan akta*), and a closing (*penutup akta*). These parts must include specific mandatory elements, such as the title of the deed, deed number, date of execution, identity of the appearing parties

¹³ Habib Adjie, *Hukum Notariat di Indonesia-Tafsiran Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008), 90.

¹⁴ Yoyon Mulyana Darusman, "Kedudukan dan Kekuatan Hukum Akta Notaris," *Jurnal Hukum Pembaruan* 2, no. 3 (2015): 78.

¹⁵ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, 5th ed. (Jakarta: Erlangga, 2010), 56.

¹⁶ Marchelina Rante and Hernita Matana, "Pertanggungjawaban Pidana Notaris Terhadap Indikasi Pemalsuan Akta Otentik Yang Dibuat," *Paulus Law Journal* 3, no. 1 (2021): 29–38.

¹⁷ Habib Adjie, *Kebatalan dan Pembatalan Akta Notaris* (Bandung: Refika Aditama, 2011), 65.

(*para penghadap*), the explicit intentions of the parties, identity of the witnesses, as well as a statement concerning the reading and signing of the deed. This provision aims to provide legal certainty and guarantee the authenticity of the deed. If any required element under Article 38 is omitted or drafted in non-compliance with the applicable regulations, the deed suffers a formal defect (*cacat formil*), causing the loss of its authentic nature.

Furthermore, Article 39 of the UUJN sets forth the requirements for the appearing parties. The appearing parties must be at least 18 years old or married, possess legal capacity, and be personally known to the Notary or introduced by qualified identifying witnesses. This provision ensures that the parties declaring their intentions within the deed genuinely possess the legal capacity to act. If an appearing party fails to meet these criteria for instance, if they are minors, legally incapacitated, or their identity cannot be verified the execution process fails to satisfy the formal requirements established by the U, UJN. Consequently, the deed loses its binding power as an authentic instrument.

In addition, Article 40 of the UUJN regulates the attendance of witnesses during the execution of a notarial deed. Principally, the execution must be witnessed by at least two qualified witnesses who are at least 18 years old or married, possess legal capacity, understand the language used in the deed, are able to sign, and do not share specific familial relationships with the Notary or the parties involved. The presence of witnesses is an essential formality in drawing up a deed, as it guarantees that the execution process strictly adheres to the statutory procedures. If the number of witnesses is insufficient or if the attending witnesses are unqualified, the deed suffers from a formal defect.

It is important to note that a violation of Articles 38, 39, and 40 of the UUJN does not automatically render the deed null and void (*batal demi hukum*). Instead, such violations cause the deed to lose its status as an authentic instrument, leaving it with the evidentiary strength of a private deed only.

B. Deeds Rendered Null and Void

In addition to losing its authenticity and being downgraded to a private deed, a notarial deed may also be declared null and void (*batal demi hukum*). Unlike the downgrade in evidentiary value caused by non-compliance with formal requirements, a deed becomes null and void due to a failure to meet the material/substantive requirements (*syarat materiil*) essential for the validity of a legal act. Thus, the issue no longer concerns the procedural execution of the deed, but rather the underlying substance or content of the legal act contained therein.^[18]

A state of being null and void implies that a legal act is legally deemed to have never existed from the outset (*void ab initio*) because it violates prevailing statutory provisions. In such circumstances, no formal rescission or cancellation by the parties is required, as the act never established a legally valid relationship. Consequently, any rights and obligations that were supposed to arise from the legal act are deemed non-existent.

In contract law, an act being null and void typically stems from a failure to meet the objective conditions mandated by Article 1320 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* KUHPerdata). These objective conditions comprise a specific/determinate object (*suatu hal tertentu*) and a lawful cause (*suatu sebab yang halal*). Both conditions are critical, as they determine whether an agreement is recognized by law. If either of these objective conditions is unfulfilled, the agreement executed within the notarial deed is rendered null and void.^[19]

The first objective condition is the existence of a specific object. A specific object refers to the performance (*prestasi*) or the subject matter of the agreement agreed upon by the parties. The existence of a specific object is fundamental because it forms the basis for the rights and obligations of the parties within a legal relationship. Without a clear and specific object, the law cannot determine the substance of the obligation or how the contractual rights and obligations should be enforced.^[20]

The subject matter of an agreement must be determinable as to its kind, clear in its existence, and legally capable of being performed. This clarity aims to prevent legal uncertainty and conflicting interpretations in the future. Therefore, an agreement whose object is ambiguous, indeterminable, impossible to perform, or entirely non-existent fails to satisfy the objective conditions stipulated under civil law.^[21]

In notarial practice, ambiguity regarding the object of an agreement manifests in various ways. For instance, a deed of sale and purchase that describes an object that cannot be definitively identified, a deed concerning goods that do not exist, or a deed regulating the transfer of rights over an object that is legally non-transferable. In these situations, the agreement embodied in the deed loses its legal foundation because its core subject matter fails to meet statutory requirements.

If the requirement of a specific object is not fulfilled, the underlying agreement is deemed never to have been validly formed. As a result, the deed lacks the legal capacity to create a binding relationship between the parties. Therefore, even if the deed was drawn up by a Notary and complied with all formal procedures, the failure to fulfill the specific object requirement will still render the deed null and void.

Beyond a specific object, the other objective condition that must be satisfied is a lawful cause (*causa yang halal*). A lawful cause represents the legitimate legal purpose that the parties intend to achieve through their agreement. Under civil law, every agreement must have a purpose justified by law and must not contradict statutory regulations, morality (*kesusilaan*), or public order (*ketertiban umum*).

The requirement of a lawful cause demonstrates that the law examines not only the form and content of an agreement, but also the underlying purpose behind its creation. Hence, even if an agreement is entered into voluntarily and executed in the form of an authentic deed, it cannot be recognized by law if its underlying purpose is illegal.

In practice, violations of the lawful cause requirement occur when a deed is executed to conceal the proceeds of a crime,

¹⁸ Wulan Agustini and Benny Djaja, "Akibat Hukum dan Pertanggung Jawaban Notaris Terhadap Akta Cacat Hukum," *Lex Jurnalica* 20, no. 1 (April 2023): 11.

¹⁹ Citra Mido *et al.*, "Tanggung Jawab Perdata Notaris terhadap Akta yang Dibacakan oleh Staf Notaris di Hadapan Penghadap," *Lentera Hukum* 5, no. 1 (2018): 171.

²⁰ Citra Mido *et al.*, *ibid.*, 175.

²¹ Darmayenti and Khairani, "Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Menurut Undang-Undang Jabatan Notaris," *UNES Journal of Swara Justisia* 8, no. 1 (April 2024): 145.

to perform acts prohibited by law, to evade specific legal obligations, or for other purposes detrimental to the public interest. Agreements with such illicit purposes are deemed to lack a valid legal basis and are denied legal protection from the outset.

The consequence of failing to meet the lawful cause requirement is that the agreement embodied in the deed is treated as if it never existed (*void ab initio*). The parties cannot demand the enforcement of any rights or obligations arising from the agreement because the underlying legal relationship is deemed never to have been born. In this case, the notarial deed loses its legal force not due to an error in its drafting procedure, but because the substance of the legal act it contains violates the law.

Thus, being null and void is the direct legal consequence of failing to fulfill the objective conditions of an agreement. The absence of either a specific object or a lawful cause means that the legal act contained in the notarial deed is considered non-existent from the beginning. Consequently, the deed cannot serve as a valid basis to give rise to rights and obligations, as its legal existence is unrecognized.

Based on the foregoing analysis, it is clear that the authenticity of a deed depends not only on satisfying formal requirements during its execution but is also heavily contingent upon fulfilling the material requirements that validate a legal act. If formal requirements are breached, the deed loses its authenticity and drops to a private deed. Conversely, if material requirements are unfulfilled specifically regarding a determinate object and a lawful cause, the deed is declared null and void and is deemed never to have existed from the outset.

The legal consequence of a deed being null and void is far more severe than its downgrade to a private deed. In the case of a downgraded deed, the underlying legal act remains intact and can still be utilized as evidence, albeit with a lower weight of proof. On the other hand, when a deed is null and void, the underlying legal act itself is deemed never to have existed, causing the deed to lose its legal function entirely.^[22] This distinction emphasizes that the validity of a notarial deed is determined not only by compliance with formal execution procedures but also by the legality of the substance contained within it. Therefore, a Notary must meticulously examine the object of the agreement and the legal purpose sought by the parties to ensure that the executed deed does not conflict with prevailing legal provisions.

2. Forms of Legal Liability of a Notary for Legally Defective Deeds

A Notary may be held legally liable if it can be proven that the Notary was at fault regarding a legally defective deed they executed. In assessing notarial fault, the concept of *beroepsfout* (professional malpractice) is applied. *Beroepsfout* is a term specifically designated for errors committed by professionals holding specialized offices, such as physicians, advocates, and Notaries, in the performance of their professional or official duties.^[23]

However, the concept of fault in this context is objective, meaning that within the scope of *beroepsfout*, it is evaluated against the standards expected of a professional in exercising

their office. Nonetheless, to examine the foundational definition of fault under *beroepsfout*, one can reference the general definition of fault under criminal law. In addition to this objective definition of fault, specific prerequisites must be met to assert that a Notary has been at fault in exercising their office.^[24]

In general, the definition of fault can be found in the field of criminal law, where a person can only be declared guilty or at fault if they satisfy the following essential elements:^[25]

1. Possessing the capacity to bear legal responsibility (*mampu bertanggung jawab*);
2. Acting with intent (*sengaja*) or negligence (*alpa*); and
3. Having no grounds for excuse (*alasan pemaaf*).

The capacity to bear responsibility stems from psychological normality and intellectual maturity, which translates into three capacities:

- a. The capacity to understand the intrinsic value and consequences of one's own actions;
- b. The capacity to realize that the act is prohibited according to societal standards; and
- c. The capacity to formulate intent when performing the act.

The primary issue is whether a Notary, in exercising their office or drawing up an authentic deed, fully understands the legal value and consequences of the deed before it is ultimately declared legally defective. In practice, many Notaries tend to assume that a deed is valid as long as the parties have reached a mutual consensus as a prerequisite of an agreement and that each party possesses legal capacity, and that a specific object and a lawful cause exist. This reveals that errors in performing official notarial duties can often be attributed to a lack of knowledge (*onvoldoende kennis*), a lack of experience (*onvoldoende ervaring*), or a lack of comprehension (*onvoldoende inzicht*).^[26]

For instance, an individual might purchase agricultural land but register it under their sibling's name to circumvent the prohibition against absentee ownership of agricultural land (where the owner resides outside the sub-district where the land is located) or the maximum landholding limit. To assist the client in securing the land, the Notary draws up the deed, even though the land does not actually belong to the buyer whose name appears in the deed of sale and purchase. Consequently, the Notary fails to meticulously observe the underlying legal aspects implied in drawing up a notarial deed. While a Notary is bound by the duty to produce an authentic deed that serves as conclusive evidence, this does not mean that the Notary's actions are legally justifiable, nor does it imply that the Notary genuinely lacks the capacity to understand the values and consequences involved in executing a deed.

In the context of executing a deed which encompasses composing, reading aloud, and signing the instrument the Notary in question must be an individual who has reached at least 20 years of age pursuant to Article 3 paragraph (c) of the UUJN, is not under conservatorship (*di bawah pengampuan*), and is not acting under external duress. Based on these criteria, it can be concluded that a Notary is a person who

²² Darmayenti and Khairani, "Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum," 143.

²³ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2015), 90.

²⁴ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika* (Yogyakarta: UII Press, 2009), 45.

²⁵ E.Y. Kanter and S.R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya* (Jakarta: Alumni AHM-PTM, 2012), 166.

²⁶ Koswadi, cited in Nico, *Tanggung Jawab Notaris selaku Pejabat Umum* (Yogyakarta: Center of Documentation and Studies of Business Law, 2003), 98.

possesses the full capacity to bear legal responsibility.^[27]

An unlawful act committed by a Notary (*onrechtmatige daad*) is an act that inflicts injury or damage upon another party and is legally subject to the provisions of Article 1365 of the Indonesian Civil Code (KUHPerdata). The form of liability adopted under Article 1365 is fault-based liability. This is evident from the wording of the article, which requires the presence of fault on the part of the wrongdoer to determine whether an action constitutes an unlawful act. Furthermore, it must be understood that the element of fault must be proven by the injured party who suffered the loss, as mandated by Article 1865 of the KUHPerdata and Article 163 of the HIR.^[28]

The concept of an unlawful act or tort committed by a Notary extends beyond acts that directly violate statutory law. It also encompasses acts that directly infringe upon other prevailing norms, including those within the realms of morality, religion, and societal decorum.

In cases where a notarial deed is legally defective, the Notary has violated Article 15 of the UUJN in conjunction with Article 1865 and Article 1870 of the KUHPerdata. There are four criteria to establish an unlawful act, as follows:^[29]

1. Violation of the legal duty of the wrongdoer;
2. Infringement upon the subjective rights of another person;
3. Violation of moral virtues or societal norms or;
4. Contravening the principles of propriety, meticulousness, and the due care expected of a person in societal interactions or toward the property of others.

To establish an unlawful act, these four criteria do not need to be fulfilled cumulatively; satisfying any single criterion is automatically sufficient to characterize an act as unlawful.

In the realm of civil law, liability serves as a legal enforcement mechanism to compel individuals to honor agreements or adhere to statutory provisions.^[30] Every legal rule in Indonesia incorporates a sanction at its conclusion. The inclusion of sanctions in various legal instruments is a mandatory drafting requirement. Without a concluding sanction, a legal rule would lack teeth, making it unenforceable and unlikely to be obeyed.

The essence of a sanction is a form of legally authorized coercion. It aims to make the violating party aware that their action has breached prevailing legal rules, to restore their conduct into alignment with the law, and to maintain the equilibrium of the legal framework.

Sanctions imposed on Notaries serve as an explicit reminder that the Notary, in performing their official duties, has violated the rules governing the notarial profession as stipulated in the UUJN. These sanctions are meant to realign the Notary's conduct with the professional order mandated by the law. Additionally, imposing sanctions on Notaries who execute legally defective deeds serves to protect the public from detrimental notarial practice

A. Civil Liability

Civil liability is imposed for faults committed by a Notary when they engage in an unlawful act (*perbuatan melawan*

hukum), such as executing a legally defective notarial deed. The civil sanctions imposed on the Notary take the form of compensating for damages, costs, and interest (*ganti rugi, biaya, dan bunga*). This is the direct legal consequence a Notary must face through lawsuits filed by the appearing parties if the deed in question loses its authenticity and is downgraded to a private deed or rendered null and void.^[31]

In the event that a legally defective deed is executed, a lawsuit for damages is deemed the most relevant and effective remedy. However, filing a lawsuit for damages—whether based on breach of contract (*wanprestasi*) or tort (*PMH*) requires two prerequisites: first, the existence of an actual loss or injury suffered; and second, a causal relationship (*hubungan kausal*) between the loss and the violation of the norm committed by the party.

The civil liability arising from an unlawful act, which corresponds to the Notary's action in executing a defective deed under Article 1365 of the KUHPerdata, allows for various forms of judicial relief, including claims for monetary damages, declaratory judgments, or mandatory/prohibitory injunctions.

B. Administrative Liability

A legally defective notarial deed can give rise to administrative liability for the Notary if the defect occurs because the Notary violated professional regulations set forth in the UUJN, particularly regarding the procedural execution of deeds, official duties, and professional prohibitions. Administrative liability aims to safeguard professionalism, integrity, and public trust in the office of the Notary as a public official.

A legal defect in a notarial deed may arise from a failure to fulfill formal requirements during its execution. This includes failing to read the deed aloud before the appearing parties and witnesses, the absence of mandatory witnesses, incomplete identification of the parties, or failing to sign the deed in accordance with the procedures mandated by Articles 38, 39, and 40 of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning Notarial Profession. Violations of these provisions may cause the deed to lose its authentic nature or result in financial injury to the parties.

For such violations, a Notary may face administrative sanctions as stipulated under Article 85 of the UUJN, which include:

- a. Oral warnings (*teguran lisan*);
- b. Written warnings (*teguran tertulis*);
- c. Honorable discharge (*pemberhentian dengan hormat*); or
- d. Dishonorable discharge (*pemberhentian dengan tidak hormat*).

The investigation and imposition of these sanctions are carried out by the Notarial Supervisory Council (*Majelis Pengawas Notaris*), which comprises the Regional Supervisory Council (MPD), the Provincial Supervisory Council (MPW), and the Central Supervisory Council (MPP). The Supervisory Council will assess whether the Notary has committed a violation of the UUJN, the Notarial

²⁷ Darmayenti and Khairani, "Tanggung Jawab Notaris Terhadap Akta Yang Cacat Hukum Menurut Undang-Undang Jabatan Notaris," *UNES Journal of Swara Justisia* 8, no. 1 (April 2024): 87.

²⁸ R. Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum Dipandang dari Sudut Hukum Perdata* (Bandung: Mandar Maju, 2000), 6–7.

²⁹ [9] Sjaifurrahman and Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta* (Bandung: CV Mandar Maju, 2011), 180.

³⁰ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia Pusat Bahasa*, 4th ed. (Jakarta: Gramedia Pustaka Utama, 2008), 1224.

³¹ Sjaifurrahman and Habib Adjie, *Aspek Pertanggungjawaban Notaris*, supra note 9, p. 45.

Code of Ethics, or official duties that caused the deed to become legally defective.

Consequently, if a notarial deed is legally defective due to the Notary's error or negligence in complying with statutory provisions, the Notary can be held administratively liable through the oversight and investigation mechanisms of the Notarial Supervisory Council and subjected to administrative sanctions corresponding to the severity of the violation.

C. Criminal Liability

Under the UUJN, if a Notary is proven to have committed a violation in the performance of their duties such as executing a legally defective deed they can be subjected to civil and administrative sanctions. This liability was heavily regulated both in the former notarial regulations and under the current UUJN and the Notarial Code of Ethics. However, the UUJN does not regulate criminal sanctions against Notaries because Law No. 2 of 2014 does not govern criminal liability. Therefore, if a criminal offense is committed by a Notary, criminal sanctions under the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* KUHP) apply, provided that the criminal prosecution is subject to the following limitations:

1. There must be a legal action by the Notary concerning the external, formal, and material aspects of the deed that is committed intentionally, with full awareness, and premeditated, where the deed executed before the Notary or via collusion between the Notary and the appearing parties is used as a vehicle to commit a criminal offense.
2. There is a legal action by the Notary in drawing up the deed before or by the Notary which, when measured against the UUJN, is found to be in direct non-compliance with the UUJN.
3. The Notary's actions are deemed non-compliant by the authorized institution empowered to evaluate notarial conduct, namely the Notarial Supervisory Council (*Majelis Pengawas Notaris*).

The imposition of criminal sanctions on a Notary can be pursued as long as these limitations and the elements of the crime are met. This means that in addition to violating the provisions of the UUJN and the Notarial Code of Ethics, the Notary's conduct must fully satisfy the elements of a criminal offense as defined under criminal law.

Conclusion

A legally defective notarial deed can result in two distinct legal consequences. First, an authentic deed may be downgraded to a private deed (*akta di bawah tangan*) if it fails to fulfill the formal requirements stipulated under the Notarial Profession Law, thereby losing its conclusive evidentiary value as an authentic instrument. Second, a deed may be declared null and void if it fails to satisfy the material/substantive requirements specifically regarding a specific object and a lawful cause as mandated by Article 1320 of the Indonesian Civil Code (*KUHPerdata*). Consequently, such a deed is deemed never to have existed (*void ab initio*) and creates no legal rights or obligations for the parties. Thus, the validity of a notarial deed relies heavily on the strict fulfillment of both formal and material requirements; a breach of formal requirements deprives the deed of its authenticity, whereas a violation of material requirements renders the underlying legal act null and void. The forms of legal liability imposed on a Notary for

executing a legally defective deed encompass civil, administrative, criminal, and ethical liabilities. Under civil law, a Notary can be sued for monetary damages, costs, and interest if they commit an unlawful act (*perbuatan melawan hukum*) that inflicts financial injury upon the parties. Administratively, a Notary may face sanctions ranging from oral warnings, written warnings, and temporary suspension, to dishonorable discharge from office. Criminally, a Notary can be held liable if they are proven to have intentionally committed acts satisfying the elements of a crime, such as document forgery during the execution of the deed. Finally, regarding professional ethics, a Notary may be subject to disciplinary sanctions including reprimands, warnings, temporary suspension, or expulsion from the professional organization, all of which serve to uphold the honor, integrity, and professionalism of the notarial office.

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