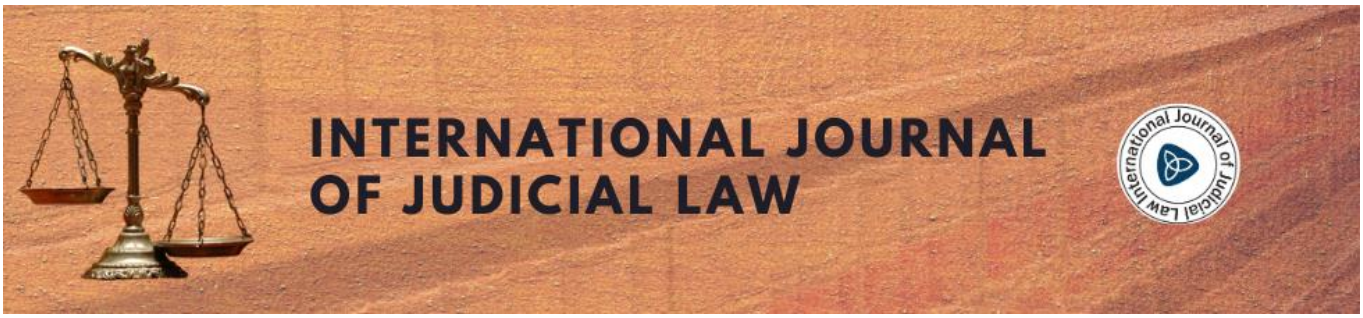




Assesing Notarial Liability: Between the Formality and Substance of Authentic Deeds

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Abstract

As a public official, a notary public has the authority to create authentic deeds with full evidentiary force. In practice, a notary's responsibility is often understood to be limited to formalities, namely ensuring that formal requirements as stipulated in laws and regulations are met. However, it is not uncommon to find authentic deeds that are formally valid but contain substantial problems, resulting in disputes and losses for the parties. This issue raises questions about whether limiting notaries' responsibilities to formalities is sufficient to guarantee the validity of authentic deeds and how notaries' liability for the substantial truth of authentic deeds should be constructed to ensure legal certainty and justice. This study aims to analyze the limits of notaries' liability regarding formalities and examine the possibility of accountability for the substance of authentic deeds. The research method used is normative legal research, utilizing a legislative approach, a conceptual approach, and a case study approach. The legal sources used include primary legal materials in the form of the Civil Code, the UUJNP, secondary legal materials in the form of literature and journals, and tertiary legal materials in the form of legal dictionaries. The legal materials were analyzed qualitatively. The results of this study indicate that notary liability are essentially limited to formal aspects, but under certain circumstances can extend to substantial aspects if there is an element of negligence or a violation of the principle of prudence. Therefore, a reconstruction of notary liability is needed that emphasizes not only formalities but also integrates the principle of prudence to achieve a balance between legal certainty and justice.

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Introduction

In performing the duties of office, a notary is vested with authority and is subject to certain obligations and responsibilities. As a public official, a notary plays a highly strategic role within the Indonesian legal system, particularly in the field of civil law. The principal authority of a notary is to draw up authentic deeds possessing conclusive evidentiary force, as stipulated in Article 1868 of the Indonesian Civil Code, which provides that an authentic deed is a deed executed in the form prescribed by law, by or before a public official authorized to do so at the place where the deed is executed. An authentic deed drawn up by a notary serves not only as written evidence but also as a legal instrument that ensures legal certainty for the interested parties. Authentic deeds occupy the highest evidentiary status under procedural law; therefore, any error or irregularity occurring in the process of drafting such deeds may give rise to serious legal consequences. Accordingly, as a public official, a notary bears a high degree of both moral and legal responsibility, since the performance of notarial duties has direct implications for legal certainty, justice, and the legal protection afforded to the wider community ^[1].

¹ Habib Adjie. Hukum Notaris Indonesia: Tafsir Tematik terhadap UU Jabatan Notaris (Bandung: Refika Aditama, 2020), 34–40.

In performing the duties of office, a notary is bound by the provisions of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary (the "Amended Notary Office Law" or "UUJNP"). Article 15 paragraph (1) of the UUJNP expressly provides that a notary is authorized to draw up authentic deeds concerning all acts, agreements, and determinations required by laws and regulations and/or desired by the interested parties to be set forth in an authentic deed; to ensure certainty as to the date on which the deed is drawn up; to retain the deed; and to issue grosse copies, copies, and excerpts thereof, provided that the authority to draw up such deeds has not been assigned or reserved to another official or person designated by law. This provision means that a notary is vested with specific authority to draw up authentic deeds possessing conclusive evidentiary force. The scope of such authority encompasses various legal acts, agreements, and determinations, insofar as the authority to perform them has not been assigned to another official. Furthermore, deeds drawn up by a notary provide the parties with legal certainty regarding the date and contents of the relevant agreement. Meanwhile, Article 16 paragraph (1) letter a of the UUJNP requires a notary to act in a trustworthy, honest, thorough, independent, and impartial manner, while safeguarding the interests of all parties involved in the relevant legal act.

From a normative perspective, a notary's responsibility is often understood as being limited to formal aspects^[2] namely ensuring that the deed drawn up complies with the formal requirements prescribed by the Indonesian Civil Code and the Amended Notary Office Law (UUJNP). These requirements include, among other matters, the appearance of the parties, the reading of the deed, and its execution before the notary, as stipulated in Article 38 of the UUJNP concerning the form and structure of a notarial deed. In this context, the notary is positioned as a public official whose role is to embody the parties' intentions in the form of an authentic deed, without being under an obligation to investigate the substantive truth of the statements made by the parties.

In practice, it is not uncommon to encounter authentic deeds that are formally valid yet substantively flawed for instance, due to false statements, bad faith, or a lack of correspondence with actual circumstances^[3]. Such situations give rise to legal issues when the deed becomes the subject of a dispute or is even annulled by a court. This context raises questions regarding the extent of a notary's liability for the content of the deed, particularly given the "perfect" evidentiary value of authentic deeds; as affirmed in Article 1870 of the Indonesian Civil Code, an authentic deed constitutes conclusive and binding proof of its contents for the parties involved, their heirs, and their successors in interest. Under this provision, the authentic deed is presumed valid unless proven otherwise^[4].

Extending a notary's liability to encompass substantive veracity is not without issues. Fundamentally, a notary lacks the investigative authority to verify all facts presented by the parties involved. This aligns with the view held by Habib

Adjie that a notary does not guarantee material truth, but rather merely attests to the formal validity of a deed^[5]. Consequently, imposing full substantive liability on a notary risks creating legal uncertainty and undermining the notary's role as a neutral public official.

The tension between formal and substantive liability highlights a problematic aspect of the legal framework governing a notary's liability in the drafting of authentic deeds. On one hand, legal certainty demands clearly defined limits on a notary's liability based on the formalities of the deed. On the other hand, the principle of justice requires protecting the parties involved against potential losses arising from the incorrect substance of the deed^[6].

Based on the foregoing discussion, it is important to re-examine and reassess the boundaries of a notary's responsibility in drawing up authentic deeds, particularly from the perspective of the relationship between formal requirements and substantive truth. This study is expected to contribute to the development of notarial law while offering a framework for reconstructing notarial responsibility in a manner that achieves a more appropriate balance between legal certainty and justice.

Problem Formulation

1. Is the limitation of a notary's liability to matters of formality sufficient to guarantee the validity of an authentic deed?
2. How should a notary's liability regarding the substantive truth of an authentic deed be structured to ensure legal certainty and justice?

Purpose

This study aims to analyze the adequate limits of a notary's formal liability in guaranteeing the validity of authentic deeds, and to analyze the possibility and implications of a notary's substantive liability in the drafting of authentic deeds, with the goal of achieving legal certainty and justice.

Method

This study employs a normative legal research methodology^[7]. The approaches utilized include the statute approach, the conceptual approach, and the analytical approach^[8]. The statute approach is applied through a study of various regulations governing the office of the notary. The conceptual approach is used to examine relevant theories, concepts, and aspects of professionalism. Meanwhile, the analytical approach is applied to assess the relationship between existing legal rules and their practical application in the field; this enables a comprehensive assessment of legal impacts and a critical evaluation of how regulatory provisions are implemented within the social context and the framework of notary professionalism. The study utilizes primary legal sources, specifically legislation such as the Indonesian Civil Code (KUHPdata) and Amended Notary Office Law (UUJNP), as well as secondary legal sources, including scholarly journal articles, research papers, and other

² Anggita, S.N. and Sari, N.K., 2025. Batasan Tanggung Jawab Hukum Notaris terhadap Pembuatan Akta Autentik Menggunakan Artificial Intelligence. *Acta Comitas: Jurnal Hukum Kenotariatan*, 10(3), pp.465-477.

³ Aditya, I Made. "Pertanggungjawaban Notaris dalam Pembuatan Akta Cacat Formil." *Jurnal Hukum Acara dan Praktik Peradilan* 7, no. 2 (2021): 233-247.

⁴ Subekti. *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2018), 112-120.

⁵ Habib Adjie *Op.cit.*, h. 45

⁶ Ningsih, R. "Kekuatan Akta Otentik dan Perlindungan Hukum bagi Para Pihak." *Jurnal Ilmu Hukum Yustisia* 15, no. 3 (2023): 290-310.

⁷ Peter Mahmud Marzuki. 2007, *Penelitian Hukum*. Jakarta: Kencana Prenada Group, h. 35.

⁸ Rahmawati, Eka. "Kewenangan Notaris dalam Perspektif Hukum Administrasi Negara." *Jurnal Ilmiah Ilmu Hukum* 4, no. 2 (2021): 178-193.

academic literature regarding notary liability. Tertiary legal sources, such as Indonesian language dictionaries and legal dictionaries, are also used. Data collection is conducted through a literature review, and the analysis employs qualitative analysis techniques.

Discussion

A. The Scope and Limits of Notarial Responsibility in Relation to Formal Requirements

As a public official, a notary is subject to legal obligations in the performance of notarial duties, particularly in the drawing up of authentic deeds. These obligations are expressly regulated under the Amended Notary Office Law (UUJNP). Article 16 paragraph (1) letter a of the UUJNP stipulates that a notary must act honestly, diligently, independently, and impartially, while safeguarding the interests of the parties involved in the relevant legal act. Furthermore, pursuant to Article 16 paragraph (1) letter m of the UUJNP, a notary is required to read the deed before the appearers in the presence of witnesses and to ensure that the deed is understood and signed by the parties. These obligations demonstrate that the role of a notary is not merely administrative, but also encompasses ensuring compliance with the formal procedures constituting the requirements for the validity of an authentic deed. Accordingly, a notary's obligations in drawing up a deed primarily emphasize compliance with formal procedures in order to guarantee the deed's validity as an instrument possessing conclusive evidentiary force^[9].

An authentic deed must satisfy the formal requirements prescribed under Article 1868 of the Indonesian Civil Code, namely that it must be drawn up in the form prescribed by law, by or before an authorized public official. Furthermore, Article 38 of the Amended Notary Office Law (UUJNP) sets out in detail the form and structure of a notarial deed, comprising the introductory section, the main body, and the closing section of the deed. Other formal aspects include the appearance of the parties, clear identification of the parties, the time and place at which the deed is drawn up, as well as the signatures of the parties, witnesses, and notary. Where these formal requirements are not fulfilled, the deed may lose its authentic character and possess only the evidentiary force of a privately executed deed. Accordingly, formal requirements constitute fundamental elements in determining the validity of an authentic deed.

A notary's responsibility under the Amended Notary Office Law (UUJNP) is fundamentally associated with the formal performance of the duties of office. In other words, a notary may be held responsible where there is a breach of the formal requirements governing the preparation of a deed, such as the failure to read the deed aloud, the absence of witnesses, or non-compliance with the prescribed form and structure of the deed^[10]. In this context, a notary's legal liability may include:

- a. administrative liability, in the form of sanctions imposed by the Notary Supervisory Council;
- b. civil liability, including the obligation to pay compensation; and
- c. in certain circumstances, criminal liability where intent

or gross negligence can be established^[11].

Nevertheless, such liability is, in principle, rooted in the breach of formal duties rather than in the substance of the statements made by the parties.

Under the doctrine of notarial law, a notary is often positioned as the "recorder of the parties' intentions" (verlijden van akten), namely a public official who embodies the intentions or statements of the parties in the form of an authentic deed^[12]. This position emphasizes that the notary is not a party to the agreement, has no personal interest in the contents of the deed, and merely serves as an intermediary who gives legal form to the parties' intentions. Accordingly, the notary's responsibility is limited to ensuring that such intentions are accurately incorporated into a legally compliant formal instrument, without being required to assess the substantive truth of the statements contained therein.

One of the fundamental principles of notarial law is that a notary is not responsible for the substantive truth of the contents of a deed. The notary only guarantees that the deed has been drawn up in accordance with the procedures and formalities prescribed by law^[13]. This principle is consistent with the view that the truth guaranteed by an authentic deed is formal truth, namely that the parties did in fact make the statements recorded in the deed, that such statements were made before the notary, and that the applicable legal procedures were duly observed. Conversely, substantive truth, such as whether the statements contained in the deed correspond to the actual facts, is, in principle, beyond the scope of the notary's responsibility and remains the responsibility of the parties making such statements. In practice, however, this distinction often becomes blurred, particularly where a deed causes loss as a result of inaccuracies or falsehoods in its substantive contents. This circumstance has consequently given rise to debate as to whether a notary's responsibility should be extended into the substantive sphere.

Under the law of evidence, a distinction is recognized between formal truth and substantive truth. Formal truth refers to the fact that a statement was duly made by the parties before an authorized public official, in this case a notary, in accordance with the applicable legal procedures. Substantive truth, by contrast, concerns whether the contents of such a statement correspond to the actual circumstances^[14]. An authentic deed, serving as conclusive evidence, essentially guarantees formal veracity, as affirmed by Article 1870 of the Indonesian Civil Code, which states that such a deed provides conclusive proof of its contents. However, this evidentiary weight pertains primarily to the formal aspect, namely that the parties have made specific declarations, rather than to the material truth of the statements themselves. Thus, there is a conceptual limit: a notary does not guarantee material truth but merely ensures that formal procedures have been satisfied.

In practice, authentic deeds may satisfy all formal requirements while nevertheless containing substantive

⁹ Dewi, Putu Inten Andhita, and I. Wayan Novy Purwanto. "Peran notaris dalam pendirian perseroan terbatas pasca Undang-Undang Cipta Kerja." *Acta Comitas: Jurnal Hukum Kenotariatan* 6, no. 03 (2021): 549-560.

¹⁰ Habib Adjie, *Hukum Notaris Indonesia*, (Bandung: Refika Aditama, 2015), p. 89.

¹¹ Lidya Christina Wardhani, Tanggung Jawab Notaris/PPAT terhadap Akta yang Dibatalkan oleh Pengadilan, *Lex Renaissance* 1, no. 2 (2017): 49-63.

¹² G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, (Jakarta: Erlangga, 1999), p. 45.

¹³ R. Subekti, *Hukum Pembuktian*, (Jakarta: Pradnya Paramita, 2008), h. 27.

¹⁴ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2006), p. 154.

defects. Such defects may include false statements made by the parties, elements of fraud or bad faith, or an object of the agreement that does not correspond to the actual circumstances. These situations may give rise to legal consequences, including the annulment of the deed by a court or the degradation of its evidentiary status to that of a privately executed deed. In this context, even where the notary has complied with all prescribed formal procedures, the resulting deed may still give rise to legal disputes^[15]. This demonstrates the limitations of a formalistic approach in guaranteeing the validity and fairness of an authentic deed.

Substantive defects in an authentic deed may cause losses to the parties, particularly to those acting in good faith. A deed that is intended to provide legal certainty may instead become a source of dispute where its contents do not reflect the actual circumstances. In such cases, the injured party may encounter difficulties in discharging the burden of proof because an authentic deed possesses conclusive evidentiary force. This creates a paradox in which an instrument intended to guarantee legal certainty may instead impede the attainment of justice where its substantive contents are inaccurate^[16]. Accordingly, the issue of substantive truth affects not only the legal aspects of the deed but also the protection afforded to the parties within a legal relationship.

The Amended Notary Office Law (UUJNP) does not expressly regulate a notary's responsibility for the substantive truth of a deed. The existing provisions place greater emphasis on formal obligations, including the procedures for drawing up deeds and the ethical duties attached to the notarial office. Consequently, there is a normative lacuna (vacuum norm) concerning the extent to which a notary is required to ascertain the substantive truth of a deed. On the one hand, a notary is required to act diligently and to safeguard the interests of the parties; on the other hand, the notary is not vested with sufficient authority to conduct an in-depth verification of the substantive facts.

This situation creates uncertainty in practice, particularly in determining the limits of a notary's responsibility where a dispute arises from the substantive contents of a deed. A lacuna in the applicable legal norms may result in legal uncertainty due to the absence of clear regulation and may also lead to disorder in the application of law within society. Ultimately, the issue of substantive truth gives rise to ambiguity concerning the limits of notarial responsibility. On the one hand, legal doctrine emphasizes that a notary is not responsible for substantive truth. On the other hand, developments in legal practice and the demands of justice have encouraged an expansion of such responsibility, particularly where the notary is considered negligent or insufficiently cautious^[17]. In certain cases, a notary may even be held legally liable where it is proven that the notary failed to observe the principle of due care, for example by failing to verify the parties' identities adequately or by disregarding indications that the parties' statements were inaccurate or false. Accordingly, the boundary between formal and substantive responsibility has become increasingly blurred,

demonstrating the need for further analysis to formulate a clearer and more balanced legal framework governing notarial responsibility.

B. Analysis of Notarial Responsibility for the Substance of Authentic Deeds.

Conceptually, a notary is, in principle, not responsible for the substantive truth of the contents of a deed, but only for the formal aspects of its preparation. This concept is based on the notary's position as a public official whose function is to embody the intentions of the parties in the form of an authentic deed. Nevertheless, developments in legal practice indicate a tendency to hold a notary legally liable where the notary is proven to have acted negligently or failed to observe the principle of due care in the performance of notarial duties. In other words, although a notary does not guarantee substantive truth, this does not mean that the notary is entirely exempt from responsibility for the substance of the deed. Such liability may arise, in particular, where there is:

- a. Negligence
- b. Intentional misconduct,
- c. A breach of legal obligations incumbent upon the notary.

Thus, a notary's liability regarding the substance of a deed is limited and conditional, depending on whether or not there was fault in the performance of their official duties.

From the perspective of civil law, a notary may be held legally liable where the notary's conduct satisfies the elements of an unlawful act as stipulated in Article 1365 of the Indonesian Civil Code^[18]. Such liability may arise where the notary is proven to have:

- a. Negligently verified the identities of the parties;
- b. Failed to act diligently; or
- c. Disregarded the procedures that should have been followed.

Where these elements are established, the injured party may seek compensation from the notary^[19]. In this context, a notary's liability is not limited solely to compliance with formal requirements, but also encompasses the duty to exercise due care in ensuring the validity of the relevant legal act.

Under criminal law, a notary may be held criminally liable where the notary is involved in the commission of a criminal offence^[20], such as the forgery of a deed under Articles 263 and 264 of the Indonesian Criminal Code or the insertion of false statements into an authentic deed under Article 266 thereof^[21]. Such criminal liability, however, requires proof of intent or the notary's active involvement in the unlawful conduct^[22]. Where a notary merely records the statements provided by the parties without having knowledge of their falsity, the notary, in principle, cannot be held criminally liable.

In addition to legal responsibility, a notary is also bound by the Notarial Code of Ethics, which prescribes the moral and professional standards applicable to the performance of

¹⁵ Habib Adjie, *Op.cit.*, h. 112.

¹⁶ R. Subekti, *Op.cit.*, p. 30.

¹⁷ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, (Bandung: Citra Aditya Bakti, 2010), p. 78.

¹⁸ *Ibid.*, p. 82.

¹⁹ Anggraeni, Dwi. "Perlindungan Hukum bagi Pihak yang Dirugikan atas Kesalahan Notaris." *Jurnal Lex Renaissance* 6, no. 1 (2022): 88–103.

²⁰ Kurniawan, Bagas. "Tanggung Jawab Hukum Notaris terhadap Kebenaran Data Para Pihak." *Jurnal Notarius* 14, no. 2 (2022): 55–70.

²¹ Sari, Komang. "Pertanggungjawaban Notaris dalam Kasus Pemalsuan Akta." *Jurnal Legislasi Indonesia* 19, no. 1 (2022): 85–101.

²² Darsana, I Gede. "Aspek Pidana dalam Tanggung Jawab Notaris." *Jurnal Magister Hukum Udayana* 10, no. 3 (2021): 356–371.

notarial duties. Under the Code of Ethics, a notary is required to act honestly and diligently, maintain the integrity of the profession, and refrain from conduct that may cause harm to the parties. A violation of the Code of Ethics may result in administrative or professional sanctions, including a reprimand, suspension, or dismissal from office by the Notary Supervisory Council ^[23].

From a doctrinal perspective, legal scholars generally maintain that a notary is responsible only for the formal truth of a deed and not for its substantive truth. Habib Adjie emphasizes that a notary has no authority to investigate the substantive accuracy of the statements made by the parties; therefore, the notary's responsibility is limited to formal aspects ^[24]. In judicial practice, as reflected in Supreme Court Decision Number 1099/PID/2010 concerning the criminal liability of a notary in the preparation of a deed of parties, there is a tendency for judges not to assess formal compliance alone, but also to consider the degree of care exercised by the notary in performing the duties of office. Furthermore, Supreme Court Decision Number 385 K/PDT/2013 held that a notary is not responsible for substantive truth where the notary was unaware that the documents submitted by the parties were false, provided that the notary had acted carefully and in accordance with the applicable procedures. In several decisions, a notary may be held legally liable where negligence or a failure to observe the principle of due care is established, even though the deed has formally satisfied the prescribed requirements ^[25]. This perspective indicates a paradigm shift from a formalistic approach toward a more substantive approach in assessing notarial responsibility.

The concept of a duty of care is a principle that has developed in modern law and has become increasingly relevant to the notarial profession. This concept emphasizes that a notary must not merely comply with formal requirements, but must also exercise due care to ensure that the performance of notarial duties does not cause harm to other parties ^[26]. In the notarial context, the duty of care may be implemented through:

- a. Careful verification of the parties' identities;
- b. Ensuring that the parties possess the requisite legal capacity; and
- c. Refraining from drawing up a deed that clearly indicates the existence of a violation of law.

Although a notary is not directly responsible for substantive truth, the application of the duty of care principle may serve as a bridge between formal and substantive responsibility. This concept provides a basis for strengthening notarial responsibility without obscuring the notary's position as a neutral public official.

The problems arising from the tension between formal and substantive responsibility indicate that the existing legal framework has not fully addressed the practical needs of notarial practice. An approach that places excessive emphasis on formal compliance may disregard the legal protection of the parties, particularly where the deed contains substantive

inaccuracies or falsehoods. Conversely, an unmeasured expansion of notarial responsibility for substantive truth may also create legal uncertainty and impose obligations upon notaries that exceed the scope of their authority. Therefore, a reconstruction of notarial responsibility is required in order to establish an appropriate balance between legal certainty and justice.

The reconstruction of notarial responsibility must be grounded in a balance between two fundamental legal values, namely legal certainty and justice. Legal certainty is reflected in compliance with the formal requirements of an authentic deed as stipulated in Article 1868 of the Indonesian Civil Code and the provisions of the UUJNP. Justice, however, requires that a deed not be used as a means of legitimizing conduct that causes harm to another party as a result of false or inaccurate substantive content. In this regard, a notary should be regarded not merely as an official responsible for fulfilling formalities, but also as a legal professional who bears moral and professional responsibility for safeguarding the validity of legal acts. Accordingly, reconstructing notarial responsibility does not mean transferring such responsibility entirely into the substantive sphere, but rather strengthening the duty to exercise due care in the performance of the notary's formal functions ^[27].

One form of reconstruction that may be undertaken is to strengthen the application of the prudential principle in notarial practice. This principle requires a notary to:

- a. Carefully verify the identities of the parties;
- b. Ensure that the parties possess the requisite legal capacity; and
- c. Refuse to draw up a deed where there are strong indications of a violation of law.

The obligation to act diligently, as stipulated in Article 16 paragraph (1) letter a of the Notary Office Law, may be interpreted as the normative basis for the application of this prudential principle. Accordingly, although a notary is not directly responsible for substantive truth, the notary remains under an obligation to prevent the misuse of an authentic deed through conduct that lacks due care or constitutes an unlawful act ^[28].

The reconstruction of notarial responsibility should also be directed toward a more explicit delineation of its scope under applicable laws and regulations. At present, the Notary Office Law does not expressly regulate the extent to which a notary may be held responsible for the substantive contents of a deed. Such clarification is essential to provide legal certainty for notaries in the performance of their duties, prevent multiple interpretations in judicial practice, and ensure proportionate legal protection for the parties. Notarial responsibility may therefore be formulated as follows:

- a. Full responsibility for the formal aspects of the deed; and
- b. Limited responsibility for its substantive aspects where negligence or a breach of the duty of care can be established ^[29].

²³ Mahendra, A.A. "Implementasi Kode Etik Notaris dalam Menegakkan Integritas Jabatan." *Jurnal Hukum Dewantara* 11, no. 1 (2020): 34–48.

²⁴ Habib Adjie, Op.cit. p. 120.

²⁵ Yuliana, Made. "Akta Notaris sebagai Alat Bukti Otentik di Pengadilan." *Kertha Semaya* 10, no. 2 (2020): 120–138.

²⁶ Salim H.S. *Perkembangan Hukum Kontrak Innominata di Indonesia*, (Jakarta: Sinar Grafika, 2003), p. 56.

²⁷ Hadi, Rudi. "Analisis Akibat Hukum Akta Notaris yang Cacat Hukum." *Jurnal Hukum dan Keadilan* 8, no. 1 (2019): 112–129.

²⁸ Mahadewi, I.G.A.I.L. and Purwanto, I.W.N., 2021. Tanggung Jawab Notaris Pengganti yang Melakukan Perbuatan Melawan Hukum dalam Pembuatan Akta Autentik, *Acta Comitatus: Jurnal Hukum Kenotariatan*, 6 no. 2 (2021): 450–460.

²⁹ Herlien Budiono, Op.cit., p. 90.

In addition to normative regulation, the reconstruction of notarial responsibility may also be pursued by strengthening the role of the Notarial Code of Ethics and supervisory institutions. The Notarial Code of Ethics establishes professional standards of conduct that must be observed by notaries, including the obligation to maintain professional integrity and refrain from conduct that may cause harm to other parties. Supervision by the Notary Supervisory Council should also be optimized to ensure that notaries perform their duties in accordance with applicable legal provisions and professional ethical standards. Accordingly, effective enforcement of the Code of Ethics and supervisory mechanisms may serve as important instruments for preventing violations relating to the substantive contents of authentic deeds.

The reform of notarial law must accommodate developments in legal practice and the needs of society, including the increasing complexity of modern legal transactions. The reconstruction of notarial responsibility may be directed toward strengthening a concept of professionalism that is based not only on formal compliance but also on the legal protection of the parties^[30]. In this regard, an approach that may be developed is the integration of the principle of legality, as reflected in compliance with legal formalities, the principle of due care, and the principle of substantive justice. A notary must remain within the limits of the authority conferred upon the office as a public official, while assuming responsibilities that are more adaptive to evolving legal dynamics.

Closing

Conclusion

Based on the discussion, it can be concluded that a notary's liability regarding the drafting of authentic deeds is fundamentally rooted in formal requirements as stipulated in the Indonesian Civil Code and the UUJNP. A notary is responsible for ensuring that a deed is executed in accordance with applicable legal procedures, thereby endowing it with conclusive evidentiary value. In a formal context, the notary acts as a public official who records the parties' intentions without guaranteeing the material veracity of the deed's content. However, practical issues arise when a deed that is formally valid contains substantial defects that disadvantage the parties involved. This demonstrates that a purely formalistic approach is insufficient to fully guarantee legal justice. Consequently, although a notary is not doctrinally liable for material truth, they may still be held accountable if proven negligent, lacking in due diligence, or in breach of the duty of care in the exercise of their office. Thus, the scope of a notary's liability is not absolute regarding formalities but extends to a limited form of liability concerning the substance of the deed, particularly where fault or negligence is involved. This expansion underscores the need to redefine the nature of a notary's liability to strike a better balance between legal certainty and justice.

Suggestion

1. For the legislature, the provisions of the UUJNP should be clarified with respect to the limits of notarial responsibility, particularly in relation to the substantive contents of authentic deeds, in order to prevent multiple interpretations and provide legal certainty for both

notaries and the parties concerned.

2. For notaries, the performance of notarial duties should not be directed solely toward compliance with formal requirements. Notaries should also apply the prudential principle optimally, including by carefully verifying the identities of the parties and ensuring that there are no indications of unlawful conduct in the substantive contents of the deed.

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