

# Notary's Legal Liability for Deeds Declared Null and Void

Ardita Almira Rahma<sup>1\*</sup>, Pujiyono<sup>2</sup>, Noor Saptanti<sup>3</sup>

<sup>1</sup> Master of Notary, Faculty of Law, Sebelas Maret University, Indonesia

<sup>2,3</sup> Law Faculty Lecturer, Sebelas Maret University

\*Corresponding Author:

Email: [arditaalmiraaa@gmail.com](mailto:arditaalmiraaa@gmail.com)

---

## Abstract

*Notary is a public official authorized to make authentic deeds. The authority of a Notary in making authentic deeds is the authority granted by the Notary Position Law as stipulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. Notarial deeds have perfect evidentiary power, which means that as long as no defects and untruths are found in the deed, the judge must be convinced and believe in the deed. However, if a dispute arises against the authentic deed, then the deed can be canceled or null and void. In carrying out his official duties towards an authentic deed he made, Notary is charged with a responsibility. So that if a deed is declared null and void, the Notary can be held accountable. This research is normative legal research, using library techniques and document studies to collect legal materials. analysis of legal materials in this study using deductive analysis. The results of this research show that, the form of Notary's responsibility for deeds declared null and void can include, civil responsibility, criminal responsibility and administrative responsibility.*

**Keywords:** Notary, Notary Responsibility, Null and void.

---

## I. INTRODUCTION

Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary, in Article 1 number 1 regulates that: "Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law or based on other laws". The position of Notary is a position of trust (Wardhani, 2017). This means that the Notary in carrying out the duties of his/her office can be trusted and the Notary has an obligation to keep confidential everything regarding the deed made and all information obtained by him/her for the purpose of making the deed in accordance with the oath or promise of office, unless the law determines otherwise as stipulated in Article 16 paragraph (1) letter f of Law Number 2 Year 2014. This is an act to protect the interests of all parties related to the deed so that there is a guarantee of legal certainty (Wijaya, 2015).

Article 15 Paragraph 1 of Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary authorizes a Notary for the purpose of assuring in an authentic deed an:

- a. Legal Actions;
- b. Agreement;
- c. Decree.

The authority of a Notary in making authentic deeds is an authority granted by the Notary Position Law as stipulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. According to Article 1868 of the Civil Code, an authentic deed is a deed made in the form prescribed by law by / or before a public official authorized for that purpose, at the place where the deed is made. Authentic deeds have perfect evidentiary power. This means that as long as there are no defects and untruths in the deed, the judge must be convinced and believe in the deed (Sasauw, 2015). Notaries in making a deed must be in accordance with the form and nature of the deed as stipulated in Article 38-Article 53 of the Notary Office Law and understand the science of agreement law including the legal requirements of the agreement. This is important to understand so that agreements made in the form of authentic deeds can have perfect evidentiary power and will not cause disputes in the future. However, if a dispute arises against the authentic deed, then the deed can be canceled or null and void. The deed can be

canceled if an authentic deed does not meet the subjective requirements of the agreement in Article 1320 of the Civil Code, namely regarding capacity and agreement, then at the request of a certain person, the deed can be canceled. This is different from a deed that is null and void. An authentic deed that does not fulfill the objective requirements of the agreement, namely regarding a lawful cause and a certain matter, then the deed can be null and void. Ex officio judges basically cannot cancel a Notarial deed if cancellation is not requested. This is because judges cannot decide what is not requested (Mertokusumo, 1998). In the event that cancellation is requested by the party concerned, basically the authentic deed can be canceled by the judge if the party concerned can prove it in court (Mayra, 2021). Notary as a public official has full responsibility for every deed he makes. Based on the explanation above, the author is interested in discussing the legal responsibility of a Notary towards a deed that is declared null and void.

## II. METHODS

The research is a type of normative legal research. Normative legal research is a scientific research procedure to find the truth based on scientific logic from the normative side (Ibrahim, 2012). The technique of collecting legal materials in this research uses library techniques and document studies. This legal material collection technique is carried out by reading, studying and analyzing legal materials. The analysis of legal materials in this research uses deductive analysis, which starts from major premises (rules of law) then minor premises (legal facts) are proposed. Then from these two premises a conclusion or conclusion is drawn (Marzuki, 2013).

## III. RESULT AND DISCUSSION

The authority of a Notary in making authentic deeds has been regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Article 15 paragraph (1) of Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary states that:

“Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide a grosse, copy and quotation of the Deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law.”

A deed made before or by a Notary has the status of an authentic deed according to the form and procedure stipulated in the Notary Law. Article 1868 of the Civil Code is a source for the authenticity of deeds, as well as the basis for the legality of the existence of Notary deeds, with conditions (Adjie, 2017):

- a. The deed must be made by (door) or in the presence of (ten overstaan) a public official;
  - b. Deeds must be made in the form prescribed by law;
  - c. The public servant by - or before whom the deed is made, must have the authority to make the deed.
- Notarial deeds as authentic deeds have evidentiary value, namely (Adjie, 2017):

- a. Outward

The outward ability of a Notarial deed is the ability of the deed itself to prove its validity as an authentic deed. If it is seen from the outside/born as an authentic deed and in accordance with the legal rules that have been determined regarding the requirements of an authentic deed, then the deed is valid as an authentic deed until proven otherwise, which means until someone proves that the deed is not an outwardly authentic deed. The burden of proof is placed on the party denying the authenticity of the Notarial deed.

- b. Formal

Notarial deeds must be able to provide certainty that the events and facts mentioned in the deed were actually carried out by the Notary or described by the facing party. Formally to prove the truth and certainty about the day, date, month, year, time of facing, and the parties facing, witnesses and Notary, as well as prove what was seen, witnessed, heard by the Notary (in the

official deed / event report), and record the information or statements of the parties/facing (in the party deed).

c. Material

Material evidentiary power is certainty about the material of a deed, that what is stated in the deed is valid evidence against the parties who make the deed or those who get the right and applies to the public, unless there is evidence to the contrary.

The three aspects mentioned above constitute the perfection of a Notarial deed as an authentic deed and anyone who is bound by the deed. If it can be proven in court that one of these aspects is incorrect, then the deed concerned is degraded in its evidentiary power as a deed that has the evidentiary power of a deed under hand.

When it comes to a notarial deed, the terms cancelation and annulment are known. The term cancelation is often confused with annulment. Cancellation is passive, meaning that the deed will become void or null and void without the need for legal action or other efforts from the parties to the deed. This can happen because from the beginning the agreement made has violated the existing provisions. Notarial deed invalidation based on the explanation above includes:

- a. Notarial deeds can be canceled;
- b. Notarial deeds are null and void;
- c. Notarial deeds have evidentiary power as deeds under hand.

Cancellation has an active nature. This means that even though the terms of the agreement have been fulfilled, for certain reasons the parties can mutually agree not to bind themselves in the agreement they have made or through a lawsuit to the court to cancel the agreement/deed that has been made (Adjie, 2017). Cancellation of notarial deeds includes:

- a. Notarial deeds are canceled by the parties themselves;
- b. Assessing notarial deeds with the presumption of validity.

In carrying out his official duties towards an authentic deed he makes, Notary is charged with a responsibility. The responsibility of a Notary in making an authentic deed is the basis for realizing guarantees of legal certainty, order, legal protection, and law enforcement (Adiansa, 2024). Notary's responsibility for something related to the deed he made is (Adjany, 2022):

a. Civil Liability of Notary

Civil liability for the material truth of deeds made by notaries is an explanation of unlawful acts (Article 1365 of the Civil Code). Unlawful acts can be active or passive. Active unlawful act means that the act committed causes harm to other parties. Meanwhile, regarding passive unlawful acts, in this case passive means that not doing a certain action or a necessity, so that other parties can suffer losses. This unlawful act contains elements of fault and the loss caused.

The Elucidation of the Notary Position Law explains that the Notary is responsible for the formality of an authentic deed, and not for the material of the deed. This then obliges the Notary to be neutral, impartial and provide legal advice/counseling for parties who seek legal guidance from the Notary. Through the explanation of the Notary Position Law, it can be concluded that a Notary can be held liable for the material truth of a deed if the Notary does not provide certain legal views related to the deed in question, which makes one of the parties feel deceived due to ignorance.

b. Criminal Liability of Notary

A criminal offense is an act that is prohibited in the rule of law, and the prohibition is accompanied by sanctions/threats in the form of criminal sanctions for violators. The Notary Position Law does not regulate criminal provisions, but with regard to criminal liability, it can be imposed on Notaries who commit a criminal act.

Criminal cases related to notarial deeds can be examined if the Notary has taken the following legal actions:

1. Making false or falsified documents and using false or falsified documents (Article 263 Paragraph (1) and Paragraph (2) of the Criminal Code);
2. Committing forgery (Article 264 of the Criminal Code);

3. Ordering false information to be included in an authentic deed (Article 266 of the Indonesian Criminal Code);
  4. Committing, ordering to commit, participating in committing (Article 55 jo. Article 263 Paragraph (1) and Paragraph (92) or Article 264 or Article 266 of the Indonesian Penal Code);
  5. Assisting in the production of false or falsified documents and using false or falsified documents (Article 56 Paragraphs (1) and (2) jo. Article 263 Paragraphs (1) and (2) or Article 264 or Article 266 of the Indonesian Criminal Code).
- c. Administrative Responsibility of Notary

In the scope of administration, there is a relationship between the Notary Position Law and the professional code of ethics. The code of ethics of the Notary profession regulates the Notary internally, and the Notary Position Law regulates the Notary externally (Adjany, 2022). In carrying out the duties of his/her office, Notary must act as follows (Anshori, 2009):

1. Notaries are required to make deeds properly and correctly. This means that the deeds he makes fulfill the public interest and the requests of interested parties because of his position;
2. Notaries are required to be able to produce quality deeds. This means that a deed is made in accordance with legal provisions and the wishes of the parties concerned in the true sense. The notary must explain to the interested parties the correctness of the contents and procedures of the deed. The deed will also have a positive impact, so that anyone will recognize the deed, and the deed will have perfect evidentiary power.

The form of responsibility that can be imposed on Notaries as described above, is intended so that Notaries in carrying out their duties and positions in making deeds must be prudent and guided by the provisions of the applicable laws and regulations (Romavita, 2022). As it has been determined that the duty of a Notary is to make an authentic deed which is used to prove the truth about a legal act by the parties. Thus, the Notary must be able to provide legal certainty to the public using Notary services in his authority as a public official who makes and certifies authentic deeds (Alfiana, 2018).

#### IV. CONCLUSION

Notaries as public officials have full responsibility for every deed they make. Notarial deeds made in accordance with the provisions of the applicable laws and regulations will have perfect evidentiary power. If a deed does not fulfill the provisions and procedures for making a deed, and this can be proven in court, then the deed can be declared a deed under the hand or become null and void. For a deed that is declared null and void, the Notary can be charged with a legal responsibility, namely in the form of: civil responsibility if it is related to an unlawful act; criminal responsibility if it commits criminal act of falsifying a letter; and administrative responsibility if it violates the Notary Position Law and the code of ethics of the Notary profession.

#### REFERENCES

- [1] Wardhani, Lidya Christina, *Tanggung Jawab Notaris/PPAT terhadap Akta yang Dibatalkan oleh Pengadilan*, **Lex Renaissance**, Vol. 2, No. 1, 2017, pp. 49-63
- [2] Wijaya, Dony and Umar Ma'ruf, *Tinjauan Hukum Kedudukan Dan Fungsi Notaris Sebagai Pejabat Umum Dalam Membuat Akta Otentik (Studi Kasus di Kecamatan Bergas Kabupaten Semarang)*, **Jurnal Pembaharuan Hukum**, Vol. 2, No. 2, 2015, pp. 370-380
- [3] Harahap, A. et, all, Macrozoobenthos diversity as anbioindicator of the water quality in the Sungai Kualuh Labuhanbatu Utara, AACL Bioflux, 2022, Vol 15, Issue 6.
- [4] Sasauw, Christin, *Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris*, **Lex Privatum**, Vol. 3, No. 1, 2015, pp. 98-109
- [5] Harahap, Arman ,2018, Macrozoobenthos diversity as bioindicator of water quality in the Bilah river, Rantauprapat, Medan. **J. Phys.**: Conf. Ser. 1116 052026.
- [6] Mertokusumo, Sudikno. (1998). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty, p.126

- [7] Mayra, Hoyrinissa, and Dian Puji N. Simatupang, *Akta Dinyatakan Batal Demi Hukum Oleh Pengadilan: Bagaimana Tanggungjawab Notaris*, **Jurnal Kertha Semaya**, Vol. 10, No. 1, 2021, pp. 163-177
- [8] Ibrahim, Johnny. (2012). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing. p. 57
- [9] Marzuki, Peter Mahmud. (2013). *Penelitian Hukum (Edisi Revisi)*. Jakarta: Kencana Prenada Media Group. p. 89
- [10] Adjie, Habib. (2017). *Kebatalan dan Pembatalan Akta Notaris*. Bandung: Refika Aditama, p. 18-21, p. 63-84
- [11] Adiansa, Fazindra, Cicilia Julyani Tondy and I Wayan Karya. *Tanggungjawab Notaris terhadap Akta yang Dibatalkan oleh Pengadilan*. **ARMADA: Jurnal Penelitian Multidisiplin**, Vol. 2, No. 1, 2024, pp. 39-52
- [12] Adjany, Shakilla Vyatri and Sonyendah Retnaningsih, *Tanggung Jawab Notaris/PPAT Terhadap Akta yang Dinyatakan Batal Demi Hukum oleh Putusan Pengadilan (Studi Kasus Putusan Nomor 473/Pdt.G/2019/Pn.Tng)*, **Justitia: Jurnal Ilmu Hukum dan Humaniora**, Vol. 9, No. 6, 2022, pp. 3165-3174
- [13] Harahap, A. P. Hrp, N.K.A.R. Dewi, Macrozoobenthos diversity as anbioindicator of the water quality in the River Kualuh Labuhanbatu Utara, **International Journal of Scientific & Technology Research**, 9(4), 2020, pp. 179-183.
- [14] Anshori, Abdul Ghofur. (2009). *Lembaga Kenotariatan Indonesia; Perspektif Hukum dan Etika*. Yogyakarta: UII Press. p.16
- [15] Romavita and Yeniwati, *Pertanggungjawaban Notaris Terhadap Akta Yang Dinyatakan Batal Demi Hukum Oleh Pengadilan (Studi Kasus Putusan Pengadilan Negeri Malang Nomor 227/Pdt.G/2018/Pn.Mlg)*, **Recital Review**, Vol. 2, No. 4, 2022, pp. 452-473.
- [16] Alfiana, Rita, *Ambiguitas Bentuk Akta Notaris (Analisis Undang-Undang Tentang Jabatan Notaris Dan Kitab Undang-Undang Hukum Perdata)*, **Lex Jurnalica** Vol. 15, No. 3, 2018, pp. 299-307.
- [17] Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary Indonesian Civil Code