

Legal Consequences of Authentic Actes Made Based on Oral Document Verification Without Written Evidence

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Abstract

Against agreements including name loan agreements are generally set forth in an authentic Acte in order to have strong evidentiary power. An authentic Acte is a document made in accordance with the provisions of the form regulated by laws and regulations and drawn up by or in the presence of a Civil Servant authorized at the location of the Acte. The position of Notary is regulated in precisely in Clause 1 Number 1 UUJN. The provision states that a notary is a Civil Servant who has authority in making authentic Actes as well as other authorities as stipulated in this law. In his capacity as a Civil Servant, the notary provides explanations or testimonies regarding everything seen, witnessed and experienced by him that is done by other parties. This research is descriptive-analytical in nature, comprehensively, systematically, and thoroughly describing the legal consequences of authentic deeds made based on verbal document verification without supporting written evidence, particularly in relation to the notary's liability to third parties who suffer losses. The type of research used is normative legal research, which is research based on legal norms contained in legislation, legal doctrines, and related jurisprudence. An authentic Acte made only on the basis of oral verification of documents without being supported by written evidence carries serious legal consequences, namely the loss of authenticity and legal force of the Acte. This causes the Acte to be declared null and void or at least legally defective, contrary to the provisions Clause 1868 Civil Code, which requires written documents as a basis for making authentic Actes. As a result, the notary who made the Acte must be legally responsible for losses suffered by third parties, including criminal, administrative, civil, and ethical liability, which confirms that the notary's liability is multidimensional in order to maintain the integrity of his profession.

Keywords: *Law Consequences, Authentic Acte, Notarial*

INTRODUCTION

Known as a country based on the rule of law, founded on Pancasila and the 1945 Constitution, Indonesia exists to guarantee certainty, order and legal protection for its people. In civil law, particularly in providing legal certainty and protection for people who perform legal acts, the state is represented by notaries. Guarantee against the tools that will be used to make an authentic Acte.

A notary is a trust-based position granted by law and community. To carry out his position a notary is not enough if he only has legal expertise but must be based on responsibility in carrying out the trust given to him by upholding moral values, legal ethics and the dignity and nobility of his position, if this is ignored by the notary it will be dangerous for the general public he serves. The role and authority of Notaries is very important, therefore notaries must be able to carry out their profession professionally, be highly dedicated and always uphold their dignity by enforcing the notary Code of ethics. (Sri Yuniati dan Sri Endah Wahyuningsih, 2017)

Notaries in carrying out their duties and authorities are carried out based on Act Number 30 Year 2004 concerning Notary as amended by Act Number 2 Year 2014 (hereinafter referred to as UUJN). In Clause 1 Verse (1) UUJN explains that: "As a Civil Servant, Notaries Autonomous to create authentic Acte and has other authority as referred in this Act or based on other Act."

Making an authentic Acte as the one of notary's autonomous, must be in accordance with applicable regulations so that the parties get a legal protection and legal certainty. (I Wayan Arya Kurniawan, 2018) In the process of drafting the deed, the notary must listen to all information

provided by the parties without bias, and this information will form the basis for drafting the deed in accordance with the wishes of the parties. In the process of drafting a deed, the notary must listen carefully to all information provided by the parties without bias, and this information then forms the basis for drafting the deed in accordance with the wishes of the parties. The deed drafted based on the wishes of the parties is read aloud in front of the parties, who then approve it. This is regulated in Article 38 of the UUJN, whereby the parties are required to sign the deed in front of the notary.

An authentic Acte is a Acte made in the form prescribed by law by or before a Civil Servant authorized for it at the place where the Acte was made, this is described in Clause 1868 Civil Code. This means that the Acte can be said to be authentic if it meets the elements contained in Clause 1868, namely: 1. That the Acte was made and formalized in the form according to law; 2. That the Acte was made by or in the presence of Civil Servants; 3. That the Acte is made before the authorized to make it in the place where it is made. (Rahmad Hendra, 2014)

Based on this, as Civil Servant who is given the authority to make an authentic Acte in accordance with existing regulations with the aim of providing legal protection and legal certainty for the parties concerned. In making this authentic Acte, in addition to being regulated by law, it is also the will of the parties concerned regarding the certainty of their rights and obligations. This is what makes the form of legal certainty and protection for the parties.

A valid Notarial Acte fundamentally embodies conformity and formal accuracy in context of what the stakeholders have communicated to the notary. However, the Notary is obligated to ensure that contained in the Acte has really been understood and in accordance with the will of the parties, namely by reading to the parties so that it becomes clear the contents of the notarial Acte. This the parties can determine to agree or disagree with the contents of the notarial Acte to be signed. The objective of law can be seen from its role as a means of protecting human interests, whereby law has objectives that must be achieved.

In relation to the expediency-oriented goals of law, adherents of the utilitarianism school place expediency as the main goal of law. The measure of the usefulness of this law is the creation of maximum happiness for as many people as possible as proposed by Jeremy Bentham. (Said Sampara, et.all,2011) Happiness can be defined as a condition that creates happiness (happiness). The quality of a law is determined by the extent to which it is capable of providing happiness to human beings. Good law is a law that is able to provide benefits to each subject of law. In practice, the law must be enforced in such a way as to prevent riots in the community. Therefore, expediency acts as a complementary element that supports the achievement of justice and legal certainty. (Hayah El-Nabela. 2018)

Legal certainty is a basic principle that guarantees everyone to obtain clarity regarding the application of the law. This principle is one of the three main objectives of law, in addition to justice and expediency. In its implementation, both material and formal law must uphold legal certainty, so that a balance between justice and expediency is created as the ultimate goal of law. Gustav Radbruch argues that legal certainty refers to the obligation to obey positive laws that govern various human interests in society, even though they may be perceived as less fair. (Jaka Mulyata, 2015)

The development of the agreement is very rapid because the agreement serves as the main foundation and has a binding legal force like the law for the parties who have agreed to be bound in it (Yahya Harahap, 1986), until the name loan agreement appears (nominee agreement). The term nominee comes from the Latin meaning "on behalf of" or "under the name of someone's appointment." Thus, nominee refers to an individual appointed to act on behalf of another party. In a name Loan Agreement or nominee agreement, there is a party who appoints the nominee, known as the beneficiary. (Kintania Rizky Putri, et.all, 2023)

Thus, a nominee agreement can be defined as an agreement between two or more parties, in which one party acts as an officially registered nominee, while the other party, the beneficiary,

receives benefits and profits resulting from the actions taken by the nominee. Nominee agreement is classified as one type of agreement that is not named, because its existence is not explicitly regulated in the laws and regulations in Indonesia, including in the Civil Code. (I. G. Rai Widjaya, 2003)

Agreements that use the nominee scheme can be applied in a variety of contexts, such as business activities, property ownership, or intellectual property protection. In terms of property ownership, legal subjects who do not have the right to own land with freehold status in Indonesia often choose to use the nama loan agreement scheme. The agreement is done by borrowing someone else's name to be included in the land certificate without being the actual owner. (Yoshua Putra Dinata Naiborhu, 2024)

Against agreements including name loan agreements are generally set forth in an authentic Acte in order to have strong evidentiary power. An authentic Acte is a document made in accordance with the provisions of the form regulated by laws and regulations and drawn up by or in the presence of a Civil Servant authorized at the location of the Acte. The position of Notary is regulated in precisely in Clause 1 Number 1 UUJN. The provision states that a notary is a Civil Servant who has authority in making authentic Actes as well as other authorities as stipulated in this law. In his capacity as a Civil Servant, the notary provides explanations or testimonies regarding everything seen, witnessed and experienced by him that is done by other parties. (Wita Wikasita Wirayang, 2021)

Similar research has been conducted by Ni Kadek Dwi Ariartini and I Wayan Novy Purwanto (2026), who found that a notary's legal liability is personal and inherent to the public office held, such that any negligence may give rise to civil, criminal or administrative liability. Authentic deeds possess strong evidential weight; however, if there are legal defects resulting from a notary's negligence, such a deed may be downgraded to a private document. Consequently, the application of proper procedures, due diligence, and high integrity are key factors in ensuring the authenticity and legal validity of the deeds produced. A similar study was also conducted by Ade Aktanotaria et al. (2025), which found that notarial deeds containing false statements carry legal consequences of a multidimensional nature. In the civil sphere, such a deed may be declared null and void by operation of law or annulled by a court ruling, thereby losing its evidential value and potentially giving rise to a claim for damages from the aggrieved party. Another study was conducted by Rilawadi Sahputra (2021), who noted that a notary is the authorised official for drawing up authentic deeds. Negligence on the part of a notary in the preparation of a deed, resulting in the failure to meet formal requirements, causes the evidential value of the deed to be reduced to that of a private document. If the parties suffer a loss as a result of the notary's negligence, the aggrieved party may claim costs, damages and interest from the notary.

RESEARCH METHODS

This research is descriptive-analytical in nature, comprehensively, systematically, and thoroughly describing the legal consequences of authentic deeds made based on verbal document verification without supporting written evidence, particularly in relation to the notary's liability to third parties who suffer losses. The type of research used is normative legal research, which is research based on legal norms contained in legislation, legal doctrines, and related jurisprudence. (Peter M. Marzuki, 2023)

The Statute Approach was used to conduct an in-depth review of the legal provisions relating to notarial liability and the legal consequences of authentic deeds drawn up on the basis of verbal verification without supporting written evidence. Legal materials were collected through library research, systematically reviewing documents and literature related to the issue

of notary criminal liability for forging authentic deeds, including primary, secondary and tertiary legal materials.

RESULTS AND DISCUSSION

In the Indonesian civil law system, the authentic Acte has a very important position as a written-evidence that has perfect evidentiary power, as specified in Clause 1868 Civil Code that: "an authentic Acte is a Acte made in the form prescribed by law by or before a Civil Servant authorized for it at the place where the Acte was made".

In Clause 16 Verse (1) UUJN, it is explained that "notaries compulsory to act trustfully, honestly, carefully, independently, and impartially, and maintain the confidentiality of every Acte and information obtained in their positions." This provision confirms the moral integrity and professionalism in the performance of Notarial duties.

Furthermore, Clause 37 UUJN States "notaries are prohibited from rejecting applications for Actes from parties who are unable and obliged to provide services free of charge." This shows the social role of notaries in ensuring access to legal justice for underprivileged communities. According to Clause 61 UUJN "notaries are obliged to submit a copy of the list of Actes to the regional supervisory council every month, no later than the 15th of the following month," which serves as an administrative supervision mechanism to maintain accountability.

Regarding the responsibility for the Acte, Clause 65 UUJN reads "the Notary is fully responsible for the Acte made, including after the protocol is submitted." This provision applies that even if the term of office has expired, the responsibility for the legality of the Acte remains attached. In addition, confidentiality is emphasized in Clause 70 UUJN, which requires notaries to maintain the confidentiality of the position and contents of the Acte, and if it is violated, criminal or civil liability can be imposed in accordance with Clause 322 of the criminal code that "whoever because of his position knows a secret that must be kept, and deliberately opens the secret, when he is obliged to maintain the confidentiality, shall be punished with imprisonment for a maximum of two years and eight months and Clauses 1365-1367 Civil Code, which contain:" any unlawful act that causes harm to another person, oblige the person who by his fault incurred the loss, to compensate for the loss."

"The responsibility to indemnify arises also if as a result of negligence or inattention, or not in accordance with legal obligations, a person causes harm." "Liability to indemnify shall apply only if the person responsible for the loss, it can be proved that he caused the loss intentionally or by negligence."

In addition, Clause 84-85 UUJN states that "the Notary is responsible for the injured party as a result of the actions committed by the notary in the exercise of his office, if it is proven that the act was committed due to negligence or error. "That is, a notary who is negligent and causes harm may be subject to civil liability and is obliged to compensate the injured party and "to fulfill the responsibilities referred to in Clause 84, Notaries can be covered by insurance provided by Notary associations or recognized organizations. "Namely, it provides protection options for notaries by providing insurance that can be used to cover losses caused by negligence or errors in carrying out duties. Notaries can use professional insurance provided by professional organizations or recognized associations to cover losses incurred.

An authentic Acte, according to the provision, is a Acte drawn up in the form prescribed by law by or in the presence of a Civil Servant authorized for it. Notary, as a Civil Servant authorized to make an authentic Acte, is required to carry out his duties honestly, carefully, independently, impartially, and based on the principle of prudence, in accordance with the provisions of Clause 16 Verse (1) UUJN, contains several important points regarding the obligations of notaries in carrying out their positions, including the obligation to act carefully,

safeguard the interests of the parties, keep everything secret about the Acte, as well as present yourself physically and put your signature on the Acte. This precautionary principle is not optional, but is a fundamental principle on which the accountability of the notary profession is based.

The first legal consequence that arises is the collapse of the force of proof of the authentic Acte if the Acte turns out to contain incorrect information or is made on the basis of documents that are not legally verified. In the doctrine of civil law, authentic Actes whose contents are proven to be incompatible with the actual circumstances can be declared *null and void (nietig)* or at least can be applied for cancellation in court due to formal or material legal defects. In this context, the Actes drawn up by the accused can be considered "materially false Actes" even if they are formally drawn up by authorized officials, since the truth of the materiel in which the Acte is contained is not based on a valid legal document.

Furthermore, in terms of liability, notaries are not only responsible to the parties facing and conducting transactions, but also to third parties in good faith who are harmed because they believe in the legality of the Acte made. In this case, the third party was Suwayanto Wanggana, who suffered a loss of Rp7.5 billion as a result of making payments based on a Acte of sale document made by a notary, which was later proven to be based on a fake certificate. Although the court in the appeal decision decided to release the defendant from criminal liability because there is no evidence of intentional or malicious intent (*mens rea*), civil and administrative liability can still be enforced.

In civil law, a notarial act in this case can be classified as an unlawful act (PMH) as provided for in Clause 1365 Civil Code, which states that any act that violates the law and causes harm to another person obliges the perpetrator to compensate for the harm. The notary's negligence in exercising the authority to verify documents, which should be done with great care given the potential impact, is a form of professional negligence (*culpa levis in abstracto*) that can be requested for compensation by third parties.

From the point of view of administrative law and code of ethics, the act of a notary drafting a Acte without a valid and accountable document verification process is a gross violation of the notary professional code of ethics and may be subject to administrative sanctions by the regional Supervisory Council (MPD) and the notary honorary council (MKN). The sanction can be in the form of a written reprimand, temporary suspension, until the revocation of the license to practice depending on the severity of the violation. In this context, although criminal sanctions are not imposed, administrative and ethical sanctions are important as a form of institutional accountability of the notary profession.

The broader consequence of this case is the erosion of public confidence in the authentic Acte as a strong and reliable legal instrument. If the public can no longer trust notarial Actes due to negligence practices that are not acted upon, then the power of Notarial institutions as Guardians of civil law becomes questionable. Therefore, structural improvements in the notary professional supervision system are an urgent need, including the implementation of operational standards for document verification procedures, regular training on professional prudence, and strengthening the MPD and MKN supervisory functions as the vanguard in maintaining the integrity of the notary position.

Negligence in verifying the validity of documents can lead to serious losses for third parties and cause a crisis of confidence in the notarial profession. Legally, the actions of a notary who draws up a deed based on a land certificate that was never issued by the Land Office has opened up the possibility of criminal liability under Clause 264 Criminal Code concerning the falsification of authentic deeds. However, in its deliberations, the panel of judges stated that the element of intent was not proven legally and convincingly, so the defendant was acquitted of criminal charges. Nevertheless, from the perspective of positive law and the theory of professional liability, notaries can still be held liable in civil and administrative proceedings,

particularly if their negligence causes losses to other parties, as stipulated in Clause 16 UUJN and Clause 1365 Civil Code concerning unlawful acts.

In addition to legal responsibility, the ethical dimension of the notary profession cannot be ignored. The notary assumes social duties as a guarantor of legal validity in any agreements and transactions. The act of making a Acte without written verification of a land certificate is not only an administrative offense, but also reflects non-compliance with the principles of prudence, objectivity and neutrality that are the core values of notary ethics. Morally, notaries who ignore professional standards have betrayed the trust of the public and opened a gap for abuse of power that should be neutral. Therefore, it is important to strengthen the supervisory system through the notary Supervisory Council and the notary honorary council in order to be able to act proactively in fostering and prosecuting procedural and ethical violations, as well as providing firm and proportionate sanctions.

Thus, this discussion shows that the responsibility of notaries in the criminal act of forgery of authentic Actes must be viewed as a whole, not only from the formal legal aspect, but also from the perspective of professional ethics and basic values of the state. Integration between positive law and Pancasila values is important to ensure that the implementation of public office, including notarial, is carried out in an accountable, equitable, and in favor of protecting the interests of society as a whole. This is a normative and philosophical basis in formulating regulatory reform, strengthening supervision, and fostering Ethics in the notary profession in Indonesia.

CONCLUSION

An authentic Acte made only on the basis of oral verification of documents without being supported by written evidence carries serious legal consequences, namely the loss of authenticity and legal force of the Acte. This causes the Acte to be declared null and void or at least legally defective, contrary to the provisions Clause 1868 Civil Code, which requires written documents as a basis for making authentic Actes. As a result, the notary who made the Acte must be legally responsible for losses suffered by third parties, including criminal, administrative, civil, and ethical liability, which confirms that the notary's liability is multidimensional in order to maintain the integrity of his profession.

REFERENCES

- Dini Anggraeni and Siti Mahmudah, “Urgensi Peningkatan Peran Notaris Melalui Implementasi Konsep Cyber Notary Dalam Pembuatan Akta Di Era Cyber Society 5.0,” AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam 5, no. 2 (2023): 2307–20
- Gaby Handayani Simangunsong and Janpatar Simamora, “Pertanggungjawaban Hukum Notaris Pengganti Dalam Pembuatan Akta Melampaui Kewenangan Di Indonesia,” Politica: Jurnal Hukum Tata Negara Dan Politik Islam 11, no. 2 (2024)
- Hendra, Rahmad. Tanggungjawab Notaris Terhadap Akta Otentik Yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru. Jurnal Ilmu Hukum.
- Ida Ayu Kade Kusumaningrum, I Gusti Ngurah Wairocana, and I Dewa Made Suartha, “Kewajiban Saksi Instrumenter Merahasiakan Isi Akta Berdasarkan UU Jabatan Notaris”, Acta Comitatus, volume 2, 2017.
- Inge Kalista Hikmasari, “Perlindungan Hukum Kepada Pencipta Lagu Yang Diumumkan Tanpa Seizin Pencipta,” Jurnal Multidisiplin Indonesia 2, no. 9 (2023).

- Kunni Afifah, “*Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya*,” *Lex Renaissance* 2, no. 1 (2017)
- Kurniawan, I Wayan Arya. *Tanggung Jawab Notaris Atas Akta yang Tidak Dibacakan Dihadapan Para Penghadap*. Jurnal Hukum Kenotariatan.
- Mulyata, Jaka. *Keadilan, Kepastian, Dan Akibat Hukum Putusan Mahkamah Konstitusi Republik Indonesia Nomor: 100/PUU-X/2012*. Tesis, Universitas Sebelas Maret.
- Nur Aini and Yoan Nursari Simanjuntak, “*Tanggung Jawab Notaris Atas Keterangan Palsu Yang Disampaikan Penghadap Dalam Akta Pendirian Perseroan*,” *Jurnal Komunikasi Hukum* 5, no. 2 (2019)
- Pius Eliadi Hia, Adisti Putrianti Gulo, and Taufika Hidayati, “*Analisis Yuridis Terhadap Putusan Batal Demi Hukum (Null And Void) Menurut Ketentuan Pasal 1335 KUH Perdata*,” *Jurnal Dunia Pendidikan* 5, no. 2 (2024): 486–99.
- Putra Mekka Mohamad Fajri, Nabilah Ananda Priyanka, “*Perlindungan Hukum Saksi Instrumenter Dalam Memberikan Kesaksian di Persidangan atas Suatu Akta Notaris*,” *Jurnal Kertha Semaya*, Volume 10 Nomor 8, Universitas Indonesia (Fakultas Hukum, 2022)
- Putri, Kintania Rizky, dkk. *Perjanjian Nominee Jual-Beli Tanah oleh WNA Berdasarkan Putusan Pengadilan Negeri No. 137/PDT.G/PN GIN Ditinjau dari Peraturan Perundang-Undangan*. *Jurnal Global Ilmiah*.
- Samudera Teguh, *Hukum Pembuktian dalam Acara Perdata*, Cetakan ke-1, Bandung : Penerbit Alumni, 1992.
- Tobing, SH, G.H.S Lusman, *Peraturan Jabatan Notaris*, Cetakan ketiga, Jakarta:Erlangga, 1983.
- Vicky, Tetti Samosir, and Indah Harlina, “*Akibat Hukum Bagi Notaris Yang Tidak Saksama Dalam Pembuatan Akta Kuasa Menjual (Studi Kasus Putusan No 20pk/Pid/2020)*,” *Jurnal Hukum Sasana* 10, no. 2 (2024)