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Forgery of Authentic Instruments by Notaries and the Scope of Legal Liability

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Original Article

Abstract

The forgery of authentic deeds by notaries constitutes a serious legal issue with direct implications for legal certainty and public trust in the civil law system. As public officials, notaries are not only responsible for the formal accuracy of deeds but are also bound by a duty of care in verifying the identities and documents of the parties involved. This article examines the construction of notarial legal liability in cases of authentic deed forgery and the legal consequences arising from deeds executed on the basis of invalid document verification. Employing a normative legal approach, the study analyzes statutory regulations, legal doctrine, and judicial decisions, with particular emphasis on Bandung High Court Decision No. 73/Pid/2023/PT.BDG as a case study. The findings indicate that a notary's failure to exercise due care, especially within the scope of official authority, may constitute fault giving rise to criminal, civil, and administrative liability. Authentic deeds prepared on the basis of invalid documentation may suffer a degradation of evidentiary value and may lead to the annulment of the legal acts embodied therein. The Bandung High Court decision affirms that the notary's duty of care serves as a primary benchmark in assessing criminal liability, while also highlighting the need for clearer parameters to distinguish administrative negligence from criminal negligence in order to safeguard legal certainty.

Keywords: Notary, Authentic Deed, Forgery, Legal Liability, Duty of Care

Abstrak

Pemalsuan akta otentik oleh notaris merupakan persoalan serius yang berimplikasi langsung terhadap kepastian hukum dan kepercayaan publik dalam sistem hukum perdata. Notaris sebagai pejabat umum tidak hanya bertanggung jawab atas kebenaran formal akta, tetapi juga memiliki kewajiban kehati-hatian dalam memverifikasi identitas dan dokumen para pihak. Artikel ini bertujuan menganalisis konstruksi pertanggungjawaban hukum notaris dalam tindak pidana pemalsuan akta otentik serta akibat hukum terhadap akta yang dibuat berdasarkan verifikasi dokumen yang tidak sah. Penelitian ini menggunakan pendekatan yuridis normatif dengan menelaah peraturan perundang-undangan, doktrin hukum, dan putusan pengadilan, khususnya Putusan Pengadilan Tinggi Bandung Nomor 73/Pid/2023/PT.BDG sebagai studi kasus. Hasil kajian menunjukkan bahwa kelalaian notaris dalam menjalankan kewajiban kehati-hatian, terutama dalam konteks kewenangan jabatan, dapat dikualifikasi sebagai kesalahan yang menimbulkan pertanggungjawaban pidana, perdata, dan administratif. Akta otentik yang dibuat berdasarkan dokumen tidak sah mengalami degradasi kekuatan pembuktian dan berpotensi menyebabkan batalnya perbuatan hukum yang dituangkan di dalamnya. Putusan Pengadilan Tinggi Bandung menegaskan bahwa kewajiban kehati-hatian notaris menjadi standar utama dalam menilai pertanggungjawaban pidana, sekaligus menuntut adanya parameter yang lebih jelas untuk membedakan kelalaian administratif dan kelalaian yang berkualifikasi pidana guna menjaga kepastian hukum.

Kata kunci: Notaris, Akta Otentik, Pemalsuan, Pertanggungjawaban Hukum, Kehati-Hatian.

1. INTRODUCTION

The role of notaries within the Indonesian legal system arises from a tangible public demand for legal certainty and protection in civil legal relationships. Authentic deeds executed by or before a notary function not merely as administrative records but as written instruments possessing conclusive evidentiary value and binding legal force. Accordingly, notaries should not be viewed solely as legal practitioners exercising technical skills, but as public officials entrusted with carrying out a portion of the state's authority to safeguard order and certainty in legal relations among legal subjects. This institutional position inherently imposes a heightened level of responsibility on notaries, extending beyond legal accountability to ethical and moral obligations.¹

Under the Notary Law, notaries are authorized to formalize the intentions of the parties into authentic deeds, provided that such authority is exercised with honesty, independence, impartiality, and due diligence, particularly in verifying the identities and documents of the parties involved. The principle of prudence constitutes the core foundation of notarial practice, as errors or omissions in the deed-drafting process may generate extensive legal consequences.² In practice, however, this normative ideal is not consistently realized. Numerous cases demonstrate that authentic deeds may become instruments of legal violations, either due to inadequate document verification or the notary's active participation in unlawful conduct. Forgery of authentic deeds represents the most severe form of such violations, as it directly erodes trust in authentic deeds as valid legal evidence and transforms an instrument of legal certainty into a source of dispute and legal uncertainty.³

Scholarly examinations of legally defective notarial deeds and their implications for legal certainty have been conducted, including research by Dripsi Teresa P. Sapni, who argues that notarial deeds may be declared null and void when they fail to satisfy formal or material requirements, thereby exposing notaries to potential civil, administrative, and criminal liability. Nevertheless, such studies predominantly emphasize the validity of the deed and its legal consequences, while treating document verification as a secondary concern. Yet it is precisely at the verification stage that the boundary between professional negligence and criminal liability becomes contested.

¹ Yenny Febriyanti, *Keberadaan Hukum Kenotariatan di Indonesia* (Cirebon: CV. Green Publisher Indonesia, 2023), hal. 121.

² Eudea Adeli Arsy, Hanif Nur Widhiyanti, dan Patricia Audrey Ruslijanto, "Tanggung Jawab Notaris Terhadap Akta Yang Cacata Hukum dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 130–40, <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/324>.

³ Jane Patricia Suryanto, "Analisis Yuridis Terhadap Tindak Pidana Pemalsuan Akta Otentik oleh Notaris: Studi Kasus No. 146 K/PID/2015," *Unes Law Review* 6, no. 3 (2024): 8094–8104, <https://doi.org/10.31933/unesrev.v6i3.1689>.

Consequently, the relationship between notarial professional conduct and criminal accountability as reflected in judicial decisions remains insufficiently articulated.⁴

The recurring occurrence of forged authentic deeds committed by or involving notaries reveals a fundamental deficiency in the execution of the notarial office, particularly with respect to document verification standards and the scope of notarial responsibility for the material truth of the deeds produced. Within notarial practice, a prevailing view continues to position notaries merely as recorders of the parties' declarations, thereby limiting their responsibility to formal truth alone. This perspective becomes problematic when deeds are subsequently found to rely on forged documents or inaccurate information, resulting in losses to third parties and undermining the integrity of the notarial institution.

Research by Agus Kristianto Sinaga, Mahmul Siregar, Mahmud Mulyadi, and Tony analyzes notarial liability for authentic deeds containing false statements, with reference to Supreme Court Decision No. 379 K/Pid/2021. The study finds that notaries may incur criminal liability when violations of the Notary Law and the professional code of ethics are established. Nonetheless, the analysis largely conceptualizes notaries as recorders of the parties' declarations, leaving the obligation to actively verify the authenticity of supporting documents insufficiently examined. As a result, the demarcation between responsibility for formal accuracy and the requirement of substantive due diligence remains inadequately articulated.⁵

In land-related legal practice, the notary's role is particularly decisive. Deeds executed before a notary frequently constitute the sole legal basis for the transfer of land rights, carrying complex and far-reaching legal consequences. Certificates that are not subject to rigorous verification may generate serious legal complications, ranging from the loss of rights to prolonged disputes. Where prudence is supplanted by a passive acceptance of documents, the risk of forgery ceases to be merely theoretical and becomes a recurring reality.

The Bandung High Court Decision No. 73/Pid/2023/PT.BDG illustrates how a notary's negligence and/or intentional misconduct in the preparation of an authentic deed may result in criminal accountability. In that case, the notary was convicted for drafting a deed based on a land certificate that had never been issued by the competent land authority, relying solely on an alleged oral verification. The deed was subsequently used to facilitate a transaction that caused substantial losses to parties acting in good faith. This decision not only evidences a breach of positive law but also signals a failure

⁴ Dripsi Teresa P. Sapni, "Analisis Yuridis Atas Akta Notaris Yang Cacat Hukum dan Implikasinya Terhadap Kepastian Hukum," *Recital Review* 7, no. 2 (2025): 252–65, <https://online-journal.unja.ac.id/RR/article/view/46980>.

⁵ Agus Kristianto Sinaga et al., "Pertanggungjawaban Notaris Terhadap Keterangan Palsu Dalam Akta Autentik (Studi Putusan Mahkamah Agung No. 379 K/PID/2021)," *Jurnal Intelek Insan Cendekia* 1, no. 9 (2024): 4675–89, <https://jicnusantara.com/index.php/jiic/article/view/1347>.

to uphold the principles of prudence and professional integrity inherent in the notarial office.

Judicial practice further reveals that notarial liability in cases involving forged authentic deeds remains contentious. On the one hand, notaries are expected to bear responsibility for deeds produced under the authority of their office. On the other hand, there persists an argument that notaries cannot be held fully accountable for the material accuracy of documents submitted by the parties. The tension between these perspectives reflects a broad interpretive space regarding the limits of notarial responsibility, which in turn affects the consistency of legal enforcement.⁶

From a criminal law standpoint, the falsification of an authentic deed constitutes a serious offense subject to severe sanctions due to its capacity to erode public confidence in the legal system. Where a notary is shown to have contributed to such falsification, whether actively or through culpable omission, criminal liability becomes unavoidable. Nevertheless, the imposition of criminal sanctions on notaries must be assessed in light of principles of justice and proportionality, given the public service function inherent in the notarial office. Accordingly, any assessment of notarial criminal liability must carefully evaluate the elements of fault, causation, and the concrete harm suffered by the injured parties.

With respect to notarial criminal liability, Ade Aktanotaria, Anriz Nazaruddin Halim, and Tofik Yanuar Chandra contend that notaries who deliberately incorporate false statements into authentic deeds may be sanctioned under Articles 263 and 266 of the Criminal Code, in addition to facing civil and administrative consequences. Their analysis, however, remains largely confined to the normative satisfaction of the offense elements and does not comprehensively examine the causal nexus between a notary's failure to conduct proper verification and the tangible losses incurred by parties acting in good faith. Consequently, the issue of proportionality in the imposition of criminal sanctions on notaries within judicial practice remains insufficiently explored.⁷

Beyond the criminal dimension, the falsification of authentic deeds by notaries also gives rise to civil and administrative legal consequences. Deeds executed on the basis of forged or invalid documents may lose their evidentiary value and may be declared null and void. Under such circumstances, injured parties possess a legal basis to seek compensation on the grounds of unlawful conduct. Simultaneously, notaries may be subject to administrative penalties and professional disciplinary measures, as breaches of prudence and integrity constitute serious violations of both the Notary Law and the Notary Code of Ethics.

⁶ Laurensius Arliman S, *Notaris dan Penegakan Hukum Oleh Hakim* (Yogyakarta: Deepublish, 2015), hal. 26.

⁷ Adi Utama Pandapotan Lubis, "Analisis Yuridis Pertanggungjawaban Notaris Terhadap Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Autentik," *Jurnal Somasi Sosial Humaniora Komunikasi* 1, no. 1 (2020): 81–91, <https://doi.org/10.53695/js.v1i1.36>.

Further comparative insight is provided by Ali Munib, Suratman, and Diyan Isnaeni, who examine notarial liability in cases where deed cancellation results from forgery committed directly by the notary. Their study underscores that a notary's direct involvement as the perpetrator of forgery directly affects the validity of the deed and gives rise to criminal responsibility.⁸ In contrast, Adi Utama Pandapotan Lubis focuses on notarial responsibility for signature forgery committed by a witness, emphasizing the limits of notarial liability within the framework of formal truth.⁹ While these studies offer valuable comparative perspectives, they do not specifically address scenarios in which forgery arises from a combination of deficient document verification, negligence, and the abuse of official authority, as analyzed in this article.

On this basis, a comprehensive examination of notarial legal liability in the offense of authentic deed falsification is warranted, particularly with respect to the legal consequences of deeds produced through the verification of invalid documents. Such an inquiry is not only academically significant for the advancement of notarial law but also practically relevant as guidance for notaries in performing their duties with professionalism, diligence, and accountability. Clarifying the boundaries of notarial liability is therefore essential to ensuring legal certainty for both notaries and the public who rely on notarial services.

This article examines the legal liability of notaries in cases involving the forgery of authentic deeds through a normative legal approach, drawing upon statutory regulations, legal doctrine, and judicial decisions, with particular emphasis on Bandung High Court Decision No. 73/Pid/2023/PT.BDG as a case study. From a theoretical perspective, the study seeks to contribute to scholarly discussions concerning the interplay between formal truth, the principle of prudence, and notarial legal responsibility. From a practical standpoint, the findings may serve as a reference for notaries and law enforcement authorities in objectively evaluating notarial accountability. Accordingly, this study addresses not only issues of legal enforcement but also broader efforts to preserve the integrity of the notarial profession and sustain public confidence in Indonesia's civil law system.

2. RESEARCH METHODOLOGY

This study adopts a normative legal approach, treating law as a system of norms analyzed through statutory provisions, legal doctrine, and judicial decisions. This approach is employed to examine the construction of notarial legal liability in cases involving the forgery of authentic deeds, particularly with respect to the exercise of

⁸ Ali Munib, Suratman, dan Diyan Isnaeni, "Tanggung Jawab Notaris Terhadap Pembatalan Akta Atas Terjadinya Tindakan Pemalsuan Oleh Notaris," *Jurnal USM Law Review* 7, no. 3 (2024): 1241–59, <https://doi.org/10.26623/julr.v7i3.9653>.

⁹ Lubis, "Analisis Yuridis Pertanggungjawaban Notaris Terhadap Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Autentik."

official authority and the duty of care. The legal sources utilized comprise primary materials, including the Notary Law, the Civil Code, the Criminal Code, and relevant court rulings; secondary materials, such as scholarly books, academic journals, and prior studies; and tertiary materials intended to facilitate an understanding of legal concepts and terminology.

As the core focus of the analysis, this research relies on Bandung High Court Decision No. 73/Pid/2023/PT.BDG as a case study to evaluate the concrete application of legal norms. The analysis is conducted qualitatively through deductive reasoning, drawing conclusions from general legal principles to their application in specific factual contexts. This method is designed to assess the extent to which notarial criminal liability is constructed on the basis of fault, official authority, and the resulting legal consequences, thereby providing a comprehensive understanding of the relationship between formal truth, notarial prudence, and the consistency of law enforcement in judicial practice.

3. RESULT AND DISCUSSION

3.1. The Construction of Notarial Legal Liability in Cases of Authentic Deed Forgery

The legal liability of a notary in cases involving the falsification of authentic deeds must be situated within the framework of official authority conferred by law. Notaries do not exercise their powers on the basis of private legal relationships with the parties, but rather by virtue of authority attributed by the state in their capacity as public officials. Accordingly, every deed executed by or before a notary constitutes an exercise of official authority and carries the state's legitimacy with respect to the formal truth embodied in the deed. As a consequence, errors arising from the exercise of such authority cannot be characterized as purely private mistakes, but must be understood as breaches of legally defined official obligations.¹⁰

The position and authority of notaries are expressly affirmed in Article 1(1) of Law No. 2 of 2014, which amends Law No. 30 of 2004 on the Office of Notaries, providing that a notary is a public official authorized to execute authentic deeds and to exercise other powers as prescribed by law. This provision confirms that notarial authority derives directly from positive law, such that every deed executed falls within

¹⁰ Irham Akbar dan Suprayitno Hasim Purba, "Kedudukan Notaris/PPAT Yang Dikenai TPPU dan Pemalsuan Terkait Akta Yang Dibuatnya (Studi Putusan No. 248/Pid.B/2022/PN.Jkt.Brt)," *Soliclaw* 3, no. 3 (2025): 24–49, <https://lawinsight.net/index.php/SOLICLAW/article/view/824>.

the scope of the notary's official responsibility as a representative of the state in civil legal relations.¹¹

Notarial responsibility is not assessed solely on the basis of compliance with formal procedures in deed drafting, but also on the fulfillment of substantive obligations set out in Article 16(1) of the Notary Law.¹² These obligations require notaries to act honestly, carefully, independently, impartially, and to protect the interests of all parties involved in a legal transaction. The duty to act with due care and to safeguard the parties' interests entails a legal obligation for notaries to refrain from passively accepting documents and statements. In the context of authentic deed falsification, failure to comply with this duty particularly with respect to identity and document verification may constitute grounds for establishing negligence with criminal relevance.

The core issue in constructing notarial criminal liability lies in delineating the boundary between formal truth and the substantive duty of care. In principle, notaries are responsible for the formal truth of a deed, namely its conformity with statutory form and procedural requirements. In practice, however, confining responsibility exclusively to formal truth cannot be sustained where a deed is based on documents whose validity is objectively questionable. Under such circumstances, the acceptance of documents without adequate verification can no longer be justified as a prudent exercise of official functions.

Criminal liability for notarial involvement in the falsification of authentic deeds does not invariably require proof of an active act of forgery. Judicial practice demonstrates that notarial liability may also arise from gross negligence or culpable omission committed with awareness of the legal risks inherent in the conduct. Such negligence cannot be regarded as ordinary error, but rather as a form of fault capable of giving rise to criminal responsibility where the requisite elements are satisfied and tangible legal consequences ensue.

From a criminal law perspective, the falsification of an authentic deed constitutes a serious offense, reflecting the special legal protection afforded to such deeds as instruments of high evidentiary value. Article 264(1) of the Criminal Code designates authentic deeds as objects of enhanced protection, such that any act causing the deed to misrepresent the actual legal situation is deemed to undermine legal certainty. Where a notary is involved—either through direct participation or through gross negligence—

¹¹ Edwar, Faisal A. Rani, dan Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau dari Konsep Equality Before The Law," *Jurnal Hukum dan Pembangunan* 49, no. 1 (2019): 180–121, <https://doi.org/10.21143/jhp.vol49.no1.1916>.

¹² Dimas Almansyah dan Mohamad Fajri Mekka Putra, "Tanggungjawab Notaris dalam Pembuatan Akta Para Pihak Di bawah Tekanan dan Paksaan," *Jurnal USM Law Review* 5, no. 2 (2022): 754–66, <https://doi.org/10.26623/julr.v5i2.5728>.

in the execution of a deed based on forged or invalid documentation, such conduct may fulfill the constituent elements of a criminal offense.¹³

Article 266(1) of the Indonesian Criminal Code is also pertinent to the assessment of notarial criminal liability, particularly with respect to the incorporation of false statements into authentic deeds. Although the provision is principally directed at the party who instructs the inclusion of such false information, judicial practice has frequently relied upon this article to evaluate whether a notary knew or reasonably should have known that the information recorded in the deed was inaccurate. Accordingly, an assessment of notarial fault cannot be divorced from the factual circumstances surrounding the preparation of the deed and the applicable standard of care.

From the standpoint of civil liability, Article 1365 of the Indonesian Civil Code provides a legal basis for injured parties to seek compensation where an unlawful act committed by a notary is established. An authentic deed executed on the basis of forged documentation may give rise not only to criminal consequences but also to tangible losses suffered by parties acting in good faith. In such cases, a notary's failure to properly perform official duties may satisfy the elements of an unlawful act where fault, damage, and a causal link are demonstrated.¹⁴

Accordingly, notarial legal liability in cases of authentic deed falsification should be understood as a direct consequence of the exercise of official authority in a manner that departs from statutory requirements. The imposition of criminal liability on notaries in this context is not intended to undermine the notarial profession, but rather to serve as a mechanism for regulating the exercise of official functions in order to preserve the integrity of authentic deeds and maintain legal certainty within the Indonesian civil law system.

3.2. Legal Implications of Authentic Deeds Executed on the Basis of Invalid Document Verification

An authentic deed attains full legal validity when it satisfies the requirements set forth in Article 1868 of the Civil Code, namely that it is executed in the form prescribed by law, by or before a duly authorized public official, and within the scope of that official's jurisdiction. This provision underscores that the authenticity of a deed depends not solely on the formal authority of the official or the prescribed form, but also on the legal legitimacy of the foundations underlying its contents. Accordingly, where a deed

¹³ Lubis, "Analisis Yuridis Pertanggungjawaban Notaris Terhadap Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Autentik."

¹⁴ Vivi Carolin Wijaya dan Anita Afriana, "Perlindungan Hukum Secara Keperdataan Bagi Klien Notaris Yang Mengalami Kerugian Akibat Diterbitkannya Akta Autentik Yang Cacat Hukum Oleh Notaris," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 7, no. 1 (2023): 15–30, <https://doi.org/10.23920/acta.v7i1.1332>.

is prepared on the basis of invalid or forged documentation, it is inherently affected by a legal defect that undermines both its validity and evidentiary value.

Within the civil law framework, reliance on invalid documentation at the verification stage directly affects the legal status of the deed. Article 1869 of the Civil Code provides that a deed executed by an unauthorized official, or one that fails to meet the requirements of an authentic deed, possesses the evidentiary force of a private deed only insofar as it is signed by the parties. This provision may be applied analogously to deeds that are formally executed by an authorized official but substantively grounded in legally defective documentation. In such circumstances, the deed forfeits its authentic character and no longer binds the court as conclusive evidence.¹⁵

Beyond its impact on evidentiary strength, invalid documentation also affects the validity of the legal act embodied in the deed. Article 1320 of the Civil Code establishes four prerequisites for a valid agreement: consent, legal capacity, a specific object, and a lawful cause. Where the document serving as the basis for the deed is proven to be forged or invalid, the requirements of a definite object or lawful cause may be compromised. Consequently, the agreement set out in the deed may be declared null and void pursuant to Articles 1335 and 1337 of the Civil Code, on the grounds that it contravenes the law or is founded on an unlawful cause.¹⁶

These legal ramifications become increasingly complex when an authentic deed is relied upon as the basis for subsequent legal transactions. In practice, notarial deeds frequently function as the primary instruments for the transfer of rights, the creation of security interests, and other transactions of substantial economic value. When the deed forming the foundation of such legal acts loses its legal force, the entire sequence of transactions dependent upon it likewise loses its juridical legitimacy. This situation not only generates legal uncertainty for the parties involved but also risks disrupting the legal and administrative order that authentic deeds are intended to uphold.

From a judicial perspective, deeds produced on the basis of invalid document verification no longer place courts under the binding evidentiary effect typically associated with authentic deeds. Judges are therefore free to assess the probative value of such deeds in conjunction with other evidence, in accordance with the rules of civil procedure. As a result, deeds originally intended to function as strong evidentiary instruments may lose their strategic significance in litigation and even become the source of disputes requiring complex supplementary proof.

These consequences further extend to the issue of legal protection for parties acting in good faith. Normatively, authentic deeds are designed to provide legal certainty

¹⁵ Dilla Pyarrani dan Sisca Ferwati Buhanuddin, "Peran Notaris dalam Menjamin Keabsahan dan Autentisitas Akta Kredit Perbankan," *Jurnal USM Law Review* 8, no. 3 (2025): 2106–22, <https://doi.org/10.26623/julr.v8i3.10081>.

¹⁶ Desi Syamsiah, "Kajian Terkait Keabsahan Perjanjian E-Commerce Bila Ditinjau Dari Pasal 1320 KUHPerdata tentang Syarat Sah Perjanjian," *Jurnal Inovasi Penelitian* 2, no. 1 (2021): 327–32, <https://doi.org/10.47492/jip.v2i1.1443>.

and security to those who rely upon them. However, where a deed is shown to have been executed on the basis of invalid documentation, such protection becomes uncertain. The law is then confronted with the challenge of reconciling the formal legal certainty inherent in authentic deeds with the demands of substantive justice for injured parties. In this context, deficiencies in a notary's document verification process have implications that extend well beyond the notary–party relationship, as they strike at the core function of authentic deeds within the civil law system.

Accordingly, on the basis of a normative analysis of Articles 1868 and 1869 of the Civil Code, together with the provisions governing the validity of agreements under Articles 1320, 1335, and 1337 of the Civil Code, it may be concluded that authentic deeds executed on the basis of invalid document verification give rise to serious and multi-layered legal consequences. These consequences extend beyond the diminution of the deed's evidentiary force to include the potential invalidation of the legal acts embodied therein, the erosion of legal certainty for the parties, and the impairment of the function of authentic deeds as instruments of legal order. Within this analytical framework, the legal consequences attached to such deeds constitute a central element for comprehensively understanding the relationship between the deed-execution process, the quality of document verification, and the scope of legal protection in notarial practice.

3.3. An Analysis of Bandung High Court Decision No. 73/Pid/2023/PT.BDG in Light of Justice and Legal Certainty

Bandung High Court Decision No. 73/Pid/2023/PT.BDG constitutes a significant ruling in criminal adjudication involving notaries, as it expressly recognizes notaries as legal subjects who may incur criminal liability for the falsification of authentic deeds. The case originated from the execution of a deed based on a land title certificate that, in fact, had never been issued by the competent land authority. The deed was subsequently used as the legal basis for a transaction that resulted in losses to a party acting in good faith. Accordingly, the central issue in this case extends beyond the mere presence of forged documentation to encompass the notary's role and conduct in the process of deed preparation.

In its reasoning, the panel of judges determined that the notary had failed to exercise due diligence in the performance of official duties as required under the Notary Law. The court emphasized that the notary proceeded with the execution of the deed despite conducting only limited verification of the certificate's validity, without corroboration from the relevant authorized institutions. This assessment indicates that the court did not rigidly distinguish between formal truth and the duty of care, but instead treated both as inseparable components of the notarial function.

In evaluating the constituent elements of the offense, the judges linked the notary's conduct to the provisions governing the falsification of authentic deeds under the Criminal Code. The analysis was not confined to identifying acts of direct document falsification, but also encompassed an examination of the notary's awareness of, and acquiescence in, the use of unauthorized documentation. Through this approach, the notary's conduct was not characterized as mere administrative negligence, but rather as negligence amounting to criminal fault, given that it occurred within the exercise of official authority and produced concrete legal consequences.

These considerations demonstrate that the court treated the notary's official authority as an aggravating factor in determining liability. The notary was deemed to possess the competence, authority, and opportunity to conduct a more thorough verification of the document's validity, yet failed to exercise that authority appropriately. On this basis, the court concluded that the conduct exceeded the threshold of tolerable professional misconduct and entered the domain of criminal responsibility. This reasoning is consistent with the principle that public officials who misuse or neglect their official duties may be held to a higher standard of accountability than ordinary legal subjects.

With respect to the legal consequences for the deed, the decision implicitly affirms that deeds executed on the basis of invalid documentation cannot be sustained as authentic deeds possessing full evidentiary force. Although the ruling primarily addresses criminal liability, the court's reasoning suggests that defects at the document verification stage undermine the legal standing of the deed itself. In this sense, the decision reinforces the close connection between notarial criminal liability and the legal status of deeds, as discussed in the preceding analysis.

From the standpoint of legal certainty, the Bandung High Court's decision conveys a clear message that authentic deeds cannot function as instruments to legitimize legal acts founded on forged documents. The ruling enhances legal protection for parties acting in good faith and underscores that public confidence in authentic deeds must be preserved through strict adherence to the notary's duty of care. At the same time, the decision raises substantive concerns regarding the scope of criminalization of the notarial office, particularly in delineating the boundary between professional negligence and criminal conduct.

Critically, the decision does not articulate explicit criteria for distinguishing administrative negligence from negligence that warrants criminal sanction. Although the court identified negligence accompanied by awareness of legal risk, the articulation of the applicable standard of care remains highly contextual and dependent on judicial discretion. This leaves considerable interpretive latitude in comparable cases and may, in future practice, generate uncertainty for notaries in the exercise of their professional duties.

Nonetheless, Bandung High Court Decision No. 73/Pid/2023/PT.BDG may be understood as a judicial effort to reinforce the accountability of public officials and to safeguard the integrity of authentic deeds within the civil law system. The ruling illustrates that the imposition of criminal liability on notaries does not constitute mere criminalization, but rather functions as a corrective response where official authority is exercised without due care and results in concrete harm. In this regard, the decision carries substantial jurisprudential value as a reference point for evaluating notarial legal liability in cases involving the falsification of authentic deeds.

4. CONCLUSION

Based on the foregoing analysis, it may be concluded that a notary's legal liability for the offense of forging an authentic deed is inseparable from the statutory authority of the office and the duty of care inherent in its exercise. As a public official, a notary bears responsibility not only for the formal correctness of the deed, but also for ensuring that the deed is not grounded in invalid or legally questionable documents. A failure to discharge this obligation—particularly when occurring within the scope of official authority and producing concrete legal harm—may constitute a form of fault that is attributable under criminal law. In such circumstances, an authentic deed produced through defective document verification is subject to serious legal repercussions, including the erosion of its evidentiary value and the potential invalidation of the legal act it embodies, thereby undermining its role as an instrument of legal certainty.

The Bandung High Court Decision No. 73/Pid/2023/PT.BDG illustrates a judicial tendency to treat the notary's duty of care as a central benchmark in determining criminal liability, even in the absence of direct participation in the act of forgery. This ruling reinforces legal protection for parties acting in good faith and affirms that authentic deeds may not serve to legitimize legal acts founded on forged documentation. At the same time, the decision exposes the necessity of articulating clearer criteria to distinguish administrative negligence from criminal negligence, in order to prevent legal uncertainty and mitigate the risk of excessive criminalization of the notarial profession.

Accordingly, it is recommended that legislators and professional notarial bodies enhance regulatory frameworks and technical standards governing document verification, particularly in high-risk transactions such as land dealings, so that the duty of care may be applied consistently and objectively. Moreover, law enforcement authorities should impose criminal liability on notaries in a proportional manner, taking into account the scope of official authority, the gravity of the fault, and the legal consequences arising therefrom. Such an approach is essential to ensure that law enforcement remains corrective rather than punitive, while preserving the integrity of

authentic deeds as reliable legal evidence and promoting both legal certainty and substantive justice within notarial practice.

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