



Legal liability of a Notary for identity forgery by a party appearing before the notary in the execution of a Deed

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Abstract

As a public official authorized to draw up authentic deeds, a notary must be meticulous, thorough, and consistently apply the principle of prudence in exercising their authority. Under Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Notary Office—specifically Article 16 (1) letter a—a notary is obligated to act honestly, diligently, independently, and impartially, while safeguarding the interest of the parties involved in the legal act. Furthermore, a notary is required to verify the identities, authority, and intentions of the parties. This requirement is stipulated in Article 39 of Law Number 2 of 2014, which mandates that a notary must know the parties appearing before them (“penghadap”). However, in practice, instances of identity misuse by appearing parties during the drafting of deeds still occur; this situation gives rise to legal issues as it can compromise the principles of formal and material truth in deed execution. Such identity misuse by appearing parties can also affect the validity of the deed and result in liability for the notary.

Keywords: Legal consequences, identity forgery, Notary

Introduction

The principle of a state governed by the rule of law is to guarantee legal certainty, order, and protection, grounded in truth and justice. These elements require, among other things, the existence of evidentiary means that clearly define the rights and obligations of individuals as legal subjects within society.^[1] Article 1865 of the Indonesian Civil Code (KUH Perdata) stipulates that anyone asserting a right—whether to substantiate their own claim or to refute the right of another—is obliged to prove the existence of said right or event. One form of evidence recognized under Article 1867 of the KUH Perdata is documentary evidence, which may take the form of either authentic deeds or private writings (“akta di bawah tangan”). An authentic deed is a document drawn up in the form prescribed by law, executed by or in the presence of public officials authorized to do so at the place of execution. An authentic deed constitutes conclusive evidence for both parties involved as well as for any persons deriving rights from them.^[2]

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary (UUJN) defines a notary as a public official authorized to draw up authentic deeds and exercise other powers as stipulated in the law. Notaries play a vital role in providing legal services to the public, ensuring legal certainty, and maintaining legal order through the drafting of authentic deeds.

Notaries are trusted figures in the performance of their duties; they are obligated to maintain the confidentiality of all matters regarding the deeds they draft and any information they obtain, a requirement aimed at protecting the interests of all parties associated with said deeds.^[3]

The authority of a Notary is outlined in Article 15 of the UUJN, which empowers the Notary to draw up authentic deeds regarding all acts, agreements, and determinations required by legislation and/or desired by interested parties to be embodied in an authentic deed; to guarantee the certainty

of the deed's execution date; to keep the deeds in custody; and to issue *grosses* (executory copies), copies, and excerpts of the deeds—provided that the drafting of such deeds has not been assigned to or reserved for other officials or persons designated by law.^[4]

The existence and services of a Notary are essential for the creation of authentic deeds, which serve as written evidence capable of providing legal certainty and protection to all parties. In the drafting of an authentic deed before a Notary, one aspect requiring meticulous attention is the identification of the appearing party (“penghadap”).

This requirement is stipulated in Article 39 of the UUJN, which mandates that the Notary must identify the appearing party. The act of “appearing” refers to physical presence before the Notary, as recorded in the preamble of the notarial deed. Identifying the appearing party involves drafting the deed based on the identities of the parties as presented to the Notary. Failure to meet the requirements for identifying the appearing party results in the authentic deed being relegated to the evidentiary status of a private writing.^[5]

Such identification is typically carried out by presenting a Resident Identity Card (KTP) as proof of identity. The content of the notarial deed must accurately reflect the actual events, status, and data involved. In this regard, the Notary must ensure that the appearing party named in the deed is using their genuine identity. Article 38, paragraph (3), letters a and b of the UUJN stipulate that if a notary remains uncertain regarding the identities of the appearing parties—whether due to a lack of clear information or an inability to obtain such details for other reasons—identification may be established through two “identifying witnesses” whose details are recorded in the deed.^[6]

When drafting a deed, a notary is required to have the parties present to accurately verify who is authorized to perform the legal act or to grant or accept a power of attorney. This direct involvement of the parties also serves

to confirm the authenticity of the appearing parties' identities and ensures they are actual, existing subjects. If, in the exercise of their duties, a notary fails to act with due care, diligence, and precision in applying legal regulations concerning the deed's content, the resulting deed may be relegated to the evidentiary status of a private writing (*akta di bawah tangan*), be annulled by a court ruling, or even be rendered null and void by operation of law.

In reality, however, despite mandatory identification procedures, many notarial deeds subsequently give rise to conflicts—one instance being the involvement of a "fictitious party." A fictitious party is a non-existent individual whose persona is fabricated to appear real, or someone who provides information or statements using dishonest or false identities; the notary, unaware of this deception, proceeds to formalize the legal act into an authentic deed.

Consequently, the notary may be held legally liable for the deed executed in their presence, as it causes detriment to various parties. If a deed issued by a notary contains a legal defect resulting from the notary's own error—whether due to negligence or intentional misconduct—the notary must bear legal responsibility.

Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning Principles for Identifying Service Users for Notaries (Permenkumham No. 9/2017) stipulates that notaries have an obligation to exercise greater caution and diligence in identifying appearing parties. This entails verifying the authenticity and completeness of the documents presented and remaining vigilant as to whether the transaction being executed involves money laundering. Notaries are required to identify and verify service user data thoroughly, extending to the verification of material truth. This duty of caution and diligence regarding appearing parties must be exercised whenever the notary harbors doubts concerning the information provided or the veracity of the party's identity.^[7]

The exercise of such caution by the notary aims to curb the forgery and misuse of the appearing parties' identities. However, in practice—even when the appearing party is already known to the notary—instances of document, letter, identity, or signature forgery, as well as the provision of false information, are not uncommon; such actions cause harm to other parties or to one of the parties involved in the deed. Regardless of a notary's diligence, honesty, and impartiality, the submission of false statements and forged documents by appearing parties poses a significant challenge for the notary. It is entirely possible for certain parties to exploit notarial deeds to further bad-faith intentions—for example, by creating a power of attorney to sell property in order to execute a sale-and-purchase agreement, where the appearing party has falsified their identity.

Although a notary is not liable for false statements or documents provided by appearing parties, such situations can still result in losses for the notary and potentially expose them to criminal liability. In performing the duty of drafting authentic deeds, a notary is required to provide services in accordance with applicable regulations.^[8] A notary must carry out their duties in compliance with Article 16 of the UUJN.

In practice, legal issues regarding notarial deeds arise due to false identities, documents, letters, or statements that cause losses to other parties; consequently, the notary is named as

a co-defendant for allegedly committing or aiding in the commission of a criminal offense or an unlawful act violating civil law provisions. Whether the notary—intentionally or unintentionally—colluded with a party or appearing party to draft a deed for the sole benefit of a specific party or to the detriment of another appearing party is a matter that must be proven in court. The notary's involvement is limited to formulating the parties' legal acts within the deed and subsequently formalizing that deed. Regarding the drafting of deeds, various cases reveal that clients may falsify:^[9]

- a. Statements conveyed to the notary during the deed drafting process.
- b. Identity details, such as the KTP.
- c. Data or documents required to be attached to the deed minute.

One example involves a case where a notary was named as a co-defendant in court proceedings alleging an unlawful act regarding the drafting of a power of attorney to sell and a sale and purchase deed. It was discovered that the appearing party—the defendant in this instance—had falsified their identity. This falsification occurred when the appearing party/defendant visited the notary's office to draft the power of attorney to sell and the sale and purchase deed, bringing along another individual to act as the grantor of the power of attorney while using the actual party's KTP. However, the Notary was completely unaware of the matter, and the process of drafting the deed proceeded. This continued until a lawsuit was filed by another interested party who claimed never to have consented to the sale of the land.

Research Method

This study falls under the category of normative legal research, an approach based primarily on examining theoretical aspects—such as legal principles, concepts, doctrines, regulations, and legal systems—using secondary data. An approach represents the researcher's perspective in selecting the scope of discussion intended to clarify the substance of the scholarly work.^[10] This study employs three approaches: (1) the statutory approach, which involves examining all laws and regulations related to Notaries and notarial deeds; and (2) the analytical approach, used to understand the conceptual meaning of terms within legislation as well as their application in practice and legal rulings. Finally, the case approach examines the application of legal norms or rules in legal practice. This approach focuses on cases that have resulted in court rulings; in normative research, such cases are studied to gain insight into the practical impact of the normative dimensions found within legal rules.

The legal materials used in this study were obtained through library research. Data collection involved reviewing and gathering three types of legal materials: primary, secondary, and tertiary sources.^[11] Data collection methods included document analysis and interviews with resource persons and parties relevant to the topic of discussion. The processing and analysis of legal materials were conducted qualitatively, interpreting the findings through descriptive narratives. This aligns with the study's nature as descriptive-analytical research. The data and legal materials obtained were subsequently analyzed qualitatively—specifically by providing a high-quality description of the data using sentences that are organized, logical, non-repetitive, and

effective. This process involved presenting the data and facts derived from field research alongside interpretations, evaluations, and general knowledge—systematically and analytically structured—to comprehensively address the legal issues raised, ultimately enabling a conclusion to be drawn.

Result and Discussion

Legal Liability of a Notary for Identity Forgery by a Party Appearing in the Execution of a Deed

1. Basic Concepts of Notary Legal Liability

A Notary's legal liability is a juridical consequence arising from the exercise of the office of Notary in drafting authentic deeds. Under the Indonesian legal system, a Notary is viewed not merely as an official who draws up deeds but also as a legal subject who can be held accountable if a legal violation occurs during the performance of their duties. Regarding identity falsification by appearing parties, the key issue is the extent to which a Notary can be held liable for the veracity of the identities recorded in the deed. From a doctrinal standpoint, a Notary is responsible only for formal veracity—that is, ensuring that the parties are physically present and declare their intentions before the Notary.

However, this liability is not absolute. If a Notary is negligent in fulfilling identity verification obligations, they may be held legally liable—whether civilly, criminally, or administratively.

2. Civil Liability of a Notary

The legal framework applied to civil liability regarding the material truth of a deed drawn up by a Notary is that of an unlawful act (tort) under Article 1365 of the KUH-Perdata. An unlawful act can be characterized by either active or passive conduct. It is active when a person commits an act that causes loss to another party. It is passive when a person fails to perform a specific act or fulfill an obligation, thereby causing loss to another party. In line with the contemporary evolution of the doctrine of unlawful acts, the concept is interpreted broadly. More specifically, an unlawful act occurs when the conduct:

- a. Violates the rights of another person;
- b. Conflicts with the perpetrator's legal obligations;
- c. Violates standards of morality; or
- d. Violates standards of propriety regarding due regard for the interests and property of others in daily social interaction.

The Elucidation of the Law on the Notary Profession indicates that a notary is responsible only for the formalities of an authentic deed, not for its substantive content. This requires the notary to remain neutral and impartial while providing legal advice to clients who seek guidance. Consequently, a notary may be held liable for the material truth of a deed if the legal advice provided turns out to be erroneous. Based on the interpretation of the Law on the Notary Profession, it can be concluded that a notary may be held accountable for the material truth of a deed if they failed to disclose relevant legal information regarding the deed, causing a party to feel deceived due to their lack of knowledge. Article 84 of the UUJN stipulates that a violation by a Notary of the provisions set forth in the UUJN—resulting in a deed having only the evidentiary value of a private deed or becoming null and void by

operation of law—may serve as grounds for an aggrieved party to claim reimbursement of costs, damages, and interest from the Notary.

In this case, the actions of Notary Irma Savitry Harahap constitute an unlawful act. The author concurs with the Banda Aceh District Court ruling, which declared that the actions of Defendant I (Mawardi Usman) and Defendant II (Notary Irma Savitry Harahap). However, the court's judgment should have also ordered the defendants to pay damages to the Plaintiff.

The defendants may be held liable for damages regarding the freehold title certificate for the disputed property (Certificate No. 374 of 1999). Originally registered in the name of the Plaintiff's father, Z. Ahmad Nyak Cut, the title was transferred to Mawardi Usman based on a Sale and Purchase Deed (No. 24 of 2013, dated March 14, 2013) executed before Defendant II. It is appropriate to hold Mawardi Usman and Notary Irma Savitry Harahap liable for material damages, as the Plaintiff must now restore the title to the name of their father.

A Notary's civil liability arises when a party suffers a loss due to a deed executed based on false identity. The primary legal basis for this liability is Article 1365 of the KUH-Perdata regarding unlawful acts. In this context, a Notary may be sued if they:

1. fail to verify identities diligently;
2. disregard the duty of care; or
3. actively contribute to the occurrence of the loss.

The legal consequence of this civil liability is the obligation to pay damages to the aggrieved party. In judicial practice, there are cases where a Notary is sued because a deed they executed served as the basis for a transfer of rights that was subsequently declared legally defective due to the incorrect identity of the appearing party.

3. Criminal Liability of the Notary

A criminal act is an act prohibited by law, where such prohibition is accompanied by a sanction—specifically a criminal penalty—for the violator. Although the UUJN does not explicitly define specific criminal offenses, a Notary who commits a criminal act remains subject to criminal liability. The Law on the Position of Notary only prescribes sanctions regarding violations that result in a deed lacking authentic force or possessing only the evidentiary value of a private deed; meanwhile, the Notary personally may face sanctions ranging from a reprimand to dishonorable dismissal.

Regarding alleged forgery involving a Notary, investigators rely on existing legal norms, including those derived from the Criminal Code (KUHP). Specifically, Article 263 (1) of the KUHP governs the general crime of document or handwriting forgery, carrying a maximum prison sentence of six years. Furthermore, the legislature has addressed the crime of intentionally using forged or falsified authentic deeds (and other specific documents) in Article 264 of the KUHP, as follows:

1. Any person who commits the forgery of the following documents shall be punished with imprisonment for a maximum of 8 years:
 - 1.1 Authentic Deeds.
 - 1.2 Debt instruments or certificates issued by a public institution, a state, or a subdivision thereof.
 - 1.3 Shares or debt securities issued by a corporation, company, foundation, or association.

- 1.4 Proof of dividends or interest regarding any of the instruments referred to in items 2 and 3 above, or a document issued in their stead.
- 1.5 Commercial paper or letters of credit intended for circulation.
2. Any person who intentionally uses any of the forged or falsified instruments referred to in paragraph (1)—treating the instrument as if it were not forged, or treating the document as if it were genuine and not forged—shall be subject to the same penalties as prescribed in paragraph (1) above.

Following the enactment of Law Number 1 of 2023 concerning the Criminal Code, the regulation regarding this type of forgery falls under the category of document forgery as stipulated in:

- a. Article 391 (1) of Law Number 1 of 2023, which states: “Any person who untruly creates or forges a document capable of giving rise to a right, an obligation, or a discharge of debt, or intended as proof of a matter, with the intent to use it or have another person use it as if its contents were true and genuine—where the use of such document could result in loss—shall be punished for document forgery with imprisonment for a maximum term of 6 years or a fine of up to Category VI (i.e., IDR 2 billion).”
- b. Article 391 (2) of Law Number 1 of 2023, which states: “Any person who uses a document containing untrue information or a forged document, treating it as genuine or authentic—where the use of such document could result in loss—shall be subject to the same punishment as prescribed in paragraph (1).”
- c. Regarding the party who orders the insertion of false information—previously regulated under Article 266 of the KUHP — Law Number 1 of 2023 addresses this in Article 393 (1), which states: “Any person who orders the insertion of false information into an authentic deed regarding a matter whose truthfulness must be attested by said deed, with the intent to use it or have another person use it as if the information therein were true, shall be punished with imprisonment for a maximum term of 6 years or a fine of up to Category V.” Based on the foregoing explanation, the Banda Aceh District Court ruling established that Notary Irma Safitri Harahap committed an unlawful act but was not subject to criminal sanctions. This outcome arose because it could not be determined whether she was aware that the private power of attorney to sell was forged—an act that would otherwise constitute aggravated document forgery due to the high level of trust associated with the forged instrument.

Based on the facts above, it can be concluded that during the deed preparation procedure, Notary Irma Savitry Harahap committed acts of negligence—specifically, issuing a copy of a sale and purchase deed based on a forged power of attorney created by Mawardi Usman. This document falsely implied that Z. Ahmad Nyak Cut (the plaintiff's father) had authorized Mawardi Usman to sell the land and house in dispute, even though the plaintiff's father had passed away in 2002. This situation led to a conflict because the original

landowner's child (the plaintiff) was unaware of the existence of the power of attorney or the subsequent sale of the land.

However, considering the points raised earlier, Notary Irma Savitry Harahap can be said to have committed an unlawful act. A party to the agreement could potentially sue the Notary for issuing a sale and purchase deed that carried a high risk of causing loss to the plaintiff (the original landowner's child); consequently, the Notary should be liable for damages if the court rules in the plaintiff's favor regarding the issuance of the deed.

The legal grounds applied at the time were:

1. Article 263 of the KUHP regarding document forgery.
2. Article 264 of the KUHP regarding authentic deeds.

A Notary may face criminal charges if proven to have:

1. Known about the forgery but proceeded to draft the deed.
2. Aided or instigated the forgery.
3. Deliberately authenticated false data.

In several instances—including in Aceh—Notaries have been sentenced to prison after being proven not only negligent but also complicit in the process of drafting deeds that utilized false identities. Nevertheless, in practice, proving criminal liability against a Notary is challenging, as it requires establishing the existence of **mens rea** (criminal intent), rather than mere negligence.

4. Administrative and Ethical Responsibilities

There is a very strong correlation between the Law on the Office of Notary, the regulations governing Land Deed Officials (PPAT), and the professional code of ethics. The professional code of ethics regulates Notaries internally, while the Law on the Office of Notary and the regulations governing Land Deed Officials regulate them externally. In carrying out their official duties, Notaries must adhere to the following:

- a. Notaries are required to draft deeds properly and correctly. This means the deed produced must satisfy the general intent and the requests of the interested parties within the scope of the Notary's office.
- b. Notaries are required to produce high-quality deeds. This means the deed produced must comply with legal regulations and reflect the true intent of the interested parties, rather than being fabricated.
- c. Notaries must explain to the interested parties the accuracy of the content and the procedures of the deed being drafted. Furthermore, the deed must yield a positive impact, ensuring that its status as having perfect evidentiary value is acknowledged by all.

Article 16 (1) letter a of the UUN stipulates that in exercising their office, a Notary is obliged to act in a trustworthy, honest, meticulous, independent, and impartial manner, and to safeguard the interests of the parties involved in the legal act. Sanctions for violating Article 16 (1) letter a are set forth in Article 85 of the UUN, which lists the sanctions for Notaries who violate said article, namely:

1. Oral reprimand;
2. Written reprimand;

3. Temporary suspension;
4. Honorable dismissal;
5. Dishonorable dismissal;

In this case, the plaintiff was neither present nor aware at the time the legal act was performed before Notary Irma Savitry Harahap. The sale and purchase deed was based on a power of attorney to sell that was invalid. Notary Irma Savitry Harahap should have refused to execute the deed; furthermore, the transaction involved only one party—the defendant acting as both the attorney-in-fact (seller) and the buyer—by falsifying a power of attorney in the name of Z. Ahmad Nyak Cut, who had long since passed away in 2002. The alleged violation and the matter of dismissal will be further examined by the Regional Supervisory Board (MPD), which will convene a hearing to review the case concerning the negligence. Consequently, a party claiming to have suffered harm may report the Notary to the Regional Supervisory Board (MPD) in addition to filing a lawsuit in court. In the context of this case, Notary Irma Savitry Harahap has been proven to have committed an unlawful act; therefore, it is appropriate for the competent authority—acting under applicable laws and regulations—to impose administrative sanctions for her actions that harmed the plaintiff. In this instance, it is fitting that Notary Irma Savitry Harahap be subject to temporary suspension, as stipulated in Article 10, Paragraph (4), letters a and b of the Law on the Notary Profession, specifically regarding her status as a defendant in court proceedings for a criminal offense punishable by imprisonment and her commission of a minor violation of prohibitions and obligations. Notaries are subject to administrative and ethical sanctions. These sanctions are imposed by the Notary Supervisory Board or the professional association of Notaries. Forms of administrative sanctions include:

- a. oral reprimand
- b. written reprimand
- c. temporary suspension
- d. permanent dismissal

5. Case Analysis

Case Background: The Plaintiff is the biological child of the late Z. Ahmad Nyak Cut. Defendant I is the deceased's stepchild; Defendant II is a Notary; and Defendant III is the National Land Agency (BPN). The object of the dispute is a plot of land and a building in Banda Aceh, held under Freehold Title Certificate No. 374 of 1999 in the name of Z. Ahmad Nyak Cut. Z. Ahmad Nyak Cut acquired the land during his marriage to Hj. Fatimah, the Plaintiff's biological mother; thus, it constitutes marital property.

Z. Ahmad Nyak Cut passed away in 2002. In 2012, Defendant I executed a Power of Attorney to Sell before Defendant II, presenting an individual who claimed to be Z. Ahmad Nyak Cut—despite the fact that he was already deceased. Based on this fraudulent power of attorney, in 2013, Defendant I executed a Sale and Purchase Deed (No. 24) before Defendant II, acting as both the seller and the buyer. Subsequently, Defendant I applied for a transfer of title, resulting in the Freehold Title Certificate No. 374 of 1999 being re-registered in Defendant I's name. When the Plaintiff attempted to clear the land, Defendant I obstructed the effort. A few weeks later, the Plaintiff learned that Defendant I intended to lease out the land, claiming ownership of it. The Plaintiff asserts that the actions of

Defendants I, II, and III constitute an unlawful act, and seeks a ruling declaring the power of attorney, the sale and purchase deed, and the transfer of title null and void, as well as an order for the vacation of the property and the payment of damages. The Court's legal reasoning at the time held that the core of the dispute concerned the validity of the transfer of land rights. Based on the evidence and statements from the parties, the following facts were established:

1. Regarding the legal capacity of the parties – Article 1320 of the Indonesian Civil Code.
2. The Power of Attorney to Sell (Deed No. 19 of 2012) was executed at a time when the grantor, Z. Ahmad Nyak Cut, had already passed away (having died in 2002).
3. A deceased person lacks legal capacity. Consequently, the said power of attorney deed is null and void **ab initio** (deemed never to have existed). The authority granted therein terminated by operation of law upon the grantor's death.
4. To execute the deed, Defendant I presented an "imposter." This action constitutes an unlawful act and also a criminal offense of document forgery.
5. The Power of Attorney to Sell (Deed No. 19 of 2012) is defective because it was based on a fraudulent power of attorney. Since the underlying authority was invalid, the resulting Sale and Purchase Deed is also null and void by operation of law.
6. A Notary is required to verify the identity of the appearing parties. Defendant II's negligence resulted in the issuance of an authentic deed based on false data; therefore, Defendant II is also liable for the unlawful act.
7. The National Land Agency (BPN) should have rejected the transfer of title based on a legally defective sale and purchase deed. This negligence caused loss to the legitimate heirs; therefore, Defendant III is also liable for the unlawful act.
8. Defendant I is a stepchild, not an heir, of Z. Ahmad Nyak Cut. The legitimate heirs are the Plaintiff and Hj. Fatimah. Thus, Defendant I has absolutely no right to the land in question. Considering the foregoing, the actions of Defendants I, II, and III satisfy the elements of an Unlawful Act as stipulated in Article 1365 KUH-Perdata.

The operative part of the judgment declares that Defendants I, II, and III committed an unlawful act. It declares the power of attorney to sell, the sale and purchase deed, and the transfer of title (re-registration) null and void by operation of law. It orders Defendant I to vacate the land and surrender it to the Plaintiff. It orders Defendant III to cancel the transfer of title and return the certificate to the name of Z. Ahmad Nyak Cut. It orders the Defendants to pay damages on a joint and several basis. It orders the Defendants to pay court costs. Important Note regarding "Leased": since the case background only mentions the property "would be leased," the judge likely will not award damages for rental income. Damages would consist of: attorney's fees and the costs of the re-transfer process. However, if it is proven that the property had already been leased for two years, then damages for that two-year rental period could also be claimed.

For comparison, a case involving a different form of liability is outlined here: Semarang District Court Judgment

Number 773/Pid.B/2021/PN.Smg. In this case, a notary failed to perform her professional duties in accordance with the UUJN and the Notary Code of Ethics, as detailed in Semarang District Court Judgment No.773/Pid.B/2021/PN.Smg.^[12] In this matter, I Madiyana Herawati, acting as a Notary/PPAT in Semarang City, was named a defendant in a case involving the forgery of four (4) Powers of Attorney to Sell concerning Freehold Titles (SHM) No. 5435, No. 5436, No. 5437, and No. 5438, all owned by Suratinah. The core issue was that Suratinah and her husband never appeared before the notary to have the deeds drafted, nor did they ever sign the original deed records (*minuta*); instead, it was Puput Ariyanto who appeared and requested the drafting of the Powers of Attorney to Sell. Based on said deeds, Puput Ariyanto sold Freehold Title (SHM) No. 5435 to Jauhari Ahmad for Rp1,000,000,000 and transferred the title of SHM No. 5436 into her own name before selling it to Andrian Nugroho for Rp750,000,000. As a result of these actions, Suratinah lost her rights to the two Freehold Titles and suffered a financial loss of Rp1,750,000,000. The panel of judges found Defendant I, Madiyana Herawati, guilty of falsifying an authentic deed pursuant to Article 264 (1) in conjunction with Article 55 (1) item 1 of the KUHP and sentenced her to one year and six months of imprisonment. The procedure for drafting a notarial deed of power of attorney to sell must comply with the UUJN and the Notary Code of Ethics—specifically Articles 15, 16, 38, and 44 of the UUJN and Article 3 letter d of the Code of Ethics—while also adhering to the KUHP, particularly Articles 1792, 1867, and 1868. A notary is required to act honestly, independently, impartially, trustworthily, diligently, and responsibly, in accordance with statutory regulations and their oath of office. The drafting of a deed of power of attorney to sell must be based on the consent and agreement of the parties involved and must not be based on a unilateral decision.

This case demonstrates that a Notary may face criminal liability if there is an intent to include incorrect data or identities in an authentic deed. The Notary is no longer viewed merely as a public official exercising professional authority, but rather as a perpetrator of a criminal offense who has participated in creating false evidence. The Semarang case illustrates the most severe form of liability, as the Notary was proven to have actively participated in the crime of forgery.

Interviews with Notaries regarding identity forgery during deed preparation reveal that identity falsification by appearing parties remains a serious issue in notarial practice. All three interviewees agreed that the identity of the appearing party is fundamental to the creation of an authentic deed, as it establishes the validity of the legal subject performing the legal act. Erlina explained that every appearing party is required to present original identity documents before the deed is drafted. Verification involves cross-referencing the electronic KTP, the Family Card (KK), and other supporting documents relevant to the specific type of deed being prepared. This process includes physically verifying that the person present before the Notary matches the documents provided. Such measures are implemented as an application of the principle of prudence to minimize the risk of identity fraud.

Notary Juliani Mukhtar also noted that technological advancements do not necessarily eliminate the potential for

identity forgery. Current methods of fraud often involve the use of documents that appear genuine or the provision of statements that do not reflect the actual circumstances. Consequently, Notaries must exercise greater diligence in assessing the authenticity of documents and the legal objectives sought by the appearing parties. If there are doubts regarding an identity or the documents submitted, the Notary has the right to postpone or even refuse the preparation of the deed until all requirements are confirmed to comply with applicable laws.^[13]

Novana Octa Syahputra explains that the majority of disputes involving authentic deeds stem from the dishonesty of the parties in providing data and information to the Notary. This situation demonstrates that an authentic deed provides legal certainty only when all data forming the basis of its creation is accurate and verifiable. While a Notary is obliged to conduct identity verification professionally, it is impossible to ascertain the full material circumstances if the parties deliberately conceal facts or use false identities that appear administratively valid.^[14]

The perspectives of the three interviewees reveal a consensus regarding the limits of a Notary's liability. A Notary's responsibility is primarily formal in nature, centering on ensuring that the deed execution procedure complies with the provisions of the Law on the Notary Office. Responsibility for the material accuracy of identity details rests fundamentally with the parties providing the information and presenting documents to the Notary. Legal liability on the part of the Notary arises only if it is proven that they disregarded identity verification procedures, acted without due care, or intentionally colluded with parties engaging in identity fraud. These interview findings reinforce the study's normative analysis, confirming that the principle of prudence serves as a key instrument for both legally protecting Notaries and upholding public trust in authentic deeds. Consistent application of identity verification procedures minimizes the likelihood of disputes arising from the use of false identities by appearing parties. This approach also aligns with the doctrine of Habib Adjie, which emphasizes that the office of Notary is one of trust, requiring performance characterized by professionalism, independence, and the utmost prudence.

Conclusion

A Notary's liability regarding identity fraud committed by a party appearing before them (the “penghadap”) may be civil, criminal, administrative, or ethical in nature, provided that intent or negligence is proven in the performance of official duties—specifically regarding the verification of the parties' identities. Civil liability may entail an obligation to pay damages; criminal liability may arise if the Notary is complicit in or aware of the identity fraud, as stipulated in Articles 263 and 264 of the KUHP—or, following the enactment of the new KUHP, under Articles 391 (1) and (2) and Article 393 (1) of Law Number 1 of 2023 concerning the Criminal Code; meanwhile, administrative and ethical sanctions may be imposed through oversight mechanisms involving the Notary Supervisory Board and professional organizations. Conversely, if the Notary has fulfilled all obligations under the Law on the Notary Office and adhered to the principle of prudence, full legal liability rests with the party who committed the identity fraud.

Recommendations

Notaries are urged to further enhance the application of the principle of prudence (“prudential principle”) when drafting any deed, particularly during the identity verification process. Notaries must conduct more thorough examinations of identity documents; they should not rely solely on formal documentation but must also ensure that the data aligns with the actual circumstances of the appearing party. Furthermore, Notaries are advised to consistently document the verification process as a form of legal protection in the event of future disputes.

Policy makers are encouraged to strengthen regulations regarding identity verification systems for the drafting of Notarial deeds—for instance, by integrating digital population data systems with notarial systems. Such measures are crucial to minimizing the risk of identity fraud by appearing parties and providing stronger legal protection for Notaries in the execution of their duties.

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