



DOI: <https://doi.org/10.38035/jlph>  
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## Legal Consequences of Authentic Deed with False Identity Against Notary

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**Abstract:** Given the very important role of Notaries in upholding justice and truth in society, everyone who participates in law enforcement is obliged to carry out their duties with integrity and devotion, thus raising the degree of the Notary profession to a noble level (*officium nobile*). This can lead to increasingly complex and challenging tasks amidst the increasingly intense competition between Notaries, which in turn causes some Notaries to be less careful in carrying out their official obligations. The rapid changes in society are accompanied by the increasing need for Notary services, especially in the midst of globalization. People need Notary services in order to carry out their legal obligations, especially in the framework of civil law, where the implementation of a legal action depends on the existence of supporting documents such as letters or documents. This deed is often made by a Notary in the form of an original deed, so that it has more legal weight because of its official and legal existence. Notaries are public officials who have the authority to make Deeds and other legal authorities, as stated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices. In Indonesia, the legal system is very important to resolve various disputes between the government and the community. Another indication that legal certainty has been guaranteed is the stipulation or legalization of a contract by a Notary. The purpose of this normative legal research is to examine laws and regulations relating to the position and duties of Notaries in society.

**Keyword:** Notary, Authentic Deed.

### INTRODUCTION

A Notary's primary responsibility is to assist in the creation of valid Deeds, he or she must also understand all legal requirements and guidelines. This is so that the general public understands the legal regulations and does not commit unlawful acts, especially for those who are less savvy. In various legal contexts, such as trade, banking, property ownership, social intercourse, and so on, Deeds play an important role as persuasive evidence. Authentic Deeds have become essential in many commercial and social ties at national, regional and

international levels due to the times and the need for legal certainty. The establishment of legal certainty and the potential avoidance of problems are supported by an Authentic Deed that ensures clarity of rights and obligations. A contract is an act in which one or more parties bind themselves to one or more other parties, according to Article 1313 of the Civil Code. The phrase “binding” is used in this definition, although it only pertains to one party, which is one of its faults. The term is also overly inclusive, covering agreements in various fields of law without providing specific justification as to the purpose of the parties involved. Thus according to Abdul Kadir Muhammad, an agreement is any arrangement in which two or more parties commit to do something relating to property law. (Subekti, 84: 2009). Article 1313 of the Civil Code explains that: “an agreement is an act by which one or more people bind themselves to one or more other people.” This provision is reinforced by the opinion of Abdulkadir Muhammad who states that: “an agreement is an agreement by which two or more people bind themselves to carry out a certain thing related to property.” (Abdulkadir Muhammad, 225: 2000). In order for the agreement to be valid, it must be made by fulfilling the provisions in Article 1320 of the Civil Code, which is often referred to as the legal requirements of the agreement.

## **METHOD**

This research uses normative legal research techniques. To answer a legal question or case, legal research seeks to establish legal rules in accordance with legal doctrines and principles. Theoretical approach and statutory approach are the approaches used in this research. The following legal resources are used in this research:

### **1. Legal Sources in Written Form**

Including Article 16 paragraph (1) of Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary, Articles 1320 and 1338 of the Civil Code regarding the validity of agreements and the principle of *pacta sunt servanda*, referred to as primary legal materials.

### **2. Articles**

Other related sources, and textbooks written by legal professionals are examples of secondary legal materials that can be used to assist the research. The Big Indonesian Dictionary (KBBI) and Wikipedia provide tertiary legal materials used in this research. Normative juridical research is the method used in this research. Reading papers, laws, regulations, and official literature on the topic discussed which are all based on secondary data is how the method of collecting legal materials is done. After being analyzed, the information is compiled to serve as supporting information for this research. The research methods applied are empirical and normative juridical. Scholars and Notaries were interviewed for the empirical study, and certain laws and legal ideas were mentioned for the juridical research, in this study, the legislative approach has been applied as the main method of analysis. This approach involves a thorough analysis of all legislation relevant to the legal issue under study. The data used in this research consists of primary and secondary legal materials, which have been collected through various relevant data collection techniques. The analysis process was conducted using the content analysis method, in which texts related to the legal issues under study were identified and evaluated. Relevant legal theories and principles are then applied to understand and interpret the meaning of the legal texts. In this context, the papers or archives that are the object of analysis are considered as “texts”, which are then analyzed in depth using content analysis techniques. The purpose of this analysis is to uncover the significance, meaning, and legal implications of the texts under investigation, using this approach, the research can generate a better understanding of the legal regulations related to the issue under study, as well

as their impact in a broader context. This analysis allows the researcher to make conclusions that are based on a solid understanding of the legal material analyzed, thus making a valuable contribution to the understanding and further development of the law.

## RESULTS AND DISCUSSION

A Notarial Deed or an Authentic Deed has very strong evidentiary power or it can be said that it can be used as strong evidence before the court, therefore if there is an error in the Authentic Deed (defect) in the identity of the Facilitator, the date of making the Deed or any error contained in the Authentic Deed, it can make the Authentic Deed degraded into an underhand Deed or in other words lose its legal strength as evidence before the court. According to Sudikno Mertokusumo, an agreement is a form of legal relationship between two or more parties based on an agreement to create legal consequences (Sudikno Mertokusumo, 97:1995). In this context, both parties agree to establish rules, principles, or rights and obligations that bind them to be obeyed and implemented. This agreement aims to create certain legal consequences, such as establishing rights and obligations, so that violations of the agreement will have an impact on legal consequences or sanctions for violators. In other words, agreements create legal entanglements between the parties involved, where they are expected to abide by the commitments they have agreed upon. If one of the parties violates the agreement, there will be legal consequences. This shows that the agreement is an important instrument in the legal system to regulate the relationship between parties and ensure compliance with the agreement that has been made.

An agreement drafted by a Notary is recognized as valid because it complies with legal provisions and because it is made by or witnessed by an official who has the authority. The provisions of Article 1 of Law No. 30/2004 on the Office of Notary (hereinafter referred to as UUJN) establish the validity of documents drafted by a Notary. According to this law, a Notary is considered an officially appointed “public official”, actions performed by a Notary in his/her official capacity are considered valid actions. In other words, Article 1868 of the Civil Code states that actions executed by a Notary have a special level of authenticity or are admissible as evidence in court. (KUHPperdata). The following is an explanation of the components contained in Article 1868 of the Civil Code:

1. That the Deed is made and formalized in the form according to law.
2. That the Deed is made by or before a public official.
3. The process of making the Deed is carried out in the presence of a duly authorized individual at a predetermined location.

The responsibility of making an Authentic Deed which means it has the strongest evidentiary power falls on the Notary, who is a public official; other public authorities do not have the authority to perform this task, as an effort to ensure legal protection, order, and clarity, the law emphasizes the need for making an Authentic Deed. The main purpose of drafting an Authentic Deed in the presence of a Notary is to provide security, maintain order, and provide fair legal protection for all parties involved. It aims to ensure that their rights and obligations are secured in the process. The importance of this process is not only a legal responsibility, but also a shared aspiration of all individuals involved in the transaction. The terms of the agreement are regulated in Articles 1332 to 1334 of the Civil Code. According to these provisions, the object that is the focus of the agreement must be described in writing in the agreement document, except in the context of inheritance. The object must be clearly identifiable both quantitatively and qualitatively, and last but not least, the object must be transactable, meaning that it is an item that can be traded for a specific purpose. (Handri Raharjo, 57:2009).

Collecting the necessary documents from the Deed maker is one of the steps a Notary must take to complete the process. The Identity Card (KTP) is one of the documents requested

by the Notary to be included in the Deed Minutes or the actual Notarial Deed document. The Notary has the responsibility to check whether the party making the Deed is of legal age (18 years old according to the UUJN, 21 years old according to the Civil Code) to carry out the legal transaction stated in the proposed Deed, Article 39 of the UUJN regulates the conditions that must be met by the party making the Deed, among others: Article 39 (1) The person making the Deed must fulfill the following conditions: At least eighteen years of age or married; and Able to sue. (2) The Notary must certify the person making the Deed, or can be presented by two identifiable witnesses, who are at least 18 (eighteen) years old, married, and capable of performing legal acts, or by both. (2) the party executing the other act. (3) The Deed must expressly reflect the introduction of the party making the Deed as referred to in paragraph (2).

As stipulated in Article 1868 of the Civil Code, a Deed prepared in the presence of a Notary who has the authority to do so in his/her area of office is considered an Authentic Deed or which means it has the strongest and fullest evidentiary power based on several requirements. Firstly, the Deed must be prepared by or in the presence of a Notary; secondly, the Deed must comply with the format prescribed by the Notary Office Law, hereinafter referred to as UUJN; A document prepared and signed in the presence of a Notary is referred to as a Notarial Deed, which is often also referred to as an Authentic Deed, but it should be noted that, in relation to the provisions of Article 16 paragraph (1) letter a of Law of the Republic of Indonesia Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Notary Position, The concept of "impartiality" emphasizes the importance of Notary neutrality in carrying out their duties, if a Notary performs actions that violate or are not in accordance with the UUJN in front of his client who is also a party to the Deed, then the Deed will lose its authentic status and will turn into a Deed under the hand, so that it can no longer be considered an Authentic Deed. This is very important to ensure the integrity and authority of a Deed prepared by a Notary. Notarial Deeds play a vital role in the legal system, especially in Indonesia. In the context of civil law, a Notarial Deed is considered the strongest evidence, therefore, regulations governing the existence and strength of a Notarial Deed as evidence must be strictly regulated to avoid potential problems for all parties involved, as part of his responsibility as a Notary, the Notary takes an oath to maintain the confidentiality of the information he obtains during the performance of his duties as well as the contents of the Deed he prepares, and this is based on the understanding that the office of Notary is based on public trust, where the public gives trust to the Notary to take care of their affairs and interests, therefore, to protect the interests of all parties involved, it is very important to ensure the confidentiality of the information collected.

According to Law Number 30 Year 2004 on Notary Position, Article 1 defines Notary as follows: Notary is a civil servant who has the authority to authenticate Deeds and exercise further authority in accordance with the provisions of this law, according to this definition, unless the law determines otherwise, only Notaries are authorized to function as public authorities in making valid Deeds. Notaries are the only public officials authorized to make valid Deeds, unless by law another official is appointed, so that the position and role of Notaries in the field of commerce becomes very important, Notaries involved in a problem can be subject to a series of sanctions which include reimbursement of costs, compensation. The articles that regulate this are listed in various provisions, such as Article 44, Article 48, Article 49, Article 50, and Article 51, according to the description in these articles, an Authentic Deed is considered legally problematic if it does not meet the conditions described therein and the consequence of this is that the injured party in the transaction has the right to sue the Notary responsible for making the Deed. They can demand reimbursement of costs incurred, compensation for losses suffered, as well as payment of interest as compensation for delay or violation of the law, and also if the Notary is involved in violating these articles, this also violates Article 16 (m). This article stipulates that a Deed must be read out in the presence of

the signatories in the presence of at least two witnesses, or four witnesses specifically in the case of an underhand testamentary Deed, furthermore, the Deed must be signed by the signatories, the witnesses present, and the Notary at the same time. Violation of this provision can be the basis for the affected party to hold the Notary responsible for making the legally flawed Deed, thus sanctions and lawsuits against Notaries can be an effort to enforce compliance with strict legal procedures in making an Authentic Deed and also to create legal certainty.

### **Legal consequences for the Notary due to the falsification of the identity of the confronters in the making of the Authentic Deed**

The role of a Notary in the process of making a Deed cannot be done on the personal will of a Notary. A Notarial Deed must be prepared by taking into account all applicable laws and regulations, and must have certainty in making and can be read correctly. Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Office of Notary has provisions governing Notarial Deeds, starting from Article 38 to Article 56, with the aim of ensuring legal certainty and preventing falsification of Notarial Deeds. Notaries must not take sides because in the process of making a Deed, the Notary is not a party directly involved but only as an intermediary. The role of the Notary is to assist the parties to comply with the applicable legal procedures without any tendency to favor one of the parties and also the Notary also plays a role in expressing the will or will of the Faces in the Deed, this allows the parties to reach their agreement in a way that is in accordance with the law, thus creating a legal and guaranteed legal relationship through a proper process, so that a Notary can balance the rights and obligations of the parties fairly. A comprehensive understanding of the law is crucial. The position and function of a Notary is determined by the authenticity of the Deed he/she makes, which is proof that the information of the parties has been accurately recorded in the Deed. Before making a Deed, the Notary must ensure the accuracy and correctness of the documents, information from the parties involved, in this context, the act, agreement, or decision requested by someone to be made in a Notary Deed is what is the content of the Deed, not a legal action carried out by the Notary itself, where the result of the action is that the conditions stated in the Notary Deed are binding for all parties involved in the agreement and cannot be violated. Thus the role of a Notary in the process of making a Notarial Deed is not only limited to administrative actions, but also involves a deep understanding of the law as well as the responsibility to ensure compliance with applicable regulations. The Notary acts as the guardian of the validity and accuracy of the Deed he/she makes, thus creating fair and guaranteed legal protection for all parties involved. A notary is not just a Deed maker or an individual who does the work of making Deeds, but they perform a much broader and more complex role. The role of a Notary is not only limited to the mere creation of Deeds, but involves a great responsibility in upholding compliance with the law and the Notary code of ethics. The position of the Notary Honor Council (hereinafter MKN) in providing legal protection for Notaries shows the representation of an institution that has strong independence. MKN is not bound by the government that appointed it, so it has full freedom and autonomy in carrying out its duties. This makes the decisions made by MKN cannot be influenced or contested by other parties or institutions. Establishing MKN as an independent institution is a reasonable and important step, given that the law provides a time limit of 30 working days from the date the request is received, if the time limit is exceeded, MKN will take over the request for approval, emphasizing its independence in the decision-making process. The tiered structure of MKN provides an opportunity for aggrieved parties, be it the Notary or the investigating party, to appeal to higher agencies. This appeal process involves both the Regional MKN and the Central MKN, with the focus of examination on the decision made by the Regional MKN. This shows that MKN not only functions as a watchdog, but also as a

mechanism to ensure that decisions are made in accordance with the principles of justice and applicable law, thus, MKN's role in providing legal protection for Notaries not only strengthens the independence of the institution, but also provides a strong foundation in upholding the principles of justice and legal compliance in Notary practice. The final decision of the Central MKN is unassailable as MKN is an independent body responsible for the final judgment of Notary examinations. Through its clear role and authority, MKN is expected to be able to provide clarity and fair legal protection, as expressed by Sunaryati Hartono, the law has an important role in achieving social justice for individuals who are still weak and do not have power socially, economically, or politically (Sunaryati Hartono, 55: 1991), therefore in accordance with the opinion of these figures it can be concluded that legal certainty needs to be enforced in a legislation because with this step the welfare of the entire community can be created.

A Notarial Deed reflects the legal acts desired by the parties involved, who wish to make it an official binding document. The legal act contained in the Deed is not an act performed by the Notary, but what the parties want to agree and document. Notaries act as recorders or documenters of agreements, provisions, or other legal acts desired by the relevant parties, thus, the parties involved in making a Notarial Deed are those who have involvement in the process in accordance with the terms of the Deed. A notary is not merely a writer or executor of deeds but rather a professional who carries out his or her duties using legal expertise and extensive knowledge. They must understand and apply the various legal aspects associated with the creation of a Deed appropriately and accurately. Deeds made by Notaries or in their presence are recognized as valid evidence in legal proceedings. The parties involved in an agreement have the authority to apply for the making of an Authentic Deed with a Notary. The Notarial Deed is an integral part of the agreement and must comply with the conditions set out in Article 1320 of the Civil Code which regulates the validity of agreements. These conditions include the existence of a binding agreement between the parties, the ability to enter into an agreement, the existence of a specific object, and the existence of a valid basis for the agreement.

Certainty in the making and application of regulations is called legal certainty. Legal certainty refers to the consistency and regularity of rules that do not conflict or cause conflict, which means there is no doubt or multiple interpretations. The administration of law that is transparent, steady, consistent, and not affected by arbitrary considerations prioritizes legal certainty, as a basic principle of the rule of law, legal protection falls into two categories: repressive and preventive. Preventive legal protection directs the government to make careful decisions in an effort to avoid conflict, if there is a difference of opinion or violation of the law, then repressive legal protection is carried out, this protection is usually in the form of fines, imprisonment, or other penalties, therefore, repressive legal protection is given after the violation, while preventive legal protection aims to stop conflict from occurring. The function of the Notary in this situation is only to act as a mediator, recording the information of the parties according to the identity they provide themselves, in making the Deed and entering the information into the Deed, the Notary must be very careful, but if the parties commit identity fraud, the Notary has additional legal protection in his capacity as an intermediary. The Notary's liability for the falsification of the identity of the Notary in an Authentic Deed in the form of a photograph, signature or anything else submitted by the Notary to the Notary in the making of an Authentic Deed cannot be held liable by the Notary as long as the Notary does not violate the Notary Office Law and does not violate the technique of making a Deed or the applicable laws and regulations, as long as the Notary makes a Deed, be it an Authentic Deed, Legalization or Waarmerking in accordance with the Notary Office Law, the Notary will not be sued by any party. Indeed, the Law on Notary Position (UUJN) has set standards for Notaries to ensure that the process of making Deeds is carried out in compliance with professional ethics and applicable laws and regulations. There is no room for deviation from these provisions for

any reason that may result in the making of false statements. The Notary has a great responsibility for the accuracy and validity of the contents of the Deed when making the evidentiary Deed, and in the event of a deliberate error or violation, the Notary will be subject to sanctions, but the Notary must comply with his authority in accordance with the applicable regulations if the error or violation comes from the parties involved, as additional evidence, the Notary is tasked with recording what is submitted by the parties to be included in the deed so that the Notary cannot be blamed for the untruthfulness of the information provided by the party. A Notary will only be liable if involved in an act of fraud or deceit themselves, therefore maintaining integrity and reputation is crucial for a Notary, as well as performing duties with integrity and in accordance with applicable laws. One important aspect of a Notary's responsibility is to ensure that the Deed-making process is conducted transparently and in accordance with applicable legal regulations.

A deed under hand is a document prepared and signed by the parties involved without the presence or intermediary of a Notary. Letters made under the hand can be found in agreements such as power of attorney, wife's consent letter, and others. In accordance with the provisions of Article 1857 of the Civil Code, a Deed under hand can be used as valid evidence against the parties involved in its making as well as the heirs and assigns of these parties, provided that these parties recognize the validity of the Deed, but a Deed made by a Notary has stronger legal force than a Deed under hand. Some characteristics that distinguish an underhand Deed from an Authentic Deed are that an underhand Deed can be made by the parties at a free time, place, location without the need to be made in the presence of a Notary, and is valid as long as the parties making the agreement do not deny the underhand Deed. An Authentic Deed has a stronger power because it is made by a Notary, while an Underhand Deed can only be used if there is no denial from the parties involved. With a Notary as an intermediary who expresses the wishes of the community in the form of an Authentic Deed to the community, legal certainty can be achieved. Notaries can violate the law if they make Deeds that harm third parties without their permission, and will be held accountable for their actions, unlike judges in the criminal realm, judges in the civil realm rely on the statements of the parties rather than the facts but Notaries can also be held accountable for the correctness of the contents of the Deed if the statements of the parties provided are inaccurate and the Notary is responsible for all information he/she obtains, Notary is responsible for all information that he/she obtains, witnesses, and performs as a public official, to ensure the validity of the Deed he/she makes, including the date, signature, and identity of the party involved (comparanten), Notary is not responsible for the truth of the information or documents submitted by the related party, if the confrontant uses a false identity, the Deed is still considered valid, and only the judge has the authority to cancel it, as happened in SURABAYA District Court Decision Number 2834/Pid. B/2020/PN Sby, where a Notary was defendant in identity forgery but because he was proven innocent in the trial, the Notary was released from all types of sanctions, because the Notary carried out his obligations in accordance with the Notary Position Law.

## CONCLUSION

Notaries are authorized to make Authentic Deeds in accordance with the provisions of Article 1868 of the Civil Code. Notaries are responsible for their work in carrying out their authority. The wishes of the parties, not the wishes of the Notary, are stated in the contents of the Deed. Advice given by a Notary is merely advice; as long as it is implemented and documented in the Deed, the intent of the parties remains unchanged. The Notary's liability in making a person's identification can be divided into three categories: civil, administrative, and criminal. If someone uses a false identity in a completed Deed, then the Deed can be degraded to a Deed under hand which has a legal force that is not as strong as an Authentic Deed. Parties who are harmed as a result of this can request compensation or compensation from the Notary.

The responsibility of a Notary for falsification of identity photos by the parties appearing without the Notary's knowledge is a very important aspect in carrying out duties as a public official authorized to make Authentic Deeds. Notaries have an obligation to ensure that all information presented before them is accurate and in accordance with the truth, both in terms of fact and law, to ensure the administrative completeness of the parties appearing, Notaries must record all information provided by the parties appearing in the minutes of the Deed if there is fraud or fraudulent acts carried out by the Notary himself, which results in losses for other parties concerned and violates the public interest, then the Notary can be held accountable under civil and criminal law. Legal sanctions for Notaries due to falsification of identity photos by the parties appearing can vary, in accordance with Article 16 number (1) letter a of the Notary Law. Administrative sanctions that may be imposed include verbal warnings, written warnings, temporary dismissal, honorable dismissal, and dishonorable dismissal, to protect the legal rights of Notaries, the principle of prevention is applied, providing an opportunity for Notaries to provide the necessary information for their physical and mental safety, normatively, steps such as the establishment of a Supervisory Board and a cooperation agreement between the Indonesian National Police and the Indonesian Notary Association (INI) have been regulated to improve professionalism and law enforcement in the field of Notaries, in addition, the existence of a clause in the draft Deed which confirms that the parties come face to face with the Notary to make the Deed provides legal protection for the Notary, although the truth of the material is not the direct responsibility of the Notary, but the Notary has an obligation to ensure the validity of the identity of the parties. The suggestions given include the need for caution and accuracy in the process of making a Deed and the ability to check the identity of the person appearing through the official website of the Population and Civil Registration Service before making a Deed, thus, preventive measures can be taken to avoid identity forgery and other potential crimes that may arise and it can also be concluded that a Notary only functions as an intermediary who expresses the will and desires of the parties in an Authentic Deed. Identity forgery carried out by the parties is not the responsibility of a Notary.

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