

LEGAL ANALYSIS OF ABUSE OF AUTHORITY BY NOTARIES IN MAKING AUTHENTIC DEEDS

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Abstract

A notary is a public official authorized by the state to create authentic deeds that have full evidentiary force before the law. However, in practice, notaries often abuse their authority in carrying out their duties, resulting in the loss of authenticity of the deed and causing losses to the parties. This study aims to analyze the forms of abuse of authority committed by notaries in creating authentic deeds, the resulting legal consequences, and the forms of legal accountability that can be imposed on notaries. The research method used is normative juridical, by examining applicable statutory provisions, legal doctrine, and relevant court decisions. The approaches used include a statutory approach, a conceptual approach, and a case approach. The results of the study indicate that abuse of authority by notaries can occur in various forms, including creating deeds without the presence of the parties, falsifying data, and providing false information in the deed. These actions not only violate the principles of professionalism and integrity of the notary's office, but also result in the deed losing its evidentiary force. Legal accountability for notaries who abuse their authority can take the form of administrative, civil, or criminal sanctions, depending on the level of error and the impact of their actions. To prevent recurrence of abuse of authority, it is necessary to strengthen the oversight system by the Notary Supervisory Board, improve moral integrity, and update the notary professional ethics education and training system. Keywords: Notary, Authentic Deed, Abuse of Authority, Legal Accountability, Professionalism

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INTRODUCTION

Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary. This regulation was formed to organize the notary profession in carrying out its authority. This regulation is not only important for the notary itself, but also for the community as a legal subject who interacts with the notary, because from that relationship arises rights and obligations that must be fulfilled (Borman, 2019). The position of a notary is affirmed in Article 1 of the Notary Position Law (UUJN) which states that a notary is a public official who has the sole authority to make authentic deeds regarding all legal actions, agreements, or determinations required by law or desired by interested parties, with guaranteed certainty of date, storage of deeds, and provision of grosse, copies, and extracts of deeds (Article 1 of Law Number 30 of 2004 Jo. Amendments to Law No. 2/2014). However, in practice, abuse of authority or negligence that harms the public is still common (Azwar & Sirait, 2025). This is a serious problem because it can erode public trust in the notary profession, which is supposed to maintain integrity and legal validity (Rio Cahya Nandika, 2021).

The rules regarding the authority of a Notary in making an Authentic Deed have been regulated in UUJN II, although in its rules UUJN always emphasizes the making of an Authentic Deed before a Notary (Doly, 2011: 271). Agus Yudha Hernoko, a professor in the field of Civil Law, argues that humans are social creatures who tend to live side by side and interact with other humans or what is commonly called *zoon politicon* so that in essence humans must carry out business steps related to contracts (Kartini, 2019). Regulations regarding contractual relations between these social creatures are in the rules of the *Burgelijk Wetboek* (hereinafter abbreviated as BW), namely in Article 1320 BW which regulates the conditions/validity of an agreement (Hernoko, 2010: 41). Agreements formed in certain situations are referred to as pseudo-agreements, because in this case, there is no substantial meeting of minds (*consensus ad idem*) between the parties. Abuse of circumstances is one of the main factors causing imbalance in such agreements, so that the aggrieved party can file legal remedies (*rechtsmiddelen*), such as filing a lawsuit to

annul the agreement that has been made. In the context of agreements, one type of agreement often made by the parties is an agreement in the form of an authentic deed prepared by a notary. This deed is essentially the result of the realization of the parties' wishes, which are then consolidated into a valid deed by the notary (Januardi, 2022: 42). The notary is responsible for ensuring that the interests of the parties involved in the agreement are protected and properly recorded in the deed (Santoso et al., 2023: 151). However, in practice, the role of a notary is often fraught with challenges, particularly regarding the potential for abuse of authority. The strategic and independent nature of the notary's position makes it vulnerable to abuses of power. Abuse of power can occur when a notary uses their authority beyond the limits prescribed by law or carries out their duties for personal or group interests. Such actions clearly contradict the basic principles of the legal profession: integrity, honesty, and independence. Notaries, who are supposed to maintain public trust, can instead become the source of legal problems if they fail to adhere to these principles.

One form of abuse of authority that often occurs is the involvement of a notary in the creation of authentic deeds that do not correspond to the actual facts or data. For example, when a notary makes a deed without the presence of the parties who should be present, signs minutes of a deed that have not been verified, or allows forgery of identity in the deed creation process. In other cases, practices have also been found where notaries collaborate with certain parties to manipulate the contents of the deed for unilateral gain (Diana, 2017). This is contrary to the provisions of Article 16 paragraph (1) of the UUJN which requires notaries to act honestly, independently, impartially, and protect the interests of all parties involved in a legal act. Notaries who are proven to have violated the obligations and prohibitions as stipulated in Articles 16 and 17 of the UUJN may be subject to sanctions, either in the form of civil, administrative, code of ethics, or criminal sanctions. Civil sanctions are usually imposed due to violations of private law that regulates relationships between individuals in order to fulfill their interests. (Annas, 2025). Previous research conducted by Annas (2025) examined sanctions against notaries for violations of office and code of ethics, but did not specifically analyze concrete cases such as Lady Marsella. Borman's research (2019) discussed the position of notaries as public officials from the perspective of the UUJN, but did not integrate aspects of professional ethics with supervisory mechanisms. The existing research gap is the absence of a comprehensive study that integrates legal analysis with concrete case studies to demonstrate the implementation of sanctions and supervision of notaries.

METHOD

This research uses a normative juridical legal approach, namely a research approach that relies on the study of written legal norms that regulate the position of notary and legal principles relevant to the topic of abuse of authority in the preparation of authentic deeds. Normative juridical research focuses on the process of analyzing existing legal materials, both primary, secondary, and tertiary, to understand in depth how the legal system regulates, limits, and assesses the responsibilities of notaries in the context of abuse of authority. In its implementation, this research uses three types of legal approaches. First, the statute approach, namely by examining various provisions stipulated in Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014, as well as relevant provisions in the Criminal Code (KUHP), especially Articles 263, 264, and 266 which regulate the crime of document forgery (Wijaya, 2024). This approach also includes an analysis of the Notary's Code of Ethics and other implementing regulations that serve as guidelines for notary professional behavior. Second, a conceptual approach is used to understand basic legal concepts related to this research, such as the meaning of abuse of power, the principle of professionalism, the principle of prudence, and the concept of public office responsibility. This approach is important to theoretically explain how abuse of authority can be categorized as a violation of the law and ethics of the notary profession (Wonggo, 2025). Thus, this research method plays a role not only in exploring applicable legal norms but also in constructing a conceptual and applicable understanding of the legal responsibility of notaries in maintaining the integrity of their profession and protecting the public from abuse of office.

RESULTS AND DISCUSSION

The Position and Power of Notarial Deeds in the Indonesian Legal System. The term "Notary" comes from the Latin term "nota literaria," meaning a written mark or character used to record and illustrate the oral expressions of a source. The marks or characters referred to refer to symbols in shorthand (stenography). Initially, the position of a notary was essentially that of a public official (private notary) mandated by the authorities to meet the public's need for authentic evidence that provides legal certainty in civil relations (Zhillan, 2025; Mahadewi & Purwanto, 2021; Fauzal, 2021). Therefore, as long as the legal system in a country still requires authentic evidence, the existence of notaries will continue to play an important and relevant role in society. According to the Minister of Law and Human

Rights Regulation Number M.01-HT.03.01 of 2006, a notary is a public official authorized to make authentic deeds in accordance with the UUJN. The term public official means that a notary is appointed by the state, given authority, and is responsible for providing public services. The position of a notary is entirely determined by the role of the state because without legal norms this position does not have legal authority. (Borman, 2019, p. 78) Notaries as Public Officials who have certain authorities as stated in Article 15 of the UUJN where with the authority that exists in the Notary, the Notarial deed binds anyone who is interested in the deed. If in making a Notarial deed all provisions have been met, such as: 1. The Notary has the authority to make a deed in accordance with the wishes of the parties. 2. Outwardly, formally and materially, it has complied with the legal regulations regarding the making of Notarial deeds and has complied with the procedures determined by the Law,

Notaries must apply the law in making authentic deeds in carrying out their authority, and must also comply with the Notary Code of Ethics, as mandated by the Congress of the Indonesian Notaries Association. (Annas, 2025, p. 87) The Notary Law (UUJN) explains the definition of a notary and their authority, as stated in Article 1 number 1 in conjunction with Article 15. In these provisions, notaries are positioned as public officials who are authorized to make authentic deeds and have several authorities, including: a. Validating signatures and determining the certainty of dates on private letters by recording them in a special book; b. Recording private letters in a special book as a form of bookkeeping; c. Preparing official copies of private letters whose contents are in accordance with the original text; d. Validating the conformity of photocopies with original documents; e. Providing legal advice or explanations regarding the creation of deeds; f. Preparing deeds related to the land sector; and g. Making auction minutes deeds Notary Professional Ethics and Moral Principles Ethics is understood as a concept regarding the good or bad of human attitudes and behavior, while morals are the concrete manifestation of that behavior that can be judged as good or bad. Ethics emphasizes ideas, ideals, and standards regarding ideal actions, while morals serve as a benchmark for assessing the extent to which a person's behavior aligns with the examples or standards offered by ethics (Novitri, 2025; Chintami et al., 2025; Ruslan, 2013). Ethics plays an important role as a means of examining human behavior based on good and bad standards, without distinguishing whether the action violates positive law or not. This is because the law has established strict rules and sanctions. The role of a notary itself holds a strategic position in the field of civil law, namely as a servant of the public interest. Therefore, notaries greatly need guidance and development to become intellectual figures with integrity.

A notary also has the potential to commit violations in carrying out the duties entrusted to him. If proven to have violated the provisions as stipulated in Articles 16 and 17 of the UUJN, the notary can be punished, either in the form of civil, administrative, professional ethics, or even criminal (Putri, 2011). Sanctions in the civil realm are usually given for violations related to legal relationships between individuals that concern individual interests (Soejono Soekanto, 1993). Administrative sanctions arise from the relationship between government officials and citizens, and can be imposed directly without the need for a judicial decision, because the authorized executive body can immediately impose action (Jan remmelik, 2003). The legal basis that serves as the primary guideline for notaries in carrying out their work is the Notary Public Law, originally stipulated in Law No. 30 of 2004, and subsequently revised by the issuance of Law No. 2 of 2014. This law provides a clear corridor for notaries to ensure that when drafting deeds, they avoid slipping into errors that could harm other parties. In addition, there is also the Notary Code of Ethics, a set of moral rules formulated by the notary professional organization, the Indonesian Notaries Association (INI), which functions as a supervisor of morality and professionalism.

Considering the weight of responsibility and the strategic position of notaries as public officials, it is crucial for notaries to always prioritize compliance with the law and the code of ethics. Violations of the UUJN (National Law) and the Notary Code of Ethics will carry serious consequences. The UUJN stipulates that notaries found guilty of violations may be subject to administrative sanctions such as written warnings, reprimands, temporary dismissal from office, or even dishonorable discharge. These sanctions serve as a control tool to ensure that notaries maintain integrity and professionalism in carrying out their duties as public legal servants. Articles 9–13 of the Notary Law (UUJN) regulate the obligations and prohibitions of notaries. Article 9 stipulates the obligation to carry out their duties with integrity, honesty, thoroughness, independence, impartiality, and to safeguard the interests of related parties. Articles 10–13, on the more technical aspects, address the notary's domicile, security of notary protocols, storage of minutes, and matters related to the prohibition on holding multiple positions. Violations of obligations stipulated in legislation, codes of ethics, or internal policies of an organization can trigger a series of disciplinary actions that culminate in sanctions. This process is designed to maintain integrity, ensure accountability, and maintain order within a system (Mertokusumo, Sudikno, 2006). The level of sanctions imposed is generally proportional to the severity of the violation and the disciplinary history of the individual or entity concerned. (Sachipto Raharjo, 2004)

The sanctioning process often begins at the lightest level and can escalate if the violation is repeated or if the initial violation is considered serious. The stages of this sanctioning process include:

1. **Reprimand**
A reprimand is the lightest sanction given for a minor or first-time violation of obligations. Its primary purpose is to warn the individual not to repeat the offense. Reprimands can be verbal or written, and often do not result in a permanent formal record. Examples of violations that may result in a reprimand include minor tardiness or minor omissions in administrative procedures.
2. **Warning**
If a minor violation recurs after receiving a warning, or if the violation is more serious but has not yet resulted in significant harm, a warning will be issued. A warning is usually written and recorded on the individual's record. It serves as formal notification that the inappropriate behavior must stop and that further violations may result in more severe consequences. A warning is the first formal step in documenting problematic behavior.
3. **Suspension**
Suspension is a more severe sanction, where an individual is temporarily removed from their duties or position, often without certain rights such as pay, for a specified period. This sanction is applied for more serious violations, such as repeated non-compliance with rules, significant policy violations, or behavior that is detrimental to reputation. Suspension allows time for the individual to improve and for the authorities to conduct further investigations or determine next steps.
4. **Dishonorable Discharge**
Dishonorable discharge is the highest and most severe sanction, resulting in the permanent termination of employment, position, or membership. This sanction is imposed for very serious and fundamental violations, which can damage the integrity of the system or organization as a whole. Examples of violations that can lead to dishonorable discharge include criminal acts related to office, serious abuse of authority, repeated serious ethical violations, or neglect of obligations that result in fatal consequences after previous sanctions are not heeded (Lamintang, 1997). Dishonorable discharge can have a long-term impact on an individual's professional track record and future prospects.

The process of imposing sanctions must be carried out fairly, transparently, and in accordance with applicable procedures that have been set out in laws and regulations or internal policies. Individuals who are subject to sanctions generally have the right to defend themselves or file an objection, depending on the applicable regulations (Muchsan 2007). The goal is to maintain discipline and integrity, while still upholding individual rights. The Notary profession plays a central role in the Indonesian legal system as a public official authorized to make authentic deeds. Integrity and public trust are the main pillars of the sustainability of this profession. Therefore, Notaries have a series of fundamental obligations that, if violated, not only impact the Notary himself, but can directly threaten the integrity of the profession and erode public trust (Mazuki, 2011). Violation of these obligations is a *casus belli* or the main reason for the imposition of the highest sanction: dishonorable dismissal.

Dishonorable dismissal not only terminates a notary's term of office, but also revokes their right to practice as a notary for life, and imposes a significant negative stigma on their professional record. This is the most extreme consequence to protect the public from abuse of authority and ensure that practicing notaries truly uphold their oath and professional ethics. The essence of sanctions as a legal coercion is also to provide awareness to the party who violates it, that an action he has taken has not been in accordance with the applicable legal regulations, and to return the person concerned to act in accordance with the applicable legal regulations, also to maintain the balance of the implementation of a legal regulation. Sanctions aimed at Notaries are also an awareness, that Notaries in carrying out their official duties have violated the provisions regarding the implementation of Notary duties as stated in the UUJN, and to return the Notary's actions in carrying out their official duties to be orderly in accordance with the UUJN. In addition, the imposition of sanctions on Notaries is also to protect the public from Notary actions that can harm the public. Abuse of authority by notaries can also be categorized into two main forms: active and passive abuse. Active abuse occurs when a notary is consciously and intentionally involved in a violation of the law, for example by forging a signature or changing the contents of a deed for a particular purpose. Passive abuse occurs when a notary is negligent, fails to conduct a thorough examination of documents, or ignores the legal procedures applicable to the creation of a deed (Wonggo, 2025). Both forms have the potential to cause legal losses to the parties and undermine the principle of professionalism of the notary's office. According to Situmorang (2023), abuse of authority in the notary's office is also closely related to violations of the principle of due care. Notaries are required

to verify all data and documents provided by the parties before they are incorporated into a deed. If a notary fails to adhere to this principle, the action can be considered gross negligence, which has implications for legal liability. Furthermore, Wijaya (2024) emphasized that abuse of authority by notaries violates the principles of professionalism and accountability, which are the primary foundations for the implementation of public office in Indonesia. The principle of professionalism requires notaries to carry out their duties based on adequate legal competence, honesty, and moral responsibility. Meanwhile, the principle of accountability requires that every notary's actions be accounted for, both legally and ethically. When these principles are ignored, public trust in notarial institutions will decline, potentially threatening the legal legitimacy of authentic deeds drawn up by notaries.

An authentic deed drawn up by a notary has the highest evidentiary value in the Indonesian civil law system. According to Article 1868 of the Civil Code, an authentic deed is one drawn up in a form prescribed by law by or before an authorized public official. This means that the evidentiary power of an authentic deed lies not only in the substance of its contents, but also in the validity of the deed-making process (Wonggo, 2025). Therefore, if there is an abuse of authority during the deed-making process, the validity of the deed can be legally questioned. Abuse of authority by a notary can result in the loss of authenticity of a deed. For example, when a notary draws up a deed without the presence of the parties, the deed can no longer be considered authentic, but only has the evidentiary force of a private deed (Diana, 2017). In other cases, if the notary falsifies data or knows that the documents used are incorrect, the deed can be declared null and void or can be annulled by the court (Situmorang, 2023). From a procedural legal perspective, deeds made through abuse of authority also have the potential to give rise to lengthy legal disputes. Many aggrieved parties ultimately have to file lawsuits for deed annulment or compensation through civil proceedings. Furthermore, if elements of intent or forgery are found, the legal process can escalate to the criminal realm. Therefore, Wijaya (2024) emphasizes the importance of the principle of caution at every stage of deed creation to ensure the legal integrity of authentic deeds is maintained and conflicts are not created later.

CONCLUSION

Abuse of authority by a Notary in the preparation of an Authentic Deed is a serious issue in civil and official law, which can invalidate the power of proof. Authentic Deeds have perfect evidentiary power (Article 1870 of the Civil Code) because they are made by or before a public official, namely a Notary, who is authorized. The authority of a Notary is strictly regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary (UUJN). Abuse of authority occurs when a Notary acts beyond the limits of his authority, mixes up his authority, or deviates from the purpose of his authority (*détournement de pouvoir*). Forms of abuse of authority by a Notary can include:

- Violating the Prohibition on Position: For example, making a deed that is contrary to morality or public order (Article 15 paragraph (2) letter f UUJN).
- Not Complying with Formal Procedures: Not reading the deed, not signing the deed properly, or not being attended by the required witnesses.
- Personal Involvement/Conflict of Interest: The notary makes a deed for himself, his wife/husband, or his family (Article 15 paragraph (2) letter a UUJN).
- Incorrectness of the Contents of the Deed: The Notary knows or should suspect that the contents of the deed are incorrect (for example, the Notary falsifies the date of the deed or the parties), but still processes it.

In conclusion, legal protection for the public using notary services depends heavily on the integrity of the notary and the effectiveness of oversight by the MKN (National Notary Supervisory Council), the Notary Supervisory Board (MPN), and professional organizations (INI). Notary compliance with the code of ethics and the UUJN (National Notary Supervisory Board) is key to ensuring authentic deeds that are valid, legally binding, and do not harm any parties.

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