

# The Role and Responsibilities of Notaries in Making Authentic Deeds Based on Forged Letters from the Parties

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## ABSTRACT

Notaries play an important role in the Indonesian legal system, especially in the making of authentic deeds that have high evidentiary power. One of the main responsibilities of a notary is to ensure the validity of the documents used as the basis for making authentic deeds. However, in practice, it is not uncommon for fake documents to escape the notary's inspection and be used in making authentic deeds. This study aims to analyze the role and responsibilities of notaries in making authentic deeds based on fake letters, as well as the legal risks faced by notaries if they are involved in using fake letters. This study uses a normative research method with a statutory and conceptual approach, which examines laws and regulations related to the position of notary, forgery of letters, and legal responsibilities arising from the involvement of notaries in making deeds based on fake documents. The results of the study indicate that notaries have an obligation to verify the authenticity of documents and the identities of the parties involved, as well as to provide an explanation of the contents of the deed to the parties. If a notary is involved in making an authentic deed based on a fake letter, he can be subject to criminal sanctions in accordance with Article 263 and Article 264 of the Criminal Code, as well as civil liability in accordance with Article 1365 of the Civil Code. This study also highlights the importance of increasing the vigilance and ability of notaries in detecting fake documents to prevent the practice of document forgery which can harm many parties.

*Keywords:* Notary, Authentic Deed, Fake Letter, Responsibility.

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## 1. INTRODUCTION

A notary is a public official who has a very important role in the legal system in Indonesia. As an official who is authorized to make authentic deeds, a notary is tasked with providing legal certainty for every agreement or transaction made by the parties. An authentic deed made by a notary has higher evidentiary power in court when compared to a deed made without the involvement of a notary [1], [2]. Therefore, the deed resulting from the notarization process has a very important position in various legal transactions, such as sales and purchase agreements, grants, trusts, and so on [3]. An authentic deed not only provides legal protection for the parties involved, but also provides a guarantee that the contents of the deed are valid and do not conflict with applicable laws.

However, in practice, although notaries have an obligation to ensure the validity of documents submitted by the parties, the problem of forged letters often arises. Forged letters can be used by parties to manipulate existing facts, with the aim of harming other parties or to obtain illegal benefits. In this context, a forged letter is a document that is deliberately created to give the impression that the document is valid and authentic, when in fact its contents are the result of forgery or manipulation. If the forged letter is received and used in making an authentic deed, then the deed can be considered invalid, which of course will have serious legal consequences [4].

Notary is a legal profession so that the notary profession is a noble profession (*nobile officium*). Deeds made by a notary can be the legal basis for the status of property, rights and obligations of a person [5], [6]. Mistakes in the deed made by a notary can result in the revocation of

a person's rights or the burden of a person with an obligation, therefore a notary in carrying out his/her duties must comply with the various provisions stated in the Notary Law. As an official authorized to make authentic deeds, a notary has a great responsibility to ensure that all documents received are valid and correct. This responsibility is not only to protect the parties involved in the transaction, but also to maintain public trust in the notary profession itself. Therefore, a notary must be careful and thorough in examining each document submitted, and have the ability to detect signs of forgery that may be present in the submitted letter [7], [8].

The regulation regarding the authority of notaries is stipulated in Article 15 of the Notary Position Law. From this authority arises the notary's responsibility as an official tasked with creating authentic deeds [9], [10]. If a notary is proven to have committed violations in carrying out their duties, they are obliged to take responsibility for their actions, whether from an administrative law or civil law perspective, in accordance with the sanctions outlined in Articles 84 and 85 of the Notary Position Law and the code of ethics.

However, the Notary Position Law does not regulate criminal sanctions. In practice, it has been found that violations of these sanctions are later qualified as criminal offenses. The aforementioned aspects are closely related to the actions of a notary when violating Article 15 of the Notary Position Law, where the implications could lead to acts of forgery of documents or deeds, as referred to in Articles 263, 264, and 266 of the Criminal Code, potentially causing harm to interested parties.

Despite the regulations governing the obligations and responsibilities of notaries in performing their duties, there are still numerous cases where forged documents escape detection and are used in the creation of authentic deeds. This occurrence can be attributed to various factors, such as the lack of vigilance on the part of the notary, inability to detect forged documents, or even collaboration between the notary and parties with malicious intent. These situations lead to serious legal issues, affecting not only the parties involved in creating the deed but also third parties who rely on the validity of the document [11], [12].

The role and responsibility of the notary are crucial in such cases, as a notary involved in drafting deeds based on forged documents may face legal sanctions. Moreover, the use of forged documents in authentic deeds can harm other parties who may be unaware of the forgery. For instance, if someone purchases property based on a deed later found to involve forged documents, their ownership rights could be questioned and potentially nullified by law.

Therefore, this study aims to delve deeper into the role and responsibilities of notaries in drafting authentic deeds based on forged documents provided by the parties involved. The research will also discuss the legal risks faced by notaries if found complicit in the use of forged documents, as well as preventive measures that notaries can take to avoid such occurrences. With a better understanding of this issue, it is hoped that the notary profession can act more cautiously and professionally in fulfilling their duties and prevent document forgery practices that harm many parties.

## 2. METHODS

In this study, the researcher employs the normative research method as an approach used to analyze and examine law based on norms, rules, or principles contained within the applicable legal system. The normative research method focuses more on legal texts, legislation, legal doctrines, and principles within a legal system. In this study, the normative research method is used to analyze

the role and authority of notaries in drafting authentic deeds sourced from falsified documents provided by the parties involved, which may result in legal consequences. According to (Van Hoecke et al., 2006), normative research focuses on legal texts and their interpretation, aiming to understand and establish the relationship between existing legal norms and the objectives of the legal system itself.

The types of approaches used in this study include the statutory approach and the conceptual approach. The statutory approach involves reviewing relevant laws and regulations, such as Law Number 2 of 2014 concerning the Position of Notary, as well as the Indonesian Criminal Code (KUHP), particularly Article 263 on document falsification. The conceptual approach is employed to examine legal doctrines related to notary responsibilities and document falsification by analyzing legal theories governing the obligation to verify documents in the drafting of authentic deeds.

The legal sources used in this research consist of primary legal materials and secondary legal materials. Primary legal materials include laws and regulations governing the notary profession and criminal acts of document falsification, such as Law Number 2 of 2014 concerning the Position of Notary and the Criminal Code. Secondary legal materials comprise legal literature, textbooks, journal articles, and expert opinions relevant to the research topic.

The data analysis technique in this study employs qualitative analysis. This technique involves interpreting existing laws and legal doctrines and linking them to legal practices in the field. The analysis aims to identify the roles, obligations, and responsibilities of notaries in drafting authentic deeds based on falsified documents, as well as to provide recommendations on preventive measures that can be taken by notaries.

### **3. RESULTS AND DISCUSSION**

#### **3.1 The Role of Notaries in Making Authentic Deeds**

A notary plays a highly significant role in ensuring the validity of documents to be used as authentic deeds. The role of a notary is not limited to drafting the deed itself but also includes verifying the identities of the involved parties and examining the documents submitted by them. A notary is expected to identify and confirm the authenticity of the documents received, either through valid supporting documents or by conducting further examinations with the parties involved.

In practice, a notary acts as a legal witness who certifies all forms of agreements or transactions occurring between the parties. The resulting deed carries a high evidentiary value, meaning that in the event of a dispute, the deed can serve as legitimate evidence in court. Therefore, the role of the notary in ensuring that the deed produced is free from elements of forgery is crucial for establishing legal certainty and justice.

Based on Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary, notaries have specific duties and obligations in the creation of authentic deeds. The roles of a notary are as follows:

- 1. Ensuring the Validity of the Parties' Identities**

One of the primary roles of a notary in the preparation of an authentic deed is to verify the identities of the parties involved. The notary must ensure that the individuals appearing before them genuinely have the authority and legal capacity to perform the actions recorded in the deed. The notary is required to meticulously examine and record the identities of the parties, using identification documents such as ID cards, passports, or other valid documents. This provision is crucial to prevent identity fraud or transactions conducted by unauthorized or illegitimate parties. In this capacity, the notary acts as a witness who provides legal certainty that the transaction or agreement specified in the deed is carried out by authorized and legitimate parties.

- 2. Ensuring the Authenticity and Accuracy of Submitted Documents**

In addition to verifying identities, the notary is also responsible for ensuring that the documents submitted by the parties are genuine and free from elements of forgery. This aligns with the provisions of Article 16 of Law Number 2 of 2014, which stipulates that the notary must examine the completeness and accuracy of the received documents, including agreements, powers of attorney, and other documents related to the creation of authentic deeds. If the documents do not comply with applicable legal provisions, the notary must refrain from preparing an authentic deed based on such documents. For instance, in a property sale transaction, the notary must verify the validity of the land certificate, the owner's identity, and other foundational documents. If the documents are found to be forged or invalid, the notary is obligated to refuse the preparation of an authentic deed based on these documents. This duty aims to prevent fraud or losses for third parties relying on the deed's validity.

### 3. Providing Explanations to the Parties

Notaries are also obligated to provide clear explanations to the parties about the contents of the deed to be prepared. In this regard, the notary is not merely a party drafting the agreement but also acts as an information provider, ensuring that all involved parties understand the content and legal consequences of the agreement they are about to sign. Article 15 of Law Number 2 of 2014 stipulates that notary must explain the essential points stated in the deed so that the parties can make informed decisions and be aware of the legal consequences of the agreement they intend to undertake.

### 4. Drafting Authentic Deeds with High Evidentiary Power

One of the main functions of an authentic deed is to serve as a valid evidence tool with higher evidentiary power compared to deeds not prepared by an authorized official. Article 1870 of the Indonesian Civil Code (KUHPperdata) states that an authentic deed holds perfect evidentiary power, meaning its contents are considered true unless proven otherwise. The notary is responsible for ensuring that the deed they prepare complies with legal provisions and can be used as valid evidence in court, if necessary. Thus, deeds prepared by notaries have strong evidentiary value and can serve as legitimate legal references in dispute resolution.

### 5. Adhering to Applicable Legal Procedures

In carrying out their duties, notaries are also required to adhere to applicable legal procedures. This includes fulfilling administrative and reporting obligations mandated by law, such as recording and storing deeds that have been prepared. Article 16 of Law Number 2 of 2014 regulates the notary's obligation to store and document deeds for a specified period. If the deed is needed for legal purposes in the future, the notary must be able to provide access to it for the entitled parties.

In addition to ensuring the validity of documents and identities, notaries are also responsible for preventing the use of forged documents in the preparation of authentic deeds. Article 263 of the Indonesian Criminal Code (KUHP) outlines criminal penalties for document forgery, which can be imposed on anyone who deliberately creates or uses forged documents for specific purposes. If a notary is found to have intentionally or negligently been involved in preparing a deed based on forged documents, they may face criminal sanctions as stipulated in the KUHP. Therefore, notaries must exercise a high level of vigilance and the ability to detect forged documents and follow strict document examination procedures to avoid involvement in unlawful acts.

## 3.2 Notary's Responsibility for Forged Documents in Making Authentic Deeds

One of the primary responsibilities of a notary is to ensure that the documents used as the basis for creating authentic deeds are valid and genuine. However, fraudulent documents occasionally manage to pass through the notary's verification process. Research findings indicate

that there are numerous cases where notaries are involved in drafting authentic deeds based on fraudulent documents. Nevertheless, not all of these cases result from negligence or intentional acts by the notary. Several factors contribute to such negligence, including a lack of understanding or skills in detecting counterfeit documents and pressure from parties with vested interests in creating illegitimate documents.

In this context, the notary's responsibility becomes critically important. If a notary is found to be involved in drafting a deed based on fraudulent documents, they may face legal sanctions, both criminal and civil. According to Article 263 of the Indonesian Criminal Code (KUHP) on Document Forgery, a notary who deliberately creates a deed based on a counterfeit document can face severe criminal penalties. On the other hand, if the document forgery results in material losses for other parties, the notary may also be sued in civil court to compensate for the damages caused by their actions.

Notaries play a crucial role in Indonesia's legal system, particularly in the creation of authentic deeds that hold legal force as valid evidence. In carrying out their duties, notaries are responsible for ensuring that the deeds they draft are lawful, accurate, and free of any elements of forgery. When it is discovered that documents used in drafting an authentic deed are counterfeit, the notary must face significant legal consequences, both criminal and civil. The notary's responsibility regarding counterfeit documents is governed by various laws and regulations in Indonesia.

### **1. Criminal Responsibility: Forgery of Documents**

If a notary intentionally drafts an authentic deed based on a forged document, they may be subject to criminal sanctions. Article 263 of the Indonesian Criminal Code (KUHP) governs document forgery, which applies to anyone who intentionally creates forged documents or uses them for specific purposes. In this context, a notary is responsible for verifying the authenticity of documents received. If the document turns out to be forged and the notary fails to conduct adequate verification, they may face penalties under this provision. Article 263 KUHP states: "Anyone who, with the intention of unlawfully benefiting themselves or others, creates a forged document or falsifies a document that appears to be made by another person, an authorized official, or contains a signature that is not genuine, shall face imprisonment."

In this context, the notary, as an authorized official, is expected to verify the authenticity of the documents they receive. If the notary knows or should reasonably know that the document used to create the authentic deed is forged, they may be subject to criminal penalties under this article.

#### **Forgery of Deeds**

In addition to document forgery, drafting an authentic deed based on a forged document may also be prosecuted under Article 264 KUHP, which addresses the creation of forged deeds by authorized officials. A notary who deliberately drafts a deed based on a forged document can face criminal sanctions, including imprisonment, if found guilty of violating this legal provision. Article 264 KUHP states:

"Anyone who intentionally creates a forged deed or a deed not consistent with the facts, signed by an authorized official, to benefit themselves or others, may be subject to criminal prosecution." If a notary drafts a deed that should not be valid because it is based on a forged document, they may be prosecuted under this article, whether the forgery was intentional or due to negligence.

### **2. Civil Responsibility: Losses Incurred**

Apart from criminal sanctions, a notary may also face civil liability if drafting an authentic deed based on a forged document causes harm to another party. Under Article 1365 of the Indonesian Civil Code (KUHPperdata), any act that violates the law and causes harm to another party grants the injured party the right to seek compensation. If a deed drafted by a notary based on a

forged document results in losses to a third party, such as in a property transaction, the injured party may hold the notary accountable for damages caused by their actions. Article 1365 KUHPerdata states:

"Any unlawful act that causes harm to another person obliges the perpetrator to compensate for the damage." In this context, the notary may be held liable for damages if a third party relies on a deed that is later proven to be based on a forged document. Although the deed was drafted by the notary, the injured party may sue the notary if negligence or misconduct is proven in the drafting process.

### **3. Ethical and Professional Responsibility**

In addition to criminal and civil liabilities, notaries also have ethical and professional responsibilities in carrying out their duties. A notary must maintain the integrity of their profession by ensuring that the deeds they draft are valid and do not violate the law. Law No. 2 of 2014 on the Office of the Notary stipulates that notary must act with due diligence and avoid involvement in acts that contradict the law or moral principles. If a notary is found to have participated in drafting a deed based on a forged document, they may face administrative sanctions, including the revocation of their license by the Notary Supervisory Council (Majelis Pengawas Notaris, MPN). Article 66 of Law No. 2 of 2014 grants the Notary Supervisory Council the authority to impose administrative sanctions, including revocation of a notary's status, if they are proven to have committed ethical or professional violations that harm the public and the legal system.

#### **3.3 Legal Impact of Using Fake Letters in Making Deeds**

The use of forged documents in the creation of authentic deeds can have significant legal consequences. A deed based on a forged document will lose its validity and, in many cases, may be considered null and void by law. This situation can result in substantial losses for the parties involved in the creation of the deed and for third parties relying on its validity. For instance, in a property sale transaction, if the deed of sale is based on a forged document, the buyer may lose ownership rights to the purchased property. Furthermore, if a deed created based on a forged document is used in the context of an agreement or contract with a third party, that third party may sue the parties involved for any resulting damages. Additionally, if the act of forgery involves a notary, the reputation and credibility of the notary profession may be tarnished, ultimately undermining public trust in the notarial institution as a whole.

The creation of authentic deeds based on forged documents constitutes an unlawful act. According to Chazawi & Ferdian, such an unlawful act, in the context of criminal law, refers to conduct prohibited by law and subject to criminal sanctions, with its elements being:

1. Objective elements are elements that originate from outside the human self, namely in the form of:
  - a) Actions which are not subject to and prohibited by law such as forgery of documents, perjury, embezzlement.
  - b) Certain prohibited consequences such as murder, torture.
  - c) Special circumstances prohibited by law such as sedition, violating morality.
2. Subjective elements, objective elements are elements that originate from the human being himself

In relation to the criminal elements, Article 263 of the Criminal Code concerning forgery of authentic Notary deeds cannot be punished with certain articles. However, the Notary can be subject to criminal sanctions based on the provisions of Article 246 of the Criminal Code because this article stipulates that the sanctions are aggravated because the object of this forgery is an authentic deed which basically actually has perfect proof, which in the contents of the deed contains the actual truth.

If someone intentionally orders/orders a Notary in making the authentic deed to include false information, then criminal sanctions can be imposed, namely Article 266 of the Criminal Code. In Law Number 2 of 2014 concerning the Position of Notary relating to forgery of authentic deeds, there are no special regulations governing it, so if a Notary is blamed in an authentic deed that causes losses to one of the parties where there is false information in the deed, this will cause confusion whether the Notary will indeed do it intentionally or through negligence from the Notary. In this regard, Notaries can also be punished and are not immune from the law. Notaries can be punished criminally if it is proven in court that the Notary intentionally together with the parties or one of the parties did something that could be detrimental.

## CONCLUSION

Based on the explanation above, the conclusion is that the Notary has a very important role in ensuring the validity of the authentic deed made, because the deed has high evidentiary power and becomes valid evidence in court. The role of the notary includes verifying the identity of the parties, examining the submitted documents, providing explanations to the parties, and ensuring that the deed made is in accordance with applicable legal provisions. In making an authentic deed, the notary is responsible for preventing the use of fake letters and must act with caution to maintain the integrity of his profession. The notary's responsibility for fake letters is very large. If proven to be involved in making an authentic deed based on a fake letter, the notary can be subject to criminal and civil sanctions. Articles 263 and 264 of the Criminal Code (KUHP) regulate the forgery of letters and the making of fake deeds which can ensnare notaries with imprisonment. In addition, notaries can also be subject to civil liability under Article 1365 of the Civil Code if losses occur due to the making of a deed based on a fake letter. In addition, the ethical and professional aspects of notaries are also an inseparable part, where the Notary Supervisory Board has the authority to impose administrative sanctions. The legal impact of using fake letters in making authentic deeds is very large, both for the parties involved and third parties who rely on the validity of the deed. Deeds made based on fake letters can be considered null and void and cause significant losses. Therefore, notaries need to carry out their obligations and responsibilities with great care, to ensure that the deeds made are not only legally valid, but also free from elements of forgery that can harm other parties. A notary profession with integrity is very important to maintain public trust in the legal system in Indonesia.

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## REFERENCES

- [1] R. N. Afif, A. M. Ihsan, and D. E. K. Putri, "Akibat Hukum Bagi Notaris Terhadap Penyalahgunaan Keadaan Dalam Pembuatan Akta Autentik," *J. Ilmu Kenotariatan*, vol. 5, no. 1, pp. 45–61, 2024.
- [2] M. S. Bashori, "Pertanggung Jawaban Pidana Bagi Notaris Yang Melakukan Tindak Pidana Pemalsuan Surat Dalam Pembuatan Akta Otentik," *J. Supremasi*, p. 3, 2016.
- [3] A. Chazawi, "Kejahatan Mengenai Pemalsuan," 2005.
- [4] H. S. Flora, "Tanggung Jawab Notaris Pengganti Dalam Pembuatan Akta," *Kanun J. Ilmu Huk.*, vol. 14, no. 2, pp. 179–199, 2012.
- [5] H. Mochtar, *Hukum Notariat di Indonesia*. Jakarta: Sinar Grafika, 2013.
- [6] I. L. Ridawati, E. Purwaningsih, and I. Santosa, "TANGGUNG JAWAB NOTARIS ATAS PENGGUNAAN DOKUMEN PALSU DALAM PEMBUATAN AKTA AUTENTIK," *J. Res Justitia J. Ilmu Huk.*, vol. 3, no. 1, pp. 99–115, 2023.
- [7] M. A. Ahyar, *Hukum Administrasi Negara*. Yogyakarta: UGM Press, 2017.

- [8] G. Gunawan and E. R. M. Putra, "Perlindungan dan Pendampingan Hukum Kekayaan Intelektual dalam Pendaftaran Merek Dagang bagi Pelaku UMKM di Desa Cililin," *AL-MANHAJ J. Huk. dan Pranata Sos. Islam*, vol. 5, no. 1, pp. 891–898, 2023.
- [9] H. S. Salim, *Perkembangan teori dalam ilmu hukum*. Rajawali Pres, 2010.
- [10] I. M. D. Sanjaya, I. A. P. Widiati, and N. K. S. Astiti, "Tanggung Jawab Notaris terhadap Pembuatan Akta Otentik yang Didasari Surat Palsu," *J. Konstr. Huk.*, vol. 1, no. 2, pp. 300–304, 2020.
- [11] M. Soedjono and H. Sidharta, *Hukum Perdata: Akta Otentik dan Tanggung Jawab Notaris*. Bandung: Refika Aditama, 2015.
- [12] L. S. Widayati, "Peran whistleblower dalam pengungkapan kasus suap pegawai pajak," *Info Singk. Hukum*, IV, vol. 14, pp. 1–4, 2012.

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