

## Responsibility of the Notary for the False Identity of the Petitioner on the basis of which the Deed is drawn up

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**Abstract.** *This study aims to find out and analyze the responsibility of a notary against the fake identity of the applicant which forms the basis for making the deed, to find out the legal consequences for the fake identity used as the basis for making the deed. The approach method in this thesis is Normative Juridical Research, namely: Normative Juridical Research, namely research that examines and is guided by various applicable laws and regulations. The results of research that researchers have done, that 1). Responsibilities of the Notary Against the False Identity of the Applicant Used as the Basis for Making the Deed are as follows: a). Civil Notary Responsibilities That all regulations regulated in the UUJN only provide sanctions for violations of formal notaries, for example the rules for issuing certificates and others. But, the notary also has responsibility for the material in the deed he issued. On the notary's authority in providing legal advice to appearers (Article 15 letter e UUJN). The notary has responsibility from a civil perspective in the material truth in the deed he publishes. b). The Notary's Criminal Responsibility that a criminal act is an act that is not permitted by a legal regulation, the prohibition is followed by a threat, namely a sanction that has a certain criminal form for anyone who commits the violation. In carrying out his position as a Notary, the crime in question is a crime carried out by a Notary as a public official who has the authority to issue authentic deeds regulated in UUJN. c). Notary Responsibilities based on UUJN Article 65 UUJN states that the Notary has responsibility for the deed issued even though the Notary protocol has been submitted to the recipient of the protocol d). Responsibilities of a Notary based on the Code of Ethics As a public official, a Notary in carrying out his duties cannot be separated from ethics. 2). Legal Consequences for Notarial Deeds Made Based on False Statements, namely that a Notary deed which has the power of proof as a private deed, if it is stated explicitly in the relevant article and which is not stated explicitly in the relevant article, including as a deed becomes null and void by law .*

**Keywords:** *Authentic; Deed; Identity; False.*

## **1. Introduction**

Notary is an official authorized to make Authentic Deeds regarding all actions, agreements and stipulations that are required by laws and regulations or that are desired by interested parties to be stated in authentic deeds, guarantee certainty of making deeds, provide grosse, copies and quotations of deed, all as long as the making of the deeds is not also assigned or excluded to other officials or other people or other people determined by law as stipulated in Article 15 paragraph 1 of Law Number 30 of 2004 Concerning the Position of Notary juncto Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN).

Notaries also have the authority to assist the government in serving the community in guaranteeing certainty, order and legal protection through authentic deeds made by or before him, considering that authentic deeds made by or before him, considering that authentic deeds are the strongest evidence and have juridical value which essential in every legal relationship when there is a dispute in people's lives. An authentic deed drawn up by a notary is a means of proof to state the existence of a legal act committed by the appearer.

As a means of evidence, an authentic deed is said to have perfect evidentiary power because it has three evidentiary powers, namely outward evidentiary strength, formal evidentiary strength, and material evidentiary strength. The strength of external proof (*uitwendige bewijskracht*) is the ability possessed by an authentic deed to prove its validity as an authentic deed that was born in accordance with the legal provisions regarding the requirements of an authentic deed. Strength of formal proof (*formele bewijskracht*), namely the ability to provide certainty that an event and fact mentioned in the deed was indeed carried out, related to the date or time of manufacture, the identity of the appearers, the signatures of the appearers, witnesses and notaries, the place of manufacture deed, as well as information or statements seen, witnessed, heard or conveyed by the appearer. Strength of material proof of a deed.<sup>1</sup>

Notaries in carrying out their duties and positions authorized to make authentic deeds can be burdened with responsibility for their actions, this is in accordance with Article 1 point 1 UUJN. This responsibility is a basic willingness to carry out its obligations. The notary's responsibility includes the material truth of the deed he made. The notary is not responsible for negligence and errors in the contents of the deed made before him, but the notary is only responsible for the formal form of the authentic deed as required by law. Every authority given to a notary must be based on legal rules as a limitation so that the position can run well and does not collide with the authority of other positions. Thus if a notary performs an action beyond the authority that has been determined, can be categorized as an act that violates authority. Then the notarial deed is not legally binding or cannot be implemented.

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<sup>1</sup>Sjaifurrachman and Habib Adjie, 2011, *Aspects of Notary Liability in Making Deeds*, Bandung, Mandar Deed, p. 116-118.

With the coming into effect of the Notary Office Law, it is hoped that an authentic deed drawn up by/or before a notary is able to guarantee certainty, order and legal protection. In the Notary Office Act, it has been regulated regarding the Authority of a Notary in Article 15 paragraph (1) UUIJN which states the following matters. "The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations deed. All of this as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law.

Notaries in carrying out their duties and authorities for the implementation of service functions and achieving legal certainty in providing services to the public have been regulated in Article 1 point 1 Act No. 30 of 2004 concerning the position of notary has been amended by Act No. 2 of 2014 concerning amendments to the Law on Notary Position hereinafter referred to or both as UUIJN it is stated that: "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws".

The notary makes a deed based on evidence, information or statements of the parties stated, explained or shown to the notary. Notaries also play a role in providing legal advice to parties related to existing problems. Whatever advice the notary gives to the parties which is then poured into the relevant deed, this remains as the wish and statement of the parties. Related to the profession of office, in practice it is found that often a deed as a product of a notary is questioned by the parties who appear before the notary or other third parties. Notaries are often also summoned as witnesses or suspects in the investigation process. In fact, it is not uncommon for a notary to become a defendant or co-defendant in a civil court process. The problem that often occurs is the discrepancy between the contents of the deed and the facts. This problem arises because the notary is not careful in making an authentic deed. In this case, the notary is passive when making an agreement or deed.

Various mistakes experienced by a notary in making a deed can be caused by the notary himself. This can also be caused by the parties being dishonest in providing information or providing false information, causing harm to one of the parties. In fact, it causes its own losses to the notary who makes an agreement. This requires the notary to be held accountable for his actions, in the form of civil sanctions, administrative sanctions, and criminal sanctions. There are at least seven matters related to notary products so that it is not uncommon for notaries to be involved in a vortex of cases, which are described below:

1. The deed is made with the condition that the parties do not face each other.
2. Identity data from one of the parties in the deed is considered incorrect, or is considered to provide false information.

3. Data regarding the promised object is not in accordance with the actual facts. This caused one of the parties to be deemed to have provided false information so that the notary was dragged along as the party who made the deed of agreement.
4. The data provided by one or both parties is incorrect so that the notary deed issued is considered a fake deed. Commonly used traps are entering false data into authentic deeds or falsifying documents.
5. There are two outstanding deeds between the parties, which have the same number and date but different contents.
6. The signature of one of the parties in the minuteuta is forged.
7. The appearer uses someone else's identity.

Of course, a notary who makes a deed not in accordance with the facts can be held responsible both civilly, administratively and criminally. This is in line with Hans Kelsen's view that a concept related to the concept of legal obligation is the concept of legal responsibility (liability). Someone said to be legally responsible for a particular action is that he can be subject to a sanction in the case of the opposite act. In addition to forms of criminal, civil and administrative responsibility, the notary profession is also known for the existence of a Notary Supervisory Council which is primarily tasked with supervising the performance of a notary so that it remains within the scope of the notary's code of ethics. Based on the problems that have been described, several problem formulations related to this research can be drawn.

Based on the practice in the field, there are many found, if there is a notarial deed that is disputed by the appearer or other third party, then often the notary is also withdrawn as a party who participated in committing or assisting in committing a crime, namely making or giving information. Notary is a legal profession so that the profession Notary is a noble profession (*nobile officium*). A deed made by a notary can be a legal reason for the status of a person's property, rights and obligations. Mistakes on the deed made by a notary can cause someone's rights to be revoked or someone to be burdened with an obligation. Therefore, a notary in carrying out his/her duties must comply with the various provisions stipulated in the Notary Office Act.

The notary intentionally or unintentionally together with the parties/ appearers to draw up a deed with the intent and purpose of benefiting only certain parties or appearers or harming other appearances must be proven in court. Notary deed made in accordance with the wishes of the appearer who has an interest in ensuring or guaranteeing the rights and obligations of the appearer to a public official (Notary).

The notary is obliged to include in the deed what has really been understood according to the will of the appearer and read to the appearer the contents of the deed. The statements or statements of the parties are written by a notary in a notarial deed. So that in civil cases, an authentic deed is binding and coercive evidence, meaning that the judge must assume that all legal events stated in the

authentic deed are true, unless there is other evidence that can eliminate the strength of the proof of the deed.<sup>2</sup>

The notarial deed has perfect evidentiary power so that if there is a person or party who judges or declares the deed to be incorrect, then the person or party who evaluates or declares is obliged to prove his judgment or statement in accordance with the law.<sup>3</sup>

However, it is not a secret that notaries are often summoned to court to provide information on disputed deeds or letters. This raises the question of whether the notary has acted inconsistently with the laws and regulations and the notary's code of ethics or whether there was a mistake either intentionally or unintentionally by the parties or one of the parties to try to commit a fraudulent act resulting in loss to the other party by providing information. and invalid documents.

Based on the UUJN, it is regulated that when a Notary in carrying out his/her duties has committed an offense that causes deviation from the law, the Notary may be subject to sanctions, namely in the form of civil, administrative or Notary Code of Ethics. However, notaries often make letters based on the information presented by the appearer or the party who wants the authentic letter or deed without knowing the truth in the field or even the Notary is wrong in including the information desired by the appearer.

The deed drawn up by a notary must contain the conditions necessary to achieve the authentic nature of the deed, for example, when reading the deed, it is explained that the identities of the parties must be stated, making the contents of the agreement desired by the parties, signing the deed and so on. But if these conditions are not met then the deed can be canceled or null and void by law.

The importance of the role of the Notary is given by the State, where the Notary as a public official is required to be responsible for the deed he made. Because a Notary must comply with applicable regulations, namely the Law on the Position of Notary and obey the code of ethics of the legal profession. The code of ethics referred to here is the Notary's code of ethics. If the deed made later turns out to contain a dispute then this needs to be questioned, whether this deed was a notary's mistake intentionally to benefit one of the appearers or the fault of the parties who did not provide the actual documents.

The deed made/issued by a notary contains legal defects due to a notary's mistake either due to negligence or on purpose by the notary himself, so the notary must provide moral and legal accountability. And of course this must first be proven. Therefore, the purpose of making a deed before a notary is as strong evidence if one day there is a dispute between the parties or there is a civil lawsuit or criminal charges from another party.

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<sup>2</sup>Abdul Ghofur Anshori, 2009, Indonesian Notary Institute, Legal and Ethical Perspective, UII Press, , Yogyakarta p. 46.

<sup>3</sup>Habib Adjie, 2008, Notary Law in Indonesia-Thematic Interpretation of Law no. 30 of 2004 concerning the Office of a Notary, Refika Aditama, Bandung, p.14.

Referring to the examples of problems in this case, examples of cases of problems that brought Notaries to the realm of lawsuits occurred in the establishment of PT. TMS domiciled in Bombana, East Kabaena Regency. In the case of irregularities related to the deed of establishment of PT. TMS that in making the deed did not involve shareholders which were held through an Extraordinary General Meeting of Shareholders (EGMS) made before Notary RR, SH, M.Kn so that in the deed of establishment there was falsification of data on the identity of the founder of PT. TMS.

Based on this, the person concerned as a shareholder argued that there was a flaw in the will in the establishment of PT. TMS because one of the founders of PT. TMS provides false identity data when making the deed of establishment before a Notary. When making the deed, the parties requesting to have the deed of establishment drawn up before a notary used a false identity or were not shareholders and directors at PT.TMS.

The occurrence of a civil lawsuit or criminal charge from one of the parties does not rule out the possibility that the notary will be involved in the problems of the litigants regarding the deed made by the notary. In practice, it is often found that if there is a notarial deed disputed by the parties or other third parties, then the notary is often withdrawn as a party that participated in committing or assisting in committing a crime, namely making or providing false information in a notary deed. In this case, the notary, intentionally or unintentionally, together with the parties/appearers to draw up a deed with the intent and purpose to benefit only certain parties or appearers or harm other appearers must be proven in court.<sup>4</sup>

## **2. Research Methods**

The method of this approach is Normative Juridical Research, namely Normative Juridical Research, namely research that examines and is guided by various applicable laws and regulations. In this study, the writer used a case study research method. Provides a review that the case study is a more suitable strategy when the subject matter of a research, when the researcher has little opportunity to control the events to be investigated, and when the research focus lies on contemporary (present) phenomena in real-life contexts.<sup>5</sup> Sources of data come from primary data, secondary data and tertiary data. Data collection methods include Library Research (Library Research) i.e. the process of collecting secondary data to answer the problems that have been formulated by analyzing library materials related to the problems studied, both sourced from primary, secondary and tertiary legal materials.<sup>6</sup>

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<sup>4</sup>Habib Adjie, 2008, Notary Law in Indonesia: Thematic Interpretation of Law No.30 of 2004 Concerning the Position of Notary Public, Refika Aditama, Bandung, p.78.

<sup>5</sup> Robert K. Yin, 2008, in his book entitled Case Studies, Design & Methods, Edition 1, print 12, Raja Grafindo Persada, Jakarta, p. 37

<sup>6</sup>Muhammad Nazir, 1988, Research Methods, Ghalia Indonesia, Jakarta, p. 111

### 3. Results and Discussion

#### 3.1. Responsibility of the Notary Against the False Identity of the Petitioner Used as the Basis for Making the Deed

UUJN gives authority to notaries to provide legal counseling in connection with the making of deeds with the aim that the parties can understand the applicable law, so that the law can institutionalize and even animate each of the parties concerned. The goal is not just to provide information or explanations about the law that needs to be known, but to try to foster and increase the legal awareness of the parties concerned, so that legal compliance and compliance arises, on the basis of the assumption that the law is in accordance with applicable values or which he adheres to.<sup>7</sup>

The position of Notary has two essential characteristics and characteristics, his impartiality and independence in providing assistance to his clients is a credo, a belief, that these two characteristics are attached to and identical with the behavior of the perpetrators of this position. Thus the Notary in carrying out his duties:<sup>8</sup>

1. Is independent (autonomous);
2. Not taking sides with anyone (impartial);
3. Does not depend on anyone (independent), which means that in carrying out the duties of his position cannot be interfered with by the party who appointed him or by other parties.

The position of a Notary as an honorable position and having a very important role in society certainly requires that those who hold this position have qualified qualities both scientifically and in leadership. This is reflected in one of the requirements for the appointment of a Notary stated in Article 3 letter e of the UUJN, namely "Having a Bachelor of Laws degree and graduating from the Notary degree level two".<sup>9</sup>

In carrying out his position professionally it is increasingly important because the position of a notary as a public official deals directly with the interests of the community in providing assistance or services. If this is not given properly or professionally, then later there are parties who are harmed as a result of the law from mistakes or negligence that have been made by a notary.<sup>10</sup>

Notary as an independent state institution is a legal subject, as a supporter of legal rights and obligations, which has a legal position, namely as an extension of the government that serves the needs of the community in making authentic

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<sup>7</sup>Budiono, Herlien, 2013, Collection of Civil Law Writings in the Notary Field Second Book, Citra Aditya Bakti, Bandung, p. 281.

<sup>8</sup>Habib Adjie, 2008, Notary Law in Indonesia: Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary, Refika Aditama, Bandung, p. 16.

<sup>9</sup>Huddhan Ary Karuniawan, "The Legitimacy of Giving Barcodes to Minuta Deeds and Copy of Notary Deeds", Journal of Legal Communications, Volume 4 Number 2 August 2018.

<sup>10</sup>Putra Ferdiansyah, "Legal Protection of Parties Aggrieved by Legal Counseling by Notaries", Journal of Legal Communications, Volume 4 Number 2 August 2018.

deeds. As a legal subject, a Notary can carry out legal actions, namely actions that are relevant to the law or actions that can cause legal consequences.

Every form of legal action will definitely lead to legal consequences, both positive and negative. Negative legal consequences have relevance to liability because they can lead to claims from parties affected by negative legal consequences which usually cause losses from that party. The responsibility of a notary in UUJN is intended as a notary's attachment to legal provisions in carrying out his duties and obligations, in the sense that all actions of a notary in carrying out his duties must be legally accountable, including with all the consequences to be subject to legal sanctions for violations of norms. the underlying law.

When the deed made by the notary later becomes problematic or causes harm to one of the parties to the deed, then in this case the notary cannot be directly blamed or held accountable, because the notary's deed is the wish and request of the parties, not suggestions or the notary's opinion, but the contents of the deed are the actions of the parties and not the deeds or actions of a notary.

The party who feels aggrieved and who wants to sue the notary must first be able to prove the following:

1. There is suffering loss;
2. Between the loss suffered and the violation or negligence of the notary there is a causal relationship;
3. The violation (action) or negligence is caused by an error that can be accounted for by the notary concerned.

The conditions described above also apply to the Deed of Establishment of a Limited Liability Company which contains defects of will due to false statements from the appearer. In principle, a notary is passive in serving the parties facing him. The notary is only tasked with recording or writing down in the deed what the parties explained, and has no right to change, reduce or add to what the appearers explained. The elucidation part of the UUJN which states that an authentic Deed essentially contains a formal truth in accordance with what the parties have notified the Notary.

This was also confirmed through the Supreme Court Jurisprudence in the Supreme Court Decision Number 702 K/Sip/1973 dated September 5, 1973 which stated "...the function of a Notary is only to record/write down what is desired and stated by the parties who appear before the Notary. There is no obligation for the Notary to investigate materially anything (matters) raised by the appearer before the Notary". So that therefore the false statements submitted by the appearers are fully the responsibility of the appearers and the Notary in this case is neither responsible nor can he be held liable for any losses arising from the existence of false statements by the appearers.

PT is a legal entity whose establishment has been regulated in Article 7 paragraph (1) UUPT, must be based on an agreement made by 2 (two) people or



more, where the agreement must still fulfill the elements of a valid agreement requirements as regulated in Article 1320 of the Civil Code, namely :<sup>11</sup>

1. Agree those who bind themselves;
2. The ability to make an engagement;
3. A certain thing;
4. A lawful reason.

The person referred to in Article 7 paragraph (1) of the Company Law can be interpreted as an individual or legal entity, both Indonesian legal entities and foreign legal entities. In the agreement, they still have to comply with the legal provisions of the agreement set out in the Third Book of the Civil Code regarding General Provisions in Article 1313. The form of the deed of establishment of a PT must also be in the form of a notary deed drawn up in the Indonesian language, in other words, in this case the notary plays a role in making the deed of establishment of a PT. , which functions as probationis causa and solemnitas causa.<sup>12</sup>

A Limited Liability Company can also be interpreted as an association of shareholders created by law and enforced as an artificial person by the court, which is a legal entity and therefore completely separate from the people who founded it by having the capacity for continuous existence and as a legal entity, a limited liability company has the authority to receive, hold and transfer assets, sue or be sued and carry out other authorities granted by applicable law.<sup>13</sup>

This understanding is then refined in Article 1 point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter abbreviated as UUPT) which reads:<sup>14</sup>

"In this Law what is meant by a limited liability company, hereinafter referred to as a company, is a legal entity established based on an agreement, carrying out business activities with an authorized capital which is entirely divided into shares, and fulfilling the requirements stipulated in this law and its implementing regulations"

The formulation of Article 1 number 1 of the Limited Liability Company Law expressly states that a Limited Liability Company is a legal entity. This formulation certainly has the consequence that as a legal entity, a Limited Liability Company has the characteristics and ability to act as a legal entity.<sup>15</sup>

Wirjono Prodjodikoro put forward the notion of a legal entity as a body which in addition to being an individual person is also considered to be able to act within the law and which has rights, obligations and legal relations with other people or

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<sup>11</sup>Code of Civil law

<sup>12</sup>M. Yahya Harahap, 2016, Limited Liability Company Law cet.6, Sinar Graphic, Jakarta, p.169

<sup>13</sup>Munir Fuady, 2003, New Paradigm Limited Liability Company, Citra Aditya Bakti, Bandung, p.2

<sup>14</sup>Limited company law

<sup>15</sup>Gunawan Widjaja, 2002, Business Law Series Responsibilities of Directors for Company Bankruptcy, Raja Grafindo Persada, Jakarta, p. 15

entities.<sup>16</sup>A legal entity is an artificial person, namely something that is created by law to meet the development needs of people's lives.

These provisions can be found in the provisions stipulated in Article 519 of the Civil Code (KUHPPerdata). From the provisions of this article it can be seen that other than the State which can become the owner as a legal subject, are ordinary individuals, either in individuals or more, or a unitary entity as a legal entity.<sup>17</sup>

Referring to the examples of problems in this case, examples of cases of problems that brought Notaries to the realm of lawsuits occurred in the establishment of PT. TMS domiciled in Bombana, East Kabaena Regency. In the case of irregularities related to the deed of establishment of PT. TMS that in making the deed did not involve shareholders which were held through an Extraordinary General Meeting of Shareholders (EGMS) made before Notary RR, SH, M.Kn so that in the deed of establishment there was falsification of data on the identity of the founder of PT. TMS.

Based on this, the person concerned as a shareholder argued that there was a flaw in the will in the establishment of PT. TMS because one of the founders of PT. TMS provides false identity data when making the deed of establishment before a Notary. When making the deed, the parties requesting to have the deed of establishment drawn up before a notary used a false identity or were not shareholders and directors at PT.TMS.

The defect of will states that if the parties do not commit related fraud then the person concerned will not make the agreement. The provisions of Article 1328 of the Civil Code which states: "Fraud is a reason to cancel an agreement, if the fraud used by one of the parties is such that it is obvious that the other party will not enter into the agreement without deception. .

The birth of the responsibility of a notary is inseparable from the obligations and authority for those who are carried. A Notary is charged with responsibility for the formal, material correctness of the deed he made if the Notary is proven in court that the Notary committed carelessness or was intentional to the detriment of the parties. Regarding accountability for the deeds he made, the Notary remains responsible for all the deeds until the Notary retires. Accountability deed is divided into four, namely:

#### 1. Civil Notary Responsibilities

All regulations stipulated in the UUJN only provide sanctions against notary violations of a formal nature, for example the rules for issuing deed and others. However, the notary also has responsibility for the material in the deed he publishes. On the notary's authority in providing legal advice to appearers (Article 15 letter e UUJN).

#### 2. Notary Criminal Responsibilities

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<sup>16</sup>Gunawan Widjaja, 2008, Legal Risk as Directors, Commissioners & PT Owners, Friends Forum, Jakarta, p.13

<sup>17</sup>*Ibid.*,p.1

A criminal act is said to be an act that is not permitted by law, and if there is a violation related to this prohibition, it will be accompanied by sanctions, in the form of certain crimes. In carrying out his position as a Notary, the crime in question is a crime carried out by a Notary as a public official who has the authority to issue authentic deeds regulated in UUJN.

3. Notary Responsibilities based on UUJN Article 65 UUJN states that the Notary has responsibility for the deed issued even though the Notary protocol has been handed over to the recipient of the protocol. In this article, it is explained that the Notary bears an accountability for the deed based on UUJN.

4. Responsibilities of a Notary based on the Code of Ethics As a public official, a Notary in carrying out his duties cannot be separated from ethics.

### **3.2. Legal Consequences of Notarial Deeds Made Based on False Statements**

Authentic deed as the strongest and most complete evidence has an important role in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, and others, the need for written evidence in the form of authentic deeds is increasing in line with the growing demand for legal certainty in various economic and social relations, both at the national, regional and global levels. .

With the existence of an authentic deed that clearly determines the rights and obligations of each party, it is hoped that it will be able to guarantee legal certainty and at the same time it is also expected to be able to avoid disputes. Or if the dispute can no longer be avoided, it is hoped that an authentic deed which is the strongest and most complete written evidence will make a real contribution to solving cases cheaply and quickly.

In order to guarantee legal certainty, authentic written evidence is needed regarding circumstances, events or legal actions that can be obtained through making a deed before a Public Official, namely a Notary.<sup>18</sup>This is in accordance with the formulation of Article 1868 which states that: "An authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made".

According to Habib Adjie, Article 1868 BW provides limitations in terms of what is meant by an authentic deed:<sup>19</sup>

1. The deed must be made by (door) or before (ten overstaan) a Public Official;
2. The deed must be made in the form determined by law;
3. Public servants (public officials) by or in front of whom the deed was drawn up, must have the authority to make the deed.

Notaries in carrying out their duties and obligations must be in accordance with the applicable laws and regulations, obligations are something that must be

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<sup>18</sup>Utomo, Hatta Isnaini Wahyu, 2019, Understanding the Implementation of the Duties of the Land Deed Official, Phoenix Publisher, Yogyakarta, p. 41

<sup>19</sup>Habib Adjie, 2011, Cancellation and Cancellation of Notary Deed, Refika Aditama, Bandung, p. 33.

carried out so that the deed made becomes an authentic deed. Notaries as public officials are tasked with providing services to members of the public who need their services in making written evidence, especially in the form of authentic deeds in the field of civil law. The existence of a Notary is an implementation of the law of evidence.<sup>20</sup>

Deeds made by a Notary can be a legal basis for the status of a person's property, rights and obligations. Mistakes on the deed made by a Notary can cause someone's rights to be revoked or someone's burden of an obligation. Authentic deed essentially contains formal truths in accordance with what the parties notify the Notary. However, the Notary has the obligation to ensure that what is contained in the Notary Deed is really understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the Notary Deed become clear, as well as providing access to information, including access to statutory regulations. related to the parties signing the deed.

Thus, the parties can determine freely to agree or disagree with the contents of the Notary Deed to be signed. Theoretically, an authentic deed is a letter or deed that was intentionally made officially for proof, where the proof is carried out in the event of a dispute in the future.

If a deed is an authentic deed, then the deed will have 3 (three) functions for the parties who made it, namely:

1. As proof that the parties concerned have entered into a certain agreement;
2. As proof for the parties that what is written in the agreement is the aim and desire of the parties;
3. As evidence to third parties that on a certain date unless specified otherwise the parties have entered into an agreement and that the contents of the agreement are in accordance with the wishes of the parties.

According to K. Wantjik Saleh, based on the Law an official deed has perfect evidentiary power (*Volledig Bewijs*), meaning that if a party advances an official deed, the judge must accept it and assume that what is written in the deed has really happened, so the judge may not order additional evidence.<sup>21</sup>

One form of agreement made with an authentic deed is the establishment of a Limited Liability Company (PT). In the establishment of a PT, the legal act of establishment by 2 (two) or more founders does not result in an agreement between the founders, but results in an agreement between all the founders on one side and the PT on the other.

Based on the establishment agreement, the founders are entitled to receive shares in the PT and at the same time they are required to make a full deposit for the shares they have taken.<sup>22</sup> Thus, the establishment of a PT as a capital

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<sup>20</sup>Herlien, Budiono, 2013, *Collection of Civil Law Writings in the Notary Field Second Book*, Citra Aditya Bakti, Bandung, p. 31.

<sup>21</sup>Saleh, K. Wantjik, 1981, *Civil Procedure Code (RBg/HIR)*, Ghalia Indonesia, Jakarta, p. 62.

<sup>22</sup>Tumbuan, Fred BG, "Duties and Authorities of Limited Liability Company Organs According to the Law on Limited Liability Companies", Paper, presented at the "Socialization of the Law on

partnership between the founders and/or shareholders, must comply with the legal provisions of the agreement stipulated in the Third Book of the Civil Code, especially Chapter Two, Part One concerning General Provisions for agreements (Articles 1313-1319) and Part Two regarding the terms of the validity of the agreement. (Articles 1320-1337), as well as Part Three regarding the consequences of the agreement (Articles 1338-1341).

This is confirmed in the elucidation of Article 7 paragraph (1) of the Company Law which states that the principle that applies under this law is that a company as a legal entity is established based on an agreement, therefore it has more than 1 (one) shareholder. With the existence of an agreement which is the basis for the establishment of a PT, then of course it is also subject to the legal terms of the agreement mentioned in Article 1320 of the Civil Code, namely:

- 1) There is an agreement;
- 2) Proficiency;
- 3) For a certain thing;
- 4) The reason (*causa*) is lawful.

In contract law there are certain legal consequences if subjective conditions and objective conditions are not fulfilled. If the subjective conditions are not met, then the agreement can be canceled (*vernietigbaar*) as long as there is a request by certain people or interested parties.<sup>23</sup> This subjective requirement is always overshadowed by threats to be canceled by interested parties from parents, guardians or guardians. To prevent such threats from occurring, confirmation from those concerned can be requested that the agreement will remain in force and be binding on the parties.

If the objective conditions are not met, then the agreement is null and void (*nietig*), without the need for a request from the parties, thus the agreement is deemed to have never existed and is not binding on anyone. Agreements that are absolutely null and void can also occur, if an agreement made is not fulfilled, even though the legal rules have determined that legal action must be made in a predetermined manner or contrary to decency or public order.<sup>24</sup> because the agreement has been deemed non-existent, there is no longer any basis for the parties to sue or sue each other in any way or form.<sup>25</sup>

Notary deed which is a binding agreement of the parties for those who make it. Therefore, the legal requirements of an agreement must be met. These conditions include subjective conditions related to the subject that enters into or makes an agreement, and objective conditions related to the object of the agreement. The terms of the validity of the agreement must be embodied in a notarial deed.

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Limited Liability Companies" held by the Indonesian Notary Association (INI), Jakarta, August 22, 2007

<sup>23</sup>Wirjono Prodjodikoro, 1989, Principles of Agreement Law, Bale Bandung, Bandung Wells, p. 61.

<sup>24</sup>Peter Mahmud Marzuki, 2011, Legal Research, Kencana Prenada Media Group, Jakarta, p. 132.

<sup>25</sup>R. Subekti, 2005, Law of Evidence, Pradnya Paramita, Jakarta, 2001 ---, Law of Agreement, Intermedia, Jakarta, p. 29

Subjective terms are stated at the beginning of the deed, and objective conditions are listed in the body of the deed as the contents of the deed.<sup>26</sup>The first subjective element is the existence of an agreement between the parties. What is meant by agreement is that the parties making the agreement must give their consent freely, what one party wants must be the will of the other party. Thus an agreement is reached if both parties have the same will reciprocally.

The second subjective element is the ability to act. Proficiency in general is those who are adults who are associated with age and are not placed under guardianship. False statements submitted by the appearer in the deed of establishment of the PT resulted in an agreement not fulfilling the subjective requirements of the agreement because there was a defect of will.

What is meant by agreements that contain defects in will are agreements that "at the time of their birth" contain defects in will. Articles 1322 to 1328 of the Civil Code regulate agreements that have been closed on the basis of defects in will. Into the group of agreements that contain flaws in the will in the doctrine, agreements that contain elements of heresy, coercion or fraud are included at the time the agreement is born.

In agreements that contain defects in the will, the will given in the agreement is not based on pure will (agreement), agreed there is given because he was mistaken, pressured, deceived or under the influence of other people who abuse the existing circumstances. So that this condition is not an agreement that should be given if he is not mistaken (mistaken), is not afraid of the pressure that exists, if his will is not led to an incorrect picture by the opponent's promise or his trust is not misused by the opponent's promise.

In the establishment of a PT where the agreement of the founders contains a defect of will due to a false statement submitted by one of the founders and the agreement has been included in the notarial deed, the party who feels aggrieved can file a lawsuit with the court to cancel the agreement for the establishment of the PT. The lawsuit filed by the aggrieved party can be in the form of a lawsuit to cancel the contents of the agreement that has been stated in the notarial deed.

Referring to the example of the problem in this case, the problem that brought the Notary to the realm of lawsuits occurred in the establishment of PT. TMS domiciled in Bombana, East Kabaena Regency. In the case of irregularities related to the deed of establishment of PT. TMS that in making the deed did not involve shareholders which were held through an Extraordinary General Meeting of Shareholders (EGMS) made before Notary RR, SH, M.Kn so that in the deed of establishment there was falsification of data on the identity of the founder of PT. TMS.

Based on this, the person concerned as a shareholder argued that there was a flaw in the will in the establishment of PT. TMS because one of the founders of PT. TMS provides false identity data when making the deed of establishment

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<sup>26</sup>Habib Adjie, 2008, Notary Law in Indonesia: Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary, Refika Aditama, Bandung, p. 75.

before a Notary. When making the deed, the parties requesting to have the deed of establishment drawn up before a notary used a false identity or were not shareholders and directors at PT.TMS.

The defect of will states that if the parties do not commit related fraud then the person concerned will not make the agreement. The provisions of Article 1328 of the Civil Code which states: "Fraud is a reason to cancel an agreement, if the fraud used by one of the parties is such that it is obvious that the other party will not enter into the agreement without deception.

The principle of *presumptio iustae causa* or the principle of legal presumption can be used to evaluate a notarial deed, namely a notary deed must be considered valid until a party states that the deed is invalid. To declare or assess the deed as invalid, you must file a lawsuit with the District Court. During and as long as the lawsuit continues until there is a court decision that has permanent legal force, the notarial deed remains valid and binding on the parties or anyone with an interest in the deed.

Applying the principle of legal presumption for notarial deeds, then the provisions contained in Article 84 UUJN apply, namely the deed in question only has the power of proof as a private deed is no longer needed, so that the cancellation of a notary deed can only be canceled or null and void by law.

The principle of legal presumption against a notarial deed is related to a deed that can be canceled, is an act containing defects, namely the notary's not having the authority to make a deed outwardly, formally and materially, and not in accordance with the legal regulations regarding the making of a notary's deed.

This principle cannot be used to evaluate a notarial deed as null and void, because a null and void deed is deemed never made for certain reasons as stated above, the status of a notary deed is:

1. can be canceled;
2. null and void;
3. has the power of proof as a deed under the hand;
4. canceled by the parties themselves; And
5. Canceled by a court decision that has permanent legal force because of the application of the principle of legal presumption.

In connection with the cancellation of the Notary deed, it is necessary to state the provisions of Article 84 UUJN. According to Article 84 of the UUJN, the Notary committed a violation of the provisions referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51 , or Article 52 which results in a deed only having the power of proof as a private deed or a deed becoming null and void by law can be a reason for the party who suffers a loss to demand reimbursement of costs, compensation and interest from the Notary.

Habib Adjie, stated that sanctions against Notaries are regulated at the end of the UUJN, namely in Articles 84 and 85 of UUJN, there are two kinds, namely civil sanctions and administrative sanctions. Civil sanctions in the form of

reimbursement of costs, compensation or interest can be sued against a notary must be based on a legal relationship between the notary and the parties who appear before the notary, if there are parties who feel disadvantaged as a direct result of a notary deed, then the person concerned can sue civilly. against the Notary, thus the claim for reimbursement of costs, compensation and interest against the Notary is not based on an assessment or change in the position of a piece of evidence due to a violation of Article 84 UUJN, but can only be based on existing or existing legal relationships between the Notary and the appearers. Administrative Sanctions in the form of, verbal reprimand; written warning; Temporary dismissal; Temporary dismissal; honorable discharge; and Dishonorable discharge.

Based on Article 84 of the UUJN it is determined that there are 2 (two) types of civil sanctions, if a Notary commits an act of violating certain articles and also sanctions of the same type are spread in other articles, namely, a Notary deed that has the power of proof as a deed under the hand; and the notarial deed becomes null and void.

The notary can be released from responsibility and legal liability due to defects in the deed he made, as long as the legal defect is caused by another party's mistake, or the statement or proof of the letter submitted by the client. These documents generally become a reference for Notaries in serving the community as public officials assigned to represent the state in making authentic deeds.

The statement or statement of the parties submitted before the Notary is the basic material for the Notary to make a deed according to the wishes of the parties who appear before the Notary. Without a statement or statement and the wishes of the parties, it is impossible for a Notary to make a deed. If there is a statement or statement that is suspected of being false that is included in the notarial deed, this does not cause the deed to be fake.

For example, a Notary entering information into a Notary deed based on a fake identity letter (for example a fake KTP), does not mean that the Notary enters false information into a Notary deed, as referred to in Article 264 paragraph (1) and Article 266 paragraph (1) of the Criminal Code. Materially, the falsification of this matter is the responsibility of the parties concerned, unless the Notary is aware of the falsity.

Based on this, it can be concluded that a notarial deed that has the power of proof as a private deed, if it is stated explicitly in the article concerned and which is not stated explicitly in the article concerned, is included as a deed to be null and void. Administrative sanctions, in the form of verbal warnings, written warnings, temporary dismissals, respectful dismissals, and dishonorable discharges apply in stages starting from verbal reprimands to dishonorable discharges, namely if the Notary violates the provisions of the articles as stated in Article 85 UUJN .

#### **4. Conclusion**



Responsibilities of the Notary Against the False Identity of the Applicant Used as the Basis for Making the Deed are as follows: a). Responsibilities in Civil Law that all regulations regulated in UUJN only provide sanctions for violations of formal notaries, for example the rules for issuing certificates and others. However, the notary also has responsibility for the material in the deed he publishes. On the notary's authority in providing legal advice to appearers (Article 15 letter e UUJN). The notary has responsibility from a civil perspective in the material truth in the deed he publishes. b). Criminal Responsibility that a criminal act is an act that is not permitted by a legal regulation, the prohibition is followed by threats, namely sanctions that have a certain criminal form for anyone who commits the violation. In carrying out his position as a Notary, the crime in question is a crime carried out by a Notary as a public official who has the authority to issue authentic deeds regulated in UUJN. c). Responsibilities based on UUJN Article 65 UUJN states that a Notary has responsibility for the deed issued even though the Notary's protocol has been handed over to the recipient of the protocol d). Responsibilities based on the Code of Ethics As a public official, a Notary in carrying out their duties cannot be separated from ethics. 2). Legal Consequences for Notarial Deeds Made Based on False Statements, namely that notarial deeds that have the power of proof as private deed, if it is stated explicitly in the article concerned and which is not stated explicitly in the article concerned, including as a deed, it becomes null and void. Administrative sanctions, in the form of verbal warnings, written warnings, temporary dismissals, respectful dismissals, and dishonorable discharges apply in stages starting from verbal reprimands to dishonorable discharges, namely if the Notary violates the provisions of the articles as stated in Article 85 UUJN .

## 5. References

### Journals:

- Huddhan Ary Karuniawan, "Keabsahan Pemberian Barcode Pada Minuta Akta Dan Salinan Akta Notaris" , Jurnal Komunikasi Hukum, Volume 4 Nomor 2 August 2018.
- Putra Ferdiansyah, "Perlindungan Hukum Terhadap Para Pihak Yang Dirugikan Atas Penyuluhan Hukum Oleh Notaris", Jurnal Komunikasi Hukum, Volume 4 Nomor 2 August 2018.

### Books:

- Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, UII Press, Yogyakarta.
- Budiono, Herlien, 2013, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua*, Citra Aditya Bakti, Bandung.
- Gunawan Widjaja, 2002, *Seri Hukum Bisnis Tanggung Jawab Direksi atas Kepailitan Perseroan*, Raja Grafindo Persada, Jakarta.

- Gunawan Widjaja, 2008, *Risiko Hukum sebagai Direksi, Komisaris & Pemilik PT*, Forum Sahabat, Jakarta.
- Habib Adjie, 2008, *Hukum Kenotariatan di Indonesia-Tafsiran Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*, Refika Aditama, Bandung.
- Habib Adjie, 2011, *Kebatalan dan Pembatalan Akta Notaris*, Refika Aditama, Bandung.
- Herlien, Budiono, 2013, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua*, Citra Aditya Bakti, Bandung.
- M. Yahya Harahap, 2016, *Hukum Perseroan Terbatas cet.6*, Sinar Grafika, Jakarta.
- Muhammad Nazir, 1988, *Metode Penelitian*, Ghalia Indonesia, Jakarta.
- Munir Fuady, 2003, *Perseroan Terbatas Paradigma Baru*, Citra Aditya Bakti, Bandung.
- Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta.
- R. Subekti, 2005, *Hukum Pembuktian*, Pradnya Paramita, Jakarta, 2001 ---, Hukum Perjanjian, Intermasa, Jakarta.
- Robert K. Yin, 2008, dalam bukunya yang berjudul *Studi Kasus, Desain & Metode*, Edisi 1, cet 12, Raja Grafindo Persada, Jakarta.
- Saleh, K. Wantjik, 1981, *Hukum Acara Perdata (RBg/HIR)*, Ghalia Indonesia, Jakarta.
- Sjaifurrachman dan Habib Adjie, 2011, *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta*, Bandung, Mandar Akta.
- Tumbuan, Fred B.G., "Tugas dan wewenang Organ Perseroan Terbatas Menurut Undang-undang Tentang Perseroan Terbatas", Makalah, disampaikan pada "Sosialisasi Undang-undang tentang Perseroan Terbatas" yang diselenggarakan oleh Ikatan Notaris Indonesia (INI), Jakarta tanggal 22 Agustus 2007
- Utomo, Hatta Isnaini Wahyu, 2019, *Memahami Pelaksanaan Tugas Jabatan Pejabat Pembuat Akta Tanah*, Phoenix Publisher, Yogyakarta.
- Wirjono Prodjodikoro, 1989, *Azaz-Azaz Hukum Perjanjian*, Bale Bandung, Sumur Bandung.