

The Authentic Deed that is Degraded Due to False Information

Moses Nathanael¹⁾ & Gunawan Djajaputra²⁾

¹⁾Master of Notary, Universitas Tarumanagara (UNTAR), Jakarta, Indonesia, E-mail: moses.nathanael311202@gmail.com

²⁾ Faculty of Law, Universitas Tarumanagara (UNTAR), Jakarta, Indonesia, E-mail: gunawandjayaputra@gmail.com

Abstract. *An authentic deed is known as the strongest and most legally binding evidence in legal proceedings. However, its integrity can be compromised when fraudulent data is incorporated, leading to the degradation of its evidentiary value. This research aims to analyze the legal implications of authentic deeds that have been degraded due to data falsification and to explore the notary's responsibility in such cases. This research used normative juridical approach, this study examined statutory regulations, court decisions, and legal doctrines related to document authenticity. The findings indicate that an authentic deed containing falsified data may lose its status as a perfect piece of evidence and be downgraded to an underhand deed, depending on the extent of the forgery. Additionally, notaries may be held accountable if negligence is proven in verifying the validity of the data. This research contributes to a better understanding of the legal protection mechanisms for parties involved in notarial transactions and highlights the importance of strict verification procedures to uphold the authenticity of legal documents.*

Keywords: *Authentic; Degradation; Falsification; Responsibility.*

1. Introduction

The notary is a public official with duties and responsibilities in drafting authentic deeds, as regulated by Law No. 2 of 2014, which amends Law No. 30 of 2004 concerning the Notary Profession. The creation of an authentic deed must comply with the applicable laws and regulations to ensure legal certainty. A notary must adhere to the Notary Law (UUJN) while drafting authentic deeds and must also ensure the security and order of the parties appearing before them.

A notary has the duty and authority to draft authentic deeds in accordance with the UUJN. If a notary prepares an authentic deed following UUJN regulations, the agreement is considered legally valid once it is signed by the parties, the notary, and witnesses. However, if one of the appearing parties provides false

identification, the deed may be downgraded to a private deed, losing its status as an authentic deed.

One example of such a case is (Analysis of Decision Number 51/Pid.B/2022/PN Bla), involving the defendant, Sri Winarsih Binti Muhari, who provided false information in an authentic deed. The defendant intended to sell land with Ownership Certificate (SHM) No. 1024, registered under the name of Agus Kristianto (the defendant's ex-husband), to the buyer, Teguh Herri Purwanto. The deed was drafted before Notary/PPAT Didik Ariyanto. The deed's minute was sent to the defendant's residence and then signed by the defendant. However, the defendant also signed the signature column on behalf of her ex-husband and submitted false documents such as a Family Card, Marriage Book, and others. Although Sri Winarsih Binti Muhari and Agus Kristianto had already divorced, the defendant still attempted to sell the land with SHM No. 1024.

The appearing parties must sign the deed before the notary; otherwise, there will be significant consequences for all parties involved. An authentic deed may no longer be recognized due to the element of document forgery, as stated in Article 263 of the Indonesian Penal Code (KUHP):

"Anyone who falsifies a document that may create a right, an obligation, or a debt settlement, which can be used as evidence for any matter, with the intention of using or causing another person to use the document as if its contents were true and not falsified, shall be subject to a maximum imprisonment of six years if such use results in harm. The same punishment applies to anyone who intentionally uses a forged or falsified document as if it were genuine, if its use may cause harm."

In other words, this case involves multiple fraudulent acts committed both by the Notary/PPAT and the involved parties. The Notary/PPAT was negligent in drafting the deed, which had severe consequences for both the parties and the notary. Therefore, the principle of prudence must always be upheld by every notary, as even minor negligence can lead to serious repercussions. Additionally, fraud was committed by the defendant, who attempted to provide false information to the notary.

A notary and a PPAT act as intermediaries who formalize the intentions or agreements of the parties in an authentic deed. Therefore, a notary is not responsible for verifying the truthfulness of the information provided by the appearing parties. However, in this case, the notary was negligent in the signing process of the deed's minute, which constitutes a violation of the Notary Code of Ethics, particularly the obligation to read aloud the contents of the deed's minute.

A Notary and PPAT cannot be held criminally liable for drafting an authentic deed based on false information provided by the appearing parties, unless the notary

deliberately or negligently creates a false deed that causes harm to others. This means that if a notary is unaware that the information provided by the parties is false, they will not be held criminally responsible. However, if a notary intentionally or negligently drafts a false deed that harms another party, they may be held criminally liable and be subject to criminal sanctions under the applicable legal provisions.

An authentic deed drafted by a notary based on false information is not automatically null and void by law. Any party who feels aggrieved by the deed must file a lawsuit in court to annul the deed. The court will determine, based on the available evidence, whether the deed should be annulled or remain legally valid. If the court rules that the deed is null and void, it will lose its legal force.

A notary who is found guilty of providing false statements in an authentic deed may face criminal sanctions, which could include imprisonment, fines, or both, in accordance with the applicable legal provisions. Additionally, the notary may also be subject to administrative and ethical sanctions imposed by the Supervisory Council overseeing the notarial profession. Administrative sanctions may include a warning, temporary or permanent suspension from notarial practice, license revocation, or other penalties as stipulated by the relevant regulations.

A notary may be criminally punished if proven guilty in court of conspiring with the parties to draft a deed with a hidden agenda intended to benefit one party while harming another. If such a case is proven in court, both the party responsible for the fraudulent act and the notary involved in the conspiracy may face criminal penalties.

In carrying out their profession, a notary always has a choice when dealing with requests to create an authentic deed based on false information. If a notary fails to adhere to professional ethics or violates legal regulations (such as the Notary Law - UUJN) with the intent to provide unjust advantages to one party, they may be held accountable. If the court finds no evidence to negate the wrongdoing and criminal liability of the defendant, the defendant must be declared guilty and sentenced accordingly.

In practice, many violations of these sanctions occur, which are then classified as criminal offenses committed by a Notary. A Notary is responsible for the following aspects:

- a. Certainty of the day, date, month, year, and time of the appearers appearing before the Notary;
- b. The appearers who are present before the Notary;
- c. The signatures of the appearers;
- d. A copy of the deed that does not match the *minuta* (original) deed;

- e. A copy of the deed made without first creating the *minuta* deed;
- f. *Minuta* deed that has not been signed by all parties but has already been issued by the Notary.

A notary may be held criminally liable for both *Relaas* Deeds and *Partij* Deeds if they are proven to have included false information and violated the criminal provisions on forgery under Article 266(1) and Article 55(1) of the Indonesian Penal Code (KUHP). However, this study also concludes that a notary cannot be held criminally liable simply for drafting a deed based on false information provided by the appearing parties. An authentic deed made with false information does not automatically become null and void by law. If a party feels aggrieved by such a deed, they must file a lawsuit in court to annul it.

The most important precautionary principle for Notaries and Land Deed Officials (*PPAT*) is the examination of documents provided by the appearers, such as Identity Cards (*KTP*), Family Cards (*KK*), Marriage Certificates, Land Certificates, Taxpayer Identification Numbers (*NPWP*), and others. Checking all these documents is crucial to prevent the falsification of information by the appearers. For example, in this case, the Defendant, who was not entitled to sign the Sale and Purchase Deed, ended up signing it, resulting in the annulment of the Authentic Deed.

A privately signed deed that is legalized or *waarmerked* by a Notary has stronger evidentiary power than a privately signed deed without legalization or *waarmerking*. The difference between *Legalization* and *Waarmerking* lies in the process: *Legalization* is conducted before a Notary, similar to the creation of an Authentic Deed, whereas *Waarmerking* is not made before a Notary; instead, the Notary only provides an official stamp (*Waarmerking*) on the privately signed deed.

The numbering of *Waarmerking* and *Legalization* is done consecutively, unlike Notarial Deeds, which are numbered monthly, and *PPAT* Deeds, which are numbered annually.

Notary's Civil Liability

Article 1365 of the Indonesian Civil Code does not provide a detailed explanation of "intent" and "negligence," but only states that there must be an element of fault (*schuld*) on the part of the person committing an unlawful act for that person to be subject to sanctions in the form of compensation. Article 1365 of the Indonesian Civil Code categorizes unlawful acts as requiring an element of fault. Therefore, it is necessary to first examine the nature of the fault in question.

An action can be considered to contain an element of fault and thus lead to legal consequences if it meets the following criteria:

a. The Element of Intent

The element of intent in an unlawful act constitutes a legal violation if the act is consciously (*intentionally*) committed and causes an impact on the physical, mental, or financial state of the injured party. However, this does not mean that the intent is necessarily directed toward harming the affected party physically or mentally.

Van Bemmelen and Van Hattum have expressed the legal maxim "*no law without fault*," and Rutten has applied this maxim in civil law by stating that there is no liability for the consequences of an unlawful act without fault. As Meyers has stated, an unlawful act requires the presence of fault (*een onrechtmatige daad verlangt schuld*).

b. The Element of Negligence

The elements of negligence include:

1. The occurrence of an unlawful act or an act of negligence/carelessness.
2. Failure to exercise the required duty of care.
3. The occurrence of harm to one party.

2. Research Methods

This research used normative juridical research method to analyze the laws and regulations related to the drafting of notarial deeds. This approach focuses on examining the applicable legal norms, both as stipulated in legislation and as developed in legal doctrine. Additionally, this research will also review relevant court rulings and legal principles that underlie the authority and responsibilities of notaries in drafting authentic deeds. Thus, this study aims to obtain a comprehensive understanding of the legal aspects governing notarial deeds, including the legal consequences of misuse or falsification of data in the drafting process.

The data sources used in this research are Primary Data and Secondary Data such as :

1. Primary data is legal materials that are utilized by researchers to explore new knowledge, develop fresh insights into known facts, and examine ideas related to the legal consequences and evidentiary power of agreements made based on false

statements. The primary legal sources used in this legal research include the following:

- a. Article 1320 and Article 1338 of the Indonesian Civil Code – These articles outline the essential validity requirements of an agreement and the *pacta sunt servanda* principle, which emphasizes the binding nature of contracts.
- b. Article 16(1) of Law No. 2 of 2014, Amending Law No. 30 of 2004 on the Notary Profession – This provision governs the obligations and ethical responsibilities of notaries in exercising their official duties.
- c. Interview Findings with Notary Sulaiman – First-hand insights from a practicing notary, providing a practical perspective on the legal and procedural implications of drafting deeds based on false information.

By integrating these primary legal sources, this study aims to present a thorough and nuanced analysis of the legal standing and enforceability of notarial deeds affected by fraudulent misrepresentations.

2.Secondary data is legal materials consist of reference sources employed to acquire and support the information derived from the primary data. These include scholarly journals, theses, books, research reports, and also Judgment No. 51/Pid.B/2022/PN BLA.

3. Results and Discussion

3.1. What factors cause a deed to be degraded or lose its authenticity as an authentic deed?

A. Case Analysis and the Importance of Authentic Deeds

In the case detailed in Judgment No. 51/Pid.B/2022/PN Bla, the authentic deed drafted by the PPAT was declared null and void. This is because the deed should have been signed by the defendant's ex-husband—given that the certificate is registered under his name. Consequently, the Sale and Purchase Deed is deemed never to have existed, and the ownership of the land and building remains with the ex-husband.

The defendant may, however, sell the land and building if the ex-husband grants a Power of Sale, executed before a notary. With such an instrument, the defendant could sell the property without needing the ex-husband's signature on the Sale and Purchase Deed, as the Power of Sale authorizes the transaction on his behalf.

From this case, it is evident that both the Notary/PPAT and the seller committed significant errors that had fatal consequences for the authentic deed. Accordingly, it is recommended that both the appearing parties and the Notary/PPAT adhere strictly to the principles of due diligence and good faith when drafting authentic deeds.

Notaries and PPATs function solely as intermediaries between the parties, a role that is indisputable. However, for the benefit of the appearing parties—and to prevent prolonged legal disputes—it is imperative that Notaries and PPATs exercise greater caution in preparing deeds. Their focus should be on the quality of service rather than the quantity of deeds processed.

The Power of Sale is a deed created with the purpose of authorizing someone to sell a property on behalf of the owner. This means that if the rightful owner cannot be present, they may delegate the authority to sign the Sale and Purchase Deed to another party.

B. The Necessity of an Authentic Deed

The purpose of an authentic deed is to ensure legal certainty regarding the date and time of its execution, and to verify that the appearing parties have indeed visited the Notary's office and signed the deed in the presence of the Notary/PPAT. Moreover, it confirms that all the documents required for the deed are valid. This is precisely why the roles of PPAT and Notary are indispensable in the land registration process; without them, legal certainty in land registration could never be achieved. For this reason, the header of every deed invariably begins with statements such as "On this day, [DAY], [DATE]" and "At [TIME]."

A typical Notary or PPAT deed comprises the following components:

- Title of the Deed: The official name of the deed.
- Deed Number: A sequential number indicating the order of deeds drafted by a Notary within a month or by a PPAT within a year.
- Header: Contains the day, date, time, the Notary's office location, and the "comparison" of the appearing parties.
- Comparison of Appearances: This section provides the identities and roles of the appearing parties. For example: "Mr. XXX, born in Jambi on January 1, 2000, an Indonesian citizen and entrepreneur residing at XXX Street No. 03, Neighborhood Unit 001, Community Unit 004, XXX Village, XXX District, XXX City, holder of an Identity Card with the Population Identification Number XXXXXXXX (16-digit KTP)." Similarly, the Notary's office details might be recorded as: "Before me, XXX, Bachelor of Law, Master of Notarial Studies, Notary in XXX City."

- **Premise:** Serves as a bridge between the header and the body of the deed, providing additional explanations about the deed to be executed. It typically begins with “that,” as in: “that the appearing parties have executed the Inheritance Statement Deed Number: XX on [DATE] before XXX, Notary in XXX City, Bachelor of Law, Master of Notarial Studies, duly stamped.”
- **Body of the Deed:** This is the core section detailing the agreement or the intentions of the parties in the form of binding clauses. It includes essential elements such as price, time frame, basic capital, paid-in capital, among others.
- **Conclusion of the Deed:** The final section, which includes the “comparison” of the appearances of the witnesses, signatures of the appearing parties, and the Notary/PPAT.

C. The Requirements for Becoming a PPAT

The prerequisites for becoming a PPAT are stipulated in Government Regulation No. 24 of 2016, in conjunction with Government Regulation No. 37 of 1998. These requirements include:

- A minimum age of 22 years.
- No criminal record with a sentence exceeding five years.
- Successful completion of the PPAT examination administered by BPN.
- Holding a Bachelor’s degree in Law (S1) and a Master’s degree in Notarial Studies (S2).
- Completion of a one-year internship at a Notary/PPAT office.
- Indonesian citizenship.
- Sound physical and mental health.

By synthesizing these aspects, this analysis underscores the critical role of authentic deeds in ensuring legal certainty and the necessity for rigorous professional standards among Notaries and PPATs.

3.2. What causes notaries to produce deeds containing errors?

Deeds prepared by notaries are considered authentic and serve as powerful evidence in legal disputes requiring resolution in court; that is, these authentic deeds can be used as valid and compelling proof. However, the authenticity and probative value of an authentic deed may be lost if it is degraded into a private deed. Evidence demonstrating that the deed has been degraded—and thus lost its authentic status is presented by a party who contests or disagrees with the authentic deed. This party must then provide proof that the deed is not authentic, which is subsequently submitted to a judge for a decision on whether the deed can still be deemed authentic or if it has been downgraded to a private deed. The

judge may declare that the authentic deed has been degraded into a private deed or even annul it through a court ruling if it is proven to be inauthentic (i.e., evidence of falsification or other fraud is established).

The degradation of a deed results in the loss of its evidentiary force as an authentic document. Such degradation can occur due to falsification or errors in the date, the identity or signature of the appearing parties, or inaccuracies in both physical and legal data. Consequently, a notary must adhere strictly to the principle of due diligence and execute their duties in accordance with the provisions set forth in the Notary Law (UUJN) regarding the proper techniques for drafting deeds. This is essential to minimize future disputes between parties regarding the authentic deed. Failure to observe due diligence or to comply with the regulations and ethical code established by the UUJN may render the authentic deed defective, thereby reducing its evidentiary value to that of a private deed.

Although the Notary Profession Law does not specifically impose criminal sanctions on notaries, any violation involving elements of falsification, fraud, or the intentional or negligent inclusion of false information in an authentic deed will subject the notary to administrative sanctions based on the professional code of ethics, as well as civil penalties. Moreover, if it is proven that the notary deliberately falsified the authentic deed, such conduct may also be classified as a criminal offense.

Notaries are entrusted with the duty and authority to draft authentic deeds in accordance with the provisions of the UUJN. When a notary prepares an authentic deed following these regulations, the agreement is deemed legally valid once it is signed by the parties, the notary, and the witnesses. However, if any appearing party provides false identification, the deed may be degraded to a private deed, thereby losing its status as an authentic document.

A notable case illustrating this issue is analyzed in Judgment No. 51/Pid.B/2022/PN Bla. In this instance, the defendant, Sri Winarsih Binti Muhari, inserted false information into an authentic deed. The defendant intended to sell land bearing SHM No. 1024—which is registered in the name of Agus Kristianto, her ex-husband—to a buyer named Teguh Herri Purwanto. The deed was executed before Notary/PPAT Didik Ariyanto, with the deed's minute being sent to the defendant's residence and subsequently signed by her. However, she also signed on behalf of her ex-husband by submitting forged documents such as a Family Card, Marriage Book, and other supporting items. Despite the fact that Sri Winarsih Binti Muhari and Agus Kristianto had divorced, she proceeded with the sale of the property bearing SHM No. 1024.

4. Conclusion

In Judgment No. 51/Pid.B/2022/PN Bla, the notary/land deed-making official (PPAT) committed several errors during the deed drafting process. These errors included sending the draft deed (*minuta akta*) to the appearing party—resulting in the signing taking place outside the presence of the notary/PPAT—and failing to verify the appearing party's marriage certificate (or marriage book), even though the party had already been divorced. This is critical because every PPAT deed concerning the transfer of land rights requires the consent of the marital partner, as property acquired during marriage is considered jointly owned pursuant to Article 35(1) of Law No. 1 of 1974 on Marriage, which states that "property acquired during the marriage is the joint property of both husband and wife." To further ensure legal certainty and security, the PPAT is authorized to produce a separate document containing the appearing parties' thumbprint stamps. In this case, the notary/PPAT's negligence in adhering to these protocols could result in sanctions ranging from minor to severe, as determined by the Supervisory Council. One of the most crucial elements of any agreement—be it an authentic deed or a private agreement—is the mutual consent of the parties. Once both parties reach an agreement, the contract becomes binding on all signatories, embodying the intentions that were established from the outset and confirmed upon the deed's signing. However, if the appearing parties execute the deed before a notary and errors arise—whether deliberate or accidental—such as mistakes in the identity of the parties, violations of lawful cause (*kausa halal*), certificate discrepancies, or any other inaccuracies, the authentic deed may be degraded to a private deed, thereby losing its notarial status. This degradation may occur if one party initiates legal proceedings, and if the court, upon review and approval by the judge, determines that the deed is indeed flawed, the authentic deed will be declared null and void.

5. References

Journals:

- lin Purwaningsih (2020). Pemalsuan Akta Autentik Yang Melibatkan Notaris. *Jurnal Hukum dan Kenotariatan*, Vol.3, (No.2).
- Ngutra, T. (2016). Hukum dan Sumber-Sumber Hukum. *Jurnal Supremasi*, Vol. 11, (No. 2).
- Risa Hermawati. (2020). Pemalsuan Akta Autentik Yang Dilakukan Oleh Notaris (Studi Kasus Putusan Nomor 1003 K/PID/2015). *Jurnal Hukum Kenotariatan*, Vol 2, (No. 2).

Books:

- H. Nur Solikin. (2021). *Pengantar Metodologi Penelitian Hukum*. Perseroan Komanditer CV. Penerbit Qiara Media Press and Publisher, Pasuruan.



Habib Adjie (2016). *Hukum Notaris Indonesia*, Refika Aditama, Bandung.
Muhaimin. (2020). *Metode Penelitian Hukum*, Mataram University Pres.
Peter Mahmud Marzuki (2005). *Penelitian Hukum*, Kencana, Jakarta.

Internet:

Sleman District Court No. 63/Pid.B/ 2020/PN Sm

Supreme Court Ruling No. 379 K/Pid/2021.

Regulation:

Civil Code

Criminal Code

Law No. 2 of 2014 on Amendment of Law No. 30 of 2004 on Notary

Law No. 30 of 2004 on Notary