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Research Article

Legal Consequences of an Authentic Deed Made by a Notary that is Partial and Dishonest According to Law no. 2 of 2014 concerning the Position of Notary

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Abstract

A notary is a public official who is authorized by the state to make authentic deeds. This position requires the implementation of duties honestly, carefully, independently, and impartially, because the deeds made become evidence for the parties and have high evidentiary power. In practice, deeds are still found that are drafted in a biased manner or contrary to the principle of honesty, thus giving rise to issues regarding the notary's obligations and the legal consequences arising from such deeds. This study aims to: describe the notary's obligations in making authentic deeds according to the provisions of laws and regulations and codes of ethics, and analyze the legal consequences of authentic deeds made in a biased and/or dishonest manner. The method used is normative legal research with a statutory, conceptual, and case approach. Primary legal materials include the Civil Code and the Notary Law and its amendments, accompanied by doctrine and court decisions as secondary materials. The analysis is carried out qualitatively - prescriptively. The research results show that a notary's obligations include verifying the identity and authority of the parties, reading the deed before the parties and witnesses, including the date/number and signature in accordance with official procedures, and maintaining independence. Violation of these obligations can result in formal and/or material defects in the deed. As a legal consequence, the deed can lose its authentic evidentiary force and only have value as a private deed, and can even be declared null and void, or become the basis for civil, administrative, ethical, and criminal liability as long as the elements are met. The research recommends strengthening procedural compliance, implementing the principle of prudence, and enhancing the effectiveness of oversight mechanisms for notaries.

Introduction

A notary is a public official delegated authority by the state to create authentic deeds, namely deeds given a specific form by law and drawn up by or before an authorized official. This position places the notary as a trustee who guarantees the certainty of the date, identity, will, and content of the parties' agreements. Therefore, every deed born from the notarial process carries an important function: preventing disputes through clarity of

contractual norms and, if disputes arise, providing high-quality evidence before the courts. In modern state and economic practices, the presence of authentic deeds is the backbone of civil transactions from the transfer of land rights, the establishment of business entities, to credit agreements all of which require reliable standards of certainty and legal protection.

This responsibility is bound by job norms and professional ethics. The Notary Law (UUJN), along with its amendments, mandates that notaries act honestly, carefully, independently, impartially, and maintain confidentiality. This set of principles is often understood as an open norm (*vague van normen*) that demands ethical sensitivity and caution in every stage of the deed creation: verifying the identity and authority of the parties, eliciting the will, formulating balanced clauses, reading the deed before the parties and witnesses, signing according to procedure, keeping the minutes, and providing copies. Compliance with these formal procedures is not merely an administrative routine, but an accountability mechanism to ensure that the deed truly reflects the free will of the parties without manipulation.

However, practical experience shows that the risk of irregularities always exists. Pressure from business interests, close personal relationships with one of the parties, and even technical negligence can lead to the drafting of deeds in a biased or dishonest manner. This can manifest itself in excessive emphasis on the interests of one party, obscuring material information, omitting relevant facts, or formulating clauses that create an imbalance of rights and obligations. When this occurs, not only is professional integrity at stake, but also the legal protection of the parties, as the deed, which should be an instrument of certainty, has the potential to become a source of further conflict.

Hypothesis Development

This research is positioned to answer these needs by examining two main issues: (1) how the notary's obligations in making authentic deeds are understood and operationalized according to laws and doctrines, and (2) what are the legal consequences for deeds that are drawn up in a biased and/or dishonest manner, including the prerequisites and limitations for cancellation by the court. The study is conducted through a statutory, conceptual, and case approach, in order to obtain comprehensive and relevant arguments for practice.

Practically, the research findings are expected to contribute to guidelines for strengthening procedural compliance (identity and authority verification checklists, deed reading standards, process documentation), improving the quality of balanced clause design, and mitigating conflict of interest strategies. Theoretically, the research is expected to enrich the discourse on the operational limits of the principles of impartiality and honesty in the notary profession, while clarifying the relationship between formal/material defects and the degree of evidentiary strength of the deed. Thus, efforts to realize authentic deeds that truly serve as instruments of legal certainty can be achieved through a combination of strong ethical standards, consistent procedural compliance, and effective oversight mechanisms.

Method

The approaches used include:

- (1) a statutory approach to examine the provisions of the Civil Code, the Notary Law and its amendments, and implementing regulations;
- (2) a conceptual approach to examine the principles of honesty, accuracy, independence and impartiality as well as the concept of authentic deeds;
- (3) case approach through review of relevant court decisions regarding the cancellation or reduction of the evidentiary power of the deed; and
- (4) if necessary as a complement, a limited empirical approach (directed interviews) to obtain the perspective of practitioners regarding the implementation of notarial duties. Empirical data, if used, is treated as a support that does not change the main character of the research as normative. Searches for legal materials are conducted through university libraries, national legal databases, and court decision repositories. Collection of materials is carried out within a timeframe determined by the researcher according to the

research schedule, with an emphasis on the latest relevant regulations and decisions. The legal materials used consist of: Primary legal materials: Civil Code, Notary Law and its amendments, implementing regulations, and court decisions related to notarial deeds, Secondary legal materials: notary textbooks, scientific journals, article comments, expert opinions, and professional organization guidelines, Tertiary legal materials: legal dictionaries, encyclopedias, and indexes that help search for primary and secondary materials.

Results and Discussion

As public officials, notaries are authorized by law to create authentic deeds that serve to guarantee legal certainty based on the wishes of the parties. This authority is associated with a set of official obligations that must be fulfilled so that the deed has optimal evidentiary force. This sub-chapter systematically outlines the notary's obligations, from the pre-preparation stage, through drafting, reading, and signing, to managing minutes and providing copies, based on the principles of honesty, accuracy, independence, impartiality, and confidentiality.

1. Normative Basis for Notary Obligations

The obligations of a notary are based on positive legal provisions regarding authentic deeds, the notary's office, and the professional code of ethics. These provisions essentially emphasize that authentic deeds must be drawn up by or before an authorized official in a form prescribed by law, while notaries are required to carry out their duties honestly, thoroughly, independently, impartially, and maintain confidentiality. These norms are complementary: formal provisions guarantee orderly procedures, while ethical principles ensure that the substance of the deed reflects the free will of the parties in a balanced manner.

2. Basic Principles and Attitudes of the Position

The obligations of a notary are based on the following principles of office: (a) honesty providing truthful information and not concealing material facts; (b) thoroughness conducting careful examination of documents and procedures; (c) independence free from the influence of external parties; (d) impartiality maintaining a balance of interests between the parties; (e) official secrecy maintaining the confidentiality of the contents of deeds and information obtained due to his/her position. These principles are open norms that require prudential duty at every stage of a notary's work.

3. Obligations at the Pre-Preparation Stage (Pre-Deed)

At the initial stage, the notary is obliged to ensure that the following legal and substantial prerequisites are met:

- Receive the person appearing and check their legal capacity (age, status, not under guardianship).
- Verify identity with valid documents and capture the required data accurately.
- Checking the authority to act (for example special powers, decisions of company organs, or authority of management).
- Examine the authenticity and validity of supporting documents that form the basis for legal actions.
- Provide an initial explanation of the legal consequences, risks, and available alternatives in a balanced manner.
- Reject requests to make deeds that are contrary to the law or if the formal requirements are not met.
- Record the data of the parties and make work notes as documentation of the verification process.

4. Obligations in Formulating the Substance of the Deed

Notaries are required to carefully explore the wishes of the parties and formulate clear, concise, and balanced clauses. The deed must use proper, formal language, avoid ambiguity, and include the essential elements of the agreement/legal act. In formulating the substance, notaries are required to:

- Ensure that the object, parties, and agreed performance are clearly defined.
- Avoid using clauses that create an imbalance of rights and obligations.
- Include references to relevant supporting documents and agreed conditions/terms.
- Provide written or oral clarification of technical terms or significant legal consequences.
- Harmonize with applicable regulations and best practices so that the deed can be executed.

5. Procedural Obligations at the Drafting, Reading, and Signing Stages

The evidentiary power of a deed is greatly influenced by adherence to formal procedures. A notary is obliged to ensure:

- The presence of competent legal persons and witnesses in accordance with the provisions.
- Reading of the deed in front of the person appearing and witnesses, accompanied by the opportunity for questions and answers and corrections.
- Initials on each page of the minutes and signing on the last page by the relevant parties and the notary.
- Complete and consistent inclusion of the date, time, deed number and place of creation.
- Inclusion of the identities of the parties, witnesses, and a brief description of the basic documents shown.
- Use of stamps/position marks according to provisions, including the addition of mandatory phrases if necessary.
- Closing statement of the deed confirming the fulfillment of the reading and signing procedures.

6. Obligations for Managing Minutes, Protocols, and Providing Copies

After signing, the notary is required to manage the minutes as part of the notarial protocol. This obligation includes: secure storage of the minutes, periodic binding, sequential numbering, and recording in a register/protocol book. The notary is also required to provide copies, excerpts, or grosses upon request by authorized parties, ensuring the wording matches the minutes and including any required information on the copies.

Maintain the physical integrity of minutes and prevent unauthorized access.

Save and archive according to the time period specified by the regulations.

Recording the publication of copies/quotation/grosse in a special register.

Use a position mark on each copy issued according to the provisions.

7. Obligation to Maintain Independence and Manage Conflicts of Interest

Notaries are prohibited from taking sides and must be independent. When a personal or economic relationship exists that could potentially compromise objectivity, a notary is obligated to disclose the potential conflict and, if necessary, refuse or delegate the matter to another notary. The fee must be reasonable and must not affect the substance of the deed.

8. Obligation to Maintain Official Confidentiality and Data Protection

All information obtained through their position must be kept confidential, except to the extent permitted by law or by order of an authorized official. Notaries are required to implement data security measures, including internal access arrangements, documenting the loan of files, and using reliable storage media.

9. Service Obligations, Process Documentation, and Accountability

To ensure accountability, notaries are required to provide services with clear procedures, maintain reasonable service time standards, and document their work processes. Verification records, attendance lists, lists of documents presented, and correction notes during reading are essential for demonstrating compliance in the event of a dispute.

10. Notes on the Consequences of Violations (Introduction to the Next Subchapter)

Failure to fulfill the above obligations can result in formal and material defects that affect the deed's evidentiary value. In addition to diminishing its evidentiary value, certain violations can result in civil, administrative, ethical, or criminal liability, according to applicable laws. A detailed description of the legal consequences will be discussed in the following subsection.

11. Practice Compliance Checklist (Summary)

The identity & competence of the parties are verified and documented.

The authority to act is evidenced by appropriate authentic documents.

Clauses are written in a balanced manner; important terms are explained to the parties.

The deed is read in the presence of the parties and witnesses; corrections are recorded.

Signature & initials are complete; number, date, and place are consistent.

Minutes are stored in the protocol; copies/quotes/grosses are tracked in the register.

Potential conflicts of interest are identified and managed; confidentiality is maintained.

Discussion

Authentic deeds enjoy a special status in the evidentiary system because they are drawn up by or before an authorized public official in a form prescribed by law. The degree of authenticity depends on procedural compliance and substantive integrity. When a notary acts impartially or dishonestly during the process, legal consequences arise for the deed and the parties, both at the level of evidentiary validity, the validity of legal acts, and professional and official accountability.

1. Conceptual Framework of Legal Consequences

Legal consequences are understood as the juridical consequences inherent in an act or situation. In the context of notarial deeds, legal consequences can include: (a) a shift in the degree of proof; (b) cancellation or nullification of the deed; (c) the emergence of civil, administrative, ethical, and/or criminal liability; and (d) implications for third parties acting in good faith. The determination of the type of consequence depends on the nature of the violation whether it affects the formal requirements for making the deed or concerns the material truth stated therein.

2. Parameters of Bias and Dishonesty

Bias and dishonesty can be identified through the following operational indicators: (1) neglect of identity and authority verification; (2) formulation of clauses that clearly create an imbalance of rights and obligations; (3) omission of material facts or provision of misleading explanations; (4) reading of deeds that are not carried out properly or without opportunity for correction; (5) undisclosed conflicts of interest; (6) manipulation of dates, places, or the presence of witnesses. These indicators form the basis for the judge's and ethics council's assessment in determining the severity of the violation.

3. Classification of Defects: Formal and Material

Formal defects relate to violations of legally required procedures (e.g., reading in front of the parties, presence of witnesses, signing, numbering/dating, identification). Material defects relate to the truth of the substance and the purity of the parties' intentions (e.g., false information, fabricated intentions, oppressive clauses). This distinction is important because it influences the type and degree of consequences that arise.

4. Implications for the Power of Evidence

If substantial formal defects are found, the deed may lose its authenticity and be reduced to a private deed, thus no longer having full evidentiary value for matters stated by the official. If the defect is material, the judge may set aside the evidentiary value of certain parts or the entire deed, especially if there is evidence of bias or dishonesty affecting the contents of the deed. In both cases, the burden of proof that was previously in favor of the party submitting the deed may shift and require additional evidence.

5. Cancellation or Annulment of the Deed

Certain violations can result in annulment (can be revoked) or nullity (null and void), depending on the severity and nature of the violation. Essential formal violations—for example, the failure to read or the absence of required witnesses—often result in the annulment of a deed as authentic. On the other hand, bias resulting in a defect in will can be grounds for annulment through a lawsuit, especially if there is evidence of misleading information or pressure contrary to the principle of honesty.

6. Civil, Administrative, Ethical, and Criminal Liability

In addition to the consequences for the status of the deed, notaries can face multiple levels of liability. In the civil realm, notaries can be sued for damages if their negligence results in losses for the parties. In the administrative realm, violations of official obligations can result in professional development and sanctions. In the ethical realm, professional organizations can impose sanctions based on their code of ethics. In the criminal realm, dishonesty that fulfills the elements of a crime—for example, forgery or false statements—can be accounted for under applicable criminal provisions. The application of one type of liability does not preclude the application of the other type as long as the requirements are met and the principle of *ne bis in idem* is respected.

7. Impact on Good Faith Third Parties

When a deed has consequences for a third party not directly involved in the process, the principle of protection for parties acting in good faith must be observed. The court typically assesses whether the third party reasonably suspected a defect in the deed. If not, then legal redress is sought without prejudice to the

position of the party acting in good faith, for example through compensation between the parties directly involved.

8. Differences in Impact on Partial Deeds and Release Deeds

In a deed of parties (partial deed), the notary sets out the parties' stated intentions; the material truth of the statement is essentially the responsibility of the person appearing. Notary bias that influences the formulation of clauses can reduce the evidentiary value and open up the possibility of revocation. In a deed of relaas (official deed), the notary states what the official saw or did; dishonesty at the relaas level has more serious implications because it touches on the truth witnessed by the official.

9. Judge Assessment Mechanism and Standard of Proof

Judges assess the authenticity and evidentiary weight of a deed through an integrated examination of formal and material aspects, including consistency of chronology (date, time, place), the presence of parties and witnesses, and the adequacy of explanations. Supporting evidence such as protocol registers, reading notes, or notary correspondence is often decisive. If indications of bias or dishonesty are found, the judge can issue a ruling that reduces the evidentiary value, declares the deed null and void, or serves as a basis for ordering law enforcement or professional organizations to follow up.

10. Recovery Efforts and Follow-up

Recovery efforts include: (a) making a deed of correction (rectificatie) as long as it does not change the substance of the will; (b) making a new deed after the formal and material requirements are met; (c) compensation for losses incurred; (d) requesting annulment to the court if a serious defect occurs; and (e) reporting to the supervisory authority or ethics council to enforce accountability.

11. Mitigation and Compliance Recommendations

To prevent recurrence of violations, the following steps are recommended:

Implementation of pre-deed checklist (identity, authority, object, basic documents).

Documentation of reading and correcting the deed in an orderly manner.

Disclosure and management of conflicts of interest from the outset.

Regular training on techniques for formulating balanced and clear clauses.

Strengthening internal oversight of protocols and procedural compliance audits.

Utilizing technology for audit trails without compromising confidentiality.

Standardization of language and format of deeds to minimize ambiguity.

Conclusion

An authentic deed has the highest evidentiary status because it is made by/before an authorized public official in a form determined by statutory regulations; this status is only maintained if formal procedures and substantive integrity are met. The notary's obligations include verifying the identity and authority of the parties, extracting the will, formulating clear and balanced clauses, reading the deed in the presence of the parties and witnesses, valid signing, managing minutes/protocols, maintaining confidentiality, and independence from conflicts of interest. The principles of honesty, thoroughness, independence, impartiality, and professional secrecy serve as open norms that demand professional care at every stage not just administrative formalities. Bias and dishonesty were identified, among other things, from the omission of material facts, the formulation of oppressive clauses, improper reading, manipulation of dates/attendance, or undisclosed conflicts of interest. Formal defects (violation of procedures) reduce the status of the deed to an underhand deed and/or reduce its evidentiary power, while material defects (substantial untruth/fabrication of will) can result in the evidentiary value being set aside or become the basis for cancellation. Legal consequences can take the form of: (i) shifting or decreasing the power of proof; (ii) cancellation or nullification of the deed depending on the intensity of the violation; (iii) civil liability (compensation), administrative (position sanctions), ethical (organizational sanctions), and criminal if the elements of the crime are met. Protection for good-faith third parties needs to be maintained; correction of a defective deed should not be detrimental to a reasonable third party who was unaware of the defect. The difference in the nature of a deed of partij and a deed of relaas influences the consequences: dishonesty in a deed of relaas tends to have more serious consequences because it affects the truth stated by the official. The judge's assessment is holistic, considering both formal and material aspects, using supporting evidence such as protocol registers, reading notes, and correspondence; the burden of proof can shift when indications of bias or dishonesty are proven. Prevention is key: documented due diligence,

conflict of interest management, language/format standardization, ongoing training, and effective oversight maintain the integrity of the deed and the dignity of the notary office.

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