



## Notary Responsibility for Legally Defective Deeds: Analysis of the Principle of Due Diligence in the Performance of Public Official Duties

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**Abstract.** This article comprehensively discusses the responsibility of notary for legally defective deeds, with an emphasis on the application of the principle of prudence as the foundation of the notary profession's professionalism and integrity. This research uses a normative legal method with a legislative, conceptual, and case approach to analyze the relationship between notary negligence and the resulting civil liability consequences. The study results indicate that the principle of prudence plays a central role in determining the limits of a notary's legal liability, as any negligent action in verifying identity, document validity, or the substance of the deed can cause legal harm to the parties. Conversely, if the notary can prove that their actions were in accordance with legal procedures and professional ethical standards, they can be absolved of civil liability claims. Additionally, this research also highlights the importance of applying the principle of due diligence in the context of the digitalization of notarial services, which demands stricter verification and authentication. Thus, the principle of prudence not only serves as a legal principle but also as a moral foundation that guarantees justice, certainty, and legal protection for society, as well as upholding the dignity of the notarial profession.

**Keywords:** Legally Defective Deed; Notary; Principle of Prudence; Public Official Position; Responsibility.

### 1. INTRODUCTION

Notaries occupy a strategic and central position within the Indonesian civil law system. As public officials appointed by the state, notaries are granted authority to create authentic deeds that function as the strongest and most complete form of legal evidence in civil relations. Article 1 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary (*Undang-Undang Jabatan Notaris/UUJN*) explicitly defines a notary as a public official authorized to create authentic deeds and exercise other authorities stipulated by law. Through this authority, notaries play a vital role in ensuring legal certainty, order, and protection for the public (Marzuki, 2019; Erwin, 2020).

Authentic deeds produced by notaries possess perfect evidentiary value (*volledig en bindende bewijskracht*), making them a fundamental instrument in safeguarding civil transactions. However, empirical legal practice demonstrates that a considerable number of notarial deeds become the subject of disputes before courts due to allegations of legal defects. These defects may arise from formal shortcomings, such as non-compliance with procedural requirements mandated by the UUJN, or material flaws, including inaccurate information, falsified documents, or negligence in verifying the identity, legal capacity, and intentions of the parties (Dewi & Nugraha, 2021; Sari & Nasution, 2020). This reality raises a crucial legal issue concerning the extent of a notary's civil liability when defective deeds result in losses to one or more parties.

The issue of notarial civil liability is inseparably linked to the principle of prudence (*asas kehati-hatian*). This principle obliges notaries to act carefully, diligently, honestly, and professionally in the execution of their duties. Prudence serves as a preventive legal mechanism intended to minimize the risk of disputes and protect the interests of the parties involved in a legal act (Budiarto, 2018; Handayani, 2022). Failure to apply this principle may result in legal consequences, particularly civil liability, if it can be proven that the notary's negligence caused damage to another party (Fauzan & Latief, 2019; Wulandari & Astuti, 2021).

In the context of civil law, Article 1365 of the Indonesian Civil Code concerning unlawful acts (*perbuatan melawan hukum*) becomes a key legal basis for determining notarial liability. Traditionally, classical legal doctrine limits the notary's responsibility to the formal aspects of a deed, namely ensuring that the deed is executed in accordance with statutory procedures. Nevertheless, developments in legal doctrine and jurisprudence indicate an expansion of this responsibility to include material aspects, particularly when a notary is deemed negligent in verifying the accuracy and validity of data, documents, or statements provided by the parties (Simanjuntak, 2018; Lubis & Yuliani, 2018; Hutagalung, 2020).

This expansion of responsibility becomes increasingly complex when notaries face dishonest conduct by parties or the misuse of authentic deeds for unlawful purposes. While notaries are not investigators and cannot fully ascertain the substantive truth of every statement made by the parties, the principle of prudence still requires a minimum standard of verification. This includes examining the authenticity of documents, assessing the legal status of the object of the agreement, ensuring the legal capacity of the parties, and confirming the absence of coercion or bad faith (Arifin, 2019; Pujirahayu, 2021). Neglecting these obligations may expose notaries to civil claims for damages.

Furthermore, rapid technological developments and increasing demands for efficiency in legal services have added new challenges to notarial practice. Modern society expects deed-making processes to be fast, simple, and cost-efficient. However, these expectations often conflict with the rigid formal and material requirements imposed by law. The pressure to prioritize efficiency may increase the risk of negligence, particularly when verification procedures are overlooked or documentation is inadequately recorded (Kusuma, 2021). In this regard, the principle of prudence functions as a crucial safeguard to ensure that efficiency does not undermine legal accuracy and certainty.

Judicial practice in Indonesia demonstrates a growing tendency to hold notaries civilly liable for negligence. Several Supreme Court decisions, including Decision Number 2780 K/Pdt/2016 and Decision Number 587 K/Pdt/2018, affirm that notaries can be held responsible

for failing to verify the identity and completeness of parties' documents. These rulings emphasize that negligence alone without proof of malicious intent (*mens rea*) may suffice to establish civil liability (Supriyadi & Wijaya, 2022). Such decisions reflect a broader understanding that notarial responsibility extends beyond private contractual relations and encompasses social responsibility toward the public and the state.

As public officials entrusted with public confidence, notaries are expected to ensure that every authentic deed reflects legal truth and complies with statutory requirements. When a deed is declared legally defective, the consequences extend beyond individual losses, potentially undermining public trust in the notarial institution itself (Baharudin & Syamsuddin, 2020). In addition to civil liability, notaries may also face administrative sanctions or ethical penalties for violations of professional standards. Nevertheless, it is essential to distinguish between administrative violations and civil liability, as civil liability arises only when actual losses are incurred due to unlawful acts or negligence (Anggo Doyoharjo et al., 2025).

In practice, misunderstandings frequently arise regarding the limits of notarial responsibility. Many parties assume that notaries bear full responsibility for the content and legal consequences of deeds, despite the fact that notaries primarily record the will of the parties in an authentic form. This misconception often leads to notaries being included as co-defendants in civil lawsuits or even subjected to criminal complaints arising from private disputes between parties (Broto Laksito & Bawono, 2024). Such conditions raise concerns about the potential criminalization of notarial duties and the erosion of notarial independence.

From a theoretical standpoint, the civil liability of notaries represents a form of professional liability, which is contingent upon the existence of negligence (*culpa*). Liability is not absolute but depends on whether the notary has fulfilled reasonable professional standards in accordance with the principle of prudence (Marzuki, 2019; Erwin, 2020). Therefore, the application of this principle becomes the primary benchmark for assessing whether a notary has acted lawfully and responsibly.

Based on the foregoing discussion, this research is significant as it examines the civil liability of notaries for legally defective deeds within the framework of the prudence principle. This study aims to clarify the limits of notarial responsibility, analyze legal protection mechanisms for affected parties, and assess the role of prudence in achieving legal certainty and justice. Through a normative juridical approach supported by doctrinal and jurisprudential analysis, this research is expected to contribute to the development of a more accountable, professional, and responsive notarial system in Indonesia that aligns with contemporary legal challenges.

## 2. RESEARCH METHOD

The research method used in this article is normative legal research (doctrinal research) with a statute, conceptual, and case approach. Normative legal research was chosen because the main focus of this study is to examine positive legal norms that regulate the civil liability of notaries and the application of the principle of prudence in the performance of notarial duties. The legislative approach is used to analyze relevant provisions in Law Number 2 of 2014 concerning the Position of Notary (UUJN), the Civil Code (KUHPperdata), and other related regulations. A conceptual approach was taken to understand the principle of due diligence from the perspective of legal responsibility theory and notarial professional ethics. Meanwhile, a case study approach is used to examine various court decisions and Supreme Court jurisprudence related to the civil liability of notaries for legally defective deeds. Research data was obtained thru library research with qualitative analysis to draw descriptive and argumentative conclusions based on the principles of law and notarial practice in Indonesia.

## 3. RESULTS AND DISSCUSSION

### Form and Limits of a Notary Responsibility for Legally Defective Deeds

A notary is a public official with a significant responsibility to create legal certainty and protection thru the creation of authentic deeds. Based on Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary (UUJN), a notary is authorized to create authentic deeds regarding all actions, agreements, and stipulations desired by the parties, as long as they are not excluded by law. This authority makes notaries an integral part of Indonesia's civil law evidence system. However, this privilege also entails significant legal responsibility if the deed he prepares turns out to be legally defective. Legal defects in a deed can have a direct impact on the civil liability of the notary as its creator.

In the context of civil law, the notary's liability is closely related to the principle of unlawful act (*onrechtmatige daad*) as regulated in Article 1365 of the Civil Code (KUHPperdata). This article states that any unlawful act causing damage to another person obligates the perpetrator to compensate for that damage. This means that if a notary makes an error or omission in the preparation of a deed that causes harm to a certain party, the notary can be held civilly liable. Negligence here does not have to be intentional; it is sufficient if it is proven that the notary did not act in accordance with the standards of professional care. Thus, the civil liability of notaries is rooted in the principle that every legal action taken must be done with care and in accordance with the provisions of the law.

The form of civil liability for notaries can arise in various circumstances, including when the deeds they create contain formal or material defects. Formal defects occur when the formal requirements for making a deed as stipulated in Article 38 of the Notary Law are not met, such as the absence of witness signatures, the date not being included, or the deed not being read before the parties. Meanwhile, material defects relate to the substance or content of the deed, such as discrepancies between the parties' intentions and the content of the deed, the use of forged documents, or the presence of undetected elements of fraud by the notary. Both of these forms of legal defect can cause the deed to lose its authentic evidentiary force and only be valid as a private deed. In such situations, the notary could potentially be held liable for damages if their negligence is proven to be the cause of the defect.

The civil liability of a notary can also be seen from the legal relationship between the notary and the parties who use their services. This relationship is contractual because the notary provides legal services based on the trust and agreement of the parties to create the deed. In this context, if a notary fails to fulfill their obligations according to professional standards, it can be categorized as a breach of contract. Additionally, liability can also arise from tort, meaning due to an unlawful act that causes damage. Thus, the civil liability of a notary can stem from two legal bases: breach of contract and unlawful act, depending on the relationship and consequences that arise in each case.

One of the crucial issues in determining the civil liability of notaries is proving the element of fault or negligence. A notary is considered negligent when they fail to properly verify the identity of the parties, their legal capacity, and the validity of the documents that form the basis for the deed. For example, in the case of land sales, a notary is required to verify the ownership certificate and ensure that the seller is the rightful owner. If the notary fails to conduct such checks and a dispute arises due to dual ownership, the notary may be held civilly liable. Therefore, the principle of prudence becomes the main benchmark for determining whether negligence has occurred or not.

Based on various case laws, the civil liability of notaries is often linked to the extent to which the notary correctly fulfills their professional obligations. For example, in Supreme Court Decision Number 2780 K/Pdt/2016, the notary was held civilly liable for failing to verify the validity of the documents before preparing the deed of sale. As a result, the deed was declared legally defective and caused losses to the buyer. Similarly, in Decision Number 587 K/Pdt/2018, the notary was found negligent for failing to ensure the presence and signatures of the parties in the preparation of the deed. These cases confirm that administrative negligence can lead to civil consequences if it is proven to have caused harm to another party.

On the other hand, not all errors in a deed automatically give rise to civil liability for the notary. If the error is caused by false information or manipulation from the party appearing before the notary, then responsibility cannot be directly placed on the notary. In this case, the notary is only obliged to ensure that the deed is made based on the information provided by the parties voluntarily and without coercion. As long as the notary has performed their duties with due care and in accordance with legal procedures, they cannot be held liable for errors originating from those parties. This principle is important for maintaining a balance between legal protection for the public and protection for the notary profession.

In notarial practice, the civil liability of a notary is also related to legal aspects of proof. A legally defective deed no longer has the perfect evidentiary force as stipulated in Article 1870 of the Civil Code, which states that an authentic deed has perfect evidentiary force regarding its contents. When a deed loses its authentic force, the injured party could potentially sue the notary civilly for being negligent in ensuring the formal and substantive validity of the deed. As a result, the notary's civil liability is not only a moral obligation, but also a real legal consequence for the loss of the deed's authenticity.

The civil liability of a notary can take the form of compensation, restitution, or annulment of the deed. The form of accountability depends on the level of negligence and the legal consequences that arise. If a notary's negligence causes financial loss, they may be required to compensate the injured party. However, if the negligence is purely administrative and does not result in actual loss, the sanctions may be moral or administrative without civil claims. This distinction is important to ensure proportionality in the application of legal responsibility toward notaries.

In the context of liability limits, the Notary Position Law provides certain legal protection for notaries who have performed their duties according to procedure. Article 66A of the Notary Law states that to examine a notary in relation to the deeds they have made, the approval of the Notary Honor Council (MKN) is required. This provision is intended to prevent notaries from being immediately criminalized or sued civilly without strong grounds. However, this protection is not absolute – if it is proven that the notary acted negligently or unlawfully, the MKN can grant permission for an investigation. Thus, legal protection for notaries is balanced by the principle of professional accountability.

In addition to legal protection from the Notary Law, the civil liability of notaries is also regulated thru the Notary Code of Ethics established by the Indonesian Notary Association (INI). The code of ethics affirms that notaries are required to act independently, honestly, and objectively in carrying out their duties. Violations of the code of ethics can be the basis for

moral and civil liability if they cause harm to others. Thus, the code of ethics serves as a complement to positive legal norms, clarifying the boundaries of a notary's professional responsibility. This integration of ethical and legal norms creates a comprehensive system of accountability within the notarial profession.

In practice, there are cases where notaries face dual lawsuits, both civil and criminal, due to legally defective deeds. This raises concerns among notaries because the line between civil and criminal liability is often blurred. In fact, civil liability should only apply when negligence causing loss without any element of intent is proven. Therefore, there needs to be a clear understanding that not all professional errors made by notaries can be categorized as criminal acts. A clear distinction between administrative, civil, and criminal offenses will create fairer legal certainty.

Theoretically, the civil liability of a notary can also be linked to the concept of "vicarious liability," which is liability arising from the errors of the notary's subordinates or employees in carrying out administrative duties. In the practice of a notary's office, many administrative activities are delegated to staff, such as collecting documents, printing deeds, and storing archives. If staff errors cause a deed to become legally defective, the notary remains responsible because the entire deed-making process falls under their responsibility. This principle underscores the importance of internal control systems and the application of the principle of prudence in the management of notarial offices.

Based on the above explanation, it can be concluded that the form and extent of a notary's civil liability for legally defective deeds are highly dependent on the application of the principle of due care at every stage of deed creation. Notaries have a legal, ethical, and professional obligation to ensure the formal and material validity of the deeds they prepare. Failure to fulfill these obligations can lead to civil liability in the form of damages, cancellation of the deed, or other legal sanctions. However, the notary's limits of responsibility must still be maintained to prevent the criminalization of the profession. Therefore, the system for supervising and guiding the notary profession must be strengthened so that civil liability is carried out proportionally, fairly, and in accordance with the principles of the rule of law.

### **Application of the Precautionary Principle as the Basis for Notary Responsibility**

The principle of prudence is a fundamental principle in the performance of a notary's duties, serving to ensure the validity of deeds and protect the legal interests of the parties. This principle requires every notary to perform their duties with care, diligence, and in compliance with applicable laws and regulations. In the context of notarial practice, diligence is not only administratively significant but also ethically and morally, as it is directly related to public trust

in the notarial profession. A notary who is negligent in exercising due diligence has the potential to cause legal disputes and damage the integrity of the office. Therefore, the application of the principle of prudence becomes the main measure in determining whether a notary has civil liability for legally defective deeds.

The legal basis for applying the principle of prudence is stated in Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Position of Notary (UUJN), which states that a notary is obliged to act honestly, independently, impartially, and with full responsibility. This obligation illustrates that diligence is a fundamental value in carrying out notarial functions as a public official. This principle is also in line with the concept of good notarial governance, which is the governance of the notarial profession that emphasizes integrity, accuracy, and professionalism. Thus, the principle of prudence is not only an ethical norm, but also a legal norm that binds every action of a notary. Violation of this principle can have direct civil liability implications if it causes harm to another party.

The application of the principle of due diligence should begin from the initial stage of deed preparation, namely when the parties come before the notary. The notary is obliged to ensure that the relevant parties truly possess valid identities and are legally competent to perform legal acts. Identity checks can be done thru official documents such as an Indonesian Identity Card (KTP), passport, or other documents recognized by the state. Additionally, the notary needs to ensure that the parties present are acting on their own behalf or representing a legal entity with a valid power of attorney. This stage is an important part of applying the principle of prudence, which aims to prevent fraud or identity theft.

Furthermore, the principle of prudence is also applied during the document verification and legal object validity stages. The notary must ensure that all documents forming the basis for the deed are in accordance with legal provisions and do not contain legal defects. For example, when preparing a land sale deed, a notary is required to verify the authenticity of the certificate, the status of the land, and ensure there are no disputes or encumbrances. If the notary neglects this step, the resulting deed can be declared legally defective and give rise to civil liability. Therefore, thorough verification is a concrete implementation of the principle of prudence in notarial practice.

In addition to document examination, caution must also be applied in understanding the substance or content of the deed to be made. The notary is obligated to ensure that the content of the deed truly reflects the will of the parties without any pressure, coercion, or mistake. This principle is known as the principle of consensualism in civil law, which emphasizes that the agreement of the parties is a condition for the validity of the contract. A notary who is negligent

in ensuring this can be considered as not fully adhering to the principle of due diligence. As a result, the resulting deed is potentially void by law or can be challenged due to a defect in will.

The application of the principle of prudence is not only technical but also moral. As a public official, a notary must possess high integrity and a sense of social responsibility. Decisions and actions taken by notaries have a wide ranging legal impact on society, so every step must be taken with careful ethical consideration. Notaries who are solely focused on economic gain often disregard the principle of due diligence in order to expedite the deed-making process. In fact, such actions can lead to serious legal consequences that harm all parties, including himself.

From a legal liability perspective, the principle of prudence serves as a yardstick for determining whether or not there is an element of negligence in the actions of a notary. If the notary can prove that they performed their duties according to procedures and professional standards, they can be absolved of civil liability. Conversely, if it is proven that the notary acted negligently, hastily, or did not conduct proper examinations, then the element of negligence is met. Thus, the principle of prudence becomes the dividing line between legitimate professional action and negligence that can lead to legal liability.

Various court decisions demonstrate how the application of the principle of prudence is a key consideration for judges in deciding cases of notary liability. For example, Supreme Court Decision Number 2780 K/Pdt/2016, which stated that the notary was negligent for failing to check the authenticity of the certificate documents in the land sale deed. As a result of this negligence, the buyer suffered losses and the notary was found civilly liable. Conversely, in Decision Number 1734 K/Pdt/2019, the notary was absolved of responsibility because they had conducted the examination according to procedure and proven their due diligence. This difference in decisions shows that the principle of prudence is the main criterion in assessing the professional negligence of notaries.

The principle of prudence is also closely related to the obligation to record and store notarial documents. Based on Article 62 of the Notary Law, a notary is required to keep the minutes of the deed as part of the notary's protocol. This obligation is a form of legal accountability that reflects the application of the principle of prudence in professional administration. Negligence in maintaining notary protocols can lead to serious legal consequences, including the loss of valid evidence. Therefore, orderly document management is an integral part of applying the principle of prudence.

In the era of digitalization, the application of the principle of prudence faces new challenges related to the use of electronic documents and digital signatures. Notaries are

required to adapt to technological developments without neglecting the principle of prudence. Checking the authenticity of electronic documents, the validity of digital signatures, and the security of personal data are important aspects that must be considered. Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE) provides a legal basis for the use of technology in creating legal documents, but still requires verification and authentication by a notary. Thus, the notary's diligence in the digital world should not be diminished, but rather increased.

From a professional ethics perspective, the application of the principle of prudence aligns with the notary's principle of social responsibility toward the community. The profession of notary is not only related to individual interests, but also to the public interest in maintaining legal stability and justice. Therefore, diligence is a manifestation of professional morality that upholds the values of justice and public trust. Notaries who disregard this principle not only violate the law but also damage the dignity of the notary profession. Thus, the application of the principle of prudence is a form of moral and social responsibility inherent in every notary.

In the context of professional development, the principle of prudence also serves as the basis for supervision carried out by the Regional Supervisory Council (MPD), the Regional Supervisory Board (MPW), and the Notary Honor Council (MKN). These institutions are responsible for ensuring that every notary performs their duties in accordance with the principles of professionalism and integrity. If violations of the principle of prudence are found, the panel is authorized to impose sanctions ranging from reprimands and temporary suspension to recommendations for legal examination. This supervisory system demonstrates that the principle of prudence is not only a moral norm, but also has legal consequences within the notarial system.

The application of the precautionary principle also has preventive and repressive dimensions. Preventively, this principle prevents violations and disputes by applying correct legal procedures. Repressively, the precautionary principle serves as the basis for determining responsibility and imposing sanctions in case of negligence. Thus, this principle serves double duty as a guide for conduct and a mechanism for legal control within the notarial profession. The effectiveness of applying this principle heavily relies on professional awareness and consistent oversight by relevant institutions.

Based on the above explanation, it can be concluded that the principle of prudence is a fundamental principle that determines the limits of a notary's civil liability. Notaries are required to exercise caution at every stage of deed preparation, from identity verification to document storage. Violation of this principle can lead to civil liability, as it is considered a

form of professional negligence. Conversely, the consistent application of the principle of prudence provides legal protection for notaries while also ensuring legal certainty for the public. Thus, the principle of prudence is not only a normative obligation, but also the moral spirit in maintaining the integrity of the notarial profession in Indonesia.

#### **4. CONCLUSION**

Based on the discussion results, it can be concluded that the application of the principle of prudence is the main foundation in determining the civil liability of notaries for legally defective deeds. This principle requires notaries to work with utmost care, honesty, and professionalism at every stage of deed preparation, from identity verification to signing. Failure to apply this principle can result in civil liability because it is considered negligence in fulfilling official duties. Conversely, if the notary can prove that their actions were in accordance with procedures and professional standards, they can be absolved of legal responsibility. Applying the principle of prudence also serves as a preventive mechanism to maintain the integrity of the profession and public trust in notaries. Thus, the principle of prudence is not only normative but also serves as a moral and professional principle that ensures legal certainty in notarial practice in Indonesia.

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