



# Principle of Legal Presumption as Notaries Legal Protection in Carrying Out Their Duties and Authorities



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## Abstract

As a means of legal defense for Notaries, this study seeks to examine and expand the use of the Principle of Legal Presumption in the creation of Authentic Deeds. This study is normative since Law No. 2 of 2014, An Act to Amend Law No. 30 of 2004 Concerning Notary Positions, leaves open a conceptual norm vacuum in the area of Notary Protection in the performance of their official duties and responsibilities. This paper takes a philosophical and legal approach to the question. This study's findings indicate that the Notary's Authentic Deed, prepared in line with the agreement and using accurate information from the Faces, is free of any formal or material flaws. As a result, in the event of future difficulties, the Principle of Legal Presumption should be invoked to safeguard Notaries against potential deception on the part of the Claimants. Law No. 2 of 2014, An Act to Amend Law No. 30 of 2004, emphasizes the need for Notary protection procedures to reduce roadblocks to the implementation of the Principle of Legal Presumption.

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## 1 Introduction

In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Article 1 Paragraph (1), In line with this law and other laws, a Notary is defined as a public official who has the authority to make legally binding document known as a "Deed". Article 15 of Law Number 2 of 2014 contains the authority of Notaries in detail. The first paragraph of Article 15 explains that as long as the making of the Deed is not delegated or excluded to another official or other person, all contracts, agreements and other legal documents mandated by law must be recognized by a Notary before they can be considered legally binding. And or as may be determined by the interested party in an authentic Deed which guarantees the date of making the Deed, where the Deed will be kept, providing Grosse, and a copy of the Deed (Kie, 2000).

A Notary has the responsibility to examine the legal relationship between the parties before a Notary and record the relationship in writing according to certain conditions so that the Deed can be recognized as a valid Deed. A Deed made by a notary can be accepted as evidence in court.

The Notary's position is one of trust, and therefore, he has an ethical responsibility to protect the privacy of any information disclosed to him by the Applicants, whether the information is contained in the Deed itself or not. Thus, the Notary has to guarantee the implementation of the parties' intentions as stated in the Notarial Deed by reading the Deed expressly to them. In this way, the public and Notaries alike receive great benefits from the legal certainty and protection provided by the Notary profession

The greatest proof of the parties agreeing is a written agreement made and signed before a Notary, which has the effect of providing legal certainty. To avoid problems in the future regarding the deeds they make, the Notary must be very careful in everything they do and say, and be very careful in checking every letter or statement submitted to them by the person present (Parsa & Ariawan, 2018).

Only if the original Deed is not intended for another public official can the power of attorney be used to make an authentic Deed for the Notary. As a public authority, one of the main responsibilities of a Notary is to create legally binding documents such as Deeds. Notaries are often called to be witnesses or even suspects in trials. Notaries are obliged to face criminal charges if their actions cause harm to one of the parties. On the other hand, the Notary's obligations are only limited to the validity of the Deed he made, therefore he cannot be held legally responsible (Jalal et al., 2018).

In carrying out their duties, a Notary must be trustworthy, honest, thorough, independent, impartial, and protect the interests of parties involved in legal proceedings, as intended in Paragraph (1) letter (a) Article 16 of Law Number 2 of 2014 regarding the Position of Notary. Anyone who has a hand in making the Deed in question is included in the definition of "parties involved". The public must be more careful and alert in carrying out the legal process so as not to cause harm to other parties in connection with the actions they commit. So that future legal actions can be clear and not cause disputes, there needs to be evidence and good faith, and the public must know and understand whether things are right or wrong. This ensures that the evidentiary power of the authentic Deed remains complete and perfect evidence in front of the court judge. In this case, you must be careful (which may also mean methodical, thorough, and careful) when doing the work and getting to know the parties.

If the parties or other third parties dispute the Notarial Deed at the implementation stage, the Notary can be accused of committing a criminal act, namely making or inserting false information into the Notarial Deed. If the Notary is proven to have conspired with one of the parties to make a Deed that unfairly benefits one of the parties or only one of the parties to the detriment of the other party, then the Notary can be held responsible for the losses suffered by the other party. This matter must be proven in court (Adjie, 2021).

Fines and other consequences can be imposed on a Notary if he is proven to have committed a criminal act in carrying out his official responsibilities, as regulated in the Law on Notary Positions (UUJN). The Law on Notary Positions which replaces the Notary Position Regulations, regulates civil and administrative sanctions for wrongful acts committed by Notaries, while the Notary Code of Ethics does not regulate criminal sanctions (Cahyanti et al., 2018).

This may ultimately involve the Notary in the judicial process. In connection with this, it is natural for a Notary to take preventive measures. Notaries will receive adequate protection as long as they carry out their

responsibilities following the requirements of the Law on Notary Positions and do not violate the Notary Professional Code of Ethics. However, some Notaries include provisions for the Notary's self-protection in the Deed they make, also called a self-protection clause, to increase the protection of the Notary.

According to the Indonesian Dictionary (KBBI), a clause is an additional provision or change in an agreement. The Notary's security clause states that the Notary will not be involved in any way or form if a dispute arises inside or outside the court based on information that is later proven to be untrue by the parties to the dispute.

However, in modern practice, many notarial Deeds are challenged in court due to inadmissible evidence. Courts have recently started asking a lot of questions to notaries who are called as witnesses. Notary or third-party dishonesty can cause complications. If the mistake is made by the Notary himself, then the Deed is considered a private Deed and can be cancelled according to Article 84 of the Notary Position Law (UUJN).

The responsibility of the Notary for the cancellation of the Deed is based on the Notary's actions which caused the cancellation of the Deed, whether it was caused by the Notary's error/Notary's negligence or the actions of another party that violated the law. The notary cannot be held responsible if the cancellation of the Deed is caused by another party's fault, not the notary's fault.

The words in the Notarial Deed are binding and cannot be interpreted by anyone, including the courts. Police, prosecutors, courts, and advocates in some jurisdictions don't understand this. There are many court decisions in this case which immediately cancel the Notarial Deed, without first relegating the authentic Deed to a private Deed.

Fortunately, the Law on the Position of Notaries (UUJN) and other statutory restrictions provide a means for Notaries to protect themselves from liability in carrying out their duties and authority. However, if there are differences of opinion or other things which later turn out to be untrue, the Notary often asks for physical protection or personal security from the presenters. Apart from that, a Notarial Deed is the work or legal product of a public official. Therefore, it must be evaluated in line with perceived legality. Notarial Deeds can be assessed according to the concept of the principle of presumption of validity which states that notarial Deeds are considered valid until a party rejects them as valid Deeds (Nahak, 2017).

Based on the things mentioned above, it can be concluded that Notaries play an important role in people's lives and therefore they must carry out their work carefully when making Deeds or documents. This is supported by the Principle of Legal Presumption, which stipulates that if the document is wrong or fake, the Notary cannot be held responsible. This research aims to increase knowledge and understanding of the legal profession, especially notaries. As well as to find out the reasons for the criminalization of Notaries and to understand solutions to problems that arise. The Notary profession is very dependent on public trust, so this is crucial. Notary's reputation as impartial public servants can suffer if they are accused of a crime. It is believed that the innovative ideas presented here will contribute to the advancement of legal science. Several papers discuss this, but we hope that by taking from the Journal by Vitto Odie Prananda from Narotama University Surabaya, we can raise some fresh and interesting points. Analysis of the Decision of the Supreme Court of the Republic of Indonesia Number 385 K/PID/2006 concerning the Legal Protection of Notaries for Making Deeds by Petitioners which are Declared to be Fake. This issue is stated in the Decidendi Ratio of the Decision of the Supreme Court of the Republic of Indonesia Number 385 K/PID/2006 and the authenticity of the evidence used to support the Notary's Deed (Prananda & Anand, 2018).

The journal written by Finanto Valentino and Cokorda Dalem Dahana, Udayana University, is another important source to consult besides the papers mentioned above. Maintaining Notary Integrity and Preventing Criminalization. Discusses the potential impact of criminalization of Notaries on the ability of Notaries to carry out their duties as officials authorized to make legally binding Deeds. Therefore, it is important to understand what preventive measures can be taken to reduce the possibility of criminal acts relating to Deeds, provide legal protection for the Notary profession, and ensure that Notaries continue to receive public respect as a trusted profession (Listiana, 2020; Boediarto, 2005).

Based on the explanation above, there is no attempt to imitate or plagiarize previous writings because the two papers have different research focuses. Therefore, we created this article by offering an additional understanding of the problem and discussing issues that are considered important to support the two previous articles. The formulation of the problem that will be addressed in this research has been found, namely how the Principle of Legal Presumption is implemented and what are the obstacles and solutions if the Principle of Legal Presumption is implemented as a form of legal protection for Notaries.

## 2 Materials and Methods

Seeing these problems, this paper utilizes normative law to overcome the gaps in the Notary Position Law, especially in terms of providing legal protection for Notaries who are victims of problems or criminalization. The main sources of normative research examined are legal sources such as laws and regulations. This study combines a legislative approach with a conceptual approach. Assisted with library research methods that utilize primary legal materials such as regulations, secondary legal materials such as books and journals, as well as tertiary legal materials such as articles and online dictionaries.

## 3 Results and Discussions

### 3.1 Implementation of legal presumption principle for notary legal protection

In social life, legal certainty is needed in terms of making Deeds. Having legal certainty in entering into agreements and legal acts is important in social interactions. Written evidence has absolute evidentiary power and can be relied upon for all legal purposes. Evidence that may be presented in court includes such things as (a) documents, (b) eyewitness statements, (c) estimates, (d) admissions of guilt, and (e) sworn statements. In the case of written evidence, a general Deed or private Deed is sufficient.

A public or private Deed is created to be admissible in court as evidence. The two Deeds differ mainly in how strong the Deed can be used as evidence. Just as a Deed recorded in public can be used as evidence in court without the slightest doubt, a Deed recorded privately can be used as evidence in court if all parties to the transaction agree that the Deed is true. However, if one party does not admit it, then that party must prove that the Deed is not true, and the court will decide whether the evidence presented is sufficient or not.

According to R. Tresna, a private Deed only has the power of proof if the signature is acknowledged, whereas an authentic Deed is proof of the truth of all its contents until someone shows that the Deed is fake. The date of a private Deed cannot be used as evidence in court (Tresna, 2005).

In its position as an Authentic Deed, a Notarial Deed has external evidentiary value (Uitwendige Bewijskracht), formal evidentiary value (Formele Bewijskracht), and material evidentiary value (Materiele Bewijskracht) (Mertokusumo, 2009). The external evidentiary value of a Deed is a manifestation of its ability to prove its authenticity as a genuine Deed (*acta publica probant sese ipsa*). A Deed is valid as an authentic Deed until proven otherwise, that is until evidence is shown shows that the Deed is not authentic even though it appears on the outside and conforms to the form determined by the Legislative Regulations regarding the requirements for an authentic Deed.

The credibility of a Notarial Deed lies in its ability to show that the statements it contains are true representations of the facts made by the parties appearing before the Notary. The term of the Deed is determined in line with the conditions which must now be included in every Deed. Formally, to provide proof of the validity of the day, date, month, year and time of attendance, as well as the identity of the parties who came, the initials and signatures of the parties, witnesses and the Notary, and what was observed, witnessed and heard by the Notary (in the Deed/official minutes) and the statements or statements of the parties/those present are recorded (in the Deed of the parties) (Adjie, 2011).

The concept of the principle of presumption of validity (*vermoeden van rechtmatigheid*) (Herningtyas et al., 2022) or *presumptio iustae causa* must be used in determining whether or not a Notarial Deed is valid as a Deed issued by a Public Official (Ritonga, 2016). Deeds made by a Notary are considered genuine, unless and until proven otherwise by the party challenging the validity of the Deed. The invalidity of a Deed can only be declared or tried through a lawsuit filed with the General Court. The Notarial Deed must be considered valid and binding as long as the case process is still ongoing, or until there is a final decision from the Court which has binding legal force. To declare a Notarial Deed invalid in court, it must be proven that the Deed is physically, formally and materially invalid.

The existence of the principle of presumption of legality provides a layer of security for legal documents created by a Notary. The concept of presumption of legality (*Vermoeden van Rechtmatigheid* or *Presumptio Iustae Causa*) holds that an act or document is valid unless there is a final and binding decision issued by a court stating otherwise. With this concept, the original Notarial Deed is considered a valid Deed and has

binding force on the parties until physical, formal and material defects in the authentic Deed itself appear. Unless such evidence exists, the relevant Deed will remain valid and enforceable against the parties to the Deed and against any other person who may have an interest in the Deed (Adjie, 2002).

Article 84 of the Notary Position Law states that if a Notary violates the provisions as intended in Article 16 paragraph (1) letters i, k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 of the Law regarding the Notary's Position, the Deed in question merely proves that the Notary is not acting following these provisions. Law is the only means that can cancel a Notarial Deed. A Deed that does not have the authority of a Notary to make it, whether in appearance, form or material or because it was made not following the rules. The law governing the making of Notarial Deeds cannot be cancelled based on the principle of presumption of validity. A Deed cannot be declared void and invalid based on this principle, because a Deed that is void by law has the same effect as if it had never been made (Noailly & Nahuis, 2010; Hoffman et al., 2015).

### *3.2 Obstacles and solutions to the implementation of the legal presumption principle for notary legal protection*

A Deed is an official letter that contains the terms of an agreement and is signed by the parties concerned. A Notarial Deed is a Deed made before a Notary. Meanwhile, a Notarial Deed is an original Deed made by or before a Notary in the form and manner specified in Article 1 Paragraph 7 of the Law concerning the Office of a Notary. Because a Notary is a Public Official, a Deed issued by or in his presence has binding legal force and can be accepted in court as written evidence. Therefore, the Notary is responsible for ensuring that all necessary procedures are followed when drawing up the Deed. One of the Notary's obligations is to read the Deed, which aims to inform the parties regarding the provisions of the Deed they have made and agreed to (Chen et al., 2009; Hildebrandt & Tielemans, 2013).

A Notarial Deed, also called a Relaa Deed or Official Deed (*ambtelijke akten*), is a type of legal Deed. This Deed accurately reflects an original event that the maker of the Deed, the Notary, participated in or personally witnessed in carrying out his duties as a Notary. An official Deed made before a Notary is often called a *Partij Deed* or *Partij Akten*. This Deed recounts the events that occurred as a result of the actions of the parties who voluntarily appeared before the Notary to provide information for the Notary's official duties and to request that information or actions based on the Notary in a Deed previously made.

Hatta Isnaini Wahyu Utomo stated that the main reason for making a Notarial Deed is the wish or desire and request of the parties involved. If the parties' intentions are not clear, the Notary will not make a Deed. At the request or direction of the Applicants, the Notary makes a Deed following the Notary's authority which formalizes the activities or legal process of the Applicants. The Applicants come to the Notary of their own accord and convey their wishes to the public official. The notary is obliged to sign the Deed based on statutory regulations (Utomo, 2018).

The role of a Notary is purely passive, namely serving the interests of the parties involved. The role of a Notary is limited to accurately recording the intentions of the parties in a Deed, he does not have the authority to change, reduce or change the terms. Yahya Harahap thinks this attitude is too strong. Thus, the Notary appears to have the right to; a) Determine or decide what happens before him; b) Therefore, he has the authority to correct or determine the facts he obtains to refine the contents of the Deed so that it is more acceptable (Taliwongso, 2022).

Making a Deed before a Notary requires all parties involved to act in good faith and present all relevant information without seeking any benefit for themselves. A Notary must think carefully about what is needed from the data or data presented. To protect their independence, Notaries must verify the truth of a statement before submitting it (Licht et al., 2005).

False documents and fictitious statements made by the parties can still harm the Notary and even create opportunities for the Notary to commit criminal acts, even though the Notary has implemented the principles of honesty, thoroughness and impartiality in carrying out his office. If there is a legal difference of opinion, a Notary will be summoned to provide testimony regarding the Deed he or she has made, thereby costing both money and time (Valentino & Dahana, 2022).

To prevent complications, Notaries must be careful and have foresight. Notaries must adhere to the principle of prudence. In line with this, Notaries are more careful in carrying out their work. The Notary's familiarity with the party making the Deed or securities binding the Notary does not affect the validity of the



Deed or securities. The duties of a Notary require him to be careful and pay attention to the truth of the parties. However, the Notary must carry out a careful and thorough examination to find out the identity of the assistance requested before the Notary can interpret the letter, statement, etc., even though the Notary knows the parties (Bac & Bag, 2001).

There are no errors in form or content in the Notarial Deed above. The intention of the parties to appear before the Notary is stated in the Notarial Deed. A Notarial Deed cannot be made unless both parties express their wishes. The notary must ensure that the Deed is drawn up correctly following applicable laws and regulations before it can be recognized as a valid Deed. What is reflected in the language of the Deed at issue is the intention of the parties, not the Notary's intention. The Notary must explain to the parties why the steps listed in the Deed are legal and how to carry them out. The parties agree to appear before a Notary to cancel the contents of the Deed in question if they later determine that the Deed does not achieve the intended purpose or must be changed following the circumstances. The procedure is to go to a Notary to request that the Deed be cancelled, after which the Deed no longer has legal force. All legal consequences, both before and after the cancellation date, are null and void (Van der Toorn et al., 2011; Lin et al., 2010).

One of the problems in using the principle of legal presumption in law is that the principle of legal presumption can be used as a weapon by unscrupulous individuals. By providing misleading information, false documents, or exaggerated figures, the applicant has shown bad faith in making *Akta Partij*. Applicants who have malicious intentions to falsify documents, convey false information, or fabricate stories make the Notary the victim.

Because a Notarial Deed is considered correct until proven otherwise in a lawsuit filed against a Notarial Officer, the definition of the principle of presumption of validity can be seen as an effort to achieve legal certainty in the context of *Partij* Deeds. If the Applicant provides incorrect information to the Notary, then the Deed made in his presence is considered valid based on the concept of the principle of presumption of validity. Until there is a General Court decision which has permanent legal force stating that a Notarial Deed is invalid, the Deed remains binding on the parties concerned. Notaries are not responsible for many of society's problems, including the problem of bad faith.

There are several options to resolve the problems mentioned above, the first is that the Notary must be firm, if there is resistance from the aggrieved party in the District Court, so that the statements of the parties in the Deed remain upheld. If the General Court decides that the Deed is invalid, the Applicant can order the Notary to make a new Deed that reflects his views. The second is a family solution. The third is to include a provision in the Deed that prevents the Notary from being sued if problems arise in the future due to the contents of the Deed. The fourth option is to amend Law Number 2 of 2014 by adding Articles and Regulations concerning Notary Protection.

## 4 Conclusion

Article 15 of Law Number 2 of 2014 details the authority of Notaries in detail. If the making of the Deed is not handed over or excluded to another party, Article 15 Paragraph 1 states the Notary's ability to make a legally binding Deed for all Deeds, agreements and provisions that may be required by law and/or upon request. who owns it. All you need to do is confirm the date the Deed was executed, keep a copy of the Deed in a safe place, and provide Grosse with a copy and quotation of the Deed. A Notary's job is to create a Deed by checking its conformity with legal requirements and then recording it in writing. A Deed signed by a Notary can be accepted as evidence in court. Therefore, the presumption of legality that protects Notaries in making legal Deeds is very important. Notarial Deeds can be assessed according to the concept of the principle of presumption of validity which states that a Notarial Deed is valid unless and until a party declares it invalid. Making a Notarial Deed can be complicated because there are individuals who try to take advantage of the Notary's duties and authority. The presenter here has bad intentions and deliberately misleads the Notary by providing false information and figures. The solution to the obstacles mentioned above can be done with the principle of a Notary who is firm in the contents of the Deed he has made based on the statements of the Applicants, and can also be resolved amicably. Apart from that, Notaries need to add clauses to the Deed they make to protect themselves and it is necessary to add or create regulations regarding the protection of Notaries in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004.

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	<p><b>Prof. Dr. Anak Agung Istri Ari Atu Dewi, SH, MH.</b>          She was born in Puri Pegambangan Batubulan Village, Sukawati District, Gianyar Regency, on January 10, 1976. Daughter from Drs. Anak Agung Gde Astawa (father) and Cokordalstri Putra Murtini (Mother). she has been completed his undergraduate education and obtained a Bachelor of Law (SH) in 2000 at the Faculty of Law Udayana University, then she has been completed his Masters education in the Program Study Master of Law at Udayana University (2009) and she got a title as a Doctor of Law at Faculty of Law Udayana University (2017). She began as a Lecture at the Faculty of Law started since 2001 and placed in the Law and Society departement, on year 2009-2016 she placed as secretary of laboratorium of law, and in 2019 she began a leader of legal-skill in law faculty and serving as Vice Dean II in the Faculty of Law Udayana University (2020-2024). Recognition outside the Faculty of Law Udayana University she became the Legal Advisory Team of the City of Denpasar (2019-present), active as the Nayaka Assembly of the Traditional Villages of the Bali province. As a great lecture, she always doing a lot of research and focused on topics and issues of the relationship between state law and society with local wisdom.  <i>Email: <a href="mailto:ari_atudewi@unud.ac.id">ari_atudewi@unud.ac.id</a></i></p>