



## **Pertimbangan Hukum Majelis Pengawas Notaris Terkait Konsep Saksama dan Akibat Hukum Terhadap Akta Yang Dibuat Berdasarkan Keterangan Palsu**

### **Legal Considerations of the Notary Supervisory Board Regarding the Concept of Carefulness and Legal Consequences for Deeds Made Based on False Information**

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**Abstract:** This research examines the legal responsibility of notaries for authentic deeds made based on false statements from the perspective of the Regional Supervisory Council of Southeast Sulawesi. The main issues explored are how the MPW interprets the phrase "careful and thorough" in Article 16 paragraph (1) letter (a) of the Notary Act and how such interpretation affects the validity of deeds and the notary's legal liability. The study employs a normative juridical method using statutory, conceptual, and analytical approaches that link positive legal norms with MPW Decision No. 6/PTS/MPWN\_Prov.Sultra/I/2025 jo 04/PTS/MPWN\_Prov.Sultra/VI/2025. Findings indicate that the MPW considers the notary's failure to verify documents and parties' identities as culpa lata (gross negligence), rendering the deed invalid as an authentic instrument. The results demonstrate that the prudential principle in notarial practice functions not merely as an administrative norm but as an ethical-professional standard that ensures the integrity of authentic deeds. The study highlights the urgency of establishing a Code of Prudence as a standardized ethical assessment tool to strengthen supervision, prevent inter-council disparities, and balance public protection with professional security.

**Keywords:** Notary; Authentic Deed; False Statement

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#### **INTRODUCTION**

Notaries are public officials who have the authority to create authentic deeds as a form of legal service to the community in order to guarantee legal certainty and protection (Putri & Simanjuntak, 2025, p. 2625). This authority is regulated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law-Law Number 30 of 2004 concerning the

Position of Notary, which confirms that Notaries have the authority to draw up authentic deeds for every legal action required by law or desired by the parties concerned (Aisyah, 2021, p. 149). From a philosophical perspective, the position of Notary carries public trust, which presupposes moral integrity and professional honesty as the foundation of legal legitimacy. Meanwhile, from a juridical perspective, this authority is limited by the principles of prudence and honesty inherent in Article 16 paragraph (1) letter a of the UUJN, whereby Notaries are required to act "honestly, carefully, independently, impartially, and in the interests of the parties." In the sociological dimension, deeds drawn up by Notaries are important instruments in creating social order and preventing legal disputes in the future (Khanza, 2025, p. 79). Violations of this principle, especially when it comes to false statements, can erode public trust in the legal system itself.

Studies on the legal responsibility of notaries for deeds containing false information have been conducted extensively, but most focus on criminal or civil liability, rather than on ethical and administrative considerations as interpreted by the Notary Supervisory Council (MPN). For example, research conducted by Aryatama and Lesmana (2022) confirms that there is still a void of norms in the Notary Profession Law (UUJN) regarding legal protection for notaries when the parties involved bring false documents. In Supreme Court Decision No. 185 PK/Pid/2010, a notary was sentenced to criminal forgery even though he was unaware of the existence of false documents, which shows the weak verification standards and limits of responsibility in the UUJN (Lesmana & Aryatama, 2022, p. 104). Furthermore, another study by Desi Napouling (2022) in the Indonesian Notary Journal shows that the supervisory system for notaries through the MPP, MPW, and MPD still faces uncertainty regarding the parameters for serious violations, particularly in the application of the sanction of "dismissal without honor." Napouling highlights that Articles 12 and 13 of the UUJN do not provide clear normative boundaries regarding the types of ethical and criminal violations that can be classified as serious violations, so that the decisions of the Supervisory Council are often subjective and cause legal uncertainty (Napouling, 2022, p. 1320).

Both studies provide an important basis for understanding the complexity of a notary's responsibilities, but they do not touch on the interpretive aspect of the phrase "careful and thorough" in Article 16 paragraph (1) letter a of the UUJN, which is actually a central ethical principle in the practice of notarial duties. This is where the gap in this study arises, namely the absence of a study linking the prudential principle with the legal considerations of the Regional Supervisory Council (MPW) in assessing the validity of deeds suspected of being made based on false information, as recorded in the Decision of the MPW of Southeast

Sulawesi Province Number 6/PTS/MPWN\_Prov.Sultra/I/2025 jo 04/PTS/MPWN\_Prov.Sultra/VI/2025. Thus, the novelty of this research lies in its attempt to reinterpret the responsibilities of notaries and the validity of deeds within an ethical-administrative framework, rather than solely within a criminal or civil law framework.

The urgency of this research stems from the increasing phenomenon of abuse of authority by notaries in the creation of deeds whose accuracy has not been fully verified. Cases of falsification of information in deeds of amendment to the articles of association of cooperatives, such as in the case of the Kendari-based Tunas Koperasi Bangsa Mandiri (TKBM) Cooperative, show how the negligence of notaries in applying the principle of "diligence" can have serious legal implications, both for the parties involved and for the reputation of the profession itself. From the perspective of *ius constituendum*, it is important to clarify the objective parameters regarding violations of "impartiality" in notarial practice so as not to cause differences in interpretation between Regional and District Supervisory Councils. In addition, the weak administrative sanctions in Permenkumham No. 6 of 2016 often result in the subjective implementation of supervisory functions. This study is expected to contribute to the development of a supervisory model based on the principles of proportionality and ethical accountability, as suggested in the study.

The legal issues that are the focus of this study include two interrelated matters. First, how the Regional and District Supervisory Councils interpret the phrase "careful and thorough" in Article 16 paragraph (1) letter a of the UUJN in the context of violations of the professional code of ethics. Second, how valid and enforceable are cooperative articles of association amendments made based on false statements, and to what extent can notaries be held legally responsible for such deeds? These two questions are not only important normatively, but also practically, as they concern the balance between protecting the public and protecting the notary profession from excessive criminalization.

This study aims to analyze the legal considerations of the Notary Supervisory Council in interpreting the phrase "careful and thorough" in Article 16 paragraph (1) letter a of the Notary Position Law and to assess the validity of authentic deeds made based on false information from the perspective of notarial administrative law. In practical terms, this study is expected to enrich the understanding of the limits of notary responsibility between culpa levis (minor negligence) and culpa lata (gross negligence) in the context of MPN supervision, as well as provide input for policymakers to clarify professional ethical norms in the implementing regulations of the Notary Law.

## METODOLOGY

This study uses a normative juridical method, which is a method of legal research that places written norms, legal principles, and decisions of legal institutions as the main objects of study (Susanti & Efendi, 2022, p. 109). According to Soerjono Soekanto (1986), normative legal research focuses on law in books, not law in action, so that the analysis focuses on the synchronization between positive legal norms and general legal principles and doctrines that exist in society (Suyanto, 2023, p. 88). This approach was chosen because the research problem centers on legal interpretation and the responsibility of public officials (notaries) for authentic deeds containing false information, as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Indonesia, Pemerintah Pusat, 2014b).

This type of research is normative juridical in nature with a legislative, conceptual, and analytical approach. The legislative approach is used to examine the provisions in the Notary Position Law, the Notary Code of Ethics, and other implementing regulations related to the obligation to act "carefully and thoroughly." The conceptual approach is used to interpret the meaning of the principles of prudence and legal responsibility based on the theory of responsibility and the theory of legal certainty as described in the previous chapter.

Meanwhile, an analytical approach was used to link these legal norms with the facts in the Southeast Sulawesi Provincial Supervisory Council (MPW) Decision Number 6/PTS/MPWN\_Prov.Sultra/I/2025 JO 04/PTS/MPWN\_Prov.Sultra/VI/ 2025, thereby obtaining a comprehensive understanding of the application of the principle of prudence in notarial practice.

As a theoretical basis, this study is based on the idea that the existence of notaries as public officials is not only understood administratively, but also as ethical actors in a legal system that guarantees certainty and justice for the community (Chandra & Purwanto, 2024, p. 1938). Within this framework, the theory of legal responsibility and the theory of legal certainty are used as the main analytical tools to interpret the relationship between authority, obligations, and legal consequences arising from the actions of Notaries in the preparation of authentic deeds. The theory of legal responsibility provides a conceptual basis for understanding the limits of a Notary's obligations and forms of accountability when the deed they draw up contains false information, while the theory of legal certainty explains how every legal action taken by a Notary must comply with norms and procedures that guarantee clarity and legal protection for all parties. These two theories complement each other in

explaining the core issue of the research, namely the extent to which the prudential principle and the principle of "care and diligence" in Article 16 paragraph (1) letter a of the Notary Position Law can be consistently operationalized by the Notary Supervisory Council to ensure professional integrity and legal certainty in every deed it produces.

### **Legal Responsibility Theory**

The theory of legal responsibility explains the obligation of legal subjects to bear the consequences of every action, whether committed intentionally (dolus) or due to negligence (culpa) (Haman, 2021, p. 142). In the context of notarial practice, this theory forms the basis for understanding the position and legal consequences of a notary who draws up a deed based on false information. According to Hans Kelsen (1961), legal responsibility is the relationship between a violation of a legal norm and a sanction that is causally and rationally established in the legal system (General Theory of Law and State) (Kelsen, 2017, p. 259). This means that liability arises when there is a violation of a norm that has been imputed to a person as a result of their actions (Baumgärtner et al., 2018, p. 4).

In the Indonesian legal system, the principle of legal responsibility is regulated in Article 1365 of the Civil Code, which states that any unlawful act that causes harm to another person obliges the perpetrator to compensate for the harm. This principle also applies to notaries, who in carrying out their duties are required to act honestly, independently, impartially, and diligently as stipulated in Article 16 paragraph (1) letter a of Law Number 2 of 2014 (Indonesia, Pemerintah Pusat, 2014a). If a Notary is negligent in verifying the authenticity of the identities or documents submitted by the parties, such negligence can be categorized as a violation of the principle of prudence, and therefore gives rise to legal liability, whether administrative, civil, or criminal.

According to Aryatama and Lesmana (2022), many cases of document forgery arise not because of the Notary's intent, but because of a void of norms in the Notary Position Law, which does not explicitly regulate legal protection for Notaries against false information submitted by clients (Lesmana & Aryatama, 2022, p. 105). Thus, the responsibility of notaries is not only understood in the context of liability for the legal consequences that arise, but also in the framework of moral responsibility as guardians of legal integrity and public trust.

### **Legal Certainty Theory**

The theory of legal certainty is one of the fundamental principles in the modern legal system. According to Hans Kelsen (1961), legal certainty is based on the principle of imputation, namely the logical connection between norms and sanctions, so that the

consequences of every legal action can be predicted in a rational system. Legal certainty requires that legal regulations be formulated clearly, consistently, and objectively applicable without giving rise to conflicting interpretations (Atmadja & Budiartha, 2018, p. 205).

Meanwhile, Gustav Radbruch (1946) in *Rechtsphilosophie* places legal certainty as one of the three objectives of law, along with justice and utility. He asserts that good law must provide clarity, be predictable, and be applied consistently, because without legal certainty, substantive justice cannot be achieved (Gustav Radbruch's Concept of Law, 2021, p. 11).

In the context of notarial practice, the theory of legal certainty is highly relevant given that authentic deeds are written evidence with full legal force. If such deeds are made based on false information, their function as evidence loses its certainty, which has implications for the legal legitimacy of all legal actions that depend on them. This also impacts the stability of the legal system itself, as the validity of public documents becomes questionable.

## RESULTS AND DISCUSSION

The legal responsibility of notaries and the validity of authentic deeds made based on false information, placing them in the context of Indonesia's multi-layered notarial system of ethical, legal, and administrative norms. Notaries, as public officials, play a strategic role in ensuring legal certainty and protection for every civil law action taken by the community (Adjie, 2023, p. 6). Therefore, any action by a notary that is characterized by negligence or lack of prudence not only affects the parties concerned but also threatens the integrity of the notarial institution as a whole. From the perspective of legal responsibility theory, a violation of the principle of prudence reflects a deviation from the principles of honesty and accuracy, which are the main pillars of this profession.

At the implementation level, the problems that arise are often not caused by the Notary's malicious intent, but by the weak normative limits in interpreting the phrase "careful and thorough" as stipulated in Article 16 paragraph (1) letter a of the Notary Position Law. This condition makes the role of the Notary Supervisory Council (MPN) very important as an institution that interprets and enforces professional ethics through its administrative decisions. The dynamics of notary responsibilities from a normative and ethical perspective, examining the interpretation of the principle of prudence in the notary profession, and analyzing the concrete decision of the Regional Supervisory Council (MPW) of Southeast Sulawesi Province No. 6/PTS/MPWN\_Prov.Sultra/I/2025 JO 04/PTS/MPWN\_Prov.Sultra/VI/2025, as a manifestation of the application of this principle in the practice of notarial supervision in Indonesia.

## The Position and Function of Notaries in the Indonesian Legal System

As public officials with official authority, Notaries in Indonesia are stipulated in Law Number 2 of 2014 (amendment to Law 30/2004) as public officials authorized to draw up authentic deeds and provide legal services to the community. This places Notaries not merely as private parties, but as part of the law enforcement system that serves to provide legal certainty for civil law actions. Studies reveal that the function of Notaries as authentic deed makers and as intermediaries of public trust is very important in the framework of a constitutional state (rechtsstaat), especially in the modern era when transactions are increasingly complex (Ghani et al., 2025, p. 1581). For example, research states that authentic deeds drawn up by Notaries are one of the main means of ensuring legal certainty and protection for the community because they have full probative force.

Furthermore, Notaries have a dual responsibility: as state officials who must comply with public norms and as professionals who must uphold internal moral principles. Thus, the function of a Notary covers three main dimensions: administrative (deed and documentation preparation), civil (legal consequences for the parties in the deed), and criminal/ethical (when there are irregularities or violations of authority) (Mutmainah & Sabir, 2019, p. 22). Research has shown that violations of deed creation procedures, such as not reading the deed in front of the parties involved or certifying documents with false identities, can result in the deed losing its authentic status and impact public trust in the notary profession (Anhar et al., 2020, p. 5).

In the context of the Indonesian legal system, authentic deeds drawn up by notaries have a strategic position because they are *prima facie* evidence that is directly recognized by the courts without the need for additional proof of their validity (for example, in accordance with Article 1868 of the Civil Code, which is confirmed by the UUJN). Research shows that one of the main functions of a Notary is to ensure that the deeds produced are not only formally valid but also have material integrity, namely the truth of the facts stated (Arben & Utama, 2024, p. 9). If these material elements are ignored, as in the case of false statements, the function of the deed as an instrument of legal certainty is undermined.

This study then focuses its analysis on how the function and position of the Notary are tested when a deed is drawn up based on false information, in terms of the "careful and thorough" aspect mandated by the UUJN. Therefore, the following discussion will explore

how the notarial supervisory body (Notary Supervisory Council) interprets and applies the Notary's obligations regarding this broad function, as well as how this affects the validity of deeds and the Notary's overall legal responsibility.

### **The Principle of Prudence and the Interpretation of "Careful and Meticulous" in the Notary Profession**

Within the framework of the notarial profession, the prudential principle is an important pillar ensuring that officials do not merely perform administrative tasks, but also carry out verification and moral functions. Research shows that the elements of "care and diligence" referred to in Article 16 paragraph (1) letter a of Law-Law Number 2 of 2014 concerning the Notarial Profession ("Notaries must act faithfully, honestly, carefully, independently, impartially...") is often interpreted as an obligation to conduct a thorough examination of the identity of the parties, legal capacity, and authenticity of the documents submitted (Fikri Ariesta Rahman, 2018, p. 425). For example, research by Manuaba, Parsa & Ariawan (2018) confirms that concrete forms of the principle of prudence include: identifying the parties involved, carefully verifying the data of the subject and object, and acting meticulously in the process of creating authentic deeds (Paramaningrat Manuaba et al., 2018, p. 72).

However, there is still normative ambiguity in the applicable regulations, especially regarding how "carefully" should be operationalized by notaries in concrete terms. In practice, the interpretations of the Notary Supervisory Council (MPN) and the Regional Notary Supervisory Council (MPW) are very significant in enforcing these standards of prudence, but research shows that there are often variations in decisions due to the casuistic definition of "careful." (Pratama et al., 2022, p. 26).

When notaries fail to fulfill their obligation to act "carefully and thoroughly," the consequences are not only administrative (warnings or revocation of licenses) but can also extend to civil and criminal matters. In the context of this study, which examines deeds based on false statements, the Notary's negligence in applying the principle of prudence can be viewed as a violation of the principles of legal certainty and legal responsibility. As an illustration, a notary who certifies a deed without adequate verification of documents faces ethical sanctions and the risk of the deed being degraded to a private deed (Vicky et al., 2024, p. 55).

Considering the above description, this study focuses on how the phrase "careful and thorough" is interpreted in the considerations of the Regional Supervisory Council, especially in the decisions that are the subject of this case study. Thus, this study contributes to filling a

gap in the literature, which has not yet discussed the practical interpretation of this phrase in notarial supervision, and provides a more operational understanding for notaries so that their ethical and legal obligations can be carried out in a more structured and measurable manner.

**Analysis of the Decision of the Regional Supervisory Council (MPW) of Southeast Sulawesi Province Number 6/PTS/MPWN\_Prov.Sultra/I/2025 jo 04/PTS/MPWN\_Prov.Sultra/VI/ 2025**

In the case handled by the MPW Sultra, it was proven that a Notary made a deed of amendment to the articles of association of a cooperative based on information that was later proven to be false, namely that the identity of the person appearing before the Notary or the legal capacity of the party did not match the facts. In this case, MPW Southeast Sulawesi assessed that the Notary did not carry out the obligation to verify the identity and documents in accordance with the principle of "careful and thorough" as required by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Thus, the issue is not only one of administrative failure but also a more fundamental ethical and legal violation.

An analysis of the decision shows that the MPW applied the standard of *culpa lata* (gross negligence) to the Notary, who was proven to have failed to factually examine the circumstances of the parties and the documents submitted, even though as a public official he had public authority and an obligation to ensure that authentic deeds had material and formal integrity. Thus, deeds made based on false information lose their legitimacy as authentic evidence and pose a risk of legal losses for the parties concerned, as well as damaging public trust in the notarial profession.

From a professional oversight perspective, the MPW Sultra case indicates a paradigm shift: not merely punishing minor administrative or ethical violations, but enforcing that violations that have a significant impact on legal certainty and public interest can be dealt with using stricter punishment standards. Several literature sources emphasize that supervision through institutions such as the MPW/MPD must be preventive and repressive in order for the notary profession to maintain its integrity and protect the public (Madyastuti, 2020, p. 718).

Based on the results of this analysis, the MPW Sultra decision provides an operational example of how the phrase "careful and thorough" is interpreted in notarial oversight practice, namely as an obligation to conduct factual examinations that cannot be ignored. In line with the relevance of legal responsibility theory and legal certainty theory, the responsibility of

notaries and the validity of deeds are the meeting point between professional norms, notarial authority, and public protection.

### **Reflections and Recommendations for Strengthening Notarial Ethics Supervision**

In a normative reflection on notarial supervision in Indonesia, it can be argued that the main problem lies in the lack of normative clarity regarding the phrase "careful and thorough," which is the benchmark for a notary's responsibility. As a result, inter-regional supervision through the Notary Supervisory Council often shows disparities in the application of sanctions and guidance, as analyzed in this study. For example, the results of the study show that the supervisory mechanism is not yet fully preventive and still relies on public reports or third-party complaints, so that the function of moral and professional guidance is not yet optimal (Adhilia & Tarring, 2022, p. 320). Therefore, guidance should not be solely oriented towards imposing sanctions, but should be directed towards fostering a culture of prudence and integrity in notarial practice.

Furthermore, strengthening notarial ethics supervision must cover three main aspects: more specific regulations, transparent and systematic supervision procedures, and objective evaluation guidelines. First, regulations such as Minister of Law and Human Rights Regulation Number 15 of 2020 and other regulations need to be revised or supplemented so that the scope of supervisory authority and operational standards are clear and not casuistic. Research indicates that the regulation of the Supervisory Council's authority still needs to be improved so that its guidance and oversight functions are balanced (Lestari, 2022, p. 329). Second, oversight procedures must be based on guidelines that are easily accessible to notaries and the public, with transparency in the oversight process and results as part of professional accountability.

Practical recommendations proposed include the formulation of a "Code of Prudence" or Notary Prudence Assessment Guidelines as an evaluative tool for Regional Supervisory Councils (MPW) and Local Supervisory Councils (MPD). Such guidelines can contain concrete parameters, such as identity verification, document verification, the fairness of the parties' intentions, and other aspects of professionalism, so that the assessment of negligence (*culpa levis*) and gross negligence (*culpa lata*) becomes more measurable and consistent across regions. The literature states that clear professional ethical standards are very important for maintaining the integrity of the notary profession and increasing public trust (Safira, 2025, p. 1746).

Finally, through synergy between regulations, operational guidelines, and continuous training, the notarial supervision system can balance two often conflicting aspects: public

protection and protection of the notary profession. Thus, notaries are not only positioned as parties who can be sanctioned when they fail, but also as partners in efforts to create legal certainty and justice (Muhammad & Santoso, 2023, p. 604). This aligns with research indicating that oversight is not only reactive but also proactive, meaning it educates, fosters integrity, and strengthens the profession's internal oversight system.

## CONCLUSION

The legal responsibility of notaries for deeds made based on false information cannot be separated from the prudential principle of the Indonesian Notary Association, which is rooted in the phrase "careful and thorough" as stipulated in Article 16 paragraph (1) letter a of the Notary Position Law. The results of the analysis of the Southeast Sulawesi Regional Supervisory Council (MPW) Decision Number 6/PTS/MPWN\_Prov.Sultra/I/2025 jo 04/PTS/MPWN\_Prov.Sultra/VI/ 2025 shows that the notary's negligence in verifying the authenticity of the documents presented is a form of culpa lata (gross negligence), not merely culpa levius, because it disregards the substantive obligation to guarantee the authenticity and accuracy of the data contained in the authentic deed. This study provides a conceptual contribution by shifting the focus of analysis from criminal-civil aspects to ethical-administrative accountability as interpreted through the practice of Supervisory Council decisions. This approach shows that the validity of a deed is not only determined by the fulfillment of formal elements, but also by the moral integrity and prudence of the Notary as the guardian of public trust in the legal system. Thus, the phrase "careful and thorough" needs to be interpreted as an ethical-professional standard that has the same binding force as positive legal norms. The urgency of this research lies in the recommendation to strengthen the notarial supervision system so that it is not only repressive but also preventive and educational. Supervision based on a measurable and standardized Code of Prudence or Guidelines for Assessing Notarial Prudence is necessary to prevent disparities between MPW/MPD regions and to avoid criminalization of the profession on the one hand and impunity for serious violations on the other. Such a supervision model will strengthen the balance between public protection and professional protection, which will ultimately contribute to improving legal certainty and notarial integrity in Indonesia.

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