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Original Article

The Authority and Legal Validity of Notarial Deeds Drawn Up by a Notary Who Is a Suspect

Ni Wayan Yunika Duarta[1*], I Wayan Wesna Astara[2], I Ketut Kasta Arya Wijaya[3]

[1-3]Master's Program in Notarial Studies, Graduate School, Universitas Warmadewa, Indonesia
Email: [1)] duartaniwayanyunika@gmail.com, [2)] wesnaastara58@gmail.com, [3)] kastaaryawijaya@gmail.com

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Abstract

The growing number of notaries in Indonesia being designated as criminal suspects has raised pressing questions regarding the continuity of their authority and the legal standing of the deeds they have executed, underscoring the need for a clear normative framework on this issue. This study aims to analyze the legal implications of the designation of a Notary as a suspect on their authority and the validity of authentic deeds under Indonesian positive law, encompassing both the authority retained by a notary in carrying out his duties while holding suspect status and the legal consequences befalling authentic deeds executed during this period. This research employs a normative legal method with statutory and conceptual approaches. The results show that the designation of a Notary as a suspect does not automatically limit or revoke their authority, as the Law on Notary Position does not recognize suspect status as a ground for dismissal. Article 9 paragraph (1) of the Notary Law provides a limitative regulation on temporary suspension, including when a Notary is under detention. Furthermore, authentic deeds executed by a Notary holding suspect status remain valid and retain their full evidentiary power, provided they comply with the requirements set forth in Articles 1868 and 1870 of the Civil Code. A suspect's status does not impact deed validity unless proven legal violation in execution occurs causing degradation or nullification of the deed. Thus, while it lacks direct legal consequences suspect status carries sociological implications harming public trust and legal certainty.

Keywords: Authentic Deed, Authority, Evidentiary Power, Notary, Suspect.

1. Introduction

Pursuant to Article 1((2) of Law of the Republic of Indonesia No. 2 of 2014 amending Law No. 30 of 2004 on the Office of the Notary (hereinafter referred to as the UUJN) stipulates that "A notary is a public official authorised to draw up authentic deeds and possessing other powers as referred to in this Law or under other legislation". A notarial deed is an authentic deed drawn up by or in the presence of a notary in accordance with the provisions of the applicable legislation (Emeralda Girsang et al., 2024). An authentic deed has full probative force, as provided for in Article 1870 of the Civil Code (hereinafter referred to as the Civil Code), which stipulates that "For the parties concerned and their heirs, or for persons deriving rights from them, an authentic deed constitutes full proof of its contents".

Article 1868 of the Civil Code provides that: "An authentic instrument is an instrument drawn up in the form prescribed by law by or in the presence of public officials authorised to do so, at the place where the instrument is drawn up." An authentic deed is a document whose form is prescribed by law or which is drawn up by or in the presence of public officials authorised to do so (Lestari & Kasih, 2021). An authentic deed has full evidential value in all respects, both formal and substantive (Septianingsih et al., 2020). In light of this, the existence and authority of notaries as drafters of authentic deeds constitute a vital pillar of legal certainty or "*Rechtzekerheid*" for the public.

However, in the practice of law enforcement, it is not uncommon to encounter situations where a notary is named as a suspect in a criminal case, such as in allegations of forgery, fraud, abuse of authority, or breaches of the code of ethics. This situation raises a fundamental legal question: namely, whether the designation of a notary as a suspect automatically restricts or even removes their authority as a public official, thereby affecting the validity of the authentic deeds they have drawn up (Adjie & Gunarsa, 2013). This issue is of crucial importance, given that authentic deeds play a central role in ensuring legal certainty for the parties involved (Satya Wibowo et al., 2022). Such deeds serve not only as conclusive evidence, but also as the basis for the creation of rights and obligations in various legal transactions, such as contracts, sales, inheritance and so on (Utami & Suyatna, 2019).

In legal terms, the provisions concerning the temporary suspension of a Notary are set out in Article 9(1) of the Notaries Act, which stipulates that a Notary shall be temporarily suspended from office on the following grounds:

a. is subject to bankruptcy proceedings or a moratorium on debt repayment;
b. is under guardianship;
c. has committed a disgraceful act;
d. has breached the duties and prohibitions of the office and the Notary's code of ethics; or
e. is currently in custody.

Based on these provisions, there is no legal provision that explicitly stipulates that the designation of suspect status constitutes grounds for dismissing a Notary, whether temporarily or permanently. Thus, from a legal standpoint, suspect status does not automatically deprive a Notary of their office or authority to carry out their duties, including the drafting of authentic deeds. However, this situation creates a tension between two fundamental legal principles: the presumption of innocence and the principle of public trust in the office of a notary. On the one hand, the presumption of innocence requires that any person designated as a suspect must continue to be presumed innocent until a court judgement with the force of res judicata has been handed down (Hamzah, 1994). Therefore, legally speaking, the Notary retains the rights and powers of their office.

On the other hand, the office of Notary is a position of trust that demands a high degree of integrity and credibility (Hendra, 2013). The designation of a suspect status, although it does not yet prove guilt, may, from a sociological perspective, affect the level of public trust in the Notary in question, including in the deeds they draw up. This has the potential to create legal uncertainty, particularly for parties who rely on the probative force of authentic deeds. Consequently, a balance must be struck between protecting the rights of notaries as legal persons and efforts to maintain public confidence in the notarial profession. In this context, the supervisory mechanisms of the Notarial Supervisory Council and the application of the professional code of ethics serve as vital instruments to ensure that notaries' powers are exercised in an accountable manner, without disregarding applicable legal principles.

The principle of legal certainty, as one of the primary objectives of the regulations in the Notaries Act, risks being undermined, given that positive law only formally regulates the powers of notaries and the procedures for drawing up authentic deeds, but has not explicitly addressed the implications of a person being designated as a suspect on those powers or on the validity of deeds drawn up under such circumstances. The absence of such specific provisions risks creating a legal vacuum, which could ultimately lead to legal uncertainty. On the one hand, the principle of the presumption of innocence requires that a person who has not yet been convicted by a final and binding court judgement is still presumed innocent and, in principle, does not lose their powers. However, on the other hand, the absence of a provision explicitly stating that the status of a suspect does not affect a notary's authority or the validity of the deeds they draw up leaves room for varying interpretations.

This situation has the potential to give rise to legal risks, particularly for third parties and the public who rely on authentic deeds for legal certainty and protection (Ginting & Gusmarani, 2025). In fact, the profession of notary and authentic deeds serve a fundamental function as instruments to ensure legal certainty, the reliability of documents, and the protection of the parties to a legal transaction. Therefore, a comprehensive study is required to examine the applicable legal norms from a legal perspective, identify regulatory gaps, and analyse the legal implications of the designation of suspect status on a notary's authority to draw up authentic deeds and on the validity of the deeds produced. The purpose of the law is to promote compliance and ensure security in order to create a harmonious, peaceful and prosperous society (Tristania et al., 2025). Based on the above, the author is interested in conducting research on the following topic: "The Authority and Legal Validity of Authentic Deeds Drawn Up by Notaries Who Are Suspects."

This study is directed at addressing two central questions: first, whether the designation of a notary as a suspect limits or revokes their authority as a public official to draw up authentic deeds under positive law in Indonesia; and second, what legal consequences arise for authentic deeds drawn up by a notary whilst they hold suspect status. Accordingly, the purpose of this paper is to examine whether the designation of a Notary as a suspect limits or revokes their authority as a public official to draw up authentic deeds under positive law in Indonesia, and to determine the legal consequences for authentic deeds drawn up by a Notary whilst holding suspect status.

2. Literature Review

The theoretical foundation is a framework of thinking or points of opinion, theories, principles, and concepts that are relevantly used to analyze a case or problem. The position of legal principles serves as the foundation for the birth of legal regulations, as no legal regulation can be understood without knowing the legal principles contained within it.

2.1. Theory of Rechtsvinding

According to Sudikno Mertokusumo (2010), legal interpretation—or law-finding—is fundamentally understood as the mechanism of law formulation carried out by judges or judicial authorities responsible for enforcing and applying statutory regulations to specific cases. Consequently, legal interpretation serves as the concretization, crystallization, or individualization of a general legal norm (*das sollen*) when confronted with actual factual circumstances (*das sein*). This interpretative process undertaken by the judiciary is designed to uphold the rule of law and justice rooted in Pancasila, thereby fostering the Constitutional State of the Republic of Indonesia in alignment with the mandate of Article 24 of the 1945 Constitution.

2.2. Theory of Authority

Authority constitutes formal power derived from the Law, meaning that whosoever (legal subject) is granted authority by the Law is empowered to perform actions specified within that authority. The authority possessed by government organs (institutions) in carrying out concrete (real) actions is invariably predicated upon authority obtained from the constitution through attribution, delegation, or mandate. An attribution denotes an original authority based on the constitution. In delegated authority, a transfer of power to another government organ must be explicitly stated. Under a mandate, no transfer occurs in the sense of granting authority. In administrative law and public law, authority (authority/*bevoegdheid*) is a fundamental concept pertaining to the legally legitimate right and power to execute a public legal action.

2.3. Theory Legal Certainty

Certainty denotes a state of definitive provision or determination. Fundamentally, the law must intertwine both certainty and justice; the former serves as an objective blueprint for conduct, while the latter ensures this blueprint fosters a rational social order. The law can only realize its core function when it is executed with both equity and predictability (Asshiddiqie & Safa'at, 2006). Consequently, legal certainty is an issue rooted in normative evaluation rather than sociological observation. As Hans Kelsen (2011) posited, law operates as a system of norms. A norm functions as a prescriptive statement emphasizing the *das sollen* (ought) aspect, encapsulating regulations on mandatory actions derived from deliberate human conduct. Statutory laws, by prescribing general rules, guide individuals within their societal interactions and establish boundaries against arbitrary burdens imposed on them (Satjipto, 2009). Ultimately, it is the codification and enforcement of these rules that engender genuine legal certainty.

3. Methods

This study employs a normative legal research method. The approaches used to analyse the issues in this study are the statutory approach, the conceptual approach and the case-based approach (Diantha & Made, 2017). The legislative approach was adopted, meaning that this paper was written in accordance with the regulations currently in force (Hadjon, 2017). The conceptual approach was adopted, referring to legal concepts in the form of legal doctrines and principles relevant to the issues discussed in this study.

4. Results and Discussion

4.1. The designation of a notary as a suspect restricts or revokes their authority as a public official to draw up authentic deeds under positive law in Indonesia

Pursuant to Article 1(28) of Law No. 20 of 2025 on the Code of Criminal Procedure (hereinafter referred to as the KUHAP), it is stipulated that "A suspect is a person who, by virtue of their actions or circumstances, is reasonably suspected of having committed a criminal offence on the basis of at least 2 (two) pieces of evidence." Thus, the status of a suspect constitutes the initial stage in the criminal justice process, which is of a prima facie nature and does not yet constitute proof of legal guilt. Consequently, the determination of whether a suspect is guilty or not must be carried out through a fair trial (due process of law), upholding the principle of equality before the law.

In relation to the office of Notary, the designation of suspect status in a criminal case does not, in principle, automatically restrict or revoke their authority as a public official to draw up authentic deeds (Adjie, 2014). This is due to the absence of any explicit provision in legislation, particularly in the Notaries Act (UUJN), stating that the status of a suspect constitutes grounds for the suspension or revocation of a notary's powers. This absence of an explicit statutory ground forms the central legal basis for the analysis that follows.

From a normative perspective, the provisions regarding the suspension of a notary are set out exhaustively in Article 9(1) of the UUJN, which stipulates that a notary shall be temporarily suspended from office on the following grounds:

a. is currently undergoing bankruptcy proceedings or a moratorium on debt repayment;
b. is under guardianship;
c. has committed a disgraceful act;
d. has breached the duties and prohibitions of the office and the Notary's code of ethics; or
e. is currently serving a period of detention.

This provision indicates that only certain conditions expressly set out in the law may serve as grounds for the temporary suspension of a Notary.

Upon systematic analysis, the status of a suspect does not fall within the categories set out in Article 9(1) of the Notaries Act. Consequently, as long as the Notary in question has not been placed in the circumstances referred to in that provision (in particular, has not been remanded in custody), then, from a formal legal perspective, the Notary retains full authority to perform their duties, including the drawing up of authentic deeds. This reflects the fact that Indonesian positive law adheres to the principle of prudence in restricting the powers of public officials, whilst upholding the principles of legality and legal certainty.

Furthermore, from a criminal law perspective, the designation of suspect status cannot be separated from the principle of the presumption of innocence, which implies that any person suspected of committing a criminal offence must be presumed innocent until a final and binding court judgement has been handed down. The consequence of this principle is that a person's civil rights and official powers, including those of a Notary, cannot be revoked solely on the basis of suspect status.

However, if such suspect status leads to detention by law enforcement authorities, then pursuant to Article 9(1)(e) of the Notaries Act, the Notary in question may be temporarily suspended from office. In such circumstances, the Notary's authority to draw up authentic deeds is legally suspended for the duration of the suspension. Furthermore, should a court ruling with the force of res judicata subsequently find the Notary guilty, this may form the basis for permanent dismissal in accordance with the provisions of the applicable legislation.

Within the framework of legal discovery (*rechtsvinding*), the interpretation of legal norms serves as a vital instrument for filling legal gaps or resolving legal ambiguities. The process of legal discovery by judges is intended to uphold the law and justice in accordance with the Pancasila, for the realisation of the Rule of Law in the Republic of Indonesia, in accordance with the provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia. The statutory and principle-based reasoning set out above may be formalised through the argumentum a contrario method, namely a method that draws legal conclusions from the opposite of an explicitly stipulated provision. This method is commonly used in relation to restrictive provisions.

If Article 9(1) of the Notaries Act is interpreted using the argumentum a contrario approach, it can be asserted that, since the status of a suspect is not mentioned as a ground for suspension, that status cannot be used as a reason to restrict or revoke a notary's powers. Conversely, the law expressly requires the existence of detention as the basis for temporary suspension, which indicates that the legislature deliberately distinguished between the status of a suspect and the condition of detention.

Consequently, as long as the Notary has not met the conditions set out exhaustively in the Act, their official powers remain intact, including the power to draw up authentic deeds as provided for in Article 15 of the Notary Act. On the other hand, although the status of a suspect does not, in normative terms, have a direct implication for a Notary's powers, in practice this situation may give rise to significant sociological implications. The office of Notary, as an '*officium nobile*', demands a high level of integrity and public trust. Consequently, the designation of suspect status, even where guilt has not yet been proven which has the potential to influence public perception and trust in the Notary and in the deeds they draw up.

A further implication is the potential for legal uncertainty, particularly for parties relying on authentic deeds as the basis for legal relationships. In practice, deeds drawn up by a notary who is a suspect may be challenged or even contested in court, although legally they retain full probative force as long as they have not been annulled by a court ruling. This highlights a gap between normative legal certainty and the reality of practice in society.

It can therefore be concluded that, under positive law in Indonesia, the designation of a notary as a suspect does not automatically limit or revoke their authority as a public official to draw up authentic deeds. These powers remain in force as long as the conditions explicitly stipulated in legislation, such as detention or a court ruling that has the force of *res judicata*—are not met. However, from a sociological perspective, the status of a suspect still has the potential to affect public trust and give rise to practical implications regarding the validity and acceptance of authentic deeds within society.

4.2. Legal Consequences for Authentic Deeds Drawn Up by a Notary Whilst Under Investigation

Authentic deeds drawn up by a notary hold a very important position within the Indonesian legal system, particularly in the law of evidence (Satya Wibowo et al., 2022; Tanuwidjaja & Hoesin, 2022). Article 1868 of the Civil Code stipulates that "An authentic deed is a deed drawn up in the form prescribed by law by, or in the presence of, a public official authorised for that purpose at the place where the deed is drawn up". In this context, a Notary is a public official authorised by law to draw up authentic deeds, as provided for in Article 1(1) of the Notaries Act, which states that "A Notary is a public official authorised to draw up authentic deeds and possesses other powers as referred to in this Act or under other legislation".

As a means of evidence, an authentic deed possesses full probative force (*volledig bewijskracht*) as provided for in Article 1870 of the Civil Code, which stipulates that "For the parties concerned, their heirs, or persons deriving rights from them, an authentic deed provides full proof of its contents". It may be said that an authentic deed provides conclusive evidence to the parties, their heirs, and those deriving rights from them, regarding what is set out therein. According to Sudikno Mertokusumo, the evidential force of an authentic deed encompasses three aspects, namely extrinsic, formal and material evidential force, which means that, in principle, the deed must be deemed true by the judge unless the contrary can be proven (Mertokusumo, 2009).

In relation to a Notary who is a suspect in a criminal case, questions arise regarding the legal consequences for the authentic deeds drawn up by that Notary. From a normative perspective, it must be emphasised that the status of suspect does not automatically affect the validity of authentic deeds drawn up by a Notary. This is due to several legal reasons. Firstly, as previously explained, the status of a suspect does not constitute grounds for the dismissal of a notary, as set out exhaustively in Article 9(1) of the Notaries Act. Consequently, as long as the notary has not been dismissed, either temporarily or permanently, their authority as a public official remains in force. Consequently, deeds drawn up by that Notary continue to fulfil the requirements of an authentic deed as referred to in Article 1868 of the Civil Code, provided they are drawn up in accordance with the applicable formal requirements.

Secondly, from a criminal law perspective, the status of a suspect remains an initial stage that does not yet prove a person's guilt. Therefore, based on the principle of the presumption of innocence, a Notary who is a suspect is still presumed innocent until a court judgement with the force of res judicata has been issued (Hamzah, 1994). Consequently, there is no legal basis for automatically casting doubt on the validity of a deed drawn up by such an official solely on the basis of that status. Thirdly, the validity of an authentic deed is essentially determined by the fulfilment of the formal and material requirements in its execution. Formal requirements include, amongst other things, the authority of the notary, the presence of the parties, the reading of the deed, and the signing in accordance with the provisions of the Notaries Act. Meanwhile, material requirements relate to the accuracy of the content and the intent of the parties. If these requirements are met, the deed remains valid and possesses full probative force, regardless of the personal status of the Notary in question.

However, in practice, the status of a Notary as a suspect may give rise to certain implications for the deeds they have drawn up, particularly from a sociological and judicial perspective. Interested parties may question the notary's integrity, meaning that the deed they have drawn up is potentially open to challenge or may become the subject of a dispute. Under certain circumstances, the deed may be challenged in court, either through a civil action (for example, to have the deed set aside) or in the context of evidence in a criminal case.

Furthermore, if it is proven during criminal proceedings that a Notary has committed a criminal offence directly related to the drafting of a deed, such as forgery or abuse of authority, the deed in question may lose its authentic status. In such cases, the deed may be declared null and void or, at the very least, be downgraded to a private document, depending on the severity of the offence and the relevant court ruling (Subekti, 2001).

Furthermore, where a Notary is found to have breached the formal requirements for the drafting of a deed—for example, by failing to read out the deed, failing to have the parties present in person, or failing to comply with the procedures laid down in the Notaries Act—the deed may also lose its evidential value as an authentic deed. This is in line with the provisions of Article 1869 of the Civil Code, which stipulates that "A deed which cannot be treated as an authentic deed, whether due to the lack of authority or capacity of the public official concerned or due to a defect in its form, shall have the force of a private document if signed by the parties". Consequently, the focus of the assessment of the deed's validity does not lie solely on the suspect's status, but rather on whether or not a breach of the law occurred during its drafting. On the other hand, if the notary's status as a suspect is unrelated to the performance of their notarial duties, then legally there is no direct connection with the validity of the deed they have drawn up. In such circumstances, the deed retains its legal force provided it complies with the applicable provisions.

Thus, from a normative perspective, while a notary may be designated as a suspect, this status does not automatically undermine the validity or probative value of the authentic deeds they have drawn up. Such deeds remain valid and possess full evidential value provided they fulfil the requirements set out in legislation. However, in practice, the status of a suspect may give rise to sociological implications in the form of a decline in public trust and the potential for disputes regarding the deeds drawn up, particularly if there are allegations of legal violations in the process of their creation.

5. Conclusion

The designation of a notary as a suspect does not automatically restrict or revoke their authority as a public official to draw up authentic deeds. This is because the Notaries Act does not provide for the status of suspect as grounds for dismissal. Article 9(1) of the Notaries Act stipulates, by way of an exhaustive list, that a notary may only be temporarily suspended under certain conditions, one of which is whilst they are in custody. Consequently, as long as the notary has not been detained, their authority remains intact. This is also consistent with the principle of the presumption of innocence. Furthermore, authentic deeds drawn up by a notary who is a suspect remain valid and possess full probative force, provided they fulfil the formal and material requirements as set out in Articles 1868 and 1870 of the Civil Code. Suspect status does not affect the validity of the deed. However, if it is proven that there was a breach of the law during the drafting process, the deed may lose its authentic status or be downgraded to a private deed in accordance with Article 1869 of the Civil Code.

The government, in this case the legislative body, along with the relevant ministries, the author suggests that they immediately revise and strengthen the regulations in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on Notary Positions. This is to provide clearer legal certainty. The author believes that there needs to be clear rules regarding the status of notaries when it comes to criminal matters, so that there is no legal vacuum. This is important to maintain public trust and ensure that no one feels uncertain or worried about legal protection when using the services of a notary who is undergoing legal proceedings.

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