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Notary Liability for Authentic Deeds after the Expiration of the Term of Office

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ABSTRACT

Notaries are public officials authorized to draw up authentic deeds with conclusive evidentiary force. However, the expiration of a notary's term of office raises questions concerning the continuing liability for deeds that are subsequently found to be legally defective. This study analyzes the legal requirements and procedures for drawing up authentic deeds and develops a framework for notarial liability after the notary has left office. It employs normative legal research using statutory, conceptual, and case approaches. Primary and secondary legal materials were collected through library research and analyzed using systematic, comparative and forward-looking interpretation, content analysis, and deductive reasoning. The findings show that the authenticity of a deed depends on the fulfillment of requirements concerning the official's authority, the prescribed form and procedure, the legal capacity of the appearing parties, witnesses, reading aloud, and signing, as stipulated in the Notary Office Law. Depending on the nature of the defect, non-compliance may downgrade the deed's evidentiary force, render it voidable, or make it null and void by operation of law. The expiration of the term of office does not extinguish liability for deeds drawn up while the notary was in office. Liability must be based on fault, loss, causation, and the nature of the violation, and may take civil, criminal, administrative, or ethical forms according to the character of the conduct. Strengthening audits of notarial protocols before their handover is necessary to prevent disputes arising after the notary has left office.

***Keywords:** Authentic Deed, Legal Defect, Notary, Term of Office*

INTRODUCTION

A state governed by law regards legal certainty, order, and protection as prerequisites for the proper functioning of civil relations. Within this framework, notaries are entrusted with a portion of the public authority to produce reliable written evidence. Article 1, Point 1 of Law No. 2 of 2014 affirms that a notary is a public official authorized to draw up authentic deeds and exercise other powers conferred by law. This status is not merely a professional designation; it is the legal basis linking state authority and legal services to the public and personal-professional accountability for instruments produced in the exercise of office. Therefore, a notarial deed not only records the parties' intentions but also provides a legal form through which rights, obligations, dates, identities, and sequences of legal events can be established with greater certainty.

The principal value of an authentic deed lies in its evidentiary strength. Article 1868 of the Indonesian Civil Code provides that an authentic deed is drawn up in the form prescribed by law by or before a public official authorized to do so at the place where the deed is executed, while Article 1870 accords conclusive evidentiary force to the parties, their heirs, and persons deriving rights from them. This force encompasses external, formal, and material dimensions of the state. External evidentiary force means that the instrument is treated as an authentic deed until proven otherwise. Formal evidentiary force establishes the truth of what was seen, heard, performed, and declared before the notary. Material evidentiary force binds the parties to the substance of the statements recorded in the deed. This framework demonstrates that public confidence in a deed depends on procedural accuracy, the integrity of the official, and due care in assessing documents and the legal capacity of the parties appearing (Sjaifurrachman & Adjie, 2011).

Conclusive evidentiary force does not imply that every notarial deed is immune to scrutiny. A deed may lose its authenticity if the legally required elements of authority, form, or procedure are not satisfied. Recent studies have shown that drafting errors, insufficient scrutiny of documents, and formal violations may give rise to notarial liability and alter the deed's evidentiary status (Darmayenti & Khairani, 2024; Sabrina & Musyafah, 2024). In practice, this issue does not necessarily end when the deed is signed. A defect may only be discovered years later during a dispute, audit, rights transfer, or judicial examination. The interval between the drawing up of the deed and the emergence of a dispute is significant because the notary who drew up the deed may have relocated, resigned, been dismissed, died, or retired from the position.

This temporal issue becomes more acute when considered in conjunction with Article 65 of the Notary Office Law, which provides that a notary, substitute notary, and temporary notarial official remain responsible for every deed they have drawn up, even when the notarial protocol has been delivered or transferred to a protocol custodian. This provision affirms the continuity of responsibility but does not expressly define the time limit, standard of fault, forms of liability, or relationship with limitation periods under various legal regimes. Consequently, there is room for interpretation: responsibility may appear to attach indefinitely, even though civil claims, criminal prosecutions, official sanctions, and ethical proceedings have different legal bases, subjects and limitations. This ambiguity may undermine legal certainty for former notaries and parties who rely on the deed.

The legal implications of the end of a notary's term of office also changed following Constitutional Court Decision No. 84/PUU-XXII/2024. Before this decision, Article 8(2) of the Notary Office Law permitted an extension from 65 to 67 years. The Court subsequently allowed annual extensions after the age of 67, up to a maximum age of 70, subject to physical and mental fitness. This interpretive development extends the possible duration of office but does not eliminate the central issue examined in this study: whenever the office ends, deeds drawn up during the period of authority may still be challenged afterward. Therefore, the analysis cannot stop at the retirement age; what is more decisive is the relationship between the time when the deed was drawn up, whether authority existed at that time, the type of defect, the notary's fault, the resulting loss, and the mechanism for enforcing liability.

Decision No. 261/Pdt.G/2016/PN Dps, which was examined in this thesis, illustrates the relevance of this issue. In that case, the plaintiff alleged procedural violations in the drawing up of the deed, including that the deed had not been read aloud before signing and that the notary had allegedly failed to maintain their independence. These allegations concern the notary's core duties under Article 16 of the Notary Office Law. When procedures designed to ensure proper reading, consent, presence, and signing are not observed, the consequences extend beyond the administrative quality of the work; they may affect the authenticity of the deed and open the way for a claim for damages. This case provides a basis for distinguishing defects arising from false statements by the parties from those resulting from the notary's own acts or omissions.

Previous studies have generally examined notarial liability for legally defective deeds while the notary remains in active office, errors in land-related matters, lack of due care in powers of attorney to sell, the authenticity of forged deeds, and reasonable limits on the number of deeds drawn up (Engracia & Santoso, 2023; Hartono & Raisah, 2023; Samosir et al., 2024; Santoso & Priyono, 2023). Prianto et al. (2024) emphasize fault-based liability, whereas Ivena et al. (2026) show that non-compliance with the Notary Office Law and the code of ethics may render a deed invalid and produce legal consequences for the parties. Sugiana et al. (2024) demonstrate that elements of a deed not expressly regulated may nevertheless perform an important function in ensuring legal certainty and protection, while Prabhawisnu et al. (2023) stress that notarial authority is attributive and requires clear guidelines. However, the systematic relationship among defects in deeds, expiration of the term of office, Article 65, and the distinction between official and personal liability still requires further clarification.

The novelty of this study lies in treating the expiration of the term of office as a juridical-temporal variable for assessing liability. The analysis does not regard retirement as a ground for extinguishing responsibility, but neither does it interpret Article 65 as imposing unconditional and unlimited absolute liability. The continuity of responsibility is examined through four layers: the validity of the notary's authority when the deed was drawn up, compliance with formal and material requirements, proof of fault and causation, and the compatibility of the type of sanction with the notary's status when legal proceedings take place. On this basis, this study aims to analyze the legal requirements and procedures for drawing up authentic deeds before a notary and to formulate a framework of notarial liability for legally defective deeds after the notary's term of office has ended.

RESEARCH METHOD

This study employs normative legal research, treating legal norms, principles, concepts, doctrines, and judicial decisions as the primary objects of analysis. This methodological choice follows the thesis design because the issues examined center on the construction of notarial authority, the requirements for the authenticity of deeds, the legal consequences of defective deeds, and the continuity of liability after the term of office has ended. The study does not measure notarial conduct through surveys or interviews; rather, it evaluates the consistency and adequacy of the legal framework by bringing together statutory provisions, the concept of authority, theories of legal certainty and liability, and specific cases. Normative legal research allows the argument to be developed from defensible legal prescriptions rather than from empirical generalizations that are unavailable in the thesis materials (Marzuki, 2011).

This study applies statutory, conceptual, and case approaches. The statutory approach examines the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law No. 30 of 2004 on the Office of Notary, Law No. 2 of 2014 amending the Law, and Constitutional Court Decision No. 84/PUU-XXII/2024. The conceptual approach draws on the concepts of notary, attributive authority, authentic deeds, legal certainty, and legal liability. This case approach focuses on Decision No. 261/Pdt. G/2016/PN Dps as an illustration of how procedural compliance and the legal consequences of a deed are assessed. These three approaches are integrated so that legal norms are not interpreted in isolation from doctrine or their application.

Primary legal materials consist of relevant legislation and judicial decisions. Secondary legal materials include books on notarial law, legal research, national and international journal articles, and scholarly works addressing authority, prudence, defects in deeds, and notary liability. Legal materials were collected through library research by inventorying, classifying, and recording them according to issues of authority, procedure, formal defects, material defects, expiration of office, and forms of liability. References used in the thesis were retained where relevant and strengthened with articles published between 2021 and 2026 that have digital object identifiers, including two articles in Jurnal Smart Hukum and publications authored by Putu Ayu Sriasih Wesna and Anak Agung Istri Agung.

Legal materials were analyzed through systematic interpretation by relating Articles 15, 16, 38-44, 62, 65, and 66 of the Notary Office Law to Articles 1320, 1868, and 1870 of the Indonesian Civil Code. Comparative and future-oriented interpretations were used to compare the consequences of different types of defects and formulate future regulatory needs, while content analysis was used to identify patterns of argumentation in legal doctrine and prior studies. Conclusions were drawn deductively, moving from general rules on authority and authenticity to an assessment of legal consequences and liability in concrete situations arising after the term of office ended.

RESULTS AND DISCUSSION

Notarial Authority and the Legal Basis of Authenticity

A notary's authority derives directly from the legislation. In H. D. van Wijk's theory of authority, this form is described as attribution, namely, the original conferral of authority by the legislature upon an organ or office. Article 15(1) of the Notary Office Law authorizes notaries to draw up authentic deeds concerning acts, agreements, and determinations required by legislation or desired by the parties; guarantee the certainty of the date; retain the minuta deed; and issue grosse copies, copies, and excerpts. This attributive construction is important because the responsibility for exercising authority follows the officeholder who exercises it. Prabhawisnu et al. (2023) likewise characterized notarial authority as an attributive authority derived directly from legislation, meaning that the scope of notarial action must be defined and limited by the norm that confers the authority.

As public officials, notaries perform a public function in the civil law sphere but do not become parties to the legal relationships created by the appearing parties. A notary must maintain a professional distance: the notary gives legal form to the transaction, ensures procedural compliance, provides necessary legal advice, and records the parties' statements without substituting the notary's will for theirs. This position explains why a partij deed essentially contains statements made by the appearing parties, whereas a relaas deed records events seen, witnessed, or performed by the notary. This distinction affects the scope of liability. In a partij deed, a materially falsehood originating solely from a party's statement does not automatically constitute a notarial fault if the notary acted carefully and was unaware of the falsity. In contrast, formal facts concerning presence, time, reading, and signing fall within the notary's direct sphere of responsibility.

Authority cannot be separated from duty. Article 16(1) requires a notary to act in a trustworthy, honest, diligent, independent, and impartial manner and safeguard the interests of the parties. These duties function as both standards of conduct and standards for assessing fault. The duty of diligence requires verification of identity, legal capacity, supporting documents, legality of the object, internal consistency, and conformity of the parties' intentions with the law. The duties of independence and impartiality preclude the notary from favoring a party. Samosir et al. (2024) show that failure to examine the legality of documents when drawing up a power of attorney to sell may be an unlawful act and cause material loss. Therefore, diligence is not an abstract ethical demand but an objective measure for determining whether a notary's conduct satisfies reasonable professional standards.

An authentic deed results from the combined requirements of a qualified official, a lawful authority, proper territorial jurisdiction, a prescribed form, and the required procedure. It is not sufficient for a document to be merely entitled a 'notarial deed' or to be signed in a notary's office. The official must still possess authority, act within the lawful territorial jurisdiction, be free from statutory disqualification or conflict of interest, and follow the prescribed forms. These elements underscore the formal nature of an authentic deed: the law grants it special credibility because its creation is controlled by an official subject to the public standards. Consequently, deviations from certain formalities may reduce their evidentiary value, even though the parties' underlying civil-law intentions may remain.

External, formal, and material evidentiary forces form an integrated whole, but each concerns a different object of proof. External evidentiary force concerns a deed's capacity to prove itself as authentic. Formal evidentiary force binds the parties to the date, place, identity, statements, reading, presence of witnesses, and signing as certified by the notary. Material evidentiary force concerns the legal effects of the statements recorded in the deed on the parties. Santoso and Priyono (2023) emphasize that the assessment of authenticity must begin with the form and function of the deed; if the deed is forged or the process is unlawful, it may be voidable, null and void by operation of law, devoid of legal force, or possess only the evidentiary value of a private deed. Therefore, the assessment of a defect cannot be uniform but must identify the specific element that is not satisfied.

The importance of the structure of a deed is also reflected in Sugiana et al. (2024). Their study shows that the premises, although not expressly regulated in Article 38, explain the background, facts, and reasons for the parties' legal act and assist the notary in examining the material truth more adequately. This finding is relevant because the quality of a deed depends not only on compliance with the minimum structure but also on the notary's ability to construct a coherent and verifiable legal narrative. However, additional elements must not obscure compliance with mandatory elements. Creativity in drafting remains subject to statutory limits of authority, form, procedure, and prohibition.

Legal Requirements and Procedures for Drawing Up Authentic Deeds

The procedure for drawing up a deed begins with receiving and initially assessing the parties' intentions. The notary must ensure that the requested legal act does not conflict with the legislation, morality, or public order. The duty to provide services does not require a notary to accept every request. Refusal is justified when there is a conflict of interest, the parties lack legal capacity, identity, or supporting documents cannot be verified, the request pursues an unlawful purpose, or the notary lacks subject-matter or territorial authority. This preliminary stage is decisive because a defect that could reasonably have been detected but was ignored strengthens the inference of negligence.

The identity and legal capacity of the appearing parties must be assessed in accordance with Article 39 of the Notary Office Law. The appearing party must be personally known to the notary or introduced by a qualified identifying witness, and the party's identity must be expressly stated in the deed. Verification cannot be limited to copying an identity card. The notary must compare the documents, assess the consistency of the photographs and signatures, evaluate the legal capacity to act, and verify the representative authority where a person acts on behalf of a legal entity or another party. Failure at this stage may cause the deed to identify the wrong legal subject, thereby allocating rights and obligations to an improper party. However, where the documents appear valid and no indicator would reasonably give rise to suspicion, liability for concealed forgery cannot be automatically shifted to the notary.

The examination of the object and supporting documents must be proportionate to the type of legal act involved. For certain objects, the notary must assess proof of ownership, required approvals, the status of security interests, the authority of a legal entity's organs, or restrictions on transfer. Hartono and Raisah (2023) emphasize that notaries bear civil and administrative responsibility when drawing up deeds relating to land, particularly when an error causes a loss. The standard of diligence does not require the notary to guarantee every fact in the external world, but it does require professionally reasonable verification, disclosure of legal risks to the parties, and refusal to proceed in the presence of a material inconsistency.

Article 38 regulates the structure of a deed, comprising the opening, body, and closing. The opening states the title, number, time, and notary's name and official seat. The body states the identities and representative capacities of the appearing parties, the intended legal act or event, and the identity of any identifying witness. The closing records the reading and signing of the deed, the place of execution, the identities of the witnesses to the deed, and any amendments. This structure performs an evidentiary function because each part documents formal facts that may be examined later. Therefore, errors cannot always be treated as ordinary drafting mistakes. An omission or inaccuracy in a mandatory element may affect a deed's legal status.

The presence of deed witnesses under Article 40 strengthens the formal truth of the process. Witnesses must satisfy requirements concerning age, legal capacity, comprehension of the language of the deed, ability to sign, and the absence of certain family relationships with the notary or parties. They do not assess the substance of the transaction but witness the reading and signing of the contract. If a witness is unqualified or was not actually present, the formal statement in the closing of the deed does not correspond with the facts. This defect lies within the sphere controlled by the notary and is therefore difficult to attribute to the parties involved.

Reading the deed aloud is a mechanism of confirmation and not a symbolic formality. Through reading, the notary ensures that the appearing parties hear, understand, and approve the wording they are about to sign. Article 16(1) (m) requires the deed to be read before the appearing parties in the presence of witnesses and signed immediately thereafter. An exception is permitted where the appearing parties state that they have read, know, and understand the contents, provided that this statement is recorded and every page of the minuta deed is initialed. When the reading is omitted without satisfying the exception, the safeguard of informed consent is lost, and the deed may be downgraded. Decision No. 261/Pdt.G/2016/PN Dps was used in this thesis to demonstrate how an allegation that a deed was not read aloud may relate directly to its authenticity and liability.

The language of the deed also serves to ensure that it is comprehended. Article 43 generally requires that a deed be drawn up in Indonesian. If a party does not understand the language used, the notary must translate or explain the contents with the assistance of an official translator, and this circumstance must be stated in the deed. Violating this duty may create doubt as to whether consent was given knowingly and freely. From the perspective of Gustav Radbruch's theory of legal certainty, the predictability of legal consequences can be achieved only when the parties understand the provisions that bind them.

Signing under Article 44 links the statement to the person who approved it. The appearing parties, witnesses, and notary must sign immediately after the reading unless a reason for not doing so is stated in the deed. The timing and unity of the process are important because separate signing creates risks of changes to the contents, absence of a party, and divergence of intention. A deed signed contrary to the prescribed procedure may lose its formal evidentiary basis. Sabrina and Musyafah (2024) emphasize that procedural non-compliance may result in invalidity or reduce the instrument to the evidentiary status of a private deed where the notary's fault or negligence is established.

The minuta deed is subsequently retained as part of the notarial protocol. Retention is not a secondary administrative task but rather a guarantee of authenticity and continuity of proof. Copies in circulation derive their legitimacy from the minuta held in the protocol book. When a notary leaves the office, the protocol is delivered to a protocol custodian in accordance with the Notary Office Law. The transfer of physical custody does not transfer the substantive responsibility for the official acts performed by the notary who drew up the deed. This is the rationale of Article 65: the protocol custodian is responsible for maintaining and providing services related to the documents within the custodian's authority, while the notary who drew up the deed may still be required to explain the process and professional decisions made at the time.

Workload also affects the procedural quality. Engracia and Santoso (2023) show that reasonable limits on the number of deeds are intended to preserve accuracy and prevent the process of drawing up deeds from becoming administrative mass production without adequate examination or scrutiny. Its relevance to liability after leaving office lies in the residual risk embedded in the protocol: the more deeds produced without quality control, the greater the possibility that disputes will emerge only after the notary retires.Therefore, procedural compliance must be supported by sound office governance, records of document verification, proper archiving, and internal control mechanisms.

Table 1. Matrix of Defects in Deeds and Their Legal Consequences

Type of issue	Illustrative source of defect	Consequence for the deed	Implications for liability
Defect of authority	The official is no longer in office, acts outside the territorial jurisdiction, or is subject to a statutory disqualification.	The document does not satisfy the elements of an authentic deed and is assessed under general civil law.	Acts performed after authority has ended tend to give rise to personal liability.
Formal defect	Reading, witnesses, identity, structure, language, or signing does not comply with the Notary Office Law.	The deed may be downgraded to a private deed or subject to other legal consequences prescribed by law.	Liability arises where fault, loss, and a causal link are established.
Defect in subjective contractual requirements	Consent or legal capacity is not satisfied.	Generally voidable at the instance of the protected party.	It must be assessed whether the notary knew or ought to have known of the defect.
Defect in objective contractual requirements	A specific object or lawful cause is absent.	May be null and void by operation of law.	The notary is liable where the notary participated in, knew of, or was negligent regarding an evident violation.
False statements by a party	A party provides false documents or facts not apparent upon reasonable examination.	The legal consequences are determined through evidentiary proceedings and a court judgment.	This does not automatically constitute notarial fault; proof of knowledge, participation, or negligence is required.

Legal Defects and Their Effects on the Evidentiary Force of Deeds

The term legal defect must be used with precision. First, a defect of authority exists when a document is drawn up by a person who lacks the capacity of a public official at the time or location of execution. Second, a formal defect exists when the procedure or form of the deed does not comply with the Notary Office Act. Third, there may be a defect in the contractual requirements set out in Article 1320 of the Indonesian Civil Code. Fourth, there may be a material inaccuracy originating from the parties' statements or documents. These four categories may overlap, but their legal consequences are not necessarily the same. Characterizing all of them as 'null and void by operation of law' without analysis would obscure the distinctions among downgraded evidentiary force, voidability, nullity by operation of law, and lack of legal force by virtue of a judgment.

Downgrading an authentic deed to a private deed primarily affects proof quality. The document does not automatically lose all civil-law functions; it may still be considered written evidence if signed by the parties and satisfies the relevant requirements. However, the party relying on the document no longer enjoys the advantage of the conclusive evidentiary force attached to an authentic one. Additional evidence may be required, and documents may be exposed to broader challenges. This consequence demonstrates that a notary's procedural violation may shift the burden and risk of proof to the parties, so the resulting loss may be procedural and financial.

A deed may be voidable if the issue concerns subjective contractual requirements, such as consent or legal capacity, and the protected party seeks annulment. In contrast, failure to satisfy the objective requirements of a specific object or lawful cause may render the agreement null and void by operation of law. This distinction derives from contract law and must not be conflated with the downgrading of a deed because of a formal defect in it. Prianto et al. (2024) emphasized that notarial liability is grounded in fault; therefore, the annulment of a deed does not, in itself, establish liability. The court must still determine whether the cause of annulment fell within the notary's sphere of duty and whether the applicable standard of care was breached.

False statements by the parties require careful analysis. Notaries have no investigative authority and are not absolute guarantors of the material truth of every fact presented. When a party uses a false identity or document that is not visibly detectable and cannot be identified through reasonable examination, the primary fault lies with that party. The position changes, however, where clear indicators, contradictions among documents, a lack of representative authority, or other circumstances should have prompted the notary to seek clarification but were ignored. The principle of prudence discussed by Oklahoma Amanda (2022) requires a notary to ensure that the drafting process produces a deed that is formally complete and legally accountable.

Ratna Putri et al. (2021), in their study of deeds written in blank spaces in the deed register, show that failures in record management governance may create opportunities for manipulation and undermine confidence in the protocol. This finding supports the argument that post-office liability must be assessed with the quality of protocol management. Disputes arising after retirement often require the reconstruction of a process that occurred many years earlier. Verification records, attachments, minute deeds, repertories, and administrative evidence provide the basis for distinguishing notarial negligence from fraud by the parties. Without orderly documentation, a former notary may have difficulty proving that relevant duties were performed.

The case was decided in Decision No. 261/Pdt. G/2016/PN Dps treated the reading of the deed and notarial independence as central issues. From an evidentiary perspective, the closing statement that the deed was read and signed before the notary is a formal fact that must correspond with reality. If a discrepancy is proven, the defect cannot be explained as a unilateral falsehood by the appearing parties because the process was under the notary's control. From the perspective of liability, the plaintiff must establish a causal connection between the procedural violation and the damages claimed. This analysis avoids two extremes: overprotecting the notary merely because the substantive statements came from the parties or attributing every consequence of the transaction to the notary without examining fault.

Ivena et al. (2026) identified a similar pattern in a deed recording the resolution of a general meeting of shareholders. Non-compliance with the Notary Office Law and the code of ethics may cause the deed to be declared invalid and devoid of legal force, while also disrupting the corporate resolution recorded there. Its relevance to this study lies in the cascading nature of the loss: a defective deed may affect not only the document itself but also the transfers of rights, decisions of corporate organs, security interests, or subsequent transactions. Because these effects may emerge only after a considerable period, the expiration of the notary's term of office should not be treated as severing the connection between professional conduct and its consequences.

The Legal Status of a Notary after the Expiration of the Term of Office

The expiration of the term of office ends the authority to act prospectively; it does not erase the legal facts already created. From the effective date of termination, a person may no longer exercise notarial authority to draw up new deeds, issue gross copies, or perform official acts unless the law provides a special mechanism through an authorized official or protocol custodian. A document drawn up after the authority has ended does not satisfy Article 1868 because its maker is no longer an authorized public official when performing the act. In such circumstances, the issue is not merely a procedural defect but the absence of a legal basis for authority.

The temporal distinction is crucial. For deeds drawn up during the term of office, the notary acts as a public official, and liability is assessed by reference to the exercise of lawful authority. Documents drawn up after the term has ended are no longer protected by the office and may be assessed as a personal act that uses the attributes of the office without a legal basis. Kranenburg and Vegtig distinguish personal faults from official faults. In this context, an earlier deed that is defective because of the performance of official duties may give rise to liability originating in an official act, whereas the creation of a new document after termination is more closely associated with personal liability.

Article 65 ensures that the handover of the protocol does not sever the responsibility of the notary who drew up the deed. This rule is necessary because the protocol custodian was not present when the deed was made and cannot replace the notary's personal knowledge of the reading, examination, and signing process. However, the phrase 'remains responsible for every deed drawn up' must be interpreted together with the principle of fault and the applicable limitation regimes. Responsibility is not synonymous with the obligation to pay damages in every dispute. This means that the notary may still be required to provide information and, where the elements of liability are proven, may be subject to the appropriate legal consequences.

Constitutional Court Decision No. 84/PUU-XXII/2024 altered the interpretation of the age limit for holding public office. The basic rule continues to set the age of 65 as the limit, with a possible extension to 67; the decision then permits annual extensions after the age of 67 up to a maximum age of 70, subject to health requirements. This change extends the period of authority for qualifying notaries but does not alter the principle that every deed must be drawn up while the authority remains valid. Because the extensions are conditional and incremental, the administrative status of an appointment or extension must be clearly documented to prevent doubts concerning deeds executed during transitional periods.

From the perspective of Gustav Radbruch's theory of legal certainty, clarity, consistency, and predictability must be balanced. The parties need assurance that a deed drawn up while the notary was authorized does not lose its authenticity merely because the notary later retires from office. Notaries also need assurance that liability will not be imposed without proof of fault. Simultaneously, injured parties should not lose access to a remedy merely because the violation was discovered only after the office had ended. This balance is achieved by preserving the continuity of responsibility while assessing each form of claim according to its elements and limitation period.

A Framework for Liability after Leaving Office

Civil liability is the most direct form of liability when a defective deed causes a loss. Depending on the legal characterization of the case, it may be based on a breach of contract within a particular service relationship or an unlawful act. In an action based on an unlawful act, the plaintiff must prove an unlawful act, fault, loss, and causation to win the case. A violation of the Notary Office Law may indicate unlawfulness, but the court must still connect the violation to a concrete loss. Darmayenti and Khairani (2024) emphasize that a notary may be held liable when an unlawful element exists in the preparation of a defective deed. Hartono and Raisah (2023) likewise treat damages as a consequence of notarial faults that harm the parties.

Fault may be intentional or negligent. Intent is present when the notary knows of the defect, collaborates with a party, or consciously departs from prescribed procedures. Negligence is assessed objectively by comparing the conduct in question with that of a diligent and professional notary under the same circumstances. The central question is whether the consequence was foreseeable and could have been prevented through reasonable measures or not. This standard prevents liability from becoming a strict liability. A notary is not at fault merely because a dispute occurs but may be at fault for disregarding verification, failing to read the deed aloud, using unqualified witnesses, or proceeding with a transaction despite an evident prohibition.

The causation must be examined rigorously. Not every administrative error produces the claimed loss. The plaintiff must show that, without the violation, the loss would not have occurred or that the risk could have been significantly avoided. Where the loss primarily results from another party's fraud that could not have been detected through reasonable examination, the causal connection to the notary is weak. Conversely, causation is easier to establish where the deed was not read aloud and a party consequently signed a clause that the party did not understand, or where identity and representative authority were not verified, and rights were therefore transferred by an unauthorized person.

Criminal liability requires a higher threshold than civil liability. A defective or annulled deed does not automatically constitute a criminal offense. Criminal law requires proof of the statutory elements of the offense, personal culpability, and evidence that the notary committed, ordered, participated in, assisted, or intentionally inserted or used false statements under the applicable criminal provisions. Islam et al. (2021) emphasize that criminal consequences must be established by a court judgment and that the procedure under Article 66 of the Notary Office Law is important when investigators, public prosecutors, or judges require a copy of the minuta deed or summon the notary. Therefore, criminal liability must not be inferred solely from the failure of a deed.

The expiration of the term of office does not preclude criminal proceedings concerning acts committed while a notary was in office. Retirement does not alter the time or nature of the conduct. Nevertheless, summonses and the taking of documents forming part of the protocol must continue to respect official confidentiality and the approval mechanism of the Notary Honorary Council under Article 66. This protection is not immunity but a procedure designed to balance law enforcement with confidentiality. A former notary may provide information about the process followed, while confidential contents may be disclosed only to the extent required and in accordance with the legal procedure.

Administrative and ethical responsibilities have different characteristics. Administrative sanctions, such as warnings, temporary suspension, or dismissal, are directed at the status and performance of the office. After a notary retires, some sanctions that presuppose active office lose their practical effect. However, this does not preclude the examination of violations committed while in office, the recording of supervisory findings, consequences for membership in the professional organization, or the use of administrative findings as evidence in civil or criminal proceedings. The code of ethics also retains a moral and professional dimension because professional integrity does not end on the date of termination of employment.

Therefore, Article 65 should be understood as a connecting norm. It preserves the attribution of responsibility to the notary who drew up the deed after the protocol was transferred, but the resulting consequences must be differentiated. In civil law, the focus is on compensation for loss. In criminal law, the focus is on personal culpability and satisfaction of the elements of an offense. In administrative law, the focus is on compliance with official duties and effective supervision. In ethics, the focus is on the dignity of the profession. Conflating these four spheres produces exaggerated conclusions, such as assuming that annulment of a deed automatically entails criminal liability or that retirement extinguishes all administrative consequences.

The duration of enforceable liability must also be distinguished from the continuity of the responsibility. Although Article 65 does not expressly specify an end date, this does not mean that every claim may be brought at any time. The limitation periods for claims and prosecutions follow the legal regime on which the action is based. In civil cases, the commencement of the period may be disputed when the loss is discovered only later; in criminal cases, the limitation follows the applicable criminal rules; and administrative and ethical supervision follows institutional rules. This study does not alter those limitation provisions but emphasizes the need for harmonization so that both the public and notaries can have predictability.

Notarial responsibility must also be confined to matters within a notary's professional control. The notary is responsible for the form of the deed, the identity and capacity that must be verified, the reading and signing, the presence of witnesses, retention of the minuta deed, legal counseling, and refusal of acts that are manifestly unlawful. A notary is not strictly liable for concealed motives, undetectable falsehoods, or the parties' performance of their obligations after the deed has been completed unless the notary knew of, participated in, or negligently ignored evident warning signs. This limitation preserves the notary's function as a gatekeeper of formal legal certainty without turning the notary into a guarantor of every transaction risk.

An exoneration clause stating that all data were supplied by the parties cannot eliminate the notary's mandatory duties. Prianto et al. (2024) show that liability remains based on notarial errors. Such a clause may clarify the source of the information but cannot be used to release the notary from the duty to examine identity, authority, documents, and procedures. Therefore, the best protection for a notary is not a contractual waiver of responsibility but evidence of compliance: checklists, consultation records, supporting documents, initials on every page, a record of the reading, and a properly maintained minuta deed.

A comparison with prior studies reinforces this framework. Samosir et al. (2024) link inadequate verification to loss; Sabrina and Musyafah (2024) link faults to invalidity or evidentiary downgrading; Santoso and Priyono (2023) distinguish the various implications of authenticity; Ivena et al. (2026) demonstrate the effects of annulment on corporate decisions; and Sugiana et al. (2024) emphasize the importance of deed structure for legal protection. This study integrates those findings into the post-office dimension: the issue is not only whether the notary was at fault, but also how timing, authority, protocol, and the type of sanction affect liability after the notary has left office.

Implications for Supervision and Regulatory Reform

The findings indicate that the prevention of disputes arising after a notary leaves office must begin before the protocol is handed-over. The handover should not be treated merely as a transfer of archives. The Notary Supervisory Council and professional organizations should promote risk-based audits of the completeness of minute deeds, repertories, identity attachments, evidence of representative authority, witness lists, records of readings, and the consistency of numbers and dates. The audit is not intended to disclose confidential content to the public but to ensure that the protocol can be traced and used as evidence if a dispute arises. Administrative findings can be addressed before the notary retires, allowing permissible corrections to be made and preventing indications of serious violations from being concealed for years.

Supervision also requires continuity of information regarding the official status. Following Constitutional Court Decision No. 84/PUU-XXII/2024, annual extensions beyond the age of 67, up to a maximum age of 70, require precise administration. A public system should display the effective dates of appointment, extension, and termination, as well as the identity of the protocol custodian. Such information protects the public from using the services of a person whose authority has ended and protects notaries from allegations based on outdated administrative data.

Digitalization may assist, but it must not obscure the legal basis for authority. Prabhawisnu et al. (2023) demonstrated the need for clearer guidelines for the certification of electronic transactions. In the context of post-office protocols, a digital system may record timestamps, official status, verification checklists, and the location of the minuta deed, while authentic instruments must still be drawn up in a form recognized by law. Technology functions as a tool of control and audit, not as a substitute for the requirements of presence, reading, or signing where the law continues to require them.

Normatively, Article 65 should be clarified through statutory amendments or implementing regulations. An ideal framework should address the meaning of 'responsible' after the protocol has been transferred, distinguish liability for deeds drawn up while authority existed from acts performed after authority ended, explain the relationship with limitation periods, regulate the summoning of former notaries, allocate duties among protocol custodians, the Notary Supervisory Council, and the Notary Honorary Council, and establish an audit mechanism before handover. Such a reform would reduce the interpretation of unlimited liability while preventing retirement from being used as a means of avoiding accountability.

The practical implication for notaries is the need for strict compliance with and documentation of professional decisions. Prudence must be evident in the process, rather than merely asserted in the deed. Notaries should retain evidence that identities were verified, the authority of corporate organs was confirmed, risks were explained, the deed was read aloud, any exception to the reading requirement satisfied the applicable conditions, and supporting documents were linked to the minuta deed. Such documentation does not extinguish liability, but it enables a fair assessment when a dispute arises after the parties' memories have faded or the notary has retired.

For the public, the findings confirm that an authentic deed must be read and understood before it is signed. The parties cannot shift the full responsibility for the truth of their statements to the notary. They must provide accurate information, disclose material facts, and verify that the content reflects their intentions. Legal protection operates reciprocally: the notary ensures that the process and form comply with the scope of authority, while the parties remain responsible for the truth of their statements and the performance of their obligations. This layered model of responsibility best reflects the function of a deed as evidence and as an instrument for preventing disputes.

CONCLUSION

This study concludes that a notarial deed qualifies as an authentic deed only when it is drawn up by an authorized official at a place and during a period in which the authority is valid, and in the form and according to the procedure prescribed by the Notary Office Law. The procedures for verifying the identity and legal capacity of the appearing parties, ensuring the presence of witnesses, complying with the required structure, using a language understood by the parties, reading the deed aloud, signing it, and retaining the minuta deed are substantive components of the guarantee of authenticity. Violations do not invariably produce the same consequence: a formal defect may downgrade evidentiary force; a defect in a subjective contractual requirement may make the deed voidable; a defect in an objective requirement may render it null and void by operation of law; and false statements by the parties must be assessed by reference to the notary's knowledge, participation, and diligence. The expiration of the term of office ends the authority to act prospectively but does not extinguish the responsibility for deeds drawn up while in office. Article 65 preserves the connection between the notary who drew up the deed and the deed itself even after the protocol has been transferred; however, the liability is not strict. Civil liability requires fault, loss, and causation; criminal liability requires satisfaction of the elements of an offense and personal culpability; and administrative and ethical consequences must be adapted to the notary's status and the purpose of supervision. A deed or document created after the term of office has ended lacks a basis of notarial authority and is more likely to give rise to personal liability. Academically, this study confirms the importance of the temporal dimension in the theory of notarial responsibilities. Practically, audits of protocols before handover, transparent records of official status, documentation of compliance, and normative clarification of Article 65 are required so that public protection does not become an unlimited liability for notaries and retirement does not become a means of avoiding accountability.

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