



PROFESSIONAL ETHICS, PRUDENCE, AND LEGAL IMPLICATIONS OF NOTARIAL DEEDS GRANTING POWER OF ATTORNEY TO SELL

Farhan Abdul Ghaffar

Master of Notarial Law Study Program, Faculty of Law, Universitas Diponegoro
Semarang City, Central Java, Indonesia
farhanabdulghaffar03@gmail.com

Yos Johan Utama

Faculty of Law, Universitas Diponegoro
Semarang City, Central Java, Indonesia
yosjohan@lecturer.undip.ac.id

Abstract: The making of Power of Attorney to Sell Deed Number 155 by Notary Wiwin Roswinanti, S.H. in the Sambong, Batang land case raises fundamental questions on professional ethics and the notarial prudence principle. The land was still registered under Tabari bin Dulah's name, offered by Karnoto who was not the certificate holder, while the object remained pledged as collateral at Koperasi Sekartama Batang. Using an empirical juridical approach, this research analyzes the reasons behind the notary's willingness to issue the deed, the conformity of the notary's conduct with standards of authority, prudence, and professional ethics, and the resulting legal implications. The findings indicate strong violations of the prudence principle and professional ethics, with potential implications including degradation of the deed's authentic evidentiary value, administrative sanctions, ethical liability, and civil liability.

Keywords: Power of Attorney to Sell; Notarial Professional Ethics; Principle of Prudence; Legal Implications.

INTRODUCTION

Indonesia is a state governed by the rule of law that guarantees legal certainty, order, and protection for all its citizens. In the context of land law, legal certainty is realized through the land registration system as mandated by Law Number 5 of 1960 on Basic Agrarian Principles (Undang – Undang Pokok Agraria - UUPA) and Government Regulation Number 24 of 1997 on Land Registration. One important instrument in this protection is the role of the notary as a public official authorized to make authentic deeds relating to the transfer and encumbrance of land rights.

A notary is granted authority by the state to make authentic deeds concerning all legal acts, agreements,

and stipulations required by interested parties or mandated by law (Adjie, 2008). In carrying out their duties, a notary does not merely transcribe the will of the parties into a deed, but is also obligated to ensure that all legal acts contained therein satisfy the formal and material requirements prescribed by law. Public trust in the notarial office requires its exercise to be grounded not only in technical-juridical competence, but also in moral integrity and compliance with high standards of professional ethics (Adjie, 2009).

Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Notarial Office (Undang – Undang Jabatan Notaris - UUJN) expressly requires notaries to act in a trustworthy, honest, diligent,

independent, and impartial manner, and to safeguard the interests of all parties involved in the legal act. The Notarial Code of Ethics established by the Indonesian Notary Association (Ikatan Notaris Indonesia - INI) further regulates the moral standards every notary must uphold. A power of attorney to sell deed is one of the notarial products with the broadest legal implications in land matters; through this deed, the landowner grants authority to an attorney-in-fact to sell the land on their behalf (Notodisoerjo, 1993).

The Sambong, Batang land case that serves as the object of this study illustrates the complexity of legal relationships in a land transaction that raises serious questions about a notary's standard of prudence. The case began when a man named Karnoto offered a piece of land to Muhaimin in late 2015, namely Certificate of Ownership Number 208 covering 5,935 m² registered under Tabari bin Dulah's name, located in Wirosari Village, Sambong District, Batang Regency. The land was still registered under Tabari bin Dulah's name, while the party making the offer was Karnoto, who was not the certificate holder, and the certificate was pledged as collateral at Koperasi Sekartama Batang with a debt of IDR 425,000,000. Muhaimin agreed to the transaction for a total of approximately IDR 1,700,000,000 covering debt repayment and the land purchase price.

In formalizing the sale and purchase agreement, Notary Wiwin Roswinanti, S.H., executed two deeds on 30 November 2015: Sale and Purchase Agreement Deed Number 154 and Power of Attorney to Sell Deed Number 155, by which Tabari

authorized Juminah, Muhaimin's wife, to act on his behalf. The notary and staff of Koperasi Sekartama visited Tabari's home to obtain his signature, a procedure that raises questions about compliance with notarial practice. This arrangement raises an academic question: why was the notary willing to execute the power of attorney when the land was offered by someone other than its registered owner and the certificate remained pledged as collateral?

This question cannot be answered solely from the standpoint of the notary's formal authority, but must also be examined from the perspectives of professional ethics, the principle of notarial prudence, and the obligation to know one's client. Legal scholarship indicates that violations of notarial duties may cause a deed to lose its authentic evidentiary force and open the door to administrative, civil, ethical, and even criminal liability (Violations of Notarial Duties and Prohibitions, Indonesian Notary Journal, 2022). In this case, the legal opinion serving as the primary source specifically analyzes alleged violations of Article 391(1) and Article 394 of Law Number 1 of 2023 on the National Criminal Code (KUHP Nasional) concerning acts of ordering or requesting the insertion of false statements into an authentic deed, carrying a maximum penalty of seven years' imprisonment. Several prior studies have addressed related topics. Habib Adjie (2008) discusses notarial authority in making authentic deeds under the UUJN. Research on the legal consequences against notaries who act without due diligence in making power of attorney to sell deeds shows that such cases invariably involve examination of the notary's compliance with formal

procedures and substantive ethical standards (Journal of Humanities and Legal Governance, 2024). Research on the liability of notaries who order the insertion of false statements into authentic deeds confirms that the boundary between administrative error and criminal offense depends on the presence or absence of intent (*dolus*) and resulting harm (Indonesian Notary Journal, 2022). This study seeks to fill the gap in scholarship that specifically places the notarial-ethical question — why a notary would issue a power of attorney to sell deed within a legally contentious construction as the central focus of analysis.

RESEARCH QUESTIONS

This study addresses three questions: (1) What considerations may explain the notary's willingness to execute the power of attorney in the Sambong, Batang land case? (2) How should the notary's conduct be assessed in terms of authority, prudence, and professional ethics? (3) What are the legal implications of Deed Number 155 under the Law on the Notarial Office, the Notarial Code of Ethics, and the rules governing authentic deeds?

RESEARCH METHOD

This study employs an empirical juridical approach (socio-legal research), examining law not only from the textual perspective of statutory regulations, but also from the perspective of how law is applied and practiced in reality, including the attitudes and conduct of legal actors in concrete situations. This approach was chosen because the first and second research problems relate directly to the notary's attitudes, considerations, and professional

conduct, which cannot be answered solely through abstract normative analysis. The third research problem is approached through a juridical analysis of the UUJN, the Notarial Code of Ethics, and legal provisions relating to authentic deeds.

The study combines four approaches: a statutory approach to examine regulations governing notaries and authentic deeds; a conceptual approach to clarify the legal concepts informing the analysis; a case approach to examine the Sambong, Batang land transaction; and a socio-legal approach to consider non-normative factors that may have influenced the notary's conduct.

The research specification is descriptive-analytical with an empirical orientation, describing and analyzing concrete legal facts in the case, then connecting them with applicable statutory norms, codes of ethics, and legal doctrine. Data sources include primary data in the form of a legal opinion from the advocate handling the Sambong, Batang case, and secondary data comprising the UUJN, the Notarial Code of Ethics, Law No. 1 of 2023 (National Criminal Code), the Civil Code, UUPA, books, and scientific journals. Data collection was conducted through library research, with data analysis using a qualitative-prescriptive method to examine norms and facts in order to formulate the legal assessments that ought to apply.

RESULTS AND DISCUSSION

Why Was the Notary Willing to Issue the Power of Attorney to Sell Deed?

Review of Notarial Authority

Formally, the notary possesses unquestionable authority to make a

power of attorney to sell deed pursuant to Article 15 of the UUJN. This attributive authority derives directly from statute and requires no additional delegation from any other party (Lumban Tobing, 1999). The notary likely based their willingness on several considerations: first, Tabari as the certificate holder was present and signed the deed, thereby formally satisfying the requirement for an appearing party; second, a Sale and Purchase Agreement (PPJB) and a Power of Attorney to Sell Deed are common instruments in land transactions prior to full payment; third, the notary, as a legal partner of Koperasi Sekartama, may have considered their active involvement in facilitating the transaction as part of their duty to the cooperative.

However, formal authority does not automatically justify making a deed without considering the objective conditions of the underlying legal relationships. The more substantive question is whether that authority was exercised within its lawful limits — when the object, subject, and legal relationships truly satisfied the requisite conditions (Adjie, 2008).

Review of the Principle of Prudence

The empirical juridical approach in this study enables the identification of non-normative factors that allegedly contributed to the notary's willingness to issue the deed, including relational pressure arising from their position as the cooperative's legal partner, the assumption that Tabari's presence and signature were sufficient, and the lack of internal protocols for out-of-office signing situations. The principle of notarial prudence requires the notary not merely to accept the

physical presence of an appearing party, but to substantively verify all aspects of the underlying legal relationship (Adjie, 2009).

In the Sambong, Batang case, several red flags should have prompted deeper verification: first, Karnoto, who offered the land, was not the certificate holder, making his authority to control a transaction over another person's land legally questionable; second, Certificate of Ownership Number 208 was still pledged as collateral at Koperasi Sekartama Batang, which juridically limits Tabari's freedom to transfer his rights without the creditor's consent; third, standard procedure requires the appearing party to attend the notary's office, yet the notary visited Tabari's home together with creditor staff, raising concerns about whether Tabari was signing freely; fourth, the transaction value of IDR 1,700,000,000 should have prompted a higher degree of scrutiny (Legal Consequences against Notaries, JHLG, 2024).

Review of Professional Ethics

The most critical aspect of this case is the notary's dual position as both a legal partner of Koperasi Sekartama and the notary facilitating the transaction between the cooperative's debtor and a third party. The Notarial Code of Ethics affirms that a notary must uphold the dignity of the office, act honestly, independently, impartially, and safeguard the interests of all parties (Indonesian Notary Association, 2015). The most fundamental ethical question is whether the notary's presence at Tabari's home alongside cooperative staff reflects notarial independence, or

rather signals partiality toward the creditor.

If the notary acted in a manner that caused the cooperative's interests to take precedence over Tabari's interests as the appearing party, there is strong indication of a violation of the duty of impartiality (*onpartijdigheid*), which is a fundamental principle of notarial professional ethics (Implementation of the Notarial Code of Ethics, Jurnal Justicia, Universitas Darul Ulum). This dual position represents an ethically highly sensitive

situation directly related to the prohibition against a notary acting under the influence or pressure of another party that could compromise their independence as a public official (Ethics and the Notarial Code of Ethics, IJIJEL, 2025).

Integrated Review of Authority, Prudence, and Professional Ethics

The integrated assessment of these three aspects yields the following picture:

Assessment Aspect	Condition	Assessment
Notarial Authority (Article 15 UUJN)	The notary is authorized to make a power of attorney to sell deed	Formally satisfied
Prudence (<i>zorgvuldig</i>), Article 16 UUJN	Four red flags were not substantively verified	Allegedly not satisfied
Independence & impartiality (Code of Ethics)	Dual position as the creditor's legal partner	Allegedly violated
Appearing party procedure (UUJN)	The notary visited the appearing party's home with creditor staff	Deviates from standard
Know your client verification	The legal relationship between Karnoto and Tabari was not verified	Allegedly not satisfied

From the analysis, although the notary's formal authority was satisfied, the notary's conduct in the Sambong, Batang case indicates non-compliance with the principle of prudence and professional ethics, which serve as substantive limitations on notarial authority. This study employs the Theory of Authority (*theorie van bevoegdheid*) to analyze the limits of notarial authority, the Prudent Officer Principle to measure the standard of diligence required of the notary, and the Theory of Professional Ethics to assess the notary's conduct from the standpoint of professional moral propriety (Notodisoerjo, 1993; Adjie, 2009).

Legal Implications of Power of Attorney to Sell Deed Number 155

Implications in the Civil Sphere: Validity of the Deed

The validity of Deed Number 155 is examined through three layers of authentic deed evidentiary force. Based on the doctrine of evidentiary law, an authentic deed carries external evidentiary force (*uitwendige bewijskracht*), formal evidentiary force (*formeel bewijskracht*), and material evidentiary force (*materieel bewijskracht*) (Subekti, 2008). Of these three aspects, the formal evidentiary force of Deed Number 155 is called into question because Tabari may not have been in a position to give free consent when signing, given that

he was visited by the notary alongside creditor staff. The material evidentiary force is potentially flawed if Tabari did not genuinely exercise free will, or if the deed contained statements that did not reflect reality.

If the formal and/or material evidentiary force is proven to be defective, Deed Number 155 risks being downgraded to a private deed, or in the worst case, declared null and void by a court (Mertokusumo, 2006). The civil consequences include the notary's obligation to pay compensation to the injured party under Article 1365 of the Civil Code.

Implications in the Administrative Sphere

Article 65 of the UUJN affirms that a notary is responsible for every deed they make, even after the notarial protocol has been transferred to another party (Adjie, 2009). If the Notarial Supervisory Board finds a violation of notarial duties as stipulated in Article 16 of the UUJN, the notary may be subject to administrative sanctions ranging from a verbal reprimand, written reprimand, temporary suspension, to dishonorable dismissal. The fact that the notary visited the appearing party together with creditor staff constitutes strong indication of a potential procedural violation that may serve as grounds for administrative sanctions.

Implications in the Professional Ethics Sphere

The alleged violation of the duty of impartiality and the prohibition against acting under the influence of another party as stipulated in the Notarial Code of Ethics may bring this case before the Honor Council of the INI (Indonesian Notary Association,

2015). Proven ethical violations may result in permanent sanctions on the notary's professional career. This is supported by the analysis of Article 16 of the UUJN, which affirms that the notarial office carries moral responsibilities that extend beyond mere compliance with written rules (Humanisa, 2025).

Relevance of the National Criminal Code: Articles 391, 392, and 394 of Law No. 1 of 2023

Law Number 1 of 2023 on the National Criminal Code regulates three articles relevant to this case. Article 391(1) imposes a maximum penalty of seven years' imprisonment on any person who orders the insertion of false statements into an authentic deed. Article 392 governs the falsification of authentic deeds in general as a *lex specialis*, carrying a maximum sentence of eight years' imprisonment. Article 394 imposes a similar penalty on any person who requests that false statements be inserted into an authentic deed.

The elements of Article 391(1) were found not to be satisfied with respect to Muhaimin and Juminah as the buyer and attorney-in-fact. However, this analysis opens a more fundamental question regarding the notary's own position and liability, as the boundary between administrative error and criminal offense depends heavily on the presence or absence of criminal intent (*dolus*), resulting harm, and violations of fundamental notarial duties (Liability of Notaries Who Order Insertion of False Statements, Indonesian Notary Journal, 2022; Existence of Article 266 of the Criminal Code in Addressing Notarial Deed Forgery, Repository of Universitas Sam Ratulangi).

CONCLUSION

The notary's willingness to issue Power of Attorney to Sell Deed Number 155 in the Sambong, Batang land case was likely based solely on the satisfaction of formal requirements — the presence and signature of Tabari as the certificate holder — without conducting substantive verification of the entire legal relationship underlying the transaction. From an empirical juridical perspective, the notary's relational position as a legal partner of Koperasi Sekartama allegedly contributed to this willingness. Assessed from the standpoints of the principle of prudence and professional ethics, there are strong indications of non-compliance with the duty of diligence (*zorgvuldig*) under Article 16(1) of the UUJN and the principle of notarial independence, even though formal authority was satisfied. The legal implications of Deed Number 155 are multidimensional: in the civil sphere, there is a risk of downgraded evidentiary force if formal or material defects are proven; in the administrative sphere, there are grounds for sanctions by the Notarial Supervisory Board; in the ethical sphere, there are indications of a violation of the impartiality principle that may be processed through the INI Honor Council; and in the criminal sphere, while Article 391 of Law No. 1 of 2023 was not satisfied with respect to the buyer, the question of the notary's own liability remains open.

As recommendations, notaries should strengthen their due diligence standards regarding the identity, capacity, and legal relationships of the parties before issuing a power of attorney to sell deed, and should avoid out-of-office signings in situations

involving the interests of a creditor with whom they have a professional relationship. The Indonesian Notary Association should formulate more concrete technical guidelines on verification procedures for making power of attorney to sell deeds, including an explicit prohibition against a notary simultaneously acting as a creditor's legal partner in the same transaction. Law enforcement authorities should develop an analytical framework that clearly distinguishes between administrative violations, ethical violations, civil defects in a deed, and alleged criminal offenses, with particular reference to Articles 391, 392, and 394 of Law No. 1 of 2023. Policymakers should revise the UUJN provisions on the prohibition of conflicts of interest between the notarial office and the notary's position as a financial institution's legal partner.

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