

Civil Liability of Notaries in The Execution of Bank Credit Agreement Deeds Based on Invalid or False Documents

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ABSTRACT

This study aims to analyze the limits of a notary's civil liability in the preparation of banking credit agreement deeds based on materially inaccurate documents, as well as to examine the juridical implications for the validity of authentic deeds and the legal relationships between the parties. The research employs a normative legal method with statutory, conceptual, and case approaches, supported by an analysis of banking regulations, the Civil Code, and the Notary Position Act. The results indicate that, in principle, a notary is only responsible for the formal validity of the deed, insofar as all procedures and statutory requirements have been fulfilled. However, under certain circumstances, a notary may be held civilly liable if proven to have acted negligently, carelessly, or in violation of the duty of prudence. Furthermore, the use of materially inaccurate documents may lead to defects of consent, unlawful acts, and the degradation of the evidentiary strength of an authentic deed into that of a private document. Therefore, it is necessary to establish clearer normative boundaries regarding the extent of material verification by notaries in order to ensure legal certainty and protection for the parties in banking credit practices. This study also emphasizes the importance of harmonizing the prudential banking principle with notarial authority to prevent an imbalance of legal responsibility that may adversely affect financial institutions and the public at large. In addition, it provides normative recommendations to clarify the scope of notarial liability in the future.

Keywords : Notary Civil Liability; Authentic Deed; Banking Credit; Material Truth; Legal Certainty.

1. INTRODUCTION

The development of the banking sector plays a strategic role in supporting national economic growth, particularly through its intermediation function in channeling credit to the public. Credit, as one of the primary banking products, constitutes the provision of funds based on an agreement between the creditor and the debtor, with an obligation of repayment within a specified period accompanied by interest. In this context, banks function not only as financial institutions but also as instruments of development that promote the improvement of public welfare (Hermansyah, 2006). Therefore, credit distribution activities must be carried out in accordance with the prudential banking principle in order to minimize risks that may affect the financial stability of banks.

In practice, the extension of credit inherently involves potential risks, particularly those arising from non-performing loans due to the debtor's inability to fulfill their obligations. To mitigate such risks, banks implement creditworthiness assessments, one of which is through the application of the 5C principles (character, capacity, capital, collateral, and condition of economy)

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as an evaluative instrument for prospective debtors (Ariesta & Siregar, 2025). Nevertheless, such assessments are not entirely capable of eliminating risk, especially when the data or documents used as the basis for credit applications are materially inaccurate.

The legal relationship between a bank and a debtor in the provision of credit is manifested in a credit agreement, which is generally embodied in an authentic deed drawn up by or before a notary. An authentic deed possesses perfect evidentiary value as stipulated in the Civil Code, thereby providing legal certainty for the parties involved. In this regard, a notary, as a public official, is vested with attributed authority to draw up authentic deeds that function as strong written evidence within the civil law evidentiary system (Adjie, 2008). The existence of an authentic deed is of paramount importance in banking practice, as it is directly related to legal certainty and the protection of the parties' interests.

However, within notarial doctrine, a notary is, in principle, only responsible for the formal validity of the deed he or she executes, namely matters relating to the procedure for drafting the deed, the identification of the parties, and its conformity with the applicable legal provisions. A notary is not burdened with the obligation to guarantee the material truth of the documents or statements submitted by the parties (Notodisoerjo, 1993). This condition gives rise to legal issues when an authentic deed is found to have been based on documents that are subsequently proven to be materially inaccurate. The problem becomes increasingly complex because an authentic deed retains perfect evidentiary value insofar as it cannot be disproven through a mechanism of rebuttal evidence (*tegenbewijs*). Nevertheless, if the deed is proven to contain defects, whether formal or material, it may be degraded into a private deed as stipulated under Article 1869 of the Indonesian Civil Code. Such degradation results in the loss of its perfect evidentiary value, which may ultimately prejudice the parties and undermine public trust in authentic deeds as legal instruments (Pyarrani & Burhanuddin, 2025). Furthermore, the use of inaccurate or false documents in the credit-granting process not only causes economic losses but also has the potential to give rise to legal disputes, both in civil and criminal domains. One case demonstrates that the use of inaccurate documents in a credit application may lead to financial losses for the bank and raise issues regarding the notary's involvement in the execution of a deed based on such documents (Julianti, Djaja, & Sudirman, 2023). This situation indicates the existence of a legal gap concerning the limits of a notary's responsibility in verifying the material truth of documents submitted by the parties.

On the other hand, the regulation under the Law on Notary Position (Undang-Undang Jabatan Notaris/UUJN) primarily emphasizes the formal aspects of deed execution, including procedures, authority, and the obligations of notaries in performing their office. The UUJN does not explicitly regulate the limits of a notary's obligation to verify the material accuracy of

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documents submitted by the parties. This condition gives rise to vague norms (vage normen), which may lead to legal uncertainty, particularly in determining the civil liability of notaries in the event of losses arising from the use of inaccurate or false documents in the execution of a deed.

Based on the foregoing discussion, it can be concluded that there is a significant legal issue concerning the limits of a notary's civil liability in the execution of banking credit agreement deeds based on inaccurate or invalid documents. This issue is crucial to examine as it relates to legal certainty, the protection of the parties involved, and public trust in authentic deeds as instruments possessing perfect evidentiary value. Accordingly, this study aims to analyze the limits of a notary's civil liability in verifying the material accuracy of documents used in the execution of banking credit agreement deeds, as well as to examine the legal implications arising from the use of such inaccurate documents.

This research is expected to provide both theoretical and practical contributions. From a theoretical perspective, it is intended to enrich the body of legal scholarship, particularly in the fields of notarial law and banking law concerning the concept of notarial liability. From a practical perspective, it is expected to contribute to notaries, banking institutions, and policymakers in formulating clearer boundaries of notarial authority and responsibility, thereby enhancing legal certainty and minimizing the potential for disputes in the future.

2. RESEARCH METHODS

This study employs a normative legal research method (doctrinal legal research) focusing on the analysis of legal norms governing the civil liability of notaries in the execution of banking credit agreement deeds based on inaccurate or false documents. This approach is selected because the issues examined relate to vague norms (vage normen), conflicts of norms, and legal gaps concerning the regulation of the limits of notarial responsibility for the material truth of the parties' documents. The approaches applied in this study include the statute approach, conceptual approach, and case approach. The statute approach is conducted by examining relevant legislation, such as the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), the Law on Notarial Office (Undang-Undang Jabatan Notaris), and regulations related to the banking sector. The conceptual approach is utilized to analyze legal doctrines and concepts developed in the literature, particularly those concerning notarial liability, the evidentiary value of authentic deeds, and the prudential principle in banking. Meanwhile, the case approach is carried out by analyzing relevant court decisions to understand the application of legal norms in practice. The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and court decisions relevant to the research object. Secondary legal materials comprise books, scholarly journals, prior research findings, and opinions of legal

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scholars relevant to the topic. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that provide supplementary explanations of primary and secondary materials. The technique for collecting legal materials is conducted through library research, involving the inventory, identification, and examination of relevant literature and legal documents. All collected legal materials are then systematically analyzed to develop comprehensive legal arguments. The analysis of legal materials in this study is conducted using qualitative methods through legal interpretation and legal reasoning techniques. Legal interpretation is performed using various methods, including grammatical, systematic, and teleological interpretation, to ascertain the meaning of applicable legal norms. Furthermore, a prescriptive analysis is undertaken to formulate arguments and recommendations regarding the limits of civil liability of notaries in drafting credit agreement deeds based on inaccurate documents. Through this method, the study is expected to provide a comprehensive, systematic, and argumentative analysis of the legal issues examined, as well as to produce conclusions that are academically accountable.

3. RESULTS AND DISCUSSION

The Scope of a Notary's Obligations in Verifying Documents as the Basis for the Execution of Banking Credit Agreement Deeds.

Based on a normative analysis of statutory regulations, legal doctrines, and notarial practices, it is found that the notary's obligation to verify documents as the basis for the preparation of a banking credit agreement deed is formal in nature rather than material. This means that a notary is only required to ensure that the documents submitted by the parties have fulfilled the administrative and procedural requirements, without any obligation to guarantee the substantive truth or accuracy of the contents of such documents (Indonesia, 2014; Soekanto & Mamudja, 2001).

The formal obligation encompasses several fundamental aspects, namely the verification of the parties' identities, the formal validity of the submitted documents, and the conformity between the parties' intentions and the formulation of the deed to be executed. In this regard, the notary acts as a public official who provides juridical legitimacy to a legal act through an authentic deed, which possesses perfect evidentiary value under civil law. Nevertheless, the notary is not burdened with the obligation to conduct an investigation or to verify the material truth of such documents, as this falls outside the scope of the notary's authority (Kelsen, 1945; Marzuki, 2008).

Descriptively, the limits of a notary's obligations can be formulated as follows:

Tabel 1. The Limits of a Notary's Verification Obligations in the Execution of Notarial Deeds

Verification Aspect	Notary's Obligation	Limitation
Identity of the Parties	To examine the identity and formal legality of the parties	Does not guarantee the material truth
Supporting Documents	To verify administrative completeness	Does not examine the substantive content of the documents
Intention of the Parties	To ensure the existence of mutual consent	Does not assess any underlying or hidden motives
Deed Content	To formalize the agreement into an authentic deed	Based solely on the statements of the parties

From the table, it can be observed that the authority of a notary is explicitly limited to the aspect of *formele waarheid* (formal truth), rather than *materiële waarheid* (material truth). This limitation constitutes a logical consequence of the notary's function as a creator of authentic evidentiary instruments in civil law, who does not possess investigative authority comparable to that of law enforcement officials (Ishaq, 2009).

In the banking context, documents used as the basis for credit agreements have generally undergone internal analysis by the bank. As a creditor, the bank is obliged to apply the prudential banking principle, including assessing creditworthiness through the 5C approach (character, capacity, capital, collateral, and condition). Accordingly, the verification of the material truth of the debtor's documents fundamentally constitutes the primary responsibility of the bank, rather than the notary (Hermansyah, 2006; Ariesta & Siregar, 2025).

Theoretically, the limitation of a notary's obligations to formal aspects is consistent with the concept of legal certainty within the framework of legal positivism. Hans Kelsen emphasizes that the law must provide clear boundaries regarding the authority and responsibilities of each legal subject in order to achieve order and predictability (Kelsen, 1945). This view is reinforced by the argument that legal certainty can only be attained when legal norms are formulated explicitly and applied consistently (Julyano & Sulistyawan, 2019). Within this framework, a notary is positioned as a passive public official, whose role is limited to embodying the will of the parties into an authentic deed without assessing the material truth of the underlying documents. This limitation is essential to maintain efficiency in legal transactions, particularly in the banking sector, which requires speed, certainty, and reliability in every credit transaction. However, from the perspective of progressive law, the law is not solely oriented toward certainty but must also consider aspects of justice and utility (Raharjo, 2000). In notarial practice, this tension between legal certainty and justice becomes particularly relevant when a notary is confronted with documents that appear formally valid but are substantively suspected of containing inaccuracies or falsehoods.

In modern banking practice, the obligation of banks to conduct material verification is reinforced by various regulations, including the implementation of anti-fraud strategies that require banks to detect and prevent the use of false or inaccurate documents in the credit process (Indonesia, 1998; Indonesia, 2019). Therefore, from a systemic perspective, the allocation of responsibilities between banks and notaries becomes clear: banks are responsible for material truth, while notaries are responsible for formal truth. Nevertheless, the limits of the notary's formal obligations are not absolute. In circumstances where a notary knows or reasonably suspects the existence of inaccuracies in the submitted documents, the notary has both a legal and ethical obligation to refuse to execute the deed. This constitutes an implementation of the prudential principle and the principle of good faith in contract law (Indonesia, Civil Code).

Furthermore, the concept of legal fiction posits that every person is presumed to know the law and is responsible for their actions, including any documents submitted in a legal act (Hamdani et al., 2023). Accordingly, responsibility for the material truth of such documents remains with the parties, and a notary cannot be held liable insofar as they have fulfilled their formal obligations in accordance with the applicable legal provisions. Moreover, this limitation functions as a mechanism of legal protection for notaries, ensuring that they are not burdened with responsibilities beyond the scope of their authority. In this context, the law serves to create a balance between the protection of public officials and the assurance of legal certainty for society (Hadjon, 1987).

Thus, it can be affirmed that the notary's duty in verifying documents for the preparation of bank credit agreement deeds is limited to formal aspects, with the exception of cases where there are clear indications of falsity. This limitation is part of a legal framework designed to maintain a balance between legal certainty, transactional efficiency, and the protection of parties involved, particularly within banking practices that entail high complexity and legal risk.

Legal Regulation Concerning the Liability of Notaries in the Preparation of Banking Credit Agreement Deeds Based on False Documents

Based on the results of normative legal research using a statutory approach and a conceptual approach, it is found that the liability of a notary in drafting banking credit agreement deeds based on false documents can be systematically classified into three main types: civil liability, administrative liability, and criminal liability. This classification does not stand independently but is highly determined by the degree of fault (*schuld*), the nature of the notary's involvement, and the presence or absence of elements of intent or negligence in the notary's actions.

Descriptively, civil liability arises when a notary commits an unlawful act (*onrechtmatige daad*) that causes harm to another party. The essential elements that must be fulfilled include the

existence of an unlawful act, the presence of fault, the occurrence of damage, and a causal link between the act and the resulting harm (Indonesia, KUHPerdata). Therefore, not every defective deed automatically imposes civil liability on a notary; it must first be demonstrated that a verifiable fault exists, particularly the obligation to act honestly, diligently, independently, and impartially (Indonesia, 2014).

Meanwhile, administrative liability is closely related to violations of the duties stipulated in the Notary Position Act. As a public official, a notary is required to act honestly, diligently, independently, and impartially, while safeguarding the interests of the parties in every execution of a deed (Indonesia, 2014). Violations of these obligations may result in administrative sanctions, ranging from warnings to dismissal, aimed at preserving the integrity and professionalism of the notary office.

Criminal liability represents the most serious form of accountability and can only be imposed if a notary is proven to be actively involved in a criminal act, such as document forgery or providing false statements in an authentic deed (Indonesia, KUHP; Ex Crimen, 2021). In this context, the element of intent constitutes a key factor distinguishing criminal liability from other forms of responsibility.

However, if a notary acts solely based on the documents submitted by the parties, has no knowledge of any falsity, and has followed formal procedures in accordance with the applicable statutory regulations, the notary cannot, in principle, be held legally liable. This underscores that the notary's role is not to guarantee the material truth of the documents, but rather to serve as an official who provides formal legitimacy to the parties' intentions.

The legal regulation regarding the liability of notaries fundamentally rests on the principle of fault-based liability. This principle stipulates that legal responsibility can only be imposed if an element of fault exists, whether in the form of intent (*dolus*) or negligence (*culpa*) (Marzuki, 2008; Huda, 2011). Accordingly, this concept establishes a clear boundary, indicating that notaries cannot be held strictly liable, but their responsibility must be established through the demonstration of fault.

In the context of criminal law, this principle is known by the adagium *geen straf zonder schuld* (no punishment without fault), which asserts that an individual cannot be criminally sanctioned without the existence of fault that can be attributed to them personally (Huda, 2011). The same principle is also reflected in civil law through Article 1365 of the Indonesian Civil Code, which requires the existence of fault as a basis for a claim for damages (Indonesia, KUHPerdata).

In banking practice, a credit agreement constitutes a principal contract that is subject to the provisions of Article 1320 of the Indonesian Civil Code regarding the validity requirements of contracts, as well as the principle of freedom of contract under Article 1338 of the Civil Code

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(Indonesia, KUHPperdata). In this context, a notary serves as a public official authorized to prepare authentic deeds, which provide perfect evidentiary value for the legal relationship between the creditor and the debtor.

However, it should be emphasized that a notary's responsibility is limited to formal accuracy (*formele waarheid*) and does not extend to the material truth (*materiële waarheid*) of the documents submitted by the parties. This aligns with the passive nature of the notary's role, which consists solely of reflecting the parties' intentions into an authentic deed without conducting further substantive investigation (Soekanto & Mamudja, 2001). Consequently, the notary is not obliged to verify the material validity of each document submitted.

In the banking context, the responsibility for ensuring the material accuracy of documents lies with the bank as a financial intermediary, which is required to implement the prudential banking principle. This principle is regulated under the Banking Law and reinforced through regulations concerning anti-fraud strategies (Indonesia, 1998; Indonesia, 2019). Banks are obliged to conduct comprehensive credit analyses using the 5C approach (character, capacity, capital, collateral, condition) to assess the creditworthiness of debtors (Ariesta & Siregar, 2025). Therefore, the primary responsibility for the material accuracy of documents systematically rests with the banking institution.

Legal issues arise when the documents used as the basis for drafting a deed are found to be false or fraudulent. In this context, two distinct legal constructs can be analyzed more systematically. First, if a notary is unaware of, and has no reasonable grounds to suspect, the falsity of a document, the notary cannot be held legally liable. This is related to the legal fiction concept, whereby the law considers the fulfillment of formal procedures sufficient to confer legitimacy on a legal act (Hamdani et al., 2023). Under this framework, legal protection is granted to the notary as a public officer who has acted in accordance with the prescribed procedures.

Second, if a notary is aware of, or at least has reasonable grounds to suspect, the falsity of the documents but nevertheless proceeds with the execution of the deed, the notary may be deemed negligent or even intentional in their conduct. Under such circumstances, the notary may be held liable under civil, administrative, and criminal law for violating the principles of due diligence and professional integrity.

If there is no clear delineation of a notary's responsibilities, legal uncertainty may arise, potentially causing harm to both the notary and the involved parties. Therefore, a more explicit, systematic, and comprehensive legal framework is required, including but not limited to:

1. Normative clarification of the limits of formal and material verification in the Notary Position Law, aimed at providing certainty regarding the scope of notaries' responsibilities;

2. Standardization of due diligence procedures for notaries in banking transactions, particularly to detect indications of questionable documents, without shifting the primary responsibility from the bank;
3. Strengthening the notary code of ethics as an internal professional control instrument in addressing potential document misuse;
4. Harmonization between banking regulations and notarial regulations, thereby creating a proportional and non-overlapping division of responsibilities.

Thus, future legal regulations should be able to create a balance between the protection of notaries as public officials and the legal certainty for the parties involved in banking credit agreements. This aligns with the fundamental objectives of law to achieve order, justice, and legal certainty simultaneously in practice (Raharjo, 2000; Kansil, 1980).

4. CONCLUSION

Based on the research findings, the notary's obligation to verify documents as the basis for drafting a banking credit agreement deed is legally limited to the aspect of formal truth (*formele waarheid*), rather than material truth (*materiële waarheid*). The notary is only required to ensure that administrative requirements, the formal validity of documents, and the identities and intentions of the parties are properly reflected in the authentic deed, without any obligation to examine or guarantee the substantive truth of the submitted documents. This limitation is a consequence of the notary's role as a passive public official without investigative authority and aligns with the principle of legal certainty in legal positivism, which demands clear boundaries of authority. In the banking context, responsibility for the material accuracy of documents rests with the bank as the creditor, which is required to apply prudential principles through credit analysis, thereby creating a systematic division of responsibilities between the notary and the bank. Nevertheless, this limitation is not absolute, as the notary remains obliged to refuse the drafting of a deed if aware of or reasonably suspects any falsification of documents, as an implementation of the principles of prudence and good faith in contract law.

Furthermore, the legal framework regarding the liability of notaries in drafting bank credit agreements based on incorrect documents indicates that notarial responsibility can be classified into three types: civil, administrative, and criminal liability. The application of these responsibilities largely depends on the presence of fault, either in the form of intent (*dolus*) or negligence (*culpa*). A notary cannot be held liable if they merely fulfill formal obligations based on the documents provided by the parties without knowledge of any inaccuracy. However, liability arises if it is proven that the notary knew or ought to have suspected defects in the documents yet proceeded with the drafting of the deed. This regulation reflects the application of the principle



geen straf zonder schuld in criminal law and fault liability in civil law. Therefore, to prevent legal uncertainty and ensure a balance between the protection of notaries and the interests of the parties, regulatory reinforcement is required through the clarification of the limits of formal and material verification, standardization of due diligence procedures, strengthening of professional codes of ethics, and harmonization between banking and notarial regulations. Such measures aim to optimally realize the legal objectives of certainty, justice, and utility in practice.

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