

## Notary's Liability in Drafting Successive Powers of Attorney: Case Study of Supreme Court Decision No.130/Pdt.G/2023/PN.Skt

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### Abstract

Notaries occupy a pivotal position within Indonesia's civil law system as public officials authorized to produce authentic deeds that ensure legal certainty and protect private rights. However, the practice of drafting successive powers of attorney – where delegated authority is transferred to a third party without the principal's explicit consent – raises serious legal and ethical concerns. This article employs a normative juridical method to examine the scope and forms of notarial liability in such cases, drawing on statutory provisions, legal doctrine, and judicial practice, particularly Supreme Court Decision No. 130/Pdt.G/2023/PN.Skt. The analysis demonstrates that successive delegation without express authorization contradicts the personal nature of mandates as regulated under Article 1814 of the Indonesian Civil Code. Moreover, notaries who fail to exercise due prudence in verifying consent and legality may incur layered liability, including civil, administrative, ethical, and, in exceptional cases, criminal responsibility. This study highlights the importance of the prudential principle in notarial practice and argues that strengthening verification mechanisms and promoting ethical awareness are crucial for safeguarding the authenticity of notarial deeds and maintaining public trust in Indonesia's legal system.

**Keywords:** Notary's Liability, Successive Powers of Attorney, Supreme Court Decision

### Introduction

The notarial institution occupies a central position within Indonesia's civil law system as a key instrument for guaranteeing legal certainty (*rechtszekerheid*) and protecting private rights in civil transactions. As public officials vested with authority by the state, notaries are entrusted with the responsibility to draft authentic deeds (*akta otentik*), which constitute the highest and most reliable form of written evidence in private law disputes (Marzuki, 2017). Authentic deeds enjoy a strong evidentiary presumption regarding the truth of their contents and the legality of the legal acts they record, thereby serving as a foundation for stability, predictability, and trust in civil relations.

The authority of notaries is expressly regulated under Article 15 of Law No. 2 of 2014 on the Notary Office (*Undang-Undang Jabatan Notaris*), which empowers notaries to formalize agreements, legal acts, and declarations required by law or requested by the parties. This statutory mandate places notaries in a unique position that goes beyond mere administrative facilitation. They are required to act

independently, impartially, and prudently, ensuring that every deed reflects not only formal legality but also the genuine will and lawful intent of the parties involved (Indrati, 2019). In this sense, the notary functions not simply as a recorder of private agreements, but as a guardian of legality and legal order.

Despite this normative ideal, contemporary notarial practice in Indonesia reveals recurring challenges that threaten the integrity of authentic deeds. One of the most problematic issues concerns the use of successive powers of attorney, namely situations in which an attorney-in-fact transfers the granted authority to another person without the explicit consent of the principal. This practice is frequently justified on pragmatic grounds, particularly in land and property transactions where principals are geographically distant or where intermediaries seek to expedite the process. However, such convenience-oriented practices often come at the expense of fundamental legal principles.

From a doctrinal perspective, the power of attorney is inherently based on the principle of *intuitu personae*, which emphasizes the personal trust and confidence placed by the principal in a specific individual (Sari, 2020). The authority granted is therefore personal and non-transferable unless expressly permitted by the principal. The absence of explicit consent not only violates the personal nature of representation but also undermines the validity of subsequent legal acts performed under such authority. In practice, the misuse of successive powers of attorney has frequently resulted in land disputes, overlapping ownership claims, and prolonged litigation, thereby eroding legal certainty and public trust in notarial instruments (Diah, 2023).

The central legal challenge lies in reconciling procedural efficiency with the principle of authenticity, which requires that every notarial deed reflect lawful intent, valid authority, and genuine consent. A notary who authenticates a successive power of attorney without conducting adequate verification is not merely documenting a private arrangement, but may inadvertently facilitate an unlawful act. Such negligence compromises the evidentiary strength of the deed and weakens the moral authority of the notarial office as an institution entrusted with public confidence (Basuki, 2023). This tension illustrates the broader dilemma faced by notaries in modern legal practice: balancing demands for efficiency with the obligation to uphold substantive justice.

Within this context, the prudential principle (*asas kehati-hatian*) emerges as a cornerstone of notarial responsibility. Prudence obliges notaries to exercise due care, thoroughness, and good faith in examining the identity, capacity, authority, and intent of the parties. Importantly, prudence extends beyond technical compliance with statutory provisions to encompass ethical accountability and professional conscience (Handayani, 2022). It reflects the understanding that notarial authority carries both legal and moral consequences.

Against this background, this article employs a normative juridical approach to examine the legal foundations governing successive powers of attorney and to analyze

the scope of notarial liability arising from their improper use. By integrating statutory analysis, doctrinal perspectives, and ethical considerations, this study seeks to clarify the boundaries of professional responsibility in notarial practice. Ultimately, it aims to propose normative guidance that strengthens prudential conduct, reinforces the authenticity of notarial deeds, and enhances public confidence in Indonesia's legal system.

## Research Method

This study adopts a normative juridical approach, focusing on the analysis of legal norms, statutory interpretation, and doctrinal perspectives concerning notarial liability. This method is appropriate because the issue under examination is fundamentally normative, centering on the interpretation of legal rules rather than empirical social behavior (Soekanto & Mamudji, 2018). The approach emphasizes *das sollen*—law as it ought to be—by examining coherence between legislation, doctrine, and judicial reasoning (Rofiq, 2021).

Primary legal materials include the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), Law No. 2 of 2014 on the Notary Office, and relevant judicial decisions, particularly Supreme Court Decision No. 130/Pdt.G/2023/PN.Skt. Secondary materials consist of legal textbooks, peer-reviewed journal articles, and doctrinal commentaries addressing notarial ethics, prudence, and professional responsibility (Marzuki, 2017; Merryman, 2007). Tertiary materials, such as legal dictionaries and academic reports, are used to ensure terminological clarity.

Data were collected through library-based research. The analysis is qualitative and interpretative, synthesizing statutory provisions and doctrinal arguments into a systematic legal reasoning framework. Statutory analysis is combined with conceptual analysis to evaluate authenticity and prudence as foundational principles of notarial conduct. Through this integrated method, the study formulates normative conclusions aimed at reinforcing preventive responsibility and legal certainty.

## Result and Discussion

### The Legal Nature of Successive Powers of Attorney

Under Article 1792 of the Indonesian Civil Code, a power of attorney (*surat kuasa*) is defined as an agreement by which one person (the principal) grants authority to another (the attorney-in-fact) to perform a legal act on the principal's behalf. This legal relationship is inherently personal (*intuitu personae*), grounded in trust and confidence between specific individuals. Consequently, the authority conferred through a mandate cannot be transferred to a third party unless such substitution is expressly authorized by the principal (Sari, 2020). This personal character distinguishes a power of attorney from proprietary rights, emphasizing that legal authority arises from consent rather than ownership.

Article 1814 of the Indonesian Civil Code further reinforces this limitation by explicitly prohibiting unauthorized substitution. The provision reflects the legislature's intent to preserve the fiduciary nature of the mandate and to prevent the dilution of the principal's will through uncontrolled delegation. In this sense, the prohibition of successive powers of attorney without consent is not merely procedural but substantive, safeguarding the autonomy and legal security of the principal.

Despite this clear normative framework, successive powers of attorney continue to appear frequently in notarial practice, particularly in land and property transactions. In such contexts, intermediaries often justify successive delegation on the grounds of efficiency, geographical distance, or administrative convenience. However, these pragmatic considerations cannot override fundamental legal principles. When authority is transferred without the principal's explicit approval, the legal basis of representation becomes defective, exposing subsequent transactions to invalidity and dispute (Diah, 2023). Empirically, such practices have contributed to overlapping ownership claims and prolonged litigation, undermining the very legal certainty that notarial deeds are intended to provide.

From a doctrinal standpoint, the validity of a power of attorney must be assessed in light of the general requirements of contracts under Article 1320 of the Civil Code, namely: consent, legal capacity, a certain object, and a lawful cause. Among these elements, consent occupies a central position. The absence of genuine consent – particularly consent to substitute the attorney-in-fact – undermines the legitimacy of the mandate itself. As a result, any legal acts performed on the basis of an unauthorized successive power of attorney lack a valid legal foundation and may be deemed null and void (Mertokusumo, 2020). In this regard, the defect is not merely technical but strikes at the core of contractual validity.

This doctrinal analysis underscores that the role of the notary is not limited to formalizing documents. Rather, the notary bears a substantive responsibility to ensure that all legal requirements, especially consent and authority, are genuinely fulfilled. Authenticity (*keotentikan*) demands more than procedural correctness; it requires substantive legality and alignment with the parties' true intentions. A notary who authenticates a successive power of attorney without verifying the principal's authorization risks transforming the notarial function into a mechanical process devoid of legal and ethical judgment.

Historically, the concept of mandate originates from Roman law (*mandatum*), which treated delegation as a personal, trust-based agreement rather than a transferable right (Merryman, 2007). This historical foundation continues to shape modern civil law systems, where representation is understood as an extension of the principal's will rather than an autonomous legal power possessed by the agent. The fiduciary nature of the mandate obliges the agent to act strictly within the limits of authority granted, and any deviation from those limits invalidates the representation.

Comparative civil law analysis further confirms this doctrinal position. The Dutch *Burgerlijk Wetboek* allows substitution only when expressly authorized by the principal or when necessitated by the nature of the task, and even then, liability remains with the original attorney-in-fact. Similarly, the French *Code Civil* holds the attorney liable for unauthorized substitution, emphasizing personal responsibility and fiduciary accountability (de Cruz, 2019). Given that Indonesian civil law is deeply influenced by the Dutch legal tradition, these comparative insights reinforce the conclusion that unauthorized successive delegation is incompatible with the core principles of Indonesian private law.

Accordingly, successive powers of attorney that lack explicit principal consent represent a deviation from both doctrinal foundations and comparative civil law standards. When such instruments are nonetheless authenticated by a notary, the issue extends beyond contractual invalidity to professional responsibility. The notary's involvement in legitimizing an unauthorized delegation implicates not only civil law norms but also ethical standards and public trust. Thus, the legal nature of successive powers of attorney must be understood not merely as a technical issue of delegation, but as a broader challenge to the integrity of notarial practice and the protection of legal certainty.

### **Authenticity and the Prudential Principle in Notarial Practice**

Authenticity (*asas keotentikan*) constitutes the defining hallmark of notarial deeds and forms the normative foundation of the notary's public authority. Article 1868 of the Indonesian Civil Code stipulates that an authentic deed must be drawn up by or before a competent public official and in strict accordance with statutory requirements. This provision establishes a presumption of legality and truthfulness, granting authentic deeds their superior evidentiary force. However, as affirmed in both doctrine and judicial practice, authenticity cannot be reduced to mere procedural formality; it necessarily requires substantive legality and a truthful representation of the parties' genuine intent (*wilsverklaring*) (Basuki, 2023).

This substantive understanding of authenticity is clearly reflected in Surakarta District Court Decision No. 130/Pdt.G/2023/PN.Skt. In this case, the court examined a notarial deed involving a successive power of attorney that had been executed without explicit authorization from the original principal. Although the deed formally satisfied the external requirements of an authentic instrument—being drafted by a notary and bearing the requisite signatures—the court found that the underlying delegation of authority was legally defective. The absence of the principal's consent rendered the substitution unlawful, thereby undermining the substantive authenticity of the deed.

The court's reasoning demonstrates that authenticity is not determined solely by the notary's formal involvement, but by the legality of the legal act embodied in the

deed. By recognizing that a formally authentic deed may lose its evidentiary strength when it conceals a substantive legal flaw, the decision reinforces the principle that authenticity encompasses both form and substance. In effect, the court treated the defective deed as incapable of producing full legal consequences, illustrating the practical consequences of neglecting substantive legality in notarial practice.

The prudential principle (*asas kehati-hatian*) emerges in this context as an indispensable complement to authenticity. Prudence obliges notaries to exercise due care by verifying the identity and legal capacity of the parties, the scope and validity of authority, and the lawfulness of the intended legal act (Handayani, 2022). In Decision No. 130/Pdt.G/2023/PN.Skt, the court implicitly criticized the notary's failure to conduct adequate verification regarding the permissibility of successive delegation. The notary's omission to ascertain whether the principal had expressly authorized substitution constituted a breach of professional prudence.

This failure illustrates how the absence of prudential conduct can transform authenticity into a merely symbolic attribute. Although the deed appeared authentic on its face, the lack of substantive verification allowed an unlawful delegation to be formalized under the guise of legality. The court's findings thus confirm that notarial prudence functions as a preventive mechanism, designed to intercept legal defects before they materialize into disputes and litigation.

From a theoretical standpoint, the court's approach aligns with Kelsen's theory of the hierarchy of norms, which holds that the validity of legal acts depends on their conformity with higher legal norms (Kelsen, 2009). In this case, the notarial deed failed to conform to Article 1814 of the Civil Code, which prohibits unauthorized substitution. As a result, the deed's normative validity was compromised, regardless of its formal appearance. Procedural correctness alone was insufficient to preserve legitimacy in the absence of substantive legality.

At the same time, the decision resonates with Pound's sociological jurisprudence, which emphasizes that law must serve social interests and promote substantive justice rather than rigid formalism (Pound, 1954). By prioritizing the protection of the principal's consent and legal autonomy, the court affirmed the social function of notarial deeds as instruments of trust and fairness. The ruling signals that notarial practice must balance efficiency with ethical responsibility, ensuring that legal form does not override justice.

Accordingly, Decision No. 130/Pdt.G/2023/PN.Skt illustrates that authenticity and prudence are inseparable principles in notarial practice. Authenticity without prudence risks degenerating into empty formalism, while prudence without authenticity lacks legal authority. Only through the integration of both principles can notaries fulfill their preventive role, maintain the credibility of authentic deeds, and sustain public confidence in the notarial institution within Indonesia's civil law system.

## Forms and Layers of Notary's Liability

The concept of liability in the notarial profession reflects a multidimensional obligation that integrates legal norms, ethical values, and public trust. As public officials, notaries perform a dual function: they act as agents of the state endowed with public authority and, simultaneously, as guardians of private legal relations. The authority to produce authentic deeds (*akta otentik*) therefore entails not merely procedural compliance with statutory requirements, but also a moral duty to safeguard truth, fairness, and justice in every legal transaction. Within this framework, the prudential principle (*asas kehati-hatian*) emerges as the core of professional responsibility, binding notaries to act with diligence, integrity, and impartiality.

### a. Civil Liability

Civil liability arises when a notary's negligence causes harm or loss to one or more parties. Pursuant to Article 1365 of the Indonesian Civil Code, any act that results in damage due to fault or negligence constitutes an unlawful act (*onrechtmatige daad*). A notary who drafts or authenticates a successive power of attorney without verifying the principal's explicit consent may be deemed negligent, as such conduct violates both statutory provisions and professional standards. Consequently, the deed may be declared null and void, and the notary may be held liable for compensation.

This form of liability highlights the preventive function of civil law. Rather than focusing on punishment, civil liability seeks to restore balance and legal certainty between the parties by placing responsibility on the party whose negligence caused the loss. In the notarial context, this mechanism reinforces the obligation of due care and serves as a deterrent against careless or purely formalistic practices.

### b. Administrative Liability

Administrative liability is governed primarily by Law No. 2 of 2014 on the Notary Office, which authorizes the Notary Supervisory Board (*Majelis Pengawas Notaris*) to oversee professional conduct and enforce disciplinary measures. Sanctions may range from written warnings and temporary suspension to dismissal, depending on the severity of the violation. These sanctions are imposed not only for breaches of procedural rules but also for conduct that undermines the dignity and credibility of the notarial profession.

The objective of administrative liability is corrective rather than punitive. By enforcing compliance with statutory duties and ethical standards, administrative supervision ensures that notaries consistently uphold the principles of authenticity and legality in the deeds they issue. Effective oversight thus plays a crucial role in maintaining professional integrity and strengthening public confidence in the notarial institution as a whole.

### c. Ethical and Criminal Liability

Ethical liability represents the internal moral dimension of notarial responsibility. The Code of Ethics of the Indonesian Notary Association (INI) obliges notaries to uphold honesty, independence, impartiality, and confidentiality in the exercise of their duties. Ethical violations—such as knowingly ignoring the unlawfulness of a successive delegation of authority—may not always result in formal legal sanctions, yet they significantly erode the credibility of both the individual notary and the profession at large.

Criminal liability, by contrast, arises only under exceptional circumstances, namely when a notary intentionally falsifies information or knowingly facilitates unlawful acts. Article 266 of the Indonesian Criminal Code stipulates that the inclusion of false statements in an authentic deed constitutes a criminal offense. However, criminal prosecution should remain a measure of last resort, reserved for cases involving deliberate fraud or bad faith. Excessive criminalization of professional errors risks undermining notarial independence, whereas proportional enforcement preserves both accountability and trust in the legal system.

### d. The Layered System of Liability

Notarial liability in Indonesia operates within a layered framework encompassing civil, administrative, ethical, and criminal dimensions. The first layer concerns personal responsibility, whereby the notary bears direct consequences for negligence or misconduct. The second layer involves institutional oversight through the Supervisory Board, ensuring compliance with professional standards. The third layer consists of moral and social responsibility, rooted in public expectations that notaries act as protectors of justice and legal certainty.

This layered model is consistent with civil law traditions in jurisdictions such as the Netherlands and France, where notaries are regarded not merely as legal technicians but as moral agents entrusted with public confidence. In essence, liability functions both as a legal safeguard and as an ethical mirror. A notary who embodies prudence, independence, and honesty does not merely satisfy formal legal requirements but also sustains the moral authority of the profession. Upholding these principles ensures that authentic deeds retain their credibility and that public trust in the legal system is preserved over time.

## **Conclusion**

The notarial profession occupies a strategic position within Indonesia's civil law framework as a key guardian of legal certainty and public trust. Entrusted with public authority to produce authentic deeds, notaries are expected to ensure that every legal act they formalize reflects not only procedural validity but also substantive legality and genuine consent. This study demonstrates that the issuance of successive powers of attorney without the explicit authorization of the principal fundamentally

contradicts both the doctrinal foundations of civil law and the ethical principles governing notarial practice.

As affirmed by Article 1814 of the Indonesian Civil Code, the doctrine of *intuitu personae* establishes that a mandate is inherently personal and non-transferable unless expressly permitted by the principal. Disregard for this limitation renders the delegation of authority legally defective, undermining the validity of subsequent transactions and eroding the authenticity of the notarial deed itself. The analysis of Surakarta District Court Decision No. 130/Pdt.G/2023/PN.Skt confirms that courts do not assess authenticity solely on formal grounds, but also scrutinize the substantive legality of the legal act embodied in the deed. In this regard, a notarial deed that conceals unauthorized delegation may lose its full evidentiary value and expose the notary to professional liability.

Employing a normative juridical method, this research has examined notarial liability from statutory, doctrinal, and ethical perspectives. The findings indicate that notarial responsibility operates within an interrelated and layered system of liability. Civil liability functions to restore losses caused by negligence, administrative liability ensures adherence to statutory and professional standards, ethical responsibility preserves the moral integrity and credibility of the profession, and criminal liability serves as an exceptional safeguard against intentional or fraudulent conduct. These layers collectively reflect the multifaceted nature of notarial accountability as both a legal and moral institution.

At the core of these dimensions of responsibility lies the prudential principle (*asas kehati-hatian*), which harmonizes legal compliance with ethical consciousness. Prudence requires notaries to exercise active diligence in verifying authority, consent, and legality, thereby preventing defective legal acts from being formalized under the guise of authenticity. Adherence to this principle signifies not merely obedience to written norms, but a deeper commitment to justice, fairness, and the preventive function of law.

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