

The Role Of Notaries In Facilitating The Creation Of Partij Deeds For Individual Financing In Accordance With Fairness And Reasonableness

Febrina Rizka Lilya Wati David, Made Gde Subha Karma Resen

febrinarizka98@gmail.com, karma_resen@unud.ac.id

Faculty of Law, Universitas Udayana, Indonesia

Article Info

Received: 2025-01-20

Revised: 2025-03-20

Accepted: 2025-05 50

Keywords:

*Notary; Legal Security;
Consumer Financing*

Abstract

This study aims to explore the role of notaries in ensuring legal certainty and promoting fairness and transparency in consumer financing. Using a qualitative approach and analyzing several consumer financing cases, the study finds that notaries play a critical role in ensuring the validity and legal protection of the agreements made. The main challenge lies in balancing the interests of creditors and debtors while ensuring that all relevant information about the agreements is disclosed transparently. Regulations such as Law No. 30 of 2004 on the Notary Position and Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Notary Position provide the legal framework for notaries' authority and responsibilities in consumer financing, although there is still a gap in regulations specifically addressing the notary's role in such transactions. This study recommends updating regulations and enhancing notary professionalism to better address these challenges. While the role of notaries is crucial, significant challenges in maintaining fairness and transparency still need to be addressed for consumer financing to be carried out equitably and transparently.

Keywords:

Notary; Legal Security; Consumer Financing

I. Introduction

Background

"Personal financing is currently experiencing significant growth, becoming the primary choice for many individuals who need funds to fulfill various consumer needs. In Indonesia, personal financing can take several forms, such as unsecured loans, credit cards, microfinancing, and various other financing models. This process involves multiple parties, primarily creditors and debtors, interacting within legally binding agreements (Winarno, 2013). From a civil law perspective, personal financing is frequently associated with the concept of debt obligations as regulated under the Indonesian Civil Code. Debt obligation refers to a legal relationship arising from an agreement, whereby one party (the debtor) is obliged to deliver a certain amount of funds or goods to another party (the creditor) within a specified period. Meanwhile, personal financing can be categorized as an innominate contract, which is an agreement not explicitly regulated within the KUHPer but is legally valid based on the principle of freedom of contract as stipulated in Article 1338 of the Indonesian Civil Code. The fundamental differences between debt obligations and personal financing lie primarily in their mechanisms and regulatory frameworks (Online Pajak, 2025). Debt is more conventional, in which the debtor borrows a certain amount of money and repays it according to an agreed arrangement. Meanwhile, personal financing includes additional aspects such as financial services, interest, collateral, and more complex payment schemes.

The legal consequences arising from treating personal financing agreements similarly to conventional debt can lead to differences in legal treatment, particularly concerning the enforcement of rights and dispute resolution. If personal financing is viewed merely as ordinary debt, disputes may be settled through breach of contract or standard civil lawsuits. However, if recognized as financing agreements involving specific mechanisms, they can engage more complex legal aspects, including collateral seizure or the application of banking and financial institution regulations. In the context of authentic deeds, both debt agreements and personal financing agreements can be formalized through various legal documents, such as acknowledgment of debt deeds, credit or financing agreements, and collateral deeds like fiduciary or mortgage arrangements, intended to legally protect creditors' rights within the agreement. Based on Article 1131 of the Civil Code, all the debtor's property, both movable and immovable, both existing and new in the future, becomes a liability for all individual obligations, or in other words as a form of general guarantee. The definition of material guarantee is a guarantee in the form of absolute rights to an object that has a direct relationship to a certain object, can be maintained against anyone, always follows the object (Supramono, 2013). If the debtor defaults on his debt, the object of the guarantee cannot be owned by the creditor, because the guarantee institution is not intended to transfer ownership of an item. In addition to general guarantees, there are also special guarantees that can be given by the debtor to the creditor, where the creditor has the rights to claims that are prioritized (preferential rights) (Kaliey, 2023). The characteristics of material collateral are that it is an absolute right to an object, can be defended against claims by anyone, always follows the object in the hands of whoever the object is in (*droit de suite/zakaaksqevolg*), contains the principle of priority, namely that material rights that occur first will be prioritized over those that occur later (*droit de preference*) (Hukum Online, 2023). The role

of a notary is particularly crucial, not only to ensure the legal validity of the agreements but also to guarantee that all participating parties clearly understand their respective obligations. Among the individuals holding a key role in the personal financing process is the notary. The notary is responsible for ensuring that all agreements and deeds made between the debtor and creditor comply with applicable legal requirements and have valid legal authority (Salim, 2021). The notary does not only act as a witness and the party responsible for drafting deeds but also as a guardian of the integrity of the agreements made. It is essential for the notary to ensure that agreements in personal financing are not only formally valid but also guarantee the fulfillment of legal rights for every party involved in a specific legal relationship or event.

As a public official authorized to create authentic deeds, a notary plays a crucial role in ensuring that every agreement drafted is aligned with applicable legal provisions (Alvanso, 2023). In the context of personal financing, a notary plays a role in providing legal protection, preventing fraud, and maintaining transparency of information to the debtor regarding the terms and conditions of the agreement. The primary challenge faced is how the notary can maintain a balance between the interests of creditors and debtors while ensuring that the entire process is carried out fairly, transparently, and in accordance with applicable legal provisions.

The role of notaries in personal financing in Indonesia experiences various dynamics and complex issues. One of the primary challenges relates to law enforcement, which still encounters obstacles, both in terms of compliance with existing regulations and effective enforcement in practice. Weak law enforcement can create doubts regarding the validity and sustainability of agreements, thereby reducing the level of trust from consumers and creditors towards the personal financing mechanism.

The issue of information transparency in personal financing is also a critical concern. Many consumers do not fully understand their rights and obligations under financing agreements, or they are unaware of certain risks that may arise. Lack of clarity regarding additional costs, high interest rates, or hidden terms in credit agreements may result in dissatisfaction and even legal disputes among involved parties. Notaries are required to ensure that all funding-related information is clearly and openly communicated to all relevant parties to prevent potential harm to any of them.

Several previous studies have addressed the significant role of notaries in legal transactions. For instance, Arianto (2015) demonstrated that notaries play an important role in verifying documents underlying an agreement, providing assurance that the agreements are valid and accountable. However, Widodo (2018) highlighted shortcomings in the existing legal system, particularly regarding consumer rights protection in personal financing, and emphasized the importance of improving transparency in the role of notaries. While these studies provide valuable insights into the role of notaries, no research has specifically examined the challenges faced by notaries in the context of personal financing, especially in adapting to regulatory changes and increasingly complex dynamics in the financing market.

During the course of the research, it was found that despite the existence of various

regulations, such as Law Number 30 of 2004 regarding the Notary Profession, which authorizes notaries to draft authentic documents, there is a notable lack of in-depth studies examining the role of notaries specifically within the context of personal financing. Law Number 2 of 2014, which amends the aforementioned law, focuses more on administrative and procedural regulations, without clarifying the challenges notaries face in personal financing. This issue becomes significant because the personal financing sector involves a large number of individuals, and if it is not properly regulated, it may lead to imbalances that negatively impact one party, especially debtors who may have limited understanding of the agreements they enter into.

One relevant regulation that is rarely discussed is the Minister of Finance Regulation (PMK) Number 86/PMK.010/2015 concerning Information Disclosure Obligations for Financial Institutions in Financing Transactions. Although this regulation provides guidelines on the disclosure of information required from financial institutions to consumers, researchers have noted gaps in ensuring that such disclosures are conducted fairly and transparently, an area where notaries play a crucial role. This issue leads to a broader challenge: how to ensure that the financing process prioritizes consumers' interests without neglecting creditors' interests.

Although existing regulations provide a general overview of a notary's authority, Government Regulation No. 24 of 2016 regarding the Position of Notary grants more specific authority concerning the preparation of authentic documents and mandates that notaries remain neutral in every agreement drafted. However, this regulation does not address the practical challenges notaries encounter in maintaining transparency and balancing the interests between creditors and debtors.

The purpose of this study is to examine the role of notaries in ensuring legal protection and transparency in personal financing. This research also aims to identify various challenges faced by notaries in fulfilling their obligations amid regulations that do not yet fully support transparency and fairness in personal financing. By analyzing various cases and practices, this study is expected to offer constructive recommendations to policymakers for improving the existing legal system and provide insights into how notaries can more effectively support the creation of a fair and transparent financing system.

Problem Statement

1. How is the legal position of a notary in ensuring legal certainty for personal financing agreements under the prevailing laws and regulations?
2. How does a notary fulfill their role by placing a fair and appropriate position in incorporating the substance of an agreement into an authentic deed?

Research Objectives

The purpose of this research is to analyze the role of a notary in ensuring the legal certainty of personal financing agreements in accordance with applicable laws and regulations, and to examine the notary's role in appropriately and reasonably positioning the substance of agreements into authentic deeds.

2. Research Method

This study employs a qualitative method using a case study approach to identify and analyze the challenges faced by notaries in ensuring legal certainty and transparency in personal financing transactions in Indonesia (Assyakurrohim, 2023). This method was selected because it enables the researcher to gain deeper insights into the functions and responsibilities of a notary, as well as to explore various elements influencing the effectiveness of executing these roles in daily professional practice (Qamar, 2017).

Data collection was conducted by reviewing various relevant literature sources, including laws and regulations governing the notary profession, such as Law Number 30 of 2004 concerning the Notary Profession as amended by Law Number 2 of 2014, and Government Regulation Number 24 of 2016 concerning the Notary Profession, which further regulates the authority and responsibilities of notaries in performing their duties. Regulations related to personal financing in Indonesia, such as Law Number 10 of 1998 concerning Banking which outlines the fundamental principles for the operation of financial institutions and the Financial Services Authority Regulation (OJK) Number 14/POJK.03/2017 concerning the Implementation of Personal Financing Services, which aims to regulate aspects associated with personal financing, are also highly relevant sources for this research. Literature concerning the professional ethics of notaries, including the Notary Code of Ethics, was reviewed to understand how notaries are expected to act with objectivity and transparency in all client-related transactions. Furthermore, this research examines academic articles discussing challenges faced by notaries in personal financing transactions as well as solutions proposed in prior literature.

After data collection, analysis was conducted by identifying key issues related to the notary's role in personal financing. Several themes emerged, including the necessity for transparency in personal financing processes, challenges in ensuring fairness in financing agreement provisions, and the influence of regulations and the notary code of ethics on personal financing practices. The results of this literature analysis were used to draw conclusions about the contributions and challenges of the notary's role, as well as to provide recommendations for improvements in personal financing practices.

3. Results and Discussion

Legal Position of Notaries within the Indonesian Legal System

Definition and Role of the Notary

A notary is a public official granted authority by laws and regulations to draft authentic deeds and holds a strategic role within the Indonesian legal framework. In their capacity as public officials, notaries are obligated to serve the public by preparing legal documents that possess full evidentiary power. The legal standing and functions of notaries are explicitly regulated by Law Number 2 of 2014, which amended Law Number 30 of 2004 concerning the Notary Profession (UUJN).

In carrying out their duties, notaries act independently and impartially, refraining from favoring any of the parties involved in an agreement. A notary's primary responsibilities include preparing formal legal documents, such as deeds of incorporation, contractual agreements, and special power of attorney documents. This function ensures legal certainty and protection for all involved parties, given that deeds drafted by a notary are recognized as legally valid and juridically binding.

Notaries also play a role in ensuring that the documents they draft comply with applicable laws and regulations. This step is undertaken through meticulous verification of administrative completeness and the identities of involved parties, thereby preventing elements that might invalidate the document in the future. Thus, notaries do not merely serve as drafters of authentic deeds but also act as guardians of legal integrity and certainty for the public requiring their services. Through this role, notaries become an inseparable part of efforts to establish an orderly legal framework, particularly within civil transactions requiring authentic deeds as a robust legal foundation.

Legal Basis for the Position of Notaries

The position of a notary as a public authority recognized by law is firmly rooted within the legal structure adopted in Indonesia. The primary legal foundation governing the authority and responsibilities of notaries is Law Number 2 of 2014, amending Law Number 30 of 2004 concerning the Notary Profession (UUJN). This law establishes notaries as officials authorized to create authentic deeds and who bear the responsibility to ensure that documents produced comply with formal and substantive requirements stipulated by applicable legislation.

Specifically, according to Article 1 point 1 of UUJN, a notary is defined as a public official empowered to draft authentic deeds and exercise other authorities as regulated by prevailing laws and regulations. This status indicates that a notary is not merely an ordinary profession but an integral component of the legal apparatus aimed at ensuring clear and consistent legal protection for the community.

In addition to the UUJN, other legal foundations reinforcing the notary's position include:

1. The Indonesian Civil Code

KUHPer serves as a significant legal foundation governing the legal validity of deeds prepared by a notary. Article 1868 of the KUHPer explicitly states that an authentic deed is a document drafted in the presence of a public official authorized by applicable laws and regulations. Furthermore, Article 1870 of the KUHPer establishes that authentic deeds hold perfect evidentiary power according to the law. Consequently, deeds prepared by notaries are not only recognized for their legal validity but also possess substantial evidentiary value, making them primary evidence in dispute resolution processes within the legal system.

2. The Indonesian Civil Procedure Code

Within the civil evidentiary system, the Civil Procedure Code (KUHAPer) specifically recognizes authentic documents. Article 165 HIR or Article 285 RBg stipulates that authentic documents carry legitimate evidentiary power as written evidence in court

proceedings. This underscores the central role notaries play in ensuring document authenticity and reliability during legal proceedings. Thus, deeds drafted by notaries serve as legal protection for involved parties seeking legal certainty.

3. Regulations of the Minister of Law and Human Rights

Technical aspects concerning the implementation of notarial duties are also governed by regulations issued by the Ministry of Law and Human Rights of the Republic of Indonesia. One relevant regulation is the Regulation of the Minister of Law and Human Rights Number 62 of 2016 regarding the Procedures for the Appointment, Transfer, Dismissal, and Extension of the Term of Office of Notaries. This regulation outlines the administrative procedures that must be fulfilled by notaries, ensuring that the execution of their duties complies with applicable legal provisions.

4. Notary Code of Ethics

In addition to complying with statutory provisions, notaries must also adhere to the Notary Code of Ethics established by the Indonesian Notary Association (INI), which serves as a moral and professional guideline in carrying out their duties. Principles such as integrity, neutrality, and compliance with the law form the foundation for every action taken by a notary. By adhering to this ethical code, notaries not only maintain public trust but also ensure that their duties are performed according to high professional standards.

5. Special Legal Instruments Related to Notarial Duties

Notaries are frequently referenced in various specialized laws concerning specific fields. Examples include Law Number 42 of 1999 on Fiduciary Guarantees, which regulates the role of notaries in preparing fiduciary deeds. Law Number 40 of 2007 on Limited Liability Companies (UUPT) also specifies the obligation of notaries to draft company incorporation deeds. Additionally, Law Number 4 of 1996 concerning Mortgage Rights and Law Number 8 of 1999 concerning Consumer Protection define the strategic role of notaries in transactions involving formal legal documents.

6. Government Regulations

Notaries are also regulated by several government regulations, one of which is Government Regulation Number 24 of 2016, amending Government Regulation Number 37 of 1998 concerning the Official Regulation for Land Deed Officials (PPAT). This regulation governs collaboration and the division of responsibilities between notaries and PPATs, particularly in matters related to land documentation.

7. 1945 Constitution of the Republic of Indonesia (UUD 1945)

The position of notaries within the Indonesian legal system is also based on the 1945 Constitution. Article 27 paragraph (1) of the 1945 Constitution states that all citizens have equal standing before the law. Article 28D paragraph (1) of the 1945 Constitution emphasizes that every individual is entitled to recognition, guarantee, protection, and fair legal certainty. These constitutional principles provide a foundational basis for the existence and role of notaries in delivering legal services to the community.

Function of the Notary in Ensuring Legal Certainty and Security

The primary function of a notary is to ensure legal certainty and security in various transactions and agreements within society. This role is realized through the notary's

authority to prepare authentic deeds that hold full legal force under applicable legislation. Documents prepared by a notary, including contractual agreements, fiduciary guarantee deeds, and deeds of company establishment, are intended to ensure legal certainty and protection for all involved parties.

The guarantee provided by a notary arises from the inherent characteristics of authentic deeds themselves. Referring to Article 1868 of the Indonesian Civil Code (KUHPer), an authentic deed is a document prepared before a competent public official and fulfills both formal and substantive requirements as stipulated by prevailing regulations. Consequently, authentic deeds drafted by a notary serve as legally valid instruments that are recognized by the state and difficult for involved parties to dispute.

The legal security offered by a notary also stems from the verification processes conducted prior to the drafting of deeds. A notary is responsible for verifying the identities of involved parties, ensuring agreements comply with applicable laws, and preventing fraudulent or coercive elements. In performing these duties, the notary acts neutrally and impartially, ensuring that all parties involved feel protected.

The notary serves as a legal guardian in the administrative processes of documents requiring formal legality. For instance, in personal financing agreements, a notary is responsible for preparing legal documents that explicitly define and secure the rights and obligations of each party involved. With the presence of a notarial deed, the risk of future disputes is significantly minimized, as all legal aspects are clearly and legally detailed within the document.

The function of the notary is also closely related to the principle of legality, where every legal document prepared must comply with applicable legal provisions. This compliance generates a sense of security for all involved parties, as they have certainty that the document is not only legally valid but also protects their legal interests. In cases of dispute, notarial documents serve as evidence with perfect evidentiary power in court, facilitating the resolution of legal issues.

Through these functions, the notary becomes a crucial component within the Indonesian legal system. Their role provides not only legal certainty and security but also fosters trust among parties in transactions involving legal documents. These functions position the notary as a guardian of the legal order, contributing significantly to stability and justice within society.

Relationship between the Legal Position of Notaries and Personal Financing

Notaries play a significant role in ensuring that personal financing arrangements conducted by the involved parties (such as consumers and financing providers) are legally valid and in accordance with prevailing laws and regulations. Several legal foundations regulating the role of notaries in personal financing include:

1. Law Number 30 of 2004 concerning the Notary Profession, this law governs the duties and responsibilities of notaries in carrying out their profession. As public officials, notaries must ensure the legal validity of documents they sign, including those involved in personal financing transactions.
2. Law Number 4 of 1996 concerning Mortgage Rights, when personal financing includes collateral such as property, the notary's role in preparing mortgage deeds becomes crucial. The notary is responsible for ensuring the deed's legality and enforceability.
3. Financial Services Authority (OJK) Regulations, OJK regulates the financial industry, including personal financing. Notaries ensure that financing processes adhere to applicable regulations within this sector, including legal procedures and requirements.
4. Laws and Regulations Governing Banking and Financing Institutions, personal financing typically involves financial institutions or banks. Notaries must verify that all documents related to financing arrangements, such as loan agreements or contracts, comply with existing laws and regulations.

This legal role requires notaries to function not merely as formal witnesses but also as guardians of compliance with existing laws and regulations (Anugrah, 2020). Thereby safeguarding the interests of all parties involved in transactions.

Legal security in personal financing, from the notary's perspective, is crucial to ensure that transactions are valid and legally binding. Notaries play an important role in drafting authentic deeds, which possess stronger evidentiary power in court compared to privately executed deeds (Darusman, 2016). The drafting process of these authentic deeds guarantees that every agreement made has a solid legal foundation, leaving no room to question its validity.

Notaries are also responsible for verifying and examining the documents submitted by the involved parties. This step ensures that documents are valid, the involved parties have the legal capacity to act, and all legal requirements have been fulfilled (Warsito, 2022). As facilitators of agreements, notaries also provide legal advice to parties involved in personal financing, helping them understand their respective rights and obligations, as well as potential risks. By ensuring all legal procedures are properly followed, notaries help create a sense of security for all parties, both financing providers and consumers, and protect their legal interests in the future.

Essentially, notarial practices in personal financing must always adhere to applicable legal principles to ensure transactions are valid and dispute-free. Several aspects that need to be addressed in this context include (Wardiono, 2021):

1. Compliance with the Principle of Freedom of Contract
In personal financing, the freedom of contract is a fundamental principle that must be adhered to. Notaries must ensure that agreements do not contain elements of coercion or unfair terms. This is closely related to protecting the rights of both consumers and financing providers (Kosasih, 2021).
2. Compliance with Principles of Fairness and Balance

Notaries are responsible for ensuring that contracts between parties involved in personal financing reflect a fair balance of rights and obligations. This includes making sure agreements do not unfairly disadvantage either party, especially the consumer.

3. Appropriate Legal Procedures

Notaries must ensure that the procedures followed in preparing agreements or deeds are not only legally valid but also comply with established procedural requirements under applicable regulations. This involves using correct forms and following proper procedures in drafting personal financing agreements.

4. Legal Responsibility of the Notary

Notaries are legally responsible if they negligently or intentionally commit errors during the drafting process of deeds or agreements that may harm another party. Notaries must uphold their professional ethics and consistently adhere to established legal principles.

The role of the notary in ensuring legal security in personal financing is crucial. By verifying the validity and conformity of documents, providing appropriate legal advice, and upholding principles of fairness in transactions, notaries significantly contribute to ensuring legitimate, dispute-free transactions. Notaries also have a juridical obligation to guarantee that all activities comply with applicable laws, creating legal certainty and security for all parties involved in personal financing.

The presence of notarial deeds also provides legal security for financial institutions as lenders. Through authentic deeds, lenders gain assurance that financing agreements can serve as valid and compelling evidence in legal proceedings, should disputes or defaults occur. This also facilitates the enforcement of agreed-upon guarantees, such as fiduciary agreements or mortgage rights, in accordance with existing regulations.

Throughout the personal financing process, notaries serve to ensure that transactions adhere strictly to legal requirements, thereby safeguarding the interests of all relevant parties. Authentic documents prepared by notaries not only establish the legal validity of personal financing but also provide a sense of security and certainty for consumers and financial institutions involved in these transactions.

The Role of Notaries in Establishing a Fair and Appropriate Position When Incorporating the Substance of Agreements into Authentic Deeds

The Position of Notaries in the Preparation of Authentic Deeds

The notary holds a crucial role within the Indonesian legal system, particularly in relation to the preparation of authentic deeds. As a public official authorized by the state, a notary has an obligation to ensure that every agreement formalized as an authentic deed is created with due consideration for legal certainty, protection of parties' rights, and balance in the substance of the agreement. The notary's role is not limited merely to the legalization of documents but also encompasses a duty of care to ensure that agreements are drafted with fairness and appropriateness for all involved parties.

According to Article 1 point 1 of Law Number 2 of 2014, which amends Law Number 30 of 2004 concerning the Notary Profession (UUJN), a notary is defined as a public official authorized to draft authentic deeds and perform other duties as stipulated by laws and regulations. The presence of a notary serves to provide legal certainty to the public when entering into agreements or making legal declarations that carry binding legal consequences.

According to Yahya Harahap (2008), a notary, as a public official, carries out three primary functions within civil law, namely:

1. Assisting Parties in Formalizing Agreements

The notary acts as the party who ensures that agreements made by the involved parties are clearly formulated, possess legal force, and are legally binding when drafted into authentic deeds.

2. Ensuring Legal Certainty and Preventing Disputes

With the existence of authentic deeds, agreements between parties hold complete evidentiary power, thus effectively minimizing potential disputes in the future.

3. Guaranteeing Legality and Compliance with the Law

Notaries guarantee that every deed they draft aligns with prevailing legal provisions and does not contain elements contrary to the law.

As a public official, a notary must remain neutral and impartial toward all parties involved in the agreements they draft. This aligns with the principles of independence and impartiality, as stipulated in Article 16 paragraph (1) of the UUJN, emphasizing that notaries are obligated to act honestly, independently, neutrally, and to protect the interests of all parties in every deed they prepare.

In practice, notaries frequently encounter situations where one party possesses greater bargaining power than the other, especially in personal financing agreements. Therefore, notaries must actively undertake the following roles:

1. Ensuring that all parties fully understand the content of the agreement before signing the deed.
2. Evaluating clauses that may potentially disadvantage one party, particularly if there is an imbalance between rights and obligations.
3. Refusing to draft deeds that reflect an abuse of circumstances (*misbruik van omstandigheden*), which could lead to unfairness in the execution of the agreement.

The presence of legal officials such as notaries aims to uphold the principle of legal balance, meaning that agreements should reflect an equitable distribution of rights and obligations among the parties involved. If significant imbalances occur, notaries have the right to refuse drafting any deed that contradicts this principle.

The principle of prudence serves as the primary guideline in notarial practice. Notaries are responsible not only for formalizing agreements in written form but also for ensuring that these agreements are created with due consideration for legal certainty, fairness, and the protection of all parties involved.

This approach aligns with the prudent principle applied across various aspects of civil law, including personal financing agreements. In this context, a notary must ensure that:

1. The parties fully understand the legal implications of the agreement made. Notaries are obligated to explain the contents of the agreement to the parties involved to prevent any misunderstandings during its execution.
2. The substance of the agreement aligns with the prevailing legal norms. Notaries must refuse to draft deeds that contain provisions that violate the law or conflict with public interests.
3. The agreement is made in good faith, with no pressure or coercion from one party to another. If there is an indication that one of the parties is in a forced or unclear situation regarding the agreement, the notary is required to delay or refuse to draft the deed.

This principle of prudence is also in line with the Supreme Court of Indonesia's ruling No. 123 PK/Pdt/2007, which emphasizes that deeds created without considering the principles of balance and prudence may be subject to annulment because they contradict the principle of fairness in contract law.

The involvement of a notary in the preparation of authentic deeds carries significant legal implications, both for the parties entering into the agreement and for the notary as a public official. If a notary fails to perform their duties properly, several legal consequences may arise, including:

1. **The Authentic Deed May Be Declared Invalid or Annulled**

If a deed is created without considering the principles of fairness and appropriateness, one of the parties has the right to request its annulment through the judicial system, based on Article 1320 of the Civil Code (KUH Perdata).

2. **Notaries May Face Administrative and Ethical Sanctions**

If a notary is found to violate the principle of impartiality or acts unprofessionally, they may be subject to sanctions through the authority of the Notary Supervisory Board, as mandated in Article 85 of the Notary Law (UUJN).

3. **Risk of Civil and Criminal Liability for Notaries**

In certain cases, notaries can be sued civilly for negligence in drafting a deed. Furthermore, under specific circumstances, they may face criminal charges if proven to have intentionally violated the law.

The Concept of Appropriateness and Fairness in Authentic Deeds

In the realm of contract law, the concepts of appropriateness and fairness play a crucial role in ensuring that the agreements made by the parties are not only legally valid but also fair and reasonable for execution. These principles serve as a guide for notaries in incorporating the substance of agreements into authentic deeds, ensuring harmony in the rights and responsibilities of each party involved.

Appropriateness and fairness are often linked to norms that are recognized and applied in social life. According to Subekti (2002), appropriateness relates to the standards of acceptability in legal relationships, while fairness refers to the balance between the rights and responsibilities agreed upon by the parties.

In contract law doctrine, appropriateness and fairness are often associated with the principle of good faith, as stated in Article 1338 paragraph (3) of the Civil Code (KUH Perdata), which asserts that agreements must be executed in good faith. This means that the parties must not act arbitrarily or exploit the agreed terms unfairly.

The appropriateness and fairness in authentic deeds can be measured through several parameters, including:

1. Equality in Rights and Obligations

Every agreement should establish an equal position for all parties involved. For example, in a personal financing agreement, a clause that gives unilateral advantages to the lender without considering the interests of the borrower may be considered inappropriate and unfair.

2. Compliance with Social and Legal Norms

Notaries must ensure that the terms of the agreement align with both legal provisions and prevailing social norms. For instance, an agreement that sets an unreasonable interest rate or imposes excessive penalties may be deemed to violate the principles of appropriateness and fairness.

3. Balance of Risks and Benefits

According to Fried (2011), a good agreement should reflect a balance between the risks and benefits for all parties. If one party bears risks far greater than the benefits they receive, the agreement could be considered unfair.

In practice, appropriateness and fairness serve as legal protection for all parties entering into an agreement. As a public official, the notary has the obligation to ensure that the substance of the agreement contained in the authentic deed does not contradict the principles of justice.

For example, in the Supreme Court ruling Number 3186 K/Pdt/2017, one of the clauses in a credit agreement was declared invalid because it imposed excessively high interest rates on the debtor without a truly transparent agreement. This ruling demonstrates that agreements that do not meet the principles of appropriateness and fairness can be annulled by the court.

In carrying out their duties, notaries must ensure that all authentic deeds they draft comply with the principles of appropriateness and fairness. If not, several legal consequences may arise, including:

1. The Deed Can Be Annulled (Vernietigbaar)

If there is a significant imbalance in the agreement, one of the parties has the right to request its annulment through the judicial system.

2. Notary's Responsibility

According to Article 16 paragraph (1) of the Notary Profession Law (UUJN) Number 2

of 2014, notaries have the obligation to remain independent and neutral when drafting a deed. If a notary is proven to have created a deed with inappropriate or unfair clauses, they may be subject to administrative sanctions or even civil lawsuits.

3. Risk of Legal Disputes

Agreements that do not adhere to the principles of appropriateness and fairness are more prone to causing disputes between the parties, which may ultimately lead to annulment or revision of the agreement through legal channels.

The Principle of Good Faith in the Preparation of Authentic Deeds

In every agreement made and formalized into an authentic deed, the principle of good faith is a fundamental concept that must be upheld by all parties involved. This principle ensures that the agreement is not only legally valid but also executed honestly and fairly, without any elements of coercion, fraud, or abuse of circumstances.

Notaries play a crucial role in ensuring that the principle of good faith is implemented in every deed they prepare. This responsibility extends beyond the substance of the agreement to encompass the entire process of drafting, from the pre-agreement phase, through the execution of the agreement, to after the agreement is finalized.

This principle is outlined in Article 1338 paragraph (3) of the Civil Code (KUH Perdata), which states that "every agreement must be executed in good faith." This implies that the parties entering into an agreement are obligated to carry out the terms of the agreement honestly, without engaging in fraudulent activities or causing harm to the other party. According to Subekti (2002), the principle of good faith has two main dimensions, which are:

1. Subjective Good Faith

- a. Relates to the intent or will of the parties when executing the agreement.
- b. Refers to the internal honesty of each party when forming the agreement.

2. Objective Good Faith

- a. Relates to the standards of appropriateness and fairness prevailing in society.
- b. Refers to how the agreement should be executed fairly and reasonably according to the applicable legal norms and customs.

As a public authority, a notary bears a significant responsibility in ensuring that the principle of good faith is applied in every deed they prepare. This condition aligns with the principles of impartiality and independence of notaries as stipulated in Article 16 paragraph (1) of Law Number 2 of 2014 concerning the Notary Profession, which requires notaries to act with integrity, independence, impartiality, and protect the interests of all parties involved in the agreement.

The implementation of the principle of good faith by notaries includes the following aspects:

1. Explaining the Rights and Obligations of the Parties Transparently

- a. The notary must ensure that each party understands the substance of the agreement before signing the deed.
- b. If there is an imbalance in the rights and obligations, the notary must explain the potential impacts to the parties involved.
2. Refusing to Draft Deeds Containing Unfair or Fraudulent Clauses
 - a. If an agreement contains clauses that unfairly benefit one party, the notary has the right to refuse to draft the deed.
 - b. For example, in a personal financing agreement, a clause imposing excessively high interest rates without proper and clear consent from the debtor may violate the principle of good faith.
3. Ensuring No Exploitation of Circumstances (*Misbruik van Omstandigheden*)
 - a. If one party is in a weaker position and is forced to accept an agreement, the notary must act as a mediator to ensure fairness.
 - b. Exploitation of circumstances can occur in loan or sale agreements where one party is economically dependent on the other party.

The principle of good faith is not only applied to the substance of the agreement but also throughout the entire process of the agreement, which includes:

1. Pre-Agreement Stage

At this stage, the notary plays a role in ensuring that the parties understand the legal consequences of the agreement they are about to make. Actions that the notary must take at this stage include:

- a. Providing explanations about the substance of the agreement to the parties involved.
- b. Identifying potential imbalances in the agreement.
- c. Screening whether the agreement is made under coercion or fraudulent elements.

2. Agreement Creation Stage (Authentic Deed)

At this stage, the notary must act professionally and neutrally when drafting the content of the agreement into an authentic deed. The principles to be observed include:

- a. Clarity in formulating the clauses of the agreement to avoid ambiguity.
- b. Drafting clauses that reflect a proportional balance of rights and obligations.
- c. Including reasonable provisions that comply with applicable legal norms.

3. Post-Agreement Stage

After the agreement is made, the principle of good faith still applies in its execution. The notary is responsible for ensuring that:

- a. The deed created can be used as valid evidence in resolving legal issues.
- b. If there is a breach of the agreement, the affected party can receive legal protection in accordance with the deed's content.
- c. The notary may provide testimony or clarification if the agreement becomes a subject of dispute in court.

If an agreement is made without adhering to the principle of good faith, it can have serious legal implications. According to Article 1320 of the Civil Code (KUH Perdata), an agreement must meet certain valid conditions, one of which is being made in good faith.

If coercion, fraud, or abuse of circumstances is proven, the agreement can be annulled.

If one party is proven to act in bad faith in executing the agreement, the other party can file a civil lawsuit for compensation. If a notary is found negligent in ensuring the appropriateness and fairness of the deed they create, they may face administrative sanctions or even civil lawsuits as stipulated in Article 85 of the Notary Law (UUJN).

The Role of Notaries in Incorporating Fair and Appropriate Substances into Agreements

The role of a notary extends beyond merely drafting authentic deeds; it also includes ensuring that the substance of the agreement contained within the deed adheres to the principles of appropriateness and fairness. The notary must act as the party responsible for ensuring that the agreement made is not only legally valid but also reflects a balanced distribution of rights and responsibilities for all parties involved.

An agreement formalized in an authentic deed must meet the standards of appropriateness and fairness, reflecting justice for all parties. An agreement is considered appropriate and fair if:

1. The provisions in the agreement do not violate legal regulations, moral norms, or public order as stipulated in Article 1337 of the Civil Code (*KUH Perdata*).
2. No party is unfairly advantaged over the other party.
3. The agreement's clauses do not contain elements of abuse of circumstances (*misbruik van omstandigheden*).
4. The agreement does not disproportionately burden one party.
5. Clauses that regulate sanctions or penalties must be proportional and not excessive.

4. Conclusion

Based on the results of this study, it can be concluded that the role of notaries in ensuring legal security in personal financing is very important. Notaries function as the party responsible for ensuring that the agreement between the financing institution and the debtor is legally valid, while protecting the interests of both parties. The challenges in maintaining fairness and transparency remain significant barriers, especially regarding the lack of clarity in information about financing terms and the potential abuse of clauses that disadvantage consumers. These challenges must be addressed by improving transparency and understanding of the rights and obligations between notaries, financing institutions, and debtors.

The role of notaries in incorporating the substance of agreements into authentic deeds must always be based on the principles of appropriateness and fairness to ensure a balance between the rights and obligations of the parties involved. The principle of good faith, which consists of both subjective and objective aspects, serves as the foundation for every stage of the agreement, from pre-agreement, agreement creation, to post-agreement. Notaries have a legal responsibility to reject the drafting of deeds containing unfair clauses or those that disproportionately harm one of the parties. If a notary neglects their duties, the authentic deed created may be annulled, and the notary may face administrative sanctions or even civil and criminal lawsuits.

References

- Fried, Charles. *Contract as Promise: A Theory of Contractual Obligation*. Oxford University Press, 2011.
- Gatot Supramono, *Perjanjian Utang Piutang*, Jakarta: Kencana, 2013.
- Harahap, Yahya. *Hukum Acara Perdata*. Sinar Grafika, 2008.
- HS, H. Salim, dan M. S. Sh. *Peraturan jabatan notaris*. Sinar Grafika, 2021.
- Kosasih, J. I., & Haykal, H. *Kasus hukum notaris di bidang kredit perbankan*. Bumi Aksara, 2021.
- Notaris, Pengurus Pusat Ikatan. *Jati Diri Notaris Indonesia*. Gramedia Pustaka Utama, 2013.
- Qamar, Nurul, Muhammad Syarif, Dachran S. Busthami, M. Kamal Hidjaz, Aan Aswari, Hardianto Djanggih, and Farah Syah Rezah. *Metode Penelitian Hukum (Legal Research Methods)*. CV. Social Politic Genius (SIGn), 2017.
- Subekti. *Hukum Perjanjian*. Intermasa, 2002.
- Wardiono, Kelik, M. Kn, Saepul Rochman, and Septarina Budiwati. "Hukum Perdata." (2021).
- Alvanso, Tonicca, and Mujiono Hafidh Prasetyo. "Perlindungan Hukum Terhadap Kriminalisasi Jabatan Notaris Ditinjau Dari Undang-Undang Jabatan Notaris." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 2 (2023): 2195-2204.
- Assyakurrohim, Dimas, Dewa Ikham, Rusdy A. Sirodj, dan M. Win Afgani. "Metode Studi Kasus dalam Penelitian Kualitatif." *Jurnal Pendidikan Sains dan Komputer* 3, no. 1 (2023): 3-5. <https://doi.org/10.47709/jpsk.v3i01.1951>.
- Damaiyanti, Alifia, and Kholis Roisah. "Peran Notaris dalam Perlindungan Hak Kekayaan Intelektual: Studi Komparatif Praktik Hukum Indonesia dan Standar Internasional." *UNES Law Review* 6, no. 4 (2024): 11624-11632. <https://doi.org/10.31933/unesrev.v6i4.2103>.
- Darusman, Yoyon Mulyana. "Kedudukan notaris sebagai pejabat pembuat akta otentik dan sebagai pejabat pembuat akta tanah." *ADIL: Jurnal Hukum* 7, no. 1 (2016): 36-56. <https://doi.org/10.33476/ajl.v7i1.331>
- Kartikosari, Heni, and Rusdianto Sesung. "Pembatasan Jumlah Pembuatan Akta Notaris Oleh Dewan Kehormatan Pusat Ikatan Notaris Indonesia." *Legality: Jurnal Ilmiah Hukum* 25, no. 2 (2017): 158-171. <https://ejournal.umm.ac.id/index.php/legality/article/view/5999>
- Lubis, Nurul Qomariyah. "Tanggung Jawab Notaris dalam Menjamin Kepastian Hukum bagi Konsumen." *Jurnal Hukum dan Keadilan* 7, no. 3 (2020): 123-134.
- Ma'ruf, Umar, and Dony Wijaya. "Tinjauan Hukum Kedudukan Dan Fungsi Notaris Sebagai Pejabat Umum Dalam Membuat Akta Otentik." *Jurnal Pembaharuan Hukum* 2, no. 3 (2015): 301-302.
- Kaliey, R. M. (2023). Kedudukan Benda Tak Bergerak Sebagai Jaminan Dalam Perjanjian Kredit. *Lex Privatum*, 11(1), hal. 8.
- Sasauw, Christin. "Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris." *Lex Privatum* 3, no. 1 (2015): 98-99.
- Warsito, Happy, and Herman Adriansyah. "Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris." *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 1 (2022): 24-33. <http://dx.doi.org/10.28946/rpt.v11i1.1640>
- Winarno, J. "Perlindungan Hukum Bagi Kreditur Pada Perjanjian Jaminan Fidusia." *Jurnal Independent* 1, no. 1 (2013): 44-55. <https://doi.org/10.30736/ji.v1i1.5>.
- Yustica, Anugrah, Ngadino Ngadino, and Novira Maharani Sukma. "Peran etika profesi notaris sebagai upaya penegakan hukum." *Notarius* 13, no. 1 (2020): 60-71. <https://doi.org/10.14710/nts.v13i1.29162>
- Hukum Online, 5 Jenis dan Contoh Jaminan Kebendaan, diakses melalui <https://www.hukumonline.com/klinik/a/jenis-dan-contoh-jaminan-kebendaan->

[lt518f8c34e5c67/](https://www.online-pajak.com/seputar-invoice/perbedaan-utang-dan-piutang-pentingnya-memahami-dua-konsep-finansial-ini)

Online Pajak, Perbedaan Utang dan Piutang serta Pentingnya Memahami Dua Konsep Finansial Ini,
<https://www.online-pajak.com/seputar-invoice/perbedaan-utang-dan-piutang-pentingnya-memahami-dua-konsep-finansial-ini>

Kitab Undang-Undang Hukum Perdata (KUHPerdata)

UU No. 8 Tahun 1999 tentang Perlindungan Konsumen (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 42. Tambahan Lembaran Negara Republik Indonesia Nomor 3821.)

Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 117. Tambahan Lembaran Negara Republik Indonesia Nomor 4432.)

Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3. Tambahan Lembaran Negara Republik Indonesia Nomor 5491.)

Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan (OJK) (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 111. Tambahan Lembaran Negara Republik Indonesia Nomor 5253.)

Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168. Tambahan Lembaran Negara Republik Indonesia Nomor 3889.)

Undang-Undang No. 4 Tahun 1996 tentang Hak Tanggungan (Lembaran Negara Republik Indonesia Tahun 1996 Nomor 42. Tambahan Lembaran Negara Republik Indonesia Nomor 3632.)

Putusan Mahkamah Agung RI Nomor 3186 K/Pdt/2017.

Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Penyelenggaraan Sistem Elektronik untuk Administrasi Pemerintahan (Lembaran Negara Republik Indonesia Tahun 2016 Nomor 120.)

Peraturan Pemerintah No. 24 Tahun 2016 tentang Jabatan Notaris (Lembaran Negara Republik Indonesia Tahun 2016 Nomor 121.)

Peraturan Menteri Keuangan No. 86/PMK.010/2015 tentang Kewajiban Pengungkapan Informasi bagi Lembaga Keuangan dalam Transaksi Pembiayaan (Berita Negara Republik Indonesia Tahun 2015 Nomor 1071.)

POJK No. 35/POJK.05/2018 tentang Penyelenggaraan Usaha Perusahaan Pembiayaan (Berita Negara Republik Indonesia Tahun 2018 Nomor 1071.)

POJK No. 76/POJK.07/2017 tentang Layanan Pinjaman Uang Berbasis Teknologi Informasi (*Fintech Lending*) (Berita Negara Republik Indonesia Tahun 2017 Nomor 1071.)

POJK No. 28/POJK.03/2016 tentang Perlindungan Konsumen di Sektor Jasa (Berita Negara Republik Indonesia Tahun 2016 Nomor 1071.)