



Legal Certainty of Authentic Deeds Drawn up By Notaries Violating the Dual Office Holding Prohibition Pursuant to Article 17 of Law No. 2 Of 2014 on Notary Positions

Frisky Removy Butar Butar

Universitas Jayabaya, Indonesia

Email: sint2104@gmail.com

Keywords:	Abstract
Dual Office; Notary; Authenticity; Legal Certainty	<p>Notaries are public officials authorized to draw up authentic deeds. However, violations of the prohibition on holding dual offices under Article 17 of Law No. 2 of 2014 continue to occur, including cases in which notaries concurrently practice as advocates or engage in other prohibited professions, sometimes by attempting to circumvent the prohibition through formal leave. This article aims to analyze violations of the prohibition on dual office holding by notaries and examine their legal consequences for the legal certainty of the deeds they draw up, using the Theory of Authority to assess the legality of actions performed by public officials and the Theory of Legal Certainty to evaluate the authenticity of the resulting legal instruments. This normative juridical study employed statutory, conceptual, analytical, and case approaches. Data were collected through a literature review and analyzed using a qualitative-deductive method. The findings indicate that the validity of an authentic deed requires the cumulative fulfillment of formal and substantive requirements and that compliance with the prohibition on dual office holding forms part of the formal requirements governing a notary's authority. If a notary is proven to hold a prohibited concurrent position, including through circumvention by taking formal leave, the notary's legal authority to act may be deemed impaired. Consequently, pursuant to Article 1869 of the Civil Code, the deed may lose its status as an authentic deed and instead have the evidentiary value of a private deed, irrespective of the substantive correctness of its contents. Furthermore, supervision by the Notary Supervisory Council remains suboptimal and largely reactive. The legal defect in the deed therefore arises from the impairment of the notary's authority at the time the deed was drawn up. Notaries are advised to comply strictly with their oath of office and statutory obligations in order to preserve the legal certainty of the deeds they produce.</p>

INTRODUCTION

A notary is a public official authorized to draw up authentic deeds that serve as conclusive evidence in civil law. Article 1868 of the Civil Code (Kitab Undang-Undang Hukum Perdata [KUHPerdata]) provides that an authentic deed is a deed drawn up by or before an authorized public official in the form prescribed by law. This provision demonstrates that the authority of the public official constitutes an essential requirement for determining the authenticity of a deed (Adjie, 2009, 2014, 2017). As public officials, notaries perform public functions intended to ensure legal certainty, order, and protection for the community. A notary's authority is not a personal right but an attributive authority conferred by law as part of

the state's delegation of functions in the field of civil law (Government Regulation Number 37 of 1998 Concerning Regulations on the Position of Land Deed Making Officials, 1998; Law Number 18 of 2003 Concerning Advocates, 2003; Law Number 30 of 2004 Concerning the Position of Notary, 2004; Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary, 2014; Muhammad, 2006; Subekti & Tjitrosudibio, 2008). Accordingly, notaries are required to act independently, impartially, and free from conflicts of interest.

To preserve such integrity and independence, the legislature expressly regulates the prohibition on dual office holding under Article 17 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Office of Notary, hereinafter referred to as the Notary Office Law (Undang-Undang Jabatan Notaris [UUJN]). This prohibition is intended to prevent conflicts of interest that may compromise a notary's objectivity in exercising authority as a public official. Therefore, dual office holding is not merely an administrative matter but also concerns fundamental aspects of professional independence and the legitimacy of notarial authority (Agustina, 2003; A. Ali, n.d.; Z. Ali, n.d.; Amiruddin & Asikin, 2010; Anshori, 2016; Badruzaman, n.d.; Budiono, n.d.).

In practice, the prohibition under Article 17 of the UUJN may be circumvented through the misuse of leave from office. Under Articles 25 to 27 of the UUJN, leave temporarily suspends the performance of notarial duties, while the notary's legal status and oath of office remain in effect until an official dismissal is issued by the state. Accordingly, leave from office cannot automatically be treated as a legal basis for undertaking another profession that is otherwise prohibited, such as practicing as an advocate or serving as a company director, without raising concerns regarding compliance with the statutory restrictions applicable to the notarial office (Fuady, n.d.; Hs, 2015, 2018; HS, n.d.; Kie, 2007; Kusumaatmadja & Sidharta, 2000).

From a sociological perspective, the prohibition on dual office holding was established not to restrict individual civil rights but to protect the public interest by ensuring that authentic deeds are drawn up by officials who are free from conflicts of interest. In practice, however, such violations may be perceived as causing no immediate harm as long as the resulting deed continues to satisfy the civil needs of the parties (Ayumi, 2022; Halim, 2020; Pradana, 2024; Randi, 2021). Consequently, where no party initiates proceedings to challenge the violation, dual office holding may persist through social acquiescence (Master of Notary Study Program Team, 2024; Sjaifurrachman & Adjie, 2011; Sutedi, 2010; Tambunan, 2020; Tedjosaputro, 2001). This persistent gap between the legal norm (law in the books) and actual practice (law in action) constitutes a fundamental problem. The absence of direct material loss or judicial proceedings does not necessarily eliminate the unlawful character of the conduct, particularly where the prohibition on dual office holding is treated as a formal violation assessed primarily on the basis of the prohibited act itself rather than the consequences arising from it (Lumban Tobing, 1999; Marzuki, n.d., 2008; Mertokusumo, n.d., 2009; Rahardjo, n.d.).

Several decisions of the Notary Supervisory Council illustrate the occurrence of such violations, as summarized in Table 1.

Table 1. Case Study of Violation of the Prohibition of Dual Notary Positions

Verdict	Notary Reported	Forms of Violation	Sanctions
Decision of MPW DKI Jakarta Number 1 and 2/PTS/Mj.PWN.Prov.DKI.Jakarta/XI/2017	Netty Maria Machdar, S.H.	Not reading the deed in front of the audience and transferring the Deed of Borrowing and Borrowing into a Power of Attorney to Sell while busy taking care of personal business.	Proposed temporary suspension of 6 (six) months.
MPPN Decision Number 06/B/MPPN/2018 jo. MPW Decision	Chairil Anom, S.H.	Concurrently serving as a legal representative/advocate of PT Buni Madu Mandiri and being dishonest about the time of leave of office.	The temporary suspension of 6 (six) months, aggravates the MPW's proposal which was originally 3 (three) months.
MPPN Decision Number 15/B/MPPN/XII/2017	Hairandha Suryadinata, S.H., C.N.	Concurrently serving as an advocate and committing fraud under the guise of SP3 management services in client criminal cases.	Dismissal without respect by MPPN, accompanied by PERADI ethics sanctions and criminalization

Source: Processed from decisions of the Notary Supervisory Council (MPW DKI Jakarta and MPPN), 2017–2018.

The three cases demonstrate that violations of the prohibition on dual office holding may extend beyond ethical and administrative consequences and may also give rise to civil and criminal implications, while potentially undermining public trust in the notarial institution. However, in-depth studies examining the juridical consequences of violations of Article 17 of the Notary Office Law (Undang-Undang Jabatan Notaris [UUJN]) for the validity and evidentiary status of notarial deeds remain relatively limited, as reflected in the previous studies summarized in Table 2.

Table 2. Relevant Previous Research

Researcher (Year)	Study Focus	Key Results/Conclusions
Ully Tambunan (2020)	Supervision of notaries who concurrently hold positions by the Notary Supervisory Council.	MPN supervision has not been optimal due to weak reporting and sanctions enforcement systems.

Researcher (Year)	Study Focus	Key Results/Conclusions
M. Artha Randi (2021)	Dual notary position as the leader of a private business entity.	The dual position is contrary to the principle of legal certainty and neutrality of the position.
Saffron Nadila Ayumi (2022)	Dual notary position as chairman of a political party.	Dual positions interfere with the independence and objectivity of notaries as public officials.
The Rambling Man (2020)	Legal harmonization of dual notary positions as members of the House of Representatives.	Harmonization of norms is needed to ensure legal certainty and professional integrity.
Kevin Pradana (2024)	Legal consequences of dual notary positions (case simulation).	Analyze the legal consequences of violations against the validity and evidentiary strength of the deed.

Source: Processed from previous theses and research in the field of notary law, 2020–2024

These studies generally focus on institutional supervision and have not specifically examined the relationship between violations of the prohibition on dual office holding and the validity and evidentiary force of authentic deeds through the Theory of Authority and the Theory of Legal Certainty. Accordingly, this study is important to address that gap. Based on the foregoing discussion, this article formulates two research questions: (1) what are the validity and evidentiary force of authentic deeds drawn up by notaries who are proven to have violated the prohibition on dual office holding under Article 17 of the Notary Office Law (Undang-Undang Jabatan Notaris [UUJN]); and (2) what is the legal certainty of deeds drawn up by notaries who violate the prohibition on dual office holding? This article aims to analyze and examine these two issues and is expected to contribute theoretically to the development of notarial law and practically to notaries, users of notarial services, regulators, law enforcement authorities, and legal scholars. The benefits of this research lie in its theoretical contribution to clarifying the relationship between violations of formal authority and the authenticity of legal instruments, as well as its practical contribution to providing guidance for notaries, users of notarial services, regulators, law enforcement authorities, and legal scholars in understanding the legal consequences of dual office violations and the importance of maintaining the integrity of the notarial profession to ensure legal certainty for the public.

METHODS

This study employed normative legal research using secondary data and legal materials obtained through a literature review. The approaches applied included a statutory approach to examine legal norms concerning the position of notaries, authentic deeds, and the limits of notarial authority; a conceptual approach to analyze legal certainty, public functions, and notarial responsibility; an analytical approach to interpret legal norms related to conflicts of interest; and a case approach to examine relevant decisions of the Notary Supervisory Council that had acquired permanent legal force.

The primary legal materials included the Civil Code; Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Office of Notary; Regulation of the Minister of Law and Human Rights No. 19 of 2021 concerning Procedures for the Appointment and Dismissal of Notaries; Regulation of the Minister of Law and Human Rights No. 40 of 2015 concerning the Organization and Work Procedures of the Notary Supervisory Council; and relevant decisions of the Notary Supervisory Council. Secondary legal materials included books on notarial law, scientific journal articles, and previous studies relevant to the research focus.

Legal materials were collected through identification, inventory, and classification of applicable legislation, literature, and other relevant sources. The materials were analyzed qualitatively using a deductive method, supported by grammatical and systematic interpretation. Where necessary, legal construction through analogy and legal refinement (*rechtsverfijning*) was applied to address normative ambiguities related to legal protection for third parties.

RESULTS AND DISCUSSION

A. Validity and Evidentiary Strength of Authentic Deeds Made by Notaries Who Violate the Prohibition of Dual Positions

Based on the Theory of Authority as stated by Prajudi Atmosudirdjo, authority is the power to carry out actions in the realm of public law provided by laws and regulations and cause legal consequences. A notary act can be categorized as a dual position that is prohibited if it fulfills four cumulative elements, namely: first, there are other positions outside the notary position that are carried out on a regular and active basis; second, the position is included in categories that are expressly prohibited by Article 17 paragraph (1) of the UUJN, such as civil servants, state officials, advocates, political party leaders, as well as leaders or employees of state-owned enterprises, regional-owned enterprises, and private business entities; third, these other positions are still actively carried out at the same time as the notary position; and fourth, there is a potential conflict with the independence and neutrality of notaries as public officials (Fauzi, 2023; *Decision of the Central Supervisory Council Number UM. MPPN.06.15-55 dated June 4, 2014, 2014; Decision of MPPN Number 06/B/MPPN/IX/2018, 2018; Purnayasa, 2018*).

One of the modes that is often used to get around the prohibition is the abuse of the right to leave of office. Based on Article 25 of the UUJN, a new notary can apply for leave after effectively exercising his position for 3 (three) years, unless there is an urgent reason such as illness or pregnancy, with a maximum duration of each leave taken of 3 (three) years and a maximum accumulation of 12 (twelve) years during the term of office as stipulated in Article 26 of the UUJN. The submission is carried out in stages, namely to the Regional Supervisory Council for leave of up to 6 (six) months, the Regional Supervisory Council for leave of more than 6 (six) months to 1 (one) year, and the Central Supervisory Council for leave of more than 1 (one) year to 3 (three) years, accompanied by the appointment of a Substitute Notary based on Article 27 of the UUJN. Although the procedure is legal on paper, the fundamental essence that is often overlooked is that leave only suspends the physical and administrative performance of the duties of the office, while the legal status and oath of office of the notary remain

personally attached as long as he or she has not been officially dismissed by the state. Therefore, the right to leave cannot be used as a means of whitewashing the violation of the prohibition of dual positions, as seen in the following cases (*Decision of the Notary Central Supervisory Council Number 15/B/MPPN/XII/2017*, 2017; *Decision of the Regional Supervisory Council of Notary Provinces of DKI Jakarta Number 1 and 2/PTS/Mj.PWN.Prov.DKI.Jakarta/XI/2017*, 2017; *Notary Code of Ethics of the Indonesian Notary Association*, n.d.).

The case of Chairil Anom, S.H. in MPPN Decision Number 06/B/MPPN/2018 shows the fulfillment of these four elements, namely carrying out the role of notary as well as legal representative of PT Buni Madu Mandiri in a land asset dispute with PTPN VII. This action is considered to violate Article 16 paragraph (1), Article 17 letter e, and Article 52 paragraph (1) of the Law as confirmed in Decision Number 158 K/TUN/2011, so that the MPPN imposes a sanction of temporary dismissal of 6 (six) months based on its absolute authority according to Article 77 of the Law on Law and Human Rights Regulation Number M.02.PR.08.10 of 2004. From this case, the implication can be drawn that dual positions create a factual conflict of interest and undermine the independence of the notary, so that the deed he makes is in a position prone to questioning in court, even though formally the authority of the notary has not disappeared before there is an official dismissal.

The case of Hairandha Suryadinata, S.H., C.N. in MPPN Decision Number 15/B/MPPN/XII/2017 shows a more severe pattern, namely the abuse of dual status as a notary and advocate to commit fraud under the guise of managing the termination of investigation (SP3) in exchange for money. The legal consequences for the notary are multi-layered, including ethical sanctions for dishonorable dismissal by PERADI, administrative sanctions for dishonorable dismissal by MPPN, and criminal liability through court decisions. This case emphasizes the difference between the consequences for the personal status of the notary and the consequences for the product of the position in the form of an authentic deed; not all violations of office automatically eliminate the authentic nature of the deed, unless there is an element of fraud, bad faith, or a real conflict of interest that directly affects the process of forming a deed.

Meanwhile, the case of Netty Maria Machdar, S.H. in the Decision of the DKI Jakarta MPW Number 1 and 2/PTS/Mj.PWN.Prov.DKI.Jakarta/XI/2017 shows a form of violation that is directly in contact with the process of forming the deed, namely not reading the deed in front of the audience and diverting the will of the parties from the Deed of Borrowing and Borrowing to the Power of Attorney to Sell, thus causing material losses for the complainant. This action violates the imperative obligation in Article 16 paragraph (1) letter a and letter m as well as Article 16 paragraph (9) of the UUJN, so that the deed in question loses its authenticity and is only valuable as a deed under hand, and even has the potential to be canceled if it is proven to contain elements of fraud (*bedrog*) or abuse of circumstances (*misbruik van omstandigheden*).

The comparison of the three cases shows that the legal consequences for notaries (discipline of office) must be distinguished from the legal consequences for the deed (the validity of legal products). Article 85 of the UUJN regulates tiered administrative sanctions against notaries who violate the provisions of the position, including the prohibition of dual

positions, as summarized in Table 3, while Article 84 of the UUJN limitively regulates violations of certain provisions (including Article 16 paragraph (1) letters i and k, Article 41, Article 44, and Articles 48 to Article 52) which directly result in the degradation of the deed into a deed under the hands or the cancellation of the deed for the sake of the law.

Table 3. Notary Administrative Sanctions Based on Article 85 of the UUJN

No.	Types of Sanctions	Properties
1	Verbal reprimands	Lightweight
2	Written reprimands	Lightweight
3	Temporary stops	Medium
4	Respectful dismissal	Weight
5	Disrespectful dismissal	Weight

Source: Processed from Article 85 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary

Because the prohibition of dual positions in Article 17 of the UUJN is not included in the exhaustive list of violations in Article 84 of the UUJN, the violation is basically a violation of formal official requirements that have consequences for the discipline of the position (Article 85 of the UUJN), and only has an impact on the validity of the deed if it is proven to directly harm the process of forming the deed, as seen in the case of Netty Maria Machdar. Thus, the validity of an authentic deed made by a notary who concurrently holds a position is maintained as long as the formal elements of Article 1868 of the Civil Code are fulfilled at the time of making the deed and the notary has not been officially dismissed, but its authority can be substantively questioned if the violation is later proven before the Notary Supervisory Council or the court.

B. Legal Certainty on Deeds Made by Notaries Who Violate the Prohibition of Dual Positions

Gustav Radbruch stated that legal certainty requires rules that are positive, clear, ratified by the competent authority, and rooted in concrete facts in order to create predictability. In this context, the prohibition of duplication of office is an absolute formal requirement that must be fulfilled by a notary in order for the legal product he or she is born to provide complete certainty. The three concepts of validity, evidentiary power, and legal certainty do not stand alone, but work in a chain of causality: defects in the formal requirements of authority will erode the evidentiary power of the deed, and the collapse of the evidentiary power ultimately paralyzes legal certainty for the parties, as summarized in Table 4.

Table 4. Summary of the Relationship of Validity, Probative Strength, and Legal Certainty

Aspects	Validity	Evidentiary Power	Legal Certainty
Basic Questions	Is this deed legally made?	How strong is this deed in court?	Are the rights of the parties safe and predictable?
Object of Analysis	Fulfillment of formal and material requirements.	The value of the deed as evidence in the civil procedure law.	Legal protection for legal subjects (society).

Conditions in Dual Position Cases	The deed is still made by an official notary, but it is defective in the formal requirements of the official office.	It has the potential to lose its authenticity and drop its value to a deed under hand.	It has the potential to collapse because the status of ownership/civil rights becomes uncertain.
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Source: Processed by the authors based on the Theory of Authority (Prajudi Atmosudirdjo), the Theory of Legal Certainty (Gustav Radbruch), and provisions of the Civil Code and UUJN.

According to Article 1869 of the Civil Code, the degradation of an authentic deed into a deed under the hand does not occur automatically (*ipso jure*), but must be proven first through a judicial process until there is a decision with permanent legal force (*inkracht van gewijsde*). This is in line with the principle of *praesumptio iustae causa*, namely a notary deed must be considered valid, correct, and binding from the date of its issuance, while the burden of proof to deny its validity lies with the party who postulates the existence of a legal defect (*actori incumbit probatio*). The district court is the only institution that has the authority to assess and decide the proven violation of dual office, so that a notary deed does not necessarily change its status just because of allegations or alleged violations from one of the parties.

In civil disputes involving notary deeds, the judge not only assesses the existence of the deed as written evidence, but also assesses the integrity of the process of its formation. Although an authentic deed basically has perfect evidentiary power, this power is not absolute, because the judge still has the authority to assess whether the process of making the deed meets the principles of honesty, independence, and impartiality of the making official. If the judge finds that the notary who made the deed has a direct interest in the transaction stated in the deed, then the deed can be considered to no longer reflect the will of the parties freely and objectively, so that its validity can be questioned through a civil lawsuit and its evidentiary force can be lowered to the equivalent of a deed under hand, even declared to have no binding legal force under certain conditions.

A conflict of interest can arise if the notary who makes the deed has a certain relationship of interest with one of the parties, either because of dual positions, economic relations, or direct involvement in the transactions outlined in the deed, so that it has the potential to interfere with the independence of the notary and raise doubts about his objectivity as a public official who should be neutral. However, the existence of a conflict of interest does not automatically invalidate the authentic deed that has been made; it is only a basis for the aggrieved party to sue the validity of the deed in court, which will then assess whether the conflict of interest really affects the deed making process, for example through pressure, information manipulation, or notary partiality towards one of the parties. This kind of catechistic approach is important to maintain a balance between the protection of parties in good faith and the enforcement of the integrity of the notary profession as a public official tasked with ensuring certainty and legal protection for the community.

This caustic approach is also in line with the principle of protection of parties in good faith (good faith principle). If every violation of the notary office automatically cancels the deed he made, it will actually create greater legal uncertainty for the notary service user

community who are unaware of the violation. Therefore, the relationship between the violation of office and the validity of the deed must be assessed based on the principle of direct relevance: if the violation only concerns the administrative status of the notary position, the deed that has been made remains valid as an authentic deed; on the other hand, if the violation is proven to affect the process of forming the will of the parties or the content of the deed, then the deed may lose its perfect evidentiary force.

In assessing this, the judge is not only bound by the formal form of the deed as evidence, but also has the authority to assess the honesty, independence, and intention of the notary in the process of making it. The evidentiary power of an authentic deed consists of external, formal, and material evidentiary strength, but the three are not absolute if it is proven that there is abuse of office, conflict of interest, or bad faith in the process of its formation. The validity of the authentic deed itself also cannot be separated from the fulfillment of material requirements according to Article 1320 of the Civil Code, namely an agreement that is free from coercion and fraud, the ability to act of the parties, certain objects, and halal causes, as also emphasized in Article 39 of the UUJN regarding the conditions of presence. These material requirements are cumulative-imperative with the formal requirements of official authority, presence and identification of the parties, the presence of witnesses, the reading of the deed, the immediate signing, and the anatomy of the deed regulated in Article 15, Article 18, Article 38, Article 39, Article 40, and Article 16 paragraph (1) letter m of the Civil Code, so that a violation of one of these elements, and not just a dual status of office, which directly activates the consequences of Article 84 of the Civil Code. Article 1869 of the Civil Code.

To a limited extent, Article 84 of the UUJN states that violations of Article 16 paragraph (1) letters i and k, Article 41, Article 44, and Articles 48 to 52 of the UUJN result in the resulting deed only having the power of proof as a deed under hand or even declared null and void. These provisions include the negligence of the notary in compiling and reporting the list of will deeds, the absence of valid stamps or stamps of office, the non-affirmation of the deed reading information for deeds made in foreign languages, the absence of paraphrasing or endorsement of changes in the deed, and the failure to make minutes to correct writing errors in the minutes of the deed. Since Article 17 of the UUJN on the prohibition of dual positions is not included in the restrictive list, the consequences of deed degradation due to dual positions are only relevant if the violation also drags a violation of one of the above formal provisions, as seen in the case of Netty Maria Machdar who did not read the deed in front of the audience.

Overall, the system of administrative, ethical, and civil sanctions (based on Article 1365 of the Civil Code regarding unlawful acts), as well as criminal sanctions against notaries who concurrently hold positions function to maintain public trust in notary legal products. However, the effectiveness of this function is highly dependent on the active supervision of the Notary Supervisory Council and the willingness of the aggrieved party to take legal action, considering that unreported violations of dual positions tend not to have an impact on the legal status of the deed that has been issued. This condition confirms that the legal certainty of a notary deed that violates the prohibition of dual positions is conditional, that is, it remains guaranteed as long as there is no court decision stating otherwise, but it has the potential to collapse if the violation is later proven to directly affect the process of forming the deed.

CONCLUSION

Based on the results of the research and discussion, it can be concluded that the validity of an authentic deed requires the cumulative fulfillment of formal and substantive requirements. The prohibition on dual office holding by a notary constitutes an important aspect of the formal requirements governing the authority of a public official. However, an allegation or indication of such a violation does not automatically invalidate a deed, because the violation falls within the domain of professional discipline and must first be legally established through examination by the Notary Supervisory Council. Even where a notary has formally been found to have violated the prohibition on dual office holding, a deed previously drawn up by that notary may retain its status as an authentic deed and its evidentiary force, provided that the formal and substantive requirements for its execution were fulfilled at the time the deed was drawn up. The imposition of administrative sanctions on the notary does not, by itself, automatically nullify the legal instrument previously produced. To challenge the evidentiary status of the deed or seek its degradation to a private deed, an interested party must pursue the appropriate civil judicial process. As long as no final and binding court decision declares otherwise, the deed continues to have legal effect as an authentic deed.

Based on these conclusions, notaries are advised to maintain impartiality, avoid favoring any party, and perform their duties as public officials independently and free from conflicts of interest, external interference, or personal gain. Notaries should also consistently apply the principle of prudence at every stage of drawing up a deed, including verifying the legal capacity and identities of the parties, examining the validity of supporting documents and the object of the agreement, and ensuring that the deed is read and signed in accordance with applicable legal procedures. These measures are necessary to provide balanced legal protection for the parties while preserving the legal certainty and evidentiary reliability of authentic deeds.

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