

Legal Certainty for the Parties to a Notarial Deed Minute Not Signed by a Notary Due to Death

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Abstract.

The death of a notary prior to signing a deed minute generates a normative void that existing Indonesian notarial law has yet to adequately resolve. This study examines two central issues: the form and limits of legal protection available to parties in respect of an unsigned deed minute following a notary's death, and the legal remedies accessible to those parties to enforce the substantive content of the agreement. Employing normative legal research through statute, conceptual, and case approaches, this study analyzes primary legal materials including Law Number 30 of 2004 on Notarial Office as amended by Law Number 2 of 2014 (UUJN-P), the Indonesian Civil Code, and the Regulation of the Minister of Law Number 22 of 2025. The findings establish that a deed minute unsigned due to a notary's death is not extinguished in juridical terms but undergoes a degradation of status from an authentic deed to a private deed, retaining limited evidentiary force pursuant to Articles 1869 and 1867 of the Civil Code, provided the parties acknowledge it. This condition is rooted in the normative obscurity of Article 44 paragraph (5) of UUJN-P, which regulates only violations by a living notary and fails to accommodate overmacht arising from death — a deficiency empirically demonstrated to generate divergent practitioner interpretations, thereby directly impairing legal certainty. Non-litigious remedies, namely deed cancellation followed by the execution of a new deed before a different notary, facilitated by the MPND-appointed Temporary Notary Official, constitute the most appropriate resolution mechanism.

Keywords: Authentic deed, Legal certainty, Notarial deed minute, Overmacht and Temporary Notary Official.

I. INTRODUCTION

The Republic of Indonesia constitutionally establishes itself as a state governed by the rule of law, as expressly stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The fundamental consequence of this principle is that every aspect of social and state life must be grounded in applicable law, including civil legal transactions that require legal certainty, order, and protection [1]. It is within this framework that authentic deeds acquire their legal urgency: they function not merely as evidentiary instruments, but as legal mechanisms that guarantee the certainty of legal relationships between parties across a wide range of domains, including commercial transactions, banking, land affairs, and social relations [2]. Authentic deeds hold the highest evidentiary value as the strongest and most complete form of written evidence, such that all statements contained therein are presumed true unless proven otherwise before a court of law [3].

As a public official exclusively authorized to produce authentic deeds, a Notary occupies a strategically indispensable position within Indonesia's legal system. This authority is governed by Law Number 30 of 2004 on Notarial Office, as amended by Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on Notarial Office (hereinafter referred to as UUJN/UUJN-P). In discharging official duties, a Notary is not merely vested with authority but is simultaneously subject to strict legal obligations. Among the most critical of these obligations is the requirement to read the deed aloud before the appearing parties and witnesses, and thereafter to sign it at that same moment, as prescribed under Article 16 paragraph (1) sub-paragraph m and Article 44 paragraph (1) of UUJN-P. The Notary's signature constitutes a formal requisite that determines the authenticity of a deed; absent the Notary's signature, a deed cannot be legally qualified as an authentic instrument [4]. Article 1 number 8 of UUJN-P explicitly affirms this by defining a deed minute (*minuta akta*) as the original deed bearing the signatures of the appearing parties, witnesses, and the Notary.

The legal problem at the core of this research arises from a situation that has yet to receive adequate normative regulation: what is the legal status of a deed minute when a Notary dies before affixing their signature? This condition differs fundamentally from a violation committed by a living Notary. Article 44 paragraph (5) of UUJN-P does regulate the legal consequence of a deed in cases of non-compliance with signing obligations, namely that the deed shall only carry evidentiary force as a private deed (*akta di bawah tangan*). However, that provision contextually addresses intentional or negligent violations by a living Notary, not a condition of *overmacht* arising from the Notary's own death [5]. This normative obscurity (*obscurity of norm*) generates legal uncertainty: there is no provision that explicitly governs the legal consequences for the deed, the protective mechanisms available to the parties, or the legal remedies accessible when a Notary dies without having signed a deed minute that had already been read aloud and signed by the appearing parties and witnesses.

This uncertainty carries concrete and direct consequences for parties who have acted in good faith in articulating their legal intentions within such a deed minute. They find themselves in a vulnerable position: on one hand, the deed that was intended to serve as the foundation for their legal rights and obligations can no longer function as an authentic instrument; on the other hand, no clear and standardized mechanism exists to restore the legal standing of that deed. This condition stands in direct contradiction to the constitutional ideal enshrined in Article 28D paragraph (1) of the 1945 Constitution, which guarantees every person's right to recognition, guarantee, protection, and just legal certainty.

Several prior studies have addressed issues intersecting with this topic, including Rudianto et al. [6], who examined legal protection for parties in relation to deed minutes whose validity could not be determined following a Notary's death, from the perspective of the role of the Interim Notary (*Notaris Pengganti Antar Waktu*); Astuti [7], who investigated the resolution of unsigned deed minutes through a concrete case study in Denpasar; Tampubolon et al. [8], who focused on the legal consequences and notary liabilities pertaining to the absence of properly signed deed minutes; and Suwardiyati and Rustam [9], who addressed the legal vacuum in notary office management and proposed administrative and technological solutions. Nevertheless, a comprehensive research gap remains unaddressed: none of these studies simultaneously integrates an analysis of the form of legal protection available to parties on the basis of the evidentiary force of a private deed, the construction of *overmacht* as a distinguishing basis between negligence and force majeure, and the mapping of legal remedies, both litigious and non-litigious, available to parties within the framework of the most recent regulations, including the Regulation of the Minister of Law of the Republic of Indonesia Number 22 of 2025. Moreover, the issue of conflicting interpretations regarding the authority of the Temporary Notary Official (*Pejabat Sementara Notaris*) that have emerged in practice has not been examined in depth in relation to the principle of legal certainty.

Departing from this research gap, this study aims to analyze two specific matters: first, the form and limits of legal protection available to parties with respect to a deed minute that has not been signed by a Notary who has died; and second, the legal remedies available to those parties to fulfill the content of the agreement that has been reached within that deed minute. This study argues that the ambiguity of Article 44 paragraph (5) of UUJN-P in accommodating the condition of *overmacht* arising from a Notary's death represents not only a normative deficiency requiring correction through legislative reform, but has also produced practical impediments that can be addressed through existing legal mechanisms, provided they are correctly identified and appropriately applied.

II. METHODS

This study employs normative legal research as its primary methodological approach. This selection is grounded in the central problem of the research, namely the absence of clear regulation within UUJN/UUJN-P concerning the legal consequences of a notarial deed minute that has not been signed by a Notary who has died. Without the Notary's signature as a formal requisite element, a deed minute cannot be legally qualified as an authentic deed, thereby generating legal detriment for the parties involved. Normative legal research focuses on legal norms as its primary object of inquiry, with the scope of analysis measured against the

nature and boundaries of legal discipline as a systematic body of doctrine concerning both norms and legal reality [10].

This study employs three complementary research approaches. First, the *statute approach*, which involves a systematic examination of all legislation and regulations bearing upon the legal issue under investigation, treating law as a comprehensive, all-inclusive, and systematic normative system. Second, the *conceptual approach*, which entails an analytical review of legal doctrines and scholarly perspectives within jurisprudence to construct sound legal arguments capable of resolving the problems under examination. Third, the *case approach*, which involves an analysis of cases relevant to the legal issue being studied — particularly adjudicated cases and established jurisprudence — in order to derive clarity from empirical legal phenomena [11], [12].

This study draws upon three categories of legal materials. Primary legal materials consist of binding legislative instruments, including the 1945 Constitution of the Republic of Indonesia; Law Number 30 of 2004 on Notarial Office; Law Number 2 of 2014 on its Amendment; the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*); and the Regulation of the Minister of Law of the Republic of Indonesia Number 22 of 2025. Secondary legal materials comprise academic papers, legal textbooks, peer-reviewed journals, and scholarly writings that provide explanatory context for the primary legal materials [3]. Tertiary legal materials include the *Kamus Besar Bahasa Indonesia* (Indonesian Dictionary), legal dictionaries, foreign language dictionaries, and encyclopaedias, which serve as supplementary references. Legal materials were collected through a library research method, conducted by systematically reviewing and analyzing in depth the relevant legal norms and materials pertaining to the problems under investigation, including statutory instruments such as UUJN/UUJN-P, with a view to obtaining comprehensive supporting data.

The analysis of legal materials in this study employs a qualitative descriptive technique grounded in the normative provisions of applicable legislation [13]. Consistent with the view advanced by Sugiyono, qualitative descriptive methodology aims to describe, explain, and address research problems in a detailed manner by studying phenomena as they naturally occur, with the researcher functioning as the primary instrument of inquiry [14]. The legal materials collected and analyzed were subsequently developed into a scholarly exposition that provides an educative contribution commensurate with the legal issues that constitute the focus of this study.

III. RESULT AND DISCUSSION

Legal Protection for the Parties to a Deed Minute Not Signed by a Notary Who Has Died

1. Notarial Deed-Making Procedures as the Foundation of Legal Protection

Legal protection for the parties in the context of a notarial deed does not exist as an abstract concept in isolation; rather, it inheres organically in the fulfilment of the deed-making procedures prescribed by statute. The existence of a notarial deed as an authentic instrument is governed by Chapter VII of UUJN/UUJN-P, spanning Articles 38 through 56, which comprehensively regulates every stage of the deed-making process from inception through to the issuance of certified copies. Compliance with all provisions contained within that chapter is not merely a procedural obligation; it constitutes a substantive precondition that determines whether the resulting deed can genuinely provide legal certainty and legal protection to the parties involved [2].

Article 38 of UUJN prescribes the anatomy of a notarial deed, which consists of three mandatory parts: the opening or header of the deed, the body of the deed, and the closing or footer of the deed. Each part contains elements that cannot be omitted. The opening sets out the deed's title, number, time of execution, and the full name and official domicile of the Notary, elements that jointly serve to identify the type of legal act performed, verify the Notary's territorial jurisdiction, and guarantee the certainty of the date of execution as mandated by Article 15 paragraph (1) of UUJN-P [3]. The body of the deed contains the *comparitie*, which identifies the appearing parties in full, including the legal capacity requirements under Article 39 of UUJN, as well as the substantive content of the deed, which must not contravene the conditions for the validity of agreements set out in Article 1320 of the Civil Code. The closing of the deed contains an account

of the reading aloud, the signing, the identity of the instrumental witnesses, and any corrections or amendments made during the drafting process, commonly referred to as *renvooi*.

In notarial practice, a notarial deed is produced through three sequential and non-interchangeable stages: *mengkonstatir*, *mengkonstituier*, and *memverlijden* [15]. The *mengkonstatir* stage is the initial step in which the Notary identifies the relevant juridical facts on the basis of the empirical facts furnished by the appearing parties, encompassing the classification of documents and supporting papers (*warkah*), identity verification, and confirmation that a legal event giving rise to the deed has in fact occurred [16]. The *mengkonstituier* stage involves the Notary's determination of the most appropriate type of deed to correspond with the juridical intentions of the appearing parties, as established through the preceding verification. Finally, the *memverlijden* stage encompasses the most critical sequence of actions: drafting the deed minute, reading it aloud before the appearing parties and witnesses, providing clarification where necessary, signing the deed, authenticating the deed minute, and issuing certified copies thereof.

Beyond these three stages, a Notary is further required to apply a three-tier methodological framework, the *tiga metode lingkaran*, in producing an authentic deed [15]. The inner circle method (*lingkaran kecil*) refers to Article 1320 of the Civil Code as a benchmark for assessing whether the appearing parties may act as parties to the deed, whether the subject matter of the agreement is capable of being incorporated into a deed, and whether the deed's purpose and cause are lawful. The middle circle method (*lingkaran sedang*) refers to Article 1868 of the Civil Code as a benchmark for the authenticity of the deed, ensuring that it is made in the form prescribed by statute by a competent public official within their territorial jurisdiction. The outer circle method (*lingkaran besar*) references other applicable legislation as a comprehensive benchmark for the legal validity of the authentic deed as a whole. These three concentric methods form a multi-layered verification system that, when consistently applied, functions as a preventive protection mechanism shielding the parties from both formal and substantive defects in the deed.

The direct relevance of this entire procedural framework to the research problem is as follows: where every stage has been duly performed by the Notary, yet the Notary thereafter dies before affixing their signature to the deed minute, the legal protection available to the parties becomes incomplete. This incompleteness is not attributable to any procedural failure on the part of any party; rather, it arises from a formal deficiency originating from a condition of *overmacht* that lies beyond anyone's control.

2. Validity Requirements of an Authentic Deed and the Determinative Position of the Notary's Signature

The validity of a notarial deed as an authentic instrument is determined by two cumulative layers of requirements: formal requirements under Article 1868 of the Civil Code and substantive requirements under Article 1320 of the Civil Code. Validity in the legal sense, derived from the Dutch term *rechtmatig* and its English equivalent *legality*, refers to the status or quality of an act, document, or decision that is considered lawful, correct, and valid in accordance with applicable rules or norms [17]. In the context of a notarial deed, validity is not merely a matter of formal legality, but also a question of public trust in legal documents produced by an authorized public official.

Article 1868 of the Civil Code prescribes three cumulative conditions for a deed to qualify as an authentic instrument. First, the deed must be made in the form prescribed by statute, which, in the context of a notarial deed, refers to the deed's anatomy as regulated under Articles 38 through 56 of UUJN/UUJN-P. Since the enactment of UUJN, the existence of a notarial deed has obtained juridical affirmation because its form is expressly determined by statute, in contrast to the preceding regime under which it was governed only by *Reglement* [18]. Second, the deed must be made by or before an authorized public official. According to Teguh [19], the concept of a public official in this context is closely tied to attributive authority conferred by the state through legislation, not merely to the legal profession at large. An advocate, however expert in law, is not authorized to produce an authentic deed because they do not hold the status of a public official; a Notary, by contrast, possesses such authority on an attributive basis by virtue of appointment under Article 2 of UUJN. Third, the deed must be made within the territorial jurisdiction of the relevant public official, a Notary whose official domicile is in Badung Regency, for example, is only authorized to produce and finalize deeds within that regency, pursuant to Articles 18 and 19 of UUJN [18].

From a substantive standpoint, the validity of a notarial deed is further measured against the conditions for the validity of agreements under Article 1320 of the Civil Code, which requires four elements to be satisfied: mutual consent of the contracting parties, legal capacity to enter into an obligation, a definite subject matter, and a lawful cause. These four conditions are divided into subjective conditions, whose non-fulfilment renders the deed voidable, and objective conditions, whose non-fulfilment renders the deed void *ab initio*. In practice, the Notary bears responsibility for ensuring that both layers of requirements are satisfied before the deed is signed.

Among all the formal requirements, the Notary's signature occupies the most determinative position. Article 1 number 8 of UUJN-P definitively states that a deed minute is the original deed bearing the signatures of the appearing parties, witnesses, *and* the Notary. The use of the conjunction "and" in this formulation is cumulative and absolute: the absence of any one of the three signature components causes the document to fall short of the legal definition of a deed minute. The external parameter for identifying a deed as authentic is precisely the Notary's signature, both on the minute and on its certified copies, from the opening to the closing of the deed [3]. The Notary's signature is therefore not merely an administrative element; it is an essential constituent that constitutes the very authenticity of the deed itself.

The normative implications of this central position of the Notary's signature manifest in three dimensions of evidentiary force that attach exclusively to an authentic deed. Formal evidentiary force (*kekuatan pembuktian lahiriah*) is the capacity of a deed to prove itself as authentic on the basis of its outward appearance (*acta publica probant seseipsa*), a deed that externally appears authentic must be accepted as such until proven otherwise. Procedural evidentiary force (*kekuatan pembuktian formil*) proves the procedural accuracy of the deed, encompassing the time and place of execution, the identity of the parties, the validity of the reading process, and the authenticity of all signatures. Substantive evidentiary force (*kekuatan pembuktian materiil*) guarantees that the content of the deed constitutes legally binding truth as against the parties, their heirs, and third parties who derive rights from them [20]. All three dimensions can coexist fully and simultaneously only if all formal requirements, including, and most critically, the Notary's signature, have been satisfied [21].

3. Legal Construction of a Deed Minute Not Signed by a Notary Who Has Died

The most fundamental normative problem in this research originates in the formulation of Article 44 paragraph (5) of UUJN-P. That provision states that a violation of the signing obligation results in the deed carrying only the evidentiary force of a private deed, and may serve as grounds for an aggrieved party to claim reimbursement of costs, damages, and interest from the Notary. Contextually, the phrase "to claim from the Notary" implicitly presupposes that the Notary continues to exist as a legal subject capable of being held accountable. A Notary's death prior to signing, however, represents a condition that is ontologically distinct: it is not a violation arising from free will, but rather an *overmacht* that renders the discharge of an official obligation impossible [22]. A genuine normative obscurity therefore exists within this provision: it regulates the consequences for a deed arising from a violation by a living Notary, yet provides no explicit regulation for the condition of *overmacht* constituted by the Notary's death.

Nevertheless, the absence of explicit regulation does not equate to the absence of legal consequences altogether. Article 1869 of the Civil Code serves as the decisive juridical anchor: a deed that, by reason of a formal defect, cannot be treated as an authentic instrument nonetheless retains the force of a private deed if signed by the parties. In the context of a deed minute that has been signed by the appearing parties and witnesses but not by the Notary who subsequently dies, this provision produces an important juridical consequence: the deed is *degraded* from an authentic deed to a private deed, but does not cease to have legal existence. The distinction between "degraded" and "non-existent in law" is fundamental, as it determines whether any legal protection remains available to the parties.

4. Legal Protection for the Parties: Dimensions, Limits, and Practical Implications

Drawing upon the theory of legal protection advanced by Rahardjo [23], legal protection is fundamentally the provision of shelter for human rights that have been infringed, so that every member of society may enjoy all rights guaranteed by law. Muchsin, as cited in Hasibuan [24], further distinguishes

between legal protection afforded by the state to its citizens through regulation and law enforcement, and legal protection extended among citizens through social norms. In the case of a deed minute not signed by a deceased Notary, the first dimension, state protection through regulation, constitutes the most relevant instrument for analysis.

The primary normative instrument providing minimum legal protection for the parties is Article 1867 of the Civil Code, which affirms that proof by writing may be effected by means of either authentic writing or private writing. This provision, read in conjunction with Article 1338 of the Civil Code, which affirms that all validly formed agreements operate as law between those who made them, establishes a floor of minimum protection: the substantive content of the agreement contained in the deed minute remains binding upon the parties so long as they acknowledge and affirm it. Furthermore, Article 28D paragraph (1) of the 1945 Constitution, which guarantees every person's right to recognition, guarantee, protection, and just legal certainty, reinforces the constitutional premise that parties acting in good faith must not be left entirely without legal protection on account of an event wholly beyond their control.

The field findings of this study consistently confirm this normative construction. The first informant, an experienced Notary in Badung Regency, stated that

“from an evidentiary standpoint, legal protection for the parties in cases where a deed minute has not been signed by a Notary due to death can still be provided in the form of protection as a private deed, and it can still serve as evidence, like a receipt, for example — so long as it is acknowledged by the parties. However, it cannot serve as authentic evidence, because a deed minute not signed by a deceased Notary has only lost its status or standing as an authentic deed — it has been degraded” [25].

In a consistent vein, the second informant affirmed that

“legal protection for the parties over a deed minute not signed by a deceased Notary is based on the force of a private deed, because a deed minute that has not fulfilled the conditions for validity undergoes only a change of form or status — from an authentic deed to a private deed — and its evidentiary force is no longer perfect” [26].

Both statements consistently reflect the same principle: the degradation of a deed's status is not equivalent to the total extinguishment of legal protection. The substantive content of the agreement contained in the deed minute remains materially binding upon the parties, and the deed may still function as written evidence in the context of civil proceedings pursuant to Article 1867 of the Civil Code.

On the other hand, a more restrictive view was expressed by a third informant, who stated that “the deed is considered never to have existed in law, and will only be regarded as a notarial deed once it has been signed by a public official, that is, the Notary” [26]. This position directly challenges the foundation of the legal protection available. Were this view to prevail in a dispute, parties acting in good faith would lose all legal protection over an agreement they had lawfully concluded. The significant divergence in views among these practitioners itself constitutes the most compelling empirical evidence of the normative obscurity of Article 44 paragraph (5) of UUJN-P: the lack of normative clarity has generated mutually contradictory interpretations, which in turn directly undermines the legal certainty received by the parties on the ground.

Analyzed through the lens of Jan M. Otto's theory of legal certainty, as cited in Rahardjo [23], this condition plainly falls short of the requirements for genuine legal certainty. Jan M. Otto requires that governing institutions apply legal rules consistently. Where experienced Notaries who are professionally confronted with this very issue produce mutually contradictory interpretations of the same legal consequence, the requirement of consistent application of law cannot be met. Accordingly, the legal protection available to parties in respect of a deed minute not signed by a deceased Notary is *partial and conditional* in character: it is available within the framework of the evidentiary force of a private deed, which remains binding so long as acknowledged by the parties, but is vulnerable to interpretive disputes rooted in unresolved normative obscurity. More substantive and certain protection can only be achieved through two complementary pathways: normative reform of Article 44 paragraph (5) of UUJN-P to explicitly accommodate the condition of *overmacht* constituted by a Notary's death, and the active pursuit of legal remedies by the parties, which will be analyzed in depth in the following sub-section.

Legal Remedies Available to the Parties to Fulfil the Content of the Agreement in a Deed Minute Not Signed by a Notary Who Has Died

1. Legal Consequences and Evidentiary Force of a Deed Minute Not Signed by a Deceased Notary

An understanding of the legal remedies available to the parties cannot be disentangled from a precise determination of the legal consequences arising from the condition of a deed minute that has not been signed by a Notary who has died. From a legal standpoint, legal consequences are all consequences that arise from legal acts performed by a legal subject in relation to a legal object, or from certain events that have been determined or recognized as having legal consequences under applicable law [17]. In the present case, the relevant legal subject is the Notary, and the Notary's absence from the signing process of the deed minute was not caused by any exercise of will or negligence, but rather by the legal event of death, which constitutes an absolute *overmacht*.

The most fundamental legal consequence is the non-fulfilment of the definitional elements of a deed minute as prescribed by Article 1 number 8 of UUJN-P. That provision requires a deed minute to contain four cumulative elements: the originality of the deed, the signatures of the appearing parties, the signatures of the witnesses, and the signature of the Notary. The signatures of the parties constitute an affirmation of legality and an expression of the legal will binding them in an obligation. The signatures of the instrumental witnesses, who must satisfy the requirements of Article 40 of UUJN, attest to and validate the reading aloud and signing process. The Notary's signature, consistent with Article 1 number 1 of UUJN-P which designates the Notary as the public official authorized to produce authentic deeds, constitutes the element that constitutes the very authenticity of the deed itself [27]. The absence of this fourth element renders the document in question juridically unqualified as a deed minute, with the consequence that the parties are unable to obtain a certified copy of the deed, which is ordinarily issued by the Notary on the basis of a formally complete deed minute.

The cascading consequences of the non-fulfilment of this formal requirement bear directly on the evidentiary force of the deed. An authentic deed as constructed under Article 1870 of the Civil Code carries perfect evidentiary force encompassing three dimensions: external evidentiary force that proves the validity of the deed from its outward appearance (*acta publica probant seseipsa*), procedural evidentiary force that proves the accuracy of the procedural record concerning the time, place, identity of the parties, and validity of all signatures, and substantive evidentiary force that guarantees that the content of the deed constitutes binding truth as against the parties, their heirs, and those who derive rights from them [20]. In the context of civil procedural law, written evidence constitutes the primary form of proof as regulated under Article 1866 of the Civil Code, which enumeratively recognizes five categories of evidence: written proof, witness testimony, presumptions, admissions, and oaths. Among these five categories, an authentic deed as written evidence holds the highest standing because its evidentiary force is perfect and binding upon the judge, such that any party who challenges its content bears the burden of adducing proof to the contrary.

Article 1888 of the Civil Code reinforces this position by establishing that the evidentiary force of a written instrument rests upon the original deed, that is, the deed minute. Where a deed minute exists and is formally complete, certified copies and extracts thereof may only be relied upon to the extent that they correspond with the original. In the case of a deed minute not signed by a deceased Notary, however, this evidentiary force is rendered imperfect. Salim [3] affirms that the completeness of the Notary's signature constitutes the foundation for imparting legally binding force to a deed. Without the Notary's signature, the deed cannot possess perfect evidentiary force, and its status is altered to that of a private deed. The practical implications are highly significant: in the context of litigation, the deed no longer constitutes evidence binding upon the judge, but rather is subject to the judge's free evaluation in the same manner as any private deed. One informant confirmed this practical consequence by stating that:

“the legal consequence of the Notary's signature on the deed minute is that the deed minute is valid, and the Notary's responsibility endures for life. Accordingly, if the deed minute has not been signed by the Notary who has died, the deed is incomplete — meaning it cannot serve as valid evidence before the law in the event of a future dispute, and this is even more significant if the matter is related to criminal proceedings” [28].

This statement reflects the profound significance of the Notary's signature not merely as a formality, but as the element that determines the enforceability and legal force of the deed.

2. The Sources of Legal Remedies: Unlawful Acts and *Overmacht*

Legal remedies do not arise from a vacuum; rather, they emerge from legal acts or legal events that produce legal consequences prejudicial to a given party. Swantoro [29] defines a legal remedy as a legal course of action pursued by a legal subject to contest a matter, whether still ongoing or already adjudicated by a court. The purposes of a legal remedy are to restore violated rights, to ensure that an aggrieved party receives proportionate compensation, to release a party from a defective obligation, and to deter repetition of similar violations. In the context of a deed minute not signed by a Notary, legal remedies arise from two conditions that are normatively distinct in character, namely unlawful acts and *overmacht*.

First, unlawful acts. In a scenario where a living Notary intentionally or negligently fails to sign a deed minute, this condition may be legally constructed as an unlawful act (*onrechtmatige daad*) under Article 1365 of the Civil Code, which obliges every person who, by reason of their act, causes damage to another to make good such damage. The concept of an unlawful act in Indonesian civil law is not confined to statutory violations, but also encompasses acts contrary to norms of morality, propriety, and the legally protected rights of others, reflecting the adoption of the substantive rather than merely formal conception of unlawfulness. The constituent elements of an unlawful act in this context include the Notary's act of failing to sign the deed, the unlawfulness constituted by the breach of a professional obligation, fault in the form of either intent (*dolus*) or negligence (*culpa*), the damage suffered by the parties, and a direct causal nexus between the failure to sign and the resulting damage.

Second, *overmacht*. The condition relevant to the case under examination in this study is that of a Notary who dies before being able to sign the deed minute. According to Subekti, as cited in Irianto et al. [30], *overmacht* or force majeure is a condition in which the non-performance of an obligation is attributable to circumstances wholly unforeseeable and unavoidable, without any bad faith on the part of the party unable to perform. The constituent elements of *overmacht* include the occurrence of an extraordinary or unforeseen event, the event being beyond the power and will of the parties, the event being incapable of prevention despite maximum efforts, and the event rendering performance of the obligation or duty impossible [22]. A Notary's death satisfies all of these elements in their entirety. Its legal basis is found in Articles 1244 and 1245 of the Civil Code, which in principle discharge the obligor from liability for costs, loss, and interest where non-performance is attributable to force majeure that cannot be imputed to them.

Within the doctrine of *overmacht*, two varieties are recognized: absolute *overmacht*, which arises where performance of the obligation has become wholly and permanently impossible, and relative *overmacht*, which arises where performance remains theoretically possible but only at a disproportionate sacrifice to the obligor [30]. A Notary's death falls squarely within the category of absolute *overmacht*: the signing of the deed minute by that Notary is biologically impossible to achieve. The juridical implication is that no liability may be attributed to the Notary for this condition, and accordingly the appropriate legal resolution lies not in a claim for damages but in the institutional mechanisms available under UUJN/UUJN-P and its implementing regulations.

3. Litigious Legal Remedies: Relevance and Limitations

Litigation is the resolution of a legal dispute through the formal judicial process administered by the state, characterized principally by the formalization of proceedings under procedural law, the involvement of state institutions as administrators of justice, the binding and enforceable nature of judicial decisions that are final in character, and the principle of transparency through open hearings [31]. The strengths of litigation lie in the legal certainty produced by judicial decisions that clarify the legal status of the parties' rights and obligations, the executory force of court orders that may be compelled with the assistance of state apparatus, and the protection of public interests particularly in matters affecting the rights of the broader community. Nevertheless, litigation carries limitations that cannot be disregarded: proceedings from the court of first instance through to cassation or judicial review may span years; costs are high, encompassing legal representation and administrative fees; the adversarial nature of the process tends to position the parties as

opponents, potentially damaging their post-dispute relationship; and the winner-takes-all character of judicial decisions leaves no room for creative compromise that might better serve both parties.

In the context of a deed minute not signed by a Notary who has died, litigious legal remedies are of limited relevance. Their relevance is confined to the specific condition where the non-signing of the deed minute is attributable not to the *overmacht* of the Notary's death, but to an unlawful act in the form of intentional or negligent failure to sign by a living Notary. In such circumstances, the aggrieved parties may bring a civil claim before the competent district court pursuant to Article 1365 of the Civil Code, seeking judicial recognition of the degraded status of the deed and claiming compensation for the resulting damage. The supporting legal basis for such a claim is Article 1869 of the Civil Code, which provides that a deed that, by reason of a formal defect, cannot be treated as an authentic instrument, nonetheless retains the force of a private deed if signed by the parties. Through a court judgment or order, the legal status of that deed acquires binding juridical certainty.

In cases of *overmacht* constituted by a Notary's death, however, litigious remedies encounter fundamental normative obstacles. The phrase "to claim from the Notary" in Article 44 paragraph (5) of UUJN-P implicitly presupposes that the Notary continues to exist as a legal subject amenable to suit. Death extinguishes the Notary's active legal capacity as a defendant. Bringing a claim against the Notary's heirs is theoretically conceivable but requires a more complex legal construction and lacks explicit normative grounding in UUJN/UUJN-P. Further, in conditions of *overmacht*, there is no element of "fault", which is an essential precondition for an unlawful act, and accordingly a claim under Article 1365 of the Civil Code would lack a sound foundation. Litigious legal remedies must therefore be understood as an alternative pathway relevant to cases of active violation by a living Notary, not as the primary avenue in cases of *overmacht* caused by death.

4. Non-Litigious Legal Remedies: Institutional Mechanisms and Resolution Procedures

In conditions of *overmacht* constituted by a Notary's death, non-litigious legal remedies constitute the substantially more appropriate and operationally viable pathway. Such remedies rest upon the institutional framework of the Temporary Notary Official (*Pejabat Sementara Notaris*), defined under Article 1 number 2 of UUJN-P as a person who temporarily holds the office of Notary to discharge the official duties of a Notary who has died. The eligibility requirements for appointment as a Temporary Notary Official are governed by Article 33 paragraph (1) of UUJN-P, namely Indonesian citizenship, a bachelor's degree in law, and a minimum of two consecutive years of employment as a staff member of a Notary's office.

Procedurally, the process is initiated when the heirs or employees of the deceased Notary's office report the situation to the Regional Notary Supervisory Council (*MPND*), which is then required under Article 57 of Ministerial Regulation Number 22 of 2025 to appoint a Temporary Notary Official as interim protocol holder within a period of no more than 14 days from the date of receipt of the notification. Where the eligibility requirements for the appointment of a Temporary Notary Official are not met, Article 59 of that Regulation empowers the MPND to designate another Notary as protocol holder. The Temporary Notary Official's tenure as interim protocol holder extends for a maximum of 60 days pursuant to Article 61 paragraph (1), before the MPND formally designates a permanent Notary as protocol holder. Following the issuance of the decision on dismissal, the Temporary Notary Official is obliged to transfer the Notarial Protocol to the designated permanent protocol holder within 30 days.

Within this institutional framework, non-litigious legal remedies for the parties are pursued through two sequential mechanisms: First, cancellation of the deed. In the law of contract, cancellation is the process of declaring an agreement invalid or inoperative. With respect to notarial deeds, Article 84 of UUJN provides that where a Notary violates provisions encompassing Article 44, the deed in question may be subject to three possible outcomes: voidability, nullity *ab initio*, or reduction to a private deed [21]. Pursuant to Article 1869 of the Civil Code, a deed that cannot be treated as an authentic instrument on account of a formal defect retains the force of a private deed if signed by the parties, signifying that the deed is not automatically null *ab initio*, but rather undergoes a degradation of status [18]. In the non-litigious context, cancellation of the deed is effected by the parties appearing before another Notary to execute a deed of

cancellation that explicitly references the unfinished deed minute, expressly declares the agreement contained therein to be cancelled, and releases both parties from all future legal claims in connection with that draft deed.

Second, execution of a new deed before a different Notary. Following the cancellation of the deed, the parties may appear before another competent Notary to execute a new deed restating the agreement that had previously been left in abeyance. The new Notary cannot continue, rectify, or authenticate the deed of the deceased Notary, the new Notary executes an entirely new deed bearing a new number and date of execution. All parties who were involved in the preceding legal act must attend and consent to appear before the new Notary, a requirement that presupposes the continued good faith of all parties. The new deed may incorporate a *recital clause (premis)* setting out the history that an earlier agreement had been concluded before the Notary who subsequently died, but that the deed had not been signed by that Notary prior to their death. This clause is important for maintaining documentary continuity and avoiding ambiguity regarding the background to the agreement. The new deed will carry perfect evidentiary force as an authentic instrument, fully restoring legal certainty for the parties.

5. Conflicting Interpretations of the Temporary Notary Official's Authority and Their Implications for Legal Certainty

Beneath the seemingly structured non-litigious mechanism lies a deeper normative problem: this study identifies a significant divergence of interpretations among practitioners concerning the limits of the Temporary Notary Official's authority in handling deed minutes not signed by a deceased Notary.

The interview data reveals three distinct positions among the informants. The first informant held that “the duties and authority of a Temporary Notary Official are not regulated exhaustively in UUJN or UUJN-P, but on the basis of the nature and rationale of the appointment — which is to replace the duties of a Notary who has died — a Temporary Notary Official is permitted to continue and complete deeds that were left unfinished by the deceased Notary” [25].

The second informant expressed a diametrically opposed view:

“A Temporary Notary Official is not permitted, and has not been authorized by the Regional Notary Supervisory Council, to sign deed minutes of the deceased Notary, as doing so would constitute forgery or an abuse of authority, given that the deed is a product issued by the Notary who has died” [32].

The third informant offered a more pragmatic position, advising that the parties should submit a request to the Temporary Notary Official to examine the supporting documents of the previous Notary, submit an application to the Regional Notary Supervisory Council, execute a new deed before a different Notary, and, if these efforts prove unsuccessful, pursue a legal remedy through the courts [28].

The contradiction emerging from these three positions is not merely a matter of individual disagreement; it is a direct reflection of a genuine normative vacuum within UUJN and UUJN-P. Neither statute contains any provision that exhaustively delimits the substantive duties and authority of a Temporary Notary Official, in particular, whether such official is authorized to sign deed minutes originating from a deceased Notary. Ministerial Regulation Number 22 of 2025 does address the procedural mechanism for appointing a Temporary Notary Official, but provides no substantive clarity regarding the limits of their authority over unfinished deeds.

Examined through Jan M. Otto's theory of legal certainty, as cited in Rahardjo [23], this condition plainly falls short of the requirements for genuine legal certainty. Jan M. Otto requires that governing authorities apply legal rules consistently and that independent courts do likewise in the resolution of disputes. Where a Temporary Notary Official, the very institution directly confronting this issue in practice, lacks clear normative guidance regarding the boundaries of their authority, the requirement of consistent legal application cannot be met. Parties who depend on the Temporary Notary Official to assist in resolving their deed minutes risk receiving treatment that varies depending on the interpretation adopted by the Temporary Notary Official or the MPND in each respective working area.

This condition reveals a broader dimension of the normative weakness at the heart of this research: normative obscurity is not confined to Article 44 paragraph (5) of UUJN-P concerning the consequences for a deed in conditions of *overmacht* constituted by a Notary's death, but extends equally to the regulation of the

authority of the Temporary Notary Official who serves as the instrument of resolution. Both the "problem" and the "solution" alike lack adequate normative grounding, a condition that cumulatively generates layered legal uncertainty for the affected parties. The non-litigious legal remedies analyzed in this sub-section must therefore be understood as the best mechanism available within the current positive legal framework, not as a perfected solution. The execution of a new deed before a different Notary, preceded by cancellation of the degraded deed, remains the most practically reliable step for restoring legal certainty for the parties. Legislative reform that explicitly regulates the legal consequences for a deed minute in conditions of *overmacht* constituted by a Notary's death, while simultaneously clarifying the exhaustive limits of the Temporary Notary Official's authority, remains an imperative that is both urgent and no longer capable of being deferred.

IV. CONCLUSION

This study establishes that a deed minute unsigned by a Notary due to death is not wholly extinguished in juridical terms, but undergoes a degradation of status from an authentic deed to a private deed, retaining limited evidentiary force pursuant to Article 1869 in conjunction with Article 1867 of the Civil Code, provided the parties acknowledge it. This condition is rooted in the normative obscurity of Article 44 paragraph (5) of UUJN-P, which regulates only violations committed by a living Notary, thereby failing to accommodate *overmacht* constituted by a Notary's death, a deficiency empirically demonstrated to generate divergent interpretations among practitioners and directly impair the parties' legal certainty. Since the Notary's death constitutes absolute *overmacht* under Articles 1244 and 1245 of the Civil Code, non-litigious remedies, deed cancellation followed by execution of a new deed before a different Notary, facilitated by the MPND-appointed Temporary Notary Official, represent the most appropriate mechanism, while litigious remedies under Article 1365 of the Civil Code remain relevant solely for active violations by a living Notary. This study accordingly recommends legislative revision of Article 44 paragraph (5) of UUJN-P to explicitly address *overmacht* conditions and to exhaustively delimit the Temporary Notary Official's authority.

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