

The Validity of Notary Public Deeds in the Capital Market During a Vacuum of License Due to the Retroactive Cancellation of Registration Certificates by the Financial Services Authority

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Article Info

Article history:

Received: 8 December 2025

Publish: 18 December 2025

Keywords:

Notary deed validity;

Capital market regulation;

License vacuum;

Retroactive certificate

cancellation;

Financial Services Authority oversight.

Abstract

The increasingly significant Indonesian capital market demands a vital role from supporting professions like Capital Market Notaries to ensure legal certainty and compliance. The Financial Services Authority Regulation (POJK) Number 67/OJK.04/2017 mandates the re-registration of the Registered Certificate (STTD), but its implementation triggered an administrative crisis that led to the cancellation of 1066 Notary STTDs, creating a period of "vacuum of license". To assess the impact of this implementation, research is needed on the validity of Notary deeds created during the vacuum of license and the analysis of legal protection provided to the Notary and relevant parties (issuers/investors). This study employs a normative juridical method with a case study approach, referencing the State Administrative Court (PTUN) Decision Number 38/G/2020/PTUN.JKT. The research findings conclude that deeds made by the Notary during the vacuum of license period are vulnerable to legal uncertainty and potentially downgraded to private deeds (underhand documents). However, the PTUN decision indicates that OJK's action cannot fully guarantee legal certainty as it was deemed procedurally flawed and violated the General Principles of Good Governance (AUPB). The implementation of the STTD cancellation regulation failed to realize the objective of providing protection for Notaries and capital market stakeholders, because the Notary and the parties using the deed (issuers/investors) are entitled to legal protection if they can prove compliance with administrative obligations (STTD re-registration).

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1. INTRODUCTION

National economic development requires sound financing from both the government and the public. On the corporate side, a Limited Liability Company (PT) serves as the primary vehicle for capital mobilization, while on the market side, the Capital Market plays a crucial role in supporting equitable distribution, growth, and economic stability [1]. The presence of a capital market drives a country's economic progress. Historical dynamics, including the 1997/1998 Asian crisis which suppressed the Jakarta Composite Index (IHSG) before its recovery, demonstrate the resilience of the Indonesian capital market, which is now increasingly significant for the economy. Most recently, the market capitalization reaching approximately Rp12,300 trillion in 2024 indicates the capital market's role as a substantial and dynamic part of the financial system and an engine for financing the real sector [2].

The reliability of the capital market ecosystem is sustained not only by infrastructure and regulation but also by supporting professions, especially the Notary. As a public official, the Notary ensures the legality of corporate legal actions, ranging from General Meetings of Shareholders (GMS), amendments to the articles of association, corporate actions including Pre-emptive Rights Issues (HMETD), to documents related to securities and Collective Investment Contracts (KIK), thereby guaranteeing legal certainty for investors and issuers. The significance of this role is reflected in the increase in the number of Notaries, with a jump in the growth of Notaries by 15.6% in 2021 and sustained growth to reach 360 people by 2025 [3].

However, the strengthening of governance through administrative obligations, particularly with the regulatory change to POJK 67/POJK.04/2017, has also created challenges. Many notaries faced technical and administrative hurdles, one of which was a lack of adequate understanding and information about the re-registration procedure they needed to complete. Furthermore, a lack of communication between the OJK and the Indonesian Notaries Association (INI) also affected the effectiveness of the POJK's implementation. A frequently encountered problem is the lack of awareness or delay in fulfilling these administrative obligations, which ultimately led to the revocation of the Certificate of Registration (STTD).

This became highly problematic, especially when the decision to revoke the STTD was declared retroactive, resulting in the cancellation of previously issued documents or deeds. In this regard, the OJK issued the Decision of the Board of Commissioners of the Financial Services Authority Number: KEP-19/PM.223/2019 concerning the Cancellation of the Certificate of Registration of Notaries as Supporting Profession in the Capital Market, which declared the cancellation and invalidity of 1066 Certificates of Registration for Capital Market Supporting Notaries. This raises serious questions about the validity of deeds created during the period of "vacuum of license" and the legal protection for the parties involved.

Stemming from this gap, this research analyzes the legal validity of Notary deeds as a capital market supporting profession created during the *vacuum of license* period following the STTD revocation. Theoretically, this study enriches the literature on legal certainty and capital market governance. Practically, it offers policy recommendations to balance enforcement of compliance with the protection of interested parties, aiming to maintain the integrity of the Indonesian capital market.

2. RESEARCH METHODS

The research method used in this thesis is normative-empirical legal research, which combines a study of statutory regulations and their application in practice through case studies. This research examines the implementation of Financial Services Authority Regulation (POJK) No. 67/OJK.04/2017 concerning the cancellation of the Certificate of Registration (STTD) by the OJK and its impact on the validity of deeds drawn up by capital market notaries. Data was collected through literature review, as well as interviews with the OJK and affected notaries, to gain an understanding of the administrative and procedural issues that led to a vacuum of license. Data analysis was carried out qualitatively with a deductive approach, connecting existing regulations with the observed practices, and summarizing the results to provide recommendations for improving the administrative system and legal protection for notaries in the capital market.

3. RESEARCH RESULTS AND DISCUSSION

A "vacuum of license" is a condition where the Certificate of Registration (STTD) of a Notary as a Capital Market Supporting Profession at the OJK is inactive, revoked, or administratively disputed. Literally, a legal vacuum (*rechtsvacuum*) is defined as an "empty state" or emptiness, as per the Great Dictionary of the Indonesian Language (KBBI). However, in legal studies, the term is often narrowed down to the absence of a written legal norm (*rechtsvacuum*), meaning the lack of a rule in the statute. It is important to note that legal experts use this term not to suggest that law is completely non-existent, but rather to emphasize that while written norms might be absent, genuine law also encompasses unwritten rules and practices that live and operate within society [4].

This condition affects the Notary's authority in the capital market sector because the Notary is the only public official authorized to draw up contractual agreements or decisions that the law requires to be confirmed in a document [5], even though the Notary's general authority as a public official appointed by the Minister remains. The validity of an authentic deed is governed by two levels of authority that must be fulfilled by the Notary: General Authority to create authentic deeds generally, which remains inherent as long as the Notary has not been dismissed by the Minister and Sectoral Authority, which is the specific authority to conduct activities in certain sectors, such as the Capital Market, obtained through the STTD from the OJK [6]. If the STTD is revoked or canceled by the OJK, the Notary is deemed to have violated the sectoral subjective requirements. This means that the deeds they create related to capital market transactions (e.g., GMS deeds for an Initial Public Offering or bond issuance agreements) become vulnerable because they do not meet the specific administrative requirements mandated by the regulator (OJK). The main consequence of violating this subjective requirement is that the deed can no longer be recognized as an authentic deed. According to civil law, a deed made by an unauthorized official will be downgraded to a private deed (*akta di bawah tangan*) [7].

If a *vacuum of license* occurs for a Notary as a capital market supporting profession, the legal basis for the Notary's authority becomes unclear. This ambiguity directly creates vulnerability regarding the validity of the deed created by the Notary [8]. Such a deed will lose the perfect and binding evidentiary force (*perfect proof*) inherent in an authentic deed [9]. This situation is highly crucial in the Capital Market, as an inauthentic deed can disrupt the processes of due diligence, emission registration, or the execution of a General Meeting of Shareholders (GMS), all of which absolutely require perfect evidence. The application of the STTD revocation sanction by the OJK through the STTD Cancellation Decree KEP-19/PM.223/2019, which was retroactive (deemed void since the re-registration deadline, December 2018), while the official decision was only issued in 2019, created a *vacuum of license* period. During this period, deeds made by the Notary were considered *null and void by law* retrospectively. This retroactive action clearly violates the Principle of Legal Certainty and the Principle of Prohibition of Abuse of Authority, which are part of the General Principles of Good Governance (AUPB), because it left Notaries and service users (issuers/investors) unaware of their legal status when the deed was properly executed.

Legal protection regarding the validity of the deed emerges when the Notary files and wins a lawsuit at the State Administrative Court (PTUN). The case of PTUN Decision Number 38/G/2020/PTUN.JKT proves that the court found the OJK had violated the AUPB by failing to provide proper and specific warnings or notifications regarding the Notary's administrative deficiencies. The court decided to cancel the OJK Decision, with the

cancellation taking effect *ex tunc* (deemed never to have existed). Thus, the Notary's STTD status was considered active and valid during the dispute period. Through this PTUN decision, the *vacuum of license* status was legally nullified. Consequently, the deeds created by the Notary during that period are once again recognized as having perfect evidentiary force (authentic) and guarantee legal certainty for all capital market stakeholders who relied on them. This constitutes an effective repressive legal protection mechanism.

4. CONCLUSION

The validity of deeds created by capital market notaries during the vacuum of license period becomes vulnerable to legal uncertainty. The ambiguity of the status of a notary who is unregistered or fails to fulfill administrative obligations can cause the deeds they create to be considered invalid and downgraded to private deeds (*akta di bawah tangan*). Although such deeds may be defensible under certain conditions, the unclear administrative status can disrupt the legal process and capital market transactions involving these deeds. However, if the Notary concerned successfully cancels the OJK decision through the State Administrative Court (PTUN), the validity of the deed is restored and remains recognized as an authentic deed with perfect evidentiary force, because the *vacuum of license* is legally considered to have never been valid.

5. RECOMMENDATION

There is a need for clearer Regulations concerning the provision of legal protection for deeds issued by notaries who have met their administrative obligations. This will enhance legal certainty for parties relying on those deeds, such as issuers and investors. Furthermore, the legal protection mechanism for notaries experiencing a *vacuum of license* must be strengthened, providing legal certainty regarding the status of deeds created during that period.

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