JURNAL MAGISTER HUKUM UDAYANA
(UDAYANA MASTER LAW JOURNAL)
Vol. 15 No. 2 July 2026
E-ISSN: 2502-3101 P-ISSN: 2302-528x
http: //ojs.unud.ac.id/index.php/jmhu

Ensuring Legal Certainty and Notary Liability for Foreign Nationals in Bilingual Notarial Deeds

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Article Info

Submitted: 28th April 2026
Accepted: 30th July 2026
Published: 31st July 2026

Keywords:
Bilingual notarial deeds; Legal certainty; Notary liability; Foreign nationals; Legal protection

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DOI:
10.24843/JMHU.2026.v15.i02.p11

Abstract

This study examines the adequacy of legal certainty and the construction of notary liability in bilingual notarial deeds involving foreign nationals under Article 43 of the Indonesian Notary Law. It aims to evaluate the extent to which the current regulatory framework fails to ensure substantive legal certainty, to analyze the construction of notary liability in cases of misinterpretation, and to identify structural gaps in legal protection for foreign nationals. This research employs a normative legal method using statute, conceptual, and analytical approaches. The findings demonstrate that the existing framework remains predominantly formalistic, equating legal certainty with procedural compliance, particularly the use of the Indonesian language, without adequately ensuring that foreign parties understand the legal consequences of the deed. The involvement of sworn translators does not eliminate or transfer notary liability, as the notary retains a non-delegable responsibility to ensure that legal consent is genuinely informed. Furthermore, the study reveals a structural protection gap arising from the absence of clear standards for verifying comprehension and allocating responsibility in bilingual notarial practice. In response, this study proposes a reconstruction of Article 43 through the introduction of a duty to ensure understanding, requiring notaries to actively verify that foreign nationals comprehend the substance and legal implications of the deed. This reconstruction repositions legal certainty as an integration of formal validity and substantive understanding, thereby strengthening legal protection and accountability in cross-border notarial transactions.

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1. Introduction

The expansion of cross-border transactions in Indonesia has significantly intensified the involvement of foreign nationals in legal relationships, particularly in investment, property acquisition, and commercial agreements. While notarial deeds function as the primary legal instruments to formalize such transactions by ensuring authenticity, evidentiary value, and legal certainty, their role becomes increasingly complex in cross-border contexts. This complexity arises not merely from the diversity of legal systems involved, but more fundamentally from the intersection between legal formalism and linguistic accessibility.[1]

Indonesian law mandates that notarial deeds must be drafted in the Indonesian language as a formal requirement of validity. This requirement reflects the function of language as an instrument of legal certainty, ensuring uniform interpretation within the national legal system. However, in practice, transactions involving foreign nationals frequently necessitate the use of foreign languages, resulting in the widespread adoption of bilingual notarial deeds. This situation creates a structural tension between formal legal requirements and practical necessity. While the Indonesian version remains the only legally authoritative text, foreign parties often rely on translated versions to understand their rights and obligations. The absence of equal legal standing between these versions creates a risk of divergent interpretation, placing foreign nationals in a structurally vulnerable position.

The issue, therefore, is not merely linguistic but fundamentally legal. The use of foreign languages in notarial deeds, particularly without accurate and standardized translation, may undermine the validity of the deed itself. In certain circumstances, such deficiencies may lead to the degradation of an authentic deed into a private deed or even result in its annulment in legal disputes.[2] This demonstrates that language is not a neutral medium, but a determinant factor affecting legal certainty and enforceability. The increasing complexity of cross-border transactions further transforms the role of notaries. They are no longer confined to a formalistic function of documenting legal acts, but are required to ensure that such acts are substantively understood by the parties involved. In this context, notaries act not only as public officials who authenticate legal acts, but also as legal gatekeepers who must bridge differences between legal systems and ensure that the legal consequences of the deed are properly understood by the parties.[3]

Despite these developments, the existing legal framework remains predominantly formalistic. Legal certainty is primarily interpreted as compliance with procedural requirements, particularly the obligation to use the Indonesian language, without sufficient consideration of whether the parties genuinely understand the legal consequences of the deed. As a result, legal certainty risks being reduced to mere procedural validity, rather than functioning as a mechanism of substantive legal protection.[4]

This formalistic orientation becomes increasingly problematic in the context of cross-border transactions, where linguistic asymmetry directly affects the formation of

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[1] Ikhsan Lubis et al., "The Role of Notaries in Making International Grant Deeds : A Legal Study of Cross-Border Grant Regulations," *ULTIMATE JOURNAL OF LEGAL STUDIES (ULJLS)* 03, no. 01 (2025): 190–201.

[2] Titin Hartati and Ahmad Redi, "Legal Vacancies Regarding Notarial Deeds Made In Foreign Languages Without Official Translation And Their Implications for The Validity Of The Deed," *Dialog Legal: Jurnal Syariah, Jurispridensi Dan Tata Negara* 2, no. 1 (2026): 77–85, https://doi.org/doi.org/10.64367/dialoglegal.v2i1.133.

[3] Lubis et al., "The Role of Notaries in Making International Grant Deeds : A Legal Study of Cross-Border Grant Regulations."

[4] Agnes Nova Randomis, "Regulation of Legal Protection for Notaries in Performing Official Duties to Ensure Legal Certainty and Justice," *Interdiciplinary Journal and Hummanity (INJURITY)* 4, no. 11 (2025): 969–75, https://doi.org/10.58631/injurity.v4i11.1491.

consent. In civil law systems, the validity of an agreement is closely linked to the existence of genuine consent, which presupposes that the parties understand the content and legal implications of the agreement. However, in bilingual notarial practice, such understanding cannot be assumed, particularly when foreign nationals rely exclusively on translated versions that do not carry equal legal authority.

This study departs from previous research by advancing a different analytical perspective. First, it shifts the focus from formal compliance toward substantive legal protection, emphasizing that legal certainty cannot be achieved without ensuring genuine understanding. Second, it integrates the issue of language with the doctrine of notary liability, thereby reconceptualizing the role of the notary as an active guarantor of informed consent rather than a passive formal actor. Third, it explicitly positions foreign nationals as vulnerable legal subjects whose protection must be addressed within the notarial framework.

Based on this perspective, this study introduces the concept of a duty to ensure understanding as a normative extension of the notary's obligations in bilingual notarial transactions. The concept challenges the prevailing assumption that the provision of translation is sufficient to fulfill the requirement of explanation under Article 43 of the Notary Law. Translation, although necessary to facilitate communication between the notary and foreign nationals, does not necessarily establish that the parties have understood the substance, legal meaning, and consequences of the deed. The proposed duty therefore requires the notary to move beyond the mere provision of translated content by taking reasonable and verifiable measures to ensure that the parties, particularly foreign nationals, understand the legal act to which they give consent. This approach places substantive understanding alongside formal compliance as an important element in assessing the adequacy of legal protection in bilingual notarial transactions.

Accordingly, this study is guided by three research questions that correspond to the limitations of the existing regulatory framework, the construction of notary liability, and the need for legal reconstruction. First, to what extent does the current regulation of bilingual notarial deeds under Article 43 fail to ensure substantive legal certainty for foreign nationals? Second, how should notary liability be constructed in cases of misinterpretation arising from bilingual notarial deeds? Third, how can the legal framework be reconstructed to provide effective protection for foreign nationals in bilingual notarial transactions? These questions are intended to examine not only the formal adequacy of Article 43, but also the relationship between linguistic understanding, notarial responsibility, and substantive legal protection.

Previous studies have extensively examined the role of language in notarial deeds, primarily emphasizing its function as a formal requirement to ensure legal certainty and uniform interpretation. Research by Keristion and Sesung highlights that the use of Indonesian language in notarial deeds is essential to prevent ambiguity and ensure enforceability within the national legal system.[5] Meanwhile, Hartati and Redi identify a legal vacuum regarding the consequences of foreign-language deeds without official translation, which may lead to the degradation of an authentic deed or even its

[5] Keristion and Rusdianto Sesung, "Legal Certainty of Using Indonesian Language in Notarial Deeds," *JHK: Jurnal Hukum Dan Keadilan* 2, no. 2 (2025): 63–75, https://doi.org/https://doi.org/10.61942/jhk.v2i2.278.

annulment in disputes.[6] In addition, studies on bilingual agreements in broader contractual contexts demonstrate that linguistic discrepancies may lead to interpretive conflicts, particularly when no governing language clause is established. Courts tend to prioritize the Indonesian version as the authoritative text, often to the detriment of foreign parties who rely on translated documents.[7] This condition reinforces the structural imbalance in bilingual legal relationships, where one party possesses linguistic advantage over the other.

Furthermore, research on notarial liability indicates that disputes frequently arise from misunderstandings embedded in legal documents, particularly in transactions involving foreign investment structures. Empirical cases demonstrate that inaccuracies or misinterpretations in notarial deeds may result in significant legal consequences, including the annulment of deeds and financial losses suffered by foreign parties.[8] These findings suggest that the issue is not limited to language as a technical matter, but extends to the broader question of legal responsibility and protection within notarial practice.

Despite the growing body of literature on notarial deeds and the use of language in legal instruments, significant gaps remain unaddressed. Existing studies predominantly focus on the formal function of language in ensuring legal certainty or on the procedural implications of translation requirements. However, there has been no comprehensive analysis examining the relationship between legal certainty and substantive understanding within bilingual notarial deeds. Nor has there been a clear construction of notary liability in situations where misinterpretation arises due to linguistic asymmetry.

Furthermore, prior research has not adequately positioned foreign nationals as vulnerable legal subjects within bilingual legal transactions. Most studies treat foreign parties as ordinary participants in contractual relationships, without addressing the structural disadvantages they face due to unequal access to legal language. This omission is significant, as the reliance on translated documents places foreign nationals in a position where their consent may be formally valid but substantively compromised.

2. Research Methods

This study employs a normative legal research method, as it examines legal norms related to bilingual notarial deeds and their implications for legal certainty and notary liability toward foreign nationals. The approaches used include statute, conceptual, and analytical approaches. The statute approach is applied to analyze relevant regulations governing notarial practice and language requirements, while the conceptual approach is used to examine legal doctrines such as legal certainty, legal protection, and notary liability. The analytical approach is used to assess the adequacy of existing norms in

[6] Hartati and Redi, "Legal Vacancies Regarding Notarial Deeds Made In Foreign Languages Without Official Translation And Their Implications for The Validity Of The Deed."

[7] Rizky Puspita Cahyaning Putri and Yulies Tiena Masriani, "Between Notarial Formality and Digital Innovation: A Legal Inquiry into Bilingual Electronic Agreements," *International Research Journal of Multidisciplinary Scope* 6, no. 4 (2025): 1673–84, https://doi.org/10.47857/irjms.2025.v6i04.06290.

[8] Ayu Zihan Nabillah, "Notary's Liability for the Cancellation of the Deed of Establishment of A Foreign Investment Limited Liability Company Due to Violation of the Notary Profession," *Authentica* 6, no. 1 (2023): 12–24, https://doi.org/10.20884/1.atc.2023.6.1.369.

addressing issues arising from bilingual notarial deeds. The legal materials are collected through document study and analyzed using qualitative methods.

3. Result and Discussion

3.1. The Limitations of Article 43 in Ensuring Substantive Legal Certainty for Foreign Nationals

The regulation of bilingual notarial deeds in Indonesia is primarily anchored in Article 43 of the Notary Law, which mandates the use of the Indonesian language as a formal requirement of validity. However, this provision cannot be understood merely as a technical rule of drafting. It embodies a deeper legal principle in which language operates as a constitutive element of legal certainty, shaping not only the form of legal instruments but also their interpretative authority within the national legal system. In this context, the use of the Indonesian language serves to anchor notarial deeds within the national legal order, thereby reinforcing their status as authentic instruments possessing full evidentiary strength.

From the perspective of legal certainty theory, certainty cannot be reduced to the existence of a formally valid legal rule; it also requires the law to provide a predictable and sufficiently clear basis for those subject to it to understand the legal consequences of their conduct. In the context of a notarial deed, therefore, formal certainty concerning the authoritative language must be distinguished from substantive certainty concerning the parties' understanding of the legal act.

Despite its normative clarity, the monolingual framework established by Article 43 encounters significant limitations in the context of cross-border transactions. The increasing participation of foreign nationals exposes a fundamental tension between formal legal uniformity and the practical necessity of linguistic accessibility. Transactions involving foreign investment, property ownership structures, and cross-border commercial agreements frequently involve parties who do not possess adequate proficiency in the Indonesian language. This condition reflects a recurring practical issue in notarial practice, where foreign parties are formally bound by legal instruments that they do not fully comprehend.[9] In response, Article 43 provides a mechanism allowing the notary to explain or translate the contents of the deed. However, this mechanism does not fully resolve the underlying issue. The tension reveals that legal certainty, as constructed within the statutory framework, may not necessarily translate into actual understanding for all parties involved.

Within this framework, the role of the notary undergoes a functional transformation. The notary is no longer confined to a formalistic role as a drafter and authenticator of legal documents, but assumes a more complex position as a guarantor of informed legal consent. This shift reflects an implicit recognition that the effectiveness of legal consent cannot be detached from the parties' comprehension of its content, particularly in linguistically asymmetrical situations. This relationship between language and legal effect can be understood through a law-and-language perspective, which recognizes that legal meaning is mediated through linguistic expression and interpretation. Linguistic

[9] I Gusti Ayu Sinta Kesuma Devi and I Wayan Novy Purwanto, "The Legal Aspect of Using Foreign Language in Notarial Deed Format," *International Journal of Judicial Law* 4, no. 6 (2025): 66–70, https://doi.org/10.54660/ijjl.2025.4.6.66-70.

differences therefore do not merely create a communication problem; they may affect how the rights, obligations, and legal consequences contained in a legal instrument are understood by its addressees. In bilingual notarial deeds, the translation of legal language consequently becomes part of the process through which legal meaning is communicated, rather than a merely technical step accompanying the preparation of the deed. At a normative level, the obligation to explain or translate the deed indicates that language is not merely a formal requirement, but a substantive element that directly affects the validity of consent.

The involvement of sworn translators introduces an additional layer of complexity into the notarial process. Rather than resolving linguistic disparities, it restructures the process into a dual-actor system in which legal authority and linguistic interpretation are institutionally separated. While the notary retains formal authority over the deed, including its drafting and authentication, the translator effectively mediates its meaning across languages. This separation, however, is not accompanied by a corresponding allocation of legal responsibility, thereby creating a normative vacuum. This normative ambiguity has been identified as a consequence of the inconsistent formulation of Article 43, which allows the use of foreign language while simultaneously maintaining Indonesian as the authoritative legal language.[10]

This absence of regulatory clarity generates a critical normative gap. The law recognizes the necessity of translation, yet fails to define its legal consequences, particularly in situations where discrepancies in interpretation arise. As a result, the framework produces a paradox: while legal certainty is formally preserved through the dominance of the Indonesian text, substantive certainty is potentially undermined for parties who rely on translated versions. This condition creates a structural imbalance within the notarial process, where foreign nationals depend on a version of the deed that does not carry equal legal authority.

While Article 43 establishes the normative basis for the use of translation in notarial deeds, its application cannot be separated from other provisions within the Notary Law that regulate the procedural validity of the deed. In particular, Article 16 paragraph (1) letter m requires the notary to read the deed before the appearing parties in the presence of witnesses and to ensure that it is signed simultaneously. This requirement reflects a fundamental principle in notarial practice, namely that the authenticity of a deed is not derived solely from its written form, but also from the procedural process through which it is declared, explained, and acknowledged by the parties.

The procedural requirements under Article 16 further reinforce a formalistic orientation within the notarial framework. The obligation to read the deed is traditionally understood as a safeguard to ensure that the parties are aware of its contents. However, in the context of bilingual deeds, this assumption becomes problematic. The act of reading the deed in the Indonesian language does not guarantee comprehension for foreign nationals who lack sufficient linguistic proficiency. This condition exposes a disjunction between procedural compliance and substantive understanding, where

[10] Arif Budiman, Mohammad Ryan Bakry, and Iskandar Muda, "REKOGNISI HUKUM PENGGUNAAN BAHASA ASING DALAM PEMBUATAN AKTA NOTARIS BERDASARKAN KETENTUAN HUKUM DI INDONESIA," *Syntax Idea* 6, no. 9 (2024): 3877–96.

formal requirements may be fulfilled without achieving genuine awareness of the legal consequences of the deed.

This issue becomes more complex when considered alongside Article 16 paragraph (7), which allows the deed not to be read aloud if the appearing parties declare that they have read and understood its contents. At a normative level, this provision introduces flexibility within the notarial process. However, in bilingual contexts, such a declaration may be based solely on reliance upon translated versions rather than on the original Indonesian text that carries legal authority. Consequently, the presumption of understanding embedded in this provision risks being constructed on an unverified assumption rather than on actual comprehension. From a legal-linguistic perspective, the effectiveness of legal language depends on clarity, precision, and the avoidance of multiple interpretations, which cannot be presumed in translated legal contexts.[11]

The intersection between Article 43 and Article 16 therefore reveals a deeper procedural tension within the legal framework. Article 43 acknowledges the necessity of translation as a mechanism to facilitate understanding, while Article 16 operates on the assumption that reading or declaring understanding is sufficient to validate the deed. This interaction demonstrates that the law implicitly assumes that translation effectively bridges the gap between language and comprehension. However, such an assumption is neither explicitly regulated nor empirically verified within the statutory framework.

This disparity reveals a structural imbalance within the notarial framework. Procedural elements such as reading, signing, and witnessing are meticulously regulated and strictly sanctioned, whereas the substantive element of understanding remains largely unverified. Consequently, the law privileges formal validity over actual comprehension, thereby weakening its function as an instrument of legal protection, particularly for foreign nationals who depend on translation as their primary means of accessing the content of the deed.[12]

Furthermore, Article 16 paragraph (9) introduces strict legal consequences for procedural non-compliance, namely the degradation of the deed's evidentiary value into that of a private document. This provision underscores the importance of procedural correctness within the notarial process. However, it simultaneously highlights a critical limitation within the legal framework: while procedural deficiencies are clearly sanctioned, failures in ensuring substantive understanding are not subject to equivalent legal consequences. This asymmetry reinforces the dominance of formalism within the current regulatory structure.

The interaction between Article 43 and Article 16 ultimately leads to a more complex issue concerning the allocation of responsibility within the notarial process, particularly in transactions involving foreign nationals. In practice, the involvement of a sworn translator is frequently perceived as a sufficient mechanism to address linguistic barriers. Once the contents of the deed have been translated, the obligation of explanation is often considered fulfilled, and the process proceeds without further

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[11] I Wayan Ana et al., "The Characteristics of Indonesian Legal Language in Notarial Documents," *International Linguistics Research* 3, no. 3 (2020): p1, https://doi.org/10.30560/ilr.v3n3p1.

[12] Randomis, "Regulation of Legal Protection for Notaries in Performing Official Duties to Ensure Legal Certainty and Justice."

scrutiny regarding whether the foreign party has genuinely understood the legal implications of the deed.

This practice gives rise to a tendency to shift responsibility from the notary to the sworn translator. When disputes arise due to discrepancies in interpretation, notaries may rely on the argument that the translation has been conducted by a certified translator, thereby implying that any error in meaning falls outside their responsibility. However, from a doctrinal perspective, such a shift of responsibility lacks normative justification. The involvement of a translator does not diminish the notary's obligation, as the duty to ensure that the deed is properly understood remains inherent to the notarial function as a public office.

From a legal standpoint, the role of the sworn translator should be understood as auxiliary rather than substitutive. The translator facilitates linguistic communication, but does not assume the legal responsibility attached to the notarial function. The notary retains full authority over the deed, including its authenticity, formulation, and legal consequences. This distinction is critical in maintaining the integrity of the notarial institution, as it confirms that responsibility cannot be delegated in a manner that undermines the notary's public function.

The absence of explicit regulation regarding the allocation of responsibility between notaries and translators creates a normative vacuum that enables this shifting practice to persist. While the law recognizes the necessity of translation, it does not establish clear standards governing how translation affects notarial obligations or liability. As a result, the implementation of Article 43 tends to rely on professional discretion rather than on a coherent legal framework, thereby weakening legal certainty in practice.

This condition becomes particularly problematic when viewed from the perspective of legal protection for foreign nationals. From the perspective of legal protection theory, protection is not limited to providing a formal legal remedy after a violation has occurred, but also encompasses preventive mechanisms that enable parties to exercise their rights effectively within a legal relationship. This preventive dimension is particularly relevant to foreign nationals whose limited command of the Indonesian language may restrict their ability to assess the substance and legal consequences of a notarial deed before giving consent. In situations where a foreign party relies on a translated version of the deed and subsequently suffers a legal disadvantage due to misinterpretation, the question of responsibility becomes uncertain. If liability is effectively displaced onto the translator, foreign nationals may be left without adequate legal protection, given that the translator does not occupy the same legal position or bear the same level of responsibility as the notary.

Moreover, reliance on translation as a substitute for understanding overlooks a fundamental principle of contract law, namely that consent must be informed. A valid legal act requires not only agreement, but also comprehension of its legal consequences. In the context of bilingual notarial deeds, this principle is at risk of being undermined when understanding is presumed rather than verified. The law provides a mechanism for explanation and translation, yet does not impose a corresponding obligation to ensure that such mechanisms effectively result in comprehension.

Ultimately, the current framework under Article 43 facilitates linguistic accommodation without establishing a coherent system of accountability. It allows bilingual practices to emerge, yet fails to regulate their legal implications in a manner that ensures substantive protection. This condition underscores the need to reconceptualize notarial responsibility beyond formal compliance, particularly in cross-border transactions where linguistic asymmetry fundamentally affects the validity of consent.

3.2. The Construction of Notary Liability in Cases of Misinterpretation in Bilingual Notarial Deeds

Notary liability in the context of bilingual notarial deeds must be understood within a broader framework that extends beyond formal compliance toward the protection of informed legal consent. The involvement of foreign nationals introduces a structural condition of linguistic asymmetry, in which the ability of the parties to understand the legal act is inherently unequal. In such circumstances, the notary's role cannot be confined to document authentication, but must be interpreted as encompassing the responsibility to ensure that legal consent is both genuine and informed. This responsibility also extends to the verification of translations and supporting documents, as notarial involvement in foreign-language deeds requires ensuring their legal acceptability across jurisdictions.[13]

Article 15 paragraph (2) letter e of the Notary Law establishes the notary's authority to provide legal counseling, thereby positioning the notary as an active legal actor rather than a passive recorder of the parties' intentions. This provision, when read in conjunction with Article 16 paragraph (1) letter a, which requires the notary to act carefully and to safeguard the interests of the parties, creates a normative foundation for a heightened duty of care. In the context of bilingual deeds, this duty necessarily includes addressing the risks of misinterpretation arising from linguistic differences. Safeguarding the interests of the parties cannot be interpreted narrowly as procedural compliance, but must be understood as requiring the notary to prevent situations in which one party is disadvantaged due to lack of understanding.

The involvement of a sworn translator does not diminish this responsibility. While Article 43 provides a mechanism for translation, it does not establish any normative basis for transferring or limiting the notary's liability. The translator operates within a technical and linguistic capacity, whereas the notary retains legal authority over the deed. This distinction is critical. The translator facilitates communication, but does not assume responsibility for the legal consequences of the act. Consequently, the notarial obligation to ensure clarity and understanding remains non-delegable.

Liability becomes particularly significant in cases of misinterpretation. Where a foreign national consents to a notarial deed based on an inaccurate or incomplete understanding, the validity of that consent becomes questionable. A notarial deed that does not reflect the actual intention of the appearing party, particularly due to lack of understanding, may constitute an unlawful act and give rise to civil liability.[14] In such

[13] Anggia Septiara Putri Utomo, "Notary's Responsibility for Legalizing Private Deeds in Foreign Languages," *JIHAD : Jurnal Ilmu Hukum Dan Administrasi* 6, no. 4 (2024): 661–70, https://doi.org/10.58258/jihad.v6i4.7741.

[14] Christy Chandra and Tjempaka, "Legal Consequences of a Notarial Deed That Does Not Accord to the Facts And Is Not Signed in the Presence of a Notary (Study Decision Number 46/Pdt.G/2023/PN Cbi)," *Journal of Law, Politic and Humanities* 5, no. 1 (2024): 192–200, https://doi.org/10.38035/jlph.v5i1.820.

situations, the assessment of liability must focus not only on whether the notary has complied with procedural requirements, but also on whether adequate steps have been taken to ensure substantive understanding. The absence of explicit statutory standards governing bilingual notarial deeds necessitates a doctrinal construction of the notary's duty of care. The legal framework provides general obligations, yet does not specify how such obligations should be operationalized in situations involving linguistic asymmetry. This gap requires interpretation beyond the text of the statute, particularly in light of the foreseeable risks inherent in cross-border transactions.

The involvement of foreign nationals creates a foreseeable risk of misinterpretation, as differences in language and legal systems may prevent accurate comprehension of the legal act. From a doctrinal perspective, foreseeability becomes a critical element in determining liability. A notary, as a legal professional, is expected to anticipate such risks and take reasonable measures to mitigate them. In this context, the duty of care cannot be satisfied solely through formal compliance or reliance on translation, but must extend to verifying that the foreign party genuinely understands the legal implications of the deed. Reliance exclusively on the presence of a sworn translator, without further verification of understanding, may therefore be insufficient to discharge this heightened duty of care. The translator ensures linguistic conversion, but does not guarantee legal comprehension. Consequently, the notary's responsibility must be interpreted as encompassing both the provision of explanation and the verification of understanding. This interpretation aligns with the broader principle that legal acts must be based on informed consent, rather than merely formal agreement.

The issue of liability becomes more concrete when examined through the framework of sanctions. Article 16 paragraph (12) of the Notary Law establishes that a notary may be held liable for losses arising from the improper performance of their duties, including administrative sanctions and civil liability in the form of compensation. This provision creates a direct link between the conduct of the notary and the legal consequences arising from the deed. From the perspective of legal responsibility theory, liability arises from the relationship between a legally imposed duty, the conduct of the responsible actor, and the consequences resulting from the failure to perform that duty. In the context of notarial practice, this framework requires the assessment of whether the notary has exercised the level of care reasonably expected from a public official entrusted with the authority to authenticate legal acts. The legal consequences of a notarial deed, including its evidentiary force, depend on compliance with both formal and material requirements, failing which the deed may be declared void or subject to cancellation.[15]

In cases of misinterpretation, liability should therefore be assessed not only on the basis of procedural compliance, but also on whether the notary has fulfilled their duty to ensure that the parties' consent was genuinely informed. Where a foreign national suffers loss due to misunderstanding of the deed, such loss may be attributable to a failure to adequately address foreseeable risks of linguistic asymmetry.

[15] Mey ANJANI, I Nyoman Putu BUDIARTHA, and Nengah RENAYA, "Settings for Copies of Deeds Issued by Notaries in Agreements Between Indonesian Citizens and Foreign Citizens," *Journal of Political And Legal Sovereignty* 2, no. 3 (2024): 278–87, https://doi.org/10.38142/jpls.v2i3.244.

In practice, the involvement of a sworn translator is often invoked as a defense to shift responsibility for interpretative errors. However, this argument lacks a clear legal basis. The Notary Law does not recognize any transfer of liability from the notary to the translator. A systematic interpretation of Articles 15, 16, and 43 confirms that responsibility remains attached to the notary as the holder of public authority. Allowing such a shift would undermine the protective function of notarial practice and create a gap in legal accountability.

This inconsistency becomes particularly evident in the treatment of liability. The legal framework recognizes the importance of notarial responsibility, yet does not explicitly regulate how such responsibility operates in cases involving bilingual deeds. As a result, interpretative errors arising from linguistic discrepancies are often addressed through practical assumptions rather than through a coherent doctrinal framework. This condition creates uncertainty in determining the extent of notary liability, particularly when foreign nationals suffer losses due to misinterpretation.

From a doctrinal perspective, notary liability in bilingual notarial deeds must be interpreted as encompassing both procedural and substantive dimensions. The notary's responsibility is not limited to ensuring that formal requirements are fulfilled, but extends to guaranteeing that the legal act is properly understood by the parties. This interpretation is consistent with the notary's position as a public official whose authority derives from the function of ensuring legal certainty and protecting the interests of the parties. Within this framework, liability must be constructed as a non-delegable obligation. The involvement of a sworn translator does not diminish or transfer responsibility, as the duty to ensure clarity and understanding remains inherently attached to the notarial function. Any attempt to shift liability to the translator lacks normative justification and risks undermining the integrity of the notarial institution.

Allowing such a shift of responsibility would create a gap in legal accountability, leaving the party most directly affected by misinterpretation, namely foreign nationals, without effective protection. From the perspective of legal protection theory, effective protection requires preventive safeguards that reduce the risk of harm before a legal violation occurs. This dimension is particularly relevant to bilingual notarial transactions, where foreign nationals may depend on translated explanations to understand the substance and legal consequences of the deed. The translator, while facilitating communication, does not occupy a position of public authority and is not subject to the same legal obligations as the notary. Consequently, attributing liability to the translator would not only be inconsistent with the legal framework, but would also weaken the protective function of notarial practice.

Ultimately, the construction of notary liability must reflect the realities of cross-border transactions in which linguistic asymmetry plays a central role. Notary liability in bilingual notarial deeds must therefore be understood as a non-delegable responsibility rooted in the notary's public authority, encompassing both procedural compliance and substantive understanding. Without such an interpretation, the legal framework risks legitimizing situations in which formal validity is preserved at the expense of substantive justice, particularly for foreign nationals who are structurally disadvantaged by language barriers.

3.3. Reconstructing the Legal Framework for the Protection of Foreign Nationals in Bilingual Notarial Transactions

The increasing involvement of foreign nationals in notarial transactions has not been matched by a corresponding development of legal protection within the existing framework. While Article 43 provides a procedural mechanism through translation, it operates on an implicit assumption that linguistic conversion is sufficient to ensure understanding. This assumption is fundamentally flawed. Translation does not merely involve the transfer of language, but also the interpretation of legal concepts that may not have equivalent meaning across different legal systems. As a result, foreign nationals may formally consent to a notarial deed while lacking a substantive understanding of its legal consequences. This condition reveals the existence of a structural legal protection gap. This structural condition reflects a broader pattern of normative fragmentation, where inconsistencies within the legal framework generate barriers to access and disproportionately affect vulnerable groups within the legal system.[16] The current framework recognizes the need for translation, yet fails to regulate its effectiveness. No standard is provided to assess whether the translated content has been properly understood, nor is there a mechanism to verify the presence of informed consent. Consequently, legal certainty is constructed in purely formal terms, where compliance with procedural requirements is deemed sufficient, even when substantive understanding is absent.

Such a framework creates a paradox in which legal validity coexists with potential misunderstanding, particularly for parties operating within a linguistically asymmetrical position. Foreign nationals, in this context, are not merely participants in legal transactions, but occupy a structurally disadvantaged position where their consent is mediated through a system that does not guarantee comprehension. The inadequacy of legal protection for foreign nationals is therefore not merely the result of regulatory absence, but reflects a deeper structural limitation within the legal framework. The current system is oriented toward formal legality rather than substantive fairness, prioritizing the integrity of the document over the integrity of consent.

In this configuration, foreign nationals are placed in a structurally disadvantaged position, as their understanding of the legal act is mediated through a process that is neither standardized nor legally verified. The notarial system ensures that procedural elements such as drafting, reading, and signing are strictly regulated, yet fails to establish equivalent safeguards for verifying comprehension. This imbalance reinforces a formalistic conception of legal certainty that does not fully account for the realities of cross-border transactions.

The absence of a verification mechanism further intensifies this structural problem. While the law provides a mechanism for explanation and translation, it does not impose a corresponding obligation to confirm that such explanation has been effectively understood. As a result, understanding is presumed rather than demonstrated, and legal validity may be established on the basis of assumptions that are not empirically verified within the notarial process. Comparative perspectives further demonstrate that

[16] Salsa Rima Savita, Muh Afif Mahfud, and Pham Thanh Nga, "Normative Fragmentation in Indonesian Notary Law : Regulatory Harmonization of Cyber Notary and Electronic Signatures toward Structural Justice," *Potret Pemikiran* 29, no. 2 (2025): 282–304.

differences in notarial systems across jurisdictions influence the scope of legal protection and institutional responsibility, particularly in cross-border legal interactions.[17]

From the perspective of legal protection theory, effective protection requires not only formal recognition of rights, but also preventive mechanisms capable of safeguarding parties against foreseeable legal risks. In bilingual notarial transactions, such protection requires mechanisms that enable foreign nationals to understand the substance and legal consequences of the acts to which they consent. The need for such a shift is also reflected in contemporary scholarship, which emphasizes that existing notarial regulations remain rigid and insufficiently adaptive to evolving legal and technological challenges, thereby necessitating comprehensive regulatory reform.[18] Legal protection cannot be confined to procedural safeguards alone, but must extend to ensuring that the parties genuinely understand the legal consequences of their actions. Without such a shift, the legal framework risks perpetuating a system in which formal compliance is achieved at the expense of substantive justice. This study proposes a reconstruction of the legal framework through the recognition of a duty to ensure understanding as an integral component of notarial responsibility. Under this approach, the obligation to explain or translate the deed, as provided in Article 43, must be interpreted not as a formal requirement, but as a substantive duty to verify that the parties, particularly foreign nationals, possess an adequate understanding of the legal act.

The duty to ensure understanding requires the notary to take active and verifiable measures within the notarial process. This includes providing clear and contextually appropriate explanations of legal terms, confirming the parties' comprehension through interactive clarification, and ensuring that translation accurately reflects not only linguistic meaning but also legal implications. In this framework, translation functions as a supporting instrument rather than as a substitute for understanding. The recognition of this duty also has direct implications for notary liability. Failure to ensure understanding, particularly in situations involving foreseeable linguistic risk, should be regarded as a breach of the notary's duty of care. Liability, therefore, arises not only from procedural violations, but also from negligence in addressing the risk of misinterpretation. This construction reinforces the principle established in the previous discussion that notary liability in bilingual notarial deeds constitutes a non-delegable obligation.

By introducing a verification-based approach to consent, this reconstruction shifts the paradigm of legal certainty from a purely formal conception toward a substantive model that integrates both validity and understanding. Legal certainty, in this sense, is no longer limited to compliance with statutory requirements, but is achieved only when the parties' consent is both formally expressed and genuinely comprehended.

Ultimately, the reconstruction of legal protection in bilingual notarial deeds requires a fundamental shift from a formalistic paradigm toward a substantive approach that prioritizes informed consent. By positioning understanding as a central element of legal certainty, the notarial framework can better respond to the challenges posed by cross-

[17] Maharani Millenia Hussy and Benny Djaja, "Comparison of Notary Law in Indonesia and Singapore," *Interdisciplinary Social Studies* 2, no. 7 (2023): 2157–63.

[18] Maniah Maniah and Erniyanti Erniyanti, "Reforms of Notary Position Regulations in Indonesia Regarding Challenges and Opportunities in the Modernization Era," *International Journal of Law, Crime and Justice* 1, no. 4 (2024): 295–319, https://doi.org/10.62951/ijlcj.v1i4.377.

border transactions. Such an approach not only enhances protection for foreign nationals, but also strengthens the legitimacy of notarial practice as a legal institution responsible for ensuring both the validity and fairness of legal acts.

4. Conclusion

The current regulation of bilingual notarial deeds under Article 43 does not fully ensure substantive legal certainty for foreign nationals because it regulates translation without establishing a clear mechanism to verify actual understanding of the deed and its legal consequences. Legal certainty therefore remains predominantly formal, while substantive understanding remains insufficiently protected. Notary liability in cases of misinterpretation cannot be transferred to a sworn translator. Articles 15, 16, and 43 of the Notary Law establish the notary's responsibility to provide legal counseling, safeguard the interests of the parties, and facilitate explanation or translation of the deed. The translator therefore remains an auxiliary actor, while the notary retains non-delegable responsibility to address foreseeable risks of misinterpretation. The legal framework should consequently be reconstructed by recognizing a duty to ensure understanding as part of notarial responsibility. This duty requires the notary to take reasonable and verifiable measures to ensure that foreign nationals understand the substance and legal consequences of the deed. Such reconstruction would integrate formal validity with substantive understanding and provide more effective legal protection for foreign nationals in bilingual notarial transactions.

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