

Problems in the Creation of Authentic Deeds by Notaries: Formal Truth and Material Truth

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Abstract. *Authentic deeds have full evidentiary force, making notaries public officials who provide legal certainty to the parties. However, the establishment of truth in authentic deeds creates uncertainty between formal truth and material truth, which in reality often leads to a broader understanding of the role of notaries. The purpose of this study is to critically evaluate the conceptualization of formal truth and material truth through the lens of evidence theory, as well as to investigate the normative limits of notary authority based on Law No. 2 of 2014. This is a normative legal study with a legislative and intellectual focus. The results of the study show that the evidentiary value of authentic deeds is inherently based on formal truth, namely the conformity between the parties' statements and their recording in the deed by the notary in accordance with the applicable legal process. Meanwhile, material truth regarding the substance of legal facts is limited to the evidence submitted by the parties and the judicial system. Thus, the appointment of notaries as guarantors of material truth violates both evidence theory and professional standards. This essay emphasizes the need for a clear conceptual separation between formal truth and material truth in order to avoid distortion of notarial authority and maintain the consistency of the evidence system in civil law.*

Keywords: *Authentic Deeds; Formal Truth; Material Truth; Notarial Authority.*

1. Introduction

Authentic deeds hold a central position because they have evidentiary power that is given special value by law. Authentic deeds are not merely written documents, but legal instruments that are legitimized by the state through the authority of public officials. In this situation, valid deeds play an important role because they have legally recognized evidentiary power. Legal deeds are not merely written documents; they are legal instruments legitimized by the state through the authority of public officials.

Based on Law No. 2 of 2014, notaries in Indonesia have the authority to issue legal deeds as public officials. This legitimacy places original deeds in the category of written evidence that has full evidentiary power unless proven otherwise by legal means. Therefore, the validity of an original deed depends on two main factors: the authority of the issuing official and compliance with the formal process established by law.

However, developments in notarial practice and the dynamics of modern legal relations have led to a broader interpretation of authenticity than its normative definition. Authenticity is sometimes seen as a full guarantee of the honesty of the contents of a deed.

In reality, the civil evidence system in Indonesia distinguishes between formal truth and material truth. Formal truth refers to the consistency of legal procedures and the recording of statements by the parties, while material truth refers to things that occur in objective reality. However, developments in notarial practice and the dynamics of modern legal relations have led to a broader interpretation of authenticity than its normative definition. Authenticity is sometimes considered a full guarantee of the truth of the contents of a deed.

Therefore, formal truth and material truth are basically Formal truth refers to the consistency of legal procedures and the recording of statements made by the parties, while material truth refers to things that occur in objective reality.

The Indonesian civil evidence system is essentially oriented towards formal truth. This means that judges assess cases based on the evidence submitted by the parties in accordance with the provisions of procedural law. Within this framework, authentic deeds acquire evidentiary force because they meet the formal requirements set forth, not because they absolutely prove all the material facts behind them. In other words, authenticity is a procedural construct that gives rise to a presumption of truth regarding what is formally stated in the deed.

The conceptual difference between formal and material dimensions becomes important when linked to the function of a notary as a public official. Notaries exercise their authority to translate the wishes of the parties into a deed that is valid and meets legal requirements. This process includes verifying identities, reading the deed, and ensuring that the parties understand its contents. However, this authority does not automatically make the Notary a judge or investigator of all the facts underlying the parties' statements.

The development of increasingly complex business transactions has expanded the types of information included in authentic deeds. Various declarative statements, representations of facts, and affirmations of certain circumstances are often included as part of the deed's content. This information is essentially sourced from

the parties' statements. In this context, authenticity guarantees that these statements have indeed been made before a public official in accordance with the procedure, but does not automatically verify their material truth.

In addition, developments in information technology and digitization have also influenced notarial practices. Although the basic principles of deed creation still refer to formal provisions, the variety of supporting documents and electronic data has increased. This requires precision in administrative and procedural aspects, but still within the limits of formal authority. This dynamic further emphasizes the need for a clear conceptual understanding of the scope of authenticity in the modern context.

From a legal philosophy perspective, truth in law is not a direct reflection of empirical reality, but rather a normative construction built through certain procedures. Law creates its own reality through symbols, formalities, and institutional recognition. Authentic deeds are one manifestation of this construction. They transform private will into legal statements recognized by the system. Therefore, the dimension of truth in authentic deeds must be understood as part of a normative mechanism, not as an absolute representation of empirical facts.

Within the institutional framework, the position of Notary is designed as an institution that guarantees the orderly administration of private law. This order is reflected in compliance with form and procedure. Authenticity arises from such compliance. If the meaning of authenticity is expanded to include a guarantee of material truth, then a conceptual shift will occur that could disrupt the balance of institutional design in the civil law system.

In addition, the principle of freedom of contract in civil law provides space for the parties to determine the content and form of their legal relationship. Notaries facilitate this intention in the form of a valid deed. The autonomy of the parties is an inherent principle in the civil system. Therefore, the distinction between formal recording and material verification is important so that there is no blurring of responsibility for the statements made.

Public trust in authentic deeds is also an important aspect in a social context. Authentic deeds are seen as a symbol of security and legal certainty. This trust is the foundation for the continuity of notarial practice. However, this trust needs to be based on a proper understanding of the nature and limits of authenticity so that it does not develop into expectations that exceed its normative structure.

In several scientific studies, discussions about authentic deeds often focus on practical aspects, such as legal consequences or professional responsibilities. Meanwhile, conceptual studies on the dimension of truth in authentic deeds have

not been explored in depth. In fact, conceptual clarity regarding formal and material truth is the foundation for a comprehensive understanding of the position of authentic deeds in the civil evidence system.

Considering these normative, theoretical, and sociological dynamics, the discussion of the dimension of truth in authentic deeds is relevant to strengthening the academic construction of notarial practice. Affirming the boundary between formal truth and material truth is not merely a matter of terminology, but part of an effort to maintain the consistency of the evidence system and institutional design of the Notary position in Indonesian positive law.

2. Research Methods

This study uses a normative legal research method. This method is used to analyze the laws and regulations governing the status, authenticity, and evidentiary value of notarial deeds in the Indonesian legal system. This approach focuses on examining the applicable legal norms as stipulated in laws and regulations and developed in civil law doctrine and theory. In addition, this study also examines the systematic position of authentic deeds in civil evidence law in order to obtain a comprehensive understanding of the formal and material dimensions of a notarial deed as a written piece of evidence.

The data sources used in this study consist of primary and secondary legal materials, as follows:

1. Primary Legal Materials

Primary legal materials are binding sources of law and form the normative basis for analyzing the authenticity and evidentiary value of notarial deeds. The primary legal materials used in this study include:

A. Article 1868 of the Civil Code, which defines an authentic deed as a deed made in the form prescribed by law by or before a public official authorized to do so in the place where the deed is made.

B. Article 1870 of the Civil Code, which stipulates that authentic deeds provide perfect evidentiary force for the parties and their heirs or parties who acquire rights from them regarding what is formally stated therein.

C. Articles 1320 and 1338 of the Civil Code, which regulate the validity of agreements and the principle of *pacta sunt servanda*, which confirms that every agreement made legally is valid as law for the parties who made it.

D. Article 1 paragraph (1) of Law No. 2 of 2014, which defines a Notary as a public official authorized to draw up authentic deeds and have other powers as stipulated in the law.

E. Article 15 paragraph (1) of Law No. 2 of 2014, which regulates the authority of Notaries in drawing up authentic deeds concerning all acts, agreements, and stipulations required by laws and regulations and/or desired by the parties to be stated in authentic deeds.

F. Article 16 paragraph (1) letter a of Law No. 2 of 2014, which emphasizes the obligation of Notaries to act honestly, carefully, independently, impartially, and to protect the interests of the parties in legal actions.

G. Article 38 of Law No. 2 of 2014, which regulates the form and structure of notarial deeds, includes the opening section (head of the deed), the body of the deed, and the closing section of the deed as formal requirements for authenticity.

Through the integration of these primary legal materials, this study analyzes the normative construction of deed authenticity, the formal requirements for the formation of notarial deeds, and their position as written evidence in civil evidence law.

2. Secondary Legal Materials

Secondary legal materials consist of doctrines, scientific literature, legal journals, and the opinions of academics discussing civil evidence theory, the concepts of formal truth and material truth, and the institutional framework of the Notary position in the Indonesian legal system. These secondary legal materials are used to construct a conceptual and systematic analysis of authenticity as a legal construct that provides legitimacy and evidentiary power to a deed.

Legal analysis is conducted qualitatively using grammatical and systematic interpretation methods, as well as deductive reasoning to draw conclusions from general norms towards argumentative constructions regarding the position of authentic deeds as evidence that has full probative force in the Indonesian civil law system.

3. Results and Discussion

3.1. How are formal truth and material truth conceptualized in the creation of authentic deeds from the perspective of the theory of evidence and the authority of the Notary?

A. Truth in the Perspective of Legal Epistemology and the Civil Evidence System

The concept of truth in law cannot be separated from the epistemological construct adopted by the legal system itself. In legal philosophy, truth can be understood through correspondence theory (correspondence with facts), coherence theory (consistency within the system of norms), and pragmatic theory (practical function in social life). Indonesian civil law, which is rooted in the civil law tradition, predominantly adheres to a normative-procedural approach, in which truth is established through procedures of evidence that have been determined by law.

This is reflected in Article 1865 of the Civil Code, which states that anyone who asserts a right must prove that right. This norm indicates that truth in civil cases is not actively sought by judges, but is established through the evidence submitted by the parties.

In this context, authentic deeds occupy a central position because they are written evidence legitimized by the state. Based on Article 1868 of the Civil Code, authentic deeds are deeds made in the form specified by law by or before an authorized public official. This formulation emphasizes that authenticity is primarily determined by compliance with form and authority, not by proof of factual substance.

Furthermore, Article 1870 of the Civil Code gives full evidentiary force to what is formally stated in the deed. Thus, the Indonesian civil law system builds a standard of truth based on procedural legitimacy, where legal certainty is prioritized through recognition of a valid form.

B. Authenticity as a Normative Construction and Delegation of Public Authority

Authenticity is not an inherent characteristic of a document, but rather a legal quality conferred by norms through the mechanism of public authority. Within this framework, notaries perform a state function in the field of evidence.

Article 1 paragraph (1) of Law No. 2 of 2014 defines Notaries as public officials authorized to draw up authentic deeds. Their status as public officials indicates that the actions of Notaries have a public dimension, even though the substance being formalized is in the private sphere.

This authority is confirmed in Article 15 paragraph (1) of Law No. 2 of 2014, which mandates notaries to draw up authentic deeds for legal actions desired by the parties. This means that the state provides a formal instrument to convert private intentions into documents that have full evidentiary force.

Article 38 of Law No. 2 of 2014 regulates the structure and form of notarial deeds in detail. This provision shows that form is not merely an administrative formality, but a constitutive element that determines the birth of authenticity.

Thus, authenticity can be understood as the result of three normative elements:

1. Delegation of public authority,
2. Compliance with the form prescribed by law,
3. Legitimate formation procedures.

Formal truth in authentic deeds arises from this normative construction.

C. Conceptualization of Formal Truth as Procedural Legitimacy

Formal truth in the creation of authentic deeds is truth that is legitimized by the legal system through compliance with procedures and forms. It is not empirical truth, but rather institutionalized normative truth.

Conceptually, formal truth includes:

1. Certainty that the parties are present and express their will;
2. Certainty that the deed is made at a valid time and place;
3. Certainty that the official who makes it has the authority;
4. Certainty that the structure of the deed complies with the provisions of the law.

This truth serves as the basis for extrinsic and formal proof. In the perspective of coherence theory, a statement is considered true if it is consistent with the applicable system of norms. Authentic deeds are considered true because they meet the requirements determined by the legal system.

The dominance of formal truth is not a shortcoming, but rather a design of the legal system to create stability in transactions and certainty in legal relationships. Without procedural legitimacy, every document must be re-verified factually, which would lead to uncertainty and inefficiency in civil practice.

D. The Dimension of Material Truth in the Authority of the Notary Position

Although the civil evidence system emphasizes formal truth, the norms of the Notary position still contain a material dimension in the form of professional obligations and integrity.

Article 16 paragraph (1) letter a of Law No. 2 of 2014 requires Notaries to act honestly, carefully, independently, and impartially. This norm shows that the legislators did not want a mechanical formalization process without legal consideration.

However, material truth in this context is not synonymous with investigative obligations. Notaries are not mandated to investigate facts in depth as in the criminal justice system. Material truth here is more accurately understood as:

- The consistency of the contents of the deed with applicable legal norms;
- The absence of any real conflict with public order;
- The expression of will that is conveyed consciously and freely.

Thus, material truth in the creation of authentic deeds is normative-integrative in nature, not empirical-investigative.

E. Conceptual Synthesis: Layered Truth Construction Model in Authentic Deeds

Based on an analysis of the theory of evidence and the authority of the Notary, a conceptual construction of truth in authentic deeds can be formulated as a dual-layer construction.

The first layer is formal truth, which is constitutive and forms the foundation of authenticity. This layer is built through compliance with Articles 1868 and 1870 of the Civil Code and the norms of authority in the Notary Position Law. It produces perfect evidentiary power and creates legal certainty.

The second layer is material truth, which is corrective and normative in nature. It serves to maintain the integrity of the process and compliance with the law, without changing the character of the evidence system to an investigative one.

The relationship between the two layers is dialectical. Formal truth provides initial legitimacy and stability, while material truth provides room for correction through judicial mechanisms in the event of a dispute. With this construction, the Indonesian legal system has succeeded in balancing legal certainty and substantive justice.

Conceptually, it can be concluded that in the creation of authentic deeds, Indonesian law adopts a model of procedural legitimacy reinforced by normative integrity. Authenticity is not a guarantee of absolute factual truth, but rather a guarantee that a statement has been formalized through a mechanism that is valid and recognized by the state as true within the framework of civil evidence.

3.2. What are the limits of a notary's role in ensuring the formal and material accuracy of the parties in the process of creating an authentic deed?

The limits of a notary's role in guaranteeing the formal and material truth of the parties in the process of forming an authentic deed must be understood systematically by placing the notary as a public official who exercises attributive authority based on Article 1868 of the Civil Code and Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary. As a public official, a notary is not a party to the agreement, but rather a state organ authorized to give authentic form to the legal intentions of the parties. Therefore, the scope of their responsibilities cannot be extended beyond the norms of the position explicitly imposed by law.

In the context of formal validity, notaries bear full responsibility for ensuring that all procedures for the formation of deeds comply with legal provisions. This includes the obligation to verify the identity of the parties through official documents, ensure their competence and authority to act, examine the validity of supporting documents administratively, draft the deed in accordance with the structure specified by law, read the contents of the deed in front of the parties, present witnesses as required, and ensure that the signing is done consciously and without coercion. This obligation is rooted in Article 16 paragraph (1) letter a of the Notary Position Law, which requires notaries to act honestly, carefully, independently, impartially, and in the interests of the parties. In this context, formal truth is closely related to the evidentiary and formal validity of authentic deeds, so that any procedural irregularities may have implications for the evidentiary value of the deed.

However, when it comes to material truth, the scope of a notary's role becomes more limited and proportional. Material truth concerns the truth of the substance of the facts stated by the parties, such as the truth of ownership, the condition of the object, the motive for the transaction, or other factual circumstances that are beyond the notary's direct knowledge. The Notary Public Law does not grant Notaries investigative powers to conduct in-depth investigations, field inspections, audits, or forensic evidence of such substantive truth. Thus, Notaries are not burdened with the obligation to guarantee that all statements made by the parties are completely true in material terms, but are only required to carry out reasonable and professional administrative verification.

This limitation can be understood through the theory of evidence in civil law. Authentic deeds have full evidentiary force regarding what is formally stated and done before a notary. This means that the presence of the parties, the date, the signing, and the statements of intent contained in the deed are considered true unless proven otherwise. However, with regard to external facts that form the basis of the parties' statements, this evidentiary power can still be refuted through evidence in court. In this case, the burden of proof of material untruth lies with the party alleging it. Therefore, the primary responsibility for the material content of the statement remains with the parties as the legal subjects concerned.

However, limited investigative authority does not mean that notaries can be passive. The principle of professional prudence requires notaries to test the fairness of the data and documents submitted. If there are clear indications of inconsistencies, conflicts with the law, or potential abuse, notaries are obliged to refuse to draw up deeds in order to maintain the integrity of their position and legal certainty. The obligation to refuse is part of the ethical and normative responsibilities inherent in the position of Notary. Thus, the limits of a Notary's role are not rigid boundaries, but rather functional boundaries that require a balance between protecting the interests of the parties and legal certainty.

Within the framework of legal accountability, these limits also determine the extent to which a notary can be held liable. Administratively, violations of procedures or official duties may be subject to sanctions by the Supervisory Board. Civilly, a notary may be held liable if proven to have committed negligence that caused losses based on the principle of unlawful acts as stipulated in Article 1365 of the Civil Code. Criminal liability can only arise if there is an element of intent or active participation in an unlawful act, such as participating in forgery or data manipulation. Without the existence of a clear element of fault, a Notary cannot be held liable for material inaccuracies that are completely beyond their knowledge.

Thus, the limits of a notary's role in guaranteeing the formal and material truth of the parties lie in the clear distinction between procedural obligations and the substance of statements. Notaries are guardians of formal legality, guardians of legal structures, and providers of authentic power to the will of the parties, but they are not guarantors of the absolute truth of all external facts underlying the agreement. As long as the Notary has carried out their administrative verification obligations carefully, applied the principle of prudence, and has no bad faith or serious negligence, then the limits of their responsibility remain within the realm of formal truth and reasonable verification, while responsibility for substantive material truth remains with the parties who made and expressed their will in the deed.

4. Conclusion

Overall, this journal emphasizes that the construction of truth in the creation of authentic deeds must be placed within the normative framework of the Notary's position as a public official whose authority derives directly from the law. The truth guaranteed by authentic deeds is essentially formal truth, namely truth that arises from the fulfillment of the requirements, form, and procedures as stipulated in Article 1868 of the Civil Code and Law No. 2 of 2014 concerning the Position of Notary. From the perspective of the theory of evidence, this formal truth provides perfect extrinsic and formal evidentiary force as long as it cannot be proven otherwise in court. As for material truth, which concerns the substance of the facts and statements of the parties, in principle it remains the responsibility of the party making the statement and is not automatically guaranteed by the Notary. This journal also concludes that the limits of a notary's role in guaranteeing truthfulness are proportional and functional. Notaries are obliged to carry out careful administrative verification, apply the principle of professional prudence, and refuse to draw up deeds if there are clear indications of legal violations or irregularities that could damage the integrity of the position. However, Notaries are not burdened with investigative authority to prove substantive material truth beyond the documents and statements submitted by the parties. The liability of Notaries, whether administrative, civil, or criminal, can only arise if there is evidence of a breach of official duties, gross negligence, or intent to participate in unlawful acts. Thus, this journal positions Notaries as guardians of formal legality and architects of legal certainty in the formation of authentic deeds, rather than as guarantors of absolute truth regarding all the facts underlying the parties' statements. A clear distinction between formal truth and material truth is key to maintaining a balance between public protection, legal certainty, and protection of the independence and dignity of the Notary profession in the Indonesian civil law system.

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