

Authentic Notarial Deed as Evidence in Civil Court: Implications of Forged Signatures

Shenti Agustini^{1*)}, Abdurrahman Alhakim²⁾ & Lu Sudirman³⁾

¹⁾Faculty of Law, Universitas Internasional Batam, Batam, Indonesia, E-mail: shenti.agustini@uib.ac.id

²⁾Faculty of Law, Universitas Internasional Batam, Batam, Indonesia, E-mail: alhakim@uib.ac.id

³⁾Faculty of Law, Universitas Internasional Batam, Batam, Indonesia, E-mail: lu@uib.ac.id

Abstract. *A notary is an official who is authorized to make an authentic deed that has legal force when used as evidence in a contract conference. The purpose of this study is to analyze the forgery of signatures on authentic deeds that are used as evidence in a civil trial. The research method used is normative juridical. The results of the study show that there are cases of forgery of authentic deeds that are used as evidence in a civil trial, while the judge in the civil trial only seeks formal truth, not checking the authenticity of the authentic deed data. If there is forgery of an authentic deed, it can go to criminal court. Therefore, in order for the civil trial to run efficiently, the judge in the civil trial should not only seek formal truth, but also material truth by using the judge's belief. Based on the coherence theory, the judge in the civil trial is still given the opportunity to find the law through the interpretation of statutory regulations. Then based on the theory of evidence, judges in civil trials can also use their beliefs which are referred to as material truth.*

Keywords: *Notarial Deed; Civil Trial; Signature Forgery; Material Truth; Coherence Theory.*

1. Introduction

A notary is a public official who is authorized to make authentic deeds and has other rights as referred to in this law or based on other laws. A notary is a public official, known in Dutch as *openbare ambtenaren* (Subiyanto, 2016), because formal truth Number 2 of 2014 Amendment to the Notary Law Number 30 of 2004 is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws (Iryadi, 2019). Concretely, the authority of a Notary includes 4 things, namely (Sihaan & Hasanah, 2023): First, Notaries must be authorized as far as the deeds made are concerned. This means that not all deeds can be made by a Notary. Deeds that can be made by a Notary are only certain deeds that are assigned or excluded from the Notary based on statutory regulations; second, Notaries must be authorized as far as the person(s) for whose benefit the deed is made; this means that Notaries are

not authorized to make deeds for the benefit of any person. For example, Article 52 of the UUJN stipulates that Notaries are not permitted to make deeds for themselves, their wives/husbands, other people who have family relationships with Notaries, either by marriage or blood relations in a straight line downwards and/or upwards without limitation of degree, and in a lateral line up to the third degree, and to be a party for themselves, or in a position or through power of attorney. Violation of these provisions causes the Notary's deed to no longer have the status of an authentic deed, but only as a deed under hand; Third, notaries must have authority as far as the place where the deed is made. This means that each Notary is determined to have an area of office according to his/her domicile. Therefore, a Notary is only authorized to make deeds within his/her area of office. Deeds made outside his/her area of office only have the same status as private deeds and; fourth, notaries must have authority as far as the time of making the deed. This means that a Notary may not make a deed while he/she is on leave or dismissed from his/her position, and likewise a Notary is not authorized to make a deed before obtaining a Letter of Appointment and before taking an oath of office (Royce & Sudiro, 2024; Flora, 2025).

The authority of a notary is clearly regulated in Article 15 paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary which states that a Notary is authorized to make an authentic Deed (Tan et al., 2024) regarding all acts, agreements, and determinations required by laws and regulations and/or desired by the interested party to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide a grosse, Copy and extract of the Deed, all of which as long as the making of the Deed is not also assigned or excluded to another official or other person determined by law (Hasana, 2021).

In addition, the article also describes the Role of a Notary through the authority given to him, including validating signatures and determining the certainty of the date of private letters by registering them in a special book; recording private letters by registering them in a special book; making copies of the original private letters in the form of copies containing descriptions as written and described in the relevant letter; validating the suitability of the photocopy with the original letter; providing legal counseling in connection with the making of Deeds; making Deeds related to land; or making Deeds of auction minutes (Faizeh & Latumahina, 2024). Therefore, the role of a notary in providing legal certainty through an authentic deed made is very important. Because an authentic deed made by a notary can be used as one of the evidences in a civil trial. Related to authentic deeds, it is also regulated in the Civil Code (KUHPerdata). The requirements for the validity of an authentic deed are regulated in Article 1868 of the Civil Code as follows: a. The deed must be made by or before a public official; b. The deed must be made in the form determined by law; and c. The public official by or before whom the deed is made must have the authority to make the deed (Tan, 2020).

In the provisions of Article 1870 of the Civil Code, it has been regulated regarding the evidentiary power of an authentic deed, which explains about an authentic deed which is useful as perfect evidence regarding all matters contained therein, for the parties who are given rights to the authentic deed, such as the parties to the agreement and their heirs or people who receive rights from them. The power of proof or truth inherent in an authentic deed is perfect (volledig bewijskracht) and binding (bindende bewijskracht), this authentic deed has absolute and binding legal or evidentiary power. An authentic

deed also has the power of proof as a deed consisting of (Dewi & Santoso, 2024): a. External evidentiary power, that the deed itself has the ability to prove itself as an authentic deed, as referred to in Article 1875 of the Civil Code. The evidentiary power of an authentic deed is not given to a deed made underhand, because a deed underhand has valid evidentiary power if all those who sign the deed have acknowledged the contents of the deed and the parties who signed the deed underhand; and b. Formal evidentiary power, this deed proves the truth of what was witnessed, heard and also done by the Notary as a public official in carrying out his/her position (Nathanael et al., 2024).

However, the problem is that there are notaries who do not carry out their positions as regulated in the Notary Law properly, for example by falsifying the signatures of the parties in the authentic deed he/she made. Whereas as explained previously, the authentic deed made by this notary can be used as a means of evidence in civil court. For example, there are several cases of forgery of signatures on authentic deeds by notaries, namely based on the decision of the Semarang District Court Number: 676/Pid.B/2016/PN.Smg. Notary S, was proven to have committed or participated in an act, namely making a fake authentic deed or falsifying an authentic deed which caused losses due to the actions carried out by Notary S in making the Deed of Sale and Purchase (Raihan & Hertanto, 2024).

There was a similar case that occurred in 2012 in Yogyakarta, between Notary EM and victim GD, based on the Supreme Court Decision Number 1234/K/PID/2012. Based on the decision, Notary EM was proven legally and convincingly guilty of committing a criminal act, namely falsifying the signature of the person appearing, where the person appearing suffered material losses due to the actions of Notary EM. Strengthened by evidence in the form of a Criminalistic Laboratory Examination Report Document Number Lab. 416/DTF/IV/2011 on May 3, 2011 (Mardheana, 2016). This is very dangerous because an authentic deed is perfect evidence in a civil trial, while in a civil trial what is sought is only formal truth. Not checking or seeking material truth such as the authenticity of the signature in an authentic deed made by a notary, whereas based on previous cases, it was found that it was possible for a notary to forge a signature on the notary's deed he made. Given the critical role of authentic deeds and the potential for signature forgery, this study addresses the following question: what if the authentic deed made by the notary is used as evidence in a civil trial, while there is forgery of the signature on the authentic deed?

2. Research Methods

This research employs a normative juridical approach, which focuses on examining legal norms and principles contained in statutory regulations and the doctrines of legal scholars (Suwondo & Saputra, 2019). The data used consist of secondary data, including primary legal materials such as the Notary Law and the Civil Code, as well as secondary legal materials in the form of legal literature, academic journals, and expert opinions. All data are analyzed qualitatively by reviewing, interpreting, and assessing the coherence between written legal norms and their application in practice. In addressing the research questions, this study is supported by a legal basis derived from primary legal materials and analyzed using a theoretical framework, namely the Coherence Theory, which emphasizes the consistency of norms, and the Formal Truth Theory, which views truth as the logical conformity between legal rules and legal reality. Through this approach,

the research aims to provide an in-depth overview of the implementation of legal norms, identify potential legal issues, and contribute ideas for the development and improvement of relevant laws.

3. Results and Discussion

3.1. The Role of Notarial Deeds in Civil Trials

A notary has a role in legal traffic, especially in civil law, where a notary functions as a public servant in this case a public official who is tasked with making deeds (Abdullah, 2017). Notaries have the authority to make authentic deeds regarding all agreements, events and determinations for those interested in taking care of making the deeds, and this authentic deed is guaranteed to be legally certain because it clearly states the date, month, year and place of making it and its contents are in accordance with the description agreed upon by the party making the deed (Marchelino et al., 2022).

The word "deed" in Dutch and means "acte" or "deed", in English the word deed is called "act" or can also be called "deed", Sudikno Mertokusumo stated that the meaning of the deed is a signed letter which contains events that are the basis of a right or agreement that is made intentionally with the aim of proof. Deeds have two main functions, namely as a formal function which means that a legal action will be more complete if documented in a deed, besides that the deed also has a function as evidence where the deed is made by the parties involved in an agreement to be used as evidence in the future (Sirait & Djaja, 2023).

Based on its form, the deed is divided into two parts, namely authentic deed and private deed, authentic deed is a deed made by an official who has been given power or authority by the state/government based on the provisions that have been set, either with or without a sign of assistance from the interested party, and records what is requested by the interested party. In HIR in article 165, it has been regulated regarding authentic deeds, the contents of which are: "an authentic deed is a deed made by or before an official who is authorized to do so, is complete evidence between the parties and their heirs and those who receive rights from them regarding what is stated therein as mere notification; however, the latter is only as long as what is notified is closely related to the subject matter of the deed" (Rasyid & Herinawati, 2015).

Then related to proof, Article 1876 of the Civil Code stipulates that: "Written proof is done with authentic writing (deed) or with writings (private deeds)". Every authentic deed made by a notary is valid and binding as long as no other party can prove otherwise. So that the authority to assess the evidentiary power of a disputed deed is the authority of the judge in the trial. An authentic deed's perfect and binding evidentiary power derives from its combined attributes. If one of these powers is defective, the authentic deed does not have a perfect evidentiary value (*volledig*) and binding (*bindende*). The quality of the evidentiary power of an authentic deed is not coercive (*dwingend*) or decisive (*beslissend*) and opposing evidence can be submitted against it. A deed is a form of evidence through writing that is deliberately made to explain a legal act.

An authentic deed has perfect evidentiary power, so it does not need to be made or supplemented with other evidence. If there is a party that denies it, then the party must

prove their statement according to the applicable legal rules. In Latin it is stated that *acta publica probant seseipsa*, namely a deed that appears to be an authentic deed, meaning that it indicates itself from the outside, from its words as coming from a public official, then the deed is considered an authentic deed to everyone, until it can be proven that the deed is not authentic (Holidi, 2023; Adam et al., 2024).

3.2. Signature Forgery Issues

Proof is a stage that has an important role for judges to make decisions. The process of proof in the trial process can be said to be central to the examination process in court. Proof becomes central because the arguments of the parties are tested through the proof stage in order to find the law that will be applied (*rechtoepasing*) or found (*rechtvinding*) in a particular case. Proof is historical in nature, which means that this proof tries to determine what events have occurred in the past which are currently considered to be true, events that must be proven are relevant events, because irrelevant events do not need to be proven (Sidrajat, 2024). A deed made in secret and authentically has the same evidentiary value as a deed containing the following matters (Ramadhan, 2024):

- a. External Evidential Power
The ability of the deed itself to prove its authenticity is known as external evidential power. Because, from the beginning the intention of the deed to create or produce evidence has been in accordance with the provisions of Article 1868 of the Civil Code and Law Number 30 of 2004 concerning the Position of Notary (previously referred to as Law Number 1860).
- b. Notary Regulations in Indonesia.
Furthermore, private deeds/letters do not contain the ability or power of proof of birth (see Article 1875 of the Civil Code).
- c. Formal Evidential Power.
The ability to show through an authentic deed that its contents truly reflect the wishes of the parties, namely the wishes of the parties stated in a deed by or before an authorized official in carrying out his official duties, is called an authentic deed. formal evidential power. Formally, an authentic deed guarantees the truth of the following matters: Date, Signature, Complaint, and Place of Implementation. Formally, a notarial deed proves the truth of what is observed, namely what is seen, heard, and experienced by the notary in carrying out his duties as a public official. A deed under his hand does not have binding legal force, unless the person signing the letter or the deed states its truth.

The truth that the judge seeks in resolving a case can be formal truth (*foermele waarhied*) or material truth (*materiele waarhie*) both of which are included in the scope of legal truth that is social in nature (*maatschappelijke werkelijkheid*). In proving civil cases, what the judge seeks is formal truth, which means that the judge is bound by the statements or evidence submitted by the parties. The judge is bound by events that are acknowledged or disputed. Here the judge is sufficient with unconvincing evidence (Seknun, 2021).

According to the civil procedural law evidentiary system, the judge must prioritize seeking formal truth in resolving a civil dispute in court. Which evidentiary system according to civil procedural law is based on the provisions of Article 164 HIR and the provisions of Article 1866 of the Civil Code (Lengkong, 2017). However, the problem

with authentic deeds made by notaries is that there are often forgeries in the signatures of authentic deeds, while in civil trials what is sought is only the formal truth, not to the point of seeking the truth in the signatures in the authentic deeds.

The authority of a notary to make a notarial deed by identifying the actions listed therein, either in the form of minutes of the deed, copies, extracts, or grosse notarial deed, can be a determining factor in identifying whether a notarial deed is fake or genuine: a. There are situations where there is use of other people's ideas or works without giving proper recognition, known as intellectual forgery; b. The existence of material forgery refers to the forgery of signatures from the Notary and witnesses; and c. The existence of forged documents such as copies of deeds, wholesale deeds, and deed extracts is a real thing (Subagiyo et al., 2022; Parmono et al., 2024).

Various forms of forgery in deeds include formal and substantial aspects of notarial deeds, which are considered illegal acts based on Articles 263, 264, 266 together with Articles 55 and/or Article 56 of the Criminal Code, both in cases that have been decided by the court or those that are still in the legal process. An example of forgery is when the signature of the person appearing is fake in a notarial deed or when the notarial deed contains a statement that "I, the notary, know the person appearing." The perpetrators of the crime can act alone or together, either as participants or assistants in the act (Sundari et al., 2023).

If it is related to forgery of the authentic deed, then the case is no longer included in a civil trial, but has entered a criminal case with the crime of forgery. Unlike the act of forgery, which involves changing a document in any way by an unauthorized individual, resulting in part or all of the contents of the document being inconsistent with the original document, the crime of forgery contains elements of untruth or falsity related to an object. Forgery is a crime that involves the representation of something that appears from the outside as if it were true, when in fact it is not in accordance with the truth. According to the first paragraph of Article 263, the act of forgery of a letter includes two main things: first, creating a fake letter or changing the contents of the letter so that it does not correspond to the truth, and second, modifying the letter so that the actual contents are distorted. This modification can be done by reducing or adding information in the deed, changing the content of the deed, or changing the signature contained in the deed.

3.3. Applying Coherence Theory

According to Article 263 of the Criminal Code, the act of forgery of a deed committed by a Notary cannot fully apply to a Notary who executes an authentic deed individually. However, the Notary can still be subject to sanctions in accordance with the provisions of Article 264 of the Criminal Code which handles serious cases of forgery of documents. This is because forgery in Article 264 of the Criminal Code is related to documents that have a high level of trust. Thus, the main difference between Article 263 and Article 264 of the Criminal Code lies in the object of forgery which is considered to have a higher level of trust. Both of these articles are part of the Criminal Code (KUHP) (Suryanto, 2024). Based on this, it is actually an urgency that civil courts not only seek formal truth, but also material truth because if a case is found such as forgery of an authentic deed used as evidence in a civil trial, while the judge only seeks formal truth, then justice will not be fulfilled.

In the perspective of philosophy, to seek truth, 2 (two) theories can be used, first, the theory of correspondence or conformity, namely truth or a true state if there is a conformity between a statement or opinion and the object in question and second, the theory of coherence or related, namely truth is the conformity between a statement and other statements that have previously been known, accepted and recognized as true. According to the author, to find the truth in proving civil cases, the coherence theory can be applied, namely a statement is called true if it is in accordance with a comprehensive network of logically related statements. The coherence theory uses 2 (two) approaches, the first is the truth approach in the sense of accuracy, namely the lawsuit and the response letter are used as a guideline for the accuracy of the evidence and the second is the reliability truth approach which can be realized during the fact-finding process in proving or by comparing the evidence, so that the judge can conduct a fact-finding as far as the possibility of its truth.

In addition, the reason for seeking formal truth in civil procedural law is closer to the coherence theory because judges carry out their duties and functions must apply laws that do not conflict with common sense or can be accepted as rational decisions with the limitations of laws that regulate the types of civil evidence, the strength of the evidence and the method of submitting evidence (Ramadhani & Suhartana, 2025). Thus, judges are still given the freedom to find the law through the interpretation of laws and regulations.

Evidence in civil cases in court is generally based on 3 (three) principal events, namely: first, Acceptance of evidence. Acceptance of evidence or the process of accepting evidence is the judge's activity in the form of accepting types of evidence by relying on the rules contained in formal civil law. Second, Sorting evidence. Sorting evidence is the judge's activity in matching evidence with events that are closer and evidence that does not match or contradicts one another must be set aside in his considerations. Third, Assessment of evidence. Assessment of evidence is the judge's activity in the context of the process of giving evidentiary value, the relationship between evidence, possibilities, generalizations, reasoning, arguments and drawing conclusions during the trial (Lesmana & Aryatama, 2022; Salsabila, 2024).

The formal truth theory or formed *waarheid* as a consequence of the application of the theory of evidence based on law is no longer relevant because the judge's belief in civil evidence can be presented specifically in the assessment of evidence, not regarding the belief in an event as in criminal law. It can be concluded that the judge's belief in civil law is also part of the material truth as in criminal law but its nature is limited (dependent). In other words, in civil evidentiary law, seeking material truth is limited because it still depends on formal truth which is subject to strong and perfect evidence.

4. Conclusion

A Notaries play a critical role in providing legal certainty through authentic deeds used as evidence in civil trials. Authentic deeds made by a notary can also be used as evidence in civil trials. In civil trials, what is sought is only formal truth. However, the problem is when there is a forgery of the signature on an authentic deed made by a notary and the deed is used as evidence in a civil trial. The dilemma is that the civil trial will not find out more about the authenticity of the authentic deed. Therefore, if associated with the Formal Truth Theory, the judge in a civil trial can also present the judge's belief in the

evidence in the trial. This belief can be categorized as material truth. However, the judge's belief is certainly different from the judge's belief in a criminal trial. The judge's belief which is referred to as material truth in a civil trial is only limited in nature. Judges should adopt forensic verification of signatures in cases where authenticity is disputed, and notaries should implement stricter identity verification protocols.

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