
THE POWER OF EVIDENCE OF AUTHENTIC DEEDS IN CIVIL DISPUTE SETTLEMENT IN COURT

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Abstract

This study discusses the evidentiary power of authentic deeds in resolving civil disputes in Indonesian courts. Authentic deeds, as regulated in Article 1868 of the Civil Code, are written evidence that has perfect evidentiary power in matters carried out and witnessed directly by authorized public officials. In judicial practice, authentic deeds are often submitted as the main evidence, especially in cases of debt agreements, sales, leases, and inheritance. However, the application of the evidentiary power of authentic deeds often raises debate among judges, practitioners, and academics, especially regarding the extent to which the binding power of authentic deeds applies formally and materially. This study uses normative legal research methods, with a statutory, conceptual, and case approach. The analysis was conducted on the Civil Code, the Notary Law, the Electronic Information and Transactions Law, and Supreme Court decisions. The results of the study indicate that, although authentic deeds provide evidentiary advantages, their application in court is not absolute. Judges still have discretion to assess the material and formal truth of the deed, and consider factors such as formal defects, the substance of the statement, and the validity of the parties' wishes.

In addition, the development of legal digitalization presents new challenges related to the recognition of electronic deeds as evidence. Therefore, comprehensive regulatory updates, increased notary competence, and consistent application of jurisprudence are needed so that the evidentiary power of authentic deeds can more effectively guarantee legal certainty in the modern era.

Keywords: *Authentic Deed, Probative Power, Civil Dispute.*

INTRODUCTION

In the Indonesian civil law system, one of the important instruments in proof is an authentic deed. This deed has high legal force because it is made by or before an authorized public official, namely a notary, in accordance with the provisions of the law. The existence of an authentic deed is clearly regulated in the Civil Code (KUHPerdata), especially in Article 1868, which states that "an authentic deed is a deed made in the form determined by law by or before an authorized public official for that purpose at the place where the deed is made".

In civil court practice in Indonesia, authentic deeds are often submitted as the main evidence in various disputes, ranging from sales and purchase agreements, debt binding, rental agreements, to inheritance cases. This deed is considered to contain formal truth, namely the truth about what is stated and stated in the deed, and when and where the statement was made (Sudikno Mertokusumo, 2009). Therefore, the evidentiary power of an authentic deed is crucial in determining the success of a lawsuit or defense in a civil trial.

However, in practice, the evidentiary power of authentic deeds often causes debate among legal practitioners and academics. One source of the debate is the difference in understanding regarding the extent to which the binding and evidentiary power of authentic deeds applies in court. It is not uncommon to find cases where the contents of authentic deeds submitted by the plaintiff or defendant are challenged by the opposing party, either through arguments of fabrication, fraud, error, coercion, or submission of other contradictory evidence (Subekti, 2014).

This is closely related to the evidentiary system in civil cases that adheres to the principle of free evidence. This means that the judge has the authority to assess all evidence submitted, including authentic deeds. Although authentic deeds have high evidentiary value, the judge still has the discretion to assess whether the deed truly reflects the true will of the parties or not (Yahya Harahap,

2005). Thus, although the Civil Code provides clear regulations regarding the evidentiary power of authentic deeds, its application in practice is not always absolute.

Furthermore, with the development of social and economic dynamics, the form and content of authentic deeds have also developed. Notaries are currently often asked to make various more complex agreements, such as derivative agreements, joint ventures, mergers & acquisitions, and international business agreements. This development implies that the role of authentic deeds as evidence is also increasingly strategic, but on the other hand, it increasingly demands accuracy and professionalism from notaries in ensuring that the deeds made are in accordance with the wishes of the parties and do not conflict with laws and regulations (Sjahdeini, 2011).

On the other hand, changes in the legal environment are also triggered by the development of information technology. Along with the birth of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) and its amendments, now there is also recognition of electronic deeds as legal evidence. Although not all forms of authentic deeds can be replaced by electronic deeds, this regulation has begun to open up opportunities for the transformation of the paradigm of evidence law in Indonesia, including in civil cases (Putra, 2021).

This context becomes even more interesting considering that Indonesian courts still face challenges in standardizing and understanding the application of the evidentiary force of authentic deeds. For example, there are often differences in interpretation between one district court and another regarding whether an authentic deed is only formally or also materially binding, and how to prove objections or rebuttals to the contents of an authentic deed. Not a few Supreme Court decisions have overturned decisions of first-instance or appellate courts because they incorrectly applied the principle of the evidentiary force of authentic deeds (Hasanuddin, 2017).

In addition, from the perspective of legal protection for the parties in the agreement, the evidentiary power of an authentic deed is also closely related to the principle of legal certainty. In legal theory, the principle of legal certainty is one of the fundamental principles that is expected to be reflected in the judicial process (Fuller, 1964). Therefore, every preparation of an authentic deed should ideally be able to create legal certainty for the parties, so that if a dispute arises, the court can easily uphold justice based on a valid and effective deed.

However, in reality, in some cases, authentic deeds actually become a source of new conflict if the deed contains formal weaknesses, for example due to the notary's negligence in the deed-making procedure, or a discrepancy between the statement in the deed and the actual facts. This is not only detrimental to the parties, but can also damage the credibility of the notary institution as a legal service provider (Mulyadi, 2013).

Furthermore, in the context of jurisprudence, the Supreme Court often emphasizes that an authentic deed only has perfect evidentiary power against what is directly stated or done before a notary, while other substantive matters, which originate from the will of the parties outside the presence of a notary, still require other evidence (Supreme Court of the Republic of Indonesia, Decision No. 1624 K/Pdt/2019). Thus, not all contents of an authentic deed can be considered absolute evidence that cannot be refuted.

Departing from these various problems, research on the evidentiary power of authentic deeds in resolving civil disputes in court becomes very important. This research is expected to provide a deeper understanding of:

1. What is the position of authentic deeds as evidence in the civil case evidence system in Indonesia?
2. To what extent does an authentic deed have binding power in the context of civil procedural law;
3. Factors that can weaken or strengthen the evidentiary power of an authentic deed;
4. The relevance and challenges of developing electronic deeds from the perspective of civil evidence law;
5. Practical implications for notaries, judges, and justice-seeking communities in understanding and using authentic deeds as evidence.

By conducting a comprehensive study of various legal theories, regulations, court decisions, and developing judicial practices, it is hoped that the results of this study can provide a real contribution to strengthening the civil law system in Indonesia, especially in order to ensure legal certainty, justice, and benefits for all parties.

As expressed by Soerjono Soekanto (1986), that "one of the important requirements for the enforcement of law in society is the existence of a legal instrument that has clear binding power and can be accounted for". In this context, authentic deeds as evidence play an important role in strengthening civil justice. Therefore, the better the understanding and application of the evidentiary power of authentic deeds, the greater the public's trust in the civil justice system in Indonesia.

METHOD

This study uses a normative legal research method, namely research that focuses on the study of applicable positive legal norms and legal principles related to the evidentiary power of authentic deeds in civil cases. The main sources of legal materials analyzed include the Civil Code, the Notary Law (Law Number 30 of 2004 as amended by Law Number 2 of 2014), the Electronic Information and Transactions Law, and various implementing regulations and court decisions, especially relevant decisions of the Supreme Court of the Republic of Indonesia. The approaches used are the statute approach, the conceptual approach, and the case approach as conveyed by Marzuki (2005).

The technique of collecting legal materials is carried out through library research, by analyzing legal literature, textbooks, scientific journals, and related jurisprudence documents. Data analysis is carried out qualitatively, namely by reviewing and interpreting legal norms and developing judicial practices, then drawing prescriptive conclusions. Thus, this study is expected to provide an in-depth understanding of the evidentiary power of authentic deeds in the civil case evidence system in Indonesia, as well as its implications for judicial practices and legal certainty for justice seekers.

RESULTS AND DISCUSSION

The Concept and Proving Power of Authentic Deeds in Indonesian Civil Law

An authentic deed is one type of written evidence recognized in the Indonesian civil law system. The position of an authentic deed as evidence is regulated in the Civil Code (KUHPerdata), which until now is still the main source for evidentiary practices in civil cases. Provisions regarding authentic deeds are contained in Article 1868 of the Civil Code which reads:

"An authentic deed is a deed made in the form determined by law by or before a public official authorized to do so in the place where the deed is made."

From these provisions, we can draw important elements inherent in a deed so that it can be called an authentic deed, namely: (1) made in a form determined by law; (2) made by or before a public official; and (3) the official must be authorized and act according to his/her competence (Mertokusumo, 2009). One of the officials authorized to make an authentic deed is a notary, as regulated in Law Number 30 of 2004 concerning the Position of Notary, which has been amended by Law Number 2 of 2014.

The role of authentic deeds in resolving civil disputes is very strategic. Authentic deeds, according to legal doctrine, have perfect proof, because these deeds are considered to reflect the formal truth of legal events or legal acts that occur before a notary (Subekti, 2014). In other words, if a dispute occurs in court, the party who has an authentic deed is in a stronger position, because it no longer needs to re-prove what has been stated in the deed. The burden of proof shifts to the party who wants to dispute the validity of the deed.

According to Yahya Harahap (2005), an authentic deed not only has the power as a valid written evidence, but also has formal binding power. This means that what is stated in an authentic deed is considered true by law as long as there is no evidence to prove otherwise. Even the Supreme Court in many of its jurisprudence states that an authentic deed binds the parties who made it as well as the heirs and parties who receive rights from it.

In theory, there are three dimensions of the evidentiary power of authentic deeds, namely:

1. Formal evidentiary force, namely the truth about who made the deed, when and where the deed was made, and the formal form of the deed in accordance with legal provisions;
2. The power of material evidence, namely the truth regarding the contents of the statement contained in the deed;
3. Binding power, namely the power to force the parties and third parties who have an interest in the deed (Sjahdeini, 2011).

However, not all parts of an authentic deed have absolute evidentiary power. As explained by Subekti (2014), an authentic deed only has perfect evidentiary power for things that are directly done, seen, or witnessed by a notary. While statements or statements originating from parties outside the presence of a notary, the evidentiary power is relative and can be refuted with other evidence.

For example, in the case of a deed of debt acknowledgement, if the deed states that party A owes party B a certain amount, then the court will consider the acknowledgement to be true, unless party A can prove otherwise, for example by showing that the acknowledgement of debt was made under pressure or coercion (Harahap, 2005).

Furthermore, in court practice, judges often refer to the Supreme Court's jurisprudence which distinguishes between the part of the deed that is a statement of the will of the parties, and the part of the deed that is a statement or direct observation by the notary. The latter part has higher evidentiary power, while the first part is easier to refute (Hasanuddin, 2017).

For example, in the Decision of the Supreme Court of the Republic of Indonesia No. 1624 K/Pdt/2019, the Supreme Court emphasized that "what is stated by an authorized notary, which is seen and witnessed directly by the notary, is perfect evidence, while other substantial matters remain open to further proof."

In the context of civil dispute resolution, the position of authentic deeds as evidence is not only important at the level of proof in the district court, but also has strategic implications in other stages of legal efforts, such as cassation or judicial review. Many civil cases decided by the Supreme Court are based on the existence of authentic deeds which are considered strong enough to confirm the arguments of one of the parties (Mulyadi, 2013).

For example, in a bank credit agreement dispute, an authentic deed in the form of a credit binding deed is often the main weapon for the bank in demanding repayment from a defaulting debtor. The deed is considered to prove the existence of a legal relationship and legal obligations between the parties. Likewise, in land sale and purchase cases, the deed of sale and purchase made by the land deed making official (PPAT) is the main evidence that determines who has the right to the land (Putra, 2021).

However, in the development of practice, a number of issues have emerged regarding the application of the evidentiary power of authentic deeds, including:

1. Issues regarding formal defects: If an authentic deed turns out to contain errors in the procedure for making it, then the deed can lose its evidentiary power. For example, if the notary does not fulfill the formal requirements as stipulated in the Notary Law.
2. Issues regarding the substance of the statement in the deed: If the contents of the deed turn out to be contrary to the actual legal facts, then the interested party can submit other evidence to refute the deed.
3. Paradigm shift towards digitalization: With the development of electronic deeds, new challenges have also emerged in interpreting the evidentiary power of digital deeds in a legal system that was previously based on physical deeds (Putra, 2021).

In this context, the judge's task becomes very important. The judge does not only "read" the deed, but must also be able to assess the integrity and validity of the deed, including paying attention to the possibility of legal defects. The judge acts as a guardian of the principle of fair trial, so that even though an authentic deed has perfect evidentiary power, the principle of material truth must still be maintained (Soekanto, 1986).

Another aspect that is no less important is the role of the notary. Notaries as public officials bear great responsibility to ensure that the deeds made truly fulfill the elements of truth and legal validity. If the notary is negligent or even intentionally makes a defective deed, then not only the deed can be questioned, but also the ethical and legal responsibility of the notary himself (Sjahdeini, 2011).

Therefore, understanding the concept of the evidentiary power of authentic deeds is not only important for judges and advocates, but also for notaries and the public who use notary services. Public legal awareness of the importance of authentic deeds as evidence, as well as their limitations and strengths, needs to be continuously improved so that there are no misunderstandings that can lead to disputes (Mertokusumo, 2009).

On the other hand, in the future, the development of electronic deeds as part of the civil evidence system requires more comprehensive legal regulations. So far, the ITE Law has indeed opened up opportunities to use electronic documents as evidence, but synchronization is still needed between the electronic legal system and the civil evidence system which is still based on the Civil Code which is more than a century old (Putra, 2021).

Thus, a proper and in-depth understanding of the evidentiary power of authentic deeds in resolving civil disputes becomes increasingly relevant, both in the traditional context (physical deeds) and in the context of the development of legal digitalization. This is in line with the need to realize a modern, efficient, and just justice system in the era of globalization.

Problems and Challenges in Applying the Proving Power of Authentic Deeds in Civil Court Practice

In civil court practice in Indonesia, the application of the evidentiary force of authentic deeds does not always run smoothly as ideally stipulated in the provisions of the Civil Code (KUHPerdota) and in legal doctrine. Many technical and substantive issues arise in court, both from procedural aspects, the substance of the deed, the competence of notaries, and other factors related to the dynamics of modern judicial practice.

One of the problems that is quite often encountered is the difference in understanding between judges in interpreting the binding force and evidentiary force of authentic deeds. Although the classical doctrine taught in various law faculties states that authentic deeds have perfect evidentiary force, in practice, judges still have the freedom to assess whether the deed is worthy of being believed as irrefutable evidence (Hasanuddin, 2017).

This is certainly related to the principle of the judge's freedom in assessing evidence, as regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that judges in trying civil cases must explore, follow, and understand the legal values that exist in society. Thus, even though an authentic deed is submitted, the judge still has the discretion to assess whether the material truth of the deed is truly fulfilled.

In some cases, inconsistency of decisions between courts regarding the use of authentic deeds as the main evidence occurs quite often. For example, in cases of default in credit agreements, there are courts that fully accept the credit binding deed as perfect evidence, while other courts consider that the contents of the deed must be re-proven because there are indications of defects in the agreement. In Supreme Court Decision No. 235 K/Pdt/2016, the Panel of Supreme Court Justices emphasized that even though the credit binding deed was made authentically, the court still needs to carefully assess whether the debtor's confession was made freely without coercion or was mistaken. This shows that the aspect of the substance of the will of the parties is an important consideration in providing evidence.

In addition, there is also the problem of formal defects in authentic deeds. If a deed turns out to contain formal errors—for example, not attended by the parties as stipulated, not signed in full, or there is a violation of the provisions stipulated in the Notary Law—then the deed can be declared invalid or only have the force of a private deed (Mulyadi, 2013). This is certainly detrimental to the parties who rely on the strength of the deed in filing a lawsuit or defense in court.

Furthermore, there are also challenges in interpreting the differences between a deed of release and a deed of *partij*. A deed of release, which is a deed containing the actions of a public official (for example a deed of auction minutes), is generally recognized as having stronger evidentiary power. Meanwhile, a deed of *partij*, which contains a statement of the will of the parties, tends to have weaker evidentiary power because it only contains what the parties stated to the notary (Harahap, 2005). Not infrequently, the party who feels aggrieved tries to refute certain parts of the deed of *partij* by submitting other evidence, such as witnesses or additional documents.

On the other hand, the development of modern business agreements also brings its own challenges. Many deeds of agreement are made with complex structures, using technical terms that are difficult for lay parties to understand. If the notary is not careful in providing adequate explanations to the parties, this can lead to misperceptions that ultimately become disputes later on (Sjahdeini, 2011).

Furthermore, the issue of the role and responsibility of notaries is also a source of problems. There are a number of cases where authentic deeds were made based on unilateral statements that were not adequately verified by the notary. In Supreme Court Decision No. 2875 K/Pdt/2017, the Court stated that notaries who are negligent in verifying the material truth of the contents of the deed can be held accountable both civilly and ethically. This shows that the notary's task is not only as a writer of deeds, but also as a guardian of legal integrity (Mertokusumo, 2009).

No less important is the challenge that arises from the digitization of authentic deeds. Although Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) has recognized the evidentiary power of electronic documents, not all types of deeds can be converted into electronic form. Deeds that require the physical presence of the parties (for example, land sale and purchase deeds or will deeds) still require conventional procedures. It is still unclear how electronic deeds can be integrated into the Civil Code system which was originally designed for physical deeds (Putra, 2021).

Another aspect that is also in the spotlight is the inconsistency of the enforcement of jurisprudence by the Supreme Court. Although there have been a number of decisions that expressly regulate the evidentiary power of authentic deeds, it is not uncommon for conflicting decisions to occur at the appeal or cassation level. This inconsistency creates legal uncertainty for the public and legal practitioners (Hasanuddin, 2017).

In addition, the problem that arises in practice is the attempt to cancel or delete authentic deeds. According to legal doctrine, authentic deeds cannot be canceled unilaterally. Cancellation can only be done by the court after going through a strict proof process. However, in reality, there are individuals who use social or political power to pressure notaries to withdraw or delete deeds that have been made. Such actions clearly contradict the principles of deed integrity and violate the notary code of ethics (Sjahdeini, 2011).

In addition, in terms of legal protection for the parties, there are still legal loopholes in protecting parties who are harmed by authentic deeds that are defective or made illegally. Not all parties understand their rights to sue the validity of the deed, or have the legal capacity to fight against defective deeds in court. Therefore, there needs to be strengthening of regulations that clarify the legal protection mechanism for parties who are harmed by deeds that are formally or materially defective (Mertokusumo, 2009).

Finally, the challenge ahead is how the Indonesian legal system can synergize classical civil law and the demands of modernization. On the one hand, the old Civil Code is still the main basis for regulating authentic deeds. On the other hand, the era of the digital economy and globalization demands a more adaptive and responsive evidentiary legal system to changes in the times.

Reformulation of civil evidentiary law that integrates physical and electronic authentic deeds is inevitable in the future (Putra, 2021).

Thus, understanding the problems and challenges of applying the evidentiary power of authentic deeds in court is not only important for academics and legal practitioners, but also for national legal policy makers. Without comprehensive regulatory updates and strengthening understanding at the level of judicial practitioners, the potential for legal uncertainty will continue to overshadow the use of authentic deeds as evidence in the civil realm.

CONCLUSION

From the description that has been presented, it can be concluded that authentic deeds play a very strategic role as evidence in resolving civil disputes in Indonesia. Based on the provisions of the Civil Code Article 1868 and supported by doctrine and jurisprudence, authentic deeds have perfect evidentiary power in matters that are directly carried out, witnessed, and recorded by authorized public officials, such as notaries. The evidentiary power of authentic deeds includes formal power, material power, and binding power, thus providing an advantageous position for the party submitting it to court. However, the application of this power is not absolute, because the judge still has discretion in assessing the validity and integrity of the deed, in line with the principle of freedom of evidence in civil procedural law.

On the other hand, there are various problems and challenges in judicial practice, such as inconsistent interpretations between judges, potential formal defects in deeds, the role and responsibilities of notaries that are not yet fully optimized, and the dynamics of digitalization of deeds that have not been comprehensively regulated. Therefore, regulatory renewal, increased notary competence, and strengthening of understanding among judicial practitioners are needed to strengthen the function of authentic deeds as effective evidence and provide legal certainty for the community. Thus, the Indonesian civil evidence legal system will be increasingly able to answer the challenges of the times and meet the expectations of justice seekers in the modern era.

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