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The Notary's Prudential Principle as a Safeguard for the Validity of Authentic Deeds

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Original Article

Abstract

Authentic deeds executed by notaries occupy a pivotal position within the Indonesian legal system, as they serve as written instruments of evidence that ensure legal certainty and protection for the parties involved. Nevertheless, violations of the legal requirements governing deed preparation, as well as the failure to apply the prudential principle, may result in the degradation of a deed's evidentiary value and, in certain circumstances, its annulment. This study aims to analyze the legal status of authentic deeds within the Indonesian legal framework and to examine their role, function, and evidentiary strength in civil proceedings. The research employs a normative juridical method using statutory, conceptual, and case-based approaches through an extensive review of legislation, legal doctrines, and scholarly literature. The findings demonstrate that authentic deeds possess perfect evidentiary force in terms of external, formal, and material proof, as recognized under the Indonesian Civil Code and the Law on Notarial Office. The application of the notary's prudential principle constitutes a fundamental factor in preserving the validity and evidentiary integrity of authentic deeds. The study concludes that notarial professionalism and strict compliance with legal procedures are essential for ensuring legal certainty, legal protection, and substantive justice.

Keywords: *Authentic Deed, Notary, Evidentiary Force, Legal Certainty*

Abstrak

Akta otentik yang dibuat oleh notaris memiliki kedudukan penting dalam sistem hukum Indonesia karena berfungsi sebagai alat bukti tertulis yang memberikan kepastian dan perlindungan hukum bagi para pihak. Namun, pelanggaran terhadap ketentuan pembuatan akta dan kurangnya penerapan prinsip kehati-hatian notaris berpotensi menyebabkan degradasi kekuatan pembuktian bahkan pembatalan akta. Penelitian ini bertujuan menganalisis kedudukan hukum akta otentik dalam sistem hukum Indonesia serta mengkaji peran, fungsi, dan kekuatan pembuktiannya dalam perkara perdata. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus melalui studi kepustakaan terhadap peraturan, doktrin, dan literatur hukum. Hasil penelitian menunjukkan bahwa akta otentik memiliki kekuatan pembuktian sempurna secara lahiriah, formil, dan materiil berdasarkan KUHPerdara dan Undang-Undang Jabatan Notaris. Penerapan prinsip kehati-hatian notaris menjadi faktor utama dalam menjaga keabsahan akta. Disimpulkan bahwa profesionalitas dan kepatuhan notaris terhadap prosedur hukum menentukan terwujudnya kepastian, perlindungan, dan keadilan hukum.

Kata kunci: *Akta Otentik, Notaris, Kekuatan Pembuktian, Kepastian Hukum*

1. INTRODUCTION

Indonesia, as a state founded upon the rule of law, places legal certainty at the core of its legal system and governance framework. Legal certainty is realized through the availability of reliable evidentiary instruments capable of establishing the truth of legal events and safeguarding the rights and obligations of parties engaged in legal relationships.¹ Among these instruments, authentic deeds executed by notaries play a strategic role. As public officials vested with state authority, notaries are entrusted not only with a professional legal function but also with a public service mandate to provide written evidence possessing full evidentiary value.² This authority is conferred by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary, which authorizes notaries to prepare authentic deeds relating to legal acts, agreements, and determinations requested by interested parties.

The position of authentic deeds within the Indonesian legal system is particularly significant because they constitute primary written evidence in civil proceedings. Article 1868 of the Indonesian Civil Code defines an authentic deed as a document executed in the form prescribed by law by or before a duly authorized public official. Furthermore, Article 1870 of the Civil Code accords authentic deeds perfect evidentiary force, whereby their contents and legal validity are presumed true unless successfully challenged through lawful judicial procedures. This evidentiary force encompasses external, formal, and material dimensions, granting authentic deeds the highest evidentiary status among the recognized forms of proof in Indonesian civil procedural law.³

The expansion of economic activities, investment transactions, banking operations, land administration, and other civil legal relations has substantially increased public reliance on authentic deeds. Through deeds prepared by notaries, parties obtain legally recognized documentation of their rights and obligations, which may serve as a basis for legal protection in the event of future disputes. Consequently, notaries occupy a pivotal position as guardians of public trust within the civil law evidentiary system. Nevertheless, the evidentiary value of an authentic deed is not absolute. Judicial practice has revealed numerous cases in which deeds have lost their authenticity due to noncompliance with formal or substantive legal requirements during their preparation. Errors in identifying parties, incomplete supporting documentation, violations of deed-reading and execution procedures, and breaches of statutory requirements governing

¹ Nurul Islam Tajudin Putra et al., "Juridical Analysis of the Making of Business Rights Deeds in Electronic Forms," *Path of Science* 9, no. 8 (2023): 1060–72, <https://doi.org/10.22178/pos.95-7>.

² Valentania Ratna Sari et al., "The Existence of Sign Language Interpreters in Assisting Deaf Individuals in the Creation of Notarial Deeds," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 4, no. 1 (2024): 89–102, <https://doi.org/10.53754/iscs.v4i1.671>.

³ Muhammad Azzura Notariano et al., "The Existence of Notaries in the Drafting of Peace Deeds as A Dispute Resolution Process: Case Study in East Lombok, Indonesia," *Path of Science* 10, no. 12 (2024): 2045, <https://doi.org/10.22178/pos.112-19>.

notarial office may result in the degradation of an authentic deed into a private document or even render it null and void.⁴ Such circumstances may cause significant losses to the parties and undermine the legal certainty that authentic deeds are intended to guarantee.

These developments underscore the importance of the prudential principle in notarial practice. This principle requires notaries to exercise due diligence throughout every stage of deed preparation, including verifying the identities and legal capacities of the parties, examining the completeness and validity of supporting documents, and ensuring strict compliance with all procedural requirements prescribed by law. The relevance of the prudential principle has become increasingly pronounced in the context of technological advancements and the digitalization of legal services, which introduce new challenges concerning the authenticity, reliability, and evidentiary quality of legal documents. Accordingly, an examination of the legal status of authentic deeds and the urgency of implementing the prudential principle in safeguarding their evidentiary force is essential to promoting legal certainty, justice, and legal protection within the Indonesian legal system.

The legal position of notaries and the evidentiary force of authentic deeds have attracted considerable scholarly attention within the fields of civil law and notarial law in Indonesia. This interest stems from the strategic role of notaries as public officials vested with state authority to execute authentic deeds possessing full evidentiary value, as recognized under the Indonesian Civil Code and the Law on Notarial Office. Previous studies have primarily examined the validity of authentic deeds, their evidentiary strength in judicial proceedings, and the legal consequences arising from formal or substantive defects in deed preparation. However, substantial opportunities remain for further research, particularly concerning the relationship between the application of the prudential principle by notaries and the preservation of the evidentiary force of authentic deeds in civil disputes.

A study conducted by Ni Made Yusmita Dewi analyzed the validity of authentic deeds executed and read through video teleconferencing. The findings revealed that the use of teleconferencing in the deed-execution process does not comply with Article 16 paragraph (1) letter m of the Law on Notarial Office because the parties and the notary are not physically present during the signing process. Consequently, the deed loses its status as an authentic deed and is unable to provide the level of legal certainty required by law. While this study contributes significantly to understanding the challenges posed by the digitalization of notarial services, it does not comprehensively address the

⁴ Berliana Kusuma Wardhani et al., "Juridical Implications on Notary Acts Signed by Circular," *Path of Science* 9, no. 4 (2023): 5001–8, <https://doi.org/10.22178/pos.91-16>.

prudential principle as a mechanism for safeguarding the evidentiary quality of authentic deeds.⁵

Similarly, Vivien Pomantow examined the evidentiary force of authentic deeds and the legal consequences of formal defects pursuant to Article 1869 of the Indonesian Civil Code. The study confirmed that authentic deeds possess perfect evidentiary force and are binding upon the parties. Nevertheless, such evidentiary status may be reduced to that of a private deed when the formal requirements governing deed execution are not fulfilled. Although these findings underscore the importance of procedural compliance, the study does not explore the preventive measures that notaries should undertake to avoid formal deficiencies during the deed-drafting process.⁶

Furthermore, Ramadhan emphasized the function of authentic deeds as primary evidence in civil law. The study demonstrated that authentic deeds play a crucial role in ensuring legal certainty, protecting the rights of the parties, and minimizing the likelihood of legal disputes. However, the analysis focused predominantly on the evidentiary function of authentic deeds rather than on the professional responsibilities of notaries in maintaining the validity of both the substance and procedural aspects of deed preparation.⁷

An empirical study conducted by Ni Ketut Liana Citra Dewi and I Gede Surata investigated the degradation of the evidentiary force of authentic deeds through judicial decisions. The findings indicated that authentic deeds retain their full evidentiary value unless and until a final and binding court judgment determines otherwise. Although the study provides valuable insights into evidentiary practices in judicial proceedings, it does not establish a direct connection between such findings and the notary's obligation to apply the prudential principle from the earliest stages of deed preparation.⁸

Based on the foregoing review, it can be observed that existing studies have largely concentrated on the validity, evidentiary force, and legal consequences of authentic deeds. Nevertheless, limited attention has been devoted to examining the prudential principle as a preventive legal mechanism that enables notaries to preserve the authenticity and evidentiary integrity of deeds. This study therefore seeks to fill that gap by analyzing the legal status of authentic deeds and the urgency of implementing the prudential principle as a safeguard for maintaining their evidentiary force and ensuring legal certainty, legal protection, and justice within the Indonesian legal system.

⁵ Ni Made Yusmita Dewi, "Analisis Hukum Akta Otentik Yang Dibacakan Oleh Notaris Melalui Teleconference," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 5 (2023): 130–40, <https://doi.org/10.572349/civilia.v2i5.1362>.

⁶ Vivien Pomantow, "Akibat Hukum Terhadap Akta Otentik Yang Cacat Formil Berdasarkan Pasal 1869 Kuhperdata," *Lex Privatum* 6, no. 7 (2018): 90–98.

⁷ Irpan Ramadhan, "Analisis Terkait Akta Otentik Sebagai Alat Bukti Dalam Perkara Hukum Perdata," *Al-Dalil: Jurnal Ilmu Sosial, Politik, Dan Hukum* 2, no. 3 (2024): 32–37, <https://doi.org/10.58707/aldalil.v2i3.875>.

⁸ Ni Ketut Liana Citra Dewi and I Gede Surata, "Akta Otentik Dalam Pembuktian Pada Perkara Perdata: Studi Kasus Di Pengadilan Negeri Singaraja," *Kertha Widya: Jurnal Hukum* 3, no. 2 (2015): 89–101.

A study conducted by Ade Yuliani Sihaan and Aida Nur Hasanah examined the role of notaries in the preparation of authentic deeds and their involvement in judicial evidentiary proceedings. The findings indicate that notaries may be summoned, examined, and held legally accountable for deeds they execute, as provided under Article 66 of the Law on Notarial Office (UUJN). While the study offers valuable insights into the legal responsibility of notaries, it does not specifically address the relationship between the application of the prudential principle and the preservation of the evidentiary force of authentic deeds.⁹

Similarly, Ahmad Fauziannor et al. compared the legal force of authentic deeds and private deeds in civil disputes. Their findings demonstrate that authentic deeds possess a superior evidentiary status because they embody external, formal, and material evidentiary force.¹⁰ Likewise, Asri Diamitri Lestari explained that judges retain the authority to invalidate a notarial deed when legal violations are identified that render the deed legally defective.¹¹ Furthermore, Yuni Putri Dewantara et al. emphasized the significance of authentic deeds in establishing proof of land rights¹², whereas Elis Yesika Br. Rajagukguk and Debora Debora reaffirmed the function of authentic deeds as perfect evidence capable of providing legal certainty and protection to the parties concerned.¹³

The foregoing studies demonstrate that existing scholarship has largely concentrated on the validity of authentic deeds, their evidentiary force, notarial liability, and the legal consequences arising from formal and substantive defects. However, limited attention has been devoted to comprehensively examining the interrelationship between the legal status of authentic deeds, the implementation of the notarial prudential principle during the deed-drafting process, and the implications of such implementation for the evidentiary force of deeds in civil disputes. Consequently, a significant research gap remains within the existing literature.

This study seeks to address that gap by offering an integrative analysis of the prudential principle as a preventive legal instrument designed to preserve the authenticity, validity, and evidentiary integrity of authentic deeds. By examining the role of notarial prudence in preventing legal defects that may undermine or invalidate

⁹ Ade Yuliani Sihaan and Aida Nur Hasanah, "Peran Notaris Sebagai Pembuat Akta Otentik Dalam Proses Pembuktian Di Pengadilan," *Al-Usrah: Jurnal Al Ahwal As Syakhsyah* 11, no. 1 (2023): 23–37, <https://doi.org/10.30821/al-usrah.v11i1.16650>.

¹⁰ Ahmad Fauziannor et al., "Perbandingan Kekuatan Pembuktian Antara Akta Otentik Dan Akta Di Bawah Tangan Dalam Sengketa Perdata," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1963–76, <https://doi.org/10.62976/ijjel.v3i2.1198>.

¹¹ Asri Diamitri Lestari, "Kekuatan Alat Bukti Akta Otentik Yang Dibuat Oleh Notaris Dalam Pembuktian Perkara Perdata Di Pengadilan Negeri Sleman," *Universitas Fakultas Hukum Universitas Atmajaya*, 2014, 1–17.

¹² Yuni Putri Dewantara et al., "Kekuatan Pembuktian Akta Otentik Dalam Perspektif Hukum Acara Perdata: Studi Kasus Putusan Mahkamah Agung No. 656 PK/Pdt/2019," *Paradigma: Jurnal Filsafat, Sains, Teknologi, Dan Sosial Budaya* 30, no. 3 (2024): 24–31, <https://doi.org/10.33503/paradigma.v30i3.71>.

¹³ Elis Yesika Br Rajagukguk and Debora Debora, "Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata," *Jurnal Teknologi Mesin* 2, no. 2 (2025): 195–207, <https://doi.org/10.46930/teknologimesin.v2i2.5695>.

authentic deeds, this research contributes to a deeper understanding of how legal certainty, legal protection, and substantive justice may be enhanced within the Indonesian legal system.

Based on the identified research problems, this study aims to analyze the legal status of authentic deeds executed by notaries within the Indonesian legal framework, particularly in light of the provisions of the Indonesian Civil Code, the Law on Notarial Office, and other relevant legislation. In addition, the study examines the role, function, and evidentiary force of authentic deeds as evidence in civil litigation. Particular attention is given to the application of the prudential principle by notaries during the deed-preparation process as a mechanism for preventing legal defects that may lead to the degradation or annulment of authentic deeds and consequently diminish legal certainty for the parties concerned.

2. RESEARCH METHODOLOGY

This study employs a normative legal research method, which conceptualizes law as a normative system comprising legal principles, rules, doctrines, and statutory regulations. This method is appropriate because the research focuses on analyzing the legal status of authentic deeds executed by notaries, their evidentiary force in civil proceedings, and the urgency of applying the prudential principle during the deed-preparation process. To achieve these objectives, the study adopts statutory, conceptual, and case-based approaches.

The statutory approach is utilized to examine and analyze relevant legal provisions governing authentic deeds and notarial practice, including the Indonesian Civil Code, the *Herziene Indonesisch Reglement* (HIR), the *Rechtsreglement voor de Buitengewesten* (RBg), Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary, and other related legislative instruments. This approach facilitates a comprehensive assessment of the normative legal framework regulating the authority of notaries and the evidentiary status of authentic deeds within the Indonesian legal system.

The conceptual approach is employed to examine the theoretical foundations and legal doctrines relating to authentic deeds, evidentiary force, legal certainty, legal protection, and the prudential principle in notarial practice. Through this approach, the study seeks to develop a coherent legal understanding of the relationship between notarial prudence and the preservation of the validity and evidentiary integrity of authentic deeds.

Furthermore, the case approach is conducted through an analysis of judicial decisions concerning the validity, authenticity, and evidentiary force of notarial deeds. This approach enables the identification of legal considerations applied by courts in

resolving disputes involving authentic deeds and provides practical insights into the implementation of relevant legal norms.

The research relies on primary, secondary, and tertiary legal materials obtained through an extensive literature review. Primary legal materials consist of statutory regulations and judicial decisions, while secondary legal materials include legal doctrines, scholarly articles, textbooks, and other academic sources. Tertiary legal materials comprise legal dictionaries, encyclopedias, and reference materials that support the interpretation of legal concepts. All legal materials are analyzed qualitatively through methods of legal interpretation and legal reasoning to formulate systematic legal arguments concerning the importance of implementing the prudential principle in notarial practice. The analysis ultimately aims to demonstrate how the consistent application of this principle contributes to maintaining the validity and evidentiary force of authentic deeds, thereby promoting legal certainty, legal protection, and substantive justice within the Indonesian legal system.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Legal Status of Authentic Deeds Executed by Notaries in the Indonesian Legal System

The legal status of authentic deeds within the Indonesian legal system is of fundamental importance because such deeds constitute written evidence possessing the highest evidentiary value in civil proceedings. This status is normatively grounded in Article 1868 of the Indonesian Civil Code, which defines an authentic deed as a document executed in the form prescribed by law by or before a public official authorized to do so at the place where the deed is executed. This provision demonstrates that the authenticity of a deed is determined not only by its substantive content but also by compliance with formal legal requirements concerning its form, execution procedure, and the authority of the public official responsible for its preparation.

Notaries are public officials vested with state authority to execute authentic deeds concerning legal acts, agreements, and legal determinations requested by interested parties. This authority is expressly recognized in Article 15 of the Law on Notarial Office (UUJN), which authorizes notaries to execute authentic deeds, certify the date of execution, maintain deed protocols, and issue grosses, copies, and excerpts of deeds. Accordingly, the position of a notary extends beyond that of a legal professional and encompasses the role of a public official performing part of the State's function in providing legal services and ensuring legal certainty for the public.

Based on Article 1868 of the Civil Code and the relevant provisions of the UUJN, three fundamental elements determine whether a deed qualifies as an authentic deed. First, the deed must be executed in the form prescribed by law. This requirement obliges notaries to comply with all procedural requirements stipulated under the UUJN,

including the identification of parties, verification of supporting documents, reading of the deed, execution by the parties, witnesses, and the notary, as well as the preservation of the original deed (*minuta deed*). Failure to comply with any of these procedural requirements may jeopardize the authenticity of the deed and potentially diminish its legal standing.

Second, the deed must be executed by or before a duly authorized public official. In this regard, notaries derive their authority directly from statutory law through attributive delegation by the State. Consequently, the validity and authenticity of a deed are closely linked to the legal authority of the notary who executes it. A document prepared by an individual lacking the requisite legal authority cannot be classified as an authentic deed and therefore cannot enjoy the legal consequences attached to such status.

Third, the deed must be executed within the scope of the notary's legal authority. This requirement reflects the principle that notarial authority is limited by territorial jurisdiction and by the categories of legal acts entrusted to notaries under applicable legislation. Article 19 of the UUJN stipulates that a notary may not perform notarial functions outside the territorial jurisdiction assigned by law. Accordingly, a deed executed beyond the authorized territorial scope may lose its status as an authentic deed and may no longer enjoy full evidentiary force.

The legal status of an authentic deed is not only derived from the manner in which it is executed but also from the evidentiary force inherently attached to it. Pursuant to Article 1870 of the Indonesian Civil Code, an authentic deed constitutes complete evidence regarding the matters contained therein for the parties involved. This evidentiary force encompasses three interrelated dimensions, namely external evidentiary force, formal evidentiary force, and material evidentiary force.

External evidentiary force signifies that a deed is presumed valid and authentic insofar as it satisfies the formal appearance and legal requirements prescribed by law. Consequently, courts are generally required to recognize the deed as authentic unless its authenticity is successfully challenged through legally recognized procedures. Formal evidentiary force guarantees that all statements recorded in the deed were actually made by the parties before the notary in accordance with the prescribed legal procedures. Meanwhile, material evidentiary force establishes a presumption that the contents of the deed are true and binding upon the parties, thereby enabling the deed to serve as a reliable basis for judicial consideration in the resolution of civil disputes.

Therefore, authentic deeds occupy a privileged position within the Indonesian evidentiary system. Their legal status is founded not only on statutory recognition but also on the fulfillment of substantive and procedural legal requirements that ensure their authenticity and reliability. As a consequence, compliance with these requirements is

indispensable for preserving the legal validity and evidentiary force of authentic deeds and for ensuring legal certainty, legal protection, and justice within civil legal relations.

The findings of this study are consistent with those of Vivien Pomantow, who argued that authentic deeds possess perfect and binding evidentiary force, although their contents may still be challenged through legally recognized forms of counterevidence.¹⁴ Similarly, the present study supports the findings of Ahmad Fauziannor et al., which emphasize that authentic deeds occupy a superior position compared to private deeds because they simultaneously embody external, formal, and material evidentiary force.¹⁵

Furthermore, the results are in line with the research conducted by Ramadhan, which concluded that authentic deeds function as legal instruments for ensuring legal certainty and minimizing the potential for future disputes.¹⁶ However, the present study extends the existing analysis by emphasizing that the evidentiary force of an authentic deed is determined not only by its status as an official legal instrument but also by the extent to which the notary adheres to the prudential principle throughout the deed-execution process. Consequently, the preservation of a deed's evidentiary integrity depends upon both statutory compliance and the professional diligence exercised by the notary.

The existence of authentic deeds represents a concrete manifestation of the principle of legal certainty within Indonesian civil law. Authentic deeds provide legal protection by establishing certainty regarding the identity of the parties, the date of the legal act, and the substance of the legal relationship agreed upon by the parties.¹⁷ Such certainty is particularly important within the Indonesian system of civil evidence, which accords primary evidentiary value to written documents over other forms of evidence, including witness testimony, presumptions, confessions, and oaths.

Nevertheless, the evidentiary force of an authentic deed is not absolute. Pursuant to Article 1869 of the Indonesian Civil Code, an authentic deed may be degraded to the status of a private deed if defects in its formal execution are established. In certain circumstances, a deed may even be declared null and void when it is proven to violate applicable statutory provisions. These findings are consistent with the studies conducted by Asri Diamitri Lestari and Ni Ketut Liana Citra Dewi and I Gede Surata, which

¹⁴ Vivien Pomantow, "Akibat Hukum Terhadap Akta Otentik Yang Cacat Formil Berdasarkan Pasal 1869 KUHperdata."

¹⁵ Ahmad Fauziannor et al., "Perbandingan Kekuatan Pembuktian Antara Akta Otentik Dan Akta Di Bawah Tangan Dalam Sengketa Perdata."

¹⁶ Ramadhan, "Analisis Terkait Akta Otentik Sebagai Alat Bukti Dalam Perkara Hukum Perdata."

¹⁷ Hana Marty Dongoran and Aminah Aminah, "Obligations Arising from Contracts and Laws and Their Relationship with Authentic Deeds," *Al-Ishlah: Jurnal Ilmiah Hukum* 27, no. 1 (2024): 31–43, <https://doi.org/10.56087/aijih.v27i1.444>.

demonstrate that courts possess the authority to assess the validity of authentic deeds when evidence suggests that legal violations occurred during their execution.¹⁸

The findings of this study therefore confirm that the legal status of an authentic deed executed by a notary within the Indonesian legal system is that of a written instrument possessing perfect evidentiary force and occupying the highest position within the hierarchy of civil evidence. This privileged status derives from the authority attributed by the State to notaries as public officials and from compliance with all substantive and procedural requirements prescribed by law. The continued validity and evidentiary force of an authentic deed are closely dependent upon the notary's adherence to the provisions of the Law on Notarial Office (UUJN) and the consistent application of the prudential principle in the performance of notarial duties.

Accordingly, notarial professionalism, integrity, and strict observance of legal procedures constitute the primary determinants in preserving the authenticity and evidentiary value of authentic deeds. These factors are essential for ensuring legal certainty, legal protection, and substantive justice for individuals engaged in civil legal relationships. In this regard, the prudential principle should not merely be viewed as an ethical standard of professional conduct but rather as a fundamental legal safeguard that preserves the validity, reliability, and evidentiary strength of authentic deeds within the Indonesian legal system.

3.2. The Role, Function, and Evidentiary Force of Authentic Deeds in Civil Litigation and the Application of the Notarial Prudential Principle

Pursuant to Article 1866 of the Indonesian Civil Code, Article 164 of the *Herziene Indonesisch Reglement* (HIR), and Article 284 of the *Rechtsreglement voor de Buitengewesten* (RBg), the Indonesian civil evidentiary system recognizes five categories of evidence, namely written evidence, witness testimony, presumptions, confessions, and oaths. Among these forms of evidence, written evidence occupies the most prominent position because civil law primarily governs legal relationships intentionally established by parties through written expressions of consent and legal intent. Consequently, deeds as written instruments of evidence play a highly strategic role in proving the existence of legal relationships, as well as the rights and obligations arising therefrom.

Authentic deeds occupy a particularly significant position within the Indonesian civil law system because they function as evidentiary instruments capable of providing legal certainty regarding the existence and validity of legal acts. Beyond serving as administrative records, authentic deeds are deliberately created to document legal transactions and safeguard the interests of the parties involved. Individuals entering into

¹⁸ Asri Diamitri Lestari, "Kekuatan Alat Bukti Akta Otentik Yang Dibuat Oleh Notaris Dalam Pembuktian Perkara Perdata Di Pengadilan Negeri Sleman"; Ni Ketut Liana Citra Dewi and I Gede Surata, "Akta Otentik Dalam Pembuktian Pada Perkara Perdata: Studi Kasus Di Pengadilan Negeri Singaraja."

agreements, transactions, or other legal acts generally seek to have such acts recorded in an authentic deed in order to obtain the highest degree of legal protection and evidentiary certainty in the event of future disputes.

Article 1868 of the Indonesian Civil Code defines an authentic deed as a document executed in the form prescribed by law by or before a duly authorized public official. Within this framework, a notary acts as a public official endowed with attributive authority by the State to execute authentic deeds. Consequently, notarial deeds possess distinctive legal characteristics that differentiate them from private deeds. The principal distinction lies in the guarantee of formal legality and authenticity conferred by the State through the notary's official authority.

The functions of authentic deeds in civil law may be classified into two principal categories. The first is the function of *formalitas causa*, whereby the execution of a deed constitutes a legal requirement for the validity or completion of a particular legal act. In certain transactions and legal relationships, the law expressly requires the existence of an authentic deed as a condition for legal validity. The second is the function of *probationis causa*, under which the deed serves as evidence intentionally prepared for potential use in future disputes. In this capacity, the deed provides legal certainty concerning the contents of the agreement, the identity of the parties, the date of the legal act, and the rights and obligations arising from the legal relationship.

The evidentiary force of an authentic deed occupies a superior position compared to other forms of evidence recognized under Indonesian civil procedural law. Pursuant to Article 1870 of the Indonesian Civil Code, an authentic deed constitutes complete and binding evidence for the parties with respect to the matters stated therein. This evidentiary force consists of three interrelated dimensions: external evidentiary force, formal evidentiary force, and material evidentiary force.

External evidentiary force signifies that a deed must be presumed authentic so long as it satisfies the formal appearance and requirements prescribed by law. Formal evidentiary force guarantees that all statements recorded in the deed were genuinely made by the parties before the notary in accordance with applicable legal procedures. Material evidentiary force establishes a legal presumption that the contents of the deed are true and binding upon the parties unless and until a competent court determines otherwise through a final judicial decision. Collectively, these three dimensions confer upon authentic deeds the highest evidentiary status within the Indonesian civil evidentiary system.

The findings of this study are consistent with those of Vivien Pomantow, who concluded that authentic deeds possess perfect and binding evidentiary force.¹⁹ Likewise, the present findings support the conclusions of Ahmad Fauziannor et al., who

¹⁹ Vivien Pomantow, "Akibat Hukum Terhadap Akta Otentik Yang Cacat Formil Berdasarkan Pasal 1869 KUHperdata."

emphasized that authentic deeds derive their superior legal standing from the cumulative existence of external, formal, and material evidentiary force.²⁰ These characteristics distinguish authentic deeds from private deeds and explain their privileged position within civil litigation.

Furthermore, the results of this study reinforce the findings of Ramadhan, who argued that authentic deeds function as effective instruments for dispute prevention by providing a greater degree of legal certainty than other forms of evidence.²¹ However, the present study advances the existing literature by emphasizing that the effectiveness and evidentiary value of authentic deeds are closely linked to the manner in which they are prepared. In particular, the preservation of their evidentiary force depends not only on statutory recognition but also on the diligent application of the notarial prudential principle throughout the deed-execution process.

The notarial prudential principle requires notaries to exercise due diligence in verifying the identity and legal capacity of the parties, examining the authenticity and completeness of supporting documents, ensuring the legality of the intended legal act, and complying with all procedural requirements established by law. Through the consistent implementation of this principle, notaries contribute significantly to safeguarding the validity, authenticity, and evidentiary integrity of authentic deeds. Accordingly, the prudential principle serves not merely as a professional ethical standard but as a fundamental legal mechanism for preserving the reliability of authentic deeds and ensuring legal certainty, legal protection, and substantive justice within civil legal relations.

The evidentiary power of an authentic deed is not absolute. An authentic deed can lose its evidentiary power if a legal flaw is discovered during its creation. Based on an analysis of Article 1869 of the Civil Code and various notarial legal doctrines, it was found that violations of deed creation procedures can result in the deed being degraded to a private deed or even resulting in its cancellation by court decision. This condition can occur if a notary public fails to fulfill their obligations in accordance with the UUJN provisions, such as failing to verify the parties' identities, failing to present witnesses as required by law, failing to read the deed before the parties appearing before them, or creating the deed outside their jurisdiction.

The application of the prudential principle by a notary public plays a crucial role in maintaining the quality and validity of an authentic deed. The prudential principle requires a notary to carefully examine the identities of the parties, the validity of supporting documents, the legal capacity of the parties appearing before them, the authority of the parties to act, and the legality of the legal object that constitutes the

²⁰ Ahmad Fauziannor et al., "Perbandingan Kekuatan Pembuktian Antara Akta Otentik Dan Akta Di Bawah Tangan Dalam Sengketa Perdata."

²¹ Ramadhan, "Analisis Terkait Akta Otentik Sebagai Alat Bukti Dalam Perkara Hukum Perdata."

substance of the deed.²² Furthermore, notaries are also required to ensure that all deed-making procedures are carried out in accordance with the provisions of the UUJN (National Notary Law) and the notary's professional code of ethics.

The principle of prudence is a preventive instrument that serves to protect the interests of the parties while maintaining public trust in the notary profession. The higher the level of a notary's compliance with the principle of prudence, the less likely it is that formal or material defects will occur, which could reduce the deed's evidentiary value. Conversely, a notary's failure to apply the principle of prudence can give rise to legal disputes, resulting in a loss of legal certainty for parties relying on the deed as evidence.

The findings of this study complement those of Ni Ketut Liana Citra Dewi & I Gede Surata, which asserted that authentic deeds retain full evidentiary value until a legally binding court decision states otherwise.²³ This study provides a new contribution by emphasizing that the continued evidentiary value is largely determined by the quality of the notary's deed-making process, through the consistent application of the principle of prudence.

Authentic deeds play a strategic role as the primary evidence in civil cases because they provide legal certainty regarding the legal relationship between the parties. Authentic deeds also have formal and evidentiary functions, making them a crucial legal instrument in society. The absolute evidentiary power inherent in authentic deeds can only be maintained if the notary exercises his or her authority in accordance with statutory provisions and optimally applies the principle of prudence. Therefore, the notary's professionalism, integrity, and compliance with legal procedures are key factors in maintaining the authenticity of the deed, preventing its degradation or cancellation, and ensuring legal certainty, justice, and legal protection for all interested parties.

4. CONCLUSION

This study examined the legal status of authentic deeds executed by notaries within the Indonesian legal system and analyzed their role, function, and evidentiary force in civil litigation, with particular emphasis on the importance of applying the notarial prudential principle during the deed-execution process. The findings demonstrate that authentic deeds occupy a privileged legal position under Articles 1868 and 1870 of the Indonesian Civil Code and the Law on Notarial Office (UUJN). As written instruments of evidence possessing external, formal, and material evidentiary force, authentic deeds constitute the highest form of documentary evidence recognized in Indonesian civil procedural

²² Ida Ayu Sri Widari and Amad Sudiro, "Validity of a Notarial Deed Containing the Distribution of Inheritance When It Involves Elements of Fraud (Bedrog)," *Journal of Judicial Review* 28, no. 1 (2026): 91–120, <https://doi.org/10.37253/jjr.v28i1.12124>.

²³ Ni Ketut Liana Citra Dewi and I Gede Surata, "Akta Otentik Dalam Pembuktian Pada Perkara Perdata: Studi Kasus Di Pengadilan Negeri Singaraja."

law. Consequently, they serve as essential instruments for ensuring legal certainty, legal protection, and the prevention of disputes in civil legal relationships.

The study further reveals that the evidentiary force of authentic deeds is closely dependent upon the notary's compliance with statutory requirements and the consistent application of the prudential principle. Such compliance includes the verification of the parties' identities, examination of the authenticity and completeness of supporting documents, assessment of the parties' legal capacity and authority to act, and adherence to all procedural requirements governing deed execution. Failure to fulfill these obligations may result in the degradation of an authentic deed into a private deed and, under certain circumstances, may even lead to its annulment through judicial proceedings. These findings contribute theoretically to the development of notarial law and the law of evidence while also offering practical guidance for notaries in enhancing professional standards and improving the quality of legal services provided to the public.

Notwithstanding its contributions, this study has certain limitations. The research adopts a normative legal approach that focuses primarily on the analysis of statutory regulations, legal doctrines, and scholarly literature. Consequently, it does not examine the practical implementation of the prudential principle in notarial practice or evaluate empirical factors influencing disputes concerning the validity of authentic deeds. As a result, the study is limited in its ability to assess the effectiveness of existing legal norms in practice.

In light of these findings, stronger policies are needed to enhance the supervision, professional guidance, and competency development of notaries in order to ensure the quality, validity, and reliability of authentic deeds. Future studies are encouraged to employ empirical, socio-legal, or mixed-method approaches to investigate the practical application of the prudential principle by notaries, identify factors contributing to disputes concerning authentic deeds, and evaluate the effectiveness of regulatory and institutional mechanisms in safeguarding legal certainty within the Indonesian notarial system.

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