



Private Deeds In Civil Evidence Practice: Analysis Of Formal And Material Validity

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ABSTRACT

Private deeds constitute one of the written evidentiary instruments frequently utilized in Indonesian civil litigation, particularly in disputes arising from contractual relationships and private legal engagements. This study aims to examine the legal standing of private deeds within the civil evidentiary system by emphasizing both formal validity and substantive validity, as well as their implications in judicial proof. The analysis focuses on the normative regulation of private deeds under the Indonesian Civil Code, doctrines of civil evidence law, and scholarly perspectives developed in national legal journals. This research employs a normative juridical method using statutory and conceptual approaches. Data were collected through library research, encompassing legislation, legal textbooks, and relevant academic journal articles addressing private deeds and their evidentiary force. The data were analyzed qualitatively to assess the coherence between positive legal norms and their application in judicial practice. The findings indicate that private deeds possess a relative evidentiary value, which depends on the fulfillment of formal requirements, namely written form and the signatures of the parties, as well as substantive requirements relating to the authenticity and legality of the content. When both the signature and the substance of the deed are acknowledged by the interested parties, a private deed may function as strong evidence before the court. Conversely, when denial or dispute arises, such a deed requires corroboration by other forms of evidence to strengthen its probative value. Accordingly, formal and substantive validity play a decisive role in determining the effectiveness of private deeds in civil evidentiary proceedings.

INTRODUCTION

Evidence constitutes one of the most critical stages in the resolution of civil disputes before the courts. Through evidentiary procedures, judges are able to obtain an objective basis for assessing the truthfulness of the arguments presented by the disputing parties. Within the Indonesian civil procedural system, written evidence continues to occupy a dominant position, as reflected in Article 164 of the Herziene Indonesisch Reglement (HIR) and Article 1866 of the Indonesian Civil Code. The strategic placement of written documents as primary evidence underscores the central role of legal documents in shaping judicial reasoning and determining the outcome of civil cases (Amin, 2020).

Among the various forms of written evidence, deeds hold a particularly significant status due to their dual function: serving both as evidentiary instruments and as mechanisms for ensuring legal certainty in private legal relationships. In Indonesian civil law, deeds are generally classified into two categories, namely authentic deeds and private deeds. Authentic deeds are drawn up by or before authorized public officials, such as notaries, and possess perfect evidentiary force. In contrast, private deeds are created solely by the parties without the involvement of public officials, resulting in evidentiary strength that is not absolute and remains subject to judicial scrutiny.

Private deeds represent the most commonly used form of written agreement or declaration in everyday legal practice. Their widespread use can be attributed to their simplicity, flexibility, and the absence of

complex formal procedures. In daily transactions, private deeds are frequently employed in various legal relationships, including loan agreements, lease contracts, simple sales transactions, business collaborations, and written acknowledgments of specific obligations. Nevertheless, the ease of their creation is often not accompanied by sufficient legal awareness regarding the juridical consequences attached to such documents.

Legal issues arise when private deeds are introduced as evidence in civil litigation. It is not uncommon for one party to dispute the authenticity of the signature, the content, or even the existence of a private deed submitted as evidence. Such disputes generate complex legal questions, particularly concerning the formal and substantive validity of private deeds and the extent to which their evidentiary value may be accepted by the court. Consequently, although private deeds are normatively recognized as lawful means of proof, their evidentiary effectiveness remains limited and warrants thorough legal examination (Ardiansyah, 2020).

The formal validity of a private deed relates to the fulfillment of legally prescribed formal requirements, such as its written form, the presence of the parties' signatures, and the intention to use the document as evidence. Failure to meet any of these formal elements may significantly diminish the deed's probative value. Substantive validity, on the other hand, concerns the accuracy and authenticity of the deed's content, namely whether it genuinely reflects the parties' intentions and the actual legal facts underlying the transaction. Both formal and substantive validity serve as fundamental parameters for assessing the evidentiary strength of private deeds before the court.

In judicial practice, judges are frequently confronted with cases in which private deeds are presented as primary evidence but are contested by the opposing party. Denials concerning signatures or content necessitate additional proof, such as witness testimony, expert opinions particularly in handwriting analysis or other corroborative evidence. This reality demonstrates that private deeds do not operate in isolation but must be evaluated within the broader framework of the civil evidentiary system. Accordingly, a comprehensive understanding of the legal position and probative value of private deeds is essential not only for legal practitioners but also for the general public (Palit, 2015).

Furthermore, developments in legal practice and social dynamics have significantly influenced the use of private deeds. In the digital era, for instance, an increasing number of agreements are concluded electronically without the involvement of public officials. This development presents new challenges in civil evidentiary law, particularly in relation to verifying document authenticity and the identities of the contracting parties. Although the Law on Electronic Information and Transactions (ITE Law) recognizes electronic documents as lawful evidence, issues of formal and substantive validity remain central concerns that require further examination in the context of private deeds.

Academic discussions on private deeds have been extensive; however, many studies remain predominantly normative and insufficiently connected to judicial practice. In reality, discrepancies between legal norms and their application often lead to legal uncertainty. Against this backdrop, an analytical approach that integrates positive law with actual court practice becomes increasingly relevant. Such an approach is expected to provide a more comprehensive understanding of how private deeds are evaluated and weighed by judges in resolving civil disputes.

From the perspective of evidentiary theory, the probative value of a piece of evidence is not determined solely by its formal characteristics but also by its capacity to convince the judge of the truth of a legal event. Therefore, private deeds should not be regarded merely as administrative documents, but rather as legal instruments with significant juridical implications. When a private deed satisfies both formal and substantive requirements and is acknowledged by the parties, it may possess substantial evidentiary force and play a decisive role in the settlement of civil disputes.

Based on the foregoing discussion, private deeds occupy an ambivalent position within the system of civil evidence law. On the one hand, they offer convenience and flexibility for individuals in regulating their legal relationships. On the other hand, limitations related to validity and evidentiary strength necessitate caution in their use. Consequently, a comprehensive and systematic study of private deeds particularly with regard to formal and substantive validity and their implications in civil evidentiary practice is essential.

This research aims to conduct an in-depth examination of private deeds from the perspective of civil evidentiary law, focusing on the analysis of formal and substantive validity as well as their application in judicial practice. Employing a normative juridical approach supported by an analysis of legal literature and court decisions, this study is expected to contribute academically to the development of civil law scholarship and to offer practical recommendations for parties who rely on private deeds in their legal relationships. Moreover, this research seeks to bridge the gap between legal norms and judicial practice, thereby enhancing legal certainty and fairness in the resolution of civil disputes.

RESEARCH METHOD

This study adopts a normative juridical research design, which focuses on the examination of legal norms, principles, and doctrines governing private deeds as evidentiary instruments in civil litigation. The normative approach is considered appropriate because the issues under investigation primarily concern the

analysis of positive law, legal doctrines, and theoretical concepts related to the formal and substantive validity of private deeds within the Indonesian civil evidentiary system (Suyanto, 2023).

The research employs two principal approaches, namely the statutory approach and the conceptual approach. The statutory approach is conducted through a systematic review of relevant legislation, particularly the Indonesian Civil Code, with emphasis on provisions regulating written evidence and private deeds, as well as other statutory instruments related to contract law and civil procedural law. The conceptual approach is utilized to examine the views of legal scholars and prevailing doctrines concerning the evidentiary strength of private deeds, including discussions on formal validity and substantive validity as applied in judicial practice.

The legal materials used in this research are categorized into primary, secondary, and tertiary sources. Primary legal materials consist of statutory regulations that are directly relevant to the object of study, especially the Indonesian Civil Code and civil procedural law provisions. Secondary legal materials include authoritative legal textbooks, articles published in accredited national law journals, previous scholarly studies, and expert opinions addressing private deeds and civil evidence law. Tertiary legal materials comprise legal dictionaries, legal encyclopedias, and other supporting references used to clarify legal terminology and concepts employed in the analysis.

The collection of legal materials is carried out through library research by identifying, compiling, and examining relevant legal literature in accordance with the research focus. The collected materials are subsequently analyzed qualitatively using a descriptive-analytical method. This method involves explaining applicable legal provisions and correlating them with issues of formal and substantive validity of private deeds in civil evidentiary practice. The results of the analysis are then systematically organized to produce coherent and well-reasoned conclusions that align with the objectives of the study.

DISCUSSION

Concept and Formal Requirements of Private Deeds

A private deed is essentially a written document prepared by the parties concerned without the involvement of an authorized public official, such as a notary or other deed-executing officer. Within the Indonesian civil law system, private deeds are normatively recognized as lawful forms of written evidence. This recognition is reflected in Article 1874 of the Indonesian Civil Code, which affirms that signed writings may serve as evidence provided that certain legal requirements are fulfilled. Accordingly, although private deeds are not executed before a public official, they nevertheless possess legal standing within civil evidentiary proceedings (Susanto, 2018).

The formal requirements of a private deed constitute fundamental elements in determining whether a document may be classified as valid written evidence. In general, these requirements include the existence of a written form, the deliberate intention of the parties to record a legal event in writing, and the presence of the parties' signatures. The written form is the primary element, as a private deed functions as documentary evidence intended to document and preserve the parties' intentions within a legal relationship. In the absence of a written format, a statement or agreement cannot be regarded as a private deed within the framework of civil evidence law (Jayadi, 2023).

In addition to being in written form, the intention to use the document as evidence plays a crucial role in satisfying the formal validity of a private deed. Such intention may be inferred from the structure of the document, the use of binding legal language, and the inclusion of clauses that indicate the parties' desire to create legal consequences. Documents drafted without an evidentiary purpose such as personal notes or informal correspondence cannot automatically be equated with private deeds, even if they are written and signed. Therefore, the objective underlying the creation of the document serves as an important indicator in assessing compliance with the formal requirements of a private deed (Fauziannor et al., 2023).

The signatures of the parties represent a decisive formal element in private deeds. A signature functions both as a means of identification and as an expression of consent to the entire content of the document. By affixing their signatures, the parties are deemed to have understood and agreed to the provisions contained therein. In judicial practice, acknowledgment or denial of a signature has direct implications for the evidentiary strength of a private deed. When a signature is acknowledged, the deed acquires stronger probative value; conversely, when it is disputed, its authenticity must be established through other forms of evidence recognized under civil procedural law.

The clarity of the parties' identities also constitutes an inseparable component of the formal requirements of a private deed. Clear identification includes the parties' names, legal status, and capacity to perform legal acts. Ambiguity regarding identity may give rise to disputes over who is legally bound by the deed, thereby undermining its evidentiary value before the court. Consequently, the explicit and comprehensive identification of the parties is an essential formal aspect in the drafting of private deeds.

Substantive Requirements and Proof of the Contents of Private Deeds

In addition to satisfying formal requirements, a private deed must also fulfill substantive validity in order to possess strong evidentiary value in civil proceedings. Substantive validity is directly related to the

substance of the deed, namely whether the contents of the document genuinely reflect the legal event that occurred and comply with applicable legal norms. Within the framework of evidentiary law, substantive validity is a critical element because it serves to assess the material truth of the legal relationship asserted by the parties through the private deed.

The substantive validity of a private deed is generally determined by the existence of a clear legal relationship between the parties, such as a contractual agreement, an acknowledgment of debt, or a cooperation arrangement. This legal relationship must be expressly articulated in the content of the deed so as to clearly delineate the rights and obligations of each party. Furthermore, the substance of the deed must correspond to the actual legal facts. Where discrepancies arise between the factual circumstances and what is recorded in the document, the private deed may lose its evidentiary weight or be deemed incapable of representing material truth (Djafar, 2017).

From the perspective of contract law, the substantive validity of a private deed is inseparable from the fulfillment of the legal requirements for a valid agreement as stipulated in Article 1320 of the Indonesian Civil Code. The contents of the deed must be based on the free consent of the parties, executed by legally competent subjects, concern a specific object, and not contravene statutory law, morality, or public order. Failure to satisfy any of these elements may render the agreement void or voidable, thereby directly affecting the probative value of the private deed before the court (Subekti, 2014).

In civil court practice, disputes over the contents of private deeds frequently become the focal point of litigation, particularly when one party challenges the accuracy or authenticity of the substance of the document. Such challenges may take the form of allegations that the deed was executed under duress, contains material error, or does not accurately reflect the parties' actual agreement. Under these circumstances, a private deed no longer operates as conclusive evidence and must be corroborated by other forms of proof, including witness testimony, admissions by the parties, or judicial presumptions, in order to establish its material truth (Palit, 2015).

Several academic studies emphasize that judges in civil cases do not limit their assessment to the formal aspects of a deed, but also examine the substantive truth of its contents. Judges are vested with the authority to evaluate whether the substance of a private deed reflects a reasonable and logical legal relationship that is consistent with the facts revealed during the proceedings. Accordingly, substantive validity functions as a mechanism for testing the integrity and credibility of private deeds as evidentiary instruments in civil litigation (Fauziannor et al., 2023).

Evidentiary Strength of Private Deeds in Civil Proceedings

The evidentiary value of private deeds in civil litigation differs fundamentally from that of authentic deeds. Within the Indonesian civil evidentiary system, private deeds do not possess conclusive evidentiary force; rather, their probative value is relative and largely dependent on the parties' positions toward the document. This means that the strength of a private deed as evidence is primarily determined by whether the parties acknowledge or dispute the signatures and the substance of the deed (Siregar, 2017).

When a private deed is acknowledged by the signatory either expressly or implicitly it attains evidentiary force that approaches that of an authentic deed. Such acknowledgment results in the contents of the deed being presumed true and binding upon the parties, thereby enabling the judge to rely on it as a basis for adjudication. In this context, the private deed functions as strong written evidence, having satisfied both formal and substantive requirements and remaining uncontested by the opposing party (Hidayat, 2018).

Conversely, where one party denies the authenticity of the signature or challenges the substance of the private deed, its evidentiary strength is significantly diminished. Such denial prevents the deed from standing alone as sufficient proof and necessitates corroboration through other forms of evidence recognized under civil procedural law. In these circumstances, the burden of proof rests with the party submitting the deed, who must establish its authenticity and accuracy through means such as witness testimony, admissions by the opposing party, or other supporting evidence (Susanto, 2018).

In judicial practice, judges are vested with the discretion to assess the probative value of private deeds freely, based on the entirety of evidence presented during the proceedings. This assessment is not confined to formal aspects such as the existence of signatures, but also extends to the coherence of the deed's content, its consistency with the facts revealed at trial, and its relationship with other evidentiary materials. Accordingly, private deeds are evaluated contextually and do not automatically determine the outcome of a case.

Several court decisions indicate that judges tend to exercise caution when evaluating private deeds that stand alone without the support of additional evidence. This approach reflects the principle of prudence in civil evidentiary law, aimed at preventing judicial decisions from being based solely on documents whose validity remains contested. Consequently, in practice, private deeds are more effective when presented alongside other forms of evidence, thereby forming a coherent and mutually reinforcing chain of proof.

Legalization and the Enhancement of the Evidentiary Value of Private Deeds

In civil law practice, one of the commonly employed measures to enhance legal certainty and strengthen the evidentiary value of private deeds is the mechanism of legalization or *waarmerking* conducted by a notary. Legalization refers to an act performed by an authorized public official to authenticate the signatures of the parties and to confirm that the signing of the deed took place before the notary. It should be emphasized, however, that legalization does not transform a private deed into an authentic deed; rather, it provides additional assurance with respect to the formal aspects of the document.

From a juridical perspective, legalization serves to ensure certainty regarding the identity of the parties, the authenticity of their signatures, and the date on which the deed was executed. Through legalization, the likelihood of a party subsequently denying their signature is significantly reduced, as the notary directly witnesses the signing process. In the context of civil evidence, this mechanism offers a procedural advantage to the party submitting the private deed as proof, particularly in disputes concerning the formal validity of the document.

Nevertheless, the enhancement of evidentiary value achieved through legalization remains limited in scope. Legalization guarantees only the formal elements of the deed namely the authenticity of the signatories and the time of execution without extending to the substantive accuracy or truthfulness of the contents. Consequently, when disputes arise regarding the material validity or substantive correctness of the deed, legalization does not automatically render its contents indisputable before the court. In such cases, the substance of the deed must still be established through additional evidence to demonstrate its material truth.

In addition to legalization, legal practice also recognizes *waarmerking*, which involves the registration of a private deed in a notarial record without the notary witnessing the signing of the document. *Waarmerking* essentially provides confirmation of the existence of the deed as of a particular date, without guaranteeing the authenticity of the signatures or the accuracy of the contents. As a result, the evidentiary value conferred by *waarmerking* is weaker than that of legalization and continues to place the private deed within a framework that requires comprehensive judicial scrutiny during litigation.

In judicial practice, judges tend to accord a higher degree of credibility to private deeds that have undergone legalization compared to those that have not. Although such deeds do not enjoy conclusive evidentiary force comparable to authentic deeds, legalized private deeds are often perceived as more persuasive due to the reduced risk of signature denial. This practice illustrates the strategic role of legalization as a preventive mechanism to strengthen the evidentiary position of the parties in civil disputes.

CONCLUSION

Private deeds constitute lawful written evidence within the Indonesian civil law system and play a significant role in judicial evidentiary practice. However, the legal validity and evidentiary force of private deeds are not absolute; rather, they depend heavily on the fulfillment of both formal and substantive validity requirements, as well as on the parties' positions toward the deed. Formal validity encompasses the existence of a written form, the intention to use the document as evidence, the signatures of the parties, and the clear identification of the legal subjects involved. Compliance with these elements forms the preliminary basis for qualifying a document as a valid private deed.

In addition, substantive validity holds equally important significance, as it relates to the truthfulness of the deed's content and its conformity with the actual legal facts. The substance of a private deed must accurately reflect a genuine legal relationship and satisfy the legal requirements for a valid agreement as stipulated in the Indonesian Civil Code. Any inconsistency between the content of the deed and the factual circumstances, or the presence of defects of consent or legal violations, may weaken or even nullify the deed's evidentiary value before the court.

In civil litigation practice, the evidentiary strength of private deeds is relative and largely determined by whether the parties acknowledge or deny the document. Acknowledged private deeds carry strong probative value, whereas disputed deeds require corroboration through other lawful forms of evidence to establish both their formal and substantive validity. Efforts to enhance evidentiary strength through notarization mechanisms such as legalization or *waarmerking* may increase certainty with respect to formal aspects, but they do not convert private deeds into authentic deeds nor do they guarantee the substantive truth of their contents.

Accordingly, private deeds remain important legal instruments in civil evidentiary practice; however, their use must be accompanied by a comprehensive understanding of their limitations and validity requirements. The fulfillment of formal and substantive conditions, together with appropriate evidentiary strategies, is essential to ensure the effectiveness of private deeds in promoting legal certainty and justice in civil dispute resolution.

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