

Contractual Freedom, Legal Certainty, and the Enforceability of Notarial Deeds: A Normative Analysis

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The principle of freedom of contract is a fundamental doctrine of contract law that allows parties to determine the terms of their agreements within the limits imposed by statutory law, public policy, morality, and good faith. In civil law systems, agreements are commonly formalized through notarial deeds to ensure legal certainty and strong evidentiary value. This study employs a normative legal approach by examining legislation, legal doctrines, and the regulatory framework governing notarial practice. The findings indicate that a notarial deed attains authentic status only when it complies with the formal and procedural requirements prescribed by law. However, its evidentiary authority does not validate agreements that suffer from defects of consent, lack of legal capacity, unlawful objects, or illegal causes. Such agreements remain subject to judicial review and may be declared void or voidable. This study concludes that freedom of contract and the legal enforceability of notarial deeds are complementary concepts: contractual autonomy governs the formation of agreements, whereas notarial deeds strengthen legal certainty without legitimizing contracts that violate substantive legal requirements.

Keywords: Freedom of Contract; Contract Law; Notarial Deed; Legal Certainty; and Evidentiary Force.

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1. Introduction

Agreements constitute one of the most fundamental legal instruments in private law because they establish legal relationships through which parties voluntarily determine their respective rights and obligations. As the primary mechanism governing civil transactions, contract law recognizes the principle of private autonomy, enabling individuals to regulate their legal affairs according to their mutual intentions. This concept is reflected in Article 1313 of the Indonesian Civil Code, which defines an agreement as a legal act by which one or more persons bind themselves to one or more other persons. The provision confirms that contractual relationships originate from the mutual consent of the parties and that agreements function as the legal basis for creating enforceable rights and obligations. The autonomy granted to contracting parties is embodied in the principle of freedom of contract, one of the cornerstones of modern contract law. This principle permits parties to determine whether to conclude a contract, select their contractual counterparts, negotiate contractual terms, determine the form of the agreement, and regulate the manner of its implementation. Nevertheless, contractual autonomy is not unlimited. It operates within a normative framework established by statutory law, mandatory legal provisions, public order, morality, and the principle of good faith. Consequently, freedom of contract should be understood as a legally regulated freedom rather than unrestricted private discretion.

The legal foundation of contractual freedom in Indonesia is embodied in Article 1338 paragraph (1) of the Civil Code, which provides that all legally concluded agreements shall bind the parties as law (*pacta sunt servanda*). This provision recognizes the binding force of agreements while simultaneously emphasizing that contractual autonomy is conditioned upon compliance with legal requirements. The phrase "legally

concluded agreements" demonstrates that contractual freedom is inseparable from legality. Agreements acquire binding legal force only when they satisfy the substantive and procedural requirements prescribed by law and are performed in good faith. To strengthen legal certainty in civil transactions, contractual agreements are frequently embodied in notarial deeds. Unlike private agreements, a notarial deed constitutes an authentic deed prepared by or before a duly authorized notary in accordance with statutory formalities. The use of notarial deeds provides significant legal advantages, including certainty regarding the identity of the parties, the date of execution, the contents of the agreement, and superior evidentiary value in judicial proceedings. Consequently, notarial deeds play an important role in minimizing legal disputes and enhancing transactional certainty in commercial and civil practice.

The authority of notaries to prepare authentic deeds is regulated under Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary. Article 1 paragraph (1) defines a notary as a public official authorized to execute authentic deeds and exercise other powers conferred by law, while Article 1 paragraph (7) specifies that a notarial deed is an authentic instrument executed by or before a notary in accordance with legally prescribed forms and procedures. These provisions demonstrate that the authenticity of a notarial deed derives not merely from the involvement of a notary but from strict compliance with statutory procedural requirements. Accordingly, notaries perform not only an administrative function but also an important public legal function in ensuring legal certainty, order, and evidentiary reliability.

Despite the privileged evidentiary status of authentic deeds, a common misconception persists that agreements executed before a notary are automatically valid and immune from judicial challenge. Such an interpretation is inconsistent with the Indonesian Civil Code. Article 1320 establishes four essential requirements for contractual validity, namely mutual consent, legal capacity, a definite object, and a lawful cause. These substantive requirements apply equally to agreements executed privately and those embodied in notarial deeds. Consequently, the authentic nature of a notarial deed cannot validate agreements affected by defects of consent, incapacity, unlawful objects, or illegal causes. Furthermore, Article 1337 of the Civil Code explicitly provides that a contractual cause is unlawful if it is prohibited by law or contrary to morality or public order. This provision constitutes an important normative limitation on contractual autonomy and confirms that freedom of contract cannot be exercised to legitimize agreements that violate mandatory legal norms. Accordingly, the function of a notarial deed is to strengthen legal certainty through authentic evidentiary value rather than to cure substantive legal defects contained within the underlying contractual relationship.

Although previous studies have extensively examined the doctrine of freedom of contract and the evidentiary authority of authentic deeds, these issues are generally discussed separately. Limited scholarly attention has been devoted to explaining how contractual freedom, legal certainty, and the enforceability of notarial deeds interact within a coherent normative framework. Existing literature tends to emphasize either the autonomy of contracting parties or the procedural authority of notarial instruments without comprehensively analyzing the legal limits governing the enforceability of authentic deeds when the underlying agreement fails to satisfy substantive legal requirements. This gap has become increasingly relevant in contemporary civil and commercial practice, where legal certainty must be balanced with judicial oversight and substantive justice. This study addresses that gap by conducting a normative legal analysis of the relationship between contractual freedom, legal certainty, and the enforceability of notarial deeds within the Indonesian civil law system. The research examines statutory regulations, legal doctrines, principles of contract law, and relevant jurisprudence to evaluate the legal conditions under which authentic deeds obtain binding legal force and the circumstances in which such deeds may lose their evidentiary authority or become subject to judicial annulment.

The study contributes to contemporary contract law scholarship by arguing that contractual freedom and the legal enforceability of notarial deeds are complementary legal concepts rather than autonomous doctrines. While contractual autonomy provides the normative basis for establishing private legal relationships, authentic deeds function as instruments for enhancing legal certainty and evidentiary reliability. However, neither contractual autonomy nor authentic form can override mandatory legal requirements governing contractual validity. By clarifying the relationship between these principles, this study contributes to the development of private law theory and offers practical guidance for notaries, legal practitioners, judges, and policymakers in strengthening legal certainty while preserving the integrity of Indonesian contract law. Based on this background, the study addresses the following research questions: How does the principle of contractual freedom influence the formation and legal validity of agreements embodied in notarial deeds under Indonesian civil law?

To what extent does the authentic nature of a notarial deed determine its legal enforceability, and what normative limitations govern its validity within the Indonesian legal system?

2. Research Methods

This study adopts a normative juridical research design to examine the legal relationship between contractual freedom, legal certainty, and the enforceability of notarial deeds within the Indonesian civil law system. Normative juridical research is appropriate because the study focuses on the analysis of positive legal norms, legal principles, doctrines, and conceptual frameworks governing contractual validity and the evidentiary authority of authentic deeds rather than on empirical observations or field-based investigations. The objective is to evaluate how statutory provisions and legal doctrines regulate the formation of agreements, define the limits of contractual autonomy, and determine the legal force of notarial deeds. To achieve these objectives, the research employs two complementary approaches: the statutory approach and the conceptual approach. The statutory approach involves a comprehensive examination of the relevant legislative framework, including the Indonesian Civil Code (*Burgerlijk Wetboek*), particularly Articles 1313, 1320, 1337, and 1338 concerning contractual formation, validity, and enforceability. The analysis also considers Law Number 30 of 2004 concerning the Office of Notary, as amended by Law Number 2 of 2014, which regulates the authority of notaries, the formal requirements of authentic deeds, and the legal procedures governing their execution. Where relevant, applicable provisions of Indonesian civil procedural law concerning documentary evidence are also examined.

The conceptual approach is utilized to analyze the theoretical foundations underpinning the study. Specifically, the research explores the doctrines of freedom of contract, private autonomy, consensualism, *pacta sunt servanda*, good faith, legal certainty, and the legal concept of authentic deeds. These concepts are examined to explain the normative relationship between contractual autonomy and the evidentiary authority of notarial instruments within contemporary contract law. The legal materials employed in this study consist of primary, secondary, and tertiary legal sources. Primary legal materials include the Indonesian Civil Code, the Notary Law, and other relevant statutory provisions governing contracts, authentic deeds, and documentary evidence. Secondary legal materials comprise academic books, peer-reviewed journal articles, legal commentaries, and scholarly opinions concerning contract law, notarial law, civil procedure, and the law of evidence. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other authoritative reference sources that facilitate the interpretation of legal terminology and concepts. The collected legal materials are analyzed using qualitative legal analysis through three complementary methods of legal interpretation. Grammatical interpretation is applied to determine the ordinary textual meaning of statutory provisions. Systematic

interpretation is employed to examine the relationship between the provisions of the Civil Code governing contractual obligations and the statutory framework regulating notarial deeds under the Notary Law, thereby ensuring consistency within the Indonesian legal system. Furthermore, teleological interpretation is used to identify the legislative objectives underlying the regulation of authentic deeds, particularly the promotion of legal certainty, legal protection, and evidentiary reliability in contractual relationships.

The analytical process involves identifying the legal norms governing contractual freedom, evaluating the statutory requirements for the validity of agreements and authentic deeds, and assessing the extent to which procedural compliance in executing a notarial deed affects its legal enforceability. Particular attention is given to the interaction between the formal authenticity of notarial deeds and the substantive validity of the underlying agreements. The findings are synthesized to develop a normative explanation of how contractual autonomy, legal certainty, and judicial review collectively determine the legal enforceability of notarial deeds within the Indonesian civil law system. This methodological framework enables a comprehensive evaluation of the extent to which authentic deeds strengthen contractual certainty while remaining subject to substantive legal requirements imposed by mandatory legal norms, public policy, morality, and the principle of good faith. Through this approach, the study provides a coherent normative analysis of the complementary relationship between contractual freedom and the legal enforceability of notarial deeds in Indonesian private law.

3. Research Results And Discussion

The Position of the Principle of Freedom of Contract in the Formation of Notarial Deeds of Agreement

The principle of freedom of contract is a principle that gives legitimacy to parties to form legal relationships based on their wishes. In civil law, the will of the parties is an important element because agreements are basically born from agreements. Without agreement, there is no valid agreement. However, the agreement cannot stand alone. Agreements must arise from free will, be carried out by competent parties, regarding certain objects, and be based on reasons that are not prohibited.

Article 1321 of the Civil Code states:

"No agreement has any force if it is given by mistake or obtained by force or fraud."

This provision emphasizes that the agreement that forms the basis for a contract must be genuine. If the agreement is given due to error, coercion, or fraud, the will of the parties is defective. In such circumstances, the agreement can be annulled. This also applies to notarial agreements. This means that even if an agreement is documented in a notarial deed, it can still be challenged if a defect in will is proven. Freedom of contract is also limited by the object of the agreement. The parties are not free to agree on everything without limits. The object of the agreement must be specific, determinable, and within the legal traffic that can be traded.

Article 1332 of the Civil Code states:

"Only tradable goods can be the subject of an agreement."

These provisions indicate that not all things can be the subject of an agreement. Objects prohibited by law, non-tradeable, or contrary to certain legal requirements cannot be the subject of an agreement. Therefore, if the parties include a prohibited object in a notarial deed, the deed cannot transform the prohibited object into a valid one. In this case, the notary must be careful to ensure that the object of the agreement does not conflict with the law.

Article 1335 of the Civil Code states:

"An agreement without cause, or made based on a false or forbidden cause, has no force."

This article emphasizes that causes or causes in agreements have a very important position. Agreements made without valid reasons have no legal force. False reasons or prohibited reasons cause the agreement to lose its basis for validity. Therefore, in the context of a notarial deed, it is not enough for a notary to simply record the wishes of the parties formally, but must also pay attention to whether the wishes contain a legitimate legal purpose or whether they conceal an intention that is contrary to the law.

Article 1339 of the Civil Code states:

"Agreement is not only binding on what is expressly stipulated in it, but also on everything that by its nature requires agreement based on justice, custom, or law."

This provision shows that agreements are not only judged from what is written explicitly, but also from justice, customs and laws inherent in the nature of the agreement. Thus, the principle of freedom of contract should not be understood narrowly as the freedom to formulate any clause. Agreements must always be in accordance with contractual justice, propriety, custom, and applicable legal norms. In this regard, notarial deeds play a crucial role. On the one hand, notarial deeds respect the parties' freedom to choose a form of agreement that is more evidentially valid. On the other hand, notarial deeds also entail more serious legal responsibilities because they are drawn up before a public official. The presence of a notary in the drafting of a deed should not be understood merely as an administrative formality, but as a legal mechanism to ensure that the agreement is drawn up in an orderly, clear, and legally compliant manner.

In Article 15 paragraph (1) of the Notary Position Law, it is stated:

"A notary has the authority to make authentic Deeds regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law."

These provisions show that the notary's authority is very broad, including making authentic deeds regarding agreements desired by the parties. However, this authority does not mean that a notary is authorized to make all forms of agreements without regard to legal limitations. The phrase "as long as the creation of the deed is not delegated or excluded to another official or person as determined by law" indicates that the notary's authority remains limited by law.

In Article 16 paragraph (1) letter a of the Notary Position Law, it is stated:

"In carrying out his/her duties, a Notary is obliged to:

- a. act in a trustworthy, honest, thorough, independent, impartial manner, and protect the interests of the parties involved in legal actions."*

These norms emphasize that notaries are not just writers of deeds. Notaries are required to act in a trustworthy, honest, thorough, independent and impartial manner. This obligation places the notary as a public official who must maintain the balance of the interests of the parties. When making a deed of agreement, the notary must ensure that the parties understand the contents of the agreement, have legal skills, act in the correct position, and do not include clauses that clearly conflict with the law. The position of the principle of freedom of contract in notarial deeds is therefore limited and responsible. The parties are free to determine the contents of the agreement, but this freedom must be within the framework of the law. A notarial deed provides an authentic form of the will of the parties, but must not be a refuge for substantially flawed agreements. If the contents of the agreement conflict with law, morality, public order or good faith, then the principle of freedom of contract cannot be used as a justification.

Thus, freedom of contract in a notarial deed must be understood as freedom governed by legal norms. This freedom is valid as long as it complies with Article 1320 of the Civil Code, does not violate Article 1337 of the Civil Code, is carried out in good faith as per Article 1338 of the Civil Code, and is documented in a deed in accordance with the Notary Law. Beyond these limits, freedom of contract loses its legal legitimacy.

Legal Strength of Deeds of Agreement Made Notarially and Limits of Their Validity

A notarial deed of agreement is essentially an authentic deed. This status arises because the deed is drawn up by or before a notary public official, as an authorized public official, in a form prescribed by law, and at the official's place of authority. An authentic deed has important value in the law of evidence because it provides certainty regarding the identity of the parties, the time of drafting, the declaration of will, and the content of the legal act outlined therein.

Article 1867 of the Civil Code states:

"Written proof is done with authentic writing or with private writing."

These provisions distinguish between two types of written evidence: authentic writings and private writings. Notarial deeds fall into the category of authentic writings as long as they meet the requirements stipulated by law.

Article 1868 of the Civil Code states:

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

Based on these provisions, there are three main elements of an authentic deed. First, the deed must be drawn up in a form prescribed by law. Second, the deed must be drawn up by or before a public official. Third, the public official must be authorized to draw up the deed at the location where it is drawn up. If any of these elements is not met, the authenticity of the deed may be questioned. In the context of notarial deeds, the form of the deed is regulated by the Notary Public Law. The structure of the deed is not merely a technical matter, but rather a formal requirement that affects its evidentiary validity. A notarial deed must contain a beginning, body, and end or closing section.

In Article 38 paragraph (1) of the Notary Position Law it is stated:

"Every Deed consists of:

- a. beginning of the Deed or head of the Deed;*
- b. body of the Deed; and*
- c. end or closing of the Deed."*

Furthermore, Article 38 paragraph (3) of the Notary Law states:

"The Deed Body contains:

- a. full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;*
- b. information regarding the acting position of the face;*
- c. the contents of the Deed which constitute the wishes and desires of the interested parties;*
And
- d. full name, place and date of birth, as well as occupation, position, position and residence of each identifying witness."*

These provisions indicate that a notarial deed must be clearly structured. The identities of the parties, their respective positions, the contents of the deed, and the witnesses are all crucial elements in establishing the deed's authenticity. The legal force of a notarial deed depends not only on the notary's signature, but also on the fulfillment of formal requirements as stipulated by law. The legal force of a notarial deed lies

primarily in its evidentiary power. In civil evidence law, an authentic deed provides complete proof for the parties, their heirs, and those who obtain rights from them regarding the contents of the deed.

Article 1870 of the Civil Code states:

"For the interested parties and their heirs or for those who receive rights from them, an authentic deed provides perfect proof of what is contained therein."

This perfect evidentiary power means that the judge must in principle accept what is formally contained in an authentic deed as true, as long as there is no legal proof to the contrary. A notarial deed provides certainty regarding the parties' presence or appearance, their stated will, their signing of the deed, and that the deed was made at the time and before the authorized official.

Doctrinally, the evidentiary power of a notarial deed can be seen in three forms. First, external evidentiary power, namely the deed's ability to prove itself as an authentic deed from its external form. As long as the deed appears to have been drawn up by a notary, contains the form of the deed as stipulated by law, and is not visibly flawed, then the deed is considered an authentic deed until proven otherwise. Second, formal evidentiary power, namely the power of the deed to prove that the legal acts and statements written in the deed were actually carried out or stated before a notary. In this case, the deed proves the formal truth regarding the date, place, identity of the appearing party, position of action, reading of the deed, signing, and presence of witnesses.

Third, material evidentiary force, namely the power of the deed to prove the truth of the parties' statements as long as they are directly related to the subject matter of the deed. However, this material force should not be understood in an absolute sense. A notary essentially reflects the parties' wishes in the deed. Therefore, if it is later proven that the parties' statements are untrue, there is legal malfeasance, or there is a flaw in the will, the substance of the agreement can still be tested through legal proceedings.

Article 1871 of the Civil Code states:

"However, an authentic deed does not provide perfect evidence of what is contained in it as mere narration, unless what is narrated has a direct relationship with the main contents of the deed."

This article is important because it demonstrates that the evidentiary power of an authentic deed is not unlimited. Not everything stated in the deed has perfect evidentiary value, especially if it is merely a statement or narrative that is not directly related to the deed's main content. Therefore, the legal force of a notarial deed must be read proportionally. Furthermore, a notarial deed can also lose its authentic quality if there are defects in the official's authority, competence, or form of the deed. This is emphasized in Article 1869 of the Civil Code.

Article 1869 of the Civil Code states:

"A deed that cannot be treated as an authentic deed, either because of the lack of authority or incompetence of the public official concerned or because of defects in its form, has the force of private writing if signed by the parties."

This provision is the basis that a deed that is formally defective cannot be maintained as an authentic deed. If the notary is not authorized, the official who made the deed is incompetent, or the deed does not comply with the provisions of the law, then the deed can be downgraded to a private deed as long as it is signed by the parties. The legal consequences are very serious because the deed loses its authentic evidentiary force. The same is also emphasized in the Notary Law. Article 41 of the Notary Law states:

"Violations of the provisions as referred to in Article 38, Article 39, and Article 40 result in the Deed only having evidentiary force as a private deed."

These provisions indicate that violations of the deed form, the requirements for appearing before, and the requirements for witnesses can result in a notarial deed only having the force of a private deed. Thus, the Contractual Freedom, Legal Certainty, and the Enforceability of Notarial Deeds: A Normative Analysis. Mochammad

formalities in making a notarial deed are not merely administrative procedures, but rather legal requirements that determine the quality of the deed's evidence. Article 16 paragraph (9) of the Notary Law states:

"If one of the conditions as intended in paragraph (1) letter m and paragraph (7) is not fulfilled, the Deed in question only has evidentiary force as a private deed."

These provisions relate to the obligation to read and sign the deed. Reading the deed is crucial for ensuring that the parties fully understand, understand, and agree to its contents before signing it. If the deed is not read or its replacement procedure is not carried out according to the provisions, the deed may lose its authentic force. Another limitation that must be considered is that notarial deeds do not always have executory force. Notarial deeds generally have full evidentiary force, but cannot automatically be executed like a court decision. Executorial force is only attached to certain grosse deeds that are given such force by law, for example, grosse deeds of debt acknowledgement that contain certain irah. Therefore, a distinction must be made between evidentiary force and executory force. Ordinary notarial agreement deeds are generally strong as evidence, but enforced enforcement of the agreement's contents still requires legal mechanisms if one party is in default.

Thus, the legal force of a notarial deed can be formulated in two ways. On the one hand, a notarial deed has strong legal force because it is an authentic deed and provides perfect evidence for the parties. This deed is an important instrument for ensuring legal certainty in contractual relations. On the other hand, the force of a notarial deed is not absolute. The deed can still be challenged, annulled, lose its authentic force, or only have value as a private deed if the substance of the agreement is flawed or the procedure for its creation violates statutory provisions. Therefore, a notarial agreement should not be viewed solely on its form, but must also be tested on its substance. The notarial form strengthens the evidence, but does not eliminate the obligation to fulfill the requirements for a valid agreement. A notarial deed is not a tool to validate an unlawful agreement. A notarial deed is a legal instrument to prove that an agreement is valid, made in an orderly manner, and is legally accountable.

4. Conclusion

The principle of freedom of contract has an important position in the formation of notarial deeds of agreement. This principle gives the parties the freedom to determine the wishes, content, form and legal consequences of the agreement they make. However, this freedom is not absolute. Freedom of contract is only valid if it is exercised within the limits of Article 1320 of the Civil Code, and does not conflict with the law, morality, public order, decency and good faith. In notarial deeds, the freedom of the parties must still be controlled by the function of the notary as a public official who is obliged to act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of the parties in legal actions.

A notarized agreement has the legal force of an authentic deed as long as it is drawn up by or before an authorized notary, in the form prescribed by law, and according to the procedures specified in the Notary Law. A notarized deed has external, formal, and material evidentiary power, and provides perfect evidence for the parties regarding what is contained therein. However, this power is not absolute. If the agreement contains a flawed will, is made by an incompetent party, has an illegitimate object, or is for a prohibited reason, then the notarized deed can still be legally challenged. Likewise, if there is a violation of the form and procedures for making the deed, then the deed can be downgraded to an underhand deed. Thus, a notarized deed provides certainty and evidentiary power, but cannot cover up or justify an agreement that is contrary to law.

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