AHKAM
Jurnal Hukum Islam dan Humaniora

p-ISSN: 2964-6332
e-ISSN: 2964-6340

Terindeks: Dimensions, Scilit, Lens, Semantic, Crossref Garuda, Google, Base, etc.

https://doi.org/10.58578/ahkam.v4i4.8454

Legal Status and Consequences of Civil Agreements Made without a Notarial Authentic Deed

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Article Info:

Submitted:	Revised:	Accepted:	Published:
Nov 12, 2025	Dec 5, 2025	Dec 17, 2025	Dec 22, 2025

Abstract

Authentic acts performed by notaries play a crucial role in the Indonesian civil law system because they provide legal certainty and evidentiary guarantees for the parties concerned. Although notaries, as public officials, possess the legal authority to codify the intentions of the parties into lawful deeds with full evidentiary weight as stipulated in Article 1868 of the Civil Code, Indonesian civil law does not require all agreements to be formalized as authentic notarial deeds as long as they comply with the validity requirements in Article 1320 of the Civil Code. In practice, civil agreements without notarial validation are frequently made and documented as handwritten or private deeds, a practice that raises legal challenges in the event of disputes, particularly regarding the legal validity of the agreement and its evidentiary force in court. This study aims to analyze the legal status of civil agreements concluded without an authentic notarial deed and the consequent legal ramifications from the perspectives of civil law and evidentiary law. Employing normative legal research, the study uses statutory and conceptual approaches, supported by an examination of legal concepts and relevant court decisions. The findings demonstrate that a civil agreement without an authentic notarial deed remains

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legally valid and binding on the parties as long as it fulfills the substantive requirements for validity; however, it lacks comprehensive evidentiary strength because it does not meet the external, formal, and material standards characteristic of an authentic deed. As a result, the parties face weaker legal protection, reduced legal clarity, and a higher potential for disputes. The study concludes that the use of authentic notarial deeds is an essential instrument for preventing legal problems and ensuring legal certainty and clarity in civil relations.

Keywords: Civil Agreements; Notarial Authentic Deeds; Private Deeds; Evidentiary Law; Legal Certainty

INTRODUCTION

The rise of modern civilization has led to increasingly complex civil law exchanges stemming from social, economic, and commercial activities. The legal relationship is often articulated by a contract that delineates the rights and obligations of the parties involved. (Ratna, 2025). Agreements are today seen not just as formal contracts, but as legal instruments that fulfill both preventive and punitive functions, designed to preempt issues and provide a basis for legal redress in the case of disputes. (Rahim, 2022).

In the early stages of society's evolution, the affirmation of civil law relations primarily relied on the statements of witnesses present at the legal event. This kind of evidence becomes increasingly insufficient over time, especially when long-term disputes arise, and witnesses become unavailable due to death, relocation, or inability to be found. This situation highlights the importance of written documentation as proof that guarantees continuity and clarity in civil law interactions. (Handriani & Mulyanto, 2021).

Indonesia's civil law system emphasizes written evidence as the principal type of evidence in the adjudication of civil cases. (Source, 2014). A genuine deed has the highest significance among written evidence, since it is performed by or in the presence of a legally recognized public authority. An authentic deed guarantees the accuracy of the parties' names, their stated purposes, the time and place of the deed, and the procedures involved in its formation. (Taliwongso, 2022). This duty serves as an essential mechanism for ensuring legal clarity and protecting the parties concerned.

In the Indonesian civil law system, written evidence has a crucial role in civil adjudication. Among written documents, genuine deeds provide the greatest evidential value

since they are executed by or in the presence of a legally authorized public authority. Genuine documents provide formal precision about the identities of the parties, the articulation of their intents, and the time and location of the legal act, thereby functioning as a fundamental tool for legal certainty.

Recent research indexed by Scopus has underscored the strategic function of notaries in the evidential process within civil law regimes. Begichev and Frolova emphasize that notarial tasks often overlap with judicial procedures in safeguarding and maintaining legally relevant facts, establishing notaries as pivotal figures in assuring evidential integrity and mitigating evidentiary conflicts in legal proceedings. (Begichev & Frolova, 2023).

Notaries, as public officials, possess the legal authority to execute lawful deeds using prescribed forms and procedures. The notary's presence is to ensure impartiality, prudence, and legal clarity in all activities delineated in the deed. (Pratama et al., 2022). The notary not only transcribes the parties' intentions into written form but is also required to ensure that the agreement's content is really understood and willingly accepted by the parties, free from force, error, or fraud. (Fahmi, 2024). Documents issued by or in the presence of a notary are often expected to alleviate issues and provide legal clarity in the event of disputes. (Octavia & Rahayu, 2025).

Indonesian civil law does not require that all agreements be formalized as legitimate notarial deeds. Article 1320 of the Civil Code asserts that the validity of a contract depends on the fulfillment of subjective and objective criteria, namely, the consent of the parties, legal capacity, recognizable objectives, and legitimate justifications. (Pradistya, 2022). The norm does not need a specific form of agreement for legality, save for certain legal actions specifically mandated by law. Civil agreements signed without an original notarial deed maintain legal validity, provided they fulfill these four criteria. (Scott, 2010).

The experience of legal life illustrates that civil agreements without a valid notary deed, sometimes referred to as deeds under hand, are widespread throughout the community. (Fauziannor et al., 2025). Factors like as ease, cost-effectiveness, and a lack of understanding of legal concepts often serve as the key incentives for participating in a clandestine arrangement (Hertanto & Djajaputra, 2024). This arrangement may seem simple and effective at first, but it might result in legal issues when the connection between the parties declines. (Agus Yudha, 2019).

Legal complications arise when a civil transaction without a notary's authentic deed gets disputed in court. The fundamental difference between a genuine deed and a deed under hand is in its evidentiary capacity. (Lidya Christina Wardhani, 2017). A genuine deed has external, formal, and material evidential authority that obligates the judge until disproven. (Sasauw, 2015). Conversely, the deed in question lacks intrinsic evidential power, relying significantly on the parties' admissions and the judge's assessment during the trial.

Judicial precedent indicates that agreements without an actual deed are more susceptible to challenges, particularly where one party contests the existence, substance, or signature of the agreement. (AIMMAH, 2025). This situation indicates a substantial disparity between the normative legitimacy of the agreement and the legal clarity over the evidential dimension. An agreement may be deemed legitimate under civil law; nonetheless, it may not provide ideal legal protection without robust proof. (Susanti, 2024). Existing legal studies typically analyze either the normative validity of civil agreements or their evidentiary strength in judicial practice in isolation, resulting in a conceptual void regarding the operation of legally valid agreements lacking notarial deeds under evidentiary examination in court.

The distinction between normative validity and evidential force is often misunderstood by society. This misconception leads to the belief that an agreement without a notarized deed is void, despite the primary issue being evidential rather than the agreement's legitimacy. (Damayanti, 2025). This circumstance renders the parties susceptible to legal ambiguity when disagreements are adjudicated via judicial systems.

A study of the legal status of civil agreements executed without an official notary deed within the Indonesian civil law system is essential. Furthermore, an examination of the legal ramifications of such agreements, especially concerning their legitimacy and evidentiary weight in court, is essential for a comprehensive and balanced understanding. This study aims to comprehensively elucidate the positioning of agreements under Indonesian civil law that lack notary-authenticated deeds, together with the associated juridical ramifications in judicial practice.

This study presents a unique contribution by merging the examination of contractual validity under Article 1320 of the Civil Code with the evidentiary principles about authentic and private deeds, thus elucidating the dual legal status of civil agreements executed without notarial authentication in Indonesian judicial practice.

METHODS

This paper examines the legal status and ramifications of civil agreements made without a notarial deed under Indonesian civil law using a normative legal research technique. The study examines positive legal norms, concepts, and doctrines regulating agreement validity and evidentiary value.

This analysis uses legislative and conceptual techniques. A systematic study of pertinent provisions in the Indonesian Civil Code and Law on the Notary Position is the statutory method. The conceptual method analyzes basic legal principles, including consensualism, nullity, and annulment of agreements, and civil procedural law's evidential strength of deeds.

To reinforce and contextualize normative legal arguments, chosen court judgments relevant to the study concerns are analyzed using a restricted case method. A complete literature study provided primary, secondary, and tertiary legal sources for this inquiry. The normative analysis is accurate and reliable since these sources are authoritative and legally binding. Select legislative provisions and court judgments that are directly relevant to the legal problems under study are analyzed in normative legal research.

By linking legal norms with legal theory and judicial practice, legal interpretation and systematic reasoning qualitatively and prescriptively analyze legal materials. Analysis results are meant to address research questions normatively. This study uses only publicly available legal materials and does not involve humans; thus, it does not need ethical approval. The study focused on Indonesian civil law from 2024 to 2025.

RESULTS

This section delineates the principal normative conclusions about the legal status and evidential implications of civil agreements entered without an authentic notarial deed under Indonesian civil law. The results are based on the legislative provisions of the Civil Code and their implementation in court practice.

The Indonesian Civil Code establishes the legitimacy of a civil agreement based on the fulfillment of the criteria outlined in Article 1320, which includes mutual consent, legal ability, a definite purpose, and a justifiable reason. The Civil Code does not mandate a formal

criterion for the legitimacy of an agreement, save for certain legal activities explicitly governed by statute law.

Civil agreements entered without a formal notarial deed remain legally legitimate and enforceable by the parties, as long as all subjective and objective conditions are met. The lack of a notarial deed does not invalidate the legal connection established by the agreement, nor does it inherently make the agreement void under Indonesian civil law.

Written evidence is acknowledged as a legitimate form of proof according to Article 1866 of the Civil Code. Civil agreements conducted without a formal notarial deed are often documented in private contracts. Such papers serve as textual proof but lack the evidential weight of legitimate deeds. To elucidate the normative difference between contractual validity and evidential strength, together with the legal status of genuine and private deeds, the principal results are encapsulated in Table 1 below.

Table 1. Legal Position of Civil Agreements Without an Authentic Notarial Deed under Indonesian Civil Law

Legal Aspect	**Without a Notarial Deed**	**With an Authentic Notarial Deed**
Contract validity	Valid if Art. 1320 fulfilled	Valid
Evidentiary force	Limited, dependent on acknowledgment	Full (external, formal, material)
Burden of proof	On the asserting party	On the contesting party
Legal certainty	Relatively weak	Strong
Risk of dispute	High	Low

An authentic deed, as stipulated in Article 1868 of the Civil Code, is completed in the mandated legal format by or in the presence of a qualified public official and has binding evidential weight in accordance with Article 1870 of the Civil Code. In contrast, a private deed has no intrinsic outward or formal evidential authority. The authenticity of the signature and the substance of the agreement rely on the parties' acceptance. In the case of denial, the document necessitates more evidence, and the onus of proof rests with the party invoking the agreement.

Judicial practice demonstrates the implementation of these normative norms. In Decision Number 87/Pdt.G/2019/PN. Sel of the Selong District Court, the judges evaluated a civil agreement formed without sufficient clarification to one of the parties

involved. The court recognized instances of deceit and determined that the agreement failed to meet the legal criterion of voluntary assent.

The court deemed the agreement and all associated legal documents regarding the contested item to be null and devoid of legal significance. This ruling illustrates that the mere presence of a written agreement, even if documented, does not preclude court annulment where legal deficiencies are shown.

DISCUSSION

1. Legal Status of Civil Agreements Made Without a Notary Authentic Deed in the Indonesian Civil Law System

The legal validity of an agreement under the Indonesian civil law framework is fundamentally dictated by the satisfaction of the legal prerequisites outlined in Article 1320 of the Civil Code (Ali et al., 2022). This article underscores that the enforceability of an agreement depends on four principal elements: the mutual consent of the parties, the capacity to engage in legal activities, specific purposes, and lawful reasons. (Sopiani et al., 2024). Indonesian civil law indicates that the form of an agreement is not a decisive determinant in its legitimacy, save in certain instances explicitly mandated by law. (Wahid et al., 2022).

This notion aligns with consensualism, which establishes agreement as the foundation for the initiation of an interaction. The implementation of this concept establishes that a civil agreement creates a binding legal connection between the parties, even in the absence of a legitimate notary deed. (Jabalnur et al., 2024). Provided that the subjective and objective requirements are satisfied, the agreement is legally binding and establishes rights and responsibilities for the parties, irrespective of whether it is documented in writing or conveyed verbally. (Sari, 2019).

Nevertheless, the legal status of the agreement extends beyond mere normative legitimacy. In civil dispute resolution, agreements are often evaluated via an evidence process in court. At this juncture, the form of the agreement attains considerable legal significance. Civil agreements executed without a notary's genuine deed are often documented as a handwritten deed. The document in question is acknowledged as written evidence as per Article 1866 of the Civil Code, although it lacks the same evidential weight as an original deed. (Palit, 2015).

The primary distinction is like substantiating a genuine action. An authentic deed, as delineated in Article 1868 of the Civil Code, is a document executed in the legally approved format by or in the presence of a duly authorized public official. The legal implication of this kind is the imposition of absolute and obligatory evidentiary strength as stipulated in Article 1870 of the Civil Code. The court is mandated to acknowledge and evaluate the contents of the deed as genuine until disproven by credible counter-evidence.

The authority to validate a genuine deed is based on three primary criteria. The exterior element guarantees that the deed is recognized as legitimate and remains valid until disproven. The formal feature ensures clarity about the method for executing the deed, including the time, location, identification of the parties, and the participation of the notary in compliance with legal stipulations. The material element guarantees that the declarations and intentions of the parties articulated in the deed are deemed accurate and obligatory for both the parties involved and any third parties who acquire rights from them.

Conversely, the civil agreement specified in the present deed does not inherently possess these three tiers of evidence. The legitimacy of the signature and the accuracy of the agreement's content are significantly contingent upon the acknowledgment of the parties involved. If a party contests the signature or substance of the agreement, the document loses its full evidentiary value and requires supplementary proof. The onus of evidence rests solely on the side advocating for the agreement.

The disparity in evidential nature places a civil agreement without a genuine notary deed in a dualistic status. The agreement is lawful and legally enforceable as it fulfills the requisite criteria, but it has a diminished standing when subjected to evidential scrutiny in court. The legal status of the agreement no longer ensures ideal legal certainty, particularly if one party contests the disagreement. (Ardhan et al., 2025).

Judicial experience indicates that courts are inclined to adjudicate more stringently agreements executed without a genuine notarial deed. In a dispute, the agreement remains a legal occurrence, although its binding efficacy is largely contingent upon the evidential capacity of the parties involved. (Vicky et al., 2024). The legal efficacy of the agreement is contingent not only upon its normative validity but also on the quality of the supporting evidence.

Based on this description, it can be affirmed that the legal status of a civil agreement without a notary's authentic deed in the Indonesian civil law system is valid and binding as

long as it meets the legal requirements of the agreement. However, in the context of proof in court, the agreement does not have the perfect probative force of an authentic deed. This distinction shows that the main function of an authentic deed is not to determine the validity of an agreement, but rather to provide higher legal certainty through strong and binding evidentiary power.

2. Legal Consequences of Civil Agreements Made Without a Notary Authentic Deed on Its Validity and Evidentiary Strength

The legal ramifications of civil agreements executed without a genuine notary deed must be examined via two primary areas in Indonesian civil law: the legality of the agreement and the evidentiary authority. The two realms operate under distinct regulatory frameworks; yet, in judicial practice, they are intricately connected, particularly when the agreement becomes the subject of contention and is examined via the evidence process in court. (Irmawati et al., 2020).

The legitimacy of a contract under the Indonesian civil law framework is contingent upon the satisfaction of the criteria outlined in Article 1320 of the Civil Code. This article delineates four essential elements: the consent of the parties, the capacity of the parties to engage in legal activities, specific purposes of the agreement, and permissible reasons. The four factors provide the foundation for the establishment of a binding legal relationship and ascertain the validity of an agreement. (Kuspraningrum, 2011).

The circumstances are categorized into subjective and objective conditions. Agreement and the capacity to act are classified as subjective criteria, since they pertain directly to the legal subject that binds itself. Specific purposes and halal reasons are categorized as objective requirements because of their connection to the essence of the agreement itself. This distinction in categories also entails varying legal ramifications in the event of a breach. (Suadi et al., 2021).

Transgression of subjective terms renders the agreement revocable. Permanent agreements are deemed genuine and enforceable until a cancellation request is made by interested parties or a court ruling with enduring legal authority is issued. A breach of objective requirements makes the agreement null and invalid, so it retroactively negates its existence and precludes any legal penalties for the parties involved. (Sanjaya, 2021).

A legal agreement executed without a notary's original deed does not inherently forfeit its validity. The satisfaction of all components of Article 1320 of the Civil Code is the primary criterion for determining the validity of the agreement, irrespective of the formal structure of the document. Legal connections are established and obligatory for the parties when the agreement is made voluntarily, the parties possess the capacity to act, the subject matter of the agreement is unambiguous, and the rationale for the agreement does not contravene the law. (Hermawan et al., 2024).

Vulnerabilities emerge in reality when agreements are established without the participation of public authorities authorized to formulate and oversee processes. This situation creates opportunities for flaws of will, including compulsion, errors, deception, or exploitation of circumstances. This predicament often arises in legal relationships characterized by disparities in social, economic, and intellectual standings between the persons involved.

The principle of misuse of circumstances has particular significance in the case of agreements without a notarial genuine deed. The disparity in negotiating power enables one party to exploit the other party's vulnerable position for unilateral benefit. A will formed under such conditions does not entirely represent free consent, so it creates a subjective flaw that affects the potential for annulment of the agreement.

The legitimacy of the agreement is intrinsically linked to the matter of evidence. Agreements not documented as an actual notary deed are often executed as a deed in hand. The document in question is acknowledged as written evidence as per Article 1866 of the Civil Code; yet, it lacks the intrinsic probative force. (Rahmadhani, 2020).

The evidential strength of a handwritten deed relies on the acknowledgment of the signature and the substance of the agreement. If the parties acknowledge the veracity, the document may function as legitimate proof. The circumstances alter when one party disputes the signature or substance of the agreement, since this renders the document ineffective as independent proof.

This role is essentially distinct from a genuine deed. A genuine deed has external, formal, and material evidential authority as outlined in Article 1868 and Article 1870 of the Civil Code. The judge must take into account the contents of the genuine deed until disproven by contrary evidence. The onus of evidence is with the person contesting the validity or veracity of the deed's contents. (Aulia et al., 2025).

The disparity in the strength of evidence has tangible implications in the judicial process. Agreements without a notary's original deed are normatively valid, although they possess a diminished probative status. (Mirfa & Rimadona, 2025). The anticipated legal certainty from an agreement is sometimes not fully realized, since its validity must still be shown by supplementary proof.

Decision Number 87/Pdt.G/2019/PN of the Selong District Court. The cell exemplifies the legal ramifications of a covenant established in a situation of diminished capacity. The trial evidence indicates the exploitation of an illiterate individual under economic duress. The execution of the deed occurs without sufficient elucidation of the substance and legal ramifications of the agreement established. (Firmansyah, 2024).

The panel of judges determined that the agreement had fraudulent elements as outlined in Article 1328 of the Civil Code and contravened the norms of propriety and tradition as specified in Article 1339 of the Civil Code. All actions about the contested item are deemed null and devoid of legal effect. This ruling establishes that the formal execution of the deed cannot rectify essential deficiencies of intent.

The legal ramifications of agreements without a genuine notary deed pertain to the notary's liability when the agreement is executed as a deed, although the responsibilities of the post are disregarded. The Law on the Notary Position designates the notary as a public authority accountable for the formal and procedural accuracy of the deed, including the presence of the parties, the reading of the deed, and the alignment of the deed's substance with the intentions of the witnesses.

The breach of these requirements incurs legal responsibility for the notary. Civil responsibility may be invoked according to Article 1365 of the Civil Code if a notary's actions result in damages to third parties. Administrative punishments may be enforced under the Notary Profession Act, ranging from reprimands to terminations, contingent upon the severity of the infraction committed.

Criminal culpability may arise if a notary's actions fulfill the criteria of a criminal offense as defined by the Criminal Code. A punitive approach to notaries should be considered a last option, used only when civil and administrative systems fail to provide sufficient legal protection.

The comprehensive exposition indicates that the legal ramifications of civil agreements executed without a genuine notarial deed are multifaceted rather than simple.

The agreement's legitimacy is contingent upon the satisfaction of the requirements outlined in Article 1320 of the Civil Code. The evidential strength of the agreement is inferior to that of an actual deed and is significantly reliant on the dynamics of evidence in court.

The disparity in the parties' positions and the presence of a defect will heighten the possibility of cancellation or nullification of the agreement. The primary purpose of an authentic deed is to provide legal certainty by offering superior evidential strength, rather than just establishing the legitimacy of the agreement, provided that the deed is executed in compliance with legal and ethical standards of the notary's office.

CONCLUSION

This study concludes that civil agreements entered without an authentic notary deed retain valid and enforceable legal status, provided that they satisfy the requirements set out in Article 1320 of the Civil Code. Indonesian civil law does not prescribe a specific formal deed as a general condition for contractual validity, except for certain legal acts expressly required by statute. Accordingly, the absence of a notary-authenticated deed does not, in itself, prevent the annulment or enforcement of an agreement, as long as the elements of lawful content, capacity, specific purpose, and legitimate cause are fulfilled. The principal legal consequence of the absence of an authentic notarial deed lies instead in the evidentiary sphere: the agreement functions as a private deed in possession that lacks the apparent and formal certainty attached to an authentic deed, so that in the event of a dispute over signatures or content, the burden of proof rests exclusively on the party relying on the agreement, rendering otherwise normatively valid contracts comparatively weaker in judicial proof. Agreements concluded without a notary's original deed are therefore more vulnerable to challenge where there is a defect of will or structural imbalance between the parties, and under such conditions may be annulled or deemed void and invalid. An authentic deed does not itself determine the substantive validity of an agreement, but it provides legal certainty by conferring stronger evidentiary weight when drawn up in accordance with statutory requirements and notarial ethics.

Scientifically, this research elucidates and sharpens the doctrinal distinction between contractual validity and evidential strength in Indonesian civil law, a distinction that is frequently blurred in legal practice and public perception. By clarifying that validity and evidentiary quality are analytically separate yet practically intertwined dimensions, the study

contributes to doctrinal development in contract and evidence law and offers a more precise conceptual framework for assessing the legal position of agreements with and without authentic deeds. At the practical level, the findings underscore the importance of authentic deeds as instruments of legal certainty, encouraging legal practitioners and notaries to emphasize the use of genuine deeds to reduce evidentiary disputes and enhance predictability in civil litigation.

Future research is recommended to build on this doctrinal analysis through empirical investigations into judicial reasoning and evidentiary assessment in cases involving non-notarial agreements, as well as systematic studies of notarial practices in drafting and safeguarding authentic deeds. Such empirical work can further clarify how courts operationalize the distinction between validity and evidential strength in concrete disputes and how notarial methods may evolve to address recurring sources of conflict, thereby deepening the theoretical and practical understanding of civil agreements in Indonesian law.

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