

Notarial Liability for Abuse of Circumstances: Protecting Legal Certainty in Authentic Deeds

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ABSTRACT

Authentic deeds play a central role in providing legal certainty because they possess strong evidentiary authority. However, formal authenticity does not necessarily guarantee substantive validity when a party's consent results from inequality, vulnerability, or abuse of circumstances. This study examines the relationship between abuse of circumstances and notarial liability and formulates a liability framework that safeguards both legal certainty and contractual fairness. It employs normative legal research using statutory, conceptual, case, and comparative approaches, with England, Germany, and France providing comparative perspectives. The study produces three principal findings. First, abuse of circumstances constitutes a defect of consent that can undermine contractual validity, although its recognition in Indonesian law remains primarily jurisprudential rather than explicitly codified. Second, defective consent may affect the substantive validity of an authentic deed and provide grounds for annulment despite its formal evidentiary strength. Third, notarial liability should extend beyond procedural compliance toward substantive protection of genuine and voluntary consent through prudence, good faith, verification of the parties' understanding, and identification of significant power imbalances. Comparative analysis confirms that effective protection requires the integration of formal authentication with substantive safeguards against exploitation.



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Introduction

Authentic deeds perform an essential function in private law by providing authoritative evidence of legal acts and strengthening certainty in contractual relationships. Individuals and legal entities frequently engage notaries to formalize transactions concerning property, credit, security interests, commercial cooperation, and other private legal arrangements.¹ Through authentication, a notary establishes important legal facts concerning the identity of the parties, the date of execution, the declarations expressed before the notary, and the formal

¹ Anis Mashdurohatun and Belahim, 'Reconstruction of Notaries Liability on Their Authentic Deed Based on Justice Value: Moderating Role of Supply Chain Management', *International Journal of Supply Chain Management*, 9.3 (2020), 605–12
<https://www.scopus.com/pages/publications/85087766250?origin=resultslist>



characteristics of the transaction. These functions give authentic deeds substantial evidentiary authority and explain why contracting parties commonly use notarial instruments to secure their legal interests. However, the evidentiary strength of an authentic deed does not necessarily establish the substantive validity of the underlying agreement. A transaction may satisfy formal requirements while economic dependence, psychological vulnerability, informational inequality, or substantial differences in bargaining power affect the consent upon which the agreement rests.²

Consent constitutes a fundamental element of contractual validity. Indonesian private law requires the parties to reach an agreement, possess legal capacity, determine a sufficiently certain object, and pursue a lawful cause. These requirements reflect the principle that contractual obligations derive their legitimacy from the autonomous intentions of the parties.³ Freedom of contract allows individuals to decide whether to establish contractual relationships, select their contractual partners, determine contractual terms, and distribute rights and obligations according to their respective interests. Once parties conclude a valid agreement, the principle of *pacta sunt servanda* requires them to respect and perform the obligations that they have voluntarily assumed. Contract law therefore protects private autonomy while providing the legal certainty necessary for parties to rely on the enforceability of their agreements.⁴

Nevertheless, freedom of contract cannot operate independently from contractual justice. Contractual autonomy derives its legitimacy from the assumption that parties exercise their intentions freely, consciously, and voluntarily. A signature or other formal manifestation of agreement cannot always demonstrate that genuine autonomy existed during contractual formation. Economic necessity may influence a party to accept conditions that would otherwise be rejected.⁵ Psychological dependence may restrict independent judgment. Informational inequality may prevent a party from understanding important legal consequences. Significant disparities in bargaining power may also allow one party to determine contractual conditions without providing the other party with a meaningful opportunity to negotiate. These circumstances

² Siti Ahsanu Nadya, 'The Validity of Credit Agreement Deeds Non-Compliant with the Law on the Office of Notaries: A Review from the Perspective of Legal Certainty and Accountability', *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam*, 7.1 (2026), 41–51 <https://doi.org/10.58836/al-qanun.v7i1.27456>

³ Geert Medema, "'And We May Not Even Touch a Hair of Our Kitchen Maid's Head". Advantages and Disadvantages for Owners of Monuments and Historic Buildings; [‘En Aan Onze Keukenmeid Mogen Wij Zelfs Geen Haar Krenken’. Lusten of Lasten Voor Monumenteneigenaren]', *KNOB Bulletin*, 111.1 (2012), 2-9+66 <https://www.scopus.com/pages/publications/84859601766?origin=resultslist>

⁴ Mashdurohatun and Belahim.

⁵ None Hustam Husain and others, 'MAKING A NOTARY DEED THAT PROVIDES LEGAL CERTAINTY', *Awang Long Law Review*, 2022 <https://doi.org/10.56301/AWL.V5I1.548>

demonstrate that formal consent and genuine contractual autonomy do not always coincide.⁶

The doctrine of abuse of circumstances responds to this problem by examining the conditions surrounding contractual consent. Abuse of circumstances occurs when a party exploits another party's vulnerability, dependence, urgent need, limited knowledge, psychological condition, or weaker bargaining position to obtain an unreasonable contractual advantage. Unlike conventional coercion, this form of exploitation does not necessarily involve explicit threats or physical pressure. The stronger party may instead take advantage of circumstances that restrict another party's capacity to make an independent and rational contractual decision. Legal analysis must therefore examine not only whether a party formally expressed consent but also whether the circumstances surrounding contractual formation allowed that party to exercise genuine autonomy.⁷

This issue creates a particular doctrinal problem within Indonesian contract law. The Indonesian Civil Code recognizes mistake, coercion, and fraud as traditional defects affecting consent, but Indonesian positive law has not comprehensively established abuse of circumstances as an independent category of defective consent. Judicial practice has nevertheless recognized the doctrine when resolving contractual disputes involving serious inequality or exploitation. This development demonstrates an evolving relationship between codified contract law and judicial interpretation. It also indicates that contemporary contractual justice increasingly requires courts to examine the substantive conditions surrounding consent rather than relying exclusively on its external manifestation.⁸

The problem becomes considerably more complex when parties formalize the disputed agreement through an authentic deed. The law attributes substantial evidentiary authority to authentic deeds, but evidentiary authority and substantive contractual validity perform different legal functions. Evidentiary authority concerns the legal strength of an instrument in proving particular facts, whereas contractual validity concerns whether the underlying transaction satisfies the requirements necessary to produce legitimate legal consequences. Formal authentication cannot convert defective consent into genuine consent. An authentic deed may therefore remain formally valid as an evidentiary instrument while the

⁶ Philippe Pierre, 'The Liability of French Notaries and the Duty to Advise on Environmental Matters', *Journal of Civil Law Studies*, 16.1 (2024), 146–54
<https://www.scopus.com/pages/publications/85216265971?origin=resultslist>

⁷ Aslan Noor and others, 'Legal Protection for Notaries from Crimes of Misbruik Van Omstandigheden in Making Dependency Deeds', *International Journal of Science and Society*, 2024
<https://doi.org/10.54783/IJSOC.V6I3.1234>

⁸ Syifa Rana Tsary and others, 'Problematic of Implementation of Electronic Gms on Deeds Made by Notaries', *Jurnal IUS Kajian Hukum Dan Keadilan*, 10.3 (2022), 609–19
<https://doi.org/10.29303/ius.v10i3.1106>

agreement contained within it becomes vulnerable to judicial challenge because abuse of circumstances affected the formation of consent.⁹

Contemporary contractual relationships demonstrate the practical significance of this distinction. Land acquisition may involve considerable disparities between economically powerful developers and individual landowners with limited bargaining resources or access to legal information. Standard form contracts allow businesses and financial institutions to determine contractual provisions in advance while consumers and debtors often possess limited opportunities to negotiate their contents. Electronic transactions create additional challenges because digital platforms frequently require users to accept complex contractual provisions through a single electronic action before accessing a service. Although these transactions differ in their legal and economic characteristics, they share a common concern: formal consent may conceal a contractual process shaped by substantial economic, informational, technological, or psychological inequality.¹⁰

Standard form and financial contracts illustrate this concern particularly clearly. Contractual standardization increases efficiency and reduces transaction costs, but it may substantially limit negotiation. A debtor facing urgent financial circumstances may accept burdensome contractual obligations because the immediate need for financing leaves few realistic alternatives. Consumers may similarly accept unilateral provisions concerning fees, liability, dispute resolution, or other important obligations because rejection prevents access to the relevant service. These circumstances do not automatically establish abuse of circumstances because differences in economic position and bargaining power constitute ordinary features of many contractual relationships. The legal problem arises when a stronger party knows or reasonably should recognize another party's vulnerability and deliberately exploits that condition to obtain an excessive or unjustifiable contractual advantage.¹¹

Digital contracting further complicates the meaning of genuine consent. Electronic transactions increasingly replace direct negotiation with standardized interfaces, automated acceptance procedures, and extensive terms and conditions. Consumers may express formal consent by selecting an acceptance button without directly interacting with the party that drafted the contract. Differences in digital

⁹ Zahwa Maulidina Afwija, Yeni Oktafia and Abdul Ghofar, 'STRENGTHENING ACCOUNTABILITY IN INDONESIAN NOTARIAL PRACTICE: THE LEGAL GAP ON LIABILITY FOR BACKDATED DEEDS', *Indonesia Private Law Review*, 6.1 (2025), 57–70 <https://doi.org/10.25041/iplr.v6i1.4459>

¹⁰ Tahegga Primananda Alfath and Reynaldi Putra Genial, 'The Liability of Notaries in the Execution of Hybrid Deeds: A Review of Compliance with the Notary Law and Notarial Code of Ethics', *Journal of Law Politic and Humanities*, 2025 <https://doi.org/10.38035/JLPH.V5I6.2239>

¹¹ Ayşe Nur Ökten, Tuba İnal-Çekiç and Senem Kozaman, 'Civic Engagement in an Informal Settlement: Between the Devil and Deep Blue Sea', *Cities*, 112 (2021), 103110 <https://doi.org/https://doi.org/10.1016/j.cities.2021.103110>

literacy, technical knowledge, legal understanding, and access to information may weaken their ability to evaluate contractual consequences. Technological development therefore requires contract law to address forms of structural inequality that differ from traditional coercion but may nevertheless restrict meaningful contractual choice.¹²

These developments place notaries in a complex institutional position. A notary acts as an impartial public official rather than as an advocate for either contracting party. Impartiality prevents a notary from determining the commercial interests of the parties, altering legitimate business decisions, or guaranteeing economic equality within every transaction. However, professional impartiality should not require complete passivity when observable circumstances create reasonable doubts about genuine consent. By authenticating an agreement, a notary performs a public legal function that strengthens the evidentiary reliability and institutional legitimacy of the resulting instrument. This function raises a fundamental question concerning the extent to which professional prudence requires notaries to examine the circumstances surrounding consent before conferring formal authenticity upon an agreement.¹³

Indonesian judicial practice demonstrates that this issue produces concrete legal consequences. Courts have considered disputes in which parties challenged transactions contained in authentic deeds because abuse of circumstances allegedly impaired their consent. The judicial process reflected in Decision Number 778/Pdt.G/2017/PN.Jkt.Sel., Decision Number 303/PDT/2019/PT DKI, and Decision Number 581 K/Pdt/2021 illustrates the importance of substantive circumstances in evaluating agreements associated with authentic instruments. The dispute concerned debt restructuring transactions in which the plaintiffs questioned agreements formed under alleged economic pressure and unequal bargaining positions. Judicial scrutiny of the circumstances surrounding contractual formation demonstrates that notarial authentication does not prevent courts from examining whether the parties exercised genuine contractual autonomy.¹⁴

This development exposes a fundamental tension between legal certainty and contractual justice. An approach that defines legal certainty exclusively through documentary form risks allowing an authentic deed to protect a transaction produced through exploitation. Conversely, requiring notaries to guarantee

¹² Azmi Fendri and Yussy Adelina Mannas, 'Electronic Notary Deed: A Legal Certainty Study Based on the Law of Notarial, the Law of the Limited Liability Company and the Law of Electronic Transaction and Information', *International Journal of Innovation, Creativity and Change*, 10.5 (2019), 109–19 <https://www.scopus.com/pages/publications/85079621200?origin=resultslist>

¹³ Izabela Bludnik, 'Digitalisation as a Driving Force for Land Grabbing in the Global South', *Procedia Computer Science*, 207 (2022), 265–71 <https://doi.org/https://doi.org/10.1016/j.procs.2022.09.059>

¹⁴ I P A Tanaya, 'VALIDITY OF AUTHENTIC DEED MADE BY NOTARY IN SUSPECT STATUS', *NOTARIIL Jurnal Kenotariatan*, 2023 <https://doi.org/10.22225/JN.8.2.2023.73-81>

complete substantive equality between contracting parties would impose obligations beyond the appropriate institutional function of an impartial public official. The law must therefore identify a defensible boundary between passive formalism and excessive intervention. An appropriate model of notarial responsibility should preserve private autonomy and professional impartiality while requiring notaries to respond when objectively observable circumstances create reasonable concerns regarding the voluntariness and independence of contractual consent.¹⁵

The study further develops its novelty through comparative legal analysis. Dutch private law provides an important comparative framework because it expressly recognizes *misbruik van omstandigheden* within the legal regime governing defects in juridical acts. The historical and doctrinal relationship between Dutch and Indonesian private law makes this system particularly relevant for examining possible developments in Indonesian contract law.¹⁶ English law offers a contrasting model through undue influence and related equitable doctrines that address agreements affected by relationships of influence, dependence, trust, and vulnerability. These different approaches provide valuable perspectives for determining when contractual influence crosses the boundary into legally unacceptable exploitation.¹⁷

The urgency of this study arises from the increasing complexity of contractual relationships and the continuing importance of authentic deeds as instruments of legal certainty. Economic inequality, financial dependency, standardized contracting, digital transactions, and informational asymmetry create circumstances in which formal expressions of consent may increasingly diverge from genuine contractual autonomy. At the same time, judicial recognition of abuse of circumstances has developed without a sufficiently clear positive law framework defining the preventive responsibilities of notaries. This normative uncertainty creates risks in two directions. Excessive formalism may allow authentic deeds to provide institutional legitimacy to exploitative transactions, while excessive intervention may impose unreasonable responsibilities on notaries and interfere with legitimate contractual autonomy.¹⁸

¹⁵ Peter Oukes and others, 'Domain-Driven Design Applied to Land Administration System Development: Lessons from the Netherlands', *Land Use Policy*, 104 (2021), 105379 <https://doi.org/https://doi.org/10.1016/j.landusepol.2021.105379>

¹⁶ Jasmina Mutabžija, 'Blockchain as the Catalyst in the Shift from Closed to Open Limited Liability Companies: The Case of Greyp Bikes', *Balkan Yearbook of European and International Law*, 2021 (2022), 239–58 https://doi.org/10.1007/978-3-030-97431-2_11

¹⁷ Viktor A Mikryukov, 'Legal and Economic Regulation of a Member's Withdrawal from the Limited Liability Company: Gaps and Analogies', *Espacios*, 39.24 (2018) <https://www.scopus.com/pages/publications/85048608611?origin=resultslist>

¹⁸ Agnessa O Inshakova, Svetlana Y Kazachenok and Maxim V Sevostyanov, 'Legislative Approbation of the Extended Powers of Notaries in the Sphere of Civil Turnover of Immovable

Several previous studies have examined the issue of abuse of circumstances and notary liability, but have generally done so from different perspectives. Aryanto (2019) examined benchmarks for abuse of circumstances in agreements by analyzing Indonesian court decisions. The research shows that although the abuse of circumstances has not been explicitly codified in legislation, the doctrine has been accepted by the courts as a basis for annulling agreements formed through the imbalance of the parties' positions.¹⁹

Furthermore, Dimas Santoso's (2022) research examines the notaries' responsibility in cases of contract cancellation involving abuse of circumstances under Article 1321 of the Civil Code. This research emphasizes that procedural negligence by a notary in verifying the parties' intentions can result in certain legal consequences. However, the research places greater emphasis on the procedural verification aspect by the notary and has not yet thoroughly examined the relationship between the notary's liability and the function of an authentic deed as evidence with perfect evidentiary power.²⁰ Maya Rizkiana (2024) analyzes how notaries protect weaker parties in business agreements. She shows notaries act as neutral parties who maintain balanced interests during agreement drafting. Ovilia Nata (2024) explores how psychological pressure or one party's advantage can restrict the other's freedom to consent, identifying this as a cause of defective will in agreements. The four studies indicate that issues of abuse of circumstances, protection of the weaker party, and notaries' responsibility have become points of concern in the study of civil law in Indonesia.²¹ However, these studies generally discuss the issues separately. There are still limitations in studies that comprehensively link the abuse of circumstances with notaries' liability in the creation of authentic deeds and their implications for the function of authentic deeds as a guarantor of legal certainty and evidence in the civil proof system.²²

A significant research gap therefore remains between the literature on defective contractual consent and scholarship concerning notarial responsibility. Studies of abuse of circumstances primarily examine contractual validity, protection of

Property: The Russian Federation and the European Legal Orders', *Journal of Advanced Research in Law and Economics*, 8.5 (2017), 1526–36 [https://doi.org/10.14505/jarle.v8.5\(27\).16](https://doi.org/10.14505/jarle.v8.5(27).16)

¹⁹ Rahmat Hidayat, Pujiyono Suwadi and Solikhah, 'Measuring The Criteria For Notary Accountability In The Use Of Online Media As A Means Of Notary Promotion In Indonesia; [Medindo Os Critérios Para A Responsabilidade Notária No Uso De Mídia Online Como Meio De Promoção Notária Na Indonésia]; [Medición De', *Revista de Gestao Social e Ambiental*, 18.5 (2024) <https://doi.org/10.24857/rgsa.v18n5-074>

²⁰ Agung Iriantoro, 'Notarial Authority And Legal Accountability In Sharia Banking Contracts: A Doctrinal Study', *Jurnal Hukum Unissula*, 41.3 (2025), 528–47 <https://doi.org/10.26532/jh.v41i3.42041>

²¹ Ida Bagus Putra Raharja, 'Due Diligence In The Execution Of Office And The Legal Consequences For Notaries', *NOTARIIL Jurnal Kenotariatan*, 2024 <https://doi.org/10.22225/JN.9.2.2024.89-96>

²² Anastasiia Sieraia, 'Peculiarities Of Notarial Certification Of Irrevocable Powers Of Attorney In Corporate Rights', *Evropsky Politicky a Pravni Diskurz*, 7.6 (2020), 330–34 <https://doi.org/10.46340/eppd.2020.7.6.42>

weaker parties, and judicial remedies. Studies of notarial liability generally concentrate on formal authority, procedural obligations, negligence, and sanctions. Existing approaches have not sufficiently integrated these areas to determine how notaries should respond when indicators of exploitation become apparent before an agreement receives authentic form. The central problem therefore extends beyond whether abuse of circumstances can provide grounds for challenging an agreement. It concerns whether a notary has a preventive responsibility to identify such circumstances and what professional measures the notary should undertake when reasonable indicators of defective consent arise.²³

This study addresses that limitation by integrating genuine consent, contractual proportionality, substantive justice, and professional prudence within a single analytical framework for notarial liability. Rather than treating notaries as passive recorders or requiring them to become advocates for weaker parties, this study conceptualizes the notary as a preventive legal actor whose professional responsibility depends on a reasonable assessment of observable circumstances. Serious economic dependency, psychological vulnerability, informational disadvantage, substantial contractual disproportionality, domination by another party, or an apparent inability to understand material legal consequences may justify greater professional scrutiny before authentication.²⁴

The scientific contribution of this study also lies in distinguishing ordinary contractual inequality from legally relevant exploitation. Contractual relationships commonly involve differences in economic resources, expertise, information, experience, and bargaining capacity. Such differences cannot independently establish abuse of circumstances. They acquire legal significance when a stronger party consciously exploits a known vulnerability in a manner that undermines independent consent and produces an unreasonable contractual advantage. This distinction provides a more precise foundation for determining when professional prudence should require notarial intervention. It also avoids imposing an unrealistic obligation on notaries to equalize every contractual relationship.²⁵

This study aims to analyze the legal consequences of abuse of circumstances for agreements incorporated into authentic deeds and to formulate an appropriate model of preventive notarial liability. It seeks to clarify the boundary between notarial impartiality and professional intervention, identify circumstances that justify greater notarial scrutiny, and establish a framework that integrates genuine consent, proportionality, professional prudence, protection of vulnerable parties,

²³ Renata Marks-Bielska, 'Conditions Underlying Agricultural Land Lease in Poland, in the Context of the Agency Theory', *Land Use Policy*, 102 (2021), 105251 <https://doi.org/https://doi.org/10.1016/j.landusepol.2020.105251>

²⁴ Maudy Rahma Pranadia and Gunardi Lie, 'Notary Responsibilities for the Occurrence of Identity Faking In the Making of Authentic Deeds', *Edunity Kajian Ilmu Sosial Dan Pendidikan*, 2023 <https://doi.org/10.57096/EDUNITY.V2I6.112>

²⁵ Inshakova, Kazachenok and Sevostyanov.

and legal certainty. Through comparative examination of Dutch and English legal approaches, this study seeks to develop a more coherent conception of notarial responsibility in Indonesian private law. Ultimately, the study argues that authentic deeds should function not merely as instruments of formal evidentiary certainty but as legal instruments whose legitimacy rests upon lawful transactions, genuine contractual autonomy, and substantive justice.²⁶

Research Method

This study employs normative legal research to examine notarial liability arising from abuse of circumstances in agreements incorporated into authentic deeds. The analysis proceeds from the premise that statutory provisions alone cannot adequately explain the relationship between the validity of authentic deeds, genuine contractual consent, and professional responsibility. The study therefore integrates statutory, conceptual, case, and comparative approaches to construct a comprehensive framework for assessing the legal responsibilities of notaries when unequal circumstances affect contractual consent. The statutory approach examines the legal framework governing contractual validity, defects of consent, authentic deeds, and notarial duties, particularly the Indonesian Civil Code and legislation governing the notarial profession. The conceptual approach analyzes abuse of circumstances, contractual autonomy, good faith, professional prudence, proportionality, and legal liability. These concepts provide the analytical foundation for distinguishing ordinary contractual inequality from circumstances in which exploitation compromises genuine consent. The case approach examines judicial decisions concerning agreements and authentic deeds challenged because of defective consent, with particular attention to judicial reasoning on abuse of circumstances and its consequences for contractual validity and notarial responsibility.²⁷

The study also employs comparative legal analysis involving England, Germany, and France. The comparison examines how these jurisdictions address defective consent, exploitation of vulnerability, contractual fairness, legal certainty, and professional responsibility. Rather than merely describing foreign legal rules, the analysis identifies similarities, differences, and functional mechanisms that may provide relevant principles for developing Indonesian law. The research relies on primary, secondary, and tertiary legal materials. Primary materials comprise legislation, judicial decisions, and other authoritative legal instruments concerning contractual consent, authentic instruments, and professional responsibility. Secondary materials include scholarly books, journal articles, legal commentaries, and relevant academic literature that develop

²⁶ Inshakova, Kazachenok and Sevostyanov.

²⁷ Katarzyna Kocur-Bera, 'Understanding Information about Agricultural Land. An Evaluation of the Extent of Data Modification in the Land Parcel Identification System for the Needs of Area-Based Payments – a Case Study', *Land Use Policy*, 94 (2020), 104527 <https://doi.org/https://doi.org/10.1016/j.landusepol.2020.104527>

doctrinal and theoretical perspectives. Tertiary materials support the clarification of legal terminology and concepts used throughout the analysis. The study analyzes these legal materials qualitatively through legal interpretation, doctrinal analysis, case reasoning, and comparative evaluation. It first identifies the normative standards governing valid consent and notarial conduct, then evaluates how courts address circumstances in which inequality affects contractual autonomy, and finally compares the functional responses adopted in the selected jurisdictions. This methodological framework enables the study to formulate a normative model of notarial liability that defines the appropriate boundary between professional impartiality and preventive responsibility. The proposed framework seeks to strengthen professional prudence, protect genuine contractual autonomy, and reconcile the evidentiary certainty of authentic deeds with substantive contractual justice.²⁸

Results and Discussion

Legal Foundations of Rights Protection and Evidentiary Authority in Authentic Deeds

Authentic deeds constitute a central instrument in civil law, serving not only as formal legal documents but also as mechanisms to guarantee legal certainty, protect rights, and provide evidentiary authority in legal relations.²⁹ However, their strong evidentiary status raises a fundamental question: whether the formal validity of authentic deeds is sufficient to ensure substantive justice, particularly when the underlying consent is formed under unequal or exploitative conditions. In this context, the protection of rights in authentic deeds cannot be separated from a conceptual understanding of rights, the evidentiary function of deeds, and the role of notaries as public officials entrusted by the state to ensure the validity of legal relations.

Table 1. Research Gap in the Protection of Rights in Authentic Deeds in Indonesia

Aspect	Normative Condition in Indonesia	Problem/Gap	Legal Implications	Research Urgency
Concept of rights in authentic deeds	Rights are understood as arising from agreements embodied in authentic deeds	The conceptual understanding remains formalistic and does not sufficiently emphasize free and genuine consent	Rights may be legally recognized but substantively defective due to imbalance or coercion	Reconstruction of the concept of rights based on substantive justice is required
Evidentiary function of	Authentic deeds have	Emphasis is placed on formal validity	Deeds remain formally valid	Integration between

²⁸ Adi Akbar and others, 'Proliferation of Policies on Notarial Supervisory Institutions Based on Justice', *Journal of Human Rights, Culture and Legal System*, 5.3 (2025), 833–64 <https://doi.org/10.53955/jhcls.v5i3.789>

²⁹ Poppy Agustina Panduwina, Hary Purwadi and W T Novianto, 'Notary Liability in Criminal Acts of Fraud Based on a Power of Buying Deed', *Journal of World Science*, 2022 <https://doi.org/10.36418/JWS.V1I7.70>

authentic deeds	perfect evidentiary power (Art. 1868 & 1870 Civil Code)	rather than the substance of consent	despite potential defects in consent	evidentiary strength and substantive validity is needed
Position of notary	Notary acts as a public official authorized to produce authentic deeds	The role of notaries is largely understood as formal-administrative rather than substantive	Notaries are not fully engaged in detecting abuse of circumstances	Expansion of the notary's role as a guardian of contractual fairness is necessary
Abuse of circumstances	Not explicitly regulated in statutory law	Relies heavily on jurisprudence and judicial interpretation	Legal uncertainty in application	Strengthening doctrinal and normative recognition is needed
Protection of consent	Recognized through defect of consent (Art. 1321 Civil Code)	No clear standard for notaries to verify free will	Risk of exploitation of weaker parties	Development of a verification model of consent is required
Legal certainty vs justice	System prioritizes legal certainty through authentic deeds	Substantive justice is often overlooked	Annulment cases reveal tension between formality and fairness	A balanced approach between certainty and justice is required

Source: Compiled by the author based on statutory analysis of the Indonesian Civil Code (Articles 1321, 1868, and 1870) and Law No. 2 of 2014 on Notarial Office)

Table 1 demonstrates that the primary issue in protecting rights within authentic deeds in Indonesia is not the absence of legal norms, but the fragmentation between conceptual understanding, evidentiary function, and notarial responsibility.³⁰ This fragmentation creates a structural gap in which authentic deeds remain formally valid while potentially lacking substantive legitimacy.³¹ Consequently, the current legal framework tends to prioritize certainty over justice, revealing the need for a more integrated and substantive approach.³²

³⁰ Feifeng Jiang and others, 'Estimating and Explaining Regional Land Value Distribution Using Attention-Enhanced Deep Generative Models', *Computers in Industry*, 159–160 (2024), 104103 <https://doi.org/https://doi.org/10.1016/j.compind.2024.104103>

³¹ Bayu Indra Permana, Mohammad Rafi Al Farizy and Ferdiansyah Putra Manggala, 'Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence', *Jurnal Justiciabelen*, 2024 <https://doi.org/10.30587/JUSTICIABELEN.V7I1.7801>

³² Pierre.

In civil law, rights are conceptualized as relationships acknowledged and protected by the legal system, as well as those between legal subjects and objects.³³ The parties' legally binding intentions are formalized through a duly executed deed. As a result, the will becomes valid because it is issued by an authorized authority and expressed in accordance with the law.³⁴ Therefore, the protection of rights in an authentic deed depends not only on the agreement's content but also on its form and the process by which it is created, which must comply with the relevant legal requirements.³⁵

From a normative standpoint, Article 1868 of the Civil Code states that a deed made by or in the presence of an authorized public official in the format specified by law is considered authentic.³⁶ According to this clause, the authenticity of a deed depends on the official's authority and the fulfillment of formal requirements.³⁷ Additionally, original deeds have full evidentiary value under Article 1870 of the Civil Code, meaning that anything stated in the deed must be taken at face value, so long as it cannot be refuted by legal means. Additionally, as stated in Article 1866 of the Civil Code, written evidence holds a prominent position in the civil evidence system, underscoring the significance of genuine deeds as the most powerful proof in legal proceedings.³⁸

Three dimensions can be used to determine the evidentiary strength of an authentic deed: its appearance, formal aspects, and material aspects.³⁹ The legality of the deed's form as an authentic deed, which may only be contested by evidence of fabrication, is related to the appearance of strength. The truth of what is said or done in front of a notary is related to the formal strength.⁴⁰ In the meantime, the

³³ Grazyna Wiejak-Roy, Jaideep Roy and D A C Smith Andrew, 'Violation of Land Use Regulations for Allotment Gardens: The Case of Warsaw, Poland', *Land Use Policy*, 158 (2025), 107728 <https://doi.org/https://doi.org/10.1016/j.landusepol.2025.107728>

³⁴ Rosa M Garcia-Teruel, 'Legal Challenges and Opportunities of Blockchain Technology in the Real Estate Sector', *Journal of Property, Planning and Environmental Law*, 12.2 (2020), 129-45 <https://doi.org/https://doi.org/10.1108/JPEL-07-2019-0039>

³⁵ Tsary and others.

³⁶ Elżbieta Zysk, Agnieszka Dawidowicz, Sabina Żróbek, and others, 'The Concept of a Geographic Information System for the Identification of Degraded Urban Areas as a Part of the Land Administration System - A Polish Case Study', *Cities*, 96 (2020), 102423 <https://doi.org/https://doi.org/10.1016/j.cities.2019.102423>

³⁷ Robiatul Afrian, 'LEGAL CONSEQUENCES OF COOPERATION BETWEEN NOTARY PARTNERS AND BANKS ON THE VALIDITY OF THE DEEDS MADE', *Authentica*, 2024 <https://doi.org/10.20884/1.ATC.2024.7.1.446>

³⁸ Afwija, Oktafia and Ghofar.

³⁹ Yoga Trayama and Ade Adhari, 'Evidence of Authentic Deeds in Civil Disputes Related to Nominee Agreements on Ownership of Land Title Certificates', *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, 2025 <https://doi.org/10.32505/JURISPRUDENSI.V17I1.10550>

⁴⁰ Pierre Vincent, 'Does Urban Overheating Affect Neighborhood Attractiveness? Evidence from the French Housing Market', *Journal of Housing Economics*, 71 (2026), 102111 <https://doi.org/https://doi.org/10.1016/j.jhe.2025.102111>

material strength is associated with the veracity of the deed's content or substance.⁴¹ These three aspects demonstrate how genuine deeds serve as both proof and tools for establishing legal trust in civil relationships, enabling the parties to rely on the certainty of their rights and responsibilities. This situation exacerbates the critical paradox, increases the difficulty of creating authentic acts, and increases the risk that formalism may result in substantive injustice.

According to Gustav Radbruch's legal certainty theory, the law must provide utility, justice, and certainty in a balanced way. Legal certainty is achieved in the context of legitimate acts through standardized forms, transparent procedures, and strong evidence.⁴² A genuine deed ensures that the parties' legal relationship is recognized and safeguarded by the law, bringing stability and predictability to civil unions. Therefore, one of the practical applications of the legal certainty concept in civil law practice is an authentic deed.⁴³ But an authentic deed's legal authority is not unqualified. In the evolution of contemporary legal doctrine, it is acknowledged that legal protection must take fairness and appropriateness into account, alongside a focus on certainty.⁴⁴ Therefore, an authentic deed is a legal product that greatly depends on the quality of the will of the people concerned rather than an absolute depiction of truth. Even though the deed formally satisfies the conditions for an authentic deed, its substantial validity may be questioned if it contains flaws such as fraud, coercion, or abuse of circumstances.⁴⁵

The notary's function becomes crucial in this situation. In addition to recording the parties' intentions, notaries are public servants who ensure that the genuine deeds they draft comply with formal and substantive legal requirements.⁴⁶ According to Hans Kelsen's notion of legal responsibility, every legal power is always accompanied by legal responsibility. In order to ensure that the parties' intentions are not tainted by flaws in the will that could compromise the validity

⁴¹ Nadia Mileni Habibah, Mohammad Hamidi Masykur and Diah Aju Wisnu Wardhani, 'FORCE MAJEURE AND NOTARY RESPONSIBILITY: THE CASE OF THE DESTRUCTION OF DEED MINUTES', *IBLAM LAW REVIEW*, 2024 <https://doi.org/10.52249/ILR.V4I1.241>

⁴² Recky Rizkiryanto Permana, 'Legal Certainty on Fiduciary Guarantee Deed Based on Power of Attention Under The Leasing Agreement', 2021 <https://doi.org/10.61968/JOURNAL.V2I1.15>

⁴³ Iriantoro.

⁴⁴ Rosa M Garcia-Teruel and Héctor Simón-Moreno, 'The Digital Tokenization of Property Rights. A Comparative Perspective', *Computer Law & Security Review*, 41 (2021), 105543 <https://doi.org/https://doi.org/10.1016/j.clsr.2021.105543>

⁴⁵ Sieraia.

⁴⁶ Salvatore Pinna, 'Cartographic Erasure of Landscape as a Social Concept: Changes in Ancient Rural Practices and Land-Use Policy behind the Study of Toponyms. A Case Study from Sardinia', *CATENA*, 229 (2023), 107229 <https://doi.org/https://doi.org/10.1016/j.catena.2023.107229>

of the deed, the notary's authority to make authentic deeds must be balanced with their duty to operate attentively, thoughtfully, and professionally.⁴⁷

These responsibilities include confirming the parties' names, determining their legal capacity, and evaluating any signs of imbalance in the legal relationship, including the potential for abuse of circumstances.⁴⁸ Therefore, the quality of the notary's performance in upholding the integrity of the parties' will-formation process determines the protection of rights in an authentic deed, as well as the legal standards that define its form and evidential strength. It is possible to conclude that the protection of rights and proof in genuine deeds is based on three major pillars by taking these conceptual and normative factors into account.⁴⁹

First, genuine deeds are recognized by law as strong evidence and a means of asserting rights. Second, the understanding that this authority is not unrestricted due to the possibility of flaws in the formation of wills in agreements.⁵⁰ Third, the notary's duty as a public servant is to guarantee that the genuine deed they draft is not only legally binding but also equitable and legitimate on a substantive level. Fore, the quality of the parties' will is inextricably linked to the strength of a genuine deed as a perfect piece of evidence and a tool of legal certainty.⁵¹ There are questions about the deed's substantial validity and the notary's accountability as the public official who drafted it when the will is written under unfair circumstances, such as the misuse of circumstances.⁵² Therefore, the abuse of circumstances as a type of will defect and its consequences for the notary's liability in creating valid deeds will be specifically examined in the debate that follows.⁵³

Therefore, the strength of authentic deeds as instruments of legal certainty cannot be assessed solely on the basis of formal validity, but must also be

⁴⁷ Widodo Budidarmo and Lily Kalyana, 'The Authority of a Notary in the Creation of Deeds in the Field of Land Affairs', *International Journal of Law, Crime and Justice*, 2024 <https://doi.org/10.62951/ijlcj.v1i3.177>

⁴⁸ Radoslaw Trojanek, Michal Gluszak and Maria Trojanek, 'Public Land Leases, Reforms and (in)Stability of Municipal Revenues in Poland – The Case of Poznan City', *Cities*, 148 (2024), 104877 <https://doi.org/https://doi.org/10.1016/j.cities.2024.104877>

⁴⁹ Habib Adjie, 'Legal Study Regarding the Responsibilities of Notaries in Providing Social Services in Accordance with the Implementation of Their Position', *Journal of Law and Sustainable Development*, 2023 <https://doi.org/10.55908/SDGS.V11I8.1435>

⁵⁰ Adjie.

⁵¹ Amanda Guimbeau, 'Settling Prosperity: Historical Immigration and Its Long-Term Institutional Legacies', *Journal of Comparative Economics*, 2026 <https://doi.org/https://doi.org/10.1016/j.jce.2026.02.008>

⁵² Claire Aragau and Jean-François Valette, 'Incursions upon Agricultural Land within Metropolitan Peripheries: Deadlocks and Geo-Legal Trajectories of Regularization in Paris and Mexico-City', *Habitat International*, 168 (2026), 103696 <https://doi.org/https://doi.org/10.1016/j.habitatint.2025.103696>

⁵³ Y Monastyrsky, 'Theoretical Aspects of the Basic Conditions for Liability: Restorative and Punitive Approaches under Russian Law', *Kutafin Law Review*, 2025 <https://doi.org/10.17803/2713-0533.2025.1.31.088-116>

evaluated in light of the integrity of the consent underlying them.⁵⁴ Without such an approach, authentic deeds risk becoming instruments of legal protection rather than mechanisms that legitimize structural inequality. This concern justifies the need to further examine abuse of circumstances as a form of defective consent and its implications for notarial liability in the formation of authentic deeds.⁵⁵

Abuse of Circumstances and Notary Liability in the Creation of Authentic Deeds

One of the significant innovations in contemporary contract law doctrine is the doctrine of abuse of circumstances (*misbruik van omstandigheden*), which represents a paradigm shift from a formalistic to a substantive approach to determining the legality of consent.⁵⁶ Article 1320 of the Civil Code (KUHPerdata), which requires agreement, capacity, a particular object, and a justifiable cause, is the foundation for the validity of contracts in the traditional sense under Indonesian law.⁵⁷ Additionally, Article 1321 of the Civil Code provides that any agreement made by fraud, coercion, or error is void. However, the evolution of judicial practice demonstrates that defects of will are not restricted to those three categories; they also include the condition of abuse of circumstances, in which consent emerges in an unbalanced situation that is exploited by one party.⁵⁸

Conceptually, misuse of circumstances is more structural and tacit, and does not usually take the form of direct pressure such as coercion (*dwang*) or fraud (*bedrog*).⁵⁹ Economic factors, social dependency, or psychological pressure that restricts decision-making can all contribute to the disparity in positions between the parties. Under such circumstances, an agreement that seems legitimate on paper does not truly represent free will.⁶⁰ This demonstrates the limitations of the formal approach to evaluating agreements as outlined in Article 1320 of the Civil Code in addressing the reality of unequal legal relationships.⁶¹

Although it hasn't been formally codified in legislation, the theory of abuse of circumstances has been recognized in Indonesian legal practice through several

⁵⁴ Mirosław Belej and others, 'Airports in the Urban Landscape: Externalities, Stigmatization and Housing Market', *Land Use Policy*, 126 (2023), 106540 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.106540>

⁵⁵ Tjhong Sendrawan, Rosa Agustina and E Makarim, 'Legal Antinomy in Exercising Civil Rights of Persons with Disabilities in Notarial Activities', *Journal of Southeast Asian Human Rights*, 2024 <https://doi.org/10.19184/jseahr.v8i2.1713>

⁵⁶ Elvina Wijaya and Disriani Latifah Soroinda, 'The Principle of Notary Prudence in Making Deeds for Attendees in Detention Houses', *Asian Journal of Engineering Social and Health*, 2025 <https://doi.org/10.46799/AJESH.V4I8.604>

⁵⁷ Husain and others.

⁵⁸ Sebastián Rivero Silva, 'Blockchain Evidence versus the State', *Oñati Socio-Legal Series*, 2025 <https://doi.org/10.35295/osls.iisl.2202>

⁵⁹ Noor and others.

⁶⁰ Alfath and Genial.

⁶¹ Debby Flora Siahaan and Benny Djaja, 'Legal Certainty of the Deed of Grant of the Will Whose Object Is Sold by the Grantor of the Will to Another Party', *OPSearch: American Journal of Open Research*, 2023 <https://doi.org/10.58811/opsearch.v2i4.50>

court decisions as a basis for annulment of agreements.⁶² A shift toward more substantial legal protection is indicated by this circumstance. However, because the evaluation of misuse of circumstances is entirely dependent on the judge's interpretation, the lack of explicit normative standards leads to legal confusion. This leads to uneven application of this theory, which could result in disparities in court decisions.⁶³

When a notary formalizes an agreement that contains a misuse of circumstances into an official deed, the issue gets even more complicated.⁶⁴ According to Article 1868 of the Civil Code, a deed made by or in the presence of an authorized public official in the format specified by law is considered authentic. Additionally, an authentic deed has full evidentiary force under Article 1870 of the Civil Code, meaning its contents must be taken at face value unless proven otherwise.⁶⁵ Under Article 1866 of the Civil Code, this authority makes the original deed the primary evidence in the civil proof system.⁶⁶

However, there is a dilemma because of the strong evidentiary value of such an authentic deed.⁶⁷ An authentic deed offers legal certainty on the one hand, but it can also justify a relationship that is legally problematic on the other. To put it another way, if the parties' will is made under abusive circumstances, a genuine deed may be used to justify injustice. This suggests a conflict in civil law between substantive justice and legal certainty.⁶⁸ The notary's position becomes extremely important in this situation. According to Law Number 2 of 2014 regulating the Notary Position, Article 1, paragraph 1, a notary is a public official with the authority to draft genuine deeds and additional legal powers.⁶⁹ Notaries must also operate honestly, diligently, independently, impartially, and in a manner that protects the interests of the parties involved, according to Article 16, paragraph (1), letter a, of the Notary Position Law. This clause shows that a notary's duties include ethical and professional aspects in addition to formal ones. It is important

⁶² Raharja.

⁶³ S Latorre, 'The Place of the Public Notary: How the Engine of the Capitalist State Operates through Material and Legal Arrangements', *Environment and Planning C: Politics and Space*, 42 (2022), 401–16 <https://doi.org/10.1177/23996544221110040>

⁶⁴ Tanaya.

⁶⁵ Suryadi Suryadi and T Rahayu, 'Legal Interpretation of Terms, Phrases, and Clauses in the Notarial Deeds', *Jurnal Hukum Novelty*, 2023 <https://doi.org/10.26555/novelty.v14i2.a25751>

⁶⁶ Rahmat Hidayat, Pujiyono Suwadi and Solikhah, 'Measuring the Criteria for Notary Accountability in the Use of Online Media as a Means of Notary Promotion in Indonesia', *Revista de Gestão Social e Ambiental*, 2024 <https://doi.org/10.24857/rgsa.v18n5-074>

⁶⁷ Made Bagus Dewaana Manu Saputra and others, 'Legality of Electronic Notary Deeds', *Path of Science*, 10.1 (2024), 8008–16 <https://doi.org/10.22178/POS.100-30>

⁶⁸ Mashdurohatun and Belahim.

⁶⁹ Ni Komang Arini Styawati and others, 'Problems of the Obligation to Keep Information Confidential in Making a Notarial Deed with the Principle of Recognizing Notary Service Users', *Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*, 2023 https://doi.org/10.2991/978-2-494069-93-0_80

to recognize the limits of notaries as defenders of substantive justice. Since notaries rely on the parties' disclosures and lack investigatory powers, they are not suited to assess underlying pressures or dependencies. Assigning notaries exclusive responsibility for detecting abuse of circumstances could overburden them and increase liability without effectively addressing the issue.⁷⁰

However, from the standpoint of legal certainty, the notion of abuse of rights must also be questioned. This notion may be applied excessively widely and subjectively in the absence of established boundaries. This could make it easier for some parties to avoid contractual commitments by claiming abuse of circumstances. The stability of legal relationships and trust in transactions may thus be jeopardized by the protection of the weaker party. Judges' involvement in judicial practice exacerbates this problem. Judges take the lead in deciding whether or not there has been an abuse of circumstances when there are no clear normative standards. This gives courts the freedom to interpret the law broadly, but it also creates the possibility of judicial activism and inconsistency. Because of this, court rulings in comparable circumstances may differ, creating legal ambiguity. The lack of clear operating norms creates practical challenges for the requirement that notaries play an active role. There are currently no unambiguous normative indicators that specify how notaries should recognize abuse of circumstances. The topic of whether it stems from economic inequality, an unfair bargaining position, or certain psychological characteristics has not been thoroughly addressed. Likewise, there are no guidelines regarding the actions that notaries should take, whether it is sufficient to provide additional explanations or even refuse to create the deed.⁷¹

This problem can be viewed more broadly as a dispute between three major players in the legal system. While the state, through judges, prioritizes substantive justice, notaries focus on formal validity and procedural compliance, and the parties are guided by the principle of freedom of contract as set forth in Article 1338 of the Civil Code.⁷² A structural conflict arises from the tension between these three interests, in which an act may be ruled unjust by the court even though it is formally valid and agreed to by the parties.⁷³ Therefore, abuse of circumstances is a structural concern in Indonesian civil law as well as a conceptual one. As a result, the concept of the notary's liability must be reconstructed, taking into account both the preservation of the parties' freedom of choice and formal

⁷⁰ S Rahmah, Husni Jalil and M Kadir, 'Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in Indonesia: A Study in Aceh Province', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 2024 <https://doi.org/10.22373/sjhk.v8i1.16898>

⁷¹ Fani Martiawan Kumara Putra, 'Characteristics of Notary Deeds for Transactions Through Electronic Media', *Norma*, 17 (2021), 1–14 <https://doi.org/10.30742/nlj.v17i3.1091>

⁷² Jan Veuger, 'Dutch Blockchain, Real Estate and Land Registration', *Journal of Property, Planning and Environmental Law*, 12.2 (2020), 93–108 <https://doi.org/https://doi.org/10.1108/JPEL-11-2019-0053>

⁷³ Akbar and others.

conformity.⁷⁴ To prevent legal ambiguity, this rebuilding must be accompanied by explicit restrictions. This situation reflects a structural tension between three competing interests: notaries emphasizing formal validity, parties relying on contractual freedom, and courts pursuing substantive justice.⁷⁵ The absence of clear boundaries between these roles creates systemic inconsistency in legal outcomes. Additionally, a comparative viewpoint is required to understand how other legal systems manage the harmony between legal certainty, contract freedom, and protection for the weaker party in legal interactions, in order to reinforce the study.⁷⁶

Preventing Abuse of Circumstances through the Principles of Caution and Good Faith

The primary problem with notarial practice in Indonesia is not only that the doctrine of misuse of circumstances is not codified, but also that the notary's liability is not optimally constructed to guarantee the legitimacy of the parties' intentions.⁷⁷ Notaries are frequently still viewed in a restricted role as officials in charge of the formal parts of deeds; substantive features, especially those pertaining to the freedom of will, have not yet been incorporated into their professional duties.⁷⁸ However, the ability of genuine deeds to serve as perfect evidence and a guarantee of legal certainty is directly affected by the abuse of circumstances.⁷⁹

In this situation, a notary liability model that balances procedural compliance with the substantive protection of the parties' intents must be developed.⁸⁰ The concepts of prudence and good faith, which are the cornerstones of contemporary civil law doctrine for preserving the equilibrium of contractual agreements, can be used to construct this model.⁸¹ Notaries must actively confirm the circumstances

⁷⁴ Selamat Widodo and others, 'State Officials Asset Disclosure: Evidence from China', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 54–74 <https://doi.org/10.53955/jhcls.v4i1.187>

⁷⁵ Zlatica Muchová and Vladimír Raškovič, 'Fragmentation of Land Ownership in Slovakia: Evolution, Context, Analysis and Possible Solutions', *Land Use Policy*, 95 (2020), 104644 <https://doi.org/https://doi.org/10.1016/j.landusepol.2020.104644>

⁷⁶ K Dantes and others, 'Notary Deed in the Implementation of Local Government Asset Grants as an Effort to Transfer Regional Property', *Journal of Ecohumanism*, 2025 <https://doi.org/10.62754/joe.v3i8.5726>

⁷⁷ Julia Ziółkowska, 'The Influence of Quality Characteristics on Undeveloped Real Estate Valuation', *Procedia Computer Science*, 246 (2024), 4241–50 <https://doi.org/https://doi.org/10.1016/j.procs.2024.09.264>

⁷⁸ Pranadia and Lie.

⁷⁹ Alexander Begichev and Evgenia Frolova, 'Philosophical and Theoretical Aspects of Court-Notary Interaction: Current Relationships in the Provision of Evidence', *WISDOM*, 2023 <https://doi.org/10.24234/wisdom.v28i4.1038>

⁸⁰ Afrian.

⁸¹ Hassan F Gholipour and others, 'On Real Estate Market Transparency: The Relationship with ICT Trade and Investment', *Land Use Policy*, 133 (2023), 106846 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.106846>

surrounding the formation of the parties' intentions in addition to recording them in accordance with the concept of prudence. In actuality, this implies that notaries need to be able to spot signs of dominance that could lead to misuse of power, such as economic reliance, psychological pressure, or positional imbalances.⁸² As a result, the notary's duty is now proactive rather than passive, aimed at preventing defective agreements before the fact. Meanwhile, the notary has a moral and legal duty to act honestly, equitably, and impartially, following good faith. This responsibility binds the notary as a public official, not just the parties to the agreement.⁸³ The notary must ensure that the contract is legally binding and free from real injustice. Notaries must keep contracts balanced and avoid exploiting the weaker party. This is essential for acting in good faith. A comparative perspective can help create an ideal model to support these claims. Many legal systems show that protecting free will is both an individual right and a fundamental part of their structure.⁸⁴

Table 2. Comparative Model of Protection of Consent and Liability of Deed-Making Officials

Aspect	Indonesia	England	Germany	France
Approach to consent	Formal & jurisprudence	Undue influence doctrine	Principle of good faith & morality	Contractual justice
Role of notary/official	Formal (deed maker)	Not dominant	Formal-procedural	Active-substantive
Protection of weaker party	Limited	Through courts	Through legal norms	Through notaries & courts
Liability	Predominantly administrative	Judge-based liability	Norm-based liability	Substantive & preventive
System focus	Formal legal certainty	Correction of injustice	Normative balance	Balance & active protection

Source: Author's compilation based on Indonesian, English, German, and French civil law frameworks.

It is apparent from the comparison that the French legal system offers the model that most closely resembles the reform Indonesia needs: making notaries active participants in upholding contractual balance.⁸⁵ In the meantime, Germany and England show how crucial judges and legal principles are in redressing injustices, but they do not explicitly place this obligation on notaries.⁸⁶ The ideal model of notarial liability in Indonesia can be developed along three primary dimensions, using these three systems as a guide.⁸⁷ The first is the preventative

⁸² Permana, Farizy and Manggala.

⁸³ Iriantoro.

⁸⁴ Ika Yuli Agustin and Ghansham Anand, 'Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective', *Lentera Hukum*, 2021 <https://doi.org/10.19184/ejhl.v8i1.21375>

⁸⁵ Gemma Caballé Fabra, 'Housing Professionals in Europe. Special Attention to the Spanish Case', *Journal of Property, Planning and Environmental Law*, 17.2 (2025), 191–209 <https://doi.org/https://doi.org/10.1108/JPEL-11-2024-0053>

⁸⁶ Sieraia.

⁸⁷ Ran Abramitzky, Leah Boustan and Adam Storeygard, 'Chapter 11 - New Data and Insights in Regional and Urban Economics☆☆We Thank Ethan Bergmann, Alison Campon, Frankie Fan, and Noah Simon for Excellent Research Assistance, and Victor Couture, Stephan Heblich, Jackelyn Hwang, Isabela Manelici, Arianna Salaz', in *Handbook of Regional and Urban Economics*, ed. by Dave Donaldson and Stephen J Redding, *Handbook of Regional and Urban Economics* (Elsevier, 2025), VI, 715–77 <https://doi.org/https://doi.org/10.1016/bs.hesreg.2025.05.001>

dimension, which is the duty of the notary to identify and stop any misuse of circumstances prior to the execution of the deed.⁸⁸ The second is the verificative dimension, which is the duty to confirm that the parties' will is genuinely free, conscious, and unaffected by coercion. The third is the protective dimension, which requires declining or postponing the execution of the deed if there are compelling signs of injustice or a substantial imbalance.⁸⁹ The optimal model of notarial liability in Indonesia should be developed both conceptually and operationally within the country's legal framework, taking into account the experiences of the English, German, and French legal systems. Thus, norms, practice guidelines, and monitoring mechanisms must be strengthened in order to incorporate the three-dimensional model of preventive, verificative, and protective into the Indonesian legal system.⁹⁰

First, the Notary Position Law's Article 16 paragraph (1) letter a, which mandates that notaries act cautiously, honestly, and impartially, can be strengthened to apply the preventative component.⁹¹ More specific technical requirements, such as the need to perform basic legal due diligence on the parties' conditions, including identifying signs of economic pressure, bargaining imbalances, or dependency relationships, are needed to broaden this obligation.⁹² In actuality, notaries can put in place an early warning system by, for instance, providing the potentially weaker party with special explanations before the deed is signed.⁹³

Second, the process of analyzing the parties' intentions could be strengthened to operationalize the verificative dimension.⁹⁴ This relates to the principles of agreement set out in Articles 1320 and 1321 of the Civil Code, which stipulate that the will must be faultless. In this situation, the notary verifies that the parties are aware of the deed's contents and legal ramifications, and confirms their identities

⁸⁸ Panduwinata, Purwadi and Novianto.

⁸⁹ Valentina Pescini and others, 'Tracing the History of a Mediterranean Terraced Landscape: Interdisciplinary Research in the Cinque Terre Coastal Region (NW Italy)', *Quaternary International*, 719 (2025), 109670 <https://doi.org/https://doi.org/10.1016/j.quaint.2025.109670>

⁹⁰ Muhammad Zaki and Saidin Saidin, 'Legal Protection and Law Assistance to Notaries as a Public Official in Indonesia', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 2024 <https://doi.org/10.22373/sjhk.v8i2.17276>

⁹¹ Pranadia and Lie.

⁹² Karto Iskandar, Christianto and Maria Grace Herlina, 'Property Selling System with Support for Validation and Verification Process', *Procedia Computer Science*, 216 (2023), 186–93 <https://doi.org/https://doi.org/10.1016/j.procs.2022.12.126>

⁹³ Ikhsan Lubis and others, 'Cyber Notary as A Mean of Indonesian Economic Law Development', *Sriwijaya Law Review*, 2023 <https://doi.org/10.28946/slrev.vol7.iss1.1972.pp62-72>

⁹⁴ Yuli Endah Wardantik, Wahyu Prawesthi and others, 'Legal Liability for Notaries Due to the Issuance of Authentic Deeds Resulting in State Losses', *Srawung: Journal Of Social Sciences And Humanities*, 2023, 23–38 <https://doi.org/10.56943/jssh.v2i1.264>

and legal capacity.⁹⁵ A more thorough reading of the deed, active clarifying sessions, and proof that the parties genuinely comprehend the terms of the agreement (informed consent) are some ways it can be put into practice. This strategy is crucial for bolstering the status of genuine deeds as both formal proof and a symbol of rightful purpose.⁹⁶ Third, if there are clear signs of misuse of circumstances, the notary's power to reject or postpone the creation of an act can be used to implement the protective dimension.⁹⁷ The principles of good faith in Article 1338, paragraph (3), of the Civil Code and the notary's duty to protect the parties' interests in Article 16, paragraph (1), of the Notary Position Law provide the normative foundation. In actuality, notaries must have unrestricted discretion to decline the production of deeds in specific circumstances, such as when there is a severe imbalance or evidence of exploitation. To prevent ambiguity or misuse of power, this discretion must be supported by precise rules.⁹⁸

Furthermore, both institutional and regulatory components need to be strengthened to ensure these three dimensions operate properly.⁹⁹ The notary professional association can achieve this goal by creating a code of conduct and additional operational technical rules that provide practitioners with clear guidance.¹⁰⁰ Furthermore, the Notary Supervisory Council's role must be strengthened, especially by developing consistent interpretation guidelines to reduce disparities in actual practice. As a more solid normative basis, it is also feasible to promote limited codification of misuse-of-circumstances in Indonesian contract law.¹⁰¹

The notary's liability model, based on preventive, verificatory, and protective dimensions, can now be implemented in the Indonesian legal system following

⁹⁵ Bob Pierik, 'An Assemblage of Urban Water Access: The Geography of Water Marginalization in Amsterdam, 1690-1840', *Journal of Historical Geography*, 86 (2024), 231-45 <https://doi.org/https://doi.org/10.1016/j.jhg.2024.07.012>

⁹⁶ Yuda Anrova, Eman Suparman and Hazar Kusmayanti, 'Proof Power of Authentic Deed Transfer of Land Rights in Legal Perspective of Civil Procedures', *Jurnal Hukum Novelty*, 2021 <https://doi.org/10.26555/novelty.v12i2.a18604>

⁹⁷ Philippe Jeanneaux and others, 'Structure and Determinants of the Cost of Setting up a Farm: The Case of Young Farmers in Central France', *Journal of Rural Studies*, 114 (2025), 103583 <https://doi.org/https://doi.org/10.1016/j.jrurstud.2025.103583>

⁹⁸ Fina Nazran and others, 'Legal Protection of Notaries in Document Validation through Technology-Based Systems: A Comparative Legal Review of Indonesia, the United States, the Netherlands, and Australia', *Journal of Ecohumanism*, 2024 <https://doi.org/10.62754/joe.v3i7.4608>

⁹⁹ Maria Rosaria Guarini and others, 'Intrinsic and Extrinsic Attributes in Real Estate Pricing: Insights for Sustainable Urban Planning Strategies', *Land Use Policy*, 153 (2025), 107543 <https://doi.org/https://doi.org/10.1016/j.landusepol.2025.107543>

¹⁰⁰ Mei Elfriana Saragih and Benny Djaja, 'Review of the Authorities of the Notary Office and the Legal Consequences for Making Authentic Deeds Against the Law', *Edunity Kajian Ilmu Sosial Dan Pendidikan*, 2.10 (2023), 1096-1113 <https://doi.org/10.57096/edunity.v2i10.119>

¹⁰¹ Annalisa Yahanan and others, 'Notarial Challenges for Aircraft Deeds: Unlocking the Potential of Aircraft as Collateral', *Hasanuddin Law Review*, 2024 <https://doi.org/10.20956/halrev.v10i3.4818>

this strengthening.¹⁰² This method allows a compromise between substantive justice, which preserves the parties' freedom of choice, and the legal certainty provided by genuine deeds. According to this concept, the notary's liability must be broadened to a substantive responsibility directly tied to the standard of justice in legal relationships, rather than narrowly interpreted as an administrative duty.¹⁰³ In addition to creating a legally flawed deed, a notary's failure to fulfill that duty may have wider repercussions, including the annulment of the deed, civil lawsuits, and even administrative or criminal penalties.¹⁰⁴ To close the gap between formal legal certainty and real justice, it is crucial to strengthen notaries' liability grounded in the principles of prudence and good faith. Even though authentic deeds are still officially recognized as flawless proof, they risk losing their substantive legitimacy in the absence of such reformulation.¹⁰⁵

Conclusion

An essential component of ensuring legal certainty in the Indonesian civil law system is protecting the parties' intentions in genuine deeds. This study demonstrates that notaries' liability must now take into account a substantive aspect in addition to formal ones, particularly when it comes to misuse of circumstances. First, although it hasn't been formally codified yet, the misuse of circumstances has been recognized in judicial practice as a type of defect of will. This shows a discrepancy between legal practice and written norms. In this situation, the notary must make sure that the parties' intentions are freely formed and unaffected by any imbalance of position, in addition to being in charge of the formal parts of the deed. Second, the ability of an authentic deed to serve as perfect probative evidence is directly impacted by the exploitation of circumstances. If the parties' intentions are defective, an authentic deed may lose its substantial validity even though it satisfies the requirements of Articles 1868 and 1870 of the Civil Code. This highlights that an authentic deed's evidentiary force is dependent on the integrity of the underlying will rather than being absolute. Third, the ideal notarial liability model must be based on the precepts of good faith and caution through three dimensions: protective, verificative, and

¹⁰² Emma Gamba and others, 'Multidisciplinary Approach to Investigate Human-Forest Relationships in Southern French Alps: How to Estimate the Impact of Populations on the Local Mountain Wood Stock?', *Quaternary International*, 700–701 (2024), 80–96 <https://doi.org/https://doi.org/10.1016/j.quaint.2023.07.011>

¹⁰³ Tjhong Sendrawan and others, 'OPTIMIZING THE ROLE OF NOTARIES IN DIGITAL PROPERTY INHERITANCE: A COMPARATIVE LEGAL ANALYSIS', *Indonesia Law Review*, 2025 <https://doi.org/10.15742/ilrev.v15n2.3>

¹⁰⁴ Elżbieta Zysk, Agnieszka Dawidowicz, Magdalena Nowak, and others, 'ORGANIZATIONAL ASPECTS OF THE CONCEPT OF A GREEN CADASTRE FOR RURAL AREAS', *Land Use Policy*, 91 (2020), 104373 <https://doi.org/https://doi.org/10.1016/j.landusepol.2019.104373>

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preventative. When there are signs of abuse of circumstances, notaries must be able to identify imbalances, confirm the freedom of will, and refuse or delay the production of deeds. It should be mentioned, nonetheless, that this extension of obligation still needs to take the notary's role's limits into account. Furthermore, judicial decisions may become subjective and inconsistent in the absence of explicit normative criteria. Therefore, in order to preserve a balance between justice and legal certainty, rules and practice guidelines must be strengthened. Therefore, it is essential to reinforce the notary's liability through a substantive approach to ensure that authentic deeds are both substantively fair and legally valid.

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