

The Structure and Function of Notarial Text in Indonesia from a Legal Perspective

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This study aims to describe the structure and function of notarial text, which is authentic text generated by, or in front of, a notary. As a single entity, the notary text is a unit of language that has a textual structure and a distinctive function as a general legal text. The primary data sources in this study were a Letter of Attorney (PA), a Deed of Sale and Purchase (DSP), and a Deed for the Establishment of a Foundation (DEF). The methodological approaches used were a case study and interpretative approach. The theoretical approach used was Edmundson's theory of discourse structure and text, while the theory behind the function of language used in texts was Halliday's theory, as presented in his book *Explorations in The Functions of Language*. Research data was collected using library and note techniques. The results of this study may be useful in providing a preliminary description of the identified structures of the text and the function of language used in legal documents, even if there must still be an awareness of the differences that exist in different contexts.

Key words: *Text structure, language use function, notary text.*

Introduction

A text is a series of structured language expressions to form one entity, such as a notarial deed. A notarial deed, which is also referred to as a notarial text herein, is an authentic deed made by, or in front of, a notary in accordance with the procedures stipulated for a notarial deed in Indonesia Law No. 2 of 2014, Article 1, paragraph 7:5. This authentic deed contains a formal statement in accordance with the notices of the parties to the notary. The formal truths expressed in the deed are presented in the form of written text with its own characteristics in its use.

This formal document is the strongest and most powerful evidentiary tool for establishing any legal relationship in Indonesian society. Written evidence in the form of a notarial text is needed in legal relationships in various fields, such as in banking, land sales, social activities, and so on. Moreover, the need for notarial texts is increasing as the law demands greater legal certainty for various legal relationships at regional, national, and global levels.

The relevant authorities authorize notaries to produce authentic deeds, which can be written by a notary or in the presence of one. These may be required by law, but they may also serve to protect the interests of the parties concerned.

In the past, in general, the study of language in the field of law—whether in the form of articles, research findings, or printed books—has been more focused on the description and analysis of language mistakes in legal documents, the use of words, and the effectiveness of sentences in legal texts, laws, and regulations. In his dissertation titled *Indonesian Law in Legal Certainty Perspective*, Sinal (2013) concluded that (i) Indonesian law had a relationship with legal certainty and (ii) the terminology, interpretation, and writing of Indonesian Language for Law (BIH) must conform to correct and proper Indonesian language norms and concepts, so the meaning or concept can be easily understood. Sinal's research findings indicated that Indonesian language use, especially for legal texts, should be based on the Central Bank's norms and formal standards, because this will affect the legal understanding. However, in terms of language, these findings still relate to the effectiveness of a sentence in legal language and do not apply to in-depth linguistic theory in peeling off the layers of legal language. Similar findings for the effectiveness of legal language were also found in various other studies (Kusuma, 2010; Murniah, 2010; Fuad, 2007; Wijayanti, 2009; Mahadi & Ahmad, 1979 in Sudjiman, 1999; Matanggui, 2013; Attamimi, 1998). These studies of legal documents revealed that the Indonesian legal language used in treaties, legislation, court verdicts, and other legal documents still shows incorrect language use, such as spelling mistakes, punctuation errors, inaccuracies in sentences, and inconsistent paragraphs. However, studies of legal language have not explored linguistic theory, including theories of discourse and texts, when looking at legal documents, including notarial texts.

Research Questions

This research seeks to examine the structure and function of notarial text. The findings of this study may in future form the basis for a model of language use and development in notarial texts. The following two research questions guide the research procedures:

- 1) What is the general structure of a notarial text according to the law of notary?

- 2) How do the opening deed, content deed and closing deed elaborate their contents based on the law of notary?

Context and Literature Review

Discourse and Text

In relation to discourse and text, Edmundson (1981) stated that a discourse is a structured event manifested in linguistic (and other) behaviour, while text is a structured sequence of linguistic expressions that forms a unitary whole. Thus, discourse is a structured event expressed through a language, while a text is a series of structured language statements (Sumarlam, 2003). Halliday (1990) defined text as a semantic unit containing specific textual components that make it internally cohesive and functional as a whole in the relevant environment for the operation of some themes or information systems.

In this case, David Crystal in *The Cambridge Encyclopedia of Language* (1987) distinguished the concepts of discourse analysis and text analysis. Discourse analysis focuses on the structure of naturally occurring spoken language, as found in discourses such as conversations, interviews, commentaries, and speeches. Text analysis, meanwhile, focuses on the structure of written language, as found in texts such as essays, notices, road signs, and book chapters.

The Structure of Notarial Text

Text, in general, is structured globally or organizationally into a message. Traditionally, a text is built from a series of parts, with an opening, content, and a closing (Santoso, 2014). This structured text, when united, expresses rhetoric for some social purpose. Parts of the text are grouped through logic discourse, clauses, or relationships and are combined through grammatical conjunctions (Martin, 1992; Ibrahim, 2018).

Notarial text, as an authentic text, must be created with the textual structure set down by UU No.30 of 2004. The form of the text is actually not firmly determined in UU, but it does clearly determine the content of an authentic deed. Authentic texts made by the public, official texts, verdicts of judges, and verbal statements made by bailiffs, among others, take diverse forms, and only the content specified through regulation is shared.

As evidence, a notarial deed has a particular anatomy, as specified in Article 38 of UJN No.2 of 2014. Anatomically, every notary deed comprises of (i) the head of the deed (HD), (ii) the body of the deed (BD), and (iii) the closing of the deed (CD). The HD expresses the following elements: (i) the title of the deed, (ii) the number of the deed, (iii) the time and date of creation, and (iv) the full name and details of the notary. The body of the deed includes the

following details: (i) full names, places and dates of birth, citizenship status, employment details and places of work, a notch (the attendance of a witness), and home addresses of the persons in question; (ii) information about the domicile status of the persons concerned; (iii) the content of the deed wanted by the parties involved; and (iv) the full names, dates of birth, employment details, and home addresses of every witness. Finally, the closing of the deed addresses the following issues: (i) a description of the deed's reading, (ii) a description of the deed's signing, (iii) the full names, dates of birth, employment details, and home addresses of every witness, and (iv) a description of any changes, which may be in the form of additions and amendments.

The anatomy of a notarial deed differs in the regulation of notaries (Peraturan Jabatan Notaris). Clause 38 of this regulation (Peraturan Jabatan Notaris) stipulates that a notarial deed is drawn up with the following anatomy: (i) HD, (ii) BD, and (iii) CD. Looking at each part, the head of the deed contains clear details about the notary and the person(s) who requested the deed, while the body of the deed presents the arguments given by the parties involved or clear evidence about things noted down at the request of concerned parties. Finally, the closing of the deed contains clear details about the deed's signing, including the place and time, information about witnesses, whose presence the deed was created in, and details about the reading of the deed.

Different from the above two structures, Adji (2015) proposed an anatomy based on subjective conditions and the objective of the notarial deed when signing an agreement that cannot be undone and voided in law. According to Adji (2015), the anatomy or framework of a notarial deed should still comprise the head, body, and closing of the deed. The deed's head should include (a) the title of the deed; (b) the number of the deed; (c) the date; (d) full name and details of the official notary; (e) the full names, places and date of birth, citizenship status, employment details, and home addresses of any concerned person; (f) information on the act in question; and (g) full names, places and dates of birth, employment details, and work addresses for every witness. The deed's body expresses the will and desires of the parties, as mentioned or expressed toward the notary, or statements from the notary about what shall be done at the request of the relevant parties. The closing of the deed finally addresses the following issues: (i) a description of the reading of the deed; (ii) a description of the deed's signing; (iii) the full names, positions, birth date, and employment details of every witness; and (iv) a description of any changes, which may be in the form of additions or amendments. The three anatomical structures for notary texts (UUJN, PJN, and Adji) depend on the concept of the rules of subjective and objective law. In this study, the current text is based on the concept of linguistics, namely the structure of text in a discourse.

Function of Text

In relation to the function of text as a form of written language, Halliday (1976) in his book *Explorations in the Functions of Language* presented seven language functions: (i) instrumental, (ii) regulatory, (iii) representation, (iv) interaction, (v) individual, (vi) heuristic, and (vii) imaginative functions. Of these seven functions, legal texts, including notarial deeds, generally have (i) instrumental, (ii) regulatory, (iii) representation, and/or (iv) interaction functions. In their instrumental function, texts are able to bring about the conditions and/or causes for certain events. Through their regulatory function, texts can serve a supervising role, such as controlling or managing the actions of other people involved in an event. Through the representation function, texts are able to make statements, convey knowledge, or explain and report a particular reality. Finally, the interactional function of texts serves to guarantee and strengthen the resilience and continuity of the written communication.

In relation to textual function as a written discourse, Brown and Yule (1996) cited the main transactional language function, namely that a language serves to convey factual information. In this transactional function, the writer's mind is the most effective at delivering information. This language function is message-oriented, and within this function, it is very important for the message's recipients to receive the correct details.

The concept of law through text was introduced by Rahardjo (2009) in his book, *Law and Behavior: Good Life is a Good Legal Basis*. Law through text is a deed or behaviour that is consciously transformed into a positive text. People involved in legal texts construct the text as a guide for what they want to achieve. Law through text begins with an understanding of the contents of the text, which is incorporated into the mind with a legal awareness. Legal awareness leads to legal behaviour, and the text of the law can foster legal attitudes and consequently legal behaviour. Due to the importance of legal texts, it is assumed that such texts, including notarial deeds, are written with a clear structure in order to provide legal clarity for anyone affected.

Methods

This research into the general structure and function of notarial texts took the form of analytic descriptive research supported by qualitative data. A case study approach was used in this study. The research findings about the structure and function of notarial text may be useful in forming a preliminary description for the identification of the structure and function of language used in other legal documents, although the differences in different contexts should still be borne in mind (Santoso, 2014; Ilyas, 2018). The case study approach in this study may

also explain the reasons behind documents, in the form of notarial texts, which have generic structures and functions.

In addition to the case study approach, this study also employed an interpretative approach. This approach focuses on a single case to produce theoretical views and meanings. These meanings are conveyed through the use of symbols that apply to the values, codes, and rules contained in a notarial text. An interpretative approach is achieved by listening to the notaries within a legal community as they explain notarial texts. This is done so an understanding can be gained of the institutions and practices of notaries in delivering messages through notarial texts.

This research used primary and secondary sources of data. Primary sources included the text of a "Letter of Attorney" (LA, text 1), the text of a "Deed of Sale and Purchase" (DSP, text 2), and the text of a "Deed for Establishment of a Foundation" (DEF, text 3). Secondary sources of data included previous research results from various relevant literature.

A literature study represents the easiest way to get much-needed research concepts, theories, and secondary data in a study. Searching for data and previous research results is all part of a literature study, which is a comparative study that can help explain a phenomena by looking at research studies with similar objectives, even if they focused on different locations or periods.

The steps taken in this study included collecting and extracting primary data from texts produced by notaries or made before one. These included notary text fragments. Such data has the potential to enrich our understanding of the characteristic structure and function of notarial texts.

Research data was collected using library and writing techniques, as well as through interviews with notaries. These in-depth interviews were conducted in order to identify, understand, and inventory generic structures and functions for notarial texts, including the symbolic meaning of notarial texts and other phenomena that could support the analysis. All the data collected through the above approaches was further classified, linked, and accumulated. In addition, all data was linked to primary or secondary sources as a form of interpretation. Furthermore, the data was synthesized in order to develop a model for the structure and function of the examined notarial texts' language.

Results and Discussion

Based on the research data and the analysis results, it was found that the general structure of notarial text comprised three main parts: (i) HD, (ii) BD, and (iii) CD. Each of these had its own elements and functions.

General Structure of Notarial Text

The structure for the text, elements, and contents of the deeds are expressed in Table 1, while the structure and the function of the notarial texts is given in Table 2.

Table 1: Structure, elements, and content of notarial text

No.	Structure of Text	Element of Text	Content of Text
1	2	3	4
1.	Head of Deed (HD)	Title of Deed (TD)	Name of the deed
		Number of Deed (ND)	Deed numbering in accordance with notary's office
2.	Body of Deed (BD)	Opening of Deed (OD)	1. Time and place of deed writing 2. Notary identity and work region 3. Information for presented witnesses
		Content of deed (ID)	1. Identity of subject 2. Place of act of subject 3. Content of deed 4. Expiration date of deed 5. Place of law 6. Guarantee of involved identity justness 7. Time of completion of deed
3.	Closing of Deed (CD)	Closing of Deed Description (CDD)	1. Information of deed as original deed 2. Information of deed perusal by notary, as mentioned in article 16, paragraph 1, letter m, Act No. 2, 2014 3. Information of deed signing after deed perusal by notary
		Witnesses Introduction (WI)	Complete identity details of witnesses

		Guarantee Description (GD)	Guarantee of unchangeable information in the form of additional, removal, or replacement and the number of changes.
		Deed Signature (DS)	1. Place and time of deed signing 2. Parties involved in deed signing

The structure of the text and the functions of language use

Table 2: Structure, function, and meaning of notarized text

No.	Structure of Text	Function of Text	Meaning of text
1	2	3	4
1.	Head of Deed (HD)	Instrumental function	1. To show the type of deed 2. To produce certain terms and trigger events related to the Title of the Deed (TD)
2.	Body of Deed (BD)	1. Representation function	1. To convey a related reality with information about the time and place of deed completion 2. Notary introduction 3. Information about witnesses involved in validation of deed.
		2. Regulatory Function	To order conditions, including witnesses involved in a deed, in accordance with TD
3.	Closing of Deed/CD	1. Representation Function	1. To explain the time of validation of a deed and those involved with it 2. To give the identities of witnesses
		2. Regulatory Function	1. To order deed signature after deed perusal 2. To order a certified duplicate copy of the deed that is identical to the original

The head of a deed comprises two elements, namely the title of the deed and the number of the deed. The TD element shows the type of act taking place in the text to produce certain conditions or cause certain events (i.e., the functioning of the instrument). The ND element indicates the number of the deed, as sequenced in accordance with the numbering system of the issuing notary office.

Examples of TD text appear in the following data:

- (1) LETTER OF ATTORNEY (01/LA-1/II/2016/1)
- (2) DEED OF SALE AND PURCHASE (14/DSP-1/XII/2005/1)
- (3) "HAQQUL AMIN" FOUNDATION (31/DEF/X/2010/1)

The numbers (01), (14), and (31) following the titles of the deeds indicate the type of deed being enacted. In the titles of deeds 1 and 2, the subject is not explicitly mentioned, while in deed 3, the name of the object being established is explicitly mentioned.

In addition, these three items of data serve to generate certain conditions or bring about certain events. Deed 1, for example, indicates the circumstances or events where the first party authorizes the second party to sell, transfer, or release rights to a piece of land. Deed 2, meanwhile, indicates the legal conditions and events relating to the sale of something from the first party, as the seller, to the second party, as the buyer. Finally, deed 3 indicates the conditions and events for the legal establishment of the "HAQQUL AMIN" foundation.

Structure of the body of the deed

The structure of BD comprises the following elements: (i) the opening of the deed (OD) and (ii) the content of the deed (CD). The OD element in turn details (1) the time and place, (2) an introduction to the notary, and (3) the presence of witnesses.

The OD element serves to convey information about the time and place of the deed's creation, the identity of the notary issuing the deed, and the witnesses present for the deed's validation. Accordingly, the OD section serves the representation function, as is evident in the data below:

- (4) On this Friday, 26-02-2016 (the twenty-sixth of February, two thousand and sixteen) at 13.00 (at thirteen hundred hours Indonesian Western Time), present before me, JEFRI OKTA WIJAYA, Bachelor of Law, Master of Notarial Law, Notary in Sukoharjo Regency, in the presence of witnesses of deed, whose names will be mentioned at the end of this deed. (02/LA-1/II/2016/1)
- (5) On this day, Tuesday the 20th (twentieth) of December, 2005 (two thousand and five), present before me PURNAMANINGRUM, Bachelor of Law, based on the Decree of the State Minister of Agrarian / Head of the National Land Authority, 1998, number 15-XI-1992, was appointed as official certifier of title deeds hereinafter referred to as PPAT referred to in article 7 of Government Regulation Number 24 of 1997 concerning Land Registration, with a work area of Sukoharjo Regency, and placed on Jalan Solobaru AB

02 Solobaru, Sukoharjo, attended by witnesses I acquainted with and who will be mentioned at the end of this deed. (15/DSP-1/XII/2005/1)

(6) On this day, Friday the 29th (twenty-ninth) of October, 2010 (two thousand and ten), 10.00 (ten hundred hours) Indonesia Western Time, came before me, ADIB SUJARWADI, Bachelor of Law, with the presence of witnesses that I, the notary, acknowledged and whose names will be mentioned at the end of this deed. (32/DEF-1/X/2010/1)

The contents of the deed (CD) include the substance of the material in accordance with the TD. The CD element for the letter of attorney (LA) contains details about (i) the legal participants as authorizer and attorney, (ii) the authorization, (iii) the granted letter of attorney, (iv) a summary of rights, (v) the law office; (vi) the identity authorization of the parties involved, and (vi) the completion time of the LA.

The CD element for the deed of sale and purchase (DSP) includes (i) an introduction to the seller as the first party and the buyer as the second party, (ii) a statement of the sale and purchase, and (iii) the sale and purchase agreement between the first and second parties.

The CD element for the deed for the establishment of a foundation (DEF), meanwhile, contains an introduction to the parties founding the foundation. It also includes the following discourse units: (i) the purpose of the DEF, (ii) the name and office address of the foundation, (iii) the purpose of the foundation, (iv) a summary of the foundation's activities, (v) the expiration period of the foundation, (vi) the foundation's annual report, (vii) any changes in the charter, (viii) possible foundation mergers, (ix) possible dissolution of the foundation, (x) how residual liquid wealth will be used, and (xi) closing rules as agreed by the founders, managers, and supervisors of the foundation.

The CD serves to (i) detail or introduce the identity of the legal participants as authorizer and attorney, (ii) declare authorization by the authorizer to the attorney, (iii) define and clarify the legal rights being exercised by the authorizer to the attorney, (vi) summarize and arrange the power of attorney being delivered by the authorizer, (vi) give the start and expiration date for the LA, (vi) explain the choice of legal residence and the consequences to each party involved in the LA, (vii) confirm the identities of the parties concerned and that they understand the content of the LA, and (8) explain the timing of the LA's completion.

Based on the above, the content of a deed (CD) generally has regulatory and representation functions. However, the OD element leans more to the representation function, while the content of a deed leans more toward a regulatory function. Here is an example of the data for a CD section.

- (7) Mr. PURWONO, born in Sukoharjo on 10-08-1983 ----- (tenth of August, nineteen eighty-three), ----- The next appearer (sic) is referred to as the AUTHORIZER-----
(05/ LA-1/II/2016/1)
- (8) The appearer (sic) hereby appoints POWER OF SALE to: DWI PURNANTO, Master of Humaniora, born in Boyolali, 11-11-1961 (eleventh of November nineteen sixty-one), Lecturer, Indonesian Citizen, Next referred to as ATTORNEY----- (06/LA-1/II/2016/2)
- (9) For and on behalf of the AUTHORIZER to sell, assign, transfer and dispose of: A plot of land with Proprietorship Number: 4128 / Gampang described ----- (07/DSP-1/II/2016/2 to 3)
- (10) In order to achieve the purpose, the attorney shall appear as is appointed to the institutions/agencies of both the government and the private sector, particularly the Official Certifier of Title Deed, in providing all papers, complete evidence, and the necessary agreements and engagements and determine and comply with all requirements and then submit the sale/transfer/release to the buyer/recipient of the rights, receive the proceeds of the sale, provide a valid and completed receipt for money/ signature/content, submit application of transfer letters, and comply with all necessary terms and conditions in such a way that any business is completed as perfectly as possible (08/DSP-1/II/2016/3)

Structure of the closing of the deed

The structure for the closing of the deed (CD) comprises the following elements: (i) the final description of the deed (CDD), (ii) an introduction to witnesses (WI), (iii) a description of the guarantee (GD), and (iv) the deed's signing (DS). In general, the CD's structure includes (1) the timing of the deed's completion, (2) the identity of the witnesses, and (3) the deed's signing following perusal by the notary. The CD serves to (a) state the validity of the deed, (b) provide information about witnesses' identities, (c) demonstrate signing of the deed following perusal by the notary and the creation of a certified copy of the deed.

Accordingly, in general the closing of the deed (CD) provides representation and regulation functions. The following is an example closing of a deed (CD):

- (11) Hereby the original of the deed as legal proof and completed in Sukoharjo, on the day and date at the beginning of the deed in the attendance of: 1. Mrs. ENIN CHRISTINA, Bachelor of Law, age 34 years old, residing at Jalan Kemuning 1 number 17, RT003 RW 014, Purwosari Village, Laweyan Subdistrict, Surakarta; 2. Miss RIZKA AYUGOWATI, age 24, residing in Gabudan, RT01, RW 07, Joyosuran Village, Kliwon Subdistrict,

Surakarta, both Notary Officers at Sukoharjo, as witnesses. This deed after I, as notary, read before the appearers (sic) and witnesses, the and appearers (sic), witnesses and I, as notary immediately signed this act made with no changes before the original of the deed was signed and a COPY IDENTICAL TO THE ORIGINAL MADE (13/LA-1/II/2016/4)

The findings from analyzing the text structure of the notarial text indicates that the head of a deed (HD) comprises just the title of deed (TD) and the number of the deed (ND). This differs from the text structure for notarial text specified in Law No. 2 of 2014, article 38, paragraph (2).

Indeed, the structure of a HD in this law should comprise (i) the title of the deed (TD), (ii) the number of the deed (ND), (iii) the time and date, (iv) detail of the notary. Elements (i) and (ii) are located in a central position. The TD is written with capital letters, while the ND is written with capital letters, lowercase letters, Arabic numbers, and roman numerals. Element (iii) of the HD structure in the law contains a time, day, and date, as well as the full name and position of the notary. Element (iii) is written under the ND in the form of a paragraph beginning with the text.

The elements for the head of a deed (HD) according to Law No.2 Year 2014, article 38, paragraph (2) can be seen in the following example:

(i) DEED OF SALE AND PURCHASE

(ii) Number: 313/GT.068/ DSP/ VI/2003

(iii) On this day of the 25th (twenty-fifth) of June 2003 (two thousand and three) present before me HERTANTI PINDAYANI, Bachelor of Law, based on the Decree of the State Minister of Agrarian / Head of the National Land Authority of the 4th March 1996, number 3-III-1996 appointed as Official Certifier of title deeds..... , with regional scope of working of Tegal and placed at Jalan Sultan Agung No. 32 Tegal attended by witnesses whom I acknowledge and mentioned at the end of this deed.

Based on discourse and textual theory, element (iii) above, which is legally part of the HD, would be more appropriately placed in the body of the deed. This is because the placement of the element (iii) does not fit with the characteristics of a HD, because it is a paragraph that begins a discourse. Thus, element (iii) in the structure of the above HD is more accurately placed at the opening of the body of the deed (BD) rather than ending the head of the deed.

Conclusion

This study examines the general structure of notarial texts and their elaboration into opening deed, contain deed and closing deed. In summary, generic notarial text has the structure of: (1) the head of the deed, (2) the body of the deed, and (3) the closing of the deed. The head includes the title of deed and the numbering of the deed, while the body includes the opening and content of the deed. The closing of the deed, meanwhile, contains a description of the deed's closing, witness introductions, a guarantee description, and the deed's signatures. Specifically, the structure of the HD serves to indicate the type and number of acts that occur to produce certain conditions or trigger certain events in the text (i.e., the function of the instrument). In addition, the structure of the body of the deed (BD) contains the opening and content of the deed. The opening provides information about time and date, the notary issuing the deed, and witnesses present. This serves to convey the reality of the time and place of the deed, the notarial deed, and the witnesses present to confirm the deed, so it serves a representation function. The content of the deed, meanwhile, has elements in accordance with the deed's title. In general, the content serves regulatory and representation functions. The closing of the deed includes the time of the deed's validation, the identities of the witnesses, and the deed's signing immediately after perusal by the notary. In general, the closing serves representation and regulation functions. In the structure of the head specified in UUJN No. 2 of 2014, clause 38, paragraph (2), element (iii) would be more appropriately used to open the body of the deed rather than end the head of the deed.

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