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Notarial Gatekeeping in Sovereign Investment: Formality Requirements and the Legal Consequences of Informality in Danantara's Investment Agreements

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Abstract: Sovereign wealth funds are public bodies that commit capital through private-law contracts, yet scholarship on their governance has concentrated on the institutional layer of mandates, boards, and voluntary disclosure, leaving the transactional layer, where public capital is actually committed, without doctrinal attention. This study examines that layer in the case of Danantara, Indonesia's sovereign investment body established in February 2025. Using doctrinal and functional-comparative methods, it asks how Indonesian positive law regulates the involvement of civil-law notaries in Danantara's investment agreements, which transactions require an authentic instrument as a condition of validity, and what consequences follow when agreements affecting state capital are executed as private deeds. The analysis shows that the applicable formality rules are scattered across company, investment, treasury, land, and notarial legislation and are absent from the fund's own statutes. A three-tier typology distinguishing constitutive, evidentiary-functional, and discretionary formality is developed and applied to the fund's transaction modalities. Comparative evidence from Norway, Singapore, the Netherlands, and France shows that notarial gatekeeping is system-contingent. The novelty lies in reframing the authentic instrument as transaction-level verification that complements self-reported institutional governance and in proposing a proportionate formality clause for the fund's regulations.

Keywords: Sovereign Wealth Fund, Danantara, Civil-Law Notary, Authentic Instrument, Gatekeeper Theory

Abstrak: Dana kekayaan negara adalah badan publik yang mengikat modal melalui perjanjian berdasarkan hukum privat, tetapi kajian mengenai tata kelolanya terpusat pada lapisan kelembagaan berupa mandat, dewan, dan pengungkapan sukarela, sehingga lapisan transaksional tempat modal publik benar-benar diikatkan belum memperoleh perhatian doktrinal. Penelitian ini mengkaji lapisan tersebut pada kasus Danantara, badan pengelola investasi Indonesia yang dibentuk pada Februari 2025. Dengan metode doktrinal dan perbandingan fungsional, penelitian ini menelaah bagaimana hukum positif Indonesia mengatur keterlibatan notaris dalam perjanjian investasi Danantara, transaksi mana yang

mensyaratkan akta autentik sebagai syarat keabsahan, dan akibat hukum apa yang timbul apabila perjanjian yang menyangkut modal negara dibuat sebagai akta di bawah tangan. Hasil analisis menunjukkan bahwa ketentuan formalitas tersebar dalam peraturan perseroan, penanaman modal, perbendaharaan, pertanahan, dan jabatan notaris, serta tidak diatur dalam undang-undang pembentuk Danantara. Tipologi tiga tingkat yang membedakan formalitas konstitutif, evidensial-fungsional, dan diskresioner dikembangkan dan diterapkan pada modalitas transaksi Danantara. Perbandingan dengan Norwegia, Singapura, Belanda, dan Prancis menunjukkan bahwa penjagaan gerbang oleh notaris bergantung pada sistem hukum. Kebaruan penelitian terletak pada pemaknaan akta autentik sebagai verifikasi pada tingkat transaksi yang melengkapi tata kelola kelembagaan dan pada usulan klausul formalitas proporsional bagi peraturan pelaksana Danantara.

Kata Kunci: Dana Kekayaan Negara, Danantara, Notaris, Akta Autentik, Teori Penjaga Gerbang

INTRODUCTION

Sovereign wealth funds hold more than eleven trillion United States dollars in assets, and most of them are sponsored by non-Western governments (Megginson et al., 2021, 2023). Their rapid growth has produced a large literature on investment behaviour, target-firm effects, and transparency (Bahoo et al., 2020; Megginson & Gao, 2020; Truman, 2010), and a smaller body of work on governance whose unit of analysis is the fund as an institution. It studies mandates and board composition (Clark et al., 2013), the legitimacy pressures that drive disclosure (Amar & Lecourt, 2023), the home-country political determinants of transparency (Cuervo-Cazurra et al., 2023), and the uneven record of voluntary compliance with the Santiago Principles (Rwakigumba et al., 2026). What it rarely studies is the instrument through which a sovereign fund commits capital. Every acquisition of shares and every transfer of a state asset into a holding company is accomplished through a contract whose legal form determines what evidence survives a dispute, whether the transaction is valid at all, and whether a foreign court or counterparty will recognise it. For funds domiciled in civil-law jurisdictions, this transactional layer is populated by the Latin notary, a public official who draws up authentic instruments with privileged evidentiary force and exercises preventive control over legality before the transaction closes.

Indonesia presents an unusually clear case because its new fund was created quickly and its legal architecture was revised within eight months of launch. Law No. 1 of 2025, the Third Amendment to the State-Owned Enterprises Law, established Badan Pengelola Investasi Daya Anagata Nusantara (Danantara) as a body receiving delegated presidential authority over the state's shareholdings. Government Regulation No. 10 of 2025 set out its organs. Law No. 16 of 2025, enacted on 6 October 2025, then reversed several provisions of the first amendment after public criticism, restoring the status of fund organs as state administrators, affirming the audit jurisdiction of the Supreme Audit Agency (BPK), and prohibiting ministers from holding board positions following Constitutional Court Decision No. 128/PUU-XXIII/2025. In the same period the fund began contracting at scale: a four billion United States dollar co-investment fund with the Qatar Investment Authority was announced in April 2025, a two billion euro vehicle with the Russian Direct Investment Fund followed in June, and seven of the largest state enterprises were transferred under its control. The institutional debate has been intense (Priyono & Gunadi, 2025), but the contracts themselves have passed without legal commentary on their form.

The Indonesian scholarship on Danantara reproduces the institutional focus of the international literature. Sarjana et al. (2025) and Masnun et al. (2026) debate whether the fund's

assets remain state finances for the purposes of criminal and audit law. Hermawan et al. (2026) measure the fund's statutory design against the Santiago Principles and find divergence on independent oversight. Cahyani (2026) proposes transplanting the Temasek model to resolve the public private dichotomy, Resti et al. (2026) draw on Malaysia and Norway to propose a welfare oriented governance model, and Helmi et al. (2025) examine the role of advocates in safeguarding the economic reform that the fund represents. None of these contributions asks what legal form Danantara's agreements must take, which formality requirements already bind the fund by operation of general law, or what happens when those requirements are ignored. Conversely, the extensive Indonesian notarial literature treats foreign direct investment in generic terms (Illiyin, 2023; Anggraini, 2024; Warsito, 2025) and has not engaged with the hybrid status of a sovereign investor whose counterparties are frequently other sovereign funds. The two bodies of work do not meet, and the gap between them is where legal uncertainty accumulates. This is the **research gap** that the present study addresses.

The theoretical starting point is the hybrid character of the sovereign fund. Gelpert (2011) describes such funds as entities that implicate a four-part accountability matrix, being simultaneously public and private, domestic and transnational, and argues that this hybridity is what makes them difficult to define and govern. A fund created by statute, capitalised from the budget, and answerable to a legislature acts in the market through instruments governed by private law: share purchase, limited partnership, shareholder, and loan agreements. Freeman (2000) made a parallel argument in administrative law, observing that the public/private distinction obscures more than it reveals when private instruments carry public functions, and Clark et al. (2013) showed that the legitimacy of the Norwegian, Singaporean, Chinese, Australian, and Gulf funds depends on how each resolves this hybridity. Empirical work has since connected hybridity to governance quality (Cuervo-Cazurra et al., 2023; Amar & Lecourt, 2023; Ghouma & Ouni, 2022), but it locates the governance problem at the level of the institution and its disclosure, which is also where the Santiago Principles operate. Rwakigumba et al. (2026), examining the Southeast Asian funds including Indonesia's, conclude that voluntary self-reported compliance can create the appearance of good governance without its substance because no external assessment exists. That conclusion opens a question the literature has not asked: whether verification can be located somewhere other than the institution, namely at the point of transaction.

Gatekeeper theory supplies the lens for that question. Kraakman (1986) defined gatekeeping as a third-party enforcement strategy in which liability or duty is imposed on private parties who can prevent misconduct by withholding their cooperation. The theory was developed for auditors, underwriters, and lawyers in securities markets (Coffee, 2006; Hamdani, 2003) and has since been extended to large firms conscripted as regulators of their counterparties (Van Loo, 2019). Its analytical core is a set of conditions: the gatekeeper must have the capacity to monitor, the capacity to interdict, and incentives aligned with the public interest rather than captured by the client (Kim, 2008). The Latin notary is a candidate gatekeeper with distinctive features. Carosi (2016) argues that the common-law term fits the civil-law notary only imperfectly, because the notary's preventive legality control is combined with impartiality towards all parties and with public-official status, which places the institution closer to the judiciary than to a market intermediary. Arruñada (1996) showed that the value of the notariat lies in reducing information asymmetry and enforcement costs in impersonal exchange, Deffains et al. (2026) find that jurisdictions with notaries perform better on property transfer and company incorporation, Murray and Stürner (2010) describe the notary as a neutral lawyer for the situation whose authentic instrument carries presumptions that a private deed cannot, and Rivero Silva (2026) adds that cross-border recognition of public documents has moved from equivalence of form to equivalence of authority. Three implications follow for a sovereign fund: the notary monitors at the level of the individual transaction, examining

identity, capacity, authority, and legality of object, which is precisely where institutional governance is blind; the notary interdicts by refusing, as a legal duty, to execute a deed that offends mandatory law; and the authentic instrument is a verification record external to the fund and archived independently of it.

The **state of the art** of this study lies in joining two literatures that have developed in isolation and in shifting the unit of analysis from the fund as an institution to the transaction through which it commits public capital. Theoretically, the study extends gatekeeper theory from capital-market intermediaries to the civil-law notary acting in sovereign investment, and it reframes the authentic instrument as a transaction-level verification mechanism that complements the institution-level and largely self-reported Santiago framework. Doctrinally, it supplies the first systematic mapping of the formality requirements that bind an Indonesian sovereign fund and a typology that distinguishes constitutive from functional formality. Practically, it proposes a proportionate formality clause for the fund's implementing regulations, drawing on how Norway, Singapore, the Netherlands, and France handle the same problem within their own legal traditions. Based on this description, the research questions can be formulated as follows:

1. How does Indonesian positive law currently regulate the involvement of notaries in Danantara's domestic and cross-border investment agreements, and is that regulation coherent?
2. Which categories of Danantara transaction require an authentic instrument as a condition of validity, which require it for evidentiary or enforcement reasons, and which leave form to the parties' discretion?
3. What legal consequences follow, for evidence, validity, cross-border recognition, and public accountability, when an agreement affecting separated state capital is executed as a private deed?

METHODS

This study is doctrinal legal research supplemented by functional comparison. Doctrinal research in the sense used by Marzuki (2016) and Soekanto (2007) identifies, interprets, and systematises the rules that govern a legal problem and tests them against principle. The functional-comparative component follows the method associated with Zweigert and Kötz (1998), asking how different legal systems solve the same practical problem rather than comparing institutions by name. The problem is defined functionally as the verification and recording of transactions through which a sovereign fund commits public capital. Three approaches are combined: a statutory approach that inventories and interprets the relevant Indonesian legislation and Constitutional Court jurisprudence; a conceptual approach that clarifies the concepts of authentic instrument, separated state assets, and gatekeeping; and a comparative approach that examines four foreign systems selected for variation on two dimensions, namely the legal tradition (civil-law notarial versus common-law) and the maturity of the fund.

Primary legal materials comprise the 1945 Constitution (Articles 23E and 33); the Civil Code (Articles 1320, 1338, and 1868–1880); Law No. 19 of 2003 on State-Owned Enterprises as amended by Law No. 1 of 2025 and Law No. 16 of 2025; Government Regulations No. 10 of 2025 and No. 19 of 2026 on Danantara; Law No. 17 of 2003 on State Finances; Law No. 1 of 2004 on the State Treasury; Laws No. 15 of 2004 and No. 15 of 2006 on BPK audit; Law No. 40 of 2007 on Limited Liability Companies; Law No. 25 of 2007 on Investment; Law No. 30 of 2004 as amended by Law No. 2 of 2014 on the Notarial Office; Law No. 24 of 2009 (Article 31 on contract language); Law No. 42 of 1999 on Fiduciary Security; Government Regulation No. 24 of 2016 on Land Deed Officials; Presidential Regulation No. 2 of 2021 on the Hague Apostille Convention; and Constitutional Court Decisions No. 48/PUU-XI/2013,

No. 62/PUU-XI/2013, and No. 128/PUU-XXIII/2025. Foreign primary materials include the Norwegian Government Pension Fund Act 2005, the Singapore Companies Act 1967 and the Fifth Schedule to the Singapore Constitution, Book 2 of the Dutch Civil Code (Articles 2:86 and 2:196 on notarial transfer of shares), and the French *Code civil* provisions on the *acte authentique* (Articles 1369–1371). Secondary materials comprise peer-reviewed scholarship on sovereign fund governance, gatekeeper theory, and the civil-law notariat identified through structured searches of Scopus-indexed and other databases in September and October 2026, supplemented by Indonesian legal scholarship on Danantara published in 2025 and 2026. Publicly reported facts about Danantara's transactions are used only to illustrate transaction modalities, not as evidence of contractual terms, which are not public.

The analysis proceeded in four steps. First, every statutory provision that conditions the validity, evidentiary force, registration, or enforceability of a transaction on an authentic instrument was extracted and tabulated against the types of transaction Danantara is authorised to undertake under Law No. 1 of 2025, Law No. 16 of 2025, and Government Regulation No. 10 of 2025. Second, each transaction type was assigned to a tier of a three-tier typology of formality, developed in the next section, on the basis of the extracted provisions. Third, the legal consequences of executing each transaction type as a private deed were derived from the Civil Code's rules on evidence and nullity, the treasury rules on asset transfer, the audit statutes, and the Apostille Convention. Fourth, the four comparator systems were examined for the functional equivalent of each tier. Interpretation followed systematic and teleological canons; where provisions conflicted, the *lex specialis* and *lex posterior* rules were applied, with Law No. 16 of 2025 treated as the controlling text wherever it departs from Law No. 1 of 2025.

RESULTS AND DISCUSSION

The Authentic Instrument in Indonesian Law and the Three-Tier Typology of Formality

Indonesian private law retains the Dutch civil code structure (Butt & Lindsey, 2018). Article 1868 of the Civil Code defines an authentic deed as one made in the form prescribed by law by or before a competent public official, and Article 1870 gives such a deed complete evidentiary force between the parties and their successors. Doctrine distinguishes three dimensions of that force: external (the deed is presumed to be what it appears to be), formal (the official truthfully records what occurred before him or her), and material (the content is presumed true between the parties) (Adjie, 2018; Nurhanto et al., 2026). A private deed, by contrast, has evidentiary force only once its signature is acknowledged or proved (Article 1875), and its date is not binding on third parties. Law No. 30 of 2004 on the Notarial Office, as amended by Law No. 2 of 2014 (UUJN), designates the notary as the public official with general authority to make authentic deeds concerning all acts, agreements, and determinations required by law or desired by the parties (Article 15(1)). The notary must retain the original (*minuta*) in the protocol (Article 16(1)(b)) and refuse to act where the content contravenes law or morality; supervision is exercised by the Notarial Supervisory Councils, and liability attaches to breach (Tan et al., 2023). Land deed officials (PPAT) hold exclusive authority over deeds transferring rights in land under Government Regulation No. 24 of 2016. These rules give Indonesia a fully formed Latin notariat whose gatekeeping functions are already in place; the question is whether and how they attach to a sovereign fund.

Combining the gatekeeping conditions with the doctrine of the authentic instrument produces a typology that structures the analysis that follows. *Constitutive formality* exists where a statute makes the notarial deed a condition of validity, so that its absence renders the transaction void or legally non-existent regardless of the parties' intentions. *Evidentiary-functional formality* exists where no statute requires the deed but the authentic instrument materially changes the transaction's legal position: by fixing its date against third parties, by supplying executory force, by satisfying a cross-border recognition requirement, or by

generating an archive that an auditor can rely on. *Discretionary formality* exists where the deed adds little beyond ceremony, as in a non-binding memorandum of understanding. The typology permits a proportionate answer to when a sovereign fund should be required to use a notary, in place of the undifferentiated recommendation in much Indonesian notarial scholarship that notarial involvement should simply be increased.

The Danantara Legal Regime and Its Revision

Law No. 1 of 2025 introduced the concept of a *Badan* receiving delegated presidential authority to manage the state's shareholdings in enterprises and to invest their dividends, and it transferred the state's position as shareholder, previously exercised through the Ministry of State-Owned Enterprises, to that body. Government Regulation No. 10 of 2025 established a Supervisory Board and a Managing Board, with the fund holding Series B shares in two operating holdings, PT Danantara Asset Management and PT Danantara Investment Management, while the state retains a Series A share carrying veto rights. The fund was launched on 24 February 2025 with initial capital of IDR 320 trillion and with seven enterprises, including Bank Mandiri, Pertamina, PLN, and Telkom, transferred under its control.

Two provisions of the first amendment attracted immediate criticism: one excluded the fund's directors, commissioners, and supervisory board members from the category of state administrators subject to anti-corruption reporting obligations; the other characterised investment losses as losses of the fund rather than of the state, which, read with the business judgment rule, appeared to insulate managers from criminal exposure. Law No. 16 of 2025, enacted on 6 October 2025, responded on several fronts. It converted the ministry into a Regulatory Agency for State-Owned Enterprises (BP BUMN) distinct from the fund, removed the exclusion from state-administrator status, affirmed financial audit by BPK, and prohibited ministers from holding board positions in enterprises, implementing Constitutional Court Decision No. 128/PUU-XXIII/2025. Government Regulation No. 19 of 2026 subsequently authorised PT Danantara Investment Management to establish multiple investment holdings and gave the fund sole authority to approve write-offs of enterprise assets.

Beneath these revisions lies a doctrinal dispute that bears directly on the formality question. Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013 held that state capital injected into enterprises remains part of state finances for the purposes of Law No. 17 of 2003 and BPK audit, even though it is separated from the budget and managed under company law. Law No. 1 of 2025 sought to characterise losses on that capital as the fund's own, and the scholarship divides on whether this is permissible: Sarjana et al. (2025) argue that separated state assets in Danantara remain state finances, Masnun et al. (2026) recommend judicial review on the ground that both 2025 amendments contradict the Court's *ratio decidendi*, Ghifari et al. (2026) propose a hybrid framework in which state capital remains constitutionally public while operationally governed by corporate principles, and Cahyani (2026) argues that without a legislative safe harbour the ambiguity will produce managerial paralysis. The dispute matters here for a reason the participants have not drawn out. If Danantara's assets are state finances, then transactions disposing of them engage Articles 45 to 49 of the State Treasury Law and fall within the audit jurisdiction that Law No. 16 of 2025 confirmed. The evidentiary record of each transaction then becomes an object of public accountability, and whether that record is an authentic instrument or a private deed whose date and content may be contested is a question the statutes do not answer.

Transaction Modalities

The fund's reported activity in its first eighteen months reveals at least six transaction modalities: the receipt and holding of shares in state enterprises through transfer of the state's

shareholding into the fund's holdings; the establishment and capitalisation of new legal entities, including the two operating holdings and the sectoral holdings authorised by Government Regulation No. 19 of 2026; bilateral co-investment with foreign sovereign investors, exemplified by the four billion United States dollar Danantara–QIA fund announced on 15 April 2025 and the two billion euro Danantara–RDIF vehicle announced in June 2025; direct equity investment and acquisition, domestically and abroad; debt issuance, including the Patriot Bond programme announced in August 2025; and the restructuring, merger, and write-off of enterprise assets. Each modality engages a different combination of the formality rules examined next.

Regulatory Fragmentation: Where the Formality Rules Sit

Neither Law No. 1 of 2025 nor Law No. 16 of 2025 nor Government Regulation No. 10 of 2025 contains a single provision on the form of the fund's agreements or on the involvement of notaries. The rules that govern that form are found elsewhere, in legislation enacted for other purposes, and they attach to Danantara only because the fund and its holdings are limited liability companies and because its counterparties and objects fall within general law. Table 1 maps those provisions.

Table 1. Statutory Provisions Governing the Form of Danantara's Transactions

Legal source	Provision	Transaction affected	Nature of requirement
Law No. 40/2007 (Companies)	Art. 7(1)	Establishment of a company	Deed of establishment must be a notarial deed in Indonesian
Law No. 40/2007	Art. 21(4)–(5)	Amendment of articles of association	Notarial deed; amendments to certain articles require ministerial approval
Law No. 40/2007	Art. 56(1)–(2)	Transfer of shares	Deed of transfer (notarial or private); copy to the company; registration in shareholders' register
Law No. 40/2007	Art. 128(2)	Merger, consolidation, acquisition	Draft and deed must be set out in notarial deed in Indonesian
Law No. 25/2007 (Investment)	Art. 5(2)	Foreign investment	Must take the form of a limited liability company under Indonesian law, engaging Art. 7 Companies Law
Law No. 24/2009 (Language)	Art. 31	Any agreement involving an Indonesian party	Must be drawn up in Indonesian; bilingual permitted
Civil Code	Arts. 1868, 1870, 1875	All agreements	Evidentiary force of authentic versus private deed
Civil Code	Art. 1320	All agreements	Validity conditions: consent, capacity, object, lawful cause
Law No. 1/2004 (Treasury)	Arts. 45–49	Transfer of state assets	Legislative or presidential approval depending on value and asset class
Law No. 42/1999 (Fiduciary)	Art. 5(1)	Fiduciary security over movables	Notarial deed in Indonesian; registration
Gov. Reg. No. 24/2016 (PPAT)	Art. 2	Transfer or encumbrance of land rights	Deed before a land deed official (PPAT)
Law No. 2/2014 (UUJN)	Arts. 15, 16	Any act the parties wish to authenticate	General authority of notary; duty to retain minuta; refusal where unlawful
Pres. Reg. No. 2/2021 (Apostille)	—	Use of Indonesian public documents abroad	Apostille certification of notarial deeds for use in Convention states
Law No. 15/2006 (BPK)	Art. 6	All state finances	Audit jurisdiction, confirmed for Danantara by Law No. 16/2025

Source: Compiled by the authors from Indonesian legislation (2026)

The map reveals three features. First, the constitutive requirements are concentrated in company law and the law of security interests, not in the fund's own statute. Second, the requirements are triggered by the legal form of the counterparty or object: a co-investment

implemented through an Indonesian limited liability company requires notarial deeds at formation and on every capital change, whereas the same co-investment implemented through a foreign limited partnership requires none under Indonesian law. Third, none of the provisions was drafted with a sovereign investor in mind, so the public interest in the evidentiary record is protected only incidentally. The result is not an absence of regulation but a regulation that is accidental in its coverage: the degree of verification attaching to a given deployment of public capital is a by-product of structuring choices rather than a policy decision. This answers the first research question.

Applying the Typology to Danantara's Transaction Modalities

Table 2 applies the three-tier typology to the six modalities identified above, stating for each the formality tier, the legal basis, and the consequence of executing the transaction as a private deed.

Table 2. Formality Tier, Legal Basis, and Consequence of Informality by Transaction Modality

Modality	Formality tier	Legal basis	Consequence if executed as private deed
Establishment of holdings and new entities	Constitutive	Companies Law Arts. 7, 9	Company does not acquire legal personality; acts of founders bind them personally
Amendment of articles; capital increases/decreases	Constitutive	Companies Law Art. 21	Amendment ineffective; ministerial approval or notification unavailable
Merger, consolidation, acquisition of enterprises	Constitutive	Companies Law Art. 128	Corporate action void; registration refused
Transfer of shares in state enterprises to fund	Constitutive as to registration; functional as to form	Companies Law Art. 56; Treasury Law Arts. 45–49	Private deed valid between parties but date not opposable to third parties; audit trail weakened; approval requirements still apply
Security over movables; land	Constitutive	Fiduciary Law Art. 5; PPAT regulation	Security unenforceable against third parties or non-existent
Co-investment vehicle with foreign sovereign fund (offshore vehicle)	Evidentiary-functional	Civil Code Arts. 1868–1875; Apostille; UUJN Art. 15	Valid; evidentiary force depends on signature acknowledgement; Indonesian public-document status unavailable abroad; no independent archive
Shareholder and joint-venture agreements	Evidentiary-functional	Civil Code; Language Law Art. 31	Valid if in Indonesian; private evidentiary force; disputes over authority of signatories not pre-empted
Bond issuance and trust deeds	Functional (sector regulation governs)	Capital market regulation; OJK rules	Governed by securities law; notarial deed customary for trustee agreements
Memoranda of understanding	Discretionary	Civil Code Art. 1338	No legal consequence beyond ordinary contract law

Source: Authors' analysis (2026)

The table answers the second research question. The transactions through which Danantara reorganises the state enterprise sector, namely formation of holdings, capital changes, mergers, and security, are already subject to constitutive notarial formality under general company and property law. For these, the fund has no discretion, and the policy question is one of compliance and competence. The transactions through which the fund deploys capital with foreign sovereign partners, by contrast, fall in the evidentiary-functional tier: they are valid without a notary, and the parties are free to choose a foreign governing law

and an offshore vehicle. It is here, where the largest sums and the most politically sensitive counterparties are involved, that Indonesian law is silent.

The Legal Consequences of Informality

Four consequences attach to executing an evidentiary-functional transaction as a private deed, and together they answer the third research question. The first is evidentiary: under Article 1875 of the Civil Code a private deed acquires full force only when the signature is acknowledged or proved, and its date is not opposable to third parties. In a dispute over the sequence of commitments or the authority of a signatory, the fund as a public body would bear a burden of proof that an authentic instrument would have discharged in advance. Kristianto et al. (2025) show that even notarial deeds are routinely denied in Indonesian litigation, but that legal certainty survives because the external and formal presumptions stand until the deed is proved false; a private deed offers no such anchor.

The second consequence concerns authority and capacity. The notary's duty under the UUNJ to verify the identity and authority of the parties and to refuse an unlawful deed supplies a preventive check that is absent from private execution. For a fund whose power to contract derives from delegated presidential authority and is confined by its statute and the Treasury Law, a transaction concluded without that check exposes the state to the argument that an officer acted *ultra vires*, which Articles 1320 and 1335 of the Civil Code would then turn against the state's counterparties or the state itself.

The third consequence is cross-border. Indonesia acceded to the Hague Apostille Convention by Presidential Regulation No. 2 of 2021 with effect from June 2022. A notarial deed executed in Indonesia can be apostilled and circulate as a public document in more than 120 Convention states; a private deed cannot. Where the vehicle or the asset is Indonesian and a foreign partner requires a public document, the choice of form determines whether the Indonesian instrument will be recognised without re-documentation; Rivero Silva (2026) shows that recognition increasingly turns on which public functions were performed, a test that a deed before a Latin notary satisfies and a private deed witnessed by counsel does not.

The fourth consequence is one of public accountability and has not previously been identified in the Danantara debate. Article 16(1)(b) of the UUNJ requires the notary to retain the *minuta* in a protocol that is independent of the parties and supervised by the Notarial Supervisory Council. An authentic instrument therefore creates an archive that BPK, whose jurisdiction over the fund Law No. 16 of 2025 confirmed, can access without depending on the fund's own records. The Santiago Principles call for audit and disclosure at the institutional level, but compliance is self-reported and externally unverified (Rwakigumba et al., 2026; Chijioke-Oforji, 2019). The notarial protocol supplies, at transaction level, exactly the externally held record that the institutional framework lacks: the notary does not oversee the fund, but it fixes in independent custody what the fund did.

Comparative Evidence: Is Notarial Gatekeeping Necessary or Contingent?

The four comparator systems were examined for the functional equivalent of each tier. The findings are summarised in Table 3.

**Table 3. Functional Equivalents of Transactional Verification
in Four Sovereign Fund Home Jurisdictions**

Jurisdiction and fund	Legal tradition	Constitutive formality for corporate acts	Transaction-level verification mechanism	Institution-level oversight
Norway – Government Pension Fund Global	Civil law (Nordic), no Latin notariat	Registration with Brønnøysund registers; no notarial deed	Statutory investment mandate from Ministry of Finance; Norges Bank Investment Management	Government Pension Fund Act 2005; parliamentary

			internal compliance; Council on Ethics	reporting; Office of the Auditor General
Singapore – Temasek Holdings and GIC	Common law	Companies Act filings with ACRA; no notarial deed	Board approval; Fifth Schedule constitutional safeguard requiring presidential concurrence for drawing on past reserves; statutory auditors	Companies Act; Fifth Schedule; Auditor-General for GIC- managed reserves
Netherlands – state participations and Invest- NL	Civil law, Latin notariat	Notarial deed mandatory for incorporation and for transfer of shares in BV and NV (Civil Code Arts. 2:86, 2:196)	Civil-law notary verifies capacity, authority, and legality; deed registered	Ministry of Finance participations policy; Court of Audit
France – Bpifrance and Caisse des Dépôts	Civil law, Latin notariat	Notarial deed mandatory for real- property transfers; corporate acts by private deed with registration	Acte authentique with executory force (Code civil Arts. 1369–1371); notary liability	Parliamentary supervisory commission for Caisse des Dépôts; Cour des comptes

Source: Authors' comparative analysis of primary legal materials (2026)

Two patterns emerge. First, the two funds most often held up as models, Norway's and Singapore's, operate in legal systems that have no Latin notariat and that locate transaction-level verification in registries, internal compliance, and constitutional or ministerial mandates. Transplanting their design to Indonesia, as Cahyani (2026) proposes for Temasek and Resti et al. (2026) for Norway, would import the oversight architecture without the registry and compliance infrastructure that makes it work, while leaving the existing Indonesian notariat unused. Second, the two civil-law comparators with a Latin notariat rely on it exactly where Indonesian law does: at incorporation, on share transfers, and on transfers of real property. The Dutch rule that shares can be transferred only by notarial deed is more demanding than Indonesia's Article 56, so that every change in the ownership of a Dutch state participation passes through a notary who verifies the state's authority to dispose. Backer (2013) describes Norway's fund as constructing a rule-of-law framework through its own governance documents; the Dutch approach constructs it through the general law of transactions. Neither is universal. Notarial gatekeeping is a system-contingent control, and its availability in Indonesia is an asset of the legal system that the Danantara debate has so far ignored.

Discussion

Theoretical Implications: Verification at the Point of Transaction

The literature treats sovereign fund governance as a problem of institutional design and disclosure and concludes that self-reported compliance is weak because it is unverified (Rwakigumba et al., 2026; Chijioke-Oforji, 2019). The findings suggest that the problem has been framed at the wrong level of aggregation. In civil-law systems a verification mechanism already exists at the level of the individual transaction, performed by a public official who is independent of the fund, who is bound to refuse unlawful acts, and whose record is held outside the fund's control. Gatekeeper theory predicts that such a mechanism will be effective where the gatekeeper can monitor and interdict and has incentives aligned with the public interest (Kraakman, 1986; Kim, 2008); the Indonesian notary meets the first two conditions by statute, while the third depends on supervision and liability, which exist but are imperfectly enforced. The theoretical contribution is therefore to add a transactional dimension to the sovereign fund governance model: institutional oversight and transactional verification are complements, and

a fund that has the second available but unused is governed less well than its institutional scorecard suggests. The reframing also speaks to Gelpern's (2011) accountability matrix: the authentic instrument is a private-law contract recorded by a public official that, through the Apostille Convention, circulates as a public document abroad, so it already has the hybrid character of the fund itself.

Counter-Arguments and Responses

Three objections are likely to be raised. The first is that notarial formality raises transaction costs and slows deal execution. The response is that the typology is precisely a device for proportionality: constitutive formality already applies and imposes no new cost, discretionary formality is not proposed, and the recommendation is confined to evidentiary-functional transactions that dispose of or encumber separated state assets above a value threshold. Deffains et al. (2026) find no evidence that notarial systems impose higher aggregate costs on property transfer and incorporation; the *ex-ante* cost is offset by lower *ex-post* litigation and renegotiation cost, which for a public fund includes the political cost of a contested transaction.

The second objection is that Indonesian notaries are themselves exposed to capture and that enlarging their role in high-value state transactions would create a new point of failure rather than a safeguard. The concern is real, but gatekeeper theory treats capture as a design variable, not a disqualification. The appropriate reply is to raise the gatekeeper's accountability for this class of transaction through a dedicated register of authorised notaries, mandatory professional indemnity, and enhanced reporting to the Supervisory Council. The alternative, leaving verification to the fund's own legal department, places the gatekeeping function inside the entity it is meant to check, the configuration that Kim (2008) identifies as weakest.

The third objection is that common-law counterparties neither need nor recognise notarial deeds, so the recommendation would complicate exactly the cross-border transactions that matter most. Recognition of public documents is converging on equivalence of authority (Rivero Silva, 2026), and the Apostille Convention, to which Singapore, Qatar, and most of Danantara's likely partner jurisdictions are parties, supplies the mechanism; an apostilled Indonesian notarial deed is more, not less, usable abroad than a private deed. Where the vehicle is offshore and governed by foreign law, the proposal requires only that the Indonesian side of the transaction, the resolution authorising the commitment and the transfer of any Indonesian asset into the vehicle, be recorded in authentic form so that the chain of authority is externally verifiable.

Policy Implications: A Proportionate Formality Clause

The implementing regulations under Law No. 16 of 2025 should contain a formality clause that a) confirms that the fund and its holdings are subject to the constitutive requirements of the Companies Law, the Fiduciary Law, and the land deed regulation without exception; b) requires that any agreement by which the fund or a holding disposes of, encumbers, or commits separated state assets above a stated threshold be executed in or accompanied by an authentic instrument recording the corporate authority for the commitment, the identity and capacity of signatories, and the regulatory approvals obtained; c) establishes a register of notaries authorised to act for the fund, with competence requirements in cross-border investment documentation and enhanced supervision; d) directs that copies of such instruments be furnished to BPK on request as part of the audit jurisdiction confirmed by Law No. 16 of 2025; and e) leaves the form of non-binding and sub-threshold instruments to the fund's discretion. The clause builds on institutions that exist and would convert the accidental coverage identified above into a deliberate one. For the notarial profession the implication is a competence agenda, since deeds for sovereign co-investment involve governing-law and dispute-resolution clauses,

sovereign immunity waivers, sanctions representations, and multi-tier approval chains that are not standard notarial fare; the fund should accordingly involve notaries at the structuring stage rather than at signing, so that the preventive function is exercised when it can still change the transaction.

Relation to Prior Findings

The results support the earlier Indonesian scholarship's intuition that the rules on notarial involvement are scattered and implicit, but they qualify it: the rules are constitutive for a large class of the fund's transactions and simply absent for another, and the two classes have different policy needs. The results also diverge from the contention that notaries are needed because state investment is strategic, since strategic importance is not a legal category. What the analysis shows is that the need for authentic form tracks the disposal of separated state assets, the engagement of foreign public documents, and the audit interest, which are legal categories with defined content. The findings are consistent with Sarjana et al. (2025) and Ghifari et al. (2026) on the continuing public character of separated state assets, and they add that this character has a documentary consequence those authors did not examine. They are in tension with proposals to transplant the Temasek or Norwegian model (Cahyani, 2026; Resti et al., 2026) only to the extent that such proposals overlook the Indonesian legal system's own verification infrastructure.

The **novelty** of this study lies in three findings that the existing literature has not produced. First, the formality requirements binding an Indonesian sovereign fund are mapped systematically for the first time and shown to be accidental in coverage, concentrated in company and property law and silent precisely where the largest cross-border commitments are made. Second, a three-tier typology of constitutive, evidentiary-functional, and discretionary formality replaces the undifferentiated call for more notarial involvement with a proportionate test. Third, the authentic instrument is reframed, through gatekeeper theory, as a transaction-level verification mechanism whose independently archived record supplies what the self-reported Santiago framework lacks, so that institutional oversight and transactional verification are complements rather than substitutes in the governance of a civil-law sovereign fund.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Danantara was created to professionalise the management of Indonesia's state capital, and its first two years have been dominated by a debate about institutional design. That debate has not asked what legal form the fund's agreements take, and this study has shown that the question has a determinate answer in existing law and a consequential gap. In answer to the first research question, Indonesian positive law regulates notarial involvement in Danantara's agreements only indirectly, through company, investment, treasury, land, and notarial legislation that was not drafted with a sovereign investor in mind, and the resulting coverage is accidental rather than coherent. In answer to the second, the reorganisation of the state enterprise sector through incorporation, capital changes, mergers, and security is already subject to constitutive notarial formality, so that the fund's task is compliance; the deployment of capital with foreign sovereign partners, where the sums are largest and the public interest most acute, falls in the evidentiary-functional tier, where Indonesian law is silent on form and the evidentiary record of the state's commitments depends on structuring choices rather than policy; and non-binding instruments remain discretionary.

In answer to the third research question, executing an evidentiary-functional transaction as a private deed weakens the fund's evidentiary position, removes the preventive check on authority and capacity, forecloses apostilled circulation as a public document abroad, and

deprives the state auditor of an independently archived record. The civil-law notary is not a universal feature of sovereign fund governance; Norway and Singapore do without one. But Indonesia has one, and it verifies at the level of the transaction what institutional oversight cannot see, refuses what the law forbids, and keeps an independent record that an auditor can read; the Santiago framework is weak precisely because its verification is self-reported, and the authentic instrument supplies verification that is not. The contribution of this study to legal science is to add a transactional dimension to the governance of sovereign wealth funds and to show that, for a civil-law fund, the harmonisation needed is not between public and private law in the abstract but between an institution that has been built quickly and a transactional infrastructure that was already there.

Limitations

This study has several limitations. First, it is doctrinal and does not observe practice. Whether Danantara in fact uses notaries for its evidentiary-functional transactions cannot be determined from public sources, because the fund's agreements are confidential. Second, the regulatory position was in motion throughout the research period, and implementing regulations issued after October 2026 may alter the position described. Third, the comparative component is functional and selective; it establishes that notarial gatekeeping is system-contingent, not that it is superior to registry-based alternatives. The findings therefore describe the law that binds the fund and the consequences of non-compliance, not the fund's actual conduct.

Recommendations

For regulators, the implementing regulations under Law No. 16 of 2025 should adopt a proportionate formality clause, confined to dispositions of separated state assets above a threshold and supported by a register of competent notaries. For the notarial profession, a certification track in state investment documentation is needed. For the fund, notarial involvement should be reported as a component of governance disclosure under the Santiago Principles. For future research, three lines follow. Qualitative research with notaries, fund counsel, and Supreme Audit Agency auditors would test whether the gatekeeping conditions are met in practice; a comparative study of the Gulf funds, whose home jurisdictions combine civil-law notarisation with common-law transactional practice, would illuminate the hybrid documentation that Danantara's partnerships are likely to require; and an empirical analysis of Indonesian litigation involving state enterprise transactions could estimate the evidentiary and fiscal consequences of informality that this study has derived doctrinally.

Author Contributions

The first author was responsible for the research conceptualisation, legal analysis, and drafting of the manuscript; the second author contributed supervision, methodology, and critical review; the third author contributed supervision, comparative analysis, and critical review. All authors have read and approved the final version of the article submitted for publication.

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The authors declare that the generative artificial intelligence (AI) tool ChatGPT was used exclusively for language editing and grammatical improvement. The use of AI did not influence the scientific content, study design, data analysis, data interpretation, results, or conclusions of the manuscript. Full responsibility for the content remains with the authors.

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