

Strength of Evidence The Deed Under of Hands in The Case Civil Evidence

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Abstract. Deed under the hand that has obtained the legalization give assurance to the judge about the date and the identity of the parties to the agreement. The strength of evidence deed under hand as evidence in court proceedings connected with the notary authority in legalization, as for the purpose of this research is to know how strong the deed under the hand of proof in proving the civil case.

Research method used in this research is normative juridical study of the legal texts alone, but involves the ability of scientific analysis of legal materials to support eversafe against legal theory. Sources and Types of Data based on primary law material that is taken from the Book of Legislation applicable and secondary law, which consists of reference books and journals and scientific papers, the results of research related to materials research.

From the research it can be concluded that the Power of the deed under the hand that had deilegalisasi by notary it would be perfect proof if the party wants and recognize the signature on the deed agreement under the hand that had terlegalisasi by Notary.

Keywords: Legalization; Deed; Notary.

1. Introduction

Since the days of the Netherlands, there are officials of certain commissioned to create registries and issue a deed - the deed of the specifics of civil someone, such as birth, marriage, death, wills and agreements between the parties, which results or quotations from record the-record considered as a certificate of authenticity. The real meaning of the authentic act is: the deed must be always considered true unless proven otherwise in court³, *According Sudikno Mertokusumo, authentic act is a letter by a signature, which contains the events that form the basis of the right or of the engagement, which was made since all intentionally to pembuktian. Berdasarkan these definitions, the requirements for a certificate be authentic act is:*⁴

- The authentic act to be made in the form prescribed by law. The purpose of the prescribed form of the legislation in this regard is that the deed of manufacture must comply with the legislation, especially Act No. 2 of 2014 on the Amendment to Act No. 30 Of 2004 on Notary (UUJN).
- The authentic act must be made before or by public officials (*openbaar ambtenaar*). The word "before" indicates that the certificate was created at the request of a person, while the deed made "by" public officials because of an incident, investigation, decision, etc. (minutes of meetings, protest notes, etc.)
- Officials who make such deed must be authorized for that purpose in the certificate is issued. Authorities (*bevoegd*) in this particular case involves several parts in its

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³<http://irmadevita.com/2008/01/13/perbedaan-akta-otentik-dengan-surat-dibawah-tangan/.%20Aksesinternet%20tanggal%2016%20Nopember%202009>, accessed October 2, 2018. At 13.00

⁴ Sudikmo Mertokusuma, 1999, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, p.68

first position and kind deed made, second day and date of the act of action and Third place was made.

Officials are entitled to make authentic act not only Notary, because what is meant by "competent public authority" itself is an officer who has been given the authority and duty to taking notes, such as: official KUA or official civil registration charge of recording marriages, births and death, PPAT (Land Deed Officer) and other. Contrast in authentic deed, deed under the hand has the style and manner of committing to a formulation in accordance with the parties themselves, such as for example:

- Do not have a special form;
- Made not before the competent authority;
- Power Hidden still have proof for such evidence is not refuted by the making;
- In terms of evidence, the evidence must be equipped with the witnesses and the other evidence. In general deed under the hand included two witnesses who have competent law.

In practice, the deed under the hand sometimes used for certain private interests, which sometimes is not the same as the time of manufacture. For example deed under hand made today by date in months and years ago, because there was no obligation to report the deed under the hand, who warrant that the deed under the hand was made in accordance with the time. According Subekti, proving is to convince the judge of the truth of the proposition or the arguments put forward in a disputed.⁵ Darwan Prinst stated that the definition of proof is proof that indeed a criminal event has occurred and the accused are guilty of doing it, so it must give an account.⁶

General population must have been many who know what it is authentic deeds, I but the community itself is still not obvious sense, especially to do with the authentic bukti. Akta tool is a deed made by the competent public authority that is to make it according to the form and manner set out in the legislation containing the agreement or the willingness of the parties.

Authentic meaning because it is made before a public officer appointed for that which in this case is usually a Notary Public, and can be used as evidence in pengadilan. sedangkan deed under the hand is the term used by the general public because many are not made before the competent authority or notary.

Agreements made under the hand is yamg agreement made by the parties and promised, without any fixed rule and simply adapted to the needs of the parties berjanji. untuk proof strength only to the parties if the parties deny or acknowledge the agreement tersebut. artinya one party may deny or justify his signature. Another thing with the authentic act, the authentic act or ordinary common people call a notary deed had perfect strength of evidence that his intent could be alatbukti court.

How the Power of proof deed under hand as evidence in court proceedings, and is there a function notarize a deed under the hand can provide additional strength of evidence in court.

Research Methods

The method used in this research is the study of the normative legal text alone, but involves the ability of scientific analysis of legal materials to support the understanding of legal theory.

⁵R. Subekti, 2001, *Hukum Pembuktian*, Pradnya Paramita, Cet 13, Jakart, p. 1.

⁶Darwan Prinst, 1998, *Hukum Acara Pidana Dalam Praktik*, Djambatan, Cet 2, Jakarta, p. 133

In this study, the research method used is descriptive analytical, that base on condition that are applicable to the data obtained in the study, linked and compared with existing theories that fit the theme of the thesis.

However, this study is more emphasis on secondary data. Primary data is more support data sources used consisted of primary legal materials, secondary, and tertiary. On normative legal research, secondary data source / information materials can constitute legal materials.

2. Result and Discussion

2.1 The Strength Deed As Proof Under Hand As Evidence In Court Proceedings

Historically, the notary is an official with the State / public official can be appointed by the State to perform the tasks of the State in legal services to the public in order to achieve legal certainty as an authentic deed officials in the civil case. Definition of Notary can be seen in the legislation itself, which in Article 1 of Act No. 2 of 2014 on changes to No. 30 of 2004 concerning Notary, which states that "the notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this Act.

The provisions concerning the Notaries in Indonesia is regulated by Act No. 2 of 2014 on changes to No. 30 of 2004 concerning Notary, where the notion Notary governed by Article 1 paragraph 1, which states that a Notary is the official public authorities to create authentic deeds and other authorities referred to in this law.

Notary authorized to make an authentic deed regarding all deeds, agreements, and provisions required by the expressed an interest in an authentic deed, guarantee certainty the date of a deed, saving certificates, giving draft copy, and official copies, all of it along making of the deed was not also assigned or excluded to another official or other person designated by the law.

In fact that is happening in the community, the majority of society less aware of the importance of a document as evidence that the agreement between the parties is done by mutual confidence and made verbally, especially to the people who are still overwhelmed by a strong customs, for important events evidenced by the testimony of several witnesses, usually the be witnesses to the events that are neighbors, friends or employees compatriot village.

Such events may include the usual events already inherent in the life of society, such as naming to, the newborn child, but it can also be an event have important legal consequences, for example in the sale and purchase transactions or lease as well as on other important events in family environment, inheritance, adoption for people who do not have children of their own with the right to inherit. Indeed, in testimony by using some of the witnesses are weaknesses, if there is an events which must be verified, in the event of a dispute among the interested parties, the witnesses that will prove it by giving testimony.⁷

Regarding this testimony, as long as the witness was still alive at the time something that event must be verified, then it will not arise adversity, but if the witnesses that is not there anymore, either because the witness it had died or had moved to another place far away and unknown address of residence, then there will be difficulties in to prove.⁸

⁷ Koesoemawati Ira, dan Rijan Yunirman. *Ke Notaris, Cetakan 1*, Raih Asa Sukses, Jakarta.

⁸ R. Subekti, 1999, *Hukum Acara Perdaa Indonesia*, Liberty, Jogjakarta, p. 72

The term comes from Dutch deed is deed. In These certificates mean that there are two opinions. The first opinion interpret the deed as a letter and a second opinion interpret the deed as a legal act. Some scholars who hold opinions first to interpret the deed as a letter, among others Pitlo interpret the deed as follows: letter signed, done to be understood as evidence and to be used by the person for whom the purpose of the letter was made.

The strength of proof materill of the deed under the hand, according to Article 1875 Book of the Law of Civil Law, the deed under the hand recognized by the people against whom the certificate was used or that may be considered recognized by the laws of the signatory, heirs and people got the rights of the person, is a testament to perfect as an authentic deed. Based on this, fill in the deed under hand it holds as true to who made it and for the benefit of those to whom the statement was made. Deed under the hand that has been in Waarmerrking not been able to assist the judges in evidence during the trial, because the deed under hand in waarmederking there is no guarantee either date, signature and the content of the letter is known by the Notary.⁹

2.2 Legalization Function Under Hand Over Deed of Extra Strength Such Can Provide Evidence In Court of Justice

Types of Deeds Deed may be given in two kinds of authentic deed and the deed under hand. The authentic act is divided into two kinds of certificate authorities (*Ambtelijk acte*) and deed the parties (*Partij acte*).

Above has been explained that the mandate and work of the principal Notary is to create an authentic deed, whether made before namely (*Partij acten*) or by the Notary (*relaas acten*) if the said deed is authentic, it is generally the intended is nothing but the deed made by or before a Notary.

Deeds function, namely:

- Formalities Causa

Deed may have formal function (formality causa), which means that in order to complete or perfect (not to validity of) a legal act must be made an act. Here deed the formal requirements for the existence of a legal act. Besides the formal deed function has a function as evidence because the deed was built in the first intentionally to proof later. The nature of an agreement written in deed that does not make the validity of the agreement but merely in order can be used as evidence in the future.

- Probability Causa

On the Strength of proof of birth of an authentic deed applies the principle of *acta publica probant Sese IPSA*, Which means that a deed appears as an authentic birth certificate and meet the requirements which has been determined, then the certificate is valid or may be considered as authentic deeds, until proven otherwise. This means that official signature is considered as genuine until there proving otherwise. The burden of proof lies on who questioned about the authenticity of these certificates.

The strength of evidence of birth applies to the interest or profit and for the individual and is not limited to the party only, and as evidence of the good deed official authentic act nor deed merits of the parties in the strength proof of birth.

In a civil case or of the whole stage screening trial in a civil case, the proof holds a very important role. Said, because in the stage proof of this is the disputing parties are

⁹ A. Kohar, 1984, *Notaris Berkomunikasi*, Alumni, Bandung, p. 36.

given the opportunity to reveal the truth of the arguments put forward. So based on this evidence a judge or panel of judges will can determine the presence or absence of an event or the right, which would finally judge may apply the legal basis right, right, fair, or in other words judge decision right and fair can only be determined after going through the stage of proof in court settlement of a civil case in court. Rules of evidence is part of the procedural civil law. Law of Evidence in Civil Code set out in the fourth book in it contains all the basic principles of proof in the field of civil relations.¹⁰

In connection with the rules of evidence, then for the purposes of a proof, the necessary evidence. According to the provisions of Article 1866 Civil Code states that the verification tool include:

- written evidence;
- evidence of witnesses;
- presupposition;
- recognition;
- oath.

Regarding the legalization of Article 1874 of the Civil Code states:

As a writing under the hand is considered the deeds signed under hand, papers, registers, letters household affairs and other posts made without the mediation of a public servant. With a signing writing under the hand equalized a thumbprint, spiked with a dated statement from a notary or a Another employee designated by legislation where it turned out that he knew the thumbprint stamp, or that this person had been introduced to him, that it deed has been explained to him, and that after the cap The thumb affixed in front of public servants. This employee should be posted on the text. By law can be held further rules on statements and bookkeeping referred.

Definition above implies that the deed done by the parties affixed with the signature, received the endorsement of a notary or a competent official therefore.

Legalization in the real sense is proved that the documents created by the parties was indeed signed by the parties who made it. Therefore General required the testimony of a duly authorized officer for that which in this case is to watch the signature marker of the Notary on the same date as the time signature marker it. Thus it is Legalize the document in question before the Notary to prove bunches truth signature and the date.¹¹

Notary, in his post, authorities also posted the letter under the hand, by enrolling in a special book. The book specifically referred to the book Under the Registration Letter Hand. In everyday life, this authority also known as the Registration of a note under the hand-coded "Register" or *waarmeking*.

In addition, as mentioned *waarmerking* and Legalization above, usually the parties also do the matching copy of the sometimes termed the same term is "legalized". In practice this is done for the term "legalized" this is match the original copy of a document with the title Matching Copy. In the copy will be stamped / cap photocopy every page in the page initialed by the Notary and A copy of the final match will be listed the same information that a copy of the original.¹²

¹⁰ Soebekti, 1990, *Tafsiran Kitab Undang-undang Perdata*, Cetakan 5, Citra Aditya Bhakti, Bandung, p. 23

¹¹ Mochammad Dja'is Dan RMJ Koosmogorono, 2008, *Membaca Dan Mengerti HIR*, Badan Penerbit Undip Semarang, p. 89

¹² Habib Adjie, 2011, *"Kebatalan dan Pembatalan Akta Notaris"*, Cetakan Ke satu, PT. Refika Aditama, Bandung, p.55

3. Closing

3.1 Conclusion

Based on the above results, it can be concluded that there are two (2) kinds of conclusions are:

- First, answer accountability in mepertanggung justified a notary deed in the legalization of him is the proof can be perfectly apabila the parties that made it declared the existence and validity of the certificate in evidence.
- Secondly, legal certainty in the courts Assurance that certificates can be used as evidence were perfect in equalizing the Agreement when both parties acknowledge their defense. Then in the proof of the presence of the witnesses presented by the maker of the agreement which stated correctly the deed agreement under the hand that has received recognition from one of the parties seek or take to the truth of the deed he had made along party produce deed agreement under hand.

3.1. Suggestion

Advice from the author of:

- Preparation of an authentic deed assist judges in giving its decision as an act which notariel, it is neutral and impartial, and notaries can become an expert witness when necessary.
- In an agreement made under the hands of frequent emphasis on the great need, there is no balance to be made by the parties themselves. Sebaiknya every agreement made before a notary.

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