JURNAL KONSTATERING
published by Master of Notary Law, Faculty of Law Sultan Agung Islamic University
Volume 1 No. 3, July 2022
ISSN: 2828-4836

The Legal Analysis of the Strength of Proof of Underhanded Deeds Legalized by a Notary

Saepulloh[*)]

[*)] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: saepulloh1@gmail.com

Abstract. *This study aims to analyze: 1) Deed under the hand in civil evidence law. 2) The legal consequences of applying the Underhand Deed are in accordance with Article 15 paragraph (2) letter a of the UUJN or Article 1874a of the Civil Code. This thesis uses a normative legal research type which is descriptive analytical. Secondary legal materials in the form of books, and tertiary in the form of general dictionaries, legal dictionaries. The results of the study: 1) The private deed in civil evidence law is a weak evidence. The deed under the hand must be signed and sufficient stamp duty if there is no signer then it can be categorized only as an ordinary letter. 2) As a legal consequence of the existence of two different underhanded deeds, namely Article 15 paragraph (2) letter a of the UUJN and Article 1874 of the Civil Code, there has been legal uncertainty. As a result of the private deed applied by a Notary as referred to in Article 15 paragraph (2) letter a of the UUJN, the deed has the power of formal proof of truth guaranteed by the Notary so that the private deed is not included in the category of weak evidence. As a result of a private deed applied by a Notary as referred to in Article 1874a of the Civil Code, the deed has the power of formal and material proof of truth.*

Keywords: Deed; Proof; Underhand.

1. Introduction

Proof is the essence of examining a case in court. In the Civil Procedure Code, valid evidence or recognized by law, one of which is written evidence. Proof by writing is done by authentic writings or underhanded writings. Authentic writings in the form of authentic deeds made in a form determined by law, made before officials (public servants) who are authorized and at the place where the deed is made. 1 Authentic deeds can not only be made by a Notary, because the law

determines the authority This is also given to officials other than notaries who are also authorized to make authentic deeds, including Land Deed Making Officials (PPAT), Auction Officials and Civil Registry Office employees.

According to Goodhart, every judge will review the facts of a case that can be proven. Based on these facts, the judge reviews legal arguments to arrive at a conclusion in order to decide on a case. The most important facts in a case are combined with legal arguments to become a consideration as a binding legal principle. 2 The role of law in public demands for the importance of the legal consequences of a deed, thus demanding that a Notary as a public official must be able to always follow legal developments in provide information to the public who need and maintain the deeds made so that they can always provide clear legal certainty.

The deed is a letter signed, containing information about events that form the basis of an agreement. Article 1867 of the Civil Code states that proof in writing is carried out in authentic writing or in private writing. Based on the above provisions, there are two types of deed, namely authentic deed and private deed. According to Sudikno Mertokusumo, a deed is a signed letter, which contains events that form the basis of a right or an agreement, which was made from the start on purpose for proof physical evidentiary strength, formal evidentiary strength and material evidentiary strength. 4 In the event that it must be proven, then the evidence must also be accompanied by witnesses and other evidence. Therefore, usually in an underhanded deed, it is better to include 2 adult witnesses to strengthen the legal consequences. Because this often happens in practice when an underhanded deed is used by someone for personal gain, which is likely to harm someone, which is not the same as the time making.

For example, a private deed that should have been made was dated last month and year but was replaced when someone earlier needed it, because there is no obligation to report private deed, who guarantees that the deed under the hand is properly made in accordance with the time or not. Often also in society, the meaning and understanding are still not clear, especially in relation to being a means of evidence, so that people often do make a deed under the hands where the understanding and knowledge of the community can be made as an authentic means of evidence if a problem occurs. That's why it is necessary to give an understanding to the community how authentic it is and how it is under the hand.

Article 15 paragraph (2) letter a Act No. 2 of 2014 concerning the Position of a Notary, a Notary in his position has the authority to validate signatures and determine the certainty of the date of private documents, by registering them in a special book. Provisions for the legalization of private deeds, made by individuals, or by the parties, on sufficiently stamped paper, by way of

registration in a special book, provided by a Notary recorded in the Legalization Book. The date at the time of signing before the Notary, as the date of the legal action, which gave birth to the rights and obligations between the parties

The parties have signed the letter, either a day or a week before, then bring the letter to the Notary to be registered in the Book of Registration of Private Documents. Its function is, to the agreement/agreement that has been agreed upon and signed in the letter, apart from the parties, there are other parties who are aware of the existence of the agreement/agreement. This is done, one of which is to eliminate or at least minimize denial from one of the parties. The rights and obligations between the parties are born at the time of signing the letter that has been carried out by the parties, not at the time of registration with the Notary. The Notary's responsibility is limited to confirming that the parties entered into an agreement/agreement on the date stated in the letter registered in the Registration Book of Private Documents.

The clear difference between *waarmeking* and legalization is evident when the Notary's signature and the signatures of the parties to the deed are affixed. In *waarmeking*, the Notary's signature is affixed at a different time after the parties to the deed have agreed and signed the deed first. So the date the deed was signed by the parties is different and earlier than the date the deed was signed by the Notary. Whereas in legalization, the time of signing between the parties involved in the deed and the Notary must be the same. In other words, the deed is legalized before a Notary by being signed by the parties first, then followed by signature by the Notary at the same time.

The notarial deed can be accepted in a trial in court as absolute evidence regarding its contents, although changes to the said deed can still be made if the evidence to the contrary is provided by witnesses, if those who prove it can prove that what is explained in the deed is not true. The purpose of the court process is to determine a truth and the basis for that truth and will be determined in a judge's decision as a result of our law if a problem occurs in the future. According to Subekti, to prove is to convince the judge about the truth of the arguments or arguments put forward in a dispute. 10 This paper tries to see how far the power of proof of the deed is under the hands of Legalization by a Notary.

2. Research Methods

This type of normative legal research is descriptive analytical, using secondary data, namely primary legal material in the form of Act No. 30 of 2004 concerning the Position of Notary, Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 regarding the Position of Notary, and the Civil Code. Secondary legal materials are in the form of books, and tertiary in the form of general

dictionaries, legal dictionaries.

3. Results and Discussion

3.1 Deed Under Hand As Evidence In Civil Proof Law

One of the duties of a judge in civil court proceedings is to investigate whether or not a legal relationship is the basis of a lawsuit. Evidence is needed by justice seekers and courts in proving. 12 One of the pieces of evidence that can prove a legal relationship is a deed under the hand. Private deed is a deed made by the parties without the assistance of a public official with the aim of being used as a tool evidence. Deeds under the hand have the power as evidence that can be used in a court in Indonesia as a basis for judges to decide a case.

Evidence is a tool that has been determined in formal law, which can be used as evidence in court proceedings, this means that outside of these provisions it cannot be used as legal evidence. 14 According to Achmad Ali and Wiwie Heryani, clear evidence is a tool to prove the truth of legal relations, stated both by the plaintiff and by the defendant in civil cases. Various types of evidence in civil procedural law, to prove a pretext about rights and obligations in court disputes, the types have been determined in a limited manner in law.16

The deed under the hand can be seen as an object consisting of reading signs containing thoughts. The deed under the hand generally contains an arrangement of punctuation marks that contain the meaning of the agreements in an agreement. Based on this, it is clear that private deeds including letters contain various types of letters, including:

a. Letters that are not included in the deed are ordinary letters.

b. Letters that include deed, namely authentic deed and private deed.

An ordinary letter is a letter made without the intention of being used as evidence. When an ordinary letter later becomes evidence, it is a coincidence. Ordinary letters in evidentiary law have evidentiary value as independent evidence. A private deed is a letter made with the aim of later becoming evidence. In order for a private deed to become evidence at a later date, it must have the following:

a. The deed under the hand must contain the agreement.

b. The deed under the hand must contain a signature.

A thumbprint or fingerprint can be equated with a signature if it is affixed in front

of a notary, regent, mayor or judge who states that they know or have been introduced to the person who provided the fingerprint or fingerprint and the contents of the deed have been explained to that person. Article 286 RBg that the official must record it or "*waarmeking*". Based on civil procedural law, it can be seen that the mention of written evidence (letters) is the first. Based on this, it can be seen that letters are the main means of evidence, because letters are made precisely to prove a situation, or an event that has occurred or a legal action that must be carried out by someone later.

There are procedures for court examinations regarding documentary evidence including private deeds, as follows: 22

a. According to Article 137 HIR/164 RBg, parties can ask the other party to show the letter submitted to the judge.

b. According to Article 138 HIR/165 RBg, it states:

1) If one of the parties denies the veracity of the letter submitted by the opposing party, the district court examines the letter, after which it will decide whether or not the letter can be accepted in the examination of the case.

2) If during the examination it is found that it is necessary to use documents kept by public officials, the court shall issue an order for the documents to be shown in court at a predetermined time.

3) If there is an objection to showing a letter either because of the nature of the letter or because the public official's residence is far away, the district court orders that an examination be carried out before the district court at the general official's place.

4) If a public official, without valid reason, does not comply with an order to hand over or send the documents requested by the interested party to the court, then by order of the head of the court he can be forced by taking hostage to hand over or send the documents concerned.

5) If the letter in question is not part of a register, the public official, before submitting or sending the letter, makes a copy to be used as a substitute for the original letter, as long as the original letter has not been returned. The reason for writing the letter in lieu of replacement is stated below, the note is also included on the valid copy (grossen) and its descendants.

6) The fee to be paid by the party submitting the letter, the amount is determined by the head of the district court that decides the case.

7) If during an examination of the veracity of the letter submitted it raises suspicion that the letter was forged, then the letter is sent by the court to the authorized official to prosecute a criminal case and the case is suspended until a decision is made in the criminal case.

There is jurisprudence relating to letters in court examination procedures, including:

a. Based on the MARI Decision Number 167 K/Sip/1959 that in the event that there is an allegation that a piece of writing used as evidence is fake, there is no need to carry out an examination by an expert, if the judge can see for himself clearly that there was a forgery of the letter.

b. Based on the MARI Ruling Number 167 K/Sip/1959 that according to Article 138 HIR/164 RBg that the court is not required to conduct an examination of documents that are suspected of being fake but the court can carry out the examination.

According to Achmad Ali, classifying two ways of proof to submit evidence in court: 23

a. Ways of direct proof, among others:

1) The method of proof is by asking directly what needs to be proven, namely: by showing the events (of course, fragments of events, because the events as a whole are impossible to show). Evidence that can be used directly·

2) The method of proof is by submitting a letter describing past events. Evidence that can be used in how to submit a letter is written evidence.

3) The way of proof is by bringing certain people before the court to provide information about events. The evidence used by bringing people is evidence of testimony or expertise (expert testimony).

b. The method of indirect proof is proving something by proving something else. Indirect way of proof can usually be used to prove something that is difficult to prove. The evidence used in the indirect way of proof is presumptions.

Deeds under the hand in the event that they are submitted in a trial are included in direct evidence. It can be understood that the deed under the hand can directly and clearly describe the events regarding the engagement that occurred between the disputing parties. Deeds under the hand can also directly prove what agreements were agreed upon in the past before the case occurred. The

role of evidence in civil proceedings is very decisive, in contrast to criminal judges who are "beyond reasonable doubt". Based on this, the deed under the hand in the law of civil evidence has a position that is quite influential on the decision civil court because it can be seen that in civil court.

According to Munir Fuady, based on the theory of evidentiary law that evidence can be used as evidence in a court of law requires the following conditions:

a. Permitted by law to be used as evidence.

b. Reability, namely the validity of the evidence can be trusted (for example, not fake)

c. *Necessity,*that is, the evidence is necessary to prove a fact.

d. *Relevance*, namely the evidence has the relevance of the facts to be proven.

Based on the theory of evidentiary law put forward by Munir Fuady, in order for a private deed to become evidence before a court, several things must be fulfilled, as follows:

a. Private deed is permitted by law to be agreed upon as evidence.

b. Deeds under the hand must be trusted for its validity.

c. Deeds under the hand are needed to prove a fact.

d. The deed under the hand has the relevance of the facts to be proven.

An private deed has value as the initial written evidence, if it fulfills several conditions according to Article 1902 of the Civil Code, that is, the deed was made by the person against whom the charges were made or from the person he represented and the underhanded deed allows for the truth of the events described or concerned. Deed under the hand when submitted in court.

The first time the judge saw it was the signatures of the parties contained in the private deed. 26 In a court of law, the signatures of the private deed could admit or deny the signature. According to Article 3 Stbl 1867 Number 29, Article 290 RBg/1877 Civil Code that if the signature contained in the deed under the hand is disputed or the truth is denied, the judge must order that the correctness of the deed be examined. It can be understood that the signature in an underhanded deed is the number one consideration for the judge in proving a civil case in court if the signature is recognized and then continued with proof regarding the legal consequences of the engagement arising in the underhanded deed.

If the signature in an underhanded deed is denied, the opponent who argues must prove the truth. 27 This can be understood as a deficiency that an underhanded deed has when compared to an authentic deed where an authentic deed, if the signature in the deed is disputed, it must be proven that argue. An underhand deed only has the same power as an authentic deed if the truth is acknowledged before the court, but only in court outside it is not the same. Deed under the hand if the truth is acknowledged by the parties who sign it, the deed has the power of physical evidence, and material and formal evidence.

There are several values of evidence for judges to decide on a civil case, including:

a. Weak evidence, namely the evidence put forward by the plaintiff which does not provide evidence at all or provides evidence but does not meet the requirements needed to accept the pretexts of a lawsuit (only has preliminary evidence/*kracht van begin bewijs*)

b. Perfect evidence, namely the evidence that has been submitted by the party concerned is complete, meaning that there is no need to complete it with other evidence, without reducing the possibility of being submitted with evidence of refutation (*tengen bewijs*).

c. Definite evidence, namely evidence that has definite evidentiary power.

d. Binding evidence, namely evidence that has binding evidence, the judge is obliged to adjust his decision.

e. Evidence of denial, namely evidence used in rebuttal against evidence submitted by opponents in court.

In principle, all evidence can be weakened by evidence of refutation, meaning that if one of the litigants has presented evidence. The strength of perfect evidence gives the judge sufficient certainty which results in the claim that submitted the evidence is true and must be accepted by the judge

3.2. Legal Consequences for the Power of Underhanded Deeds for the Implementation According to Article 15 Paragraph (2) Letter A UUJN

Deed under the hand in English is called deed under the hand, while in Dutch it is called Deed onder de hand by a Notary or an authorized official. A private deed based on this article is a private deed that is ratified by its signature, the certainty of the date of the private letter is determined by the Notary and then registers it in a special book.

The underhanded deed referred to in Article 15 paragraph (2) letter a UUJN can be known as the underhanded deed if the signature has been legalized by a Notary and the date of the underhanded deed is determined with certainty on the date of the underhanded deed. Based on this, it can be seen that the deed under the hand has the power of proof approved by the Notary in terms of signature and date.

A deed that has perfect evidentiary power is a deed that has outward evidentiary power, formal evidentiary power, and material evidentiary power, as follows:

a. A deed that has external evidentiary strength is a deed that is able to prove the deed as an authentic deed. The strength of external proof can be understood as the strength of proof given by law, the deed is determined as an authentic deed.

b. A deed that has formal evidentiary power is a deed proving the truth in the formal sense of what was witnessed, namely what was seen, heard and also what was done by a Notary as a public official. Truth in the formal sense, namely:

1) The correctness of the date of the deed;

2) The truth contained in the deed;

3) Correct identity of the people present; and

4) The truth of the place where the deed was made.

c. Deeds that have material evidentiary power are the contents of the deed deemed true for everyone.

As a result of the underhanded deed applied by the Notary as referred to in Article 15 paragraph (2) letter a UUJN that it can be seen that it gives the effect of formal evidentiary power to the underhanded deed. Based on this, it can be seen that an underhanded deed that was legalized by a Notary in accordance with Article 15 paragraph (2) letter a UUJN that is different from an underhanded deed which is not legalized where without being legalized has weak evidentiary power or without any evidentiary force in law civil evidence.

As a result of the underhand deed applied by the Notary as referred to in Article 15 paragraph (2) letter a UUJN that it can be found to have formal evidentiary power given by the Notary. Based on this, if there is a dispute related to the deed under the hand, the truth of the person who signed and the date of the deed is

guaranteed by the Notary, which based on this matter. In terms of proving the formal truth, there is no need for supporting evidence.

As a result of an underhanded deed applied by a Notary as referred to in Article 15 paragraph (2) letter a UUJN it can be seen that it provides stronger evidentiary strength than an underhanded deed in general which includes weak evidence but cannot be equated with a deed authentic as a perfect means of evidence in civil evidentiary law because the deed under the hand only has formal evidentiary power while external and material evidentiary strength is not owned. The strength of an underhand deed legalized by a notary can have the same strength as an authentic deed if the deed is acknowledged or denied in court.

As a result of the underhand deed being applied by the Notary as referred to in Article 15 paragraph (2) letter a UUJN that has provided formal evidentiary powers guaranteed by the Notary. Based on this, it can be seen that if later the formal truth turns out to be incorrect, the Notary must be responsible for the formal untruth of the legalized private deed.

Civil sanctions are sanctions imposed on mistakes that occur due to default, or unlawful acts (*onrechmatige daad*). Based on this, it can be seen that the formal untruth of an underhand deed that was legalized by a Notary can be given sanctions if it violates the law.

Sanctions given in civil law are in the form of reimbursement of costs, compensation and interest. According to Subekti, what is meant by costs are those that have been incurred, losses, namely those suffered as a result of these losses, and interest, namely profits that have been calculated previously will be received. 33 The sanction can be sued against a Notary must be based on a legal relationship between the Notary and the party facing the Notary. 34 Based on this, it can be seen that the person who filed a civil lawsuit against the Notary against the private deed which was legalized must have a legal relationship.

The amount of loss that can be claimed by the aggrieved parties in the event of an unlawful act in the ratification of a private deed by a Notary based on Article 1865 of the Civil Code states that every person who claims to have a right, including the right to ask for damages, must prove the existence of this right. Based on this article, the amount of loss cannot be determined by the parties without going through the process of proving it in court.

According to Article 50 of the Criminal Code that whoever commits an act to carry out the provisions of the law, is not punished. Based on this, it can be seen that if the Notary legalizes the underhanded deed as referred to in Article 15 paragraph (2) letter a UUJN, he cannot be punished if the Notary commits an act

intending to carry out the provisions of the law. A notary can only be punished if he intends to commit an act other than what is stipulated by law and the sentence must also fulfill the elements of a criminal article.

4. Conclusion

Deeds under the hand in civil evidentiary law are weak evidence, namely evidence that does not provide the strength of evidence where the evidence must be supported by other evidence, but according to Article 1875 of the Civil Code, if the truth is acknowledged, it has the strength of evidence such as an authentic deed. A private deed is a letter made with the aim of later becoming evidence, so a signature and sufficient stamp duty must be given. If there is no signature, it can be categorized as just an ordinary letter. A private deed is a letter that contains reading marks, so based on this, photos and pictures do not include private deed. The legal consequences of the occurrence of two different applications of underhanded deeds, namely Article 15 paragraph (2) letter a of UUJN and Article 1874 of the Civil Code, result in legal uncertainty regarding underhanded deeds legalized by a Notary. As a result of an underhanded deed being implemented by a Notary as referred to in Article 15 paragraph (2) letter a UUJN, the deed has the strength of formal proof of truth guaranteed by the Notary so that underhanded deed is not included in the category of weak evidence. As a result of an underhanded deed being implemented by a Notary as referred to in Article 1874a of the Civil Code, the deed has the power of proving formal and material truth guaranteed by the Notary so that an underhanded deed almost resembles an authentic deed where it only does not have the power of proving the truth outwardly. There are no sanctions provided by the Notary Office Law if the Notary applies the private deed in accordance with Article 1874a of the Civil Code, but causes the Notary to have the burden more responsibility than what is imposed by the Law on Notary Office but the application of underhanded deeds according to Article 1874a of the Civil Code by explaining the contents of underhanded deeds to the parties gives more moral responsibility to the Notary in carrying out his position because the parties can know clearly according to the legal point of view what has been agreed in the deed under the hand.

5. References

Journals:

[1] Mahendra. AA Oka. "Harmonization of Legislation". Journal of the Directorate General of Legislation. RI Ministry of Law and Human Rights. The year 2010.

[2] Triashari Revelation. Sagung Putri ME Purwani. Juridical Analysis of Deeds

Under Hand in *Waarmeking* and Legalization. Journal of Civil Law. Faculty of Law, Udayana University.

[3] Zaka Firma Aditya and M. Reza Winata. "Reconstruction of the Hierarchy of Legislation in Indonesia)". Journal of State Law. Volume 9 Number 1. Year 2018

Regulation:

[1] The 1945 Constitution of the Civil Code

[2] Criminal Code

[3] Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary

[4] HIR

Internet:

http://www. Hukumonline.com