

The Evidential Power of a Private Deed Legalized by a Notary in Court

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Abstract *The evidentiary power of a private deed as evidence in a court proceeding that is connected to the notary's authority in legalization. This study aims to determine the strength of a private deed as evidence in a court proceeding, to determine whether or not the legalization function of a deed made privately can provide additional evidentiary power in a court hearing. Based on the results of the study, it can be seen that: 1) The practice of legalization by a Notary is that legalization is an acknowledgment of the date of the agreement, so that a private deed that has been legalized provides certainty for the judge regarding the date, identity, and signature of the parties concerned and related to the agreement. In addition, as long as they still have the authority to carry out their duties as a Notary; 3) The legal consequences in evidence in court in the event that there is a private deed that is legalized by a notary are that it does not have perfect evidentiary power because it lies in the signatures of the parties which, if recognized, are perfect evidence like an authentic deed. In contrast to authentic deeds which have definite evidentiary power, for private deeds the evidentiary power lies in the hands of the judge to consider them (Article 1881 paragraph (2) of the Civil Code).*

Keywords: *Deed; Legalization; Private; Proof.*

1. Introduction

Deeds are divided into two (2) types, namely authentic deeds and private deeds. Private deeds can be made in such a way based on the agreement of the parties and it is important that the date can be made by an authorized official for that purpose.

Since the Dutch era, there have been certain officials who were assigned to make records and issue certain deeds regarding a person's civil affairs, such as

marriage, will, birth, death, and agreements between the parties, where the results or excerpts from these records are considered authentic deeds. The true meaning of an authentic deed is: these deeds must be considered true, unless proven otherwise in court.

Regarding the definition of an authentic deed, it is stated in Article 1868 of the Civil Code, which states that:

"An authentic deed is a deed that is (made) in a form determined by law, made by or in the presence of public officials who have the authority to do so, in the place where the deed is made."

If we take the essence, an authentic deed must meet the following criteria:

1. The form is in accordance with the Law The form of notarial deeds, marriage certificates, birth certificates and other formats and contents are determined by law. However, there are also deeds which are in the nature of agreements between the two parties in accordance with the principle of freedom of contract;
2. Made by: Made by the official concerned to make the deed, the type is in the form of a verbal process or *ambtelijke deed*;
3. Before the authorized public official: This means that the parties concerned make it, while the public official (notary) only witnesses it, writes it in the form of a deed and then reads the contents to the parties (*partij akte*);
4. The perfect power of proof
5. If the truth is denied, then the denier must prove its untruth.

Officials who are authorized to make authentic deeds are not only Notaries, because what is meant by "authorized public officials" themselves are officials who are indeed given the authority and task to carry out the recording, for example: KUA officials or civil registry officials who are tasked with recording marriages, births and deaths, PPAT (Land Deed Making Officials) and so on.

In contrast to authentic deeds, private deeds have their own characteristics and peculiarities, namely:

- 1) The form is free;
- 2) It does not have to be made in the presence of a public official;
- 3) It still has the power of proof as long as it is not denied by the maker, meaning that the contents of the deed do not need to be proven again unless someone can prove otherwise (deny its contents);
- 4) In the case that it must be proven, then the proof must also be equipped with witnesses and other evidence. Therefore, usually in a private deed, on the other hand, 2 adult witnesses are included to strengthen the proof.

In practice, private deeds are sometimes used for certain personal interests that are sometimes not the same as the time of their creation. For example, private deeds made today are dated last month and year, because there is no obligation to report private deeds, who can guarantee that the private deed was made correctly according to the time.

Although the term authentic deed is generally known, the public is still not very clear about the meaning and understanding of this term, especially in relation to evidence. An authentic deed is a deed made by a public official who is authorized to make it according to the form and procedures stipulated in the law containing an agreement or the will of the parties.

Authentic means that it was made before a public official appointed for that purpose, which in this case is usually a notary. so that the deed made before a notary can be used as evidence in court.¹ Meanwhile, the term private letter is a term used for making an agreement between parties without the presence or presence of a notary as stated in the authentic deed above.

An agreement made under hand is an agreement made by the parties themselves who promise, without a certain standard and only adjusted to the needs of the parties. While the power of proof is only between the parties if the parties do not deny and acknowledge the existence of the agreement (acknowledge their signature in the agreement made). This means that one party can deny the truth of their signature in the agreement. Unlike authentic deeds, authentic deeds or commonly called notarial deeds have perfect evidentiary power, meaning they can be used as evidence in court.

The purpose of the trial process is to determine the truth and then determine a judge's decision. To determine the truth in the trial process, proof is required. According to Subekti, proof can convince the judge about the truth of the arguments or arguments put forward in a dispute.² Darwan Prinst stated that what is meant by proof is proof that a criminal event has occurred and that the defendant is guilty of committing it, so he must be held responsible for his actions.³ Meanwhile, according to Sudikno Mertokusumo, proof is a legal proof, which is none other than historical proof. This legal proof tries to establish what

¹Engracia, Et Al. 2003, Reasonable Limitation Rules for Making Notarial Deeds and Their Legal Consequences, Notarius, Volume 16 Number 1, Master of Notary Study Program, Faculty of Law, Diponegoro University, p. 151.

²R. Subekti, 2001, Law of Evidence, Pradnya Paramita, Jakarta, p. 1.

³Darwan Prinst, 1998, Criminal Procedure Law in Practice, 2nd ed., Djambatan, Jakarta, p. 133.

has happened concretely. Both in legal and scientific proof, then proving essentially means considering logically why certain events are considered true.⁴

The evidentiary power of a private deed as evidence in a court proceeding is related to the notary's authority in legalization. Based on Articles 1874, 1874 (a), and 1880 of the Civil Code, the written evidence must be legalized by an authorized official. This study also aims to determine the strength of a private deed as evidence in a court proceeding, to determine whether or not the legalization function of a deed made privately can provide additional evidentiary power in a court proceeding.

Based on the Court Decision Case Number Rev.G/2023/PA.Sby, In 2022, there was a dispute between the plaintiff (wife) and the defendant (husband) where in their household there were often quarrels because the defendant was suspected of having an affair until one time the plaintiff met another dream woman (wil) to confirm the defendant's actions, until finally the plaintiff separated from the plaintiff for 3 weeks until a peace agreement was made which was legalized by notary Dian Purnama Putera, SH, M.Kn. However, the defendant's actions were repeated until finally the plaintiff filed for divorce, which was registered on January 2, 2023.

2. Research Methods

The research approach method used in this thesis is the normative legal research method. research whose discussion of the problem is based on laws and regulations or literature related to the problem. The approach used in this study is the statute approach and the conceptual approach. Normative legal research is conducted by examining library materials and is also called library legal research.⁵The specification of this research uses descriptive analysis, namely research that provides an overview, writes and reports an object or event that will be drawn general conclusions from the problems discussed. Data sources come from primary, secondary, and tertiary data. The data collection method used is by literature study, namely a way of obtaining data by analyzing the entire contents of the Library (primary legal materials, secondary legal materials, and tertiary legal materials). The data analysis method required in this study is prescriptive.

⁴Sudikno Mertokusumo, 1999, Indonesian Civil Procedure Law, 5th ed., 2nd ed., Liberty, Yogyakarta, p. 109.

⁵Soemitro, Ronny Hanitijo, 1990, Legal Research Methodology and Jurimetrics, Ghalia Indonesia, Jakarta, p. 9.

3. Results And Discussion

3.1 Legalization Practice by Notary

The definition of a notary based on the text of Article 1 point 1 in conjunction with Article 15 paragraph 1 of Law Number 30 of 2004 concerning the Position of Notary Public, hereinafter referred to as UUJN, states that a Notary Public is a public official who is authorized to make authentic deeds and other authorities regarding all acts, agreements and provisions required by laws and/or desired by the interested party to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, storing the deed, providing grosse, copies and extracts of the deed, all of which are as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by law. Given the heavy responsibility of a notary as a public official who is appointed and works for the interests of the state, a notary must first take an oath to be able to carry out his/her position legally. Regarding the requirement to take an oath or promise according to his/her religion before the Minister or other appointed official, it is expressly stated in Article 4 of the Notary Public Law. A notary who has been appointed but has not taken an oath cannot carry out his/her office legally, but that does not mean he/she is not a notary. A notary who has not taken an oath is not authorized to make a deed that has authentic power. As a public official who carries out the office entrusted by the law, according to Article 1 junto Article 15 UUJN, the duties and work of a notary are as a public official not limited to making authentic deeds but also assigned to register and legalize private letters, provide legal advice and explanation of the law to the parties concerned, make deeds of establishment and deeds of amendment to Limited Liability Companies and so on. As those assigned to provide legalization and register (waarmerking) private letters in the register book, in addition to a notary, those who have the same authority for this are the Head of the District Court, Mayor, Regent and Head of the Kewedanan.

Based on the above, it is clear that private deeds between the date of their creation and the occurrence of different legal events need to be legalized by a notary upon agreement of the parties, to be dated and the parties to sign the deed which is then signed by a notary, so that the parties obtain a guarantee or certainty from this official regarding the date, signature, and identity of the signatory. The legalization in question must be carried out on the basis of an agreement of the interested parties. Some people are of the opinion that by legalizing a private letter, the letter obtains the status of an authentic deed. In other words, the letter is considered as if it were made by or before a notary. Even though a private letter has been legalized by a notary, it is still a letter made privately "Legalization is the ratification of a letter made privately."⁶

⁶M. Yahya Harahap, 2005, Civil Procedure Law, Sinar Grafik, Bandung, p. 597.

3.2. Legal Consequences in Proving in Court in Cases of Private Deeds Legalized by a Notary

In general, it can be said that if a person makes an agreement by way of agreement, because the person wants it, then the basis for binding oneself is his will or intention. In the written statement, it is what embodies the will of the person and because the intention of the person cannot be touched or seen, then the binding of a person to the statement is the manifestation of his intention or will. In theory, an agreement arises on the basis of an agreement, it occurs because there is an intention from the people concerned, but in practice, the basis is the statement of will or intention. Based on the statement of reciprocal intention, an agreement is made and from that agreement come the rights and obligations for both parties or one of the parties. The rights of one party are contrary to the obligations of the other party, so this gives the right to sue. In a reciprocal agreement, both parties each have the right to sue and each has obligations. A private deed also contains a record of a legal act, but the difference with an authentic deed is that a private deed is not made in front of a public official, but by the parties themselves. A private deed only has formal evidentiary power, namely if the signature on the deed is acknowledged, this is actually evidence of acknowledgement which means that the statement contained in the deed is acknowledged and justified. Based on this, the contents of the deed that are acknowledged are truly statements of the parties concerned, what can still be denied is that the statement was given on the date written in the deed, because the date is not included in the contents of the statements of the parties concerned. Based on this, the power of a private deed as evidence against a third party regarding the contents of the statement therein is very different from that regarding the dating of the deed. A private deed that is acknowledged is evidence against anyone, of the truth of the statement of the parties who made it in the deed in a form that can be touched and seen, but that the statement was given on the date written in the deed, is only a certainty for the parties who signed the deed and the heirs of the parties and the people who receive their rights. The third party, namely a person who did not sign it and who is not an heir or who receives the right to sign can only see the black and white contents of the statement but will not be able to check or ascertain whether the signature was placed on the date stated in the deed. However, materially, The evidentiary force of the underhand statement only applies to the person to whom the statement was given, while against other parties, the evidentiary force depends on the judge's assessment (free evidence).

Based on the above, authentic deeds and private deeds which are acknowledged by anyone are undeniable evidence that the parties concerned have made

statements as written in the deeds.⁷The difference in the power as evidence of an authentic deed and a private deed is that an authentic deed is proof of the truth.all its contents, until there is evidence indicating the falsity of the deed, whereas a private deed only has the power of evidence, if then The signature is acknowledged or considered to be acknowledged as true, and regarding the date of the deed, it has the power as evidence against third parties.

The power as evidence of a deed, whether authentic or underhand, which is recognized is the same. The deed proves the statement of will or intention of both parties, proves the existence of an agreement if the deed is fulfilled by one party to the other party in the deed, then the party can thus prove that he has the right to sue his opponent, According to the provisions of Article 285 RBg, it states as follows:⁸

"Authentic deed, namely a deed that has been made by or before a public official who is authorized to do so, provides between the parties and all their heirs, all those who obtain rights from them, perfect proof of what is explained therein, even about what is contained there as a mere statement; however, regarding the latter, it is only as long as what is stated has a direct connection with the main contents of the deed."

The term "perfect evidence" In the above article, it means that the agreement described in the deed is considered to be proven, as long as the opposing party has not provided evidence to the contrary. As long as there is no evidence to the contrary, then the proof with the deed is accepted as sufficient and for the judge the deed is decisive.

In terms of evidence in court, the judge must acknowledge the power of authentic deeds and private deeds as evidence between the disputing parties, even if the judge is not sure of the truth of the contents, however this does not mean that it is an obstacle for the opposing party to object to the evidence.

Everything that is submitted as an objection, of course, must also be proven according to Article 283 RBg which states: "Anyone who claims to have a right, or in order to strengthen his right or to deny the right of another person, points to an event, is required to prove the right or event." Both opposing parties can also submit an objection by saying that the agreement was indeed made, but because they have fulfilled their obligations, the agreement is finished and no longer valid, or that after the agreement in question was made as stated in the deed, another agreement was made between the two parties, which negated

⁷Sjaifurrachman and Habib Adjie,. Aspects of Notary's Responsibility in Deeds, Publisher CV. Mandar Maju, Bandung, p. 100

⁸Hari Sasangka and Ahmad Rifai, Loc Cit, p. 99.

the first agreement, or that the agreement in question where the deed is actually just a cover, behind the pretend agreement there is another agreement, and so on.

Matters presented as actual events by the party who disputes the evidence in the deed, of course must be proven true, perhaps it is not easy but in any case the party who is faced with the evidence of the deed has the right to present evidence of his objection. Article 285 RBg also states that the deed is also evidence of what is written in it as "mere notification" as long as it is directly related to the contents of the deed.

Equated with a signature on a private letter is a fingerprint that is strengthened by a dated statement and a notary or other employee appointed by law stating that the fingerprint on the deed was made by the person appearing before the notary or employee appointed by law, then the employee records the deed in question. If the interested party wishes, private letters can also be given a dated statement by a notary or other employee appointed by law stating that the person signing the letter is known to him or introduced to him, that the contents of the deed were clearly explained to that person and that after that the deed was signed before the employee. Private letters that are recognized by the person against whom the letter is used or that are considered recognized in a legal manner become sufficient evidence like an authentic deed for the signer and their heirs and those who receive their rights.

Thus, the judge must assume the contents of the deed are true as long as the opponent cannot prove its untruth. A person against whom the private letter is used is obliged to firmly confirm or deny its writing or signature, but its heirs or those who receive rights from it are sufficient to explain that the party does not recognize the writing or signature as the writing or signature of the person they represent. A person who does not acknowledge his writing or signature or if his heirs or those who receive rights from him state that they do not recognize the writing or signature, then the judge must order that the truth and clarity of the letter be examined. Based on the above, the signed deed, if the agreement is denied, can only be accepted as the beginning of a proof letter.

In the case of the amount stated in the deed, differing from the amount stated in the information to support it, then the agreement will be considered up to the smallest amount between them, if the deed was written by the hand of the person who bound himself to the agreement, unless the person can prove in which part of the contents of the deed there was an error. A private deed, as long as it is not accompanied by an information, regarding its date against a third party has no further force than the day of the month when the deed was given an information and recorded according to Ordonantie Staatblad 1916 No. 46 or from the day of the month since the existence of the deed was witnessed to

deeds made by public officials, or from the day of the month since the third party against whom the deed was used has acknowledged the existence of the deed in writing. A Plaintiff who wants to prove a certain event, then the person can explain the event before the judge in court so that the judge can directly see with his own eyes about the disputed matter that does not correspond to the contents of the agreement. A deed is a signed letter, containing an event that is the basis of a right or obligation, which was made from the beginning intentionally for proof. The requirement for a letter to be signed in order to be called a deed is apparently from Article 1869 of the Civil Code, where if the deed is made by a person who is not authorized or incompetent or the deed is defective, then it is not an authentic deed but has the power as a private writing if signed by the parties. Based on this, the name or signature written in block letters is not enough, because the block letters do not show the characteristics or traits of the maker.

"Signing means affixing the name of the signatory so that affixing the initials, which is an abbreviation of the signature, is not considered sufficient."⁹

In the event that there are differences in signatures, this matter is completely left to the judge without the need to hear expert witnesses. A letter signed by a person who is not competent to act according to the law cannot be submitted as evidence.

A person cannot legally state that the person was deceived by another party by putting his signature under an agreement without first reading the agreement.¹⁰

"Equal to a signature on a private deed is a fingerprint (fingerprint or thumbprint) which is confirmed by a statement dated by a notary or other official appointed by law stating that the official knows the person who affixed the fingerprint or the person was introduced to him and that the contents of the deed have been discussed and explained to him, then the fingerprint is required on the deed before the official (Article 1874 of the Civil Code, Stb. 1876 no. 29 and Article 1286 RBg)"

Fingerprint verification, better known as legalization, is different from legalization (validation according to law) of birth certificates, where the validation of the signature of the civil registration officer listed on the birth certificate is carried out by a District Court Judge.

⁹Ida Bagus Putu Pramarta Wibawa, 2018, Use of Changing Signatures by Applicants in the Making of Notarial Deeds, Masters Program (S2) in Notary Affairs, Faculty of Law, Udayana University

¹⁰Cit., p. 122.

A deed can have a formal function (formality causa), which means that for the completeness or perfection (not for the validity) of a legal act, a deed must be made. Here, a deed is a formal requirement for the existence of a legal act. For example, a legal act that must be stated in the form of a deed as a formal requirement is Article 1610 of the Civil Code concerning a contract of subcontracting, Article 1767 of the Civil Code concerning a debt agreement with interest and Article 1851 of the Civil Code concerning peace. For that, all of them require a private deed. While what is required by an authentic deed includes Article 1945 of the Civil Code concerning taking an oath by another person.

In addition to its formal function, a deed has a function as evidence because the deed was made from the beginning intentionally for evidence in the future. The written nature of an agreement in the form of a deed does not make the agreement valid but only so that it can be used as evidence in the future.

Based on this, a private deed that has been legalized by a notary helps the judge in terms of proof because with the acknowledgment of the signature, the contents of the deed are considered as an agreement between the parties because the truth of a private deed lies in the signatures of the parties, so with the acknowledgment of the signature, the deed becomes perfect evidence.¹¹

According to the author, if viewed from the perspective of its legal force for evidence, then of course Legalization is stronger than Registration (waarmerking). There are certain documents that will be used as a completeness of a process that must be absolutely legalized, for example: at the Land Office, a letter of approval from the heirs to guarantee land and buildings, or a letter of approval from the wife to sell land registered in the name of her husband and so on. If the letter/document is not legalized by a notary, then usually the document cannot be accepted as a completeness of the Mortgage Rights or sale and purchase process in question. The relevant party is forced to re-make the agreement and legalize it before a local notary.

4. Conclusion

The practice of legalization by a notary is that legalization is an acknowledgment of the date of the agreement, so that a private deed that has been legalized provides certainty to the judge regarding the date, identity, and signatures of the parties concerned and related to the agreement. The notary's responsibility for the truth of the private deed that he legalized is regarding the certainty of the signature, meaning that it is certain that the signatory is indeed a party to the agreement, not someone else. The legal consequences in evidence in court in the

¹¹Dody Radjasa Waluyo, 2001, Authority of Notaries as Public Officials, Media Notariat (Menor) October-December Edition.

event that there is a private deed that is legalized by a notary are that it does not have perfect evidentiary power because it lies in the signatures of the parties which, if recognized, are perfect evidence like an authentic deed. Unlike an authentic deed that has definite evidentiary power, then for a private deed, the evidentiary power is in the hands of the judge to consider it (Article 1881 paragraph (2) of the Civil Code).

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