

The Evidential Power of a Private Deed Legalized and Notarized by a Notary

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Abstract. *A private deed is a legal document created and signed by the parties without the direct involvement of a public official, such as a notary. However, in practice, private deeds can be strengthened through legalization or waarmeding by a notary. This study aims to analyze the legal force of private deeds after legalization and waarmeding, as well as the differences between them and authentic deeds. The research method used is normative juridical with a statutory approach and case studies. The results show that legalization provides additional evidentiary strength for the signature and date of the deed, making the deed a stronger evidence in legal proceedings. Meanwhile, waarmeding only records the date the deed was submitted to the notary, without guaranteeing the accuracy of its contents. Both do not change the status of the deed to an authentic deed, but they have important value in civil evidence. Therefore, the choice between legalization and waarmeding must be adjusted to the legal needs of the parties.*

Keywords: *Legalization; Notary; Private; Waarmeding.*

1. Introduction

In the Indonesian legal system, deeds are an important instrument to prove the rights and obligations of the parties in legal transactions. Deeds are divided into authentic deeds (notarial deeds) and private deeds (onderhands deeds). Authentic deeds have perfect evidentiary power (volledig bewijs) as regulated in Article 1866 (Civil Code), where the contents of the deed are considered true without the need for additional proof. On the other hand, private deeds have the evidentiary power of an ordinary letter, so that the party relying on the deed must prove its truth in court (Article 1870 of the Civil Code). However, legal practice allows private deeds to have their evidentiary power increased through the process of legalization and

waarmeking by a notary.¹This legality is important in the context of civil transactions, such as credit agreements, land sales, or marriages, where private deeds are often used for cost and time efficiency. Waarmeking, derived from the Dutch term "waarmaken" (to make true), refers to a notary's attestation of the authenticity of the signature and contents of a deed, thus declaring it authentic.

2. Research Methods

The research approach used in this thesis is the normative juridical legal research method. Normative legal research is legal research conducted by examining materials derived from various laws and regulations and other materials from various literature that are correlated and relevant to the problem being studied, as well as legal theories and scholarly opinions. In other words, this research examines library materials or secondary materials. The specifications of this research use descriptive analysis, namely research which, in addition to providing a description, writing and reporting an object or an event, will also draw general conclusions from the problem being discussed. The data collection method used in this study is library research, also known as document study. Document study involves the collection of legal materials through the review of legal documents and supporting treatises. These legal materials include laws and regulations, legal documents on the evidentiary power of private deeds that have been notarized by a notary, and other sources that can be used as references. All legal materials collected through library research will be sorted to obtain legal rules for the formulated problems and then systematized to produce a classification that is in line with the problems of this research. Furthermore, the legal materials obtained will be analyzed qualitatively.²

3. Results and Discussion

3.1 The Evidential Power of a Private Deed Legalized and Notarized by a Notary

Among the general public and among officials, there is often a misunderstanding regarding the meaning of waarmeking, some people think that by waarmeking a private deed, the deed obtains the status of an authentic deed or equate such a deed with an authentic deed which is the responsibility of a notary.³The thing that determines the status between an authentic deed and a private deed is:

1) Authentic Deed Is a perfect evidence as referred to in Article 1870 of the Civil Code, this deed has such evidentiary power because it is considered attached to the deed itself so that it does not need to be proven again and for the judge it is "Mandatory Evidence" (Verplicht Bewijs). Thus, whoever states that an authentic deed is fake must prove the falsity of the deed, therefore an authentic deed has

¹Bahder Johan Nasution, "The Application of Administrative Sanctions as a Means of Controlling Restrictions on Notaries' Freedom of Action," Jurnal Review, Vol. 2 No. 1, 2020, P. 2

²Ibid

³Salim, HS, Regulations on the Position of Notary, (East Jakarta: Sinar Graha, 2018), p. 15

external, formal and material evidentiary power.

2) For the judge, a private deed is "Free Evidence" (VRU Bewijs) because a private deed only has material evidence after its formal strength has been proven, while its formal evidential strength only occurs if the parties concerned know the truth of the contents and the method of making the deed, thus a private deed is different from an authentic deed, because if a private deed is declared fake, then the person using the private deed as evidence must prove that the deed is not fake.⁴

A private letter that has been registered/waarmerking does not have legal force to be used as evidence against a third party, however for the first party and the second party it can be used as evidence as long as the parties acknowledge the signature and contents of the deed, for a private letter it has no influence at all on its evidentiary power because the Notary only numbers and records it.⁵ If the signature is denied, the judge must order that the authenticity of the document be examined. If the signature is acknowledged by the person concerned, the private deed has force and effect and constitutes complete evidence. The contents of the statement in the private deed can no longer be denied, because the signature on the private deed has been acknowledged by the person concerned.

The minimum strength limit for proving private deeds is regulated in Article 1875 of the Civil Code, which explains as follows:

The Value of the Strength of Proof:

In private deeds, the power of proof is attached, the formal and material requirements must first be fulfilled:

- 1) Made unilaterally or in the form of a party (at least 2 (two) parties) without the intervention of authorized officials.
- 2) Signed by the maker or the parties who made it.
- 3) Contents and signatures are acknowledged.

If the above conditions are met, then according to the provisions of Article 1875 of the Civil Code:

- 1) The value of the strength of the proof is the same as authenticity;
- 2) Thus, the value of the evidentiary power attached to it is perfect and binding (volledig en bindendebewijskracht).

1) Minimum Limit of Proof If its existence perfectly fulfills the formal and material requirements, apart from having perfect and binding evidentiary power, it also has

⁴NG Yudara, 2006, Main points of thought regarding the position and function of Notaries and Notarial deeds according to the Legal System in Indonesia, Renvoi, Number 10.34.III, March 3

⁵Darwin Prinst, 1998, Criminal Procedure Law in Practice, Jakarta: Djambatan, p. 133

a minimum limit of proof:

- a. Able to stand alone without the help of other evidence
- b. In itself, the minimum limit of proof is met.

2) The Strength Value and its minimum limit are subject to change.

There are 2 (two) factors that can change and reduce the value of the strength and minimum limit of proof of private deeds, namely:

- a. Counter-evidence was presented against him
- b. The contents and signature are denied or not recognized by the opposing party.⁶

In such cases, a very substantial change occurs, namely the evidentiary power attached to it, falls to initial written evidence, while the minimum limit changes to evidence that cannot stand alone, but requires the addition of one of the other pieces of evidence.⁷

The legal force of a private agreement deed registered by a Notary (waarmerking), namely in a private deed the evidentiary force only includes the fact that the information was given, if the signature is acknowledged by the signer or is considered to have been acknowledged as such according to the law for a private letter the evidentiary force will depend greatly on the truth of the acknowledgement or denial of the parties to the contents of the deed and their respective signatures. If a private deed is acknowledged in content and signature by each party then the evidentiary force is almost the same as an authentic deed, the difference lies in the evidentiary force, which is not automatically possessed by a private deed. This private deed as referred to in Article 1880 of the Civil Code will not have the power of proof against a third party except from the day a statement is made by a Notary or another official appointed by law and recorded according to the Statutory Regulations or from the day the signatory or one of the signatories dies or from the day the existence of the private deed is proven from deeds made by public officials, or from the day the private deed is acknowledged in writing by the third party against whom the deed is used.

3.2 Legal Aspects of Private Deeds Notarized by a Notary

Written evidence in civil cases is the main evidence, because in civil traffic often people intentionally provide evidence in making an agreement that can be used if a dispute arises. In general, it can be said that if a person by way of agreement makes an agreement, because the person wants it, then the basis for binding oneself is his will or intention. A person's intention cannot be known directly, therefore, in social

⁶M. Yahya Harapan, 2010, Civil Procedure Law Concerning Lawsuits, Trials, Seizure of Evidence and Court Decisions, Sinar Grafika, Jakarta, pp. 546-547

⁷Cici Harfiah, Op. Cit, p. 97

life, people can know what is desired by others only from their statements alone, whether spoken or written, in writing, it is the statement that embodies the will of the person and because the intention of a person cannot be touched or seen, then a person's binding to the statement is a manifestation of his intention or will. Based on the above, the law recognizes the existence of a binding state, both according to written regulations, and according to unwritten regulations or customs.⁸

In theory, an agreement arises from mutual consent, occurring because of the intention of the parties concerned, but in practice, the basis is the statement of will or intention. Based on this mutual statement of intention, an agreement is formed, and from that agreement, rights and obligations arise for both parties or one of the parties. The rights of one party are contrary to the obligations of the other party, thus giving the right to sue. In a reciprocal agreement, both parties each have the right to sue and each has obligations. The matter of being bound by the question of will or intention is very important to be used as written evidence. The use of written evidence by a party in a deed against another party has other consequences for or by a third party. Judges in a trial really need evidence to be able to provide a settlement (decision) based on the evidence presented. In the process of proof, the truth can be determined according to law and can guarantee protection for the rights of the parties in the case in a balanced manner. This is based on the belief that the parties who signed the deed can certainly know for sure when to affix their signatures to the deed. The third party, namely the 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 power of the private deed only applies to the person for whom the statement was given, while for other parties, the evidentiary power depends on the judge's assessment (independent evidence). All cases in court are solely the power and authority of the judge or court to decide. This judge or court is an equipment in a state of law that is tasked with determining the actual legal relationship between the parties involved in the dispute or dispute.

In the trial, if what is submitted is only a private deed, considering its limited evidentiary power, other supporting evidence is still sought so that other evidence is obtained which is considered sufficient to reach the truth according to law. Based on the above, then the authentic deed and the private deed which are recognized, against anyone are undeniable evidence, that the parties concerned have made statements as written in the deeds. The difference in the strength as evidence of an authentic deed with a private deed, is that the authentic deed is proof of the truth of all its contents, until there is evidence that indicates the falsity of the deed, while the

⁸Habib Adji & Sjaifurrahman, Aspects of Notary Accountability in the Preparation of Deeds, (CV. Mandar Maju, 2011). P. 102

private deed only has the power of evidence, if later the signature is recognized or considered as recognized as true, as for the date of the deed, against a third party it has the power as evidence. 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, but this does not mean that it becomes an obstacle for the opposing party to object to the evidence. Article 285 RBg also states that the deed is also evidence of what is written in it as "a mere notification" as long as it has a direct relationship with the contents of the deed. In Staatblad 1867 No. 29, a regulation on private deeds states as follows: "As private letters, deeds signed privately, register letters, notes regarding households and other writings, which are made without using the intermediary of a public official are considered."

Equated with a signature on a private letter is a fingerprint that is strengthened by a dated statement and a notary or other official appointed by law stating that the fingerprint on the deed was made by the person appearing before the notary or other official appointed by law, then the official records the deed in question. Based on the above, the signed deed, if denied the agreement can only be accepted as the beginning of the evidence. In the case of the amount stated in the deed, different from the amount stated in the statement to strengthen it, then the agreement will be considered up to the smallest amount between them, if the deed was written by the person who binds himself to the agreement with the handwriting, unless the person can prove in which part of the contents of the deed there has been an error. valid evidence, which means that the judge may only make a decision based on evidence determined by law. The evidence in civil proceedings mentioned by law is stated in Article 284 RBg and Article 1866 of the Civil Code. Written evidence or letters are anything that contains written signs that are intended to express one's feelings or convey one's thoughts and are used as proof.

According to Article 285 RBg, an authentic deed for the parties and their heirs and those who obtain rights from it, is perfect evidence, regarding what is contained therein and even regarding what is contained in the deed as mere narration, the latter only as long as what is narrated is directly related to the subject of the deed. In the case that what is explained in the deed has no direct relationship with the subject of the deed according to Article 1871 of the Civil Code, it will only apply as initial written evidence. Furthermore, according to Article 1872 of the Civil Code, if an authentic deed, whatever its nature, is suspected of being fake, its implementation can be suspended.

The evidentiary power of an authentic deed is based on the principle of *acta publica probant sese ipsa*, which means that a deed that appears to be an authentic deed and meets the specified requirements is valid or can be considered an authentic deed until proven otherwise. This means that an official's signature is considered

authentic until proven otherwise. The burden of proof lies with the person who questions the authenticity of the deed. This evidentiary power applies to the interests or benefits of everyone and is not limited to the parties alone, and as evidence, authentic deeds, both official deeds and parties' deeds, have the advantage of being evidentiary.

A private deed that has been legalized by a notary helps the judge in terms of proof because with the recognition 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 recognition of the signature, the deed becomes perfect evidence. If viewed from the perspective of its legal strength for proof, then of course Legalization is stronger than Registration (waarmerking).

4. Conclusion

Based on the description above, the conclusion in this study is the evidentiary power of a private letter registered by a Notary (waarmerking) according to Article 1875 of the Civil Code, then a private deed recognized by the person against whom the deed is used or which can be considered recognized according to the law for the signer, his heirs and people who receive rights from the person, is perfect evidence like an authentic deed. Based on this, the contents of the information in the private deed apply as true to who made it and for the benefit of the person for whom the statement was made. A private deed that has been registered with a notary for the judge has obtained certainty regarding the date, identity and fulfillment of 1320 of the Civil Code of the parties who entered into the agreement and the signature affixed under the letter is truly derived and affixed by the person whose name is listed in the letter without pressure or intervention. The evidentiary value of a private deed is attached to the evidentiary value, the formal and material requirements must be met first, namely that it is made by at least 2 (two) parties without the intervention of authorized officials, signed by the maker and the parties who made it, and the contents and signatures are acknowledged. If these requirements are met, then in accordance with the provisions of Article 1875 of the Civil Code, then: The evidentiary value is the same as an authentic deed, thus the evidentiary value attached to it is perfect and binding (volledig en bindendebewijskracht). In carrying out his duties as a Public Official, a Notary must comply with the applicable laws and regulations, so that negligence or errors by the Notary in registering private deeds (waarmerking) do not occur again, so that if there are parties who wish to register an agreement made in the form of a private deed, the Notary should first explain the legal status of the private deed registered at the Notary's office to the parties interested in registering the private deed. The need for special regulations for the registration of private letters, as well as regulations in making deeds that are valid in the eyes of the law, because if the private letter is recognized by its signature and the truth of its contents, its legal force is the same as a deed, therefore the need for clear regulations, letters made by oneself

without authorized officials, what are the requirements so that they can be legally recognized by the State and have strong legal force the same as a deed and there must still be special regulations as a new legal discovery so that the registration of private letters by a notary is on target for its use. If no special regulations are made or the existing laws are not corrected, this will become a new problem or legal setback for the State of Indonesia.

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