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The Power Proof Of Deed Under Hand Is Associated With The Authority Of Notary In *Legalization* And *Waarmeking* Based On Law Number 2 Of 2014 On Notary Position (Study On Several Notary Offices In Malang Regency)

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Abstract: the deed under hand is a free-form deed. The making of which does not have to be in the presence of an authorized public official, still has the power of proof as long as it is not denied by the maker and if it must be proven, the proof must also be equipped with witnesses and other evidence. Deed under hand can be made by a notary. It can be in the form of legalization and waarmeking. So it can formulation of the problem as follows: 1. What is the notarial authority related to the deed under the legalized hand legalisasi and waarmeking ?, 2. How is the strength of the deed under hand that has legalisasi dan been legalized and waarmeking in proving the case at trial ?, 3. What is the notary's responsibility for the deed under the hand that has legalisasi dan been legalized and waarmeking?. The research method used is empirical juridical approach. It can be concluded that the notarial Authority related to the deed under legalisasi the legalized and waarmeking, in accordance with the notary's definition based on Article 1 Item 1 joint article 15 Paragraph 1 and 2 of Law Number 2 of 2014 concerning the position of notary, that the Notary is authorized to certify the signature and book The Deed. The power of proof of the deed under the legalized hand and waarmeking in civil cases legalisasi , as long as the deed under the legalized hand is not denied or denied by the parties, the deed under the hand has perfect legal force. The notary's responsibility for the deed under the hand that has been legalized and waarmeking, the notary does not have public responsibility in the deed under the hand that is legalized or waarmeking, the notary is responsible for ensuring that the parties who sign and make the agreement.

Keywords: Power Of Deed, Notary, Legalization, Waarmeking

1. Introduction

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Based on Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia in 1945, the state of Indonesia is a state of law. The state based on law is characterized by several principles including that all acts or actions of a person, both individuals and groups, people and governments must be based on the provisions of

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The basic idea of the rule of law in both the concept "rechtsstaat or the rule of law" the main target is the protection of basic human rights. In the concept of rechtsstaat the protection of fundamental rights is realized through the principle of legality. With this principle, the law must be positive, meaning that the law must be formed consciously and set forth in an official and definite form as Made By Law Number 2 of 2014 on amendments to Law Number 30 of 2004 on the position of Notary.³

The state also places a profession called Notary as a public official, who serves as an authentic deed maker or deed of agreement. In legal events, people usually do something in the form of binding evidence of an agreement, where the agreement comes from the agreement of the parties. The treaty itself publishes whose name is the alliance, the treaty is the source of the alliance, alongside it other sources. A labor agreement is called an agreement, because the two parties agree to do something.³

When two parties enter into an agreement, the agreement gives rise to the name of the rights and obligations of each party to do something, so as to achieve the desire and justice of each party. The covenant was binding on the parties to each other because of the promise they have spoken or given, this bond is only broken when the promise has been fulfilled.⁴

Etymologically according to R. Subekti and R. Tjitro Sudibio, deed comes from the word *acta* which is the plural form of the word *actum* which comes from latin which means deeds.⁵ In the opinion of Fockema Andreae in his Dictionary of DutchIndonesian legal terms, the deed is:

1. In the broadest sense, a deed is a legal act (*Recht handeling*)
2. A book that is made to be used as evidence of a legal act.⁶

Furthermore, according to Sudikno Mertokusumo, the deed is a signed letter, which contains the events that are the basis of a right or alliance, which was made from the beginning deliberately for proof.⁷

² <https://online-journal.unja.ac.id/RR/article/download/9135/5714/24984> diakses, pada hari Jum'at (1003-2023), pada pukul 21.00 WIB

³ Bahder Johan Nasution, *Penerapan Sanksi Administratif Sebagai Sarana Pengendali Pembatasan Terhadap Kebebasan Bertindak Bagi Notaris*, *Jurnal Recital Review*, Vol. 2 No.1,2020, hlm. 2

³ Subekti, *Hukum Perjanjian*, (Jakarta: PT. Intermasa, 1990), hlm 2.

⁴ Ibid.

⁵ R. Subekti dan R. Tjitrosudibio, 1980, *Kamus Hukum*, Pradnya Paramita, Jakarta, hlm.9.

⁶ Nikolaas. E. Algra, *et al*, 1983, *Kamus Istilah Hukum*, Bina Cipta, Bandung, hlm. 25. ⁷ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, *Op.Cit.*, hlm. 110.

So that the deed in practice in addition to containing the events and events outlined in a letter, the deed is also made deliberately to serve as a basis for proof in court in the event of things that are not desired by the parties who have made an engagement.

In addition to containing events or events that are deliberately contained for the basis of evidence, a letter to be classified in the sense of a deed, the letter must be signed by the parties, the necessity of this signature is implied in Article 1869 of the Civil Code. The necessity of a signature is nothing but aimed at distinguishing between one deed and another. So the function of a signature on an act is to characterize an act or to individualize an act.⁷ The deed can be divided into two, namely:

1. Authentic Deed

Authentic deed according to Article 1868 of the Civil Code is "a deed in the form prescribed by law, made by or in the presence of public employees who have authority to it in the place where the deed was made".

2. Deed under hand

Deed under the hand or writings under the hand is a deed that is free form, its manufacture does not have to be in the presence of authorized public officials, still has the power of proof as long as it is not denied by the maker and if it must be proved, the proof must be equipped with witnesses and other evidence.

Notary is a public official who has the right to make an authentic deed as a means of proving a perfect agreement or engagement. Notary is an extension of the state where notaries fulfill some state duties in the field of civil law. With the aim of providing legal protection to the public, especially in the field of private law, the state has delegated part of its authority to notaries to make authentic deeds. Therefore, when performing their duties, the Notary is obliged to be positioned as a public official who assumes duties. In this case, the notary has the authority to make a deed.

Each deed also has the requirements to be said to be a valid deed, both authentic deed and deed under the hand itself, although in terms of strength in terms of proving the deed under the hand is not like an authentic deed, akan but the deed under the hand can also be used as evidence in the trial, to prove that the parties they have agreed to do something and violate it or not do it later.

Based on the above background, it was compiled in the form of a journal with the title, "The Power Proof Of Deed Under Hand Is Associated With The Authority Of Notary In *Legalization And Waarmerking* Based On Law Number 2 Of 2014 On Notary Position (Study On Several Notary Offices In Malang Regency)."

2. Method

This research uses empirical juridical research, is a type of sociological legal research and can be mentioned by Field Research, which examines the prevailing legal terms and that has occurred in people's lives. Or in other words, a research conducted on the actual situation or the real situation that has occurred in the community with the intention of knowing and finding the facts and data needed.

Empirical juridical approach is a type of research approach that is carried out by researching, and collecting primary data that has been obtained through direct observation of related problems.

⁷ Soedikno Mertokusumo, 1979, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta, hlm.175.

In this study, because it uses empirical juridical research, the authors examined several notary offices in Malang regency, namely:

- 1) Notary Fairiyah Fatimah, SH., M.Kn, which is located at Kebon Agung Megah Kav.11 F, Jalan Raya Kebon Agung, Malang Regency.
- 2) Notary Nuruddin, SH., M.Kn, whose address is Jeru Highway No. 58, Tumpang, Malang Regency.
- 3) Notary Rina Novianti, SH., M.Kn, whose address is Twin Ferns Highway, No. 143, Pakis, Malang Regency.

There are 2 types of data used, primary Data is data obtained from interviews to several notaries in Malang regency. Secondary Data is data obtained from data obtained from laws such as, the Civil Code and then Law Number 2 of 2014 amendments to Law Number 30 of 2004 on notary positions and others, such as books, literatures, journals and other documents discusses the authority of Notaries, especially in the field of waarmeding and legalization and its legal force.

Data collection techniques used are interviews, literature studies and observation. Data analysis in this study, after the data was collected, both primary data and secondary data by researchers, further data analysis. Done in a descriptive qualitative, which means analyzing the data by looking at the provisions contained in the regulations, legal concepts and so forth.

3. Notarial Authority Related To Legalization And Waarmarking Of Deed Under Hand

Notary is a public official appointed by the government to assist the general public in making agreements that exist or arise in society. The need for this written agreement to be made before a notary is to guarantee legal certainty for the parties to the agreement. A written agreement made before a notary is called a deed.

Definition of notary based on Article 1 point 1 jo Article 15 Paragraph 1 of Law Number 2 of 2014 amendment to Law Number 30 of 2004 on the position of Notary hereinafter referred to as UUJN states that a notary is a public official authorized to make authentic deeds and other authorities regarding all acts, agreements and statutes required by the UUJN laws and / or regulations that are required by the interested parties to be stated in the authentic act.

Then guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copy and quotation of the deed, all of it as long as the making of the acts is not also assigned or excluded to other officials or other persons stipulated by law. Looking at the main task of the notary, it can be said that the notary has a tough task, because it must put community service above all else.

Notary as a public official as stated in Article 1 UUJN Number 2 of 2014 is the only one who has general authority, not other officials. Other officials have only a certain authority, meaning that the authority does not extend beyond the making of authentic deeds that are expressly assigned by law to authorized officials. The definition of a public official is not a public servant.

Public officials here are defined as people who serve the public interest or the general public based on laws appointed by the authorities, one of which is a notary. Thus, the regulations on civil servants do not apply to notaries. Given the weight of the notary's responsibility as a public official who is appointed and works for the interests of the state, the notary must first take the oath to danat run his office legally.

Regarding the necessity to take an oath or promise according to his religion in the presence of Ministers or other officials appointed, stated expressly in Article 4 of the Notary Office law. Notaries who have been appointed but have not been sworn in cannot legally exercise their office but are by no means notaries. Notaries who have not taken the oath are not authorized to make a deed that has authentic force.

A deed made by a notary before taking his oath only has the force of a deed made under hand, when the deed is signed by the parties concerned. It is based on the provisions contained in Article 1869 of the Civil Code which states:

"A deed which, because of the incompetence or incompetence of the employee referred to above or because of a defect in its form, cannot be enforced as an authentic deed, but nevertheless has the force of being handwritten if it is signed by the parties".⁸

As assigned to provide legalization (legalization) and register (waarmarking) the letters under hand in the register book, in addition to the notary, who has the same authority for it is the chairman of the District Court, Mayor, Regent and head of Kewedanan. Actually, if you want to increase the authority of notaries not by adding the authority of notaries based on the law alone, because it has been covered in the General Authority of notaries, but can also be done.

That is, to require that certain legal acts must be made by notarial deed, for example, in the establishment of a political party, it must be made by notarial deed.⁹

The philosophical foundation gives the authority to the notary to make authentic deeds and other deeds, that is, to provide legal certainty to legal acts committed by the community or subject of law. Sociologically, many of the powers granted by law to notaries cannot be implemented properly, this is because there are still many notaries who do not know about the authority.¹¹

The authority of notaries in Indonesia is classified into two types, which include:

1. Authority of notaries listed in the law on notary positions, and
2. Notarial authority contained in other laws.

Notary authority contained in other laws, such as Law Number 25 of 1992 on cooperatives, Law Number 40 of 2007 on limited liability companies, and other laws. Notary authority in principle is a general authority, meaning that this authority includes the making of all kinds of Deeds except those excluded are not made by notaries, and based on UUJN notary authority created and given by the notary office Act itself (attribution).

The authority of the Notary as a translation of Article 1 Number 1 of the notary position law (UUJN) is contained in Article 15 of the UUJN which reads as follows:

a. Notary is authorized to make an authentic deed regarding all acts, agreements, and provisions required by laws and / or required by the interested party to be stated in the authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copy and quotation of the deed, all that as long as the making of the deeds is not also assigned or exempted to other offices or other persons prescribed by law.

b. Notaries are authorized anyway:

- 1) Certify the signature and establish the certainty of the date of the deed under hand by registering in a special book.
- 2) Book The Letters under hand by registering in a special book.
- 3) Make copies of the original letters under the hand in the form of copies containing descriptions as written and illustrated in the letter in question.
- 4) Certify the match of the photocopy with the original letter.
- 5) Provide legal counseling related to the creation of the deed.
- 6) Make an act relating to the land.
- 7) Make a deed of auction minutes.

Notary is a noble legal profession and thus the notary profession is a noble profession, because the notary profession is closely related to humanity. In carrying out the duties of his position a notary is required and required to always be based on the laws and regulations in force in Indonesia. Not only that, a notary is also obliged to carry out his duties in accordance with the ethics that have been agreed upon and arranged together in the form of a code of ethics.

⁸ R. Subekti, *Hukum Pembuktian*, Fradnya Paramita, Jakarta, 2001, hal. 475.

⁹ Habib Adjie, *Hukum Notaris Indonesia*, PT. Refika Aditama, Bandung, 2008, hal. 83. ¹¹ Salim HS., *Peraturan Jabatan Notaris*, Jakarta timur: Sinar Grafika, 2018, hlm. 28.

Furthermore, the parties sign before the notary at that time, day, and date to ensure the certainty of the date and signature of the deed in question. In the Notary Office Law Article 15 Paragraph (2) letter A describes the legalization, which reads: "certify the signature and determine the certainty of the date of the letter under hand by registering in a special book provided by a notary".

In Article 1874 the law of Undang-Undang Civil Law ukum has been regulated regarding legalization, which reads " " What is considered as underhand writing is a deed signed under the hand, Letters, lists, letters of household affairs and other writings made without the intermediary of a public employee. By signing an inscription under the hand is equated affixing a thumbprint with a statement dated from a notary.

Another employee appointed by law stating that the affixing of the thumb print is known to him or has been introduced to him, that the contents of the deed have been explained to that person, and that thereafter the thumbprint is affixed to the writing in the presence of the employee concerned. The officer must prove the writing. With the law can be held further rules on the statement and bookkeeping referred to".

Provisions regarding legalization lack clear regulation in the law. The law only explains that legalization is part of the notary's authority to certify the signature and certainty of the date of each deed made under hand. So legalisasi what is legalized is a deed under hand while the extent of certainty, procedure, and responsibility for the parties to the legalization is not regulated in law.

The procedure for the legalization of deeds under their own hands by law has not been clearly regulated. In principle, the legalization procedure itself legalisasi is: 1) Performed in the presence of a notary at the time of signing the deed under hand; 2) Certified by a notary by providing certainty of the date in accordance with the signing; and 3) Registered in a special book that has been provided by a notary.

Certify deed under hand or legalization and register in a special book or *waarmerking*. The deed under hand that is legalized is a deed that must be signed and certified in front of a notary or authorized official. The meaning of the verification of the act under hand is:

- a. Notary guarantees that the true person whose name is listed in the contract is the person who signed the contract, and
- b. The notary guarantees that the date on which the signature is performed is on the date indicated in the contract.

This legalized deed must be registered in a special book provided by a notary.¹⁰ Then about *waarmerking*, the notary posted a letter under his hand by registering in a special book, called *gewarmeken*. The deed under hand that is recorded is a deed that has been signed on the day and date mentioned by the parties, the signature is not in front of a notary or authorized official. The meaning of the deed under which the hand is recorded is:

- a. That which is assured by the notary is that the deed is indeed there on the day, and
- b. Date of registration or bookkeeping by a notary.¹¹

¹⁰ Pasal 15 ayat 2 huruf a Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris

¹¹ Salim HS., dkk, *Perancangan Kontrak & Memorandum of Understanding*, (Jakarta : Sinar Grafika, 2011), hlm. 33.

The elements contained in the authority of the notary, include the presence of powers, determined by law, and the presence of the object. Power is defined as the ability of notaries to carry out their positions, the authority of notaries is divided into two kinds, namely the authority of notaries in making authentic deeds and the authority of notaries in making other deeds. The other authority is the power that has been determined in the law on notary and other laws and regulations.

4. Power Of Deed Under Legalized Hand And Waarmerking In Proof Of Case At Trial

Based on Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia in 1945, the state of Indonesia is a state of law. The basic idea of the rule of law in both the concept of "rechtsstaat" and "the rule of law" the main target is the protection of basic human rights. In the concept of rechtsstaat the protection of fundamental rights is realized through the principle of legality. With this principle, the law must be positive, meaning that the law must be formed consciously and set forth in an official and definite form as Made By Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 on the position of Notary.

Article 1868 of the Civil Code states that an authentic deed is an act made in the form prescribed by law, made by or in the presence of public officials who have authority to do so at the place where the deed is made. Authentic deed is divided into two kinds, namely, authentic deed made by officials (*acte ambtelijk*), for example, the minutes of court hearings made clerk. "The next division of the authentic deed is the deed made before the official (*acte partij*).

For example, the deed of sale-purchase of land made in the presence of the sub-district or Notary as the Land Deed Officer (PPAT). "The authentic deed has the power of perfect proof, that is, it stands alone, does not need to be added to other evidence, and its contents are considered true as long as it is not proven otherwise".¹² Then, in addition to the authentic deed, there is also a deed called the deed under hand or Onderhand Act, which is a deed made by the parties themselves without the intervention of a notary or an authorized public official.

In the trial, if what is submitted as evidence is only in the form of a deed under hand considering the limited strength of the evidence, so that other evidence that supports it is still sought so that evidence is obtained that is considered sufficient to achieve *kebenar* according to law. "So the deed under hand hanya can only be accepted as the beginning of written evidence as described in Article 1871 of the Civil Code.

However according to the article it is not explained what is meant by the written evidence". In Article 1902 Civil Code, the requirements are put forward when there is the beginning of written evidence, that is, there must be a deed, the deed must be made by the person against whom the claim is made or from the person it represents, and the deed must allow the truth of the event in question.

So, the deed under hand can be perfect and complete evidence from the beginning of the written evidence must still be equipped with other evidence, therefore it is said

¹² Bambang Sugeng A. S. dan Sujayadi, *Pengantar Hukum Acara Perdata dan Contoh Dokumen Litigasi*, Kencana, Jakarta, 2012, hlm. 67.

that the deed under hand is written evidence. In this case, it will be focused on the study of the deed under hand which is strengthened through *waarmerking* (register).

In this regard, several provisions *peraturan* of the legislation will be elaborated, which can be presented in Article 1865 of the Civil Code, which states: "Everyone who postulates that he has a right, or in order to establish his own right or dispute a right of another, pointing to an event, is obliged to prove the existence of a right or the event".

Article 1866 of the civil code determines that the means of evidence consists of written evidence/letter, evidence with witnesses, conjectures, confessions, and oaths. In the Code of civil law regarding written evidence, the arrangement can be seen in Article 1867-1894, where Article 1867 of the Code of Civil Law states that proof by writing is done with authentic writings and with writing under hand".

Things that make the position between the authentic deed with the deed under hand are:

1. Authentic Deed

Is a perfect proof as referred to in Article 1870 of the Civil Code, this deed has such strength of evidence because it is considered attached to the deed itself that it does not need to be proved again and for the judge it is "mandatory evidence" (*Verplicht Bewijs*), thus anyone who declares that the authentic deed false then he must prove the falsity of the deed, therefore the authentic deed has the power of proof both outwardly, formally and materially.

2. Deed under hand

For the judge is "free evidence" (*VRU Bewijs*) because the deed under the new hand has the power of material evidence after proving its formal strength while the strength of the formal proof has just happened, if the parties concerned know the truth of the contents and how to make the deed, thus the deed under the hand is different from the authentic when a deed under the hand is declared false, the one who uses the deed under the hand as evidence must prove that the deed is not false.¹³

Based on the above description, the deed made authentically with the deed made under hand, has the power of proof of a deed which includes:

1. The power of proof of *lahiriyah* means that the deed itself has the ability to prove itself as an authentic deed;
2. The strength of formal proof means that from the authentic deed it is proved that what is stated and stated in the deed is true is a description of the will of the parties;
3. The power of material proof means that legally the content of the deed has proved its veracity as true against any person, who made or ordered to make the deed as evidence against him.

Related to the deed of agreement under hand registered by a Notary, the public generally has an understanding that with the registration of the letter of agreement under hand by a Notary, the deed has legal force and is legally binding. Article 1338 of the Civil Code uses the phrase "lawfully made". This means that what is agreed between the parties, applies as law as long as what is agreed is valid.

¹³ N.G. Yudara, *Pokok-pokok Pemikiran disekitar kedudukan dan fungsi Notaris serta akta Notaris Menurut Sistem Hukum di Indonesia*, Renvoi, Nomor. 10.34.III, Tanggal 3 Maret 2006.

The legal force of the deed under the hand legalized by the notary does not have the same power as the authentic deed, because the Notary as a public official only witnessed the signing of the parties whose names are listed in the agreement, but regarding the content and what was agreed by the parties in the agreement, only the parties know the the.

Likewise, the legal force of the deed of agreement under the hand registered by a notary (waarmerking), that is, in the deed under the hand the power of proof only includes the fact that the information is given, if the signature is recognized by the signatory or is considered as having been recognized as such according to the law for the letter under the on the correctness of the recognition or denial of the parties to the content of the deed and its respective signatures.

If a deed under the hand is recognized in its content and signature by each party, the power of proof is almost the same as an authentic deed, the difference lies in the power of proof of birth, which is not automatically owned by the deed under hand. Deed under this hand as referred to in Article 1880 of the Civil Code will not be able to have the power of proof born against third parties.

Except from the day a statement is made by a notary or another employee appointed by law and recorded according to legislation or from the day of the death of the signatory or one of the signatories or from the day of proof of the existence of the deed under the hand of the deeds made by public employees, or from the day- the deed under the hand is in writing by a third party against whom the deed is used.

The letter under the hand that has been registered or waarmerking has no legal force to be used as a means of evidence against third parties, but for the first and second parties can be used as evidence as long as the parties acknowledge the signature and contents of the deed, for the letter under the hand does not have any effect on the just give it a number and book it.

In relation to the deed under the hand that has been registered (waarmerking) by a Notary, the strength of the proof is the same as the deed under the hand that is not registered, meaning that even if there is a stamp of office and signature by a notary on the deed under the hand it does not affect the legal strength of the proof.

The power of proof of the deed under hand, the person against whom the deed under hand is used is obliged to confirm or deny the signature, while for the heir it is enough just to explain that the heir is not familiar with the signature. In the event that the signature is denied, then the judge must order that the correctness of the letter be checked. When the signature is recognized by the person concerned, then the act under the hand has force and becomes perfect evidence.

The content of the statement in the deed under the hand can no longer be denied, because the signature on the deed under the hand has been recognized by the person concerned. The value of the strength of the minimum limit of proof of the deed under hand is regulated in Article 1875 of the Civil Code, explaining as follows :

a) Rate The Strength Of The Proof

In the deed under hand attached to the power of proof, must be met in advance the formal and material conditions:

1) Made unilaterally or party (at least 2 (two) parties) without the intervention of officials;

- 2) Signed by the manufacturer or the parties who made it;
- 3) Fill it in and sign it.

If the above conditions are met, then in accordance with the provisions of Article 1875 of the Civil Code then :

- 1) The value of its evidentiary power is equal to authentic deed.
- 2) Thus the value of the evidentiary power attached to it is perfect and binding (*volledig en bindendebewijskracht*).
- b) The minimum limit of proof if the existence of perfectful filled formal and material conditions in addition to having the power of perfect proof and binding, also has a minimum limit of proof :
 - 1) Able to stand alone without the help of other evidence; 2) On itself is met the minimum limit providence.
- c) Strength values and their minimum limits are subject to change

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

- 1) Evidence against him;
- 2) Isi and signatures denied or not recognized the opponent.¹⁴.

So that the deed under hand is not easily refuted or denied the truth of the signature in the deed and to strengthen the formal, material, and proof in front of the judge, the deed made under hand should be legalized. Literally legalization means stating the truth of the true statement by giving endorsement by the authorized official of the deed under hand including the Signature, Date, Place of making the deed, and the contents of the deed.

With the legalization of the parties making the agreement under the hand can not deny the validity of the Signature, Place and date of making the deed because the contents of the deed under the hand read and explained before the parties put a signature. Based on the ordinance staatblad 1916 number 43 and 46 officials who are given the authority to legalize the notary, Chairman of the District Court, District Head Regent, and Mayor.

With the legalization by a notary of the deed under hand as mentioned above, the legal force of the deeds under hand becomes an authentic deed. The deed under hand is still not perfect evidence. But as a means of proof of the deed under the hands of a legalized legal force such as authentic deed, unless there is a disclaimer from the parties making the agreement. As long as there is no objection from the parties, the legal force of the deed under hand is like an authentic deed.

Legalized deed under hand has the same legal force under the authentic deed, because the deed under hand is almost the same as the authentic deed, but the difference is that the deed is made by the parties themselves who make the agreement and signed before a notary. It is different from *waarmerking* because the deed of the agreement has been signed and then taken to a notary who will be registered by the

¹⁴ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan Pembuktian dan Putusan Pengadilan*, Sinar Grafika, Jakarta, 2010, hlm. 546-547.

notary in a special book. So it is said that the deed under the hands of the *waarmerking* is the strength of proof is weak compared to the deed that is legalized.¹⁵

Although the legalized deed under the hand does not change the status of the deed under the hand into an authentic deed, but with the legalization of the parties who signed the deed under the hand can no longer deny or deny the validity of the signature and the contents of the deed because the notary has witnessed and read the contents of the deed before the parties sign the deed.

This means that the deeds under the legalized hand have the legal force of proof such as authentic deeds, both material, formal, and proof in front of a judge.¹⁶ In addition to the legalization against the deed under hand there is the so-called *waarmerking*. Literally *waarmerking* can be interpreted endorsement is the endorsement of the deed under hand by an authorized official appointed by law or other regulation.

Juridically, in fact, the notary *waarmerking* simply records the agreements that have been made by the parties in the list provided for it in the order in which they exist. So the *waarmerking* does not state the truth of the signature, date, place where the deed was made, and the truth of the contents of the deed as in legalization. Legalization is a form of ratification of the deed under hand where the signing of the deed is done by the parties before a notary, and at that time the notary will provide certainty of the date of the deed.

In a civil case or of the entire trial stage in the selection of a civil case, evidence plays a very important role. It is said so because it is in this stage of proof that the parties to the dispute are given the opportunity to present the truth of the arguments put forward by them. So based on this evidence, the judge or panel of judges will be able to determine whether or not there is an event or a right.

Then in the end the judge can apply the law appropriately, correctly, fairly, or in other words the right and fair decision of the judge can only be determined after going through the stage of proof in the trial of the settlement of civil cases in court.¹⁷

The law of evidence is part of procedural law. civil. The law of evidence in the Civil Code, which is regulated in the fourth book, contains in it all the Basic Rules of evidence in the field of Civil Relations. In the law of proof there are several theories about the burden of proof that can be used as a guide, among others, namely :¹⁸

- The theory of mere corroboration of evidence (*bloot affirmatief*) that is, for those who propose something must prove and not those who deny or deny it;
- Subjective theory that states that a civil process is the implementation of subjective law or aims to defend subjective law which means that whoever presents or claims to have a right must prove;
- Objective theory which states that filing a lawsuit means that the plaintiff asks the court for the judge to apply the provisions of the objective law to the events filed.
- A public theory that gives judges greater authority to seek the truth in the public interest.

¹⁵ Notaris Fairiyah Fatimah, SH., M.Kn, yang beralamat di Ruko Kebon Agung Megah Kav.11 F, Jalan Raya Kebon Agung, Kabupaten Malang.

¹⁶ Suparman, J. A., & Putrawan, S. (2016). Kekuatan Pembuktian Akta Dibawah Tangan Yang Telah Dilegalisasi Oleh Notaris. *Jurnal Kertha Semaya*, 4(3).

¹⁷ R. Soebekti, *Pembuktian dan Daluwarsa*, Jakarta, Intermasa, 1987, hlm. 43.

¹⁸ Martiman Prodjohamidjojo, *Hukum Pembuktian Dalam Sengketa Tata Usaha Negara*, (Jakarta :Pradnya Paramita, 1997), Hlm. 42.

The necessity of a signature is nothing but aimed at distinguishing between one deed and another deed, so the function of a signature on a deed is to characterize a deed. In terms of the individual aspect as a witness, basically everyone who has grown up and is capable of doing legal acts can be a witness and is even required to testify when requested.

In relation to the obligation of a person to be a witness, there are several provisions that regulate people who cannot be heard as witnesses and can refuse and be asked to be released to testify. Recognition as evidence in addition to regulated in Article 164 HIR is also spelled out in Article 174 HIR and Article 176 HIR, while in the Civil Code, in addition to regulated in Article 1866 is also spelled out in Article 1923 to Article 1928.

Then in the case of legalization in the true sense is to prove that the document made by the parties was actually signed by the parties who made it. It therefore requires the testimony of a public official authorized to it who in this case is a notary public to witness the signing on the same date as the time of the signing.

Thus, legalization is to certify the document in question before a notary by proving the correctness of the signature of the handyman and the date. In addition to *waarmerking* and legalization as mentioned above, usually the parties also make matching copies which are sometimes termed with the same term, "legalized". In practice, what is done for the term "legalized" is to match a copy of a document with the original.

On the photocopy will be stamped or stamped on each page in the photocopy with a notarized paragraph and the last page of the matching photocopy will be included information that the photocopy is the same as the original. Putting a stamp on the deed under such a hand is one legalization or endorsement. For the purposes of legalization, the signatories of the deed must come before a notary, it must not be previously signed at home.

Then the notary checks the identification, i.e. ID card or other identification. Understanding that other familiar with the Daily sense, the notary must understand properly in accordance with the card, that the person who came was indeed the same as the card, he is the person, who resides at the address of the card, the picture is suitable. After checking the match, then the notary reads the deed under the hand and explains the content and purpose of the letter under the hand.

In contrast to *waarmerking*, in this case the parties have made a deed of agreement under hand and have been signed by the parties, then the parties make a letter of agreement called the deed to the public official, namely a notary. To be registered in a special book owned by the Notary as a public official as stipulated in Article 15 Paragraph 2 of the Civil Code.

5. Notary Responsibility For The Deed Under The Legalized Hand And Waarmerking

The responsibility of notaries in writing is mentioned in Article 65 of Law Number 2 of 2014 concerning the position of notaries which states that notaries (substitute notaries, special substitute notaries, and temporary notary officials) are responsible for every deed they make, even though the notary protocol has been submitted or transferred to the notarial protocol depository.

In carrying out their duties and positions, notaries can be supervised by MPD (notary regional Supervisory Council) and MPD as the party who oversees notaries is authorized to take photocopies of the minutes of deeds and letters attached to the minutes of deeds or notarial protocols in notary irregularities and call notaries to attend examinations related to the deeds they make or notarial protocols which are in the notary irregularities.

MPD itself is not entitled to impose sanctions for notaries who violate the code of ethics or do not meet the Notary Office Act, which has the right to impose sanctions is MPW (regional Supervisory Council). In the legalization of the notary's own responsibility heavier than *waarmerking* (affix a letter under hand by registering in a special book).

Notaris could be part of the party that is fully responsible or can be used as a suspect if it explains it turns out that the notary wholelegalisasi legalizes already knows the conditions in the agreement are one-sided. Even though it is only legalization in doing so, it must be in accordance with the applicable law, it must be balanced in making it (not biased). Moreover, if the notary to intervene related to the issue of the deed under the handslegalisasi of the legalized notary will be held accountable more.¹⁹

In legalization there are rules that must be executed by a notary, the notary must hold on to what has become a procedure and in making it should not be as convenient as what is requested by the parties. When it turns out that the fact requested by the parties violates the procedure or its rules the notary has the right not to perform his duties.²⁰

In carrying out its responsibility if the notary makes a mistake in legalization, the notary may be subject to civil penalties in the form of compensation according to that suffered by the injured party in the deed, as stipulated in Article 84 of Law Number 2 of 2014 Jo Law Number 30 of 2004 concerning the position of Notary.

The purpose of legalizing the signing of the deed under hand is gets certainty on the correctness of the signature in the deed is really signed by the parties concerned. If at any time it is needed as evidence, the legalized deed as long as it is not denied by the parties has *kekuatan pembuktiperfect* proof power, that it is true that the parties have bound themselves.

The responsibility that needs to be given by the notary regarding the deed under the hand that is legalizedlegalisasi, only confirms that the parties whose names are listed in the agreement are the ones who signed in front of the notary, because if it is true that the parties signed the deed, the deed cannot be denied.²¹ While related *waarmerking* notary is not responsible for the deed in the event of a dispute in the future.²²

In the case of notary reporting, it is responsible to report all forms of deeds, both authentic deeds and deeds under hand,²³ according to the notary's obligations to the notary protocol. Because the notary must not interfere in the substance of the deed

¹⁹ Notaris Fairiyal Fatimah, SH., M.Kn, yang beralamat di Ruko Kebon Agung Megah Kav.11 F, Jalan Raya Kebon Agung, Kabupaten Malang.

²⁰ Wawancara dengan notaris Nuruddin, yang ber alamat di Jalan Raya Jeru No. 58, Kec. Tumpang, Kabupaten Malang

²¹ Wawancara dengan notaris Nuruddin, yang ber alamat di Jalan Raya Jeru No. 58, Kec. Tumpang, Kabupaten Malang.

²² Wawancara dengan Rina Noviati beralamat di Jalan Raya Pakis Kembar, No. 143, Pakis, Kabupaten Malang., notaris di Kabupaten Malang.

²³ Wawancara dengan notaris Nuruddin, yang ber alamat di Jalan Raya Jeru No. 58, Kec. Tumpang, Kabupaten Malang

under hand let alone intervene in the parties in making the deed under hand.²⁴ Criminal sanctions are not regulated in Law Number 2 of 2014 on amendments to Law Number 30 of 2004 on notary positions.

However, In Law Number 30 of 2004 on notary position Article 13, states that, "Notary dismissed with disrespect by the Minister for sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more". There are three things stipulated in this article, which include:

1. Types of sanctions imposed,
2. Cause imposed sanctions,
3. The kind of crime he committed.

The type of sanction imposed by the Minister of Law and Human Rights on a notary who has committed a criminal act is dismissal with disrespect. If the notary is declared to have violated the criminal law regulated by the Criminal Code, yahe isthreatened with imprisonment of 5 (five) years or more. With a verdict that has been decided on the basis of a court decision that has acquired permanent legal force.

Moreover, with so many or can be said in general that the people of Indonesia do not understand what it is deed inahand, especially *legalisasithose* legalized, by Authorized Public Officials or notaries, notaries must be more careful in exercising their authority in certifying the signature of the agreement made by the parties themselves, because if the notary does not based on the code of ethics, it can be a problem for notaries in the future.²⁵

In contrast to *legalization*, registering the deed of agreement made by the parties themselves or *waarmerking*, the notary in this case is only responsible for the correctness that it is the party who brings the deed of agreement under the hands of a notary to be registered in a special book.

6. Conclusion

Based on the research I have done, the author concludes that the results of this study, namely :

1. Notarial authority related to the deed under the hand of *legalization* and *waarmerking*, in accordance with thenotary's definition based on Article 1 point 1 joint article 15 paragraphs 1 and 2 of Law Number 2 of 2014 amendment to Law Number 30 of 2004 concerning the position of Notary hereinafter referred to as the UUJN states that notaries are public officials who authorized to make authentic deeds and other authorities regarding all acts, agreements and provisions required by laws and regulations and/or required by the interested parties to be stated in the authentic deed. Then certify the signature and guarantee the certainty of the date of manufacture of the deed, and book the letter under hand in a special book and so on.
2. The power of proof of the deed under the hand of the *legalized and waarmerking* in civil cases, as long as the deed under the hand of the legalized is not denied or denied by the parties, the deed under the hand has perfect legal forces, while if the truth of the

²⁴ Wawancara dengan Rina Noviati beralamat di Jalan Raya Pakis Kembar, No. 143, Pakis, Kabupaten Malang., notaris di Kabupaten Malang.

²⁵ Wawancara dengan notaris Rina Novita beralamat di Jalan Raya Pakis Kembar, No. 143, Pakis, Kabupaten Malang.

deed under the hand is denied the truth, the deed under hand, legalized and *the* *waarmerking* must be proven by the party who uses the deed under hand as evidence tersebut.

3. The notary's responsibility for the deed under the hand that has been *legalized and* *waarmerking*, in fact the notary does not have responsibility in the deed under the hand both *legalized and* *waarmerking*, the notary is only responsible for ensuring that the truth of the parties who signed and made the agreement.

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