THE POWER OF LAW ACTION WAARMERKING BY NOTARY OFFICIAL REGARDING UNDER HAND DEED

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ABSTRACT

The development of social life has increased the intensity and complexity of legal relations that must be protected and ensured based on evidence that clearly defines rights and obligations. To avoid losses, every community needs a reliable person (figure) called a Notary, who the public can trust because they are legal authorities whose signature and stamp provide strong guarantees and evidence. The notary is an impartial expert and a counselor with no defects and makes an agreement that can protect both parties in the future. The formulation of the problem of this research is what is the basis of the notary's authority to carry out Waarmerking actions against private deeds and what is the legal power of underhanded deeds, which is Waarmerking by a notary official. The research method used in the preparation of this research is normative research. The results of the discussion in this study are as follows: The notary's authority over underhanded deeds that are Waarmerking by a Notary following Law Number 30 of 2014 concerning the Office of a Notary is only limited to registering underhanded deeds that have been made by the parties and present before the notary to register the deed under the hand in a special book provided by the notary. The notary, in this case, does not know the contents of the deed that has been drawn up and signed by both parties even though the notary signs the deed under the hand. The legal force of the agreement Underhanded deed in Waarmerking is different from an authentic deed with definite evidentiary strength, so for an underhanded deed, the power of proof is in the hands of the judge to consider it. An underhanded deed in Waarmerking is more at risk of forgery in the deed and signature because the notary does not have the authority to read the contents of the deed. The authenticity of the party's signature can be doubted because the parties signing the deed is not in the presence of a Notary, so the notary is often blamed by the police in terms of investigation.
Keywords: Power of Law, Notary, Underhand Deed, Waarmerking

1. INTRODUCTION

Deeds, as written evidence, have an important role in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, and others, the need for written evidence in the form of written deeds is increasing in line with the growing demand for legal certainty in various economic and social relations, both at the national, regional and global levels. Through a written deed that clearly defines rights and obligations, guarantees legal certainty, and at the same time, it is hoped that disputes can be avoided. Even though the dispute cannot be avoided, in the process of resolving the dispute, an authentic deed that is the strongest and most complete written evidence makes a real contribution to solving cases cheaply and quickly. As the strongest and most complete written evidence, what is stated in the notarial deed must be accepted unless the interested party can satisfactorily prove the opposite before a court hearing (Artadi, 2010:181). The stage of proving the party who postulates something must be supported by evidence, as evidence that has been regulated in legislation.

According to Soimin (1995: 463) in article 1866 of the Civil Code, the means of proof include:

1. Written evidence.
2. Witness evidence.
3. Presumptive evidence.
4. Confession.
5. Oath.

Following the order of evidence in civil procedural law, written or written evidence is the most important evidence in civil cases. In civil practice, for example, in sales and purchase agreements, exchanges, leasing, borrowing, grants, probate, transportation, insurance, and so on, people who commit these actions deliberately make written forms for proof later.

Written evidence, in this case, can be in the form of a private deed or an authentic deed. An authentic deed must fulfill what is required in Article 1868 of the Civil Code. Deeds made, even though signed by the parties, do not meet the requirements of Article 1868 of the Civil Code, cannot be treated as authentic deeds, and only have the power as handwriting under Article 1869 of the Civil Code.

The reality is that what is happening in society, some people need to be made aware of the importance of a document as evidence so that an agreement between the parties is sufficient to be carried out with mutual trust and made verbally. But some people understand more about the importance of making a document as evidence so that these agreements are made in written form, which will indeed be presented as evidence later. Evidence plays a very important role in civil cases or from all stages of the trial in settlement of civil cases. It is said so because it is in this stage of proof that the disputing parties can state the truth of the arguments. So based on this evidence, the judge or panel of judges will be able to determine whether or not an event or right exists. In the end, the judge can apply the law appropriately, correctly, and fairly. In other words, a judge's right and a fair decision can only be determined after going through the following stages: evidence in court and settlement of civil cases in court.

Based on the description above, the strength of the letter evidence is in the Civil Code book and in Article 1874, where it is stated that the letters in question need to be ratified by signatures and determine the certainty of the date of private letters Waarmarking by a Notary.

The problems to be discussed in this study are as follows:
1. What is the basis for the notary's authority to carry out the Waarmerking action against private deeds ?
2. What is the legal power of the underhand deed Waarmerking by a notary official ?

2. RESEARCH METHODOLOGY

The type of research that the writer uses is normative legal research. According to Peter Mahmud Marzuki, normative legal research is finding legal rules, principles, and doctrines to answer the legal issues at hand. This follows the authoritarian character of legal science. As a prescriptive science, jurisprudence studies the purpose of the law, the values of justice, the validity of legal rules, legal concepts, and legal norms (Marzuki, 2010:35). The approach used to discuss the problems in this paper is the statutory approach. This approach is carried out by examining all legal regulations related to the legal issues under study. This approach is applied by examining and analyzing the regulations related to the authority and responsibilities of a Notary in terms of carrying out Waarmerking actions following the Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of a Notary. Furthermore, the concept approach is an application of concepts relevant to the doctrines put forward by scholars regarding the legal power of underhanded deeds in Waarmerking as strong evidence and legal protection in civil cases.

3. RESULTS AND DISCUSSION

Authority of the Notary Against Deeds Under the Hand of the Waarmerking

The definition of authority in the General Indonesian Dictionary is the right and power to do something. Authority (authority) is the right or power to give orders or act to influence the actions of others so that something is done as desired. Prejudice Atmosudirjo (1981:29) argues about the notion of authority concerning authority as follows :

> “Authority is called formal power, which comes from legislative power (granted by law) or from executive/administrative power. Authority is power over a certain group of people or power over

> a certain unanimous area of government (or field of affairs), while authority concerns only certain parts. Within authority, there are powers. Authority is the power to take public legal actions."

Concerning the duties of a Notary, namely carrying out Waarmerking registration and legalizing the legalization of letters or deeds made privately as stated in Article 1874 of the Civil Code and Article 15 paragraph (2) letters a and b of the Notary Office Law. In full, the provisions of Article 1874 of the Civil Code are formulated :

> "As writings under the hand which is considered signed deeds, letters, registers, household affairs papers and other writings made without the intermediary of a public employee. By signing a piece of writing under the hand it is equivalent to a thumbprint, affixed with a dated statement from a Notary or another official appointed by law from which it is clear that he knows the person who put the thumbprint or that this person has been introduced to him, that the contents the deed has been explained to the person. After that, the thumbprint was affixed before the employee. This employee must attach the writing. By law, further regulations can be enacted regarding said statement and bookkeeping."

Furthermore, article 1874 of the Civil Code regarding the strengthening of underhand documents by a Notary is completely formulated: If the interested parties so desire, it is also possible that outside of the matters referred to in paragraph two of the previous article, the signed underhanded writings are stated a Notary or other employee designated by law, from which it is evident that he knows the signatory or that this person has been introduced to him, that the contents of the deed have been explained to the signer and that afterward the signing has been made in front of the said official.

Now the provisions in the third and fourth paragraphs of the previous chapter apply. Furthermore, Article 15 paragraph (2) of the Notary Office Law regulates the ratification of private deeds by a Notary, which is also formulated in full by a Notary with authority:

1. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
2. Affix letters under the hand by registering in a special book.

Waarmerking is the authority of a notary to record a deed under the hand by registering in a special book called the Underhand Registration Book, also known as the "Register" Waarmerking or Waarmerk. Waarmerking is known in notary practice as registration which:

1. The deed has previously been signed or affixed with thumbprints by the parties outside the presence or knowledge of the notary.
2. The notary needs to determine when the deed was signed and who signed it.

If there is no guarantee of certainty about the date of signing and who signed it or who put the thumbprint, the parties determine the contents and sign the appropriate deed. At the same time, the Notary only makes the registration number in a special Waarmerking list book and affixes the position stamp. Each sheet of the deed in Waarmerking is given a page number, a photocopy of which is left at the Notary's Office as an archive.

Furthermore, examples can be found regarding the application of Waarmerking in the daily practice of Notaries as follows:
Number: 01/2009
"Stamped and registered in a registration book specially made for this purpose by me, Mohammad Arief Rachman Hakim, Bachelor of Laws, Master of Notary Affairs, Notary domiciled in the city of Mojokerto, the territory of the Province of East Java, on Wednesday, July 22, 2009."
Examples regarding the application of Legalization in Notary's daily practice:
Number: 01/2009
I the undersigned, Mohammad Arief Rachman Hakim, Bachelor of Law, Notary Magistrate, Notary domiciled in Mojokerto City, East Java Province, now certify that Miss Milatul Islamiyah, Private, resides in Mojokerto, Jalan Kedung Kwali Gang XII Number: 24, which I, the Notary, already know and after I, the Notary, read and explained the contents and intent of the agreement, then immediately before me, the Notary, he affixed his signature on the agreement, today, Wednesday, the twentieth two (22) July (2009) two thousand and nine.

Waarmerking must be distinguished from the legalization or validation of a deed, according to the law on signatures and establishing date certainty. The authority of a notary exercised in terms of carrying out his position as a notary in doing an orentik deed is an authority obtained by attribution, which is normatively regulated through Law Number 30 of 2004 Juncto Law Number 2 of 2014 concerning the Position of Notary (Sjaifurrachman, 2011: 105).

The Law on Notary Position makes a notary a public official so that the legal consequences in a notary deed have an original position and an executorial character. The authentic strength of a notarial deed is that the process of doing the deed is based on a form that has been determined by the law and made by or before an authorized official. This is referred to in Article 1868 of the Civil Code: An authentic deed is a deed determined by law, made by or before a public official authorized for that where the deed was done (Subekti et al. 2001: 475).

The general authority of a notary is regulated in Article 15 paragraph (1) of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Office of a Notary; this authority includes: Notary has the authority to make factual statements regarding all actions, agreements and decisions required by laws and regulations and/or desired by interested parties to be stated in original words. Guarantee the certainty of the date of doing the deed, keep the deed, and provide Grosse copies and excerpts of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people determined by law.

Based on the authority that exists with the Notary, as stated in Article 15 of the Notary Office Law, and the strength of evidence from the notary deed, two conclusions can be drawn:

1. The Notary's task is to formulate the wishes/actions of the parties into an authentic deed by taking into account and not violating applicable legal provisions.
2. An authentic deed is a deed that has the legal force of proof which is perfect and binding for the parties so that in its proof, it can stand alone and does not need assistance and additional evidence from other means of evidence. Suppose an opposing party proves the deed is not true with another authentic deed. In that case, the level of proof of the authentic deed can be reduced, so it is necessary to get the help of other additional evidence.

The special powers of a notary are regulated in Article 15 paragraph (1) of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary Public, including:

1. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a notary's special book;
2. Recording letters under the hand by registering in a special book;
3. Make copies of the original letters under the hand in the form of a copy containing the description as written and described in the letter concerned;
4. Verify the compatibility of the photocopy with the original letter;
5. Providing legal counseling in connection with doing deeds;
6. Making deeds related to land;
7. Make a deed of minutes of an auction.

The Notary also has other special powers as referred to in Article 51 of the Notary Office Law, namely the authority to correct written errors or typographical errors contained in the minutes of the signed deed by making minutes of the correction, and the Notary is obliged to submit it to the parties.

Legal Force of Underhand Agreement Waarmeking by Notary in Civil Cases

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 (Kusumawardhani, 2022). Likewise, the deed under the hand that was Waarmerking by a Notary, also has the power of proof. The most important function of the deed is as a means of evidence, and the strength of proof of the deed must be based on three evidentiary values, the same as an underhand deed that is Waarmerking by a notary also has the outward strength of an underhanded deed. The outward strength of this underhanded deed is used. It is obligatory to justify or deny its signature, while for the heirs, it is enough to explain that the heirs do not know the signature.

If the signature is denied, the judge must order that the truth of the deed be checked. If the signature is recognized by the person concerned, then the deed under the hand has power and becomes perfect evidence. The contents of this underhanded statement cannot be denied, therefore the signature on the underhanded deed has been acknowledged by the person concerned. If the deed under the hand that was Waarmerking by the notary in terms of the signature is not recognized by one of the parties, the deed that was Waarmerking by the notary has no power. The notary deed must provide assurance that the events and facts in the deed were carried out by the notary or explained by the parties who appeared at the time stated in the deed, following the procedures specified in doing the deed.

Formally to prove facing, the parties facing, the initials and signatures of the parties/appearers, witnesses, and notary, as well as proving what was seen, witnessed, heard by the notary (in the deed of officials/official minutes), and record the statements or statements of the parties/ appearers (in the deed of parties). A private deed has formal evidentiary power; if the signature on the deed is acknowledged (and this is evidence of acknowledgment), it means that the statement contained in the deed is also acknowledged and justified.

However, materially, the strength of proof of the deed under the hand only applies to the person for whom the statement was made, while for other parties, the strength of the proof depends on the judge's judgment (free evidence). All cases at trial are solely within the power or authority of the judge or court to decide them. This judge or court is a tool in a legal state that is tasked with establishing the actual legal relationship between the two parties involved in a dispute or dispute. In court, if what is presented as evidence is only an underhanded deed considering the limited strength of proof, then other supporting evidence is still being sought so that evidence is obtained which is considered sufficient to reach the truth according to law.

Deeds under the hand can only be accepted as the beginning of written evidence, as stated in Article 1871 of the Civil Code. Still, according to that article, it is not explained what is meant by written evidence. According to R. Soegondo Notodisoerjo (2003:44), in article 1902, it is written that:

1. There must be a deed
2. The deed must be drawn up by the person against whom the claim is made or by the person he represents
3. The deed must allow for the truth of the event concerned.

Certainty regarding the material of a deed that what is stated in the deed is valid evidence against the parties who made the deed or those who got the rights and applies to the public, unless there is evidence to the contrary. According to Article 1875 of the Indonesian Civil Code, the material evidentiary strength of a private deed is a private deed recognized by the person against whom the deed is used or which can be recognized according to law for those who sign it, their heirs, and other people. Who gets the rights from that person is proof of an authentic deed. Based on this, the contents of the underhanded deed statement apply as true to who made it and for the benefit of the person for whom the statement was made.

4. **CONCLUSION**

Based on the description and discussion that the author has described above, the following conclusions can be drawn :

1. The notary's authority over private deeds, which is Waarmerking by a Notary following Law no. 30 of 2014 concerning the Office of a Notary, is only limited to registering private deeds that have been made by the parties and present before the notary to register the underhanded deeds in a special book provided by the notary. The notary, in this case, does not know the contents of the deed that has been drawn up and signed by both parties, even though the notary signs the deed under the hand.
2. The legal force of the agreement Underhanded deed in Waarmerking is different from an authentic deed with definite evidentiary strength, so for an underhanded deed, the power of

proof is in the hands of the judge to consider it (Article 1881 paragraph (2) of the Civil Code). An underhanded deed in Waarmerking is more at risk of forgery in the deed and signature because the notary does not have the authority to read the contents of the deed. The authenticity of the party's signature can be doubted because the parties signing the deed is not in a Notary's presence. Hence, the police often blame the notary in terms of investigation.

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