

POWER OF PROOF OF UNAUTHENTIC DEED LEGALIZED BY NOTARY

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ABSTRACT

Notary is a public official who has the authority given by law. One of the powers of notary is to validate the signatures of the parties contained in an authentic deed made by the parties or what is known as legalization. Legalization is regulated in Article 1874a of the Civil Code. In the process of legalizing, a Notary as a public official who has the authority, is obliged to explain the contents of the deed to the parties who will sign the unauthentic deed of the Notary. It is intended that the parties really understand what they will agree on in the unauthentic deed and can avoid misinterpretation among the parties in understanding the contents of the unauthentic deed. The notary also guarantees the validity of the signatures of the parties contained in the unauthentic deed, and the unauthentic deed which is recognized by the parties has the same power as the authentic deed. Then, the legalization is the validation of the signature before the notary, and the notary guarantees the signature of the parties so that the parties cannot deny the signature contained in the unauthentic deed. However, in practice, there is a unauthentic deed which has been legalized by a Notary which is canceled by the court. The author used an approach of normative juridical, which is a legal approach that examines written law from various aspects of history, theory, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, article by article, formality and binding power of laws.

Key words: Notary, Legalization, Evidence

A. INTRODUCTION

In the case of proof by means of evidence it can be in the form of an ordinary letter, it can also be a deed. A deed is a writing that is solely written to prove something or an event, therefore a deed must always be signed, whereas according to Soedikno Mertokusumo, what is called a deed is a signed letter containing the events that are the basis of a right / engagement. which was created from the beginning on purpose for proof.¹

Deeds can be divided into two types, namely authentic deeds and Unauthentic deeds.

Article 1868 of the Civil Code which states:

"An authentic deed is a deed which is in the form stipulated by law, made by or in front of public officials who have the power to do so at the place where the deed was made".

Meanwhile, what is meant by a Notary deed is an authentic deed made before a Notary according to the form and procedure stipulated in law. The types of deeds made by the Notary are various authentic deeds regarding all the actions, agreements and stipulations required by the statutory regulations or desired by the person concerned. Since authentic deeds have perfect evidentiary power, the most important thing in the power of proof of a deed is the complete power of proof.²

Meanwhile, Unauthentic deeds are deeds that are made by the parties or other people without certain standard standards and are only adjusted to the needs.

In practice in the community in fulfilling evidence in the form of deeds, people choose to use deeds under their hands as evidence for their legal actions, this happens because deeds under their hands can also be used as valid evidence in court, and have the same power of proof as authentic deed if the parties do not deny it and the unauthentic deed can be made faster, easier and cheaper in the fulfillment of evidence in a legal act.

Article 1867 of the Civil Code which states:

"Evidence by writing is carried out in authentic writings as well as by handwriting."

In order to avoid or prevent the denial of Unauthentic deeds, the parties *legalize the* Unauthentic deeds they made before a notary.

In exercising their authority, notary officials have a very important role in building public law certainty, order and protection. In the 1945 Constitution of the Republic of Indonesia it clearly determines that the Republic of Indonesia is a constitutional state. Legal certainty, order and protection demands, among other things, that legal traffic in people's lives requires evidence that clearly determines the rights and obligations of a person as a legal subject in society. Article 1874 of the Civil Code regarding deeds under the hands and legalization which states:

"As Unauthentic writings are deemed under-hand signed deeds, letters, registers, domestic affairs documents and other writings which made without the intermediary of a public employee.

By signing a writing under the hand is equivalent to a thumbprint, affixed with a statement dated from a notary public or another employee appointed by law from which it turns out that he knows the thumbprinter, or that this person has been introduced to him, that the contents of the deed have been explained to that person, and that after that the thumbprint was affixed before the employee. "

Legalization is an endorsement of a signature by a notary for the benefit of legal protection for the parties in the implementation of the agreement. If a default occurs, the aggrieved party can file a lawsuit to the court if there is no agreement or peace for the default. Notary as a public official who has the legalization authority by UUJN, guarantees the signing of the

¹ Soedikno Mertokusumo, *Op.Cit.*, p.142.

² Setiawan, 1992, *Aneka Masalah Hukum dan Hukum Acara Perdata*, Alumni, Bandung, p.405

unauthentic deed by the parties so that if there is a denial of the signature by one of the parties, the Notary can assist in proving that the party who denied the signing actually signed the deed under that hand.

Whereas in the practice of legalization carried out by a Notary Public Notary has been careless as an official who has the authority to legalize deeds under his / her hands. In carrying out legalization, the Notary does not pay attention to things that can harm one of the parties, such as what happened to the Notary Apasra Dhewayani, SH, Notary in South Lampung because the Notary was not careful in carrying out legalization so that it resulted in the loss of one of the parties involved. In the unauthentic deed. There was a lawsuit between the two parties and it also involved the Notary as co-defendant because the Notary was not properly carrying out his / her duties. Ahmad Bumi Pangeran bin Raja Sangun as the plaintiff felt aggrieved by the legalization carried out by the notary, because when doing the legalization, the notary did not read and explain the contents of the unauthentic deed which the plaintiff would sign, and because the plaintiff also had cataracts so he could not see the contents unauthentic deed that would be legalized, therefore the plaintiff immediately affixed his thumbprint. The plaintiff also felt that the defendant, Syafrudin, was tricked because the Unauthentic deed made by the defendant was not in accordance with what was mandated in the Supreme Court Decision Number 3550 K / Pdt / 2011 so that based on the Supreme Court Decision Number 1110 K / PDT / 2011 in the verdict stated that The Deed of Peace Statement legalized by the Notary with number: Leg 659/2007 is canceled because in the legalization process there has been fraud (*bedrog*) by the defendant because he made the deed under his hands not in accordance with what it should be and the Notary was not properly in the legalization process because he did not read and explain contents of the unauthentic deed which is his obligation in carrying out legalization. Notaries as public officials who have the authority given by law should be careful in carrying out their duties and authorities so that in carrying out their duties and authorities, they do not harm other parties and do not cause legal consequences that can even harm the Notary itself in the event that the Notary is made Co-Defendant in civil dispute between the parties in the unauthentic deed of a notary legalized.

B. LITERATURE REVIEW

1. Definition of Deeds

Based on the origin of the word, the term deed comes from the Latin "*acta*" which means *geschrift* or letter,³ while A.Pitlo argues that a deed is a signed letter, made to be used as evidence, and to be used by others for whose purpose the letter was made.⁴

In general, deeds are letters made by officials or parties that contain legal relationships or legal actions of the parties that regulate legal status, rights and obligations. According to the Big Indonesian Dictionary, a deed is a certificate of evidence containing a statement (statement, recognition, decision, etc.) regarding a legal event made according to applicable regulations, witnessed, made and legalized by an official official.

Article 165 *Staatblad* Year 1941 Number 84 states that a deed is a letter made in this way by or in front of an authorized employee to make it sufficient evidence for both parties and their heirs as well as relating to other parties as a legal relationship, regarding all matters mentioned in the letter as notification of direct relationship with the subject of the deed. According to Subekti, what is meant by deed is "a writing that is deliberately made to be used as evidence about an event and signed".⁵

Based on the above definition, then regarding the function of the deed for interested parties are:⁶

- a. A condition to declare a legal act;
- b. As a means of proof.;
- c. As the only means of proof.

2. Types of deeds

a. authentic deeds

According to their form, agreements can be divided into oral and written agreements, written agreements are divided into authentic deeds and Unauthentic deeds.

Authentic Deed is a deed made by or in front of an official who is authorized to do so by the authorities, according to the stipulated provisions, either with or without assistance from the interested party, which records what is requested to be contained in it by the interested party, authentic deed especially contains a statement of an official, which explains what he did and saw before him.

From Article 165 HIR and Article 1868 of the Civil Code it can be concluded that authentic deeds can be further divided into:⁷

- 1) The deeds made by officials (*acte ambtelijk, procesverbaal acte*), are deeds which made by an authorized official by which the official explains what he saw and what he did, so that the initiative does not come from the person whose name is explained in the deed, for example, this official deed, for example, is an investigation report made by the police.
- 2) The deed made by the parties (*partijacte*), the deed made before the official authorized to do so, is the deed by which the official also explains what he saw and did, this *Partijacte* was made by the official at the request of the parties concerned, for example mentioned notarial deed regarding sale and purchase, lease and so on.

Whereas it is clear that what is meant by Authentic Deed is a deed made by a public official, one of which is a Notary and its form is determined by law, therefore all Authentic Deeds issued by the authorized public official will issue said

³ Victor.M.Situmorang,dkk, 1992, *Grosse Akta Dalam Pembuktian dan Eksekusi*, Rineka Cipta, Jakarta, p.24.

⁴ Sudikno Mertokusumo, 1993, *Mengenal Hukum (Suatu Pengantar)*, Liberty, Yogyakarta, p.120.

⁵ R. Subekti, *Op.Cit.*, p.25

⁶ A.Pitlo, 1986, *Pembuktian dan Daluarsa, Menurut Kitab Undang-Undang Hukum Perdata Belanda.Alih Bahasa M.Isa Arief.Cet.2*, Intermasa, Jakarta, p.59.

⁷ Suharjono, 1995, *Sekilas Tinjauan Akta Menurut Hukum*, Varia Peradilan, Jakarta, p.23.

deed in the same form, referred to as the same form, namely in making it regulated in detail, for example having to use a certain size and type of paper, in terms of the font it must use a predetermined font and the specified font size and most importantly in an authentic deed must have parts of the same deed, namely the head deed, deed body and deed cover.

b. Unauthentic Deed

It is a deed made by the parties which contains the conditions they have agreed upon, and signed by the parties. Unauthentic deeds according to Article 1874 of the Civil Code are deeds signed under hand, letters, lists, household affairs letters and other writings that are made without the intermediary of a public official.

These deeds can be divided into three types, namely:⁸

- 1) Unauthentic deeds where the party signs the contract on a stamp duty (without the involvement of a public official);
- 2) Deed under the registered hand (*waarmerking*) by the authorized notary / public official;
- 3) The deed is Unauthentic and legalized by the authorized notary / public official.

Waarmerking and Legalization are two of the several special powers of a Notary which can be seen in Article 15 paragraph (2) of Law Number 30 of 2004 concerning Notary Position (UUJN) to carry out certain legal actions.⁹

Unauthentic deed is a deed that is simple in form and usually only regulates legal relationships or legal actions that have a low level of risk, meaning that the level of risk is low, namely the unauthentic deed is made to regulate legal relationships or legal actions of parties in a legal relationship or action. The law is that if there is default, one of the parties does not cause major losses, for example a rental agreement for renting a house with a rental price of 12 million per year.

In practice, the deeds under the hands of the parties without the help of public officials are carried out *waarmerking* and legalization. *Waarmerking* is the bookkeeping of deeds under the hand in a special notary book, which indicates that the unauthentic deed actually exists and has been dated by the Notary at the time of the bookkeeping so that the unauthentic deed which is *waarmerking* has 2 dates, namely the date of signing the parties and the date recorded by Notary Public.

In legalization, the parties who make the unauthentic deed, are present before the Notary to sign and the Notary ratifies their signature and the Notary records the legalization in the Notary's special book. In the unauthentic deed legalized by a Notary, there is only 1 date, namely the date of signing the deed before a Notary.

3. Function of Deed

a. *Formality Causa*

A deed can have a formal function (*formality causa*), which means that a deed must be completed or perfect (not to be valid). Here the deed is a formal requirement for a legal act.

In addition to its formal function, deeds have a function as evidence because they were drawn up from the beginning on purpose to prove it at a later date. It is written that an agreement in the form of a deed does not validate the agreement but only so that it can be used as evidence in the future.

The point is that the existence of a legal action is stated by the existence of a deed because deed is a writing that contains a legal act and contains the terms agreed upon in the legal act.

b. *Causa Probabilis*

In the power of proof born from an authentic deed, the principle applies *acta public probant sese ipsa*, which means that a deed that appears as an authentic deed and fulfills the specified conditions, then the deed is valid or can be considered as an authentic deed, until proven otherwise. This means that the official's signature is considered the original until there is evidence to the contrary.

Whereas the signature of the official as the public official authorized to issue the deed is stated that the signature is correct because the signature of the official, in this case the Notary Public, who signed the copy of the deed held by the tappers has registered his signature with the relevant ministry and the Notary in issuing the copy deeds are based on the minimum deeds that are held and kept by the notary public.

c. Evidence

According to Kohar, authentic deeds function for the parties, authentic deeds have perfect proof strength but can still be paralyzed by opposing evidence. For third parties, authentic deeds have the strength of free evidence, meaning that the assessment is submitted to the judge.¹⁰

In terms of proof, the authentic deed has a burden of proof on the person who denies the deed or on a third party who feels that there is an act against the law for the birth of the authentic deed. Therefore, the party in the event that the authentic deed wants to be canceled by a third party can only go through the court and This authority rests with the judge based on the evidence in court.

⁸ Salim HS, H. Abdullah and Wiwiek Wahyuningsih, 2008, *Perancangan Kontrak & Memorandum Of Understanding (MOU)*, Sinar Grafika, Jakarta, p.16.

⁹ Hartanti Sulihandri and Nisya Rifani, 2013, *Prinsip-Prinsip Dasar Profesi Notaris*, Cet.I, Dunia Cerdas, Jakarta, p.96.

¹⁰ Muhammad, 1984, *Ilmu Pengetahuan Notariat*, Sinar Baru, Bandung, p.10.

4. Definition of Notary

Notary is derived from the word *natae*, which means secret writing, so an official is a kind of writer *steroid*.¹¹ Notary is a public official, a public official when he is appointed and dismissed by the government and given the authority and obligation to serve the public in certain matters.¹²

According to Article 1 number (1) UUJN, Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in this Law or based on other laws.

Notaries are known as people who serve the public to make authentic deeds or documents. The task of a notary today is different from the time when the position of notary was born. During the heyday of the Romans, there was not only a group of *gladiators* there, but also lived a group of people called *notarians*. *Notarius* is a term used by Roman society to name those who do writing work, but the function of *Notarius* at that time was different from the function of a notary today.¹³

5. Legalization

Legalization is an activity in which the parties come before the Notary with the deed under their hands which they have made to be signed by the parties before the Notary Public and the Notary ratifies their signatures and records them in a special book made by the Notary Public.

The location of the difference between *waarmerking* and legalization is that:¹⁴

"*Waarmerking* only has certainty, only the date and there is no certainty of the signature while the legalization of the signature is done in front of the legalizing person, while for *waarmerking*, at the time of *waarmerking*, the letter has been signed by the person concerned. . So the one who gives *waarmerking* does not know and therefore does not validate his signature "

Based on the location of the difference between *waarmerking* and legalization, it can be explained that the legalization function of the unauthentic deed made by the parties is to guarantee the date and signature of the parties concerned. as well as a notary explaining the contents of the deed made by the parties. Unauthentic deed that has been legalized provides certainty for the judge regarding the date and identity of the parties who entered into the agreement as well as the signature affixed under the letter is true originated and affixed by the person whose name is listed on the unauthentic deed.

6. The Power of Proof of Deed

In the Big Indonesian Dictionary it is stated that the general meaning of proof is the act (rights and so on) to prove, while to prove means:¹⁵

1. To give (to show evidence);
2. Do something as proof of truth, carry out (ideals and so on);
3. Signifies, states (that something is true);
4. Convincing, witness.

According to Munir Fuady, proof itself in Law has the following meaning, namely:

"a process, both in civil proceedings and criminal proceedings, as well as other events, where by using valid evidence, an action is taken with a special procedure. to find out whether a fact or statement, in particular a fact or disputed in court, submitted and declared by a party in the court process is true or not as stated. Meanwhile, the Law of Evidence contains the meaning as a set of legal rules governing proof.¹⁶

M. Yahya Harahap provides a formulation regarding the definition of proof, namely:¹⁷

"proof is the provisions which contain outlines and guidelines on the methods justified by law to prove the guilt charged to the accused. Evidence is also a provision that regulates evidence justified by law that a judge may use to prove the guilt of the accused. "

The meaning of proof in terms of procedural law includes, among others:¹⁸

- 1) Provisions that limit court proceedings in seeking and defending the truth. Whether the judge, public prosecutor, defendant or legal adviser, all are bound by the provisions of the procedure and evaluation of evidence as determined by law. Should not be free to act in their own way in judging the evidence. In using evidence, it must not be in conflict with the law. The parties cannot freely defend something they think is true outside of the provisions outlined by law.
- 2) The panel of judges is expected to find and put down the truth that will be imposed in the decision, it must be based on evidence which has been determined by law in a limitative manner, as referred to in law.

¹¹ Soetarjo Soemoatmodjo, 1986, *Apakah Notaris, PPA, Pejabat Lelang*, Liberty, Yogyakarta, p.4.

¹² R. Soegondo Notodisoerjo, *Op.Cit.*, p.44.

¹³ Abdul Ghofur Anshori, 2009, *Lembaga Kenotariatan Indonesia (Persepektif Hukum dan Etika)*, UII Press, p.7-8.

¹⁴ Subekti, *Op.Cit.*, p.34.

¹⁵ Munir Fuady, 2006, *Teori Hukum Pembuktian (Pidana dan Perdata)*, Citra Aditya Bakti, Bandung, p.1-2.

¹⁶ *Ibid.*

¹⁷ M. Yahya Harahap, 2009, *Pembahasan Permasalahan dan Penerapan KUHAP*, Edisi 2, Cet.keXI., Sinar Grafika, Jakarta, p.273.

¹⁸ Yahya Harahap, *Op.Cit.*, pp.273-274.

C. RESEARCH RESULTS AND DISCUSSION

1. Legal protection for parties contained in under-handed deeds legalized by a notary

Law has the objective of creating order and security, in order to achieve the goals of order and security, legal protection must exist. Legal protection is designed for every legal subject so that in carrying out their rights and interests, they can be properly guaranteed by law.

Protection referred to is legal protection carried out by a notary as a public official who has the authority to legalize the signatures of the parties on a unauthentic deed of the parties or third parties. The authority of a notary regarding legalization is contained in Article 15 paragraph (2) letter b of the UUJN which regulates: "ratify the signature and determine the date of the letter Unauthentic by registering in a special book." The notary guarantees the signature of the parties contained in the unauthentic deed, so that the parties who participate in signing the unauthentic deed cannot deny the signature, meaning that the parties agree on all the provisions stipulated in the unauthentic deed and cannot say that they do not understand regarding the unauthentic deed.

Notary legalizes, records, and attaches the unauthentic deed made by the parties in the special book of the Notary so that if there is a dispute over the unauthentic deed, the Notary will show it for the purposes of proof in court.¹⁹

The legal protection provided can be in the form of legal advice for parties who wish to validate the signature of the unauthentic deed they have prepared because in the legalization process, before signing the unauthentic deed, the notary explains the contents of the unauthentic deed to the parties. The purpose of explaining here is that the notary reads the unauthentic deed and the notary assesses the contents of the unauthentic deed whether it is in accordance with statutory regulations, order and morality.²⁰

Notary in legalizing deeds under the hands of the parties, Notaries do not always accept legalization of all deeds under the hands of the parties, but the Notary still scrutinizes the identities of the parties and assesses whether the deeds Unauthentic are in accordance with Article 1320 of the Civil Code.²¹

This is done by the Notary in order to prevent the occurrence of legal problems both between the parties and the Notary, so that the Notary does not always accept legalization of the unauthentic deed made by the parties because at this time many are committing fraud by utilizing services provided by the Notary so that the Notary is a professional position. must actually carry out its authority responsibly.

According to the provisions of Article 1875a of the Civil Code, the notary not only reads out but also explains the contents of the unauthentic deed whether the Unauthentic deed meets the provisions of Article 1320 of the Civil Code regarding the validity of the agreement and whether there are elements of error (*dwang*), coercion (*dwaling*) and fraud (*bedrog*) so that from this legalization process, the parties receive legal protection that is preventive by the notary as a public official who is authorized to carry out legalization of deeds under hand.

The parties who validate the signature on the unauthentic deed before the Notary can no longer deny the existence of the unauthentic deed and the contents of the unauthentic deed and the signature of the parties in the deed because the Notary as an official authorized to carry out legalization according to UUJN, guarantees regarding this matter and if there is a dispute over the unauthentic deed, the notary can also be a witness to the truth of the unauthentic deed, regarding the contents of the deed and the truth of the signatures of the parties.

Legalization carried out by a notary provides legal certainty and legal protection for the parties in exercising their rights and obligations so that order and security can be achieved in legal traffic in the community. It can be seen that the Notary Public has a moral responsibility for the legalization of the unauthentic deed by providing a guarantee for the parties who signed the deed and the date of the signing.²²

Legal protection for parties who legalize the unauthentic deed if one of the parties denies his signature, the party who wants to prove the truth of the signature can take litigation measures, namely filing a lawsuit to the court. In the judicial process, a proof can be made regarding the correctness of the signature on the unauthentic deed which has been legalized by a notary. In the process of evidence in court, the judge provides equal opportunity to the parties to prove their claim for the plaintiffs and the answer to the lawsuit for the defendant.²³

Notary, in exercising its authority, namely legalizing the unauthentic deed, has the following responsibilities:²⁴

1. Identity
 - Notary is obliged to examine the identity of the parties who will sign the letter / unauthentic deed (KTP, passport, driving license), or introduced by others.
 - Researching whether they are capable of taking legal actions.
 - Checking whether the authorized parties signed the letter / deed.
2. The contents of the Notary
 - Deed must read the contents of the deed to the parties and ask whether the contents of the deed are true that the parties want.
3. Signature
 - They must sign before a notary.

¹⁹ Interview with Notary Stefanus Yuwono Tedjosaputro, ST, SH, MBA., M.Sis., M.Kn., MH

²⁰ Interview with Notary Suyanto, SH.

²¹ Interview with Notary Suyanto, SH, Notaris Ngadino, SH, MH, Stefanus Yuwono Tedjosaputro, ST, SH, MBA., M.Sis., M.Kn., MH, Notaris Anief Ratnawati., SH, Notaris Ahlia Indriany, SE, SH, M.Kn., and Makin Amin, SH

²² Interview with Notary Suyanto, SH, dan Ngadino, SH, MH

²³ Interview with the Judge of Ungaran District Court, Sulistiyanto R. Budiharto, SH, on 8 August 2018.

²⁴ HM Imron, 2006, *Legalisasi Harus Dilengkapi Saksi*, Renvoi Number 10/34, April Edition, p.1.

4. Date

- Affixing the date on the unauthentic deeds then recorded in the register provided for that.

The notary's responsibility in exercising legalization authority provides legal protection for parties who legalize the deed under his / her hand, so that if there is a dispute related to the denial of a signature by one of the parties, the Notary as a public official who has the authority to carry out legalization can help provide information regarding the correctness of identity, content of deed, signature and date as described above. Basically, affirming the truth of the signature contained in the unauthentic deed (*waarmerking van onderhands akten*), by itself includes validating the truth of the date (*waarmerking van datum*).²⁵

The purpose of the statement or ratification of the Notary or the authorized official for the signing of the unauthentic deed of the parties:²⁶

- In order to have certainty over the accuracy of the signatures contained in the deed and also certainty of the truth that the signature is the signature of the parties;
- Thus, the parties are basically no longer free to deny the signatures listed on the deed.

With the legalization of the unauthentic deed by a notary public, it does not make the Unauthentic deed become an authentic deed but the Unauthentic deed has certainty that the parties contained in the deed and the date of the deed and the parties cannot deny the unauthentic deed. The signing made by the parties before a notary is a form of agreement on the contents of the unauthentic deed.

2. Power of Evidence of Unauthentic Deeds Legalized by Notaries

Unauthentic deeds are deeds made by parties or third parties without the help of authorized officials, namely Notaries, deeds under the hands have a free form. All forms of writing or deeds that are not authentic deeds are called unauthentic deeds or in other words, all types of deeds that are not drawn up by or in front of a public official, including clusters of deeds under hand.²⁷

According to the provisions of Article 1880 of the Civil Code, deeds under the hands that are not legalized by a notary or other official appointed by or based on law and do not comply with the provisions of Article 1874 and Article 1874a of the Civil Code regarding the date have no power against third parties (*derden*) other than or unless:

- a. Since the day of legalization referred to and recorded according to law; or
- b. Since the day of the death of the signatories concerned, whether all or one person; or
- c. Since the day it is proved that there are deeds under the hands of the deeds made by public employees; or
- d. Since the third party has just recognized the unauthentic deed in writing, the deed is used.

Legalization of deeds under the hands of a notary does not actually result in the deeds Unauthentic to become authentic deeds. unauthentic deeds legalized by a Notary still have the same proof power as an Unauthentic deed and the burden of proof remains with the party who recognizes the unauthentic deed, but the unauthentic deed which is legalized by the Notary.

Legalization of deeds under the hands is carried out to avoid denial of parties in the deed and unauthentic deeds legalized by a notary are guaranteed that the deed is actually signed by the parties.²⁸ The parties who put their signatures before the Notary in the unauthentic deed drawn up by the parties cannot say that the parties or one of the parties did not sign the unauthentic deed because the Notary guarantees the accuracy of the signing in the unauthentic deed.

Ratification of the signature by the Notary in the unauthentic deed and the Notary explains the contents of the deed and guarantees the signature of the parties according to the provisions of Article 1874a of the Civil Code, the unauthentic deed which is recognized by the parties has the same power of proof as the Authentic Deed it is expressly recognized that the provisions of Article 1875 of the Civil Code are fully applicable, namely giving birth to legal assumptions, deeds under hand are true or original; and the judge is obliged to consider it to be genuine.²⁹

With the legalization of the unauthentic deed made by the parties, the Judge is sure of the certainty regarding the date and identity of the party who entered into the agreement as well as the signatures of the parties who have a legal relationship or the legal action is true and affixed by the party whose name is listed in the unauthentic deed and the party who put the signature cannot say that the parties or one of the parties do not know what the contents of the unauthentic deed are.³⁰

Based on this, the unauthentic deed legalized by the Notary has perfect evidentiary power because the under-hand deed that has been legalized by the Notary has the correct signature of the parties and cannot be denied. With the recognition that the parties' signatures in the unauthentic deed, the contents of the deed are considered as agreement between the parties and the parties know the contents of the unauthentic deed because before signing the deed, the Notary explains the contents of the deed.

²⁵ M. Yahya Harahap, *Op.Cit.*, p.597.

²⁶ *Ibid.*

²⁷ R. Soepomo, 1993, *Hukum Acara Perdata Pengadilan Negeri*, Pradnya Paramita, Jakarta, p.78.

²⁸ Interview with Notary Suyanto, SH, Notaris Ngadino, SH, MH, Stefanus Yuwono Tedjosaputro, ST, SH, MBA., M.Sis., M.Kn., MH, Notaris Anief Ratnawati., SH, Notaris Ahlia Indriany, SE, SH, M.Kn., and Makin Amin, SH

²⁹ M. Yahya Harahap, *Op.Cit.*, p. 604.

³⁰ Results of Interview with the Judge of Unggaran District Court, Sulistiyanto R. Budiharto, SH, August 8, 2018.

1. Causes of Unauthentic Deed Cancellation Legalized by Notary

Unauthentic deed is an agreement made by the parties without the help of a public official to serve as evidence in a legal relationship or legal actions of the parties that regulate the legal status, rights and obligations of each party.

Cancellation of an unauthentic deed legalized by a Notary may be requested for cancellation if:

1. Unauthentic deed made by the parties violates the subjective requirements of the validity of the agreement as stipulated in Article 1320 paragraph (1) and (2) of the Civil Code, namely the agreement was born due to a defect of will (*wilsgebreke*), among others, due to mistake, coercion or fraud, or due to the incompetence of the parties in the agreement (*ombekwaamheid*) so as to result in the unauthentic deed can be canceled (*vernietigbaar*)
2. Unauthentic deed made violating the objective requirements of the validity of the agreement as stipulated in article 1320 paragraph (3) and (4), the unauthentic deed is made that does not meet the requirements of a certain object or has causes that are not permitted, such as being opposed to law, public order and morals so that the unauthentic deed is null and void by law (*nietig*).

The phrase 'null and void' is a phrase in the field of law which means 'not valid' and is not valid according to legal provisions. Void by law means that something becomes invalid or invalid because it is based on law (or in a narrow sense, based on statutory regulations) it is. Thus, 'null and void' indicates that the invalidity or invalidity of such a thing occurs instantaneously, spontaneously, automatically or automatically, as long as the conditions or circumstances that make it null and void are met.³¹

Dwaling is a form of will defect in an agreement in which one party tricks the other party to determine the contents of the agreement or is often called heresy. Article 1322 of the Civil Code states that: "an error does not result in the cancellation of an agreement if the mistake occurs regarding the nature of the item which is the subject of the agreement" and paragraph (2) states that "an error does not become a cause for cancellation if the mistake only occurs about the person with whom it intended. make an agreement, unless the agreement has been made primarily because he remembers that person."

In accordance with the provisions of Article 1265 of the Civil Code, the condition for cancellation is a condition which, if fulfilled, will abolish the engagement and bring everything in its original state as if there was no agreement. Things that must be considered as a condition for cancellation of a unauthentic deeds of legalized by a notary are default, where default is always considered a condition of being canceled in an agreement so that the party who feels aggrieved because other parties who defaulted can demand the cancellation of the unauthentic deed legalized by Notary Public.

Article 1323 of the Civil Code states "Coercion exerted on the person making the agreement is the reason for the cancellation of the agreement, also if the coercion is carried out by a third party, for whom the agreement was made". With this provision, coercion can come from the counterparty of the agreement or a third party.

Article 1324 of the Civil Code states that "Coercion has occurred, if the act is such that it can frighten someone with a sound mind and if that act can cause fear to that person that he or his wealth will be threatened with a clear and real loss." In considering this matter, the age, sex and position of the people concerned must be considered.

Fraud (*bedrog*) is where one party provides false information or information so that the other party is willing to sign the deed. Article 1328 clearly states that fraud is the reason for the cancellation of the agreement.³² The definition of fraud contained in Article 1328 of the Civil Code paragraph (1) is "Fraud is a reason for cancellation of an agreement, if the deception used by one party is such that it is clear and obvious that the other party is not tired of making the agreement otherwise. the deception was carried out." Paragraph (2) "fraud is not suspected, but must be proven."

Apart from defects of will, another thing that can cause the unauthentic deed legalized by the notary to be canceled by the court is the abuse of circumstances. Abuse of circumstances is a condition where one of the parties feels benefited in signing a unauthentic deed because the other party does not understand or does not know that the party should not have signed the unauthentic deed or a situation occurs if someone knows that someone else should have committed a legal act as a result of special circumstances, the special circumstances referred to such as inexperience, carelessness and others.

A claim for cancellation of an unauthentic deed legalized by a notary must be filed through a court so that the one who cancels the unauthentic deed is through a judge's decision in accordance with the provisions of Article 1266 of the Civil Code, which regulates:

"The condition for cancellation is considered to be always included in the reciprocal agreements, when one of them is party does not fulfill its obligations. In such cases the agreement is not null and void, but the cancellation must be requested to the judge. This request must also be made, even though the conditions for not fulfilling the obligations are stated in the agreement. If the conditions for cancellation are not stated in the agreement, the Judge is free to, according to the circumstances, at the request of the defendant, give a period of time to still fulfill his obligations, which period however it cannot be more than one month."

The time period for a lawsuit to cancel the unauthentic deed is five years. In addition, an agreement that can be canceled must be reciprocal, namely an agreement that gives rights and obligations to both parties. The above requirements are conditions that must be met for unauthentic deeds which can be canceled while for underhand deeds that are null and void, the unauthentic deeds are invalid and underhand deeds legalized by a notary are considered non-existent.

Unauthentic deeds that are canceled by the court can be caused by several factors, such as in the decision of the Supreme Court Number 1341 K / PDT / 2016 in its legal considerations, the cancellation of the unauthentic deeds which was legalized by a notary, namely the Sale and Purchase Agreement Letter Number 2323 / PTTSBT / MT / VIII / 2012 and Letter of Sale and Purchase Agreement Number 2324 / PTTSBT / MT / VIII / 2012 dated August 19, 2012 were declared invalid

³¹ *Ibid.*

³² J. Satrio, 1995, *Engagement Law: An agreement born from an agreement*, Citra Aditya Bakti, Bandung., P. 350.

because they violated the valid terms of the agreement, namely agreement based on Article 1320 of the Civil Code and there was a defect of will, namely fraud (*bedrog*).

D. CLOSING

1. Conclusion

In practice in society, the efforts that can be made by the community so that the deed under their hands can have more legal force and legal certainty, so that the community will carry out legalization of the deed under their hands that they made before public officials, namely notaries. legalization is one of the authorities possessed by a Notary based on the Law on the Position of Notary Public. In legalizing the unauthentic deed, the parties contained in the unauthentic deed receive legal protection in the form of legal guarantees provided by the notary, namely the notary guarantees the signatures of the parties contained in the unauthentic deed so that the parties who participate in signing the unauthentic deed do not can deny the signature, meaning that the parties agree on all the provisions stipulated in the unauthentic deed and cannot say that one of the parties did not sign the unauthentic deed.

The power of proof of unauthentic deed which is legalized by a Notary is to have perfect proof power such as an authentic deed based on the provisions of Article 1875 of the Civil Code because the parties can no longer deny the signature contained in the unauthentic deed and the Notary as a general official who has the authority to legalize the unauthentic deed based on Article 15 paragraph (2) letter a and the Notary guarantees the signature of the parties contained in the unauthentic deed but the legalization of the unauthentic deed by the Notary does not make the unauthentic deed legalized by the Notary into an authentic deed. The unauthentic deed which is legalized by the Notary in terms of proof in court still has the burden of proof on the party proving that the unauthentic deed is true but in the process of proof, the party who will prove the truth of the unauthentic deed will receive legal protection from the Notary as a public official who guarantees the sign. The hands contained in the deed under these hands are the signatures of the parties.

The cause of the cancellation of an unauthentic deed legalized by a Notary by the court is the presence of a defect of will (*wilsgebreke*), namely the existence of a defect in the formation of an agreement in an underhand deed. Defect of will is divided into 3, namely delusion (*dwaling*) is a form of defect of will in an unauthentic deed where one party deceives the other to determine the contents of the unauthentic deed; coercion (*dwang*) is the second form of defect of will, wherein an interested party is forced to sign the unauthentic deed with threats; and fraud (*bedrog*) is where one of the parties provides information or information that is untrue so that the other party is willing to sign the unauthentic deed by deceiving the party; as well as the abuse of circumstances, namely situations that occur when someone is in an agreement by something that prevents him from making judgment independent from other parties, so that the party cannot make an independent decision.

2. Suggestions

Based on the results of the research that the author has done; the author will submit several suggestions:

- a. In carrying out the legalization of deeds under the hands of a notary, it is better if the parties who come to the notary ask the notary to assess whether the deed under their hands meets the legal requirements of an agreement according to the provisions of Article 1320 of the Civil Code and explain the contents of the unauthentic deed so that the parties understand and understand the legal status, rights and obligations of each party contained in the provisions of the deed so as not to cause multiple interpretations that can lead to legal problems.
- b. In conducting legal relations or legal actions that have a high-risk level (having high economic value), it is better if the parties go to the Notary Public to produce evidence in the form of an Authentic Deed (Deed of Notary) and not make the unauthentic deed because the Notary Deed has the power of proof that perfect.

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