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Legal Review Of Article 15 Paragraph (2) Of Law Number 2 Of 2014 Concerning The Office Of Notary Public Regarding The Validity Of Legalization And *Warranty* Of Deeds Under Hand By Notaries

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Abstract

This research aims to find out, analyze and study related to (1) the validity of the legalization and marketing of private deeds based on Law Number 2 of 2014 concerning the Position of Notaries, (2) the responsibility of notaries regarding the validity of legalized private deeds and in warmerking. This research uses a type of normative legal research, namely research that can be carried out by examining a system of laws and regulations that apply or are used in certain problems. The legal materials used in preparing this research came from primary legal materials, secondary legal materials and tertiary legal materials with legal material collection techniques carried out by document study or literature study. The legal material analysis technique used is the interpretation method. Then the results of the research show that (1) The validity of the legalization and marketing of the deed under the hand of a notary can be seen from the date and signatures of the parties involved in the notarial agreement deed, (2) The responsibility of the notary is very large in providing legal certainty to society. The notary's responsibility for legalized private documents is the certainty of the signature, meaning that the person signing is indeed a party to the agreement, not someone else. Then the notary's responsibility for under-handed letters that are under-handed is to guarantee the certainty of the date stated in the under-hand letter or agreement.

1. Introduction

The 1945 Constitution clearly states that the Unitary State of the Republic of Indonesia is a state of law (rechstaat) and not a sovereign territory (machtstaat). This is what makes Indonesia unique. Every person, group, government agency, and state institution is required to comply with applicable legal policies in exercising their freedom and responsibilities; Where in accordance with the principles of a state of law that seeks to ensure stability, harmony, and sustainability of law as a leader in truth and

justice. Indonesian society along with our economic growth began to make various kinds of legal agreements such as sales and purchase agreements, leases, and other agreements.

A valid agreement gives rise to rights and responsibilities, which in turn give rise to carelessness and legal consequences due to serious or underhand actions, which are often exploited by negligent people, either intentionally or unintentionally. because what is contained in the deed is different from the way it is made or signed. To ensure the smooth running of agreements and agreements that the community makes, notaries are present to assist the community in making, registering and validating deeds or underhand letters which can later be used as evidence in court. A public official, namely a notary, is someone who has the authority to work on authentic deeds and legalize letters or documents. In situations like this, a notary must ensure that the documents he legalizes comply with all relevant laws (Immanuella & Hoesin, 2022). According to article 1 number 1 of the UUJN, it states that as a public official, a Notary has the authority to work on authentic letters and has other powers that have been stated in the regulations and are based on other policies. Public officials are officially recognized members of society who can support the community in making agreements that are beneficial to the progress of society and can carry out legally binding deeds. If the parties want their agreement to have binding legal force, it must be made in writing and witnessed by a public official. Public officials, namely notaries, have been recognized by law to be able to serve ordinary interests in civil law matters; more specifically, this is a legal document used by the state to carry out its responsibilities in this area (Herlien Budiono, 2004). Proof of a legal act is a very important thing that is done at all times, namely that which is carried out in public or under hand with an authentic deed. Traditional wisdom states that a notary is a reliable source of legal advice. When it comes to writing documents that have an impact on the legal process, everything that is decided and written is accurate. Disputes should be avoided with sincere actions. Then, if there is a difference of opinion, the original deed is the most reliable written record and can really help resolve existing problems. The philosophical basis for the formation of the Notary Law (UUJN) is to realize the guarantee of legal certainty, harmony and policy of power based on the validity and equality beyond letters produced by public officials. Thus, public officials have an obligation to guarantee the legal certainty of the parties. In accordance with his oath of office, a Notary is obliged to carry out his duties competently, sincerely, and objectively. In this case, public officials have the responsibility to ensure that the letter is comparable to legal policies in Indonesia, so that potential problems caused by gaps in the law can be resolved properly. In this case, the deed or document in question can trigger the loss of its authenticity or authenticity to become a deed under hand.

The authority of a Notary is stated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Based on this authority, public officials can produce various forms of goods and services. For example, ensuring the certainty of the date of the deed while maintaining its essence regarding the processing of official letters containing all activities, agreements, and provisions which are required by law or requested by parties who have an interest to be stated in a document. stating that no official or other person is excluded or assigned during the deed making process, and presenting the gross, photocopy, and citation of

the letter. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary is further written as UUJN which stipulates that letters or documents must be processed, namely together with a notary, visited by witnesses, and the notary is required to provide material for the letter that has been signed by someone who makes an agreement. Although the parties may request other public officials to make deeds on their behalf, the authority to execute official letters in connection with any and all agreements, actions, and determinations in connection with the making of certain authentic deeds lies with the Notary. Deeds according to their form are divided into 2 (two) types, namely official letters and private deeds. An authentic letter is a letter that is executed as a form stated in the law, both for and before official officials who have the appropriate authority, and is made in a designated place, as stated in Article 1868 of the Civil Code. If the contents of the letter are not proven to be true by another party, then the deed is considered perfectly valid and can stand alone without any additional evidence. so that a deed can be used as evidence in court, so that the deed must be executed for the person concerned directly, without assistance from public officials, such as a notary. The position of a document as written evidence can be increased through ratification. If there is no notary appointed to validate a deed, the interested party can request that the deed be trademarked or legalized so that it can be used as a valid deed. In legalization and waarmerking there are differences of interest in the use of documents due to differences in the strength of evidence which is also related to the responsibility given by a notary to the two forms of documents or letters. Regarding the legal force of proof of a private letter which has been registered with a public official, it does not have an impact on the waarmerking itself which can be interpreted by law. However, in reality it often happens in society where some of them do not understand how useful a letter or deed is as proof, then someone only makes an agreement verbally if they are fully convinced of each other's abilities, but there are also those who know the value of writing down an agreement as proof so that the agreements can be made in written form which is very necessary as evidence.

After being registered (waarmerking), a private deed loses all its legal weight and cannot be used as proof against a third party. However, as long as the first and second parties know the signature and contents of the deed, it can be used as evidence. However, a public official only includes numbers and records them, so this private letter has no effect on the evidentiary force in court. Notaries and other public officials are the only parties authorized to record private letters and agreements in a specific book, a practice known as waarmerking. The legalization of this practice is stated in Law Number 2 of 2014 which amends Law Number 30 of 2004 concerning the Position of Public Officials. Specifically, Article 15 paragraph (2) letter a explains that public officials have the power to confirm the date of the document and validate the signature through the recording of the transaction in a special book. Based on the policy on the formation of a waarmeking carried out as a public official, based on Article 15 paragraph (2) letter b of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary which states where, listing private deeds by recording them in a special book. Reviewed from Article 15 Paragraph (2) of Law Number 2 of 2014 concerning the Position of Notary there is a gap in norms where in the implementation of private deeds that have been waarmerking by public officials, there

are high problems, where the Notary Position Law is one of the sources of regulation for documents recorded privately, then these deeds are considered not to have a solid legal basis. The author is interested in researching the following topics in order to write a thesis entitled "Legal Review of Article 15 Paragraph (2) of Law Number 2 of 2014 concerning the Position of Notary Regarding the Validity of Legalization and Waarmerking of Private Deeds by Notaries".

2. Research Methods

The method used in this study is the normative legal research method. This study will examine more clearly the absence of norms related to Article 15 paragraph (2) Number 2 of 2014 concerning the position of notaries regarding the validity of legalization and waarmerking of deeds under hand by notaries. In this study, the author uses 2 types of approaches, namely the Statute Approach and the Conceptual Approach. The legal materials used are primary, secondary, and tertiary legal materials. In writing this study, the method used in collecting legal materials is document study and literature study. The data obtained, both primary and secondary data, are grouped and arranged systematically. Furthermore, the data is analyzed qualitatively. Then continued by interpreting or interpreting the research data. After understanding the meaning of all the data obtained, it is continued by presenting the research results based on the researcher's perspective.

3. Results and Disscusion

3.1 Validity of Legalization and Waarmerking of Private Deeds Based on Law Number 2 of 2014 Concerning the Position of Notary

1. Legalization of Private Deeds Legalization

comes from the root word valid. Validity also means legitimacy. Looking at the translation from the law dictionary and the Oxford dictionary, legal validity has the same meaning, namely legal certainty. Legal validity is very close to the positivist theory adopted in Indonesia. That the law that is in force and declared valid is an existing rule, stated in a Law or written rule (Van Pramodya Puspa, 1977:252).

Legalization in the Great Dictionary of the Indonesian Language is a ratification according to a Law or law. The legal basis for legalization is stated in Staatsblad 1909 Number 291 Concerning Legalization of Signatures. Legalization serves as proof that the person or body involved in making a document actually signed it. If an authorized public official provides information, a notary is appointed to witness the signing at the same time and place as the official. In order for the legalized letter to have legal force that is used as evidence that is valid in court, the legalization must be stamped sufficiently, this fulfills the provisions stated in article 2 paragraph (1) a of Law Number 13 of 1985 concerning Stamp Duty. Legalization is proving that the document made by the parties who made the agreement has indeed been signed by the parties and this stage is seen by a notary who is a public official and there is the same date and time of signing. In accordance with article 7 letter c of Law Number 30 of 2004 concerning the Notary Position, every Notary who will work is required to send a sample of his signature to the Ministry of Law and Human Rights of the Republic of Indonesia. This is to ensure that the document legalization process is carried out by the competent authority in Indonesia. One solution to the problem of

fulfilling the interests of legal aid is to legalize official signatures as one type of legal service which is the main responsibility of the Ministry of Law and Human Rights of the Republic of Indonesia (Directorate General of AHU). The legal basis for this legalization can be found in Article 15 UUJN, Article 1874 KUHPerdata, Article 1878 KUHPerdata, Article 1880 KUHPerdata. Deeds signed privately, letters, registers, domestic letters, and all other writings made without the intervention of public officials, are all considered private writings according to Article 1874 KUHPerdata. especially notaries. Notaries or other officials determined by law will provide information containing the date and thumbprint. If the notary knows the party who affixed the thumbprint to the deed, the notary will explain the contents of the deed to the party. Then, employees are required to record the writing in accordance with statutory regulations so that it can be submitted with further regulations regarding statements and bookkeeping.

Notary legalization is a stage carried out to validate a copy or photocopy of a document, when the copy or photocopy of the document in question is the same as the original document, then the notary will observe the copy document whether it is the same as the original document, after which a notary legalization stamp is given, then signed on it. At the legalization stage, the notary has the following authorities:

1) Copying a letter or document from the original source shows that the copied text is a translation of the original text, with the description and contents in accordance with those in the source document or letter.
2) To obtain a photocopy that is the same as the original deed, has binding legal force, the notary must first verify whether the contents of the photocopy are in accordance with the contents of the original deed. If this verification is successful, the notary can then legalize the deed or letter. The notary's task in this authority is to prove, with a signature or official acknowledgment stamp, that a deed or written letter is an exact copy of the original.

The notary will read and explain the contents of the deed to the parties, who will then sign the deed under the witness of the notary. If the parties have not signed the letter, it can be personally legalized and given to the notary. One of the procedures for legalization or validation is by affixing a stamp to the private deed. For the purposes of legalization, the signatories to the deed must come to the notary, they cannot sign it first at home. Then the notary checks the identity card, namely the KTP or other identification. The meaning of knowing is different from the everyday meaning, namely the notary must really understand what is stated on his identity card, whether he is the person domiciled at the address on the card, according to what is stated on the identity card. After checking the suitability, the notary then reads the private deed and explains the contents and purpose of the private letter.

According to the law governing the role of a Notary, specifically Article 15 paragraph 2 letter a, the power to validate is the power to validate a deed, validate a signature, and ensure the certainty of a deed. In accordance with this provision, the parties can validate a deed under hand before a Notary and record it in a book provided by the Notary. The Notary witnesses the signatures of the parties in the deed, and the dates of signing and validation are the same. Thus, in the notarial deed itself it is stated that the notary guarantees the validity of the deed, including the

validity of the signatures of the parties involved, and usually the notary also reads or explains the contents of the notarial deed. This validation is called ratification. Before signing, make sure the deed is in the presence of both parties.

According to Article 15 paragraph 2 letter d, legalization is the authority of the Notary in confirming the conformity between a photocopy of a deed and the original deed that has previously been matched by the Notary, so that the Notary will affix a stamp/stamp and initials. Each photocopy page, including the back page, will be marked by a Notary who will also make a statement stating that the photocopy is an exact replica of the original deed. The rights of the parties in making notarial ratification include the following:

1. Rights and obligations between the parties arise when the parties sign the deed, not when registering with the notary
2. The notary has the sole duty to prove that the signatures of the parties and the date of the letter are genuine, because this will guarantee that the agreement has legal force if recorded in the private letter registration.

To complete Notarial Legalization, the following steps must be taken: witnesses and Notary must be present at the time of signing; Notary must know the parties concerned; the parties must write a letter; Notary must explain its contents privately; Notary must affix a stamp and sign the letter; Notary must make a statement; and finally, Notary must record and record the ratification of the letter in his own hand. In the notarial ratification process, each party is required to do the following: the presence of a notary at the time of signing; The responsibility of a Notary is solely to guarantee the authenticity of the signature on the deed; and finally, to ask the notary to record the deed in a separate ratification. According to the book, a Notary must have the following authorities: authority over letters, authority over the signatory, authority over the place where the letter is made, and authority to give power of attorney to the signatory to make letters. The ratification of a private deed carried out by a notary has the effect of ratifying the date the parties made the agreement, which means that the private deed is ratified and can be used as evidence in court. issued by a Notary provides legal weight and certainty. The date, identity, and signatures of the parties making the agreement are important information that needs to be considered by the court judge. Therefore, a private deed only depends on the signatures of the parties making the agreement, the deed does not have perfect evidentiary legal consequences, even if it is notarized as evidence in court. gives perfect evidentiary legal consequences for the benefit of the party who wants to be given evidence by the signatory, while for third parties the legal consequences of the evidence are free.

3.2 Validity of Waarmerking Against Private Deeds

According to Salim HS, warmerking is the recording of a letter in private by recording it in a special book or called a Register. Warmerking is when the deed/letter in question is recorded in a special book made by a notary. This is a standard procedure when the parties have signed the deed or letter and sent it to the relevant Notary. The legal basis for warmerking is included in the category of civil procedural law in the form of written evidence/letters regulated in Articles 138, 165, 167 HIR/Articles 164, 185, 305 Rbg and Articles 1867 to 1894 of the Civil Code. The power of warming evidence can be divided into 3 (three) types, namely:

a) The power of external evidence is a deed which, if there is no evidence to the

contrary, will be recognized and treated as a deed.

b) The power of formal evidence is evidence that is recognized by both parties; For example, in a deed, both parties affirm that the signature is theirs.

c) The strength of evidence is the evidentiary power determined by the truth of the information in the deed and the truth of the legal event described in it.

Article 1 of the 1916 State Gazette Ordinance Number 46 Jo Number 43 states that the Regent, Chairman of the Council, and Notary are jointly appointed to ratify and validate deeds in Indonesia. This gives the Notary the authority to conduct warmerking. According to Article 2 paragraph (2) of the District Court and Mayor's Rules of Procedure, a Notary can add the word "signed" to a private deed that has not been officially ratified so that it can be accepted as evidence in court. official documents that confirm the date, month, and trademark.

According to Article 15 paragraph (2) letter b of the law on the position of Notaries, it states that warmerking includes parties who have previously agreed to and signed the deed in advance and appeared before the Notary so that the date of signing the deed by the parties is different, namely earlier than the date the deed was signed. This means that a notary can legally record private deeds in a book provided by the notary. The notary will only record pre-existing private deeds in this procedure, known as waarmerking. has been approved by all interested parties. in this unique book, where the parties have signed the deed in advance so that the signing and registration dates are different, and where the notary cannot see the signatures. The notary is required to witness the deed underhand in addition to the parties. Thus, the notary can know the intentions of the parties and their subsequent rights and responsibilities. when he puts his hand on the deed. Notarial Deeds are required for the validity and enforceability of various deeds, including but not limited to deeds of sale and purchase, deeds of gift, and other similar letters. The notary is not involved in this process; instead, the parties themselves are responsible for it. Because the recording procedure does not involve a notary, the resulting private deed does not have full legal force that can be applied to a properly made general deed. Because there is no guarantee that the notary knows the date, signature, and contents of the deed made underhand, the judge cannot use it as evidence in court. Legally registered letters submitted to a Notary for the purpose of warming up can be used as evidence in the event of a dispute; however, this does not guarantee that the contents are legally permissible. The date of the late registration of the letter is the only thing verified by this warning.

3.2 Notary's Accountability for the Validity of Legalized **and *Waarmerking***

Private Deeds Notary comes from the word "*nota literaria* " which means a sign or written deed. Signs or scripts which mean signs used in abbreviated form, are assigned by the authorities to provide services to the community for their needs in the form of legal evidence so that they can provide determination in civil legal relations. According to Huala Adolf, responsibility arises because of an agreement made by agreement between the parties so that it gives rise to rights and obligations that must be fulfilled by the bound parties. So that the exchange of rights and obligations will give rise to the responsibility of the parties.

Public officials who have the responsibility and authority to provide legal services, consultations, or assistance to the general public are called notaries. Notaries are

expected to have a neutral profession, so that it is expected that Notaries can provide legal counseling and legal acts carried out at the request of the parties in need. Public officials who are authorized to make authentic deeds and other authorities as referred to in this law are defined as notaries in Article 1 number 1 of Law Number 2 of 2014 concerning the Position of Notaries. In order for a deed to be considered a valid deed, the deed must be made in writing and follow certain guidelines; it is the notary's responsibility to ensure this. Making legal documents is an area that he or she masters. Public officials who represent and act on behalf of the state in providing civil legal services to the public are called Notaries, according to the national legal system. Notaries are one of the state's tools. Providing legal certainty to the public is a major responsibility of a Notary. The legal certainty of the community indirectly becomes the responsibility of public officials appointed by the government, namely Notaries. Daily legal acts, both those carried out in public and privately, require proof or evidence of the legal act itself. One of the authorities carried out by a Notary is to make authentic deeds (Negara, 2018). In the procedure for making authentic deeds, a Notary must follow the applicable regulations or laws. Administrative actions are regulated in regulations made by the government and the Ministry of Law and Human Rights of the Republic of Indonesia. According to Law Number 2 of 2014 concerning the Position of Notary in Article 15 it is explained that the Authority of a Notary is divided into 3 (three) authorities, namely as follows: 1) Article 15 paragraph 1 of the Notary Position Law confirms that a Notary has the authority to make general deeds. This authority can be viewed as the general authority of a Notary which has limitations, as long as:

a) It needs to be clarified for whose interests the deed is made in relation to the interests of the legal subject

b) Other people who are deemed necessary by law are also not excluded

c) In relation to the necessary deed, what is meant by the deed is the original deed containing everything that is desired or required by law to be done.

2) The Special Authority of a Notary is contained in Article 15 paragraph (2) of the Notary Position Law which regulates the special authority of a notary to carry out certain legal actions such as:

a. Making deeds related to land;

b. Recording private letters by registering them in a special book;

c. Validating signatures and determining the certainty of the date of private deeds by registering them in a special book;

d. Making original photocopies of private letters in the form of copies containing descriptions as written and described in the relevant letter;

e. Providing legal counseling in connection with the making of deeds;

f. Validating the conformity between photocopies and the original letter;

g. Making auction minutes deeds.

3) In accordance with other laws and regulations that will be stipulated in due course, the authority of a Notary as referred to in Article 15 paragraph 3 of the Notary Law will be further regulated later (ius constitutum).

Notaries in Article 15 paragraph (2) letter b UUJN, Notaries have the authority to record private letters, by recording them in a special book called the private letter registration book (waarmeking). The authority of a notary to validate signatures and determine the exact date of a private letter by recording it in a special book or what is called validation

is regulated in Article 15 paragraph (2) letter a UUJN. The following are the objectives of legalization of the signing of a private deed, among others: 1) To ensure certainty regarding the authenticity of the signature in the deed and the authenticity of the signature that is the right of the parties to sign .

2) As a result, the parties are basically no longer free to sign the deed.

Waarmerking is to provide a certain date (a certain date) of information that the Notary saw the letter or agreement that is under the hands of the parties (not the date of signing the private deed). The legal implication of warmerking for the Notary is to see the deed under his hand. It is important to note that the notary is not responsible for the content, signature, or date stated in the letter. The notary has a special register book for the administration of recording letters, so that all parties involved can be sure that the date of receipt of the letter is certain. Therefore, interested parties should bring the letter or agreement that has been signed so that it can be registered in this book. In a letter registered in a special Notary book (waarmerking), it contains:

1. The serial number of the registered letter;
2. The date of the registered letter
3. The date of the bookkeeping of the registered letter;
4. The nature of the registered letter;
5. The parties who sign the letter

The function of the waarmerking is to ensure that the other party is aware of the letter or agreement. This occurs on the basis of minimizing default or rejection of the statement of one of the parties. The rights and obligations of the parties already exist when the parties sign the agreement or letter privately, not when it is registered with a notary. The notary only needs to sign and date a special personal book stating their agreement to the terms of the agreement.

Therefore, the notary's duty to guarantee the validity of a legalized private deed lies in the truth of the signature, or the ability to prove that the signer is actually a party to the agreement and not an authorized representative. It is said so because the party who validates the letter is required to know the person who signed it by looking at his/her identification such as KTP and so on. If the party who validates really knows the person, then he/she will affix his/her signature in front of the party who validates it on that day and date. In addition, as long as you still have the authority to carry out your duties as a Notary.

4. **Conclusion**

1. The policy related to Legalization can be found in Law Number 2 of 2014 concerning the Position of Notary in Article 15 paragraph (2) letter a which states that Among the duties of a notary is the validation of signatures and determination of the exact date of a private deed by recording it in a special book. Article 15 paragraph (2) letter b of Law Number 2 of 2014 concerning the Position of Notary explains that private recording by recording it in a special book, becomes the legal basis for the warming carried out by the Notary. Checking the validity of the documents contained in the notarial deed is sufficient by looking at the signatures of the parties who made the notarial deed. Even more than that, notaries usually read or explain the contents of the deed to the parties before they sign it. Then the validity of *the waarmerking* of a private deed lies in the date of signing the

deed and the date of its registration .

2. A notary is a public official who has the duty and authority to provide advice, services, and legal consultations to the general public. When it comes to private deeds that will be legalized, the notary's duties include verifying the identities of the parties who will sign the deed, reading the contents to the parties and ensuring that everything is in accordance with the intentions of the parties, and finally asking the parties to sign the deed before a notary, by affixing the date of the deed with his hand, and recording it in a register book specifically for that purpose. Then the notary's responsibility for private letters that are *legalized* is to guarantee the certainty of the date stated in the private letter or agreement.

5. **Recommendation**

1. For the Government regarding the legalization and *waarmerking* of private deeds, it is expected to help encourage legal education to the public about the importance of legalization and *waarmerking* in making a deed of agreement through socialization, so that the public understands the existence of this and minimizes the occurrence of default. In addition, the government is also expected to be able to hold training for notaries, namely as public officials, to improve their understanding of the legalization and *waarmerking* of documents or private deeds and ensure that the services provided are in accordance with applicable laws.
2. For Notary Practitioners, it is expected to provide counseling on legal actions taken at the request of the parties who need it. In addition, notaries are expected to improve their skills in preparing a deed, namely an authentic deed and a deed under hand. Notaries are also expected to provide legal services and consultations to the community or other legal assistance related to the importance of legalization and *waarmerking* in making an agreement.
3. For the community, it is expected that in making an agreement, they will understand well the contents of the agreement made. In addition, the community is also expected to consult with a notary before making an agreement regarding the importance of legalization and *waarmerking* of private deeds so that there will be no problems in the future.

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