

# The Legal Certainty Of Waarmerking In Notarized Sale And Purchase Agreements: A Case Analysis Of Civil Proceedings (Case Research: District Court Decision No. 354/PDT.G/2019/PN.SDA)

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## Abstract.

*The purpose of this research is to determine The Legal Certainty of Waarmerking in Notarized Sale and Purchase Agreements: A Case Analysis of Civil Proceedings (Case research: District Court Decision No. 354/Pdt.G/2019/PN.Sda). The research employed in this research is normative research, drawing from literature studies. Data collection techniques involve an extensive literature review. The outcomes indicate that a waarmerking agreement possesses robust legal evidentiary authority in civil cases, contingent upon the parties acknowledging the signatures within the agreement. This is attributed to the fact that the function of waarmerking deeds under the hand primarily ensures the accuracy of the date in the registration of deeds under the hand in a dedicated book within the notary office. In the Sidoarjo court decision, the waarmerking of the binding agreement of sale and purchase, once waarmerked, is deemed valid and binding for both parties by the judge. However, it is noteworthy that the binding agreement of sale and purchase, serving as the foundation for the lawsuit, fails to meet the essential criteria for a valid agreement concerning the specification of "a certain thing." The subject matter pledged in the agreement has undergone a transfer of ownership to a different entity. Consequently, the binding agreement of sale and purchase in the Sidoarjo Court's civil cases lacks legal evidentiary force, as it is deemed to fall short of meeting the essential requisites of the agreement. This situation introduces legal uncertainty for other parties currently exercising control over the land and building.*

**Keywords:** Sale and purchase agreement, legal certainty, evidentiary power and notary.

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## I. INTRODUCTION

A Notary is a trusted official authorized to prepare authentic deeds and possesses various powers stipulated by law. The jurisdiction of a Notary is delineated in Article 15 of Law Number 2 of 2014 amending Law Number 30 of 2004 regarding the Office of Notary. According to the provisions in the aforementioned article, it is evident that the primary responsibility of a notary is to draft authentic deeds. An authentic deed refers to a document created in the form specified by law, executed by a public official duly empowered for such purposes, at the location where the deed is produced. In addition to authentic deeds, there are also deeds under the hand, which are crafted and signed by the involved parties. Based on Article 1874 of the Civil Code, a deed under the hand is a letter or writing made by the parties not through the intermediary of an authorised official to be used as evidence. (Saleh et al., 2007). A deed under the hand can acquire the status of an authentic deed through legalization and registration (waarmerking) by an authorized official. Pursuant to Article 15, paragraph (2), letter b of Law Number 2 of 2014 amending Law Number 30 of 2004 regarding the Office of Notary, a notary is permitted to conduct the bookkeeping (waarmerking) of a document under the hand, created and signed by both parties, by officially registering it in a dedicated ledger.

Pembukuan (waarmerking) is a letter under the hand that is recorded by registering in a special book, in the form of a stamp containing information that the relevant document has been registered with the notary office. The function of waarmerking a deed under hand is only to give certainty to the date of the letter. The making and signing of the deed under the hand is done in advance by the parties, and is not done in the presence of a notary (Khisni, 2017). Notaries only perform waarmerking on documents in a special book. Concerning the elucidation of content and legal ramifications in waarmerking, it is not mandatory for the notary to provide an explanation, but they are permitted to do so. Notaries, however, are obligated to consistently adhere to the precautionary principle. They must embody qualities of trustworthiness, honesty,

thoroughness, independence, impartiality, and safeguard the interests of the involved parties in legal transactions, as stipulated in Article 16, paragraph (1), letter a of UUJN-P. In the analysis of the Sidoarjo District Court Decision research Number 354/Pdt.G/2019/PN.Sda, a legal case is discussed concerning a sale and purchase agreement waarmed by a notary, utilized as evidence in a civil proceeding. According to the judge's ruling, the sale and purchase agreement is deemed valid and binding. However, challenges arise in relation to the specified land and building object, which forms the foundation for the execution of the sale and purchase agreement.

The object of the land and building had changed hands to another party and was no longer under the authority of Defendant I, so Defendant I no longer had rights over the land and building, including in terms of buying and selling the land. The notary as the official who executed the waarmed of the sale and purchase agreement knew that the land and building had changed hands to another party, because it was the notary who made the certificate of transfer of land rights from Defendant 1 to the other party. Therefore, it is clear that the notary and Defendant 1 had conspired to defraud the Plaintiff. A sale and purchase agreement that has been waarmed by a notary is considered to have legal certainty and perfect legal force if both parties recognise the signatures in the agreement. By considering the validity and bindingness of the waarmed of the binding agreement of the sale and purchase in the Sidoarjo District Court decision, the Judge considers the agreement to have fulfilled the legal requirements of the agreement listed in Article 1320 of the Civil Code. However, based on the case above, the agreement that is considered valid by the judge does not have a clear object of agreement so that it does not meet the objective requirements of the agreement listed in Article 1320 of the Civil Code. Based on the provided background information, the objective of this research is to ascertain the legal validity of waarmed as evidence in a civil case for a binding sale and purchase agreement, as examined through the lens of the Sidoarjo District Court Decision research Number 354/Pdt.G/2019/PN.Sda.

## **II. METHODS**

This research adopts a descriptive approach within the framework of normative legal research, employing a case research methodology. Primary and secondary data are utilized, sourced from primary, secondary, and tertiary legal materials. The legal sources encompass primary legal materials, denoting legally binding juridical documents; secondary legal materials, comprising event records or materials derived "far away" from the original source and tertiary legal materials, encompassing explanations of non-legal content that provide guidance and elucidations for secondary and primary legal materials. Additionally, supporting legal materials are incorporated, offering instructions and explanations for primary legal materials. The data collection technique used is the research of documents or library materials (I Made Pashek Diantha, 2017).

## **III. RESULT AND DISCUSSION**

### **The Legal Certainty Of Waarmed In Notarized Sale and Purchase Agreements: a Case Analysis Of Civil Proceedings**

Sale and Purchase Agreement is one of the binding stages before making a Sale and Purchase Deed of land rights. There are two types of sale and purchase binding agreements, namely an unpaid sale and purchase binding agreement, this occurs because the price of the agreed land rights is not paid off, and a paid-off sale and purchase binding agreement, this agreement is made due to a reason that does not allow the sale and purchase in front of a PPAT, a cause that can be such as the certificate of the agreed land rights, etc. (Kusumawati, 2022). So it can be seen that the sale and purchase binding agreement is not an agreement that must exist when buying and selling land. With the birth of an agreement there must be the will of both parties, this will must be based on the good faith of both parties, this provision is in accordance with Article 1338 of the Civil Code. Article 1338 recognises the existence of freedom of contract provided that the agreement made must not conflict with statutory regulations and must be based on the good faith of both parties making the agreement. In addition to paying attention to the provisions in Article 1338 of the Civil Code, the things that must be considered in the making of PPJB are the conditions for the validity of the

agreement contained in Article 1320 of the Civil Code, namely (Joesoef, 2022) :An agreement can be construed as reflecting the autonomy of the involved parties, implying the absence of coercion during its formation. The agreement is reached through the mutual consent of the parties involved. In terms of its validity, an agreement may be terminated by either party if it fails to meet subjective criteria, while it may be deemed null and void if it fails to meet objective standards.

These stipulations hold sway in the creation of a sale and purchase binding agreement. In general, the sale and purchase binding agreement is typically executed by a Notary, although it can alternatively be executed under private agreement. A sale and purchase agreement executed before a notary holds the status of an authentic deed, as stipulated in Article 1868 of the Civil Code. This provision is further supported by Article 1870 of the Civil Code, which affirms the perfect evidentiary power of a deed executed before a Notary. Conversely, a sale and purchase agreement executed under private agreement only carries perfect evidentiary power if both parties acknowledge the signatures affixed to the agreement. In cases where one party evades recognition, the party presenting the privately executed deed as evidence must provide or seek additional evidence to bolster their legal argument in the ensuing litigation. Underhand deeds can be regarded as authentic deeds following the processes of legalization and certification (Kholik, 2023). Legalisation is a document made under the hands of both parties and signed in front of a notary, after the document is read and explained one by one by the notary. The notary in this case guarantees the validity of the signatures of both parties whose signatures are legalised. Regarding important documents that will be used to complement the process of transferring ownership of property rights or other absolute rights, it will be made in the form of legalisation such as a letter of expert approval, a letter of wife's approval, a power of attorney to sell and others. Waarmerking is an underhand document that is made and has been signed by both parties and registered in a special book made by a notary on a certain date. (Kuncoro, 2015). So the date of the document may not be the same as the date of registration.

An underhand deed that is waarmerking by a notary provides validation or certainty of the date in the registration of the underhand deed in a special book for the registration of underhand letters in the notary's office. (Wangsawidjaja, 2020). Several other officials possess the authority to conduct certification, known as waarmerking. These officials include the chairman of the district court, the mayor, and the regent. In the process of waarmerking, the notary is not obligated to provide an explanation regarding the legal implications of the document created by the parties, although the notary may choose to offer legal clarification regarding the underhand deed. According to Article 15, paragraph (2), letter a, which specifies that "notaries are authorized to certify signatures and establish the certainty of the date of underhand letters by recording them in a special book," the content of the article indicates that there are two types of certification: firstly, certifying documents and signatures of the parties (Achmad, 2021). Second, recording or registering it in a special register book at the notary office. In terms of legal force, a notarial deed is a deed that has stronger legal force than legalisation. Meanwhile, legalisation has a stronger legal force than waarmerking. From these three deeds, it can be distinguished between authentic deeds and deeds under the hand. Authentic deed: a. The deed is made in the form prescribed by law; b. Must be made or before an authorised public official; c. Has perfect evidentiary power; d. If the truth is denied, then the one who denies the truth shall be proven. If the truth is denied, then the one who denies it must prove the denial. Deed under hand: a. Not bound by a standard and formal form, but free according to the agreement of both parties provided that it does not violate existing laws; b. Can be made freely by the parties, not necessarily before an authorised official; c. If recognised by the parties, then the deed has perfect legal force like an authentic deed; d. If the truth is denied, then the party making the denial must prove its truth. If the truth is denied, then the party submitting the denial must prove the truth.

A sale and purchase agreement that has undergone waarmerking does not alter its legal validity. This is because it still necessitates acknowledgment of the signatures appended by both parties to the agreement. Therefore, the legal validity of a sale and purchase agreement subjected to waarmerking is still deemed equivalent to that of a deed under the hand. Based on the aforementioned explanation, it becomes evident that a deed under the hand holds formal evidentiary authority if the signatures within it are acknowledged and validated by both parties. This principle is grounded in Article 1875 of the Civil Code.

However, in terms of substantiating a deed under the hand materially, its evidentiary authority is restricted solely to the individual to whom the statement is directed. If the parties recognize the deed under the hand, it can then serve as conclusive evidence against the individual who affixed their signature to it (Abida & Irham, 2021). In a civil trial, a letter under hand can be utilized as evidence with equal legal validity as an authentic deed, given that both parties who sign the agreement do not dispute the authenticity of their signatures. Therefore, an underhand sale and purchase binding agreement that has undergone waarmeding falls within the category of letter evidence. Letters, as per Article 1866, paragraph (1) of the Civil Code, possess superior evidentiary authority.

An agreement under hand is deemed valid and conclusive, provided that it not only acknowledges the signatures of both parties but also meets the legal requisites outlined in Article 1320 of the Civil Code (Hartanto, 2018). In the case research of Sidoarjo District Court Decision Number 354/Pdt.G/2019/PN.Sda, the judge ruled that the waarmeding of the sale and purchase agreement conducted by the notary is valid and legally enforceable. However, upon examining the object outlined in the sale and purchase agreement, it became apparent that it lacked clarity. This discrepancy arose because the subject of the agreement had already been sold to a different party by Defendant I. Consequently, Defendant I no longer retained rights to the land and building in question. So with this the author disagrees with the Judge's decision, because if we look at the provisions of the valid requirements of the agreement in Article 1320 of the Civil Code, it can be seen that the sale and purchase binding agreement does not fulfil the objective requirements of an agreement and the consequence that should be obtained is that the sale and purchase binding agreement is null and void. So in this case the judge can actually give a declaratory ruling, the agreement is considered non-existent so that the judge in his decision cancels all the contents of the agreement and no new formulation is made.

So that for the sale and purchase binding agreement No. 38/W/A/II/2019 that has been made: 38/W/A/II/2019 which has been waarmeding but does not meet the objective requirements makes its evidentiary legal strength imperfect and is considered null and void so that the deed of sale and purchase agreement cannot be used as the basis for filing a lawsuit in court and cannot be used as evidence. Legal certainty is comprised of two essential components: firstly, the law itself must be clear and not subject to multiple interpretations, and secondly, the authority responsible for enforcing the law must not act arbitrarily but rather adhere to the principle of legality. Considering these elements in relation to the Sidoarjo District Court Decision Number 354/Pdt.G/2019/PN.Sda, it fails to provide legal certainty for the Plaintiff and other involved parties, namely the current owners of the land and building. This is because the Judge determined the sale and purchase agreement deed as valid and legally binding, offering a sense of security to the Plaintiff, who consequently sought reimbursement of the initial installment. However, on the other hand, it will pose a threat and legal uncertainty for the new owner who already controls the land and building. Because by declaring the deed of sale and purchase binding agreement valid, the binding deed can of course be upgraded to a deed of sale and purchase which will have an impact on the current owner of the land and building.

#### **IV. CONCLUSION**

Underhand sale and purchase agreements that have been waarmeded by a notary carry evidentiary weight, particularly concerning the certainty of the deed's date, which is documented or registered in a specialized book at the notary's office. In a civil trial, a letter under hand can serve as evidence with the same legal potency as an authentic deed, provided that both signing parties do not dispute the veracity of their signatures. If an agreement crafted by both parties fails to meet the legal criteria, it may result in the agreement being subject to cancellation by one of the parties or deemed null and void. Regarding the examination of the Sidoarjo District Court's decision concerning the evidentiary authority of the binding sale and purchase agreement that has been waarmeded, it falls short of meeting the objective requirements outlined in Article 1320 of the Civil Code. This is because the object used as the basis of the agreement has been sold to another party, so Defendant I no longer has the right to the object agreed upon in the agreement. So with this legal certainty the evidentiary power of the sale and purchase agreement is considered imperfect and the sale and purchase agreement is considered null and void.

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