

JHK 327 HAL 44-55.pdf

by Seffianidwiazmi@gmail.com 1

Submission date: 20-May-2025 12:45PM (UTC+0300)

Submission ID: 2671293731

File name: JHK_327_HAL_44-55.pdf (436.92K)

Word count: 7381

Character count: 39124

Legal Power of Authentic Deeds and Underhand Deeds in Civil Cases

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Email: hennysaida@yahoo.com

Received : February 28, 2025

Revised : March 18, 2025

Accepted : April 19, 2025

Published : April 27, 2025

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Abstract: *This study aims to analyze and compare the legal force between authentic deeds and deeds under hand in civil cases in Indonesia. The focus of the study is directed at how the two types of deeds function as written evidence in the evidentiary process in court, and the extent to which they provide legal certainty for the parties. The method used is normative legal research, which is research based on an analysis of legal norms in laws and regulations, legal doctrines, and court decisions. The approaches used include the statute approach, the conceptual approach, and the case approach. The results of the study show that authentic deeds made by public officials have perfect evidentiary power, both formally and materially, and provide higher legal certainty in the settlement of civil cases. Meanwhile, the deed under hand has a weaker evidentiary power because it relies on the acknowledgment of the parties who made it or reinforcement through legalization and additional proof. Therefore, to strengthen the legal position of deeds under hand, it is necessary to increase public legal literacy and update regulations that provide clarity regarding legalization and recognition of its evidentiary power before the law.*

Keywords: *authentic deed, deed under hand, power of proof, civil case, law of proof*

INTRODUCTION

In the civil law system in Indonesia, written evidence plays a central role in proving in court.¹ This is because the evidentiary system in civil law prioritizes clarity and legal certainty, which can usually be proven concretely through written documents.² Written evidence, such as agreements, statements, receipts, notary deeds, and other official documents, is considered to have high evidentiary power, especially if the document meets the formal and material requirements as stipulated in the Civil Code (KUHPperdata) and other regulations. The existence of this written

evidence not only shows the existence of a legal relationship, but also becomes the basis for the judge to consider and decide a case.³ Therefore, in practice, litigants in civil courts will generally rely heavily on written documents to strengthen their respective legal positions. Without adequate written evidence, the evidence becomes weak and can result in the non-granting of the lawsuit or defense. Thus, it is important for every legal subject to maintain, store, and prepare legal documents in an orderly manner as a form of anticipation in the event of a dispute in the future. This evidence can be in the form

¹Damanik, M. I. L., & Lubis, F. (2024). Arti Pentingnya Pembuktian Dalam Proses Penemuan Hukum Di Peradilan Perdata. *Judge: Jurnal Hukum*, 5(02), 74-81.

² Yarsina, N. (2023). *Rekonstruksi Regulasi Pendaftaran Tanah Ulayat Dalam Memberikan Kepastian Hukum Berupa Sertifikat Berbasis Nilai*

Keadilan (Doctoral Dissertation, Universitas Islam Sultan Agung (Indonesia)).

³ Nabawi, M. F. (2022). *Implikasi Hukum Pendirian Perseroan Perorangan Bagi Pelaku Usaha Dan Kekuatan Pembuktian Surat Pernyataan Pendirian Secara Elektronik*.



of an authentic deed or a deed under hand, both of which are legally recognized and have an important function in proving the existence, content, and validity of a legal relationship between the parties.⁴

An authentic deed is an official document made by an authorized public official, such as a notary, by meeting the formal requirements as stipulated in Article 1868 of the Civil Code. This deed has perfect evidentiary power for the parties and third parties as to what is stated in it as long as it cannot be proven otherwise. In contrast, a deed under hand is a document made and signed by the parties without the involvement of a public official. This deed has a weaker evidentiary power and only gains value as evidence if it is recognized by the signatory party, in accordance with the provisions of Articles 1874 and 1875 of the Civil Code.⁵

In the practice of civil justice, disputes often arise regarding the validity of the deed under hand, especially if one of the parties denies having signed or declares that the deed is invalid.⁶ A deed under hand, which is a document of an agreement or statement made without the intervention of a public official such as a notary, does have weaker evidentiary power than an authentic deed. When a dispute occurs, the burden of proof of the validity and correctness of the deed usually lies with the party who submits or uses it as evidence.⁷ If one of the parties denies his signature in the

document, then the party filing the deed under that hand must prove its authenticity, for example through additional proof such as testimony, graphologist, or other supporting documents. The Civil Code in Article 1875 also stipulates that a deed under the hand recognized by the party against whom the deed is filed, has the same evidentiary force as an authentic deed. However, if it is not recognized, the deed loses its probative value, unless it can be legally proven before the court. This situation confirms the importance of caution in making and keeping deeds under hand, as well as the need for supporting measures such as recording or legalization to increase its legal force in the face of potential disputes.⁸

This condition makes it difficult to prove and can complicate the judicial process. To strengthen the deed under hand, it is known as the practice of legalization by notaries. Through legalization or waarmeking, the notary affixed a statement that the parties have signed the deed before him, even though the deed still has the status of a deed under the hand. This legalization practically adds value to the evidentiary power of the deed under the hand, but there is no explicit legal provision that equates its evidentiary power with an authentic deed. Therefore, legalization still gives rise to different interpretations among judges.⁹

⁴ Ramadhani, D. (2023). *Kekuatan Hukum Akta Elektronik Di Bawah Tangan Dalam Proses Pembuktian Perkara Perdata E-Litigasi* (Doctoral Dissertation, Universitas Islam Indonesia).

⁵ Wijaya, V. C., Afriana, A., & Baraba, B. (2023). *Perlindungan Hukum Secara Keperdataan Bagi Klien Notaris Yang Mengalami Kerugian Akibat Diterbitkannya Akta Autentik Yang Cacat Hukum Oleh Notaris*. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, 7(1), 15-30.

⁶ Kholidah, K., Hasibuan, P. H., Alamsyah, M. R., Ramadani, A. F., & Keramat, A. (2024). *Notaris Dan*

Ppat Di Indonesia: Aplikasi Teori Dan Praktik Dalam Pembuatan Akta.

⁷ Tampanguma, C. I. (2021). *Kekuatan Hukum Pembuktian Dalam Perjanjian Akta Dibawah Tangan*. *Lex Privatum*, 9(11).

⁸ Widiyoko, S. (2021). *Kekuatan Pembuktian Akta Dibawah Tangan Yang Dilegalisasi Atau Di Waarmeking Oleh Notaris (Studi Kasus Putusan Nomor 13 Pdt/2020/Pt. Mtr)* (Master's Thesis, Universitas Islam Sultan Agung (Indonesia)).

⁹ Sari, D. Y. (2023). *Analisis Yuridis Putusan Pengadilan Terhadap Delik Pencucian Uang Yang Dilakukan Oleh Notaris Dalam Perkara Pidana*

Some court rulings show that deeds under the hands that have been legalized are more admissible as evidence, while in other cases additional proof is still required. This shows that there is a disparity in the application of the law of proof related to the deed under hand. This inconsistency is a challenge in realizing the principles of certainty and justice in civil law. Therefore, it is important to conduct further studies on the role and legal force of the two types of deeds in the context of civil cases.

This study is relevant considering the increasing volume of civil cases originating from contract and agreement disputes, most of which are in the form of deeds, both authentic and under the hand. This study aims to comprehensively analyze the difference in legal force between authentic deeds and deeds under hand, as well as their implications in proving civil cases. With the Systematic Literature Review approach, the author hopes to make a scientific contribution to the development of civil law theory and practice in Indonesia.

METHODOLOGY

This research is normative legal research, which is research that focuses on the analysis of legal norms contained in laws and regulations, doctrines, and court decisions. Normative legal research was chosen because the focus of this study lies in the power of proving authentic deeds and deeds under hand in civil cases, which are in principle regulated in the Civil Code (KUHPercivil) as well as various other relevant legal provisions.¹⁰ The approaches used in this study include the statute

¹⁰ (Studi Kasus Putusan Pengadilan Nomor 250/Pid. B/2022/Pn Jkbrt) (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

¹⁰ Kasmarani, Y. (2021). Analisis Yuridis Normatif Undang-Undang Pemilihan Kepala Daerah Tentang Pencalonan Mantan Pelaku Tindak Pidana Korupsi. *Ta'zir: Jurnal Hukum Pidana*, 5(2), 101-120.

approach, the conceptual approach, and the case approach. The statutory approach is used to review the regulations that regulate deeds, especially Article 1866 of the Civil Code, the Law on Notary Positions, and the civil procedure law. A conceptual approach is used to examine legal concepts related to the definition, nature, and legal position of authentic deeds and deeds under hand. Meanwhile, the case approach is carried out by analyzing several related court decisions to see how the legal force of the two types of deeds is applied in practice. The sources of legal materials used include primary legal materials such as laws and regulations and court decisions, secondary legal materials in the form of law books, journals, and expert opinions, and tertiary legal materials such as legal dictionaries and legal encyclopedias. The data collection technique is carried out through library research, while data analysis is carried out qualitatively by interpreting relevant legal provisions and opinions to draw conclusions about the problem being studied.

RESULTS AND DISCUSSION

Definition and Types of Deeds in Civil Law

According to the Civil Code (KUHPerdara), a deed is a writing that contains a statement about an event or legal act and is signed as evidence. The Civil Code distinguishes deeds into two types, namely authentic deeds and deeds under hand.¹¹ An authentic deed, as described in Article 1868 of the Civil Code, is a deed made in the form prescribed by law by or in the presence of an authorized public official, such as a notary. This type of deed has perfect evidentiary power in the eyes of the law. Meanwhile, the deed under

¹¹Taliwongso, C. A. A. (2022). Kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata Di Tinjau Dari Pasal 1870 Kuh Perdata (Studi Kasus Putusan Nomor 347/Pdt. G/2012/Pn. Mdn). *Lex Administratum*, 10(2).



hand is a deed made and signed by the parties without involving a public official. Although it remains valid as evidence, the deed under hand has a lower evidentiary power and its authenticity can be disputed in court. Thus, a deed according to the Civil Code is an important legal document in proving an event or legal relationship between parties.¹²

Authentic deeds and deeds under hand are two types of deeds that are distinguished based on the way they are made and their evidentiary power before the law. An authentic deed is a deed made by or in the presence of an authorized public official, such as a notary, and made in accordance with the form and procedure prescribed by law. Because it is made by an official with official authority, an authentic deed has perfect evidentiary power regarding the contents contained in it, as long as it cannot be proven otherwise. Meanwhile, the deed under hand is a deed made by the parties themselves without involving public officials. This deed is still valid as evidence, but it has a weaker evidentiary power than an authentic deed, because its authenticity can still be disputed in court. Thus, the main difference between the two lies in who made it, the form of the law it is fulfilled, and the level of legal force as evidence.¹³

In civil law, a deed is written evidence used to prove the existence of an event or legal act. In general, deeds are classified into two types, namely authentic deeds and deeds under hand, each of which has different legal force and way of making. An authentic deed is a deed made by or in the presence of an authorized public official and in the form prescribed by law. The official in question can be a notary, a civil registrar, or a court official. Examples of authentic deeds include land sale and purchase deeds made before a notary, marriage certificates recorded by the Religious Affairs Office or the Population and Civil Registration Office, and deed of establishment of a limited

liability company (PT). An authentic deed has perfect evidentiary power and cannot be denied unless proven otherwise through counter-proof.

Meanwhile, the deed under hand is a deed made and signed by the parties without involving a public official. This type of deed is still valid as evidence if it is not denied by the interested party, but its legal force is weaker than an authentic deed. Examples of deeds under hand include a debt and receivables agreement written and signed by both parties, a personal statement, or a payment receipt made by the party receiving the money himself. However, the deed under hand can still be used as valid evidence in court if the parties admit its truth and authenticity. Thus, understanding the types and examples of deeds in civil law is very important because it is directly related to the power of proof in legal proceedings.¹⁴

Legal Basis Regarding Authentic Deeds and Deeds Under Hand

In the Civil Code, the regulations regarding evidence, including deeds, are clearly regulated. Article 1866 states that the means of proof in civil cases consist of writings (deeds), witnesses, suspicions, confessions, and oaths. Among these evidence, deeds play an important role, especially authentic deeds. Article 1870 explains that an authentic deed provides perfect evidence for the parties and their heirs regarding the contents contained therein, so that the contents of the deed are considered true unless it can be proven otherwise. Meanwhile, Article 1874 and Article 1875 regulate deeds under hand. Article 1874 states that the deed under hand is a writing signed by the parties without a public official and can be used as evidence as long as there is no denying its truth. Article 1875 confirms that a deed under hand can have the same evidentiary force as an authentic deed if the signature therein is recognized by the signatory or has been legalized by an authorized official. Thus, the

¹² Setiadewi, K., & Wijaya, I. M. H. (2020). Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik. *Jurnal Komunikasi Hukum (Jkh)*, 6(1), 126-134.

¹³ Cintiadewi, I. A. C., Budiarta, I. N. P., & Astiti, N. G. K. S. (2020). Perlindungan Hukum Bagi Notaris Dalam Melegalisasi Akta Dibawah Tangan Yang

Menjadi Objek Sengketa. *Jurnal Preferensi Hukum*, 1(1), 189-194.

¹⁴ Saputra, A., & Kansil, C. S. (2023). Keabsahan Dan Kekuatan Hukum Surat Kesepakatan Pengembalian Dana Sebagai Akta Di Bawah Tangan Menurut Kitab Undang-Undang Hukum Perdata. *Unes Law Review*, 6(2), 5750-5762.



Civil Code provides clear provisions regarding the type of deed and its evidentiary power in the civil law process.¹⁵

The Law on Notary Positions (Law No. 2 of 2014) specifically regulates the duties, authorities, and responsibilities of notaries in making authentic deeds. The UUJN emphasizes that notaries are authorized to make authentic deeds that contain information about acts, events, or realities that according to the law must or may be made in the form of an authentic deed. In addition, the notary is also responsible for ensuring the validity and correctness of the contents of the deed and ensuring that the deed is made in accordance with applicable legal procedures. The Law of Enlightenment stipulates that a deed made by a notary has perfect evidentiary power in court as valid evidence, unless it can be proven otherwise.¹⁶ In addition to making deeds, the UUJN also regulates the obligations of notaries in storing deed documents, providing copies or citations of deeds to the parties, and maintaining the confidentiality of information obtained during the performance of their duties. Thus, the Law on Notary Positions provides a strong legal basis for the role of notaries in making and ratifying authentic deeds for the sake of legal certainty for interested parties.

In civil procedural law, proof is a crucial stage to ensure the truth of an event or legal act that is disputed in court. Deeds, both authentic deeds and deeds under hand, play an important role as written evidence that can be used by the parties. Based on the Civil Code, especially Article 1866, deeds are one of the recognized evidence, but there are significant differences in their evidentiary strength. An

authentic deed made by a public official such as a notary has perfect evidentiary power as stipulated in Article 1870 of the Civil Code, which means that the contents of the deed are considered true and binding on the parties and their heirs, unless it can be proven otherwise through reverse proof.¹⁷ In the trial process, the judge is obliged to accept the authentic deed as strong evidence without the need for further proof unless there is an indication of forgery or inconsistency. Whereas the deed under hand, made by the parties without the involvement of a public official, has weaker evidentiary power. Articles 1874 and 1875 of the Civil Code stipulate that a deed under the hand can be used as evidence if it is not denied by the opposing party, or if the signature in it is recognized or legalized. In the practice of civil procedure law, in the event of a dispute, the party who filed the deed under hand must prove its authenticity in order to be accepted by the judge. Thus, civil procedure law gives different treatment to authentic deeds and deeds under hand in terms of proof, which aims to maintain legal certainty and justice in the settlement of civil cases.¹⁸

The Evidentiary Power of an Authentic Deed in Civil Cases

An authentic deed has two important properties that underlie its evidentiary strength in civil cases, namely formal nature and material nature. Formal nature refers to the manner or procedure of making a deed that must meet certain legal provisions, such as being made by an authorized public official (e.g. a notary), carried out in writing, and following the procedures and formalities regulated by law.¹⁹ Compliance with this formal

¹⁵ Wahid, A., Dewi, E. K., & Sarip, S. (2019). Kekuatan Alat Bukti Akta Otentik Terhadap Akta Pejabat Pembuat Akta Tanah (Ppat) Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2016 Juncto Pasal 1868 Kuhperdata. *Mahkamah: Jurnal Kajian Hukum Islam*, 4(2), 205-219.

¹⁶ Melinda, S., & Djajaputra, G. (2021). Pembuatan Akta Notaris Di Luar Wilayah Jabatannya Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. *Syntax Literate: Jurnal Ilmiah Indonesia*, 6(7), 3521-3541.

¹⁷ Muza, Y. N. (2024). *Peran Dan Akibat Hukum Bagi Notaris Terhadap Akta Autentik Yang Di Buat* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

¹⁸ Sirait, G. N. A., & Djaja, B. (2023). Pertanggungjawaban Akta Notaris Sebagai Akta Autentik Sesuai Dengan Undang-Undang Jabatan Notaris. *Unes Law Review*, 5(4), 3363-3378.

¹⁹ Boenjamin, F. A. (2022). Akibat Hukum Dan Pertanggungjawaban Notaris Berkaitan Dengan Pembuatan Akta Perjanjian Pendahuluan Jual Beli Tanah Yang Tidak Memenuhi Syarat Formil Suatu Akta Autentik. *Indonesian Notary*, 4(2), 20.



aspect ensures the validity of the deed in terms of procedure so that the deed is considered legally valid. Meanwhile, the material nature is related to the content or substance of the deed itself, which must contain correct information about the events or legal acts recorded in it. In this case, an authentic deed is considered as perfect proof (prima facie proof) of the truth of the contents of the deed to the parties and their heirs. This means that the contents of the deed are considered correct and legally binding until there is evidence to prove otherwise. This combination of formal and material nature makes an authentic deed have a high evidentiary power in court, so the judge will accept an authentic deed as strong evidence and does not require additional proof unless there is a legitimate reason to doubt it. Thus, the evidentiary strength of an authentic deed lies not only in the manner in which it is made in accordance with the procedure, but also in the truth of the content contained in it, making this deed very important in the settlement of civil cases.²⁰

An authentic deed has very important legal force in civil cases because of its two main properties, namely binding power and perfect evidentiary power. Binding power means that the content of the authentic deed is binding on the parties who made it, including the heirs and beneficiaries of the rights of the parties. Thus, the parties cannot easily reject or deny the contents of the deed in legal proceedings because legally they are deemed to have agreed to and are bound by the contents of the deed. In addition, an authentic deed also has perfect evidentiary power, which means that it is considered valid and complete evidence of the content of the statement or agreement contained in it without the need for additional proof.²¹ In the trial process, the judge is obliged to accept

²⁰ Sari, D. R. (2025). *Keabsahan Akta Notaris Yang Tidak Dibacakan Oleh Notaris Di Depan Para Penghadap Dan Saksi Saat Penandatanganan Akta* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

²¹ Demak, A. A. K. (2024). *Kekuatan Pembuktian Akta Notaris Sebagai Alat Bukti Dalam Proses Peradilan Perdata* (Master's Thesis, Universitas Islam Sultan Agung (Indonesia)).

an authentic deed as strong and binding evidence, unless there is evidence to show that the deed is false or there is an element of forgery. With this perfect evidentiary power, an authentic deed becomes a very effective evidence tool to strengthen the legal position of the parties and speed up the resolution of disputes in court. Therefore, the role of authentic deeds is vital in providing legal certainty and optimal legal protection in civil cases.²²

Legal protection of authentic deeds is an important aspect that ensures the enforceability and validity of the deed in the civil legal system. An authentic deed, as a document made by an authorized public official such as a notary, is protected by law to have maximum evidentiary power in court. This protection includes the assurance that the deed is recognized as valid evidence without the need for additional proof, so that the parties holding the authentic deed have legal certainty of the rights and obligations listed therein.²³ In addition, the law also provides protection for the process of making deeds, for example by regulating strict procedures that must be followed by notaries in making deeds, thereby minimizing the risk of forgery, manipulation, or administrative errors. In the event of a dispute or dispute, an authentic deed will be difficult to deny its validity, unless there is strong evidence that there is a forgery or legal defect in the making of the deed. This legal protection also includes the obligation to keep the deed by a notary which must be done neatly and safely, so that it can be used as a reference in the future if needed. With strong legal protection, authentic deeds are an effective instrument in providing legal certainty and protection to the parties, as

²² Hakim, R., & Mauludin, N. A. (2023). *Pertanggungjawaban Pidana Terhadap Penghadap Yang Membuat Keterangan Palsu Dalam Akta Authentic Yang Dibuat Notaris*. *Unizar Recht Journal (Urj)*, 2(4).

²³ Sari, D. R. (2025). *Keabsahan Akta Notaris Yang Tidak Dibacakan Oleh Notaris Di Depan Para Penghadap Dan Saksi Saat Penandatanganan Akta* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).



well as strengthening their legal position in resolving civil cases in court.²⁴

Although authentic deeds have impeccable probative power, in civil law practice it is common to find disputed cases involving these deeds. One type of dispute that commonly occurs is a dispute regarding the authenticity or validity of the authentic deed itself. The aggrieved party sometimes lodges objections on the grounds of forgery of signatures, errors in the content, or abuse of authority by deed-making officials such as notaries.²⁵ In addition, disputes can also arise related to the interpretation of the content of the deed, for example when the parties have different understandings of the rights and obligations listed in the deed. In cases like these, even if an authentic deed is legally recognized as strong evidence, the judge must still consider other evidence and witness testimony to ensure truth and justice. There are also disputes that arise due to allegations of pressure or coercion at the time of making the deed, which can nullify the legal force of the deed. These dispute cases show that although authentic deeds have perfect evidentiary power, legal protection of deeds is not absolute without a mechanism to test the validity and honesty of the deed's contents. Therefore, the supervision and verification process is important so that the authentic deed remains a reliable piece of evidence and provides legal certainty for interested parties.²⁶

The Evidentiary Power of the Deed Under Hand in Civil Cases

The deed under hand is a form of written evidence that is widely used in civil law, but in order for the deed to have legal force and

be accepted as evidence in court, there are several requirements that must be met. First, the deed under hand must be made in writing and signed by the interested parties. This signature is proof that the parties have agreed to the contents of the deed. Second, the content of the deed under hand must be clear and contain statements or agreements that do not conflict with law, decency, and public order. Third, even if the deed is made without the involvement of a public official such as a notary, the parties must ensure that it is not made under duress, coercion, or fraud so as not to be null and void.²⁷ In addition, in order for the evidentiary power of the deed under hand to be stronger, the parties can carry out signature recognition in court or legalize it at the authorized official, so that the deed has the same evidentiary power as an authentic deed. If these requirements are met, then the deed under hand can be used as valid evidence in civil cases, even though the evidentiary strength is lower than that of an authentic deed. Therefore, fulfilling the requirements for the validity of the deed under hand is very important to maintain legal certainty and minimize disputes in the future.²⁸

The deed under hand has relative evidentiary power in civil cases, meaning that its legal force is not automatically binding or perfect like an authentic deed, but is highly dependent on the recognition or not of the contents and signatures by the opposing party in the dispute. According to Article 1875 of the Civil Code, a deed under hand only has the same evidentiary force as an authentic deed if the signature in the deed is recognized by the party concerned. If the opposing party denies the signature or existence of a written

²⁴Cahayani, D. (2025). Implikasi Hukum Digitalisasi Akta Notaris Terhadap Validitas Hukum Di Indonesia. *Jurnal Cakrawala Ilmiah*, 4(5), 813-826.

²⁵Ardiansyah, A. (2023). *Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Terkait Akta Yang Dibuatnya Di Kabupaten Pati (Studi Kasus Di Kantor Notaris Binsar Adityatama Saragih, Sh, M. Kn.)* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

²⁶Ikromi, Y. (2024). Analisis Perlindungan Hukum Terhadap Pihak Yang Dirugikan Akibat Pembuatan Melawan Hukum Dalam Perjanjian. *Al-Dalil: Jurnal Ilmu Sosial, Politik, Dan Hukum*, 2(2), 78-85.

²⁷Sulaiman, E., Arifudin, N., & Triyana, L. (2020). Kekuatan Hukum Digital Signature Sebagai Alat Bukti Yang Sah Di Tinjau Dari Hukum Acara Perdata. *Risalah Hukum*, 95-105.

²⁸Rahmadhani, F. (2020). Kekuatan Pembuktian Akta Di Bawah Tangan Yang Telah Diwaarmarking Berdasarkan Peraturan Perundang-Undangan Di Indonesia. *Recital Review*, 2(2), 93-111.



agreement, then the burden of proof shifts to the party who submitted the deed to prove its validity, for example by presenting witnesses, graphologists, or other relevant evidence. This shows that the power of the deed under hand does not stand alone, but depends on the attitude and response of the other party in the civil process. In practice, this is often the weak point of the deed under hand because the aggrieved party can easily deny it, which then leads to debate and prolongs the evidentiary process in court. Therefore, in order for the deed under hand to be an effective evidence, the parties are advised to take additional legal steps such as legalizing it or keeping it in a verifiable form, in order to strengthen its position in civil cases in the event of a dispute in the future²⁹.

In Indonesian civil law, the deed under hand has valid evidentiary force if it is recognized by the party against whom the deed is filed, as stipulated in Article 1875 of the Civil Code (KUHPercivil). However, if one of the parties rejects or does not acknowledge the deed—both its content and its signature—the evidentiary power decreases significantly. The deed no longer has value as perfect evidence and is only considered as the beginning of written proof. This poses various risks in the civil trial process. The first risk is the transfer of the burden of proof to the party who wants to use the deed. The party must provide additional evidence, such as witness statements, electronic evidence, or even an examination of a graphologist to prove the authenticity of the signature. Without a confession, the deed cannot stand alone as the basis for a lawsuit or defense. The second risk is the possibility of losing legal claims. If the plaintiff only relies on the deed under hand whose validity is denied, the judge can reject the lawsuit because it is considered insufficient evidence. Similarly, in the defense, the defendant can lose the main evidence if the deed submitted is rejected by the plaintiff. In addition, the rejection of the deed

under hand can prolong the trial process because it requires additional examinations that are technical and time-consuming. Not infrequently, civil disputes can spread to the criminal realm if there is an allegation of forgery of signatures or the contents of documents. Therefore, in the practice of civil justice, the judge will be careful in assessing the strength of the deed under hand, especially if one of the parties denies its validity. In such conditions, it is important for interested parties to prepare other supporting evidence so that they can still prove their evidence before the judge.³⁰

Deeds under hand are legally recognized as written evidence, but their evidentiary strength is highly dependent on the confession of the intended party. Therefore, legalization or registration is an important step to strengthen the legal position of the deed under hand. Legalization is the process of notifying the signatures of the parties by an authorized official, such as a notary, which ensures that the parties have actually signed the document consciously and voluntarily. With legalization, the deed under hand acquires added value in terms of formality, because the notary as a public official guarantees the authenticity of the signatures of the parties. This will make it difficult for those who intend to deny the validity of the deed in the future.³¹

Similarly, registration—for example, the registration of an agreement with the relevant agency—can provide administrative force and evidence of a state-recognized legal action. Although legalization and registration do not automatically turn an under-handed deed into an authentic deed, both processes can increase the credibility of the document in the eyes of the law and judges. In the context of a civil case, a deed under the hand that has been legalized or registered will be more easily accepted as strong evidence, even if one of the parties later tries to reject it. This is because

²⁹Shofiyah, S. (2022). *Kekuatan Pembuktian Akta Dibawah Tangan Sebagai Alat Bukti Surat Dalam Perkara Perdata (Studi Kasus Putusan Nomor 241/Pdt. G/2014/Pn. Mks.)* (Doctoral Dissertation, Universitas Muslim Indonesia).

³⁰Rahmadhani, F. (2020). *Kekuatan Pembuktian Akta Di Bawah Tangan Yang Telah Diwaarmerking*

³¹Berdasarkan Peraturan Perundang-Undangan Di Indonesia. *Recital Review*, 2(2), 93-111.

³¹Sari, D. R. (2025). *Keabsahan Akta Notaris Yang Tidak Dibacakan Oleh Notaris Di Depan Para Penghadap Dan Saksi Saat Penandatanganan Akta* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

legalization and registration function as a preventive protection against disputes, as well as making it easier to prove in the judicial process. Therefore, for parties who make agreements under hand, it is highly recommended to legalize or register to strengthen the legal position and avoid evidentiary problems in the future.³²

Comparison of Legal Powers between Authentic Deeds and Deeds Under Hand

In the Indonesian civil law system, the distinction between an authentic deed and a deed under hand has significant implications for the force of the law and its proof in court. An authentic deed, as stipulated in Article 1868 of the Civil Code, is a deed made by or in the presence of a public official authorized for it, such as a notary, in accordance with the provisions of applicable law. Because it is made by an official official in his or her capacity, an authentic deed has the power of perfect proof (volledig bewijs), both regarding the content of the agreement and the dates and signatures of the parties. An authentic deed does not require further recognition to be used as evidence in court, because it is considered a reflection of legal facts that have occurred legally.³³

In contrast, a deed under hand is a civil document created and signed by the parties without the intervention of a public official. Although recognized in law as written evidence, the evidentiary power of the deed under hand is relative, as stipulated in Article 1875 of the Civil Code, which is only valid if the intended party acknowledges the contents and signatures. If a confession is not given, then the deed loses its force as full evidence and only becomes the beginning of written proof that requires additional evidence. Thus, in terms of proof, an authentic deed is in a much stronger position, since it has formal and material force

that is not easily refuted, except with very strong evidence to the contrary, such as evidence of forgery.³⁴

In terms of legal protection, an authentic deed provides higher legal guarantees for the parties, especially in the event of a dispute. Not only is the content stronger, but it also has executory power, meaning that it can be immediately executed like a court decision with permanent legal force without the need for a new lawsuit, if it contains an executory clause. Meanwhile, the deed under hand does not have direct execution force and must first be tested through the ordinary judicial process. Therefore, although deeds under hand are easier and cheaper to create, from a legal and evidentiary perspective, authentic deeds remain a stronger and safer option, especially in transactions that are of great value or high risk.³⁵

CONCLUSION

An authentic deed and a deed under hand are two forms of written evidence that are valid in Indonesian civil law, but they have significant differences in their evidentiary strength. An authentic deed made by a public official has perfect evidentiary power both formally and materially, and can only be refuted by strong reverse proof. Meanwhile, the deed under hand has a weaker position because its strength is highly dependent on the recognition of the parties who made it or reinforcement through legalization or other additional proof. In the context of resolving civil cases, authentic deeds have been proven to provide higher legal certainty and efficiency as evidence, while deeds under hand still require clearer legal protection in

³² Saepulloh, S. (2022). *Analisis Hukum Tentang Kekuatan Pembuktian Akta Dibawah Tangan Yang Dilegalisasi Oleh Notaris* (Doctoral Dissertation, Universitas Islam Sultan Agung).

³³ Saputra, A., & Kansil, C. S. (2023). Keabsahan Dan Kekuatan Hukum Surat Kesepakatan Pengembalian Dana Sebagai Akta Di Bawah Tangan Menurut Kitab Undang-Undang Hukum Perdata. *Unes Law Review*, 6(2), 5750-5762.

³⁴ Sinaga, R. I. (2022). Kekuatan Pembuktian Akta Di Bawah Tangan Menurut Hukum Perdata. *Lex Privatum*, 10(5), 16.

³⁵ Purwanto, P. (2025). *Peran Dan Tanggung Jawab Notaris Dalam Pembuatan Akta Wasiat Yang Berpotensi Melanggar Hak Ahli Waris Berdasarkan Hukum Waris Islam Di Kecamatan Jepara* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

order to provide balanced evidentiary power. Therefore, it is necessary to increase public legal literacy regarding the difference in the position of these two types of deeds as well as updates to regulations that provide clarity regarding the legalization and the power of proving deeds under hand.

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