

Notary's Responsibility for Legalizing Private Deeds in Foreign Languages

Anggia Septiara Putri Utomo

Fakultas Hukum, Magister Kenotariatan, Universitas Indonesia

Article Info

Article history:

Received: 19 November 2024

Published: 1 December 2024

Keywords:

Notary;

Legality;

Private Deed;

Foreign Language;

Legalization;

Verification.

Abstract

The responsibility of notaries in the legalization of foreign-language private deeds is crucial in ensuring the validity and acceptance of documents in both domestic and international legal contexts. This study aims to analyze the role and responsibilities of notaries in the legalization process of private deeds written in a foreign language, as well as the challenges they face. The study explores how legalization affects the evidentiary value of the deed and the additional legal requirements that may be necessary for international recognition. Findings indicate that notarial responsibility includes thorough verification of translations and documents, as well as compliance with both domestic and international laws to ensure that documents are accepted in the destination country. The study concludes that best practices in legalization involve selecting qualified translators, meticulous documentation of the legalization process, and adherence to international legal requirements.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](#)



Corresponding Author:

Anggia Septiara Putri Utomo,

Fakultas Hukum, Magister Kenotariatan, Universitas Indonesia

1. INTRODUCTION

In an era of increasingly rapid globalization, interactions between countries are becoming more intensive, and the need to manage international legal documents is becoming increasingly important. One important aspect of international transactions is the legalization of documents, especially documents made in foreign languages. Foreign language private deeds, which are often the result of private agreements or agreements without involving legal authorities when they are made, require a legalization process in order to be legally accepted in different jurisdictions.

Notaries play a crucial role in the legal system in many countries, including Indonesia, as officials who have the authority to certify and legalize important documents. One of the main responsibilities of notaries is to ensure that the deeds they legalize meet applicable legal requirements and can be accounted for. In the midst of globalization and increasing international transactions, documents in foreign languages increasingly require legalization for legal purposes. This creates special challenges for notaries in the process of legalizing deeds made in foreign languages, especially private deeds.

The need to legalize foreign language deeds often arises in various contexts, such as international business agreements, power of attorney, or documents relating to inheritance rights. These deeds must meet certain standards in order to be used legally in the country where they are required. However, challenges arise when the deed requires translation from a foreign language to the local legal language and when the notary must ensure that the translation is accurate and matches the contents of the original document.

Agreements can be made verbally or in writing. In relation to written agreements, an agreement is made by putting it in written form, while an oral agreement is a form of agreement between the parties which is implemented through verbal words. In practice,

written agreements include 2 (two) types, the first is private agreements and notarial agreements/authentic deeds which are defined as "a deed made in a form determined by law by or before a public official authorized to that's where the deed was made."

According to Wawan Setiawan, "A public office is a state organ that is equipped with general authority and is authorized to exercise state authority to make written and authentic evidence in the field of civil law". The most important product of the Notary is an authentic deed, as mentioned in Article 1868 of the Civil Code, an authentic deed is a deed made in the form determined by the Law by an authorized official and where the deed was made. In Article 1 of the Law of the Notary Department, a notarial deed is an authentic deed made by or in front of a notary according to the form and procedure stipulated in the Law of the Notary Department.

Based on the definition above, this means that a notarial deed must be made based on statutory regulations, which in this case the law in question is Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning the Position of Notaries. One of the articles that regulates how the deed must be made is Article 43 of the Law on Notary Positions, which states that the deed must be made in Indonesian, but in paragraph (3) it is stated that if the parties wish, the deed can be made in a foreign language. .

The use of a foreign language in making a deed is permitted by the Law on Notary Positions as long as it is translated by a sworn translator as regulated in paragraph (5) that "If the Notary cannot translate or explain it, the Deed is translated or explained by an official translator". However, in Law Number 24 of 2009 concerning the Flag, Language and National Emblem and the National Anthem, Article 27 states that it is mandatory to use Indonesian in official Indonesian state documents, which in the explanation of official state documents includes, among other things, decrees. , securities, diplomas, certificates, personal identity letters, sale and purchase deeds, letters of agreement, court decisions.

A deed is a signed letter containing information about events which are the basis of an agreement. Article 1867 of the Civil Code states: "Writing proof is carried out in authentic writing or in writing under the hand."

Authentic deed according to the provisions of Article 1868 of the Civil Code (KUHPperdata), namely "An authentic deed is a deed which, in the form determined by law, is made by or in the presence of public officials who have authority for that purpose in the place where the deed was made." According to Sudikno Mertokusumo, a deed is "a signed document, which contains events which form the basis of a right or obligation, which was made from the beginning intentionally for proof." An authentic deed is a perfect piece of evidence, its form is regulated by law, made before an authorized public official.

A private deed is a deed made and signed by the parties who agreed to the agreement or between interested parties only. According to Sudikno Mertokusumo, a private deed is "a deed that is deliberately made for proof by the parties without the assistance of an official". So, it is solely made between interested parties. Meanwhile, the strength of the evidence is only between the parties if the parties do not deny and admit the existence of the agreement (acknowledge their signatures in the agreement made). This means that one party can deny the veracity of their signature in the agreement. This is different from authentic deeds, authentic deeds or also known as notarial deeds have perfect evidentiary power, meaning they can be used as evidence in court.

Regarding the duties and work of a Notary, it is not limited to making authentic deeds but is also tasked with registering and ratifying private documents which are usually called Legalization and Warmerking, and making copies of private letters and validating the suitability of photocopies with the original letters.

According to Article 1874 of the Civil Law book, a deed under the hand is a deed signed under the hand, letters, registers, household affairs letters and other writings made without the intervention of a public officer/office. That is why the power of proof of a deed under the hand is not as strong as the power of proof of an authentic deed that has perfect and binding proof. However, the deed under the hand can have a perfect and binding evidential force if it is legalized by an authorized official and acknowledged by whom the deed was made.

Legalization is the signing of a writing under the hand with a thumb/finger impression (*vingeratdruk*) which is "*gewarmerkt*" by another authorized notary, where the notary knows the person explaining the thumb/finger impression or is introduced to him and that the contents of the deed are clearly reminded (*voorgehouden*) and that the application of the thumb/finger tread is carried out in the presence of a notary. By legalization (*legalisatie*) *de Bruijn* means that a legal action must fulfill several conditions, namely:

1. That the notary knows the person who is affixing his signature
2. That the contents of the deed be explained and explained (*voorhouden*) to the person, and
3. Then the person signs his name in front of a notary.

The above matters must be mentioned or included by the notary in his statement in the deed under his hand. According to *de Bruijn*, such a legalized signature cannot be denied unless the notary's statement is accused of being a false statement.

In Article 15 paragraph (2) letter a of the Law on the Position of Notaries, the Notary, in his/her position, has the authority to certify signatures and determine the exact date of documents under his/her hand, by registering them in a special book. Provisions for legalization of private deeds, which are made by individuals, or by parties, on paper with sufficient stamps, by way of registration in a special book, provided by a Notary. This legalization means that the parties make a letter, take it to a Notary, then sign it in front of a Notary, then it is recorded in the Legalization Book. The date of signing before a Notary is the date the legal act occurs, which gives birth to the rights and obligations between the parties. So, if the deed has been signed by the parties long before appearing before the notary, then that date does not count as being valid. However, the date the parties appear before the notary corresponds to the date in the notary's register book.

Validation of the signature and determination of the exact date are recorded in a special book, namely the Legalization Book. The notary who witnesses and validates the signature, determines the certainty of the date, as an official who is authorized by law to explain/confirm/ensure that on the correct date as written in the Legalization Book, the parties make a private agreement and face him to sign the document. The editorial written on the legalization sheet is the extent of the Notary's responsibility.

In *waarmerking*, the signature by the Notary is carried out at a different time after the parties to the deed have agreed and signed the deed first. So the date the deed was signed by the parties is different and earlier than the date the deed was signed by the Notary. Only guarantee the date and time of registration. There is no guarantee of certainty regarding the signature and date of making the private deed. Meanwhile, for legalization, the signing time between the parties involved in the deed and the Notary must be the same. In other words, the deed is legalized before a Notary by being signed by the parties first and then followed by signature by the Notary at the same time.

The aim of the judicial process is to determine the truth and based on that truth a judge's decision will be determined. To determine the truth in the judicial process, evidence is required. According to Subekti, proving is convincing the judge of the truth of the

argument or arguments put forward in a dispute. Darwan Prinst stated that what is meant by evidence is proof that a criminal incident has indeed occurred and the defendant is guilty of committing it, so he must be held accountable.

Meanwhile, according to Sudikno Mertokusumo, the proof is:

"Judicial proof is nothing but historical proof. This juridical evidence tries to establish what has happened concretely. In both juridical and scientific evidence, proving essentially means considering logically why certain events are considered true."

The evidentiary power of private deeds as evidence in court proceedings is linked to the notary's authority in legalization. Based on Articles 1874, 1874 (a), and 1880 of the Civil Code, the documentary evidence must be legalized by an authorized official. This research also aims to determine the strength of foreign language deeds as evidence in the court trial process, to find out whether or not the legalization function of private deeds can provide additional evidentiary power in court trials.

Private deeds are documents made by certain parties without involving a notary, and are often used in various legal transactions. When the deed is in a foreign language, additional challenges arise regarding its validity and legal recognition in the country concerned. The notary's responsibility in certifying this type of document is an important issue.

2. RESEARCH METHOD

Normative Juridical, namely research using legal materials to solve legal facts or problems and to obtain these legal materials and analyze them through literature studies (legislation and literature). The problem approach uses the Statue Approach, namely the problem presented is studied and formulated based on an approach to the relevant laws and regulations

In Normative Juridical research, the legal sources used include:

- a. Primary Legal Material, namely binding legal material in the form of statutory regulations.
- b. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, for example: doctrines or principles, written by legal circles related to this article.

3. RESULTS AND DISCUSSION

a. Notary's Responsibility for Legalizing Private Deeds in Foreign Languages

In Indonesia, Notaries play a central role in the document legalization process. They are responsible for ensuring that the legalized deed meets applicable legal provisions and can be accounted for. When dealing with private deeds in foreign languages, the notary's responsibilities become more complex. The deed, even though it is not officially drawn up by a notary, must go through a legalization process that requires special attention to translation accuracy and conformity with applicable law.

A private deed can also be referred to as an authentic deed through validation (legalization) and registration (waarmerking) with an official who is given the authority to carry out legalization, namely a Notary. This is made possible by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter written with the abbreviation UUJN) which regulates the authority of Notaries, one of which is to record documents privately by registering. in a special book.

The duties and work of a notary are not only to make authentic deeds but also to register and certify deeds made privately (Legalization and Warmerking), provide

legal advice and explanation of laws to the parties who make them and make deeds of establishment and amendments Limited Liability Company in the Department of Law and Human Rights. Legalization is a private ratification of a deed which is read by a notary and signed by the person appearing in front of the notary at that time to guarantee the certainty of the date of the deed in question. Where the persons presenting their signatures are known to the notary or introduced to the notary.

The responsibility of a notary in legalizing foreign language private deeds includes a series of tasks that must be carried out with accuracy and compliance with applicable legal regulations. The notary plays an important role in ensuring that the private deed that is translated and legalized meets the legal requirements and can be accepted in the country where the document will be used.

Notary Responsibilities in the Legalization Process:

a) Verify the Identity and Legal Capacity of the Parties Involved

1. Verify the Identity of the Parties

- Identity Document Check: The notary must check the validity of identity documents such as ID cards or passports to ensure that all parties involved in the deed have valid identities.
- Original and Copy Verification: Ensure that the identity documents submitted are originals or certified copies.

2. Legal Capacity of the Parties

Legal Capacity: The notary needs to ensure that the parties signing the deed have the legal capacity to do so, such as being of legal age and not being in a legal status that hinders them.

b) Inspection of Acts and Translations

1. Examination of the Contents of the Act

- Accuracy of Information: The notary must check that the contents of the deed, both in the foreign language and in translation, are accurate and do not contain false or misleading information.
- Compliance with Law: Ensure that the deed does not violate applicable law, both in the domestic and international context.

2. Translation Check

- Sworn Translator: The notary must ensure that the deed has been translated by a sworn translator who has the qualifications and credibility to translate legal documents.
- Translation Conformity: Verifying that the translation of the deed corresponds to the original document and correctly reflects the content and intent of the document.

c) Legalization and Validation of Documents

1. Document Verification

- Stamp and Signature: After verification, the notary places a stamp and signature on the deed and its translation, indicating that the document has been checked and accepted.
- Legalization Statement: The notary includes information stating that the document has been legalized, including information regarding translation.

2. Legalization Process Documentation

- Records and Archives: Maintain detailed records of the legalization process, including documents processed, translations, and information provided.

The responsibility and authority of a notary in legalizing private deeds is very important and is clearly structured in Law Number 30 of 2004. The following is an explanation of the responsibilities and authority of a notary in legalizing private deeds:

1. Notary's Authority:

Ratifying Signatures: Notaries have the authority to ratify signatures on private deeds (Article 15 paragraph (2) letter a of Law Number 30 of 2004). **Determining the Certainty of the Date:** The notary is also authorized to determine the certain date of a private letter by registering it in a special book. **Attestation and Registration:** The notary is responsible for validating the signature and establishing the exact date, as well as registering the deed in a special book.

2. Notary Responsibilities:

- **Material Truth:** The notary is responsible for the material truth of the deed he makes. This means that the notary must ensure that the contents of the deed are not against the law and do not cause harm to other parties.
- **Losses Incurred:** If the deed made by a notary contains legal defects or does not meet formal requirements, the notary can be required to provide compensation to the injured party.
- **Criminal Responsibility:** Notaries are also criminally responsible for criminal acts committed in their capacity as public officials who have the authority to make deeds.
- **Administrative Responsibilities:** Notaries can be given administrative sanctions if they violate the provisions of Law Number 2 of 2014. These sanctions can be in the form of a verbal warning, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Certainty of Date and Signature: A private deed that has received legalization provides certainty for the judge regarding the date and identity of the parties entering into the agreement, as well as that the signature affixed under the signature of the document really came from and was affixed by the person whose name is listed in the document. .

Challenges and Risks

Errors or omissions in translation have legal impacts, namely errors in translation can cause documents to be invalid and give rise to legal disputes. Notaries can be held liable if inaccurate translations cause legal problems. Legal terminology in a foreign language often has no direct equivalent in another language and requires careful interpretation by a notary. Notaries must understand the differences and ensure that documents comply with local and international laws.

Documents may require additional legalization such as an apostille or attestation by an embassy to be recognized in another country. Notaries must ensure that documents comply with the provisions of relevant international conventions.

Best Practices in Legalizing Foreign Language Private Deeds. Choose a sworn translator who is experienced and has credibility in translating legal documents. Verify the accuracy of the translation and ensure that the translator includes an accuracy statement.

Record Keeping keeps detailed records of the legalization process and all related documents. Create reports that include steps taken during the legalization process and

notes on verification. If there is any doubt regarding legalization or translation, consult a legal expert or international legal consultant.

In a dispute, the notary is asked by the court for an explanation regarding the validity of the signature. Notaries are not burdened by civil, administrative and criminal responsibilities as is the case when making authentic deeds. Losses arising from errors regarding the contents of the deed must be borne by the parties.

Thus, the responsibilities and authority of a notary in legalizing private deeds include validating signatures, determining certainty of dates, registering them in a special book, and ensuring the material truth of the deed. Notaries also have administrative and criminal responsibilities if they violate statutory provisions. Notaries have the authority to certify signatures and determine the exact date of documents under their hands. This aims to ensure the validity of the document and provide a guarantee of the certainty of the date the deed was made.

The purpose of legalizing the signing of a deed privately is:

- 1) So that there is certainty about the authenticity of the signatures contained in the deed, and also certainty about the truth that the signatures are correct as the signatures of the parties; and
- 2) Thus, the parties are basically no longer free to sign what is contained in the deed. This legalization is sometimes differentiated by the Notary concerned with the legalization of the signature. Where in legalizing the signature, the Notary does not read the contents of the document/letter/agreement in question. What is caused by the Notary not understanding the language used, not understanding the language here is that the contents of the letter/document/agreement are in a foreign language.

In practice, legalizing private deeds in foreign languages requires special attention from the notary. The notary must ensure that the notarized signatures truly belong to the parties who created the document. Apart from that, the notary must also ensure that the date of making the deed is the same as the date of ratification of the signature.

The notary's responsibilities in legalizing foreign language private deeds involve verifying the identity and legal capacity of the parties, examining the deed and translation, and attesting the document. Notaries must deal with challenges such as translation errors and differences in legal terminology carefully, and ensure that documents meet all domestic and international legal requirements. Best practices include selecting a qualified sworn translator, properly documenting the legalization process, and consulting with legal experts when necessary.

b. The evidentiary strength of foreign language private deeds that have been legalized by a notary

A private deed in a foreign language legalized by a notary is an important piece of evidence in the legal process. However, the strength of this proof can be influenced by several factors, including the language used and the legalization process. A private deed is a document made by an interested party and signed directly. In some cases, this deed can be made in a foreign language, especially if the interested party does not speak Indonesian. However, to ensure the validity and strength of the evidence, this deed must be legalized by a notary.

A private deed legalized by a notary has perfect evidentiary power and is binding. This is because the notary has the authority to certify the signature and determine the exact date of the private letter, as well as register it in a special book (Article 15 of the Notary's Position Law). Apart from that, notaries are also authorized to make authentic

deeds that meet formal and material requirements, so that these deeds can be accepted as absolute evidence in court.

The use of foreign languages in private deeds can affect the strength of the evidence. However, if the deed is legalized by a notary, then foreign language is not a problem. The notary can translate the contents of the deed and ensure that interested parties understand what they are signing. Thus, the validity and evidentiary power of the deed are not compromised by the foreign language used.

In Indonesian law, a private deed legalized by a notary has the same evidentiary power as an authentic deed. This is because a notary has the authority to make an authentic deed that meets formal and material requirements, and has the authority to certify signatures and determine the certainty of the date of the document under his/her hand (Article 15 of the Notary's Position Law). Thus, foreign language deeds legalized by a notary can be used as strong evidence in court proceedings.

A foreign language private deed legalized by a notary has perfect evidentiary power and is binding. Although the use of a foreign language can affect the strength of the evidence, with a proper legalization process by a notary, this deed can be used as strong evidence in legal proceedings. Thus, it is important for interested parties to choose a notary who is skilled in certifying signatures and establishing the certainty of the date of a signed letter.

A foreign language private deed that has been legalized by a notary is a document that has undergone a verification and validation process to ensure its validity. In the context of international and domestic law, legalization by a notary provides assurance that the deed meets the legal standards required to be recognized and accepted.

A private deed, even though it is not officially made before a notary at the time of making it, can still have legal force if it has been legalized. Legalization by a notary provides additional recognition that the document has been properly checked and translated. After legalization, foreign language private deeds can be accepted as evidence in court or legal institutions if the legalization process has been carried out in accordance with applicable procedures.

Legalization by a notary ensures that the translation of the deed into a language recognized in the country where the document will be used is accurate and reflects the contents of the original document. The notary provides a stamp and signature stating that the document has been checked and legalization has been carried out correctly.

The strength of the proof depends greatly on the accuracy of the translation. Translations must be carried out by sworn translators who have credibility and experience in translating legal documents. A translation accompanied by a statement from the translator regarding the accuracy of the translation gives additional strength to the deed. The notary includes information regarding the legalization and verification of the deed as well as the translation. This provides additional confirmation that the document has been checked and translated correctly. Documents related to the legalization process, including verification notes and statements from notaries, support the evidentiary strength of the deed.

Errors in translation can affect the strength of the evidence and lead to legal disputes. If the translation is inaccurate, the interpretation of the document may be incorrect, impacting the legal outcome. Notaries can be held liable if errors in translation cause legal problems. Differences in legal terminology between foreign and local languages can lead to discrepancies in interpretation, affecting the strength of evidence. Notaries must ensure that legal terminology is translated correctly and in accordance with the intended legal meaning.

Documents may require additional authentication such as an apostille to be recognized in other countries. Without proper attestation, the evidentiary power of the deed may be questioned. The destination country may have additional requirements for recognizing international documents, affecting how the deed is accepted as evidence. Choose a sworn translator who is experienced in translating legal documents and has a good reputation. An accurate translation will increase the evidentiary power of the deed. Verify the contents of the deed and ensure that the translation matches the original document and accurately reflects the information. Keep complete records regarding the legalization and verification process, including statements from translators and statements from notaries. Make sure the document meets additional requirements such as an apostille or embassy endorsement to be recognized in another country. Understand and fulfill legal requirements in the destination country to ensure documents are accepted as evidence.

4. CONCLUSION

If the notary makes a mistake in the legalization process, the consequences can be very serious. Article 1365 of the Civil Code states that losses arising from a notary's error or negligence can make the deed legally defective and the evidentiary power of the deed is no longer perfect. This can cause the deed to become null and void.

The responsibility of a notary in legalizing private deeds in foreign languages is very important to ensure the validity of the document and provide a guarantee of the certainty of the date the deed was made. Notaries must pay close attention to their authority and the legalization process to avoid mistakes that could cause serious legal consequences.

The evidentiary strength of foreign language private deeds that have been legalized by a notary depends on the accuracy of the translation, attestation by the notary, and compliance with international law. Legalization by a notary provides assurance that the document has been checked and translated according to the required standards, however translation errors and differences in legal terminology can affect the strength of the evidence. Selecting a competent translator, carrying out careful verification, and fulfilling international legal requirements can increase the evidentiary power of the deed.

5. BIBLIOGRAPHY

A. BOOKS

- Ali, Zainuddin. 2016. *Metode Penelitian Hukum*. Jakarta, Sinar Grafika, p. 24.
- Cita Astungoro Sukmawirawan, 2014, "Kekuatan Pembuktian Legalisasi dan Waarmerrking Akta Dibawah Tangan Oleh Notaris". *Jurnal Hukum Ekonomi*. Jember: Fakultas Hukum Universitas Jember(UNEJ)
- Darwan Prinst, 1998, *Hukum Acara Pidana Dalam Praktik*, cet. 2, Jakarta: Djambatan Hartono, Sunaryati. (1994). *Penelitian Hukum di Indonesia Pada Akhir Abad ke-20*. Bandung: Alumni, p. 141.
- Hukum Universitas Indonesia, 2005), hlm. 22.
- Komar Andasmita, 2007, *Akta II Notaris Dan Contoh-Contoh Akta, Ikatan Notaris Indonesia, Sumur Bandung*, Bandung.
- Tan Thong Kie, 1987, *Serba Serbi Praktek Notaris*, Alumni, Bandung, hlm. 47-48
- Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Edisi Keempat, Yogyakarta, Liberty: 1993
- Soekanto, Soerjono. 2014. *Pengantar Penelitian Hukum*. Jakarta, Univesitas Indonesia Press

Sri Mamudji, *et al.*, *Metode Penelitian dan Penulisan Hukum*, Jakarta: Badan Penerbit Fakultas

Whenahyu Teguh Puspa, TANGGUNGJAWAB NOTARIS TERHADAP KEBENARAN AKTA DIBAWAH TANGAN YANG DILEGALISASI OLEH NOTARIS, *Jurnal Repotarium* Volume III No. 2 Juli-Desember 2016

B. LEGISLATION

The 1945 Constitution of the Republic of Indonesia;

Law Number 24 of 200 concerning the National Flag, Language and Emblem and the National Anthem

Law number 2 of 2014 concerning Amendments to Law number 30 of 2004 concerning Notary Positions;

Civil Code

C. Online Resources

Irma Devita, <http://irmadevita.com/2012/perbedaan-akta-otentikdengan-surat-di-bawah-tangan/> akses internet 1 Februari 2023