



The position and use of a handwritten deed that is waarmeding by a notary

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Abstract

A private deed that is legalized by a notary through waarmeding is a form of legal documentation widely used by the public as an effort to obtain administrative legal certainty for private documents. Although it does not make the document an authentic deed, the waarmeding process provides a certainty of date for the deed and officially records its existence in the notary's books. This study aims to analyze the legal status and practical utility of deeds that are legalized by waarmeding within the Indonesian civil law system, using a juridical-empirical method through literature studies and interviews with notaries, academics, judges, and service users in Banda Aceh. The research findings show that a deed that is legalized by waarmeding remains a private deed but possesses stronger administrative evidentiary power compared to a regular deed. Its usefulness includes protection against forgery, increased trust between parties, and support in the process of evidence in court. However, the waarmeding practice also carries legal risks, especially if the public misunderstands its position or if there is abuse of the document's substance. Therefore, public legal understanding, as well as improvements in regulations and notarial practices, are crucial to ensure the accountable and appropriate function of waarmeding.

Keywords: Waarmeding, private deed, notary, certainty of date, legal proof

Introduction

In Indonesian civil law practice, the existence of written evidence plays a crucial role in determining the validity of legal relationships between legal subjects. A deed is one of the most commonly used written documents as evidence, whether in the form of an authentic deed or a private deed (Burhanuddin, 2021) ^[6]. Although an authentic deed is considered to have perfect evidentiary power because it is created by or in the presence of a public official, such as a notary, in reality, the public often prefers to use private deeds due to considerations of efficiency, flexibility, and cost. However, to strengthen the legal status of a private deed, more people are utilizing the waarmeding service provided by notaries (Permana *et al.*, 2024) ^[17]. Waarmeding is the official recording by a notary of a private deed that has been signed by the parties, with the aim of providing certainty of the document's date (date certain). This practice serves as a pragmatic solution for individuals who do not create authentic deeds but still seek administrative recognition and limited legal protection for their documents.

Although the practice of waarmeding continues to evolve, public understanding of its legal status and the limitations of its function remains very limited (Lestari *et al.*, 2024) ^[13]. Many people believe that a deed that has been waarmeding automatically changes its status to an authentic deed, when in fact, the deed remains a private deed that is only strengthened by the certainty of its date through notarial recording. This leads to misconceptions and even potential legal confusion when the deed is used as evidence in civil cases. It is also not uncommon for a deed that has been waarmeding to be used as a tool to gain a seemingly stronger legal position, even though its substance has never been verified by the notary.

The practice of waarmeding also carries several legal risks. For instance, there is the possibility of one party inserting unilateral information into the deed before it is registered, the use of problematic documents in high-value

transactions, and even the potential for abuse by notaries who fail to follow the proper procedural standards (Van Baeveghem). In the context of dispute resolution, the existence of a waarmeding deed can indeed narrow the scope for denying the document's creation date, but it does not automatically render the deed indisputable. It is also important to note that not all judges assign the same evidentiary weight to a waarmeding deed (Widiyoko, 2021b) ^[24, 25], which means that disparities in court decisions still occur frequently. In practice, waarmeding is widely used by small businesses, cooperatives, or individuals in simple transactions, such as debt, vehicle sales, inheritance statements, and lease agreements. This demonstrates that waarmeding has significant social and administrative functions, particularly in terms of practicality and affordability (NGADIRAH & SINAULAN; Sari *et al.*; Tyana *et al.*, 2024) ^[15, 19, 21]. However, on the other hand, the absence of technical guidelines and strict supervision means that this practice holds the potential for misuse.

Given this complexity, it is crucial to conduct an in-depth study on the legal status and practical utility of private deeds legalized by a notary through waarmeding, not only from a normative legislative perspective but also in terms of its implementation in practice. This study adopts a juridical-empirical approach by combining literature review and interviews with notaries, academics, judges, and users of the waarmeding service in Banda Aceh. It is hoped that, through comprehensive understanding, a balanced solution can be found between legal protection, administrative efficiency, and public education so that the practice of waarmeding can become an accountable, proportional, and effective legal instrument within the national legal system.

Research on private deeds legalized by notaries through waarmeding has indeed attracted attention in several previous academic works; however, the focus and perspectives taken have varied widely. Most studies emphasize aspects such as the evidentiary power of the deed, the comparison between legalization and

waarmerking, or juridical analyses of specific court decisions. Therefore, this study presents a different and more specific perspective, namely to thoroughly examine the legal status and practical usefulness of private deeds that are waarmerking, both theoretically and empirically.

Unlike Setiawan Widiyoko's study titled "The Strength of Private Deeds Legalized or Waarmerking by a Notary (Case Study of Decision No. 13 PDT/2020/PT.MTR)", which focuses more on comparing legal strength and judicial considerations in court decisions (Widiyoko, 2021a) ^[24, 25], this research places greater emphasis on the practical function of waarmerking in society and the status of deeds within the legal system, including the perceptions of the parties involved and the administrative responsibilities of notaries.

Kiagus Yusrizal's thesis, "A Legal Review of the Evidentiary Power of Private Deeds in Relation to the Authority of Notaries in Article 15 Paragraph (2) of the Notary Law", touches on waarmerking, but it is more oriented toward formal evidentiary power within the context of the judiciary (Yusrizal, 2008) ^[26]. In contrast, this study focuses primarily on the administrative benefits, practical legality, and legal certainty from the perspective of the notary service users, as well as an analysis of the deed's status in the eyes of the public.

Similarly, Shofia Chairunnisa's thesis from the Islamic University of Malang, titled "The Evidentiary Power of Private Deeds in Relation to Notarial Authority in Legalization and Waarmerking", reviews aspects of evidentiary strength and juridical regulations (Chairunnisa, 2020) ^[7]. This research differs because it highlights how waarmerking deeds are understood and used by the public and evaluates their utility in everyday legal life. This study aims to explain and analyze the reasons why parties register private deeds that are waarmerking by notary, the position and usefulness of such deeds, and the notary's responsibilities regarding notarized private deeds.

Research Methods

This study uses a juridical-empirical method, which is an approach that combines written legal provisions with real-world facts. The purpose of juridical-empirical research is to understand how the law operates in society, not just how the law should operate. In this context, this research examines the practice of registering private deeds through the waarmerking mechanism by notaries in Banda Aceh, evaluating the relevance and implementation of provisions in the Notary Position Law (UUJN), as well as the responses and understanding of notary service users toward this practice.

Data collection was carried out through two sources: primary and secondary data. Primary data was obtained through interviews with notaries, notary service users, the head of the notary association, academics, and judges, who were deemed relevant to the research topic. Meanwhile, secondary data was gathered through literature review, including legal literature, regulations, doctrines, and court decisions related to waarmerking. Data analysis was conducted descriptively and qualitatively, linking the results of interviews with literature studies to provide a comprehensive picture of the legal status and practical utility of private deeds legalized by notaries through waarmerking.

Result and Discussion

Reasons for the Parties to Waarmerking a Handwritten Deed

Based on research and interviews with notaries and parties in Banda Aceh, several fundamental reasons explain why people choose to register private deeds through the notarization process (waarmerking) by notaries.

Legal certainty is a primary motivation for many. Waarmerking provides administrative evidence that a document existed on a specific date, which strengthens its validity as proof in the event of future disputes (Article 1880 of the Civil Code). While notaries do not certify the content of agreements, their seal and signature serve as legally accountable evidence (Arkani *et al.*, 2024) ^[5]. Nurdhani, a notary in Banda Aceh, explains that this process provides legal legitimacy, although it is limited in scope. Another key reason is protection from legal risks, such as forgery or denial (Voyatzis & Pitas, 2002) ^[23]. Recording documents in a notary's special register helps the parties feel more secure. The Banda Aceh District Court Decision Number 38/Pdt.G/2018/PN. Bna demonstrates how waarmerking helps prove the existence of an agreement when one party denies it. However, it is important to note that notaries are not responsible for verifying the authenticity of signatures or the content of the document, as explained by Erlina, another notary in Banda Aceh.

The simplicity and efficiency of the process also make waarmerking appealing. Compared to creating an authentic deed, the notarization process is faster, cheaper, and requires fewer formalities (Ratnayake, 2011) ^[18]. Hafizh, a notary service user, chose waarmerking because of its straightforward process and affordable cost. This view is supported by Marilang, who notes that private deeds are intentionally created by the parties to serve as proof without the involvement of officials (Marilang, 2017) ^[17].

Social propriety and public perception further contribute to the popularity of notarization. Many, like Mukhlis and Bahtiar, believe that the involvement of a notary—even just through waarmerking—gives the document added legitimacy. Legally, however, waarmerking differs from legalization, where the notary only records the document without verifying the truth of its contents or signatures (Article 15, paragraph (2) letter b of the Notary Law).

Finally, the principle of caution plays a role. Although the Notary Law does not require notaries to verify the truth of the document, Gita Melisa emphasizes the importance of applying caution and accuracy, particularly to ensure the document does not violate Article 1320 of the Civil Code, which outlines the requirements for valid agreements. The practice of waarmerking reflects three core legal values, as outlined by Gustav Radbruch (Arfionita, 2022) ^[4]:

- **Legal certainty:** people want their documents to be officially recognized.
- **Justice:** notaries, as neutral officials, create a fair process.
- **Utility:** it simplifies administrative procedures and prevents issues.

Despite this, research shows that many people do not fully understand the difference between waarmerking and legalization. Samsul and Bahtiar, for example, consider all notary seals to be forms of "certification." This suggests that, despite limited understanding of formal legal concepts,

there is a real demand for legal protection through mechanisms seen as providing legitimacy.

Therefore, although the legal strength of *waarmerking* is limited to proving the existence of a document (rather than its substantive validity), this practice remains a practical option for individuals seeking additional legal protection through a relatively simple and affordable process

The Legal Status of a Handwritten Deed That Is Waarmerking

The position of a private deed that is registered by a notary does not change its nature to become an authentic deed, but it remains classified as a private deed (Janice & Rahayu, 2023) ^[12]. The process of registration by the notary, known as *waarmerking*, is simply an administrative registration to record that the document was signed by the parties on a specific date and stored in the notary's special register (Article 1874 of the Civil Code, Article 286 of the RBg). Even with the notary's seal or stamp, this does not provide authentic power because the notary is not involved in the preparation of the deed's content or verifying its material accuracy (Hiariej, 2012) ^[10].

The fundamental difference between an authentic deed and a private deed lies in their evidentiary strength. An authentic deed has full evidentiary power (Article 1868 of the Civil Code), while a privately registered deed only has evidentiary power if it is acknowledged by the parties involved (Article 1875 of the Civil Code). If one party denies the signature, the burden of proof shifts to the party presenting the deed to prove its validity through witnesses or other evidence (Decision of Banda Aceh District Court No. 38/Pdt.G/2018). A case on debt disputes in the Banda Aceh High Court Decision No. 18/Pdt/2019/PT.BNA illustrates that the *waarmerking* does not prevent a denial, and additional proof is still required.

The *waarmerking* process provides several practical and legal benefits, even though it does not alter the status of the deed:

1. **Legal Certainty:** The *waarmerking* process provides formal certainty regarding the time and authenticity of the signature, reducing the risk of forgery (Article 1874 of the Civil Code). The notary acts as a neutral party who certifies the signing date, making the deed a strong initial piece of evidence in court.
2. **Legal Protection:** The notarial registration protects good-faith parties by providing administrative evidence if a dispute arises. For example, in land collateral cases, the *waarmerking* helps prove the existence of an agreement even if its contents are disputed.
3. **Increased Trust:** The involvement of a notary in the *waarmerking* process enhances the legitimacy of the document, encouraging the parties to comply with the agreement due to the oversight of an authorized official.
4. **Fraud Prevention:** Registration in the notary's book makes forgery more difficult, as the notary keeps a copy that can be verified (Article 286 of the RBg).

However, these benefits are still limited. As emphasized in the *Negatief Wettelijk Bewijstheorie* theory, judges are not strictly bound by the registered deed and must evaluate its material truth using other evidence if a denial occurs (Eddy

Os Hiariej). For example, in a debt case in Banda Aceh, the court ordered additional proof despite the deed being registered because one party denied its validity. Therefore, the position of a notarially registered private deed remains as a written piece of evidence with limited strength, while its utility lies more in reinforcing the formal and administrative aspects. Its effectiveness depends largely on the recognition of the parties and supporting evidence in the judicial process.

The Notary's Responsibility for a Handwritten Deed That Is Waarmerking

The responsibility of a notary regarding deeds under hand that are "waarmerking" (registered) is a critical aspect of notarial duties (Sudini, 2020) ^[20]. As a public official, a notary has various roles and powers as outlined by the Indonesian Notary Law, UU No. 2/2014, particularly in Article 15, paragraph (2), letter b. This law grants notaries the authority to register documents under hand into a special register, commonly referred to as "waarmerking." This process involves a notary registering a document brought by the client, which is signed by the involved parties. The document typically already contains a signature date and a registration date. The document registered through *waarmerking* must contain several elements, such as the serial number of the registered document, the date of the document, the date of registration, the type of document, and the parties who signed the document.

Waarmerking is explained in Article 15 paragraph (2) letter b of the Notary Position Act (UUJN) as "registering a deed under hand by entering it into a special book." This implies that the registration of deeds under hand, through *waarmerking*, is a significant authority for notaries. Notaries do not create or verify the content of these documents; rather, they only register the document in their special book after the parties have signed it.

Responsibility, as defined by Huala Adolf (Adolf, 1996) ^[2], arises from agreements made by parties, which create rights and obligations that must be fulfilled. Thus, responsibility in the legal context arises from actions that cause harm to others, as well as those based on applicable laws. The theory of legal responsibility is essential to explain the notary's responsibility regarding deeds under hand in the context of civil law (Adjie, 2023) ^[1]. A notary's responsibility and professional ethics are strongly related to integrity and moral values. If a notary lacks integrity, they cannot be said to have responsibility and ethics in their profession (Chandra & Purwanto, 2024) ^[8].

In the traditional theory, there are two types of responsibility: fault-based responsibility and strict responsibility (Goldberg & Zipursky, 2016) ^[9]. Fault-based responsibility arises from actions that breach an agreement or commitment causing harm to another. Strict responsibility, on the other hand, is a form of responsibility based on the awareness of living in society. Legal responsibility can be divided into three categories:

1. Responsibility with fault elements (intent or negligence) as outlined in Article 1365 of the Civil Code.
2. Responsibility with fault elements, particularly negligence, as outlined in Article 1336 of the Civil Code.
3. Strict responsibility (without fault), as outlined in Article 1367 of the Civil Code.

As a notary, there is a responsibility toward both the office and clients for all actions taken in the course of notarial duties. Professional responsibility can be summarized as follows:

1. Responsibility toward the profession, adhering to the relevant code of ethics.
2. Responsibility for the work performed according to the duties of the profession.
3. Responsibility for the outcomes of the work according to the profession.
4. Responsibility toward oneself, society, and God.
5. Willingness to take risks to uphold the truth in the context of the profession.
6. Willingness to provide reports on professional actions when necessary.

The notary's responsibility extends beyond personal accountability (Iriantoro, 2022) ^[11]. They must ensure that the public, who relies on their services, receives proper and ethical service. Notaries must provide legal counseling to promote legal awareness, ensuring that society understands their rights and obligations. Additionally, notaries should offer services to less affluent people, fulfilling their duties to society.

Notaries do not bear responsibility for the contents of a deed under hand once it has been registered unless there is a specific involvement in the creation or validation of the document. As long as the notary performs their duties in accordance with the law, the notary is not responsible for the contents of the document. According to Nico, a notary's responsibility can be classified into four categories (Nico, 2003) ^[16]:

1. Civil responsibility for the material truth of the deeds they make.
2. Criminal responsibility for the material truth of the deeds they create.
3. Responsibility according to the regulations of the notary's office.
4. Responsibility in accordance with the notary's code of ethics.

In the case of "waarmerking," the notary's role is purely administrative (Ardiansyah *et al.*, 2022) ^[3]. They do not verify or assess the content of the document but rather register the document and ensure that it is signed by the parties involved. This responsibility is limited to confirming that the parties were present, the signatures were made by the appropriate individuals, and the registration followed the proper procedure.

The notary's role in "waarmerking" is crucial because it ensures that there is a formal acknowledgment of the document's existence and the date of registration. However, the notary does not guarantee the truth or legality of the contents of the document (Widiyoko, 2021b) ^[25, 24]. This responsibility lies with the parties who signed the document, who bear full responsibility for its content. The notary's duty is limited to ensuring that the document is properly registered with an official date, providing formal acknowledgment that the document was received by the notary.

The legal implication of "waarmerking" is that while the notary confirms the date and the signing of the document, they do not assume responsibility for the document's content or the authenticity of the signatures (Arkani *et al.*,

2024) ^[5]. The notary's only role is to maintain a record of the document in their register and confirm the date it was presented. The notary does not have the authority to evaluate or confirm the correctness of the document's contents.

In the case of a dispute regarding the contents or authenticity of the document, the notary cannot be held accountable unless there is clear evidence that the notary was involved in fraud or manipulation of the document's content. Thus, the notary's responsibility remains limited to administrative tasks, and the document's validity is dependent on the acknowledgment of the parties involved. Ethically, the notary must maintain integrity and professionalism, ensuring that they act in the best interests of the public. Although the notary does not bear responsibility for the contents of the deed, they must ensure that the deed is created in good faith and does not contain fraudulent elements. If there is any indication of falsification or bad faith, the notary has the right to refuse to register the document.

In conclusion, a notary's responsibility with regard to deeds under hand that are "waarmerking" is fundamentally administrative. The notary does not have the power to verify the contents of the deed or the authenticity of the signatures but is responsible for ensuring that the document is properly registered and that the signatures are genuine. The responsibility of the notary is constrained by the duties outlined in the law, and any dispute regarding the contents of the document falls to the parties involved, not the notary.

This issue is exemplified in the case of the Banda Aceh District Court Decision No. 38/Pdt.G/2018/PN.Bna and the Banda Aceh High Court Decision No. 18/Pdt/2019/PT.BNA. In this case, the dispute arose when one party did not recognize the existence of a deed under hand that had been "waarmerking." One party claimed to be harmed by the non-fulfillment of the agreement outlined in the deed. In this situation, the notary who registered the document was called to testify. However, as the notary was not involved in the creation of the document, they could not be held responsible for the content or the validity of the signatures.

Conclusion

Based on juridical analysis and empirical findings, this study concludes that a private deed (*akte di bawah tangan*) with a notarial *waarmerking* (certification) retains its status as a private deed but gains an administrative advantage: official date certification by the notary. Although it does not become an authentic deed (*akte otentik*) and the notary is not responsible for its content, *waarmerking* strengthens its legal standing, particularly in civil evidentiary proceedings. Practically, *waarmerking* enhances the legal position of parties in agreements, boosts trust in civil transactions, and streamlines administrative processes with government or financial institutions. The notary's date certification is crucial for establishing the chronology of legal relationships, which can determine validity and priority of rights. However, the study identifies legal risks, including public misconceptions (e.g., equating *waarmerking* with authentic deeds), potential document misuse, and procedural oversight gaps. Mitigation measures are needed, such as public legal education, reforms in Notary Law, digitalization with stricter verification, and stronger notarial accountability. With these improvements, *waarmerking* can

remain a reliable, transparent, and secure legal mechanism, supporting administrative order and legal protection in society.

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