

Legal Validity of Private Deed on Debt Agreement

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Abstract: Debt is never escaped from someone. Debt is something that must be paid to the lender with a certain period and a specified tenor. Every debt must be bound in an agreement. The binding of the agreement requires a fee in doing the notarized deed. Sometimes, both parties agree to not enter into a debt agreement before a notary. It is done to save costs. The agreement fee is usually charged to the recipient of the credit, so they refuse to agree with the notary. The agreement was made based on the agreement of both parties. Its name is a private deed. It is not carried out and notarized. However, it has a legal force. It becomes legal evidence in the case of a trial as long as the credit recipient acknowledges that there is a debt that is being borne. This agreement will be better if accompanied by a letter of acknowledgment of debt. By understanding the legal force in private deed, the debt and receivable offender will get a good understanding and respect the agreement.

Key Words: private deed, legal, law, debt, credit, debit

1. INTRODUCTION:

In everyday life, many problems must be faced by someone. One problem that often occurs is the problem of debt. Debt causes someone to have to deal with the law. In making loans, many requirements must be fulfilled by the borrower. This requirement is an assessment of the lender or the lender. Debts can be in the form of money loans or in the form of installments to purchase goods. In the loan process, a debtor must be able to repay the debt within a predetermined period. Debt problems must have legality in the eyes of the law to avoid things that are not desirable in the future. However, asking for legal assistance in making a debt agreement will incur costs. This agreement is known as a deed. The deed was made by a notary who then read it in front of both parties. Sometimes, both parties don't want to agree with the notary's office. They prefer to do it in their way. This agreement is called the private deed. This is done to reduce costs. However, this agreement has a different legal force. Additional matters are needed so that private deed has the same legal force as the agreement made by the notary. This research will discuss how strong the legal power of the private deed is.

2. THEORIES:

2.1 Debt

Debt is a source of funding obtained from outsiders who lent to someone for personal gain [1]. It is the financial obligation of a company to other parties that have not been fulfilled. But on the other hand, debt can also be considered as a source of funds or capital of a company obtained from creditors or by the creditor. Debts can also be given to companies in improving the quality of these companies. Debts are all financial obligations of a person or company to other parties that have not been fulfilled, where this debt is a source of funds or company capital that comes from creditors [2]. Debt is a sacrifice of future economic benefits that may arise from current obligations. In making decisions on the use of debt, it is necessary to consider the fixed costs incurred as a result of the debt, namely in the form of debt interest which causes increased financial leverage. Debts can be divided into two types, short-term debt and long-term debt [3].

2.2 Acknowledgment of Indebtedness

Acknowledgment of Indebtedness is a statement issued by the recipient of the debt in acknowledging the existence of a debt. This letter is given to the debtor. Debt recognition is different from the principal agreement. This type of letter is usually created if there is no principal agreement that binds both parties in entering into a loan agreement. Basically, it is a debt instrument, which in terms of the creditor's interests should be immediately executed against the payment obligations or the full repayment of the total debt owed by the debtor to the creditor. Immediately executed means without requiring a court decision as an order to carry out debt repayment obligations by the debtor [4]. In view of these interests, such debt instruments must be considered to have the same legal force as a court decision. Therefore, making a letter of acknowledgment of debt is made in a notary form and the head of the letter contains a sentence so that it can be immediately executed by the creditor himself. Even so, a letter of acknowledgment of debt can be made under the hand but without the power of "immediately executed" referred to above. In practice, to give the same result as the notarial debt acknowledgment above, a clause usually states that the debt confessor has given an irrevocable power to the creditor to be able to make and sign the notarial debt recognition deed. referred to above [5].

2.3 Private Deed

A private deed is a deed made not before an authorized official or Notary. This deed was made and signed by both parties who have agreed on the agreement. If a deed under the hand is not denied by both parties, it means that they acknowledge and not deny the truth of what is written on the deed under the hand, and the deed will be valid in court. The deed obtained the same proof of strength as an authentic deed [6].

2.4 Notarial Deed

A notarial deed is a deed made by an authorized official that contains or describes correctly and is proven to be an agreement made or a situation that is seen or witnessed by the general official making the deed. The intended public officials are notaries, judges, bailiffs in a court, civil registry staff, and so on. A notarial deed has perfect proof of strength for the parties along with all their heirs or other parties who have the rights of the parties. If a party submits an authentic deed, the judge must accept it and assume what is written in the deed actually happened, so that the judge may not order an additional proof [7]. A notarial deed must fulfill the following requirements:

- It must be made by or in the presence of a general officer.
- It must be made in the form determined by law.
- The notaries must have the authority to make the deed.

3. RESULT AND DISCUSSION:

The following table shows the difference between the notarial deed and the private deed. There are three parts that underlie this difference, such as the definition, characteristics, and strength of the law.

Table 1. Difference between Notarial Deed and Private Deed

Category	Notarial Deed	Private Deed
The main difference between a notarial deed and a private deed is how the deed was made.		
Definition	An authentic deed is a deed made in the form prescribed by law or in the presence of a public official authorized for it (such as a Notary, Judge, Registrar, Registrar, Civil Registrar), where the deed was made.	A private deed is a deed intentionally made for proof by the parties without the assistance of an official. The way of making or occurring is not carried out by and or in the presence of public employee officials, but sufficient by the interested parties only.
Characteristic	The format of the notary deed has been determined in the format and content by law. But some deeds are agreements between the two parties whose contents are based on the agreement of the two parties by the principle of freedom of contract. The characteristics include: <ul style="list-style-type: none"> • Made in the presence of authorized public officials • The perfect strength of proof • If it is denied about its truth, it must be proved its unrighteousness. 	The characteristics of private deed include: <ul style="list-style-type: none"> • Its free form • The making does not have to be in the presence of public officials • Still has the power of proof as long as it is not denied by the maker • 4. If must be proven, then the proof must also be accompanied by witnesses & other evidence. Therefore, usually in a deed under the hand, it should be included two adult witnesses to strengthen the evidence.
Strength of Proof	An authentic deed is a perfect proof of proof for both parties and their heirs as well as all those who have the right from it about what is contained in the deed. It is binding evidence which means the truth of the things written in the deed must be recognized by the judge, or if the deed is considered as true as long as the truth is that no other party can prove otherwise.	If the private deed is recognized by the people to whom the writing is to be used, then the deed can be a perfect proof of proof for the person who signed it and his heirs and those who got the rights from it.

An example of making a private deed agreement is seen in the following scenario. There is someone who invests in certain business fields. A certain amount of capital has been given to the debtor. The debtor will return the investment capital plus profits and the payment is made in stages over one year. Both parties signed the sealed agreement. Unwanted things happen in the next few months. Debtor blurred by not leaving any message; the debtor has not fulfilled these obligations.

A private deed is an agreement made between two or more binding parties to the parties. All written agreements can be used as evidence. If the debtor does not perform an obligation based on the agreement made, the debtor can be sued in a civil manner against the existing error. Provisions for dispute resolution can be settled through court or arbitration. If not stated, then it can be considered resolved through a court. The civil lawsuit is registered in an approved district court or in the place where the agreement was made. Creditors can sue as important as the subject of disputes or cases owned by creditors. If there is an element of a crime, for example, fraud, then the creditor can also report the matter to the authorities, such as the police to be followed up in accordance with applicable law. Basically, the private deed has legal force as long as it is accompanied by complete evidence from both parties to the agreement.

4. CONCLUSION:

A private deed is a valid deed provided that the deed is recognized by both parties bound in a debt agreement. This deed will be better if accompanied by a letter of acknowledgment of debt from someone who has borrowed money from a creditor. The parties that have an agreement with private deed aim to reduce the cost of large notaries. These costs can reduce loan deductions when money is given to borrowers. However, to avoid future misunderstandings, a private deed must be emphasized by adding a number of other important documents. This is to avoid mistakes in court if things happen that are not in line with expectations.

REFERENCES:

1. M. W. H. Michael C. Jensen, "Theory Of The Firm : Managerial Behavior, Agency Cost And Ownership Structure," *J. financ. econ.*, vol. 3, pp. 305–360, 1976.
2. P. R. Lane, "The European sovereign debt crisis," *J. Econ. Perspect.*, vol. 26, no. 3, pp. 49–67, 2012.
3. S. A. Jones, *Trade and Receivables Finance*. Cham: Springer International Publishing, 2018.
4. D. Imbawani, *Hukum Perdata*. Malang: Setara Press, 2016.
5. Yulia, *Hukum Perdata*. Lhokseumawe: CV. Biena Edukasi, 2015.
6. H. S. Bachtiar, *Contoh Akta Notaris Dan Akta Di Bawah Tangan Buku IX*. Bandung: Mandar Maju, 2008.
7. R. Rivai, "Pengertian dan Perbedaan Akta Otentik dengan Akta di bawah Tangan," 2014. [Online]. Available: <http://rahmadvai.blogspot.com/2014/04/pengertian-dan-perbedaan-akta-otentik.html>. [Accessed: 20-Dec-2019].