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Article

# The Validity of Loan-Use Agreements on Land Rights Certified by a Notary

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**Abstract**

*Based on Article 15 paragraph (2) of the Notary Law, notaries have the authority to perform waarmerking, which is to record handwritten letters in a special book. This authority aims to provide certainty of the date and register documents so that they are officially documented by the state, even though it does not change the status of the document to an authentic deed. This research departs from a legal phenomenon in the city of Ternate, where there is a Land Use and Management Agreement that was made privately and then registered with a notary. The uniqueness of this case lies in the legal subjects who signed the agreement, whereby the same person acted in two different legal capacities. This normative legal study evaluates two crucial aspects. First, regarding the validity of the agreement. Legally, even though it was made privately and only through a waarmerking process, the agreement is still considered valid as long as it meets the four objective and subjective requirements in Article 1320 of the Civil Code: agreement, competence, specific object, and lawful cause. The presence of a legal subject in a dual capacity is still considered valid as long as they have the authority to represent according to the articles of association of the company or partnership. Second, regarding evidentiary strength. Unlike authentic deeds, which automatically have extrinsic, formal, and material evidentiary strength, handwritten documents that have been waarmerking have perfect evidentiary strength.*

## A. Introduction

Law is essentially an abstract system of norms designed to regulate human behavior in society. Because of its abstract nature, the concept of law can be interpreted differently depending on the theoretical and practical perspectives used. In a modern constitutional state, however, law should not be understood merely as a set of written rules, but also as an instrument for ensuring order, justice, and legal certainty.[1] When legal rules are ineffective or fail to function properly, social life may become uncertain and disordered, reducing the predictability of legal relationships and the protection of individual rights. Therefore, law plays a fundamental role in maintaining social stability, protecting rights, and guiding the conduct of both individuals and public institutions.[2]

As mandated by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia embraces the principle of the rule of law (*rechtstaat*) rather than a state founded on power (*machtstaat*). This constitutional principle requires the state to protect fundamental rights, provide legal certainty, and ensure equality before the law. Within this

[1] Achmad Ali, *Menguak tabir hukum: suatu kajian filosofis dan sosiologis*, Cet. 2 (Toko Gunung Agung, 2002).
[2] Moh. Mahfud M. D dkk., ed., *Dekonstruksi dan gerakan pemikiran hukum progresif*, Cetakan I, Konsorsium Hukum Progresif (Conference) (Thafa Media, 2013).

legal framework, every act performed by individuals or legal entities must be based on and consistent with applicable legal provisions. Such an obligation is particularly significant in private law, where contractual agreements and the evidentiary instruments used to authenticate legal relationships must satisfy the legal requirements established by the prevailing regulatory system.[3]

In civil law, agreements constitute the primary legal instrument through which contractual relationships are formed.[4] An agreement reflects not only the free will of the parties involved but also serves as the foundation for the creation of rights and obligations that must be fulfilled in good faith. To ensure legal certainty and the protection of parties' interests, civil law recognizes various forms of evidence, among which written evidence in the form of deeds occupies a crucial position.[5] Statutory provisions distinguish between authentic deeds and private deeds, with authentic deeds enjoying superior evidentiary value. An authentic deed possesses perfect evidentiary force, meaning that the contents of such a deed must be accepted as true by a judge unless proven otherwise through lawful procedures.

Pursuant to Article 1868 of the Indonesian Civil Code (*Burgerlijk Wetboek*), an authentic deed is a legal instrument executed in accordance with the form prescribed by legislation and prepared by, or before, a duly authorized public official within the territorial scope of that official's authority. In the Indonesian legal system, notaries are entrusted with this authority as public officials responsible for producing authentic deeds. Their legal status and competence are further regulated under Law Number 30 of 2004 on the Office of Notary, as amended by Law Number 2 of 2014, which confirms that notaries possess the authority to execute authentic deeds as well as other powers specifically conferred by statutory regulations.[6]

A notary, as a public official, holds a unique and independent role within the legal framework. In contrast to other legal practitioners who generally represent the interests of particular parties, a notary is required to remain neutral and serves as a public legal authority entrusted with ensuring legal certainty, order, and protection in civil legal relations. The powers exercised by a notary are derived exclusively from statutory regulations and must be implemented in accordance with the limits and procedures established by law. The principal function of a notary is not simply to prepare legal documents but to create authentic deeds that formally record legal acts. Consequently, notarial deeds possess enhanced evidentiary value and provide a strong foundation for legal certainty in civil transactions.

In addition to the authority to create authentic deeds, the Notary Law grants notaries certain ancillary powers, including the authority to certify signatures and ascertain the certainty of dates on private documents by registering them in a special register. This practice is commonly referred to as waarmeking. From a juridical perspective, waarmeking constitutes an administrative act whereby a notary records and registers a privately executed document. Importantly, waarmeking does not attest to the truthfulness of the contents of the document, the authenticity of the signatures, or the accuracy of the date of signing. This distinguishes it

[3] M. Yahya Harahap, *Hukum acara perdata: tentang gugatan, persidangan, penyitaan, pembuktian, dan putusan pengadilan*, Cet. 2 (Sinar Grafika, 2005).
[4] subekti, *Pokok-Pokok Hukum Perdata*, 31 (Jakarta: PT. Intermasa, 2003).
[5] Peter Mahmud Marzuki, *Batas-batas Keabsahan Berkontrak*, 18, no. 3 (2003), https://doi.org/https://doi.org/10.20473/ydk.v18i3.14398.
[6] Adjie, Habib, *Kebatalan dan Pembatalan Akta Notaris*, 1 (Bandung : Refika Aditama, 2015).

from legalization, which involves the verification of signatures and confirmation that the document was signed in the presence of the notary.

In practice, the legal nature and consequences of waarmeking are often misunderstood by the public. Private documents that have been waarmeked by a notary are frequently perceived as having evidentiary value equivalent to authentic deeds. However, from a legal standpoint, such documents remain private deeds and do not attain the perfect evidentiary force inherent in authentic deeds. Nonetheless, waarmeking retains practical significance in civil litigation, as it provides certainty regarding the existence of a document at a specific point in time.

Legal complexity arises when waarmeked private agreements concern objects of substantial legal and economic value, particularly land rights. Land occupies a strategic position in Indonesian law due to its social, economic, and juridical dimensions. Consequently, any legal act involving land rights must be executed with heightened caution and strict adherence to legal norms. One such legal act frequently encountered in practice is the loan-for-use agreement, as regulated under Article 1740 of the Civil Code. This agreement involves the gratuitous granting of the right to use an object, with the obligation to return it after a specified period or upon completion of its use.[7]

From a theoretical perspective, a loan-for-use agreement is subject to the general requirements governing the validity of contracts under Article 1320 of the Indonesian Civil Code. These requirements include the existence of mutual consent between the parties, legal capacity to enter into an agreement, a clearly identifiable object, and a lawful cause. In addition, the concept of a contract necessarily involves the participation of at least two separate legal subjects, each possessing independent legal interests. This understanding is consistent with Article 1313 of the Civil Code, which defines an agreement as a legal act through which one or more persons undertake obligations toward one or more other persons.[8]

However, in notarial practice, there exists a phenomenon that raises significant legal concerns, namely the execution of a loan-for-use agreement over land that is privately executed and subsequently waarmeked by a notary, where a single legal subject acts in two different legal capacities. An illustrative case occurred in the City of Ternate, North Maluku Province, involving a loan-for-use and land management agreement signed by one individual acting simultaneously as the landowner and as the director of a limited partnership (CV). In this arrangement, the same individual bound herself to the agreement, ostensibly representing two distinct legal interests.

This situation raises fundamental questions regarding the validity of such an agreement, particularly in light of the absence of two opposing wills (*consensus ad idem*) between distinct legal subjects. Furthermore, it prompts a critical examination of the notary's role and responsibility in performing waarmeking on such agreements. Notably, the Notary Law does not explicitly regulate or prohibit the creation or registration of agreements in which a single

[7] Febri Rahmadhani, "Kekuatan Pembuktian Akta di Bawah Tangan yang Telah Diwaarmerking Berdasarkan Peraturan Perundang-undangan di Indonesia," *Recital Review* 2, no. 2 (2020): 93–111, https://doi.org/10.22437/rr.v2i2.9135.

[8] Bambang Sugeng dan Sujayadi, *Pengantar Hukum Acara Perdata & Contoh Dokumen Litigasi*, Cetakan ke-5 (Kencana, 2024).

individual represents multiple legal capacities, thereby creating interpretative ambiguity and potential legal uncertainty.

From a contract law perspective, the principle of freedom of contract grants the parties broad discretion to determine both the substance and the form of their agreement, as long as the arrangement does not conflict with applicable legislation, public policy, or moral standards. However, this contractual autonomy is not unlimited. Its exercise must comply with the essential principles governing civil law, particularly the requirement that a valid agreement involves at least two parties possessing separate legal interests. Where the subjective or objective elements required for contractual validity are not fulfilled, the agreement may either be subject to annulment or deemed void ab initio, depending on the nature of the defect, thereby giving rise to the corresponding legal consequences.

The evidentiary implications of such agreements further complicate the issue. A loan-for-use agreement over land that is privately executed and waarmeked by a notary raises questions regarding its evidentiary strength in civil proceedings. Specifically, it becomes necessary to examine whether waarmeking enhances the probative value of the agreement and to what extent such an agreement may serve as valid and binding evidence before a court, particularly when its substantive validity is contested.

Based on the foregoing considerations, it is evident that the issue of the validity of loan-for-use agreements over land that are waarmeked by a notary extends beyond technical notarial practice. It implicates fundamental principles of contract law, evidentiary law, and the legal responsibility of public officials in ensuring legal certainty. Accordingly, this issue warrants thorough academic examination to clarify normative ambiguities and contribute to the development of civil law doctrine and notarial practice in Indonesia.

This study therefore seeks to analyze the legal validity of loan-for-use agreements over land that are privately executed and waarmeked by a notary, as well as to examine their evidentiary strength under Indonesian civil law. By doing so, this research aims to provide a comprehensive understanding of the limits of notarial authority in waarmeking practices and to offer normative insights that may enhance legal certainty in land-related contractual arrangements.

## B. Methodology

This study employs a normative legal research method using statutory and conceptual approaches.[9] The statutory approach examines legal provisions governing contract law, notarial authority, and evidentiary rules, particularly the Indonesian Civil Code, Law Number 2 of 2014 concerning the Office of Notary, and other relevant legislation. The conceptual approach is used to analyze legal doctrines and principles, including freedom of contract, legal certainty, the validity of agreements, and the evidentiary value of private deeds and authentic deeds. In addition, a case-based analysis is conducted by examining a loan-for-use agreement over land that was privately executed and subsequently waarmeked by a notary, in which a single legal subject acted in dual legal capacities. Legal materials consist of primary legal sources (legislation), secondary legal sources (legal doctrines, scholarly books, and

[9] Andika Adhyaksa dan Fathurrahim Fathurrahim, "Kondisi Materiil Peraturan Perundang-Undangan Dalam Aspek Pembentukannya Dengan Penggunaan Artificial Intelligence," *Nomos : Jurnal Penelitian Ilmu Hukum* 5, no. 3 (2025), https://doi.org/10.56393/nomos.v5i3.2943.

journal articles), and tertiary legal sources where relevant. [10] The legal materials are analyzed through statutory interpretation, particularly grammatical, systematic, and teleological interpretation, combined with legal reasoning and doctrinal analysis to identify the consistency and coherence of the applicable legal norms. The analysis further employs deductive reasoning by applying general legal principles and statutory provisions to the specific facts of the case in order to assess the validity of the agreement, the legal consequences of dual legal capacity, and the evidentiary strength of the waarmeked private deed. Based on this analysis, the study formulates prescriptive legal arguments aimed at strengthening legal certainty in notarial and contractual practices

## C. Results and Discussion

### A Land Rights Loan Agreement Made Privately and Notarized by a Notary is Valid.

The assessment of the legal validity of a land loan-for-use agreement made in the form of a private deed and later subjected to waarmeking by a notary should be based on the core principles of Indonesian contract law, notarial law, and the law of evidence. The enforceability of such an agreement does not arise merely from the document's form or the participation of a notary as a public official. Instead, its validity depends primarily on whether the substantive legal requirements established under Indonesian positive law have been satisfied. Accordingly, waarmeking should be understood as a procedural notarial act that is distinct from the substantive legal elements required to establish a valid and binding agreement.[11]

The enforceability of contractual agreements under Indonesian law is primarily assessed based on Article 1320 of the Indonesian Civil Code, which prescribes four mandatory elements for a valid contract: the parties' mutual consent, their legal competence, a definite object, and a lawful cause. These elements must be fulfilled cumulatively to establish a legally binding agreement. Indonesian legal doctrine further distinguishes these requirements into subjective and objective categories. Consent and legal capacity are categorized as subjective because they relate to the contracting parties, whereas the existence of a definite object and a lawful cause constitute objective requirements concerning the substance of the contract. This distinction has important legal implications. A defect in a subjective requirement gives rise to a voidable agreement that may be annulled upon the request of the injured party, while the absence of an objective requirement renders the agreement void *ab initio*, meaning that it is considered to have had no legal effect from its inception.[12]

A loan-for-use agreement is expressly regulated under Article 1740 of the Civil Code and is categorized as a nominate contract. It is defined as an agreement whereby one party grants the use of an object to another party free of charge, with the obligation to return the object after a certain period or upon completion of its use. Despite its specific regulation, a loan-for-use agreement remains subject to the general principles of contract law, including the

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[10] Ahmad Mufti dkk., "Overlapping Authorities In Maritime Law Enforcement: A Case Study Of Ternate City," *Administrative and Environmental Law Review* 6, no. 2 (2025): 91–104, https://doi.org/10.25041/aelr.v6i2.4192.

[11] Roziqin Roziqin dan Fatma Adjie, "Implikasi Hukum Terhadap Perjanjian Pinjam Pakai Lahan Dalam Pembangunan Bendungan Lawe-Lawe Di Kabupaten Penajam Paser Utara," *Jurnal de jure* 14, no. 2 (2022), https://doi.org/10.36277/jurnaldejure.v14i2.705.

[12] Ruzman Md. Noor dan Hidayat Bin Muhammad, "Alat Bukti Dalam Hukum Acara Perdata Indonesia Dilihat Dari Kacamata Islam," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 15, no. 02 (2018): 175–97, https://doi.org/10.30631/alrisalah.v15i02.358.

requirements for validity under Article 1320, as well as fundamental principles such as freedom of contract, consensualism, and *pacta sunt servanda*.[13]

From a formal perspective, Indonesian civil law does not require a loan-for-use agreement over land to be executed in the form of an authentic deed. Therefore, a loan-for-use agreement made under a private deed cannot be deemed invalid merely because it is not notarized. As long as the agreement fulfills the substantive validity requirements stipulated by Article 1320 of the Civil Code, it is legally valid and binding upon the parties, with the same normative force as law for those who have entered into it, as articulated in Article 1338 paragraph (1) of the Civil Code.

However, the legal analysis becomes more complex when such a private agreement is subsequently waarmeked by a notary. Waarmeking, as regulated under Article 15 paragraph (2) letter a of the Notary Law, constitutes a notarial authority to register a privately executed document in a special register for the purpose of providing certainty as to its date. Juridically, waarmeking does not transform a private deed into an authentic deed, nor does it entail verification of the truth of the contents of the document, the authenticity of the signatures, or the legal capacity of the parties. It merely confirms that a document existed and was registered on a particular date.

The results of normative analysis indicate that waarmeking has no constitutive effect on the validity of a loan-for-use agreement. The legal validity of the agreement remains entirely dependent on the fulfillment of the substantive requirements of contract law. In this context, the notary does not bear responsibility for the material truth of the agreement's content, but only for the administrative act of recording the document. Accordingly, a loan-for-use agreement over land that is executed under a private deed and waarmeked by a notary may be considered legally valid, provided that it satisfies the requirements of consent, capacity, a specific object, and a lawful cause.

Nevertheless, the case examined in this study reveals a critical legal problem concerning the requirement of consent and the structure of legal subjects involved in the agreement. The loan-for-use and land management agreement under review was signed by a single individual acting simultaneously in two legal capacities: as the private owner of the land and as the director of a limited partnership (CV). Formally, the agreement appears to involve two legal subjects—an individual and a business entity. Substantively, however, the manifestation of legal will originates from the same individual.

In contract law doctrine, consent (*consensus ad idem*) is understood as the meeting of wills between two or more parties with distinct legal interests. Consent is not merely a formal act evidenced by signatures but a substantive convergence of independent and opposing wills. When one individual binds herself to an agreement by representing both sides, the essential element of mutual consent becomes questionable. The agreement lacks the dialectical interaction of interests that characterizes a genuine contractual relationship.[14]

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[13] Rizal Ananda Gibran dan Citraresmi Widoretno Putri, "Kedudukan Hukum Beneficial Ownership dalam Perjanjian Pinjam Nama Atas Hak Milik Tanah oleh Warga Negara Asing (Studi Putusan Mahkamah Agung 4223 K/Pdt/2022)," *Jurnal Locus Penelitian dan Pengabdian* 5, no. 1 (2026): 11–23, https://doi.org/10.58344/locus.v4i12.5257.

[14] Andi Faizkha Haditya dkk., "Analisis Tanggung Jawab Notaris Terhadap Keabsahan Prosedur Pembuatan Akta Terkait Tidak Dibacakannya Akta Perjanjian Pengikatan Jual Beli," *Jurnal sosial dan sains* 5, no. 10 (2025), https://doi.org/10.59188/jurnalsosains.v5i10.32519.

From a theoretical standpoint, a limited partnership (CV) is recognized as a legal subject capable of engaging in civil transactions, notwithstanding its status as a non-legal entity. A CV possesses separate assets and may perform legal acts through its management. However, in the context of the examined agreement, the director of the CV is simultaneously the owner of the land that constitutes the object of the loan-for-use agreement. As a result, the agreement does not reflect the interaction of two independent wills but rather a unilateral will expressed through two formal legal capacities.

This situation constitutes a fundamental defect in the requirement of consent as stipulated under Article 1320 of the Civil Code. A valid agreement presupposes the existence of at least two distinct legal subjects with potentially divergent interests.[15] When an individual binds herself to an agreement without the involvement of an independent counterparty, the agreement loses its essential contractual nature and resembles a unilateral declaration disguised as a bilateral contract.

Furthermore, such an arrangement raises concerns regarding compliance with the principle of good faith as enshrined in Article 1338 paragraph (3) of the Civil Code. Good faith is not limited to the performance of an agreement but extends to its formation. An agreement that is substantively constructed without genuine reciprocal consent may be regarded as an attempt to create artificial legal legitimacy for a legal relationship, potentially enabling abuse of legal form and causing harm to third parties.[16]

From the perspective of validity, a loan-for-use agreement over land executed under these circumstances cannot be deemed fully valid. Although the agreement may satisfy the objective requirements of a specific object and a lawful cause, the subjective requirement of valid consent is materially flawed. Consequently, such an agreement must be classified as voidable (*vernietigbaar*) due to a defect in consent. The right to seek annulment may be exercised by interested parties or by third parties who suffer legal prejudice as a result of the agreement.

The involvement of a notary through waarmeking does not cure or legitimize this substantive defect. Waarmeking has no validating effect on the underlying agreement and cannot be used to conceal or rectify deficiencies in its formation. While the Notary Law does not explicitly prohibit the registration of such agreements, notaries remain bound by professional ethics and the principle of prudence. As public officials, notaries are obliged to avoid actions that conflict with law, public order, or morality, even within the limited scope of waarmeking.

The findings of this study therefore demonstrate that the validity of a loan-for-use agreement over land executed under a private deed and waarmeked by a notary cannot be assessed in a generalized manner. Normatively, such an agreement may be valid if it fulfills all substantive requirements of contract law. However, where the agreement is executed by a

[15] Program Studi Magister Kenotariatan Fakultas Hukum Universitas Indonesia dkk., "Kekuatan Mengikat Perjanjian Utang Piutang Dengan Jaminan Hak Atas Tanah Berdasarkan Akta Pengakuan Hutang Notariil (Analisis Terhadap Putusan Pengadilan Negeri Kupang Nomor: 303/PDT.G/2020/PN.KPG)," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan ke-PPAT-an* 6, no. 1 (2022): 65–80, https://doi.org/10.23920/acta.v6i1.1058.

[16] "Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020), https://doi.org/10.35968/jh.v11i1.653.

single legal subject acting in dual legal capacities, its validity is substantively compromised, particularly with respect to the requirement of consent.

This analysis underscores a critical distinction between formal legality and substantive legality. The formal appearance of an agreement, including the involvement of a notary through waarmeking, does not guarantee its substantive validity. Waarmeking serves a limited evidentiary function and does not confer legal legitimacy upon an agreement that is fundamentally flawed in its formation.[17]

The implications of these findings are significant for notarial practice and contractual transactions involving land rights. There is a pressing need for greater legal awareness regarding the limitations of waarmeking and the substantive requirements for valid agreements. Parties must recognize that the involvement of a notary does not absolve them from ensuring that their agreements comply with fundamental principles of contract law.[18]

In conclusion, the results of this study affirm that a loan-for-use agreement over land executed under a private deed and waarmeked by a notary is legally valid only if it satisfies the substantive requirements of Article 1320 of the Civil Code and involves genuinely independent legal subjects. Where these conditions are not met, particularly in cases involving self-contracting through dual legal capacities, the agreement is legally defective and subject to annulment. This study thus contributes to the clarification of legal doctrine concerning notarial waarmeking and reinforces the primacy of substantive validity in Indonesian contract law.

**The Evidentiary Power of the Land Rights Borrowing Agreement Which is Notarized by a Notary**

The issue of evidentiary strength occupies a central position in civil law, particularly in disputes arising from contractual relationships.[19] In the Indonesian civil law system, which is strongly influenced by the continental European legal tradition, the law of evidence places written instruments at the apex of evidentiary hierarchy. Within this framework, the distinction between authentic deeds and private deeds is fundamental, as it determines not only the probative value of a document but also the extent to which the facts stated therein bind the parties and the court.[20] The results of this study indicate that a loan-for-use agreement over land that is privately executed and subsequently waarmeked by a notary raises complex legal consequences in terms of its evidentiary force, particularly when the substantive validity of the agreement is contested.

Under Indonesian civil law, a private deed (*onderhands akte*) is a written document made without the involvement of a public official, signed by the parties, and intended to serve as evidence of a legal act. Its evidentiary strength is governed primarily by Articles 1874 and 1875 of the Civil Code, which stipulate that a private deed obtains binding evidentiary value

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[17] Noor dan Muhammad, "Alat Bukti Dalam Hukum Acara Perdata Indonesia Dilihat Dari Kacamata Islam."

[18] Ali Arben dan Andrew Shandy Utama, "Kedudukan Akta Notaris Sebagai Akta Autentik Dalam Hukum Perdata Berdasarkan Undang-Undang Jabatan Notaris," *ANDREW Law Journal* 3, no. 1 (2024): 1–11, https://doi.org/10.61876/alj.v3i1.26.

[19] Alyssa Adelia dan Ridha Wahyuni, "Keabsahan Perjanjian Jual Beli Tanah dari Objek Tanah Warisan yang Belum Dibagi Berdasarkan KUHPerdata," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 691–98, https://doi.org/10.22225/juinhum.5.1.8317.691-698.

[20] Dede Agus dkk., "The Freedom Of Contract Principle In Contract Of Employment," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24, no. 1 (2025): 1993–2012, https://doi.org/10.31941/pj.v24i1.5976.

only after its authenticity is acknowledged by the party against whom it is invoked or after it is legally verified.[21] In contrast, an authentic deed (*authentieke akte*), as defined in Article 1868 of the Civil Code, possesses perfect evidentiary force (*volledig bewijs*), meaning that the facts formally stated therein must be accepted as true by the judge unless rebutted through specific legal remedies such as forgery proceedings.[22]

Waarmeking, as practiced by notaries pursuant to Article 15 paragraph (2) of the Notary Law, occupies an intermediary position in the evidentiary landscape. The findings of this research confirm that waarmeking does not alter the fundamental legal nature of a private deed.[23] A loan-for-use agreement over land that is waarmeked by a notary remains a private deed and does not transform into an authentic deed. The notary's role in waarmeking is limited to registering the document in a special register and affixing a statement indicating that the document has been submitted for registration on a certain date. Consequently, the notary does not attest to the truth of the contents, the legality of the agreement, or the authenticity of the signatures affixed thereto.

Nevertheless, the results of doctrinal and statutory analysis demonstrate that waarmeking is not devoid of legal significance.[24] Although it does not confer perfect evidentiary force, waarmeking enhances the evidentiary value of a private deed in a limited and specific manner. In particular, it provides certainty regarding the existence of the document at a certain point in time. This temporal certainty is especially relevant in civil disputes where the chronology of legal acts is contested, such as disputes involving overlapping rights to land, claims of unlawful occupation, or allegations of bad faith.[25]

In the context of land loan-for-use agreements, the evidentiary function of waarmeking becomes even more critical. Land rights in Indonesia are subject to strict legal regulation due to their social and economic importance. Although a loan for use agreement does not transfer ownership or create a real right over land, it establishes a contractual relationship that may justify physical control or use of land by the borrower. In disputes concerning land possession, courts frequently examine whether the party in possession has a lawful basis for such possession. A privately executed loan for use agreement that is waarmeked by a notary may serve as written evidence indicating the existence of a contractual basis for land use, even though it does not enjoy the conclusive evidentiary force of an authentic deed.

However, the evidentiary strength of such an agreement is not absolute and remains subject to challenge. The results of this study show that the probative value of a waarmeked loan-for-use agreement depends heavily on the acknowledgment of the signatures by the

[21] Mariam Darus Badrulzaman, ed., *Kompilasi hukum perikatan: dalam rangka memperingati memasuki masa purna bakti usia 70 tahun*, Cet. 1 (Citra Aditya Bakti, 2001).
[22] Arben dan Shandy Utama, "Kedudukan Akta Notaris Sebagai Akta Autentik Dalam Hukum Perdata Berdasarkan Undang-Undang Jabatan Notaris."
[23] I. Dewa Agung Dharma Jastrawan dan I. Nyoman Suyatna, "Keabsahan Perjanjian Pinjam Nama (Nominee) Oleh Warga Negara Asing Dalam Penguasaan Hak Milik Atas Tanah Di Indonesia," *Kertha Semaya : Journal Ilmu Hukum* 7, no. 2 (2019): 1, https://doi.org/10.24843/KM.2019.v07.i02.p13.
[24] Ananda Gibran dan Putri, "Kedudukan Hukum Beneficial Ownership dalam Perjanjian Pinjam Nama Atas Hak Milik Tanah oleh Warga Negara Asing (Studi Putusan Mahkamah Agung 4223 K/Pdt/2022)."
[25] Muhammad Fikri Rahmadsyah dkk., "Perlindungan Hukum Terhadap Pembeli Hak Atas Tanah dalam Akta Jual Beli dan Pemindahan Hak yang dibuat oleh Notaris (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 3059 K/Pdt/2020)," *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 3 (2025): 2063–74, https://doi.org/10.38035/jihhp.v5i3.3790.

parties.[26] Pursuant to Article 1875 of the Civil Code, a private deed gains full evidentiary force between the parties if its signatures are acknowledged. If one party denies the authenticity of the signature, the evidentiary value of the document is suspended until verification is conducted through legal mechanisms such as handwriting examination or witness testimony. In this regard, waarmeking does not preclude a party from denying the signature, as the notary does not witness the signing process.

A critical dimension of evidentiary strength emerges when the loan-for-use agreement is executed by a single individual acting in two legal capacities, such as a landowner and a director of a company.[27] The findings of this research indicate that, in such circumstances, the evidentiary value of the agreement is significantly weakened, not due to the absence of waarmeking per se, but because of substantive defects in the formation of the contract. From a contractual perspective, the existence of two opposing wills (*consensus ad idem*) is a prerequisite for the formation of a valid agreement. When the same individual signs on behalf of both parties, the distinction between the contracting parties becomes formalistic rather than substantive.[28]

In evidentiary terms, this situation creates a paradox. On the one hand, the document may formally appear to involve two parties, particularly if one party is an individual and the other is a legal entity. On the other hand, the factual reality reveals that the will of both parties emanates from a single individual.[29] Courts assessing such agreements are likely to scrutinize not only the formal structure of the document but also the underlying legal reality. The results of doctrinal analysis suggest that judges are inclined to prioritize substantive justice over formal compliance, particularly in cases involving potential abuse of legal form.[30]

Where a loan-for-use agreement is found to lack a genuine meeting of minds, its evidentiary strength is correspondingly diminished. Even if the agreement is waarmeked by a notary, it may be deemed insufficient to establish the existence of a valid contractual relationship.[31] In such cases, the document may still function as indicative evidence (*begin van bewijs*), but it cannot independently establish the legal basis for land use. Additional evidence, such as witness testimony, correspondence, or evidence of actual performance, becomes necessary to support the claims derived from the agreement.[32]

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[26] Restri Ismi Wardhani dan Rhama Wisnu Wardhana, "Tanggung Jawab Notaris Terhadap Kekuatan Pembuktian Akta Dibawah Tangan Yang Telah Di Waarmerking," *Jurnal Ilmu Kenotariatan* 1, no. 2 (2020): 19, https://doi.org/10.19184/jik.v1i2.23431.

[27] Ardiyansah Ardiyansah, "Tinjauan Yuridis Terhadap Status Akta Perjanjian Pengikatan Jual Beli (PPJB) yang Mana Hak Atas Tanahnya Belum Bersertifikat dibuat dihadapan Notaris," *Jurnal Multidisiplin Indonesia* 2, no. 7 (2023): 1579–84, https://doi.org/10.58344/jmi.v2i7.317.

[28] Dwi Atmoko, "Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku," *Binamulia Hukum* 11, no. 1 (2023): 81–92, https://doi.org/10.37893/jbh.v11i1.308.

[29] Patricia Popelier, "Five Paradoxes on Legal Certainty and the Lawmaker," *Legisprudence* 2, no. 1 (2008): 47–66, https://doi.org/10.1080/17521467.2008.11424673.

[30] Selamat Lumban Gaol, "Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020), https://doi.org/10.35968/jh.v11i1.653.

[31] Patricia Caroline Tiodor dkk., "Pembuktian Wanprestasi Perjanjian Utang Piutang Secara Lisan," *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 5, no. 1 (2023): 27–39, https://doi.org/10.37893/krisnalaw.v5i1.208.

[32] Asmaniar Asmaniar dan Fiter Jonson Sitorus, "Pendaftaran Objek Fidusia Sebagai Jaminan Utang," *Justice Voice* 1, no. 1 (2022): 11–21, https://doi.org/10.37893/jv.v1i1.32.

The discussion further reveals that the evidentiary strength of a waarmeked loan-for-use agreement must be assessed in light of the principle of legal certainty.[33] Waarmeking serves the purpose of preventing disputes over the existence and date of a document, thereby contributing to legal certainty in civil transactions. However, legal certainty cannot be achieved solely through formal registration of documents. Substantive compliance with contract law principles remains indispensable. Where the substantive validity of the agreement is flawed, the evidentiary benefits of waarmeking are insufficient to cure such defects.[34]

Another important finding concerns the role of the notary in relation to evidentiary strength. While the notary's involvement in waarmeking is limited, the notary nevertheless bears a moral and professional responsibility to exercise prudence. Although the Notary Law does not explicitly prohibit the waarmeking of agreements involving a single individual in dual capacities, notaries are bound by the principle of due care (*zorgvuldigheidsbeginsel*). Failure to exercise such care may indirectly affect the evidentiary reliability of the document, particularly if the notary's conduct is questioned in subsequent litigation.[35]

From a judicial perspective, courts tend to differentiate between formal evidentiary strength and material evidentiary value. Formal evidentiary strength refers to the legal classification of a document as an authentic or private deed, while material evidentiary value relates to the credibility and persuasiveness of the document in proving the facts alleged. A waarmeked loan-for-use agreement may possess limited formal evidentiary strength, but its material evidentiary value may vary depending on the surrounding circumstances. Where the agreement is supported by consistent behavior of the parties, such as uninterrupted land use, payment of land taxes by the owner, or acknowledgment by third parties, courts may accord greater weight to the document.[36]

Conversely, where the agreement is challenged on grounds of conflict of interest, absence of consent, or abuse of legal form, its material evidentiary value may be substantially reduced. In disputes involving land, courts are particularly cautious, as erroneous reliance on weak evidence may lead to unjust deprivation of land rights. The results of this research indicate that judges often require a higher standard of proof in land-related disputes, even when written agreements exist.

In light of these findings, it becomes apparent that waarmeking should not be misconstrued as a mechanism that elevates a private deed to the level of an authentic deed. Its evidentiary function is auxiliary rather than determinative. For parties seeking strong evidentiary protection, particularly in transactions involving land, the execution of an authentic deed before a competent public official remains the preferred option. A loan-for-use agreement embodied in an authentic deed provides greater legal certainty and minimizes the risk of evidentiary disputes.

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[33] Reza Ria Nanda dan Rouli Anita Velentina, "Tanggung Jawab Notaris Dalam Legalisasi Dokumen Warga Negara Asing Menurut Konvensi Apostille," *JURNAL USM LAW REVIEW* 5, no. 1 (2022): 270–81, https://doi.org/10.26623/julr.v5i1.4920.

[34] Wardhani dan Wardhana, "Tanggung Jawab Notaris Terhadap Kekuatan Pembuktian Akta Dibawah Tangan Yang Telah Di Waarmerking."

[35] Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2020): 66–82, https://doi.org/10.26623/jic.v5i1.2119.

[36] Pita Permatasari dkk., "Keyakinan Hakim Pada Alat Bukti Satu Saksi Perkara Perdata," *Iblam Law Review* 5, no. 2 (2025): 137–44, https://doi.org/10.52249/ilr.v5i2.627.

Nevertheless, the prevalence of waarmeked private agreements in practice reflects socio-economic realities, including cost considerations and limited public awareness of legal distinctions. This underscores the need for greater legal education and clearer regulatory guidance. The findings suggest that legislative clarification regarding the legal consequences of waarmeking, particularly in relation to land-related agreements, would enhance legal certainty and reduce litigation.

In conclusion, the evidentiary strength of a loan-for-use agreement over land that is privately executed and waarmeked by a notary is inherently limited. While waarmeking provides certainty as to the existence and date of the document, it does not confer perfect evidentiary force nor does it guarantee the substantive validity of the agreement. The probative value of such an agreement depends on acknowledgment of signatures, the presence of genuine consent between distinct legal subjects, and the consistency of supporting evidence. Where these elements are absent, the agreement's evidentiary strength is significantly weakened, and it may fail to serve as a reliable basis for asserting rights over land. Accordingly, waarmeking should be understood as a supplementary evidentiary mechanism rather than a substitute for authentic deeds, particularly in legal relations involving land rights

## D. Conclusion

Based on the results of the research and the discussion of the two legal issues presented in Chapter I above, the following conclusions may be drawn. First, from a juridical perspective, waarmeking constitutes a legal act performed by a notary under authority expressly granted by statutory law, namely to record and register a privately executed document in a special register in accordance with the prescribed order. Accordingly, waarmeking does not serve to attest to the correctness of the date, the authenticity of the signatures, or the substantive truth of the contents of the private document, as would be the case in legalization or formal authentication. In relation to the case study described in the background of this research, the legal act performed by the director acting in the capacity of managing partner (pesero pengurus/director) was legally appropriate and fulfilled all elements required under Article 1320 of the Indonesian Civil Code, namely mutual consent, legal capacity, a specific object, and a lawful cause. Second, a private document registered by a notary through waarmeking, in terms of its evidentiary strength and legal standing in judicial proceedings, may be regarded as having full probative value insofar as the parties whose signatures appear in the document acknowledge its authenticity and correctness. In such circumstances, a privately executed document that has been waarmeked is expected to serve a meaningful evidentiary function in court proceedings. Moreover, waarmeking is carried out by a legally authorized public official, namely a notary, in accordance with the provisions of the Notary Law. In principle, waarmeking aims to provide legal certainty that the private agreement in question genuinely exists, rather than constituting a document created without a lawful basis or purpose

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