

Responsibility of Notary Letter Approval on Under Hands Contract

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Abstract. *One of the legal actions by Notary in addition to making an authentic deed is making the ratification of an underhand letter and according an underhand letter (legalization) by a Notary. Underhand letters that need to be ratified include a letter of sale and purchase agreement in which a transaction occurs. In applying and interpreting the meaning, method and form of making an underhand letter ratification, interpretations and contradictions often arise regarding this matter, especially with regard to the Notary's Responsibilities in making underhand letter ratification. The purpose of this study is to understand about the responsibility of a notary in making the ratification of an underhand letter in the theory of legal protection and legal certainty theory. This study used a normative research method with statutory approach and library approach. The results of this study indicate that the form of the agreement in the ratification of the letter under the hands of a Notary with legal protection that the notary has no legal obligation to the agreement made by the party making the agreement. However, legal protection is given through the provision of sanctions to Notaries in accordance with the Notary Position Act if it is proven that the Notary has committed deviant actions or behavior or violates the Notary Position Act and the Notary Code of Ethics. The forms of sanctions given are administrative sanctions, civil sanctions, and other sanctions (criminal sanctions and sanctions for a notary code of ethics).*

Keywords: Civil; Contract; Notary; Underhand.

1. Introduction

One of the legal actions or actions carried out by a Notary in addition to making an authentic deed is making an underhand letter ratification (*waarmerking*) and recording an underhand letter (legalization) by a Notary. Letters under the hand that need to be ratified include a letter of sale and purchase agreement in which a transaction occurs. In Surah Al Baqarah it is written about the study of the basics, the benefits and importance of recording and recording in every financial transaction¹.

"O ye who believe, if you do Muamalah in a non-cash way for the specified time, you should write it down and let a writer among you write it down correctly. And don't let the writer be reluctant to write it down as Allah taught it, so let him write and let the debtor imply (what is to be written), And let him fear Allah (his Lord) and let him not reduce anything from his debt." In Surah Al Baqoroh verse 282, it has been firmly reminded again for Muslims to study, practice and maintain the habit of writing, especially in making an agreement (buying and selling), debts, lease, etc.) which is done in a non-cash manner within the specified time. In that paragraph it can be obtained if there are provisions that are regulated such as:

- In making a contract agreement, someone is needed to record the transaction
- Both parties involved in the agreement should re-examine carefully the entire contents of the agreement so as not to cause problems in the future.
- Contract agreements and witnesses can be evidence if there is a problem regarding the agreement that has been made.
- If there is someone between the two parties who deliberately complicates the agreement, then the person concerned is classified as a wicked person (has injured his religious teachings)

In applying and interpreting the meaning of, the method and form of making the ratification of the letter under the hand still often arise interpretations and conflicts regarding this matter, especially with regard to the responsibilities of a notary in making the ratification of the letter under the hand.

There are differences according to the notary legislation in applying the form of an underhand deed according to Article 15 paragraph (2) letter a of the UUJN with Article 1874a of the Civil Code, namely: at the closing of the deed under the

¹ Aptina, "Kekuatan Mengikat Klausula *Addendum* Mengenai Besarnya Bunga Pinjaman yang Dibuat Delapan Bulan Setelah Perjanjian Utang Piutang Dibuat", Jurnal Education and development Institut Pendidikan Tapanuli Selatan, Vol.9 No.4 Edition November 2021, p.20 http://repository.ubaya.ac.id/40825/1/Aptina_KEKUATAN%20MENGIKAT%20KLAUSULA%20ADDENDUM.pdf

hand according to 1874a of the Civil Code there is a notary statement that the signatory is known or has been introduced to him while according to the law there is no notary position, according to the Civil Code it is read that the contents of the deed have been explained to the signatory while according to the law the position of a notary is not explained or read out².

Differences according to laws and regulations give rise to the form of an underhand deed in practice made by a notary there are differences in its application, namely according to Article 1874a of the Civil Code and also according to Article 15 paragraph (2) letter a of the UUJN. It can be concluded that it causes problems with the duties of the notary's position in terms of the form of a private deed that is legalized by a notary.

2. Research Methods

This study was used qualitative research with statutory & normative approach. And the data was collected by literature study with coherence documents and resources which matched with Responsibility of Notary Letter Approval on Under Hands Contract.

3. Result and Discussion

3.1. Responsibilities of a Notary in Ratification of Underhanded Letters based on Legislations

Notaries are public officials authorized to make authentic deeds and other authorities as referred to in Article 1 UUJN. Based on Article 15 paragraph (2) letter a UUJN, the powers of a notary are:

- validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book,
- to record letters under the hand by registering in a special book,
- make copies of the original underhand letters in the form of copies containing descriptions as written and described in the letter concerned,
- validate the compatibility of the photocopy with the original letter,
- provide legal counseling in connection with the making of the deed,
- make a deed related to land; or
- make a deed of minutes of auction. Article 1874a of the Civil Code explains that there are legal provisions, namely: if the interested party requires signed underhand writings, the parties may request a statement

² Cheren Shintia Pantow, Djefry W. Lumintang and Anastasya E. Gerungan, "Hubungan Hukum Para Pihak Dalam Perjanjian Kerjasama Dagang Antar Perusahaan Menurut Hukum Perdata", *Lex Privatum* Vol. VIII/No. 2/Apr-June/2020, p.10, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/download/29777/28834>

from a notary or other official appointed by law. where in the statement it states that the signatory is known to him or has been introduced to him and the contents of the deed have been explained to the signatory.

Based on Article 1874a of the Civil Code, it can be seen that there are legal provisions given to the public to be able to request a Notary or other official appointed by law to carry out statements on private deeds by the community. This statement can be understood as aimed at strengthening the proof of private deeds made by the community because in the verification procedure, not only the parties but also Notary officials.

According to Article 15 paragraph (2) letter AUUJN, it can be known that the authority of a notary in the case of a private deed is to ratify the signature and determine the certainty of the date of the underwritten letter by registering it in a special book. Based on this article, it can be understood that if the notary applies Article 1874 of the Civil Code, the notary will not only ratify the signature and certainty, but also read the contents of the agreement in the form of an underhand deed.

According to Article 1874a of the Civil Code that a private deed that is requested from a Notary to make a statement cannot be an underhand deed that has been signed before appearing before a Notary or not signed before a Notary because according to the provisions of the article the parties must be before a Notary.

Based on Article 1874 of the Civil Code that a Notary in proving an underhand deed can be asked to state that the contents of the deed have been explained by the Notary. Based on this, it can be seen in the manufacture of underhand evidence that the notary can be asked by the parties who signed the underhand deed to explain the contents of the deed to both parties. Based on the article, it can be seen that the Notary in explaining the private deed, is stated in the signature deed which indirectly the Notary not only ratifies the signature but also ratifies the contents of the deed which has been completely understood by the parties.

As a result of differences in laws and regulations, there are differences between Notaries in carrying out the ratification of private deed where there are those who apply Article 15 paragraph (2) Letter a of the Notary Position Act and there are also those who apply Article 1874a of the Civil Code so that it can be seen that this resulted in no comply with good legal rules in terms of the rules for ratification of deed under the hand by a Notary.

Differences in the laws and regulations that occur between Article 15 paragraph (2) Letter a of the Act on Notary Positions and Article 1874a of the Civil Code regarding the legalization of private deeds that can be understood to cause multiple interpretations of the law in the ratification of private deeds for Notaries so that it Indirectly, it can be interpreted that legal certainty has not been achieved regarding the ratification of private deeds for Notaries in Indonesia.

The phenomenon of the occurrence of differences between Article 15 paragraph (2) Letter a of the Law on Notary Positions and Article 1874a of the Civil Code can cause the legal objectives in the case of the State of Indonesia regulating the ratification of private deeds that have not been achieved because there is still legal uncertainty regarding the legalization of the deed below. Article 1874a of the Civil Code can also be understood that the regulations that have been around for a long time which can be seen are regulations inherited from the Dutch state and now in the Netherlands itself the Civil Code has been updated. Article 15 paragraph (2) Letter a The Law on Notary Positions is a new regulation and in its making it has gone through various processes including Prolegnas and academic studies.

Based on the comparison of the two regulations, it can be seen that Article 15 paragraph (2) Letter a of the Law on Notary Positions is a better and new regulation because it has gone through many processes in Indonesia and is more in line with the development of the legal needs of the community.

According to Sudikno Merukusumo, Legal certainty is a guarantee that the law must be implemented in a good way and that those entitled by law can obtain their rights and that decisions can be implemented. ³Based on this understanding, when talking about legal certainty, the roots will lead to the existence of law and the essence of law. In the context of the research conducted, legal certainty is about the existence of law and the essence of law in the ratification of letters under the hands of a Notary. The existence of the law in the ratification of an underhand letter by a Notary means the existence of a legal basis that regulates the ratification of an underhand letter by a Notary. Meanwhile, the essence of the law in ratifying an underhand letter by a Notary means that it is about the meaning or purpose of the existence of a legal basis that regulates the ratification of an underhand letter by a Notary.

Article 1 paragraph 3 of the 1945 Constitution expressly stipulates that the Republic of Indonesia is a legal state. As a state of law, Indonesia certainly has the existence of law to regulate the survival of the community. The existence of the law includes notarial activities. In general, notarial activities are regulated in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary. The existence of this law is a legal certainty to provide legal guarantees to the public against Notaries. The law provides legal certainty which includes the notary position, notary authority, notary duty, Notary prohibition, etc. which have a function to guide the behavior of a Notary. Through this law, it can provide legal certainty to respond to Notary behaviors that deviate or are not in accordance with applicable norms and ethics that have a detrimental impact on society or the state. This is stated in Article 16 paragraph (1) of Act No. 2 of 2014 concerning Amendments to Act No. 30 of

³Dahlang UIN Alauddin Makassar, KEPASTIAN HUKUM AKTA DIBAWAH TANGAN DALAM PERSPEKTIF KEWENANGAN NOTARIS, *Jurnal Al-Adl* Vol. 9 No. 2, July 2016, p. 60, url: <https://ejournal.iainkendari.ac.id/index.php/al-adl/article/download/678/624>

2004 concerning the Position of a Notary which regulates the obligations of a Notary and Article 17 paragraph (1) of Act No. 2 of 2014 concerning Amendment to Act No. 30 of 2004 concerning the Position of Notary which regulates the prohibition of Notaries. Through these two articles, of course, it has provided legal guarantees in the behavior of a Notary so that he is able to behave professionally and behave according to the norms and ethics that apply in social life in Indonesia.

In some cases, a Notary has certainly been faced with a task to ratify a letter or deed under the hand of a Notary or called *waarmeking*. According to Sudikno Mertokusumo, an underhand deed is a deed that is intentionally made with the aim of being a means of proof by interested parties in an engagement without the assistance of an official.⁴ The letter or deed under the hand in question is a letter that is evidence of an agreement such as a land sale and purchase agreement, scholarship agreement, debt agreement, etc. The agreement in question is a legal agreement. According to Pitlo, A legal agreement is a legal relationship between two or more people where one party is entitled to an achievement and the other party is obliged to an achievement.⁵ An agreement that results in the engagement being a legal fact or legal event,⁶ A legal agreement is also explained in Article 1313 of the Criminal Code which states that an agreement is a dispute in which one or more people bind themselves to one or more other people. To create an agreement, it must meet the conditions stated in Article 1320 of the Criminal Code, namely:

- There is an agreement between the parties to the agreement

An agreement will occur through an offer and acceptance process. Bidding means the activity of giving a statement in the form of a will by one party which is then conveyed to the other party, While acceptance is a statement of will that is a response to an offer made by the other party.⁷

- There is the ability of the parties to make an agreement

People who are considered capable are those who are not prohibited by law from taking legal actions. Those people are people who are considered adults. In Article 39 paragraph (1) of the UUJN to be able to appear before a Notary, a person must be at least 18 years old or married and capable of carrying out legal actions.

- The existence of the object of the agreement

The object of the agreement must be something that can be determined, can be traded, possible and can be valued with money.⁸

⁴Mertokusumo, Sudikno, (1998), *Hukum Acara Perdata*, Liberty, Yogyakarta, p.125

⁵Dimas Agung Prastomo dan Akhmad Khisni, "Akibat Hukum Akta Di Bawah Tangan Yang Dilegalisasi Oleh Notaris", *Jurnal Akta* Vol 4 No 4 Desember 2017, hal. 737 url: <http://jurnal.unissula.ac.id/index.php/akta/article/viewFile/2519/1881>

⁶Ibid

⁷Op.cit

⁸Pramono, Dedy., 2015, "Kekuatan Pembuktian Akta yang Dibuat oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia". *Lex Jurnalica* Volume 12 No. 3, p. 249

- There is a lawful reason

Cause or cause is the content of the agreement itself. In Article 1337 of the Criminal Code, it has been determined that a prohibited cause is if the cause is contrary to the law, decency, and public order.

Thus the agreement that will be written on a deed already has legal certainty as described above. This can be a guideline and legal guarantee for the parties who will make an agreement which will later be presented to a Notary for ratification. In Article 15 paragraph (1),(2),and (3) Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary has regulated the authority of a Notary including in ratifying under-handed deeds. Article 15 paragraph (2) letter a of the Law on Notary Positions states that the authority of a Notary in ratifying the signature of an underhand letter by registering it in a special book. It is increasingly clear that in ratifying the letter under the hand by a Notary, he has a clear legal existence and is able to provide legal certainty.

Warmekingis the process of registering documents privately in a special book made by a notary, in which the document has been prepared and signed by the parties beforehand. For example, the Cooperation Agreement Letter which was made and signed by Mr. X and Mr. Y on May 22, 2021. If you look at the incident, the cooperation agreement document has been signed by the parties on May 22, 2021 so that the document cannot be legalized but can only be verified. *waarmeking* or register at the Notary's Office. The purpose of *Waarmeking* itself is only as evidence that the document has been made by the parties and has been registered with a Notary.

In the phenomenon of ratification of letters under the hand by a notary, there is clear legal certainty. This legal certainty includes the existence of a law that is able to regulate the behavior of a Notary in carrying out his profession and position so that he is able to behave professionally and in accordance with applicable norms and ethics.

A Notary in ratifying an underhand letter must be able to behave and act in accordance with the provisions stipulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions, namely must be able to act in a trustworthy manner, honest, carefully, independent and impartial. In ratifying the letter under the hand, a Notary must also act disciplined in carrying out the applicable procedures.

The procedure in question is a procedure that is in accordance with Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004, such as first registering an underhand letter into a special book that has been provided. Doing the bookkeeping of letters under the hand in a special book, make a copy of the letter under the hand which contains a description of the contents of the letter in question, provide legal counseling in connection with the making of the deed, etc.

Thus it can be said that a Notary has a responsibility to be able to provide assurance that he is able to carry out, doing, and realizing the existence of laws that regulate the activities of ratifying letters under the hand, including to see or check the validity of agreements made by the parties concerned. This form of responsibility must be carried out in order to achieve the goal of legal certainty, namely providing a sense of security and legal guarantees for the community to support increasing public trust in Notaries.

Legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.⁹ Legal protection is also defined as an action to protect or provide assistance to legal subjects by using legal instruments.¹⁰

Thus, it can be said that legal protection in ratifying letters under the hands of a Notary is an effort to provide protection or action to protect the public using legal instruments regarding the ratification of letters under the hands of a Notary.

As described previously, that the ratification of a letter under the hand by a Notary has a legal basis as regulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary. Based on the law, it has been regulated that the authority of a Notary in ratifying an underhand letter is to register an underhand letter and record it in a special book that has been provided, usually referred to as a handwritten list book. So it can be seen that the Notary basically has no responsibility for the content or cause of the related letter.

Notaries are only responsible for registering and recording letters under the hand into the register book for letters under the hand. This means that if a problem arises or creates a problem for the party who made an agreement with

⁹Mertokusumo, Sudikno, (1998), *Hukum Acara Perdata*, Liberty, Yogyakarta

¹⁰Santoso, M Agus., (2014), *Hukum, Moral dan Keadilan Sebuah Kajian Filsafat Hukum*, Second Print., Kencana, Jakarta

the agreement, the Notary has no responsibility for the contents of the agreement. However, an underhand letter that has been registered and recorded in the handwritten letter register book by a Notary can be used as a means of proof if necessary. According to Sudikno Mertokusumo, the power of proof of a legalized deed or letter that has been legalized has meaning

- Proving logically or scientifically which means being able to provide absolute certainty.
- Proving conventionally which means being able to provide certainty that is related and has levels
- Proving juridically which means historical proof.

The minimum value for proof of an underhand deed has been regulated in Article 1875 of the Criminal Code as follows:

- The value of the proving power

In the deed or letter under the hand, the strength of proof is attached which must first fulfill the formal and material requirements:

- Made by at least 2 (two) parties without the intervention of the authorized official
- Signed by the maker and the parties who made it
- Content and signature recognized

If these conditions have been met then in accordance with the provisions of Article 1875 of the Criminal Code:

- The value of the strength of proof is the same as the authentic deed;
- Thus the value of the power of proof attached to it is perfect and binding

- Minimum limit of proof

If its existence is said to be perfect by fulfilling formal and material requirements, In addition to having the power of hilling, it also has a minimum limit of proof and is able to stand alone without the help of other evidence. So it can be said that he himself is capable of being the minimum limit of proof.

In terms of legal protection, The notary has no responsibility for problems that arise on the party making the agreement related to the contents of the agreement. In his efforts, Notaries are only neutral parties who do not take sides with anyone, especially those who make agreements to help provide evidence in the form of an underhand deed that has been registered and recorded in the register of underhanded letters.

The deed or letter which will later be used as evidence against the agreement problems that arise. However, if in carrying out their duties the Notary is proven to have behaved in a deviant manner or violates Act No. 2 of 2014 concerning

Amendments to Act No. 30 of 2004 concerning the Position of a Notary, then in terms of legal protection, the Notary must be responsible for his behavior that is detrimental to society or the state.

In this case, an example can be given if in dealing with the problem of the agreement it is proven that the Notary is negligent not to register and record the letter or deed under the hand into the register book under the hand. Or negligent resulting in the loss of data under the hand that has been registered or recorded. Or in more severe cases, if it is proven that the Notary has made a forged deed for certain purposes, the Notary must be responsible for his actions that are detrimental. The form of responsibility as legal protection is through the provision of sanctions that have been regulated in the Law on Notary Positions, among others:

- Civil Sanctions

Civil sanctions against Notaries are regulated in Article 16 paragraph (1) letter m, Article 41 by referring to Article 38, Article 39, and Article 40, Article 48, Article 49, Article 50, and Article 51 it is explained that several forms of civil sanctions given are in the form of reimbursement of costs, compensation and interest if the deed in question only has the power of proof as an underhand deed. But before that, the articles that have been violated by the Notary must be explained.

- Administrative Sanctions

Administrative sanctions are given in the form of a written warning, temporary stop, honorable discharge and dishonorable discharge. The sanction is given if the Notary commits a violation of Article 7 paragraph (1), Article 16, Article 17, Article 19, Article 32, Article 37, Article 54, Article 58, and Article 59 of the Law on Notary Positions.

- Other Sanctions and Cumulative Sanctions

Other sanctions have the meaning of code of ethics sanctions and criminal sanctions that are not regulated in the Law on Notary Positions. A Notary can be sanctioned by a code of ethics if he violates Article 4 of the Notary Code of Ethics. Sanctions for the code of ethics have been regulated in Article 6 of the Notary Code of Ethics in the form of a warning, suspension, and dismissal from association membership.¹¹ Then for criminal sanctions will be given if the Notary commits a criminal act. The criminal sanctions given refer to the criminal sanctions that apply in Indonesia

Thus the form of responsibility in an effort to protect the legality of a letter under the hands of a Notary is the imposition of sanctions against a Notary in accordance with the Notary Position Act if the Notary is proven to have committed deviant actions and violated the Notary Position Act., Criminal Law or Notary Code of Ethics. This is a form of legal protection for the ratification of a letter under the hand by a Notary to the public who use the services of a Notary. However, if the problem that occurs is related to the contents of the

11

agreement by the parties who made the agreement, the form of responsibility in ratifying the deed under the hands of a Notary is to exercise the authority of a Notary listed in the Notary Position Act, which is to show back the deed under the hand that has been registered and recorded in the list of letters under the hand to be evidence. However, in this case the Notary has no responsibility for the contents of the agreement which is a problem for the parties who made the agreement.

In making the agreement, the Notary has responsibilities in accordance with the objectives of the Notary as stated in Article 15 paragraph (2) Letter e of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, namely providing legal counseling in connection with the making of the deed. The form of responsibility based on the law is to look again at the agreement that has been written on the deed and provide legal counseling about the validity of the legal agreement that has been made. So that if the agreement is not considered legally valid, it can be returned to the party making the agreement for review.

- Legal Consequences in Ratification of Underhanded Letters by Notaries based on Positive Law and Islamic Law Perspectives

The legal consequences that can occur in the ratification of a letter under the hand by a Notary have been regulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, precisely in Article 15 paragraph (2). Underhand deeds are divided into three types, namely:¹²

- Underhanded deed where the related party gives a signature on stamp duty without the presence or involvement of a public official.
- Underhand deed that has been registered by a notary or authorized official
- Deed under the hand and legalized by a notary or authorized official.

In Article 15 paragraph (2) of the Law on the Position of a Notary, the intended deed is a private deed legalized by a Notary or authorized official. The deed under the hand has been signed, the date of the letter is determined by the Notary and has been registered in the register of letters under the hand. According to Article 15 paragraph (2), the meaning of ratification or legalization carried out by a Notary on an underhand letter is as follows:¹³

- The notary guarantees that it is true that the person whose name is listed in the underhand deed is the person who signed the related underhand deed.

¹²Zainal, Asikin., (2012), *Pengantar Ilmu Hukum*, Rajawali Press, Jakarta

¹³Ibid

- The notary guarantees that the date of signature in the deed under the hand is actually done on the date of the deed under the hand.

However, the meaning of the ratification of an underhand deed in Article 15 paragraph (2) of the Notary Position Act is different from the meaning of a registered deed. If the deed or letter under the hand is recorded, the meaning is that what is guaranteed by the Notary is that the deed or letter is indeed there on the day and date the registration or bookkeeping is carried out by the Notary.

Legalization in the real sense is to prove that the documents made by the parties are indeed signed by the parties who made them. Therefore, it is necessary to testify from a public official who is authorized to do so, who in this case is a notary public to witness the signing on the same date as the signing date. Thus, legalization is legalizing the intended document before a notary by proving the correctness of the signature of the signatory and the date. In addition to *Waarmarking* and Legalization as mentioned above, usually the parties also carry out photocopying which is sometimes termed the same term, namely "legalization". In practice, what is done for the term "legalization" is to match a photocopy of a document with the original with the title Matching Photocopy. The photocopy will be stamped / stamped on every page that is photocopied with the notary's initials and the last page of the Photocopy Match will include a statement that the photocopy is the same as the original.

Putting a stamp on such an underhand deed is one of them Legalization or Ratification. For the purposes of legalization, the signatories of the deed must come before a notary, they may not be signed at home beforehand. Then the notary checks identification, namely ID card or other identification. The understanding of acquaintance is different from the everyday meaning, namely that the notary must understand correctly according to his identification card, that the person who comes is the same as his acquaintance card, he is the person, who resides at the address of the card, the picture matches. After checking that it is appropriate, the notary reads the deed under the hand and explains the contents and purpose of the letter under the hand.

An underhand deed legalized by a Notary has the power of proof that is not the same as an authentic deed, because the signature contained in the underhand deed can be denied by the signer and the party submitting it as evidence must prove its veracity through other evidence or witnesses. As well as legalized underhand deeds do not meet the requirements as authentic deeds, where one of the requirements for authentic deeds is to be made by an authorized public official, while underhand deeds legalized by a Notary are made by the parties.

If the signature in the letter under the hand has been ratified by the Notary and as well as the certainty of the date of the deed under the hand, the deed under

the hand has the power of proof ratified by the Notary in terms of the signature and date of the deed. A deed or letter that has perfect evidentiary power is a deed described as follows:¹⁴

- A deed that can be used to prove the deed is an authentic deed. The power of outward evidence can be said to be the strength of evidence given by the law, it is determined that the deed is an authentic deed.
- Deed that is able to prove the truth in a formal sense of what is witnessed, seen, heard and carried out by a Notary as a public official is said to be the power of formal proof. It can be said as the power of formal proof if:
 - The truth of the date of the deed;
 - The truth contained in the deed;
 - The identity of the parties involved
 - The truth where the deed was made
- The deed is referred to as the strength of material evidence if the contents of the deed are considered correct for everyone.

Referring to Article 15 paragraph (2) of the Law on Notary Positions, it can be seen that a private deed applied by a Notary can result in the strength of formal evidence. Deeds that are not ratified or legalized by a Notary will have weak evidentiary powers or even have no evidentiary power at all in civil proof law. The power of formal evidence created in the underhanded deed can be a means of proving the truth in the event of a dispute or problem related to the contents of the underhanded deed without the need to use other supporting evidence. The deed that has been implemented by the Notary in accordance with Article 15 paragraph (2) of the Notary Position Act also has stronger evidentiary power than the general deed. However, the strength of the evidence cannot be equated with an authentic deed as perfect evidence in civil evidence law. This is because the deed under the hand only has the power of formal proof while it does not have the power of outward proof and the power of material proof. An underhand deed legalized by a notary can have the same power as an authentic deed if the underhand deed is recognized and not denied in court.

The strength of evidence from letters that are not deed is left to the judge's consideration. (Article 1881 paragraph (2) of the Civil Code). With the legalization of the deed under the hand, the judge has obtained legal certainty regarding the date and identity of all parties who entered into the agreement and the signatures affixed under the letter are actually from the party who put the name on the letter and the person who signed the agreement. who puts his signature under the letter, there is no further denial or saying that one of the parties does not know what the contents of the letter are, because all its contents have been

¹⁴Ibid

read and explained beforehand before the parties put their signatures before a Notary with witnesses.

In the law of evidence there are several theories about the burden of proof that can be used as guidelines, including:

- The theory of proof that is merely reinforcing (bloot affirmative), namely: 'Those who put forward something must prove it and not those who deny or deny it;
- Subjective theory which states that a civil process is the implementation of subjective law or aims to defend subjective law, which means that whoever claims or claims to have rights must prove;
- The objective theory which states that filing a lawsuit means that the plaintiff asks the court for the judge to apply objective legal provisions to the events proposed.
- A public theory that gives judges wider authority to seek the truth by prioritizing the public interest.

If it is known that the deed under the hand guaranteed by the Notary is proven to have incorrect formal truth, the Notary must be responsible for the untruth of the formal letter under the hand which has been ratified by the Notary. Civil sanctions are sanctions that can be imposed on errors that occur as a result of default, so that it can be seen that formal untruths in underhanded deeds legalized by a Notary can be given sanctions if they are proven to have violated the law or are in breach of contract. The civil sanctions imposed are in the form of reimbursement sanctions, compensation and interest. The cost in question is the cost that has been incurred. What is meant by loss is the result of losses suffered and what is meant by interest is profit that has been calculated previously and will be received. The sanction can be sued against a notary based on a legal relationship between the notary and the parties involved in the related private deed agreement.¹⁵ Compensation that can be requested by the injured parties in the event of an act of violating the default or violating the law against the ratification of a deed under the hand by a Notary based on Article 1865 of the Criminal Code that everyone who claims to have rights including the right to ask for losses is obliged to prove the existence of these rights. So the amount of loss cannot be determined by the parties who feel aggrieved without going through the process of proof in court.

Criminally if a Notary legalizes an underhand letter as referred to in Article 15 paragraph (2) of the Notary Position Act, the Notary cannot be punished if the Notary commits the act with the intention of implementing the provisions of the

¹⁵Ibid, p.117

law. This is stated in Article 50 of the Criminal Code that whoever commits an act to carry out the provisions of the law, not punished. So that a Notary can only be convicted if there is an intention to commit an act outside of what is determined by law and must fulfill a certain criminal article.

In addition to being based on the Law on Notary Positions, Al-Quran is also the legal basis that regulates the behavior of Notaries as Muslims. A Muslim is commanded by the Quran to use his mind and pay attention to what is real, is it *'alahudan (in truth) or 'ala dalal (in truth) perverted*). Al-Quran Surah Al-Baqarah verse 282 is the legal basis for the authority of a Notary in Islamic law. It is explained in Surah Al-Baqarah verse 282: *"O ye who believe, if you don't do it in cash for the specified time, you should write it down. And let a writer among you write it down properly and let the writer not be reluctant to write it down as Allah has taught him, then let him write, and let the wooded man dictate (what is to be written), and let him fear Allah his Lord, And let him not reduce anything from his debt. If the debtor is a person who is weak in mind or weak (his situation) or he himself is not able to implement it, So let the guardian imply it honestly. And bear witness with two witnesses from the men (among you). If there are no two men, then one reminds him. Do not let the witnesses be reluctant (to testify) when they are summoned; and do not get tired of writing the debt, both small and large until the deadline for paying it. That kind of thing, more just in the sight of Allah and strengthen your testimony and closer to not (causing) your doubts. (Write your mu'amalah) unless your mu'amalah is a cash trade that you carry out among yourselves, then there is no sin for you, (if) you don't write it. And bear witness when you are buying and selling; and let not the writer and the witness make it difficult for one another. If you do (which is), then verily it is an act of disobedience to you. And fear Allah; Allah teaches you; and Allah knows all things."*

According to An-Nur's interpretation, it is explained that Allah commands the believers so that in every agreement they enter into a written agreement. For Muslims, Shari'a provisions that bind directly to the Muslim person in their implementation do not require assistance from state institutions, such as prayer, fast, Zakat and Hajj, and *Muamalah* worship should be an opportunity to enforce Islamic law. With regular *Muamalah*, human life can become more peaceful and peaceful. In Surah Al-Baqarah verse 282 it is known that the verse regulates the authority of a Notary in Islamic law.

In the verse *"O you who believe", if you don't pay in cash for the specified time, you should write it down.*" It can be seen that the writing in question can be explained as follows:

- *Muamalah* is like buying and selling, lease, debts, etc. which is done in cash.
- *Muamalah* debts that include qiradh and greetings.
- Other non-cash agreements or trusts.

If someone does *mu'amalah* in cash, then it is required to make a written agreement when referring to Surah Al-Baqarah verse 282 ". Thus, if there is a dispute or problem with the agreement, it can be facilitated by the existence of written evidence regarding the agreement that has been made. Notaries have responsibilities regarding the evidence, one of which is a letter or written deed. A notary must be able to first assess what is desired by the party making the agreement and find out which form or law is in accordance with the will until it ends with ratification through signatures between the parties concerned. There are several notary prohibitions that can be obtained from the quote from Surah Al-Baqarah verse 282, namely:

- Don't let the writer be reluctant to write it down as Allah taught it
- Let him not reduce anything from his debt;
- Do not let the witnesses be reluctant (to testify) when they are summoned;
- Don't get tired of writing down the debt, both small and large until the deadline for paying it
- Don't let the writer and the witness make things difficult for each other
- Don't you (witnesses) hide your testimony

Based on Surah Al-Baqarah verse 282 it is known that if you enter into an agreement, it must be accompanied by a written agreement that has a function as evidence. So as a notary, he must be able to provide certainty of the date of making the deed in order to provide strength of proof against the deed, especially on under-handed deeds. In the verse that reads "don't get tired of writing the debt", whether small or large until the deadline for paying it" means that a writer or in this case a notary must not be bored or bored to write an agreement because it can be used as a means of proof. Then it is included in the authority of a Notary to make copies of the deeds that have been made, in the case of an underhanded deed, the Notary must also record it in the register of letters under the hand. If it is associated with the letter Al-Baqarah verse 282, it can be obtained about what kind of Notary practices that can conflict with the contents of the letter Al-Baqarah verse 282.

- Write properly

In Surah Al-Baqarah verse 282 it is said that someone who is trusted to write an agreement must write it correctly, which means that it is in accordance with the rules of writing that refers to the word fair and right, does not violate the provisions of Allah and the laws that apply in society. In addition, it also does not harm one of the parties to the *Muamalah*. So it can be said simply that writing

correctly is if the author has the ability to write, knowledge of the rules and procedures for writing agreements and honesty. In this verse, the word fair is mentioned before knowledge, so it can also be said that justice must be prioritized in an agreement.

- Do not refuse client requests

A Notary is not allowed to refuse a client without *syar'i* reasons or reasons justified by religion and state law. Instead, a Notary must be able to provide his services for free or without asking for compensation to the poor who are in need of the services of a Notary.

- Pious person

Writing that must be in accordance with Allah's orders prohibits the making of deeds that are contrary to Allah's orders or religion. There are two things that must be understood in the oath or appointment of a Notary:

- Notaries must be responsible to God, because the oath or promise that has been uttered is based on their respective religions, everything that is done by a Notary in carrying out his duties must be accounted for in the name of God.
- Notaries are obliged to be responsible to the state and society which means that the state gives trust to the notary to carry out his duties in the field of civil law, namely in making evidence in the form of a deed that has perfect evidentiary power and to the public that the notary can be trusted in all his abilities related to carrying out his duties as state officials in the field of civil law.

- There are commands to dictate/dictate

The notary must make an implication or conclusion in the writing of the deed with the aim of being a reinforcement for the party who is making the agreement so that he can be his witness. Imposing is an obligation that must be done and if it cannot be done due to certain conditions then it is also obligatory to be represented.

- Seen or attended by two male witnesses or two female witnesses and one male witness

Actually the provision of male or female gender is not the main concern. However, when viewed from an Islamic perspective, a Muslim Notary should take a male witness because if he takes a female witness, both can cause sin for the maker.

- The right of a notary to get the results of his hard work

The author or witness must get security guarantees because they have carried out their obligations in accordance with Islamic law. So if things that are detrimental to the author or witness occur, then indeed the person who does it has left Allah's Shari'a and deviated from His path. This is because the writer and the witness are vulnerable parties to become the target of anger from the parties who entered into the agreement.

Thus it can be summarized that in accordance with the letter Al-Baqarah verse 282 there are five main prohibitions against the position of a Notary, namely:

- Don't let the writer be reluctant to write it down as Allah taught it
- Let him not reduce anything from his debt
- Do not let the witnesses be reluctant (to testify) when they are summoned
- Don't let the writer and the witness make it difficult for each other
- Don't you (witnesses) hide your testimony

4. Conclusion

The legal consequences that arise in the ratification of an underhand letter based on Article 15 paragraph (2) of the Notary Position Act is that if the letter is legalized by a notary then the underhand letter has the power of formal proof but does not have the power of outward and material proof. In practice, the authority of a Notary has also been regulated in the Law on Notary Positions and in an Islamic perspective it is also regulated in Surah Al-Baqarah verse 282 which further strengthens the position of a Notary. If in carrying out his duties a Notary is proven to have violated a breach of contract or the law, he may be subject to civil sanctions in the form of reimbursement of costs, compensation and interest by going through the evidentiary process. However, a Notary cannot be punished if he does not violate the criminal article and takes action in the interest of carrying out the provisions of the Notary Position Act. Violations committed by a Notary of course can also tarnish himself as a Muslim who fears Allah by carrying out all His commands contained in the Al-Quran. In the letter Al-Baqarah verse 282 it is written that a Notary must be able to be a party that helps provide written evidence in an agreement. Basically, most of the contents of the Al-Baqarah letter have provided a general description that regulates the function of a Notary which includes authority to its prohibitions.

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