

The Responsibility of Notary Agreement of The Truth Under Hand Notarized as Evidence in The Process of Trial in Court

Eka Daryanti¹, Mochammad Ipnu Wardani² and Gunarto³

Abstract. The legal consequences under the hand agreement validated by notaries who are connected with the responsibility of Notary if the agreement be used as evidence in court. This study aims to analyze the responsibility of the Notary to the truth of the under the hand agreement that was authorized by the Notary, to analyze the legal consequences of the agreement under hand, legalized by the Notary as evidence in evidence during the trial. From the results of this research is that: 1) responsibility to the truth Notary under the hand agreement that was authorized by the Public Notary. Notary is the only guarantee certainty regarding the date, identity and signature of the parties to the agreement. Notary ensures certainty at the time of signing the agreement, that the parties who signed the agreement is valid and not others, the parties who signed properly attended and have been aware of the contents in the agreement because it is read by the notary, so that the parties can not deny, 2) the legal consequences under the hand agreement, legalized by the Notary as evidence in court proving that the under the hand agreement only give legal effect to the advantage of a perfect proofing to whom sipenadatangan about to give evidence, while against the third party free pembuktiannya legal consequences. If the authentic act has the strength of evidence was perfect, under the hands of the legal consequences certificate of proof rests with the judge to consider.

Keywords: Responsibility; Under the Hands Agreement; Legalization.

1. Introduction

Notary is a position of trust as one of the legal profession that provides services in the field of legal certainty and legal protection to the public at large by way of making authentic act in a legal act.⁴ Notary is a public official authorized to make an authentic agreement and other authorities as stipulated in Act No. 30 of 2004 amended by Act No. 2 of 2014 concerning Notary.⁵

Agreement is a letter used as evidence in which there are signatures that contain events that formed the basis for a right or engagement, the agreement is made on purpose to be used as a tool in a proof.⁶ Letter agreement divided into two: the authentic act and agreement are not authentic.⁷

An authentic agreement is a letter or agreement outset officially created intentionally to serve as a means of proof. This means that since the beginning made letter or certificate is intended as proof in case of disputes in the future. Created officially because its shape has been determined by the Act and made before a competent

¹ Master of Notary's Student, Faculty of Law, Universitas Islam Sultan Agung email ekadaryantisukandar@gmail.com

² Students of Master of Law, Faculty of Law, Universitas Islam Sultan Agung email ibnuwardani686@gmail.com

³ Profesor of Faculty of Law UNISSULA

⁴ Abdul Bari Azed 2005 *Profesi Notaris sebagai Profesi Mulia* Media Studies Jakarta p.68

⁵ Sudarsono 2007 *Kamus Hukum* Cet V Rineka Cipta Jakarta p.39

⁶ Ibid p.151

⁷ Abdulkadir Muhammad 2015 *Hukum Acara Perdata Indonesia* Ed. X Citra Aditya Bakti Bandung p.131

public authority in this case is a Public Notary. According to article 165 HIR (Article 285 Rbg, 1870 BW) stated that the authentic act is a perfect proof for both parties, their heirs and those who get the right thereof, which means it's still authentic act can also dilumpukan by evidence opponents. Authentic act against third parties is evidence of the strength of evidence-free, meaning that the assessment submitted to the consideration of the judge.⁸

In the provisions of article 1874 of the Civil Code states that "were treated as writing under the hand is a certificate signed under hand, letters, lists, letters household affairs, and other writings made without the intermediary of a public official".

Notary duties and authority not only makes authentic agreements, notary also served registration and attestation letters under the hands of so-called Legalization and waarmeding, make a copy of the letter under the hand and certify compatibility with a photocopy of the original. Legalization ie issuance of the under the hand agreement that has been read by the notary and then signed tangano by the parties before a Notary at that time also to ensure the certainty of the date of signature of the agreement in question. Notary and then record the number of legalization in the register of legalization.

The purpose of the agreement either written agreement entered into agreements under the arms and in front of Notary is to be used as evidence if there's ever a problem or dispute between the parties or their claim either of the parties or any other party. In the provisions of Article 1902 of the Civil Code states that "The so-called preliminary evidence in writing is all written certificate from the person against whom a claim is filed or from the person represented by him that would justify the events of law raised by someone as a base demands it"⁹

Agreements made under the hand means the agreement is only made by the parties that promise without just a standard and simply adapted to the needs and interests of the parties concerned. The strength of the proof only between the parties that made the agreement, if the parties do not deny and acknowledge the agreement (the parties recognize the signature contained in the agreement). While the authentic act or agreement made by the competent public authority has the strength of evidence was perfect when used as evidence. Here it can be seen that the under the hand agreement does not have the certainty and strength of proof is very weak. If emerging disputes or problems related to legal actions done by the parties and one party denying never made or signed the act can be said under the hand agreement of a criminal offense are very limited, so they sought other evidence that supports that is considered sufficient to achieve the truth according to the judge. But what if the under the hand agreement legalized by a Notary?

Based on the description of the background of the above problems, it is prepared formulation of research problems, namely how the responsibility of the under hand agreement legalized? What are the legal consequences if the under the hand agreement that was authorized by the Notary be used as evidence in court proceedings in the Court.

Research Methods

In this research research approach used is a normative juridical. Normative juridical approach is the approach taken by the primary legal materials by means of studying the theories, concepts, principles of law and legislations related to this research. This

⁸ Op.cit p.157

⁹ The Civil Code Article 1902

approach is known gathering of the literature approach is by studying books, legislations and other documents related to this research. Specifications of this research is descriptive analytical research, which is based on existing conditions according to the data obtained in the study, then linked and compared with existing theories.¹⁰

Data collection methods used in the study are:

- Research literature, this literature study aims to assess, analyze, and explore the secondary data is used as supplementary material in the writing of the study.
- Field research, as for the method of data collection in the field that use is interview by exploring information from informants. Informant in this research is the Judge in the District Court and the Notary in Semarang.

Analysis of the data used in this research is qualitative analysis is used without using numbers or statistics and mathematical formulas, that is presented in narrative form. Results of the analysis will be presented descriptively with the hope to describe clearly the proof of the under the hand agreement notarized, in order to obtain a clear and comprehensive picture of the problems studied.

2. Results And Discussion

Notary is a public official authorized to make the authentic act and other authorities concerning all agreements, agreements, and statutes that are required by laws and regulations and or desired by the interest expressed in an authentic agreement, guaranteeing the creation date of the agreement, saving certificates, giving goose agreement, copy, and official copies, all along the manufacture of the agreement was not also be assigned or excluded to other officials or any other person specified by law.¹¹

Notary is a public official who is authorized to make the agreement as legal services to the public for the sake of ensuring the certainty of the legal consequences in the field of civil about all agreements, agreements and statutes that are required by legislation or dikendaki by an interest to be stated in an authentic agreement, ensure the certainty of the date of agreement, saving certificates, giving grosse, copy, and official copies.

Legalization is a validation of the letters made by the parties, where the parties make the letter came before Notary. Public Notary read and explained the contents of the letter dated and signed by the parties and the Notary record it in the register of Legalization. Legalization in article 15 paragraph 2 letter of Act No. 2 of 2014 concerning Notary "Notary authorized to certify the signatures and set a firm date under the letter of the hand by enrolling in special books".

Procedure for Legalization which qualify under section 1874 a of the Civil Code:

- The signing of the agreement (the parties) are known or are introduced to the Notary
- Before the agreement was signed by the client, notaries must first be read out its contents.
- Then the agreement was signed by the penghadap before a notary.

Legalization agreement under hand by a notary is a limited recognition of the date of the agreement by the parties, so that the under the hand agreement that was approved legalization only certainty about the date, identity and signature of the parties to such agreements. In this case the parties named in the letter of the

¹⁰ Soerjono Soekanto op.cit p.10

¹¹ Article 15 of Act No. 2 of 2014 concerning on Notary

agreement shall affix signatures or fingerprints under the agreement which states that the parties did not deny or say that one of the parties or all parties concerned did not know the contents in the agreement, because they have read Notary as a competent public authority and in front of witnesses Notary know.

2.1. Responsibility of Notary to the truth of Under Hand Agreements which Notarized.

Notary is a public official authorized to make an authentic agreement and other authorities as stipulated role in Act No. 2 of 2014 concerning Notary. In addition to creating authentic agreements, notary also register and certify the agreement under hand, provide legal advice and explanation of the Act. Legalization is the issuance of the under the hand agreement made by the parties and then submitted to the Notary for jointly signed before a Notary.

The letters were signed which are contained within an event that became the basis of a right or engagement were agreed, had been made by the parties to be used as proof that knowing the legal consequences. Documentary evidence set out in Article 138,165,167 HIR; and Section 1867-1894 of the Civil Code. As evidence of the letter or the certificate must be signed by the parties. According to Article 1874 of the Civil Code "with the signature a writing under the hand likened affixing a thumbprint with a statement dated from a Notary or another official who pointed the Act which states that pembubuh thumbprint was unknown to him or have been introduced to him, that the agreement has been explained to the man, and that afterwards the thumbprints affixed to the article before the official concerned. "

The signation on a under the hand agreement is finger or thumbprint must be strengthened by a statement given date by a Notary or other officer authorized or appointed by the Act, in the description contained clauses that Notaries are known or are introduced to him those who affix signatures and thumbprints, then signatures and thumbprints are affixed before a Notary.

Against the under the hand agreement that was authorized by the Notary, the Notary is responsible for four things:

- Identity. Notaries are obliged to meniliti clearly the identity of the parties will sign a agreement under other people's hands or are introduced through a legitimate identity (ID card, driving license, passport)
- The contents of the agreement. Notary shall read out the contents of the agreement to the parties and ask you if it so desired contents of the agreement of the parties.
- Signature. The parties must sign the agreement before a Notary
- Date. Notary put the date on the certificate and then entered into a register Legalization.

Notary authority in legalizing a under the hand agreement followed by a lack of accountability for such actions. When viewed from the position of the under the hand agreement that was authorized by the Notary by under the hand agreement that is not certified by a Public Notary, basically equally not authentic in terms of Proof.

Thus the responsibility of the Notary to the truth of the under the hand agreement that legalized is limited to ensure the certainty of the signature, it means certain that the person who signed in the certificate is valid and not others, and the parties signed in the agreement properly attended and know the contents of the agreement such as being read to by a Notary.

2.2. The Under Hand Agreement Effects legalized by Notary in Evidence in Court.

Basic examination in court cases obtained through the process of proving that the truth can be revealed truth to be achieved. Proof is a process of revealing the facts suggest that a legal event really happened, legal events that have occurred can be either actions, events, or circumstances as are prescribed by law.¹²

Proof is required in order to refute or deny about what digugatkan or to justify a right. Proof is about events or legal relationship is not about the law. Truth event or a legal relationship that is what needs to be proven. If the plaintiff has acknowledged or not contradict what the plaintiff sued by proving it does not need anymore.

A judge shall determine which party is required to prove whether the defendant or the plaintiff. Didalam civil procedure law is the most important means of evidence, based on that evidence the judge will make a decision about who won and who lost. The judge allowed to make decisions based on evidence that is valid throughout the Act does not regulate the contrary, free judges assess evidence.

In proceedings under the agreement of the hand may be submitted as evidence but has the strength of evidence is very limited, so it is still necessary evidence in support of that is enough to reach the truth according to the law as evidence.

With legalized agreement under the hands of the judges has gained certainty about the date and the identity of the parties listed in the agreement, as well as signatures affixed is really coming from the parties affix signatures, the parties have to know the contents of the agreement because of previous was read and signed before a notary and witnesses notary know.

The under the hand agreement does not have the strength of evidence of birth. If the signature on the under the hand agreement recognized by the person concerned, then the agreement is proof perfect that apply to the parties concerned, while against third parties under the agreement of hands have the strength of evidence that are free.

Agreement under the hands have the strength of evidence Formin if the signatures on the agreement recognized. This means that information or statement above the signature is correct information or statements of dipenandatangan. Strength formal proof of the agreement under this same hand with formal evidentiary force of an authentic agreement.

The strength of evidence material of the under the hand agreement according to article 1875 of the Civil Code, the under the hand agreement that is recognized then the content of information in the under the hand agreement acting as true to who made it and for the benefit of those to whom the statement was made. Agreement under semburna hand just gave evidence in favor of whom sipenadatangan about to give evidence, while on the other hand the power of free proof.

Article 1881, paragraph 2 of the Civil Code states that the under the hand agreement that was authorized by the Notary strength of proof rests with the judge to consider it.

3. Closing

3.1. Conclusion

Based on the description that has been said above, it can be deduced as follows:

- The responsibility of the Notary to the truth of the under the hand agreement that dilegalisasinya is about the certainty of the signature, it means certain that the person who signed in the certificate is valid and not others, the parties signed in the agreement properly attended and know the contents in such agreement having been read by Notary.
- The legal consequences if the under the hand agreement that was authorized by

¹² Sudikno op.cit p.125

the Notary be used as evidence in court proceedings in the Court.

- The under the hand agreement is not a legal effect of evidence that if the agreement was denied by either party or both parties. Agreement under hand only due to the rules of evidence are perfect if the under the hand agreement recognized, fill in the under the hand agreement acting as true to who made it and for the benefit of those to whom the statement was made. Agreement under semburna hand just gave evidence in favor of whom sipenadatangan about to give evidence, while on the other hand the power of free proof. Article 1881, paragraph 2 of the Civil Code states that the under the hand agreement that was authorized by the Notary strength of proof rests with the judge to consider it.

3.2. Suggestion

Based on the above conclusions, the authors suggest the following:

- The under hand agreement in order to have the strength of evidence must be furnished with the signature, thumbprint and photograph or video of the event signer certificates from being denied the parties.
- Any agreement or arrangement should be made by authentic act or before a Notary so that if an when required as evidence has the strength of evidence is perfect.

4. References

- [1] Abdul Bari Azed 2005 *Profesi Notaris sebagai Profesi Mulia* Media Studies Jakarta
- [2] Sudarsono 2007 *Kamus Hukum* Cet V Rineka Cipta Jakarta
- [3] Abdulkadir Muhammad 2015 *Hukum Acara Perdata Indonesia* Ed. X Citra Aditya Bakti Bandung
- [4] The Civil Law
- [5] Herziene Het Indonesisch Reglement (HIR)
- [6] Act No. 30 of 2004 concerning Notary
- [7] Act No. 2 of 2014 on the Amendment of Act Number 30 of 2004 concerning Notary