

Legal Force of Under-Hand Deeds Legalized by a Notary

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Abstract. *This study aims to analyze the comparative legal force between private deeds legalized by a notary and those not legalized, and to examine the responsibilities and legal protections for notaries in this process. Notaries, as public officials, have important authority to provide legal certainty by verifying signatures and confirming the legalization date on private deeds. The approach used in this research is a statute approach. This type of research is normative. The data used in this study are secondary data obtained through literature review and supported by information from a notary in Tegal. The research concludes: 1) A legalized deed has a stronger position because the notary guarantees that the signature is authentic and the date of its creation is certain. However, this legalization does not change the status of a private deed into an authentic deed, but can strengthen the evidentiary value of the deed if a dispute arises in the future. 2) The notary's responsibility in legalizing a private deed is limited to formal aspects, namely ensuring the accuracy of the signature, the identity of the parties, and the certainty of the date, not to the contents of the agreement. A notary can be held accountable if in carrying out his duties there is negligence or violation of applicable provisions. However, as long as the notary carries out his authority in accordance with laws and regulations and the code of ethics, the notary obtains legal protection, including through the role of the Notary Honorary Council which regulates the procedure for summoning a notary in legal proceedings.*

Keywords: *Evidentiary; Legalization; Notary; Protection.*

1. Introduction

Notary is one of the professions that plays a role in the law enforcement process in Indonesia by providing certainty, order and legal protection in society, especially in terms of the need for binding evidence other than witness evidence, namely in

the form of making an Authentic Deed.¹A Notary is a Public Official who has the sole authority to make authentic deeds regarding all acts, agreements and stipulations which are required by a general regulation or by those whose interests are desired to be expressed in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosses, copies and quotations, all as long as the making of the deed by a general regulation is not also assigned or excluded to another official or person (according to Article 1 of the Notary's Office Regulations). Apart from authentic deeds made by a Notary, there are other deeds which are known as private deeds, namely deeds which are deliberately made by the parties for proof without the assistance of an official who made the deed. In other words, an underhand deed is a deed that is made without the mediation of a public official, but rather is made and signed personally by the party entering into the agreement.²

A private deed is a deed made by only the parties, containing an agreement agreed to by both parties, made privately, not before a notary. Regarding the contents of a private deed, the notary does not have full responsibility like an authentic deed. The notary is only tasked with legalizing and registering the private deed.³In Article 15 paragraph (2) letter a of the Notary Position Law, a Notary, in his position, has the authority to validate signatures and determine the certainty of the date of private letters, by registering them in a special book. The authority of a notary to validate deeds or private letters can be analyzed from the provisions of Indonesian legislation and the provisions contained in the provisions of Indonesian legislation. In this case, the authority of a Notary has been determined in Article 15 paragraph (2) of Law Number 12 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of a Notary, namely: (2) In addition to the authority as referred to in paragraph (1), a Notary also has the authority to:⁴

- a. Validate signatures and determine the certainty of the date of private letters by registering them in a special book;
- b. Recording letters under hand by registering them in a special book;
- c. Make a copy of the original private letter in the form of a copy containing the description as written and described in the letter in question;

¹Wibby Yuda Prakoso, 2017, Responsibilities and Legal Consequences of Notarial Deeds Made by Substitute Notaries After Their Term of Office is Completed, Unissula Deed Journal, Vol. 4 No. 4.

²R. Soeroso, Private Agreements: Practical Guidelines for the Preparation and Application of Law, Sinar Grafika, Jakarta, 2010, p. 8.

³Ida Ayu Chandra Cintiadewi, I Nyoman Putu Budiarta, Ni Gusti Ketut Sri Astiti, 2020, Legal Protection for Notaries in Legalizing Private Deeds That Become Objects of Dispute, Journal of Legal Preferences, Vol. 1 No. 1.

⁴Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.

- d. Conducting photocopy verification to ensure the photocopy matches the original letter;
- e. Providing legal advice regarding the preparation of deeds;
- f. Making deeds related to land; or
- g. Making an Auction Minutes Deed

According to Article 1888 of the Civil Code, the evidentiary force of written evidence rests on the original deed. If the original deed exists, then a copy and an abstract that correspond to the original will be considered authentic as long as the minutes of the original deed remain part of the notary's protocol. If the notary retires, the protocol must be continued by another notary in accordance with statutory regulations.

Written evidence can be in the form of authentic writings and private writings.⁵ Both authentic and private deeds are intended to serve as evidence. The important difference between the two types of written evidence is that authentic deeds have perfect evidentiary value. With the perfection of a notarial deed as evidence, the deed must be viewed as it is and there is no need to evaluate or explain it except for the contents written in the deed. Meanwhile, private deeds have evidentiary force as long as the parties acknowledge it or no party denies it, such inappropriate behavior is evidence. If one party does not acknowledge it, then the burden of proof is transferred to the denying party and the assessment of the denial of evidence is left to the judge.

Evidence of private deeds and authentic deeds must have a formulation regarding the validity of an agreement in accordance with Article 1320 of the Civil Code and materially bind the parties who made it in accordance with Article 1338 of the Civil Code as an agreement that must be followed by all parties (*pacta sunt servanda*).

The proof of a private letter is weaker than an authentic letter or deed made before a public official, but private letters are still an option due to economic factors, the cost of making a letter with an authorized official is higher than making a private letter. Therefore, many people prefer to make private letters and then for certain purposes they legalize the letter with a public official, one of which is a notary.

A public official is a person who performs work or duties to serve the interests of the community as a whole. The position of a notary as a public official is a specific area of work or duty specifically established by law. The role of a notary is mentioned in the Civil Code, particularly in Book 4, concerning Evidence and Expiration.⁶ A private letter that has been legalized by a Notary is an acknowledgment of the date the letter was made, namely providing validation

⁵Article 1867 of the Civil Code.

⁶Munir Fuady, 2003, New Paradigm Limited Liability Company, Citra Aditya Bakti, Bandung, p. 2

regarding the date, identity, and signatures of the parties concerned. In this case, the parties whose names are listed in the letter cannot say that the parties or one of the parties did not know what the contents of the letter were, because the contents had been read out beforehand before the parties affixed their signatures in front of a public official, in this case a Notary.

There is a difference according to notary laws and regulations in applying the form of private deeds according to Article 15 paragraph (2) letter a UUJN with Article 1874a of the Civil Code, namely: at the close of the private deed according to 1874a of the Civil Code there is a notary's statement that the signatory is known to him or has been introduced to him, whereas according to the law the position of notary does not exist, according to the Civil Code it is read that the contents of the deed have been explained to the signatory, whereas according to the law the position of notary is not explained or read.

Differences according to statutory regulations give rise to the form of private deeds in practice which are made by notaries, there are differences in their application, namely some are according to Article 1874a of the Civil Code and also some are according to Article 15 paragraph (2) letter a UUJN. This can be concluded to give rise to problems with the duties of a notary in terms of the form of private deeds which are legalized by a notary.

Notaries who legalize private documents are often mistaken for the document's author or party to the document. As a result, notaries are often named as witnesses or co-defendants in legal disputes related to the document. Notaries, in carrying out their profession, do not have immunity from applicable law. Even as public officials appointed directly by the government, notaries can be prosecuted if they violate the code of ethics, which then harms the parties. However, if a notary has carried out their duties in accordance with the parties' requests, they cannot be prosecuted if they can prove they followed applicable procedures.

Based on the background described above, the author is interested in discussing a study entitled, THE LEGAL FORCE OF UNDER-HAND DEEDS LEGALIZED BY A NOTARY.

2. Research Methods

The approach used in this research is a statute approach. This type of research is normative. The data used in this study are secondary data obtained through literature review and supported by information from a notary in Tegal.

3. Results and Discussion

3.1. Comparison of legal force between private deeds legalized by a notary and private deeds not legalized by a notary in the Indonesian legal system.

In the field of Civil Law, there are two types of deeds, namely authentic deeds and private deeds. This is stated in Article 1867 of the Civil Code (KUHPer), which states:

"Written proof is done with authentic writings or with private writings."

A private deed is drawn up without a notary. This deed is typically created because the parties want to avoid the hassle and already have mutual trust. In a private deed, the notary is not responsible for the contents of the agreement or contract. The notary's sole duty is to legalize and record the private deed brought to the notary.⁷

Private deeds have their own characteristics and peculiarities, namely:

- 1) The form is free;
- 2) It does not have to be made in the presence of a public official;
- 3) It still has the power of proof as long as it is not denied by the person who made it, meaning that the contents of the deed do not need to be proven again unless someone can prove otherwise (deny its contents);
- 4) If proof is required, the evidence must be supported by witnesses and other evidence. Therefore, in private deeds, it's usually best to include two adult witnesses to strengthen the evidence.

Some things to note regarding private deeds include:⁸

- 1) In the evidentiary process, it is independent evidence. Therefore, the judge is free to determine whether the evidence is admissible or not.
- 2) Even though it can be made by or without a notary, a private deed still has legal force, but it is not as strong as an authentic deed.
- 3) In terms of costs, this type of deed is generally cheaper when compared to an authentic deed because it does not involve a notary or other authorized official.
- 4) The process of making this type of deed is faster because it only involves the parties involved and can immediately prepare and sign the document.

⁷Ira Koesoemawati and Yunirman Rijan, 2009, *Notary, Achieve Hope of Success*, Jakarta, p. 86

⁸Interview with Mrs. Laeli Nur Chamidah, SH, MKn Notary & PPAT Tegal City on December 24, 2025

5) It lacks evidentiary power and poses a potential risk of misuse because it doesn't involve a notary or authorized official. This also makes it more likely to be forged than an authentic deed.

Private deeds are divided into three types, namely:

- 1) A private deed where the relevant parties sign on a stamp without the presence or involvement of a public official.
- 2) Private deed that has been registered by a Notary or authorized official (warmeking)
- 3) Private deed and legalized by a notary or authorized official.⁹

If we look at the position of a legalized private deed and an unlegalized private deed, they are basically the same, not authentic deeds in terms of their proof. Things that must be considered in a private deed:¹⁰The purpose of legalizing the signing of a deed under hand is to ensure the truth of the signature contained in the deed and also to ensure the truth that the signature is the correct signature of the parties.¹¹By making a deed underhand without involving an authorized official, of course a deed underhand has several weaknesses, including:

a. Limited Legal Power

The legal force of a private deed is limited compared to an authentic deed or a deed drawn up by a notary. In some cases, the validity or validity of this deed may be questioned or deemed invalid in court.

b. Difficulty of Proof

The court may require additional evidence or other witnesses to validate the content or validity of the document.

Apart from underhand evidence, according to Article 164 HIR (284Rbg) evidence in civil cases consists of:

- 1) Documentary evidence.
- 2) Witness evidence.
- 3) Evidence of suspicion.
- 4) Proof of confession.

⁹Salim HS, *One Deed Making Technique* (Jakarta: Rajawali Press, 2016), p. 24

¹⁰<https://lawindonesia.wordpress.com/hukumislam/pembuktian-di-muka-persidangan/> accessed on November 3, 2025 at 13.10 WIB.

¹¹M. Yahya Harahap, *Civil Procedure Law: Lawsuits, Trials, Confiscation, Evidence, and Court Decisions*, Sinar Grafika, Jakarta 2005, p. 597

5) Proof of oath¹²

In judicial practice, if a private deed is recognized (the signature is not denied), then the deed can have full evidentiary force (formal and material) for the parties.¹³ In the trial process, if what is submitted is only a private deed, considering its limited legal consequences, it is still necessary and attempted to obtain several other supporting pieces of evidence so that the legal consequences are considered sufficient to achieve the truth according to the law as evidence. Thus, the evidence is complete and perfect, if the judge's decision, which is all based on the evidence that has been submitted and all events that have been proven by all parties in the case, is considered certain and true.¹⁴

Therefore, to make a private deed have more legal force, the private deed needs to be legalized or registered at a notary's office, as stated in Article 15 paragraph 2 of Law Number 2 of 2014, which states that a notary has the authority to:

- 1) Validate the signature and determine the certainty of the date of the private letter registered in a special book.
- 2) Recording private letters by registering them in a special book.
- 3) Make copies of private letters in the form of copies containing descriptions as written and described in the letter in question.
- 4) Confirm the photocopy matches the original letter.
- 5) Providing legal counseling regarding the creation of deeds.
- 6) Make deeds related to defense, or
- 7) Making a deed of auction minutes.

In addition, the notary is also responsible for explaining, confirming, and ensuring that the date as written in the legalization book is correct. Therefore, if a private deed document has been legalized, the judge can be sure about the date and identity of the parties who signed it, and that the signatures that have been affixed to the deed and affixed to the person named on the document and the signatory. Based on the letter, it cannot be said that the parties or one of the parties do not understand what is contained in the contents of the letter, therefore the contents

12RIB/HIR (Renewed Indonesian Regulations), Pustaka Buana, 1st ed., Bandung, 2014, p. 123.

13Maman Djafar, Legal Power of Private Deeds in Court Practice, e-journal of the Civil Law Section, Faculty of Law, Unsrat, Manado, Vol. 3 No. 4 (2015): Lex Privatum, p. 103.

14Dimas Agung Prastomo, Akhmad Khisni, Legal Consequences of Private Deeds Legalized by a Notary, Unissula Deed Journal, Vol. 4 No. 4 December 2017. P. 739

have been explained or read before the parties sign it when visiting the public official.¹⁵

Basically, a private deed (a document made without a Notary) can have formal evidentiary power if it is ratified or legalized by a Notary, in accordance with Article 15 paragraph (2) of the Notary Law. Deeds that are not legalized by a Notary generally have very weak evidentiary power or are not even recognized in civil cases. Although a private deed will be legalized, it does not change the status of a private deed to be authentic, if the deed is legalized, it is permitted for the party who signs the private deed, for reasons of their legal rights, to sign and document the contents of the deed. The parties are unable to deny or deny its validity. The Notary causes the parties to witness and read the contents of the deed before signing it. This means that a private deed that is legalized and legalized has the same valid evidentiary value as an authentic deed, both as physical and formal evidence, as well as as evidence before a judge.¹⁶

A legalized private deed has greater legal force than a regular private deed. This formal force makes it reliable evidence to prove its contents in the event of a dispute, without the need for extensive additional evidence. Legalization by a notary provides formal certainty (date of the deed, identity of the signatories), which greatly assists judges in assessing the validity of the deed.

Legally, a notarized private deed falls somewhere in between. It's stronger than a regular document because the signature has been verified by a notary, but it's not as strong as an authentic deed. Therefore, legalization ensures that the document's authenticity cannot be easily disputed when presented in court.¹⁷

3.2. Responsibilities of the Notary's position and legal protection for Notaries in legalizing Private Deeds

By examining the articles in the UUJN, the Civil Code (KUHPerdata) and the Criminal Code (KUHP), there are at least 3 responsibilities of a Notary in carrying out his authority, namely:

1) Administrative Responsibilities of Notaries

Administrative accountability is an internal accountability that involves the Notary Supervisory Board. Administrative accountability in legalization is based on Article 16 paragraph (11) UUJN which states that: "Notaries who violate the provisions as referred to in paragraph (1) letters a to l may be subject to sanctions in the form of: a. written warning; b. temporary dismissal; c. honorable dismissal; or d.

¹⁵Sukmawirawan et al., "The Power of Evidence of Legalization and Waarmerrking of Deeds Under Hand by Notaries," 7.

¹⁶Majidi Slamet, Raudatul Bayti, Muhammad Haris, Analysis of the Responsibilities and Legalization Power of Private Deeds by Notaries, FALAH: Journal of Islamic Economic Law, Vol. 5 Number 2 2023: pp. 66-75, p. 70.

¹⁷Interview with Mrs. Laeli Nur Chamidah, SH, MKn Notary & PPAT Tegal City on December 24, 2025

dishonorable dismissal." The imposition of administrative sanctions is the authority of the Notary Supervisory Board. The mechanism for imposing administrative sanctions is regulated in the UUJN and is hierarchical. The imposition of administrative sanctions is based on the severity of the violation committed by the Notary. Sanctions of verbal and written warnings are the authority of the Regional Supervisory Board (Article 73 paragraph (1) letter e) while sanctions of temporary dismissal and dishonorable dismissal are the authority of the Central Supervisory Board (Article 73 paragraph (1) letter f).¹⁸

2) Civil Liability of Notaries

The civil liability of a Notary refers to the provisions of Article 16 paragraph (12) of the UUJN which states, "In addition to being subject to sanctions as referred to in paragraph (11), violations of the provisions of Article 16 paragraph (1) letter j can be a reason for the party suffering losses to demand reimbursement of costs, compensation, and interest from the Notary." Civil liability in legalization is based on whether or not there are legal provisions that are violated and errors made by the notary that cause losses to other parties. The civil liability of a Notary can be carried out through a lawsuit based on an Unlawful Act (PMH). Article 1365 of the Civil Code states that, "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss." There are 5 elements of PMH, namely:¹⁹

- a. there is an act;
- b. This act is against the law;
- c. There was an error on the part of the perpetrator;
- d. There is a loss for the victim;
- e. there is a causal relationship between the act and the loss.

3) Criminal Liability of Notaries

Notaries' criminal liability for deeds they draft is not regulated in the amendments to Law Number 30 of 2004. However, notaries are subject to criminal liability if they commit a crime. The notary in question cannot be held accountable because they merely record what the parties convey to be incorporated into the deed. False statements submitted by the parties are the responsibility of the parties.²⁰What

18Ninik Darmini, The Responsibilities of Notaries in Their Authority to Legalize Private Agreements, Udayana Master of Law Journal, vol. 12 no. 4 December 2023, p. 909.

19Munir Fuadi, Civil Law Concept (Jakarta: PT. Rajagrafindo Persada, 2016), 254.

20Andi Mamminanga, Implementation of the Authority of the Regional Notary Supervisory Board in the Implementation of Notary Duties Based on the Notary Law, Thesis at the Faculty of Law, Gajah Mada University, Yogyakarta, 2008, p. 32

can be held accountable to the Notary is if the fraud or deception originates from the Notary himself.²¹

Law Number 2 of 2014 only regulates sanctions for violations committed by Notaries against Law Number 2 of 2014, which can be in the form of deeds made by Notaries not having authentic power or only as private deeds. The act of Notaries committing the crime of forgery or falsifying Notarial deeds, Law Number 2 of 2014 does not specifically regulate the criminal provisions therefore based on the principle of legality which is the principle of the Criminal Code that:²²

a. The Republic of Indonesia is a state of law based on Pancasila and the Constitution.

b. The state guarantees that every citizen has equal standing before the law and government;

c. Every citizen without exception is obliged to uphold the law and government.

For private letters that are legalized by a notary, the notary is responsible for 4 (four) things:²³

a. Identity

a) Notaries are obliged to examine the identities of parties who will sign letters/deeds under their own hands (KTP, Passport, Driving License), or who are introduced by other people.

b) examine whether they are competent to carry out legal actions

c) examine whether the authorized parties signed the letter/deed

b. Contents of the Deed The notary is obliged to read the contents of the deed to the parties and ask whether the contents of the deed are what the parties want.

c. Signature

d. Date

- "Affix the date to the private deed and then record it in the register book provided for that purpose."

Based on the above description, it can be concluded that the Notary's responsibility for the accuracy of the private deed that he legalizes is limited to the certainty of the signature. This means that the Notary guarantees that the parties

21Notodisoerjo, Notarial Law in Indonesia, Rajawali Press, Jakarta, 2012. P. 229.

22M. Yahya Harahap, Discussion of Problems and Application of the Criminal Procedure Code (Investigation and Prosecution), Sinar Grafika, Jakarta, 2000, p. 36.

23HM Imron, Legalization Must Be Equipped with Witnesses, Renvoi Number 10/34 April 2006, page 1

who sign the document are truly the parties to the agreement, not someone else. This is because in the legalization process, the Notary is required to confirm the identity of the signatories by checking official identification, such as a National Identity Card or other identity document. And if a deed made by a Notary later gives rise to a dispute, it is necessary to investigate whether the problem stems from the Notary's error or from the parties providing false information when appearing before him. For example, if there is a hidden agreement between the Notary and one party that is detrimental to the other party. If the deed contains legal defects caused by the Notary's negligence or deliberate action, the Notary can be held accountable.

In carrying out their duties, notaries are at risk of being involved in criminal, civil, or administrative legal proceedings related to their actions. Notaries are also frequently defendants in cases. Currently, notaries are being prosecuted, usually as co-defendants. This means that, while notaries are performing their duties, they can be prosecuted at any time. Notary minutes are deeds containing the signatures of the parties, witnesses, and the notary. These minutes are stored in a notary protocol and must be kept confidential by the notary. Minutes can be used as evidence in trials, investigations, by the public prosecutor, or by the judge. It is crucial for notaries to have legal protection while carrying out their duties. As previously explained regarding several cases currently facing notaries, this legal protection can help mitigate the risks notaries face while carrying out their duties. However, further clarification is needed regarding the type of protection that should be provided to notaries and its limits.²⁴

Article 66 of the Notary Law regulates legal protection for (the Position of) Notaries. This article stipulates the establishment of the Notary Honorary Council (MKN), which consists of representatives from notaries, the government, and academics. The MKN functions as an institution that protects the Notary Office from deeds made or submitted by notaries. It is hoped that the existence of this MKN will maximally assist the notary institution in carrying out its function as a legal protection institution. Regarding the provisions regarding the status and form of legal protection from this MKN, this is not actually expressly regulated in the Notary Law or in other forms of legislation.²⁵

Law enforcement officers are not authorized to directly request information from a Notary and/or request a photocopy of the minutes of a deed at the Notary's office, but must first obtain approval from the Notary Honorary Council (MKN). The MKN is an institution that provides legal protection for Notaries, so that the MKN, based on its prior examination, can decide to permit or reject a request from law enforcement regarding the summons of a Notary or regarding a request for a

24Hernika Andriani, Samuel Yuri Ericson, Edo Pradita Mandala Putra, Daffa Dwi Prasetyo, Legal Protection for Notaries in the Unitary State of the Republic of Indonesia, *Lex Stricta: Journal of Legal Studies*, Vol. 3 No. 2, December 2024, pp. 93-100.

25ibid

photocopy of the minutes of a deed made by/before a Notary who is being investigated by law enforcement.²⁶

The MKN is not part of the government that appointed it. The MKN functions as an independent institution that provides legal protection regarding the civil liability of notaries for the deeds they create. The MKN is not influenced by other parties or institutions when exercising its authority to issue decisions; therefore, decisions made by the MKN cannot be contested. Based on the foregoing, it can be seen that legal protection for notaries is found in the UUJN and also from the independent institution, namely the MKN.²⁷

4. Conclusion

A private deed is valid and binding on the parties as long as it meets the provisions of Article 1338 of the Civil Code. Notarization enhances its evidentiary value, particularly regarding the certainty of the date and the authenticity of the signature, but it still does not equal the strength of an authentic deed because it was prepared by the parties themselves. In the event of a dispute, the deed can still be refuted and requires additional proof. A notary's responsibility for legalization is limited to formal aspects and does not extend to the content of the agreement. Notaries receive legal protection as long as they exercise their authority in accordance with regulations, including through the role of the Notary Honorary Council. However, they can still be held accountable for violations or negligence. Therefore, notaries must adhere to laws and regulations, codes of ethics, and the principle of prudence, and provide a clear understanding to the public to prevent misunderstandings and potential future disputes.

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²⁶Helsi Yasin, Legal Protection for Notaries in Making Deeds of Meeting Decisions Based on Forgery of Circular Decisions of Limited Liability Companies, *Unes Journal of Swara Justisia*, Volume 9, Issue 1, April 2025, page 11.

²⁷ibid

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