

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 Power; Notary; Legalization; Legal Protection; Private Deeds.*

1. Introduction

The Notary profession is one of the professions that plays a role in the law enforcement process in Indonesia by providing certainty, order and legal protection in the midst of society, especially in terms of the need for binding evidence other than witness evidence, namely in the form of making an Authentic Deed. A Notary is a Public Official who is the only one authorized to make an authentic deed regarding all actions, agreements and determinations required by a general regulation or by an interested party desired to be stated in an authentic deed, guaranteeing the certainty of the date, keeping the deed and providing grosse, copies and extracts, all as long as the making of the deed by a general regulation is not also assigned or excluded to other officials or people (according to Article 1 of the Notary Position Regulations).¹This gives the understanding that based on the Law, Notaries are given the authority to create absolute evidence, in the sense that the actual contents of the contract are considered true.²

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 by the party entering into the agreement.³Thus, it is known that notaries are given authority other than making authentic deeds, in this case the authority to legalize and endorse private deeds.⁴

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.⁵Regarding the duties and work of a Notary, they are not limited to making authentic deeds but are also tasked with registering and validating private letters, which are usually called Legalization and Waarmeking, and making copies of private letters and confirming the suitability of the photocopies with the original letters.

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. Soegondo Notodisoerjo, Notary Law in Indonesia: An Explanation, Raja Grafindo Persada, Jakarta, 1993, p. 8.

³R. Soeroro, Private Agreements: Practical Guidelines for the Preparation and Application of Law, Sinar Grafika, Jakarta, 2010, p. 8.

⁴Yulia Nizwana, Yurike Fransiska DuriNotary's Responsibilities for Legalization and Validation of Private Deeds According to Law Number 2 of 2014 Concerning the Position of Notary, Sarmada Journal, p. 20.

⁵Ida 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.

In 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:⁶

- 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;

Nowadays, people have actually started to realize and make written records of important events by recording them in a letter (document) and signing them by the relevant people, witnessed by two or more witnesses.⁷ A private letter is a document drafted by the parties themselves without any standard rules and tailored solely to their own requirements. Its evidentiary force is determined by whether the parties acknowledge or deny the existence of the agreement. This means that either party can deny or prove the validity of the signature.

A deed made by a Notary is called a *Relaas Deed* or *Minutes Deed* which contains a description of the Notary seen and witnessed by the Notary himself at the request of the parties to validate the deed. In Notarial practice, a *Party Deed* is a deed made before a Notary, which contains information and statements from the parties given or told before the Notary. The parties wish for their information to be stated in the form of a Notarial Deed.⁸

Notaries must also have high moral values, because a Notary has high ethics so they will not abuse their authority, so that the Notary is able to maintain the dignity and honor of officials in general who provide services in accordance with applicable provisions and will not damage the image of the Notary. As the hope of all of us or the nation, every Notary must have knowledge and skills that are broad and deep enough to become the mainstay of the community in designing, compiling and making various authentic deeds, so that the language structure,

⁶Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.

⁷R. Soegondonotodiseorjo. 1982, *Notary Law in Indonesia*, Rajawaliipers, Jakarta, p. 4.

⁸GHS Lumban Tobing, *Regulations on the Position of Notary*, Erlangga, Jakarta, 1983, p. 51.

legal techniques are neat, good and correct, because in addition to these skills, honesty, sincerity and objective nature or views are also needed.⁹

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.¹⁰ Both authentic and private deeds are intended to serve as evidence. The important difference between these 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 as 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 constitutes evidence. If one party refuses to acknowledge it, the burden of proof rests with the denying party, and the judge will decide whether the denial of the evidence is true.

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.¹¹ A private letter that has been legalized by a Notary is an acknowledgment of the date the letter was made, namely providing validation regarding the date, identity, and signatures of the parties concerned. In this case,

⁹Komar Andasasmita, *Notary with History, Role, Duties and Obligations, Secrets of His Position*, Sumur, Bandung, 1981, p. 14.

¹⁰Article 1867 of the Civil Code.

¹¹Munir Fuady, 2003, *New Paradigm Limited Liability Company*, Citra Aditya Bakti, Bandung, p. 2

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.

2. Research Methods

This type of research is normative legal research, supported by information from informants, namely Notaries in Tegal, thus producing comprehensive data to support the achievement of this research objective. According to Mukti Fajar and Yulianto Achmad, normative legal research is research that positions law as a system of norms. The normative system in question concerns the principles, norms, and rules of statutory regulations, court decisions, agreements, and doctrines (teachings). In normative legal research, law is often conceptualized as what is written in statutes (law on the books) or as rules or norms that serve as benchmarks for what is considered appropriate human behavior. This research was conducted with the aim of providing arguments based on Indonesian law.

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.

1. Definition and Legal Basis of Private Deeds

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.¹²

12Ira Koesoemawati and Yunirman Rijan, 2009, Notary, Achieve Hope of Success, Jakarta, p. 86

In practice, private deeds are sometimes used for personal gain. For example, a private deed may be dated with a different date, month, and year than the actual date of its creation. Because there is no obligation to report private deeds, no one can guarantee that the private deed was actually created within the timeframe. According to Subekti, this evidence convinces the judge of the authenticity of the arguments or facts raised in the dispute.¹³

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);

Based on Article 1874 of the Civil Code, it states that "what is considered as private writing is a deed signed privately, letters, lists, household affairs letters and other writings made without the intermediary of a public official" while in terms of UUJN, private deeds are divided into two, namely legalized private deeds and private deeds that are endorsed, regulated in Article 15 paragraph 2 letters a and b UUJN, which reads:

- 1) Validate the signature and determine the certainty of the date of the private letter by registering it in a special book.
- 2) Recording private letters by registering them in a special book.¹⁴

The definition of a private deed is formulated in Article 1874 of the Civil Code, Article 286 RBG. According to this article, a private deed is:

- a. A written or deed signed underhand,
- b. Not made and signed in front of an authorized official (public official) but made by a person or parties themselves,

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Regarding the duties and work of a Notary, they are not limited to making authentic deeds but are also tasked with registering and validating private letters, which are usually called Legalization and Waarmeking, and making copies of private letters and confirming the suitability of the photocopies with the original letters.

¹³Subekti, Law of Evidence, Pradnya Paramitha, Jakarta, 2005, p. 1.

¹⁴Ngadino & Ayu Saputri Rahardian (2020) PGRI University Press, p. 137 quoted from Sudikno, Mertokusumo, (1993), Op.cit., p. 125

1. Legalization is a private deed that has not been signed and submitted to a notary. At that time, the notary reads and explains the contents of the private deed to the parties, and then it is signed by the parties. The parties are aware of the contents of the deed.¹⁵

2. A *waarmerker* is a private deed signed by the parties, then submitted to a notary for registration. The date of the private deed only guarantees the date and time of registration. There is no guarantee of the certainty of the signatures and the date of the private deed.¹⁶

The term legalization according to the Big Indonesian Dictionary is ratification according to law or law.¹⁷ Legalization is the ratification of a private deed read by a notary and signed by the parties appearing before the notary at that time to guarantee the certainty of the date of the deed in question. Where the parties appearing who include their signatures are known to the notary or introduced to the notary. As stated in Article 15 paragraph 2 letter a of Law Number 2 of 2014 concerning the Position of Notary, the notary has one of the authorities to ratify signatures and determine the certainty of the date of the private letter, the parties sign the private agreement before the notary so that the notary can ratify the signature and the date of the signing.¹⁸ "Legalization is the ratification of a letter made underhand."¹⁹

If the legalization carried out by a notary does not comply with what is stipulated by law, and often certain officials even legalize letters underhand, the date of signing of which is long before the date of legalization, this is clearly not in accordance with the intent and purpose of legalization because the legalization is signed on the day the letter was made, before a notary or court.

A private deed that has been legalized by a Notary is an acknowledgment of the date the letter was made, namely providing validation 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 letter contained, because the contents had been read out beforehand before the parties affixed their signatures before a public official, in this case a Notary.

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

The notary's authority to legalize a private deed is of course followed by accountability for the action. The written responsibility of a Notary is regulated in

15Widhi Handoko, Course Material: Deed Making Techniques I

16ibid

17Habib Adji & Sjaifurrahman, Aspects of Notary Responsibility in Making Deeds, (CV Mandar Maju, 2011) p. 102

18Yulia Nizwana, Yurike Fransiska Duri, Op.cit., p. 23

19M. Yahya Harahap, Civil Procedure Law, (Bandung: Sinar Grafik, 2005), p. 597

UUJN Article 65 No. 30 concerning the Position of Notaries or substitute notaries, special substitute notaries, or temporary notaries. Responsible for the deed document that has been made. as well as the protocol that has been submitted or has been transferred to the party that keeps the notary's protocol. In carrying out his position and duties, the Notary is subject to the MPD, namely the council that is tasked with regional supervision within the scope of notaries and the MPD as the party that can supervise the Notary has the right to take letters that will be attached to the minutes of the deed document or take a photocopy of the minutes of the deed document in the procedures for deviations from public officials or summon public officials to be present. in the examination can be related to the document that will be made in the procedures for public officials within the scope of deviation. The MPD does not have the right to arbitrarily impose sanctions on Notaries who violate professional ethics rules or do not comply with laws and regulations regarding the position of Notaries. The authority to impose penalties is the MPW (Regional Supervisory Council).²⁰

By examining the articles in the UUJN, the Civil Code (KUHPperdata) and the Criminal Code (KUHP), there are at least 3 responsibilities of a Notary in carrying out his authority, namely administrative responsibility, civil responsibility and criminal responsibility.

There is confusion regarding the limits of Notary's liability, based on Article 65 of the UUJN, namely that even though all deeds made by Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials have been submitted or transferred to the Notary Protocol keeper, this means that even though they have stopped or retired as Notaries, they still have to be responsible until their last breath.

By examining the articles in the UUJN, the Civil Code (KUHPperdata) 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. 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

20Kerta Dyatmika, "P-ISSN 1978-8401 E-ISSN 2722-9009 Available Online at <http://ejournal.undwi.ac.id/index.php/kertadyatmika>" 17, no. 2 (2020): 53

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).²¹

Notaries can be held legally accountable. Legal liability for notaries extends to criminal, civil, and administrative law. This is in line with the principle that anyone who has suffered a loss has the right to file a lawsuit. A lawsuit against a notary can arise if the issuance of a notarial deed fails to comply with procedures, resulting in a loss.²²

There is a strong correlation between the Notary Law and the Code of Professional Ethics. The Code of Professional Ethics oversees notaries internally, and the Notary Law oversees notaries externally. In carrying out their duties, notaries must do the following:²³

a. A notary must act properly and correctly. This means that the deeds they create fulfill the public's wishes and the requests of the interested parties due to their position.

b. A notary must produce a quality deed. This means that the act is carried out in accordance with legal regulations and the wishes of the parties concerned, in the truest sense. The notary must explain to the parties the truthfulness of the contents and procedures of the deed they are drafting. This deed has a positive impact, so anyone will recognize that it has perfect evidentiary force.

Cases that are always controversial are formal in nature, especially in these areas, are as follows:

a. Certainty of the day, date, month and year facing;

b. Whose party is facing;

c. Facing signature;

Based on Article 85 of Law Number 2 of 2014 concerning the Position of Notary, if a notary violates the formal aspects, the sanctions for a notary are as follows:²⁴

a. Verbal warning;

b. Written warning;

The sanction against a Notary in the form of temporary dismissal from his/her position is intended to prevent the Notary from carrying out his/her official

21Ninik 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.

22Interview with Mrs. Laeli Nur Chamidah, SH, MKn Notary & PPAT Tegal City on December 24, 2025

23Abdul Ghofur Anshori, Indonesian Notary Institution, UII Press, Yogyakarta, 2009, p. 49.

24Article 85 of Law Number 2 of 2014 concerning the Position of Notary

duties for a period of time before the sanction of honorable or dishonorable dismissal is imposed on the Notary. The imposition of this sanction can culminate in the Notary being reinstated to carry out his/her official duties or be followed up with a sanction of honorable or dishonorable dismissal. To provide certainty, the temporary dismissal must have a specified time limit, so that the Notary's fate is not hanging in the balance. This sanction of temporary dismissal constitutes real coercion, while the sanction of honorable or dishonorable dismissal falls within the realm of sanctions for revoking a favorable decision.

2. Civil Liability of Notaries

An unlawful act is an act or omission that causes harm to another person without any prior legal relationship, which obligation is directed towards everyone in general and by not fulfilling the obligation, compensation can be requested.

Based on the description above, the elements of a civil unlawful act include the existence of an unlawful act, the existence of an error, the existence of cause and effect between the loss and the act, and the existence of a loss.²⁵

Then, Rosa Agustina in her book entitled *Unlawful Acts* explains that in determining whether an act can be qualified as unlawful, the following 4 conditions are required:²⁶

- a. contrary to the legal obligations of the perpetrator;
- b. contrary to the subjective rights of others;

The interpretation of the explanation of the Notary Law shows that a Notary is only responsible for the actual form of the deed, not the actual material of the deed. This requires the Notary to remain neutral and impartial and to provide some form of legal advice to clients seeking legal guidance from the Notary. In line with this, if the legal advice provided is later proven to be incorrect, the Notary can be held responsible for the material truth. By constructing the interpretation of the Notary Law, it can be concluded that if the facts prove that the Notary did not grant certain legal rights related to the deed he made, the Notary can be responsible for the material truth of the deed he made, thus making One party feel deceived by his own ignorance.²⁷

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

25 <https://www.hukumonline.com/klinik/a/perbedaan-perbuatan-melawan-hukum-dalam-hukum-perdata-dan-pidana-lt5142a15699512/> accessed on November 27, 2025 at: 13.30 WIB.

26Rosa Agustina. *Unlawful Acts*. Depok: Postgraduate Publisher of the Faculty of Law, University of Indonesia, 2003, p. 17.

27Abdul Ghofur Anshori, *Indonesian Notary Institution*, Op. Cit., p. 16.

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:²⁸

- a. there is an act;
- b. This act is against the law;
- c. There was an error on the part of the perpetrator;

3. Conclusion

Based on the description above, the conclusions in this research are: 1. Based on the research results, it can be concluded that agreements made underhand are essentially valid and binding on the parties as long as they comply with the provisions of Article 1338 of the Civil Code, namely that they apply as law to the parties who made them. A private deed legalized by a notary has stronger evidentiary power than an unlegalized private deed, especially regarding the certainty of the date and the authenticity of the signature, because the signing is carried out before a notary and the contents of the deed have been explained to the parties. However, a legalized private deed still does not have the same evidentiary power as an authentic deed, because the deed is made by the parties, not by a public official. Therefore, the signature in a private deed can still be refuted, and if a dispute arises, the party submitting the deed must still prove its truth through other evidence or witnesses. In the evidentiary process in court, the judge plays a role in distributing the burden of proof, assessing whether or not a piece of evidence is admissible, and determining its evidentiary strength. 2. In the practice of legalizing private deeds, the notary's responsibility is limited to formal aspects, namely ensuring the certainty of the date, authenticity of the signature, and the identity of the parties. The notary is not responsible for the content of the agreement, because this is an agreement between the parties. If a dispute arises, the notary's responsibility is limited to proving that the signing process has been carried out in accordance with the provisions. Legal protection for notaries is provided as long as the notary carries out his duties according to his authority. This protection is also supported by the role of the Notary Honorary Council which regulates the procedure for summoning notaries by law enforcement officials. However, notaries can still be held accountable if proven to have committed violations or negligence in carrying out their duties.

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28Munir Fuadi, *Civil Law Concept* (Jakarta: PT. Rajagrafindo Persada, 2016), 254.

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