

## Notary's Responsibility for the Denial of Signature of A Letter Under the Hand that Legalized Before A Notary

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### Abstract

The notary is responsible for what he has made in accordance with the duties and powers that a notary must carry out. The authority of a Notary is stated in Article 15 paragraph (1) of Law No. 2 of 2014, and besides that, the authority to do authentic deeds, Article 15 paragraph (2) of Law Number 2 of 2014 concerning the Position of Notary which states that a Notary has the authority to "Authorize the signature and determine the certainty of the date of the letter under the hand by registering in a special book". With the formulation of the problem, how is the responsibility for the signature of the private agreement that has been legalized by a notary, and what is the legal force against the party who denies the signature of the private agreement that has been legalized before a notary. This research uses normative juridical methods and library research. The data used in this article uses primary, secondary, and tertiary legal materials. The results of this study show that the strength of proof of an underhand agreement that is legalized before a notary can be stronger as a means of legal protection for the parties. Article 16, paragraph 1 letter a Law No. 2 of 2014 reads, "In carrying out his position a notary must act in a trustful, honest, thorough, independent, impartial and safeguard the interests of parties related to legal actions". Therefore, Notary must prioritize the principle of prudence and understand your rights and obligations.

**Keywords:** Notary, Letter Under Hand, Denial.

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### Introduction

As a public official, a notary has become part of the community's needs, one of which is to create legal certainty from every agreement made by the community. Notaries are often closely related to civil law, in Indonesia, the law that regulates all matters relating to civil law is the Civil Code (KUHPer). Generally, an agreement made by a notary is in the form of a deed, and the deed itself can be a strong and perfect evidence as a guarantee of the tranquility of the party making the deed so that when there are things that violate the law, there is valid evidence that can be accounted for its validity. The general definition of a deed is a letter signed by the parties who make it and contains information about events or matters that are the basis of the agreement made in etymology according to R. Subekti and R. Tjitro Sudibio, it comes from the word *acta* which is an era form of *actum* derived from Latin which means actions (Nikolaas, 1983).

Indonesia is a State of law as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which means that all aspects of society, state and government must be based on law. To prove a case or action must be based on evidence, this is where the notary is tasked with helping to make evidence in the form of agreement letters such as authentic deeds, in this case the government also guarantees legal certainty in people's lives by guaranteeing the rights and obligations of everyone so that evidence is needed (Wibowo, 2020). Evidence in the form of writing is the most valid evidence when compared to other evidence, because an agreement can be made if there are two parties or several parties who agree to the terms of the agreement before any ratification is carried out. The condition of the parties to the agreement is also expected to be in a state of consciousness and

without coercion which further strengthens the validity of the agreement letter in this case the deed if there are legal acts violated therein.

As a society in a state of law, citizens have the same position before the law. This makes the community must have evidence that can clearly determine how the rights and obligations that must be carried out and fulfilled by citizens. If there are parties who form an agreement, then it is necessary to limit the rights and responsibilities that must be carried out then the making of an agreement letter is very necessary. When the parties already know that they will make a large enough agreement, it must also be affixed with a strong statement of evidence. If, in the future a case occurs and wants to be resolved through legal channels, then the agreement letter must be made with legal legality in the eyes of the judge. Notaries play a vital role in providing legal certainty because people currently live amid many legal events and actions that need to be proven by physical evidence in the form of an authentic deed. Establishing means that the legal bases given to the judge in examining the case regarding the facts of the events submitted are sufficient. Underhand agreements are agreements made by the parties themselves without the intervention of authorized public officials and are only tailored to the parties' needs (Palit, 2015). Notarial deeds can be degraded into deeds under the hand; the common cause is when the deed maker is not capable of making the deed so that it only has power under the needle. Article 1878 of the Civil Code states that the act must be written in the hand of the signer himself as a whole when the parties do not want to write the agreement by handwriting as a whole, then if the agreement discusses a property or money, it should be done by script.

The impact of degradation by the Notary Law does not regulate sanctions for notaries that have a direct effect. Still, the party concerned can sue the notary to compensate for losses, costs, and interest because the deed is degraded. Registration of letters under the hand, commonly known as *waarmerking*, has not been explicitly regulated or editorially. Still, the legalization of this can be seen in Article 15 Paragraph (2) paragraph an of the Notary Law, which states that notaries have the authority to certify signatures and determine the certainty of the date of letters under the hand by registering in a particular book. Therefore, underhand deeds have no clear legal basis and no rules govern the legal force of underhand deeds that have been written by the notary himself, even in the Notary Law (Wardhani, 2020). Underhand agreements made by the parties concerned should be immediately given to a notary to check the validity of the letter and also given direction regarding the legal consequences that will occur after being signed before a notary so that the legal certainty is apparent. The Civil Code regulates matters governing deeds under the hand in Articles 1874-1984. One problem that arises is when a party denies the signature of an underhand letter that has been notarized before a notary. Based on these problems, the author makes this article, which discusses the notary's responsibility for denying the signature of an underhand letter that has been legalized before him. The existence of a valid, authentic deed can help the judge in making a final decision. Because with the presence of valid validity in evidence can be used as a basis for considering a decision. One of them is Case in Decision Number: 08/MPWN/Province of North Sumatra/VI/2015, regarding the Denial of the Signature of a Letter under Hand that was Legalized Before Him and the denial of the signatures of the parties occurred because one of the parties felt that he had never put his signature on the legalization deed made before a notary so that the legal consequences resulted in the first deed being canceled, and secondly if the

notary concerned did not want to cancel the act he made, he could be criminally prosecuted.

### Problem Formulation

On the basis of the discussion of notaries about the responsibility of underhand agreements that notaries have legalized, the authors are interested in discussing the following problem formulation:

1. What is the responsibility of the signature in the agreement letter under the hand that a notary has legalized?
2. What are the legal consequences for the party who denies the signature of a letter under the hand that has been notarized before a notary?

### Research Method

The type of research used is normative juridical research, which is carried out to examine the application of norms and rules in society (Marzuki, 2005) and studied with a focus on a statutory approach that looks at a problem from its legal aspects and examines the laws and regulations relating to the subject matter being discussed. The concept approach is also used to understand the assessment of evidence from opinions and doctrines in a direction. The research method used is descriptive-analytical, based on data obtained in research such as from books, journals, and related documents (Djafar, 2015).

The legal materials used in this article are primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution, the Civil Code, and Law No. 2 of 2014 concerning the Office of a Notary. Secondary legal materials come from research results. Tertiary legal materials from legal dictionaries, the Great Indonesian Dictionary and other related legal sources.

Data analysis in this article uses a qualitative approach by discussing the subject matter based on data obtained from the results of literature studies and research results conducted in the field and arranged systematically, then analyzed qualitatively to get answers to the clarity of the problems to be discussed (Soemitro, 1988). The data collection technique is done with a literature study that classifies laws and regulations, books, and other sources related to the subject matter discussed in this article.

### Discussion

#### 1. How the Legal Power of the Signature in an Underhand Agreement Letter that Has Been Legalized by a Notary

As a society that lives in a state of law, it results in the need for legalizing documents to be used as written evidence. Authentic deeds can be used as perfect evidence with the intention that only the parties involved in the deed can give rise to rights and obligations in accordance with what is stated in the agreement. Notaries have a strategic position in civil law, concerned with primary and fundamental matters in every legal act. The community is the subject and object of legal action and will always need a notary regarding legal administration (Rasaid, 1999). Article 1868 of the Civil Code explains the provisions of authentic deeds, namely:

1. The deed must be made and presented by a public official, which means that notarial deeds concerning acts, agreements, and provisions must make the notary a public official.;

2. The deed must be done in the form prescribed by law, so if a deed is created but does not fulfill this requirement, the act has lost its authenticity and only has the strength of a deed under hand if it is signed by the confronters who submit it;
3. Before the deed is to be made, the public official must have the authority to make the deed because a notary can only perform or carry out their office within the jurisdiction determined for them. If a notary makes a deed outside the jurisdiction of their office, the act will be invalid.

Article 1874 of the Civil Code explains that agreements included in agreements under the hand are letters, registers, household affairs letters, and other writings made without the intermediary of a public servant. The characteristics of the deed in the hand have their characteristics, namely (Puspa, 2016):

- a. Free-form;
- b. It does not have to be made in the presence of a public official
- c. It has the power of proof as long as it is not denied by the maker, meaning that the contents of the deed do not need to be proven again unless someone can prove otherwise;
- d. If it must be proved, witnesses and other evidence must supplement the proof. Therefore, the deed under the hand of sbehaiknya usually included two witnesses, mature/mature/old enough to strengthen the evidence.

Crimes that often occur in society are not only seen physically but have become widespread, such as fraud, embezzlement, and smuggling that parties can commit without touching the victim. These crimes can occur only by changing, falsifying, or creating false documents supporting fraud, embezzlement, smuggling, etc. Notaries are professional public officials whose statements should be trusted and whose signatures and seals provide guarantees. They can be used as solid evidence and independent parties in legal counseling with no defects Article 1 point 1 of Law Number 30 of 2004 concerning the Position of a notary states that a notary is a public official authorized to make authentic deeds and has other powers as referred to in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a notary (Purwaningsih, 2011). In trials, judges need evidence that can be used as a basis for making decisions based on the evidence that has been submitted. The law regulates evidence regulated in Articles 138, 165, 167 HIR and Articles 1867-1894 of the Civil Code. The evidence itself is defined as the presentation of evidence that is valid according to law and carried out by the parties who have a case in a trial that is resolved before a judge to strengthen the truth about the legal facts that are the subject of the dispute so that the judge obtains a basis for certainty in making a decision (Effendi, 1999). The evidentiary power of the deed itself is divided into three parts, namely (Makarao, 2009):

- a. Evidentiary Power of Birth (existence of a third party)  
The evidentiary power of a letter based on the state of birth is a letter that looks like a deed, is accepted or considered like a deed, and is also treated like a deed, as long as it is not proven otherwise so that the letter is treated like a deed, except for the inauthenticity of the act that the other party can prove. For example, the signature on the deed has been forged, meaning the proof comes from reality.
- b. Formal Strength of Proof  
Evidentiary power is based on whether the statement in the deed is true. Example: parties A and B make a sale and purchase, and it is recognized that the signatures listed in the act are the signatures of the parties who recognize

the truth so that there is a statement on the event itself, not about the content of the message. It can be stated that the person who made the signature in the agreement letter to explain all the things listed on the signature is accurate information.

c. Material Strength of Proof

Evidentiary power is based on whether or not the contents of the statement that has been signed in the deed are accurate and that the legal events contained therein have occurred to provide certainty regarding the act's material. Example: parties A and B admit that there has been a legal event, namely, sale and purchase.

Evidence is the most essential basis when defending the rights the plaintiff threatens. If a judge gives the burden of proof only to one of the parties, it can be considered a disadvantage to the charged party because if the accused party cannot prove the matter in question, that party can be defeated. The authority of a notary is regulated in Article 15 paragraph (2) letter b of the Notary Law, namely that the notary has the power to record letters under the hand by registering in a particular book provided by the notary, which is later referred to as *waarmerking* (Trifani, 2022). One form of deed made by a notary is a deed under the hand, namely a deed made by the parties concerned and based on the agreement created by the parties without any element of coercion and interference from authorized public officials, such as debt and credit agreements, receipts, and rental of goods. When the parties agree on the hand, it is necessary to make valid proof, such as the thumbprint of each party concerned and the parties' signatures, as a proper legal basis if a case occurs later. A deed under the hand that a notary has registered has the same evidentiary power as a deed under the hand that is not written by a notary, even though there is a stamp of office and signature of the notary in the act under the needle (Rahmadhani, 2020). Proof in court if what is submitted is only a deed under the hand; it is necessary to seek other evidence to support the act to be evidence that is considered sufficient to achieve legal truth. Article 1902 of the Civil Code states that the conditions for reaching the beginning of written proof must be included in the deed made by the person against whom the claim is made or from the person he represents. The act must allow the truth of the events concerned (Notodisoerjo, 1993).

Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 concerning the Office of a Notary, Article 15 paragraph (2) letter states that notaries during their term of office have the authority to certify signatures and determine the certainty of the date of notes under the hand by registering them in a particular book. Suppose a case occurs and the plaintiff cannot submit strong evidence. In that case, the lawsuit will be rejected and not granted because a judge can only make decisions based on evidence by applicable legislation. The thing that can be done to make an agreement letter not easy to deny is to create an endorsement or legalization that can be done through a notary; based on this legalization, the agreement letter under the hand can have proof almost similar to authentic deeds in general.

The weakness of the deed under the hand, even after being registered with the notary, is that the notary does not know the contents of the letter under the hand, and the letter is not intended for a particular crime. The notary has the authority to register the letter submitted by the plaintiff without seeing or asking for precise information about the letter's contents. Notaries who do not check back in detail cannot be used as a notary's fault. This is explained in the Notary Law, precisely in

Article 15 Paragraph (2) letter b, which states that notaries have the authority to record letters under the hand by registering them in a particular book. The Notary Law does not explain in detail that the notary should double-check, examine the contents of the agreement, and call the parties concerned according to the contents of the underhand deal (Rahmadhani, 2020). The obligation to read the deed by the Notary can be carried out, as stipulated in Article 16 paragraph (7) of the UUJN, that the reading of the deed, as referred to in Article 16 paragraph (1) letter m, is not mandatory if the contributor wishes that the act not be read because the contributor has read it himself, knows and understands its contents, provided that this is stated in the closing of the deed, as well as on each page of the deed minutes initialed by the contributor, witnesses, and Notary. The provision of the obligation to read the act in Article 16 paragraph (1) letter m of the UUJN is not mandatory under Article 16 section (7) of the UUJN. It can be interpreted that the obligation to read the deed is not absolute, required, or not a necessity. Sanctions for violating the responsibility to read the act are regulated in Article 16 paragraph (9) of the Notary Position Law, that if one of the conditions in Article 16 paragraph (1) letter m and Article 16 paragraph (7) is not fulfilled, the deed concerned only has evidentiary power as a deed under the hand. When compared to Law Number 30 Year 2004 (the previous Notary Position Law), Article 84 states that acts of violation committed by a Notary, including not reading the deed itself, will result in a deed only having evidentiary power as a deed under the hand or an act becomes null and void can be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and damages. As a result of the negligence and imprudence of the Notary, if the deed is done not by the orders of the Law, then the act contains a juridical defect, which can have legal consequences on the deed, namely, the deed only has evidentiary power as a deed under the hand (Article 16 paragraph (9) UUJN), due to the act he made problematic, Depending on the form of the action in question and the size of the loss that will be borne by (the) confrontants, due to errors and negligence that the Notary has committed, the Notary can be held accountable.

**2. What the legal consequences for the party who denies the signature of a letter under the hand that legalized before a notary.**

Underhand deed agreements can be made if the valid conditions of the agreement are fulfilled, this is regulated in Article 1320 of the Civil Code, namely (Muljono, 2017):

- a. The agreement of those who bind themselves;
- b. Capacity to enter into an agreement;
- c. A certain thing;
- d. A halal cause.

If this element is not fulfilled, it can be declared to have failed. If, in the future, there is a case against the agreement and there are parties who want to fight for their rights before a judge, then the underhand agreement cannot be used as a basis for strengthening evidence if there are valid conditions that are not met.

Before the occurrence of legal consequences, legal actions generally cause binding between the parties contained in the agreement for the rights and obligations listed in the contract; if not implemented, it will cause legal consequences. To minimize the occurrence of unwanted things, a notary must not take sides with only one party and must know which party is coming to him by asking the parties for identity information. After the parties submit physical evidence of their identity, the notary must check whether the information is valid

and by other proof of identity. Notarial deed making can be created due to the following elements (Rachmat, 1995):

- a. At the request or has been desired by the interested parties so that their legal actions can be stated or poured into the form of an authentic deed.
- b. Based on a law that determines that certain legal acts are absolute and must be made in the form of an authentic deed with the threat that it will be canceled if not, for example, in establishing a Limited Liability Company, which must use an original act.

The strength of a deed under the hand is not as muscular as an authentic deed because it is not binding on the judge. If the signature or stamp that has been listed in the act, there is a complaint or lawsuit that what has been recorded is not the signature or stamp of one or more parties who deny it, the party submitting the deed under the hand must try to prove that the signature or stamp contained in the act is indeed done by the party who has denied it. There are formal and material requirements that must be met so that an act can be declared as a deed under the hand, namely (Manan, 2006):

- a. The letter or writing must be signed by the parties;
- b. The contents described therein concern legal acts or legal relationships;
- c. The agreement is deliberately made to be used as evidence and actions or those related to legal relations mentioned therein;
- d. A stamp must accompany the underhand deed by what has been regulated in the Decision of the Supreme Court of the Republic of Indonesia Number 589K/Sip/1970, namely that an underhand deed that is not stamped cannot be used as valid evidence;
- e. The content of the deed is directly related to the subject matter of the dispute being handled.

Suppose a party denies having signed a letter under the hand. In that case, the deed must be proven by the party agreeing that the act is valid and has been signed knowingly by all parties, such as presenting other witnesses, suspicion, or recognition. Agreements can be made either orally or in writing; oral contracts are usually used in indigenous communities for simple legal ties, while written agreements are closely related to business and complex legal relationships, such as making a letter under the hand in a sale and purchase agreement (Artadi, 2010). Agreements made without the involvement of a notary are underhand agreements that do not have a strong legal force so that they have solid legal power; the parties to the agreement can go to a notary to legalize/legalize. Article 1868 of the Civil Code explains the definition of an authentic deed: "An authentic deed is a deed in the form prescribed by law, made before public servants who are authorized to do so in the place where the deed is made."

The deed under the hand submitted by the notary depends on the truth and honesty of the party concerned; if there is a denial, the act will have no value before the judge. Notaries who make mistakes also violate the rules of law contained in the Notary Office Law, which has causation with Article 1869 of the Civil Code by giving the impact of authentic deeds that only have evidentiary power under the hand (Adjie, 2015). When a notary has legalized a deed under the hand, then in the implementation and process, as well as after the act has been completed, it must be followed by accountability for the show that has been legalized.

The legal consequences of notarial responsibility for violations committed by themselves, for violations committed either intentionally or with the aim of causing

harm to people who use their services, notaries are only tasked with registering and are not responsible for the following (Wardhani, 2020):

- a. That the content is authorized by law;
- b. That the parties are the ones signing;
- c. The date stamped on the deed or letter was indeed signed at that time.

Some agreements are indeed made without involving the law or notaries in it, only writing about the terms or agreements agreed upon by the parties and approved by proof of signatures included in the agreement letter. Its legal force is less potent than an authentic deed based on a notary's authority. This will be a problem if, later, there are parties who claim to have yet to sign the agreement. This problem means the plaintiff must be able to prove the validity of the signatures or evidence included by the parties on the underhand deal. Matters governing the burden of proof have been regulated in Article 163 stbl 1941 No. 44 HIR, Article 283 stbl 1927 No. 227 Rbg, then Article 1865 in the Civil Code, which states that anyone who claims to have a right, the person who claims to have the request must prove his right (Muljono, 2017). Therefore, the deed under the hand should be brought directly to the notary to get supervision and legalize the agreement before the notary; in this case, a notary can stamp the deeds under the hand submitted by the confronters, then give a number and date, which number will be recorded in the book or register of acts, then will be signed by the notary. The party who affixes the signature must come before the notary by bringing a letter of agreement under the hand without being signed beforehand.

The notary will read out what is contained in the agreement letter, and explain the contents, purpose, and purpose of the letter under the hand will be made and legalized. Legal events regarding agreements are often prosecuted as a fight for rights by what has been agreed in a valid contract. Article 16, paragraph 1, letter E in the Notary Law explains the reasons that a notary can use when rejecting a party's desire to submit or make a deed. For example, when the confronter is a family member or has a blood relationship or a close relationship with the notary, it can cause a tendency to take sides / be impartial because of it, the notary can refuse to do the deed (Dwipraditya, 2020). The protection of notaries who have performed and carried out their duties by the legal provisions according to the applicable legislation is regulated in Article 1365 of the Civil Code, which explains that every person who commits an unlawful act and then causes a loss to the party concerned, then the person must compensate the amount of loss caused.

The relationship between the notary and the parties cannot be seen from the closeness between the notary and the confronter from the beginning of the meeting because the beginning of the discussion has yet to cause a problem as it is contested later. The relationship between the notary and the confronting can also be seen in Article 1869 of the Civil Code, which explains what conditions need to be met by a notary to do an authentic deed if the provisions regarding the valid requirements for the formation of an original act are not fulfilled. It only becomes a writing under the hand that the parties have signed (Wibowo, 2020). The legal consequences received by the notary against the party who denies the deed under the hand that has been legalized before the notary is not the responsibility of a notary. Because the notary only performs duties by what is recommended in the Notary Position Law Article 15 paragraph (2) letter b, which does not explain in detail that the notary must double-check and does not have to understand the contents of the agreement made by the parties. If the party makes a claim or denies the signatures listed in the deed under the hand, then the plaintiff must prove that it is true that all parties who signed the



act under the hand were done consciously and without coercion. In this case, it is emphasized that the notary only ensures the correctness of the signatures and thumbprints of the parties in the agreement according to identification, such as identity cards and so on. The legal consequences for the party who denies his signature on the letter under the hand that has been notarized, if the party can prove the truth, then the letter under the hand can be canceled / invalid or granted by the judge according to the lawsuit made by the plaintiff. If they cannot prove it, the letter under the hand remains valid and must be accounted for all rights and obligations per what has been agreed upon.

### Conclusion

Through the discussion that the author has done, the following conclusions can be drawn:

1. In a trial, the judge really needs evidence that can be used as a basis for giving a decision based on the evidence that has been submitted. The law regulates the evidence regulated in Articles 138, 165, 167 HIR and Articles 1867-1894 of the Civil Code. A deed under the hand that has been registered by a notary has the same evidentiary power as a deed under the hand that is not registered by a notary even though there is a stamp of office and signature of the notary in the deed under the hand. Evidence in court if what is submitted is only a deed under the hand, it is necessary to seek other evidence to support the deed into evidence that is considered sufficient to achieve legal truth.
2. Responsibility occurs as a result of an agreed agreement between the parties that gives rise to rights and obligations, the existence of rights and obligations arises because of the binding bond and can be proven through an agreement letter. The legal consequences for the party who denies his signature on the letter under the hand that has been notarized, if the party can prove the truth, then the letter under the hand can be canceled / invalid, or granted by the judge according to the lawsuit made by the plaintiff. If they cannot prove it, then the letter under the hand remains valid and must be accounted for all rights and obligations in accordance with what has been agreed upon by all parties involved. Article 15 Paragraph (2) letter b, which states that notaries have the authority to record letters under the hand by registering them in a special book. The Law on the Position of a Notary does not explain in detail that the notary should double-check, examine the contents of the agreement, and call the parties concerned according to the contents of the agreement under the hand.

### Suggestions

Based on the explanation that the author has described in this article, the author provides the following suggestions:

1. To the party who will make a deed under the hand, the party who makes it should pay more attention to the validity of the deed by bringing it to a notary for legalization. As well as the law regulates the evidence regulated in Articles 138, 165, 167 HIR and Articles 1867-1894 of the Civil Code. So that when the party facing wants to make a letter under the hand can know about the legal force created in the eyes of the judge when a case occurs.
2. Because the notary only performs duties by what is recommended in the Notary Law Article 15 paragraph (2) letter b, which does not explain in detail that the notary must double-check and does not have to understand the

contents of the agreement made by the parties, the party who will make a letter under the hand before a notary, must think about the possibility of denying the signature in the future, such as presenting witnesses, or documenting the signature.

3. If the party makes a claim or denial of the signatures listed in the deed under the hand, then the plaintiff must prove that it is true that all parties who signed on the act under the hand were done consciously and without coercion. With this, it should be made about the law that more clearly explains what must be done by a notary over the deed under the hand that he legalized.

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