

The Notary's Responsibility for Legalization of Letters Underhand Based on Basic Legal Values

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Abstract. *This research aims to determine and analyze the responsibility of Notaries for the legalization of private documents based on basic legal values and the legal consequences of private letters that have received Notarial legalization. The approach that this author will take is the Sociological Juridical approach. The Sociological Juridical Approach emphasizes research that aims to obtain legal knowledge empirically by going directly into the object. Sociological Juridical Research is legal research using secondary data as initial data, which is then continued with primary data in the field or towards the community, examining the effectiveness of a Ministerial Regulation and research that seeks to find relationships (correlations) between various symptoms or variables. Based on research, it can be concluded that the Notary's responsibility for the veracity of the legalized private letter is the certainty of the signature, meaning that it is certain that the person signing the signature is indeed the party in the private letter, not someone else. The legal consequences of a private letter that has received legalization from a Notary can be more helpful for the judge in terms of proof because by acknowledging the signature, the contents of the letter are considered to be an agreement between the parties because the truth of a private letter lies in the signatures of the parties, so the signature of the letter is acknowledged. This is perfect proof.*

Keywords: *Accountability; Legalization; Notary Public; Underhand.*

1. Introduction

In general, the position of Notary is held by legal regulations with the aim of helping and serving people who need authentic written evidence regarding a

situation, event or legal act.¹Handwritten writing is writing that is deliberately made by the parties for proof without any interference from authorized public officials and without certain standard standards and is only adapted to the wishes of the parties. In other words, an underhand deed is a deed that is made without the intermediary of a public official, but is made and signed by the parties entering into the agreement themselves.² In the reality of everyday life, a letter or deed under law is often the choice to legalize any legal act such as an agreement or power of attorney. However, there are administrative requirements that require the private letter to be legalized before a public official, one of which is a notary. The position of Notary is held or its presence is required by legal regulations with the aim of helping and serving the community requiring authentic evidence regarding circumstances, events or legal actions.³

The authority of a notary to certify a deed or private letter 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 Notary.

Public officials are people who carry out work or tasks to serve the interests of society as a whole. Placing a notary as a public official is a field of work or task that is deliberately created by legal regulations. The existence of a Notary is contained in the Civil Code, especially in the fourth book on Evidence and Expiration⁴.

A private letter that has received legalization by the Notary himself is an acknowledgment of the date the letter was made, namely providing validation regarding the date, identity and signature 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 does not know what the contents of the letter are, because the contents have been read before the parties put their signatures in front of a public official, in this case a notary.

¹R. Soeroso, 2020, Agreement under the Hand of Practice Guidelines for Making and Applying Laws, Sinar Graphics, Jakarta, Page 8.

²Tara Jasmine, Arpangi & Setyawati, 2022. "Responsibilities of Notaries in Legalizing Letters Under Hand". in Deed Journal, Volume 7 No.2.<https://jurnal.unissula.ac.id/index.php/SANLaR/article/view/21783> accessed on 08 May 2023 at 15:37

³M. Luthfan Hadi Darus, 2000, Notarial Law and Responsibilities of Notary Public Positions, UII Press, Yogyakarta, Page 6.

⁴Munir Fuady, 2003, New Paradigm Limited Liability Company, Citra Aditya Bakti, Bandung, Page 2.

The inclusion of the Notary's name and the Notary's signature in legalizing the private letter by certain parties involved in law enforcement is often interpreted to mean that the letter was made by the Notary and places the Notary as a party to the letter. Therefore, when the letter is disputed by those whose names are in the letter or by other parties, the Notary is often placed as a party or co-defendant.

2. Research Methods

This research uses a Sociological Juridical approach method, namely researching and studying law as a law in action study because it studies and examines the reciprocal relationship between law and other social institutions. Law in action legal studies are non-doctoral and empirical social studies.⁵

3. Results and Discussion

3.1. Notary's Responsibility for Legalizing Letters Underhand

The responsibility of a Notary is closely related to his authority itself. The authority of a Notary in Legalization is regulated in Article 15 paragraph (2) of Law Number 12 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, namely:

(2) Apart from the authority as intended in paragraph (1), the Notary also has the authority to:

- a) Validate the signature and determine the exact date of the letter under the hand by registering it in a special book.
- b) Record letters privately by registering them in a special book;
- c) Make a copy of the original letter underhand in the form of a copy that contains the description as written and depicted in the letter concerned;
- d) Validate the suitability of the photocopy with the original letter;
- e) Make deeds related to land; or
- f) Make an auction agreement.

⁵Ronny Hanitijo Soemitro, 1988, Legal Research Methodology and Jurimetry, Ghalia Indonesia, Bogor, Page 34.

One of the backgrounds underlying the granting of this great authority to Notaries is because the State of Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia aims to guarantee legal certainty, order and protection, which has truth and justice as its core. For this purpose, authentic written evidence is needed regarding circumstances, events or legal actions carried out through certain positions. The government policy above is a legal policy towards increasing the duties, authority and responsibilities of a notary, in producing authentic written evidence regarding an event or legal act that is useful for state administration and community activities.⁶.

A notary has the authority to make authentic deeds regarding all deeds, agreements and provisions required by statutory regulations and/or which are desired by interested parties to be stated in authentic deeds.⁷ guarantee the certainty of the date of making the deed, store the deed, provide goose. copies and quotations of deeds, all of this as long as the preparation of the deeds is not also assigned or excluded to other officials or other persons as determined by law.

The public's need to ratify or validate a document is the beginning of warmeking, legalization, and up to notarial deeds. The need to legalize documents itself is needed in various cases, such as for educational purposes, to an agreement or good agreement made privately. Ratification of a document is a way to strengthen the position of the document as written evidence.

The authority of a Notary in legalizing a private document is of course accompanied by responsibility for this action. Looking at the 1874 Civil Code, basically in this case the Notary has no responsibility for the contents of the deed he makes in front of him, because the contents of the deed are the wishes and are an agreement desired by the parties. Whether a private letter is against the law or not, the notary is not responsible for this matter. The notary's responsibility is only limited to providing legal certainty regarding the date, identity and signature of the parties to the agreement, This means that there is a certainty of legal consequences under the hand which states that the signature is indeed true, all parties are present and know the contents of the agreement because it has been read by the Notary, and there is no other party because everything is done in front of the Notary. This way there is no possibility of denial in the future.

In legalizing a private letter, even though the Notary does not participate in making the private letter, he has quite a big responsibility because in legalizing a

⁶In notarial law it is called Copy Collatione.

⁷Article 15 number 1.

notary, he must know the person who is signing in front of the Notary. For private letters that are legalized by a Notary, the Notary is responsible for 4 (four) things, namely:

1. Identity of the Parties

The notary is obliged to check the identity of the parties who will sign the letter/agreement privately (such as KTP, Passport, Driver's License), or be introduced by someone else.

2. Content of letter under this hand, the Notary is obliged to read the contents of the deed to the parties and ask whether it is true that the contents of such a letter are what the parties desire.

3. Signatures of the Parties

In the event that a private letter is signed, it must be done in the presence of a Notary who will legalize the letter, and the Notary must ensure that it is the parties who are signing the letter, not someone else.

4. Letter Date

The notary must ensure that the date on the underwritten letter matches the date on which the parties affixed their signatures and then registered it in a special book that has been provided for this purpose.

Signing a letter underhand is likened to a thumbprint. Accompanied by a dated statement from a Notary or other official appointed by law stating that he knows the person signing or that this person has been introduced to him, that the contents of the deed have been explained to that person, and that after that the signature the hand is affixed in front of a public official. The official must record the writing.

Basically, the Notary is not responsible for the contents of the deed made before him, because the contents of the deed are the wishes and are an agreement desired by the parties. Whether a deed is an unlawful act or not, the Notary is not responsible for this matter. The Notary's responsibility is only limited to providing legal certainty regarding the date, identity, and signature of the parties to the agreement, meaning that there is certainty regarding the legal consequences under his hand which states that the signature is true, all parties are present and know the contents of the agreement because The Notary has read it, there is no other party because everything is done in front of the Notary.

Thus, the Notary's responsibility for the veracity of the legalized private letter is regarding the certainty of the signature, meaning that it is certain that the person signing the letter is indeed the party to the letter and not someone else. It is said this because those who legalize a private letter are required to know the person signing the letter by looking at their identification such as a Resident's Identification Card, Driving License, etc. If the Notary who will legalize the letter already knows or has been introduced to the parties, then the parties will put their signatures in front of the Notary who will legalize it at that time, day and date.

The limits of responsibility of Notaries in carrying out their official duties can be requested as long as they are still authorized to carry out their official duties as a Notary, or mistakes made in carrying out their official duties as a Notary and sanctions that can be imposed on a Notary can be imposed as long as the Notary is still authorized to carry out their duties position as Notary.

A notary can still be asked to be responsible for a deed he or she made while in office if one day the deed is annulled in court even though the notary has retired from his or her position, this can be done by parties who feel aggrieved by the deed and is valid as long as the 30 (thirty) period is still in effect counted from the date the deed is made by a Notary to create legal certainty, so that this is in accordance with the intent of the theory of responsibility.

In practice, Notaries carry out work based on their authority or within the scope of their position as Notary based on UUJN. The presenters come to the Notary on their own behalf and express their wishes in front of the Notary. Then the Notary carries out his work in accordance with applicable legal regulations, and it is impossible for the Notary to legalize the private document without a request from anyone. As long as the Notary carries out his/her official duties in accordance with the UUJN, and has fulfilled all the procedures and requirements for legalizing it and the letter is in accordance with the wishes of the parties facing the Notary, then claims against the Notary cannot be made. The parties who come to the Notary are based on their own needs and desires,

It needs to be emphasized that if the parties later have a dispute or dispute over an agreement or engagement which is proven by a legal act in a legalized private letter, which is proven by a legal act of legalization by a Notary, then it is not appropriate if the Notary is then brought into the scheme. law of investigation, prosecution and examination. So with regard to evidence of private documents that are legalized by a notary, if the parties have a dispute then it is sufficient that the Notary in this case be held responsible only in the law enforcement scheme to seek justice for the parties to the dispute or case.

3.2. The Impact of Notary Law on the Legalization of Letters Underhand

Looking at the provisions of Articles 1874, 1874 (a), and Article 1880 of the Civil Code, discussing the issue of the strength of documentary evidence, where it is stated that the document in question needs to be legalized by a Notary, although the Notary's authority is not only to legalize but also to certify the suitability of the photocopy with the original document and also make copies of original letters under your own hand in the form of copies that provide descriptions as written and depicted in the letter in question.

Legalization is the legalization of a private letter which is read by a Notary and signed by the person present in front of the Notary at that time to guarantee the certainty of the date of the deed in question. The presenters who put their signatures are recognized by the Notary or introduced to the Notary, then the Notary explains the contents of the letter to the signer or person who puts a thumbprint and at that time the deed is then signed or put a thumbprint by the person concerned in front of the Notary. The notary records the legalization number in a special legalization register book. The date of signature or affixing of the thumbprint must be the same as the date of legalization. To be used as valid evidence in court, this legalized letter must be sufficiently stamped⁸.

Private letters do not have authentic characteristics and do not have executorial power. Where a private letter only becomes valid if the parties signing it acknowledge the signature. A private deed legalized by a Notary only provides certainty regarding the date and identity of the parties entering into the agreement as well as the signatures affixed under the letter. A private letter legalized by a Notary cannot be said to be an authentic deed. Because the legalized letter only provides certainty regarding the date and signature and is not made by a Notary but is made by the parties concerned.

However, private letters can have perfect evidentiary power and are binding if they are legalized by an authorized official. The legalization referred to is proving that the document made by the parties was actually signed by the parties who made it. Therefore, the testimony of a Public Official who is authorized to do so is required, in this case a Notary, to witness the signing on the same date as the time of signing.

The purpose of evidence is the judge's decision based on that evidence.⁹The function of legalization in a private letter is to guarantee the certainty of the date and signature of the parties and the contents of the deed are explained by the Notary so that the signer cannot deny the contents of the signed letter. In terms

⁸Sudijno Mertokusumo, 2002, Indonesian Civil Procedure Law Eighth Edition, Liberty, Yogyakarta, Page. 153

⁹Frans Hendra Winarta, Jakarta : Sinar Graphics, 2012, "Indonesian National and International Arbitration Dispute Settlement Law". Pp 9 - 28

of proof, it is only about assessing the admissibility of a piece of evidence and assessing its evidentiary strength after the proof is held.

A private letter that has received legalization from a Notary can help the judge in terms of proof because by admitting the signature, the contents of the letter are considered to be an agreement between the parties. perfect proof.

However, a private letter that is legalized by a Notary has a power of proof that is not the same as an authentic deed, because the signature contained in the private letter can be denied by the person who signed it and the party submitting it as evidence must prove its truth through other evidence or witnesses. - witness. And legalized private letters do not qualify as authentic deeds, where one of the requirements for authentic deeds is that they are made by an authorized public official, while private deeds that are legalized by a Notary are made by the parties.

Private letters do not have authentic characteristics and do not have executorial power. Where a private letter only becomes valid if the parties signing it acknowledge the signature. A private deed legalized by a Notary only provides certainty regarding the date and identity of the parties entering into the agreement as well as the signatures affixed under the letter. A private letter legalized by a Notary cannot be said to be an authentic deed. Because the legalized letter only provides certainty regarding the date and signature and is not made by a Notary but is made by the parties concerned.

4. Conclusion

In accordance with the theory of legal responsibility, As long as the Notary carries out his duties in accordance with the UUJN, and has fulfilled all the procedures and requirements for legalizing it and the letter is also in accordance with the wishes of the parties facing the Notary, then claims against the Notary cannot be made. legalized by a notary, if the parties have a dispute then it is enough for the Notary to be held responsible only in the law enforcement scheme to seek justice for the parties in the dispute or case. As well as the legal consequences of a private letter that has received Notarial Legalization, the letter is binding on the parties and can be perfect evidence because the truth of a private letter lies in the signatures of the parties.

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