



# Legal Strength of Deeds Under the Hands of Notaries in Civil Proof

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## ABSTRACT

A deed is a written evidence that plays an important role in proving civil cases. In practice, deeds are divided into authentic deeds and private deeds. Private deeds that are legalized by a notary often raise questions about their evidentiary power. This study aims to analyze the legal position and evidentiary power of private deeds that have been legalized by a notary in civil disputes. This study uses normative legal research and a normative legal approach with qualitative analysis sourced from primary and secondary legal materials. The results of the study indicate that legalization by a notary does not change a private deed into an authentic deed, but provides reinforcement to the date and signatures of the parties that the date and signatures on the private deed are indeed legalized before a notary. Thus, the deed has higher evidentiary power than ordinary private deeds, but is not equivalent to an authentic deed.

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## INTRODUCTION

The development of civil transactions today is marked by the increasing preference of the public to use deeds under hands (underhands acts) for reasons of flexibility, speed, and cost. In practice, deeds under hand are often brought before a notary for legalization as an effort to strengthen the position of the letter evidence in the event of a dispute in the future. However, it is not uncommon for conceptual errors to arise: some parties think that legalization automatically 'makes' the deed under the hand as powerful as an authentic deed, or even transfers the material responsibility for the contents of the deed to a notary. This mistake has implications for improper evidentiary strategies and erroneous legal expectations at trial.

Normatively, the Indonesian civil evidence system recognizes five pieces of evidence, namely written evidence, witnesses, suspicions, confessions, and oaths. Among these evidence, written evidence plays a central role in civil cases. The Civil Code distinguishes authentic writing and writing under the hand (Article 1867), as well as defining authentic deeds (Article 1868) and the consequences if the authentic deed is deformed so that it has a position like writing under the hand (Article 1869). Article 1870 and Article 1871 regulate the power of proof of authentic deeds, while Articles 1874 and 1875 regulate the writing under hand, including the legal consequences if recognized by the parties.

On the other hand, in providing public interest services in the sense of the field of service making deeds and other duties imposed on notaries, which are attached to the title of public official within the scope of duties and authority of notaries. The Notary Position Law (UUJN) gives additional authority to notaries to certify signatures and determine the certainty of the date of the letter under hand by registering it in a special book (legalization) and conducting *waarmerking* (recording of letters under hand that have been previously signed by the parties). This authority is contained in Article 15 paragraph (2) of the UUJN. Doctrinal legalization is not the creation of an authentic deed; It is an administrative act that attaches to the deed under hand to guarantee certain formal aspects (identity, signature, date), not to justify the content of the deed.

This research is relevant because of the increasing use of deeds under hand in private transactions (e.g. debt and receivables agreements, leases, sales and purchases, business cooperation) which has the potential to cause disputes in the event of default. Misinterpretation of legalization can pose two risks: first,

the risk of proof, namely failure to meet the required evidentiary standards so that the lawsuit/exclusion is not proven; second, the risk of liability, namely wrongly placing the notary as the party responsible for the material truth, even though the Law does not order so for legalization.

In Indonesian civil law, written evidence has an important role in resolving civil disputes. Article 1865 of the Civil Code and Article 164 of the Civil Code / Article 284 of the Civil Code state that the party filing a lawsuit is obliged to prove its evidence. One of these evidences is a deed. Deeds can be in the form of authentic deeds or deeds under hand. In practice, many parties choose to make an agreement privately without involving a notary, then ask for the legalization of the deed. However, legal questions arise regarding the extent of the evidentiary power of such a deed.

## RESEARCH METHODS

The type of research used in this study is a type of normative legal research, namely legal research based on secondary data. Where the method is a research method that focuses on legal norms and applicable legal principles. In normative legal research, the data collected is qualitative and sourced from primary and secondary legal materials.

E. Saefullah Wiradipradja explained that normative legal research is "legal research that examines positive legal norms as the object of study". In normative legal research, law is no longer seen as a mere utopian thing but has been institutionalized and has been written in the form of existing legal norms, principles and institutions. Normative legal research is also referred to as dogmatic legal research that examines, maintains and develops positive legal buildings with logical buildings.

## RESULT AND DISCUSSION

### Legal Strength of Deeds Under the Hands of a Notary in Civil Proof

Article 1874 of the Civil Code explains that the deed under hand is a deed signed under the hand, letters, lists, letters of household affairs and other writings made without the intermediary of a public official, therefore the power of proof of the deed under hand is not as strong as the power of proof of an authentic deed which has perfect and binding evidentiary power.

Deeds basically have a formal function (formality causa) and a function as evidence (probationis causa). In the formal function, it means that for the completeness or perfection of a legal act, a deed must be made. As a function of evidence (probationis causa) it is intended that by making a deed from the beginning it is used as proof in the future, so that the function of proof, the written nature of an agreement in the form of a deed does not make an agreement valid, but only so that it can be used as evidence if a dispute arises in the future.

Deeds made under the hand can be legalized by a notary, in accordance with one of the notary's authorities, namely, the legalization of the deed under the hand. The legalization in question is to prove that the document made by the parties is indeed signed by the parties who made it.

The deed under hand that is legalized is a deed that must be signed and ratified in front of a notary/authorized official, the meaning of the ratification of the deed under the hand is:

The notary guarantees that the person whose name is listed in the contract is the person who signed the contract, and

The notary guarantees that the date of the signature is made on the date mentioned in the contract.

This legalized deed must be registered in a special book provided by a notary, this is stated in article 15 paragraph (2) letter a of Law Number 30 of 2004 concerning the position of notary.

Article 1866 of the Civil Code affirms the existence of five pieces of evidence in civil cases: letters, witnesses, suspicions, confessions, and oaths. Proof with writing can be done with authentic writing or under the hand, this is stated in Article 1867 of the Civil Code. An authentic deed is defined as a deed made in the form prescribed by law by or in the presence of an authorized public official. A deed that cannot be treated as an authentic deed, either because of the unauthorized or incompetent nature of the public official concerned or because of a defect in its form, has the force of writing under hand when signed by the parties. If the authentic deed is deformed, its position deteriorates to a writing under hand when signed by the parties.

The evidentiary power of authentic deeds is commonly described in three dimensions, namely:

external force (uitwendige bewijskracht), which is the ability of a deed to prove itself as an authentic deed;

formal force (formele bewijskracht), which is the formal truth regarding the dates, signatures, and identities of the parties; and

Material force (materiele bewijskracht), which is the truth of the legal events stated in the deed against the parties, heirs, and beneficiaries, as long as it is not proven otherwise.

Unlike authentic deeds, deeds under hand do not automatically have these three dimensions. The Civil Code stipulates that a writing under the hand that is recognized as true by the party to whom it is presented gives rise to 'complete evidence' (perfect evidence) such as an authentic deed against the person who signed it, his heirs, and the beneficiary of his rights (Article 1875). However, his 'underarmed' character does not

turn into an authentic deed; The nature of 'complete evidence' applies to the admitting party and those who derive rights from it.

Article 15 paragraph (2) letter a of the UUNJ gives the authority to the notary to certify the signature and determine the certainty of the date of the letter under hand by registering it in a special book (legalization). Meanwhile, *waarmerking* (letter b) is the registration of a letter under the hand that has been signed by the parties beforehand; The notary provides proof of registration and records it, without witnessing the signing. The legalization is the verification of the conformity of the photocopy with the original document (not the legalization of the signature).

From the point of view of proof, legalization adds formal guarantees, namely:

1. The identities of the parties are identified;
2. The signing is done in the presence of a notary;
3. Exact signing date; and
4. recorded in a special book.

Legalization does not mean that the notary guarantees the material correctness of the contents of the deed; The notary does not judge the correctness of the statement of will of the parties, unless the act is upgraded to an authentic deed (which is subject to the procedure and form of an authentic deed). Therefore, the reliance on the material responsibility of the contents of the deed to the notary in the context of legalization is dogmatically wrong.

If the signature on the deed under the hand is "acknowledged" by the party to whom it is presented, Article 1875 of the Civil Code applies: the deed obtains complete evidence against the signatory, heirs, and beneficiaries. In this condition, the judge is in principle bound by the evidence as long as there is no evidence to the contrary that undermines the content of the deed.

On the other hand, if the signature is "refuted" by the party to whom it is presented (or the heirs/beneficiaries of the right do not admit it), Article 1877 of the Civil Code provides a basis for the judge to order an examination of the authenticity of the signature in court. The burden of proof will practically shift to the party who submitted the deed to present other evidence (e.g. handwriting/forensic experts, witnesses, or supporting electronic evidence). In practice, the publication of Supreme Court jurisprudence also confirms this construction, for example in the discussion of the position of receipts and deeds under hand.

Legalization does not raise the degree of a deed under hand to an authentic deed. Legalization only certifies signatures affixed before a notary, establishes the certainty of the date, and records in a special book. Thus, the 'complete evidence' that can arise from the deed under hand still relies on the recognition of the signature as per Article 1875 of the Civil Code, not because of legalization itself.

Nevertheless, legalization has a fairly important impact in the following matters:

1. Reduce the disclaimer regarding the presence of the signatory on a specific date;
2. Reinforcing the argument that the signing actually happened; and
3. Makes it easy to prove the identity of the signer. In a trial, a combination of legalization, a trace of the parties' correspondence (email/chat), and proof of payment can form a series of evidence that supports each other to achieve the standard of civil proof (preponderance of evidence).

### **Position and Evidentiary Value of Deeds under the Legalized Hands of Notaries**

In principle, the deed under hand has full probative force if the signatory acknowledges his signature. If denied, the party submitting the deed is obliged to prove the correctness of the signature. In the condition that the deed has been legalized, the notary as a public official gives a professional statement that the correct signature is made in his presence by the party concerned. This statement strengthens the position of the evidence and, practically, shifts the burden of denial to the denying party even heavier.

However, legalization does not necessarily prove the material truth of the contents of the deed. Material content such as achievements, defaults, or compelling circumstances must still be proven through other evidence (witnesses, additional letters, suspicions, confessions, or oaths). In other words, legalization strengthens the formal side, but on the material side it remains a separate realm of proof.

In the litigation process, judges usually consider legalized deeds as evidence of letters that have high reliability in aspects of the identity of the signer and date. If the opponent alleges forgery of signatures, then he must submit counter-evidence such as forensic laboratory examination or witnesses who can negate the presence of the signatory before a notary.

The value of the deed under the legalized hand is only limited to the certainty of the signature and the certainty of the determination of the date, meaning that the Notary only ensures that the person who signed the deed is the right of the parties who have agreed to make an agreement and make the signature before the notary on the same day and date when the signing occurs, and has also been revealed about the content of the agreement so that the parties are considered to have known and agreed on the contents in the deed.

**CONCLUSION**

Legalization by a notary based on Article 15 paragraph (2) letter a of the UUJN does not change the character of the deed under hand into an authentic deed, legalization only adds to formal guarantees (identity, signing before a notary, exact date, and recording).

The evidentiary power of the deed under the hand whose signature is acknowledged to obtain 'complete evidence' such as an authentic deed against the parties who signed it, the heirs, and the beneficiaries of the rights (Article 1875 of the Civil Code). If the authenticity of the signature is denied, the judge can order an examination of the authenticity of the signature (Article 1877 of the Civil Code), the burden of proof practically shifts to the party who submitted the deed to prove the authenticity of the signature.

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