



## Notary's responsibilities for privately made deed signed before and attested

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### Abstract

One of the powers of a Notary based on the provisions of Article 15 paragraph (2) letter a UUJN is to legalize private deeds. A private deed that has been legalized can provide certainty for the Judge regarding the date and identity of the parties entering into the agreement as well as the signatures attached. Meanwhile, the contents of the private deed are the responsibility of the parties who made it. However, when problems arise, notaries are often used as parties in lawsuits over the contents of private deeds. Even though the Notary is not responsible for the deeds under his/her hand which are legalized. This research aims to explain and analyze private deeds that are legalized by a Notary, and explain and analyze the Notary's responsibility for legalized private deeds.

**Keywords:** Notary responsibilities, privately made deed

### Introduction

The presence of a Notary has an important role in society, especially in legal traffic, especially in relation to the production of written evidence as evidence at a later date and before a court hearing (Tia Sanitra Gumilang, 2019: 145-163) <sup>[12]</sup>. Article 1 number 1 of Law No.30 of 2004 concerning the Position of Notaries as amended by Law No.2 of 2014 (hereinafter referred to as UUJN) (Suhaimi, et.al., 2023: 27-45) <sup>[11]</sup> states that Notaries are officials general who has the authority to make authentic deeds and has other authorities as regulated in the UUJN.

The Notary's authority in Article 15 (1) and (2) UUJN is

- a. Create actual contract deeds regarding all agreements and provisions, actions required by laws and regulations to be carried out in the contract and/or actions that stakeholders wish to include in the actual contract, guarantee certainty of contract dates, produce the entire contract, and save contracts, make and present copies and extracts of deeds.
- b. Proving the signature and confirming the date of the private deed by recording it in a special book.
- c. Administration in a special book of private deeds.
- d. Make a copy of the original document under hand by explaining the contents of the deed.
- e. Verify the consistency of the copy with the original.
- f. Providing legal advice regarding contract formulation;
- g. Make deeds related to land.
- h. Preparation of auction minutes deed.

Based on this power, it can be seen that one of the powers of the notary is to confirm signatures and determine the date of documents signed by them by recording them in a special book in the Civil Code, also known as the Civil Code sex. legalization. Legalization in its true sense is proof that a document drafted by a party was in fact signed by the party who created it. Therefore, a declaration from an authorized official (in this case, a notary) is required. The notary here is intended to witness that the signing of the deed is actually carried out on the same date as the time of signing (Ayu Riskiana Dinariyanti, 2013: 6) <sup>[11]</sup>.

A certified private document allows a judge to determine the date and identity of the parties who entered into the agreement, and signatures located at the end of the letter no longer mean that the parties or one of them did not know the contents of the agreement. The content of the letter is. Because the content is first read and explained before the parties sign in front of a notary. So the function of legalizing a deed made privately is to guarantee the date and signature of the parties concerned.

The Notary's responsibility for this legalization is only limited to seeing and validating the signatures of the parties and determining the certainty of the deed under his/her hand. The notary is not responsible for the contents of the deed under the legalized signature. The contents of the private deed are the full responsibility of the parties who made it. However, in practice, when legal problems arise regarding legalized private deeds, notaries are often involved as parties in lawsuits. As in Decision No.28/Pdt.G/2019/PN. Bna, where the Notary was made a Co-Defendant in the case.

The Plaintiff in his position stated that the Notary as Co-Defendant was not observant and careful regarding the creation of the custody agreement made on December 10 the 2018 between Defendant and the Plaintiff. The Plaintiff felt disadvantaged by the custody agreement which was made by private deed and then legalized by the Co-Defendant. The Plaintiff asked the Judge to state that the Co-Defendant's action in legalizing the custody agreement was an unlawful act which had a clear detrimental impact on the Plaintiff. So that the Plaintiff's losses do not continue, by law the custody agreement dated 10 December 2018 which has been legalized can be canceled or at least can be declared invalid and/or not legally binding.

The Judge's decision regarding the lawsuit was to reject the Plaintiff's lawsuit and declare that the custody agreement which had been legalized by a Notary was declared valid and had legal force. In his consideration, based on the facts in the trial, it was proven that on December 10 2018, the Plaintiff (the party receiving the money deposit) and the Defendant (the party giving the money deposit) had come to

the Co-Defendant's office to sign a deposit agreement in the presence of the Co-Defendant.

The judge in this case found facts obtained during the trial which were then used as legal arguments that the Plaintiff had come and signed the deed privately before a Notary. As has been explained, in legalization the Notary is only responsible for signing and confirming the date of the deed under his/her hand. So in his decision the judge stated that the legalized private deed was valid and had legal force. This is also supported by the fact that there were no elements found in the custody agreement that conflicted with the conditions for the validity of the agreement as regulated in Article 1320 of the KUHPperdata. Apart from that, it needs to be understood that the custody agreement that has been legalized is a private deed that is only binding on those who make it.

Thus, it would be interesting if the issue of legalizing private deeds by a notary is discussed in this article, so that later we can find out how private deeds are legalized by a notary and the Notary's responsibilities for legalized private deeds.

### Research Method

To limit the discussion of this article from expanding and deviating from the main discussion, it is necessary to limit the problem or scope of one research object. The scope of this research is regarding the legalization of private deeds by a notary. So that the Notary's responsibilities can be known for legalized private deeds. This research belongs to the field of law, especially notarization, and the research type is normative law, namely by conducting legal research by studying library materials or secondary data (Soerjono Soekanto dan Sri Mamudji, 2018: 13-14) <sup>[10]</sup>.

Normative research must of course adopt a legislative approach, since examining various legal provisions is the focus and central theme of the research (Jonaedi Efendi dan Johnny Ibrahim, 2018: 132) <sup>[7]</sup>. In addition to using legal and conceptual approaches, this study also uses the case method, that is, the method of examining cases that are relevant to current issues and have become court decisions with lasting validity. The case method in the study of normative law aims to examine legal norms or rules implemented in legal practice (Peter Mahmud Marzuki, 2013: 134) <sup>[9]</sup>.

Data collection is carried out through library research activities, which are carried out by reading and analyzing statutory regulations, conducting literature searches through print and electronic media articles, grouping data that is relevant to the problem being studied, and analyzing relevant data to solve the problem. become the object of research.

### Results and Discussion

The power of the Notary to certify public documents under Article 15(1) of the UUJN extends to all acts, agreements and provisions required by law and/or required by interested parties to be listed in the certified document in order to ensure the creation of the document Certainty of date, storage of documents, provision of general certificates, copies of documents and excerpts, as long as the creation of the documents was not delegated or excluded by law to other officials. Notarization of public documents before or by a notary creates legal certainty and legal protection for

interested parties, including society at large (Cut Novadilla Halid, et.al., 2023: 65-73) <sup>[2]</sup>.

In addition to the power to authenticate public documents, notaries also have other powers relating to private documents. One of the powers provided for in Section 15(2)(a) is to verify signatures and establish security of the date of signed letters by recording them in a special book (M. Yahya Harahap, 2005: 597) <sup>[14]</sup>.

Some believe that a private deed certified by a notary has the same status as a true deed. Notaries are responsible for the content of certified private documents. If we refer to the UUJN regulations, there is no single provision that obliges a notary to know the contents of a private document authenticated by a notary. When notarizing, the notary is only responsible for ensuring the security of the signatures of the parties and for establishing the security of the documents they sign. In other words, the notary guarantees that the name that appears on the document is the same person who personally signed the document.

For legalized private deeds, only the signing is carried out in the presence of a Notary while the contents are drawn up by the parties themselves. Therefore, in this case there needs to be a limitation of the Notary's responsibility for legalized private deeds. In the UUJN there is no provision which states that in exercising their authority a Notary cannot be sued before the Court. However, it must be clear that the Notary is obliged to maintain confidentiality in all matters relating to the document in the performance of his or her duties. This is provided for in Article 16(1) of the UUJN letter, which states that the notary is obliged to know all the information about the deed he has drawn up and all information received by him in order to prepare the deed in accordance with the oath/promise, unless otherwise provided by law, otherwise it should be kept confidential. The notary's duty of confidentiality obliges him to keep confidential, in addition to the documents he drafts, information he receives in the performance of his notarial work, including notarized private documents. This is in line with the notary's oath of office/promise in Article 4 of the UUJN, which states "I will keep the contents of documents and information received in the performance of my duties confidential".

The UUJN states that in order to review and/or prepare a notary agreement, you must first obtain approval from the Notary Honors Committee. This is subject to the provisions of Article 66 of the UUJN, which provides that, for the purposes of judicial proceedings, the investigator, prosecutor or judge, with the consent of the Honorary Notary Public Council, has the power to

1. Leave the documentary record and/or a copy of the letter attached to the documentary record or notarial record in the custody of the notary;
2. Invite the notary to review the notarial deed or notarization agreement in his custody (M. Hendri Kurniawan, 2021: 421) <sup>[4]</sup>

This provision is a follow-up measure to protect notaries in fulfilling their obligation to maintain confidentiality of the contents of documents and information received in the course of performing their duties. The Honorary Council of Notaries (hereinafter referred to as MKN) is composed of representatives of notaries, the academics and government, which functions as a legal protection institution for Notary Positions. The existence of MKN means that notaries are

expected to make optimal legal contributions in fulfilling their tasks as legal protection bodies (Irene Dwi Enggarwati, 2015: 17) <sup>[5]</sup>.

The MKN's status in terms of providing legal protection to notaries is that of an independent body, since in this case the existence of the MKN is not part of the government that appointed it. The MKN does not allow itself to be influenced by other parties or institutions when exercising its decision-making powers, so the MKN's decisions cannot be questioned in this case (Wahid Ashari Mahaputra, 2021: 673).

According to Gustav Rudbruch There are three basic legal values, namely: justice (philosophy), legal certainty (law) and social benefit (sociology). In his view, Gustav Rudbruch declares that the primacy of three basic values is the purpose of the law. In fact, legal justice often conflicts with the usefulness and safety of the law, and vice versa. One of the three fundamental values of legal objectives is that in the event of conflict someone must sacrifice (Muhammad Erwin, 2012: 12) <sup>[8]</sup>.

The priority order as stated above means that the legal system can avoid internal conflicts. According to Radbruch, these three aspects are relative and can change. At one time it could emphasize justice and push the usefulness and certainty of law to the edge. At other times certainty or usefulness can be emphasized. This relationship, which is relative and changing, is not satisfying. Meuwissen chose freedom as the basis and ideal of law. The freedom here is not arbitrary, because freedom has nothing to do with what we want. But in terms of wanting what we want. Instead of following broken wheels, we can associate freedom with security, justice, equality, etc.

Laws containing general rules serve as guides for the conduct of individuals in society, both in their relations with fellow human beings and in their relations with society. These rules become the boundaries within which society imposes burdens or actions on individuals. The existence of regulations and their enforcement create legal certainty. In this case, the notary requires legal certainty regarding the notary's immunity.

Sudikno Mertokusumo explained that legal certainty requires efforts to regulate the law through the enactment of laws by empowering and authoritative bodies so that these regulations have a legal dimension that ensures certainty that the law functions as regulations that must be followed (Zainal Asikin, 2012: 30) <sup>[15]</sup>. If we consider the regulations in the UUJN in relation to the immunity rights of Notaries, then we can conclude that the UUJN has not provided legal certainty regarding the immunity rights of Notaries in exercising their authority in legalizing private deeds.

Jan Michiel Otto explains that in order to create legal certainty, rules need to be clear, consistent, easily accessible, issued by the state (authority) and recognized. At the same time, the "UUJN", as a national regulation regulating notaries, does not clearly stipulate the immunity of notaries. The existence of Article 66 of the UUJN regulating the MKN cannot yet be considered a form of immunity of notaries. This is because the immunity granted to professionals such as civil servants and lawyers in Indonesia is the right not to be sued in court, whether in civil or criminal proceedings. At the same time, Article 66 of the UUJN only provides that the examination by the notary and/or the preparation of the notarial agreement by investigators, prosecutors and judges require the approval of

the MKN. On this basis, it cannot be said that the UUJN provides for the immunity of notaries.

Based on the results of an interview with Novi Sri Wahyuni (a Notary in Aceh), it was stated that a Notary in legalizing a private deed has limited responsibility, namely only validating the signature and guaranteeing the certainty of the date of the private document (Novi Sri Wahyuni, 2023). UUJN did not provide further explanation regarding the existence of MKN. However, in practice, Notaries cannot be summoned immediately by Investigators, Public Prosecutors or Judges to provide information regarding the deed they have made.

In practice, with private deeds legalized by a Notary in relation to criminal procedural law, the Regional MKN very rarely gives permission to investigators, public prosecutors and judges to carry out examinations of Notaries and/or take Notary protocols. Based on the results of an interview with the former Chair of the Aceh Regional MKN, Teuku Abdurrahman, he explained that MKN will reject requests from Investigators, Public Prosecutors or Judges to examine Notaries or requests to take Notary protocols relating to private deeds, which is legalized or the deed is waarmed by a Notary. This is done as long as the request is not related to denying the signature or confirming the date of the underwritten deed (T. Abdurrahman, 2023).

Teuku Abdurrahman further explained that this was done as a form of protection by the Notary Honorary Council for Notaries. Based on the UUJN, a notary has limited responsibility for legalized private deeds, namely limited to validating the signature and determining the date of the private deed. Meanwhile, the content is entirely the responsibility of the parties who created it. So it is natural for the Notary's Honorary Council to refuse requests from Investigators, Public Prosecutors or Judges to examine the Notary and/or take the Notary's protocol in relation to private deeds that are legalized or waarmed (T. Abdurrahman, 2023).

One of the cases related to the legalization of private deeds which was processed up to court was the Banda Aceh District Court Judge's Decision with Case Register No.28/Pdt.G/2019/PN-Bna. In this case the Notary was made a Co-Defendant, meaning he was not observant and careful regarding the creation of the custody agreement made on December 10 2018 between the Plaintiff and the Defendant. The plaintiff felt disadvantaged by the custody agreement which was made by private deed and then legalized by a notary (co-defendant).

The Plaintiff in his lawsuit asked the Panel of Judges to declare that the Co-Defendant's action in legalizing the custody agreement was an unlawful act which had a clear detrimental impact on the Plaintiff. So that the Plaintiff's losses do not continue, by law the custody agreement dated 10 December 2018 which has been legalized can be canceled or at least can be declared invalid and/or not legally binding. However, the Judge in his decision rejected the Plaintiff's claim and stated that the custody agreement which had been legalized by a Notary was declared valid and had legal force. In his consideration, based on the legal facts in the trial, it was proven that on December 10 2018, the Plaintiff (the party receiving the money deposit) and the Defendant (the party giving the money deposit) had come to the Co-Defendant's office to sign a deposit agreement in the presence of the Co-Defendant.

As a comparison, the following is stated in a judge's decision at the South Jakarta District Court with Register No.306/Pdt.G/2012/PN.Jkt.Sel and in Decision Number 332 K/Pdt/2016. The parties in this case did not make the Notary a party to the lawsuit. Although this lawsuit relates to a cooperation agreement letter which was legalized by a notary. This was the right step taken by the Plaintiff because the cooperation agreement was a private deed made by the Plaintiff and Defendant themselves. So the contents of the cooperation agreement are the responsibility of the parties.

### Conclusion

UUJN only provides protection to Notaries through the MKN contained in Article 66 UUJN, namely those relating to the examination and taking of Notary protocols in the realm of criminal law. The existence of MKN does not provide legal immunity for Notaries so that they cannot be sued before the court either civilly or criminally. The Notary's responsibility for this legalized private deed is only limited to ensuring that the agreement or deed was made on that date and that the parties have agreed to the agreement by signing the deed in the presence of the Notary. Notaries cannot be held responsible other than in relation to authenticating signatures and determining the date of legalized private documents.

Based on the Banda Aceh District Court Decision Register No.28/Pdt.G/2019/PN.Bna, it can be seen that UUJN has not provided legal protection to Notaries in exercising their authority to legalize private deeds. This is because the Notary is still a party to the lawsuit in court.

### Suggestion

It is hoped that there will be a clear and definite regulation regarding Notaries in exercising their authority to legalize private deeds, the contents of which are not the responsibility of the Notary but are entirely the responsibility of the parties who make them, where the Notary cannot be held responsible regarding the contents of private deeds legalized by the Notary.

The parties to the dispute should not make the Notary a Defendant or Co-Defendant in a lawsuit related to the contents of a legalized agreement, because basically a private deed only binds the parties concerned and is related to the contents of the deed only.

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