

The Legal Position of Underhand Debt Acknowledgment Certificate Legalized by a Notary

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Abstract. *This study aims to find out and identify the legal position of private acknowledgment certificates legalized by a notary and how the notary's responsibility for private acknowledgment certificates is legalized in the event of a dispute between the parties. The approach method used in this study is sociological juridical, the specifications of this research use descriptive analysis, data sources are obtained from primary data and secondary data, namely data obtained from literature and legal materials used, namely primary legal materials, secondary legal materials, tertiary legal materials, which is then analyzed by means of interactive model qualitative analysis. Based on the results of data analysis it was concluded that, the legal position of a private acknowledgment of debt legalized by a Notary is the same as an authentic deed, as long as the process of making it fulfills the formal and material requirements and is not denied the truth, this is in accordance with the provisions of Article 1338 paragraph (1) The Civil Code, and the Notary's responsibility for the private acknowledgment of debt which is legalized in the event of a dispute between the parties, the Notary can be asked for information regarding the certainty of the date of the privately owned letter, the authenticity of the signatures of the parties, procedures and mechanisms for legalization, this is in accordance with the provisions of Article 15 paragraph (2) letter (a) of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Office of a Notary, and Article 1874 of the Civil Code.*

Keywords: Acknowledgment; Debt; Legalization.

1. Introduction

Everyone has the right to fair recognition, guarantees, protection and legal certainty and equal treatment before the law.¹ An agreement is an act by which one person or more binds himself to another person or more, this is in accordance with the provisions of Article 1313 of the Civil Code, this means that from an agreement an obligation or achievement is born from one or more people (party) to one or more other people (parties), who are entitled to the achievement.² Therefore, it is important for every agreement to be made in written form, so that it can serve as evidence for the parties entering into the agreement.

Agreements related to lending and other things, are usually made in written form in order to avoid unexpected things from happening between the parties in the future. The parties usually sign the loan agreement letter which is made in writing, so that each obtains legal certainty that is binding on an agreement that has been agreed upon. The agreement made applies like a law for the parties who make it.³

A letter of acknowledgment of debt is a letter which tries to be made to be able to guarantee a certainty of rights and law as well as obligations between the two parties in the agreement. In daily practice, acknowledgment of debt is usually made in the form of an authentic acknowledgment of debt or a private acknowledgment of debt. An authentic debt acknowledgment letter has executorial power like a court decision as long as it fulfills the formal and material requirements. The contents of the acknowledgment of debt contain simple words in which the parties or those concerned admit that they owe a certain amount of money and promise to return the money within a certain time. This is very important to do, in order to avoid things that are not desirable, such as not acknowledging the existence of accounts payable.

Legal standing, namely where a person or party is determined to meet the requirements and has been given certain limitations in accordance with statutory regulations.⁴ Letters of acknowledgment of debt made by the parties privately, can be registered in a special book available for that by a Notary legally, this is in accordance with the provisions of Article 15 paragraph (2) point (b) of Act No. 2 of 2014 concerning amendment to Act No. 30 of 2004 concerning the position of Notary, namely that the Notary has the authority to validate signatures and

¹Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia

²Kartini Muljadi and Gunawan Widjaja. (2008). Engagement Born from Agreement. Jakarta: Radja Grafindo Persada. p. 92

³Rini Pamungkas. (2009). 101 Draft Letter of Agreement (Contract). Yogyakarta. Gradient Mediatama. p. 9

⁴ [https://adcolaw.com/en/blog/kedudukan- Hukum-legal-standing-dalam-tatanan- Hukum-indonesia/](https://adcolaw.com/en/blog/kedudukan-Hukum-legal-standing-dalam-tatanan-Hukum-indonesia/) accessed on 12 August 2022

determine the certainty of the date of private letters by registering them in a special book (legalization).

Debt acknowledgment letters can be legally binding and can be executed without going through a court decision process if made authentically before a notary.⁵In practice, if the parties have a dispute regarding the acknowledgment of debt made underhand which has been legalized by a Notary, sometimes the parties always state that the Notary is also responsible for the acknowledgment of debt, simply because there is a Notary's signature and stamp.

To corroborate this writing, based on the description of the background above, the authors found previous research that had conducted earlier studies of The position and function of the deed under the hand legalized by a Notary, by using qualitative research methods with a normative juridical approach. The results of this study indicate that the duties and work of a notary as a public official are not limited to making authentic deeds, but are also tasked with registering and certifying private documents, providing legal advice and explaining laws to the parties concerned, making deed establishment and amendment deed of limited liability company and so on.⁶

From what has been done by the researchers mentioned above, it can be understood that researchers conducted research on The position and function of the deed under the hand legalized by a Notary by using qualitative research methods. The connection with this research is that the author will also discuss private letters legalized by a notary from a different perspective, namely researchers focus on discussing how the legal position of private debt acknowledgment legalized by a notary and how the notary's responsibility for the acknowledgment of debt is under hand which is legalized in the event of a dispute by the parties.

Based on the background described above, the authors are interested in conducting research in terms of examining how the legal position of private debt acknowledgment legalized by a Notary and how the Notary's responsibility for privately held acknowledgment certificates is legalized in the event of a dispute by the parties, which will be further stated in the form of research with the title "Legal Position of Underhand Debt Acknowledgment Letters Legalized by a Notary".

2. Research Methods

Approach method yesg used in this research is sociological juridical, the specification of this research uses descriptive analysis, data sources are obtained from primary data and secondary data, namely data obtained from literature and

⁵ <https://blog.justika.com/docs-business/surat-pengakuan-hutan/> accessed on 12 August 2022

⁶ Ghita Aprillia Tulenan, Merry E. Kalalo, Henry R. Ch. Memah, & Evie Sompie. (2014). "Position and Functions of Deeds Under the Hand Legalized by a Notary" in the Lex Administratum Journal, Volume 2 No 2 2014 April-June, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/4745/4268> accessed on October 21, 2022

legal materials used, namely primary legal materials, secondary legal materials, tertiary legal materials, which then analyzed by way of interactive model qualitative analysis.

3. Results and Discussion

3.1. What is the legal position of an acknowledgment of underhand debt legalized by a notary?

Letters of acknowledgment of debt under the hand are regulated in the provisions of Article 1874 of the Civil Code, which in essence is explained that what is considered as underhand writing is a deed signed underhand such as letters, registers, household affairs papers and other writings other writings made without the intermediary of a public official.

There are two forms of acknowledgment of debt that are usually made by the parties, namely a letter of acknowledgment of debt made by an authorized official, namely a Notary in the form of an authentic deed, and a private acknowledgment of debt made by the parties and then they agree to register it with the Notary to obtain endorsement. A letter of acknowledgment of debt made by the parties privately can be registered in a special book available for that purpose by a notary legally.

Notaries have the authority that has been determined by law, one of which is the authority regulated in the provisions of Article 15 paragraph (2) letter (a) of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary, namely The notary has the authority to certify the signature and determine the certainty of the date of the letter under the hand by registering it in a special book (legalization). Legalization is a form of ratification of a private letter in which the signing of the letter is made before a Notary.

Based on the authority of a Notary, a Notary deed is born and created because on the basis of a request or desired by an interested person, their legal action is stated or set forth in the form of an authentic deed, and on the basis of a law that determines that certain legal actions must be made in an absolute form of authentic deed with the threat of cancellation if not, for example in setting up a Limited Liability Company, must be with an authentic deed.⁷

Agreements can be divided into two types, namely written agreements and oral agreements. There is Some of the legal principles in the agreement are:

- a) The principle of freedom of contract.
- b) The principle of consensualism
- c) Principle of Pacta Sunt Servanda
- d) *The Principle of Good Faith (Ginede Trouw)*
- e) *Principles of Personality (personality)*

⁷Setiawan Rachmat. (1995). Principles of Engagement Law. Bandung. Abardin's son. p. 3

*An acknowledgment of private debt acknowledgment is proof against anyone, of the truth of the statement from the parties that made it in the letter in a form that can be touched and can be seen, but that statement was given on the date written in the letter, is only a certainty for the parties who sign the letter and the heirs of the parties and the people who receive their rights.*⁸

An acknowledgment of private debt which is not denied by the parties means that they have acknowledged and not denied the truth of what is written on the private deed, so that according to Article 1857 of the Civil Code the private deed has the power the same proof as an authentic deed.

A private debt acknowledgment that has been legalized by a Notary which fulfills the formal and material requirements besides having the power to prove the parties to the legal action, can also be said to be perfect and binding evidence for the parties, as long as it is not disputed in court and denied the truth.

Based on the provisions of Article 1874 paragraph 2 of the Civil Code states emphatically that the signing of an underhanded writing is equated with the affixing of a thumbprint with a statement dated from a Notary or other official appointed by law stating that the affixing of the thumbprint is known by him or has been introduced to him, has legal standing to be used as strong evidence by the parties.

3.1. Notary Responsibilities for Letters of Debt Acknowledgment Legalized When a Dispute Occurs By the Parties?

Agreements can be divided into two types, namely written agreements and oral agreements. If the parties want to make an agreement or authentic deed, they can ask for the help of a Notary to make it, because the Notary is the only public official who is authorized by law to make the authentic deed.

In making authentic deeds, as much as possible, notaries must avoid things that can be canceled by law for authentic deeds, where authentic deeds can be canceled by law if the making is not clear or clear in terms of formal or material matters. There are several things that must be considered regarding formal and material matters in the body of the deed, namely as follows:⁹

- a. Full name, place, date of birth, nationality, occupation, position, position, place of residence of the appearers, and/or the person they represent;
- b. Information regarding the position of acting as appearers;

⁸Tito Widyanto Cipta, Moh. Sugiyono and Achmad Nurjannah. (2020). "Analysis of Underhand Deeds Legalized in a Legal Perspective in Indonesia" Journal of Al-Naqdu Islamic Studies, Vol.1/No.2/, ISSN: 2732-3995, p. 5, <https://www.jurnal.iaicirebon.ac.id>, accessed on October 21, 2022

⁹Herlien Budiono (2013). Basic Techniques for Making a Notary Deed. Bandung. Image Aditya Bakti. p. 17

- c. The contents of the deed which are the wishes and desires of the parties concerned;
- d. Full name, place and date of birth, as well as occupation, position and place of residence of each identifying witness.

Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary Public, explains the responsibilities that must be considered by a Notary in carrying out his duties and responsibilities because there are also prohibitions and obligations that must be obeyed by a Notary.

The notary is appointed by the highest authority of the state and given a trust and recognition in providing services for the benefit of society. Only people who are known for their honesty and who have knowledge and ability in the field of law are permitted to assume the position of Notary. Therefore, the holder of the Notary position must maintain the nobility of the dignity of his position by avoiding violating the rules and not making professional mistakes that can cause harm to others.¹⁰

The development of economic and socio-cultural life in society, makes Notaries increasingly needed in people's lives. Notaries play a very important role in every development process, because notaries have a position that is considered as a functionary in society, officials who carry out legal professions and services and provide guarantees and legal certainty for parties, officials who make strong documents that can be used as evidence in court when a dispute arises.¹¹

The notary's responsibility for the correctness of the legalized underhand acknowledgment of debt is related to the certainty of the signatures of the parties and the certainty of the date in the legalization, meaning that the signatures are indeed the parties as in the acknowledgment of debt, and not other people.

The notary's responsibility for the legalized private acknowledgment of debt if there is a dispute between the parties, namely the Notary can be asked for information regarding the certainty of the date of the private certificate, the authenticity of the signatures of the parties, procedures and mechanisms for legalization, this is in accordance with the provisions of Article 15 paragraph (1) 2) letter (a) Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary Public, and the provisions of Article 1874 of the Civil Code.

Notaries can also be fully responsible for underhanded deeds that have been legalized if it is proven that the Notary deliberately committed negligence and mistakes in legalizing, engineering underhanded documents which are then

¹⁰Hosni Thamrin. (2011). Making of Land Deed by Notary, Yogyakarta. Laks PRESSindo. p. 71

¹¹Sang Ayu Made Arya Kusuma Wardhani and Ni Made Julianti. (2020). "Responsibility of Notaries for the Legalization of Underhanded Deeds", Kerta Dyatmika: Scientific Journal of the Faculty of Law, Dwijendra University, Vol. 17 No. 2, P-ISSN 1978-8401, E-ISSN 2722-9009, p. 46 <http://ejournal.undwi.ac.id> accessed on 21 October 2022

legalized which can be detrimental to the parties, then the Notary may be subject to administrative, criminal and other sanctions. even civil sanctions, such as being required to make compensation in accordance with what was suffered by the aggrieved party.

Responsibility according to Hans Kelsen and developed by Fockema Andrea, which in essence states that responsibility or aansprekelijk is to be legally responsible for mistakes or as a result of an act, in general everyone must be responsible for all their actions or deeds.¹²

4. Conclusion

Based on the results of research conducted can be concluded that The legal position of private debt acknowledgment legalized by a Notary is the same as an authentic deed, as long as the process of making it fulfills the formal and material requirements and is not denied its truth, has the force of law as strong evidence, in accordance with Article 1338 paragraph (1) of the Indonesian Criminal Code - Civil law and Notary's responsibility for privately held certificates of debt which are legalized in the event of a dispute between the parties, namely the Notary can be asked for information regarding the certainty of the date of the underhanded letter, the authenticity of the signatures of the parties, procedures and mechanisms for legalization, in accordance with Article 15 paragraph (2) letter (a) of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary Public, and the provisions of Article 1874 of the Civil Code.

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¹²Fockema Andrea. (2007). translated by Adiwinata A. Teloeki and H. Boerchanuddin St. Batoeh, Dictionary of Legal Terms, Cet. First. Jakarta. Binacipta. p. 6

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