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The Notary's Responsibility for the Validity of Legalization of a Deed Under Hand Signed Without the Presence of the Parties (Case Study of Decision No. 146/PDT/2018/PT YYK)

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Abstract

This research aims to examine the responsibilities of notaries in the legalization of private documents signed without the presence of the related parties. The primary focus is the analysis of Decision No. 146/PDT/2018/PT YYK, which highlights issues concerning the validity of the legalization of a land sale and purchase deed involving forged signatures. This study underscores Indonesian civil law regulations and the Notary Law (UUJN), which mandate that all parties involved in private documents must be present before the notary during the legalization process. The research adopts a normative juridical method with a conceptual, statutory, case-based, and comparative approach. The findings reveal that the legalization process conducted without the presence of all parties violates legal procedures and may compromise the validity of the document. Furthermore, the accountability of notaries who fail to comply with these procedures is not explicitly regulated under the UUJN or the code of ethics, creating potential risks for misuse. This study recommends the establishment of stricter regulations regarding sanctions for negligent notaries to ensure compliance with the law and protect the legal interests of all parties involved.

Keywords : Notary's Responsibility, Legalization, Validity of Deeds

INTRODUCTION

In the rapid development of society, reciprocal relationships between individuals frequently occur, necessitating the creation of agreements. The demand for written evidence in agreements to ensure legal certainty in various social relationships is increasingly required. Generally, individuals make agreements based solely on mutual trust between the parties (Karsayuda et al., 2023). These agreements often involve transactions such as sales and purchases, leases, loans, and others. Typically, such agreements only utilize receipts, stamps, and the signatures of the parties involved, without the involvement of public officials. This type of agreement is referred to as an underhanded agreement (Maulana et al., 2024).

An underhanded agreement, also known as an *onderhands acte*, according to Soeroso, is a deed that is not drafted by or without the involvement of a public official but is instead formulated and signed by the parties entering into the agreement (Soeroso, 2010). The evidentiary strength of such an agreement is limited to the parties named in it. This aligns with the provisions of Article 1338 of the Indonesian Civil Code (KUHPerdata), which states: *"All agreements made legally shall serve as law for those who have made them"* (Wardhani & Julianti, 2020). Therefore, if the parties do not deny and acknowledge their signatures on the agreement, the underhanded deed holds the same evidentiary weight as an authentic deed.

The authority of a notary concerning authentic deeds is regulated under the provisions of Article 1868 of the Indonesian Civil Code, which stipulates: "An authentic deed is a deed prepared in the form prescribed by law, drafted by or in the presence of authorized public officials at the location where the deed is made." An authentic deed serves as conclusive evidence of the

matters contained within it. Consequently, when an authentic deed is submitted as evidence in court, the judge must consider the contents of the deed as representing the actual events that occurred. Therefore, the drafting of an authentic deed must meet the following requirements (Adjie, 2017a):

1. The form of the deed must comply with the applicable legal provisions.
2. The deed must be prepared by or in the presence of an authorized public official.
3. The deed must possess conclusive evidentiary strength because it fulfills all elements of evidence, namely written statements, witnesses, presumptions, admissions, and oaths.
4. If the validity of the deed is contested, the party disputing it must prove its invalidity through a court decision with permanent legal force.

In contrast, an underhanded deed, as regulated in Article 1874 of the Indonesian Civil Code (KUHPerdata), has the following characteristics:

1. The form of the deed is not strictly regulated and is flexible.
2. It does not need to be drafted by or in the presence of a public official.
3. It holds conclusive evidentiary strength as long as it is not disputed by the parties involved. If one party challenges the signature or the contents of the deed, that party bears the burden of proving their claim.
4. For evidentiary purposes, it is advisable to include witnesses, typically two competent adults, to strengthen the validity of the deed.

In practice, underhanded deeds are often misused for the benefit of certain individuals. A common issue is the inclusion of backdated information that does not align with the actual signing date. Consequently, there is no guarantee that the date stated in the deed reflects the actual date it was executed. This concern has given rise to the requirement for parties drafting underhanded deeds to submit them to a notary for certification of the date and signatures. This process is undertaken to enhance the evidentiary strength of the deed in case of future disputes (Yusrizal, 2008). The general provisions regarding the certification of underhanded deeds are outlined in Articles 1874, 1874a, and 1880 of the Indonesian Civil Code (KUHPerdata), as follows:

Article 1874: “Documents considered as underhanded writings include deeds signed underhandedly, letters, records, household documents, and other writings made without the involvement of a public official. The signing of an underhanded document is equated with the affixing of a thumbprint accompanied by a dated statement from a notary or another official designated by law, declaring that the individual affixing the thumbprint is known to them or has been introduced to them, that the contents of the document have been explained to the individual, and that the thumbprint was affixed in their presence. This official must authenticate the document. The law may further regulate such statements and record-keeping.”

Article 1874a: “If the interested party requests, aside from the circumstances mentioned in the second paragraph of the previous article, underhanded writings that have been signed may also be accompanied by a statement from a notary or another official designated by law. This statement declares that the signer is known to them or has been introduced to them, that the contents of the deed have been explained to the signer, and that the signing was conducted in their presence. The provisions in the third and fourth paragraphs of the previous article apply in this case.”

Article 1880: “An underhanded writing acknowledged as valid by the person to whom it is presented, or legally deemed to have been acknowledged, constitutes complete evidence equivalent to an authentic deed for the individuals who signed it, their heirs, and those deriving rights from them. The provisions of Article 1871 apply to such writings.”

Furthermore, the **Notary Law** specifically regulates the implementation of legalization as one of the notary's authorities. This is stipulated in **Article 15, paragraph (2), letter (a)**, which

states that a notary is authorized to (Pramono, 2015): "Certify the signature and determine the certainty of the date of an underhanded document by registering it in a special register."

Thus, regulations on legalization are not only governed under Book IV of the Indonesian Civil Code (KUHPerdata) regarding evidence but are also specifically regulated in the Notary Law. According to Habib Adjie, legalization is an action performed by a notary at the request of the parties whose names are included in the underhanded deed. It pertains to documents or letters drafted privately, which are then brought before the notary by the parties for certification of the signature and date. Before doing so, the notary will read and explain the contents and intent of the document or letter to the parties. Once the parties understand, they will affix their signatures in the presence of the notary, after which the document is registered in a special register by the notary. In the case of legalization, the date of the document or letter corresponds to the date of legalization performed by the notary. Therefore, the notary is obliged to be accountable for the authenticity of the parties appearing before the notary and for the validity of their signatures affixed in the notary's presence (Adjie, 2022).

However, in practice, underhanded deeds are often misused for personal interests. Due to the provision of legalization by a notary, where the evidentiary strength is equivalent to that of an authentic deed, such deeds are frequently misinterpreted or misused. For example, during the signing of an underhanded deed intended for legalization by a notary, one of the parties may fail to appear before the notary, or an unauthorized person may sign the deed. Under the provisions of Articles 1874 and 1874(a) of the Indonesian Civil Code regarding legalization, as previously explained, the notary must have known or been introduced to the parties appearing before them and signing the deed. This means that the parties involved in the agreement must be present together before the notary at the time of the signing process.

In reality, the signing of an underhanded deed not conducted in the presence of a notary is also regulated under the Indonesian Civil Code (KUHPerdata) and the Notary Law (UUJN). This is referred to as Waarmerking. *Waarmerking* is the process by which a notary registers an underhanded deed in a special register known as a *gewarmeken* (HS, 2018). An underhanded deed that is registered has already been signed by the parties beforehand without the presence of a notary or an authorized official. As such, the date stated in the underhanded deed may differ from the date of its registration or *waarmerking*. The essence of registering an underhanded deed through *waarmerking* is that the notary only guarantees the existence of the deed on the day and date of its registration by the notary. The parties present themselves to the notary, bringing an underhanded deed that has already been fully signed. The notary then merely registers or records the underhanded deed in the notary's special register. Unlike legalization, *waarmerking* does not certify who signed the document or whether the signatories understood its contents (Abida & Irham, 2021).

This study examines Decision No. 146/PDT/2018/PT YYK, a decision at the appellate level concerning the rejection of execution in a dispute between R. Danang Sasmita (Plaintiff) and several Defendants: PT. Bank Mega Tbk (Defendant I), Edward Warma Raya, S.H. (Defendant II), Triniken Tyas Tirlin, S.H. (Defendant III), Muhamad Iwan (Defendant IV), Ny. Novita Damayanti (Defendant V), Yanti Wagiarti (Defendant VI), KPKNL (Defendant VII), and BPN of Sleman Regency (Defendant VIII). The case originated when the Plaintiff, the legitimate owner of a plot of land and house under Certificate of Ownership (SHM) No. 1385/Caturtunggal, measuring 333m² and located at Gang Wuni G2, Karangwuni Hamlet, Caturtunggal Village, Depok Subdistrict, Sleman Regency, Yogyakarta Special Region, claimed the property as marital property purchased during his marriage with Defendant IV.

On March 7, 2011, Defendant VI borrowed IDR 70,000,000 (seventy million rupiah) from Defendant IV, using SHM No. 1385/Caturtunggal as collateral. A month later, Defendant VI intended to repay the debt with interest to Defendant IV. However, Defendant IV persuaded Defendant VI into a partnership in the tourism sector (Tour and Travel). As a condition of the

partnership, Defendant IV required Defendant VI to simulate the sale of the land under SHM No. 1385/Caturtunggal to Defendant IV for IDR 300,000,000 (three hundred million rupiah). In reality, the amount was never paid to Defendant VI. Subsequently, Defendant IV presented Defendant VI with an agreement, in the form of an Agreement for Sale and Purchase (Perikatan Jual Beli) for the land under SHM No. 1385/Caturtunggal, allegedly prepared by Defendant IV underhandedly and legalized by Defendant II (Notary) on March 4, 2011, under Legalization No. 1132/Leg/III/2011. Additionally, Defendant IV presented a Power of Attorney to Sell dated April 26, 2011, also legalized by Defendant II under Legalization No. 1239/Leg/IV/2011. Both documents allegedly bore the Plaintiff's consent (R. Danang Sasmita), but the Plaintiff claimed he never signed these documents, and his signatures were forged by Defendant IV.

The process continued with the execution of a Deed of Sale and Purchase for the land and house involving Defendant IV before Defendant III (Notary). However, neither Defendant VI nor Plaintiff appeared or signed the deed before the notary. Plaintiff only became aware of the transfer of ownership when he read the auction announcement issued by Defendant I, which revealed that SHM No. 1385/Caturtunggal, originally under Defendant VI's name, had been transferred to Defendant IV (Muhamad Iwan). In this case, a notary legalized the Agreement for Sale and Purchase and the Power of Attorney to Sell underhanded documents. These legalized documents were then used as the basis for the transfer of ownership rights to the property. However, one of the parties denied the signatures and content of the documents, claiming they never appeared before the notary or executed the underhanded documents. The appellate court ruled that the Plaintiff's appeal was rejected despite the forged signatures in the documents. This decision contradicts Articles 1874 and 1874a of the Indonesian Civil Code, which stipulate that during the legalization of underhanded documents, all parties must appear before the notary, be identified, and sign the document after the notary explains its contents. This ensures the authenticity of the date and signatures of the parties.

In the case of an authentic deed, any discrepancy with the notary's authority, such as forged signatures, can threaten the validity or authenticity of the deed, resulting in its annulment (*vernietigbaar*), nullification by law (*nietigheid van rechtswege*), or degradation to an underhanded deed (*openbaarheid*) (Nurkharisma et al., 2020a). However, the evidentiary value of underhanded documents becomes questionable if the notary's legalization procedure deviates from the established legal provisions, as in the case above, where one party was absent during the signing process. Fundamentally, the liability of a notary concerning the legalization of underhanded documents is not explicitly regulated by law when such procedures are not properly followed. Consequently, many notaries fail to exercise due diligence in carrying out legalization procedures, creating a loophole exploited by individuals for personal gain, as they capitalize on the negligence of notaries in performing their duties according to the prescribed legalization procedures. Previous research conducted by (Nurkharisma et al., 2020b) found that The notary's responsibility towards his profession as an official of an authentic deed is only limited to the formal form of an authentic deed, not to the contents of the deed, every act carried out by a notary can be held accountable if there is a violation committed and the act can cause harm for the parties and The notary liability for an underhand agreement that contains elements of illegal acts that have been legalized, that is, the notary is not responsible for the contents of the deed under the hand even though there is a clause in the act against the law.

Based on the aforementioned case and previous research, this research focuses on the following questions: What is the validity of the legalization conducted by a notary on underhanded documents executed without the presence of the parties? and What is the notary's liability concerning the legalization of underhanded documents executed without the presence of the parties?

RESEARCH METHODS

This research employs a normative juridical legal research method, This is because the analysis to be conducted is related to the norms and legal principles that apply within society (Muhaimin, 2020). The approaches utilized in this journal include the Conceptual Approach, Legislative Approach, Case Approach, and Comparative Approach (Marzuki, 2019). The legal materials used consist of primary, secondary, and tertiary legal materials. The primary legal materials include the Indonesian Civil Code (KUHPerdata), Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary (UUJN), and the Code of Ethics. Meanwhile, the secondary legal materials comprise books, articles, journals, research findings, and other relevant sources. The technique for analyzing legal materials involves a descriptive method with qualitative analysis techniques, systematic interpretation, and drawing conclusions in the form of arguments that address the legal issues under discussion, providing recommendations aligned with the identified problems.

RESULT AND DISCUSSION

Based on its form, deeds are classified into two types: private deeds and authentic deeds. Although they differ in type and method of creation, both types of deeds require the signature of a Notary authorized in the jurisdiction where the deed is executed. For private deeds, parties require the signature of a Notary to certify the authenticity of the signatures and the certainty of the date of signing, an activity known as Legalization, or for the Notary to merely register the private deed in the Notary's special register. Meanwhile, authentic deeds, created by or in the presence of an authorized public official, in this case, the Notary, inherently require the Notary's signature within the deed (Divia Fitcanisa & Azheri, 2023). A Notary is a public official appointed by the Minister of Law and Human Rights and entrusted with duties and authorities as regulated by the Law on the Position of Notary. The primary authority of a Notary is to create authentic deeds, which serve as perfect evidence in legal matters concerning civil law.

The concept of authority, as proposed by H.D. Van Wijk and Willem Konijnenbelt, is categorized into three forms: attribution, delegation, and mandate. The authority of a Notary falls under attribution, which refers to authority granted by the government through legislation to a specific organ. The exercise of such attributive authority is carried out personally by the official or body specified in its fundamental regulations, and the responsibility and liability rest with the official or body as stipulated in those regulations. According to Habib Adjie, a Notary deed as an authentic deed holds perfect evidentiary strength, requiring no additional evidence. If any person or party asserts that the deed is invalid or inaccurate, the burden of proof lies with the asserting party, in accordance with the applicable legal provisions. The evidentiary strength of a Notary deed is tied to the public nature of the Notary's office (Adjie, 2008b).

A Notary is not only authorized to create authentic deeds but also has other powers as regulated in Article 15 of Law No. 30 of 2004, as amended by Law No. 2 of 2014 on the Position of Notary (Undang-Undang Jabatan Notaris). A Notary is authorized to create authentic deeds concerning all actions, agreements, and decisions required by legislation and/or requested by interested parties to be stated in an authentic deed, guarantee the certainty of the date of the deed's creation, store the deed, provide the grosse, copies, and excerpts of the deed, all provided that the creation of the deed is within the scope of authority designated by law and carried out by the Notary (Yusrizal, 2008). The specific authority of a Notary to perform certain legal actions includes: legalizing private documents and certifying the certainty of the date of private documents by registering them in a special book (legalization); registering private deeds in a

special book (Waarmerking); making copies of original private documents in the form of certified copies containing the details as written and depicted in the original document; certifying the accuracy of photocopies against the original documents; providing legal counseling in relation to the creation of deeds; drafting deeds related to land matters; and drafting deeds of auction minutes. In addition, the Notary's authority is regulated by applicable laws (Puspa et al., 2016).

Notary deeds, based on their form, are divided into two types: deeds created by the Notary (door Notary), known as Relaas Akta, and deeds made in the presence of the Notary (ten overstaan), referred to as Partij Akta (Adjie, 2017b). Deed Created by the Notary (Relaas) This is a type of authentic deed created by an official who has the authority in that regard. In this type of deed, there are no parties involved in the agreement (no comparisi), and the Notary is fully responsible for the creation of the deed. Deed Created in the Presence of the Notary (Partij) This is a deed created in the presence of an official who has the authority in that regard. In this type of deed, there are parties involved (comparisi) who explain the authority of the parties involved in the deed before the Notary.

A private deed is a deed or document signed by the parties without the intervention of an authorized public official. A private deed is created by the parties based on mutual agreement, so its form and content are free and according to the will of the parties. It is used as evidence of the occurrence of a legal act, and the evidentiary power of a private deed is binding only on the parties who created it. According to Article 1338 of the Civil Code: "All agreements made legally shall be binding as law for the parties who make them." The provisions regarding private deeds are regulated in Article 1874 of the Civil Code. A private deed refers to a deed or document made without the involvement of an authorized public official as an evidence tool. Therefore, private deeds are created based on the interests of the parties themselves. A private deed can be made by anyone, with a free form, and can be created anywhere depending on the agreement of the interested parties. According to M. Yahya Harahap, the requirements for a private deed are as follows (Thamrin & Khoidin, 2021):

1. It is made by the concerned party themselves;
2. It is signed by the maker;
3. The information contained in the private deed includes an agreement regarding legal actions or legal relationships; and
4. It is intentionally created as an evidence tool.

Bachrudin, in his book, categorizes private deeds into three (3) types based on the involvement of a Notary (Bachruddin, 2021):

a. Pure Private Deed: This is a "deed made and signed by the parties based on the principle of freedom of contract (*contractvrijheid*) as per Article 1338 of the Civil Code, with consideration for the validity requirements of an agreement as stated in Article 1320 of the Civil Code, where the creation and signing of the deed are carried out between the parties themselves without the involvement of a public official (notary)."
b. Private Deed that is Registered or Recorded (Waarmerking): This refers to a "private deed that has been signed by the parties and subsequently recorded or registered in a special book at the notary's office (Article 15 paragraph (2) letter b of the Notary Law)." In this case, the date of the private deed may be the same or different from the date of recording or registration in the Book of Registered Private Deeds at the notary's office.
c. Private Deed that is Legalized (Legalisation): This refers to a "private deed made by the parties in the presence of a notary, whose form and procedure are not specified by the Notary Law, where after being explained by the Notary (*voorhouden*), the parties then sign the deed in front of the notary (Article 15 paragraph (2) letter a of the Notary Law)." For a legalized private deed, the date of the deed is the same as the date of its legalization, and it is recorded in the Book of Legalized Private Deeds at the Notary's office

Legalization and Waarmerking

Legalization and Waarmerking are conducted to enhance the evidentiary strength of a private deed in case of a future dispute. The parties involved may request the services of a Notary to authenticate signatures and establish the certainty of the date of the private deed, which is referred to as legalization, and to register the private deed in a special register maintained by the Notary, known as Waarmerking. According to Soepomo, as cited by Yahya Harahap, when viewed from the perspective of evidentiary value, several basic requirements must be met for a document to be considered a private deed. These requirements include: first, the document or writing must be signed; second, the contents of the document must relate to a legal act (*Rechtshandeling*) or legal relationship (*Rechtsbetrekking*); and third, it must be intentionally made to serve as evidence of the legal act described within it. The evidentiary value of a private deed is binding only between the parties involved, provided those parties do not deny and acknowledge the existence of the agreement (i.e., acknowledging their signatures in the agreement). Therefore, one party may deny the validity of the signature in the agreement (Nurkharisma et al., 2020a).

In the process of legalization, the notary is required to ensure that the parties signing the private deed are present, and the notary must read aloud and explain the contents of the document so that the parties understand and can comprehend what is included in the deed. This is specifically regulated in Article 1 of the *Ordonantie Staatblad 1916 Number 46*, which states: "Legalization is the authentication of documents executed under hand in which all parties who create the document appear before the notary, and the notary reads aloud and explains the contents of the document. The document is then dated and signed by the parties and finally legalized by the notary." (Bachrudin, 2019) The provisions of Articles 1874 and 1874a of the Civil Code outline the procedure for legalization, which includes the following (Adjie, 2008a):

1. The signing of the private document by the parties takes place in the presence of witnesses and the Notary.
2. The Notary must identify the parties who sign the private document to be legalized.
3. The contents of the private document must be explained (voorhouden) by the Notary to the person or parties legalizing the document, in the presence of witnesses.
4. The Notary must affix their seal and signature at the bottom of the private document and provide the date corresponding to the date of signing the document.
5. The Notary must make a note on the bottom of the private document stating that the Notary recognizes the person or parties who signed the document, that the content of the document has been read and explained to the parties present, and that the Notary personally witnessed the signing of the document by the parties.
6. The Notary must register the private document in the special legalization register maintained by the Notary, and provide a registration date that corresponds to the date of signing by the parties.

The evidentiary power of a legalized private document includes certainty regarding:

a. The date and the signatures of the parties who appear before the Notary;
b. The parties' understanding of the contents of the document, as the Notary has explained the contents, so the parties cannot claim that they did not understand or comprehend the document;
c. The authenticity of the signatures being done by the individuals whose names are written in the document.

Waarmerking is the Notary's authority to register a private document by entering the document, which has already been signed by the parties, into a special register. The rights and obligations of the parties in the context of Waarmerking arise at the time the document is signed, not at the time it is registered with the Notary. Therefore, the Notary's responsibility is limited to confirming that the parties entered into the agreement/commitment on the date stated in the

registered document. The procedure for Waarmerking that needs to be observed is as follows (Adjie, 2009):

1. The signing of the private document by the parties is not done in the presence of the Notary.
2. The Notary is not required to identify the parties who signed the private document to be registered.
3. Any person presenting the document may request the Notary to carry out the Waarmerking.
4. The contents of the private document do not need to be explained (voorhouden) by the Notary to the person or parties seeking the Waarmerking.
5. The Notary must affix their seal and signature on the private document and provide the date corresponding to the date of its registration.

Thus, the evidentiary power of a private document that is registered (Waarmerking) is related to the certainty of the date (date certain) when the document was registered, and its physical existence. The Notary is not responsible for or guarantees:

a. Whether the document was indeed signed on the date written on the document;
b. The validity of the signatures on the document;
c. The process of signing the document;
d. Whether the parties understood the contents of the document.

the legalization of a private document will be considered valid if it is carried out according to the procedures set forth in the Civil Code (KUHPerdata). In this study, the legalization conducted by a Notary on a private document done without the presence of the parties will be examined. According to the procedure outlined by Habib Adjie, which has been explained earlier, it is stated that: "The signing of a private document is performed by the parties in the presence or with the witness of a notary and witnesses, and the notary must be acquainted with or introduced to the parties who will carry out the legalization."

In the case decision 146/PDT/2018/PT YYK, legalization was carried out without the presence of one of the parties, namely Mr. R. Danang Sasmita, the husband of Mrs. Yatie Wigiarti. The house, which was the object in the private document, was joint property acquired during the marriage. Although Mrs. Yatie Wigiarti's name appears on the certificate, the transfer process should have obtained the consent of her spouse, Mr. R. Danang Sasmita. However, Mr. R. Danang Sasmita stated that he never appeared before the Notary Edward Warma Raya S.H. to sign the private document, unless a separation of property agreement had been made in their marriage. According to Article 35 of the Marriage Law, a separation of property can only be established through a written agreement made before a marriage registration officer. However, in the marriage between Mrs. Yatie Wigiarti and Mr. R. Danang Sasmita, who married on May 5, 1984, according to the Marriage Certificate from the Office of Religious Affairs in Kebayoran Jakarta, there was no separation of property agreement between them. Therefore, in executing the legal act of a sale and purchase agreement under Notary Edward Warma Raya S.H., the signature and consent of the spouse, Mr. R. Danang Sasmita, should have been obtained.

Thus, the validity of the legalization of the private document, which was not attended by the parties, is considered invalid because it violates the procedural regulations set forth in the Civil Code. Specifically, the signing of the private document should have been done in the presence of and witnessed by the Notary after the parties understood the contents of the document, as explained by the Notary. Only after the signing of the private document should it have been registered by the Notary in the special legalization register.

Notary's Accountability

This study uses Hans Kelsen's theory of responsibility. According to Kelsen, responsibility is related to obligation, but they are not the same. An obligation arises due to a legal rule that dictates and imposes the obligation on a legal subject. The legal subject who is given this obligation must fulfill it as prescribed by the legal rule. Failure to perform this obligation results in a sanction. This sanction is then a coercive act of the legal rule to ensure the obligation is

properly carried out by the legal subject. According to Kelsen, a legal subject who is subject to a sanction is said to be "responsible" or legally accountable for the violation (Asshiddiqie & Safa'at, 2006b). According to the traditional theory, there are two types of responsibility: responsibility based on fault (based on fault) and strict liability (absolute responsibility) (Asshiddiqie & Safa'at, 2006a).

Based on the theory of responsibility outlined above, responsibility arises from a provision that imposes an obligation on a person with the threat of a sanction if the obligation is not carried out. For a notary, responsibility can be termed legal responsibility because it arises from the commands or provisions of legislation, and the sanctions imposed are the ones stipulated in the law. As regulated in the Notary Position Law (UUJN), it is established that if a notary, in performing their duties as a public official, is proven to have committed an act of deviation or violation, the notary must be held accountable for their actions, and face civil, administrative, or criminal sanctions.

In this study, the author also compares the accountability of the notarial legalization process in Malaysia, which follows the common law system. A notary (or notary public) in the common law system is a public officer established by law to serve the public in non-controversial matters, typically related to estates, deeds, powers of attorney, and foreign and international business. The responsibility of a notary in terms of the authentication of a deed, if there is an error or mistake that causes the deed to lose its authenticity, lies with the notary. The notary is expected to carry out their duties and obligations to the best of their ability to ensure that the purpose of creating the deed is achieved, and that it remains an authentic deed. As stated by Lumban Tobing, a notary is responsible for the deed they create, if there are grounds for the following (Napouling, 2022):

1. In matters explicitly determined by the Notarial Office Law.
2. If a deed fails to meet the requirements regarding its form (gebrek in de vorm), and is annulled in court or deemed to have effect only as a private deed.
3. In all matters where, according to the provisions of Articles 1365 to 1367 of the Civil Code, there is an obligation to pay compensation, meaning that all such matters must go through a balanced process of proof.

In relation to the legalization of a private deed by a notary, the notary is responsible for four aspects, namely (Wibisono, 2024):

1. Identity:
    a. The notary is obligated to verify the identity of the parties signing the deed (e.g., ID card, passport, driver's license) or to confirm their identity through a third party.
    b. To verify whether the parties are legally competent to perform legal actions.
    c. To verify whether the parties are authorized to sign the deed.
2. Content of the Deed: The notary must read the content of the deed to the parties and inquire whether the content accurately reflects the parties' intentions.
3. Signature: The parties must sign the deed in the presence of the notary.
4. Date: The notary must date the deed and register it in the designated register book provided for this purpose.

Before being returned, each page is stamped by the Notary and initialed by the Notary, while the last page of the private deed contains the registration number and date entered in the special register, along with the Notary's signature. Thus, the Notary's responsibility for the authenticity of the legalized private deed includes the certainty of the signature, meaning that the person who signed the deed is indeed a party to the agreement, and not someone else. This is the case because the person legalizing the document is required to recognize the individual signing the private deed by verifying their identification, such as an ID card.

A Notary Public in Malaysia must have at least 15 years of practice as a legal professional and is known as a solicitor, who is authorized to carry out notarial functions. Notaries Public are

appointed by the Attorney General's Chambers (AGC) and are regulated by the Notaries Public Act 1959. The Attorney General of Malaysia is the chief legal advisor to the government of Malaysia and serves as the public prosecutor. The Attorney General is appointed by the Prime Minister with the consent of the Yang di-Pertuan Agong (King). The law governing the powers and duties of the Attorney General is outlined in the Federal Constitution, Part X, concerning public services, Article 145, Peguam Negara.

Meanwhile, a Notary Public can serve as an internationally recognized witness, with their main functions including the authentication and legalization of documents for use abroad. Other powers of a Notary Public include administering oaths or affirmations, making legal statements to validate the execution of documents, and certifying documents (such as passports, identity cards, and other certificates). This position also holds the authority to administer or authenticate any statement or even legal declarations made for use in court or any place outside Malaysia (Nurliyantika et al., 2022).

The main functions of a notary include administering oaths and affirmations, taking written declarations and legal statements, witnessing and certifying the execution of certain documents, acknowledging deeds and other instruments, recording protests and promissory notes, providing notice of foreign bills of exchange, certifying maritime protests or vessel damages, issuing notarial copies and certificates, and performing other official actions depending on the jurisdiction (Deen et al., 2018). In Malaysia, the authority of notaries is governed by the Notaries Public Act 1959. Article 4 of the Act states (Notary Public Malaysia Koo Chin Nam, n.d.):

1. A notary in Malaysia has the same powers and functions as a notary in England: a. To witness/certify official documents intended for use abroad. b. To administer oaths intended for use abroad.
2. A notary can administer oaths and affirmations for written declarations and legal statements: a. To prove the proper execution of any document. b. For matters relating to maritime vessels. c. For use in any place or court outside of Malaysia.

In Indonesia, notaries have broader responsibilities and are often involved in various legal transactions, including property transactions, company establishments, and other legal documents. In contrast, in Malaysia, notaries focus more on the creation of wills and certain legal documents, making their role more limited to the types of documents they handle. In Indonesia, documents issued by notaries are considered legally binding and highly acceptable. In Malaysia, notaries have more limited powers, and some documents may require approval or additional actions from other legal authorities before being considered valid (Abdillah et al., 2023). In the responsibility of Notaries in Malaysia regarding documents that are certified, as outlined above, the responsibility of the Commissioner for Oaths who performs the task of certifying documents to be used within Malaysia consists of four key duties and authorities, as follows:

1. Administering Oaths: The Commissioner for Oaths has the primary responsibility to administer oaths and affirmations to individuals making declarations or written statements, ensuring that they understand the nature and consequences of the oath being taken.
2. Verifying Identity: The Commissioner for Oaths is responsible for verifying the identity of the parties appearing before them to ensure that the person making the statement or signing the written document is indeed the individual they claim to be. If more than one person is required to sign the document, all parties must be present and sign in person.
3. Ensuring Accuracy and Completeness of the Declaration: The Commissioner for Oaths is responsible for reviewing the document to check for errors or inconsistencies, and requesting corrections when necessary. The Commissioner will read aloud the content of the document and ensure that the parties understand the document they are about to sign, providing explanations as needed.
4. Maintaining Records: The Commissioner for Oaths must maintain accurate records of all oaths and declarations made by the parties, including a record of names and addresses of

the parties, the date and time the oath or affirmation was made, and the nature of the document.

A Commissioner who certifies or witnesses the signing of a document must include their name, signature, and membership number (Bar Council). To witness a signature, individuals must not sign the document until they present themselves at the High Commission. They must personally attend the consular section at the High Commission and sign the Malaysian legal document in the presence of the consular officer. Based on the above explanation, the responsibilities of Notaries in Indonesia and Malaysia regarding the certification or legalization of statements, letters, documents, oaths, or deeds are essentially the same. That is, the Notary is only responsible for verifying the identities of the parties involved, ensuring the authenticity of:

1. The identity provided to the notary, confirming that the parties are competent and authorized to sign the document or deed.
2. The content of the deed to ensure it accurately reflects the parties' intentions by reading the document aloud in their presence.
3. The signatures of the parties by witnessing the signing of the document or deed.
4. The date of the document's signing by registering it in a special register book and providing a registration number.

As for the notary's responsibility for the legalization of a document executed without the presence of the parties, as seen in the ruling 146/PDT/2018/PT YYK, the decision does not contain any considerations by the judge regarding the responsibility of the notary who legalized the document without the parties' presence, which was one of the claims in the lawsuit. Furthermore, neither the Notary's Office Law nor the code of ethics contain regulations regarding the sanctions that a notary may face for violations concerning the execution of authority under Article 15, paragraph (2) of the Notary's Office Law, particularly in certifying signatures and confirming the date of a document through registration in the special register or legalization. This gap has led to some notaries neglecting or being careless in carrying out the legalization procedure, resulting in various issues that threaten the validity of the notarial legalization.

Therefore, it would be beneficial to have clear regulations in place that outline the sanctions to be imposed on notaries for violations or negligence in the process of legalizing documents, as this is a specific responsibility of notaries. It would be advisable for the regulation concerning sanctions to be included in the Notary's Office Law, so that it holds binding legal force. This would encourage notaries to be more diligent and careful in performing their duties, especially concerning deeds and documents executed without the parties' presence.

CONCLUSION

The validity of a Notary's legalization of a deed under a private signature will be considered valid if the legalization process is carried out in accordance with the procedures outlined in the Civil Code. The signing of the private deed by the parties, which is done in the presence of witnesses and the Notary, must involve the Notary introducing or identifying the parties signing the deed. The content of the deed must be explained (*voorhouden*) by the Notary. After the parties understand and confirm that the content of the deed is in accordance with their intentions, they will sign it in the presence of the Notary and witnesses. The Notary will then affix their stamp and signature at the bottom of the deed, providing the date corresponding to the signing of the deed. The deed will subsequently be registered in the special legalization register. If the above procedure for legalization is not followed, particularly in cases where the Notary legalizes the deed without the presence of the parties, the legalization will be considered invalid because it was conducted in violation of the procedural regulations set out in the Civil Code. The

responsibility of a Notary for the legalization or certification of a private deed, when compared to the authority and responsibilities of Notaries in Indonesia and Malaysia, is the same. The Notary is responsible for the identity of the parties, and the content of the deed, ensuring it reflects the parties' intentions by reading the document aloud in their presence, witnessing the parties' signatures, and confirming the date of signing.

However, regarding the Notary's responsibility for the legalization of a deed executed without the presence of the parties, as seen in the ruling 146/PDT/2018/PT YYK, the court's decision did not address the issue of the Notary's accountability for legalizing the deed under private signature, which was part of the plaintiff's claim in the lawsuit. Neither the Notary's Office Law nor the code of ethics contains regulations regarding the sanctions that should be imposed on a Notary who violates the authority granted under Article 15, paragraph (2) of the Notary's Office Law, particularly in certifying signatures and confirming the date of a deed by registering it in the special legalization register. This lack of regulation has led to many Notaries paying insufficient attention to the procedural requirements for legalization, which has resulted in various issues that threaten the validity of the Notary's legalization.

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