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Legal Certainty Against The Signing of Deeds That Are Not Made in The Presence of A Notary Public

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ABSTRACT
A notary is a public official authorised to draw up authentic deeds and process legal documents, such as letters of agreement, deeds of sale, and other important documents with legal force. Although signed by the parties, the documents drawn up by a notary are not treated as authentic documents and have only the force of private writing (Article 1869 of the Civil Code). The definition of an authentic deed is contained in Article 1868 of the Civil Code, which states that an authentic deed is a deed drawn up in a form prescribed by law, by or in the presence of public officials authorised to do so, in the place where the deed is drawn up. The Notaries Act requires notaries to read documents in the presence of the parties. Article 16(7) UUJN regulates the obligation of notaries to read documents in front of the parties. A deed not read in front of the parties may become private, lose its evidential force, and be considered null and void.

Keywords: Notary, Legal Certainty, Authentic Deed.

I. Introduction

The name 'notary' comes from the servant's name, 'notarius', and later developed into a term or title for a group of fast writers or stenographers. According to Law Number 02 of 2014 on the amendment of Law Number 30 of 2004 on the office of Notary, it is stated that a Notary is a public official authorised to make authentic deeds and provide legal services to the public. The law further states in Article 15 that Notaries are authorised to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations that those concerned desire to be stated in an authentic deed (Fepi Patriani, 2025).

Notaries are the only public officials entitled to make authentic deeds as a perfect means of proof. Notary is an extension of the State where he fulfils some of the state's duties in civil law. The state provides legal protection in private law to citizens who have delegated some of their authority to Notaries to make authentic deeds. Therefore, when performing their duties, Notaries must be positioned as public officials who carry out their duties (Waluyo, 2001). According to Article 51, paragraph (1) of the 2014 Notary Position Law, the duties of a Notary are as follows:

1. Record handwritten letters by registering in a special book *(waarmerking)*.
2. Make copies of letters under the hand.

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3. Attesting the suitability of photocopies with the original letter (legalisation).
4. Providing legal counselling related to deed making.
5. Preparing minutes of the auction.
6. Correcting deeds related to land.
7. Making a deed of writing errors and/or typographical errors contained in the minutes of the deed that has been signed, by making a news event (BA) and providing a note about it on the original deed minutes stating the date and number of the correction BA, and the copy is sent to the parties (Fepi Patriani, 2025).

An agreement is an agreement (written or oral) made by two or more parties, each agreeing to comply with what is stated in the agreement. Legal subjects have the rights and obligations to perform legal acts. However, these acts must be supported by legal capacity and authority, commonly referred to as *rechtsbekwaamheid* (legal capacity) and *rechtsbevoegdheid* (legal authority). Every person / legal subject has the legal capacity to perform legal acts such as entering into agreements, getting married, and so on, as long as they are considered legally capable by law (Gumanti, 2012).

The parties that must be present in the agreement are the party making the agreement and the witnesses. The party agreeing can be an individual or legal entity, and they must be capable and fulfill the applicable regulations. In agreement, there must be at least two witnesses. The witnesses must be present when the notary reads out the agreement.

The provisions of Article 1338 of the Civil Code explain that all agreements made by the law shall apply as law to those who make them. The agreement cannot be withdrawn other than by agreement of both parties or for reasons determined by law. The agreement must be carried out in good faith. The valid terms of the agreement stipulated in Article 1320 of the Civil Code are as follows:

1. Agreement of the Parties. Agreement means that there is a free will adjustment between the parties regarding the main matters desired in the agreement. Suppose there is an element of oversight, coercion, or fraud. In that case, this means violating the valid requirements of the agreement, as stipulated in Article 1321 of the Civil Code, which explains that no agreement has any force if given due to oversight or obtained by force or fraud.
2. Capacity of the Parties Article 1330 of the Civil Code explains that those who are incapable of making agreements are minors, persons placed under guardianship, and women who have been married in cases determined by law, as well as, in general, all persons who are prohibited by law from making certain agreements.
3. Regarding a SpecificMatter The subject matter or specific matter referred to in the agreement is determined by its type, namely tradable goods, by the provisions of Article 1332 of the Civil Code, which explains that only tradable goods can be the subject matter of the agreement.

Halal Cause: The contents of an agreement must not conflict with law, decency, or public order. Article 1337 of the Civil Code explains that a cause is prohibited if the cause is prohibited by law or if the cause is contrary to decency or public order.

II. Literature Review

2.1. Notary and Authentic Deed

Notaries have a vital role in the formation of authentic deeds. Based on Law Number 2 of 2014 concerning Notary Position, Article 15, notaries are authorised to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations. Deeds made before a notary have perfect evidentiary power (Patriani, 2025). In addition, according to Article 1868 of the Civil Code (KUHPerdata), an

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authentic deed is made by or before an authorised public official, namely a notary. Therefore, any deed made outside the presence of a notary can lead to legal uncertainty. Along with the development of law and technology, there are often transactions regulated in the form of agreements that do not fulfil this provision, which may affect their validity in legal proceedings.

2.2. Deeds Not Made Before a Notary

Deeds not made in the presence of a notary or that do not fulfil the legal procedures have significant legal consequences. Article 1338 of the Civil Code stipulates that any agreement validly made between competent parties shall apply as law to those who make it. However, suppose the deed is not made before a notary. In that case, the agreement can be questioned for its evidentiary strength, especially about the validity of the signatures and the parties' identity. Some legal literature states that deeds that are not notarised will only be considered deeds under the hand, which means that they cannot be used as perfect evidence (Marwoto, 2020). Thus, the recognition of such deeds in the context of disputes in court is highly dependent on other evidence that may be required.

2.3. Legal Certainty over Notarised Deeds

The legal certainty of deeds that are not notarised depends on various factors. In some cases, a deed not made before a notary can still be valid if it fulfils the requirements of a valid agreement listed in Article 1320 of the Civil Code: agreement of the parties, capacity of the parties, on a particular matter, and lawful cause. However, without a notary, evidence of the parties' agreement becomes more difficult to prove, potentially casting doubt on its validity in the eyes of the law (Sembiring, 2021). In addition, the law recognises the existence of deeds made under the hand in Article 1870 of the Civil Code, which allows the deed to be used as evidence as long as it can be proven by other evidence, such as witnesses or other evidence. However, this does not provide the same guarantee of legal certainty as an authentic deed drafted by a notary.

2.4. Legal Consequences of Deeds Not Made Before a Notary

One of the legal consequences arising from the signing of a deed outside the presence of a notary is the inability of the deed to be used as valid evidence in court. Deeds made without involving a notary will face challenges proving them in court, especially concerning property rights or large transactions. Article 1870 of the Civil Code states that deeds made outside the presence of a notary only have evidentiary power to the extent that they can be proven by other means, for example, by using witnesses or other evidence (Marwoto, 2020). For example, in a land rights dispute involving a sale and purchase transaction, the aggrieved party can potentially claim that the transaction is invalid if the sale and purchase deed is not notarised. The court will need other supporting evidence to decide whether or not the deed is valid.

III. Research Method

The method used in this research is normative juridical, analysing legal concepts, laws, and regulations. Normative research is research that tests a norm or provision that applies. It can also be said that research is conducted by examining library materials or secondary data. Normative research is also called doctrinal research or library research. Conceptualising a written matter in laws and regulations with norms that are used as a reference for humans to act in a certain way (Budiartha & Atmadja, 2018). The legal material collection technique used in this research is from primary legal material sources taken from the Civil Code Law governing the validity of agreements, and Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Offices. This legal material uses descriptive analysis techniques, which are

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explained by interpretation, which describes and explains the article by article and matters according to the facts of the problem, so that it can be researched and studied as a whole.

IV. Results and Discussion

A deed is a formulation of the wishes or will of the parties as outlined in a Notarial deed made before or by a Notary and not the will of the Notary (Habib, 2009). Underhand writings, also known as underhand deeds, are made in a form not prescribed by law, without an intermediary or before an authorized Public Official. Authentic deeds and deeds under the hand are made to be used as evidence.

Deeds made, although signed by the parties, are not treated as authentic deeds, but only have the force of writings under hand (Article 1869 of the Civil Code). Regarding the definition of an authentic deed, it is set out in Article 1868 of the Civil Code, which states that an authentic deed is a deed made in the form prescribed by law, made by or before public officials authorized to do so, at the place where the deed is made (Suparni, 1991). If taken in essence, the deed must fulfil the following requirements: 1) The letter must be signed; 2) The letter must contain events that form the basis of a right; 3) The letter is intended as evidence (Sjaifurrachman & Habib, 2011). Notarial or authentic deeds must fulfil the following requirements: 1) An authorised public official makes the deed; 2) The deed is made by the form applied by law; 3) The deed is made carefully and without defects; 4) Predetermined procedures or procedures make the deed. The signing of an authentic or legally valid deed cannot be done circularly, meaning without the presence of one of the parties. The notary is obliged to read out the contents of the deed so that the parties know the information related to the deed. That way, the parties can decide whether they agree or disagree with the contents of the deed. If an authentic deed is not read out in the presence of a notary, it will have the same evidentiary value as a deed under the hand.

The Notary Law requires notaries to read out the deed in the presence of the parties. Article 16, paragraph 7 of the UUJN regulates the obligation of notaries to read out the deed before the parties. A deed not read out in the presence of the parties may result in the deed becoming under the hand, the deed losing its evidentiary power, and the deed being considered null and void. Article 16, paragraph 1, letter (M) of the UUJN explains that notaries are required to read every deed made in the presence of the parties and at least two witnesses who know it.

The obligation of a Notary under the Notary Position Law (UUJN) is to keep the contents of the deed and information obtained in the performance of his/her position confidential. Notaries must also maintain neutrality and be careful in carrying out their duties. Some of the obligations of a Notary under the UUJN include: 1) Make authentic deeds regarding acts, agreements, and provisions required by laws and regulations; 2) Guarantee the certainty of the date of making the deed; 3) Keep secret everything about the deed he makes, unless the law determines otherwise; 4) Be careful in making deeds; 5) Comply with laws and regulations. Article 16 of the Law on Notary Position (UUJN) regulates the obligation of notaries to keep confidential everything related to their deeds. Article 16 of the UUJN regulates the sanctions that can be imposed on notaries who violate their obligations. These sanctions can be civil, administrative, code of ethics, or criminal. Some of the things regulated in Article 16 of the UUJN include: 1) Notaries are obliged to keep confidential everything related to the deeds they make; 2) Notaries are obliged to keep confidential all information obtained to make deeds; 3) Notaries are subject to criminal sanctions and dismissed from office if they violate their obligation to keep secrets; 4) Notaries can be exempted from disciplinary sanctions if the confronter is unable to affix his signature and fingerprints to the notarial deed minutes.

V. Conclusion

The parties should agree on their hands and then be witnessed by a Notary. *Waarmerking* is recording the agreement by hand into a special book the notary provides. *waarmerking* provides legal certainty of the contents and validity of the agreement. The provisions of the agreement, under the hand legalised by a notary

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through warmaking, make it clear that the notary is not responsible for the agreement's contents. The notary only guarantees the certainty of the date of the agreement, not the data content and signature. A *waarmerking* underhand deed has stronger evidentiary power but is not the same as an authentic deed. The legal force of an underhand deed of agreement registered by a notary *waarmerking*, namely in an underhand deed the evidentiary force includes the fact that the information was given, if the signature is recognized by the person who signed it or is considered to have been recognized as such according to the law for a letter under the hand the evidentiary force will depend on the truth of the parties' recognition or denial of the contents of the deed and their respective signatures.

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