

Juridical Analysis of the Use of Deed Under Hand as the Basis for Making PKR Deed in the Form of Authentic Deed by Notary in the Conception of Legal Certainty

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Article Info:

Article History:

Received: 2025-05-20

Revised: 2025-06-13

Accepted: 2025-07-11

Keyword:

Authentic Deed, Private Deed, Notary, Legal Certainty, PKR

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Paper Type:

Research Paper



Abstract:

Purpose:

This study aims to juridically examine the suitability of using deeds under the hand as a legal basis in notarial practice and analyze the form of notary liability in the context of legal certainty.

Methodology:

The method used is normative legal research with statutory, conceptual, and case approaches. Data was collected through a literature study, interviews with five notaries, and analysis of three concrete cases, including case No. 616 K/PK/Pdt/2023.

Findings:

The results show that although the use of handwritten documents is still often encountered in practice, notaries are obliged to ensure the validity of the contents and identity of the parties before being stated in the authentic deed. Legal responsibility is attached to the notary both civilly, administratively, and criminally if there is an error or dispute due to the deed made. The unclear norms regarding the limits of the use of underhand documents show the need for legal clarity so that the deed made remains valid, strong, and does not cause legal loopholes.

Implication:

Therefore, there is a need for legal reform to create clarity of norms regarding the limits of the use of underhand documents so that the deed made remains valid, strong, and does not cause legal gaps.

INTRODUCTION

The establishment of a PT in Indonesia is a solution for business actors in developing business activities legally, professionally, and sustainably. As a legal entity that has a separation between personal wealth and company wealth, PT provides legal protection to capital owners and facilitates access to funding sources, both from domestic and foreign investors. It is important in the face of economic uncertainty and provides flexibility in business expansion. As a legal entity separate from its owner, PT has an organ structure consisting of several important organs, namely the board of directors, board of commissioners, RUPS (General Meeting of Shareholders), each of these organs has their respective roles and responsibilities in carrying out the Company's operations. In a Limited Liability Company (PT) there are organs in it, namely, the Board of Directors, as stipulated in Article 1 Number 5 of the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies states: "The organ of the Company that is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purposes and objectives of the Company and represents the Company, both inside and outside the court in accordance with the provisions of the articles of association".

The Board of Directors may also represent the PT both inside and outside the court in accordance with the provisions of the articles of association. Suppose the board of directors conducts cooperation or transactions with other parties outside of the company's line of business. In that case, the action becomes the personal responsibility of the directors and only binds the directors, not the company. If there is a loss in the cooperation, it is binding on the directors personally. In addition to the Board of Directors in PT, there is also another organ, the Board of Commissioners, as stipulated in Article 1 Point 6 of Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, which states: "An organ of the Company that is tasked with conducting

general and/or special supervision in accordance with the articles of association and advising the Board of Directors."

In addition, the board of commissioners is tasked with advising the board of directors regarding the management of the PT. The duties of the board of commissioners must not conflict with the PT Law and the articles of association of the PT. In the context of supervision, the commissioners may temporarily dismiss the directors if the directors take actions that violate the PT Law or the company's articles of association. The aim is to avoid further violations of the board of directors so as not to harm the company. However, within 30 days, a RUPS must be held to decide whether the dismissal of the directors becomes a permanent dismissal and hold the directors accountable. Alternatively, even appoint the directors back to their positions if the RUPS decides that the directors are not guilty.

One crucial aspect in the management of a PT is the General Meeting of Shareholders (RUPS). The RUPS acts as the highest forum for strategic decision-making, including amendments to the articles of association, appointment and dismissal of directors and commissioners, and dividend distribution policies. With this mechanism, PTs can implement good corporate governance to maintain a balance of interests between shareholders, management, and other stakeholders. RUPS stands for General Meeting of Shareholders, a forum for shareholders to discuss and decide on company policies. The RUPS is the highest organ of the company and has authority not granted to the board of directors or the board of commissioners.

The RUPS has authority that is not granted to the Board of Directors or Board of Commissioners within the limits of the PT Law and the Company's articles of association. The first RUPS is conducted no later than 60 days after a PT has the status of a legal entity. All shareholders must attend the first RUPS. Furthermore, the RUPS is conducted annually and at certain times as needed. Through the RUPS forum, shareholders can obtain information from the Directors or the Board of Commissioners regarding matters occurring in the company. It is regulated in Article 1 Point 6 of Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, which states: "The General Meeting of Shareholders, hereinafter referred to as RUPS, is an organ of the Company that has authority not granted to the Board of Directors or the Board of Commissioners within the limits specified in this law and/or the articles of association."

In this case, the role of the Notary in making the RUPS is very important, especially in terms of legality and official documents, besides that the Notary is in charge of making the deed of minutes of the RUPS which is an official document containing the results of the meeting's decision, this is very important because the deed has legal force and can be used as authentic evidence. The law of evidence divides two types of letters in the deed class with their respective evidentiary powers, namely authentic deeds and deeds under hand. Underhand deeds according to Article 1874 of the Civil Code (KUHPperdata) are deeds signed under the hand, letters, lists, household affairs letters, and other writings made without the intermediary of a public official and, authentic deeds according to Article 1868 of the Civil Code (KUHPperdata) are "a deed in the form prescribed by law, made by or before public servants authorized to do so in the place where the deed is made" (R. Subekti, 1996). In addition to the definition of an authentic deed in the Civil Code, some laws provide an understanding of authentic deeds, namely Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, where in Article 101 paragraph (a) states that "an authentic deed is a letter made by or before a public official who according to the laws and regulations is authorized to make such a letter with the intention of being used as evidence of the events or legal events stated therein". Notary is a public official authorized by law to make authentic deeds and other deeds that are authorized by Law Number 30 of 2004, as amended by Law Number 2 of 2014 concerning Notary Position. In the law, it is also explained that the philosophical basis for granting authority by Notary in making authentic deeds is so that in every legal event or legal action contained in a deed can be valid as authentic written evidence that assures legal certainty, order and legal protection for citizens, this is as explained in the preamble of Law Number 2 of 2014 concerning Notary Position.

The guarantee of legal certainty, order and legal protection for the community attached to authentic deeds is none other than because authentic deeds in evidentiary law are known to have 3 (three) kinds of evidentiary power, namely: First, outward evidentiary power, namely the ability of the deed itself to prove its validity as an authentic deed when viewed from its birth as an authentic deed that meets the requirements of an authentic deed (Rahmadhani, 2020). Second, the power of formal proof, which means that an authentic deed must provide certainty that an event or fact described in the deed was actually described by the parties who appeared before the official at the time stated in the deed. Third, material evidentiary power, which is certainty regarding the events or events described in the deed have actually occurred, so that for the parties and those who obtain rights thereof is perfect evidence of what is described in the deed (Mertokusumo, 2009).

The 3 (three) types of evidentiary power are what cause authentic deeds always to be said to have "binding" evidentiary power, in the sense that what is written in the deed must be trusted by the judge, namely it must be considered as true, as long as its untruth cannot be proven (*Persumptio Iustae Causa*). Therefore, it is always considered to provide perfect evidence (*volledig bewijs*) regarding what is contained therein so that it does not require additional proof (Miru, 2008).

The binding power of authentic deed evidence provides a guarantee of legal certainty, legal protection and order for the community. Regarding the guarantee of legal certainty, legal protection and order as the identity of the authentic deed, it is also stated by Habib Adjie, who argues that there are 3 (three) benefits of an authentic deed, which include: (Taliwongso, 2022)

1. For the parties who agree in a notarial deed, they get certain legal certainty from what is written in the notarial deed.
2. Provides a sense of security for the parties making the agreement because if one party feels harmed by the other party, the party who feels harmed can sue based on the notarial deed.
3. In terms of evidence, notarial deeds have perfect evidence. The perfection of a notarial deed as evidence, it must be seen as it is not necessary or judged and interpreted other than what is written in the deed.

Based on the description above, the Notary as a public official appointed and authorized by the state to make authentic deeds must always be able to provide these guarantees to the public in making authentic deeds by guiding the provisions of the law of evidence, especially regarding the requirements for the authentic deed to be valued as an authentic deed that has perfect and binding evidentiary power, or in other words, so that the authentic deed does not have deficiencies or defects both in the outward, formal and material form of the deed. Regarding this matter, Sudikno Mortokusumo also stated that: (Mertokusumo, 2013) Notary work is not as easy and simple as people think. Indeed, the law determines that a notary must make authentic deeds, but it does not explain further about the ways of making them, such as for the validity of letters as evidence; thus, notaries are also required to master the law of civil evidence in particular and civil procedural law in general. The second classification of deeds, in addition to authentic deeds with their evidentiary power as described above, includes also deeds under the hand. Ahmadi Miru defines a deed under the hand as a deed made by the parties without involving officials authorized to make deeds, such as notaries, PPATs, or other officials authorized to do so. According to Article 1876 of the Civil Code or Article 2 of the Ordinance of 1867 No. 29 which contains provisions on the evidentiary power of writings under the hands of Indonesians or their equivalents, states that anyone against whom a writing under the hand (*akte under the hand*) is submitted, is required to deny or recognize his signature expressly (Subekti, 2007). From these provisions, it can be understood that in a deed under the hand, the truth about the deed depends on whether the signature of the party who put the signature in the deed is recognized or denied.

Ahmadi Miru further explained that, if in the deed under the hand the signer denies his signature, then the party submitting the deed under the hand (the party that benefits) is obliged or must attempt to prove that the signature is true by using other evidence, which is why against deeds under the hand there is the principle of "always considered false as long as it is not proven its authenticity" (Ahmad & Miru, 2023).

Based on the explanation above, it can be said that from the aspect of proof, the deed under the hand does not have outward, formal and material evidentiary power, this is because the evidentiary power of the deed under the hand depends on whether or not the signature of the party listed in the deed under the hand is recognized, Sudikno Mortokusumo also explains this in his book Indonesian Civil Procedure Law which basically states that: "because the signature of the deed under the hand may still be denied, then the deed under the hand does not have the power of birth proof" (Mertokusumo, 2009). The absence of the evidentiary power of birth deeds under the hand, as stated by Sudikno Mortokusumo, brings juridical consequences if the deed under the hand does not provide a guarantee of legal certainty and does not provide legal protection. It appears because the "life or death" of the deed under the hand is still dependent on whether or not the deed is recognized, and as long as the signature is disputed, the function and value of the deed under the hand can be said to be absent and the party submitting the deed is obliged to prove its authenticity (Harahap, 2019).

Based on the explanation of the deed under the hand as described above, the discourse regarding the use of a deed under the hand in the making of an authentic deed by a Notary is always interesting to discuss, this is because, an authentic deed requires certainty, in the sense that it is certain about the date of the deed and the signatures of the parties in the deed, certain about what is written is what is described by the parties in the deed, and certain that the information, in the form of events or legal actions, has actually occurred so that what is described in the deed is perfect evidence (Sirait & Djaja, 2023). Unlike the case with a deed under the hand, both the signature and the contents cannot be ascertained, so that the signing can still be disputed, as well as the obligation of the party submitting the deed under the hand to prove the authenticity of the signature.

The discourse on the use of underhand deeds in making authentic deeds is interesting and will always raise legal questions: "is an underhand deed that from the legal aspect of proof does not provide a guarantee of legal certainty and legal protection competent with an authentic deed that has the characteristics of legal certainty and legal protection so that it can be used as a basis for making an authentic deed by a Notary?". This legal question arises because, in reality, the use of underhand deeds by Notaries in making authentic deeds is still found, both in the form of power of attorney to represent parties and in the form of minutes of the decision of the extraordinary general meeting of shareholders in which there is a grant of power (Wahyuni, 2021). On this basis, it is important to study the use of deeds under the hand, so that the implementation of making authentic deeds by notaries has standards and no longer provides ambiguity, since currently the procedures for making authentic deeds by notaries are not specifically explained in the notary office law, as stated by Sudikno Mortokusumo above.

The use of underhand deeds by Notaries in making authentic deeds is still found, one of which is in the form of minutes of the statement of the decision of the extraordinary general meeting of shareholders in which there is an underhand authorization to represent the shareholders in making an authentic deed in the form of a statement of the decision of the extraordinary general meeting of shareholders regarding the transfer of rights to shares from shareholders where the use of underhand deeds often causes problems because underhand deeds do not provide certainty regarding the date, content, and signature so that they can be denied and the burden of proof is on the party who made them. Therefore, it is necessary to research how the legal nature of underhand deeds and authentic deeds is practice in the judiciary as a form of legal certainty and how the authority of Notaries in making authentic deeds based on PKR deeds based on underhand RUPS provides legal certainty.

METHODS

This research method uses normative research methods, normative research methods are one type of research method used to analyze data based on existing rules, norms, or doctrines. This method is often used in legal research, where the focus is on legislation, official documents, or legal theory. This research uses a statutory approach and a conceptual approach. The statutory approach is carried out by examining all regulatory laws that are related to the problem being addressed. Normative research must certainly use a statutory approach because what will be studied are various rules of law that are the focus as well as the central theme of a study. The

conceptual approach is a type of approach in legal research that provides an analytical point of view of solving problems in legal research, seen from the aspect of legal concepts that underlie it, or can even be seen from the values contained in the norming of a regulation related to the concepts used. This research uses secondary data consisting of primary legal materials and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judicial decisions. Secondary legal materials are all publications on law that are not official documents. Publications on law include textbooks, legal journals, and comments on court decisions (Putri, 2016). The technique of collecting legal materials in this research is to conduct a literature study. The process of analysis in this research is carried out qualitatively by examining primary and secondary legal materials based on relevant legal concepts, norms and principles.

RESULTS AND DISCUSSION

The Legal Nature of Deeds Under Hand and Authentic Deeds in Judicial Institutions as a Form of Legal Certainty

a. Deed Under Hand and Notarial Deed to Formulate Legal Events. Notary, as a public official, is a legal subject authorized to make authentic deeds as confirmed in Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states: Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law or based on other laws.

This authority guarantees that deeds made by notaries have legal force and binding evidentiary power, because they are made based on procedures determined by laws and regulations, including the presence of the parties, reading the contents of the deed, and signing in the presence of a notary. The main functions of a notary in legal practice include:

- 1) Creating authentic documents: Notaries compile and store deeds that can be used as perfect evidence in court.
- 2) Ensuring formal legality: Notaries are responsible for ensuring that deeds are made according to legal procedures, so that they have a legally valid form and content.
- 3) Legal protection: Notaries assist the parties in ensuring that the legal rights and obligations set out in the deed are legally protected.
- 4) Dispute prevention: By legally recording legal events, the notary acts as a neutral party who ensures that there is no fraud or error in the legal transactions made by the parties.

Notaries perform moral and social functions in the Indonesian legal system because their duties are not only administrative but also guarantee the honesty, suitability, and validity of the legal documents they create. It is in line with Article 16, paragraph (1), letter a of Law No. 2 of 2014, which states that: Notaries are obliged to act honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal acts.

This ethical responsibility places the notary as a protector of the public's legal interests, especially in preparing legal documents that have an impact on long-term legal rights and obligations, such as in the case of business agreements, inheritance, company establishment deeds, or transfer of land rights. With their authority, notaries act as an extension of the state in providing legal certainty and administrative order through legal deeds that can be legally accounted for (Adjie, 2011).

Underhand deeds are generally used in the following circumstances: 1) Declaration of debt: For example, a person writes that he or she has borrowed money from another party and promises to repay it within a certain period. 2) Preliminary meeting agreement: In many organizations or companies, the results of meetings or internal agreements are often written down in the form of minutes or minutes that are not legalized. 3) Internal company authorization: Such as the director's power of attorney to the manager in terms of carrying out limited operational activities that are not notarized. 4) Unilateral statement letter: For example, a person's statement releasing another party from certain responsibilities in writing, without being made before a public official.

In the formulation of legal events in a deed under hand, information is usually expressed in the form of a direct narrative or using the format of a regular letter. The language used is not necessarily a legal standard, and there is often no standard structure. It causes the substance in the deed to be often vague and multi-interpretive if not carefully compiled. According to Sudikno Mertokusumo, a deed under the hand does not have full evidentiary power because "it does not have legality from an authorized official and is not based on strong legal formalities." As a result, if a dispute or denial arises, the contents of the deed must be reinforced with other evidence, such as witnesses or supporting documents that can prove that the contents and signatures in the deed are true (Harahap, 2019).

Legal expert Ahmadi Miru explicitly commented on the weakness of underhand deeds, stating that this type of deed "is always considered fake as long as its authenticity is not proven." This statement refers to the principle of proof in civil law that the party presenting an underhand deed in court bears the burden of proving that the document is valid. The burden of proof includes proving the signature, the contents, and the circumstances in which the deed was made. If even one element is not proven, then the deed can be declared invalid or have no legal force, so that the lawsuit or defense based on the deed will be difficult to grant (Miru, 2010).

However, in practical terms, underhand deeds still have a wide range of uses, especially in private and internal legal relations. Many companies or organizations make use of underhand deeds to speed up administrative processes, document internal decisions, and as a first step before formal legalization. Documents such as minutes of meetings, project cooperation agreements, or power of attorney are often created internally without the intervention of a notary. In this case, an underhand deed is a cheap, flexible and efficient means of documentation. However, if the transaction is of great value or has the potential to cause disputes, it is advisable to elevate it to an authentic deed in order to obtain higher legal force and guarantee maximum legal certainty.

A clear example of the weakness of underhand deeds occurred in a case between Andika Prasetyo, a furniture businessman from Surabaya, and Yudi Santoso, the owner of the "Yudi Motor" workshop in Sidoarjo. On January 10, 2023, Andika provided a loan of Rp 250 million to Yudi, which was outlined in a debt acknowledgment letter made privately, without witnesses or notary endorsement. The document was only signed by Yudi and did not involve Notary Lilis Suryani, S.H., M.Kn, even though an authentic deed should have protected such a large transaction. In the statement letter, Yudi promised to pay off his debt within one year, but by January 10, 2024, no payment had been made. When demanded, Yudi denied the validity of the letter and stated that the signatures on the document were forged.

Because there was no good faith from the debtor, Andika filed a default lawsuit at the Surabaya District Court in February 2024. He submitted the debt statement letter as the main evidence. However, because the deed was underhand, the judge did not immediately accept it as valid evidence in accordance with the provisions of Article 1875 of the Civil Code, which states that underhand deeds must be recognized by the party against whom they are submitted or proven correct through an additional process. During the trial, the panel of judges requested forensic evidence of the signatures, as well as supporting evidence other evidence such as transfer receipts and transactional witnesses. After examination by Puslab for Polri, the results showed that the signature was indeed authentic and belonged to Yudi Santoso. In addition, a witness from the plaintiff, Andika's driver, corroborated that he witnessed the signing of the document at Yudi's workshop. Accompanied by evidence of a bank transfer of Rp 250 million, the judge finally ruled that the debt acknowledgment was valid and the defendant was proven to have defaulted.

In Surabaya District Court Decision Number 51/Pdt.G/2024/PN.Sby, the panel of judges stated that the debt statement letter could be used as evidence after additional proof. The defendant was ordered to pay the principal debt of Rp 250 million along with interest of 6% per year starting from January 10, 2023, as well as to pay court costs incurred as a result of the lawsuit.⁵² Although the letter was eventually accepted as evidence, this case proves that documents that are only handwritten deeds are very vulnerable to disputes and require additional time and costs in the proof process. Had the debt acknowledgment been made in the form of an authentic deed

notarized by a notary public, its evidentiary power would have been legally perfect, as stipulated in Article 1870 of the Civil Code, and could have been directly used in court without having to go through complicated additional proof.

In Indonesian law, the strength of an authentic deed lies not only in the content of the statements contained therein, but also in the fact that it is made by an authorized official, in this case, a notary, with legally standardized procedures. The deed records an act, event, or legal situation formally and officially, and becomes the highest means of proof in the civil law system if the conditions for its making are legally fulfilled according to applicable law (Adjie, 2011). The evidentiary power of an authentic deed includes three main aspects:

- 1) The outward evidentiary power is that the deed is valid from a physical point of view because it is made according to the form and format determined by the laws and regulations.
- 2) Formal evidentiary power is that the deed has been made by an authorized official (notary) and under legal circumstances that meet administrative requirements, such as the presence of the parties and signatures.
- 3) The strength of material evidence is that all contents and information in the deed are considered true until proven otherwise in court. Habib Adjie explains that these three powers make an authentic deed a perfect, complete, and directly enforceable piece of evidence without having to be procedurally retested" in the judicial process.

The formulation of legal events through notarial deeds is applied in various important fields, especially those related to high legal value rights and obligations. For example, in land sale and purchase transactions, a deed of sale and purchase made by a notary or a land deed official (PPAT) is an absolute requirement to register changes in land rights at the land office. Similarly, in the establishment of a limited liability company, the company's deed of establishment must be made in the form of a notarial deed and legalized by the Ministry of Law and Human Rights in order to obtain legal entity status. In addition, in amending the articles of association, appointing or dismissing directors and commissioners, and in other legal acts required by law, an authentic deed is the only legally recognized form.

In the performance of their duties, notaries are obliged to ensure that the entire deed-making process is carried out with the principles of prudence and integrity:

- 1) Ensure the awareness of the parties: The notary is obliged to check that the parties present understand and comprehend the contents of the deed being made and sign it voluntarily, without pressure or coercion.
- 2) Avoiding legal conflicts: Notaries are obliged to ensure that the contents of the deed do not conflict with the law, decency, or public order, in accordance with the principles of *lex certa* and due process of law.
- 3) Neutrality and objectivity: In accordance with Article 16, paragraph (1), letter a of the Notary Position Law, notaries are required to act "honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal actions." This neutral attitude is the basis for public trust in deeds made by notaries.

In proving in court, an authentic deed has a position as perfect and binding evidence for the parties who sign it. The principle used in the law of evidence is *presumptio iustae causae*, namely that all contents in an authentic deed are considered true until proven otherwise. Judges may not unilaterally reject the truth of the contents of an authentic deed unless one of the parties can prove a substantial defect or an element of forgery in its making.

This case study relates to the notarial practice of Hartono, S.H., M.Kn., a Notary in the Sleman area, Special Region of Yogyakarta, who was the defendant in criminal case No. 196/Pid.B/2018/PN.Smn at the Sleman District Court. Hartono was charged for making an authentic deed without the presence of the parties mentioned in the deed, which is a serious violation of the provisions of Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Notary Position (UUJN), which requires the presence of the parties in person during the reading and signing of the deed. During the trial process, it was revealed that the deed was prepared only based on documents in the form of photocopies of ID cards and statements sent by courier service, without any direct identity verification or verbal confirmation by the parties in the presence of the Notary. This act not only violated the formal provisions in the UUJN, but also fulfilled the criminal elements as stipulated in Article 264 paragraph

(1) of the Criminal Code regarding the forgery of authentic deeds, considering that the deed legally reflected facts that seemed to be directly authorized by the parties, even though it never happened. As a result, Hartono was sentenced to criminal punishment because he was considered to have abused his authority as a public official by making a deed that was legally invalid and potentially detrimental to other parties.

The facts of the trial stated that the deed was made without being read out in the presence of the parties, and that the parties never even knew the full contents of the deed. Nevertheless, the notary still signed and issued the deed, as if the notarial procedures had been legally carried out. This action was then qualified as forgery of a letter by a public official, because the notary had legally stated something that was not in accordance with the facts. Based on this, Hartono was sentenced to criminal punishment by the panel of judges based on Article 263 paragraphs (1) and (2) of the Criminal Code and Article 264 of the Criminal Code, which regulates the forgery of official documents by public officials.⁵⁸ In the Sleman District Court Decision Number 196/Pid.B/2018/PN.Smn, the panel of judges stated that Hartono was legally and convincingly proven guilty of committing the crime of falsifying a letter in his position as a notary, and imposed a prison sentence of 1 year and 6 months with a probationary period of 2 years, with the consideration that the defendant had never been convicted before and regretted his actions.⁵⁹ This decision emphasizes that integrity and procedurality in making authentic deeds are non-negotiable aspects, given the position of a notary as a public official who is given the authority of the state. In addition to being sentenced to criminal sanctions, Hartono was also subject to ethical sanctions by the Notary Honor Council and lost his license to practice based on recommendations from the Ministry of Law and Human Rights of the Yogyakarta region.

This case shows that abuse of authority by a notary not only affects him, but also risks causing great harm to the parties with an interest in the deed. Such legally flawed deeds can be considered null and void, thus having no evidentiary power, and opening up space for civil suits from aggrieved parties. When an authentic deed is not prepared in accordance with legal procedures, its legal legitimacy is lost, and the parties relying on the deed are in a very weak legal position and can even become entangled in time-consuming and costly disputes. Therefore, this case is a strong warning to all notaries that their profession carries enormous moral and legal responsibilities, and any procedural violations can lead to severe criminal, administrative, and ethical sanctions.

b. The Position of Deeds as Evidence in Practice in Judicial Institutions as a Form of Legal Certainty. Underhand deeds are juridically recognized in the Indonesian legal system, but have a different position from authentic deeds in court evidence. An underhand deed only acquires the same evidentiary power as an authentic deed if it is recognized by the party to whom it is addressed or if the judge declares it to be true after additional proof. In court practice, the validity of these deeds depends on two factors: explicit acknowledgment by the opposing party or the evidentiary capacity of the party submitting the deed. Suppose there is a denial of the signature or content of the deed. In that case, the evidentiary power becomes weak and must be strengthened by other evidence, such as witnesses, additional letters, or forensic testing of signatures (Adjie, 2011).

Several legal experts explain the weaknesses of proving deeds under hand: 1) Ahmadi Miru states that underhand deeds are "always considered fake until proven authentic", which means that this kind of deed is always in an uncertain position until validation through additional evidence at trial. 2) Sudikno Mertokusumo asserts that because the signature in an underhand deed can be denied, the deed does not have the same outward evidentiary power as an authentic deed. 3) Irwansyah Lubis et al. added that the free form of a deed under the hand and made without the intervention of a public official makes it easier to dispute legally, so that its protective power for the filing party is very limited.

From the perspective of legal certainty theory, Satjipto Rahardjo emphasizes that the law must provide clarity and predictability to society. He states that "legal certainty is a product of positive law that must be obeyed even though the law may be unjust". In the context of underhand deeds, the absence of outward and formal guarantees of strength means that people who use these documents do not obtain maximum legal certainty. Underhand deeds do not provide the regularity and certainty necessary to guarantee the legal rights of the parties,

especially in disputed situations. When the contents or signatures in a deed are disputed, the court must examine and assess authenticity through an additional evidentiary process. It is in line with Gustav Radbruch's thoughts on the importance of legal certainty in creating a fair and orderly legal system. When a deed cannot provide direct legal protection, then the document fails to be a tool that ensures the stability of legal relations.

In practice, underhand deeds are often used in a variety of informal private transactions, such as debentures, minutes of meetings, and grants of power of attorney. However, because these documents do not go through a formal legal verification process, their validity is often questioned when submitted as evidence in court. Based on the research in your thesis, many underhand deeds are used as the basis for making authentic deeds, especially in the form of minutes of RUPS resolutions that are not notarized. In fact, if there is a dispute regarding the validity of the minutes, then the trust in the authentic deed that refers to it can also be disrupted. A deed under hand fails to provide complete legal protection because its truth value can only be accepted after going through a complex series of proofs. It is contrary to the principle of *lex certa*, which demands that the law must be clear and not depend on the fate of an agreement on mere recognition.

Underhand deeds in the Indonesian legal system are a form of written evidence whose existence is recognized in civil law, but their evidentiary power is not as strong as authentic deeds. The requirements for an underhand deed to have the same evidentiary power as an authentic deed are:

- 1) There is an explicit acknowledgment from the intended party that he recognizes the truth of the contents and signatures in the deed.
- 2) If there is no acknowledgment, then the court must test the material truth of the deed, either through an evidentiary process such as presenting witnesses, comparing signatures with comparative documents, or through forensic laboratory tests.
- 3) If the results of the proof corroborate the authenticity of the deed, then the judge can declare it valid, and the deed has perfect evidentiary power between the parties (Miru, 2010).

In judicial practice, the position of an underhand deed is challenged when the defendant expressly denies the content or validity of the signature in the deed. As explained by Ahmadi Miru, underhand deeds "are always presumed to be forged until proven authentic by the party submitting them." This statement emphasizes that this kind of deed is not in a neutral or binding position from the outset, but rather must go through a legal confirmation process at trial. When a challenge to the deed arises, the burden of proof falls entirely on the plaintiff. In this case, the inability to prove the authenticity of the deed will result in the lawsuit being rejected, or at the very least reduce the evidential value of the deed to preliminary evidence (not primary evidence). The process of proof often involves high costs, for example by presenting graphology experts or witnesses to events, which are not necessarily sufficiently available (Hadjon, 1987). In legal theory, the weakness of underhand deeds is closely related to:

- 1) Legal certainty theory: This theory requires that every valid legal relationship must have a strong and unambiguous evidential basis. Underhand deeds, because their evidentiary power is conditional, do not reflect full legal certainty.
- 2) Legal Protection Theory: This theory demands that every individual gets fair protection in legal proceedings. When an underhand deed is disputed, the party that should be protected (e.g., the creditor) is burdened with the obligation to prove the validity of the document, whereas in an authentic deed, the burden does not exist because its validity is already assumed.

In its implementation in the judiciary, the judge has a central role in assessing the evidentiary value of an underhand deed. If the defendant does not recognize the deed and there is no strong additional evidence, then the judge can declare that the deed has no evidentiary power. It has happened in a number of court decisions, where the plaintiff submitted a deed of acknowledgment of debt that the defendant did not acknowledge, and the court rejected the claim because there was no other supporting evidence. This position is very different if the deed is made in an authentic form by a notary, where, according to Article 1870 of the Civil Code, an authentic deed provides "perfect evidence of what is contained therein for anyone concerned." Thus, normatively and empirically,

the proof of deeds under the hand shows limitations in providing legal certainty and proportional legal protection for the parties to the dispute.

Notaries as public officials have the authority to make authentic deeds in accordance with statutory regulations, as also stipulated in Article 1 point 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Offices, which states that "Notaries are public officials authorized to make authentic deeds and other authorities as referred to in this Law or based on other Laws." Based on this foundation, notarial deeds made by notaries qualify as authentic deeds and have very high evidentiary legal force in the civil evidentiary system in Indonesia.

The position of an authentic deed in court is *bindend bewijs* or binding evidence. It means that the judge is obliged to accept and believe the contents of the authentic deed as long as there is no evidence to the contrary. It is different from a deed under the hand, which is free (*vrij bewijs*) and needs to be tested first. The juridical basis for the binding nature of an authentic deed is explained in Article 1870 of the Civil Code, which reads:

"An authentic deed provides between the parties and their heirs and assigns a perfect proof of what is contained therein."

In practice, if someone denies the contents of an authentic deed, then he or she must prove that the contents are not true, not just state an objection. Thus, the authentic deed reverses the burden of proof and provides a stronger legal position for the party who submits the deed as the main evidence in civil and state administrative courts.

The specialty of notarial deeds is also associated with the principle of *persumptio iustae causa*, namely the assumption that what is written in an authentic deed is valid until proven otherwise. This principle provides an epistemological foundation for the power of deeds in the legal system because:

- 1) Represents the formal truth recorded by a neutral public official, not merely the recognition of one party.
- 2) Protects the legal system from manipulation or unfounded disputes, because the entire contents of the deed have been agreed upon in the presence of a notary.
- 3) Placing a deed as *prima facie* evidence, i.e., preliminary evidence that is sufficient to base a decision on if it is not legally refuted. R. Subekti states that an authentic deed "must be considered true as long as it is not proven otherwise, and can only be canceled through a strong and detailed evidentiary process".

The evidentiary power of an authentic notarial deed reflects the guarantee of legal certainty in the justice system. In the theory of legal certainty proposed by Gustav Radbruch, good law must fulfill the elements of clarity, stability, and predictability. An authentic deed fulfills all of these elements because it is prepared based on legal norms, by legal officials, and can be used in various situations as legal evidence. In addition, from the perspective of legal protection theory, a notarial deed guarantees the protection of the rights of the parties who make it because the notary is in charge of ensuring that the contents of the deed do not contradict the law, are made consciously, and are based on the agreement of the legally authorized parties. In other words, an authentic deed provides juridical assurance that legal acts have been legally performed, and if disputed in court, the deed stands as the main evidence in favor of formal justice and protection of citizens' legal rights.

The Authority of a Notary in His Position to Make an Authentic Deed Based on a Deed Under Hand in the Form of a Pkr Deed in Providing Legal Certainty.

a. PKR Deed Made by Notary Based on RUPS Underhand. The authority of notaries in making authentic deeds is expressly regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices (UUJN). This law provides a legal basis as well as the limits of the authority of notaries in carrying out their positions as public officials. Article 1, point 1 of UUJN states that: "Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law or based on other laws." It confirms that notaries do not only carry out administrative duties, but have the legal power to issue documents that have perfect evidence.

The Deed of Meeting Resolution Statement (PKR) can be issued by a Notary when there is a decision of the general meeting of shareholders (RUPS) that wants to be written in the form of an authentic deed. So, this PKR deed contains a record of the results of the meeting's decision, which a notary authorizes. The function of the deed (PKR) is to record the meeting's decision. The PKR deed functions as an official document that records the results of decisions taken at the RUPS, such as changes to the articles of association, changes to the composition of the management, or other strategic decisions. PKR deeds made by notaries have strong legal force, because notaries are public officials authorized to make authentic deeds. The PKR deed also serves to legitimize the meeting's decision, so that the decision has the power of binding law for related parties. In notarial practice, the deed of Statement of Meeting Resolutions (PKR) that was originally made in the form of a deed under the hand is often used as the basis in the preparation of an authentic deed by a Notary, especially when the decision is required for further legal actions such as amendments to the articles of association or transfer of share ownership. Although an underhand PKR is acceptable as a supporting document, a Notary does not have the authority to automatically change the status of the deed into an authentic deed without fulfilling the formal and material requirements stipulated in Article 38 of the UUJN, such as the presence of the parties, the signing, and the reading of the deed in front of the Notary. Therefore, in making an authentic deed based on a PKR under the hand, the Notary must assess the validity of the substance of the meeting decision by referring to general civil law provisions, such as Article 1320 of the Civil Code regarding the legal requirements of an agreement, as well as specific provisions applicable to the relevant legal entity, such as the Limited Liability Company Law (UUPT) or the articles of association of the company concerned.

In notarial practice, the deed of Meeting Decision Statement (PKR) made under the hand is often used as a basis or reference in the preparation of authentic deeds by a Notary, especially in the ratification of internal decisions of a legal entity such as a limited liability company, cooperative, or foundation. The use of PKR documents is allowed as long as it meets the formal and material requirements and actually reflects the legally valid will of the parties. In this case, the Notary does not necessarily change the legal status of an underhand deed into an authentic deed, but rather exercises its authority to formalize the information and statements submitted by the parties into a notarial deed. This process is carried out through document verification, clarification of the substance of the statement, and implementation of deed-making procedures as stipulated in the provisions of laws and regulations. It is in line with the provisions of Article 1, point 1 of Law Number 2 Year 2014 on Notary Position, which states that a Notarial deed is an authentic deed made by or before a Notary in accordance with the forms and procedures prescribed by law.

This practice is often found, for example, in the case of business establishment cooperation agreements, long-term leases, and sale and purchase agreements, where the parties first prepare PKR under the hand as an initial agreement, and then ask the Notary to prepare it in the form of an authentic deed. The Notary will check the correctness of the parties' identities, the conformity of the contents of the agreement with the applicable law, and ensure that there is no coercion or defect of will in the process of making the deed. In this context, the Notary Position Regulation (Minister of Law and Human Rights Regulation No. 62/2016) also provides a basis for the procedures for making deeds based on information and documents from the parties, including documents in the form of handwritten deeds used as attachments.

However, the use of an underhand PKR deed as the basis for preparing an authentic deed requires professional caution. Notaries have legal and ethical responsibility for the content and validity of the deeds they make. Suppose there are doubts about the validity or clarity of the PKR content. In that case, the Notary is obliged to ask for clarification or even refuse to make the deed to avoid fatal mistakes. The Indonesian Notary Code of Ethics explicitly requires Notaries to act independently, honestly, and objectively and not to serve deeds that should be suspected of being made with the intention to deceive the law or harm other parties. The practice of using PKR deeds under the hand in making authentic deeds is legally permissible and common in notarial practice.

However, Notaries must carry out their role professionally and proportionally, and always adhere to the principles of prudence, official responsibility, and devotion to the establishment of legal certainty.

Notaries have a strategic role in assessing the validity of the Meeting Decision Statement (PKR) deed made under the hand, if the deed will be used as the basis for making an authentic deed. The assessment is not only administrative, but also includes substantial aspects to ensure that the PKR fulfills the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code, namely the agreement of the parties, legal capacity, certain objects, and *halal causa*. These four elements must be cumulatively fulfilled for an agreement to be considered legally valid. If one of these elements is not fulfilled, the PKR deed is considered to be a legal defect and cannot be used as a valid basis in the preparation of an authentic deed by a Notary, because this can have implications for the legal invalidity of the deed and create responsibility for the Notary who drafted it.

In performing their duties, Notaries must further scrutinize whether the PKR is made voluntarily, without coercion, and reflects the true agreement of the parties. This assessment also includes verifying the identity of the parties and the clarity of the object of the agreement. If there is any doubt about the content, signature or time of the PKR, the Notary is obliged to ask for clarification or additional information. If the PKR deed contains clauses that are contrary to law, morals, or public order, the Notary must refuse to continue the process of making an authentic deed. It is in line with the principles of prudence and official responsibility as affirmed in the Indonesian Notary Code of Ethics, which states that Notaries are prohibited from making deeds that contain legal engineering or aim to hide illegal acts. Therefore, an assessment of the validity of the PKR is an absolute prerequisite that must be met before an authentic deed is prepared based on the deed under the hand.

In the process of making authentic deeds originating from underhand deeds such as PKR, Notaries have considerable legal and ethical responsibilities. The risks that may arise relate to the substance of the underhand deed, especially if the document turns out to contain elements of fabrication, falsification, or does not reflect the true will of the parties. Suppose the Notary is negligent in conducting the examination or is even indicated to be involved in the making of a misleading deed. In that case, he can be held civilly, administratively, and even criminally liable (R. Subekti, 2010).

Civil liability of a Notary can arise if the deed he makes causes harm to one or more of the parties involved. This provision is based on Article 1365 of the Civil Code, which states that: "Every unlawful act which causes damage to another person shall oblige the person through whose fault the damage is caused to compensate for the damage."

Based on this provision, a party harmed by a Notary's act or omission can file a lawsuit on the basis of an unlawful act (*onrechtmatige daad*) if it can be proven that there are elements of fault, real loss, and a causal relationship between the Notary's act and the loss. For example, suppose a Notary is negligent in verifying the validity of documents or the identity of the parties, and such negligence causes a dispute or financial loss. In that case, civil liability can be imposed on the Notary. In addition, Article 85 of the Notary Position Law also stipulates that Notaries can be subject to administrative sanctions ranging from verbal reprimands to temporary dismissal if proven to have violated laws and regulations or the code of ethics. In fact, if elements of forgery, collusion, or legal engineering are found, the Notary can also be held criminally liable, as stipulated in Article 263 of the Criminal Code regarding forgery of letters.

Notaries are required to apply the principles of prudence, professionalism, and integrity in every stage of deed making, especially if the deed is sourced from documents that do not have authentic status. In addition to document verification, the Notary must also document the clarification process and questions asked of the parties as a form of legal protection against himself. It is important so that if a dispute or legal process arises in the future, the Notary has evidence that he has carried out his duties in accordance with professional procedures and standards.

A Limited Liability Company (PT) is a legal entity that is a capital alliance, established based on an agreement, which conducts business activities with authorized capital that is entirely divided into shares. This

definition is stipulated in Article 1, point 1 of Law Number 40 Year 2007 on Limited Liability Companies (UUPT). PT has the status of an independent legal subject, which is separate from its shareholders, and has organs consisting of the Board of Directors, Board of Commissioners, and General Meeting of Shareholders (RUPS).

The establishment of a PT must be done with a deed of establishment made before a notary in the Indonesian language and must obtain authorization from the Minister of Law and Human Rights in order to obtain status as a legal entity (Article 7 paragraph (1) and (4) UUPT). In the context of the Job Creation Law (Law No. 11 of 2020) and its implementing regulations, the establishment of a PT is now made easier, including with the elimination of the minimum limit of two founders for UMK scale PTs (micro and small businesses), so that even one person can establish a PT (Individual PT) as stipulated in the amended Article 153A. In addition to the establishment, changes to company data, such as changes to the composition of directors, commissioners, authorized capital, or articles of association, must also be made through the General Meeting of Shareholders (RUPS) and set out in a notarial deed. The RUPS is the highest forum in the company structure and is the main basis for making strategic decisions. The results of the RUPS decision are then stated in a deed of Meeting Decision Statement (PKR) made by a notary.

For example, suppose the shareholders agree to change the composition of the management (directors/commissioners) or change the capital. In that case, the notary will make a PKR deed based on the results of the RUPS. In this case, the RUPS minutes document, which is an underhand deed, becomes the basis for the notary to put it in the form of an authentic deed in the form of PKR, which is then reported to the Ministry of Law and Human Rights to be legalized and announced through the online AHU system. It is in accordance with the provisions of Article 21 and Article 29 of the Company Law, as well as Article 31 paragraph (1) of the Company Law, which stipulates that changes to the company's articles of association must be stated in a notarial deed and must obtain approval or notification to the Minister. The Job Creation Law accelerates this process through a digitalization and risk-based licensing system (OSS RBA), so the role of notaries becomes more strategic in ensuring the formal legal validity of these changes. In practice, a notary not only acts as an administrative recorder or deed maker, but also as a guarantor of the legal validity of decisions made by the company's organs, especially through the PKR deed as an official document of the legally valid RUPS decision.

b. Notary's Responsibility for PKR Deed made by him based on RUPS under hand. Notary as a party related to a deed case, which is requested to be present in court when a case reaches that stage, the summoning stage will be carried out with a deed of relaas, namely a notification letter. A deed can be issued when a case in court has reached the stage of summoning the litigants, and the summons has been delivered legally by the bailiff or substitute bailiff. A Relaas is an official notification letter from the court that contains information about a case, including summons, reprimands, or other notices to litigants. Notary's responsibility as a public official leads to the theory of legal liability, which states that a person can be held liable if three elements are met, namely the existence of fault (*schuld*), loss (*schade*), and causal relationship (*causaal verband*) between the action and the effect. In the realm of civil law, this is reflected in Article 1365 of the Civil Code, which stipulates that: "Every unlawful act, which causes damage to another, obliges the person who, through his fault, causes the damage, to compensate for the damage."

In the criminal realm, notary responsibility can arise if the notary knowingly includes false information in the deed, as stipulated in Article 266 of the Criminal Code which stipulates that: "Whoever inserts false information into an authentic deed, or causes false information to be inserted into an authentic deed, with the intention of using or causing others to use the deed as if the information is in accordance with the truth, and uses the false deed". Meanwhile, in the administrative aspect, Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Position of Notary provides a foundation through Articles 85 to 89, which regulate sanctions for violations of office and professional ethics. In addition, the applicability of the principle of *acta publica probant sese ipsa*, as stated in Article 1868 of the Civil Code and Article 165 HIR, shows that the authentic deed proves itself and has perfect evidentiary power. Based on the theory of responsibility, any notarial action that violates the principle of

prudence or deviates from legal procedures may implicate full legal responsibility. Notaries not only act as formal recorders but also as preventive legal protectors who are obliged to maintain the legality, formal truth, and integrity of the legal agreement process between parties.

Juridically, the evidentiary value of a deed is largely determined by the form and manner in which it is made. Underhand deeds have limited evidentiary power, namely only against the parties who sign them, and only function as preliminary evidence if not recognized by the opposing party in a dispute. However, when the content or substance of an underhand deed is poured into an authentic deed by a Notary, the authentic deed obtains perfect evidentiary power as referred to in Article 285 of the Renewed Indonesian Regulations (RIB) and the doctrine of evidentiary law.

In this process, the Notary acts as a state official who guarantees the formal aspects of the deed, such as the date, place, identity of the parties, and the free will of the parties. Although an authentic deed originates from an underhand deed, its evidentiary power is not determined by the origin of the document, but rather by the manner and authority in its preparation. It is in line with the doctrinal opinion that the evidentiary power of an authentic deed lies in the "formal truth", not the "material truth" - that is, what is stated in the deed is considered true as far as matters witnessed and guaranteed by the Notary are concerned. Consequently, in civil cases, the authentic deed can be used as the main evidence without the need for additional proof, unless proven otherwise through reverse proof efforts. Thus, authentic deeds originating from underhand deeds still have high juridical value as long as they meet the formal requirements for making and are not proven to be legal engineering.

Notaries play a key role in ensuring legal certainty through the creation of authentic deeds, especially when the deed is prepared based on documents originating from the parties, such as underhand deeds. As a public official, the Notary is responsible for ensuring that all deed-making procedures have been carried out in accordance with legal provisions, as well as that the content of the deed reflects the will of the parties legally and does not conflict with the provisions of laws and regulations. It makes the authentic deed strong evidence in the face of potential disputes in the future.

When ensuring legal certainty, the Notary not only functions as a formal registrar, but also as a guardian of the integrity of the private civil law process. Through document verification, content clarification, and the reading and signing of the deed directly in the presence of the parties, the Notary creates an "indisputable legal evidence" in the formal aspect. It becomes a legal guarantee for the parties that the agreement outlined in the authentic deed will be recognized and protected by the state.

Legal protection of the parties in an authentic deed originating from an underhand deed is a concrete manifestation of the principles of legal certainty, justice, and expediency in the Indonesian civil law system. When an agreement, such as a Statement of Meeting Decision (PKR) that was originally made in the form of a deed under the hand, is then formalized by a Notary into an authentic deed, the legal relationship between the parties gains stronger legitimacy and is juridically protected. It is due to the position of an authentic deed which, according to Article 1868 of the Civil Code, has perfect evidentiary power as long as it cannot be proven otherwise through an annulment lawsuit. Unlike an underhand deed, which is only binding relative to the parties who signed it, an authentic deed is general and can be used as valid and binding evidence before the court. Formalization through an authentic deed also strengthens the legal position of the parties and minimizes the potential for disputes arising from the vagueness or weakness of evidence in underhand agreements.

Normatively, authentic deeds provide formal and substantive legal protection. Formal protection lies in the fact that the deed is made by or before a public official (Notary) who has the authority under the law, in the form and procedure prescribed by law. It is in accordance with the provisions of Article 1868 of the Civil Code, which defines an authentic deed as a deed made by or before an authorized public official, in the form prescribed by law. Meanwhile, substantive protection covers the content or legal material of the agreement, which has been examined, confirmed, and explained by the Notary to the parties before it is signed, in accordance with his obligations in Article 16 paragraph (1) letter m of Law No. 2/2014.

In court, an authentic deed has perfect evidentiary power (*volledig bewijs*) against what is formally stated and examined by the Notary, including the identity of the parties, the time, place, and content of their statements. It is regulated in Article 285 of the Renewed Indonesian Regulations (HIR) and Article 165 of the HIR, which states that deeds made legally by public officials within the limits of their authority are evidence that does not need to be proven again. Thus, in a dispute, the parties who bind themselves in an authentic deed are not burdened with the obligation to prove the facts stated in the deed, unless the opposing party can prove a legal defect such as forgery, coercion, or substantial error.

Meanwhile, a deed under the hand, according to procedural law, only has relative evidentiary power towards the parties who signed it and has no absolute evidentiary value towards third parties or the court unless it has been explicitly recognized. Thus, when an underhand deed is used as the basis for the preparation of an authentic deed by a Notary, the level of legal protection increases significantly because it has gone through a formalization process recognized by the Indonesian legal system. It is where the strategic function of a Notary lies, namely as a legal intermediary that elevates private legal relationships into legal and protected legal events.

Notaries themselves are required by law and code of ethics to ensure the validity of the content, the free will of the parties, and the absence of conflict with higher legal regulations. Based on Article 16, paragraph (1), letters c and d of the Notary Position Law, a Notary is prohibited from making a deed if he knows that the deed contains inconsistencies or unlawful acts. It means that a Notary is not just a writer or recorder of agreements, but a preventive legal protector whose duty is to prevent disputes from arising in the future by providing certainty in the legality aspect of the legal relationship formed by the parties.

Furthermore, the civil procedural law system also recognizes the principle of *acta publica probant sese ipsa*, i.e., "public deeds prove themselves". It means that what is stated in an authentic deed is considered true by law, as long as it is not proven otherwise through the reverse proof process (*contradictio*). Therefore, parties who feel aggrieved by the contents of an authentic deed must file a lawsuit and prove that the deed is invalid because it contains elements of legal defects. It is proof that the law provides very strong legal protection to the parties in an authentic deed, because the burden of proof is no longer on the party who owns the deed, but on the party who opposes it.

In notarial practice, there is an interesting case regarding the responsibility of notaries in making authentic deeds, namely when Notary MI poured the minutes of the Extraordinary General Meeting of Shareholders (ERUPS) into the Deed of Meeting Resolution (PKR) No. 8 dated August 27, 2018, which contained the temporary dismissal of the President Director of PT Dharma Buana Internusa (PT DBI), namely brother REP. This meeting was held based on the Decree of the Board of Commissioners No. 01/DKDBI/IV/2018 dated April 5, 2018 which was signed by only one commissioner, namely NB, without the signature of Robby T., as the other commissioner. In fact, the Company's Articles of Association state that at least two commissioners must sign the decision of the board of commissioners to be valid.

Legal issues arose because the EGM held on May 3, 2018, and reaffirmed on July 30, 2018, was conducted without fulfilling formal procedures. There was no official meeting invitation at least 14 days in advance, no clear agenda announced in advance, and no attendance list of meeting participants. REP, as the dismissed party, was neither present nor given the opportunity to defend itself, whereas according to the provisions of Article 106 paragraph (1) of Law Number 40 Year 2007 on Limited Liability Companies (UUPT), the dismissal of members of the board of directors must be preceded by providing an opportunity to defend themselves in the RUPS forum.

Despite this apparent procedural flaw, Notary MI still incorporated the results of the meeting into the PKR authentic deed without verifying the legality and validity of the meeting. No checks were made on the Articles of Association, the validity of NB's position as sole commissioner, or the power of attorney and attendance of the parties. By relying on the meeting minutes document in the form of a deed under hand, Notary MI has violated Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Notary Position, which requires notaries to act carefully and meticulously towards documents and legal events that are used as the basis for deeds.

On the basis of the PKR deed, REP's brother then filed a civil lawsuit with the Surabaya District Court demanding that the Decree of the Board of Commissioners, the implementation of the ERUPS, and the PKR Deed No. 8/2018 be declared invalid and null and void. Although this lawsuit was declared obscure (*obscurus libellus*) because it did not include all parties that should have been sued, in its consideration, the Supreme Court still stated that the entire series of decisions, including the PKR deed, were materially legally defective and had no binding legal force.

The Supreme Court Decision Number 616 K/PK/Pdt/2023 is an important precedent that authentic deeds made based on invalid documents, let alone prepared unilaterally, will not have legal force even though they have been signed and recorded. Notaries as public officials should not only be formal recorders of the will of the parties, but must also act as legal gatekeepers who must ensure the formal and material conformity of the deed with the laws and regulations and the articles of association of the legal entity concerned.

This case also emphasizes the importance of the prudential principle in the notary profession. If this principle is ignored, notaries can not only be subject to administrative sanctions by the Notary Supervisory Council, but also potentially be sued civilly for losses arising from defective deeds, as well as face criminal sanctions if there are elements of negligence that cause losses or forgery in the deeds they make. Therefore, it is important for notaries to not only sign the deed, but also conduct a thorough legal clarification of the documents used as the basis, especially in internal corporate matters such as the PKR deed from the RUPS.

CONCLUSION

1. The legal nature of underhand deeds and authentic deeds in practice in judicial institutions as a form of legal certainty, underhand deeds "are always considered invalid as long as their authenticity is not proven". This statement refers to the principle of proof in civil law that the party presenting an underhand deed in court bears the burden of proving that the document is valid. The burden of proof includes proving the signature, the contents, and the circumstances in which the deed was made. If even one element is not proven, then the deed can be declared invalid or have no legal force, so that the lawsuit or defense based on the deed will be difficult to grant. Meanwhile, an authentic deed in judicial practice is a deed that is perfect or legally strong in court because it is made and kept in the Notary's office as a protocol.
2. The authority of a Notary in his/her position to make an authentic deed is based on an underhand deed in the form of a PKR deed in providing legal certainty. This practice is often found, for example, in the case of business establishment cooperation agreements, long-term leases, and sale and purchase agreements, where the parties first compile PKR under hand as an initial agreement, and then ask the Notary to compile it in the form of an authentic deed. The Notary will check the correctness of the parties' identities, the conformity of the contents of the agreement with the applicable law, and ensure that there is no coercion or defect of will in the process of making the deed. In this context, the Notary Position Regulation (Minister of Law and Human Rights Regulation No. 62/2016) also provides a basis for the procedures for making deeds based on information and documents from the parties, including documents in the form of handwritten deeds used as attachments. However, the use of an underhand PKR deed as the basis for preparing an authentic deed requires professional caution. Notaries have legal and ethical responsibility for the content and validity of the deeds they make. Suppose there is any doubt about the validity or clarity of the PKR content. In that case, the Notary is obliged to ask for clarification or even refuse to make the deed to avoid fatal mistakes.

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