

The Legal Power of Underhand Deeds in Civil Disputes at the District Court

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Abstract

This research aims to analyze the evidentiary power of underhand deeds in the Indonesian civil law system and its implications for legal protection and certainty. Underhand deeds are one of the written evidence recognized in civil procedural law, but have weaknesses compared to authentic deeds, especially in terms of proving the validity and correctness of their contents. The research method used is normative juridical with a statutory approach and case studies of relevant court decisions. The results showed that a deed under the hand has valid evidentiary power if it is signed by the parties and its authenticity is not disputed, but it is easily invalidated when its validity is disputed. This condition can lead to legal uncertainty, especially in important transactions. This research recommends formal standardization in the making of underhand deeds, increased legal education to the public, and the active role of notaries or public officials in the voluntary legalization process as an effort to strengthen its evidentiary value. The findings are expected to contribute to the renewal of civil evidentiary practices that better ensure legal protection and certainty for the parties.

Keywords: deed under hand; evidence; civil law; legal protection; legal certainty.

Introduction

In the realm of civil law, the existence of written evidence is a crucial element in proving a legal right or event. Among the various types of written evidence, deeds have a strategic position, both authentic and underhand¹. Authentic deeds are prepared by or before an authorized public official, and have perfect evidentiary power as to what is contained therein². In contrast, a deed under hand is only signed by the parties without the intervention of a public official, so its evidentiary power is relative and can still be disputed in court³. Nevertheless, in practice, underhand deeds are more widely used by the public due to their simpler drafting process, low cost, and flexibility in various civil transactions. This phenomenon shows the importance of an in-depth study of the legal position of underhand deeds, especially when used as evidence in civil disputes in the district court.

Problems arise when civil disputes are submitted to the court by relying on deeds under the hand as the main evidence⁴. Although this deed is legally valid, its evidentiary power is weakened if one of the parties disputes the content or validity of the deed. In many cases, the party who did not sign the deed feels that they are not bound by the contents of the deed, leading

¹ Ahmad Fauziannor et al., "Perbandingan Kekuatan Pembuktian Antara Akta Otentik Dan Akta Di Bawah Tangan Dalam Sengketa Perdata," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (June 2025): 1963–76, <https://doi.org/10.62976/ijjel.v3i2.1198>.

² Henny Saida Flora, "Legal Power of Authentic Deeds and Underhand Deeds in Civil Cases," *JHK : Jurnal Hukum Dan Keadilan* 2, no. 3 (April 2025): 44–55, <https://doi.org/10.61942/jhk.v2i3.327>.

³ Divya Ramadhani, "Kekuatan Hukum Akta Elektronik Di Bawah Tangan Dalam Proses Pembuktian Perkara Perdata E-Litigasi" (Thesis, Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/47752>.

⁴ Devi Anisa, "Tinjauan Yuridis Kekuatan Pembuktian Akta Di Bawah Tangan Dalam Penyelesaian Perkara Di Pengadilan Perdata - Walisongo Repository," accessed August 21, 2025, <https://eprints.walisongo.ac.id/id/eprint/21409/>.

to arguments in court. The vagueness of legal norms and the potential for multiple interpretations in assessing the validity and evidentiary power of underhand deeds also complicate the evidentiary process⁵. As a result, judges have considerable room for interpretation, which can have an impact on legal uncertainty and the protection of the rights of the parties to the dispute. This problem shows the need for legal affirmation regarding the standard of proof and recognition of underhand deeds in the civil justice system.

In legal practice, there is a significant lacuna or weakness regarding the assessment of deeds under hand, especially in civil cases. One of the main problems is that there is no uniformity in judges' views and considerations regarding the evidentiary power of this type of deed. In a number of cases, underhand deeds are considered to have very limited strength, especially if they are not supported by additional evidence such as witnesses, other letters, or confessions of the parties⁶. This creates legal uncertainty for people who use underhand deeds in their daily agreements. Therefore, it is necessary to conduct an in-depth study of the practices and legal considerations used by the courts in assessing the validity and evidentiary weight of underhand deeds, in order to encourage more consistent and fair standards or guidelines for all parties.

The urgency of this research lies in the need to clarify the legal position of underhand deeds in the civil case evidence system⁷. Although often used by the public due to its practical and economical nature, underhand deeds often face challenges in terms of their evidentiary power before the courts⁸. By systematically understanding how underhand deeds are assessed in civil procedural law, this research can make an important contribution in creating legal certainty for parties who rely on such documents in civil legal relationships. In addition, the results of this research are expected to provide input for judicial practice in order to be able to provide fairer and more balanced legal protection, as well as encourage consistency in judges' assessment of evidence in the form of underhand deeds.

The direction and purpose of this research is focused on an effort to comprehensively understand the legal force of underhand deeds in the context of proving civil cases. This research aims to analyze how the position of underhand deeds is regulated in civil procedural law and how it is applied in judicial practice⁹. In addition, this research also identifies factors that affect the admissibility of underhand deeds in court, such as aspects of formality, recognition of the parties, and the presence of support from other evidence. Thus, the results of

⁵ Grace Agnes Clarissa, "VALIDITY OF LAND GRANTS IN THE CONSTRUCTION OF DRINKING WATER FACILITIES MADE UNDER HAND IN THE DRINKING WATER SUPPLY PROGRAM AND COMMUNITY BASED SANITATION," *Journal Social Sciences and Humanioran Review* 1, no. 01 (January 2024): 32–43, <https://doi.org/10.64578/jsshr.v1i01.26>.

⁶ Sisca Ferawati Burhanuddin, "Analysis of Notary Deed as a Basic Reference to Evidence in Civil Law," *LEGAL BRIEF* 10, no. 2 (May 2021): 280–86.

⁷ Betty D. Laura Sihombing et al., "Kekuatan Pembuktian Surat Hibah Tanah Di Bawah Tangan Perspektif Hukum Perdata Indonesia: (Studi Putusan Mahkamah Agung No. 2681/K/PDT/2015)," *Locus Journal of Academic Literature Review*, October 21, 2023, 846–60, <https://doi.org/10.56128/ljoalr.v2i10.238>.

⁸ Ni Made Arnita Sari, Johannes Ibrahim Kosasih, and Anak Agung Istri Agung, "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," *Journal of Political And Legal Sovereignty* 3, no. 2 (July 2025): 443–49, No, <https://doi.org/10.38142/jpls.v3i2.345>.

⁹ Ami Raditya, Regina Resentia, and Alicia Shafa Azzahra, "Ius Constituendum Principle of Facing Notary in Making Authentic Deed In the Perspective of Virtual Electronics (Cyber Notary)," *Journal of Law, Politic and Humanities* 4, no. 5 (July 2024): 1706–14, <https://doi.org/10.38035/jlph.v4i5.555>.

this study are expected to provide relevant recommendations to improve evidentiary practices and policies in court, in order to encourage the creation of legal certainty, uniformity of judgment, and fair legal protection for people who use underhand deeds in civil legal relations.

Method

This research uses the normative legal research method, which is an approach that focuses on the study of applicable legal norms. This method was chosen because the main focus of the research is to analyze the legal force of underhand deeds in the civil case evidence system based on the provisions of laws and regulations, jurisprudence, and the doctrine of jurists. In this research, the data used are primary legal materials such as the Civil Code (KUHPerdata), HIR/RBg, and relevant court decisions. In addition, secondary legal materials such as literature, scientific journals, and expert opinions, as well as tertiary legal materials such as legal dictionaries and encyclopedias were also used. The approach used includes a statute approach, case approach, and conceptual approach to comprehensively understand the evidentiary power of underhand deeds. The analysis technique is carried out qualitatively, namely by examining, interpreting, and compiling legal arguments systematically against legal norms related to the object of study. Through this approach, it is hoped that an in-depth understanding and strong argumentation can be obtained regarding the legal position of underhand deeds in the process of proving civil cases in Indonesia.

Results and Discussion

1. Definition and Classification of Deeds Under Civil Law

In Indonesian civil law, a deed is a written instrument of evidence that has important legal force in proving a legal event¹⁰. The Civil Code distinguishes deeds into two types, namely authentic deeds and deeds under hand. An authentic deed is a document made by or in the presence of an authorized public official, such as a notary public, which guarantees formality and full evidentiary power (Article 1868 of the Civil Code)¹¹. In contrast, a deed under hand is a document made and signed by the parties without involving a public official¹². The main difference between the two lies in their formal aspects and evidentiary power. An authentic deed has perfect evidentiary power as long as its authenticity is not disputed, while an underhand deed requires acknowledgment from a party who did not make or sign it to have the same legal force.

The novelty of this research lies in the in-depth analysis of how the practical function of an underhand deed, which is often used in civil transactions due to its ease and cheapness, turns out to be high-risk in the context of a trial if it is not reinforced by other evidence or explicit acknowledgment from the opposing party. This is where the tension between administrative efficiency in society and legal formality in court is apparent. This research underlines that there needs to be an effort to harmonize the legal practices of communities that rely heavily on

¹⁰ Irpan Ramadhan, "Analisis Terkait Akta Otentik Sebagai Alat Bukti Dalam Perkara Hukum Perdata," *AL-DALIL: Jurnal Ilmu Sosial, Politik, Dan Hukum* 2, no. 3 (November 2024): 32–37, <https://doi.org/10.58707/aldalil.v2i3.875>.

¹¹ Yaafi Nur Muza, "PERAN DAN AKIBAT HUKUM BAGI NOTARIS TERHADAP AKTA AUTENTIK YANG DI BUAT" (undergraduate, Universitas Islam Sultan Agung Semarang, 2024), <https://repository.unissula.ac.id/35189/>.

¹² Agun Saputra and Christine S. T. Kansil, "Keabsahan Dan Kekuatan Hukum Surat Kesepakatan Pengembalian Dana Sebagai Akta Di Bawah Tangan Menurut Kitab Undang-Undang Hukum Perdata," *UNES Law Review* 6, no. 2 (December 2023): 5750–62, <https://doi.org/10.31933/unesrev.v6i2.1406>.

underhand deeds with legal protection at the judicial level, for example through strengthening the principle of independent verification or developing more consistent jurisprudential precedents regarding the strength of underhand deeds.

2. Legal Position of Underhand Deeds in Civil Evidence

In civil evidentiary law, deeds under the hand have a clear legal position as stipulated in Article 1866 of the Civil Code, which states that evidence in civil matters¹³ These include: writings (authentic deeds and deeds under hand), witnesses, testimony, confessions, and oaths. In this hierarchy, underhand deeds are one level below authentic deeds, but are still recognized as valid evidence if they meet certain requirements. Normatively, its evidentiary power depends on the recognition of the party contained in the deed. If the party in question does not dispute the contents or signature in the deed, then the deed under the hand has sufficient evidentiary power.

However, if the authenticity of an underhand deed is disputed, the burden of proof shifts to the party submitting the deed to prove its authenticity, both in terms of the signature and the content of the statement contained. This becomes a crucial point in judicial practice, where an underhand deed can lose its evidentiary power if its authenticity cannot be proven through other supporting evidence. Therefore, although underhand deeds are easier and cheaper to make, their vulnerability to challenge and the weakness of their legal position compared to authentic deeds creates the need for a more mature evidentiary strategy, as well as generating debate and non-uniformity in court practice, which is the space for this research to make theoretical and practical contributions.

3. Analysis of Court Decisions (Jurisprudence)

In the jurisprudence analysis, there are a number of court decisions that show variations in the acceptance of underhand deeds as evidence. A study of several decisions shows that the evidentiary power of an underhand deed is highly dependent on the response of the opposing party as well as additional supporting evidence. For example, in Supreme Court Decision No. 3205 K/Pdt/2018, an underhand deed that was not refuted by the defendant was declared to have the same perfect evidentiary power as an authentic deed. Conversely, in Decision No. 453/Pdt.G/2017/PN.Jkt.Sel, an underhand deed whose authenticity was denied by the defendant was declared to have no evidentiary power, as it was not supported by sufficient additional evidence.

The judge's consideration in accepting or rejecting an underhand deed generally refers to two main aspects: first, whether the deed is acknowledged by the party to whom it is made; and second, whether there is other evidence supporting the truth of the contents of the deed. In many cases, a unilateral acknowledgment from the party filing the deed is not sufficient. The judge also assesses the integrity of the contents of the deed, its relevance to the subject matter of the case, and the authenticity of the signature. Further evidentiary patterns that are often used to corroborate underhand deeds include evidence of witnesses with direct knowledge of the signing process, correspondence or other relevant supporting documents, and electronic evidence such as recorded communications. Thus, underhand deeds submitted to the court must be accompanied by a comprehensive evidentiary strategy in order to convince the panel of judges, especially in cases that have the potential to challenge the authenticity of the opposing party.

¹³ Agung Iriantoro, "THE POSITION OF INSTRUMENTER WITNESS IN MAKING OF NOTARY DEEDS," *NOTARIIL Jurnal Kenotariatan* 9, no. 2 (December 2024): 53–64, <https://doi.org/10.22225/jn.9.2.2024.53-64>.

4. Factors Affecting the Admissibility of Deeds Under Hand

In civil procedural law, an underhand deed can be accepted as valid evidence if it meets certain requirements, both from a formal and material aspect. Formally, there are several important elements that must be met in order for the deed to be considered to have evidentiary power. First, the document must contain the signatures of the parties making it. These signatures become authentic evidence that the parties concerned have indeed expressed their will in writing. Second, the date of the deed must be clearly stated so that it can be known exactly when the agreement or legal event occurred. Third, although not required, the presence of witnesses who co-sign the deed can strengthen the evidentiary value of the document. Fourth, legalization by an authorized official such as a notary can increase confidence in the authenticity and validity of the deed's contents, although it is not an absolute prerequisite for the validity of a deed under hand.

In addition to formal aspects, material factors also play an important role in assessing the strength of a deed under hand. Material factors refer to the truth of the substance or content of the deed. This means that although the form of the deed has fulfilled the provisions, the content of the deed must still reflect the actual circumstances or legal facts. If the content of the deed is not in accordance with reality or is proven to be fabricated, then its evidentiary power becomes weak, and can even be rejected by the judge. Therefore, the validity of the content of the deed is very crucial and is often the object of further proof in the trial.

In practice, a deed under hand is often not strong enough to stand alone as the only evidence in a civil dispute. For this reason, additional evidence is required to support or strengthen the validity of the deed. This additional evidence can be in the form of testimony from witnesses who have direct knowledge of the deed or the contents of the agreement. In addition, recognition from the opposing party in the trial process is also a significant factor that can strengthen the evidentiary value of the deed under the hand, as regulated in Article 1875 of the Civil Code. In addition, other evidence such as electronic correspondence, recorded conversations, and other letter evidence can also be used to emphasize that the contents of the deed are in accordance with reality. Thus, the admissibility of a deed under hand in a judicial proceeding depends not only on the form of the document, but also on the integrity of the content as well as support from other relevant evidence. It is this combination of formal completeness, material truth and additional evidentiary power that determines the effectiveness of a deed under hand as evidence in court.

5. Implications for Legal Protection and Legal Certainty

The implications of the use of underhand deeds in civil law practice have a significant impact on legal protection and legal certainty for the parties. Underhand deeds are often used in various transactions due to their simple and economical nature, but their use poses its own challenges in the event of a dispute. For parties who rely on an underhand deed, its existence can be a form of legal protection if the document meets the formal requirements and the substance of its contents is not in doubt. However, these deeds are also vulnerable to challenge, both in terms of the authenticity of the signature and the veracity of the content. Legal uncertainty arises when a deed under the hand is not recognized by the interested party or its authenticity is disputed, which then requires additional proof such as witness testimony or opponent recognition. This can prolong the dispute resolution process and obscure the legal position of the party that should be protected. Therefore, legalization and registration of underhand deeds are important alternatives to strengthen their evidentiary power. Legalization

by an authorized official or registration at the relevant agency can add value to the validity of the deed, while minimizing potential disputes in the future. Thus, strengthening underhand deeds through formal mechanisms can support the principle of legal protection and increase legal certainty in civil practice.

6. Recommendations for Improvements in Evidentiary Practices

In order to improve evidentiary practices involving underhand deeds, several strategic recommendations are needed that can strengthen the position of these documents in the civil law system. First, it is important to encourage formal standardization in the making of underhand deeds. This standardization includes the format of writing, the identity of the parties, the date of creation, and signatures accompanied by witnesses or electronic evidence if possible. With a clear standard, the validity and legality of the deed can be more easily assessed and recognized before the law. Second, increasing public understanding is also a crucial aspect. Many people do not realize the limited power of an underhand deed when compared to an authentic deed. Therefore, it is necessary to conduct widespread legal education so that the public can understand the role, function and legal risks attached to underhand deeds, especially in the context of proof in court. Third, it is recommended that notaries or other public officials be given space to play a role in the voluntary legalization process of underhand deeds. Although this legalization is optional, the involvement of public officials can strengthen the evidentiary value of the deed without changing its status to an authentic deed. This practice will provide additional guarantees for the parties and minimize potential disputes in the future. As such, these three measures are expected to improve the quality of evidence and ensure better legal protection in the use of underhand deeds.

Conclusion

Based on the results of research on the evidentiary power of underhand deeds in Indonesian civil law, it can be concluded that underhand deeds have legal status as written evidence, but their strength is relative and depends on the recognition of the parties and does not have perfect evidentiary value as authentic deeds. When the authenticity or correctness of the contents of an underhand deed is disputed, the burden of proof shifts to the party submitting it. This creates the potential for legal uncertainty, especially if the deed is made without fulfilling the minimum elements of formality or without other supporting evidence. This research also shows that legal uncertainty can be minimized through legalization or registration by authorized officials as a form of strengthening evidence, although it does not change the nature of the deed to become authentic. The implications of these findings underscore the importance of public education regarding the legal position of underhand deeds as well as the need for technical and institutional reforms, including standardization and strengthening the role of notaries in voluntary legalization. Thus, the civil evidence system in Indonesia can run more effectively, guarantee legal protection, and provide legal certainty for parties who rely on underhand deeds in civil relations.

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