

Legal Protection for Parties on Notices Demated By Court

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ABSTRACT: One of the causes of cancellation of a notarial deed is an error or negligence committed by the parties that bind themselves to each other in the deed, which consequently could become a lawsuit from one of the parties. Concerning the above issue, this research will be categorized as normative juridical. The research approach uses a statutory approach and a case approach. This study uses primary, secondary and tertiary data. Data collected through library research. Data were analyzed by qualitative analysis. The results of the research showed that three factors resulted in a notarial deed that could be canceled. The first cancellation factor is due to a Civil event, namely the default factor and unlawful acts, second, the cancellation due to a criminal event, namely intentionality (opzet) and third, the cancellation due to administrative events, if violate certain provisions referred to in Article 84 of the UUJN. Legal protection for the parties to the notarial deed canceled by the court if there is an abuse of the situation of the parties to the dispute in the deed, the law must protect all parties if there is an abuse of the situation, one party cannot be more superior than the other. There must be no imbalance between the parties to the agreement. The legal consequences of the notarial deed canceled by the court result in the legal action being invalid or the legal action have no legal consequences or the absence of something essential/principal in the agreement. Cancel by law, as a result, the legal action carried out has no legal effect since the occurrence of the said legal action, in practice null and void based on a court decision that has permanent legal force; can be canceled, as a result, the legal actions carried out do not have legal consequences since the cancellation.

KEYWORDS: Legal protection, deed, cancellation.

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I. INTRODUCTION

The Public Notary is an institution created by the State (BagirManan, 2004: 5). The Public Notary is a professional sector that requested someone to have special expertise followed with specific education and training, a notary public is also required to have extensive knowledge and great responsibility in carrying out their professional positions. As a general official, a notary is required to be responsible for the deed he has made. If the deed made turns out that behind the day there is a dispute, it must first be seen, whether there is a notary error in making this deed or there is the dishonesty of the parties in giving their statement to the notary, or is there an agreement made between the notary and one of the parties facing. Cancellation of a notarial deed through a court decision, not only because of a result of a mistake or negligence of a notary in making the deed. But the cancellation of a notarial deed can also be caused by an error or negligence of the parties who bind to one another in the deed, so that an error or negligence causes a lawsuit from one of the parties. The involvement of the notary is only limited to formulating the legal actions of the parties into the act then formalizing the deed (HabibAdjie, 2013: 67).

Based on the explanation above, some problems that arise related to the deeds that were canceled can be caused by negligence and mistakes of the Notary or the parties that made the deed. If the cancellation is requested by the party concerned, basically the authentic deed can be canceled by the judge if there is evidence of an opponent. Regarding the issue of cancellation of a notarial deed which was canceled by the court, there were 2 (two) cases as a reference in this study, namely the first case concerning the cancellation of the agreement deed in the Supreme Court's decision number 1265K / Pdt / 2016 and the second case was the decision of the Supreme Court's number 88 / PDT / 2017 / PT YYK.

This research uses normative research. The nature of this research is descriptive meaning this research aims to use, describe the characteristics of the facts to determine the frequency of something that happened (RiantoAdi, 2002: 58). The approach used in this study is the statutory approach and the case approach. Data collection techniques are carried out by means of library research and document studies, as a basis for solving problems in this research.

The analysis is carried out by examining cases related to the issues faced that have become court decisions that have permanent legal force, namely: Decision of the Supreme Court of the Republic of Indonesia, Number 265 / K / Pdt.G / 2016 and Decision of the Supreme Court of the Republic of Indonesia Number 88 / PDT / 2017 // PT.YYK. Next analyzed to obtain clarity of problem solving, then deductively drawn conclusions, namely from the general nature towards specific things that are specific (Ronny HanitijoSoemitro, 1998: 57).

The Notarial Deed is an agreement between the parties that binds those who made it, therefore the legal conditions for an agreement must be fulfilled. Article 1320 of the Civil Code governing the legality of the agreement, there are subjective conditions, namely the conditions relating to the subject that entered into or made the agreement, which consists of an agreement and able to act to carry out a legal act (HabibAdjie, 2011: 68).

The legal conditions for the agreement are realized in the notarial deed. Subjective conditions are included at the beginning of the deed, and objective conditions are stated in the deed body as the contents of the deed. If the requirements of the parties facing a notary do not meet the subjective requirements, then at the request of a particular person the deed may be canceled. The first subjective element is the free agreement of the promised parties, or without pressure and intervention from any party, but solely the wishes of the promised parties.

The Notarial deed is declared null and void by law if the deed does not meet the objective element of the deed, which is a certain thing and halal cause. In such a case, there was no legal agreement from the beginning and there was no agreement between the people who intended to make the agreement. A first objective element is a certain object (clear and definite) as agreed. Achievement is the main object of the agreement. Article 38 paragraph 3 letter a of the UUJN has determined that the subjective conditions and objective conditions of part of the body of the deed, there is confusion, between the deed that can be canceled with the deed that is null and void, so that if it is submitted to cancel the notarial deed because it does not meet subjective conditions, then considered canceling the entire body of the deed, including cancelling objective conditions. Subjective conditions are placed as part of the beginning of the deed, with the reason that even though the subjective conditions are not fulfilled as long as there is no submission of the cancellation by means of a lawsuit from certain people, then the contents of the deed containing objective conditions remain binding on the parties, this is different if the objective conditions are not met, then the deed is considered to never exist.

II. LITERATURE REVIEW

Article 1 number 1 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary states "The Public Notary is an authorized official to make an authentic deed and has other authorities as referred to in this Law or based on Other Laws".

The task of the Notary is to maintain legal relations between the parties in written form and certain format so that it is an authentic deed. He is a powerful document maker in a legal process (Tan Thong Kie, 2000: 159). LumbanTobing states that: "in addition to making authentic deeds, notaries are also tasked with registering and validating letters or deeds made under the hand" (G. H. S. LumbanTobing, 2003: 29).

Deed according to SudiknoMertokusumo is a signed letter containing the events that form the basis of a right or engagement, which was made deliberately for the purpose of proof (SudiknoMertokusumo, 1989: 149). Authentic deed according to the provisions of Article 1868 of the Civil Code namely "An authentic deed is a deed in the form determined by the Law, made by or in front of public officials in power for that at the place where the deed was made. In the event of a dispute where one party submits an authentic deed as evidence in court, the court must respect and acknowledge the contents of the authentic deed, unless the party that denies can prove that a certain part of the deed has been replaced or that it is not agreed by the parties". (Salim HS, 2006, 43)

Notarial Deed as an authentic deed has the strength of proof value (Subekti, 1989: 93-94): a. Lahiriah (UitwendigeBewijskracht); Proof value of the deed from the outward aspect, that the deed must be seen as it is, not seen anything; b. Formal (FormeleBewijskracht); The formal aspect is that the notarial deed must provide certainty that an event and the facts in the deed are actually carried out by a notary or explained by the parties facing at the time stated in the deed in accordance with the procedures specified in the making of the deed; c. Material (MaterieleBewijskracht); Certainty about the material of a deed is very important, that what is in the deed is a valid proof against those who make the deed or those who get the rights and generally apply, unless there is evidence to the contrary.

III. RESEARCH RESULTS AND DISCUSSION

A. Factors That Result in a Notarial Deed can be Canceled

1. Cancellation of Due to Civil Events

a. Default

Defaults are null and void, however, that in case of default the agreement is not null and void, but cancellation must be requested from the judge on the grounds that, even if the debtor has defaulted, the judge is still authorized to give him the opportunity to fulfill the agreement (Suharnoko, 2004: 63). If the fulfillment of the performance obligations is not due to the debtor's mistake, either due to deliberate or negligent, and all of which can be blamed on him, then it is said that the debtor performs a default (RidwanKhairandy, 2014: 277-278).

b. Act against the law

Acts against the law in the Civil Code are regulated in Article 1365 through Article 1380. In legal science, there are 3 (three) categories of acts against the law, which are as follows: 1) Acts against the law due to intentional; 2) Acts against the law without error (without the element of deliberate or negligent); 3) Acts against the law due to negligence (MunirFuadi, 2002: 3). In acts against the law, there are several elements, namely: a. b. There is a mistake; c. There are losses, and; d. There is a causal relationship between actions and losses (Rosa Agustina, et al, 2012: 3).

2. Cancellation of Due to Criminal Events

The imposition of a criminal sentence against a notary public does not automatically make the deed concerned null and void. If a civil suit has been carried out to cancel the deed and place the notary / PPAT in question as a convict, the sanction must be related to the target.

The formal aspects of a notary deed can be used as a basis or a limitation to criminal notary / PPAT, as long as these formal aspects are proven intentionally with full awareness and conviction and are planned by the notary / PPAT concerned that the deed made before and by the notary / PPAT to be used as a tool to commit a crime or in making a deed.

3. Cancellations Due to Administrative Events

Notarial deeds which have perfect proofing power, because they violate certain provisions will be degraded as evidencing the strength of proof as a deed under the hand. Degradation of the strength of notary deed evidence from authentic to the strength of evidence under the hand, and juridical defect of notary deed which results in notarial deed can be canceled or null and void if there is a violation of the provisions of the Law, namely Article 1869 of the Civil Code and Article 84 of the Law -Prom Notary Position.

B. Legal Protection of the Parties to Notarial Deed Canceled by the Court

Legal protection for Notaries in carrying out their duties and authorities for the implementation of the service function and the achievement of legal certainty in providing services to the public, has been regulated and stated in Article 66 UUJNP. Article 66 of this UUJNP regulates the formation of a Notary Honorary Council (hereinafter referred to as MKN) consisting of the notary, government and academic representatives, who function as legal protection institutions for notary positions related to notarial deeds made by or before them.

In terms of protection to the parties, if there is an abuse of the situation of the parties to the dispute in the deed, the law must protect all parties if there is an abuse of the situation, one party cannot be stronger than the other. If there is an imbalance between the parties to the agreement and harms the rights of the weaker party, that should not be the case, so the court must consider the loss of the weaker party rather than the stronger party. The judge must look for a law that places the parties in a balanced position, even though in the agreement the fact is the parties are not balanced but in the court must be balanced and have the same position and legal force.

C. Legal Results of Notary Deed Canceled by the Court

The provisions of Article 1381 of the Civil Code state that one of the deletions of the agreement or agreement is due to cancellation and cancellation. The cancellation condition as one of the reasons for the abolition of the agreement is if the cancellation condition is included in the contents of the agreement made by the parties so that the cancellation condition can occur. Such cancellation can be requested by anyone who has an interest in something that is championed because it is related to decency and public order. As a result of a cancellation, in principle the same is null and void, can be canceled or non-existent, that is, the three causes the legal action to become invalid or the legal action has no legal consequences. or the absence of something essential / principal in the agreement. So, in terms of the reason that null and void is due to the non-fulfilment of objective conditions, as well as the non-fulfilment of conditions that are the essence of the agreement and

because the formal forms are not fulfilled as required by applicable laws/provisions called null non-existent. The difference is (Mulyoto, 2012: 45):

- a. Cancel by law, as a result, the legal action carried out has no legal effect since the occurrence of the said legal action, in practice null and void based on a court decision that has permanent legal force;
- b. Can be canceled, as a result, the legal action carried out has no legal effect since the cancellation occurred and where the cancellation or ratification of the legal action depends on a particular party, which causes the legal action can be cancelled. Deed whose sanction can be cancelled remains valid and binding as long as there is no court decision that has a permanent legal force that invalidates the deed;
- c. Nonexistent, as a result of legal actions that do not exist, which are caused by not fulfilling the essential nature of an agreement or not fulfilling one element or all elements in a particular legal action. Dogmatic non-existent sanctions do not require a court decision, but in practice, a court decision that has permanent legal force is in the same implication as null and void by law.

IV. CONCLUSION

Factors that result in a notarial deed can be canceled, namely the first cancellation due to a Civil event, namely a. default, in the event of default agreement is not null and void, but cancellation must be requested from the judge; b. acts against the law, every act against the law, which brings harm to others, obliges the person who because of his mistake to issue the loss, compensates for the loss. In acts against the law there are several elements, namely: a. can be classified into 2 (two) parts, namely acts that are intentional (done actively) and actions that are negligent (passive / do not intend to do it). Second, the cancellation due to a criminal event, namely intentional (opzet) has 3 (three) elements, namely: a. Deliberation which is a goal to achieve something (opzetalsoogmerk); b. Intentions that do not contain a purpose, but are accompanied by the conviction that an effect will inevitably occur (opzetbijzekerheidsbewustzijn); c. Deliberate but accompanied by conviction there is only the possibility (not certainty) that a result will occur (opzetbijmogelijkheids-bewustzijn). Criminalize the notary / PPAT based on the above reasons and if proven correct then the notary / PPAT who violates the obligation to provide accountability. Third, cancellation due to administrative events, if it violates certain provisions referred to in Article 84 of the UUJN.

Legal protection for the parties to the notarial deed canceled by the court if there is an abuse of the situation of the parties to the dispute in the deed, the law must protect all parties if there is an abuse of the situation, one party cannot be stronger than the other. There must be no imbalance between the parties in the agreement, the Judge may not declare a case as an abuse of circumstances, because if there is no law to try a case, the judge must seek the law, because the abuse of the situation has not been regulated in Indonesian law, because the judge can associate with other matters that have been regulated in legislation in Indonesia and side with the injured party.

The legal consequences of the notary deed canceled by the court result in the legal action being invalid or the legal action have no legal consequences or the absence of something essential / principal in the agreement. Cancel by law, as a result the legal action carried out has no legal effect since the occurrence of the said legal action, in practice null and void based on a court decision that has permanent legal force; can be canceled, as a result the legal actions carried out do not have legal consequences since the cancellation. Deed whose sanction can be canceled remains valid and binding as long as there is no court decision that has a permanent legal force that invalidates the deed; non-existent, as a result of legal actions carried out do not exist, which is caused by not fulfilling the essential nature of an agreement or not fulfilling one element or all elements in a particular legal act.

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