

Notary's Responsibility for Errors in Writing Deeds That Have Been Made

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Abstract. *This study was conducted with the aim of analyzing the legal responsibility of notaries for the deeds they make and legal protection for parties who are harmed due to errors in the deed. This study uses a normative legal approach with a clinical legal research method that focuses on the study of applicable laws and regulations and legal norms. The data sources used are secondary data through literature studies covering primary, secondary, and tertiary legal materials. The results of the study indicate that based on Article 65 of the Notary Law No. 30 of 2004 concerning the Notary Law in conjunction with the Notary Law No. 2 of 2014, notaries, both active and retired, remain responsible for the deeds they make. Article 16 of the Notary Law stipulates that notaries can be subject to sanctions for errors that harm other parties, either through administrative or civil sanctions in accordance with Article 1365 of the Civil Code. Deeds that are legally flawed due to negligence or violations of the law can be canceled through a court decision in accordance with Article 1320 of the Civil Code. In terms of legal protection against errors in deeds according to Article 1868 of the Civil Code, it is emphasized that authentic deeds made by notaries have very strong evidentiary power. If there are errors or violations of the law in the process of making it, the deed can be considered null and void or become a deed under hand. In addition, the injured party can sue for compensation based on Article 1365 of the Civil Code for unlawful acts. This study focuses on notaries who remain responsible for the deeds they make even though they have retired. Legal protection for the injured party can be realized through the cancellation of legally defective deeds which can only be done through a court decision that has permanent legal force. Notaries who make mistakes or violations can be subject to sanctions in accordance with applicable regulations, both administrative and civil sanctions.*

Keywords: Deed; Error; Notary; Writing.

1. Introduction

The main task of a notary is to make authentic deeds to meet the needs of the community who need their services as an intermediary so that in carrying out legal acts carried out by the community using the notary's services, they can obtain legal certainty in implementing the rights and obligations of each party according to the clauses contained in the notary's authentic deed.¹The role of a notary in making a deed has an important role in ensuring the validity and accuracy of a legal transaction. Although a notary is considered an independent and competent party in his duties, there are serious problems that can arise, namely errors in making a deed. The phenomenon of notarial errors is the focus of relevant research, considering the legal consequences and social impacts that can arise. Errors in a deed can include technical inaccuracies, ethical violations, and potential financial losses for the parties involved. Therefore, a thorough analysis of the background of notarial errors is needed.

Notaries have certain authorities granted by Law No. 2 of 2014 concerning Notary Positions (hereinafter referred to as UUJN). Every authority granted to a position must have legal regulations as limitations so that the position can be carried out properly, and does not conflict with the authority of other positions. Thus, if a notary public official carries out an action outside the specified authority, it can be categorized as an act of violating authority.

The authority of a Notary is stated in Article 15 paragraph (1), (2) and (3) of the UUJN. Article 2 of the UUJN stipulates that a Notary is appointed and dismissed by the government, in this case the minister in charge of notaries. Article 1 number 14 of the UUJN essentially states that a Notary, although administratively appointed and dismissed by the government, does not mean that the Notary is subordinate to the one who appointed him, namely the government.²

Some background factors that may influence notarial errors include the ever-evolving complexity of the law, external pressures that notaries may experience from the parties involved, and a lack of understanding or negligence on the part of notaries in handling the required information. In addition, rapid changes in legal policies and regulations can also contribute significantly to the level of notarial errors.

As the decision that will be raised in this study is in the decision Number 46 / Pdt.G / 2023 / PN Cbi, namely the Plaintiff Khalid Dhawihi A Alsahali, domiciled in Bogor Center Point No. A12, Jalan Brigjen Saptadji Hadiprawira No. 49, West Cilendek, West Bogor, Bogor City, West Cilendek Village, West Bogor, Bogor City, West Java, acting as the director of PT. Saudi Arab International in this case granting power of

¹RRSoesanto. 1982. Duties, Obligations, and Rights of Notaries, Deputy Notaries. Jakarta: Pradnya Paramita, page 75.

²Habib Adjie. 2013. Cancellation and Revocation of Notarial Deeds. 2nd ed. Bandung: PT. Refika Aditama, page 67.

attorney to Adi Atmaka, SH, MH, Firmansyah Adnan, SH, ST.NH Andini, SH, MH, Sahala Pi Tobing, SH, Muhamad Indra Yuandana, SH and Astri Ningsih Permatasari, SH, domiciled at Bogor Center Point A12, Jl. 49, West Cilendek, West Bogor, Bogor City, West Java, 16112. based on a special power of attorney dated September 30, 2022 and notary Sugeng Purnawan, SH as the defendant residing at Perum Billabong Permai Block F2 No.10 RT.03/RW.13, Cimanggis Village, Bojonggede District, Bogor Regency, Cimanggis Village, Bojong Gede, Bogor Regency, West Java.

Regarding the deed made and stated by the Defendant, the contents are different from those submitted by the Plaintiff, namely in Deed Number 344 the Defendant stated that the Shareholders agreed to the Resignation of the Director of PT. Saudi Arab International, which should have been the desire of the Plaintiff and Shareholders to dishonorably dismiss the Director of PT. Saudi Arab International.

That in addition to the content not being in accordance with the wishes of the Plaintiff, Deed Number 344 and the Plaintiff's lack of understanding regarding the rules for Amendments to the Deed, the Defendant should have explained and described the rules for the procedure for dismissing the Board of Directors who must first hold a General Meeting of Shareholders either directly or through a circular, which then if the dismissal of the Board of Directors is through a circular, it must be stated in a decision of the Shareholders which is approved by all shareholders and stated in a Notarial deed called the Statement of Decision of the Shareholders (PKPPS).

This study aims to provide a deep understanding of the legal responsibility of a notary for the deeds he makes and the legal protection that applies if an error occurs in making the deed. Through an analysis of these aspects of responsibility, it is hoped that a clearer picture can be obtained of the limitations and legal consequences faced by notaries, while ensuring proper protection for users of notarial services in the context of errors in deeds.

2. Research Methods

This study uses a clinical legal research approach method by describing legal facts, using normative legal research specifications. Data collection in this study was carried out through library research, then the data obtained was analyzed normatively qualitatively, by discussing and describing the data obtained from this study.

3. Results and Discussion

3.1. Notary's Responsibility for the Deeds He Makes

In the case of an error in making a deed made by Notary Sugeng Purnawan, SH,. Who lives in Perum Billabong Permai Block F2 No.10 RT.03/RW.13, Cimanggis Village, Bojonggede District, Bogor Regency, Cimanggis Village, Bojong Gede,

Bogor Regency, West Java, hereinafter referred to as the defendant. Has made an error in making a client deed in the name of Khalid Dhawihi A Alsahali, who lives at Bogor Center Point No. A12, Jalan Brigjen Saptadji Hadiprawira No. 49, West Cilendek, West Bogor, Bogor City, West Cilendek Village, West Bogor, Bogor City, West Java, acting as director of PT. Saudi Arabia International in this case grants power of attorney to Adi Atmaka, SH, MH, Firmansyah Adnan, SH, ST.NH Andini, SH, MH, Sahala Pi Tobing, SH, Muhamad Indra Yuandana, SH and Astri Ningsih Permatasari, SH, having their address at Bogor Center Point A12, Jl. Brigjen Saptadji Hadiprawira No. 49, West Cilendek, West Bogor, Bogor City, West Java, 16112. based on a special power of attorney dated September 30, 2022, hereinafter referred to as the Plaintiff.

That the Plaintiff with a lawsuit letter dated January 9, 2023 which was received and registered at the Cibinong District Court Clerk's Office on February 7, 2023 in Register Number 46/Pdt.G/2023/PN Cbi, has filed a lawsuit which has the basis of the Plaintiff being a Saudi Arabian citizen as the President Director of PT. Saudi Arab Internasional based on Deed Number: 1 dated March 7, 2017 concerning the Establishment of the Limited Liability Company PT. Saudi Arab Internasional which said PT is engaged in the business of purchasing, selling, renting and operating real estate, both owned and rented, such as apartment buildings, residential and non-residential buildings, including land sales activities and operating residential areas that can be moved.

Then, based on the agreement of the Shareholders, the Plaintiff made a Change to Deed Number: 1 dated March 7, 2017 concerning the Establishment of Limited Liability Company PT. Saudi Arab Internasional. Because the Plaintiff does not understand Indonesian and does not understand the legal system in Indonesia regarding the composition of the Board of Directors and the dishonorable dismissal of Directors, the Plaintiff asked for help from his colleague in Indonesia to find a Notary for the change to the deed, and the plaintiff's colleague appointed the Defendant as a Notary to make a deed of change to the composition of the Board of Directors of PT. Saudi Arab Internasional. Regarding the change to Deed Number: 1 dated March 7, 2017 concerning the Establishment of Limited Liability Company PT. Saudi Arab Internasional, the Defendant made Deed Number 344 concerning the Statement of Shareholders Outside the General Meeting of Shareholders of PT. Saudi Arab Internasional to follow up on the wishes of the Shareholders to dishonorably dismiss one of the Directors of PT. Saudi Arabia International, however, in signing the Minutes of Deed Number 344, the Defendant through his partner sent the minutes to Saudi Arabia and did not explain to the Plaintiff regarding the Deed and also did not explain in detail in which columns of the minutes of the Deed the Plaintiff had to sign.

Furthermore, the deed made and stated by the Defendant has different contents from that submitted by the Plaintiff, namely in Deed Number 344 the Defendant stated that the Shareholders agreed to the Resignation of the Director of PT. Saudi

Arab International, which should have been the desire of the Plaintiff and Shareholders to dishonorably dismiss the Director of PT. Saudi Arab International, and the Plaintiff through his Attorney as per the Letter of Warning Number: 201/S.Kel/AA/XI/2022 dated November 14, 2022 because the Defendant had violated Article 38 paragraph (3) letter C of the Republic of Indonesia Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, the legal principle of which reads "C. Contents of the Deed which are the will and desire of the interested parties".

In addition to the content not being in accordance with the wishes of the Plaintiff of Deed Number 344 and the Plaintiff's lack of understanding regarding the rules for Amendments to the Deed which should have required the Defendant to explain and clarify the rules for the procedure for dismissing the Board of Directors who must first hold a General Meeting of Shareholders either directly or through a circular, which then if the dismissal of the Board of Directors is circular, it must be stated in a decision of the Shareholders approved by all shareholders and stated in a Notarial deed called the Statement of Decision of the Shareholders (PKPPS), the amendment to Deed Number 1 dated March 7, 2017 which is stated in Deed Number 344 dated February 10, 2022 should have been carried out at a General Meeting of Shareholders. This is based on the Company's Articles of Association as stated in Article 12 paragraph 7 point e which is stated in Deed Number: 1 dated March 7, 2017 concerning the Establishment of Limited Liability Company PT. Saudi Arab International, the rules of which state "7. The term of office of members of the Board of Directors ends, if e. Dismissed based on a decision of the GMS".

In line with the articles of association, the Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning the Requirements and Procedures for Registering the Establishment, Changes and Dissolution of Limited Liability Company Legal Entities, the legal principle of which reads "Changes to the articles of association as referred to in Article 8 paragraph (2) and/or changes to the Company's data as referred to in Article 8 paragraph (4) letters a to e are determined through a GMS".

Based on the above, the Defendant's actions have clearly and openly committed an Unlawful Act, this is because the Defendant has exceeded his authority as referred to in the articles of association of PT. Saudi Arab Internasional, so that because of the deed, the Plaintiff and PT. Saudi Arab Internasional have been legally harmed, so it is appropriate that the Minutes of Deed and Deed Number 344 concerning the Statement of Shareholders Outside the General Meeting of Shareholders of PT. Saudi Arab Internasional made by the Defendant must be declared null and void and the State Gazette Number AHU-AH.01.03-0091609 issued by the Ministry of Law and Human Rights has no legal force. So it is clear and obvious that the actions carried out by the Defendant were Unlawful Acts, where the Defendant made a Deed whose contents were not in accordance with what the Plaintiff wanted, thus causing losses to the Plaintiff both materially and

immaterially, as per Article 1365 of the Civil Code, the legal principle of which states: "Every unlawful act that causes loss to another person, requires the person whose fault it is to cause the loss, to compensate for the loss."

The material loss suffered by the Plaintiff is Rp. 100,000,000,- (one hundred million rupiah), and the immaterial loss incurred due to the management of the problems that arise is Rp. 50,000,000,- (fifty million rupiah), so that the total loss that must be paid by the Defendant to the Plaintiff is Rp. 150,000,000,- (one hundred and fifty million rupiah). Therefore, the lawsuit filed by the Plaintiff has fulfilled the provisions in Article 180 HIR and the Circular of the Supreme Court of the Republic of Indonesia (SEMA) point 7 No. 3 of 2000 concerning Immediate Decisions (uitvoerbaar bij voorraad), then it is appropriate if the decision in this case can be carried out first immediately (uitvoerbaar bij voorraad) even though there are legal remedies for appeal and cassation.

Furthermore, on the appointed trial day, the Plaintiff had come to the trial, however, the Defendant did not come or order someone else to appear on his behalf, even though based on the minutes of the trial summons dated February 10, 2023 and February 24, 2023, he had been properly summoned, whereas it was not clear that his absence was due to a legitimate obstacle. Because the Defendant was not present at the trial, based on Article 125 paragraph (1) HIR, the trial was continued without the Defendant's presence by reading the lawsuit. Because the Defendant was absent without a legitimate reason, the peace efforts as mandated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court could not be implemented and then the Panel of Judges continued the examination of this case by reading the Plaintiff's Lawsuit and the Plaintiff maintained the intent and content of his lawsuit.

To prove the arguments of the lawsuit, the Plaintiff has submitted documentary evidence, namely a Photocopy of Deed Number 1 dated March 7, 2017 concerning the Establishment of Limited Liability Company PT Saudi Arab Internasional made by notary Diharini, SH, Mkn. Dated March 7, 2017, marked with evidence P-1, Photocopy of Deed Number 344 Concerning Statements of Shareholders Outside the General Meeting of Shareholders of PT. Saudi Arab Internasional made by Notary Sugeng Purnawan, SH dated February 10, 2022, marked with evidence P-2, Photocopy of Summons Letter Number 201/S, Kel/AA/XI/2022 dated November 14, 2022 made by Adi Atmaka & Partners Law Firm, marked with evidence P-3, Photocopies of the documentary evidence have been affixed with sufficient stamps and matched to the original, except for evidence P-3 in the form of a photocopy of a photocopy without showing the original.

Apart from the written evidence, the Plaintiff did not submit any other evidence; Considering, that in order to shorten the decision, everything contained in the trial minutes is deemed to have been included and become an inseparable part of this decision.

That the judge dismissed the Plaintiff's lawsuit in part by default by declaring the Minutes of Deed and Deed Number 344 concerning the Statement of Shareholders Outside the General Meeting of Shareholders of PT. Saudi Arab Internasional made by the Defendant void, and the State Gazette Number AHU-AH.01.03-0091609 issued by the Ministry of Law and Human Rights has no legal force. Furthermore, the Panel of Judges stated that the Defendant had committed an Unlawful Act, and sentenced the Defendant to comply with the contents of the decision and sentenced the Defendant to pay the court costs incurred amounting to Rp.445,000.00 (four hundred and forty five thousand rupiah).

In essence, professional responsibility and ethics are closely related to integrity and morals. Without good integrity and morals, it is impossible to expect a Notary to have high professional responsibility and ethics. Therefore, professional responsibility and ethics must in turn be based on good integrity and morals, as theoretical and technical skills in the Notary profession must be supported by professional responsibility and ethics. So that a Notary must be responsible for the deeds he made. Even though the Notary has honorably retired from his position, a Notary must still be responsible for the deeds he made until he dies. This is because the time limit for accountability is not explained in detail in the provisions of the laws and regulations governing the position of Notary. So that in practice, the Notary's responsibility for the authentic deeds he made is not only up to the point where he enters retirement but until he dies. However, regarding the responsibility of a Notary who resigns honorably, it is not clearly explained until when the Notary must be responsible for the deeds he made.

The law imposes a burden of responsibility for the actions taken, but this does not mean that all losses suffered by the parties are entirely the responsibility of the Notary. The law itself provides limits on the Notary's responsibility so that not all losses are borne by the Notary. Regarding the provisions governing the limits of the Notary's responsibility, this can be seen in Article 65 of the UUJN that Notaries, Substitute Notaries, Special Substitute Notaries and Temporary Notary Officials are responsible for every deed they make even though the Notary's protocol has been submitted or transferred to the party keeping the Notary's protocol.³

The provisions in Article 65 of the UUJN create unclear norms regarding the time limit for the responsibility of Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials. Based on the provisions of this article, it can be concluded that even though a Notary has honorably resigned according to these provisions, he must still be responsible until his last breath. The provisions regarding Article 65 of UUJN No. 30 of 2004 in conjunction with UUJN No. 2 of 2014 are clear regarding the time limit for the Notary's responsibility because the Notary's responsibility is until the Notary dies. Although Article 65 of UUJN No. 30

³Pitlo, in the book by M. Isa Arief, Proof and Expiration According to the Dutch Civil Code, (Jakarta: PT. Intermedia, 1986), p. 51

of 2004 in conjunction with UUJN No. 2 of 2014 does not indicate the time limit for responsibility, the Notary must remain responsible until death for the deeds he has made. The provisions of Article 65 of UUJN No. 30 of 2004 in conjunction with UUJN No. 2 of 2014 regarding the time limit for responsibility are still unclear. This is because in Article 65 of UUJN No. 30 of 2004 in conjunction with UUJN No. 2 of 2014 is not explicitly explained, so that until now, Notaries have interpreted that Notaries are responsible for deeds made even though they have stopped holding office and must be responsible for their entire lives.

Notary makes a personal mistake in making an authentic deed that does not comply with the provisions stipulated in UUJN No. 30 of 2004 Jo UUJN No. 2 of 2014 resulting in losses for the parties due to the making of the deed, then the Notary can be sued to court to pay compensation and interest to the Notary. The claim for compensation and interest can be filed by the parties who feel aggrieved to the court by using the provisions of Article 1365 of the Civil Code which states that "Every unlawful act that causes loss to another person requires the person because of his mistake in causing the loss to replace the loss" therefore in making an authentic deed, a notary must be guided by UUJN No. 30 of 2004 Jo UUJN No. 2 of 2014 so that the deed truly complies with the procedures and procedures for making an authentic deed required by a notary so that there is no legal loophole for the parties to demand compensation costs and interest from the Notary due to errors in making the deed.⁴In addition, errors in making a deed by a Notary that do not comply with the provisions of UUJN No. 30 of 2004 in conjunction with UUJN No. 2 of 2014 result in the deed only having the force of a private deed. In the interests of investigating the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council (MKN) are authorized in accordance with the provisions of Article 66 of UUJN No. 30 of 2004 in conjunction with UUJN No. 2 of 2014:

- a. Take a photocopy of the minutes of the deed and/or letters attached to the minutes of the deed or the Notary's protocol in the Notary's storage.
- b. Summoning a Notary to attend an examination relating to a Notarial deed or protocol held in the Notary's custody.

The taking of photocopies of minutes of deeds or letters as referred to in paragraph (1) letter a of Article 66 UUJN No. 30 of 2004 Jo UUJN No. 2 of 2014 is made into a report of submission. The Notary Honorary Council (MKN) within a maximum of 30 (thirty) working days from the receipt of the request letter, approval as referred to in paragraph (1) is required to provide an answer accepting or rejecting the request for approval. In the event that the Notary Honorary Council does not provide an answer within the period as referred to (30 days), then the MKN is deemed to have received the approval.

⁴Arvan Mulyatno, *Notaries, Authentic Deeds, and Notary Law*, (Jakarta: Rajawali Press, 2008), p. 11

The provisions in UUJN No. 30 of 2004 Jo UUJN No. 2 of 2014 apply to Notaries who are still active or who have entered the period of retirement or whose term of office as a Notary has ended. In the case of a lawsuit for compensation costs and interest for errors in the making of deeds made by the Notary, a Notary who has entered the period of retirement or whose term of office has ended remains responsible and can be sued by the injured parties. This is because UUJN No. 30 of 2004 Jo UUJN No. 2 of 2014 does not explicitly state the time limit for a Notary's liability for deeds he has made. So even though a notary's term of office has ended, he can still be sued in court with a lawsuit for compensation costs and interest by the parties who have made deeds to him for losses caused by the Notary, resulting in the deed being legally flawed as an authentic deed.⁵

Parties who feel aggrieved can file a complaint to the Notary Supervisory Board and the Police. If a Notary neglects his/her duties and the dignity of his/her position and violates Law No. 30 of 2004 Concerning the Notary Position and other applicable laws and regulations, the Supervisory Board can take firm action to impose sanctions. It can even provide recommendations to the Minister of Law and Human Rights to revoke his/her operational permit. The Notary concerned may be sued in court, either in a criminal case or a civil case.

It is expressly stated in the Notary Law regarding the sanctions that can be given to notaries who violate the Code of Ethics or UUJN, not just moral sanctions alone.

Sanctions that can be imposed on Notaries who violate the Code of Ethics can include:

1. Reprimand,
2. Warning,
3. Temporary Dismissal from membership of the association (INI),
4. Dismissal from membership of the association (INI), or
5. Dishonorable dismissal from membership of the Association

The imposition of these sanctions is adjusted to the quantity and quality of the violations committed.

Meanwhile, in Law No. 30 of 2004, provisions regarding sanctions are regulated in Article 84 and Article 85, namely there are two types of sanctions, including:

1. As stated in Article 84, the act of violation committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letter I and letter K, Article 41, Article 44, Article 48, Article 49, Article

⁵Ryanto Pareno, *Special Rights of Notaries as Public Officials in the Notary Law*, (Bandung: Eresco, 2006), p. 52

50, Article 51 or Article 52 which results in a deed only having the power of proof as a private deed or a deed being null and void by law can be a reason for the party suffering the loss to demand reimbursement of costs, compensation and interest from the Notary. This sanction can be categorized as a Civil Sanction.

2. Then in Article 85 it states that if a Notary violates the provisions in Article 7, Article 16 paragraph (1) letters a to k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59 and/or Article 63, then the sanctions that can be imposed are in the form of:

- a. Verbal Reprimand,
- b. Written Warning,
- c. Temporary Suspension,
- d. Honorable Dismissal, or
- e. Dishonorable Discharge.

The sanctions contained in Article 85 can be categorized as Administrative Sanctions.

Notaries as public officials who are authorized to make authentic deeds, in carrying out their duties can not only be punished or prosecuted criminally. But can also be sued in the district court based on their deeds. In this civil lawsuit, the notary is only a co-defendant, not a defendant.

However, the deed made by a notary can be requested to be cancelled by the injured party. The cancellation of the deed must be based on a decision that has permanent legal force. In the case of material damages arising from a notarial deed, the notary cannot be sued to replace the losses incurred or be involved in requiring joint liability for the losses of one party.

3.2. Legal Protection Against Errors in Deeds Made by Notaries.

Written evidence is one of several evidences that are legalized and determined by the Civil Code, namely Article 1866. This written evidence can be in the form of a deed. Subekti argues that etymologically, a deed comes from the French word *acte*, which means action. So a deed is different from a letter. A deed cannot be interpreted as a letter but is an action.⁶

⁶Sjaifurrachman and H. Adjie, *Aspects of Notary Responsibility in Making Deeds*, (Bandung: Mandar Maju, 2011), p. 99.

According to Sudikno Mertokusumo, a deed is a letter that explains the events that underlie the existence of an agreement, accompanied by a signature with the purpose of making it as evidence for evidentiary purposes.⁷In conclusion, a deed is a letter that explains a legal event that has occurred, which is signed and the purpose of making the deed is as evidence at a later date.

A public official who has the authority to make an authentic deed is called a Notary. The legal product made by a notary is a notarial deed. A notarial deed is an authentic deed whose requirements, procedures and must be made before an authorized public official in this case, namely a notary, are explained in the Notary Law Article 1. Of course, in making the deed, the notary must know the contents, purpose and method of making it. In making his deed, a notary must pay attention to the contents, type and method of making it. This is because a notarial deed is formed from/because of the will of the parties. In relation to a notarial deed regarding an agreement, various agreements of the parties to a particular object are the contents of the deed that are binding on the parties themselves.⁸

It often happens in practice, a deed that has been made can be declared null and void by law. Court decisions that result in the cancellation of a notarial deed are partly due to the negligence or error of the notary. However, a notarial deed that is canceled can also be due to violations, deviations, errors, mistakes and unintentional actions of the authorized public official who made it, namely the notary and/or the parties listed in the deed. This results in a lawsuit from one of the parties due to the losses caused by the issuance of the deed.

Article 1335 in conjunction with 1337 of the Civil Code states that a cause is declared prohibited if it is contrary to law, morality, and public order. A cause is said to be contrary to law if the cause in the relevant agreement contains contrary to law, if the cause in the relevant agreement contains contrary to applicable law.⁹

Haerlien Budiono argues "When the law wants to state that there is no legal consequence, it is stated with the simple term void, but sometimes it uses the term void or worthless (Article 879 of the Civil Code) or has no power (Article 1335 of the Civil Code). These terms are quite confusing because sometimes the same term is used for different meanings for void by law or can be canceled. In Article 1446 of the Civil Code and so on to state the nullity of a legal act, we find the terms void by law, cancel it (Article 1449 of the Civil Code), demand cancellation (Article 1450

⁷Juanda, E, The Power of Evidence in Civil Cases According to Indonesian Positive Law, Galuh Justisi Scientific Journal (1), p. 29.

⁸Suryanto, S & Ningsih, AS, Unilateral Cancellation of Agreement According to Article 1320 Paragraph (1) of the Civil Code Concerning Agreement as a Condition for the Validity of an Agreement, Jurnal Pro Hukum: Journal of Legal Research, University of Gresik, pp. 3-4.

⁹Subekti and Tjitrosudibio, Civil Code, (Jakarta: Pradnya Paramita, 2003), p. 90.

of the Civil Code), declaration of void (Article 1451-1452 of the Civil Code), void (Article 1545 of the Civil Code), and void by law (Article 1553 of the Civil Code).¹⁰

Legal remedies are legitimate efforts to obtain legal protection and justice that are protected and regulated by law. Legal remedies are needed when there is a dispute between legal subjects and/or there are interests that need to be recognized with legal certainty even though there is no dispute.

In the case of cancellation of an authentic deed based on the decision of the court to cancel the deed, it has legal consequences. The problem of cancellation and nullity is the genus of nullitas (nulliteiten), namely a condition in which there is a legal act that gives rise to and has legal consequences as desired.¹¹The alignment of the imposition of sanctions regulated in several articles in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, namely in the form of verbal warnings/written warnings, the power of proof changes to a private deed, or compensation that can be claimed against a notary. The UUJNP does not regulate sanctions for deeds that are void by law.

The degradation of a notarial deed means that the evidentiary power of the deed as a deed under hand, void, or void by law, occurs because the requirements that have been contained and confirmed in general regulations are not met, without requiring special legal steps from the parties concerned in the deed. Thus, nullity has a passive nature, which means that the deed will be void or void by law without the need for any legal action or other efforts from the parties in the deed because all agreements made have violated existing provisions.¹²

Cancellation of a notarial deed includes:¹³

- 1) Canceled
- 2) null and void
- 3) Has the power of proof as a private deed

Meanwhile, the cancellation of a notarial deed includes:¹⁴

- 1) Canceled due to the wishes of the parties
- 2) Proven by the principle of presumption of legality

¹⁰Habib A, Cancellation and cancellation of notarial deeds, 4th edition, (Bandung: Reflika Aditama, 2017), p. 6.

¹¹Djameswar, KRS, Form and Substance of Legal Defects of the Deed of the Land Deed Making Official Study in the Perspective of Cancellation and Degradation of Evidence (Study of Denpasar District Court Decision Number 92/Pdt.G/2018/PN.Dps), Indonesia Notary, p. 343.

¹²Habib Adjie, Op.Cit, p. 67.

¹³Ibid, p. 69.

¹⁴Ibid, p. 80

Furthermore, cancellation due to civil events is stated in Article 1365 of the Civil Code stating that every act that violates the law and causes loss to another person, requires the person who caused the loss due to his/her fault to replace the loss. In conclusion, unlawful acts are various acts that are basically violations of the law and cause other people to suffer losses, both material and immaterial, against the violators and the cause of the loss, sanctions are given in the form of compensation.¹⁵

Lawsuits regarding unlawful acts are usually not due to a legal relationship such as an agreement. The application of the principle of a person's responsibility for an unlawful act committed is a form of effort aimed at providing protection for the rights of a person who is harmed. This outlines the rights and obligations of a person when acting or doing something wrong, an act due to negligence or an act that injures another person resulting in harm to those closest to them.¹⁶

Notarial deed is the strongest, most complete evidence and has perfect evidentiary power. However, if there is a violation of the provisions of the law in its creation, the deed is no longer written evidence that does not require other evidence to prove it. In other words, the assessment of this evidence is the degradation of the deed into a deed under hand. As long as there is an acknowledgment from the parties, the proof is perfect.¹⁷

The consequences for the parties due to the authenticity and cancellation of the deed are:¹⁸

- 1) A void deed results in the deed losing its authenticity and the legal acts agreed upon and described therein will also be void. The deed referred to here is an authentic deed which by general regulations must be made in the form of an authentic deed.
- 2) The deed or actions contained therein are not void. This situation occurs in notarial deeds where legal acts are not required to be in the form of authentic deeds by general regulations but rather based on the wishes of the parties who want an authentic deed to be made regarding their legal acts so as to obtain a strong basis for acting.
- 3) Permanent deed as an authentic deed or legal act contained in the deed becomes void. This condition occurs if the terms of the agreement

¹⁵Wardhani, Notary/PPAT's responsibility for deeds cancelled by the court, (Doctoral dissertation, Islamic University of Indonesia), p. 82

¹⁶Rosa Agustina, Contract Law, (Denpasar: Pustaka Larasan, 2012), pp. 6-11.

¹⁷Maria J, Cancellation of Notarial Deeds by Notaries, Journal of Social Sciences and Education, 4(4), p. 409

¹⁸Erliyanti, R, & Anwary, I., Notary's Accuracy in Making Deeds and Its Legal Consequences, (Lambung Mangkurat University), p. 170.

are not fulfilled in the agreement made or there is a defect in the principal right as its object.

Inconsistency in the procedure for making an authentic deed can cause the authentic deed to be canceled through the court and if the cancellation of the authentic deed is proven to cause a loss, then the party who suffered the loss has the right to sue or ask for compensation from the notary. Based on the results of the study in the decision of the Cibinong District Court Number 46 / PDT.G / 2023 / PN CBI, that the actual party who owns the original certificate has suffered a loss due to the issuance of the power of attorney to sell made before the notary concerned because the power of attorney to sell was used to sell several land objects. The power of attorney to sell made by Defendant I and Defendant II was proven to be legally flawed and contained elements of forgery, therefore the deed was declared null and void by a court decision that had permanent legal force.

Notaries can be sued by the injured party if proven to have committed an unlawful act in making a deed. Unlawful acts in Indonesia normatively refer to the provisions of Article 1365 of the Civil Code which states that "acts carried out intentionally or due to carelessness or negligence have the same legal consequences, namely that the perpetrator remains responsible for replacing all losses resulting from the unlawful act he committed."¹⁹

4. Conclusion

Based on the description above, this study concludes that notaries have strict legal responsibility for the deeds they make, including when there is fraud or error that harms another party. Based on the Notary Law (UUJN) No. 30 of 2004 in conjunction with Law No. 2 of 2014, a notary remains responsible for the deeds they make, whether they are still active or retired. This responsibility includes the possibility of a lawsuit from a party who feels aggrieved, either through the Notary Supervisory Board or the police. Sanctions imposed on notaries can be in the form of civil sanctions such as compensation, or administrative sanctions such as reprimands and dismissals, depending on the level of violation committed. In addition, this study also concludes that although authentic deeds made by notaries have strong evidentiary power, if there are errors or violations of the law in the process of making them, the deed can be canceled through the courts. Notaries who violate the code of ethics or legal provisions can be asked to be responsible, including through claims for compensation for the party who suffered the loss. Article 1365 of the Civil Code also confirms the obligation to compensate for losses in the event of an unlawful act, either in the form of material or immaterial losses. Cancellation of an authentic deed requires a court decision that has permanent legal force, and the injured party can file a legal action to obtain justice and balanced protection. Based on this study, some suggestions that can help

¹⁹Article 1365, Civil Code.

anticipate problems related to notaries are to tighten supervision of notary performance by the Notary Supervisory Board to minimize errors in making deeds, as well as encouraging notaries to continue updating their legal knowledge through ongoing training. In addition, increasing the professional responsibility of notaries in ensuring compliance with legal requirements is also important, along with simplifying the complaint mechanism so that injured parties can immediately obtain justice. Clearer regulations regarding sanctions and time limits for notary accountability will provide legal certainty, while legal education for the public regarding deeds and agreements will help them be more careful and know the right steps if a loss occurs.

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