



Legal Consequence of Cancellation of Agreement Which is Made in the Front of Notary (Study of Decision Number 105 / Pdt.G / 2014 / PN.Pdg)

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Abstract

Notary Deed is an authentic deed that has the strength of perfect proof, so that the meaning of perfect Notary Deed is a deed made before a Notary, because the Deed has been ascertained by the Notary regarding the truth of the parties, the contents of the agreement, and read it before the parties and then confirm the sign the original hand, if an agreement is used as evidence in court, then the agreement becomes evidence that cannot be denied by the parties, and the judge must trust the evidence in the form of a deed made before a notary public as legal evidence, but in this is an exception if there is a party that can prove the defect has occurred in the deed. One of them is in the case of Decision Number 105 / Pdt.G / 2014 / PN.Pdg, where the deed of agreement on the management of industrial timber plantations (HTI) made before a notary public, was canceled by the panel of judges, because the defendant could prove that there was a defect in the deed. The legal consequence of the cancellation of a deed made before a notary is that the strength of proof of a notary is lost due to bad intentions when making a deed before a notary, so that the cancellation of the agreement by the judge makes the situation must return to normal before the authentic deed was formed. Suggestions in this study is, the judge should contain the ruling by ordering the company to restore the condition of the forest to its original condition, so that it becomes a weakness in the decision 105 / Pdt.G / 2014 / PN.Pdg, considering that the nagari community is disadvantaged by the company's bad faith when making a deed agreement before the Notary.

Keywords: *Legal Consequence; Cancellation; Agreement; Notary*

Introduction

The agreement is the law for the parties who made it, as explained in Article 1338 of the Civil Code. The agreement was born because of an agreement. Engagement is a legal relationship between two parties in the field of assets, where one party (the creditor) has the right to an achievement. Therefore, every engagement has rights and obligations on the other party.¹ The agreement itself consists of a written agreement and an unwritten agreement. Over time, agreements in writing (verbally) can no longer be

¹ I Ketut Oka Setiawan, Law of Engagement, Sinar Grafika, 2015. p. 1.

applied as a guide in making agreements. Because the agreement in an oral manner has many weaknesses when there is a dispute between the parties that made the agreement. Then to overcome the matter it is necessary to have protection and legal certainty for the parties, a written agreement can be the legal basis for an act that can be proven, so that a written agreement is more effective than an oral agreement.

Article 1868 of the Civil Code explains that an authentic deed is a deed made and determined by law. An authentic deed is a deed that has perfect proof of strength. An authentic deed must be based on Article 1320 of the Civil Code which explains that for agreements to be valid, four conditions are required:

1. The agreement of those who bind themselves.
2. The ability to make an engagement
3. A certain subject or problem
4. A reason that is not forbidden

Agreements made by and signed before a Notary are called Notary Deed because the Notary Deed is a perfect proof, meaning that the judge or court considers that the deed made by a Notary is considered to be true as long as no other evidence can deny the truth of the deed. That is because the notarial deed has the following meanings:

- a. Deed made on the date, time / hour, place that is certain or clear as stated / written in the deed / agreement.
- b. Deed that proves that what is stated in it is what is desired by the parties concerned and has obtained a legal assessment from a notary. The deed which is made every officially recorded in a special book provided for it so that the truth can be accounted for.
- c. Deed that is made in the form of minutes saved by a Notary, only copies of the parties are issued. So it is unlikely that the parties or third parties will change the contents of the deed unilaterally (individually).

Therefore, from the foregoing matters, a notary is obliged to ensure that what will be included in the deed he made has understood and is in accordance with the wishes of the parties. As such, the notary deed contains the concept of truth where the authentic deed not only proves that the parties have explained what is written in the deed, but also that whatever is applied in the deed is true. Then the authentic deed can be said to have three perfect evidentiary powers because it has three evidentiary powers, namely the outer proving power, namely the ability of the deed itself to prove its validity as an authentic deed and in accordance with predetermined legal rules.

Regarding the terms of an authentic deed until proven otherwise, it means that there is someone who proves that the deed is not outwardly authentic. the strength of formal proof, that is, the notarial deed must provide certainty that an event and the facts contained in the deed are properly carried out by the

notary or explained by the parties facing, and the strength of material evidence, namely certainty about the material of a deed, because what is stated in the deed is a valid proof of the parties making the deed.²

Cancellation of a notarial deed through a court decision is not only due to the result of a notary error or negligence in making the deed. But the cancellation of a notarial deed can also be caused by mistakes and negligence of the parties that bind themselves to each other in the deed, so that an error or negligence can cause a claim from one of the parties. In the Notary Position Act, there is a regulation regarding the form of notarial deed including the requirements for making an authentic deed, so that it relates to the terms of the agreement made in Article 38 to Article 40 of the Notary Position Act so that if there is a violation of the terms and conditions mentioned above, resulting in the power of the deed as a deed under the hand. This means that the deed is still valid.

From a case obtained by the writer in the verdict 105 / Pdt.G / 2014 / PN.Pdg, in which a cooperative agreement and deed of agreement was made by PT Sukses Jaya Wood, represented by Ali Suyanto as director with Muman Datuk Panduko Rajo which agreement was made legally before a notary that was made the deed of agreement on 20 August 1999 and the cooperation agreement on 18 May 2005 concerning management of industrial plantations located in Lunang and Silaut Districts, Pesisir Selatan Regency. On October 16, 2014 PT Sukses Jaya Wood's party filed a lawsuit to the Padang IA Class District Court to Muman Datuk Panduko Rajo which contained several claims that Muman Datuk Panduko Rajo had breached the cooperation agreement that they had done. PT. Sukses Jaya Wood considered that the Muman Datuk Panduko Rajo party did not fulfill their obligations regarding the things they had promised.

After the case was rolled out and the trial was learned later by Muman Datuk Panduko Rajo that when they carried out the agreement in 1999 and 2005 it was known at that time, the permit that was held by PT Sukses Jaya Wood at the time of the agreement deed made in 1999 have died or are no longer valid, because in fact their permit had expired in 1995. The permit was intended for the management of industrial park forests (HTI). This means that PT. Sukses Jaya Wood made a mistake in entering into an agreement with Muman Datuk Panduko Rajo because their management permit had expired. Meanwhile, Muman Datuk Panduko Rajo was not informed of this. So Muman Datuk Panduko Rajo's party took a lawsuit against PT. Sukses Jaya Wood's success, which means that there was a defect in the agreement they made because it was not in accordance with the legal conditions of the agreement set forth in Article 1320. Therefore because of a case above is based on decision number 105 / Pdt.G / 2014 / PN.Pdg. Based on the above, the writer formulates the following problems: What are the Judge's Consideration Regarding Cancellation of Agreement Which is Made in The Front of Notary in Decision Number 105 / Pdt.G / 2014 / PN.Pdg. What is the legal consequence of the cancellation of agreement which is made in the front of Notary in case Number 105 / Pdt.G / 2014 / PN.Pdg.

Research Method

The research used in this study is normative legal research or normative juridical research, namely research conducted approaches used in research on secondary data with a focus on research activities³ Legal research is a statutory approach, a case approach, a historical approach and a conceptual approach.⁴

² [http // wordpress](http://wordpress), authenticity of the authentic deed / accessed on 11 February 2019.

³ Soerjono Soekanto dan Sri Amudji, 2000, normative legal research, raja grafindo persada, jakarta, p. 22.

⁴ Peter Mahmud Marzuki, 2007, Legal Research, Kencana Prenda Media Group, Jakarta, p. 93.

Discussion

Judge's Consideration Regarding Cancellation of Agreement Which is Made in the Front of Notary in Decision Number 105 / Pdt.G / 2014 / PN.Pdg.

1. Considering, that after the Panel of Judges read the suit, answers, replicas and duplicates, the main issue in this case was regarding Deed of Agreement Number 47, dated August 20, 1999 made before H. Zamri, SH Notary in Padang and Agreement Letter / The Cooperation Agreement dated May 18, 2005, relating to HTI managed by the Plaintiff which was violated by the Defendant and the Defendant had reneged on the Agreement, while the Defendant explained that the Defendant did not deny it because the Industrial Plantation Forest (HTI) had expired and the HTI managed by The plaintiff is in the Silari Nagari Forest;
2. Considering, that after the Assembly read the Plaintiff's claim, the problem in this case was Agreement No. 47 made before H. Zamri, SH Notary in Padang on August 20, 1999 (Exhibit P-4) and the issue of the Agreement / Agreement dated May 18, 2005 (Exhibit P-5);
3. That the terms of validity of the Agreement in accordance with the article 1320 of the Civil Code require four conditions namely "Agree to those who bind themselves, the ability to make an agreement, a certain thing and a halal cause";
4. Whereas according to article 1338 the Civil Code explains "all agreements made legally apply as a law for those who make them"
5. Considering, that the Plaintiff in 1990, based on the Letter of the Director General of Reforestation and Land Rehabilitation of the Ministry of Forestry Republic of Indonesia Number 749 / Considering, that the Plaintiff during the period from 1995 to 2013 there was no permit to manage Industrial Plantation Forest (HTI) in Kenagarian Silaut, Pesisir Selatan Regency, West Sumatra Province, but the Plaintiff still manages the HTI without any legality issued by the Ministry of Forestry;
6. Considering, that the Plaintiff made an Agreement with the Defendant in Notary H. Zamri, SH Notary in Padang Number 47 (Exhibit P-4) and the Agreement / Agreement Agreement dated May 18, 2005 (Exhibit P-5), the Plaintiff has never notified to the Defendant regarding the validity and non-validity of the Permit owned by the Plaintiff regarding IPP over HTI while the Plaintiff consciously knew that the Permit he had had expired or was no longer valid;
7. Considering, that based on Decree of the Minister of Forestry and Forestry Number: 312 / KPTS-II / 1999 dated May 7, 1999, if the company PT. Sukses Jaya Wood is still interested in continuing the development of the HTI area, then PT. Sukses Jaya Wood immediately processed a new application to obtain a Forest Plantation Tenure Right (HPHT) and at the same time reported the results of the IPP implementation that had been carried out to be evaluated and assessed in the field by the Central TEAM and on the basis of that fact through the Director General of Forest Control Letter of the Indonesian Ministry of Forestry Number: 4051 / I-PH / 1995 dated July 31, 1995 stated that the Industrial Plantation Forest (HTI) Experimental Planting Permit (HTI) of PT. Jaya Wood's success was declared to have ended or was canceled on its own (TK / PR-1 evidence), thus PT. SJW does not heed what is required by the Governor of the First Level Region of West Sumatra (proof of TK / PR-2);

8. Considering, that in accordance with the statements of witnesses presented by the Defendant which explained that the Permit owned by PT. Jaya Wood's success in IPP HTI ended in 1995 and was not extended until 2013 but PT. Sukses Jaya Wood continued to manage the HTI, even many letters posted by the Nagari Silaut Indigenous Peoples asked about permits, PT Sukse Jaya Wood did not reply and did not inform Nagari Silaut Indigenous Peoples;
9. Considering, that from the aforementioned considerations, the agreements made between the Plaintiff and the Defendant (Exhibit P-4 and P-5) in 1999 and 2005, did not fulfill the legal requirements of the agreement as stipulated in article 1320 Civil Code, because the Plaintiff made an agreement with the Defendant (Exhibit P-4 and P-: The Plaintiff has no clear legal basis and does not have a permit for IPP for HTI in Nagari Silaut, therefore the agreement according to the Panel of Judges is invalid and not legally binding;
10. Considering, that because the problem in this case is that the agreement and the agreement have been declared invalid, then what is demanded as the Plaintiff's Claim must be declared rejected entirely;⁵

The weaknesses in the decision 105 / Pdt.G / 2014 / PN.Pdg is regarding the decision of the ruling which did not order PT Sukses Jaya Wood to restore the defendant's land to its original state, it was very necessary that PT Sukses Jaya Wood had made a bad intention at the time of making the deed before the Notary, by notifying the industrial plantation forest management permit had expired to Muman Dt. Rajo so that later the loss of Muman Datuan Panduko Rajo due to bad faith caused by PT Sukses Jaya Wood, will be able to become a new problem in the implementation of PT Sukses Jaya Wood's responsibility to restore the land to its original state, because the benchmarks in the original condition lead to interpretations that are not certainly at the time of its implementation in the future, bearing in mind that the judge's decision only canceled the Notarial Deed No. 47 dated August 20, 1999 without any strict order to restore the condition of the forest that had been controlled by parties who were not in good faith.

The Legal Consequence of The Cancellation of Agreement Which is Made in The front of Notary in case Number 105 / Pdt.G / 2014 / PN.Pdg.

Notary Deed is an authentic deed that has perfect proof of strength, but in the Notary Deed is also inseparable, and the notary deed is made not in accordance with the legal rules regarding making a Notary Deed with certain reasons, the legal consequences of the Notary Deed become:

1. Can be Canceled (Verniegbaar)

Deed made by or before a notary can be canceled by parties who have an interest in it, this is because the deed made does not meet the subjective elements of the parties as contained in Article 1320 of the Civil Code regarding an agreement to bind itself and the ability to make an agreement.

⁵ Judge Decision 105 / Pdt.G / 2014 / PN.Pdg.

2. Notary Deed is Canceled by Law

In contrast to the deed that can be canceled because in the process of making it does not meet the subjective elements in Article 1320 of the Civil Code. Deed that is null and void occurs because the mechanism of making it violates the substance of UUJN regarding notary authority in making authentic deed Article 1320 paragraphs 3 and 4 of the Civil Code which is an objective requirement in entering into an agreement, namely the imposition of certain things and halal causes. , this is because the deed is made by violating and not fulfilling external elements, formal elements, material elements, Article 1320 paragraph 3 and Article 1320 paragraph 4.

3. Notary Deed has the power of proof as a deed under the hand.

Notary deed as evidence to have perfect proof strength, if all material requirements and formal requirements for making the deed are met. If there is a procedure that is not fulfilled in making an authentic deed and the mistake of the procedure can be proven clearly, then the deed can be submitted to the court and if there is proven implementation of the procedure that is not appropriate then the court can declare the deed as a deed under the hand and if the deed degraded into a deed under the hand then the evidentiary value of the deed is submitted to the judges of the truth of the deed.

In this case the party from Muman Datuk Panduko Rajo can file a claim for compensation for the losses they have received due to the lies committed by PT. Sukses Jaya Wood regarding their management permit which apparently ended before this agreement was made. because before this was known, certainly PT. Sukses Jaya Wood has certainly benefited from the HTI they manage, which of course has enormous benefits.

If the HTI should be managed by the local community, then they can jointly enjoy the benefits of the forest management together. and moreover the industrial plantations were cleared on customary land owned by Nagari Silaut then first PT. Sukses Jaya Wood must acquire the land, but in reality PT. Success Jaya Wood did not do that.

Based on the things mentioned above, the cancellation of a notarial deed through a court decision, not only due to the result of a mistake or negligence in making a notarial deed but the cancellation of a notarial deed can also be caused by mistakes or negligence of the parties who bind themselves to the deed , so that an error or omission causes a lawsuit from one of the parties. Because in reality the involvement of a notary is limited to formulating the legal actions of the parties into the act. Furthermore, inaugurating the deed.

However, if in this case it is also found that the notary does not apply the precautionary principle regulated in Article 16 paragraph 1 letter a which states that the notary in carrying out his position must be obliged to act carefully. if the notary is not careful in checking important facts, it means that the notary is not careful. in this case the notary must examine all the completeness and validity of the evidence or documents that are shown to him, and listen to the statements or the parties must be made as a basis for consideration to be included in the deed. Implementation of the principle of accuracy and prudence must be done in making the deed with:

- a. Make checks on the parties based on identity
- b. shown to him
- c. Inquire later and examine the wishes or tastes of the parties
- d. the party with a question and answer

- e. Checking the evidence of the letter relating to the desires or wishes of the parties provides suggestions to make a deed framework to meet the wishes of the parties
- f. fulfilling all administrative techniques of making a notarial deed such as the reading of the signing giving a copy and filing for the minuta.

Based on the things that have been mentioned above the notary in carrying out his duties and positions are burdened with responsibility for his actions. That responsibility is his willingness to carry out his obligations including material truth. the notary is only responsible for the formal form of the authentic deed as regulated by the Act.

Conclusion

1. Considerations in the decision 105 / Pdt.G / 2014 / PN.Pdg related to the cancellation of the deed made before the Notary after the cancellation is requested is appropriate, because every agreement that does not meet the subjective requirements is not the success of PT Sukses Jaya Wood because the forest management permit has been run out and also not notified when making an agreement. However, the obstacle is that there is no strict decision that ordered PT Sukses Jaya Wood to restore the condition of the forest to its original condition and PT Jaya Sukses Jaya Wood should be responsible for restoring the condition of the forest to the way it was before management, so that was the weakness of the decision 105 / Pdt .G / 2014 / PN.Pdg.
2. A Deed made before a Notary Public has a level of perfect proof, because perfect proof here means that the existence cannot be denied, because it was made by a Notary Public, then the contents cannot be denied because the Notary has confirmed the parties, so the judge must believe it, however, if a cancellation is made because the other party proves the existence of a defect, it will make the strength of the evidence lost, then due to the law of cancellation of the deed made before a Notary Public in the verdict 105 / Pdt.G / 2014 / PN.Pdg is a return to the original condition of the forest condition as the forest as before the authentic deed was made.

Suggestion

1. In addition to considering the cancellation of the deed caused by not fulfilling the subjective and objective conditions of the agreement, the judge should also provide a higher quality decision with a strict decision by ordering PT Sukses Jaya Wood to restore the condition of the forest to its original state, due to the processing. based on bad faith causes harm to landowners, in this case the Ulayat Nagari Ulaut community.
2. If PT Sukses Jaya Wood does not take responsibility for returning the forest to its original condition, then the defendant or Muman Datuak Panduko Rajo can file a revindication suit regulated in Article 574 of the Civil Code which says that each owner of an object has the right to sue anyone also the one who masters it will return the object in a state of being. And the right to claim can also be submitted to the general court for the return of his property, or an individual claim on the basis of payment that is not outstanding.

Reference

[http // wordpress, authenticity of the authentic deed / accessed on 11 February 2019.](#)

I Ketut Oka Setiawan, *Law of Engagement*, Sinar Grafika, 2015.

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