



Notary Responsibility for the Deed Canceled by the Court
(Case Study on Decision Number 34 / Pdt / 2017 / PT YYK)

Muhammad Halim Khairul; Ismansyah; Dahlil Marjon

Faculty of Law, University of Andalas Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i6.1310>

Abstract

Notary is a public official who is specifically authorized by the law to make an authentic deed, where the deed made by a notary becomes perfect, strongest and most complete proof that can guarantee legal certainty. Therefore, the notary deed which then becomes written evidence can be canceled by the judge as long as there is an opponent's evidence and regarding the cancellation of the contents of the deed. This thesis using normative juridical approach and use data sources that include the primary legal materials, secondary and tertiary obtained through literature and by using the guidelines interviews and field observations. The focus of this research is to find out how the notary's responsibility for the Purchase Binding Agreement and sale of attorney canceled by the court and the legal consequences of the decision of the Supreme Court number 34 / pdt / 2017 / pt yyk on the deed made by a notary. The research that has been conducted has found that the responsibility of the Notary towards the Cancellation of the Purchase Binding Agreement and the sale of attorney by the Court Judge because it is proven that the deed is a simulation agreement, an agreement in which the parties declare a different condition from the agreement previously held. The responsibilities of the Notary Public can be mined in terms of civil, criminal and administrative responsibilities. As a result of the cancellation of a notary deed law by the Court are declared null and void and not legally binding on the evidence.

Keywords: *Responsibility; Notary; Notary Deed; Court*

Introduction

Notary Deed in essentially contains formal truths in accordance with what the parties have notified to the public officials (Notaries). The notary is obliged to include in the deed what is really understood according to the wishes of the parties and read to the parties about the contents of the deed. The statements or informations of the parties mentioned by the Notary are stated in the notarial deed.

Notaries as public officials who make authentic deeds are often placed as defendants or co-defendants or also placed as witnesses or even suspects or defendants of the deeds that are made. The involvement of a notary public in a legal case can be caused by an error by the notary himself or the mistakes of the parties or the mistakes of one party that does not provide true information or documents (lack of good will from the parties or one of the parties) or there has been an agreement between notary with one of the parties that caused harm to the other party.

Notarial Deed should be the strongest and most complete written evidence, can be a perfect evidence in court trials for civil cases, what is stated in the notarial deed must be accepted, unless the parties concerned can prove the opposite thing correctly before a court hearing. If it can be proven that there is an error in the deed of the judge can decide to cancellation of the contents of the deed.

The case that will be discussed in the writing of this research, namely the Decision of the Supreme Court of the Republic of Indonesia Number 34 / Pdt / 2017 / PT YYK. Whereas Endang Murniati, SH as Notary / PPAT, hereinafter referred to as a defendant, is suspected of having known the mode or series of manipulations of legal relations conducted by Wakhirun Al Rasid, hereinafter referred to as Defendant II, because the notary or co-defendant was based on Heri Prasetyo's statement, hereinafter referred to as Plaintiff II is well acquainted with Defendant II and Notary Public or the Defendant also stated directly to the Plaintiff II that in fact the person who ordered the deed making in Notary / PPAT Endang Murniati, SH was Defendant II. At the time of the signing of the binding sale and purchase Ari Thonang Drajat Sutimbul, hereinafter referred to as defendant I was accompanied by Br. Iswantoro who is known to be a subordinate / employee of Defendant II, who previously also submitted certificates to the plaintiff and participated as witnesses on the receipt of the money transfer dated 3 October 2015 and on a statement dated 15 August 2015.

Because in reality the relationship that occurred between Plaintiff I, Plaintiff II, Defendant I, Defendant II is a legal relationship of accounts payable and receivable, but the fact that the legal relationship is carried out is as if a legal sale and purchase relationship was made with the sale and purchase deeds No.1 / 2015 dated October 3, 2015 concerning Purchase Bonds and Notarial Deed No.02 / 2015 dated October 3, 2015 concerning Selling Power, both of which were made by Notary / PPAT Endang Murniati, SH as the defendants.

From the description of the case, it is very unfortunate that the notary in carrying out his position is not in accordance with the Law and his professional code of ethics. Notaries should be able to keep his dignity in order not to become a co-defendant in the case and which can reduce public trust to a notary public office.

Methodology

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.¹ To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.² The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

¹ Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5.

² Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research.³

Results and Conclusion

Notary in carrying out the duties of his authority as a public official has the main characteristic, namely in his position of being impartial and independent (independent). The notary provides services to the community in making an authentic deed. In essence, the Notary only constitutes or records in writing the form and legal actions of the parties concerned. Therefore, a notarial deed or authentic deed does not guarantee that the parties "tell the truth" but what is guaranteed by the authentic deed is that the parties "tell the truth" as contained in their agreement deed.

In the case of carrying out their duties a notary has responsibility for his position and has the obligation to be accountable to his client and responsible for all actions. Regarding the responsibilities of the notary mentioned in Article 65 of the Law on notary office.

According to Hans Kelsen, legal liability is the concept of legal responsibility, a person is legally responsible for a particular act, where he can be subject to a sanction in the case of an opposing act. Refer to the general legal theory which states that everyone, including the government, must be held accountable for their actions, either by mistake or without error. From general legal theory, this will emerge as a form of legal responsibility in the form of civil liability, criminal liability, administrative liability.

1. Civil Notary Responsibility

The construction used in civil liability for deeds made by a Notary Public is the construction of acts against the law (Article 1365 of the Civil Code). This legal act can cause harm to other parties. Elements of this unlawful act include an act against the law, an error and a loss incurred.

2. Criminal Notary Responsibility

Criminal cases related to the formal aspects of the notary deed, the investigator, the public prosecutor and the judge will classify the notary as having taken legal actions as follows:

- a. Making fake letters that are falsified and using fake letters that are falsified (Article 263 paragraph (1) (2) of the Criminal Code);
- b. Falsifying (Article 264 of the Indonesian Criminal Code);
- c. Calling for false information in an authentic deed (Article 266 of the Criminal Code);
- d. Conduct, order to do, who participated in doing (Article 55 in conjunction with Article 263 paragraph (1) and 92) or 264 or 266 of the Criminal Code);
- e. Help make fake letters that are falsified and use fake or falsified letters (Article 56 paragraph (1) and (2) jo Article 263 paragraph (1) and (2) or 264 or 266 of the Criminal Code).

³ Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2006, Page 32.

If it is proven that the notary public has committed one of the above criminal acts, the notary will be held liable in accordance with applicable law.

3. Administrative Notary Responsibility

In Article 85 of the Notary Position Act, it also regulates sanctions for Notaries who violate the formal aspects contained in a deed, namely:

- a. Verbal reprimands;
- b. Written warning;
- c. Temporary stop;
- d. Dismissal with respect;
- e. Dismissal with disrespect

From the Supreme Court Decision Number 34 / Pdt / 2017 / PT. YYK, then the Notary's responsibility for his actions is civil responsibility. This is because the Notary has misused his authority in making a deed which caused a loss to the plaintiff, so the notary in this case is responsible for paying compensation in the form of returning the Certificate of Property Rights on behalf of Mrs. SUGINEM to the plaintiff I as the legal owner and paying the money forced (dwangsom) To Plaintiff I in the amount of Rp. 200,000.- (two hundred thousand rupiahs) every day for the failure of Defendant I to carry out this case Decision in the case of returning the Certificate of Ownership in the name of Mrs. SUGINEM to Plaintiff I.

In the case of the Supreme Court Decision Number 34 / Pdt / 2017 / PT YYK In this case the judge declared null and void by law and had no legal force binding the sale and purchase relationship made by the Sleman District Notary / PPAT, the conditions which were not fulfilled in this case were Objective requirements, because actually the legal event that occurred between the plaintiff I and the defendant I is a legal act of accounts payable, however, the defendant was made as if a legal sale and purchase event was strengthened by making a notarial deed, namely the binding purchase agreement and the selling authority.

Thus the legal consequences of the notarial deed canceled by the court is that the notarial deed drawn up by the Notary / PPAT of Sleman Regency, the binding purchase agreement and the power of attorney is null and void, with the consequence that all conditions return to their original state, and for Notaries / PPAT The Sleman Regency deed which he made was declared null and void by law and had no binding power and was ordered to hand back the certificate of ownership in the name of Mrs. Suginem as the legal owner.

References

Abdul Ghofur Anshori, Op.cit, p. 49.

Habib Adjie, Civil and Administrative Sanctions Against Notaries as Public Officials, p. 114-116.

Habib Adjie. (2015). Cancellation of Notarial Deed, Third Printing, PT Refika Aditama, Bandung, p. 45.

Habib Adjie, Notary Law in Indonesia - Thematic Interpretation of Law No.30 of 2004 Concerning Notary Position, Bandung, Refika Aditama, 2008, p. 26-27.

Irma Erлие Yuana, Notary's Responsibility After the End of His Term of Office on the Deed He Made from Law Number 30 Year 2004 concerning the Position of Notary Public, Thesis of Notary Magister of Diponegoro University, Semarang, 2010, p. 75-76.

M. Luthfan Hadi Darus. (2017). Notary Law and Responsibility of Notary Position, UII Press, Yogyakarta, p. 28.

Wirjono Prodjodikoro. (2011). Principles of Criminal Law in Indonesia, Refika Aditama, Bandung, p. 65.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).