

RESPONSIBILITY OF NOTARY FOR UNLAWFUL ACTION IN ANNULMENT OF SELLING AUTHORITY

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ABSTRACT

Notary Deed is an Authentic Deed drawn up according to its systematization which is included in the Law on Notary Position. Notary Deed is a perfect proof tool, but Notary Deed can turn into underhand evidentiary power if it violates the provisions of the Law on Notary Position. This article discusses the accountability of a Notary who commits an unlawful act regarding the making of the Power of Attorney to Sell without the knowledge of the suspect. This study discusses the Medan District Court Decision Number 529 / Pdt.G / 2017 / PN.MDN, where there is a lawsuit against a Notary who commits an act against the law in the matter of making a Power of Sale Act without the knowledge of the plaintiff. This research was conducted in a normative juridical manner using a statutory study approach as well as primary, secondary, and tertiary legal materials, where this research used the legal material Law No.2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Public. The results of the study were arranged in a descriptive-analytical manner and concluded that It would be nice to maintain a competent existence, a Notary must be more careful and careful and have an objective that is not contradictory in the implementation of making deeds so that there are no losses from civil and criminal law traps so that in carrying out his position, namely making a deed based on The Law on Notary Position and manners without having to go against the statutory provisions.

Keywords: Notary, Acts against the Law, and Cancellation of the Deed

INTRODUCTION

The existence of notary institutions in Indonesia was originally in the 17th century with the emergence of Oost Ind. Compagnie in Indonesia. Then gradually the first regulation regarding the notarial board was established, namely the Notary Position Regulation (Notary Reglement Stb 1860: 3) in 1860 January 26 and became effective in 1986 on July 1 as a strong basis for notarial institutions in Indonesia.¹

The notary is a public official who has the authority to make authentic deeds and other authorities as referred to in UUJN.² Granting qualifications as a public official is not only given to Notaries but also Land Deed Making Officials (PPAT)³, Auction Officer, thus a Notary is a General Official, but not every General Officer is a Notary, because General Officials can also be PPAT or auction officials. Making an authentic deed cannot only rely on examples of deeds without knowing what is the legal basis and why to use certain phrases, sentences, and wording in the deed made.

The 4 (four) consequential conditions contained in activities that can be classified as against the law are as follows:

1. Contrary to the legal obligations of the perpetrator;
2. Contrary to the subjective rights of others;
3. Contrary to decency;
4. Contrary to propriety, thoroughness, and prudence.

Actions against the law occur when the act is against the law in general. Law in this case, not only in the form of written provisions but also unwritten legal rules, which must be obeyed in social life. The losses incurred must be due to an act that is against the law, among others, the losses and the act must have a direct relationship; the loss is caused due to an error of the maker. The definition of a position must be carried out continuously (continuously) can be applied to a Notary Public, or with the cessation of a person who has retired from his position as a Notary Public, or with the dismissal of a person as a Notary, his / her position as Notary will also cease.

Meanwhile, a Notary as a Position will still exist and the deeds drawn up before or by a Notary who has retired will still be recognized and will be kept (as a continuation) by the Notary holding the protocol. The notary's responsibility for unlawful acts in the cancellation of the power of sale deed is an act that violates the Notary's office law and also the Notary's code of ethics.

This research method is a normative juridical study using a legal study approach and in this writing also uses legal materials consisting of primary, secondary, and tertiary legal materials. The writing technique used in this research is descriptive-analytic, where the data obtained is then systematically arranged for further analysis to obtain a conclusion. The objectives of this research

¹GHS LumbanTobing, Regulation of the Position of Notary Public, 3rd printing, (Jakarta: Erlangga, 1996), p. 15.

² Article 1 number 1 and Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary Public.

³Article 1 number (4) Law Number 4 Year 1996, and Article 1 paragraph (1) Government Regulation Number 37 Year 1998.

are first to analyze the status of a notary who commits an act against the law in terms of the notary code of ethics and to analyze the countermeasures so that there is no illegal act in the cancellation of the deed.

DISCUSSION

1. THE STATUS OF A NOTARY WHO COMMITS AN ACT AGAINST THE LAW IS REVIEWED FROM THE NOTARY CODE OF ETHICS.

The notary is a position mandated by law and society, therefore the Notary must accept all risks to carry out the trust held to him. Because if this is forgotten, it will cause huge losses to the community and can interfere with the legal movement that has been brightened in recent years.⁴ Therefore, the position of the Notary Code of Ethics aims to ensure that the position of the Notary Public can be carried out professionally based on motivation and receipt that rests on the ability of scholars and assumes rationally and critically and respects moral values.

Denial of the position of a notary public can be categorized as a violation of the Notary Code of Ethics as well as the violation of UUJN. When viewed in a civil law study, this responsibility is compensation. Then when viewed from the perspective of criminal law, the sanctions given are in the form of imprisonment and fines, as well as from the administrative side the sanctions that have given are dismissal from office. Every action that is against the law that can cause harm to other people should be accounted for.⁵ In the analysis of the theory of error, criminal law recognizes two elements of error, namely deliberate and negligent, besides actions that cause harm to others unethically, and contrary to law, are actions against the law. And the influence that can be caused by the role of the notary can be positive or negative. This bad effect will reduce the credibility of the community towards the profession of a notary and the legal world in Indonesia, especially in its relation to the relationship of interests between individuals and individuals and with several people.

The responsibilities of a Notary as stated in the Law on Notary Position (UUJN) are intended as a bond to Notaries in carrying out their duties and obligations by the provisions contained in UUJN. Changes in the sense that, all actions of a Notary in carrying out his duties must be legally accountable, including all the consequences for being subject to legal sanctions for violations of the legal norms that underlie it.⁶ In its realization, of course, there have been many cases of violations or unlawful acts committed by one or the parties in the making of an agreement or by a notary / PPAT as a general officer who has the power to make an authentic deed, whether caused by negligence, as well as deliberate use for personal gain.

The Notary Code of Ethics is the scope of the moral order established by the Indonesian Notary Public Association (INI), this code of ethics must be implemented and every person holding a Notary post is obliged to obey the code of conduct in his daily life in carrying out his position as a Notary Public. The Notary Code of Ethics needs to be understood by the Notary because there are regulations regarding any actions that can be said to be a violation of the code of ethics and the sanctions imposed if they violate the code of conduct.⁷

The existence of the notary code of ethics symbolizes the logical impact of a notary's activity. Until there is an opinion that a Notary as a public official who is given the trust must adhere to not only statutory regulations but also to the code of ethics of his profession because there is no code of ethics, dignity. The obligation of a Notary based on the review of the Law on the Position of Notary Public, in carrying out his / her position as regulated in Article 16. The notary is also obliged to avoid restrictions on the Notary in exercising his / her office authority as stated in Article 17 of the Law on Notary Position.

Sanctions are the most important epilogue in a legal product, and every legal provision in the country of Indonesia is always included with sanctions at the end of these legal regulations. The imposition of sanctions in the Indonesian state is not only contained in the form of law, but also other forms of coordination, such as ministerial decrees or other forms under the law. The imposition of sanctions in various legal regulations is an obligation that must be included in every legal rule.

The imposition of sanctions to Notaries is regulated at the end of the UUJN, namely articles 84 and 85 of the UUJN, which explain:

Article 84:

"The act of violation committed by a Notary against the provisions referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which results in a deed only having the power of proof as an underhanded deed or a deed to be null and void by law can be an excuse for the party who suffers loss to demand reimbursement of expenses, compensation, and interest from the Notary".

⁴DwiAndikaPrayojana, "Settlement of Notary Code of Conduct Violations Concerning the Installation of Notary Signboard in Denpasar City", *ActaComitas*, (2017): 2 <https://doi.org/10.24843/AC.2017.v02.i02.p05>

⁵AnugrahYustica, "The Role of Notary Professional Ethics as Law Enforcement Efforts". *Notarius*, Volume 13 No 1 (2020)

⁶GedeDickaPrasminda, "Authorization to Sell Notary as an Instrument to Fulfill Default Debtors in the Accounts Receivable Agreement", *ActaComitas* (2017) 1: 57 - 65. doi: <https://doi.org/10.24843/AC.2017.v02.i01.p05>

⁷RiyanSaputra, "Law Enforcement Against Notaries Who Promote Themselves Through Social Media", *Adigama Legal Journal*, Vol 1, No 1 (2018) doi: <http://dx.doi.org/10.24912/adigama.v1i1.2312>

Article 85:

"Violation of the provisions referred to in Article 7, Article 16 paragraph (1) letter a, Article 16 paragraph (1) letter b, Article 16 paragraph (1) letter c, Article 16 paragraph (1) letter d, Article 16 paragraph (1) letter e, Article 16 paragraph (1) letter f, Article 16 paragraph (1) letter g, Article 16 paragraph (1) letter h, Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter j, Article 16 paragraph (1) letter k, Article 17, Article 20, Article 27, Article 32, Article 37, Article 54, Article 58, Article 59, and / or Article 63, may be subject to sanctions in the form of:

- a. verbal warning;
- b. written warning;
- c. temporary suspension;
- d. honorific dismissal; or
- e. dishonorable discharge.

The Notary District Audit Board in this matter has the role of resolving the problem in which the Plaintiff as the Reporting Party has reported the incident against the Defendant's Notary as the Reported Party where the Defendant stated that the Defendant's Notary in making the Power of Attorney to Sell No.48 had violated Article 16 paragraph (1) letter a of Law- Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning the Position of Notary Public where the Defendant's Notary has made a New Deed with Deed Number 48 without the knowledge of the Plaintiff, that the Defendant's Notary for tearing up the Minutes of Deed Number 48 and replacing it with the new Minutes of Deed Number 48 was an act which was clearly not in accordance with Article 16 paragraph (1) letter a of Law Number 30 of 2004 as amended by Law Law Number 2 of Year and Code of Ethics 2014 which states that Notaries are obliged to act honestly, thoroughly, independently, not taking sides and safeguard the interests of the parties involved in legal actions and so that in the decision Number: 02 / PTS / MPWN / North Sumatra Province / 2015 Notary of the Defendants has been sanctioned in the form of a written warning; 02 / PTS / MPWN / North Sumatra Province / 2015 The Defendant's notary has been given a sanction in the form of a written warning; 02 / PTS / MPWN / North Sumatra Province / 2015 The Defendant's notary has been given a sanction in the form of a written warning;

2. STUDY OF THE NOTARY'S LIABILITY IN CONDUCTING UNLAWFUL ACTS IN CANCELLATION OF THE POWER OF ATTORNEY TO SELL.

As a public official who has the authority to make authentic deeds, the responsibilities of a notary are categorized into several parts, which consist of: First, in terms of civilization, the notary is responsible for the deeds he makes. In this study is the responsibility for the validity of the contents of the deed, in the foundation of actions against the law.

Actions against the law are meant in terms of active and passive characteristics. Active means that an action made by a notary will cause harm to other parties. Meanwhile, passive, literally does not do an act which is an obligation, so that one party suffers a loss. It can be concluded that the elements in this illegal act are the occurrence of an act against the law, the occurrence of an error, and the appearance of the loss that has been committed. Then, Law No. 2 of 2014 states that there are 5 (five) kinds of administrative sanctions imposed if a notary is proven to have violated the principles stipulated in Law Number 2 of 2014. Sanctions for the liability of a notary in terms of administrative sanctions for the deed he makes include:

- a. Verbal warning;
- b. Written warning;
- c. Temporary suspension;
- d. Honorific dismissal; and
- e. Disrespectful dismissal.

Preparation of deeds that do not include the wishes of the parties or the notary deed is read according to what is in its contents, can be categorized as a form of defect in the agreement of the parties. On this matter, the relevant agreement is an agreement that does not meet the subjective requirements, namely the element of the agreement. So based on that, the deed concerned can have the status of revocable.

Civil sanctions against Notaries who violate articles regarding obligations and prohibitions in UUJN, namely: Article 16 paragraph (1) letter m, Article 41 by referring to Article 38, Article 39 and Article 40, Article 48, Article 49, Article 50 and Article 51. Civil sanctions as described in the articles above are in the form of budget reimbursement, compensation, and interest which illustrates the consequences the Notary would like to receive from the claims of the parties.

3. MINIMIZING EFFORTS SO THAT UNLAWFUL ACTS DO NOT OCCUR IN CANCELLATION OF DEEDS

The 1945 Constitution of the Republic of Indonesia (UUD 1945) and Pancasila are the basic foundations for making legislation to ensure security, tranquility, and legal certainty for each society. This is so that the state can reduce and coordinate various problems that will arise anywhere, especially in society. On the other hand, elements of society must also intervene to encourage supervision of legal products so that they go hand in hand so that they can create peace in the general public. Notary Institution as a forum that operates in the civil sphere, which tends to make deeds as legal evidence in Indonesia. This institution was created so that the form of society in need of a special means of proof in civil studies.

Apart from being known as a deed-making profession according to the law, notaries must also carry a very heavy sense of responsibility. In this regard, before carrying out his profession as a notary, Law Number 02 of 2014 concerning the Position of Notary Public (UUJN) and the Professional Code of Ethics for Notary Public explains that before carrying out his position an oath

is taken by a notary public. The main obligation of the notary, namely in the proof is to make authentic deeds and carry out other obligations by the provisions of law, for example regarding the creation of fiduciary and management and legalization of legal entities.

In making the deed of power to sell without the knowledge of the collateral owner so that illegal acts like this do not occur again, efforts can be minimized utilizing a notary who is personally responsible for the implementation of his / her duties and authority in each deed. Then the Notary should be more careful and not follow the wishes of the parties or not take sides to produce legal products that do not cause harm. The importance of the organization of the Indonesian Notary Association (INI) as a forum for Notary Association throughout Indonesia must also remind each other to always be guided by the Law on Notary Position so that there is no more impartial or impartial deed making so as not to cause harm to the Notary and the party.

Legal considerations based on all the discussions systematically and based on their considerations have been proven that the Deed of power to sell was made by the Defendant's Notary without the knowledge and the consent of the Plaintiff as the power of attorney entitled to the object of collateral for the certificate of ownership title No. 921 then all legal actions based on the power of attorney number 48 are also legally invalid because they do not comply with the provisions of Article 1320 of the Civil Code regarding the legal terms of the agreement because the acknowledgment of the debt was made by the Defendant who is not entitled to pledge the Certificate of Property Rights and Article 1365 of the Civil Code which it reads "that every action against the law which therefore causes harm to others, obliges the person who because of his mistake caused the loss to compensate for the loss".

The making of the Power of Attorney to Sell by a Notary must be based on the parties/parties, namely the party giving the power to the collateral land and the power of attorney who binds it to an agreement. Article 1320 of the Civil Code, which contains provisions on the validity of an agreement, states that an agreement is considered valid if it meets the criteria for an Agreement that binds itself, is competent to make an engagement, because or a certain subject matter, and causes which are not prohibited by law (Halal). Therefore, Defendant's Notary was punished by Defendant, jointly and severally, to provide compensation to the Plaintiffs every year from the date the agreement was started until Defendant returned and delivered the Certificate of Rights to Plaintiff in a good and empty condition.

CONCLUSION

Regarding the sanction, the Notary Public has been sanctioned by the Decision of the Notary District Audit Board of North Sumatra Province Number: 02 / PTS / MPWN / North Sumatra Province / 2015 with written sanctions. It would be nice to maintain a competent existence, a Notary must be more careful and careful and have an objective that is not contradictory in the implementation of making deeds so that there are no losses from civil and criminal law traps so that in carrying out his position, namely making a deed based on The Law on Notary Position and manners without having to go against the statutory provisions. If it is to provide legal protection and legal certainty for the landowner whose rights have been impaired which contains the act against the law and provides strict sanctions to the parties who commit acts against the civil law.

Besides, the importance of the organization of the Indonesian Notary Association (INI) as a forum for Notary Association throughout Indonesia must also remind each other to always be guided by the Law on Notary Position so that there is no more impartial or impartial deed making so as not to cause harm to the Notary and the party.

Public participation is also required to monitor and report the actions of Notaries who in carrying out their duties which are not per the legal rules stipulated by the Law on Notary Position to the local Notary Supervisory Council. With the existence of a report like this, it can overcome the actions of a Notary that are not by the legal rules for implementing the duties of a Notary.

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