

The Responsibility of a Notary for the Annulment of an Agreement Deed by the Court

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ABSTRACT: Notaries have significant responsibilities for every action taken in creating authentic deeds. Notaries also often make mistakes that lead to the annulment of the deed by the court due to their negligence. This research has the purpose to examine the responsibilities of a Notary regarding authentic deeds that are annulled by the court and the legal consequences of deeds declared null and void under the law by the court. The purpose of this research is to analyze the legal consequences of deed annulment by the court and the responsibilities of the notary concerning the annulled deed. The method employed in this research is normative legal research, which draws upon literature review with legal materials such as legislation and literature, books, and others to examine the issues in this research.

KEYWORDS: Notary, responsibility, annulment

INTRODUCTION

A Notary, as a Public Official with the authority to create authentic deeds, is appointed by the Minister under Law Number 30 of 2004, in conjunction with Law Number

2 of 2014 regarding the notarial profession. To carry out their duties and responsibilities, a Notary must be entrusted, and they have an obligation to maintain confidentiality regarding all matters related to the deeds they create and any information they obtain, in accordance with their oath or pledge of office. The confidentiality concerning deeds and other documents is intended to protect the interests of all parties involved in the deeds (Habib Adjie, 2014:12).

A Notary is a public official with the authority to create authentic deeds and other powers, as stipulated in Article 15 of the Notary Law, which states that:

1. The authority of a Notary is to create authentic deeds that encompass actions, agreements, or determinations required by the law and/or desired by the parties concerned to be stated in an authentic deed. Additionally, they must ensure the certainty of the deed's creation date, preserve the deed, provide the transcript, copy, and excerpt of the deed, as long as the deed's creation is not assigned or exempted to another official or person designated by the law.
2. In addition to the authority explained in paragraph (1), a Notary has other powers:
 - a. Authenticate signatures and determine the certainty of the date of a private document by recording it in a special register.
 - b. Register private documents by recording them in a special register.
 - c. Create copies of original private documents in the form of reproductions that contain descriptions as written and depicted in the respective document.
 - d. Verify the conformity of photocopies with the original document.
 - e. Provide legal counseling related to the creation of deeds.
 - f. Create deeds related to land matters.
 - g. Prepare auction protocol deeds.

3. In addition to the authority explained in paragraphs (1) and (2), Notaries have other powers regulated by statutory provisions. Notaries provide legal certainty regarding the creation of authentic deeds because authentic deeds must be made in the presence of a notary. Therefore, authentic deeds can be accepted by the parties involved in the deed, and the deed itself carries legal certainty. A deed is a written document intentionally created to serve as evidence in the event of a future occurrence. This stems from Article 1 of the Notary Public Law, which designates Notaries as public officials, thus granting authentic characteristics to deeds created by or in the presence of public officials, namely Notaries, as outlined in Article 1868 of the Civil Code.

Notarial deeds hold strong evidentiary power, unlike private deeds. A private deed is a document created by the interested parties themselves without the assistance of a notary. An authentic deed is a product of a notary, providing legal certainty. Authentic deeds,

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as the most robust and complete means of evidence, play a crucial role in every legal relationship, including business partnerships, collaborations, property transactions, banking, social activities, and more. This is based on Article 1870 and Article 1871 of the Civil Code, which state: “*An authentic deed is a perfect instrument of evidence for both parties, their heirs, and all those who obtain rights from it regarding what is contained in the deed.*”.

The annulment of a Notarial Deed through the court is not only due to the mistakes or negligence of the Notary in creating the deed. It can also be caused by the errors or negligence of the parties who mutually bind themselves in the deed. Thus, the emergence of errors or negligence can lead to a lawsuit filed by one of the parties.

In a lawsuit that alleges the invalidity of a Notarial Deed, it must be proven to be invalid both in terms of its external, formal, and substantive aspects. If this cannot be proven, then the deed in question remains valid and binding for the parties with an interest in the deed. If the deed can be proven as such in court, then one of the aspects that causes its defectiveness is identified, which may result in the deed being downgraded to a private document or even declared null and void under the law.

Based on the explanation above, this research will discuss the legal consequences and responsibilities of a Notary in cases where a deed is annulled by the Court. This arises due to several issues related to annulled deeds, which can be attributed to negligence and errors on the part of both the Notary and the parties involved in the deed. The Notary, as a public official with the authority to create authentic deeds, and whose duties are regulated by laws and the Notary Code of Ethics, can still engage in actions that are contrary to or in violation of the law.

RESEARCH METHOD

The method employed in this research is normative juridical, which is a research conducted by examining legal literature or secondary legal materials (Soerjono Soekanto, 2007:53). This research aims to assess the application of rules or norms in positive law to address the research questions. It utilizes a statutory approach by examining the relevant laws and regulations pertaining to the legal issues under investigation.

DISCUSSION

A. Legal Consequences Of The Cancellation Of A Notarial Deed By The Court

The legal requirements for the validity of an agreement are regulated in the Civil Code, namely, mutual consent, capacity, a specific subject matter, and a lawful cause. The requirements of mutual consent and capacity are referred to as subjective requirements because they pertain to the parties entering into the agreement, as stated at the beginning of the deed. The requirements of a specific subject matter and a lawful cause are termed objective requirements because they relate to the object of the agreement and are included in the body of the deed as its content. The content of the deed embodies Article 1338 of the Civil Code concerning the principle of freedom of contract, which has provided certainty and legal protection to the parties regarding the agreements they make. If mutual consent and capacity are not met, the agreement can be annulled. If the requirements of a specific subject matter and a lawful cause are not met, the agreement is null and void under the law. This means that the agreement is considered never to have occurred. An agreement becomes legally valid and binding for the parties who make it if it satisfies all four of these requirements, thereby creating rights and obligations recognized by the law.

In contract law, there are specific legal consequences when both subjective and objective requirements are not met. If the subjective requirements are not met, then the agreement can be annulled if there is a request from an interested party. The subjective requirements can be annulled by the interested parties' parents, guardians, or custodians. To prevent such a situation, confirmation can be sought from those with an interest that the agreement will remain valid and binding on the parties. If the objective requirements are not met, then the agreement is null and void under the law, without the need for any request from the parties; thus, the agreement is considered never to have existed and is not binding on anyone.

The first element of the subjective requirement is mutual consent, which means that the parties in making this agreement do so without pressure or intervention from any party but solely based on the wishes of the promising parties.

The second element of the subjective requirement is the capacity to perform the act by the promising party. The capacity to perform a legal action by the parties in a deed that will result in certain legal consequences if the specified requirements are not met. This is related to the legal subject who will act in that deed (Habib Adjie, 2013:67).

If, at the outset of the deed, especially the subjective requirements of the parties appearing before the Notary are not met, then upon the request of a specific individual, the deed can be annulled. A Notarial Deed is a piece of evidence with full evidentiary power if all the procedural requirements or procedures for creating the deed are fulfilled. If there are procedures that are not fulfilled, and these unfulfilled procedures can be proven, then through a court process, the deed can be declared as having evidentiary power as a private document. Once it is in such a position, its probative value is entrusted to the Judge.

A Notarial Deed that is null and void or void under the law holds evidentiary power as a private document when the legal requirements are not met, without the need for any legal action by an interested party, making it passive in nature. Passive nullity means that a deed will be null and void even without any active action or effort from the concerned party, or it is void under the law immediately due to unmet legal requirements. Meanwhile, active cancellation refers to the deed being subject to annulment in court

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by the parties involved if they no longer wish to be bound by the agreement outlined in the deed, even if all the agreement's conditions have been fulfilled (Habib Adjie, 2017:66).

According to Habib Adjie (2017:67), the nullity of a Notarial Deed encompasses the following aspects:

1. Subject to cancellation.

A Notarial Deed is an agreement made by the parties involved and binds them. Therefore, in principle, the valid conditions of an agreement must also be met by a Notarial Deed. As explained in the previous chapter, the valid conditions for an agreement according to Article 1320 of the Civil

Code are as follows:

- 1) Mutual consent of the parties involved;
- 2) Capacity to enter into an agreement;
- 3) A specific subject matter;
- 4) A lawful cause.

2. Void under the law

A Notarial Deed that does not meet the objective requirements of an agreement, which includes a specific subject matter and a lawful cause, can be considered as a deed that is null and void under the law. This is different from agreements that do not meet the subjective requirements; such agreements are null and void under the law even if no party seeks court annulment. This is referred to as absolute nullity. Absolute nullity can also occur when an agreement is made that does not meet the legal requirements, without any legal action taken by the interested party or in a passive manner.

3. Holds evidentiary power as a private document.

Article 1869 of the Civil Code sets the limits for a Notarial Deed that holds evidentiary power as a private document to be considered valid if it does not meet the requirements stipulated in Article 1868 of the Civil

Code, which are as follows:

- 1) Lack of authority of the relevant public official;
- 2) Absence of the relevant public official;
- 3) Defect in its form; nevertheless, such a deed still retains its evidentiary power as a deed in private handwriting if it is signed by the parties involved.

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a. The Notarial Deed, which holds evidentiary power as a deed in private handwriting.

b. The Notarial Deed becomes null and void under the law.

The Notarial Deed, which possesses evidentiary power as a private document, and the Notarial Deed becoming null and void under the law are two distinct terms. Absolute nullity means that a legal act rendered null and void does not have any legal consequences for anyone; it is void for everyone. In other words, no one is bound by such a legal act, meaning that from the outset, the legal act has no legal ramifications. The term "legal act" refers to actions that have legal consequences and are intended or deemed to be intended. These actions are manifested in a statement, whether explicitly or implicitly (J. Satrio, 1995:29).

Some legal experts distinguish between void agreements and *nonexistent* agreements. A void agreement signifies that the essential elements of a legal act have indeed been fulfilled, but for certain reasons, the legal act itself becomes invalid. By law, such a legal act is initially sanctioned as having no legal consequences. Failure to perform the legal act in the manner required by the law will result in the voiding of said legal act. Conversely, nonexistent means that, in the eyes of the law, a legal act does not exist because one of the elements required in the agreement intended by the parties is not fulfilled (J. Satrio, 1999:59).

An agreement is a legal act formed through the attainment of mutual consent, which is a declaration of free will by two or more parties. The achievement of this agreement depends on the parties involved, resulting in legal consequences for the benefit of one party and at the expense of the other, or reciprocally, while adhering to legal provisions. Therefore, the creation of a notarial deed that does not fulfill the elements outlined in the above definition of an agreement, such as disregarding legal provisions, will render the deed null and void by law (Herlien Budiono, 2011:49).

An agreement that does not meet the objective requirements, specifically when the object is not definite, or it contains prohibited clauses, renders the agreement null and void by law. The necessity for an agreement to have a specific object is emphasized in Article 1333 of the Civil Code, which states that an agreement must have as its subject matter an item, at the very least specifying its type, which can later be determined or quantified in terms of quantity (goods).

Article 1335 of the Civil Code states that an agreement without cause or one made for a prohibited reason is void, demonstrating that every agreement must have a valid cause. However, according to Article 1336 of the Civil Code, if no specific cause is stated but there exists a valid cause, or if there is a cause different from the one declared in the agreement, it is nevertheless valid. A cause is considered prohibited if it is forbidden by the law or contrary to morality or public order, as per Article 1337 of the Civil Code. An agreement is null and void by law if it involves a cause prohibited by law or contrary to morality or public order.

Determining the notarial deeds that have evidentiary strength as underhand deeds, which will be null and void by law, can be observed and determined from:

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1) Specific articles that directly assert that if a notary commits a violation, then the respective deed is considered to possess evidentiary strength as an underhand deed.

2) If it is not explicitly stated in the respective Article as a deed possessing evidentiary strength as an underhand deed, then it reverts to the provisions in the Civil Code regarding deeds null and void by law.

The invalidation or nullity of a notarial deed, or its evidentiary strength as an underhand deed, occurs due to the failure to meet the legal requirements stipulated by law, without the necessity of any specific legal action by the concerned parties involved. Therefore, nullity is of a passive nature, meaning that without any active actions or efforts by the parties involved in an agreement, it will become null or null by law because the required conditions are not fulfilled automatically.

B. The Responsibility of a Notary for Deeds Annulled by the Court

Article 1365 of the Civil Code regulates wrongful acts, which are actions contrary to the law committed by an individual that result in harm to others.

According to Munir Faudi (2001:3), there are three types of wrongful acts: Intentional wrongful acts, wrongful acts without fault, and wrongful acts due to negligence. The legal liability for these acts is outlined in Article 1365 of the Civil Code, which involves liability with an element of fault that requires compensation for the damages caused. Article 1366 of the Civil Code deals with liability due to negligence or lack of care, while Article 1367 of the Civil Code covers liability not only for the damages caused by one's own actions but also for the damages caused by the actions of individuals under one's responsibility or supervision.

If a notary, while creating a deed at the request and with the consent of the parties involved in the agreement, and if the formal requirements stipulated by law for deed creation have been met by the notary, then the notary is not held responsible. Wrongful acts are governed by Article 1365 of the Civil Code, which states that any unlawful act causing harm to another person obligates the wrongdoer to compensate for the damages incurred. Accountability for one's actions typically applies when engaging in actions prohibited by the law.

The Notary has a primary duty in the creation of authentic deeds. If the Notary fulfills their duties in accordance with the Notary Profession Law and relevant regulations governing the creation of deeds, then they have met their material requirements and responsibilities. The Notary is responsible for what is conveyed by the parties involved but is not responsible for the accuracy of the information provided by the parties when requesting the creation of a deed.

The Notary must carry out their duties and responsibilities as they should, in order to ensure that the purpose of creating the deed is achieved and that it remains valid as an authentic deed. The Notary's responsibility in proving the deed, in case of any misunderstanding or error that leads to the loss of its authenticity, rests with the Notary themselves.

In civil cases, it is not uncommon for a notary to be placed in the position of a co-defendant as a forced party. This is because, in a notarial deed, particularly the *Partij Acte*, which serves as evidence in civil cases, the law prohibits notaries from being involved in a legal act as described in the notarial deed they officiate. The involvement of a notary is limited to formulating the legal act of the parties into a deed and then formalizing that deed. Forcing the notary to be seated as a co-defendant is an attempt to compel the notary to provide information about the deed, which has now become evidence in the judicial process (Djoko Sukisno, 2008:52).

A Notary, in the execution of their duties and responsibilities as a public official authorized to create authentic deeds, bears responsibility for their actions. This responsibility is for the purpose of fulfilling their obligations, which include the material accuracy of the deeds they produce. The Notary is responsible for any negligence and errors in the content of the deed created before them. However, the Notary is only responsible for the formal structure of the authentic deed as specified in the law.

A deed, particularly one prepared by a Notary, can potentially be null and void under the law, and as a public official, the Notary bears responsibility for the deed they have created. If a deed prepared by a Notary later becomes a subject of dispute, it becomes necessary to question whether this is a result of an error on the part of the Notary or due to the parties involved not providing honest information to the Notary.

If there is a deed invalidated by a judicial authority due to the negligence of a notary, two sanctions can be imposed on the notary: criminal sanctions and civil sanctions. Criminal sanctions are not regulated within the Notary Profession Law. Therefore, in cases of criminal violations, such as when parties provide false information and the notary, due to their negligence, incorporates this false information into the deed, the notary can be subject to criminal sanctions as stipulated in the Criminal Code. Meanwhile, the civil sanctions that can be imposed on the notary involve compensating the parties who feel aggrieved by the deed they have executed. The compensation that the notary can be held responsible for includes material compensation or actual damages and immaterial compensation or nonpecuniary damages.

CLOSING

Conclusion

The nullity of a notarial deed, or its evidential value as an underhand deed, occurs when the prescribed conditions are not met, without the need for any specific legal action by the parties involved. Therefore, nullity is passive in nature, meaning that without

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any active actions or efforts from the parties involved in an agreement, it will be deemed null or null by law due to unfulfilled conditions.

If there is a deed that is invalidated by the court due to negligence on the part of the notary, there are two sanctions that can be imposed on the notary: criminal sanctions and civil sanctions. Criminal sanctions are not regulated in the Notary Position Law, whereas the civil sanctions that can be imposed on the notary involve compensating the parties who have suffered losses due to the deed they have executed. Compensation that can be borne by the notary includes material compensation or actual damages and immaterial compensation or non-pecuniary damages

Suggestion

For parties intending to create a legal instrument, it is imperative to provide honest and accurate information to the Notary, who will draft the document, in order to ensure accountability and prevent any harm to both parties and the Notary in the future. The Notary must provide legal advice related to the document being drafted, including the legal consequences that may arise from the creation of the instrument for the parties involved. This ensures that the true intentions of the parties can be realized and fulfilled in accordance with their desires.

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