

Substantial Justice in the Court's Decision to Annul an Authentic Deed

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Abstract. *Agreements can be made in writing in the form of an authentic deed. A notary is an official authorized to create an authentic deed. The creation of an authentic deed must comply with the provisions of the Law Number 2 of 2014 concerning the Position of Notary Public amends Law No. 30 of 2004 concerning the Position of Notary Public. In Decision Number 19/Pdt.G/2024/PN.Mks, the Judge declared the authentic deed, namely the Power of Attorney to Sell land made before a Notary, null and void because it was made without the knowledge of one of the parties. However, the Notary was not punished by the judge. This study focuses on discussing whether the judge's decision has reflected substantial justice. This study uses a legal research method with a prescriptive nature, and uses a case approach and a conceptual approach. The legal material analysis technique used is the deductive logic method with a syllogistic mindset. Aristotle's theory of justice states that justice is something that is assessed proportionally according to its role. Therefore, when viewed from Aristotle's theory of justice, the decision that the Notary was not punished for making a Power of Attorney to Sell without the knowledge of one of the parties does not provide substantial justice for the plaintiff. However, the judge could not make such a decision because the imposition of punishment on the notary was not requested in the petitum and he was bound by the principle of Iudex Non Ultra Petita. The principle of Iudex Non Ultra Petita stipulates that the judge cannot decide anything beyond what is requested in the petitum.*

Keywords: *Authentic Deed; Cancellation; Substantial Justice.*

1. Introduction

An agreement is a type of civil law that facilitates various interests of the wider community. This is useful for everyday life, in order to achieve mutual understanding and minimize conflicts of interest (Bella Dalila et al., 2024: 122-132). In the Civil Code, agreements are regulated by Article 1313 of the Civil Code. Agreements can be made in various forms, both written and oral. As long as the agreement meets the provisions of Article 1320 of the Civil Code, it will be valid and binding on the parties.

In the case of written agreements, there is a type of agreement in the form of an authentic deed. The Civil Code stipulates that an authentic deed is an agreement whose preparation follows the provisions of the law and is made before a public official with authority. Notaries are included among the public officials authorized to make authentic deeds. The authentic deeds that Notaries are authorized to prepare are those regulated in Article 15 of Law Number 2 of 2014 concerning the Office of Notaries, an amendment to Law Number 30 of 2004 concerning the Office of Notaries.

Law Number 2 of 2014 concerning the Position of Notary Public, an amendment to Law No. 30 of 2004 concerning the Position of Notary Public, not only regulates the authority of Notaries, but also regulates the obligations, provisions for making authentic deeds and other provisions that must be used by Notaries as guidelines in carrying out their duties and positions. The provisions stipulated in the law must be maintained to ensure that the deeds made are valid and binding on the parties. The provisions stipulated in the law include Article 4 and Article 16 of Law Number 2 of 2014 concerning the Position of Notary Public, an amendment to Law No. 30 of 2004 concerning the Position of Notary Public, which regulates the oath of office and a description of the obligations of Notaries.

In fact, there are still notaries who neglect to implement legal provisions, resulting in lawsuits filed against their authentic deeds. One such case is Decision Number 19/Pdt.G/2024/PN.Mks. The ruling declared the annulment of a notarial deed, specifically a Power of Attorney to Sell land, because it was drawn up without the knowledge of the parties involved. However, the notary was not punished by the judge. Based on the background description above, this study aims to analyze whether Decision Number 19/Pdt.G/2024/PN.Mks, which ruled that a notarial deed was invalid because it was made without the knowledge of one of the interested parties without imposing a penalty on the notary, reflects substantial justice. Considering that the judge's decision is not only made to resolve the dispute, but also to provide justice for the parties and legal certainty.

2. Research Methods

This article is a legal research whose analysis focuses on various legal norms or legal doctrines. In addition, it uses a prescriptive nature so that it can provide opinions on what should be determined on the issues raised in this article, carried out with a case approach whose analysis focuses on the ratio decidendi of Decision Number 19 / Pdt.G / 2024 / PN.Mks and a conceptual approach whose study uses legal concepts provided by experts and developing legal doctrines. This research uses the technique of collecting legal materials from library studies, namely Decision Number 19 / Pdt.G / 2024 / PN.Mks and uses a deductive logic method with a syllogistic mindset as a technique for analyzing legal materials.

3. Results and Discussion

3.1. The Role of a Notary in Making Authentic Deeds

In Law Number 2 of 2014 concerning the Position of Notary Public, amendments to Law No. 30 of 2004 concerning the Position of Notary Public, it states that notaries as public officials have the authority to make authentic deeds as regulated in the law. The existence of this notary position is held as a form of implementation of legal certainty and protection for the community, which is reflected in its authority to make authentic deeds as written evidence of a fact, event, and legal action of the community. The authority of the Notary Public is stated in Article 15 of Law Number 2 of 2014 concerning the Position of Notary Public, amendments to Law No. 30 of 2004 concerning the Position of Notary Public. Meanwhile, the obligations of Notaries are stated in Article 16 of Law Number 2 of 2014 concerning the Position of Notary Public, amendments to Law No. 30 of 2004 concerning the Position of Notary Public. One of the verses in Article 16 which is a reference for the duties and position of a Notary is verse (1) letter a which states that a Notary is obliged to act honestly, carefully, independently, impartially and protect the interests of the parties involved in legal acts.

3.2. Substantive Justice in Decision Number 19/Pdt.G/2024/PN.Mks Declaring the Notarial Deed Invalid

When carrying out their duties, namely adjudicating cases, judges must of course pay attention to the provisions that serve as references so that a fair dispute resolution can be created for the parties. This is in line with the provisions of Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which emphasizes that this judicial power is an authority held by the state in carrying out trials as an effort to uphold law and justice. The existence of judges in this case is a symbol of the court.

In a decision, the judge's considerations play a crucial role, ultimately enabling the judge to formulate a verdict. These considerations serve as a rational basis for the judge in resolving the dispute (Aditya Yuli and Aldio Fahrezi, 2021: 482-496), ensuring that the decision is accountable. These considerations include the judge's legal reasoning process, which involves not only implementing the provisions of relevant laws but also finding the law for direct application to the case at hand (Aditya Yuli and Aldio Fahrezi, 2021: 482-496). The judge's considerations must be compiled in a complete, comprehensive, and structured manner (Tita Shabrina and Tamsil, 2020: 124-139).

After going through the trial process, then compiling the legal reasons relevant to the case, the judge's final step in resolving the case is to issue a judge's decision. This decision is final and binding on all parties involved. M. Yahya Harap argues that, based on their nature, judge's decisions are divided into three types: (M. Yahya Harahap, 2012)

1. Declatoir Decision, this judge's decision is in the form of a statement about rights or status.
2. Constitutive Decision, a judge's decision that confirms a legal situation, either eliminating or creating a new situation.
3. Condemnatoir Decision, this judge's decision contains the imposition of punishment on one of the parties to the case.

Judges in drafting a decision must pay attention to the principle of *Iudex Non Ultra Petita*, which means that judges in deciding a case must not go beyond what the plaintiff has requested in their *petitum* (Eka Nurhikmah et al., 2025: 37-53). In its development, through jurisprudence issued by the Supreme Court, it has tended to allow judges to decide *ultra petita* cases as long as they are still related and can be accounted for in their considerations (Bambang Sugeng et al., 2014: 100-112).

In Decision Number 19/Pdt.G/2024/PN.Mks, the judge's consideration in annulling the Notarial deed in the form of a Power of Attorney to Sell the land was because the plaintiff or landowner with the evidence he had could prove the main points of his lawsuit, while the defendants and co-defendants never submitted a response to the lawsuit given. So from the judge's consideration in annulling the Power of Attorney to Sell made before the Notary, it can be said that it was never attended or made with the consent of the plaintiff as the legal owner of the land. The Notary in Decision Number 19/Pdt.G/2024/PN.Mks is in the position of co-defendant, and from the beginning the plaintiff or landowner did not file a primary *petitum* to punish the Notary other than submitting and complying with the judge's decision. While in the subsidiary *petitum*, the plaintiff asked the judge to be able to decide as fairly as possible/*ex aquo et bono*.

In Decision Number 19/Pdt.G/2024/PN.Mks, the Notary is a co-defendant. The co-defendant's role is to complement the lawsuit, meaning he or she did nothing that would have caused harm to the plaintiff. This co-defendant cannot be directly punished unless proven to have actively committed an unlawful act (Ajeng Wulandari et al., 2025: 28459-28463).

Notaries only formulate the wishes of the parties in the form of an authentic deed. However, Notaries have an obligation to verify the accuracy of the formal documents given to them. In addition, Article 16 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notaries, an amendment to Law Number 30 of 2004 concerning the Position of Notaries, requires Notaries to act carefully so that the principle of caution in making deeds is realized and is also obliged to protect the interests of the parties related to the deed (Siti Khanifah, 2022: 21-29). So in making a Power of Attorney to Sell land which was declared invalid by the judge in this decision, the Notary is considered to be the party who knows the procedures for granting power of attorney to sell land until it is finally stated in the form of an authentic deed. In this case, the Notary who made the Power of Attorney to Sell land and then in court was proven to have been made without the presence of the land owner can be said to have been negligent in carrying out verification, resulting in losses for the plaintiff.

Considering that the existence of a judge's decision has the function of resolving disputes and creating justice and legal certainty, one of the experts who expressed his opinion regarding justice is Aristotle. Aristotle expressed his opinion that justice is something that is assessed proportionally according to its role. Therefore, the author argues that when viewed from Aristotle's theory of justice, a Notary who makes a power of attorney to sell without the knowledge of one of the parties should also be subject to punishment by the judge to help compensate the plaintiff in order to create substantial justice. In relation to Decision Number 19/Pdt.G/2024/PN.Mks, the judge cannot sentence the Notary because in the petitum it was not requested by the plaintiff.

4. Conclusion

The judge exercises his judicial authority to uphold law and justice through his decision. In Decision Number 19/Pdt.G/2024/PN.Mks, the judge concluded in his consideration that the cancellation of the authentic deed was caused by the plaintiff who never appeared before the Notary or agreed to the making of the Power of Attorney to Sell his land. Based on Aristotle's theory of justice, the authentic deed made by the Notary has a role that causes losses to the plaintiff due to the Notary's negligence when making the deed. Therefore, according to Aristotle's theory of justice, the Notary can also be subject to compensation in order to create substantial justice. However, this cannot be realized because the

plaintiff's petitum did not request it and the judge is bound by the principle of Iudex Non Ultra Petita.

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