

## The Legal Cancellation Consequences of A Notarial Deed Due to The Elements Existence of Unlawful Acts (Case Study of Supreme Court Ruling No. 20 PK/PID/2020)

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**Abstract.** *As a public official, a Notary has the task of making deeds. The deed is an authentic piece of evidence to prove that a legal action has occurred between the two parties. Every authentic deed made by a Notary creates legal certainty. Therefore, notaries are required to always be careful and thorough in carrying out their official duties. However, in practice, in carrying out their duties, quite a few Notaries experience problems related to the deeds they make. Like the case that occurred in Supreme Court Decision Number 20 Pk/Pid/2020. Where the Notary is proven to have committed an unlawful act in making the deed and this results in the deed being invalidated. The cancellation of the notarial deed will result in the agreement between the two parties being no longer binding and all processes of transferring rights based on the deed becoming invalid and deemed to have never occurred. For this reason, it is hoped that notaries will always apply the principle of prudence, uphold dignity and professional code of ethics so that they remain wise in carrying out their official duties without harming any party.*

**Keywords:** *Act; Cancellation; Deed; Notary.*

### A. INTRODUCTION

Notaries have heavy obligations in carrying out their mandate as public officials who have authority in the civil sector, who carry out the duties and functions of their position in making deeds as authentic evidence. An authentic deed made by a notary is a means of proof to state that a legal act has occurred between the parties.<sup>1</sup>

Notary as one of the legal professions is one of several elements in the implementation of law, part of whose authority is to issue a document in the form of a deed with the power of an authentic deed. An authentic deed is a deed made and formalized in a

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<sup>1</sup>AA Andi Prajitno. (2015). *Apa Dan Siapa Notaris Di Indonesia Sesuai UUJN Nomor 2 Tahun 2014*. Surabaya: Nusantara Media Officer (PMN), p.2.

form according to law, by or in the presence of public officials, who is authorized to do so is in the place where the deed is made.<sup>2</sup>

Provisions regarding notary deeds and authority are contained in the provisions of the Notary Position Law, namely Law No. 30 of 2004 concerning Notary Positions, hereinafter referred to as UUJN and Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Positions. The next notary will be called UUJNP. Article 1 number 1 UUJNP "Notary is a public official who is authorized to make authentic deeds and has other authorities as intended in this Law or based on other laws." The authority and duties of a notary regulated in Article 15 of the UUJNP are to make authentic deeds which in making them do not fall under the authority of other officials based on the Law, such as deeds regarding agreements, other legal acts and determinations which are based on legal rules must be made in the form of authentic deeds, as well as authentic deeds. which is the will of the parties even though there is no provision that requires it, archiving the deed, confirming the deed, providing a copy, quotation and grosse of the deed as well as other authorities as regulated in paragraphs (2) and (3).

A deed made by or before a notary in his position is an authentic deed which becomes a state document or archive, and the agreement stated therein becomes law for those who make it, in accordance with Article 1337 of the Civil Code jo. Article 1338 Civil Code. Deeds made by Notaries have an important role in creating legal certainty in every legal relationship, because Notarial deeds are authentic, and are the strongest and most complete evidence in every case related to the Notarial deed. Therefore, notaries are required to always be careful and thorough in carrying out their official duties. as stated in Article 65 UUJN and Article 3 Code of Ethics for the Position of the Indonesian Notary Association (INI).

In Article 1869 of the Civil Code, if the party making the deed is not authorized or the deed contains defects in its form or the public official who made the deed is incompetent, then the deed cannot be treated as an authentic deed. The validity of a deed made before a notary can be interpreted as an effort by the state to create legal certainty and protection for the community. However, in the community environment it is not uncommon for legal violations to occur, namely when the notary is negligent in carrying out his duties in making the deed which results in the deed being null and void. In practice, quite a few Notaries experience problems in connection with the deed they have made being declared null and void by a court decision as a result of the discovery of legal defects in its making, for example it turns out that the document provided by one of the parties is incorrect or contributes to the invalidation of the notarial deed.<sup>3</sup>

The term null and void (*nietig*) is a term commonly used to assess an agreement if it does not meet objective requirements, namely a certain thing (*een bepaald onderwerp*) and a reason that is not prohibited (*een geoorloofde oorzaak*), and the term can be canceled if an agreement is not fulfill subjective requirements, namely the

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<sup>2</sup>Notodisoerjo, R. Soegondo. (1982). *Hukum Notariat Di Indonesia Suatu Penjelasan*. Jakarta: Rajawali Press, p. 41.

<sup>3</sup>Wawan Tunggal Alam. (2001). *Hukum Bicara Kasus-kasus dalam Kehidupan Sehari-hari*. Jakarta: Popular Millennials, p. 89.

agreement of those who bind themselves (*de toetseming van degenen die zich verbinden*) and the ability to make an agreement (*de bekwaamheid om eene verbindtenis aan te gaan*).<sup>4</sup>

A Notarial Deed that is canceled by a judge through a court decision can be caused by errors or negligence of the parties who bound themselves in the Notarial Deed. Errors and negligence of both parties or one of the parties result in the existence or emergence of a lawsuit from one of the parties to the deed.<sup>5</sup>

A notary as a public official has full responsibility for every deed he makes, especially if in the future the deed is disputed in court and contains legal defects, then it should be questioned. In a deed that is in dispute or contains legal defects, it must also be known whether there is an element of pure error on the part of the Notary, or whether there was an error on the part of the parties in providing information and other supporting documents.<sup>6</sup>

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In this case, a Notary Code of Ethics has been regulated which explains sanctions related to administrative ethics within the Indonesian Notary Association (INI) and also UUJN, which regulates the overall behavior of notaries in carrying out their duties and functions. If a notary is involved in a criminal case, then the notary can have an impact on the authentic deed he or she makes, so the title of this article is "Legal consequences of the cancellation of a notarial deed due to elements of an unlawful act, case study of Supreme Court decision Number 20 PK/Pid/2020".

In Article 84 UUJN Notaries specifically regulate the consequences of violations by Notaries of certain provisions. As a result of this violation, a Notary's deed can only have the power of proof as a private deed, but it can also cause a deed to become null and void by law. It is very important to know that the violations as referred to in Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Positions relate to 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.

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<sup>4</sup>Habib Adjie. (2009). *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung: PT. Refika Aditama, p. 9.

<sup>5</sup>Djoko Sukisno. (2008). Pengambilan Foto Copi Minuta Akta dan Pemanggilan Notaris. *Pulpit Law*, Volume 20, Number 1, p.5.

<sup>6</sup>Zuliana Maro Batubara. (2011). Analisis Yuridis Terhadap Pembatalan Akta Notaris (Studi Kasus Pada Pengadilan Negeri Medan). *Faculty of Law*. USU Medan, p.8

<sup>7</sup>Habib Adjie. (2009). *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung:PT. Refika Aditama, p. 9.

Factors that can cause a Notarial deed to be canceled or declared to be invalid are as follows:<sup>8</sup>

#### 1. Incompetence and Irregularity in Acting.

The acting authority of legal subjects to carry out legal actions can be limited by or through law. Every person is considered capable of taking legal action, but this freedom is also limited by the working power of objective law. It is said that those who do not have the ability to act or are incompetent are people who generally cannot take legal action.

Changes regarding the inclusion of the identities of the parties or presenters which were originally in the PJN which was part of the head or, later in Article 38 paragraph (3) letter b UUJN the identities of the parties or presenters were changed to become part of the body of the deed, created confusion in determining the contents of the deed, So the interpretation arises that the identity of the parties in the deed is an inseparable part of the contents of the deed. Inclusion of the identities of the parties is part of the formality of the Notarial deed, not part of the material or contents of the deed. In this case, Article 38 paragraphs (2) and (3) have confused the comparison and the contents of the deed. Those who do not have the authority to act or are not authorized are people who are not allowed to carry out certain legal actions. The notary (including the witness) through whom the testator's testamentary deed has been made may not enjoy any of what he or she has granted to them (Article 907 of the Civil Code). This means that the Notary may receive a will from another person as long as it is not from the client who made the will in front of him.

#### 2. Defect in will

The Civil Code (Article 1322-Article 1328 of the Civil Code) determines in a limited way the existence of defects of will, namely error (dwaling), fraud (bedrog) and coercion (dwang).

##### a. Misrepresentation and Fraud

It is said to be fraud if someone deliberately, with will and knowledge, causes misguidance in other people. Fraud is said to occur not only when certain facts are deliberately not disclosed or hidden, but also when false information is deliberately given or occurs through other deception.

##### b. Threat

Threats occur when someone moves another person to take legal action, namely by breaking the law, threatening and causing harm to that person or his property or to a third party. The threat creates such fear that a person's will is formed in a flawed manner. True will has been expressed, but this will arises as a result of threats.

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<sup>8</sup>Habib Adjie. (2008). *Meneropong Khazanah Notaris dan PPAT Indonesia Kumpulan Tulisan tentang Notaris dan PPAT*. Bandung: Citra Aditya Bakti, p. 122-123

### c. Abuse of Circumstances

Abuse of circumstances is a situation where a person is moved by special circumstances to take legal action and the opposing party abuses this. This special situation occurs due to force/emergency circumstances, abnormal mental conditions, or lack of experience.

### d. Contrary to law

Prohibitions stipulated by law regarding agreements will relate to three aspects of the legal act in question, namely:

- 1) Implementation of legal actions.
- 2) The substance of the legal action.
- 3) The aims and objectives of the legal action.

An agreement that is made at a time when there is no prohibition regarding the legal action, but it turns out that at a later date there is a legal provision that prohibits it, then the agreement is not null and void, but becomes revocable or may still be implemented after certain permission is obtained. The determination of whether an agreement is null and void because it is contrary to law is at the time the agreement is made.

### 3. Contrary to Public Order and Good Morality

Legal acts are considered to be contrary to public order if the act violates or is contrary to the basic principles (fundamentals) of the social order, while legal acts are considered to be contrary to good morals if the act violates or is contrary to the moral norms of a society. Notarial Deeds are basically made based on an agreement between the parties. A deed made by a Notary in Notarial practice is called a deed of relaas or a deed of minutes which contains a description of the Notary which is seen and witnessed by the Notary himself at the request of the parties, so that the actions or deeds of the parties which are carried out are written down in the form of a Notarial deed. In the practice of a Notary, a deed made before a Notary is called a party deed, which contains descriptions or information, statements of the parties given or narrated before a Notary. The parties wish that the description or information be included in the form of a Notarial deed. To make a Notarial deed there must be a wish or desire (wilsvorming) and a request from the parties, if the wishes and requests of the parties do not exist, then the Notary will not make the deed in question. To fulfill the wishes and requests of the parties, the Notary can provide advice while remaining based on legal regulations.

If the deed does not comply with the provisions as stated in the Law on the Position of Notaries, then the parties involved in making the deed and who feel disadvantaged by the Notary who made the deed can ask the Notary for compensation. In practice, as happened in the Supreme Court case decision Number 20 PK/Pid/2020. That the land and buildings on Jl. Mulyosari BPD Blok C/45, Surabaya (SHM No.320) belongs to the

plaintiff. In this case, there was an unlawful act by defendant I, whose notary was involved. manipulation in publishing Certificate Sale and Purchase Agreement no 16 And Certificate Power For sell no 17 as well as the Sale and Purchase Deed no 563/2015 dated 19 June 2015, the deed that should have been made was as collateral to provide security to Defendant II and to prove that the Plaintiffs had good ethics towards Defendant II, who was going to sell it to another buyer, but instead they made the two deeds mentioned above.

When Defendant I read the deed to the plaintiff, the Minutes of the Deed contained words about a Guarantee Letter, namely a House Certificate on Jl. Mulyosari BPD Blok C/45, Surabaya (SHM No.320) to be handed over and stored at Defendant I's office due to waiting for the process of unblocking the Land Sale and Purchase on Jl. Mulyosari BPD Blok i, Surabaya (SHM No.2833). (P - 4) but apparently the defendant changed it into a sale and purchase deed. Which is different from what was read by Defendant I.

Defendant I has a different opinion, namely that the notary stated that the deed had been approved and signed by the plaintiff and also defendant II. The plaintiff also received money from Defendant II as a sale and purchase transaction for the land mentioned above. That it was wrong for Defendants I and II to change or manipulate the contents of the agreed deed.

Evidence that is valid or recognized by law in Article 1866 of the Civil Code, one of which is written evidence. Proof by writing is carried out with authentic writings or with writings under the hand. Authentic writings are in the form of authentic deeds, which are made in a form that has been determined by law. Canceling a Notarial deed means not outwardly recognizing the deed, therefore it must be proven from the beginning to the end of the Notarial deed. If it can be proven that the Notarial deed does not meet the requirements as a Notarial deed

## **B. RESEARCH METHODS**

The approach method used in this research is a normative juridical approach. Normative juridical is a type of legal research that conducts research on library materials or auxiliary data as basic research material by examining statutory regulations and documents related to research problems (Soekanto, 2011). The specifications in this writing use descriptive analysis. The purpose of writing is to provide an overview of a particular community or population, or a description of a symptom or between two or more symptoms. This research examines secondary data, namely data obtained from literature studies including statutory regulations, papers related to the problem being studied, official data from government agencies, and data from archives.

The data analysis method used in this research is a qualitative descriptive data analysis method. The qualitative method is a research method that produces analytical descriptions expressed by sources in written or oral statements and actual behavior, and the research is carried out as a whole (Soekanto, 2011). Analysis can be carried out descriptively analytically, meaning that the existing data is described first, then analyzed, and certain relevant theories and quality norms are used to solve the problems in this research.

### 3. RESULT AND DISCUSSION

#### 3.1. The Notary's Responsibilities for Deeds that are Legally Defective and Void by Law

A Notarial Deed cannot be assessed or declared directly and unilaterally to have the power of proof as a private deed or null and void by the parties whose names are listed in the deed or by other people who have an interest in the deed. Evaluation of a Notarial deed whose evidentiary strength has been degraded to become a fraudulent deed or is void by law because it violates the provisions of Article 84 UUJN cannot be carried out by the Supervisory Council, Notary, or even by the parties whose names are listed in the Notarial Deed.<sup>9</sup>

Cancellation is the process, method, or act of canceling something. In relation to Notarial deeds, the term degraded occurs when a Notarial deed as an authentic deed which has perfect and binding evidentiary power, and has met the minimum limit of valid evidence without any further need for other evidence in a civil legal dispute experiences a setback, decline or decline in quality. in the sense that its position is lower in strength as a complete and perfect piece of evidence that is the beginning of proof such as a private deed and has legal defects that cause the cancellation or invalidity of the Notary's deed.<sup>10</sup>

Within the scope of civil law, a person or legal entity is not only responsible for losses resulting from their own actions, but must also be responsible for the actions of other people who are their dependents and objects that are under their control. (Article 1367 of the Civil Code).

Reimbursement of costs, compensation and interest can be sued against the Notary based on a legal relationship between the Notary and the parties appearing before the Notary. Degradation of the evidentiary strength of a Notarial deed can occur if there is a violation of the requirements under applicable law during its preparation. Some examples of things that result in the degradation of a Notary's deed are, making deeds that are not in accordance with the facts, the Notary in making the deed does not guarantee the formal correctness of the deed, the parties do not appear before the Notary, the deed that is made is not read by the Notary to the audience and witnesses. -witnesses, and the deed was not signed on the same date by the parties.<sup>11</sup>

Regarding the claim of a party who feels disadvantaged by a Notary whose deed has had its evidentiary strength degraded or has been rendered null and void because it violates the provisions of article 84 UUJN, the Notary has the right to provide resistance or explanation. If in the judicial process the plaintiff can prove his claim, and is obliged to prove that the Notary's deed does not meet the physical, formal and material aspects, as well as proving the loss. Thus, the assessment of a Notary's deed

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<sup>9</sup> Sjaifurrachaman. (2011). *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta*. Bandung: Mandar Maju, p. 122.

<sup>10</sup> *Ibid*, p. 228

<sup>11</sup> *Ibid*, p. 122

which has the power of proof as a private deed or void by law does not come from just one party, but must be carried out by or through and proven in court.<sup>12</sup>

A Notarial deed becomes the object of dispute by the parties involved in the deed or one of the parties to the deed denies the contents of the agreement made before the Notary, then the party who feels disadvantaged by the existence of the authentic deed can file a civil lawsuit through the District Court or if there is one. Indications of forgery contained in the contents of the Notary's deed do not rule out the possibility that the Notary could be brought to court.<sup>13</sup>

Sudikno Mertokusumo said that for judges, when judging a case, what is primarily important is the facts or events and not the law. Ultimately the judge will find fault by assessing the incident as a whole. The judge, in assessing a Notarial deed which is a dispute in court, refers to the objective and subjective elements contained in the agreement behind which the Notarial deed was made. If one of these conditions is not fulfilled, then the deed will result in being null and void or can be canceled by the parties. party.<sup>14</sup>

The notary has the obligation to ensure that what is contained in the notarial deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that it becomes clear what the contents of the notarial deed are, as well as providing access to information, including access to applicable laws and regulations. related to the parties signing the deed. The parties can decide freely to agree or disagree with the contents of the Notarial deed they will sign.

In the practice of a notary's duties, it is found that if the parties or other parties have a dispute regarding a notarial deed, usually the notary will be withdrawn because he is felt to be one of the parties participating or taking part in or contributing to the criminal act. What a notary means in this case is providing or providing false information among notaries. The deed also proves whether it is possible that the notary intentionally or mistakenly intended to commit a criminal act from the start together with the criminal parties.<sup>15</sup>

According to Habib Adjie "To determine whether a notarial deed has the power of proof as a private deed or will become null and void by law, it can be seen and determined from:

a. The contents (in) of certain articles directly confirm that if the notary commits a violation, then the relevant deed is a deed that has the power of proof as a private deed.

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<sup>12</sup> Habib Adjie. (2011). *Kebatalan dan Pembatalan Akta Notaris*. Bandung:Refika Aditama, p. 153.

<sup>13</sup> Suharnoko. (2005). *Hukum Perjanjian. Teori dan Analisa Kasus*. Jakarta: C3rd stage, p.58.

<sup>14</sup> Sudikno Mertokusumo. (2009). *Hukum Acara Perdata*. Jogjakarta:Liberty, p. 67.

<sup>15</sup>Soesilo, R. (1989). *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-komentarnya Lengkap Pasal Demi Pasal*. Bandung: PT. Archipelago Works, p.23

b. "If it is not explicitly stated in the relevant article as a deed that has the power of proof as a private deed then other articles which are categorized as violating according to Article 88 UJUN, are included in the deed as being null and void."<sup>16</sup>

At the correct level of notarial law regarding Notarial deeds and Notaries, if a Notarial deed is disputed by the parties, then:

a. The parties come back to the Notary to make a deed of cancellation of the deed, and thus the canceled deed is no longer binding on the parties, and the parties bear all the consequences of the cancellation.

b. If the parties do not agree that the deed in question will be annulled, one party can sue the other party, with a lawsuit to degrade the notarial deed into a private deed. After being degraded, the judge examining the lawsuit can give his own interpretation of the notarial deed that has been degraded, whether it remains binding on the parties or is cancelled.<sup>17</sup>

The scope of a notary's responsibility includes the material truth of the deed he or she has made. Regarding a notary's responsibility for material truth, it can be divided into four points, namely:<sup>18</sup>

a. The notary's civil responsibility for the material truth of the deed he has made

b. The notary is criminally responsible for the material truth of the deed he has made

c. The notary's responsibility is based on the Law on Notary Positions regarding the material truth of the deed he or she makes

d. The notary's responsibilities in carrying out his office duties are based on the notary's code of ethics.

Basically, the Notary is not responsible for the contents of the deed made before him, because the contents of the deed are based on the agreement and wishes of the parties. So the Notary in this case is only responsible for the formal form of the authentic deed, as stipulated in the law.<sup>19</sup>

The notary's responsibility for the deed he makes is based on fault (based on fault of liability) so that a notary must be responsible if the deed he makes contains an error or intentional violation by the Notary. However, on the other hand, if an element of error occurs between the presenters then as long as a Notary exercises his authority in accordance with what is stated in the Law, the Notary concerned cannot be held

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<sup>16</sup>Habib A. (2017). *Kebatalan dan Pembatalan Akta Notaris. 4th printing*. Bandung: Reflika Aditama, p. 66

<sup>17</sup>Suharti, Akbar B. (2023). *Analisis Pengajuan Pembatalan Akta ke Pengadilan oleh Notaris (Studi Kantor Notaris Wilayah Kabupaten Gowa)*, PLEDOI, Vol. 1, No. 1, p. 20.

<sup>18</sup>Kunni Afifah. (2017). *Tanggung Jawab dan Perlindungan Hukum bagi Notaris secara Perdata Terhadap Akta yang Dibuatnya. Thesis*. Master of Notary. Islamic University of Indonesia. p. 82.

<sup>19</sup> *Ibid*, p. 82.

responsible because the Notary only records all the information he obtains from the presenters.

From the Decision in Case No. No. 211 K/Pdt/2006 The Supreme Court stated that Defendant I and Defendant II had committed unlawful acts, and the Supreme Court declared the two deeds of Sale and Purchase Agreement No. 16 dated 09 January 2015 and Deed of Power of Attorney to Sell No. 17 dated 09 January 2015. In its consideration, the Supreme Court considered that the sale and purchase agreement deed and the power of attorney to sell deed did not meet the objective requirements. Because the object of the agreement which is not in accordance with the initial agreement is changing the actual contents of the deed.

If the objective elements of Article 1320 of the Civil Code were not fulfilled, the Supreme Court was of the opinion that the agreement did not fulfill a lawful reason, because the buyer (defendant II) and the notary (defendant I) had bad intentions.

Article 1365 of the Civil Code stipulates that if a person suffers a loss due to an unlawful act committed by another person against him, he can submit a claim for compensation to the district court. The elements of unlawful acts regulated in Article 1365 of the Civil Code are:

- a. This act is against the law;
- b. There must be blame on the perpetrator;
- c. There must be a loss (*schade*);
- d. There must be a causal relationship between the act and the loss

Hans Kelsen explained that law is a system of norms, while norms are a statement that emphasizes the "should" or *das sollen* aspect, by including regulations that must be carried out. The law contains general rules which serve as guidelines for people to behave in their relationships, both with each other and in relationships with society. The existence of these regulations and their implementation creates legal certainty.<sup>20</sup>

### **3.2. The Legal Consequences of Cancellation of a Deed Issued by a Notary**

The strength of authentic deeds and notarial deeds is a direct result of the duties of notary officials given by statutory provisions. That in a legal relationship there must be authentic information which is useful as a means of proof for the parties providing the information and is included in the Notary's deed so that it becomes an authentic deed.<sup>21</sup>In line with the notary's responsibility for authority in carrying out his office, legal certainty must be guaranteed continuously and effectively.

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<sup>20</sup>Peter Mahmud Marzuki. (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana, p. 158.

<sup>21</sup>Boty, Rahmawati. Kekuatan Akta Notaris Dalam Menjamin Hak Keperdataan . *Journal of Legal Scholars*, Volume 3 Number 1. doi:<http://doi.org/10.33760/jch.v3i1.12>

A Notarial deed becomes the object of dispute by the parties involved in the deed or one of the parties to the deed denies the contents of the agreement made before the Notary, then the party who feels disadvantaged by the existence of the authentic deed can file a civil lawsuit through the District Court or if there is one. Indications of forgery contained in the contents of the Notary's deed do not rule out the possibility that the Notary could be brought to court.<sup>22</sup>

Notary Public can sentenced penalty administrative if violate provision of constitution, includes:

- a. Coercion government (*bestuursdwang*)
- b. Withdrawal return decision (decree)
- c. Imposition fine Administrative
- d. Imposition Money Force by Government (*dwangsom*)

Sudikno Mertokusumo said that for judges, when judging a case, what is primarily important is the facts or events and not the law. Ultimately the judge will find the error by assessing the incident as a whole.<sup>23</sup> Ultimately the judge will find fault by assessing the incident as a whole. The judge, in assessing a Notarial deed which is a dispute in court, refers to the objective and subjective elements contained in the agreement behind which the Notarial deed was made. If one of these conditions is not fulfilled, then the deed will result in being null and void or can be canceled by the parties. party.<sup>24</sup>

In the case of Supreme Court Decision Number 5/Pdt.G/2020/PN Sby, there has been a strong evidence agreement that the notary or Defendant I has committed a violation in making the deed, and states that Appellee III/Defendant III has canceled the name of Certificate of Ownership No.320 which has been changed to on behalf of Respondent II/Defendant II. The verdict of the Supreme Court Number 5/Pdt.G/2020/PN Sby is as follows:

1. Grant the Memorandum of Appeal submitted by the appellant by the Appellants/Plaintiffs as stated in the *posita and petitem* in full;
2. Declare that the Appellant's/Plaintiff's claim is acceptable, valid and valuable and not *Nebis In Idem*;
3. Declare Appellee I/Defendant I, Appellee II/Defendant II as the losing party and sentence them to pay the court costs arising in the *a quo case*
4. Declare that Appellee III/Defendant III cancels the name of Certificate of Ownership No. 320 which has been changed to be in the name of Appellant II/Defendant II;

<sup>22</sup>Bahder Johan Nasution. (2008). *Metode Penelitian Ilmu Hukum*. Bandung: Mandar Maju Prints to One, p. 34.

<sup>23</sup>Sudikno Mertokusumo. (2009). *Jogjakarta Civil Procedure Law: Liberty*, p. 67.

<sup>24</sup>*Ibid.* p. 119.

In this case the author saw that the court in deciding the case had sided with the plaintiff, where in the lawsuit the plaintiff had explained and provided evidence to the panel of judges to be used as a consideration in deciding the case, but this was not heeded by the panel of judges who actually decide another matter. That the defendant has committed an unlawful act, namely by violating the provisions of the process of making a notarial deed as stated in the Law on Notary Positions.

As a result, the Notarial Deed was declared to have no legal force because there were elements of unlawful acts against the Plaintiff and stated that the Notary must comply with this decision. That even though the Plaintiff does not claim material losses against the Notary in this case, the Notary is still responsible for the deed which was declared invalid by the court as a consequence or legal obligation by the Notary for his legal actions.

#### **D. CONCLUSION**

As a result of the notarial deed being declared null and void, the contents and agreements of the deed become null and void and are not binding on the parties. And factors that cause a notarial deed to be canceled by the court, namely when the notary is proven to have committed a violation such as an unlawful act, for example in making a deed there is an element of coercion by the notary for one of the parties to sign the deed, not reading the deed in front of the parties and conditions the formality of making other deeds is violated by the notary. If proven, the notary must provide compensation to interested parties or those who feel disadvantaged by the deed made by the notary. The suggestion from this research is that the notary must act carefully and thoroughly in carrying out his duties, especially in making deeds. Notary is a position given by the government to help serve the interests of the community in the form of making authentic deeds. Therefore, a Notary, in carrying out his duties in making authentic deeds, should understand properly and correctly and be careful in making a deed so that the deed he makes does not lose its authentic character and cause losses to other parties. Notaries in carrying out their duties and authority must always be thorough and check the correctness of the data provided by the presenter and adhere to the Law on the Position of Notaries and in carrying out their position must adhere to morals and ethics.

#### **5. REFERENCES**

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### **Regulation**

- Law No. 30 of 2004 concerning Notary Positions
- Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries hereinafter referred to as UUJN