

## Aspects of Legal Certainty in the Unilateral Cancellation of Notarial Deeds without the Presence of the Interested Party

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**Abstract.** *The aim of this study is to discuss the Aspect of Legal Certainty in the Unilateral Cancellation of Notarial Deeds Without the Presence of Interested Parties, in which one form of legal certainty is Legislation. Furthermore, in order to guarantee legal certainty if there is a contract between legal subjects which requires further legal action, it is usually conducted by making an official deed made before a notary. The position and legal force of a notarial deed are important since notaries are given special authority by special laws so that the notary's responsibility for the cancellation of a deed needs to be further analyzed because it is an inseparable aspect of legal certainty in the civil law system in Indonesia. This study used normative research by using the approach method, theory/concept, and analysis method included in the discipline of dogmatic law by analyzing the decision of case Number: 1127/Pdt.G/2020/PN. Dps Data were collected through literature study and it was analyzed descriptively qualitatively with primary legal materials and secondary legal materials. This study concludes that a notarial deed will be an authentic deed if the deed is made in accordance with existing regulations and it meets the provisions stipulated in the Notary Law and the notary's responsibility in cancelling a notarial deed conducted unilaterally without the presence of a notary.*

**Keywords:** *Certainty; Legal; Notary.*

### 1. Introduction

Indonesia, as a country with a large territory and population, requires a comprehensive legal system as a manifestation of the state's role in ensuring legal certainty for all citizens. One concrete form of legal certainty in community life; especially, in the implementation of legal actions such as agreements, cancellation of agreements, and so on, is the existence of Legislation. This Legislation is legal instrument which is binding and they generally applicable, and are not based on unilateral decisions. In addition, the principle of legal certainty is a fundamental concept which aims to ensure that the law is enforced consistently and it does not cause harm to any party. (Yushendri et al., 2024:2-3)

Law has a central role in providing protection to society from various forms of criminal acts and abuses which can harm individuals and groups. In addition to being a tool of

social control, law functions as a normative guideline in community life. Gustav Radbruch, as quoted in Achmad Ali's work, states that there are three basic values which are the main objectives of law according to many legal theorists and philosophers that are justice, benefit, and legal certainty. The emergence of modern law has opened up space for the emergence of new issues, one of which is the issue of legal certainty as a basic need. Although the concept of legal certainty is classified as a relatively new discourse in the development of law, the values of justice and utility have actually been known and implemented since traditional times, long before the formation of the modern legal system (Ali, 2012).

In Indonesia, law is enforced through laws that clearly define the role of each person in obtaining legal products that are accurate and reliable, the most notable of which is Notary. The concept of Notary authority was established in Law No. 2 of 2014 as a result of changes to Law No. 30 of 2004 regarding Notary Position. These laws define and govern Notarys' powers, as outlined in Sections 1 and 15. Notary is a public official authorized to make authentic deeds relating to all legal acts, agreements, and stipulations required by laws and regulations or desired by interested parties to be stated in the form of deeds. Aside from that, Notary is responsible for ensuring that the date of the act is adhered to, that the act is executed, and that the act's profits, losses, and expenses are distributed to the relevant parties in accordance with the law.

Notarys' legal product, which is an authentic act, has a high chance of success in the legal field. The act is said to have met the minimum standard as a safe tool without the need for any additional tools during the manufacturing process, making it widely regarded as the best tool. However, legal enforcement is not a one-time event. If there is a significant legal defect, the act may suffer a loss of value or a degradation of its legal status. Such defects can result in the cancellation or invalidity of the deed, which reduces its effectiveness as evidence in civil legal disputes. (Sari, 2022:249)

To ensure legal compliance when there is a disagreement between legal subjects who require legal assistance, a formal deed is typically used, which is prepared by a Notary. The purpose of creating this act is to provide formal legality to the legal proceedings that are being carried out by the parties, as well as to ensure that the proceedings are conducted in accordance with the law. (Millen Nagasti, et al., 2024:897) Meanwhile, the main purpose of making a Notarial deed is to provide a guarantee of legal certainty for parties who have good intentions in conducting legal obligations; such as, land sale and purchase transactions, business agreements, and other forms of legal relationships. Notarial Deeds have a position as valid evidence and have binding legal force. The deed even has binding force against third parties, for example through signing and affixing fingerprints to a dated statement issued by a Notary or authorized official in accordance with the provisions of the Civil Code (KUH Perdata). In conducting his/her duties, a Notary is prohibited from siding with one party, and must be neutral and objective in making the deed, so that fair legal protection is created and legal certainty is guaranteed for all parties involved in the deed.

According to Irawan Soerodjo, there are three essential elements that must be met so that a deed can be qualified as an authentic deed: (Irawan Soerodjo, 2003)

- 1) The deed must be made in a form which has been determined by laws and regulations;
- 2) The deed must be made by and before a public official who has the authority;

- 3) The deed must be made by and before a public official who is indeed authorized to do so, and must be made in the jurisdiction where the official exercises his/her authority.

The effectiveness of ostensive acts is based on the fact that the information and materials contained within them are valuable and useful to people when there are no tools available to assist or guide them. Furthermore, in the context of civil law, authentic deeds have high evidentiary value, so that no party can show formal and material defects in the deed, its truth has been legally recognized and does not need to be proven again. (Maria, 2020:409) However, in practice, the execution of the journey does not always follow the expectations of those involved. In the current situation, a variety of situations may arise as a result of a disagreement. This cancellation can be done on the basis of an agreement of the parties or based on a court decision, if the law is valid to cancel the validity of the agreement. (Maria, 2020:410) If there is a disagreement between two people or between one person and another, the law that can be used is to impose a penalty. Aside from that, it is possible to amend the act that has been created if there are legal reasons that might justify it in accordance with the current laws.

For the first time, a data case has been filed at the Denpasar District Court with the case number 1127/Pdt.G/2020/PN.Dps, which concerns the enforcement of a peace act prepared by Notary. In this case, the Plaintiff on behalf of Sahawan stated that he had never signed the Deed of Peace Number: 02 dated 2 December 2017 that was signed by Notary I Ketut Sanjaya, S.H. as a Defendant. However, based on the results of the investigation and development of the panel of judges, the lawsuit has not been eliminated. This resulted in a problem, since there was no evidence of formalism in the process of creating the act, particularly in terms of the importance of the person as one of the first steps in creating an authentic act based on legal knowledge.

According to Article 1867 of the Civil Code (KUH Perdata), an authentic deed is defined as a deed made by or before an authorized public official, and made at the place where the official exercises his authority. As a result, it is stated that formal aspects such as the form of the act, the skill of the worker, and the location of the act must be taken into account in order for an act to be classified as an ostensible act with a clear legal basis. (Sasauw, 2015:98) As a result, the presence of the interested parties is an absolute requirement that cannot be ignored. If this condition is met, the act must be declared invalid by law since it does not meet the formal requirements outlined in the law. Based on this, there is a discrepancy between the principle of legal certainty and the decision of the Denpasar District Court in case Number: 1127/Pdt.G/2020/PN.Dps, where the lawsuit for cancellation of the peace deed filed by the applicant was not granted, even though the deed was not clearly attended by the interested parties as stated in the contents of the deed. This raises legal concerns about the consistency of the application of the law to specific events, particularly in terms of ensuring legal protection and compliance for those involved.

Based on the legal facts as described, there is an urgency to conduct further studies regarding the position and application of the legal certainty aspect in the Denpasar District Court Decision Number: 1127/Pdt.G/2020/PN.Dps. This decision raises legal issues related to authentic deeds made without the presence of interested parties, but they are still considered valid by the court.

Based on the information presented above, the problem in this study can be identified as follows:

- 1) What is the status and effectiveness of notarial acts in Indonesia's legal data and jurisdiction system?
- 2) What is the role of the notary in the recording of notarial acts that are done privately without the knowledge of relevant parties?

The goal of this research is to evaluate the impact of judicial oversight on the creation and enforcement of the Indonesian legal system. Aside from that, the purpose of this research is to conduct a notarial examination of acts that are performed secretly, particularly in cases when acts are created without the knowledge of those who are responsible for enforcing the law.

## **2. Research Methods**

The methodology used in this research is a normative legal method. Normative legal research is a type of legal research that is library-based, namely research that emphasizes secondary data in the form of legal materials such as legislation, doctrine, court decisions, and other relevant legal literature. This method is used to examine existing legal norms and analyze their application in the context of a specific case that will serve as the subject of research. (Ronny Hanitijo Soemitro, 1990:11) Normative legal research is one type of primary legal research in the legal science tradition, because it focuses on written legal norms as a basis for analyzing a legal problem. The main legal sources are the main references in normative legal research, such as legislation, doctrine, and judicial centers. This study employs contingency planning, case management, and conceptual planning. The three categories are analyzed in the context of dogmatic legal education, with the primary goal of evaluating the quality of legal knowledge in the process of filing notarial acts independently and without being influenced by those in power. (Butarbutar, 2018:148) The next step in this research is to use a descriptive analysis method with a qualitative focus. The purpose of the analysis is to systematize and address the legal issues that have been identified, particularly those related to the application of the law in the context of notary acts. Data collection is accomplished through research, with the goal of obtaining primary, secondary, and tertiary legal materials. The legal materials used in this study include laws and regulations, especially the Denpasar District Court Number: 1127/Pdt.G/2020/PN.Dps, books and journals, as well as other legal documents that are relevant and allow for analysis of problems.

## **3. Results And Discussion**

Legal status and legal force are deeds that have been firmly established in legislation as important instruments to assist legal certainty. Before delving more into the status of law and its enforcement, it is critical to first understand the definition of "deed" according to legal scholars. R. Subekti, in the context of law enforcement, states that an act is a document that is quickly created as a result of the existence of a legal event, which is formalized and signed by relevant parties. This definition emphasizes that an act is more than just a written document; it also has legal significance and can be used as a tool in legal proceedings when necessary. (R. Subekti, 1987) Furthermore, Sudikno Mertokusumo defines *akta* as a statement made by those who created it, describing a situation that has become the foundation of a responsibility or a need, and has since been adopted as a tool. This study demonstrates that the element of intention in making

a deed as evidence is an essential aspect, so that the deed has inherent legal force since it was made. As a result, a deed is more than just an administrative document; it also plays an important role in the legal system of data. (Sudikno Mertokusumo, 2002) Furthermore, an act can be used as a tool if it is created by a qualified person in accordance with the requirements outlined in the rules of procedure. A deed that meets these requirements is an authentic deed, also known as a notarial deed. An authentic deed has perfect evidentiary power in civil law because its creation is carried out by or before a formally authorized public official, and follows the form and procedures stipulated by law.

Notarial deed is one form of authentic deed as referred to in Article 1868 of the Civil Code (KUH Perdata) which states that: "An authentic deed is a deed made according to the form determined by law, by or before a public official authorized for that purpose, at the place where the deed is made." In this context, "authorized public official" refers to the notary office, which was established specifically in Article 1 of Law No. 30 of 2004, as amended by Law No. 2 of 2014. The text states that: "Notary is one of the few public servants who is responsible for preparing authentic acts on all matters that are required by authentic laws or by those who have a vested interest in doing so." As a result, notaries have a central role in the system of enforcing the law through the ability to create an authentic act. (Gaol, 2018:91)

Based on the available legal knowledge, it is possible to conclude that notarial acts and their legal status in the Indonesian legal system are important tools for identifying and resolving legal issues. Notarial deeds are included in the class of authentic deeds, such as the form and procedures that have been determined in legislation, especially in the Office of Notaries (UUJN). However, if the process of creating the act does not meet the formal and material requirements outlined in the Notary Laws, such as being created without the approval of relevant parties or being created by notaries outside of the jurisdiction of the act, the act will no longer be valid. In this case, the development becomes deteriorated (degradation) and is legally classified as an act below the hand, resulting in a lack of clarity as an authentic act. (Gaol, 2018:92)

### **3.1. Position and Legal Power of Notarial Deeds in the Civil and Notarial Law System in Indonesia**

If an act has the status of an ostensible act and is subject to strict law, its creation must meet the requirements outlined in the Notary Laws (UUJN). In this case, notaries as public servants must prepare acts that adhere to formal and material requirements. The following are a few examples:

- a. Formal Requirements:
  - 1) The deed is made in the form specified in the legislation;
  - 2) Made by an authorized notary.
  - 3) Conducted in the notary's work area;
  - 4) Attended by the relevant parties and fulfilling the provisions for the presence of witnesses if required.
- b. Material Requirements:
  - 1) The parties making the deed have legal authority (legally competent);
  - 2) The contents of the deed do not conflict with the law, public order, and morality;

- 3) There is an agreement from the parties without any element of coercion, error, or fraud.

The importance of form and material in ensuring the validity and timeliness of an act as a tool in the Indonesian legal system is emphasized. Lack of concern for one of the conditions can be interpreted as the transition of the status of an act from an ostensible act to an ostensible act, which would eventually affect the amount of money owed in the legal system.

As a result, a notarial deed has the status of an authentic act with legal standing if it is prepared in accordance with the requirements of the Notary's Ordinance and other regulations. In general, a notarial deed can be considered authentic if it meets three criteria: a clear method of creation, appropriate notarial authority, and a lack of conflict with existing laws. (Habib, 2021) As a result of this, notarial deeds in the Indonesian legal system have the potential to be a useful tool in the process of determining the form and material of a transaction.

Furthermore, if an act does not meet one of the requirements outlined in the Notary Regulations or Notary law, the act will be classified as formal and/or material, and its status may change to that of an act on the ground. As a public servant, Habib Adjie's contribution to the book *Civil and State Administrative Sanctions against Notaries* is significant for two reasons: first, the desire of the notary to create an act that meets the needs of the parties; and second, the need for formality, form, and materials in accordance with the law. However, in order to determine whether or not an act is valid, it is necessary to conduct an investigation. If there is no pending legal action, the notarial act becomes valid and affects the relevant parties.

However, this does not apply to legal acts, because legal acts do not exist or are not created continuously. (Habib, 2011) According to the findings of the study, Decision Number 1127/Pdt.G/2020/PN.Dps panel of judges did not meet the requirements of the Plaintiff Act. In the *posita* of the lawsuit, it is explained that Defendant II initially offered a plot of land to the Plaintiff, but then committed a breach of contract so that the Plaintiff reported it criminally. As a form of good faith, Defendant II offered replacement land, which was agreed upon in the Peace Deed (Dading) No. 46 dated October 18, 2016 made before Notary I Ketut Senjaya, S.H., and on the basis of the peace, the Plaintiff withdrew his criminal report. However, later on, Defendant II did not conduct his performance as agreed.

Without the knowledge and presence of the Plaintiff, Defendant I unilaterally stated that the peace deed No. 46 had been cancelled, and made a new deed, namely Dading No. 02 dated December 2, 2017, the contents of which were detrimental to the Plaintiff since they removed the compensation which had previously been agreed upon. The Plaintiff felt aggrieved since he never attended or approved the new deed, so he filed a lawsuit for cancellation to the Denpasar District Court. However, the lawsuit was not accepted by the panel of judges, even though there were indications of formal defects related to the validity of the deed made without the presence of the interested party.

Furthermore, in the context of legal proceedings, the filing of a notarial act without the approval of a relevant party causes the act to lose its validity, resulting in a lack of legal standing. Despite the fact that notarial acts are not formally recorded in the Notarial Courts (UUJN), the UUJN provides a space for addressing errors in notarial acts,

particularly if errors are discovered in the areas that were previously unknown after the act was signed and recorded.

Corrections can be carried out through the mechanisms outlined in Article 51 of Law No. 2 of 2014 regarding the Notary. The method of correction that is used is as follows:

- a. Correction is carried out by creating Minutes of Correction in the presence of attorneys, witnesses, and parties;
- b. Notary is required to include information about corrections in Minutes of Deed by submitting the number and date of Minutes of Rectification without questioning or analyzing any issues with Minutes of Deed that may arise;
- c. The notary is obliged to convey or notify the parties of the correction by submitting a copy of the Correction Minutes.

Thus, the authority to make corrections to typing or writing errors lies entirely in the hands of the notary, not the authority of the parties. (Suba & Sudirman, 2024)

### **3.2. Notary's Responsibility in Cancelling Notarial Deeds Carried Out Unilaterally Without the Presence of the Interested Party**

According to the researcher, a deed which does not meet the formal and material requirements as stipulated in the laws and regulations should be able to be canceled by the panel of judges. However, in practice, it does not happen. As a result, the legal certainty that should have been obtained by the Plaintiff is not fulfilled, and instead provides space for Defendant I as a Notary to avoid his legal responsibility.

The researcher will then provide information on the responsibilities of notaries in the area of action research that is carried out independently without being influenced by important parties. This will be examined based on the provisions of the Notary Law and other laws that are implemented in Indonesia. The goal is to determine how the law protects the people who are involved and how the Notary is held accountable as a public servant.

The responsibilities that Notaries create show the responsibilities based on the situation. This means that while creating an authentic act, the Notary is adamant if there is any error or violation in the act that is created, whether it is due to a negligence or something else entirely. This begins with the Notary's position as a public servant who must express professionalism, consideration for others, and adherence to the laws governing the Notary, particularly the Notary Position Law. (Andi Mamminanga, 2008).

As stated in Decision Number: 1127/Pdt.G/2020/PN. Dps., it is a fact that the Peace Deed (dading) created by Notary (Defendant I) is not created by the Plaintiff as one of the few entities that must establish themselves in accordance with Defendant II. Accordingly, the aforementioned act is formally flawed since it does not diminish the requirement for the presence of the parties as it is outlined in the regulations of the Notary and the Law. Because of this, Notary, as a person who creates authentic acts, must be extremely cautious when creating acts that do not adhere to legal procedures. The principle of liability based on error, this means that the notary must be responsible for actions that cause losses since there are authorities for violations and provisions of laws that are being followed.

Based on the above description, the notary's responsibilities in discussing notary actions that are carried out in a private manner without being composed of important parties is as follows:

### **1) Accountability for the Notary's Position;**

According to Article 16 paragraph (1) of the letter of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning the Notary Position (UUJN), it is stated that in carrying out the duties of the position, a Notary must be able to be trustworthy, honest, fair, independent, not be biased, and protect the interests of all parties involved in a particular legal document. This highlights the importance of professionalism and ethics, which every notary should strive for.

If the notary disagrees with the aforementioned provisions, the following administrative sanctions might be established as stated in Article 85 of the UUJN:

- 1) Written Warning,
- 2) Temporary Dismissal,
- 3) Honor-based Dismissal, or
- 4) Dismissal is not consistent with the norm.

In addition to administrative sanctions, civil liability might be communicated to the guilty notary. As stated in the general data law, the parties involved are obligated to inform the notary of the compensation for costs, losses, and interest. Because of this, notaries must ensure that all procedures, formalities, and materials are followed in every action that is made so as to avoid creating legal problems for the parties involved. (Thomas, 2023)

### **2) Civil Liability;**

Based on Article 1365 in conjunction with 1366 of the Civil Code, every unlawful act, whether intentional or due to negligence, gives rise to an obligation to compensate for losses. In this case, a Notary who makes a deed without the presence of an interested party can be considered to have committed an unlawful act so that it is responsible for the losses incurred. This liability includes reimbursement of costs, compensation, and interest to the injured party. (Thomas, 2023)

### **3) Criminal liability;**

Making a deed without the presence of the interested party can be qualified as a criminal act of falsification of information since it is contrary to the provisions of the Notary Law of 2014 which requires the deed to be read in front of the parties. In this case, the Notary can be held criminally responsible in accordance with Article 263 paragraph (1) in conjunction with Article 264 paragraph (1) and Article 266 paragraph (1) of the Criminal Code concerning forgery of documents, which threatens the perpetrator with a maximum imprisonment of six years if the forgery causes losses. (Thomas, 2023:117) Article 264 paragraph (1) number 1 of the Criminal Code states that forgery of an authentic deed is subject to a maximum imprisonment of eight years. Meanwhile, Article 266 paragraph (1) of the Criminal Code stipulates that



anyone who orders false information to be included in an authentic deed, with the intention that the deed be used as if the information is true, and causes losses, shall be subject to a maximum imprisonment of seven years. (Thomas, 2023:121)

#### 4) Accountability under the Code of Ethics;

Article 6 number (1) of the Notary Code of Ethics regulates sanctions for ethical violations, in the form of: reprimands, warnings, temporary suspension, honourable suspension and dishonourable suspension from membership of the Notary Association.

#### 4. Conclusion

Legal Power and Position As stated in Article 1868 of the Civil Code and Law No. 2 of 2014 concerning Notary Position, Notary Deeds have important legal protection as an authentic tool in Indonesian data law. Notary Deeds are clear and have strict legal requirements if they are made in accordance with formal and material standards, which include minimizing the method of production, creating an official's authority, and ensuring that all information complies with applicable laws. It is not in accordance with the procedures, such as not being composed of important individuals, loses its position as an authentic deed, and can be changed to an akta below the hand. As stated in Decision of Case Number: 1127/Pdt.G/2020/PN. Dps., wherein the panel of judges rejected the lawsuit for cancellation of a deed that is created in a unilateral manner without being composed of the plaintiff, this also hinders the ability of the aforementioned party to be detrimental. Position, according to UUJN; Civil, Criminal, Code of Ethics are some examples of notaries that create an act in a separate manner without being composed of important parties. The application of legal principles in the creation and drafting of notarial acts is crucial to protecting the rights of individuals. The unilateral cancellation of a deed without going through a legal procedure is detrimental to the principle of justice and can harm the integrity of the notary profession as a public servant.

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### **Regulation:**

Law No. 2 of 2014 which is an amendment to Law No. 30 of 2004 concerning the Position of Notary