JURNAL AKTA
Volume 6 Issue 2, June 2019

Judge Authority To Cancel The Notary Deed As Authentic Evidence

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Abstract. The purpose of this study were 1) to identify and explain the authority of a judge to cancel the notarial deed as authentic evidence 2) To identify and explain the condition of the cancellation of a notary and legal consequences of the cancellation of an authentic deed. This research method is using empirical juridical approach "empirical juridical approach used to study the legislation. Specifications research used in this study is a descriptive analysis, from this study is expected to obtain a detailed and systematic description of the problem to be studied. Based on data analysis concluded that 1) Judges have authority give an assessment of a notarial deed which was used including eventually issued a verdict "cancel" the notarial deed. The authority of judges in dismissing a notarial deed in a civil case is based on the plaintiff's request wants in the lawsuit. The judge is not authorized to hear and determine a claim outside of what is included or requested by the parties in the suit so the judges to be passive. 2) The cancellation of the notary deed because of the element of achievement or objective requirements of the power of attorney and the deed of sale. As a result of the law is a) Clear and void as a result, legal acts which do not have legal effect from the occurrence of such legal acts. b) Can be canceled: legal act performed does not have the legal effect since the cancellation. c) Degraded strength of proof (UUJN): an authentic act has the strength of evidence that is complete or perfect in the proceedings, but the forces can be degraded / slowdown / downturn into a deed under the hand when in the making violation of the provisions of the requirements under laws apply. d) Subject to administrative sanctions in the form of verbal warning and a written warning light if violations.
Keywords: Authority; Deeds; Notary; Authentic evidence

1. Introduction

Indonesia is a country of law and the law provides protection to human interests that govern all relationships between people, individuals and groups as well as individuals with the government. The legal provisions are made to avoid disputes that arise in the community, with the establishment of a clear legal norms then any act that may or may not do in the community, so as to create order in society.[3] Protection of society arise because of the legal norms that require each person to behave in such a way and if these norms are violated, the violation are penalized on penalties.[4]

The role of the judge as post judicial power apparatus Act No. 7 of 1989 concerning the Religious Courts, in principle task is to carry out judicial functions Judge in accordance with regulatory requirements. In carrying out judicial functions is incumbent on the judge to uphold the law and justice. In connection with this, the verdict the judge must consider three things are essential, namely justice

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(*gerechtigheit*), usefulness (*zwachmatigheit*) and certainty (*rechsecherheit*).[5]
Sudikno Mertokusumo in his opinion, the third principle must be implemented in a compromise, that is by applying all three were equally or proportionately.[6] Decision not to cause chaos or unrest for the community, especially for those seeking justice. The judge, as the main organ in a trial and as executor of the judicial authorities who understand the law to be menerimam, examine and adjudicate a case, in accordance with Article 10, paragraph (1) of Act No. 48 of 2009 on Judicial Power, and thus mandatory incumbent upon the judge to find the law, either through written or unwritten law to decide a case based on the law as a prudent and responsible.[7]
The discovery of the law according to Sudikno is the law-making process by the judge or other legal officers who were given the task of implementing the law or apply the common law rule against a concrete legal event. The division of legal regulation was created to organize the life of society, one of whom is the agrarian law. Understanding the opinion Subekti, agrarian affairs is all the land and all that is in it and on it, as has been stipulated in the Basic Agrarian Law.[8] Along with the times, change of land to be complex transformations that accompanied the land issues are present in people's lives. Land issues in terms of empirical very closely with everyday events arising from the various policies and the changing needs on the ground, one of them is related to the grant.
Article 1868 BW, an authentic deed is a deed in the form prescribed by the laws are made by or in the presence of officials of the ruling to the public at the place where the deed was made. According to the provisions of Article 1868 BW, there are two kinds of authentic deed is a deed made by and a deed made in the presence of public servants appointed by the law. Deed made by the notary may constitute an act which includes "*relaas*" or something authentic outlines actions taken by a state that is seen or witnessed by officials of the deed, the notary's own, in carrying out his position as a notary. Deed made "before" the notary is a deed which contains of what is happening because of acts committed by other parties to the notary in the running position and for purposes where the other party that had come before a notary public and give a description of it or do this thing in before a notary, so that statements or actions that dikonstantir by a notary in an authentic deed.[9]
Based on the background of the problems mentioned above, then the problem can be formulated as follows: How can the judge authority to cancel the notarial deed as authentic evidence?; What condition the cancellation of a notary and legal consequences of the cancellation of an authentic deed?

Research methods

This type of research is by using empirical juridical approach "empirical juridical approach used to study the legislation"[10] relating to the authority of a judge to cancel the notarial deed as authentic evidence of the cancellation of the grant.
Specifications research used in this study is a descriptive analysis, from this study is

[5] Abdul Manan, 2012, *Penerapan Hukum Acara Perdata di Peradilan Agama*, Jakarta:Kencana, p. 291.
[6] Sudikno Mertokusumo dan A.Pilto, 1993, *Bab-Bab Tentang Penemuan Hukum* Jakarta:Citra Adiya Bakti, p. 2.
[7] Ahmad Rifa'i, 2010, *Penemuan Hukum oleh Hakim*, Jakarta : Sinar grafika, p.26
[8] Boedi Harsono, 2008, *Hukum Agraria Indonesia*, Jakarta, Djambatan, p. 14
[9] GHS Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, Jakarta, p. 51
[10] Ulber Silalahi, 2009, *Metode Penelitian Sosial*, Bandung: Refika Aditanam, p 29

expected to obtain a detailed and systematic description of the problem to be studied. The analysis is meant by an idea, facts obtained will be analyzed carefully to address the problem.[11]

2. Discussion

2.1. The authority of the judge to cancel the notarial deed as authentic evidence

Product performance of judges prevalent form of decision (vonnis) or determination (*beschiking*). The verdict issued by the judge started because there are disputes between the parties (contentious) while the determination is for their petition by one party (*voluntair*). Definition of the decision, according to Sudikno are:
A statement by the judge as State officials were given the authority to the court pronounced and aims to end or settle a problem or dispute between the parties.[12]
Furthermore Komari argues:
The verdict is written responsibility as a judge to accept, double check, decide and resolve cases, for the sake of upholding the law, truth and justice are spoken in advance of the trial open to the public.[13]
Focused on the opinion of some scholars in the above authors found that the written verdict is issued liability relating to the duty judge to settle a problem or dispute submitted to, for the sake of upholding the law, truth and justice are spoken in advance of the trial open to the public.
In principle, the judge must make a decision based on considerable judgment. The verdict does not meet these requirements are not considered sufficient consideration decision or onvoldoende gemotiveerd (insufficient judgment). Legal grounds into consideration the basic starting point of the following provisions:

- Articles of legislation
- customary law
- Jurisprudence
- legal doctrine

In case of cancellation of the judge's ruling is necessary because while not requested cancellation of the certificate is valid or invalid. In the case null and void, if nothing happens then no need nullification dispute was settled by a judge but if there is a dispute then it needs to be decided by the nullification of judges and undoing was retroactive since the agreement was made.
Errors that occur on the content of the deed could happen if the parties testified that when a deed is considered correct, but after that later proved false. For example:

- Concerned provide evidence of ownership of the object of an agreement later found to be fake.
- Concerned admitted as a citizen of Indonesia, later turned out to strangers. In connection with the authority of the judge in deciding the cancellation of a good deed in the form of void or in the form of irrevocable, the judge can only do so when put to him a certificate as evidence. Judges are not possible on initiative itself give judgment in the absence of a deed agreement as written evidence.

That expectations in the shed to the judge in his role to conduct judiciary and law

[11] Sunaryati Hartono, 1994, *Penelitian Hukum Indonesia Pada Akhir Abad ke-20*, Bandung, Alumni, p. 101.
[12] Sudikno Mertokusumo, Op Cit, p. 175
[13] Komari, 2003, *Putusan,* disampaikan pada diklat calon hakim angkatan XVI, Cinere, Jakarta, p.1

enforcement, and the truth is very large. Bargaining but to what extent these expectations can be met more difficult to define explicitly because to get that goal would not want to be associated with the ideals held by each judge.
In the course of his judicial and law enforcement and the truth, the judge is free (independent) means that judges are not under the influence or pressure, or no intervention from any party or any power.[14] According to article 27 of Act No. 14 Of 1970 judges as law enforcement and justice shall explore, and understand the legal values that live in the community.
The extent to which the judge can assess the contents of a notarial deed, especially when the notarial deed is an agreement. Article 1338 (1) of the Civil Code states "all agreements made according to applicable laws as laws for those who made it". Then Article 1870 of the Civil Code states that the authentic act is a perfect proof. The authentic act is an evidence of binding, in the sense that what is written in the certificate must be trusted by the judge, that must be true, as long as no provable untruths.
Notwithstanding any provision to the above, judges usually take the decision to cancel a deed with the basis of their opinions in the doctrine that an agreement must be implemented in good faith and in accordance with decency, which resulted in the judge may extend or limit the liability of the parties to the agreement (negota bona fidei) , Even the Supreme Court has indirectly often perform an action "conversite" in giving the verdict in respect of an agreement.
If a notary deed was canceled by a decision of the judge, he must be seen first due cause. If nullification that cause harm to the party requesting the notary assistance in the manufacture of such deed, (including the rights receiver), then the notary in question could be sentenced to pay the damages (along the fault lies in the notary).
Passing is essentially complete a social conflict. A judge at the time of verdict, both criminal and civil, to provide solutions to a social conflict inherent in a case. It can be the right solution and could only feel the benefits if the judge runs with a fair verdict.
A judge ruled according to the rules of existing law. The rules are interpreted and then applied to a particular case. Nevertheless, it does not mean that the judge merely be an inventor mere law (law finder) but expected a judge went further than that.
In connection with the authority of the judge in deciding the cancellation of a notary deed (whether in the form of void or in the form can be canceled). The judge can only do so when put to him a notary deed (copy). The judge on his own initiative may not break things so that (in the absence of the submission of a notarial deed as evidence posts)

2.2. **Terms of the cancellation of a notary and legal consequences of the cancellation of an authentic deed.**

Talking about the cancellation of the certificate must know the condition of the validity of a treaty. Pursuant to Article 1320 of the Civil Code there are four requirements validity of the agreement, namely:

- They agreed that bind himself
- Competent to make a deal
- About a certain thing
- A cause that kosher

The first two conditions, called a subjective condition, because of the people or the subjects who entered into an agreement, whereas the latter two conditions called

[14] Abdul Kadir Muhammad, Op Cit, p. 31

objective criteria because the treaty itself or the object of a legal act performed it.
There are legal implications if any of the conditions are not met. In the event that no terpemuhi objective requirements, the agreement was null and void. This means that previously had never been born an agreement and there never was an engagement. Accordingly, eat no basis to sue each other in front of a judge (null and void). In terms of subjective terms, if the conditions are not met, the agreement is not void, but one of the parties has the right to ask that it be canceled agreements. The parties may request the cancellation of that are the incompetents who submit agreement is not free. Such agreements called voidable / *vernietigbaar*.[15]
Definitionin their cancellation and nullification in civil law. Cancellation and nullification is not described its application in civil law rule, meaning in what circumstances or for what reasons a commitment or agreement included in the qualification of nullification or cancellation. Implementation of the second term needs to be associated with the term null and void (*nietig*) is a term commonly used to assess an agreement if it does not fulfill the objective conditions, namely a certain thing (*een bepaald onderwerp*) and the reason for that is not prohibited (*een geoorloofde oorzaak*), and the term may be canceled if an agreement is not eligible subjective, that they agreed that bind himself (*de toestsemming van degenen die zich verbiden*) and the ability to make an engagement (*de bekwaamheid om aan te gaan eene verbindtenis*).[16]
If the subjective requirement is not met, then the agreement can be canceled (*vernietigbaar*) as long as there is demand by certain people or stakeholders. This subjective requirement is always overshadowed by the threat of withdrawal by the parties concerned of their parents, guardians or pengampu. In order for a threat like that does not happen, then it can dimint be affirmation of those concerned, that the agreement will remain in effect and binding on the parties. This is called nullification nullification relative or relative (relative nietigheid). If the objective conditions are met, then the agreement is null and void (nietig), without any request from the parties, thus the agreement has never been considered and is not binding on anyone.
The legal consequences of the deed canceled are as follows: both a cancellation due to civil, criminal, or administrative error in deed, in general due to the cancellation of the authentic act of law is as follows:

- Null and void as a result, legal acts which do not have legal effect from the occurrence of such legal acts.
- Irrevocable: legal act performed does not have the legal effect since the cancellation.
- Degraded the strength of proof (UUJN): an authentic act has the strength of evidence that is complete or perfect in the proceedings, but the forces can be degraded / slowdown / downturn into a deed under the hand when in the making violation of the provisions of the requirements under applicable law.
- Subject to administrative sanctions in the form of verbal warning and a written warning light if violations.

3. Closing

3.1. Conclusion

- The judge authorized to give an assessment of a notarial deed which was used

[15] Subekti, 2002, *Hukum Perjanjian*, Jakarta : PT Intermasa, p.20
[16] Habib Adjie, 2011, *Kebatalan dan Pembatalan Akta Notaris*, Bandung: Refika Aditama, p. 64.

including eventually issued a verdict "cancel" the notarial deed. The authority of judges in dismissing a notarial deed in a civil case is based on the plaintiff's request wants in the lawsuit. The judge is not authorized to hear and determine a claim outside of what is included or requested by the parties in the suit so the judges to be passive.

- The notarial deed of cancellation because of the element of achievement or objective requirements of the power of attorney and the deed of sale. Legal consequences are 1) Clear and void as a result, legal acts which do not have legal effect from the occurrence of such legal acts. 2) Can be canceled: legal act performed does not have the legal effect since the cancellation. 3) Degraded strength of proof (UUJN): an authentic act has the strength of evidence that is complete or perfect in the proceedings, but the forces can be degraded / slowdown / downturn into a deed under the hand when in the making violation of the provisions of the requirements under laws apply. 4) Subject to administrative sanctions in the form of verbal warning and a written warning light if violations.

3.2.Suggestion

- For law enforcement expected to know and understand what and who the notary and the duties and authority so that no wrong in applying the law and the procedures to be performed by a notary as a public official. Thus they are not wrong in finding and implementing guilt and legally responsible if any cases involving notarial deed as the basis for its claim.
- To avoid a loss by the other party to the deed of their products, in addition to the Notary and PPAT, the public should be more careful and vigilant in legal actions. People should know what to do it right or not, and most importantly is accompanied by evidence and good intentions for the future, the position of the deed he made clear, and do not give rise to disputes in the future so that the strength of authentic evidence deed remains a perfect and complete evidence in the trial.

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