

The Responsibilities of the Substitute PPAT for Cancellation of Sales and Purchase Deeds Ignoring the Principle of Accuracy

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Abstract. *This study aims to find out and analyze the juridical implications of canceling a sale and purchase deed made by a Substitute PPAT, to find out and analyze the responsibilities of a Substitute PPAT for canceling a sale and purchase deed that ignores the principle of accuracy, and to find out and analyze examples of deeds that can be declared null and void. law. The approach method used in this research is normative juridical with the research specification used is descriptive analysis. This study used a data collection method, namely library research. This study uses qualitative analysis techniques. Based on the research, it was concluded that the juridical implications of canceling the sale and purchase deed made by the Substitute PPAT, then the deed he made can have the power of the deed under the hand or null and void. This relates to the cancellation of the unregistered Sale and Purchase Deed which has implications for being legally flawed. So that the Deed of Sale and Purchase is null and void by law. Substitute PPATs who commit negligence by ignoring the principle of accuracy are subject to administrative sanctions in the form of temporary dismissal to permanent dismissal. The responsibility of the Substitute PPAT for the cancellation of the sale and purchase deed that ignores the principle of accuracy, the cancellation of the sale and purchase deed that occurs due to the negligence of the Substitute PPAT. The cancellation of the sale and purchase deed must be in accordance with the applicable procedures. However, what happened was that the cancellation of the sale and purchase deed caused problems which were not registered at the Land Office.*

Keywords: Accuracy; Responsibility; Substitute.

1. Introduction

The making of the Deed is regulated in Article 16 paragraph (1) letter f of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary, explaining that the Notary's obligation to maintain the secrecy of the Deed he made is to protect the interests of all parties involved. with the Deed he made. 1 Mistakes or negligence committed by a Notary or Substitute Notary will certainly have an impact on himself or can result in losses to the parties. This is *das sein*, which is a fact that actually happened as in the case of Decision Number: 681 K/Pdt/2017.

Substitute Notary has authority based on Article 33 paragraph (2) of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, the authority of a Substitute Notary is the same as that of a Notary because Article 15 of Act No. 2 of 2014 concerning Amendment to Act No. 30 of 2004 concerning the Position of Notary, namely that a Notary has the authority to make authentic deeds. Based on the case in Decision Number: 681 K/Pdt/2017, the problem is that the deed made by the Substitute PPAT has a problem which is only discovered later, so the person responsible for the problematic deed is the Substitute PPAT himself or he can be summoned again if at any time the deed made raises a problem in order to ask for accountability.

Contrary to the existence of *das sollen*, that a PPAT Notary must carry out his duties and authorities based on the rules according to the code of ethics guidelines and the general principle of office, namely the principle of accuracy. Careful in the sense of examining all the evidence shown to the Notary and listening to the statements or statements of the parties. This principle of accuracy is the application of Article 16 paragraph (1) letter a, among others carrying out the duties of his position must act carefully. There is an imbalance between *das sein* and *das sollen*, that is, there is a violation of norms committed by a Substitute Notary. The author wants to analyze regarding the accuracy of the Substitute PPAT in making a letter of canceling the sale and purchase deed, because in making the cancellation of the sale and purchase deed the Substitute PPAT did not include the plaintiff and his wife and did not notify the plaintiff and his wife that he was only a Substitute PPAT. In this case it can be categorized that the Substitute PPAT has ignored the principle of accuracy in making the letter of cancellation of the sale and purchase deed and has violated the application of Article 16 paragraph (1) letter a of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, namely that in carrying out his position the Notary must act in trust, honest, thorough, independent, impartial, and safeguarding the interests of the parties involved in legal actions.

In taking an action, the notary must be prepared and based on the applicable legal regulations, examine all the evidence shown to the notary, and listen to the

statements or statements of the parties to be included in the deed. 4 This is necessary to minimize errors that can cause disputes in the future.

Based on these problems, the purpose of this study is to find out and analyze the juridical implications of canceling sales and purchase deeds made by PPAT Substitutes, to find out and analyze the responsibilities of Substitute PPATs for canceling sales and purchase deeds that ignore the principle of accuracy, and to find out and analyze examples of deed that can be declared null and void.

2. Research Methods

The approach method used in this research is normative juridical with the research specification used is descriptive analysis. This study used a data collection method, namely library research. This study uses qualitative analysis techniques.

3. Results and Discussion

3.1. Juridical Implications for the Cancellation of Sale and Purchase Deed made by Substitute PPAT

The cassation plaintiff namely Yulidaryati who lives in the Ujung Berung Indah Housing Complex Kav. 10-10 Ujung Berung, Bandung City, now residing in Bandung City, Bandung Wetan District, Citarum Village, RT 001 RW 004, locally known as Jalan Aria Jipang Number 7.

The respondent for cassation is Darmawan Suriaatmadja, who resides at Jalan Sukaasih Raya Number 5 (five) Sindangjaya Village, Mandalajati District, Bandung City.

The Respondent on Cassation is:

- a. Dedi Setiadi, who used to live in the Ujungberung Indah Housing Complex Kav. 10-10 Ujungberung, Bandung City, now his residence is unknown in the jurisdiction of the Republic of Indonesia.
- b. Darmawan, SH, as Notary/PPAT with office at Jalan Muara Raya Number 6 Kelurahan Animal Protection, Astanaanyar District, Bandung City, as Substitute for Notary/PPAT Ade Budi Permana, SH
- c. Kianti Sagata, SH. Notary/PPAT, having an office on Jalan Raya Dayeuhkolot KM. 56/31 Dayeuhkolot, Bandung Regency
- d. Yetty Setianingsih who lives at Jalan AH Nasution Number 129, Karang

Pamulang Village, Mandalajati District, Bandung City.5

3.1.2 Case Position of Decision Number 681 K/Pdt/2017

The decision discussed the existence of an appeal from Defendant II/Cassation Petitioner. Against the Respondent Plaintiff/Compared and Defendant I, Notary Defendant III as Notary/Substitute, Defendant IV Notary and Co-Defendant or hereinafter referred to as Participants of the Cassation Respondent. Initially before Cassation, the lawsuit was filed at the first trial at the Bandung District Court with the principal case starting in 1992. Defendant I once came to the Plaintiff's Office intending to buy a plot of Land Ownership Number 81/Desa Sukamiskin, an area of 8,295 m² (eight thousand two hundred and nine twenty-five square meters), Situation Drawing Number 1019/1990, 5 April 1990, registered in the name of the Plaintiff. Then there was an agreement regarding the price and method of buying and selling land between the Plaintiff and Defendant I.

The price agreement is made at: IDR 350,000,000.00 (three hundred and fifty million rupiah). Then the Plaintiff was given a down payment of IDR 100,000,000.00 (one hundred million rupiah) and the remaining IDR 250,000,000.00 (two hundred and fifty million rupiah), agreed to be paid and/or paid off after the disbursement of the housing loan on behalf of CV. Bima Sakti Kencana belonging to Defendant I and Defendant II from the Main Bank Bandung Branch have been approved and disbursed. However, it turned out that the application for a home loan from the Main Bank at the request of Defendant I was not approved and/or not disbursed by the Bandung Branch Main Bank. Then Defendant I and Defendant II automatically could not pay off the payment of the rights belonging to the Plaintiff and Co-Defendant. Then the Plaintiff and Defendant I agreed to cancel the land sale.

Whereas there were *Judex Facti*/Bandung High Court considerations which upheld the Bandung District Court's decision, it turned out that *Judex Facti* was right and correct with the following considerations:

a. That the Plaintiffs of the Convention are the legal owner of the disputed object, with a Property Rights Certificate Number 81/Desa Sukamiskin, Situation Drawing Number 1019/1990 with an area of 8,295 m² dated 5 April 1990 on behalf of the Convention Plaintiff;

b. Whereas the deed of sale and purchase of the object of dispute Number 02/01/21/01/JB/1993 between the Plaintiff of the Convention as a seller and Defendant I of the Convention as a buyer, has been canceled by means of a cancellation agreement letter between the Plaintiffs of the Convention and Defendant I of the Convention because Defendant I of the Convention cannot

pay off the remaining payment, vide letter Number 165/BSK/I/93 dated 5 January 1993 in which the entire down payment for the object of dispute has been returned by the Plaintiff to the Convention to Defendant I of the Convention and it is not logical if Defendant II is not aware of the cancellation of the a quo;

c. Whereas with the agreement to cancel the sale and purchase agreement between the Plaintiff of the Convention and Defendant I of the Convention, the Deed of Sale and Purchase Number 02/01/21/01/JB/1993 on behalf of the Plaintiff of the Convention is null and void and has no legal force;

Considering that based on the considerations above, it turns out that the decision of the *Judex Facti*/Bandung High Court in this case is not contrary to law and/or statutes, the cassation petition filed by the Cassation Appellant Mrs. Yulidaryati, this must be rejected.

Based on the above considerations, the panel of judges issued a verdict including the following: 8

d. Rejecting the cassation request from the Cassation Appellant Mrs. the Yulidaryati;

e. Punish the Cassation Petitioner/Defendant II/Appellant to pay the costs of the case at this cassation level in the amount of IDR 500,000.00 (five hundred thousand rupiah).

3.2. Juridical Implications for the Cancellation of Sale and Purchase Deed made by Substitute PPAT

PPAT notary as one of the public officials who has an important role in guaranteeing legal certainty, order and legal protection through authentic deeds made by and before him, then authentic deeds are strong evidence and if a dispute occurs in court unless it can be proven the untruth, so that the PPAT Notary deed provides a perfect proof as stated in Article 1870 of the Civil Code to the parties who made it. If there is a dispute over the deed, the deed can be canceled or canceled by law. Cancellation of the PPAT Notary Deed through a court decision, not only because of the mistake or negligence of the PPAT Notary in making the deed. But the cancellation of the PPAT Notary Deed can also be caused by errors or negligence of the parties who are mutually binding in the deed, so that an error or negligence causes a lawsuit from one of the parties.

Apart from PPAT Notaries, Substitute Notaries also have authority based on Article 33 paragraph (2) of Act No. 2 of 2014 concerning Amendments to Act No.

30 of 2004 concerning the Position of Notary, the authority of a Substitute Notary is the same as that of a Notary due to Article 15 of the Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, namely that a Substitute Notary is also authorized to make authentic deeds. The position of a Substitute Notary as a public official is an honorable position, but if a Substitute Notary commits negligence in carrying out his duties and authorities, he may be subject to sanctions in the Notary Position Law.

This is in accordance with what happened in the case of Decision Number: 681 K/Pdt/2017 that there was a cancellation of the deed of sale and purchase of land that was not registered, the deed of sale and purchase of land was previously made by the Substitute PPAT. Based on this case, the problem is that the deed made by the Substitute PPAT has a problem which is only discovered later, so the person responsible for the problematic deed is the Substitute PPAT. This reflects that the Substitute PPAT ignores the principle of accuracy in making land sale and purchase deeds. This principle of accuracy is the application of Article 16 paragraph (1) letter a of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary, namely that in carrying out his position the Notary must act in a trustful, honest, thorough, independent,

According to the author's analysis, when viewed from the theory of legal certainty based on the case of Decision Number: 681 K/Pdt/2017, it has been explained previously, that legal certainty is one of the objectives of law. Without legal certainty, the law will lose its meaning because it can no longer be used as a guideline for everyone's behavior. This legal certainty has a close relationship with justice. Based on the case the decision is known that has there was a sale and purchase of land in which case the plaintiff and defendant 1 had an agreement regarding payment of IDR 350,000,000.00 (three hundred and fifty million rupiahs), in which case the plaintiff was given a down payment of IDR 100,000,000.00 (one hundred million rupiahs) and the remaining IDR 250,000,000.00 (two hundred and fifty million rupiah), agreed to be paid and/or repaid after the disbursement of the housing loan on behalf of CV. Bima Sakti Kencana belonging to Defendant I and Defendant II from the Main Bank Bandung Branch have been approved and disbursed. However, because the disbursement of the home ownership credit was not approved, the plaintiff and the defendant agreed to cancel the sale of the land. As a result of the cancellation and the cancellation of the sale and purchase agreement between the plaintiff and the defendant, then the deed of sale and purchase that has been made before has no legal force. The plaintiff returned the down payment previously given by the defendant at the beginning of the agreement. Legal certainty is obtained from the cancellation of the sale and purchase agreement that has been agreed upon by both parties so that the rights and obligations in a sale and purchase agreement previously made are null and void. Apart from that, with the decision

handed down by the judge which of course was based on the law, legal facts, legal facts which were clearly formulated in the decision number 681 K/Pdt/2017 stated that the deed of sale and purchase 02/01/21 /01/JB/1993 does not have legal force, so it has obtained legal certainty.

Based on this, it can be concluded that the juridical implications of canceling the sale and purchase deed made by a substitute Notary, as in the case of Decision Number 681 K/PDT/2017, the deed he made can have the power of the deed underhand or null and void. The principle of accuracy is a very important thing that must be owned by a Notary, especially a Substitute Notary in carrying out their duties, because if there is a violation committed by a Notary, especially a Substitute Notary, it will cause events that are detrimental to society so that public trust will decrease in the Notary. This relates to the cancellation of the unregistered Sale and Purchase Deed which has implications for being legally flawed. So that the Deed of Sale and Purchase is null and void by law. Substitute PPATs who commit negligence by ignoring the principle of accuracy are subject to administrative sanctions in the form of temporary dismissal to permanent dismissal. Based on this incident, it can be suggested for the PPAT to be more careful and thorough in carrying out their duties according to the laws and regulations and the PPAT's Code of Ethics.

3.3. Responsibilities of the Substitute PPAT for the Cancellation of Sale and Purchase Deeds that Ignore the Principle of Accuracy

If this concept of responsibility is related to the notary profession, the responsibility of the notary adheres to the principle of responsibility based on fault (based on fault of liability). In making an authentic deed, the Notary must be responsible if the deed made there is an intentional error or violation by the Notary. Conversely, if the element of error or violation occurs from the parties appearing, then as long as the Notary carries out his authority according to the regulations. The notary concerned cannot be held accountable, because the notary only records what was conveyed by the parties to be included in the deed.

Based on the actions carried out by the substitute Notary, the notary's responsibility for the profession in making the deed he made includes the following:

1. Civil liability of a Notary for the deed made In Article 41 of the Amendment Act on the Notary's Position Act determines the existence of civil sanctions, if the Notary commits an unlawful act or violates Article 38, Article 39, and Article 40 of the Amendment Act -Notary's Office Law, the notary's deed will only have evidence as a deed under the hand. As a result of such a Notary deed, it can be a

reason for the party who suffers a loss to demand reimbursement of costs, compensation and interest from the Notary. Regarding the error deed violate law, in law civil no distinguish between mistakes caused by the intention of the perpetrators, but also due to the mistakes or carelessness of the perpetrators. This provision is in accordance with what was stated by Riduan Syahrani as follows: "not being careless".

2. Notary's moral responsibility in violation of the Notary's code of ethics

Notary profession as explained can be seen in an integral perspective. Through this integrated perspective, the Notary profession is a profession related to individuals, professional organizations, society in general and the state. The Notary's actions will be related to these elements, therefore a wrong action from a Notary in carrying out his work will not only harm the Notary himself but can also harm the organization. The relationship between the Notary profession and the community and the state has been regulated in the Notary Office Law and other laws and regulations. Meanwhile, the relationship between the Notary profession and the Notary professional organization is regulated through a Notary code of ethics. The existence of a Notary code of ethics is a logical consequence of a job being referred to as a profession.

There is a relationship between the code of ethics and the Notary Office Law. The first connection is contained in Article 4 regarding the oath of office. The notary through his oath promises to maintain his attitude, behavior and will carry out his obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a notary. The code of ethics for the notary profession is determined and enforced by a notary organization. The existence of a relationship between the code of ethics of a notary and the Law on Notary Position gives meaning to the notary profession itself. The Notary Position Law and the notary code of ethics require that a notary in carrying out his duties as a public official, in addition to having to comply with the Notary Position Law, must also comply with the professional code of ethics and be responsible for the community he serves. professional organizations (Indonesian Notary Association or INI) as well as to the state. With this relationship, a notary who ignores the nobility of the dignity of his position can be subject to moral sanctions, reprimanded or dismissed from his professional membership can also be dismissed from his position as a notary.

3. Administrative responsibility of the Notary for the deed he made

Administrative sanctions, in the form of verbal warnings, written warnings, temporary dismissals, honorable discharges, and dishonorable discharges apply in stages starting from verbal warnings to dishonorable discharges, namely if the notary violates the provisions of the articles as stated in Article 85 of the Law. -

Act on the Position of Notary. A notary, in carrying out his position as a public official who makes authentic deeds, is actually between the possibility/impossibility of forging a deed with the party facing to ask for the deed to be drawn up.

According to the author's analysis, if it is related to the principle of accuracy in making a sale and purchase deed carried out by a Substitute Notary as in Decision Number: 681 K / Pdt / 2017 without regard to (paying attention to) the accuracy in making authentic deeds and causing losses to other parties, the Notary can be held accountable and get administrative sanctions, in the form of verbal warnings, written warnings, temporary dismissals, respectful discharges or dishonorable discharges. In addition, a notary who violates the accuracy in making an authentic deed and causes losses to other parties, the notary is obliged to be responsible for such as paying compensation to other parties who have suffered losses.

According to the author's analysis, it has been stated previously that the theory of responsibility is a result of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an action. According to Hans Kelsen, the theory of responsibility is divided into several types, namely: individual accountability in which an individual is responsible for a violation committed by himself, collective responsibility in which an individual is responsible for a violation committed by another person, accountability based on mistakes in which an individual is responsible for violations committed intentionally and expected with the aim of causing harm,

Based on the case that occurred in case number 681 K/Pdt/2017 where there was negligence committed by the Substitute Notary in carrying out his duties related to the cancellation of the deed of sale and purchase that was not registered which had implications for being legally flawed which resulted in the contract being null and void by law. If it is based on the theory of responsibility by Hans Kelsen, then the substitute notary is responsible individual in where responsible answer to the violation he committed himself, namely not registering the deed of sale and purchase. The action of the substitute notary shows that the replacement notary ignores the principle of accuracy. Therefore, the substitute notary must be responsible civilly, morally, and administratively. Based on this explanation, the author concludes that in the case of cancellation of the sale and purchase deed that occurs due to negligence of the Substitute Notary. AJB cancellation must be in accordance with the applicable procedures. However, what happened was the cancellation of the AJB caused problems which were not registered at the Land Office. The cancellation of the Sale and Purchase Deed was made because it was canceled through the competent authority. However, it was not stated who the competent agency was and how long the notification

process took to the agency. Despite the shortcomings of the Panel of Judges in deciding the a quo case the Judge still appointed the PPAT as the party responsible for reporting the cancellation of the authentic deed of sale and purchase to the relevant agency, namely the National Land Agency of the Republic of Indonesia where the sale and purchase deed will be processed. This shows that responsibility from a substitute Notary who ignores the principle of accuracy in making the deed he makes including civil responsibility, moral responsibility of a Notary in violation of the Notary's code of ethics, and also administrative responsibility of a Notary for the deed he made.

4. Conclusion

The juridical implication of canceling the deed of sale and purchase made by the Substitute PPAT is that the deed made can have the force of a private deed or be null and void. This relates to the cancellation of the unregistered Sale and Purchase Deed which has implications for being legally flawed. So that the Deed of Sale and Purchase is null and void by law. Substitute PPATs who commit negligence by ignoring the principle of accuracy are subject to administrative sanctions in the form of temporary dismissal to permanent dismissal. The responsibility of the substitute PPAT for the cancellation of the sale and purchase deed that ignores the principle of accuracy, the cancellation of the sale and purchase deed that occurs due to the negligence of the Substitute PPAT. The cancellation of the sale and purchase deed must be in accordance with the applicable procedures. However, what happened was that the cancellation of the sale and purchase deed caused problems which were not registered at the Land Office. Preferably, a Notary or Alternate Notary who carries out his duties and authorities must apply the principle of accuracy or the principle of prudence, be more thorough, and have good faith in making authentic deeds and comply with applicable legal provisions and be based on the morals and ethics of the Notary profession so that the Notary is avoided from mistakes in making the deed so that it does not cause sanctions or cancellation of the deed that has been made. For parties who want to enter into a sale and purchase agreement, they should always help the Notary to express the truth based on good faith and honesty, so that the figure is perfect in accordance with applicable law, so it does not harm any party.

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