

Validity of Deed of Debt Acknowledgement Accompanied by Deed of Sale and Purchase Agreement (PPJB) and Deed of Land Vacate by Notary (Case Study of Decision of PT. DKI Number 368/PDT/2018)

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Abstract. *Notary is a public official who is entrusted by the Indonesian Government to provide services to the public in terms of making authentic deeds. However, some deeds made by Notaries, become disputed later and some are canceled by the court. This is due to various factors, such as differences in interpretation of laws and regulations by the Notary himself, as well as the honorarium factor that will be received by the Notary as payment or salary for making the deeds, because Notaries do not receive salaries from the state like Civil Servants or other public officials. The results of this thesis research, the author found an incorrect interpretation and application of the law by the Notary, so that the validity of the Deed of Debt Acknowledgement, Deed of Sale and Purchase Agreement (PPJB) and Deed of Land Vacancies made by him became invalid and were canceled by the court. Instead of submitting to Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, and making a Deed of Granting Mortgage Rights (APHT) for land and buildings as collateral objects of the agreement, the Notary instead made a Deed of Sale and Purchase Agreement (PPJB) and Deed of Land Vacancies based on the Deed of Debt Acknowledgement for the parties. The Notary is considered to have violated Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, as well as committing an unlawful act by the court. The Notary can be held accountable due to the Deed he has made being canceled by the court, either in civil or administrative form. The form of civil liability of a Notary is that he can be sued for damages resulting from the deeds he has made, and administrative liability is that a Notary can be dismissed dishonorably.*

Keywords: Agreement; Land; Validity.

1. Introduction

Indonesia is a country of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholding moral values, ethics, morals, and the noble personality of the nation, believing in and being devoted to God Almighty, and respecting diversity in the life of society, nation and state, and protecting the dignity and honor of every citizen.¹

The 1945 Constitution of the Republic of Indonesia has the highest position in the hierarchy of laws and regulations in Indonesia. Therefore, all laws and regulations under the Constitution must not conflict with and are the implementation of the 1945 Constitution of the Republic of Indonesia.²

As the highest legal regulation in Indonesia, the 1945 Constitution is a reference in the formation of lower laws, such as Law Number 30 of 2004 concerning the Position of Notary, which was later amended to Law Number 4 of 2014 concerning the Position of Notary, Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, including court decisions such as the Decision of the DKI High Court Number 368/PDT/2018 which is the main topic of discussion in this thesis.

Article 1 Paragraph (1) of Law Number 4 of 2014 concerning the Position of Notary, hereinafter referred to as the JN Law, reads: "A notary is a public official who is authorized to make authentic deeds and has other authority as referred to in this Law or based on other laws". Article 1 Paragraph (7) of the JN Law reads: "A notarial deed, hereinafter referred to as a Deed, is an authentic Deed made by or before a Notary according to the form and procedures stipulated in this Law".

Notaries have the authority to make authentic deeds that are desired by interested parties or can be referred to as parties in accordance with the regulations of the JN Law. The notary makes an authentic deed containing the essence of the agreement desired by the interested party or the parties, which then makes the agreement binding and must be obeyed by the parties.

Talking about agreements, it cannot be separated from one type of legal principle adhered to in contract law, namely "The Principle of Freedom of Contract". Freedom of contract can be interpreted as the freedom of legal subjects to enter into or not to enter into an agreement, the freedom to determine with whom to enter into an agreement and the freedom to determine the content and form of

¹Yuliantoro, 2019, "Application of the Element of Negligence in the Investigation Process of Traffic Accident Crimes", Unissula Law Journal, NO. 1, Vol. 35, pp. 36-51.

²Dr. Widayati, SH, MH, (2016), Legal State, Constitution, & Formation of Legislation, Unissula Press, Semarang, p. 54.

the agreement. Thus, freedom of contract originates from the freedom of legal subjects (read: individuals) in fulfilling the interests of that individual. Therefore, it can be understood that in order to fulfill individual interests, the individual is given the freedom to make agreements.³

Freedom of contract in Civil Law in Indonesia can be found in Article 1338 Paragraph (1) of the Civil Code which states that: "All agreements made legally apply as law for those who make them". From the word "all" it can be interpreted that every legal subject can make an agreement with any content, there is freedom for legal subjects to determine the form of the agreement. In other words, through the Principle of Freedom of Contract, legal subjects have freedom in making their agreements.⁴

Apart from the Principle of Freedom of Contract, the Principle of Pacta Sun Servanda is also known. This principle is included as a binding principle for an agreement, which means that the parties making the agreement are bound by the agreement they have made. In other words, an agreement that is made legally applies as if the law applies to the parties who make it. The principle of Pacta Sun Servanda is also contained in the provisions of Article 1338 Paragraph (2).⁵

The principle of freedom of contract provides the widest possible space for individuals to make agreements as desired and based on their needs, but even though they are free, they must be based on good faith as stated in Article 1338 Paragraph (3) of the Civil Code which states that "agreements must be carried out in good faith". Good faith must arise objectively and subjectively, so that even though they are free to contract, it is still based on good faith. This article is a limitation for the principle of freedom of contract itself.

Legal products in Indonesia must not conflict with the legal principles applicable in Indonesia, such as laws and court decisions, because legal principles are used as a basis for reference in making these legal products. Indonesian society is obliged to obey and submit to all written legal regulations applicable in Indonesia.

However, with the emergence of several Court Decisions that annul Deeds related to agreements made by Notaries, it certainly creates debate over the

³Christiana Tri Budhayati, 2009, "The Principle of Freedom of Contract in Contract Law in Indonesia", *Widya Sari Journal*, No. 3, Vol. 10, p. 233.

⁴Ibid.

⁵Syaeful Bahri and Jawade Hafidz, 2017, "Implementation of the Pacta Sun Servanda Principle on Testaments Made Before a Notary in the Perspective of Justice", *Jurnal Akta*, No. 2, Vol. 4, p. 152.

validity of these deeds. One example of a court decision in question is Decision Number 368/PDT/2018/PT.DKI. The Jakarta High Court annulled the deeds made by Notaries related to the agreement, because it was considered a form of unlawful act (*onrechtmatige daad*) and also contained elements of abuse of circumstances (*misbruik van onstandigheden*).

The phenomenon that occurs like this can certainly raise doubts in the community about the legal force of an authentic Deed made by a Notary. The community needs legal certainty and also legal protection from the Deeds that have been made by a Notary, especially in this study are Deeds related to Debt Recognition accompanied by a Deed of Sale and Purchase Agreement (PPJB).

The author views this phenomenon as interesting to analyze more deeply in order to find a solution to this problem. The author considers that the deeds made must be able to provide legal certainty and legal protection for the parties to the agreement, namely creditors and debtors, if there is a default in the future, of course based on the laws and regulations in force in Indonesia.

2. Research Methods

The research approach is normative juridical, which in other words is a type of sociological legal research and can also be called field research, namely examining applicable legal provisions and what happens in reality in society.⁶

Normative Jurisprudence is a research approach method that analyzes the systematics of law which includes legal subjects, rights and obligations, legal acts, legal relationships, and legal objects, the sources of which can be obtained from library materials and document studies.⁷

The research specifications used in this research, seen from its form, are analytical descriptive, to describe, illustrate, examine, and analytically explain the problems presented.⁸

The type of data used by the author is qualitative data analysis. Qualitative data is "data that can only be measured indirectly" (Hadi, 2015: 91). Meanwhile, (Muhadjir, 1982: 29) added that qualitative data is, "data presented in the form of verbal words not in the form of numbers". The data sources come from primary legal materials, secondary legal materials and tertiary legal materials.

⁶Bambang Waluyo, 2002, *Legal Research in Practice*, Sinar Grafika, Jakarta, p. 15.

⁷Sri Mamudji, (2005), *Legal Research and Writing Methods*, Publishing Agency of the Faculty of Law, University of Indonesia, Jakarta, p. 10.

⁸Soerjono Soekamto, *Op.Cit*, p. 10.

The data collection method used in this study is a literature study, namely a data collection technique with a literature review to the library and collection of books, written materials and references that are relevant to the research being conducted. This study uses qualitative data analysis techniques based on literature study research, then systematically arranged and then analyzed qualitatively to obtain conclusions from the problems studied.

3. Results and Discussion

3.1. Validity of the Deed of Acknowledgement of Debt Accompanied by the Deed of Sale and Purchase Agreement (PPJB), and the Deed of Land Vacate Based on Decision Number 368/PDT/2018/PT.DKI

Legal products in Indonesia must not conflict with the legal principles applicable in Indonesia, such as laws and regulations and Court Decisions, because legal principles must be used as a basis for reference in making these legal products. Indonesian society is obliged to obey and submit to all written legal regulations applicable in Indonesia. The emergence of several Court Decisions that annul Deeds related to agreements made by Notaries, of course, creates debate over the validity of these deeds.

Notarial Deeds should be a "law" for the parties bound by the deed agreement, but not a few disputes or problems arise, such as default or differences in interpretation by the parties to the deed that has been agreed upon later. Some of these disputes end in lawsuits to the Judicial institution so that Court decisions are issued that decide on the validity of the Notarial Deed that has been made.

One example of the court decision in question is the DKI High Court Decision Number 368/PDT/2018, which annulled the Deed of Debt Acknowledgement, Deed of Sale and Purchase Agreement (PPJB), and Deed of Land Vacate that had been made by Notary & PPAT Nelly Sylviana SH. The DKI High Court annulled the agreement, because it was considered a form of unlawful act (*onrechtmatige daad*) and also contained elements of abuse of circumstances (*misbruik van onstandigheden*).

The dispute occurred between Mrs. YENNY WAHYU CAHYANI against Mrs. RINA JULITA and NELLY SYLVIANA SH, NOTARY & PPAT JAKARTA. Mrs. Yenny Wahyu Cahyani as the debtor filed a lawsuit to the South Jakarta District Court with case register Number 237/Pdt.G/2017/PN.Jkt.Sel. because she felt that the legal relationship between her and Mrs. Rina Julita was purely a debt and not a sale and purchase, so the debtor felt that the actions carried out by the creditor together with Notary & PPAT Nelly Sylviana SH were unlawful acts where they deliberately made an agreement that was detrimental to the debtor and with full

ambition to control the debtor's assets which were used as collateral by making a Sale and Purchase Agreement (PPJB).

The South Jakarta District Court decided to grant some of the arguments submitted by the Plaintiff, including declaring that the Defendant's actions were unlawful and canceling the Deed of Debt Acknowledgement, Deed of Sale and Purchase Agreement (PPJB), and Deed of Land Vacancies made by Notary & PPAT Nelly Sylviana. Based on the decision of the South Jakarta District Court, Mrs. Rina Julita filed an appeal to the High Court of the DKI Jakarta PT with case register Number 368/PDT/2018/PT.DKI, which ultimately the High Court of the DKI PT upheld the decision of the South Jakarta District Court to cancel the three Deeds made on November 13, 2015.

The DKI High Court stated that the agreement was contrary to the law, namely Article 6 of Law Number 4 of 1996 concerning MORTGAGE RIGHTS ON LAND AND OBJECTS RELATED TO LAND, which states: "If the debtor defaults, the holder of the First Mortgage Right has the right to sell the object of the Mortgage Right under his own authority through a public auction and to take payment of his receivables from the proceeds of the sale."

The Decision of the DKI High Court Number 368/PDT/2018 also stated that based on the laws and regulations, the object of the debt guarantee cannot immediately transfer ownership from the debtor (Plaintiff) to the creditor (Defendant II) because the debtor broke his promise, if the transfer is still carried out then the transfer is void by law.

The legal consequences of the issuance of the DKI High Court Decision Number 368/PDT/2018 are that the Deed of Debt Acknowledgement, Deed of Sale and Purchase Agreement (PPJB) and Deed of Land Vacate between Mrs. Rina Julita and Mrs. Yenny Wahyu Cahyani made by Notary and PPAT Nelly Sylviana SH are declared INVALID.

3.2. Notary's Accountability for the Deed of Debt Acknowledgement Accompanied by the Deed of Sale and Purchase Agreement (PPJB), and the Deed of Land Vacate that he/she has prepared

The emergence of Decision Number 368/PDT/2018/PT.DKI which cancels the Deed of Debt Acknowledgement, the Deed of Sale and Purchase Agreement (PPJB), and also the Deed of Land Vacate made by Notary & PPAT Jakarta Nelly Sylviana is certainly a warning for all Notaries in Indonesia to be more careful in making and validating Deeds.

Notaries as parties who are considered legally competent are required to be more observant in pouring the contents of the parties' agreement into a Deed.

Notaries, although obliged to provide Deed making services to the public, but Notaries also have the right to refuse to make Deeds that they consider to be contrary to applicable norms and laws, so that there are no problems in the future that can harm the parties and also the Notary himself.

Notary & PPAT Nelly Sylviana SH as a legally competent person, has violated Article 15 Paragraph (2) letter e of the JN Law where the Notary is authorized to provide legal counseling in connection with the making of Deeds to the parties. Notary & PPAT Nelly Sylviana SH should have explained that it is not appropriate to make a Deed of Debt Acknowledgement accompanied by a Deed of Sale and Purchase Agreement (PPJB) and a Deed of Land Vacancies, and directed the parties to make an agreement in accordance with Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, so that Notary & PPAT Nelly Sylviana SH should have made a Deed of Granting of Mortgage Rights (APHT).

Notary & PPAT Nelly Sylviana SH is required to be responsible for the deed she has made because it was canceled by the Court. This responsibility can be civil and administrative. Based on the court's decision, the civil responsibility requested is in the form of compensation, but because the Plaintiff / Respondent did not submit evidence, it was rejected by the court. The Plaintiff / Respondent can also make a complaint to the Notary Supervisory Board and the Notary Honorary Council so that administrative sanctions can be imposed in the form of a written warning to dishonorable dismissal.

In the event that a Notarial deed is cancelled by a judge's decision in court, then if it causes losses to the interested parties, the Notary can be sued to provide compensation, as long as this occurs due to the Notary's error, however, in the event that the cancellation of the Notarial deed by the court does not harm the interested parties, the Notary cannot be sued to provide compensation even if he loses his good name.⁹

4. Conclusion

Notary & PPAT Nelly Sylviana SH has made a mistake in interpreting and applying the law in making the Deed of Debt Acknowledgement, Deed of Sale and Purchase Agreement (PPJB), and Deed of Land Vacancies between Mrs. Rina Julita and Mrs. Yenny Wahyu Cahyani, which caused the cancellation of the Deeds by the DKI High Court and made the Deeds invalid. The Notary should refer to and apply Law Number 4 of 1996 concerning Mortgage Rights on Land

⁹Didi Santoso, 2009, "Notary's Responsibility in Making a Deed Containing Two Legal Acts (Analysis of Supreme Court Decision Number 1440.K/PDT/1996)", Postgraduate Thesis of Notary Program, Diponegoro University, Semarang, p. 53.

and Objects Related to Land, by making a Deed of Granting Mortgage Rights (APHT), not a Deed of Sale and Purchase Agreement (PPJB). Likewise, with the collateral sales procedure, the Notary should not use the Deed of Sale and Purchase Agreement (PPJB), but through an auction process in accordance with the Mortgage Law. Notaries must comply with applicable laws and regulations, in this case the Mortgage Rights Law, and notaries should also understand that there have been several previous judicial decisions that have explained cases like this, such as Supreme Court Decision Number 78 PK/Pdt/1984 Jo Supreme Court Decision 2650K.Sip/1982 Jo Supreme Court Decision Yogyakarta Number 86/1981/Pdt, Supreme Court Decision Number 1074 K/Pdt/1985, Supreme Court Decision Number 3247 K/Pdt/1987, and Supreme Court Decision Number 1947 K/Pdt/1990, even though notaries make deeds based on the principle of freedom to contract as regulated in Article 1338 Paragraph (1) of the Civil Code. Notaries should pay attention to these matters. In this case, the Notary in carrying out his/her duties was not honest, not neutral, not thorough, did not protect the interests of the parties and did not provide legal counseling related to the deeds made to the parties, as is the obligation of a Notary as stated in the JN Law.

5. References

- Bambang Waluyo, 2002, *Legal Research in Practice*, Jakarta: Sinar Grafika.
- Christiana Tri Budhayati, 2009, "The Principle of Freedom of Contract in Contract Law in Indonesia", *Widya Sari Journal*, No. 3, Vol. 10.
- Didi Santoso, 2009, "Notary's Responsibility in Making a Deed Containing Two Legal Acts (Analysis of Supreme Court Decision Number 1440.K/PDT/1996)", *Postgraduate Thesis of the Notary Program, Diponegoro University, Semarang.*
- Soerjono Soekanto, 1986, *Introduction to Legal Research*, Jakarta: University of Indonesia Press.
- Sri Mamudji, 2005, *Legal Research and Writing Methods*, Jakarta: Publishing Agency of the Faculty of Law, University of Indonesia.
- Syaeful Bahri and Jawade Hafidz, 2017, "Implementation of the Pacta Sun Servanda Principle in Testaments Made Before a Notary from the Perspective of Justice", *Jurnal Akta*, No.2, Vol.4.
- Widayati, 2016, *Legal State, Constitution, & Formation of Legislation*, Semarang: Unissula Press.
- Yuliantoro, 2019, "Application of the Element of Negligence in the Investigation Process of Traffic Accident Crimes", *Unissula Law Journal*, NO. 1, Vol. 35.