

Notary's Responsibility in Making a Deed of Grant that is Cancelled Due to Legal Defects

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Abstract. *This study analyzes the cancellation of a deed of gift declared legally flawed and its implications for the position and accountability of a Notary, particularly when the Notary holding the protocol is also sued in an inheritance dispute. The study uses a normative legal research method with a statutory, conceptual, and case approach through a study of Decision Number 2193 K/Pdt/2018. Data are sourced from secondary legal materials obtained through literature studies and analyzed descriptively-analytically. The results of the study indicate that the withdrawal of the Notary holding the protocol as a co-defendant is administrative and pragmatic, primarily for the purposes of proving the minutes of the deed and avoiding the exception of lack of parties. The Notary's liability for the cancellation of a deed of gift is limited and can only be requested if there is proven error or negligence in fulfilling the formal obligations of the position. Legal protection for heirs is realized through the cancellation of a legally flawed deed of gift, the restoration of the status of the object of the gift as a boedel heir, and the strengthening of the precedent of caution in making a deed of gift so as not to eliminate inheritance rights.*

Keywords: Defendant; Legal; Liability; Protection.

1. Introduction

Notarial Deeds as authentic deeds are positioned as instruments of proof that provide legal certainty,¹ However, in practice, a number of deeds can still be cancelled if they contain formal or material defects.² Previous research shows that defects in deeds can arise due to carelessness in examining the legal status

¹Adjie, H. (2019). Notarial Deed as evidence. Notarius Journal, 11(2).

²Adjie, H. (2019). The authority and responsibility of notaries in making authentic deeds. Jurnal Notarius, 11(2).

of the object, defects in will, or the substance of legal acts that conflict with applicable law.

Among the various types of deeds, deeds of gift are often the object of dispute because gifts transfer ownership rights free of charge as recognized in the Civil Code as long as the donor is still alive, thus potentially giving rise to a conflict of interest when the object of the gift is related to inherited property or joint property that has not been divided.³In the context of land grants, the need for orderly land administration encourages the use of Notary/PPAT deeds, but this does not rule out the possibility of disputes arising if the basis for the grantor's rights is questioned.

Gift disputes become increasingly complex when the gift is used to transfer an object that is still essentially bound by the rights of other heirs. In cassation decision No. 2193 K/Pdt/2018, the annulment of the gift deed was based on the consideration that the transfer of rights was carried out over an object that was still part of an undivided inheritance and without the consent of all heirs, so the deed was deemed not legally binding.⁴

This ruling raises questions about the limits of a notary's liability. On the one hand, a notary is generally understood to only guarantee the formal accuracy of a deed. On the other hand, when a deed forms the basis for a series of unlawful acts that result in losses, claims against the notary are often brought in civil lawsuits.⁵

Beyond the issue of responsibility, a crucial issue is legal protection for heirs, particularly in Islamic inheritance cases. The concept of legal protection requires preventive and repressive mechanisms to guarantee the rights of legal subjects.⁶Thus, cancellation of a gift deed that is detrimental to the heirs does not only concern the status of the deed, but also the restoration of rights and prevention of similar disputes in the future.

The apparent gap lies in the assumption that authentic deeds are always final, even though the substance of the legal act contained in the deed can be tested and annulled if it conflicts with substantive law. This situation requires a precise identification of the notary's position (as both deed maker and protocol holder),

³Darmayenti, & Khairani. (2024). Notary's responsibility for legally flawed deeds. *UNES Journal of Swara Justisia*, 8(1).

⁴Hadjon, PM (1993). The authority and responsibility of government officials from the perspective of state administrative law. *Journal of Law and Development*, 23(4).

⁵Ichlas, RI, & Khisni, A. (2019). Legal analysis on status as a co-defendant notary (case study in the Court of Ungaran No. 105/Pdt.G/2016/PN.Unr). *Journal of Acts*, 6(2).

⁶Mardatillah, W. (2020). Analysis of legal considerations for the cancellation of a notarial deed of gift by a panel of judges. *Bosowa Law Review*, 5(3).

the form of their accountability, and the legal protection scheme for heirs to achieve legal certainty and substantive justice.⁷

This study aims to analyze the Notary's responsibility for the deed of gift that was cancelled due to legal defects based on Decision Number 2193 K/Pdt/2018.

2. Research Methods

Normative legal research; approach methods: statutory approach, conceptual approach, and case approach; research specifications: descriptive-analytical; data collection method: literature study (primary, secondary, tertiary legal materials); data analysis method: normative qualitative analysis with descriptive-analytical reasoning.⁸

3. Results and Discussion

3.1 Reasons Why Notaries Holding Protocols Are Also Being Sued

The withdrawal of a Notary holding a protocol as a co-defendant in a gift dispute is not essentially synonymous with the imposition of responsibility for the substance of the legal act. In case No. 2193 K/Pdt/2018, research shows that this step was driven more by pragmatic considerations: the minutes of the deed were in the possession of the protocol holder and were needed as evidence in court, so the presence of the protocol holder was seen as facilitating the process of proving and implementing the verdict.

Litigation strategies that include protocol holders also relate to efforts to avoid the lack-of-party exception.⁹In civil procedural law practice, co-defendants are commonly used to bind parties deemed necessary for the effective execution of a judgment, without making them the subject of a primary performance request. Because the protocol holder controls important documents, the plaintiff strives to ensure that all documents are available and that there are no formal obstacles to the case's proceedings.

This understanding is crucial to prevent a notary's role from expanding disproportionately. The notary holding the protocol has no substantive legal relationship with the disputed gift; he or she merely fulfills the administrative mandate of storing and maintaining the protocol. Therefore, withdrawal as a co-

⁷Rachmawati, D. (2020). Legal protection for notaries in carrying out their duties. *Jurnal Akta*, 7(1).

⁸Sumardjono, MSW (2016). The legal dimensions of the notary position in the national legal system. *Jurnal Rechtsvinding*, 5(1).

⁹Nurhadi, F. (2022). Criminal liability in cybercrime in the era of digital transformation. *Journal of Law and Technology*, 5(2).

defendant should be viewed as an administrative consequence for evidentiary purposes, not as an indicator of official misconduct.

A frequent consequence of the practice of withdrawing co-defendants is the public perception that notaries can always be held liable whenever a deed is disputed. In fact, the separation between the notary who drafts the deed and the notary who holds the protocol is part of the legal protection for public officials, preventing them from being burdened with claims not based on authority.¹⁰ This protection, from the perspective of legal protection theory, aims to maintain a balance of rights and obligations between the community and officials who carry out public service functions.

3.2 Notary's Responsibility for Cancellation of Deed of Gift

The Notary's liability for the cancellation of a deed of gift must be analyzed by positioning the Notary as a public official with attributional authority. In Decision Number 2193 K/Pdt/2018, the cancellation of a deed of gift was not based on a Notary's procedural error, but rather on a material legal defect: the gift was made on an object that was still part of an undivided inheritance and without the consent of all heirs. This material defect is beyond the scope of the Notary's obligations as long as the formal requirements for making the deed have been met.

In the theory of legal responsibility, the obligation to bear legal consequences requires a violation of a norm that links the violation to sanctions. Therefore, the relevant initial measure is whether the notary has violated his or her official obligations, such as the obligation to act honestly, diligently, independently, impartially, and to ensure compliance with deed-making procedures. If these normative obligations are met, there is no legal basis for imposing civil or administrative liability on the notary for the material consequences arising from the parties' actions.

The concept of formal truth is a key differentiator. Notaries are obligated to guarantee formal truth, such as the certainty of the person appearing, their competence to act, the appropriateness of procedures, and the fulfillment of formal requirements.¹¹ A notary is not obligated to guarantee the material truth regarding the status of inheritance rights, the origin of undivided ownership, or the consent of all heirs, as long as the parties formally declare themselves authorized. Therefore, the cancellation of a deed of gift does not automatically give rise to liability for the notary, unless it can be proven that there was negligence that resulted in the deed's formal requirements not being met or there was a breach of the duty of care.

¹⁰Hadjon, PM (1987). Legal protection for the Indonesian people. Surabaya: Bina Ilmu.

¹¹Marzuki, PM (2005). Legal research. Jakarta: Kencana Prenada Media.

Article 65 of the Notary Law is often used as a basis for suing notaries, but this norm cannot be interpreted as absolute responsibility (strict liability) for all legal consequences of the deed. This interpretation of absolute responsibility would contradict the principle of legality and blur the distinction between the cancellation of a deed as a correction to the legal actions of the parties and the liability of a notary as a public official. Decision Number 2193 K/Pdt/2018 actually demonstrates this distinction because the court did not impose sanctions or impose compensation on the notary.

In practice, the construction of proportional responsibility encourages Notaries to strengthen the application of the principle of prudence, for example by in-depth examination of ownership documents, the status of transfer of rights, and explaining to the parties about the risk of disputes if the object of the gift is related to an undivided inheritance. However, the application of this prudence remains within the scope of the Notary's duties as a public official, ensuring that procedures and formalities are met, and providing adequate legal counsel so that the parties understand the consequences of their legal actions.¹²

3.3 Legal Protection for Heirs upon Cancellation of Grant Deed

Legal protection for heirs resulting from the revocation of a deed of gift can be understood as a series of mechanisms aimed at restoring impaired rights and preventing similar violations. Within the theoretical framework of legal protection, protection encompasses both preventive and repressive forms.¹³ Preventive protection works by setting norms and obligations before a dispute occurs, while repressive protection works by enforcing the law after a violation occurs.

In case No. 2193 K/Pdt/2018, repressive legal protection was realized through the annulment of a deed of gift declared legally flawed. This annulment serves to confirm that an authentic deed cannot be used to legitimize a transfer of rights that violates inheritance law. This ruling also serves as a correction to a series of unlawful acts that harm the legitimate heirs.

Restorative legal protection is then seen in the restoration of the gifted object's status as part of the inheritance. By returning the gifted object to the inheritance, the rights of the heirs are restored, allowing for its subsequent distribution in accordance with Islamic inheritance law. This restoration establishes the principle that inheritance rights are fundamental and cannot be removed through unilateral legal actions that do not meet material requirements, especially when the inheritance has not been divided and the heirs' consent has not been obtained.

¹²Subekti, R., & Tjitrosudibio, R. (2008). Civil Code. Jakarta: Pradnya Paramita.

¹³Mertokusumo, S. (2010). The discovery of law: An introduction to the philosophy of law. Yogyakarta: Liberty.

The ruling also provides indirect preventative protection by establishing a precedent that strengthens compliance with Islamic inheritance law. This precedent encourages parties to be more cautious in using gifts as a means of transferring rights to family property, and encourages notaries to provide legal counseling on gift limits, potential disputes, and the need for consent of entitled parties when objects are related to inheritance. Furthermore, strengthening the precedent helps future courts consistently assess similar gift disputes for the sake of legal certainty.

In the context of notarial practice policy, protection of heirs can be strengthened through operational standards for document examination and consultation that emphasize identifying the status of the object (for example, whether it is an undivided inheritance) and documenting the notary's explanation to the parties. This effort is preventive in nature and is not intended to shift the burden of material proof to the notary, but rather to strengthen the notary's public service function to reduce the risk of disputes and losses for heirs.

4. Conclusion

The withdrawal of the Notary holding the protocol as a co-defendant in the dispute over the cancellation of the deed of gift is administrative in nature for the purposes of proving the minutes of the deed and the effectiveness of the case examination, so it cannot be interpreted as an automatic basis for imposing substantive responsibility. The Notary's responsibility for the cancellation of the deed of gift is in principle limited and can only be requested if there is evidence of error or negligence by the Notary in fulfilling the formal obligations of the position; while material defects in the deed of gift related to inheritance rights are beyond the scope of the Notary's responsibility as long as the deed-making procedures have been fulfilled. Recommendation: Parties planning to make a gift of potentially inheritance-related assets should ensure ownership status and obtain the consent of the entitled parties to avoid harming the heirs. Notaries/PPATs need to strengthen the application of the principle of prudence through adequate document review and clear legal counseling regarding the risks of gifts of undivided assets, while documenting such explanations as part of accountable notarial service governance.

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