

## Notary's Responsibility Regarding The Deed which has Been Void by The Court

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**Abstract.** *This research aims to determine the Notary's Responsibilities for Deeds That Have Been Canceled by the Court and the Legal Consequences of Notarial Deeds That Have Been Canceled by the Court. This research uses a normative juridical approach or research that analyzes the law, both written in books and laws decided by Judges through court process. The descriptive analytical approach is a logical and systematic legal argumentation in accordance with the formulation of the problem that has been formulated. From the results of this research it can be concluded that in the decision of the Kendari District Court Number 83/Pdt.G/2020/PN.Kdi, which states that the Authentic Deed was made before a Notary in this case as a co-defendant is invalid, not binding and null and void by law, this is because the deed made by the Notary omits the name of the party which then causes losses to other parties. The Notary can be held civilly liable if they legally comply elements of an unlawful act in accordance with article 1365 of the Civil Code in making a deed and causing harm to one of the parties, the injured party can file a claim for compensation against the Notary. The Notary can also be criminally responsible if he commits the following criminal acts: 1) Making a forged document. and using forged fake letters (Article 263 paragraph (1), (2) of the Criminal Code; 2) Committing Forgery (Article 264 of the Criminal Code); 3) Ordering to include false information in the authentic deed (Article 266 of the Criminal Code); 4) Doing, ordering to do, participating in doing (Article 55 in conjunction with Article 263 paragraphs (1) and (92) or 264 and 266 of the Criminal Code; 5) Helping to make fake or forged letters and using fake or forged letters (Art. 56 paragraphs 1 and 2 in conjunction with Article 263 paragraphs (1) and (2) or 264 and 266 of the Criminal Code. Based on these articles in the Criminal Code, a Notary can be subject to a minimum imprisonment of 6 (six) years and a maximum imprisonment of 8 (eight) years, the legal consequences for the Notary of a deed that is annulled by the Court carried out by the Notary will make the validity of an authentic deed become null and void or can be canceled so that one of the parties will be harmed. Generally a Notary can be sued to pay compensation. For the Notary concerned, will be subject to administrative sanctions in the form of an oral warning and written warning if he commits a minor violation. Meanwhile, temporary dismissal, according to Article 9 UUJN, is due to being in bankruptcy proceedings, being under guardianship, committing a disgraceful act*

*or violating the obligations and prohibitions of office, where the period of temporary dismissal is 6 (six) months. Meanwhile, if you commit an act that violates the law, you can be given sanctions in the form of dishonorable dismissal.*

**Keywords:** Court; Deed; Notary; Responsibility.

## 1. Introduction

The principle of the rule of law guarantees certainty, order and legal protection that has truth and justice as its core. Certainty, order and legal protection require, among other things, that social life requires evidence that clearly determines a person's rights and obligations as a legal subject in society.<sup>1</sup>

For this purpose, authentic written evidence is needed regarding circumstances, events or legal actions carried out through certain positions. In making authentic written evidence regarding an event or legal action, which is useful for the administration of the state and community activities. So the government gives the authority to a Notary to make and guarantee the truth of a deed which becomes written evidence which has perfect force. <sup>2</sup>As regulated in Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary.

This perfection can be trusted by the court because it was made by a Notary as a public official who is trusted by the State. Such is the magnitude of the authority given by the State to the Notary Profession, that the government has issued a Law to regulate all Notary behavior, from authority, obligations to prohibitions that carry sanctions for these actions.<sup>3</sup>

A notary is a public official who has the authority to make authentic deeds and other authorities as intended in the UUJN. Notaries who carry out their official duties can be trusted in carrying out their official duties. Notaries have the obligation to keep confidential everything regarding the deeds they make and all information they obtain in order to make the deeds in accordance with their oath or promise of office, unless the law determines otherwise, as stated in article 16 paragraph (1) letter e concerning the Notary Position Law. It is also emphasized that keeping everything related to the deed and other documents

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<sup>1</sup>Abdul Ghofur Anshori, Indonesian Notary Institute, : Legal and Ethical Perspectives, first printing, UII Press, Yogyakarta, 2009, p. 13

<sup>2</sup>Sugeng Budiman & Dr. Widhi Handoko, Legal Policy towards Notaries as Witnesses and Evidence of Authentic Deeds Based on Justice Values, First Printing, UNISSULA Press, Semarang, 2020, p.7.

<sup>3</sup>Ibid.

confidential is to protect the interests of all parties related to the deed.<sup>4</sup>A notary in his profession is actually an agency which, with its deeds, creates written evidence and has an authentic character. That the Notary is authorized by law to create absolute evidence in the sense that what is stated in the authentic deed is true.<sup>5</sup>

Notaries in carrying out or carrying out their official duties are regulated in article 17 of the Notary Law Number 30 in conjunction with Law Number 2 of 2014 concerning the Position of a Notary, namely regarding the prohibition on becoming a Notary. If the Notary violates the prohibition, the Notary will be subject to sanctions as regulated in Article 85 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notaries.<sup>6</sup>

The existence of a Notary in public life is very important. Because Notaries provide a guarantee of legal certainty to the community regarding the making of authentic deeds which are needed in community activities both in economic, social and political terms. To make this authentic deed, the services of a Notary are needed, so that the authentic deed can be accepted by all parties concerned and can have legal certainty.

Notaries in carrying out their duties and positions who have the authority to make authentic deeds can be burdened with responsibility for their actions, this is in accordance with Article 1 number 1 UUJN. This responsibility is a basic willingness to carry out their obligations. for negligence and errors in the contents of the deed made in his presence, but the Notary is only responsible for the formal form of the authentic deed as required by the Law. Every authority given to the Notary must be based on legal rules as a limitation so that the office can run well and not collides with the authority of another position. Thus, if a Notary performs an action outside the authority that has been determined, it can be categorized as an act that violates authority. Then the notarial deed is not legally binding or cannot be implemented.

Notary as one of the public officials who has an important role in ensuring legal certainty, order and legal protection through authentic deeds made by and before him, then the authentic deed is strong evidence and if a dispute occurs in court unless it can be proven to be untrue, then the Notary's deed provide perfect proof as stated in Article 1870 of the Civil Code to the parties who make

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<sup>4</sup>Habib Adji, *Knitting Thoughts in the World of Notaries & PPAT*. PT. Citra Aditya Bakti, Bandung, 2014, p.12

<sup>5</sup>R. Soegondo Notodisoerjo, *Notarial Law in Indonesia An Explanation*, Rajawali Press, Jakarta, 1982, p. 7-9

<sup>6</sup>Ngadino. *Duties and Responsibilities of Notary Positions in Indonesia*, PGRI University Semarang Press, First Printing, 2019, p. 7

it. If there is a dispute regarding the deed, the deed can be canceled or null and void by law.

Various errors experienced by Notaries in making a deed can be caused by the Notary himself. This can also be caused by the parties being dishonest in providing information or providing false information, thereby causing losses to one of the parties. In fact, it can cause losses to the Notary who makes an agreement. This requires the Notary to be held accountable for his actions, in the form of civil sanctions, sanctions administrative, criminal sanctions. This can give rise to the assumption that the Notary may together with the parties make a deed with the intention of carrying out an act that is not in accordance with applicable regulations. If the Notary is proven to have committed this act, it is mandatory for him to be given sanctions.

Cancellation of a Notarial deed through a court decision is not only due to the Notary's error or negligence in making the deed. However, the cancellation of a Notarial deed can also be caused by the error or negligence of the parties who bound each other in the deed, so that an error or negligence results in lawsuit from one of the parties. In civil proceedings, it is not uncommon for a Notary to be in the position of co-defendant which is given as a forced measure, because in notarial deeds, especially the Partij Acte which then becomes evidence for civil cases, the Notary is not involved and is even prohibited by law in a case. legal acts as explained in the notarial deed that is formalized. The Notary's involvement is limited to formulating the legal actions of the parties into the deed and then formalizing the deed. The insistence on placing the Notary as a co-defendant is an effort to force the Notary to produce information regarding the deed which is now used as evidence in the judicial process.<sup>7</sup>

In a lawsuit stating that a Notary's deed is invalid, its invalidity must be proven from both physical, formal and material aspects. If this cannot be proven, then the deed in question remains legally binding for the parties interested in the deed. If the deed can be proven in court, then there is one aspect that causes the deed to be defective, so that the deed can become a degraded deed or a fraudulent deed, or even become null and void. Based on Article 1870 of the Civil Code regarding the power of binding and perfect evidence, an authentic, binding deed means that the judge is bound to believe the deed as long as the untruth cannot be proven, while the meaning of perfect means that it is considered sufficient as evidence without any other evidence.

The occurrence of a civil lawsuit or criminal lawsuit from one of the parties does not rule out the possibility that the Notary will be involved in the

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<sup>7</sup>Djoko Sukisno, Taking Minute Photocopies of Deeds and Summoning Notaries, *Mimbar Hukum* Vol.20 Number 1, 2008, P. 52

problems of the parties involved in the case regarding the deed made by the Notary. In practice, it is often found that if a Notarial deed is disputed by parties or other third parties, then the Notary is often drawn as a party who participated in or helped commit a criminal act, namely making or providing false information in the Notarial deed. In this case, the notary intentionally or unintentionally works together with the party/person to make a deed with the intent and purpose of benefiting only a particular party or person or harming other parties, which must be proven in court.<sup>8</sup>

An ex officio judge basically cannot cancel a Notary's deed if an annulment is not requested, because the judge cannot make decisions that are not requested.<sup>9</sup>If an annulment is requested by the party concerned, basically the authentic deed can be annulled by a judge as long as there is opposing evidence. Regarding cancellation of the contents of a deed, a Notary only acts to record what is stated by the parties and is not obliged to investigate the material truth of the contents of the deed.

The validity of an authentic deed is very important because it concerns the interests of the parties and the Notary himself and the authentic deed is perfect proof, the validity of the authentic deed has been regulated both in the BW and UUJN. If it turns out that a statement of information and/or identity of the parties is not true in a deed, this is the responsibility of the parties themselves, not the responsibility of the Notary, because in this case the Notary's function is only to record (write) what is desired and stated. by the parties who appear before the Notary, and there is no obligation for the Notary to materially investigate the information and/or identity presented by the person appearing.

A Notarial Deed must be considered valid until a party declares the deed to be invalid. If a party feels aggrieved, that party can go to the Notary to have a deed of cancellation of the deed drawn up so that it does not bind the parties or file a lawsuit against one of the parties with a lawsuit for relegating a Notary's deed to a private deed and after it is degraded, the Judge will decide whether the deed is valid or not and remains binding on the parties or cancelled. As long as and as long as the lawsuit proceeds until there is a court decision which has permanent legal force, the Notary's deed remains valid and binding on the parties or anyone who has an interest in the deed, and in a lawsuit to declare the deed invalid, the invalidity must be proven from the aspect outward, formal, material notarial deed.

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<sup>8</sup>Habib Adjie, 2008, Notary Law in Indonesia: Thematic Interpretation of Law No.30 of 2004 concerning Notary Positions, Refika Aditama, Bandung, p.78.

<sup>9</sup>Sudikno Mertokusumo, Indonesian Civil Procedure Law, Liberty, Yogyakarta, 1998, P. 126

However, it is necessary for a Notary that the deed he makes must contain the conditions necessary to achieve the authentic nature of the deed, for example, when reading the deed, he explains that he must include the identities of the parties, make the content of the agreement desired by the parties, sign the deed and so on. If there is an error in the deed he has made, the Notary must be held responsible civilly, administratively or criminally.

The responsibility of a Notary in making an authentic deed can be seen from the Notary's negligence in making the deed, the negligence referred to here is if a Notary has made a deed that does not comply with the rules in the BW or UUJN, or the Notary is proven to have done it intentionally (with full awareness and conscientiousness and planned by the Notary concerned) that the deed is made in the presence of and by the Notary to be used as a tool to commit a criminal act, but if the negligence caused is not from the Notary but from the presenter whether intentionally or not related to the false information and/or identity provided by the Notary. If the person present for the purpose of making the deed is incorrect, then this is the responsibility of the parties themselves, because there is no obligation for the Notary to materially investigate the information and/or identity presented by the person present.

## **2. Research Methods**

This approach method is Normative Juridical Research or research that analyzes law, both written in books and laws decided by judges through court processes. The approach is descriptive analytical. The descriptive purpose here aims to collect data systematically, factually and accurately on a problem based on applicable laws and regulations and legal norms.<sup>10</sup>Data sources come from primary, secondary and tertiary data. Data collection methods include library research. Data analysis in this research uses qualitative methods. Research using qualitative methods starts from assumptions about reality or social phenomena that are unique and complex.

## **3. Results and Discussion**

### **3.1. Notary's Responsibility For Deeds That Have Been Canceled By The Court**

A person who is harmed due to the actions of another person, while there is no agreement between them (contractual legal relationship), then according to the law a legal relationship also arises or occurs between those people which causes the loss. This is regulated in Article 1365 of the Civil Code that "Every unlawful act that causes loss to another person, requires the person who legally issued the loss to compensate for the

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<sup>10</sup>Bambang Sunggono, *Legal Research Methodology*, PT. Raja Grafindo Persada, Jakarta, 1977, p. 36.

loss."<sup>11</sup>An unlawful act as regulated in Article 1365 of the Civil Code is an unlawful act committed by a person who through his fault has caused harm to another person. In legal science, there are 3 (three) categories of unlawful acts, namely:<sup>12</sup>

1. Intentional unlawful acts;
2. Unlawful acts without fault (without elements of intention or negligence);
3. Unlawful acts due to negligence.

So the model of legal responsibility is as follows:

- a) Responsibility with elements of fault (without elements of intention or negligence) is partly contained in Article 1365 of the Civil Code;
- b) Responsibility with elements of error, especially negligence, as contained in Article 1366 of the Civil Code;
- c) Absolute responsibility (without fault) as stated in Article 1367 of the Civil Code.

According to Abdulkadir, there are several elements of civil wrongdoing in relation to unlawful acts, namely:

- 1) Violation of Rights, namely the law recognizes certain rights regarding personal rights and material matters and will protect them by forcing the violating party to pay compensation to the party whose rights have been violated;
- 2) Elements of Error. Liability in civil wrongdoing usually requires an element of fault or intent on the part of the party committing the offence, although the degree of intent required is usually small;
- 3) Losses suffered. The essential element of civil wrongdoing in general is that there is loss suffered as a result of an action, although losses from civil wrongdoing do not always run concurrently because there are still civil wrongdoings where if someone's wrongful act is sued then the defendant himself must prove the loss he suffered.<sup>13</sup>

Roscoe Pound believes that responsibility has three types, namely:

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<sup>11</sup>AZ Nasution, Consumer Protection Law, Second Printing, Diapit Media, Jakarta, 2002, p.77.

<sup>12</sup>Munir Fuady, Acts Against the Law, First Printing, Citra Aditya Bakti, Bandung, 2001, p. 3.

<sup>13</sup>Abdulkadir Muhammad, Legal Professional Ethics, PT Citra Aditya Bakti, Bandung 2006, p.

- 1) Liability for intentional harm,
- 2) Losses due to negligence and unintentional,
- 3) The harm done was not done intentionally or due to negligence.<sup>14</sup>

According to one source of responsibility put forward by Roscoe Pound, one of them is an unlawful act which will impose responsibility on someone who is obliged by law to be responsible for it. "In labor law which explains that, the employer is an individual, entrepreneurs, legal entities, or other bodies that provide compensation in the form of wages or other things to the workers they employ. From this it is clear that a notary is an individual who provides compensation in the form of wages to his workers, so that a notary can be interpreted as an employer or superior. So that the relationship between the notary and the employee is an employment relationship. If we depart from Roscoe Pound's opinion which states that responsibility will be borne by someone who is obliged by law to bear it, then in an employment relationship, the Civil Code has a special article regarding responsibility due to unlawful acts.<sup>15</sup>

Regarding the form of Notary's responsibility for making deeds, Abdul Kadir said that the forms of Notary's responsibility can be defined as follows:

1. Notaries are required to make deeds properly and correctly, meaning that the deeds made fulfill the legal wishes and requests of interested parties because of their position;
2. Notaries are required to produce quality deeds, meaning that the deeds they make are in accordance with legal regulations and the wishes of the interested parties in the real sense, not just making things up. The notary must explain to interested parties the correctness of the contents and procedures of the deed he or she is making.
3. Having a positive impact means that anyone will admit that the Notary's deed has perfect evidentiary power.<sup>16</sup>

A Notary can be held responsible if it can be proven that the Notary is guilty. According to Mudofir Hadi, in practice a Notary can make mistakes in carrying out his duties. The errors that may occur are:

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<sup>14</sup>Roscoe Pound, 1996, Introduction to the Philosophy of Law (An Introduction to the Philosophy of law) translated by Mohammad Radjab, Bharatara Niaga Media, Jakarta 2008, p. 92

<sup>15</sup>Muhkam Arief Widodo, Journal. Notary's Civil Liability Due to Abuse of Confidentiality of Deed Minutes by His Employees. Faculty of Law, Brawijaya University, Malang 2015, page 18.

<sup>16</sup>*ibid.* matter. 94



1) There is a typographical error in the Notary's copy, in this case the error can be corrected by making a new copy that is the same as the original and only the copy that is the same as the original will have the same force as the original deed

2) Errors in the form of the Notary's deed, in this case where the minutes of the meeting should have been made but by the Notary it was made as a statement of the meeting's decision and errors in the content of the Notary's deed, in this case regarding the statements of the parties appearing before the Notary, where at the time the deed was made it was thought to be correct but it turned out to be then it's not true.<sup>17</sup>

Regarding Notary errors, what is used is *beroepsfout*. *Beroepsfout* is a special term aimed at mistakes, these mistakes are made by professionals with special positions, namely Doctors, Advocates and Notaries. In this case, the Notary made a non-compliance with the provisions in the process of making the deed in terms of formal aspects in accordance with UUJN provisions which resulted in the degradation of the authentic deed he made. If the court decides that the deed has the power of proof as a private deed or is null and void, then based on the court's decision the Notary can be sued for costs, compensation and interest.<sup>18</sup>

### **3.2. Legal Effects Of A Notarial Deed Canceled By The Court**

A Notarial Deed has perfect evidentiary power in civil lawsuits, but if it violates certain provisions, its evidentiary value will be degraded to having the evidentiary power as a private deed, a Notary who is proven to have made a mistake resulting in the deed he made only having the evidentiary power as a private deed. hand or deed becomes null and void, it will cause losses to the client or other parties.

An act of violation committed by a Notary causes a deed to only have evidentiary power as a private deed or the deed becomes null and void by law, then the adverse party can demand reimbursement of costs, compensation and interest from the Notary. In the event that a Notarial deed is annulled by a judge's decision in court, then if it causes losses to the parties concerned, the Notary can be required to provide compensation, as long as this occurs due to the Notary's error but in the case of the cancellation of the Notarial deed by the court it does not harm

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<sup>17</sup>Mudofir Hadi, Cancellation of the Contents of a Notarial Deed with a Judge's Decision, *Judicial Varia* Year VI Number 72 September, 1991, p. 142-143

<sup>18</sup>Habib Adjie., *Op. Cit.* p.59

the parties. interested parties, the Notary cannot be required to provide compensation even if he loses his good name.<sup>19</sup>

In detail, the Notary's legal responsibility for material losses incurred is divided into several things, namely:

#### 1) Civil Liability of Notaries

The juridical construction used in civil responsibility regarding the material truth of a deed made by a Notary is the construction of an unlawful act (Article 1365 of the Civil Code). What is called an unlawful act has an active or passive nature. Active means carrying out an act that causes harm to another party, so an unlawful act is an active act. Passive means not carrying out a certain action or a necessity, then the other party can suffer a loss. The elements of an unlawful act include the existence of an unlawful act, the existence of a mistake and the loss caused.<sup>20</sup> Generally, a Notary can be required to pay compensation if there is an error made by the Notary, there is a loss suffered, between the loss suffered and the Notary's negligence or violation there is a causal relationship.

Providing compensation as a Notary's responsibility for the Notary's behavior which results in losses for his clients. The law only regulates compensation for losses that are material in nature. uneconomical, namely in the form of bodily pain, mental suffering, fear, and so on. Considering that losses in civil law are separated into two classifications, namely material losses and immaterial losses.

- a. Material Losses are actual losses suffered in the form of costs, losses and interest.
- b. Immaterial losses are losses from benefits that the client is likely to receive in the future or losses from loss of profits that the client may receive in the future.<sup>21</sup>

Compensation as a result of violation of norms can be caused by breach of contract which is an agreement originating from an agreement and unlawful acts which are an agreement originating from law. Compensation as a result of breach of contract as regulated in the Civil Code can also be applied to compensation as a result of unlawful acts. Considering that there are forms of material and immaterial losses, the

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<sup>19</sup>Didi Santoso, Thesis, Op.Cit. pg 53

<sup>20</sup>Ima Erle Yuana, Responsibilities of Notaries After the End of Their Term of Office Regarding the Deeds They Make in View of Law Number 30 of 2004 concerning the Position of Notaries, Master of Notary Affairs, Diponegoro University, Semarang, 2010, p. 87.

<sup>21</sup>M. Tjoanda, Forms of Compensation According to the Civil Code, Unpatti, 2010, P. 59

form of compensation can be in kind (a sum of money) or in kind (in the form of goods).

The form of material compensation given by a Notary can be in the form of money, namely a refund of the cost of making the deed or it can be in the form of making the deed again at a different Notary's office which is paid for by the Notary who caused the loss. For immaterial compensation, it is difficult to describe the objective and concrete nature and measure of immaterial losses. For example, how to compensate for mental suffering. Person A promised Person B to sell a diamond ring of several carats. It turned out that the diamond was fake which caused shock and mental suffering for Person B. How to calculate the loss of mental suffering in question? Even if it is correct to determine the nature and extent of non-economic losses, compensation for this can also be claimed. The compensation is transferred to a calculation in the form of "recovery". The cost of this recovery is calculated as compensation that can be granted by the judge.<sup>22</sup>

That every person has the right to demand compensation and sue the Notary to court because of an unlawful act which resulted in loss to him, in accordance with the provisions of Article 1365 of the Civil Code. And the Notary is jointly and severally responsible between the Notary and the Notary's office staff in accordance with the provisions of Article 1367 of the Civil Code. Likewise, if it turns out that the lawsuit is not proven or is rejected, then it is possible for the Notary concerned to file a lawsuit against them or the party who has sued. This is an effort to maintain the rights and obligations of a Notary in carrying out his/her official duties, relating to deeds made in front of or by a Notary.<sup>23</sup>

If there is a loss suffered by a client regarding an interest in a Notary's deed, the Notary can be held civilly liable by filing a lawsuit in court. In connection with civil lawsuits related to authentic deeds that have been made by a Notary. There are two possible positions of the Notary in this civil lawsuit, including:

- a) The notary is summoned in his capacity as a witness in court regarding a deed that has been made in his presence or by himself which is used as evidence in a civil case;

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<sup>22</sup>Muhammad Tiantanik Citra Mido, Notary's Civil Responsibility for Deeds Read by Notary Staff in Front of an Audience. *Lentera Hukum*, Volume 5 Issue 1, Jember University 2018, p 16.

<sup>23</sup>*ibid.* matter. 17

- b) The notary was summoned in his capacity as a defendant who was brought before the court regarding an authentic deed he made because he was deemed to have harmed the plaintiff.<sup>24</sup>

The legal consequences of an unlawful act committed by a Notary will make the validity of an authentic deed null and void or can be canceled so that one of the parties will be harmed. Generally, a Notary can be required to pay compensation in the event of:

- a) There are errors made by the Notary;
- b) Any loss suffered;
- c) Between the losses suffered and the Notary's negligence or violation, there is a causal relationship.<sup>25</sup>

Civil evidence of an authentic deed made before or by a Notary is perfect evidence for interested parties. In the event of a denial, the party denying it must be able to prove the untruth of the deed regarding certainty:

- a) Day, date, month and year facing.
- b) Time (o'clock) facing
- c) The signature stated in the minutes of the deed.
- d) Feeling never faced.
- e) The deed was not signed in front of a Notary.
- f) The deed was not read.
- g) Another reason is based on the formality of the deed.

Denial of the matters mentioned above can be done by filing a lawsuit in the district court by the party who disputes the authenticity of the Notarial deed. If the claim regarding the falsity of the deed made by the Notary is not proven in court, then the Notarial deed remains valid as evidence of perfect value and is binding on the parties interested in it as long as it is not canceled by the parties themselves or based on a court decision. However, if the lawsuit to deny the untruth of the deed is proven, then the position of the Notary's deed will be degraded to a private deed whose evidentiary value will depend on the party or judge who evaluates it. By relegating a Notarial deed to a private deed which

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<sup>24</sup>Habib Adjie, Indonesian Notary Law, PT. Refika Aditama, Bandung. 2009, p. 21.

<sup>25</sup>Ibid., p. 54

has an impact on material losses experienced by the party suing and the party can prove the losses they have experienced, the plaintiff can ask for a certain amount of compensation.<sup>26</sup>

The Notary who is being sued cannot pay for the material losses experienced by the plaintiff, so based on a court decision which has permanent legal force, the Notary can be declared bankrupt. Bankruptcy can be used as the underlying reason for the temporary dismissal of a Notary from his position. If the Notary cannot pay the compensation demanded, then based on a court decision which has permanent legal force, the Notary can be declared bankrupt. The Notary's bankruptcy can be used as a basis for dismissing the Notary from his position. This is based on Article 9 paragraph 1 letter a UUJN where a Notary can be temporarily suspended if he is in bankruptcy proceedings or during a period of suspension of debt payment obligations. Article 12 of the UUJN Notary states that if the bankruptcy process period is declared to have expired and the Notary is still unable to fulfill his obligation to pay compensation to the plaintiff, then based on a court decision that has permanent force, the Notary concerned can be permanently and dishonorably dismissed.<sup>27</sup>

As for Decision Number 83/Pdt.G/2020/Pn.Kdi

JUDGE:

1 Stating the actions of defendant I, defendant II, defendant III, in holding the Extraordinary General Meeting of Shareholders (EGMS) dated 16 January 2017 which was then outlined in the Deed of Statement of Decisions at the Extraordinary General Meeting of Shareholders of Limited Liability Company PT Tonia Mitra Sejahtera Number 75 dated January 27 2017 which was made before Rayan Riadi SH MKn, notary in Kendari City, is an Unlawful Act.

2 Declaring the Extraordinary General Meeting of Shareholders (EGMS) dated 16 January 2017 which was then stated in the Deed of Decision Statement of the Extraordinary General Meeting of Shareholders of Limited Liability Company PT Tonia Mitra Sejahtera Number 75 dated 27 January 2017 which was made in the presence of Rayan Riadi SH MKn, notary in Kendari City, as well as any and all Shareholder Meetings including changes to the Articles of Association of PT Tonia

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<sup>26</sup>Habib Adjie, *Civil & Administrative Sanctions Against Notaries as Public Officials*, Bandung PT. Refika Aditama, 2008, p. 120

<sup>27</sup>*Ibid.* p.121

Mitra Sejahtera, in whatever form made and conducted after January 16 2017 are invalid, not binding and null and void by law.

3 Punish the defendant to comply with the contents of the decision in this case. Sentenced Defendant I, Defendant II, Defendant III, Defendant IV, and co-defendants to pay all court costs incurred in the case.

## 2) Criminal Responsibility of Notaries

The criminal responsibility of a Notary for the deed he or she makes is not regulated in the UUJN, but the Notary's criminal responsibility is imposed if the Notary commits a criminal act. In explaining his duties as a Notary, the Notary concerned cannot be held accountable, because the Notary only records what is submitted by the parties to be included in the deed. False information submitted by the parties is the responsibility of the parties themselves.<sup>28</sup>In other words, what can be held accountable to the Notary is if the fraud or deception originates from the Notary himself.<sup>29</sup>UUJN only regulates sanctions for violations committed by Notaries. These sanctions can be in the form of deeds made by Notaries that do not have authentic power or only have the power of private deeds.

Regarding the Notary's act of committing the crime of forgery or falsifying a deed, the UUJN does not specifically regulate the criminal provisions, therefore it is based on the principle of legality which is the principles of the Criminal Code that:

- a) Indonesia is a legal state based on Pancasila and the 1945 Constitution.
- b) The state guarantees every citizen the same position in law and government;
- c) Every citizen without exception is obliged to uphold the law and government.<sup>30</sup>

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<sup>28</sup>Andi Mamminanga, Implementation of the Authority of the Regional Notary Supervisory Council in Carrying Out the Duties of Notary Positions based on the UUJN, Faculty of Law, Gajah Mada University, Yogyakarta, 2008, p. 32.

<sup>29</sup>Notodisoerjo, R. Soegondo. 1982, Notary Law in Indonesia An Explanation, CV. Rajawali. Jakarta 1982. P.83

<sup>30</sup>M. Yahya Harahap, Discussion of Problems and Application of the Criminal Procedure Code (Investigation and Prosecution), Second Edition, Sinar Graphics, Jakarta, 2000, p. 36.

If the law is enforceable for Notaries, then Notaries must comply with the criminal provisions as regulated in the Criminal Code and their implementation considering that Notaries carry out actions in their official capacity to differentiate from the actions of Notaries as legal subjects. Article 50 of the Criminal Code provides legal protection for Notaries which states that "anyone who commits Actions to carry out statutory regulations must not be punished."<sup>31</sup>

In criminal cases related to the formal aspects of notarial deeds, investigators, public prosecutors and judges will state that the notary has taken legal action.

- a) Making fake/forged letters and using forged fake letters (Article 263 paragraph (1), (2) of the Criminal Code);
- b) Committing forgery (Article 264 of the Criminal Code);
- c) Ordering to include false information in an authentic deed (Article 266 of the Criminal Code)
- d) Doing, ordering to do, those who participate in doing it (Article 55 in conjunction with Article 263 paragraphs (1) and (2) or 264 or 266 of the Criminal Code);
- e) Helping to make fake or forged letters and using fake or forged letters (Article 56 paragraphs (1) and (2) in conjunction with Article 263 paragraphs (1) and (2) or 264 or 266 of the Criminal Code).

If it is related to the aspect of a formal criminal act committed by a Notary, in a conscious state a person can also commit an act which is a prohibited act, so there must be an element of fault on the part of the perpetrator of the criminal act, namely deliberate (opzet) and caution (culpa).

Deliberation (Opzet) is something that occurs in most criminal acts. Deliberation can be divided into 3 (three) types, namely:<sup>32</sup>

- a) Deliberation which is a goal to achieve something (opzet als oogmerk);

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<sup>31</sup>R. Soesilo, Criminal Code (KUHP) and Complete Comments Article by Article, Politeia, Bogor, 1993, p. 66.

<sup>32</sup>Ima Erlie Yuana, Thesis.Op.Cit, p. 70

b) Deliberation which does not contain a goal, but is accompanied by the realization that a result will definitely occur (opzet bij zekerheidsbewustzijn);

c) Deliberately but with the realization that there is only a possibility (not certainty) that a result will occur (opzet bij mogelijkheidsbewustzijn).

Apart from that, this intentionality must also cover 3 (three) elements, namely:

- a) Prohibited acts;
- b) The consequences are the main reason for the prohibition;
- c) That this act violates the law.

### 3) Administrative Responsibilities of Notaries

There is a very strong correlation between the Law on the Position of Notaries and the professional code of ethics. The professional code of ethics regulates Notaries internally and the UUJN regulates it externally. Notaries in carrying out their official duties must do the following things:

a) Notaries are required to make deeds properly and correctly. This means that the deed that is made fulfills the general will and requests of the parties who are interested because of their position;

b) Notaries are required to produce quality deeds. This means that the deed made is in accordance with legal regulations and the wishes of the interested parties in the true sense, not made up. The notary must explain to interested parties the correctness of the contents and procedures of the deed he or she is making. And this deed has a positive impact, so that anyone will admit that the deed has perfect evidentiary power.<sup>33</sup>

Notaries can also be subject to administrative sanctions if they violate the provisions of the law, including:

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<sup>33</sup>Abdul Ghofur Anshori, Indonesian Notary Institute, Legal and Ethical Perspectives, UII Press, Yogyakarta, 2009, p.49.



- a) Government coercion (*bestuursdwang*). Real action by the authorities to end a situation that is prohibited by the rules of administrative law.
- b) Withdrawal of favorable decisions (decisions) (permits, payments, subsidies). Sanctions are used to revoke a favorable decision or decree by issuing a new decree.
- c) Imposition of Administrative fines. Sanctions for imposing administrative fines are aimed at those who violate certain statutory regulations by being subject to a certain amount of money based on the relevant statutory regulations implemented by the government.
- d) Imposition of Forced Money by the Government (*dwangsom*). The imposition of forced money by the government to add a definite penalty in addition to the fine specified in the relevant laws and regulations.<sup>34</sup>

In general, administrative sanctions can be divided into 3 (three) types, namely:

- a) Reparative Sanctions. This sanction is aimed at correcting violations of legal regulations. It can be in the form of stopping prohibited actions, the obligation to change attitudes or actions so that the previously determined state is achieved, actions to correct something that is contrary to the rules. For example, coercion to do something for the government and forced payment of money as a punishment.
- b) Punitive Sanctions. Punitive sanctions are an additional burden. Punishment sanctions include retaliation and preventive measures that create fear for the same offender or possibly other offenders. For example, payment of fines to the government, harsh warnings.
- c) Regressive Sanctions. Sanctions are a reaction to disobedience, the revocation of rights to something decided according to law, as if it were returned to the actual legal

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<sup>34</sup>Herlien Budiono, Collection of Civil Law Writings in the Field of Notary Affairs, Bandung: Citra Aditya Bhakti, 2007, p. 363-389.

situation before the decision was taken. For example, revocation, change or suspension of a decision.<sup>35</sup>

Article 85 UUJN stipulates that there are 5 (five) types of administrative sanctions, namely:

- a) Verbal warning;
- b) Written warning;
- c) Temporary suspension;
- d) Dismissal with honor;
- e) Dishonorable discharge.

These sanctions apply in stages, starting from a verbal warning to dishonorable dismissal, because the Notary violated certain articles as stated in Article 85 UUJN. So apart from the three responsibilities of the Notary, in essence the Notary always makes a deed with full care. - be careful and be guided by the provisions of the applicable laws and regulations, namely UUJN and other laws and regulations. As is known, the task of a Notary is to make an authentic deed whose function is to prove the truth about whether a legal act has been carried out by the parties/persons and include their respective identities. -each of the parties / parties.

The notary only records what is stated by the parties/appearers and then puts it into the deed. Here it can be said that the Notary is only materially responsible within the formal framework, meaning that the Notary has the authority to adjust the information provided by the parties including the letters or documents provided with the original letters/documents so that the Notary can express what formal to deed material.<sup>36</sup>

The notary may make mistakes regarding the contents of the deed because the information provided is wrong, intentionally or not by the parties/persons. In this case, the Notary does not have an obligation to investigate the truth about the information internally, but only externally. Thus, errors that occur in the deed material are not the responsibility of the Notary, but rather the parties facing it. However, if a dispute arises about an authentic deed at a later date

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<sup>35</sup>Edmond Makarim, Notary and Electronic Transactions: Legal study of Cybernotary or Electronic Notary, Raja Grafindo, Jakarta 2012, p. 34.

<sup>36</sup>Winanto Wiryomartani, Implementation of Law No. 30 of 2004 concerning Notary Positions, Renvoi, November 2005, p. 30.

and is challenged in court, then in the trial process the judge will carry out evidence by assessing whether or not the evidence is admissible and assessing the strength of the evidence.

The authentic deed made by the Notary will be proof that there is a legal act that has been carried out by the parties or parties and the legal act is stated by the Notary in the material of a deed. And because of that, Notaries can be summoned/examined as witnesses for the evidentiary process in court trials.<sup>37</sup>

Notary as a profession whose duties and obligations are regulated by law, of course has a form of legal protection, when dealing with criminal law. Legal protection in this case must be interpreted as protection using legal means or protection provided by law. The protection provided by law is the protection of Notary's rights which is the result of the transformation of interests carried out through the legislative process in law-forming institutions or parliament, so that Notary's rights can be respected, protected and obeyed. The forms of legal protection for Notaries in carrying out their duties are:<sup>38</sup>

a) Legal Protection for Notaries

Based on the UUJN Law on the Position of Notaries, it regulates the form of legal protection that can be given to Notaries as a profession, this is reflected in Article 66 UUJN which is formulated: "that for the purposes of the judicial process, investigations by public prosecutors or judges with the approval of the authorized Regional Supervisory Council take a photocopy of the minutes of the deed and/or letters attached to the minutes of the deed or Notary's protocol in the Notary's storage and summon the Notary to attend an examination relating to the deed he or she has made or the Notary's protocol which is in the storage."<sup>39</sup>

b) Notary's Right to Refuse

The Notary's oath of office consists of two parts, the first is called the *belovende eed* oath or promise or also called *politieke eed* and the second is called *zuiveringseed* or also called *beroepseed*. In the first part the Notary swears/promises that he will obey and be loyal to the Republic of Indonesia,

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<sup>37</sup>*Ibid*, p. 35

<sup>38</sup>R. Soegondo Notodisoerjo, Op. Cit. pg 42

<sup>39</sup>*Ibid*.pg 43

Pancasila and the 1945 Constitution of the Republic of Indonesia, UUJN and other laws and regulations, while in the second part the Notary swears/promises that he will carry out his position with trust, honesty, thorough, independent and impartial and will maintain attitudes, behavior and will carry out obligations in accordance with the code of professional ethics, honor, dignity and responsibility as a Notary and will keep the contents of deeds and information obtained in the performance of office confidential. The right to refuse is an exception to the general rule which states that every person who is capable of giving sanctions is obliged to provide testimony before the court, both in civil proceedings and in criminal proceedings.<sup>40</sup>

c) Notary Supervisory Institutions Since the enactment of Law Number 30 of 2004 concerning the Position of Notaries, supervision of Notaries is no longer carried out by the District Court according to the working area of the Notary in question. There are two institutions that have the authority to supervise Notaries, namely the Notary Supervisory Council Institution which was formed by the Minister of Law and Human Rights of the Republic of Indonesia in order to carry out supervision of Notaries, and the Honorary Council which is one of the tools of the Notary organization, in this case the Association Indonesian Notary (INI).

According to the author of the research and discussion regarding the Notary's responsibility for deeds that have been annulled by the Court, in the Kendari District Court decision Number 83/Pdt.G/2020/PN.Kdi, which states that the Authentic Deed made before a Notary in this case is a co-defendant invalid, not binding and null and void, based on the statement of the Kendari District Court Judge, Mr. TAHIR, SH. That the position of authentic evidence made by a Notary has the value of perfect and binding evidentiary power (*wolledig en bindende bewij kracht*). If the lawsuit filed is supported by evidence of an authentic deed and it turns out that the truth of the deed cannot be crippled by the defendant with the opposing evidence having fulfilled the requirements. However, in practice at the Kendari District Court, even though the lawsuit has been supported by evidence that has perfect evidentiary value and is binding, the possibility remains open. the decision is canceled at the appeal or cassation level.

This is because the deed made by the Notary omits the name of the party which then causes losses to other parties. Notaries can be held civilly liable,

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<sup>40</sup>*Ibid.* matter. 45

if they legally fulfill the elements of an unlawful act in accordance with Article 1365 of the Civil Code in making a deed and it harms one of the parties, the injured party can file a claim for compensation against the Notary. The Notary can also be criminally responsible if he does criminal offenses as follows:

- 1) Making forged fake letters and using forged fake letters (Article 263 paragraph (1), (2) of the Criminal Code);
- 2) Committing Forgery (Article 264 of the Criminal Code);
- 3) Ordering to include false information in an authentic deed (Article 266 of the Criminal Code);
- 4) Doing, ordering to do, participating in doing (Article 55 in conjunction with Article 263 paragraphs (1) and (92) or 264 and 266 of the Criminal Code);
- 5) Helping to make fake or forged documents and using fake or forged documents (Article 56 paragraphs 1 and 2 in conjunction with Article 263 paragraphs (1) and (2) or 264 and 266 of the Criminal Code. Based on these articles in the Criminal Code, Notaries can be charged a minimum prison sentence of 6 (six) years and a maximum prison sentence of 8 (eight) years.

In carrying out its obligations, a Notary has been proven to have made a deed in violation of the articles in the UUJN and the professional code of ethics, so the Notary can be subject to administrative sanctions as contained in Article 85 of the UUJN, namely in the form of:

- 1) Verbal warning;
- 2) Written warning;
- 3) Temporary suspension;
- 4) Dismissal with honor;
- 5) Dishonorable discharge.

The legal consequences for the Notary of a deed that are annulled by the Court according to the notary's writing will make the validity of an authentic deed become null and void or can be canceled so that one of the parties will be harmed. Generally, a Notary can be sued to pay compensation. The Notary concerned will be subject to administrative sanctions in the form of a verbal warning and written warning if he commits a minor violation. Meanwhile, temporary dismissal, according to Article 9 UUJN, is due to being in bankruptcy proceedings, being under

guardianship, committing a disgraceful act or violating obligations and prohibitions on office, where the period of temporary dismissal is 6 (six) months. Meanwhile, if you commit an act that violates the law, you can be given sanctions in the form of dishonorable dismissal if the Notary is sentenced by a court to imprisonment for more than 5 (five) years, as regulated in Article 13 UUJN.

#### **4. Conclusion**

Based on the results of research regarding the Notary's responsibility for deeds that are annulled by the Court, it can be concluded that in the Kendari District Court decision Number 83/Pdt.G/2020/PN.Kdi, which states that the Authentic Deed made before the Notary in this case as a co-defendant is not valid, not binding and null and void by law, this is because the deed made by the Notary omits the name of the party which then causes losses to other parties. The notary can be held civilly liable, which if it legally fulfills the elements of an unlawful act according to the injured party can file a claim for compensation against the Notary, the Notary can also be criminally responsible if he commits the following criminal acts: 1) Making forged fake documents and using forged fake documents (Article 263 paragraph (1), (2) of the Criminal Code; 2) Committing Forgery (Article 264 of the Criminal Code); 3) Ordering to include false information in the authentic deed (Article 266 of the Criminal Code); 4) Doing, ordering to do, participating in doing (Article 55 in conjunction with Article 263 paragraphs (1) and (92) or 264 and 266 of the Criminal Code; 5) Helping to make fake or forged letters and using fake or forged letters (Art. 56 paragraphs 1 and 2 in conjunction with Article 263 paragraphs (1) and (2) or 264 and 266 of the Criminal Code. Based on these articles in the Criminal Code, a Notary can be subject to a minimum imprisonment of 6 (six) years and a maximum imprisonment of 8 (eight) year, the Notary in carrying out his obligations has been proven to have made a deed in violation of the articles in the UUJN and his professional code of ethics, then the Notary can be subject to administrative sanctions as contained in Article 85 of the UUJN, namely in the form of: 1) Verbal warning; 2) Written warning; 3) Temporary suspension; 4) Respectful dismissal; 5) Disrespectful dismissal. The legal consequences for the Notary of a deed that is annulled by the Court carried out by the Notary will make the validity of an authentic deed become null and void or can be canceled so that one of the parties will be harmed. In general, a Notary can be sued to pay compensation. For the Notary concerned, are subject to administrative sanctions in the form of verbal warnings and written warnings if they commit minor violations. Meanwhile, temporary dismissal, according to Article 9 UUJN, is due to being in bankruptcy proceedings, being under guardianship, committing a disgraceful act or violating obligations and prohibitions on office, where the period of temporary dismissal is 6 (six) months. Meanwhile, if you commit an act that violates the law, you can be

given sanctions in the form of dishonorable dismissal if the Notary is sentenced by a court to imprisonment for more than 5 (five) years, as regulated in Article 13 UUJN.

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