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Notary's Responsibility for Deeds Declared Void or Invalid Based on Court Decision

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Abstract. *This study aims to analyze: 1)The notary's responsibility for deeds declared null and void based on a court decision. 2) Legal protection for the parties, including notaries, when the deed made is declared null and void. This type of research falls within the scope of normative legal research. The approach method in this research is legislation (statue approach). The type of data in this research is secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses library techniques (document study). The analysis in this research is prescriptive. The results of the study concluded: 1) The notary's responsibility for deeds declared null and void based on a court decision is relative and is determined by the notary's level of compliance with legal provisions and the application of the prudential principle. This responsibility can include civil, administrative, and criminal aspects, depending on the presence or absence of elements of error or negligence in carrying out the authority of his position. In Decision Number 43/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Semarang, the cancellation of a deed does not give rise to responsibility for the notary because no formal error was found; Violations occur in the substance of bankruptcy law by the parties, not by the notary. 2) Legal protection for the parties, including notaries, when the deed they have made is declared null and void or invalid aims to ensure legal certainty and justice. Protection for the parties is realized through a court decision that restores violated rights, while for notaries it is provided if they have carried out their official duties in accordance with the Notary Law (UUJN) and the principle of good faith. Legal protection mechanisms include preventive protection through supervision by the Notary Supervisory Board (MPN) and the Notary Honorary Council (MKN), as well as repressive protection through the courts and professional rehabilitation if the notary is not proven guilty. Proportional legal protection ensures a balance between upholding official responsibilities and guaranteeing the independence of* *the notary profession in carrying out its state function as a guarantor of legal certainty.*

Keywords: *Cancellation; Legal; Notary; Protection; Responsibility.*

1. Introduction

Indonesia is a state based on the rule of law. This constitutional affirmation means that all aspects of social, state, and governmental life must always be based on law. To realize a state based on the rule of law, one of the requirements is a legal framework that regulates balance and justice in all areas of life and the people's livelihoods through legislation, without neglecting the function of jurisprudence. This demonstrates the crucial role that legislation plays in Indonesia's rule of law.[1]

As a manifestation of the principle of a state based on the rule of law, the existence of officials with formal legal authority is essential to ensuring justice and legal certainty in society. These officials carry out the state's function of providing legitimate and accountable legal services. One such official is the notary, who plays a strategic role because he is authorized by law to create authentic deeds as strong legal evidence in civil litigation.

Based on Article 1 number 1 of Law Number 2 of 2014 concerning Amendments toInvite-Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJNP), a Notary is defined as a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other Laws. DThe reason for making written agreements before or made by a notary is so that the deed becomes an authentic deed that can be used as strong evidence if at some point a dispute arises between the parties or there is a lawsuit from another party.[2] The history of notaries in Indonesia has evolved in line with the development of the Indonesian state and nation. Contemporary Indonesian history records significant changes in the notarial institution during the Reformation era. This change was marked by the successful enactment of Law Number 30 of 2004 concerning the Position of Notary (UUJN), which was later amended by Law Number 2 of 2014.[3]

The most important aspect of the notary profession lies in their primary duty as the maker of authentic deeds. Article 1870 of the Civil Code states that an authentic deed constitutes absolute and compelling evidence for the parties who

[1]Catur Budi Dianawati, dan Amin Purnawan, 2017, Kajian Hukum Jaminan Hak Tanggungan yang Dilelang Tanpa Proses Permohonan Lelang Eksekusi Ke Ketua Pengadilan Negeri, *Jurnal Akta*, Volume 4, Nomor 2, p. 125

[2]Kunni Afifah, 2017, Tanggung Jawab dan Perlindungan Hukum bagi Notaris secara Perdata Terhadap Akta yang Dibuatnya, *Jurnal Lex Renaissance,* Nomor 1 Volume 2, p. 150

[3]Rita Permanasari, Akhmad Khisni, 2018, Imunitas Hukum Bagi Notaris Yang Membuka Rahasia, Jabatan, *Jurnal Akta,* Volume 5 Nomor 2, p. 26

made it. Notaries are authorized by law to create this absolute means of proof. This implies that the contents of the authentic deed are essentially considered true.[4]

The authority of a Notary is general in nature as stipulated in Article 15 Paragraph (1), namely that a Notary is authorized to make authentic deeds regarding all acts, agreements and provisions required by a Statutory Regulation and/or by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copies and extracts of the deed, all of this as long as the making of the deeds is not also assigned or excluded to other officials stipulated by Law.

In carrying out their duties, notaries must adhere to the UUJN and the notary code of ethics.The existence of a Code of Ethics aims to ensure that a profession can be carried out with morals or dignity, motivation and orientation towards intellectual skills and can argue rationally and critically and uphold normative values.[5] Notaries who commit violations will face sanctions. Notaries cannot escape civil and even criminal prosecution. This means that all notary actions in carrying out their duties must be legally accountable, including all consequences, including being subject to legal sanctions for violations of the underlying legal norms.[6]

A deed has perfect evidentiary force if it meets the formal requirements (the procedure for making it according to legal provisions) and material requirements (the contents of the deed are valid, honest, and do not conflict with the law and morality). If one of these requirements is not met, the deed can lose its authenticity and be annulled by the court. For example, in Decision Number 43/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Smg, Lease Agreement No. 25 of 2022 drawn up by Notary Stephanie Wilamarta, SH was declared null and void because it was made while the debtor was in the PKPU period without the curator's approval. This case demonstrates the importance of a notary's responsibility not only administratively, but also in ensuring the validity of the agreement's substance. Therefore, the notary's responsibility for annulled deeds needs to be further studied, including the limits of responsibility, legal sanctions, and the relationship between formal obligations and the material legal consequences of the deed.

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[4]Rizki Nurmayanti, dan Akhmad Khisni, 2017, Peran Dan Tanggung Jawab Notaris Dalam Pelaksanaan Pembuatan Akta , *Jurnal Akta*, Vol. 4 No. 4, p. 611

[5]Dwi Andika, 2017, Implementation of the Settlement of Violations of the Notary Code of Ethics Regarding the Installation of Notary Nameplates in Denpasar City, Scientific Journal of the Notary Masters Study Program, Udayana University, Volume 2, Number 2, p. 213

[6]Ary Yuniastuti and Jawade Hafidz, 2017, Legal Review of the Invalidity of Deeds and Notary Liability, Jurnal Akta, Volume 4 Number 2, p. 132

2. Research Methods

This type of research falls within the scope of normative legal research. The approach method in this research is legislation (statue approach). The type of data in this research is secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses library techniques (document study). The analysis in this research is prescriptive.

3. Results and Discussion

3.1 Notary's Responsibility for Deeds Declared Void or Invalid Based on Court Decision

The validity of an authentic deed depends heavily on compliance with statutory procedures. Violation of these provisions not only impacts the deed's evidentiary value but can also result in losses for the parties and potentially result in sanctions against the notary. This demonstrates that an authentic deed is judged not only by its formal form but also by the substance of the legal act contained within it.[7]

In practice, it is not uncommon to find cases where a notarial deed is later declared null and void by a court decision. One concrete example can be seen in Decision Number 43/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Semarang. This case began with a lawsuit by the Curator in the bankruptcy process against the parties who entered into a lease agreement for assets that had become part of the bankrupt estate without the Curator's consent. Previously, the debtor was in the PKPU period and after the reconciliation plan was rejected by the creditors, the debtor was declared bankrupt by the Semarang Commercial Court, so that all of its assets, including land and buildings at Jalan Lapangan Bola No. 16-A, Kebon Jeruk, West Jakarta, were transferred to the Curator. However, before the bankruptcy decision was pronounced, the debtor executed a Lease Agreement Deed Number 25 dated March 4, 2022, before a notary with PT Sinar Inti Harapan for a period of five years. The court considered the agreement to be made without regard to bankruptcy provisions because the debtor no longer has authority over his assets, thus potentially harming creditors and hindering the settlement of the bankruptcy estate. Based on these considerations, the Semarang Commercial Court through Decision Number 43/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Smg declared the lease agreement null and void, ordered the return of the rent, vacated the leased object, and authorized the Curator to sell the assets. This cancellation shows that although the notarial deed is formally valid, the substance of the legal acts contained therein that violate bankruptcy provisions cause the deed to lose its authentic force.

In this case, the notary should be able to ensure that the parties appearing have full legal authority to carry out the legal acts set out in the deed. The principle of

[7]Herlien Budiono, 2010, Collection of Civil Law Writings in the Notary Sector, Citra Aditya Bakti, Bandung, p. 56.

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prudence is inherent in the position of a notary, as regulated in Article 16 paragraph (1) letter a of the UUJN, which requires the notary to act honestly, carefully, independently, impartially, and protect the interests of the parties. If the notary is negligent in examining the legal status of the parties appearing who are in the PKPU or bankruptcy process, then it can be said that the notary has not carried out his/her duties carefully as mandated by law. This negligence can give rise to civil and administrative legal liability, because the notary's actions have the potential to harm other parties, especially curators and creditors.[8]However, if the notary has correctly carried out all legal procedures during the deed-making process, such as checking identity documents, powers of attorney, and legal statements submitted by the parties, then the parties themselves are responsible for the substance of the agreement. In this case, the notary cannot be held legally responsible for the cancellation of the deed, because the cancellation is caused by a violation of material law by the parties, not by a formal error on the part of the notary.[9]

Based on the legal facts and the court's considerations in the decision, the notary's responsibility can be analyzed from three aspects, namely civil, administrative and criminal responsibility.

1) Civil Liability

A notary's civil liability arises if it can be proven that their negligence caused harm to another party. This provision is based on Article 1365 of the Civil Code, which states that any unlawful act that causes harm to another person requires the perpetrator to compensate for that loss.[10]In this case, if the curator can prove that the notary did not verify the legal status of the debtor who was in the PKPU period, then the notary can be sued in civil court because he is considered negligent in carrying out his official authority.[11]However, if the notary can provide evidence that they have examined the completeness of the documents and determined that the debtor is still authorized to act on their own behalf, the negligence element is waived. Therefore, the notary cannot be held civilly liable for any losses arising from the cancellation of the deed.

2) Administrative Responsibilities

In addition to civil liability, notaries can also be held administratively accountable by the Notary Supervisory Board (MPN) if they are proven to have failed to carry out their official duties as stipulated in Article 16 paragraph (1) and Article 85 of the UUJN. Administrative sanctions that can be imposed include verbal warnings,

[8]Habib Adjie, 2009, Civil and Administrative Sanctions Against Notaries as Public Officials, Refika Aditama, Bandung, p. 47.
[9]Sjaifurrachman and Habib Adjie, 2011, Aspects of Notary Responsibility in Making Deeds, Mandar Maju, Bandung, p. 128.
[10]R. Subekti, 2008, Principles of Civil Law, Intermasa, Jakarta, p. 45.
[11]R. Soeroso, 2011, Unlawful Acts in Indonesia, Sinar Grafika, Jakarta, p. 59.

written warnings, temporary dismissal, and dishonorable dismissal. In this example case, if evidence is found that the notary did not verify the legal status of the debtor who is in the PKPU process, then the notary can be subject to administrative sanctions in the form of a written warning or temporary dismissal, because they are deemed to have neglected to implement the principle of prudence in making deeds. However, if the notary can prove that he has acted in accordance with legal provisions and was unaware of the PKPU status because he was not informed by the party appearing before him, then the MPN has no basis to impose administrative sanctions.[12]

3) Criminal Responsibility

Criminal liability for a notary can arise if there is evidence of an intentional element in the unlawful act, for example by deliberately including false information in the deed as regulated in Article 266 paragraphs (1) and (2) of the Criminal Code. However, in this case, there was no indication that the notary intentionally included false information. Thus, even though the deed was declared null and void by law, there was no criminal element in the notary's actions because the cancellation was based on a violation of bankruptcy law committed by the parties, not by the notary. Therefore, criminal liability cannot be applied in this case.

This case provides an important lesson for notaries to pay greater attention to the principle of prudence in carrying out their duties. This principle requires notaries to always examine the validity and authority of the parties appearing before them, and to ensure that the legal acts outlined in the deed do not conflict with legal provisions. According to Habib Adjie, notaries are responsible for the formal accuracy of the deeds they draw up, but are not responsible for the material accuracy of the parties' statements, as long as the notary has carried out their duties in good faith and in accordance with procedures.[13]Thus, the cancellation of the deed in this case does not automatically indicate a violation by the notary, because the substance of the agreement that violates the law is not the notary's responsibility, but rather the responsibility of the parties who made the agreement.[14]

Based on the above analysis, the notary's responsibility for the deed declared void in Decision Number 43/Pdt.Sus-Other Claims/2023/PN Niaga Semarang is relative, depending on the extent to which the notary carried out his/her official duties carefully and diligently. If the notary is proven to have neglected to examine the legal status of the parties appearing before him/her, he/she may be held civilly liable and subject to administrative sanctions. However, if the notary has acted in

[12]Sjaifurrachman, 2011, Aspects of Notary Responsibility in Making Deeds, Mandar Maju, Bandung, p. 114.
[13]Habib Adjie, 2009, Civil and Administrative Sanctions Against Notaries as Public Officials, Refika Aditama, Bandung, p. 51.
[14]Henny Tanuwidjaja, 2019, Notary's Liability for Deeds Declared Invalid, Prioris Law Journal, Volume 8 Number 3, p. 17.

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accordance with the provisions of the UUJN and carried out his/her duties in good faith, the cancellation of the deed does not give rise to legal liability for the notary. This case emphasizes the importance of the principle of prudence for notaries to always conduct legal verification of the parties and the object of the agreement, so that the deed drawn up does not give rise to legal disputes in the future.

The concept of responsibility in modern legal theory is understood not only normatively but also philosophically. Hans Kelsen, in his work "General Theory of Law and State," divides legal responsibility into four forms: individual responsibility, collective responsibility, culpability, and strict liability.[15] Hans Kelsen's theory of liability can be used to analyze the position and responsibilities of a notary in Decision Number 43/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Semarang, where a lease agreement was declared null and void due to violation of the provisions of the Bankruptcy Law. Based on this theory, notary liability includes four forms, namely individual liability, if the notary is negligent in examining the legal status of the parties appearing before him; collective liability, when the notary's negligence impacts public trust in the notarial profession; liability based on fault (culpability), if proven to have an element of intent or actual negligence (culpa lata); and absolute liability, which is moral and professional in nature even without an element of legal error. In this case, the notary was not proven legally guilty because the cancellation of the deed was more due to the legal actions of the parties who violated the provisions of the bankruptcy. However, ethically, the notary still has a professional obligation to ensure the validity of the substance and legal status of the object of the agreement so that the deed made meets the formal and material requirements according to the Notary Law (UUJN). Various studies show that the cancellation of an authentic deed can give rise to legal consequences and civil and administrative responsibilities for the notary if procedural or substantial violations are found, so that caution, accuracy, and compliance with the code of ethics are the main basis for maintaining the authenticity and legal force of the deed made.

3.2 Legal Protection for Parties, Including Notaries, When a Deed is Declared Void or Invalid

The purpose of law is to establish a balance between individual and collective rights. Therefore, law must be fundamentally certain and just so that it can function as intended.[16]Notaries have an independent and impartial position in carrying out their duties. Therefore, in carrying out their duties, notaries must adhere to a professional code of ethics, as notary publics are a respected profession (officium nobile).[17]A deed made by a notary can be the legal basis for a

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[15]Hans Kelsen, 1961, General Theory of Law and State, Harvard University Press, Cambridge, p. 80.
[16]Rahmad Hendra, 2012, Notary's Responsibility for Authentic Deeds Where the Applicant Uses a False Identity, Journal of Legal Studies, Volume 3 Number 2, p. 124.
[17]Dewi Rachmayani, Agus, Notary Covernote in Credit Agreements from the Perspective of Guarantee Law, ACTA DIURNAL: Journal of Notary Law, Faculty of Law, Unpad, Volume 1, Number 1, December 2017, p. 79

person's property status, rights and obligations. Errors in a deed made by a notary can result in the revocation of a person's rights or the burden of an obligation on someone, therefore a notary in carrying out his/her duties must comply with the various provisions stated in the Notary Law, namely Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Law.[18]Within the scope of their duties, notaries have a central role in supporting the government in creating certainty, order, and legal protection through the creation of authentic deeds.

Legal protection in notarial practice is crucial as a guarantee for the parties and notaries that their rights and interests are not harmed by legal actions that result in the cancellation or invalidation of a deed. A notarial deed, which should serve as authentic evidence and possess perfect evidentiary force, can lose its legal force if declared null or void by the court. In such circumstances, legal protection is necessary to prevent the legal consequences of such cancellation from causing uncertainty and wider losses for the parties acting in good faith.[19]

In general, legal protection is intended to provide certainty regarding the legal standing of legal entities involved in a deed declared void. For the parties, legal protection is realized through the recognition and restoration of rights violated as a result of the deed's cancellation. The state, through the courts, guarantees that the rights of well-intentioned parties remain protected, whether through declaratory, constitutive, or executory court decisions.[20]Meanwhile, for notaries, legal protection is provided within the framework of carrying out their duties in accordance with statutory provisions. Notaries cannot be held legally responsible simply because a deed they have executed is later revoked, as long as it can be proven that all formal procedures have been followed and there was no element of negligence or intentional violation of the law.[21]

The cancellation of an authentic deed by the court can occur for two main reasons: a formal defect in the deed's drafting or a material defect in the substance of the agreement made by the parties. If the cancellation is caused by a formal defect, legal responsibility can be directed to the notary. However, if the cancellation is caused by the substance of the agreement being unlawful or not meeting the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, legal responsibility rests with the parties who made the agreement.[22]Therefore, it is important to distinguish between formal notarial errors and material errors of the parties in determining the scope of their respective legal protections.

[18]Abdul Ghofur Anshori, 2009, Indonesian Notary Institution, Legal and Ethical Perspective, UII Press, Yogyakarta, p. 46.
[19]R. Soeroso, 2011, Introduction to Legal Science, Sinar Grafika, Jakarta, p. 188.
[20]Sudikno Mertokusumo, 2010, Understanding Law: An Introduction, Liberty, Yogyakarta, p. 87.
[21]Habib Adjie, 2011, Indonesian Notary Law: Thematic Interpretation of UUJN, Refika Aditama, Bandung, p. 66.
[22]R. Subekti, 2008, Principles of Civil Law, Intermasa, Jakarta, p. 121.

Decision Number 43/Pdt.Sus-Other Lawsuits/2023/PN Niaga Semarang shows the application of different legal protection principles between the parties and the notary. The court declared the Deed of Lease Agreement Number 25 dated March 4, 2022 null and void because the debtor entered into an agreement on an object that had become a bankrupt estate without the authority of a curator as regulated in Article 24 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, and ordered the return of rent, vacating the object, and granting authority to the curator to sell assets to protect the interests of creditors. However, against the notary, the court did not find any error or negligence because the notary had carried out his obligations in accordance with the Notary Law (UUJN). Therefore, notaries still receive legal protection, both legally through Article 66A of the UUJN which requires the approval of the Notary Honorary Council (MKN) before being summoned in the judicial process, and administratively through the supervision of the Notary Supervisory Council (MPN) which can provide rehabilitation of good name if no ethical or procedural violations are found in the implementation of their duties.

The theory of legal protection put forward by Philipus M. Hadjon provides a normative framework for assessing the form and effectiveness of legal protection provided to parties and notaries in notarial practice. According to Hadjon, legal protection is divided into two main forms: preventive legal protection and repressive legal protection.[23]The application of Philipus M. Hadjon's legal protection theory in Decision Number 43/Pdt.Sus-Other Lawsuits/2023/PN Niaga Semarang shows a balance between preventive and repressive legal protection for the parties and notaries. Preventive protection is provided through regulations in the Notary Public Law (UUJN), specifically Article 16 paragraph (1) concerning the obligation to act honestly and diligently and Article 66A which requires the approval of the Notary Honorary Council (MKN) before a notary can be summoned by law enforcement officials, in order to prevent criminalization of the position. This protection also includes the role of the Notary Supervisory Council (MPN) as an administrative supervisor that guarantees the objectivity of examinations and maintains the integrity of the profession. Meanwhile, repressive protection is applied after a dispute occurs, as in the case, when the court restored the creditor's rights through the return of rent and vacating the leased object, but still protected the notary because it was proven that he was not negligent or violating the law. This system emphasizes that legal protection not only safeguards the rights of the parties but also guarantees the independence, professionalism, and accountability of notaries as public officials tasked with ensuring legal certainty. Thus, the balance between legal protection and responsibility reflects the principle of lex specialis in notarial law and strengthens the credibility of notaries as state instruments in upholding justice and legal certainty.

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[23]Philipus M. Hadjon, 1987, Legal Protection for the Indonesian People, PT Bina Ilmu, Surabaya, p. 2.

4. Conclusion

A notary's responsibility for a deed annulled by the court is relative, depending on compliance with the law and the application of the prudential principle. A notary is only liable if proven negligent or in violation of the formal provisions of the Notary Law (UUJN). Based on Decision Number 43/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Semarang, a notary's responsibility is determined by the extent to which they examined the parties' authority and ensured that the contents of the deed complied with the law. Legally, a notary's responsibility encompasses civil (Article 1365 of the Civil Code), administrative (Articles 16 and 85 of the UUJN), and criminal (Article 266 of the Criminal Code). According to Hans Kelsen, this responsibility can be individual or collective. Legal protection for notaries and their parties includes preventive aspects (through UUJN regulations and supervision by the Supervisory/Honorary Council) and repressive (through court decisions and professional rehabilitation), as stated by Philipus M. Hadjon. As long as a notary acts in good faith and in accordance with the Law on Legal Entities (UUJN), the state is obligated to provide protection. The Semarang Commercial Court's ruling affirms proportional legal protection, ensuring that creditors receive justice without compromising the notary's position, as they were not negligent.

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