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The Law Due to Authentic Degradation of Assets Against the Parties

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ABSTRACT

Degraded authentic deeds may cause losses to the parties. Notary as an official who is authorized by law has the responsibility for violations that cause the authentic deed to be degraded. In maintaining the professionalism of a notary, a notary who commits a violation can be given a sanction as a form of responsibility but also can file a lawsuit by the parties who suffer a loss. This thesis aims to determine the legal consequences of authentic deed degradation on the parties. The writing of this thesis uses a normative juridical research method or uses a statutory approach. Normative legal research is used to obtain rules, legal regulations and the application of the law. The notary's responsibility is given by imposing sanctions on the notary who commits the violation according to the level of the violation so that the notary can fulfill his responsibilities as a notary who has good morals and ethics in order to create justice for both the injured party and the notary itself.

1. Introduction

In general life, between two parties who have an agreement to do something, the two parties enter into an agreement where both parties bind themselves on an agreement known as an agreement. However, there are parties who deny the contents of the agreement, resulting in losses in fulfilling the achievements they have promised. The losses faced by the parties have triggered the parties to make an agreement in front of the authorized public official, namely a Notary. (Karjoko, Santosa, and Rachmi Handayani 2019)

Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) in article 1 number 1 provides the definition of a Notary. Notary is a

public official who is authorized to make authentic deeds and has other powers as referred to in this law or based on other laws. (Karjoko et al. 2020)

According to the general rules, "authentic deed" is defined as a notary deed, unless it is affirmed with an exception to and becomes the authority of another official or by general regulation it is generally referred to as a "public official" means that it is Notary Public. (Leonard et al. 2020) Authentic Deed in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) has a definition, namely a deed which is in the form prescribed by law, made by or in front of public officials who are in power for it at a place where deed is made. (Handayani et al. 2018) Meanwhile, a notary deed according to article 1 point 7 UUJN

¹ is an authentic deed made by or before a notary according to the form and procedure stipulated in this law. (Karjoko 2017)

Article 1867 of the Civil Code provides that evidence by writing is carried out in authentic writing, as well as by handwriting. The important difference between the two types of deed is that in the evidentiary value, authentic deeds have perfect proof. The perfection of a notary deed as evidence, then the deed must be seen as it is, does not need to be assessed or interpreted other than what is written in the deed. Meanwhile, underhand deeds have the power of proof as long as the parties acknowledge it or there is no denial from either party. (Utomo and Karjoko 2018)

According to the Big Indonesian Dictionary, the word degradation has the meaning of decline, regarding rank, quality, morals and so on, setbacks, deterioration, or it can also place a level or a lower position. Relationship with the power of proof that the notarial deed can experience a decrease or decrease in degree from the power of perfect proof to an underhand deed and may experience legal flaws which cause the deed to be invalid or invalid. A decrease in the status of the strength of the notary's deed evidence may occur if there is a violation of the provisions of the requirements under the applicable law. (Ismoyo 2020) The violation can be in the form of making deeds that are not in accordance with the facts, falsification of the deed by containing provisions and events that one party does not want, the Notary in making the deed does not guarantee the formal correctness of the deed, there are parties who have never appeared before the notary or the deed is not read by the notary to the tappers or witnesses and the party of tappers is not introduced to the notary. (Dahlan 2018)

The authority of a notary as stated in Article 15 UUJN with its profession as an authentic deed maker accompanied by the rapid and dynamic development of community needs has increased the intensity and complexity of legal relations which of course require certainty. (Hutomo and Karjoko 2018) order and

protection of law which has the essence of truth and justice. By understanding the authenticity requirements and reasons for the cancellation of a notary deed, it can make it easier for every notary to make notary deeds to prevent juridical defects in notary deeds which can result in loss of authenticity and cancellation of the notary's deed in accordance with the Law of notary office, and other applicable legal rules. (Respati et al. 2017)

In this case, the Notary is not merely a clerk, but the Notary also needs to understand and understand what the parties want which is stated in the authentic deed so that it does not conflict with UUJN and other applicable legal rules. The Notary Public's obligation to know and understand the requirements of authenticity, legality and reasons for the cancellation of a Notary's deed is very important to avoid legal flaws which can result in degraded power of proof of Notary's deed and cancellation of Notary's deed, where it can cause losses, especially the parties. (Sudarwanto and Handayani 2019)

In 2015 in the Pekanbaru district court there was a decision Number: 64 / Pdt.G / 2015 / PN_Pbr which stated that the Notary Deed Number 10 dated December 7, 1994 with the title of the deed "statement of transfer and transfer of ownership rights to land and power", which was drawn up before Notary Asman Yunus, SH, Notary in Pekanbaru, canceled by law. The verdict punished the defendants, including the notary, to pay the damages caused by the plaintiff's lawsuit. (Karjoko 2017)

This shows how accountable a notary is ¹⁰ carrying out his authority and obligations. In carrying out its authority and obligations, a notary must be based on statutory regulations in order to guarantee the authenticity of the deed he makes as an official recognized by the state. In practice, many notaries make irregularities or mistakes in making notary deeds, either because of the notary's own dishonesty or the parties facing him. (Candrasari and Karjoko 2018) Deviation or error of the Notary in making the authentic deed can cause the authentic deed to experience degradation or decrease in the degree

of evidence which ¹³causes losses to the parties so that the notary must be able to account for it.

2. Results and Discussion

The Law Due to Authentic Degradation of Assets Against the Parties

¹¹Notary deed is null and void by law or has the power of proof as an underhand deed occurs because the conditions that have been determined according to law are not fulfilled, without the need for certain legal action from the concerned concerned. Therefore, cancellation is passive, meaning that without any active action or effort by the parties involved in an agreement, it will be null and void because there are conditions that are not automatically fulfilled. (Subekti, Sulistiyono, and Handayani 2017)

Cancel by law (*nietig*) is a term used to evaluate an agreement if it does not meet the objective requirements, namely a certain thing ¹²and causes that are prohibited and the term can be canceled (*vernietigbaar*) if it does not meet the subjective requirements, namely the agreement of those who bind themselves and the ability to make an engagement. If the objective conditions are not met, the agreement is null and void without any request from the parties. (Sari and Karjoko 2018)

Absolutely canceled agreements can also occur, if an agreement made is not fulfilled, even though the legal rules have determined that the legal action must be made in a predetermined manner or contrary to decency or public order. There are certain legal consequences if subjective conditions are not met, then the agreement can be canceled as long as there is a request by certain people or interested parties. (Soediro, Handayani, and Karjoko 2020)

The term cancellation is active, meaning that even though the terms of the agreement have been fulfilled, the parties involved in the agreement wish that the agreement made is no longer binding itself for certain reasons. (Handayani 2013) either on the basis of an agreement or by filing a lawsuit for

cancellation to a general court, for example the parties have agreed to cancel the deed that they have made, or it is known that there are formal aspects of the deed that were not fulfilled, which were not known beforehand, and the parties want to cancel it. Because the agreement is deemed non-existent, there is no longer any basis for the parties to sue or sue each other in any way and form. (Handayani 2015)

Notary deed is a binding agreement between the parties for those who make it. Therefore, the legal conditions of an agreement must be fulfilled. These terms include subjective conditions relating to the subject who entered into or made an agreement, and objective conditions relating to the object of the agreement. The first subjective element is an agreement between the parties. The second subjective element is the ability to act. (Ketut Rachmi Handayani 2013)

A notarial deed that can be canceled is a party deed that does not fulfill the two elements mentioned above. Cancellation of a notary deed is a statement of the cancellation of a legal action against a claim from a party which is justified by law to demand such cancellation. (Handayani 2015) Here, in fact, there is a legal action that contains flaws, but according to the law, this action still has legal consequences as expected by the perpetrator, it's just that the agreement that arises based on the agreement, on the demands of the other party, can be canceled. Cancellation is made by the judge on the claim of the party given the right by law to sue as such. An authentic deed that is canceled by the court has legal consequences, that the act committed and all its consequences are still recognized until the deed is canceled. (Akhmaddhian, Hartiwiningsih, and Handayani 2017)

According to Pitlo, the result of the cancellation by the judge is retroactive or retroactive until the time the action is carried out, so that with the cancellation it seems as if there has never been such an act, and after the statement is canceled by the judge, the situation is the same as that which was canceled by law. (Hanum 2020) It is different if the

cancellation is done with the agreement of the parties. Agreeing to cancel the parties (internally) cannot have such an effect, because the agreement / agreement to cancel an agreement that has been made, only extends to the future, meaning that for the next agreement that is agreed to be canceled, it will not cause any agreements new. (Ismoyo 2020)

A deed that is null and void is different from a deed that can be canceled, a deed that is null and void occurs because in its creation it violates the objective requirements, namely article 132² of the Civil Code paragraph 3 and 4 regarding a certain matter and the causes or causes that are allowed. Notary deeds that are null and void are influenced by several factors, this is because the deed is made in violation and is not fulfilled. (Ismoyo 2020)

The definition of a cause that is allowed or someone translates a lawful cause (*een geoorloofde oorzaak*) several scholars put forward their thought⁵ including Wirjono Prodjodikoro which gives an understanding of cause (*causa*) as the purpose or purpose of the agreement. The mean⁵ of cause or cause (*oorzaak*) as referred to in Article 1320 of the Civil Code, must be linked in the context of Articles 1335 and 4³ 37 of the Civil Code. Article 1335 of the Civil Code emphasizes that an agreement made without cause or made⁴ with false or forbidden reasons has no power. Article 1337 of the Civil Code states that a cause is prohibited if it is prohibited by law or if it is contrary to decency or public order. (Rosidah 2020)

The Power of Proofing Authentic Assets to be Under the Hands of Assets

Judges in court really need evidence to be able to provide a settlement (decision) based on the evidence submitted. In the evidentiary process, the truth will be determined according to law and can guarantee the protection of the rights of the parties in litigation in a balanced manner. (Candrasari and Karjoko 2018) Deed as the most important written evidence in a civil case is a signed letter, containing information about events or things that are the basis of an agreement, it can be said that the deed is a

writing in which a legal act is stated. The existence of a documentary evidence arrangement in Indonesia still uses the Civil Code, written evidence is carried out in authentic writing (deed) or under handwriting. A deed made by an unauthorized official and without the ability to make it or does not fulfill certain conditions, is not considered an authentic deed but has the power to act as an underhand deed. (Erina and Yanis 2020)

Notary deeds as evidence in order to have perfect evidentiary power, if all material (substantive) and formal (procedural) requirements for making the deed are met. If there are procedures that are not fulfilled in making the authentic deed, and the errors of that procedure can be proven clearly, then the deed can be submitted to the court and if it is proven that there is a wrong pro⁶cedure, the court can declare the authentic deed as a deed that has the power of proof of deed under the hand. If the level of proof of authentic deeds is degraded into underhand deeds, the value of proof is left to the panel of judges to assess the validity of the deed. (Erina and Yanis 2020)

In connection with the degradation of the power of proof of Notary deeds from authentic deeds to underhand deeds, Article 84 of the UUJN states that acts of violation³ committed by Notaries against the provisions referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which results in a deed which only has the power of proof as an underhand deed or a deed becomes null and void by law. The deed under this hand is regulated in Articles 1874-1984 of the Civil Code and articles 286-305 RBg, including regulating: (Leonard et al. 2020)

- a. All underhand writings which are signed are considered as underhanded deeds, and if the parties want the underhand writings to be legalized to a notary public or authorized official.
- b. The written deed under hand must be acknowledged by the parties involved in it.
- c. Ways to prove the deed under hand must be checked at trial.

- d. Must be written in person and clear the agreed intentions.
- e. Proof of deed under the hands of each party must have it.
- f. The power of proof of the deed under hand is in the original deed, while the copies can be trusted if they are made by order of a judge and in the presence of the two parties concerned.

Thus, as long as the signature is not recognized, the underhanded deed will not bring much benefit to the party who filed it in court. However, if the signature has been recognized, the underhand deed for the signatory, the heirs and the people who get the rights from them, is perfect evidence such as an authentic deed which has formal evidentiary power and material production power. (Hutomo and Karjoko 2018)

The power of proof attached to an underhand deed is not as strong as an authentic deed. The underhand deed is basically binding for the parties who have signed in it, but not binding to the judge. If in an authentic deed the signature is not a problem, in an underhand deed it is the first way. If this signature is denied by the party who is said to have signed the signature, then the party submitting the underhanded deed must try to prove with other tools that it is true that the signature was affixed by the person who denied it. (Hutomo and Karjoko 2018)

It can be concluded that the power of proof of legal deed under hand in court does not have the strength of perfect evidence as well as the power of proof of authentic deeds. Underhanded deed can have evidence in court if it has formal and material strength, namely, the extent to which the parties who signed the deed explain and acknowledge correctly as described in the deed, the content described is a legal act or a legal relationship, intentionally made to be used as evidence and actions or legal relationships mentioned therein. (Hutomo and Karjoko 2018)

Defects in a notary deed can cause cancellation of a notary deed and in terms of

sanctions or legal consequences of cancellation can be divided into; null and void, irrevocable, and non-existent. (Handayani 2013) The legal consequence of a cancellation is in principle the same between null and void, can be canceled or non-existent, namely the three of them result in the legal act being invalid or the legal act does not have legal consequences. The point of difference at the time the cancellation is effective, namely: (Kuncoro et al. 2019)

1. Cancel by law, consequently the legal act committed has no legal consequence since the occurrence of the legal action or is retroactive (*ex tunc*), in practice it is null and void based on a court decision which has permanent legal force;
2. Can be canceled, as a result the legal act committed has no legal effect since the cancellation occurred and where the cancellation or ratification of the legal act depends on a certain party, which causes the legal act to be canceled. Deeds whose sanctions can be canceled, remain valid and binding as long as there is no court decision that has permanent legal force to cancel the deed.
3. Non-existent, as a result of the non-existent or non-existent legal action, which is caused because the essence of an agreement is not fulfilled or does not fulfill one element or all of the elements in a particular legal act. Dogmatically non-existent sanctions do not require a court decision, but in practice a court decision that has permanent legal force is still necessary and the implication is the same as being null and void.
4. Cancellation is passive, meaning that without any active action or effort by the parties involved in an agreement, it will be canceled. Active cancellation, the conditions of the agreement are met, but the parties wish not to bind themselves again for certain reasons, either by agreement or by filing a lawsuit for cancellation to a general court. For example, there are formal aspects of

deeds that were not fulfilled that were not previously known.

5. The authenticity or cancellation of a notarial deed may have various consequences for the parties that are in it, namely loss of the authenticity of the deed (notary deed is also canceled), and legal actions contained therein are also canceled, this occurs in legal acts which are required by law to be stated in an authentic deed, such as the deed of establishment of PT
6. Notary deed is not canceled, or legal actions contained in it are not canceled. This occurs in legal acts that are not required by law to be contained in an authentic deed, but parties who want their legal actions to be proven by an authentic deed, so that a strong proof can be obtained.
7. The deed still has authenticity or legal action contained therein is void. This happens if the terms of the agreement are not fulfilled or there is a defect in the basis of the rights that are the object of the agreement, such as a sale and purchase made on the basis of false evidence.

3. Conclusion

Based on the description that has been discussed in the legal consequences of the degradation of an authentic deed can be detrimental to the parties in the event that their authentic deeds lose the power of proof so that they no longer have perfect evidentiary power to be used as evidence in court. Authentic Deed can be canceled, null and void or deemed never exist. Notaries are expected to continue to carry out their positions in accordance with statutory regulations and to better understand the causes of degradation of authentic deeds so that notaries can avoid violations that allow the degradation of the authentic deeds they make.

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