
PPAT LIABILITY FOR DEEDS THAT ARE NULL AND VOID BECAUSE THEY DO NOT MEET THE LEGAL REQUIREMENTS OF THE AGREEMENT BASED ON THE CIVIL CODE

Fima Dewi Kusmara, Jeane Neltje Saly

Universitas Tarumanegara, Indonesia

Email: fima.217211025@stu.untar.ac.id, jeanes@fh.untar.ac.id

Abstract

The cancellation of the PPAT deed through a court decision, not only because of the result of the PPAT error or negligence in making the deed. But the cancellation of the PPAT deed can also be caused by the mistakes or negligence of the parties who bind themselves to each other in the deed, so that the error or omission causes a lawsuit from one of the parties. In a lawsuit stating that the PPAT deed is invalid, it must be proven invalid both from the outward, formal, and material aspects. If it cannot prove it, then the deed concerned remains legally binding for the parties interested in the deed. If the deed can be proven at trial, then there is one aspect that causes the defect of the deed, so that the deed can become a deed that is degraded or a deed under hand, even become null and void. The research method used in this study is in the form of a normative juridical approach method. Specifications The research used in this study is analytical descriptive research. The types and sources of data used by the author are secondary data types, data obtained through data sources of civil law literature studies and primary legal materials, secondary legal materials, tertiary legal materials. Data collection techniques are obtained through literature studies and interviews. The method of analysis in thesis research is in the form of Qualitative Juridical. The results of research on PPAT Liability for Deeds That Are Null and Void Because They Do Not Meet the Legal Requirements of Agreements Based on the Civil Code are PPAT that violates the code of ethics by forging PPAT deeds, PPAT that violates can get civil, criminal and administrative sanctions

Keywords: land deed making officer, liability, null and void

INTRODUCTION

The Unitary State of the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia which upholds the principle of legal certainty and protection for its citizens (Matalatta, 2009). To ensure the principle of legal certainty and protection, it is necessary to have a record related to every legal event or act that occurs in the community to avoid legal problems that may occur in the future due to legal uncertainty (Gaumi & Hartono, 2022). Social institutions known as notaries / PPAT arise because of the need in the association of fellow humans who want evidence regarding civil law relationships that exist and / or occur between them (Yusuf, 2013). An institution whose devotees are commissioned by the general authority to

produce a written evidence of authentic power. Land that has a role in human survival which functions as a social asset which is a means of binding the unity of citizens in community life while other functions are capital assets where land is a capital factor in development that must be used and utilized for the welfare of the people fairly and equitably, and none other than land must be maintained sustainably as stated in Article 33 of the State Constitution Republic of Indonesia (Suparto, 2020). The increasing need for land, which on the other hand causes the availability of land to decrease, causing land ownership problems. This results in the fact that land rights are very important for human life. However, land as one of the essential natural resources, has a deep psychological connection to the people of Indonesia, and also has a strategic role to fulfill the needs of the State and its diverse and increasing people. In the framework of sustainable national development, the role of land becomes increasingly important with the increase in the number of people who need land for settlement. With the increase in development activities, the higher demand for land in the field of business activities, this raises the need for guaranteed legal certainty in the land sector. With the increasing need for land, it will encourage increased land buying and selling activities as one of the processes of transferring land rights (Satrianingsih & Wirasila, 2019; Suryaningsih & Zainuri, 2023).

The government then created the legal profession to help those who lack understanding of the legal processes and procedures they must undergo in a case, in order to create awareness for citizens and parties to the law (Putri & Marlyna, 2021). Legal professions that we can find around us include, among others, advocates / lawyers or Notaries / PPAT. Notary is a general official who is authorized to make authentic deeds and other authorities, as referred to Law Number 30 of 2004 jo Law Number 2 of 2014 concerning the position of notary. Notary is a position of trust, this means that Notaries who carry out the duties of office can be trusted and in carrying out the duties of their office, notaries have the obligation to keep confidential everything about the deed made and all information obtained for making the deed in accordance with the oath or promise of office, unless the Law specifies otherwise, as mentioned in Article 16 paragraph (1) letter e concerning the Notary Office Law (Prabawa, 2017). It is also affirmed that to keep confidential everything related to the deed and other papers is to protect the interests of all parties related to the deed. Notaries who in their profession are actually institutions that with their deeds give rise to written means of proof and have an authentic nature. The significance of the Notary profession is that Notaries by law are authorized to create absolute means of proof in the sense that what is said in the authentic deed is true. Meanwhile, PPAT is defined as a general official who is authorized to make authentic deeds regarding certain legal deeds regarding land rights or Ownership Rights over Flats (Leyser, 1958). Just like Notaries as public officials referred to under the Law, the regulation of PPAT as a general official is not stated in the Law, but only through a Government Regulation. A PPAT is given legal authority to provide public services to the community, in making authentic deeds which are perfect evidence regarding legal deeds in the land sector. The intended PPAT legal act is about an agreement to transfer land rights and provide a new right to land, which must be proven by a deed made before

the Land Deed Making Officer (PPAT). Sale and purchase and grant is a legal act in the form of handing over land rights to another party forever. Sale and purchase of land is a legal act in the form of the transfer of property rights by the seller to the buyer. Which at that time also handed over the price to the seller. This is stated in Article 20 paragraph (2), Article 28 paragraph (3), Article 35 paragraph (3) of the Basic Agrarian Law, which states that property rights, building use rights can be transferred and transferred.

Notary / PPAT guarantees the certainty of law, order and legal protection through authentic deeds made by and before it, then authentic deeds are strong evidence and if a dispute occurs in Court unless it can be proven untrue, so that the Notary / PPAT deed provides a perfect proof as mentioned in Article 1870 of the Civil Code to the parties who make it. However, an authentic deed if there is a dispute over the deed, the deed can be canceled or null and void. The notary deed / PPAT is canceled by a judge's decision, it can be seen in advance the consequences arising from it. If it turns out that the cancellation (both revocable and null and void) causes harm to the parties seeking notary assistance in the preparation of the deed (including the receipt of its rights), then the notary may be punished to pay such damages (as long as the fault lies with the notary). The regulation of the Deed regarding has been regulated in Article Article 1868 of the Civil Code which reads; "The definition of an authentic deed is a deed which in the form prescribed by law, is made by or before the public officer authorized for it at the place where the deed is made". The judge *ex officio* basically cannot cancel the Notary Deed / PPAT if it is not requested for cancellation, because the judge cannot decide what is not requested. If requested cancellation by the party concerned, basically the authentic deed can be canceled by the judge as long as there is evidence to the contrary.

The decision making of a judge depends on the circumstances of the notarial deed used as evidence, because not all notary deeds that are considered wrong by the judge must be declared null and void or can be canceled, some even quite stated that the notary deed has no legal force. Regarding the cancellation of the contents of the deed, a Notary / PPAT only acts to record what is stated by the complainants and is not obliged to investigate the material truth of the contents of the deed. The provision stipulates that the deed of transfer of land ownership must be made by the Land Deed Making Officer (PPAT), in which case the PPAT is also concurrently held by a Notary. Where in making the deed, both regarding the form, content, and method of making it, as specified in PP No. 24 of 2016 concerning PPAT. However, in practice, the making of AJB is sometimes not in accordance with the established legal provisions, so it risks legal certainty over the ownership of land rights AJB is an authentic deed that has perfect evidentiary value to the parties as mentioned in Article 1870 of the Civil Code. Thus, when there is a problem with the deed, the consequences are canceled or declared null and void by the court.

Cancellation of the deed, not only because it is caused by the fault of the parties to the agreement, but can also be caused by the negligence of the Notary / PPAT in making the deed. The aggrieved party can pursue legal remedies both litigation and non-litigation. In the process of settlement in court, Notary / PPAT is often drawn to be a party to the

Defendant and even the Defendant as an effort so that the Notary / PPAT must provide information about the deed that becomes evidence in court examinations.

A lawsuit in court that postulates that the Notary Deed is problematic or invalid, then the problem must be tested and proven at trial regarding the matter that caused the defect of the deed. If it can be proven that the deed is legally defective, the court may render a judgment declaring the deed null or void. The legal consequence of the cancellation of the sale and purchase deed, is that the legal act as referred to in the deed is considered to have never existed, consequently the rights and obligations are returned in their original state to the parties. However, so far it is not known how the implementation of the decision is intended for Notaries / PPAT (Mulyana & Abdughani, 2021).

One source of engagement is covenant. The agreement gives birth to an engagement that gives rise to rights and obligations for the parties to the agreement. The definition of an agreement according to the provisions of Article 1313 of the Civil Code (KUH-Percivil) is as follows: "an agreement is an act by which one or more persons bind themselves to one or more other persons." The formulation in Article 1313 of the Civil Code confirms that the agreement resulting in a person binding himself to others. An agreement gives rise to obligations or achievements from one person to another who is entitled to the fulfillment of those achievements. In other words, that in an agreement there will always be two parties, where one party is obliged to fulfill an achievement and the other party is entitled to the achievement. The agreement or agreement (overeenkomst) referred to in Article 1313 of the Civil Code only occurs with the permission or will (toestemming) of all those related to the agreement, namely those who entered into the agreement or agreement concerned. Furthermore, the opposite of achievement is default; The definition of default is the debtor's negligence to fulfill its obligations in accordance with the agreed agreement (SIHOMBING, 2022). Usually in the content of an agreement it is determined when one of the parties is declared to have defaulted. Meanwhile, in the agreement which is not included regarding default, the aggrieved party in the agreement can file a summons or a warning stating that the debtor has been negligent and to fulfill its obligations within a certain period of time. The provisions regarding the subpoena are affirmed in Article 1238 of the Civil Code. Apart from a subpoena, the act of a debtor who carries out an act that is prohibited then the debtor can be declared to have committed default. The creditor can file a demand that the debtor be punished in the form of paying damages by canceling the agreement or simply requesting the execution of the agreement. However, in practice there are still Notaries / PPAT who neglect to apply these things, causing the Notary concerned to be called to the Court to account for the deed he has made because it has harmed the parties involved in the deed. One example of an authentic deed made by a Notary / PPAT that contains legal defects and is null and void is contained in Supreme Court Decision No 2714 K / Pdt / 2019.

The purpose of this study is how PPAT Liability for Deeds That Are Null and Void Because They Do Not Meet the Legal Requirements of the Agreement according to the

Civil Code. Furthermore, what are the legal consequences of a deed that is null and void because it does not meet the legal requirements of the agreement.

RESEARCH METHODS

The research method used in this study is in the form of a normative juridical approach method. Specifications The research used in this study is analytical descriptive research. The types and sources of data used by the author are secondary data types, data obtained through data sources of civil law literature studies and primary legal materials, secondary legal materials, tertiary legal materials. Data collection techniques are obtained through literature studies and interviews. Analytical methods in thesis research in the form of Qualitative Juridical.

RESULT AND DISCUSSION

PPAT Liability for Deed That Is Null and Void Because It Does Not Meet the Legal Requirements of the Agreement according to the Civil Code

In fact, in the case of Supreme Court Decision No. 2714 K / Pdt / 2019, there is still a Notary / PPAT who violates the code of ethics by forging a Notary / PPAT deed, namely that ENDANG PURWANI or called the Plaintiff is the legal owner of a plot of land yard and building recorded in the Certificate of Property No: 1766 located in Wonokromo Village, Pleret District, Bantul Regency covering an area of 264 m² recorded in the name of Endang Purwani, Bachelor of Art (Plaintiff) in accordance with Measuring letter Number 0933/Wonokromo/2003; that SRI SUTAMTINAH or called Defendant III is a business partner of the Plaintiff, therefore the Plaintiff believes in Defendant III and gives permission to Defendant III to borrow Title Certificate No: 1766 located in Wonokromo Village, Pleret District, Bantul Regency covering an area of 264 m², recorded in the name of Endang Purwani, Bachelor Of Art (Plaintiff) in accordance with Measuring Letter Number 0933/Wonokromo/2003. Then Defendant III used the certificate to seek a loan of funds to SURDJONO ARHAM, SH or called Defendant II with a guarantee of land owned by the Plaintiff, and Defendant III borrowed a sum of money to Defendant II with a guarantee of land owned by the Plaintiff and the Plaintiff was given a promise of "lure" by Defendant III in essence if there has been a disbursement from Defendant II, the Plaintiff will be given some funds by Defendant III, Because the Plaintiff was interested, a sale and purchase deed was carried out on the land owned by the Plaintiff by making notarial deed No. 141/2008 dated June 20, 2008 concerning the Deed of Sale and Purchase made before the Notary / PPAT of Bantul Ratnawati Regency.

And in Notarial Deed No. 141/2008 dated June 20, 2008 concerning the Deed of Sale and Purchase made before the Notary / PPAT of Bantul Ratnawati Regency, SH (Defendant I) the Plaintiff sold his land to Defendant II through his attorney Defendant I at a price of Rp.14,000,000 (fourteen million rupiah). After doing so, all the plaintiffs needed funds, but Defendant III did not provide the amount of funds as promised by Defendant III. Because Defendant III did not provide the funds, the Plaintiff asked for the return of the Plaintiff's certificate, namely Certificate of Property No: 1766 located in Wonokromo Village, Pleret District, Bantul Regency covering an area of 264 m²

recorded in the name of Endang Purwani, Bachelor Of Art (Plaintiff) in accordance with Measuring Letter Number 0933 / Wonokromo / 2003, but it turns out that now its ownership has changed to the property of Defendant II, it turns out to be in the control of Defendant II. However, in fact or reality, the Plaintiff and their families remain and or always live in the object of Property Rights Certificate No: 1766 located in Wonokromo Village, Pleret District, Bantul Regency covering an area of 264 m² recorded in the name of Endang Purwani, Bachelor Of Art (Plaintiff) in accordance with Measuring Letter Number 0933 / Wonokromo / 2003 which has now changed its ownership to Defendant II. So there was a forgery of the deed committed by defendant II with Notary / PPAT Ratnawati.

As regarding the responsibility of Notary-PPAT for the deed he made, it is divided into 3 types, namely as follows :

1. Notary Responsibility / PPAT in Civil

Notary / PPAT can be sued to pay compensation in the event of a mistake committed, a loss suffered. This is related to the cause and effect between errors made by Notaries / PPAT and losses caused. The provision of compensation is a form of Notary / PPAT responsibility for violations committed. Losses in civil law are divided into 2 (two), namely as follows::

- a. Material Losses are actual losses suffered in the form of costs, losses and interest. The form of material compensation in the form of money is the return of the cost of making a deed or it can be in the form of making a deed back at a different Notary / PPAT Office financed by the Notary / PPAT that caused the loss.
- b. Immaterial Loss is the loss of profit or loss on benefits likely to be received by the client at a later date. For immaterial compensation it is difficult to describe the nature and objective and concrete measure of an immaterial loss.

If the Notary / PPAT who is sued cannot pay the material losses that have been stipulated in the court decision against the plaintiff, then based on a court decision that has permanent legal force, the Notary / PPAT can be declared bankrupt. This bankruptcy can be used as a basis for the temporary dismissal of Notary / PPAT from his position. This is based on Article 9 paragraph 1 letter a of Law Number 2 of 2014 concerning Notary Position where Notaries can be temporarily dismissed if in bankruptcy proceedings or in a period of delay to the obligation to dispose of and Article 10 paragraph (4) letter e of PP Number 24 of 2006 concerning PPAT Position Regulations.

The juridical construction used in civil liability for material truth of the deed made by the Notary Public is the construction of an unlawful act (Article 1365 of the Civil Code). So-called unlawful acts have both an active and passive nature. Active in the sense of doing an act that causes harm to other parties, then an act against the law is an active act. Passive in the sense of not doing a certain action or a necessity, then the other party can suffer a loss. Elements of this unlawful act include the existence of an unlawful act, the existence of errors and losses caused. As with the development of

contemporary institutions of unlawful acts, what is meant by unlawful acts is unlawful acts in a broad sense. In more detail, an unlawful act is if :

- a. Violating the rights of others;
- b. Contrary to the perpetrator's legal obligations;
- c. Contrary to decency;
- d. Contrary to the need to pay attention to the interests of oneself and the property of others in the association of everyday life.

In line with this, the Notary Public can be held responsible for the material correctness of a deed if the legal advice he gives turns out to be wrong in the future. Through the construction of the explanation of the Notary Position Law, it can be concluded that the Notary can be held responsible for the material truth of a deed he made if it turns out that the Notary does not provide access to a certain law relating to the deed he made so that one of the parties feels deceived by his ignorance (Yuana, 2010).

The explanation of the Notary Office Law shows that Notaries are only responsible for the formalities of an authentic deed and not for the material of the authentic deed. This requires the Notary to be neutral and impartial and provide some kind of legal advice for clients who ask the Notary concerned for legal guidance.

2. Notary Responsibility / PPAT Criminally

Criminal acts are actions that are prohibited in a rule of law, where the prohibition is also accompanied by sanctions or threats in the form of certain criminal sanctions for those who violate. Criminal provisions are not regulated in the Notary Position Law, but in criminal liability, a Notary / PPAT who commits a criminal act can be charged against the Notary / PPAT. In the Notary Office Law, it only regulates sanctions for violations committed by Notaries / PPAT in the form of deeds made that do not have authentic force or only have the power of proof as deeds under hand. As for the Notary / PPAT, sanctions can be given in the form of reprimands to dishonorable dismissal. Criminal cases related to the formal aspects of the Notary Deed, the investigator, public prosecutor, and judge will include the Notary / PPAT has taken legal action :

- a. Making forged / forged letters and using forged forged 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, who participates in doing (Article 55 jo Article 263 paragraphs (1) and 92) or 264 or 266 of the Criminal Code);
- e. Assist in making false or forged letters and using false or forged letters (Article 56 verses (1) and (2) jo Article 263 verses (1) and (2) or 264 or 266 MPH)

If it is related to the aspect of formal criminal acts committed by the Notary / PPAT, in a state of awareness someone can also commit actions that are prohibited acts, then there must be an element of guilt from the perpetrator of the criminal act,

namely intentional (opzet) and careful (culpa). Intentionality (opzet) is something that occurs in most criminal acts. Usually taught that there are 3 (three) kinds of intentionality, namely :

- a. Intentionality that is a goal to achieve something (opzet als oogmerk);
- b. Intentionality that does not contain a purpose, but is accompanied by the realization that an effect will inevitably occur (opzet bij zekerheidsbewustzijn);
- c. Intentional but with the conviction there is only the possibility (not certainty) that an effect will occur (opzet bij mogelijkheids-bewustzijn).

In addition, this intentionality must also be about 3 (three) elements, including:

- a. Prohibited acts;
- b. The consequences that became the tree of the reason for the ban;
- c. That the act is unlawful.

There are criteria that are limitations to be able to criminalize a Notary / PPAT as follows:

1. If intentionally and knowingly a Notary / PPAT participates together with one party to take legal action against the formal aspects of the deed made before or by the Notary / PPAT in order to benefit one party and harm the other party.
2. If the deed made before or by a Notary / PPAT can be proven that the preparation is not based or contrary to the regulations that have been determined both in terms of Notary and PPAT.
- 3) Notary/PPAT action is not in accordance with the Code of Ethics.

Responsibility in the criminal field includes potential criminal offenses that may be committed by Notaries and PPAT either done intentionally (opzettelijk, intentional), such as Article 23 of the Criminal Code, Article 415, Article 416, Article 417 of the Criminal Code, Article 263 paragraph (1) of the Criminal Code, as well as those committed due to negligence (bersoepsfout, negligence), such as violations of Article 266 of the Criminal Code which regulates forgery of letters. However, it should be noted that the Notary / PPAT is not responsible for unlawful acts committed by the parties facing the Notary / PPAT concerned.

Notary / PPAT is criminally responsible for the material truth in the deed he made. Regarding criminal provisions, it is not regulated in the Notary Office Law or in the Regulation on the Position of Land Deed Making Officer, but the responsibility of the Notary / PPAT is criminally imposed if the Notary / PPAT commits a criminal act that violates the law. The Notary Office Law and the Regulation on the Office of Land Deed Making Officer only regulate sanctions for violations committed and these sanctions can be in the form of deeds made by Notaries / PPAT have no authentic force or only have the power of a deed under hand or even the deed is legally canceled by the Court.

3. Notary Responsibility / PPAT Administratively

In the responsibility of Notary Public / PPAT there is a very strong correlation between the Notary Office Law, the Regulation of the Land Deed Making Officer Department and the professional code of ethics. The professional code of ethics

regulates Notaries / PPAT internally and the Notary Position Law and Land Deed Making Officer Position Regulations regulate externally. Notary / PPAT in carrying out the duties of his office must do the following :

- a. Notary / PPAT is required to make a deed properly and correctly. That is, the deed made fulfills the general will and the requests of the parties who are concerned because of their position;
- b. Notary / PPAT is required to produce a quality deed. That is, the deed made is in accordance with the rules of law and the will of the interested parties in the true sense, not making it up. Notary / PPAT must explain to interested parties the correctness of the contents and procedures of the deed he made. And the deed has a positive impact, so anyone will admit that the deed has perfect evidentiary power.

Then, the matter that is always in question is from the formal aspect, especially regarding:

- a. Certainty of day, date, month, year, and time facing;
- b. Whose party is facing;
- c. Signature facing;
- d. A copy of the act does not correspond to the minuta of the act;
- e. A copy of the deed exists, without a minuta of the deed; The deed minuta is not signed completely, but the deed minuta is issued In Article 85 of the Notary Position Law, sanctions are also regulated for Notaries who violate these formal aspects, namely :
 - 1) Verbal reprimand;
 - 2) Written reprimand;
 - 3) Temporary suspension;
 - 4) Honorable dismissal;
 - 5) Dishonorable dismissal.

Of the several sanctions that will be imposed on the Notary, which are included in administrative sanctions, namely temporary suspension, honorable dismissal, and dishonorable dismissal.

Regarding violations committed by PPAT in the process of making a sale and purchase deed, Article 62 PP Number 24 of 1997 regulates sanctions as a consequence of violations committed, namely: "PPAT which in carrying out its duties ignores the provisions referred to in Article 38, Article 39, and Article 40 as well as provisions and instructions given by the Minister or appointed Officer is subject to administrative action in the form of a written reprimand until dismissal from its position as PPAT, without prejudice to the possibility of being sued for compensation by parties who suffer losses resulting from the neglect of these provisions". In addition, judging from the code of ethics of the Association of Land Deed Making Officials (IPPAT), Article 6 stipulates that members who violate the code of ethics may be subject to sanctions in the form of reprimands, warnings, schorsing from IPPAT membership, dismissal (onzetting) from IPPAT membership and dishonorable dismissal from IPPAT membership. The sanctions adjust to the frequency and quality of violations of the

code of conduct committed by IPPAT members. Notary refers to Article 16 paragraph (11) stating that sanctions are in the form of: written warning, temporary dismissal, honorable dismissal or dishonorable dismissal. Meanwhile, for PPAT who makes mistakes in making authentic deeds, either intentionally or unintentionally because they are negligent, as a consequence is to receive administrative sanctions. Based on the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning the Tentativeness of the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officers, deviations from the formal and material requirements are included in serious violations. PPAT may be subject to sanctions in the form of dishonorable dismissal by the Head of the Indonesian National Land Agency and administrative fines.

What are the legal consequences of a deed that is null and void because it does not meet the legal conditions of the agreement

1. Cancellation Due to Civil Event

a. Wanprestasi

It is often found that the parties have agreed to deviate or waive Article 1266 of the Civil Code. As a legal result, in the event of default, the agreement does not need to be asked for cancellation by the judge. In this case, default is a void condition. However, in the event of a default the agreement is not null and void, but must be asked for annulment to the judge on the grounds that even if the debtor has defaulted, the judge is still authorized to give him the opportunity to fulfill the agreement.

A thing can be said to be in default if it violates contractual obligations. Violating contractual obligations does not mean only violating the content of the agreement in the contract but also violating propriety, custom and the Law, as mentioned in Article 1339 of the Civil Code. The first contractual obligation can come from laws and regulations and come from an agreement or contract made by the parties to give rise to an achievement (Khairandy, 2013).

The fulfillment of achievements is the essence of a covenant. The obligation to fulfill the achievements of the debtor is always accompanied by responsibility, meaning that the debtor risks his assets as collateral, fulfilling his debts to creditors. In carrying out these achievements, there are times when the debtor is unable to carry out his achievements or obligations for possible reasons, namely: a) Due to the debtor's fault, either intentionally or due to negligence; b) Due to force majeure or something that happens beyond the debtor's ability so that the debtor is not at fault. If the non-fulfillment of the performance obligation is due to the debtor's fault, either due to intentional or negligence, and all of it can be blamed on him, then it is said that the debtor committed default.

b. Unlawful Acts

Unlawful acts are unlawful acts in the civil field. Because, for acts against the criminal law (delik) or what is called by the term "criminal act" has a completely

different meaning, connotation and legal arrangement. So in principle, the purpose of the establishment of a legal system that later became known as unlawful acts was to be achieved as the Latin language says, namely: "Juris praecepta sunt haec; honeste vivere, alterum non laedere, suum cuique tribuere." (The motto of the law is to live honestly, not to harm others; and to give others their due. According to Article 1365 of the Civil Code, what is meant by unlawful acts is unlawful acts committed by a person who through his fault has caused harm to others.

Another definition of unlawful or unlawful acts is that they cause shocks in the balance sheet of society. And this shock is not only found when the rules of law in a society are violated directly, but also when the rules of decency, religion and manners in society are violated directly.

Unlawful acts in the Civil Code are regulated in Articles 1365 to Article 1380. Although the regulation of unlawful acts in the Civil Code is only 15 Articles, the reality shows that civil lawsuits in court are dominated by lawsuits against the law in addition to tort claims. *Onrechtmatige daad* as "unlawful act" is more appropriate than "unlawful act". In the word "against" can include actions based either intentionally or negligently. While the word "violate" its scope is only on actions based on intentionality only. The formulation of Article 1365 of the Civil Code is "every unlawful act, which brings harm to another person, obliges the person who by mistake publishes the loss, to compensate for the damage." Unlawful acts are more defined as an act of injury than a violation of a contract. Moreover, lawsuits against the law are generally not based on the existence of contractual legal relationships. Responsibility for unlawful acts exists to protect one's rights. The law in tort outlines the rights and duties when a person commits an act of either fault or omission or injures another person and the act causes harm to others. Unlawful acts in Indonesia normatively always refer to the provisions of Article 1365 of the Civil Code. Article 1365 of the Civil Code specifies that every unlawful act that causes harm to another person requires the person who committed the act to compensate for the damage. In unlawful acts, there are several elements, namely:

- 1) Action; The element of action as the first element can be classified into 2 (two) parts, namely actions that are intentional (actively done) and actions that are negligence (passive / do not intend to do so).
- 2) Such acts are against the law; Actions in the first element are said to meet the second element, which is against the law if they meet the following conditions:
 - a) Contrary to the subjective rights of others; To violate the subjective rights of another is to violate the special authority granted by law to a person. The nature of the nature of subjective rights, special powers granted by law to a person who acquires them in his or her interests.
 - b) Contrary to the perpetrator's legal obligations; The point is a behavior that is contrary to a provision of the Law, namely all valid regulations issued by authorized agencies and have an exit binding force.

- c) Contrary to decency; Rules of decency are defined as social norms in society, as long as these norms are accepted by members of society as a form of unwritten legal regulations.
- d) Contrary to propriety, thoroughness and prudence. Actions that fall into the category of contrary to propriety, namely actions that harm others without proper interests and useless actions that cause harm to others based on normal thinking need attention. There was an error;

This element emphasizes the combination of elements of guilt and elements against the law, where actions that include intentionality or negligence are those that meet the elements against the law. The element of guilt is used to express that a person is declared responsible for adverse consequences that occur because of his wrong actions.

There are disadvantages and; Article 1365 of the Civil Code determines the obligation of perpetrators of unlawful acts to pay compensation. Article 1371 of the Civil Code (2) of the Civil Code provides a little guidance for this by stating that this compensation is assessed according to the position and ability of both parties and according to the circumstances. Then in Article 1372 paragraph (2) of the Civil Code states that in assessing one or another, the judge must pay attention to the severity of the insult, as well as the rank, position and ability of both parties, and to the circumstances.

There is a causal relationship between actions and losses. There are 2 (two) teachings related to causal relationships, namely :

- a. *Conditio Sine Qua Non* (Van Buri) Theory Every problem that is a condition for the occurrence of an effect is cause from effect. 2. Veroorzaking's theory of adaequate (von Kries)

That the action that must be considered as the cause of the effect that arises is the act that is balanced with the effect. Then, what happened in the case of the study of the Supreme Court decision Number 2714 K / Pdt / 2019 was that there had been an illegal act and violated the rules in the Notary Position Law or the Regulation of Land Deed Making Office Officials and the code of ethics carried out by Notary / PPAT. According to Article 1365 of the Civil Code, it is determined that every unlawful act that causes harm to another person requires the person who committed the act to compensate for the damage. Sanctions and legal consequences for Notaries / PPAT applied can be in the form of civil sanctions in the form of reimbursement of costs, damages, and interest, as well as administrative sanctions in the form of verbal reprimands, written reprimands, temporary suspension, honorable dismissal, and dishonorable dismissal. As for the deed, if it violates certain provisions, it will be degraded in evidentiary value to have evidentiary power as a deed under hand. The degradation of the strength of proof of a Notary deed from authentic to the strength of evidence under hand, and the juridical defect of a Notary deed that results in a Notary deed can be canceled or null and void if there is a violation of statutory provisions.

b. Cancellation Due to Criminal Event

As explained in the previous explanation, that Intentionality (opzet) has 3 (three) elements, namely :

1. Intentionality that is a goal to achieve something (opzet als oogmerk);
2. Intentionality that does not contain a purpose, but is accompanied by the realization that an effect will inevitably occur (opzet bij zekerheidsbewustzijn);
3. Intentional but with the conviction that there is only the possibility (not certainty) that an effect will occur (opzet bij mogelijkheidsbewustzijn).

Criminalize a Notary / PPAT based on the above reasons and if proven true, the Notary / PPAT who violates it must provide accountability. The imposition of criminal penalties against Notaries does not necessarily mean that the deed concerned becomes null and void. If a civil lawsuit has been filed to cancel the deed and place the Notary / PPAT concerned as a convict, then the sanctions must be associated with the target. Criminal sanctions target the perpetrator (person) who commits the legal action. Cumulative criminal sanctions are condemnatoir or punitive, which in relation to the Notary Office Law, does not provide for criminal sanctions for Notaries if they violate them, if such a thing occurs, then Notaries are subject to general criminal offenses. The criminal sanction procedure is based on a court decision that has legal force whose decision punishes the Notary to undergo certain crimes. The formal aspects of a Notary Deed may be used as a basis or limitation to criminalize a Notary / PPAT, as long as these formal aspects are proven intentionally with full awareness and conviction and planned by the Notary / PPAT concerned that the deed made before and by the Notary / PPAT to be used as a tool to commit a criminal act or in making a deed relaas. In addition, Notary / PPAT also knowingly and deliberately together with the parties concerned or the face, to do or assist or instruct the face to perform a legal action that he knows to be unlawful.

Another aspect that needs to be used as a limitation in the case of violations by Notaries / PPAT is that it must be measured based on the Notary Office Law or the Regulation of the Office of Land Deed Making Officers, whether the actions committed have violated certain articles. Thus, the punishment of Notary / PPAT can be carried out with restrictions, if :

1. There is a legal action from the Notary / PPAT against the formal aspects of the deed that is intentional, full of awareness and conviction and planned, that the deed made before the Notary / PPAT or by the Notary / PPAT agrees to be used as a basis for committing a criminal act;
2. There is a legal action from Notary/PPAT in making an act before or by a Notary/PPAT which if measured based on the Notaris Department Law or the Department's Regulation of the Land Act Maker's Office is not appropriate;
3. The action of the Notary / PPAT is not appropriate according to the agency authorized to assess, and the authority to examine the Notary is the Notary Supervisory Panel.

Criminal cases related to the formal aspects of the Notary Deed, the investigating party, the public prosecutor and the judge will include the Notary Public has taken legal action :

1. Making forged/forged letters and using forged/forged 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, who participates in doing (Article 55 jo Article 263 paragraphs (1) and (2) or 264 or 266 of the Criminal Code);
5. Assist in making forged/or forged letters and using forged/forged letters (Article 56 paragraphs (1) and (2) jo Article 263 paragraphs (1) and (2) or 264 or 266 of the Criminal Code.

Notary / PPAT must guarantee the certainty of the day, date, month, year and time of facing listed or mentioned at the beginning of the Notary Deed, as proof that the parties face and sign the deed on the day, date, month, year and time mentioned in the deed and all making procedures have been carried out in accordance with the applicable legal rules in this case UUJN. If the party in the deed feels that he is facing the Notary and signs the deed before the Notary at a time when he believes it is true, but it turns out that the copy and minuta of the deed are not in accordance with the reality he believes, then the party concerned takes an act of denial of the certainty of the day, date, month, year and time of facing stated in the deed. In this connection, proof is required from the party who made the denial and the Notary concerned. If such is categorized as a criminal offence, then the Notary Public is qualified to commit a criminal offence under Articles 263, 264, 266 jo 55 or 56 of the Criminal Code.

2. Cancellations Due to Administrative Events

A Notary Deed that has perfect evidentiary power, because it violates certain provisions will be degraded in evidentiary value to have evidentiary power as a deed under hand. The position of the Notary Deed which then has the power of proof as a deed under the hand is an assessment of an evidence. The proof is perfect as long as the parties admit it. If the parties are found to have admitted a deed that violates certain provisions referred to in Article 84 of the Notary Office Law, then the deed concerned still has perfect evidentiary power and is binding on the parties (Adjie & Gunarsa, 2013).

To determine a Notary Deed that has the power of proof as a deed under hand, it can be seen and determined from :

- a. The contents (in) certain articles that confirm directly if the Notary Public commits a violation, then the deed concerned includes a deed that has the power of proof as a deed under hand;
- b. If it is not expressly stated in the relevant article as a deed that has the power of proof as a deed under hand, then other articles that are categorized as violating according to Article 84 of the Notary Office Law, are included in the null and void deed.

According to Article 1869 BW, determining that the limitation of a Notary Deed that has the power of proof as a deed under hand can occur if it does not meet the provisions because (Adjie & Gunarsa, 2013):

- a. The non-authority of the general official concerned; or
- b. Does not have a general office in question; Or
- c. Defects in its form.

Nevertheless, such a deed still has the power of proof as a deed under hand if the deed is signed by the parties. In certain Articles in the Notary Office Law and Article 1869 BW which states if violated by a Notary, so that the Notary Deed has the power of proof as a deed under hand, namely :

1. Article 16 paragraph (1) point I and Article 16 paragraph (7) and paragraph (8) are included in the defective form of a Notary Deed, because the reading of the deed by a Notary Public in the presence of parties and witnesses is an obligation to explain that the deed made is in accordance with the will concerned, and after such reading, it must be included at the end of the Notary Deed.
2. Article 41 which refers to Articles 39 and 40 relates to the subjective aspect of the validity of a Notary Deed, namely acting competently to perform a legal act. The authenticity or cancellation of a deed can have varying consequences for the parties in it, namely (Fransiska, 2021):
 - a. The loss of authenticity of the deed because the Notary Deed is also void, and the legal actions contained therein are also void, this happens to legal acts that are required by law to be stated in an authentic deed;
 - b. The Notary Deed is not void, or the legal acts contained therein are not void. This happens to legal acts that are not required by law to be set forth in an authentic deed, but parties who want their legal deeds to be proven by an authentic deed, in order to obtain a strong proof;
 - c. The deed still has authenticity or the legal action contained in it is void. This happens if the terms of the agreement are not fulfilled or there is a basic defect of rights that are the object of the agreement, such as a sale and purchase carried out on the basis of false evidence.

The degradation of the strength of proof of a Notary deed from authentic to the power of evidence under hand, and the juridical defect of a Notary deed that results in a Notary deed can be canceled or null and void or non-existent, occurs if there is a violation of statutory provisions, namely in Article 1869 BW, Article 84 of the Notary Office Law. The two sanctions in Article 1869 BW and Article 84 of the Notary Office Law have different meanings and legal consequences for the deed and are alternative, where to distinguish which Articles subject to deed sanctions only have the power of evidence under hand, and the deed sanctions become null and void, there are limitations and criteria, namely (Fransiska, 2021):

- a. The sanction of the deed has the force of evidence under hand, expressly stated in the Articles and violation of the formal form or requirements of the Notary Deed;

- b. The sanction of the deed becomes null and void, imposed on violations that are not related to the formal form or requirements of the Notary Deed and in these Articles there is no explicit mention of sanctions for violations.

CONCLUSION

Based on the results of research related to the responsibility of the Notary / PPAT for the deed canceled by the Court, it can be concluded that the form of responsibility of the Notary / PPAT for the deed canceled by the Court is Civil, if the Notary is proven to meet the elements of unlawful acts in Article 1365 of the Civil Code in making a deed and harming one of the parties, then the aggrieved party can file a claim for compensation to the Notary / PPAT concerned. Criminally, if the Notary is proven to violate Article 263 paragraphs (1), (2) of the Criminal Code, (Article 264 of the Criminal Code), (Article 266 of the Criminal Code); (Art. 55 jo. Art. 263 paragraphs (1) and (92) or 264 and 266 of the Criminal Code; (Article 56 paragraphs 1 and 2 jo. Article 263 paragraphs (1) and (2) or 264 and 266 of the Criminal Code, the Notary Public may be subject to criminal charges with a minimum prison sentence of 6 (six) years, a maximum of 8 (eight) years. c) Administratively, if in making a Notary Deed violates the articles in the UUJN, the Land Deed Making Officer Regulation and the code of professional ethics, the Notary will be subject to sanctions contained in article 85 of the UUJN, in the form of: Oral reprimand; Written; temporary suspension; honorable dismissal; Dishonorable dismissal.

The legal consequence for Notary / PPAT for a deed canceled by the Court is null and void: it means that the legal act committed has no legal effect since the occurrence of the legal act after a court decision. Can be canceled, meaning that the legal action committed has no legal effect since it is known that there is an error / defect in the deed; Degraded evidentiary power, that is, the perfect evidentiary power of an authentic deed in court is degraded/degraded/degraded to a deed under hand if it is proven that there is a violation in its making.

Then, what happened in the case of the study of the Supreme Court decision Number 2714 K / Pdt / 2019 was that there had been an illegal act and violated the rules in the Notary Position Law or the Regulation of Land Deed Making Office Officials and the code of ethics carried out by Notary / PPAT. According to Article 1365 of the Civil Code, it is determined that every unlawful act that causes harm to another person requires the person who committed the act to compensate for the damage. Sanctions and legal consequences for Notaries / PPAT applied can be in the form of civil sanctions in the form of reimbursement of costs, damages, and interest, as well as administrative sanctions in the form of verbal reprimands, written reprimands, temporary suspension, honorable dismissal, and dishonorable dismissal. As for the deed, if it violates certain provisions, it will be degraded in evidentiary value to have evidentiary power as a deed under hand. The degradation of the power of proof of a Notary deed from authentic to the strength of evidence under the hand, and the juridical defect of a Notary deed that results in a Notary deed can be canceled or null and void if there is a violation of statutory provisions.

REFERENCES

- adjie, H., & Gunarsa, A. (2013). Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik.
- Fransiska, L. (2021). Degradasi Kekuatan Pembuktian Dan Pembatalan Akta Autentik (Studi Putusan Mahkamah Agung Republik Indonesia No. 2377k/Pdt/2016). *Indonesian Notary*, 3(2), 22.
- Gaumi, S. D. A., & Hartono, R. (2022). Analisa Hukum Sengketa Merek Dagang Geprek Benu Berdasarkan Asas Kepastian Hukum (Studi Kasus Putusan No. 196/G/2020/Ptun-Jkt). *Jurnal Darma Agung*, 30(2), 75-90.
- Khairandy, R. (2013). Karakter Hukum Perusahaan Perseroan Dan Status Hukum Kekayaan Yang Dimilikinya. *Jurnal Hukum Ius Quia Iustum*, 20(1), 81-97.
- Leyser, J. (1958). The Ownership Of Flats – A Comparative Study. *International & Comparative Law Quarterly*, 7(1), 31-53.
- Mattalatta, A. (2009). Negara Kesatuan Republik Indonesia Adalah Negara Hukum (Rechtsstaat), Tidak Berdasarkan Kekuasaan Belaka (Machtsstaat). Konsepsi Negara Hukum Yang Diinginkan Oleh Founding Fathers Sejak Awal Perjuangan Kemerdekaan Ini Terlihat Jelas Dengan Dimuatnya Po. 571â, 584.
- Mulyana, D., & Abdughani, R. K. (2021). Tanggung Jawab Notaris/Ppat Terhadap Akta Jual Beli Tanah Yang Batal Demi Hukum. *Juris And Society: Jurnal Ilmiah Sosial Dan Humaniora*, 1(1), 106-118.
- Prabawa, B. G. A. (2017). Analisis Yuridis Tentang Hak Ingkar Notaris Dalam Hal Pemeriksaan Menurut Undang-Undang Jabatan Notaris Dan Kode Etik Notaris. *Acta Comitas: Jurnal Hukum Kenotariatan*, 2(1), 98-110.
- Putri, N. M., & Marlyna, H. (2021). Pelanggaran Jabatan Dan Perbuatan Melawan Hukum Yang Dilakukan Oleh Notaris Dalam Menjalankan Kewenangannya. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, 5(1), 63-77.
- Satrianingsih, N. N. P., & Wirasila, A. A. N. (2019). Peralihan Hak Milik Atas Tanah Melalui Perjanjian Jual Beli Dibawah Tangan. *Kertha Semaya: Journal Ilmu Hukum*, 7(6).
- Sihombing, R. R. (2022). Analisis Hukum Terhadap Putusan Hakim Mengenai Ingkar Janji Dalam Perjanjian Pinjam Meminjam Yang Dilakukan Oleh Tergugat (Studi Putusan No. 568/Pdt. G/2021/Pn Mdn).
- Suparto, S. (2020). Interpreting The State's Right To Control In The Provisions Of Article 33 Paragraph (3), The Constitution Of 1945 Republic Of Indonesia. *Uir Law Review*, 4(2), 1-8.
- Suryaningsih, S., & Zainuri, Z. (2023). Pendaftaran Peralihan Hak Milik Atas Tanah Karena Jual Beli Dalam Mewujudkan Tertib Administrasi Pertanahan. *Jurnal Jendela Hukum*, 10(1), 46-54.
- Yuana, I. E. (2010). Tanggung Jawab Notaris Setelah Berakhir Masa Jabatannya Terhadap Akta Yang Dibuatnya Ditinjau Dari Undang-Undang N0m0r 30 Tahun 2004 Tentang Jabatan Notaris. Universitas Diponegoro.
- Yusuf, M. (2013). Peran Notaris Ppat Dalam Perjanjian Kredit Dengan Jaminan

Hak Tanggungan Di Bpr Nguter Surakarta. Uns (Sebelas Maret University).

Copyright holders:
Fima Dewi Kusmara, Jeane Neltje Saly (2023)
First publication right:
Injurity - Interdisciplinary Journal and Humanity



This article is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International](https://creativecommons.org/licenses/by-sa/4.0/)