

The Judge's Decision on the Cancellation of Notarial Deed as a Proof Tool in Padang State Court

Muhammad Al Hafez
Student at Faculty of Law of Andalas
University
Padang, Indonesia

Elwi Danil
Lecturer at Faculty of Law of Andalas
University
Padang, Indonesia

Muhammad Hasbi
Lecturer at Faculty of Law of Andalas
University
Padang, Indonesia

Abstract:- The cancellation of the authentic deed that can be carried out by the judge, if the authentic deed does not meet the requirements stipulated by the law and the subjective or objective requirements are not fulfilled. This study analyzes the judge's decision on the cancellation of the notary deed as evidence in the Padang District Court which aims to find out how the Judge's consideration in making the decision to cancel the notary deed as evidence in the Padang District Court and the legal consequences for the deed being canceled through the Padang District Court decision. This study uses a juridical normative approach, which is a study that aims to examine legal principles, legal systematics, legal history and comparative law. According to the provisions of Law Number 2 of 2014 concerning the Position of Notary in Article 84, if there is a case that is brought before a judge in which the material of the lawsuit is regarding the notary's actions which have violated the provisions of that article, the judge must test the formal strength of proof against the authentic deed. The decision of the Padang District Court number 127 / Pdt.G / 2015 / PN.Pdg which declared the legal invalidation of Satria Tama's notary deed on July 19, 2012 deed number 272/2012 2012 because it was made on land that was in progress or was complaining in Court. So that the results of the research on the consideration of the judge's decision on the cancellation of a notary deed which is used as evidence in Court, are errors in the deed-making process that are not in accordance with the law, illegal acts committed by notaries and parties to the parties, errors in the contents of notary deeds, form of deeds notary public, and typographical errors in the copy of the notary deed. The legal consequences for notarial deeds that are canceled by court decisions are null and void, can be canceled, and the power of proof is degraded.

Keywords:- Judge's Decision, Deed Cancellation, and Evidence.

I. INTRODUCTION

Civil procedural law is called formal civil law, which is all legal principles that determine and regulate the ways to exercise civil rights and responsibility as regulated in material civil law. Indonesia is a constitutional state, in order to carry out all life as a state, it must be in accordance with the applicable legal rules for the creation of a just law in society. In order to create legal certainty in society, it is necessary to have a legal apparatus who realizes the

enforcement of the law, including in court proceedings by judges. The judge is one of the state apparatus who has the duty and authority in a legal event that occurs in society. Judges must realize justice and legal certainty and have the main task of receiving, examining and adjudicating and resolving every given case. In this case the judge must be passive in nature, only examine a case submitted and judge it at the end. Law Number 48 of 2009 concerning Judicial Power in Article 4 paragraph (1) states that: The court shall judge according to the law without discriminating against people.

This provision can be interpreted, that basically the Court has the right to carry out any trial activity in accordance with the applicable law. The court must also view all people as equal without having to distinguish the degree or status of the position of that person. Krisna Harahap stated that in the trial the judge handed down a verdict or decision in the form of *juridictie contentiese*, which was based on a dispute or in the form of *juridictievoluntaria* based on a petition in the form of a ruling.¹

According to clause 178 paragraphs 2 and 3 of the HIR, judges have the duty to hear all claims and are prohibited from making decisions that are not requested or grant more than what is demanded (*ultra petitem partium*). The authority of judges in assessing and canceling authentic deeds submitted as evidence in court is limited to the applicable laws and regulations, in particular Law Number 2 of 2014 concerning the Position of Notary Public, hereinafter abbreviated as UUJN. This means that in deciding a case whose basic material is the cancellation of an authentic deed, the judge must refer to the applicable law relating to the case, then this is where the Judge's view can be broad to assess and decide whether a deed can be annulled or not, with consideration that the Judge in his decision must reflect the value of justice and benefit in society.

An authentic deed made by a notary has perfect evidentiary power, if the method of making it has met the provisions stipulated by the Legislation (Article 1868 KUHPer) and the contents state the actual legal action. The existence of authentic deeds is due to statutory provisions requiring such evidence for certain legal acts or the parties want certain legal actions to be manifested in the form of

¹ Krisna Harahap, *Hukum Acara Perdata*, Grafitri, Bandung, 2003, hlm. 113,

authentic deeds. Written evidence (Article 1866 KUHP) in civil cases is the main evidence because in civil traffic, people often deliberately provide evidence that can be used if a dispute arises later, and this evidence is a very valuable class for proof, namely what is called a deed, a deed is a piece of writing that is deliberately made to make evidence about an event and to be signed², in contrast to the criminal law where in Article 184 paragraph 1 of Law Number 8 of 1981 concerning the Criminal Procedure Law The first burden of proof is Witnesses while documentary evidence lies on the third point, when compared between Article 1866 KUHP and Article 184 KUHP there is a difference regarding the primacy of the evidence used, in civil law evidence of primacy is a letter or written evidence because of the purpose of proof in law. civil is looking to really formal. It is different from the purpose of criminal law, which does not lie in documentary evidence, but on other evidence as already mentioned³.

Furthermore, in G.H.S Lumban Tobing's book, entitled Regulation of the Position of Notary, authentic deeds have three kinds of evidentiary powers, namely :

- The power of external proof,
- The power of formal proof,
- The proving power of the material.

The strength of evidence above will be tested if it has been in a court process, namely to convince the judge of the truth of the arguments or arguments put forward in a dispute, thus it appears that proof is only needed in a dispute or case before a panel of judges or court. Judges are complementary in a rule of law who are assigned to determine the actual legal relationship between the two parties who are involved or have a dispute, all matters that are disputes or disputes including civil matters including buying and selling, property rights, debts, inheritance and so on.

The distribution of the burden of proof from each party that complies is guided by the provisions of Article 1865 KUHP or Article 163 HIR which regulates proof which reads :

"Every person who argues that he has a right, in order to confirm his own rights or deny the rights of others, shows that on an event that right or event is required".

In this matter, it must be noted that the notary in making the deed only takes constituent actions (gives a statement) on what happened, what was given and what was conveyed, what was seen, what he experienced himself then recorded in the deed so that the cancellation of the notary's deed was based on the reason that what is explained in the deed contradicts the material truth, which

is not correct.⁴ In practice, social life, especially in the scope of civil law, has found many notary deeds which are used as evidence in the process of case examination in court. Even the plaintiffs who suffered losses due to the issuance of a notarial deed often asked the Panel of Judges who examined the case to cancel the notary deed which was submitted as evidence in court.

In connection with the cancellation of the notary deed carried out by the Judge in the Padang District Court decision, on August 9, 2016 Register Number 127 / Pdt.G / 2015 / PN.Pdg, the case between H. Nurman, Adrizal Nurman and friends against Herman and friends friends, the Padang District Court has canceled the notarial deed, which in the judge's consideration stated that there was a party who had committed an illegal act, meaning that the seller had defaulted and harmed the buyer, by having complete evidence so the Judge canceled the notary deed.

Furthermore, the notary commits a criminal act in which the notary has forged letters, Adrian Sutendi explained the main problems behind the issuance of a fake letter or certificate are:

- Mistakes in understanding, recognizing and applying the case position for the issuance of a fake letter or certificate.
- This problem is reinforced by the lack of understanding about land ownership institutions, or institutions for transferring land rights, ignoring and allowing mismanagement of the transfer of land rights and ignoring the linking points in legal institutions between legal systems.
- The act of legalizing the mutation document was legally flawed, the drafting of the transfer of rights deed that was not carried out by a notary.
- The land administration system is not good, so it is unable to prevent the birth of fake letters or certificates.⁵

The process occurs in court because the authentic letter or deed contains elements of a criminal act, namely forgery. make a fake letter as if it is original and or falsify a letter that can cause or eliminate someone's rights, the provisions of letter forgery as referred to in Clause 263 of the Criminal Code explain :

- Any person who makes a fake document or falsifies a letter which can give rise to a right, an engagement or which is intended as evidence of a matter with the intention of using or ordering someone else to use the letter as if the contents are true and not forged, shall be punished if the use this may result in losses due to falsification of documents, with a maximum imprisonment of 6 years.

⁴ R.Soegondo Notodisoerjo, *Hukum Kenotariatan di Indonesia Suatu Penjelasan*, Rajawali Press, Jakarta,1982, hlm 18

⁵ Adrian Sutendi, *Hukum Pembuktian*, Jakarta,2000, Pradnya Paramita, Hal 27

² R.Subekti, *Hukum Pembuktian*, Pradnya Paramita, Jakarta,2001, hlm. 25

³*Ibid*

- Is punished with the same punishment, whoever deliberately uses a fake or falsified certificate as if it were original, if the use of said letter may cause losses.

Adami Chazawi explained that forgery is a crime in which there is an element of untruth or falsification on an object which looks from the outside as if it is true even though it actually contradicts the truth, in the Indonesian Criminal Code the concept of letter forgery is not fully explained, the meaning of letter forgery in Clause 263 of the Criminal Code includes amending⁶.

The illegal acts found in this case can also be considered as criminal acts against the law as long as the evidence and the acts fulfill the elements of a criminal act, in accordance with the provisions of the applicable law. As the case happened to Notary Hj. Eli Satria Pilo, SH, who proved that the notary party had falsified the land area in the project to relinquish land rights, and for his actions resulted in state losses of Rp. 1.9 M, for land acquisition of IAIN Imam Bonjol Padang campus III in the 2010 budget year in Padang, the difference in land area occurred because the land area included in the nominative list as the basis for payment was based on estimates and was not measured by the competent official (National Land Agency) who had violates Clause 56 paragraph (1), (2), and Article 57 paragraph (1), (2), Perkab of the National Land Agency Number 3 of 2007, this results in an overpayment. Such as a case where a notary is a suspect in a corruption case.

Based on the description above, the author will examine more deeply about the Judge's decision on the cancellation of the notary deed which was put forward as evidence, and the notary was involved in criminal acts of corruption, in which both cases contained illegal acts so that there were several parties who were injured. In criminal cases, the authors only compare the criminal law arrangements with the civil law arrangements.

Based on the above explanation, then the following problem formulation in this study are :

1. What is the Judge's consideration in making the decision to cancel the notary deed as evidence at the Padang District Court?
2. What are the legal consequences for the deed being canceled through the Padang District Court decision?

II. RESULT AND DISCUSSION

A. Judge's consideration in making the decision to cancel the notary deed as evidence

In principle, in making a Judge's decision it must be based on sufficient considerations. Decisions that do not meet these provisions are categorized as decisions that do not have sufficient consideration. Legal reasons that are considered start from the provisions :

- Certain articles of statutory regulations
- Customary law

⁶ Adami Chazawi, *Kejahatan Mengenai Pemalsuan*, Jakarta, 2002, Rajawali Pers, hlm 2

- Jurisprudence
- Legal doctrine.⁷

The considerations used as the basis for the Judge in deciding to cancel the authentic deed presented as evidence are as follows :

- There was an error in the deed drafting process that was not in accordance with the provisions of the law.
- There is an illegal act committed by the parties or notary in drawing up the deed.
- There is an error in the contents of the notary deed.
- There is an error in the form of notary's deed.
- There was a typo in the copy of the notary deed.⁸

In deciding a case relating to an application for the cancellation of a notary deed, in essence, the Judge or court already has a reference or guideline, namely in Law Number 2 of 2014 concerning the Position of Notary Public, there are two consequences that occur in a notary deed if it violates the provisions contained in Article 84 is that the deed becomes null and void by law or has the power of proof as an underhand deed. The two provisions have different legal consequences. In Article 84 UUJN, the existence of the word or in the provisions of the sanction mentioned above, it seems that it can be interpreted that the provisions of the sanctions are alternative. The alternative nature of the sanctions provisions is that the notary deed is null and void or the power of proof of the deed is under hand. In Article 84 UUJN it is stated as an underhand deed or a deed is null and void for the sake of the law. Whereas the legal sanction of making the deed as an underhanded deed with void by law has different legal consequences if it is stated as an underhand deed it means that the material agreement still exists whereas if it is declared null and void it means that everything is void⁹. After the description above, it can be concluded that in Article 84 UUJN there is no explicit explanation that a notary deed cannot be canceled, it's just that if the notary deed is disputed by the parties and it is proven in court then the notary deed becomes an underhand deed.

If an error arises regarding the contents of the notary deed, the judge can use the statutory regulations related to the legal action contained in the notary deed outside of the UUJN, meaning that the judge must make a legal discovery and then interpret the legal discovery so that it can produce a verdict fulfills a sense of justice. There are material errors in making a notary deed in accordance with the Law and the contents of the deed have been agreed upon by the parties but there is a default or unlawful act by one of the parties which results in the deed not having the power of proof of authentic deed and in this case the notary cannot be blamed for the notary has made a deed in accordance

⁷Sudikno Mertokusumo, *Op.Cit.* hlm 110

⁸<https://www.researchgate.net/publication/jurnal/Darma/In-do/Damanik> Diakses Pada Tanggal 28 Januari 2019.

⁹ Rangkuman Hasil Wawancara Dengan Quti Arso Hakim Pengadilan Negeri Padang, Pada Tanggal 20 Desember 2019.

with the prevailing laws and regulations¹⁰. It can be said that the notary has done the job as well as possible, it's just that the notary is still not careful (checking), so that there are some parties who suffer losses due to the issuance of a deed.

According to Mulyono, there are several criteria for notarial deeds that have material errors, including :

- There is an error in the contents of the notary deed,
- Flawed will,
- Actions against the law.¹¹

In connection with the judge's consideration in making the decision to cancel the notary deed, this is described as the case that was tried at the Padang District Court with the subject matter No.127 / Pdt.G / 2015 / PN.Pdg the judge in the decision to cancel the Notary deed Satria Darma SH number 272 / 2012 was not due to the deed making procedure that was incorrect or legally flawed, but due to other reasons the defendant Herman's objective was to sell the land object that was currently in the Padang District Court to a third party (Aldes Maryono) and without the knowledge of the second party (Adrizal Nurman). This can be proven in court that the sale and purchase agreement deed made before the Notary Yanses Saam SH number 340/2003 and the deed of transferring Rights made before the notary Trisanti SH with deed number 10 and the sale and purchase agreement deed made before notary Virgo Putri SH between Adrizal Nurman and Herman, so that Herman could not escape with Adrizal Nurman having perfect evidence in the eyes of the judge. Basically, it can be said that the judge should not cancel or decide to cancel by law the notary deed number 272/2012, if it can be formally proven that the process of issuing the deed does not contradict the laws and regulations, especially the UUJN, and if it is proven in the trial process the issuance of a deed is in accordance with the prevailing laws and regulations so that the contents of the agreement which are written in the deed can be canceled.

In connection with the deliberate factor committed by a notary in accordance with the decision of the Padang District Court in case No. 27 / Pid.Sus / TPK / 2016 / PN-Pdg where the decision of the case is a Notary in terms of making an authentic deed can also be held accountable because the notary has been deemed to have helped and participated in the crime. In this case, it can be interpreted that the judge considered the notary to have deliberately made a letter of release of land rights as if the land acquisition for the construction of IAIN's III (three) campus was land acquisition for the public interest, so that the relinquishment of rights was not carried out in front of the head of the National Land Agency (BPN). , and the notary's act of deliberately making a notary deed on land which only has a basis of rights and does not yet have legal

certainty (certificate), however a deed of relinquishment of rights is still made, so that the judge is of the opinion that the notary has committed an illegal act. Furthermore, the case is that the Judge in his decision gives a verdict to a notary who has committed an illegal act in the form of forgery of letters / documents with the aim of enriching himself, other people and corporations, thus causing the State to suffer losses for what the notary has done. The judge's consideration besides being a notary as a public official who makes the deed who must provide an example of compliance with law, also related to ethics and morals, according to the judge, the notary must be subject to sanctions or penalties in the form of imprisonment for 4 (four) years and a fine must be paid in the amount of Rp. 200.000000 provided that if the fine is not paid, it will be replaced by a 2 (two) month imprisonment.

B. Legal Consequences Against Notary Deed Which Are Canceled By Court Decision

A notary deed is null and void or has the power of proof as an underhand deed occurs because it does not fulfill the conditions that have been determined according to law without the need for certain legal action from the concerned concerned, so it is passive. The term cancellation is active even though the terms of the agreement have been fulfilled, but the parties involved in the agreement wish that the agreement made does not bind itself again for certain reasons, either on the basis of agreement or by filing a lawsuit in general court, for example the parties have agreed to disclose the deed that he has made or there are formal aspects of the deed that were not fulfilled that were not known beforehand and want to be canceled¹². Based on the explanation above, there are several legal implications regarding the cancellation and cancellation of notarial deeds based on UUJN, including :

- Can be canceled
- Cancel by law
- Has the power of proof as an underhand deed.

Basically, the judge has the authority to decide whether an authentic deed is canceled or not based on conviction, but the judge in making the decision is independent and objective, in the claim as previously described that the plaintiff cannot prove the abuse of the situation committed by the defendant. Thus, the element of unlawful acts is not fulfilled because the making of the deed is based on the plaintiff's agreement to make the deed and no law is violated as the formal and material requirements of an agreement or statement set out in an authentic deed¹³.

As for the general juridical reasons outside of the UUJN regulations which result in the cancellation of a notary deed in general, the same as the juridical reasons for the cancellation of the agreement, a defective notary deed can invalidate a notary deed and result in the legal action

¹⁰ Rangkuman Hasil Wawancara Dengan Quti Arso Hakim Pengadilan Negeri Padang, Pada Tanggal 20 Desember 2019.

¹¹ Mulyono, *Kesalahan Notaris Dalam Membuat Akta*, Cakrawala Media, Yogyakarta, 2010, hlm 35-37

¹²Syaiful Bakhri, *Dinamika Hukum Pembuktian*, Rajawali Pers, Jakarta, 2018, hlm 143

¹³Syaiful Bakhri, *Hukum Pembuktian*, PT. Rajagrafindo Persada, 2018, hlm 72

being invalid or illegitimate. . therefore there are several reasons for the notarial deed to be canceled, among others:

- Does not meet the objective requirements of an agreement
- Obsolete inadequacy
- Unauthorized action
- Contrary to law or morality
- Fulfillment of legal events in the agreement on condition that it is canceled
- Relative inadequacy
- Defect of will
- Abuse of circumstances
- Default
- Non-fulfillment of formal agreement forms

Furthermore, it can be seen from the example of the case that the author described earlier that the Padang District Court Decision number 127 / Pdt.G / 2015 / PN.Pdg declared the legal invalidation of Satria Tama's notary deed on 19 July 2012 with deed number 272/2012, the decision This creates legal consequences for the notary, the parties with an interest in the legal act, including third parties. then through normative juridical research it can be seen that in principle a notary deed that meets the formal requirements becomes an authentic deed which, as stipulated in the Law on Notary Position (UUJN) cannot be canceled, in this case the criteria for an authentic deed are analyzed. null and void and legal consequences for third parties with the Padang District Court's decision, authentic deeds are made by and in front of a notary as a public official, so that the power of proof of authentic deeds is perfect and binds the judge if the authentic deed is used in evidence before the court.

Unlike the case with the notary's responsibility in making deeds in a criminal manner, Law Number 2 of 2014 concerning the Position of Notary (UUJN) does not regulate criminal provisions. UUJN only regulates sanctions for violations committed by notaries against UUJN, these sanctions can be in the form of sanctions against deeds drawn up and against to notaries. Sanctions for deeds that he makes into deeds made by a notary are downgraded from authentic deeds to underhand deeds, while for notaries are given sanctions ranging from reprimand to ending with dishonorable dismissal.

A criminal act is an act that is prohibited by a legal rule. If a violation of the prohibition is committed, it will be followed by a sanction in the form of a certain criminal. In carrying out the position as a notary, the crime referred to is a crime committed by a notary in his capacity as a public official who is authorized to make an authentic deed mandated by UUJN, not a personal or individual capacity of the notary as a legal subject¹⁴.

¹⁴Habib Adjie, Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik, Refika Aditama, Bandung, 2008, hlm 35

From the explanation above, it is very different from civil law, where if the notary has been proven to have committed a criminal act, the notary's responsibility is that the notary is responsible for what has been done, such as the case of notary Eli Satria Pilo who was sentenced to 4 (four) years of imprisonment and must pay a fine, and if the fine is not paid, 2 (two) months of imprisonment are added. It can be concluded that between the 2 (two) examples of cases above, it can be seen that there are differences in the rules between civil law (private) and criminal law (public), which in terms of accountability is different between civil and criminal, and it all depends on what events are happening presented to the panel of judges.

III. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the results and discussion research above, the authors draw conclusions are :

- The judges' considerations in canceling the notary deed which are used as evidence in court are in general terms :
- there was an error in the deed making process that was not in accordance with the law.
- there was an illegal act committed by a notary and the parties concerned.
- there was an error in the contents of the notary deed
- there is an error in the form of notary's deed
- there is a typo in the notary deed copy.

When viewed from the case of the cancellation of Satria Tama's notary deed, the case was not due to the incorrect procedure of making the deed but because the seller wanted to sell the land at a higher price to a third party, while the land issue was being investigated by the District Court Padang, in contrast to the notary Eli Satria Pilo, whose act was not asked for cancellation and the judge's consideration of notary Eli Satrio Pilo, has been proven to have falsified letters and resulted in state losses of approximately 1.9 billion.

- The legal consequences for a notary deed that are canceled by a court decision are :
- null and void,
- can be canceled,
- the power of evidence is degraded.

Notary deed number 272/2012 is obliged to comply with the provisions of the Criminal Code regarding the legal terms of the agreement, irregularities and violations of the provisions. which applies results in the notary deed of Satria Tama as long as the material of the deed and the legal actions that follow it is null and void. The judge should have canceled the contents of the agreement in the deed, it was not the notary deed that had to be canceled, because the notary deed made by Satria Tama was made based on the applicable regulations, especially UUJN.

B. Suggestions

The following suggestions and implications that can be given are :

- In carrying out the task as a notary in making authentic deeds, should be more careful in making deeds and need awareness of law, morals and ethics. Notary public should be more aware of the rules that apply in making notary deeds to anticipate all legal risks that occur in society, especially in the pouring of authentic deeds made by the notary.
- The parties who appear before the notary should always help the notary to state the real thing based on good ethics and honesty so that the deed can be perfect in accordance with the applicable legal rules and in the future it will not harm either party.
- With the existence of UUJN, it is hoped that it can become a comprehensive renewal and reorganization in one law which regulates the position of notary public so that a legal unification that applies to all communities can be created.
- Notaries should have good faith in themselves so that cases of notaries being involved in criminal acts of corruption are no longer repeated.

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