

The Role of the Notary when Making a Canceled Purchase Agreement Deed in Court (Review of Articles 15 and 16 of the Indonesian Notary Law)

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Abstract

A notary deed is an authentic deed drawn up by or before a notary according to the form and procedure stipulated in Law Number 2 of 2014 concerning the Office of a Notary. Article 15 of the law on the position of a notary regulates the authority of a notary, and Article 16 of the law on the position of a notary regulates the obligations of a notary. In carrying out these powers and obligations, a role is required in the form of a series of actions that are supportive in carrying out the duties of a notary in accordance with his position if the Notary does not play a role in causing the deed to be canceled, as in the Supreme Court Decision No. 535 PK/Pdt/2017 (1) the cancellation was due to an imbalance between what was written in the sale and purchase agreement deed and the facts of the parties. The decision of the Surabaya District Court (2) stated that the deed made by a notary was valid according to legal provisions. In contrast, the decision of the Surabaya High Court (3) stated that the deed was legally flawed. The decision of the Supreme Court (4) at the cassation and review level upheld the decision. This study analyzes the juridical factors that cause the deed of sale and purchase agreement made before a notary to be void based on a court decision and analyzes the role of the Notary in making a sale and purchase agreement deed. The research method used is normative juridical, using secondary data obtained from literature studies, including primary, secondary, and tertiary legal sources. The juridical factor that caused the cancellation of the sale and purchases agreement deed by the Notary, according to the Supreme Court's decision upholding the high court's decision, was because the plaintiff of the convention could prove the argument for his lawsuit regarding bilyet giro not for land payment in the sale and purchase agreement deed but for the sale and purchase of scrap metal where the plaintiff (seller) is an intermediary in buying and selling scrap metal. The Notary has yet to play a role in making the sale and purchase agreement deed, which resulted in the sale and purchase agreement deed being canceled based on a court decision. The problem is caused by the Notary not carrying out roles, such as providing legal counseling in connection with doing the deed as stipulated in the notary position law Article 15 paragraph (2) letter (e), carrying out the task carefully

as stipulated in Article 16 paragraph (1) letter a, Reading the deed before the parties attended by at least 2 (two) witnesses as referred to in Article 16 paragraph (1) letter (m).

Keywords: notary; cancellation of agreement; sale and purchase agreement.

Роль нотаріуса при посвідченні анульованого договору купівлі-продажу в судовому порядку (аналіз статей 15 та 16 Закону Індонезії «Про нотаріат»)

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Анотація

Нотаріальний акт є автентичним актом, складеним нотаріусом або у присутності нотаріуса відповідно до форми та порядку, передбачених Законом № 2 від 2014 р. про нотаріат. Стаття 15 цього Закону щодо посади нотаріуса визначає права нотаріуса, а стаття 16 – його обов'язки. Здійснення прав та обов'язків виглядає як послідовність дій, що спрямовані на виконання зобов'язань нотаріуса відповідно до його посади. Нотаріус не завжди відіграє роль у визнанні правочину недійсним. Зокрема, у рішенні Верховного суду № 535 PK/Pdt/2017 (1) визнання правочину недійсним відбулося через дисбаланс між тим, що було зазначено в договорі купівлі-продажу, і фактичним станом справ за даними сторін. Розглянуто рішення окружного суду м. Сурабаї (2), в якому вказано, що договір, укладений нотаріусом, є дійсним відповідно до правових положень. Натомість у рішенні Високого суду м. Сурабаї (3) було зазначено, що договір є юридично неповноцінним. Постановою Верховного суду в касаційній інстанції (4) це рішення залишено без змін. У роботі проаналізовано юридичні чинники, які спричиняють визнання договору купівлі-продажу, укладеного нотаріусом, недійсним на підставі рішення суду, а також роль нотаріуса в укладенні договору купівлі-продажу. При цьому застосовано нормативно-юридичний метод дослідження з використанням вторинних даних, отриманих із літературних джерел, включаючи первинні, вторинні та третинні правові джерела. Юридичний чинник, що зумовив визнання нотаріального договору купівлі-продажу недійсним за рішенням Верховного суду, який залишив без змін рішення Високого суду, полягав у

тому, що позивач зміг навести аргумент на підтвердження свого позову, за яким умови договору не були вписані для договору купівлі-продажу землі. Натомість для договору купівлі-продажу металобрухту, де позивач (продавець) є посередником у купівлі-продажу, нотаріус не брав участі у складанні договору купівлі-продажу, що призвело до визнання договору купівлі-продажу рішенням суду недійсним. Це спричинено тим, що нотаріус не виконав таких функцій, як надання юридичних роз'яснень у зв'язку з вчиненням правочину, як це передбачено пунктом «е» абзацу другого статті 15 Закону про нотаріат; не виконав завдання з усією обачливістю, як це передбачено пунктом «а» абзацу першого статті 16; не оголосив правочин перед сторонами за участю принаймні двох свідків, як зазначено в пункті «т» абзацу першого статті 16 наведеного вище Закону.

Ключові слова: нотаріус; розірвання договору; договір купівлі-продажу.

Introduction

The notary is constructed as a public official. Public officials are people who carry out work or tasks to serve the interests of society as a whole. The authority of a notary is divided into 2 (two) types, namely the Authority to make authentic deeds, and other Authorities [1]. Notaries have a very important role in Indonesia as a country adhering to the civil law legal system to serve the public in terms of making authentic deeds as evidence or as legal/absolute requirements for certain legal actions. Notaries in carrying out their positions and maintaining attitudes, behavior in accordance with laws and regulations and notaries' code of ethics. The authority possessed by a notary is not solely for personal gain but for the benefit of society, and guarantees that the deed he makes is correct [2].

The role of a notary in the service sector is as an official who is given some authority by the state to serve the public in the civil field, especially making authentic deeds. A notary is a public official who is the only one authorized to make authentic deeds regarding all actions, agreements and stipulations that are required by a general regulation or by those with an interest to be desired or stated in an authentic deed [3]. According to Soerjono Soekanto, "Role is a dynamic aspect of position (status), if a person carries out his rights and obligations according to his position, then he carries out a role. In essence, the role can also be formulated as a certain set of behaviors that are elicited by a particular position" [4].

One of the powers of a notary is to make a sale and purchase agreement deed Article 15 paragraph 1 of Law Number 2 of 2014 concerning the Position of a Notary, explaining that a Notary has the authority to do an authentic deed regarding agreements required by laws and regulations and or desired by those concerned to be declared in the Authentic Deed. According to Herlien Budiono, the contents of the sale and purchase agreement which is a preliminary

agreement for the birth of the main agreement or main agreement is usually in the form of promises from the parties containing provisions regarding the conditions agreed upon for the validity of carrying out the main agreement [5]. The sale and purchase agreement is an obligatoir agreement, regarding the contents and form of the sale and purchase agreement. Given the function and purpose of making a sale and purchase agreement, the reasons or matters behind the sale and purchase need to be clearly described and illustrated in the premise of the notarial deed [6].

The sale and purchase deed made before a notary is an authentic deed with perfect evidentiary power. Based on Article 1870 of the Indonesian Civil Code, an authentic deed provides perfect evidence of what is contained therein. Perfect means that the judge does not need other evidence to decide the case other than on the basis of the intended authentic evidence, while binding means that the judge is bound by authentic evidence unless it can be proven otherwise. The legal requirements for a notarial deed include formal requirements based on Article 38 of Law Number 2 of 2014 concerning the Office of a Notary, the material requirements for a deed must meet the requirements for the validity of the agreement stipulated in Article 1320 of the Civil Code.

Notaries in the process of making a deed have obligations that must be carried out in carrying out their positions which are regulated in Article 16, paragraph 1 of Law Number 2 of 2014 concerning the Position of Notary. Not doing so will cause problems with the deed made, such as in the decision of the Surabaya District Court Number 804/Pdt.G/2012/PN.SBY (2), where the deed of sale and purchase agreement Number 48 dated 18 July 2008 was made before Notary Devi Chrisnawati, SH, in Surabaya in a case resulting in a different decision between the Surabaya District Court (2) and the Surabaya High Court (3).

The purpose of proving a notarial deed in court is to provide certainty to the judge that a legal event has occurred. It was proving that a legal event had occurred. Therefore, a deed can be authentic when it meets the requirements set out in the law, one of which is that it is made by an authorized public official so that the deed will become written evidence with perfect evidentiary power. Here the role of the notary profession is significant in fulfilling these requirements because a notary is a public official who has been given the authority to do authentic deeds stipulated by law [7].

The goal to be achieved is to analyze the juridical factors of court decisions that cause the deed of sale and purchase agreement made by a notary to be canceled by the court. What is the role of a notary as a general official doing authentic deeds according to the Indonesian Notary Office Law in doing deeds to avoid

canceling the deed made by a notary the usefulness of research is as input and consideration for the development of legal knowledge, especially in the notary field in standard arrangements and procedures, regarding the role and position of a notary so that the deed is always avoided from being canceled.

Which is the subject of the first discussion, what are the juridical factors that cause the sale and purchase agreement deed to be canceled by the court? Second, what is the role of the Notary in making the sale and purchase agreement deed so that it is canceled by the court?

Materials and Methods

This research will be compiled using normative juridical analysis [8]. Namely, research focused on examining the application of rules or norms in positive law. The methods used in this research are statutory approaches, analytical approaches, and conceptual approaches [9]. The data needed to be used in this research is to use secondary data. Primary legal materials include the Civil Code, Law Number 2 of 2014 concerning the Position of Notary Public, and secondary legal materials include legal literature, research results in the field of law, scientific articles, journals, and the internet. Researchers use library data collection methods to collect books, documents, rules and regulations, scientific papers, and other literature. Legal materials obtained will be analyzed qualitatively.

Results and Discussion

What are the juridical factors that cause the deed of sale and purchase agreement made by a notary to be canceled by the court?

The case began on July 18, 2008, with Deed of Sale and Purchase Agreement No. 48 by the co-defendant (Notary). The object of the sale and purchase agreement is land owned by the plaintiff (seller). The sale and purchase price is IDR 1.500.000.000.00 (one billion five hundred million rupiah). The buyer is the defendant (buyer) in the deed. It was explained that it had been paid off before the signing of the deed. However, problems arose with the deed because the plaintiff (the seller) filed a lawsuit at the Surabaya District Court (2) stating that the contents of the deed stated the sale and purchase price of IDR 1.500.000.000.00 (one billion five hundred million rupiah) had been paid off before the signing of the deed is incorrect. Hence, the plaintiff (seller) demands cancellation of the deed.

The argument for the plaintiff's lawsuit stated that during the process of making the sale and purchase agreement deed, the Notary never read the act in front of the plaintiff and his wife. In the process of signing, the Notary (co-defendant) and the defendant (buyer) suddenly asked the plaintiff and his wife to sign

the deed of sale and purchase agreement, so the seller did not understand the contents of the deed sale and purchase agreement made, in the contents of the act of a sale and purchase agreement made by a Notary it is explained that payment has been made before the signing of the deed of a sale and purchase agreement, the plaintiff's argument in the lawsuit for cancellation because there was no payment in the deed sale and purchase agreement made by a Notary so that the plaintiff demands cancellation of the deed of a sale and purchase agreement.

Initially, the plaintiff (seller) and the defendant (buyer) made a sale and purchase agreement deed because the defendant (buyer) asked to surrender the plaintiff's (seller) land rights to convince the defendant of the sale and purchase of scrap metal offered by the late Soenardi whose value is the same as the deed made by the plaintiff and the defendant amounting to Rp. 1.500.000.000.00 (one billion five hundred million rupiah). Payment in the sale and purchase of scrap metal is paid with a giro by the defendant, so the deed of sale and purchase is made before a Notary only as a means or way for the defendant to obtain certainty about the sale and purchase. The purchase of scrap metal was made between the defendant and the late Soenardi because the plaintiff facilitated the sale and purchase of scrap metal between the defendant and the late Soenardi.

The decision of the Surabaya District Court Number 804/Pdt.G/2012/PN.SBY (2) regarding the principal case of canceling the deed of a sale and purchase agreement between the plaintiff and the defendant, in legal considerations. The judge thinks that if the deed of the sale and purchase agreement between the plaintiff (seller) and the defendant (buyer) drawn up by the co-defendant (Notary) is under the provisions, then the deed of sale and purchase is valid and binding because the plaintiff is not yet willing to submit the object certificate of the dispute to In the name transfer process, based on counterclaims, the plaintiff (seller) is declared to have committed a breach of contract in the agreement with the defendant (buyer).

In the author's analysis of the Surabaya District Court Decision (2), the panel of judges, in their considerations, saw based on the deed made by the notary as evidence submitted by the plaintiff and the defendant without seeing other evidence submitted by the plaintiff or the defendant, in the trial the deed made by the notary explained that payment had been made before signing of the deed by the parties. A notarial deed as an authentic deed has 3 (three) evidentiary powers, namely outward, formal, and material [10].

The outward proof value (*uitwendige bewijskracht*) of a Notary deed is the ability of the deed itself to prove its validity as an authentic deed (*acta publica probant sese ipsa*). In this case, the burden of proof is that there are parties who deny the authenticity of the Notary's deed. The formal evidentiary value (*formele*

bewijskracht) of a notary deed must provide certainty that an event and fact mentioned in the deed was carried out by a notary or explained by the parties who appeared at the time stated in the deed by the procedures specified in the making deed. Formally to prove the truth and certainty of the day, date, month, year, time (time) facing, and the parties facing, initials and signatures as well as proving what was seen, witnessed, heard by the Notary and recorded the statements or statements of the parties, The material evidentiary value (*materiel bewijskracht*) is certainty about the material of a deed that what is in the deed is a valid proof of the parties making the deed or those who have rights and applies to the public unless there is evidence to the contrary (*tegenbewijs*). The statements or statements outlined in the deed by the parties must be judged to be accurate, said which is then stated in the deed to apply as valid. If it turns out that the statements or statements of the appearers were said incorrectly, then this is the responsibility of the parties themselves.

The decision of the Surabaya District Court Number 804/Pdt.G/2012/PN.SBY (2) is different from the decision of the Surabaya High Court Number 452/Pdt/2013/PT.SBY (3), based on legal considerations. The judge stated that, in this case, there were 2 (two) different legal relations. The plaintiff has never received payment from the defendant for the land purchase, and there is no evidence to prove payment in the sale and purchase agreement. The deed made before the co-defendant (Notary) contains legal defects, so the deed of the sale and purchase agreement is invalid and, therefore must be declared null and void and not legally binding. The decision of the Surabaya High Court has permanent legal force up to the Supreme Court review level.

Based on the decision of the Surabaya High Court (3), which has permanent legal force until the supreme court's decision at the judicial review level. At the level of the Surabaya High Court (3), the judge stated that there were 2 (two) different legal relationships, which can be described using the scheme of the legal relationship of the parties as a whole from the beginning, namely buying and selling scrap metal where the plaintiff is the intermediary. Then the plaintiff is the seller in the deed of agreement sale and purchase, which as a means of convincing the previous sale and purchase (sale and purchase of scrap metal) as follows:

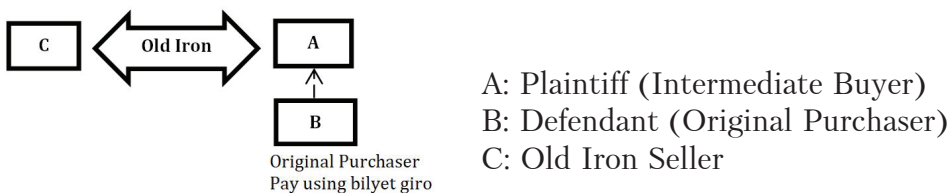


Figure 1. Letter of Agreement for Sale and Purchase of Scrap Metal Dated 10 July 2008

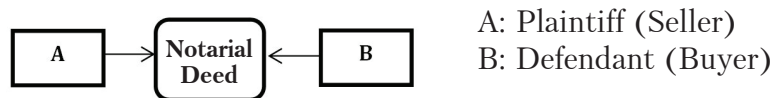


Figure 2. Sale Purchase Agreement Deed dated 18 July 2008

The author's analysis of the Surabaya High Court Decision (3) when connected with the new theory put forward by Van Dunne. The new theory does not only look at the agreement alone but also at previous actions or those that preceded them. According to the new theory, there are three stages in making an agreement [11]. The first is the pre-contractual stage (acceptance and offer). The second stage is contractual (there is a conformity of the statement of will between the parties), and the three post contractual stages (implementation of the agreement).

The pre-contractual stage in the decision case, the acceptance of the seller (plaintiff) to enter into a sale and purchase agreement due to the offer of the buyer (defendant) to make a sale and purchase agreement with the aim of convincing another sale and purchase, namely the sale and purchase of scrap metal, between buyers in the binding agreement buying and selling (defendant) with the late Soenardi because the seller in the sale and purchase agreement (plaintiff) acts as an intermediary in the sale and purchase of the scrap metal, so the seller's will in the sale and purchase agreement (plaintiff) is the implementation of the sale and purchase of scrap metal and the agreement sale and purchase as a means of convincing, while the will of the buyer in the sale and purchase agreement (defendant) is the implementation of the agreement on sale and purchase of land belonging to the seller in the sale and purchase agreement (plaintiff). This decision case has different intentions and does not complement what each party wants because, at this stage, the parties have different perceptions or understandings regarding their wishes. The seller (plaintiff) wants the sale and purchase of scrap metal to be carried out, while the buyer (defendant) wants the implementation of the agreement for the sale and purchase of land belonging to the seller (plaintiff).

The contractual stage, in the case of a decision at this stage, is contained in a deed made before a notary, by signing the deed of the sale and purchase agreement by the parties indicating that there has been an agreement and making the deed of the sale and purchase agreement born and binding for the parties. However, the problem is in the process of drafting the sale and purchase agreement deed. The notary never reads the deed in front of the seller or the seller's wife. During the process of signing the deed of the sale and purchase

agreement, the notary and the buyer suddenly ask the seller and the seller's wife to sign the deed of a sale and purchase agreement. Based on this, the seller does not understand the contents of the deed of agreement sale and purchase agreement made. The deed of a sale and purchase agreement made was the buyer's will to enter into an agreement for the sale and purchase of land belonging to the seller, and in the contents of the deed, it was explained that payment in the amount of Rp. 1.500.000.000.00 (one billion five hundred million rupiah) had been made prior to signing the deed, but in reality, there was no payment for the sale and purchase of land in the deed of a sale and purchase agreement. There is a payment for the sale and purchase of scrap metal of the same value, namely IDR 1.500.000.000.00 (one billion five hundred million rupiah), which the buyer has paid to the late Soenardi as a seller in buying and selling scrap metal.

The post-contractual stage in the case of an agreement decision is made before a Notary so that it has perfect evidentiary power. That is, it does not require the addition of other evidence because an authentic deed has the strength of proof outwardly, formally, and materially. As a means of written evidence, the statement in the notarial deed must be accepted unless the interested party can prove the opposite satisfactorily or determine before a court hearing. Discrepancies in the statement on the sale and purchase agreement deed regarding payment on the deed, which stated it had been carried out before the signing of the sale and purchase agreement deed, caused the seller to file an annulment to the court at this stage the seller realized that there was a difference in perception or understanding regarding his initial intention, namely as a means of carrying out the sale and purchase scrap metal, where the seller facilitates the buying and selling of scrap metal.

According to the next author, the legal terms of the agreement in the sale and purchase agreement deed made before a notary are questionable. An agreement that allows an agreement to have a defect of will (*wilsgebreken or defent of consent*) is a defect in forming an agreement in a contract or agreement. This defect of will is an incomplete agreement [12]. Article 1321 of the Civil Code explains that "no agreement has any power if it is given due to an oversight or is obtained by coercion or fraud". The elements of Article 1321 of the Civil Code are formulated. There are 3 (three). First, there is a mistake/misguidance/oversight (*dwaling*) one party, or several parties have a wrong perception of the object or subject contained in the agreement. Second, there is coercion (*dwang*), an act that is unjust or a threat that hinders freedom of will, including in the act of coercion. Third, there is a fraud (*bedrog*), an act of deception.

There are 2 (two) kinds of mistakes/misguidance/oversight (*dwaling*). First, an error in person, namely a mistake in the person, for example, an agreement is

made with a famous artist but then the agreement is made with an artist who is not famous just because he has the same name. Second, error in substance, which is a mistake related to the characteristics of an object, for example someone who buys a Basuki Abdullah painting, but after arriving at the house the person realizes that the painting he bought earlier is a copy of Basuki Abdullah's painting. In other cases, for an agreement to be rescinded, one has to more or less recognize that the partner has entered into the agreement on the basis of a mistake in identifying the subject or person [13].

In principle, the agreement consists of 1 (one) or series of promises made by the parties to the agreement. The essence of the contract itself is an agreement [14]. Evidence can be made with an agreement made by the parties concerned, and so that the legal action is more binding, usually, the parties put the agreement into an authentic deed drawn up by a Notary [15]. According to the authors of the case, the decision contained an element of flawed will, an error in the object (error in substance) because one party or several parties had a wrong perception of the object in the agreement. The plaintiff (seller) perceives the sale and purchase agreement as a means of carrying out another sale and purchase agreement, namely the old sale and purchase agreement. In contrast, the defendant (seller) has a different perception, namely the implementation of the land sale and purchase agreement owned by the defendant.

It was concluded that the juridical factors that caused the sale and purchase agreement deed made by the Notary were canceled according to the Supreme Court, which upheld the decision of the Surabaya High Court. The juridical reasons at the cassation level are that the Judex Facts (the judge who examines the facts of the trial) of the High Court did not wrongly apply the law, and the plaintiffs of the convention can prove their claim regarding bilyet giro (transfer form) is not for land payment in the deed of a sale and purchase agreement but for the sale and purchase of scrap metal where the plaintiff (seller) is the intermediary in the sale and purchase of the old. Judex reason Judex Judex Facts (the judge who examines trial facts), novum (new facts) submitted in the form of a Notary's statement is not new evidence, and no error was found actual judge and/or mistake.

The role of the notary in making sale and purchase agreement deed so that the court cancels it

The role is an action or behavior performed by someone who occupies a position in social status. The role requirements, according to Soerjono Soekanto, include 3 (three) important things. First, the role includes norms associated with a person's position or place in society. The role, in this sense, is a series of rules that guide a

person in social life. Both roles are a concept of what behavior can be carried out by individuals in society as an organization. The three roles can also be regarded as individual behavior, which is vital for the social structure of society [4].

The role of a notary in the process of making a deed of a sale and purchase agreement is vital, such as when providing services for appearers who do not yet understand what will be made, the purpose of which will bring legal consequences regarding rights and obligations that are truly desired and agreed upon, this is in line with the contents of Article 15 paragraph (2) letter (E) "In addition to the authority in paragraph 1. Notaries are also authorized to provide legal counseling concerning the making of deeds".

The sale and purchase agreement can be concluded that holding a sale and purchase agreement is an assistance agreement explaining that the seller is a prospective seller. The buyer is a prospective buyer who will later carry out the principal agreement in the form of a land sale and purchase deed before the Land Deed Making Officer. In making the deed of the sale and purchase agreement, it is necessary to explain clearly in the premise of the deed made by the notary regarding the provisions at the time of the sale and purchase agreement and later, the ultimate goal is to reach the main agreement, namely the deed of sale and purchase of land before the Land Deed Making Officer.

The notary's task is to confirm the legal relationship between the parties in a written form and a specific format so that it can realize legal relations between civil legal subjects. Thus, the notary can prevent a problem or dispute between the parties. The importance of the notary profession is due to the nature and nature of its work which is highly oriented towards the legalization of statements or agreements so that it can become the primary legal basis regarding the status of the property, rights, and obligations of the parties involved [16]. The community needs notary services to meet the needs of the community in carrying out legal actions that are Civil Law in nature. Legal action is based on the completeness of a letter or document that has legal force as evidence [17].

According to the author, the problem of canceling the deed in the case of a verdict should have been anticipated by the Notary during the process of doing the deed by the Notary. If, in carrying out his work as a public official, the Notary performs a role in the form of a specific set of behaviors that should be carried out either clearly regulated obligations or obligations that is supportive in carrying out work arising from his position as a public official authorized to do authentic deeds. Based on the case in which the cancellation of the deed occurred because of what was written in the sale and purchase agreement deed made by a notary regarding "the purchase price of the land rights for IDR 1.500.000.000.00

(one billion five hundred million rupiah) was paid in cash prior to signing this deed" apparently not true.

Based on the decision of the Surabaya High Court (3), which stated that the plaintiff never received payment from the defendant for the purchase of the land, according to the author, a specific notary role is needed in carrying out his position. Thorough, according to the Big Indonesian Dictionary is thorough. This thoroughness is under what is stipulated in Article 16 paragraph (1) letter A "In carrying out his position, a Notary is obliged to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions".

According to the author, the Notary was not thorough in the case of the decision because the Notary wrote in the contents of the sale and purchase agreement deed that the payment regarding the land had been made before the signing of the deed while the fact that there was no payment. The Notary should be careful, ensure by asking again that the payment in the valid deed has been carried out for a sale and purchase agreement in full and proceed by asking for proof of payment receipts made by the parties if necessary, facilitating in making receipts of payments made by the parties in order to safeguard the interests of the parties concerned. Involved in legal actions and maintain the certainty of the deed made.

In the process of doing the deed, the Notary never read it before the plaintiff and the plaintiff's wife. Suddenly the plaintiff and the plaintiff's wife were asked by the Notary and the defendant to sign the deed. According to the author, in this case, it is contrary to Article 16 paragraph (1) letter M "In carrying out his position, the Notary is obliged to read the deed in front of an audience attended by at least 2 (two) witnesses, or 4 (four) witnesses specifically for making the Deed testament under the hand, and signed at the same time by the appeared, witness, and Notary. Law No. 2 of 2014 Concerning the Position of Notary".

An authentic deed essentially contains formal truths in accordance with what the parties notify the notary. However, the notary must include that what is contained in the notary's deed has been understood and is following the wishes of the parties, namely by reading it so that the contents of the deed become clear. Notaries, as well as providing access to information, including access to relevant laws and regulations for parties signing the deed. The parties can freely agree or disagree with the contents of the notarial deed to be signed [18].

In the process of doing the deed, the Notary and the defendant suddenly asked the plaintiff to sign the deed. According to the author, in this case, the Notary in carrying out his position was contrary to his obligations, namely not protecting

the interests of the parties involved in legal actions. According to the author, this action is contrary to Article 16 paragraph (1) letter A which states that "In carrying out his position, a Notary is obliged to act in a trustful, honest, thorough, independent, impartial manner and protect the interests of the parties involved in legal actions".

According to the author, in carrying out his position, the Notary is also authorized to conduct legal counseling regarding the deed made, this provision is regulated in Article 15 paragraph (2) letter E which states that "Notaries are also authorized to provide legal counseling in connection with the making of deed" legal counseling should be carried out by a notary relating to the decision case is to inform that the contents of the deed written by the Notary must be in accordance with the actual facts, the parties must realize that the deed made must be in accordance with what the parties wish, for example in the case of a payment decision for payment of scrap metal then pouring in the deed for the sale and purchase of scrap metal not for land, in the case of a ruling that the will of the parties is not a binding agreement for the sale and purchase of land but what is stated is an agreement binding on the sale and purchase of land according to the author this occurs due to the lack of a notary's role in conducting legal counselling.

Based on the final decision that has permanent legal force, it is stated that the deed made by the Notary contains legal defects. On the basis of this description, according to the author, the Notary, in carrying out his position as a general official doing the deed, has yet to play a role that resulted in the deed being canceled based on a court decision. In the process of doing a deed, the role of a notary is needed because, in civil law, a notary is an extension of the state that is given the authority to do authentic deeds that function as perfect and binding evidence. Perfect means that the judge does not need other evidence to decide the case other than based on the intended authentic evidence, while binding means the judge is bound by authentic evidence unless it can be proven otherwise.

Based on the problem of the decision case, according to the author, the role of a notary is needed in doing deeds as long as they are still within their authority and obligations to guarantee certainty, order, and legal protection, such as by conducting legal counseling in connection with doing deeds, acting carefully, impartially and safeguarding the interests of the parties involved. In legal actions, or even according to the author, the role of a notary is needed which aims to guarantee legal certainty, such as by asking for proof of payment in an agreement that will be made between the parties if it has been paid beforehand or a notary

facilitates if there is no proof of payment between the parties so that problems such as in cases the decision can be avoided by the Notary as a public official who does authentic deeds.

Conclusions

The decision of the Supreme Court (4) upheld the juridical reasons at the cassation level. The plaintiff of the convention can prove the argument for his claim regarding the bilyet giro (transfer form) not a land payment in the deed of sale and purchase agreement but for the sale and purchase of scrap metal where the plaintiff (seller) is an intermediary in the sale and purchase of old goods. The reasons for the level of review are based on the considerations and judgments of the *judex juris* (a judge who examines the application of the law) and *judex facti* (a judge who examines the facts of a trial). The *novum* (new facts) submitted are in the form of a notarial deed, not new evidence. No oversight of judges or apparent wrongdoing was found. According to the author, the decision of the Surabaya High Court (3), which stated that the deed of the sale and purchase agreement was canceled without mentioning the legal reasons in the judge's legal considerations, caused ambiguity because the author identified an error in substance, namely an error related to the characteristics of an object. The Panel of Judges should not only declare the cancellation of the deed so that they always apply the most appropriate law in a case to create quality legal products and uphold a sense of justice and legal certainty.

The role of the Notary in making the sale and purchase agreement deed was canceled by the court because the Notary had not played a role, so the sale and purchase agreement deed was canceled based on a court decision. After all, the deed of sale and purchase agreement contains legal defects, and the problem is caused because the Notary does not carry out his role in the form of a series of behaviors. Certain things must be done, both those which are obligations that have been regulated and obligations that are supportive in carrying out their positions as public officials who carry out authentic deeds, which have been regulated: providing legal counseling in connection with doing authentic deeds. Deed as stipulated in Article 15 (2) letter (e), act carefully as referred to in Article 16 (1) letter (a), read the deed in advance in the presence of at least 2 (two) witnesses as referred to in Article 16 (1) letter (m). which has not been stipulated in the law, the position of a notary performs the role of guaranteeing certainty of payment in the agreement to be made by a notary, such as by requesting proof of payment made by the parties or facilitating the preparation of proof of payment for the parties to avoid problems that will later arise regarding authentic deed which are made.

Recommendations

The Panel of Court Judges should not only declare the sale and purchase agreement deed null and void, but there must be a legal basis for stipulating the cancellation of the deed made by a notary in the judge's legal considerations, both the legal terms in making the deed (formal requirements) or the legal terms in the agreement (material requirements), in order to consistently apply the best possible law in a case in order to create a quality legal product, uphold a sense of justice and legal certainty and can serve as a guideline for a Notary in carrying out his/her position to avoid canceling the deed he made in order to maintain legal certainty and interests of the parties (citizens).

The notary in making the deed should play a role by conducting legal counseling related to the deed to provide information that the deed made is following the wishes of the parties to the agreement. Act carefully by ensuring the supporting documents in the deed are by legal events. The notary reads the deed in front of the parties and 2 (two) witnesses to ensure the wishes of the parties in agreeing, followed by signing the deed by the parties if the deed is by the wishes of each party because the parties' signature signifies an agreement in the deed laws made.

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Suggested Citation: Prasetyo, D.H., Prihatinah, T.L. & Sulistyandari (2023). The Role of the Notary when Making a Canceled Purchase Agreement Deed in Court (Review of Articles 15 and 16 of the Indonesian Notary Law). *Problems of Legality*, 160, 249-265. <https://doi.org/10.21564/2414-990X.160.270276>.

Рекомендоване цитування: Прасетіо Д. Х., Прихатінах Т. Л., Сулістандарі. Роль нотаріуса при посвідченні анульованого договору купівлі-продажу в судовому порядку (аналіз статей 15 та 16 Закону Індонезії «Про нотаріат»). *Проблеми законності*. 2023. Вип. 160. С. 249–265. <https://doi.org/10.21564/2414-990X.160.270276>.

Статтю подано / Submitted: 25.12.2022

Доопрацьовано / Revised: 15.01.2023

Схвалено до друку / Accepted: 23.01.2023

Опубліковано / Published: 25.03.2023