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Notary's conspiracy with the defendants in the land buying and selling case

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Abstract
This research aims to discuss the responsibility of Notaries regarding the cancellation of property rights certificates that are encumbered with mortgage rights. One of the reasons for the cancellation of a land title certificate is due to a court decision which has obtained permanent legal force. Based on District Court Decision No.18/Pdt.G/2021/Pn.Bna, the certificate of title to the land was canceled because the conspiracy or evil conspiracy carried out by the Defendants had been transferred to another party, and had used it as collateral for a debt with a mortgage on it. Aceh Bank. This happened inseparably from Defendant IV as Notary and PPAT, who persuaded and seduced him using lies and deceit. So the judge who examined and tried the case decided that the Deed of Sale and Purchase Agreement No.57 dated 23 January 2019 and the Deed of Sale and Purchase No.35/2019 dated 07 February 2019 were invalid and had no legal force. Then the judge declared it invalid and had no legal force of name change process Certificate of Ownership No.718 dated 02 January 1996 Letter of Measure No.97/1996 dated 02 January 1996 from Nina Aryani to Khairul Ambia, S.Pi and Nidaul Hasanah, S.Pdi. As a result of the conspiracy, the mortgage rights imposed on the land rights on Bank Aceh were void, so that Bank Aceh suffered losses.

Keywords: Conspiracy, land buying and selling

Introduction

The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which guarantees order, security and legal protection to every citizen. To ensure order, security and legal protection, genuine written evidence of actions, agreements, decisions and lawful transactions before or by authorized officials is required (Muhammad Luthfan Hadi Darus, 2017: 1) [8]. So the presence of a Notary is very important for the community, especially for people who need written evidence which is needed in the future, which is sometimes used as evidence in court (Safrina Y. Y., Azhari., Suhaimi, 2024: 62-65) [11].

According to the Law No.30 of 2004 on the Status of Notaries (as amended by Law No.2 of 2014) (hereinafter referred to as UUJN), the above-mentioned authorized officials are notaries. In this case, according to Article 1, paragraph 1, of the UUJN, a notary is a public official with the authority to authenticate public documents. It can be understood from this that a notary is a public official who has the special power to provide true evidence and is required by law to serve those who need true written evidence. Therefore, notaries play an important role in notarizing real documents in people's lives. Therefore, notaries, as officials who notarize real documents, are required to have good personality, diligence, independence, honesty, impartiality (fairness) and a feeling of responsibility. This is something very principled (because it concerns ethics and morals which are closely related to services to the community) (Suhaimi, Nurdin MH, Enzus Tinianus, 2023: 27-45) [13]. This is important because these behaviors can interfere with or influence the Notary in carrying out his office duties (Irma Mulia Fitri, Ilyas Ismail, Suhaimi, 2019: 53-62) [6].

Initially, the agreement between the parties was only in the form of an oral agreement which prioritized the principle of mutual trust. As time goes by, verbal agreements cannot fulfill the need as evidence in the future in the form of authentic deeds with the aim of obtaining legal certainty. A legal certainty can be obtained from a written agreement made by an authorized official, so that the authenticity of the deed as evidence that has evidentiary standing in court is guaranteed. One of the officials who has the authority to make written agreements that can be used as evidence at a later date is a Notary or Land Deed Official (PPAT).

The authority of the notary referred to in Article 15 of the UUJN, his profession as a producer of official documents, and the rapid and dynamic development of social needs have increased the intensity and complexity of legal relationships, which naturally require security, order and law Protection, its essence is truth and justice. Understanding the requirements for the authenticity of a notarial certificate and the reasons for its invalidity is of great significance in order to prevent the legal defects in the notarial certificate from causing it to lose authenticity and become invalid. For everyone's convenience, the notary prepares notarized documents in accordance with UUJN.

Article 16 UUJN Paragraph (1a) In the performance of their duties, notaries are obliged to be thorough, honest, independent and impartial and to protect the interests of parties to legal disputes. The meaning of "careful" in this article can be understood as (meticulous, thorough, careful). You must be careful in both the performance of your duties and in understanding your opponents. Notaries must always exercise caution when dealing with legal disputes. Therefore, before drafting the deed, the notary must examine all relevant facts and take them into consideration in accordance with current legislation. The basis for the inclusion of documents is checking the completeness and validity of all evidence or documents submitted to the notary, as well as hearing information or statements from persons present. If the notary is not careful when verifying important facts, it means that the notary was negligent. (Peter E. Latumeten, 2011: 31) [10].

The Notary Public or PPAT has great responsibility for every action related to its activities. His responsibility is not limited to the moment the deed is created, but the notary must always be ready to take responsibility for the authenticity of the deed for which he is responsible as long as the parties use a deed drafted by a notary or PPAT. Has been drawn up. In addition, the notary is responsible for the accuracy of the content of the documents he creates so as not to cause any damage to any party before him.

The certificate is evidence of land rights within the meaning of Article 19 (2) c of the UUPA, relating to land rights, administrative rights, religious and communal organization land, housing unit ownership and mortgage rights, each of which is in the relevant documents of the land register Registration of the certificate as proof of title to the land in accordance with Section 1(20) of PP No.24 of 1997 and Section 19(2c) of UUPA and Section 32(1) of PP No.24 of 1997 (Muhammad Yamin Lubis and Abdurrahman Rahim Lubis, 2008: 20) [9].

Even if the certificate provides strong evidence of land rights, land rights certificates are sometimes canceled in accordance with Article 1(14) of the Ministry of Agriculture (PMA) No.9 of 1999, which provides for the meaning of cancellation of land rights attribution to decide. These include administrative deficiencies in the issuance or implementation of judicial decisions resulting in permanent legal decisions. For example, the cancellation of a property deed may be due to a defect in administrative law or due to a court decision that has acquired permanent legal effect (Fasatama Prakasa, et.al., 2020).

In the case of cancellation of land rights due to administrative legal deficiencies, the interested party may submit a request directly to the designated official (i.e., the State Land Bureau at the county/municipal level). Meanwhile, cancellation of land rights due to administrative legal defects without going through a request by an authorized official is carried out if it is known that there is an administrative legal flaw in the process of issuing a decision granting rights without an application and cancellation of land rights due to implementing a court decision that has obtained legal force and is still issued on request. interested parties, where the application is submitted directly to the Minister or Head of the Regional Office or through the Land Office. (Maria SW Soemardjono, 2001: 182) [7].

One example of a case that occurred was the Banda Aceh District Court Decision with Case Register No.18/Pdt.G/2021/Pn.Bna. In this case Nina Aryani (plaintiff) against Khairul Ambia (defendant I), Nidaul Hasanah (defendant II), Harbini (defendant III), Syukri Rahmat, SH, M.Kn, Notary or PPAT Banda Aceh (defendant IV), PT. Bank Aceh Syariah Banda Aceh branch (defendant V) and Banda Aceh Municipality Land Office (defendant VI). With the disputed object being a plot of land covering an area of 1,004 M2 and a two-story permanent building above it located at Lr Aria No: 15 Tunggai Hamlet, Lamgugop Village, Syiah Kuala District, Banda Aceh Municipality. The land and buildings have a basis of ownership in the form of Certificate of Ownership Number: 718 dated 2 - 1 - 1996. Letter of Measure Number: 97/1996 dated 02 January 1996 issued by the Banda Aceh Municipality Land Office in the name of Nina Aryani (Plaintiff).

However, due to a conspiracy or evil conspiracy carried out by the Defendants, the land has been transferred to another party, and has used it as collateral for a debt with a mortgage on Bank Aceh. This happened inseparably from Defendant IV as Notary and PPAT, who persuaded and seduced him using lies and deceit. So the judge who examined and tried the case decided that the Deed of Sale and Purchase Agreement No.57 dated 23 January 2019 and the Deed of Sale and Purchase No.35/2019 dated 07 February 2019 were invalid and had no legal force. Then the judge declared it invalid and had no legal force of name change process Certificate of Ownership No.718 dated 02 January 1996 Letter of Measure No.97/1996 dated 02 January 1996 from Nina Aryani to Khairul Ambia, S.Pi and Nidaul Hasanah, S.Pdi. Automatically the guarantee on the land is also void. In this case, the loser is the bank who loses the collateral for the credit that has been disbursed.

Thus, it would be interesting to discuss the Notary's responsibility for the cancellation of title certificates that are encumbered with mortgage rights.

Research Method

This particular research can be classified as both descriptive research and prescriptive research, depending on the perspective from which it is viewed. Descriptive research seeks to provide an accurate depiction of the characteristics of an individual, situation, symptom, or specific group, as well as determine the prevalence of a symptom or establish correlations between symptoms in society (Amiruddin and Zainal Asikin, 2004: 25) [2]. On the other hand, prescriptive research aims to offer an overview or formulate a problem based on existing circumstances or facts (Salim HS and Erlies Septiana Nurbani, 2013: 9). The type of research being conducted is normative legal research, also known as library research. This approach relies on the library as the primary source of data, as stated by Soerjono Soekanto (also known as Soekanto, 1989: 2). Therefore, the discussion material is derived from various sources such as books, documents, encyclopedias, papers, journals, articles, and newspapers that specifically address the topic of this research (Taufiq Abdullah and Rusli Karim, 1989: 2).

In normative legal research, it is a method that focuses on the analysis of legal cases that have occurred in the past or currently. This case approach aims to find patterns or trends that occur in these legal cases, as well as looking for solutions or suggestions that can be given to resolve related legal problems. In using this approach, researchers must collect information about the case to be analyzed, including paying attention to related facts, applicable law, and decisions that have been issued by the court.

Apart from that, it also uses a legislative approach, which is carried out by examining laws (legislation) and regulations related to the problems/issues being discussed. For practical research, the legislative approach will study the consistency and conformity between one law and another law, with the constitution, or between regulations and laws.

Results and Discussion

The role of a PPAT/Notary as a public official with the power to create legally binding documents comes with a great deal of responsibility. This responsibility lies in their commitment to fulfilling their obligations, particularly in ensuring the accuracy of the deeds they create. It is important to note that the PPAT/Notary is not accountable

for any negligence or errors in the content of the deed itself, but rather solely responsible for adhering to the formal requirements outlined by the law. The responsibilities pertaining to the substance of the deed are outlined by Abdul Ghofur Anshori (2009: 16) [1].

1. The civil responsibility of the PPAT/Notary lies in ensuring the material truth of the deed they create. This legal framework pertains to the civil responsibility for the material truth.
2. The criminal accountability of the PPAT/Notary is tied to their obligation to uphold the truth in the documents they create. While the UUJN and PPAT position regulations do not explicitly address criminal provisions, the PPAT/Notary can be held criminally responsible if they engage in illegal activities. The UUJN and PPAT office regulations primarily focus on sanctions for violations, such as rendering a deed without authentic power or limiting it to a private deed, or even having the deed legally invalidated by the court.
3. Notary's Juridical Liability for Material Losses Incurred for any loss suffered by the party regarding an interest in a deed made by a notary, the notary can be held civilly liable by filing a lawsuit in court.

Acording to Habib Adjie (2009: 21) [5], there are two possible positions of the notary in the civil lawsuit, namely

1. The notary is summoned in his or her certainty as a sanction in court regarding a deed that has been made in front of or by him/herself which is used as evidence in a civil case.
2. The notary is summoned in his capacity as a defendant who is brought before the court regarding an authentic deed he made because he is deemed to have harmed the plaintiff.

Court decision No.18/Pdt.G/2021/Pn.Bna notary as defendant because he issued a Deed of Sale and Purchase which basically the sale and purchase had not yet been paid off, then the deed was used as collateral for the Guaranteed Right to the Bank. The panel of judges examined and adjudicated the case and decided that

1. State that the defendants have committed a breach of contract which resulted in losses for the plaintiff;
2. Declare that the defendants have carried out an evil conspiracy/conspiracy;
3. The Deed of Sale and Purchase Agreement and the Deed of Sale and Purchase are deemed null and void, lacking any legal validity.;
4. Declare invalid and has no legal force the process of changing the name of the Certificate of Ownership.
5. Sentenced the defendants to pay court costs amounting to Rp. 5,531,000,-

Based on the decision in the case above, it can be concluded that the notary was carrying out his duties, then a default was committed by the defendant, the law that was applied was the provisions in the agreement and the law that regulates agreements and defaults.

Banda Aceh District Court Decision No.18/Pdt.G/2021/Pn.Bna stated that the PPJB and AJB made by a notary were declared null and void and had no legal force because the defendant had committed a breach of contract. In this case the notary is not held accountable by the judge, only the PPJB and AJB agreements made by him are declared void and have no legal force.

In the event that a court declares deeds to be invalid, notaries may face administrative sanctions for their role in the matter.

1. Government coercion. These sanctions can be imposed if the law includes provisions for government coercion, which refers to the authorities taking real action to put an end to a situation that violates administrative law regulations.
2. The revocation of favorable decisions, such as permits, payments, and subsidies, can be achieved through the implementation of sanctions. This involves issuing a new decree that effectively cancels the previous favorable decision or decree.
3. The imposition of administrative fines serves as a means of sanctioning individuals who contravene the government's implemented laws and regulations.
4. The government's implementation of compulsory monetary penalties (dwangsom). The government enforces compulsory monetary penalties as an additional consequence, in addition to the fines outlined in the applicable laws and regulations.

According to Edmond Makarim (2012:34) [3], broadly speaking, there are three distinct categories of administrative sanctions, namely

1. Reparatory sanctions serve as a means to rectify breaches of legal regulations. These sanctions can take various forms, such as ceasing prohibited actions, fulfilling obligations to achieve a predetermined condition, or undertaking actions to repair any violations. Examples of reparatory sanctions include compelling individuals to perform certain tasks, refraining from specific actions, and imposing monetary penalties as a form of punishment. Punitive sanctions, which impose penalties, serve as an additional burden to bear.
2. These punishment measures fall into the categories of retaliation and prevention, instilling fear in both the offender and potential future violators. Examples include paying fines to the government and receiving stern warnings.
3. Regressive Sanctions refer to the act of withdrawing a previously granted right or decision, effectively reverting to the legal state that existed prior to the initial decision. This can include actions such as revoking, altering, or temporarily suspending a previously made decision. Within Article 85 U, there exist a total of five distinct categories of administrative sanctions.

In Article 85 UUJN there are five types of administrative sanctions, namely

1. Verbal warning;
2. Written warning;
3. Temporary suspension;
4. Dismissal with honor;
5. Dishonorable discharge;

These sanctions apply in stages, starting from a verbal warning to dishonorable dismissal, because the notary violates certain articles in the UUJN. When making a notarial deed, you must always be careful and be guided by

the provisions of the applicable legislation, namely the UUJN and other statutory regulations.89

The theory put forward by Hans Kalsen regarding responsibility is closely related to obligations but is not identical, these obligations arise because of the existence of legal rules that regulate and provide obligations to legal subjects. PPAT/Notaries are burdened with the obligation to carry out obligations as ordered by legal regulations, the consequences of not carrying out obligations will result in sanctions which are coercion from legal regulations so that obligations can be carried out properly. Sanctions imposed on PPAT/Notaries are said to be a form of responsibility or being legally responsible for the violation.

Conclusion

In case Number 18/Pdt.G/2021/Pn.Bna, according to the Panel of Judges who examined and tried the case, it was stated that the Notary was not responsible for his actions. However, the deed that he had executed was deemed null and void, lacking permanent legal validity. The judge's ruling only mandated the defendants to cover the court expenses. The cancellation of the Mortgage Rights Certificate in Court decision No. 18/Pdt.G/2021/P.Bna carries significant legal implications.Based on Article 22 paragraph (2) Mortgage Rights means the deletion of a note on the mortgage rights certificate in the land book of land rights by the Land Office, and being withdrawn together with the mortgage rights land book is declared no longer valid. Violation of the provisions of Articles 1330, 1321, 1323, 1328, 1398, 1446 and article 1449 of the KUHPerdata making agreements with guarantees.

Suggestion

The PPAT/Notary must apply a careful attitude in issuing a Power of Attorney to Impose Mortgage Rights or a Deed of Imposition of Mortgage Rights on a land object, if the procedures carried out are not in accordance with applicable regulations then the PPAT/Notary may be sued by parties who feel doubtful. There is a strict punishment for the defendants, because there is an evil conspiracy and there is an element of fraud included in the criminal law, it is fitting that the PPAT/Notary who plays a very important role in this case should be given strict sanctions, so that they can be an example to other PPAT/Notaries and things like this are not reoccur.

References

1. Abdul Ghofur Anshori. *Lembaga Kenotariatan,* Yogyakarta: UII Press, 2009.
2. Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, 2004.
3. Edmond Makarim. *Notaris dan Transaksi Elektronik, Kajian Hukum Tentang Cybernotary atau Electronicc Notary,* Jakarta: Raja Grafindo, 2012.
4. Fasatama Prakasa, *et al*. *Pembatalan Sertifikat Hak Milik Dibebani Hak Tanggungan,* Sriwijaya University, Institutional Repository, 2019. https://repository.unsri.ac.id/2592/.
5. Habib Adjie. *Hukum Notaris Indonesia,* Jakarta: PT. Refika Aditama, 2009.
6. Irma Mulia Fitri, Ilyas Ismail, Suhaimi. Pengawasan dan Pembinaan Majelis Pengawas Daerah Terhadap Notaris Yang Melakukan Pelanggaran Di Kabupaten Aceh Timur, Syiah Kuala Law Journal,2019:3(1):53-62.
7. Maria SW Sumarjono. *Kebijakan Pertanahan Antara Regulasi & Implementasi*, Kompas, 2001.
8. Muhammad Luthfan Hadi Darus. *Hukum Notariat dan Tanggungjawab Jabatan Notaris*, Cetakan Pertama UII Press, Yogyakarta, 2017.
9. Muhamammad Yamin Lubis dan Abdurrahman Rahim Lubis. *Hukum Pendaftaran Tanah.* Jakarta: mandar Maju, 2008.
10. Peter E Latumeten. *Cacat Yuridis Akta Notaris Dalam Peristiwa Hukum Konkrit dan Implikasi Hukumnya*, Jakarta: Tuma Press, 2011.
11. Safrina YY, Azhari, Suhaimi. "Notary's responsibilities for privately made deed signed before and attested". International Journal of Law,2024:10(2):62-65.
12. Salim HS. *Perkembangan Hukum Jaminan di Indonesia*, Jakarta: Raja Grafindo, 2007.
13. Suhaimi Nurdin MH, Enzus Tinianus. Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh, *Jurnal Ius Civile (Refleksi Penegakan Hukum dan Keadilan,*2023:7(2):27-45.
14. Taufik Abdullah dan Rusli Karim. *Metodologi Penelitian Agama, Sebuah Pengantar*, Yokyakarta: Tiara Wacana, 1989.