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The Responsibility of a Notary Regarding the Cancellation of a Notarial Deed Containing a Pretended Agreement Based on a Decision from the District Court

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Abstract
There are various ways a person can obtain land rights, including borrowing and borrowing by handing over land rights as collateral. The lending party also makes a power of sale agreement and follows up on the sale and purchase agreement. When the borrower breaks the contract, the lending party approaches the PPAT to have a sale and purchase deed drawn up and registered with the Land Office for name change purposes. The method used is normative juridical with a statutory regulation approach, concept approach and case approach. The research results obtained: The land sale agreement made before the PPAT is not the same as in fact it does not have legal force, does not meet objective requirements, so the result is that it is null and void/is considered non-existent. PPATs that make pseudo-agreements do not apply the precautionary principle in making deeds, namely acting untrustworthy, dishonest, not thorough, not independent, taking sides, and not safeguarding the interests of the parties involved in legal actions. The notary's actions violate the Debtor's rights which are protected by law. Debtors can sue for compensation on the basis of violating Article 1365 of the Civil Code in conjunction with Article 16 paragraph (12) UUJN, violating Article 3 point 4 of the Notary Code of Ethics.

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1. INTRODUCTION

Civil law regulates various types of agreements. The legal relationship between the parties that originates from an agreement originates from the engagement. An agreement arises because of an agreement, as stated in Article 1313 of the Civil Code, that "An agreement is an act in which one or more people bind themselves to one or more other people", as in Article 1313 of the Civil Code. Subekti interprets an agreement as "an event where one person makes a promise to another person or where two people promise each other to carry out something". (Subekti, 2001, 1). Engagements as stated in Article 1233 of the Civil Code, that "Engages are born because of an agreement or because of law". A valid agreement must fulfill the requirements as regulated in Article 1320 of the Civil Code, namely:

1. Their agreement that binds them;
2. The ability to create an agreement;
3. A particular subject matter;
4. A cause that is not prohibited.

The agreement also adheres to the principle of openness or freedom to make agreements as regulated in Article 1338 of the Civil Code. Leonora (2018, 142) states that the law gives freedom to parties to regulate their own patterns of legal ties/bonds that give rise to legal consequences." The principle of freedom of contract itself is basically an embodiment of free will, an emanation of human rights whose development is based on the spirit of liberalism which echoes individual freedom. (Agus, 2008, 93-94). Even though it is "free", there are still limitations imposed by law based on Article 1337 of the Civil Code, namely:

1. Not prohibited by law
2. Does not conflict with decency
3. Does not conflict with public order (Abdulkadir, 2001, 17).

The evidence of an agreement is made in the form of either a private deed or an authentic deed. An authentic deed, according to Article 1868 of the Civil Code, is "a deed that is made in the form specified by law, by or in front of authorized public officials, at the place where the deed is made." An authentic deed is a deed whose form is stipulated by law, made in front of public officials, at the place where the deed is executed. The public official authorized to make an authentic deed is a notary, as referred to in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as the Notary Position Law).

Considering the aforementioned, it can be explained that the parties in making an agreement are given the freedom to do so, as long as it does not conflict with the law, public order, or decency. The agreement made is binding on the parties once mutual consent or a consensus is reached, and from that moment, they must adhere to the terms of the agreement. The mutual consent of the parties is made in the form of a written record and agreed upon in the form of an authentic deed made before a notary. A notary, in performing their duties, is impartial, meaning that the notary is prohibited from making legal actions that favor one party over the other, which could cause legal harm to the interests of the other party (Himawan, 2010, 48).

Problems or disputes regarding the validity of a notarial deed often arise when the parties do not agree on the execution of the agreement, particularly regarding the unlawful transfer of land rights. Some of the reasons for this include illegal procedures for the transfer, fraud, or agreements made outside the intentions of the parties. One case found involves a so-called "sham" or "pretend" agreement. This type of agreement fundamentally contains a discrepancy between the actual intentions of the parties when making the agreement and the statements that are ultimately made in the agreement, where this discrepancy is not explained to other parties outside of the agreement (Herlien Budiono, 2011, 87). Thus, the agreement explained to the public or written down expresses an agreement in good faith, while in practice, the implementation does not align with what was publicly declared or written (Hilman, 2002, 163). Pretended Agreementss, some of which are related to loans that ultimately result in the transfer of land rights used as collateral through a sale-purchase agreement.

One case related to a Pretended Agreements occurred on June 17, 2017, when Notary/PPAT Endang Murniati, S.H. (hereinafter referred to as Defendant III) contacted Yudhi Sabang S, S.H., M.H. (hereinafter referred to as the Plaintiff) and stated that Yohanes Sugiharto (hereinafter referred to as Defendant I) wished to borrow IDR 100,000,000 (one hundred million rupiahs) with a compensation of IDR 15 million per month. If the loan was not repaid, Defendant I would vacate the house that had been used as collateral for the debt, which was a piece of land/building described in Certificate of Ownership Number 10751/Wedomartani in the name of Defendant I, as detailed in the Survey Letter dated June

11, 2008, Number: 07812/2008, with an area of approximately 214 m², located in Wedomartani Village, Ngemplak District, Sleman Regency, Special Region of Yogyakarta. However, according to Defendant I's statement, it was not Defendant I who intended to borrow IDR 100,000,000 (one hundred million rupiahs), but rather Antonius Toto Djunaedi Ridarto (hereinafter referred to as Defendant II), who intended to borrow this amount by using Defendant I's land certificate as collateral.

Defendant I was willing to lend the land certificate because he was promised that it would be returned within one month. Additionally, Defendant I felt indebted to Defendant II, who had previously helped him. Then, Defendant III, who had previously acted as an intermediary for the money lending between the Plaintiff and Defendant I, and who was a notary, created the loan agreement, disguised as an agreement between the seller and the buyer between the Plaintiff and Defendant I, where the Plaintiff granted power of attorney to Delthy Renaldy because the Plaintiff resided in Jakarta. According to Defendant I's statement, Defendant I never knew or met the Plaintiff, making it strange that suddenly an agreement appeared between a seller and a buyer, where the object of the agreement was land in Defendant I's name. The sale and purchase agreement was later annulled by the District Court.

The situation described above can be explained by the fact that the agreement made and agreed upon by the parties was binding, as would be the case under the law, but it was actually a loan agreement (a borrowing agreement), which was disguised (sham) as a sale and purchase agreement and a power of attorney to sell. This agreement never stood on its own but was always accompanied by the true agreement, which was a loan agreement. Based on this, a legal issue arises: what is the notary's responsibility for an authentic deed containing a Pretended Agreements that causes harm to one of the parties involved

2. RESEARCH METHOD

This research is a normative juridical study, which is a process to find legal norms, legal principles, and legal doctrines to address the legal issues at hand (Peter, 2011, 35). The type of normative juridical research is based on statutory regulations as the analytical tool, related to the Pretended Agreementss made before a notary. The approach used in this research is the statutory approach, which involves reviewing all laws and regulations related to the legal issue being addressed. The conceptual approach, which refers to the views of scholars or legal doctrines, is also used, particularly regarding the strength of Pretended Agreementss made before a notary and the fact that such agreements result in harm to one of the parties involved. The case approach is another type of approach in normative legal research, where the researcher attempts to build legal arguments from the perspective of concrete cases that occur in practice, and these cases are closely related to actual legal events happening in the field (Peter, 2011, 93).

3. RESEARCH RESULTS AND DISCUSSION

3.1 The Definition of a Pretended Agreements

An agreement is an event where one person promises another person or where two people mutually promise to carry out something. Based on this event, a bond is formed between the two individuals, called an obligation. The agreement creates an obligation between the two people who make it. In terms of its form, the agreement consists of a series of words containing promises or commitments that are spoken or written (Subekti, 2002, 1). According to Article 1313 of the Civil Code, an agreement is an act in which one or more persons bind themselves to one or more other persons.

In society, there is a concept of a sham agreement or a simulated agreement. According to Hilman, "An agreement is said to be a sham or simulated agreement when

the agreement made is different from its execution. So, the agreement presented to the public or written down expresses an agreement in good faith, while in practice, it does not align with what was publicly declared or written" (Hilman, 2002: 163). A sham agreement is understood as an agreement that is made or occurs but does not reflect what actually applies in reality (Wawan Muhwan Hariri, Customary Law Paper, 2010). This differs from a fraudulent agreement or a fake agreement, which is also known as a name-lending agreement or nominee agreement, or this type of agreement is also called a simulated agreement. A simulated agreement refers to actions or several actions in which two or more persons show it as if an agreement exists between them, but in reality, they secretly agree that the apparent agreement is not valid. This may occur in a legal relationship that results in no actual changes between them, or the sham agreement will lead to something else.

According to MU Sembiring, the characteristics of a sham agreement are as follows:

1. A pretend agreement never stands on its own but is always accompanied by the actual agreement.
2. A pretend agreement is always annulled or modified by the actual agreement (Sitorus, 2017, 34).

As with agreements in general, which are based on the existence of a bond that leads to legal consequences, for the agreement to be binding, it must meet the requirements for the validity of an agreement as outlined in Article 1320 of the Civil Code. These requirements are: mutual consent of the parties, the ability of the parties to act in accordance with the law, the existence of an object of the agreement, and a lawful cause. Article 1320 of the Civil Code contains two elements: subjective elements and objective elements. The subjective elements are “mutual consent of those binding themselves” and “the ability to create an obligation.” If these elements are not fulfilled, the agreement made can be canceled, whereas the objective elements refer to “a specific subject matter” and “a lawful cause.” If the objective elements are not met, the agreement is void by law (a sham agreement is considered as if it never existed) (Indah, 2021, 23-42).

3.2 The Notary's Responsibility for the Cancellation of Deeds Containing Pretend Agreements Based on the District Court Decision

Lending and borrowing, as stated in Article 1754 of the Civil Code, is an agreement where one party gives a certain amount of goods that are consumed by use to the other party, with the condition that the latter will return the same amount of goods in the same kind and condition. Article 1754 of the Civil Code shows that an individual who lends a certain amount of money or goods to another party will have the right to receive the same amount back, in accordance with the agreement. Gatot Supramono (2013, 9) interprets lending and borrowing as an agreement where one party gives a certain amount of consumable goods to another party, with the condition that the latter will return the same amount in the same kind and condition. In lending and borrowing agreements, property guarantees are often involved. The lender requires a guarantee to ensure that the borrower repays the loan, and the borrower provides an asset, such as a land certificate, as collateral. A certificate is a proof of rights that serves as strong evidence regarding the physical and juridical data contained within it, as long as the data matches the data in the land measurement and land book (Meitri Citra Wardani, Lanny Kusumawati, 2019, 1083). Regarding the objects used as collateral, Sri Soedewi Masjchoen Sofwan (1980, 37) states that a guarantee is constructed as an accessory agreement, which is always linked to the main agreement. The agreement of lending is the main agreement, and the attachment of the asset through a mortgage is an accessory

agreement. The concept of an accessory agreement is in line with Mariam's view (1987, 95-96), who explains that "the accessory nature is in line with the characteristics of collateral law. Pledge and mortgage agreements arise and end with the main debt obligation."

In the first case example, the lending and borrowing agreement made by the creditor and debtor was also agreed upon in the form of an agreement made in front of a Notary, namely 3 (three) deeds: the Notarial Deed (Agreement between seller and buyer, Power of Attorney to Sell, and Land Clearance). The legal products of the deeds made in front of a notary, as a public official authorized to create authentic deeds, are made in the form determined by law and in front of a public official with the authority to do so in the place where the deed is made, as stated in Article 1868 of the Civil Code. The PPJB deed, the power of attorney to sell, and the land clearance deed were made before the notary, making them authentic deeds. Article 15 paragraph (1) of the Notary Position Law (UUJN) reinforces that a notary, as a public official, is authorized to create authentic deeds. The regulation of authentic deeds made by authorized officials is outlined in Articles 1868, 1870 of the Civil Code, and Article 1 number 7 of the UUJN. The legal consequence of an authentic deed with formal defects, based on Article 1869 of the Civil Code, is that the notary profession is protected by law, as long as the deed meets the material and formal requirements for the validity of the agreement between the seller and buyer of land rights. However, this does not mean that the Notary is immune to legal consequences; a Notary can make errors in creating deeds, which could render the deed legally defective.

The Supreme Court decision regarding the Judicial Review No. 78 PK/PDT/1984 ("Decision 78/1984") decided that a notarial deed made for a "loan agreement with land/house collateral" but categorized as a "sale and purchase agreement with the right of repurchase" and followed by the creation of an "irrevocable power of attorney" to transfer land rights from the debtor to the creditor was considered a "sham agreement/fictitious agreement," as the agreement should have been classified as a "secured loan agreement." A fictitious agreement can be deemed invalid. If an agreement is made to avoid legal consequences, as in the case described above, it can be declared void for failing to meet the fourth requirement in Article 1320 of the Civil Code (i.e., lawful cause).

The annulment of the deed made in front of the notary based on the Court's decision means that the deed contains legal defects, which disappoints the parties involved, who believed and trusted that the notary, in carrying out their duties, would act in good faith, honesty, prudence, independence, impartiality, and protect the interests of the parties involved in the legal act, as outlined in Article 16 paragraph (1) letter a of the UUJN. Public trust in the notarial position is crucial, and the role of a notary as a trusted official must align with the duty of the office. A notary is trusted in their position, and if they act dishonestly, the trust is undermined. In this case, both the notarial office and the individual notary performing the duties must align like two sides of a coin that cannot be separated (Habib, 2008, 83).

Regarding the responsibility of the notary profession in carrying out their duties, it pertains to civil liability. This responsibility is a logical consequence that must be sought from legal professionals when performing their duties. This responsibility is not only based on morality but also on law. This stems from the idea that every action taken by an individual must be accountable. A notary who creates a PPJB and power of attorney to sell, as part of the lending agreement with the submission of the land certificate in the debtor's name, simultaneously acts in accordance with all elements of Article 1365 of the Civil Code. Liability for damages based on unlawful acts is

determined by Article 1365 of the Civil Code, which states: "Any unlawful act that causes harm to another party obligates the party at fault to compensate for the damage."

Article 1365 of the Civil Code contains elements that Abdulkadir identifies as follows (Abdulkadir, 2001, 142):

1. Unlawful act (onrechtmatige daad). An unlawful act is “an act or failure to act that violates another party's rights, goes against the legal obligations of the perpetrator, contradicts morality, or deviates from the caution that must be exercised in public interactions with others and their property” (J.H. Nieuwenhuis, 1985: 118). The notary's act of creating a PPJB and power of attorney to sell over land as collateral for a loan violates the provisions of Article 16 paragraph (1) letter a of the UUJN, which states that the notary, in carrying out their duties, must act in good faith, honesty, prudence, independence, impartiality, and protect the interests of the parties involved in legal acts. Therefore, the element of an unlawful act has been fulfilled.
2. There must be fault. Regarding fault in an unlawful act, Article 1366 of the Civil Code stipulates: "Each party is responsible not only for the damages caused by their actions but also for the damages resulting from negligence or carelessness." In civil law, there is no distinction between fault in intent and fault due to lack of care (Riduan, 2011: 279). The notary knew that the PPJB and power of attorney to sell were created for the purpose of a lending agreement and acted as an intermediary between the creditor and debtor, with a loan amount of IDR 15,000,000 (fifteen million rupiahs) for one month. The notary's actions in creating the PPJB and power of attorney to sell were deliberately unlawful, thus the element of fault has been met.
3. There must be harm or damage caused. The element of harm or damage in an unlawful act may include both material and immaterial harm (Riduan, 2011, 280). Material harm refers to quantifiable losses, while immaterial harm refers to damages that cannot be quantified, such as reputational damage or even death. The notary's act of creating the PPJB and power of attorney to sell caused the debtor to suffer material and immaterial losses, including costs and emotional distress. Therefore, the element of harm has been met.
4. There must be a causal link between the act and the damage. Regarding the compensation for damages caused by unlawful acts, jurisprudence states that the provisions regarding compensation for damages are analogous to those concerning compensation for damages resulting from a breach of contract. The debtor, who suffered harm due to the creation of the PPJB and power of attorney to sell, can seek compensation for the damages caused by the notary's actions, including costs, losses, and interest, in accordance with Article 1246 of the Civil Code. Therefore, the causal link between the notary's actions and the damages suffered by the debtor has been fulfilled.

In addition to a claim for damages, the notary may also be reported to the Notary Supervisory Council, which has the authority and duty to carry out supervision and guidance for notaries. They may be sanctioned administratively under Article 16 paragraphs (11) and (12) of the UUJN, with sanctions such as oral reprimands, written warnings, temporary suspension, honorable dismissal, or dishonorable dismissal. The notary's actions may also violate the Notary Code of Ethics under Article 3, number 4, which states that a notary must act with honesty, independence, impartiality, trustworthiness, diligence, and responsibility in accordance with the law and the notary's oath. Violations of these ethical standards may lead to sanctions as stipulated in Article 6 of the Notary Code of Ethics. Sanctions for violations can include warnings, suspension from membership, honorable dismissal, or dishonorable dismissal from the association.

4. CONCLUSION

Notaries/PPATs who make Pretended Agreements violate Article 16 paragraph (1) letter a UUJN because they do not apply the precautionary principle in making deeds, namely acting untrustworthy, dishonest, not thorough, not independent, taking sides, and not safeguarding the interests of the parties involved. in legal actions. The notary's actions violate the Debtor's rights which are protected by law. Debtors can sue for compensation on the basis of violating Article 1365 of the Civil Code in conjunction with Article 16 paragraph (12) UUJN, violating Article 3 point 4 of the Notary Code of Ethics

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