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NOTARY LIABILITY FOR THE DEED OF LOAN AND LOAN AGREEMENT THAT IS LEGALLY DEFECTIVE AND CANCELED BY THE JUDGE (STUDY OF DECISION NUMBER 22/PDT/2017/PT. AMB)

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Abstract

Deeds made by a notary, such as a deed of agreement, sale and purchase deed, or grant deed, have the force of law that binds the parties involved. Notaries are obliged to carry out their profession with full dedication and integrity. The purpose of this study is to find out the responsibility of the Notary for the legally defective Deed of Borrowing Agreement and to find out the legal consequences for the Deed of Borrowing Agreement that is legally defective and canceled by the judge. This legal research is a type of Normative legal research. The result of this study is that the cancellation of the agreement has a retroactive effect that cancels all rights and obligations previously regulated in the agreement. The status of the deed as an authentic document is lost, so its evidentiary power declines and can only be considered as a deed under hand.

Keywords: Notary, Loan Agreement Deed, Legal Defects

Abstrak

Akta yang dibuat oleh notaris, seperti akta perjanjian, akta jual beli, atau akta hibah, memiliki kekuatan hukum yang mengikat para pihak yang terlibat. Notaris wajib menjalankan profesinya dengan penuh dedikasi dan integritas. Tujuan dari penelitian ini adalah untuk mengetahui tanggung jawab Notaris terhadap Akta Perjanjian Pinjam Meminjam yang cacat hukum dan dibatalkan oleh hakim dan untuk mengetahui akibat hukum terhadap Akta Perjanjian Pinjam meminjam yang cacat hukum dan dibatalkan oleh hakim. penelitian hukum ini adalah jenis penelitian hukum Normatif. Hasil dalam penelitian ini adalah Pembatalan perjanjian tersebut membawa efek retroaktif yang membatalkan seluruh hak dan kewajiban yang sebelumnya diatur dalam perjanjian. Status akta sebagai dokumen autentik menjadi hilang, sehingga kekuatan pembuktiannya merosot dan hanya dapat dianggap sebagai akta di bawah tangan.

Kata kunci: Notaris, Akta Perjanjian Pinjam, Cacat Hukum

INTRODUCTION

A notary is a public official who has an important role in society, especially in terms of legal acts that require authentic deeds. This position is given by the state based on Law Number 30 of 2004 concerning the Notary Position, which has been amended by Law Number 2 of 2014. This position not only requires a notary to have legal knowledge and

skills, but also a great responsibility in carrying out his profession by upholding the morals, ethics, and dignity of the position (Dias Menezes dkk., 2023). If a notary ignores these things, this can cause danger to the community he serves, even harming the parties involved in the agreement he makes.

The role of a notary is very vital, especially in making deeds that have the power of legal proof. According to Gusarov dkk., (2023) Deeds made by a notary, such as a deed of agreement, sale and purchase deed, or grant deed, have the force of law that binds the parties involved. Notaries are obliged to carry out their profession with full dedication and integrity. A valid and authentic deed must meet the conditions set by law, and if these conditions are not met, then the deed made will be considered legally defective and null and void. In this context, a notary as a public official must be fully responsible for the validity of the deed he or she issued.

This notary's responsibility is not only limited to compliance with the deed procedure but also includes the obligation to ensure that the information provided by the parties facing him is true and truthful (Amalia dkk., 2021). In practice, there are often problems where one or more parties involved in the making of the deed provide incorrect or even false information. This can cause losses to other parties, and in the end, the notary who makes the deed can be held accountable, both criminally, civilly, and administratively. Cases of violations involving notaries are not uncommon. Some of the violations that are often found include making deeds with the condition that the parties do not face the notary directly, ratifying the deed without the presence of the parties involved, or providing incorrect identity by one of the parties. According to Ivan Aji Santoso, (2023) The existence of falsification of data or signatures is also often a big problem that can damage the credibility of a notary. Sometimes, a notary is involved in the creation of a deed with data that does not correspond to reality, such as the object of the agreement or the identity of an inaccurate party. All of these actions can cause the deed made by the notary to be considered legally defective and become a source of dispute later on.

One example that often occurs is the creation of two deeds that have the same number and date, but the contents are different. This often causes losses for one of the parties involved, such as in the case of a dispute over ownership or shares. According to Dyani, (2017) It is not uncommon for signatures to be forged by parties involved in making the deed, or even witnesses who use the identity of others. All of these problems can cause the notary who makes the deed legally liable, either through civil lawsuits, administrative sanctions, or criminal sanctions. The responsibility of a notary in this case is very important to ensure that each deed issued has strong legal validity and can be accounted for. The Notary must always ensure that all documents related to the creation of the deed have met the applicable regulations, including ensuring that the data submitted by the parties is correct and accurate. In this case, the integrity and honesty of notaries are indispensable to maintain public trust and avoid potential legal problems in the future. (Fanniabelle & Lukman, 2023).

The importance of implementing the notary profession's code of ethics also cannot be underestimated. This code of ethics serves to maintain the honor and dignity of the notary

profession, as well as to ensure that all actions taken by notaries are per applicable legal norms. According to Yoga Alfi Setiawan & Suroto, (2023) Notaries should always try to avoid actions that could harm others or damage the reputation of their profession. This includes the obligation to comply with the provisions of the Notary Position Law (UUJN), as well as ensuring that all actions taken to carry out their profession are carried out in good faith. The number of violations committed by notaries shows the importance of awareness of the responsibilities that must be possessed by every notary in carrying out their profession. Some of the violations that occurred, as revealed by the Minister of Law and Human Rights Yasonna H. Laoly, included the making of deeds that were not read first in front of the audience, as well as the making of deeds by a deceased notary. All of these violations of course have a bad impact on the parties involved and tarnish the reputation of the notary profession itself (Kusumojati, 2022).

One of the cases that attracted attention was the role of the YM Notary in making legally flawed loan-lending agreement deeds. In this case, a notary was involved in making a deed that was detrimental to one of the parties, namely the DU debtor, who did not know the contents of the agreement. A deed made in this way is contrary to the principles of honesty and integrity that a notary must possess (Fitra & Ridhanti, 2023). As a result, the notary must be responsible for losses arising from the creation of the defective deed. This incident confirms how important it is for notaries to always ensure that every deed issued is per the applicable legal provisions and does not harm any party.

Awareness of the legal, ethical, and moral responsibilities inherent in the position of a notary is very important. Notaries who carry out their profession with full responsibility and integrity will be able to maintain their credibility in the eyes of the law and the public. On the other hand, indifference to this obligation can be fatal, both for the notaries themselves and for the people who use their services. Every notary needs to continue to improve their understanding and awareness of the professional code of ethics and the regulations that govern their profession, in order to carry out their duties properly and avoid potential violations that can harm many parties (Yustika Barito, 2023).

METHOD

This type of legal research is a type of normative legal research, which is research conducted by studying literature materials or also called secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Legal materials are prepared systematically and also studied so that conclusions can be drawn from what is obtained. The use of normative research methods in research efforts, and the writing of this thesis by studying legal materials relevant to the accountability of the Notary and the legal consequences of the deed of borrowing agreement that is legally defective and canceled by the judge, especially the provisions contained in the Civil Code (KUHP), the Book of Criminal Law (KUHP), and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position. The technique used in the collection of legal materials in this study is library *research*. This technique is useful for obtaining a theoretical foundation by studying, studying, and recording various research materials collected including secondary data related to the discussion of

the research theme.

RESULT AND DISCUSSION

A notary is a public official appointed by the state to provide legal services to the community related to the making of authentic deeds and other documents. As an official who has special authority, notaries have moral, legal, and professional responsibilities in carrying out their duties. In the context of a loan agreement deed, the notary's responsibility becomes very important, especially if the deed turns out to be legally defective and is later canceled by a judge. The cancellation of this deed not only reflects imperfections in the preparation of documents, but can also have legal consequences for the notary and the parties involved (Subiyantana & Fatmawati Octarina, 2020). The responsibility of notaries in the event of legally defective deeds is regulated in various regulations, including Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN). According to Noer & Fajriyah, (2021) The notary is responsible for ensuring that the deeds made meet the formal and material requirements as stipulated in the laws and regulations. Legally defective deeds are usually caused by violations of legal principles, such as inconsistencies in the content of the deed with legal facts, the existence of elements of data falsification, or the negligence of the notary in verifying the documents or identities of the parties.

If the deed of borrowing agreement is declared legally defective by the judge, then the notary can be asked to be responsible for its negligence. This negligence can be in the form of a violation of professional obligations, such as not conducting a thorough examination of the validity of the data or not providing adequate explanation to the parties related to the legal consequences of the deed made (Din, 2019). The cancellation of the deed by a judge can have various legal impacts for notaries. First, notaries may be subject to administrative sanctions by the Notary Supervisory Council, such as reprimands, suspensions, or revocation of practice licenses. Second, the notary can also face civil lawsuits from the aggrieved party due to the deed. In this case, the notary can be asked to compensate for damages in accordance with Article 1365 of the Civil Code regarding unlawful acts (Ramadhan & Suhardini, 2019).

If it is proven that there are criminal elements, such as falsification of documents or collusion with one of the parties, the notary can be charged with criminal sanctions in accordance with the Criminal Code (KUHP). In addition to legal responsibility, notaries also have moral and ethical responsibilities. According to Hartono & Raisah, (2023) As an official trusted by the public, notaries must act professionally and honestly in carrying out their duties. In the event of a legal defect in the deed made, the notary must be transparent to the aggrieved parties and try to resolve the problem in good faith. This moral responsibility includes efforts to provide clarification to the parties regarding the causes of the legal defect and the steps that can be taken to remedy the situation.

To avoid legal defects in the deed, notaries must carry out strict and professional work procedures. This includes carefully examining documents, verifying the identities of the parties, and ensuring that the contents of the deed are in accordance with the agreement and applicable laws. According to Utami, (2019) The notary must also provide the parties

with adequate explanation of their rights and obligations, as well as the risks that may arise from the agreement being made. The use of technology can also assist notaries in minimizing the risk of errors. Digital-based information systems, such as electronic registration and online verification, can improve the accuracy and efficiency of the deed creation process. Notaries must continue to improve their competence through training and continuing education to understand relevant legal developments (Nurkharisma dkk., 2020). The deed of loan and loan agreement is a legal document that provides legal certainty and protection for the parties involved. According to Wau dkk., (2022) As an authentic deed made before a notary, this deed has perfect evidentiary power as stipulated in Article 1870 of the Civil Code (KUHPerdata). However, if the deed turns out to be legally defective and is later annulled by a judge, this has significant legal consequences for the parties and third parties who may be interested. The legal consequences include the cancellation of the agreement, the loss of the power of proof of the deed, as well as the potential for civil and criminal charges against the parties involved in the making of the deed.

When a deed of borrowing agreement is declared legally defective and canceled by a judge, the first consequence that arises is the cancellation of the legal relationship stipulated in the agreement. According to Candra & Anzward, (2022) This cancellation has a retroactive effect (*ex tunc*), which means that the agreement is considered to have never existed in the first place. This is based on the legal principle that states that an agreement that does not meet the legal requirements as stipulated in Article 1320 of the Civil Code, such as provisions regarding the competence of the parties, halal objects, or agreements that are not based on free will, is null and void. As a result, all rights and obligations arising from the agreement no longer apply, so the parties must return everything that has been received in accordance with the principle of *restitutio in integrum* (Wiradiredja, 2016).

In addition to the cancellation of the legal relationship, legal defects in the deed of agreement also cause the loss of the evidentiary power of the authentic deed. In the Indonesian legal system, authentic deeds have a higher status compared to other evidence, because they are made by or in the presence of authorized public officials. However, if the deed is declared legally defective, then its status changes to a deed under the hand (Mahaputera, 2021). This means that the deed no longer has perfect evidentiary power and can only be used as evidence that must be proven true in court. This loss of evidentiary power not only harms the parties in the legal process, but can also create legal uncertainty for third parties who may depend on the existence of the deed.

The cancellation of the deed of loan agreement by the judge can also open up opportunities for the aggrieved party to file a civil lawsuit against the party considered responsible. According to Suhardini & Sukarmi, (2018) if the legal defect is caused by the notary's negligence in carrying out his duties, the aggrieved party can file a lawsuit for compensation based on Article 1365 of the Civil Code. In this case, the notary may be required to pay for losses arising from defective deeds, such as wasted transaction fees, material losses due to the invalidity of the agreement, or immaterial losses suffered by

the parties. Civil lawsuits can also be filed against other parties involved, such as the party who provided false data or documents on which the deed was made (Shafira Mulyandhani & HS, 2023).

In addition to civil lawsuits, legal defects in the deed can also have criminal consequences, especially if elements of violation of the law are found in the process of making or using the deed. For example, if one party deliberately provides false information to a notary or forges a signature, then that party can be charged with articles in the Criminal Code (KUHP) regarding document forgery (Mia Augina Romauli, 2023). Similarly, if the notary is proven to have colluded with one of the parties to make a deed that is not in accordance with the legal facts, the notary can be charged with criminal sanctions. These criminal consequences not only have an impact on the individuals involved, but can also damage the reputation of the notary profession as a whole.

Legal defects in the deed of loan and loan agreement can also have wider implications for the parties and the community. In many cases, the deed of agreement is used as the basis for conducting follow-up transactions, such as the assignment of rights or debt guarantee (Ballan, 2022). If the deed is declared invalid, then the follow-up transaction will also become invalid, so it can cause widespread losses. The cancellation of the deed can also disrupt the business relationship between the parties, as it causes mistrust and conflicts that are difficult to resolve. In this context, the cancellation of deeds not only has an impact on legal aspects, but also on economic and social aspects (Xiong dkk., 2022).

However, although the cancellation of the deed of borrowing agreement carries serious legal consequences, it also has a positive side, which is that it provides an important lesson for the parties to be more careful in drafting the agreement and choosing a notary. The cancellation of deeds by judges is a corrective mechanism that aims to uphold justice and legal certainty (Wahyudi dkk., 2023). The parties must ensure that each agreement made has met the legal requirements and in accordance with the applicable laws and regulations. Notaries, as the party that has the main responsibility for making deeds, must also improve their professionalism by carrying out their duties carefully, honestly, and independently (Aryani & Pulungan, 2021).

CONCLUSIONS

The legal consequences of a legally defective loan agreement deed and canceled by a judge have a serious impact on the parties involved as well as third parties who may be interested. The cancellation of the agreement has a retroactive effect that cancels all rights and obligations previously stipulated in the agreement. The status of the deed as an authentic document is lost, so its evidentiary power declines and can only be considered as a deed under hand. This result often triggers material and immaterial losses for the parties, which can be the basis for filing civil or criminal charges against the party considered responsible, including the notary if proven to be negligent. In addition to the direct legal implications, legal defects in the deed can also disrupt the stability of business relationships, undermine trust between the parties involved, and create far-reaching legal uncertainty. However, on the other hand, this cancellation serves as a correction mechanism to uphold justice and ensure compliance with laws and regulations. Caution

in drafting agreements, ensuring the validity of documents, and maintaining the integrity of the notary profession are essential to prevent similar cases from occurring in the future.

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