

Legal Implications of the Cancellation of Document Copies by Court Ruling on Notarial Minutes



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ABSTRACT: Notaries, as public officials regulated by the Notary Law (UUJN) and the Amendment of Notary Law (UUJN-P), play a crucial role in the creation of authentic documents and have the authority to guarantee the legality of legal acts. However, the cancellation of document copies by the court raises significant legal implications for the status of notarial minutes, which need to be further analyzed to establish legal certainty in notarial practices in Indonesia. This research aims to provide a deeper understanding of the legal status of notarial minutes after their copies are canceled, as well as to offer recommendations regarding necessary regulations to create legal certainty in notarial practices in Indonesia. This study employs a normative or doctrinal research methodology with a normative legal approach to examine the relevant legal principles and written regulations concerning the legal implications of the cancellation of document copies on notarial minutes. It utilizes primary, secondary, and tertiary legal materials as sources, along with data collection techniques through literature studies and document analysis. The findings of this research indicate that the cancellation of document copies by the court renders the notarial minutes as informal documents or null and void due to the failure to meet legal requirements. Parties who disagree can file a lawsuit in court; notaries who do not withdraw the minutes risk becoming involved in legal issues and may be held civilly liable if found to have acted unlawfully, while criminal penalties may apply if false information is present in the documents.

KEYWORDS: Deed, Minutes, Notary

I. INTRODUCTION

Notaries, as public officials, play a crucial role in the creation of authentic documents, regulated by Law Number 30 of 2004 on Notary Positions (UUJN) and Law Number 02 of 2014, which amends the UUJN (UUJN-P). Article 1, paragraph 1 of UUJN-P defines a Notary as an official authorized to create authentic documents and possesses other authorities. Thus, Notaries not only function as creators of official documents but also as parties that guarantee the legality and legal certainty of the legal acts performed by the public

The authority of Notaries includes the creation of authentic documents concerning all acts and agreements required by law or requested by the interested parties. Additionally, Notaries are also permitted to authenticate signatures, create copies of documents, provide legal counseling, and draft documents related to land and auction minutes. Based on their expertise and specialized education, Notaries carry out their duties to ensure legal certainty and protect the rights of the parties involved (Adjie, 2006).

In practice, the documents produced by Notaries do not always function as perfect authentic documents. There is a possibility of cancellation of the document, either through an agreement of the parties involved or through a court ruling. This cancellation may occur due to disputes, non-compliance with the contents of the document, or an agreement to terminate the legal relationship regulated in the document. The dispute resolution process can be carried out through non-litigation methods, such as mediation or arbitration, or through litigation in court (Rosita, 2024).

The cancellation of a notarial document brings significant legal implications, especially concerning the status of the notarial minutes and the document copies. The notarial minutes are the original documents that include the signatures of the parties and are kept as part of the Notary's protocol, while the document copies are accurate reproductions of the original document. In this

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context, questions arise regarding the status of the notarial minutes when the document copies are canceled based on a court ruling, considering that both types of documents serve as valid authentic evidence (Djameswar, 2020).

Based on the existing provisions, there are no clear regulations regarding the legal status of notarial minutes after the cancellation of the document copies. This creates legal uncertainty that needs to be further analyzed. The author is interested in examining 'Legal Implications of the Cancellation of Document Copies by Court Ruling on Notarial Minutes'. This research aims to provide a deeper understanding of the legal status of notarial minutes after their copies are canceled, as well as to offer recommendations regarding the necessary regulations to create legal certainty in notarial practices in Indonesia.

II. RESEARCH METHODS

This research methodology adopts a normative research type, which aims to examine legal principles and investigate the relevant written regulations regarding the legal implications of the cancellation of document copies on notarial minutes. This research is also known as doctrinal research, where the main focus is on what is written in statutory regulations (law in books) as well as the rules or norms that serve as guidelines for human behavior considered appropriate. In this case, the approach used is a normative legal approach, which involves document and literature studies, as well as opinions from experts related to Law Number 30 of 2004 and Law Number 2 of 2014 concerning notary positions. This research reflects the importance of notaries as positions of trust that have the obligation to maintain confidentiality in carrying out their duties and produce documents of an authentic nature (Soekanto, 2013).

The legal materials used in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include statutory regulations such as the Civil Code and the Law on Notary Positions, as well as other relevant documents. Secondary legal materials encompass reference books that discuss related themes, such as agreements, obligations, and taxes. Tertiary legal materials provide additional explanations, including legal dictionaries and other sources of information. The technique for collecting legal materials is conducted through literature studies, where the researcher gathers and analyzes legal materials by interpreting the law normatively and formulating statements based on the consistency of information obtained from various sources (Amiruddin, 2006).

III. RESULT AND DISCUSSION

LEGAL CONSEQUENCES OF MINUTA DEEDS WHICH COPY IS CANCELED BY THE COURT

A. Regulation of Notary's Authority in Making Copies of Deeds

Notaries, as public officials recognized for their high integrity, have a significant responsibility in the creation of authentic documents regulated by the Law on Notary Positions (UUJN). As an extension of the state, Notaries are authorized to create legal documents that are binding and meet public interests (Soegondo, 2001). Authentic documents, in accordance with Article 1868 of the Civil Code, have full evidentiary power, thus their validity greatly depends on the Notary's adherence to legal provisions. The duties of a Notary are not limited to the creation of documents but also include additional authorities such as the authentication of signatures and the establishment of the date certainty of letters, all of which provide guarantees of the legality of the documents produced (Soemoatmodjo, 2000).

However, the authority of Notaries is also regulated by various requirements and limitations to maintain the integrity of their profession. According to G.H.S. Lumban Tobing, Notaries are prohibited from creating documents for their personal or family interests, as this could diminish the status of the document as an authentic one (Tobing, 1991). Additionally, the prohibition against Notaries holding concurrent positions in other institutions aims to prevent conflicts of interest that could harm the public. With these strict regulations, it is expected that Notaries can perform their duties objectively and professionally while upholding the dignity of their position (Adjie, 2009).

In practice, Notaries produce two types of documents, namely the minutes of the act and the copies of the act, which are kept in an official protocol. This protocol is an important state archive that must be well-maintained, encompassing various documents that can be used for legal proof in the future. Notaries are also required to report the list of acts they create to the Regional Supervisory Council (DPD) to maintain transparency and accountability (Andriansyah, 2018). Furthermore, in a legal context, Notaries may be called upon to provide testimony as witnesses, demonstrating their important role in law enforcement and the legitimacy of the acts they create.

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B. Cancellation of Notarial Deed

The cancellation of a notarial act occurs when an agreement is declared null and void. There are two types of cancellation: absolute and relative. Absolute cancellation applies without the need for a request from a specific party if objective requirements, such as legal or moral provisions, are violated, rendering the agreement as if it never existed and not binding on anyone. For example, if an agreement that is required to be made through a Notary is not executed, that agreement is void by law. On the other hand, relative cancellation occurs if subjective requirements are not met and can be annulled at the request of an interested party, such as a guardian or parent (Adjie, 2017).

Cancellation Due to Agreement

The cancellation of an agreement according to the Indonesian Civil Code (KUHPperdata) can nullify an obligation if requested by the aggrieved party. Article 1381 of the Civil Code lists 10 ways to terminate an obligation, including cancellation, which applies if an agreement violates subjective or objective validity requirements. Subjective requirements are breached if there is a defect of will, such as error, coercion, or incapacity; whereas objective requirements are violated if the agreement contradicts law, public order, or morality, making the agreement void by law. Cancellation can also be mutually agreed upon by both parties, such as through settlement or compensation.

Cancellation Due to Court Decision

The cancellation of an agreement through a court ruling can be achieved via mediation or a judicial decision. In court-ordered mediation, a peaceful settlement is documented in an *acta van dading*, a reconciliation document endorsed by the judge in accordance with Indonesian Supreme Court Regulation No. 1 of 2016, aimed at enhancing public access to justice efficiently. Additionally, a judge may annul a notarial deed if evidence shows that a party was harmed. Under Law No. 48 of 2009 on Judicial Power, judges are required to specify the legal basis for each decision, including relevant statutory articles, jurisprudence, or legal doctrines.

C. Factors Causing the Cancellation of a Notarial Deed

1. Cancellation Due to Civil Events

Agreement cancellation can arise from civil events such as wanprestasi (non-fulfillment of obligations) and unlawful acts. Wanprestasi, as regulated by Article 1243 of the Indonesian Civil Code, occurs when a debtor fails to fulfill their obligations, which may result in liability for compensation (Wardhani, 2017). While wanprestasi does not automatically void an agreement, the aggrieved party may seek cancellation through the court. Article 1266 of the Civil Code includes conditions for contract termination to address this possibility (Khairandy, 2014). Conversely, an unlawful act, outlined in Article 1365, involves actions that breach the law and cause harm, where the responsible party may face compensation obligations. This application of liability aims to protect the rights of individuals who suffer losses (Agustina, 2012).

2. Cancellation Due to Criminal Events

The imposition of a criminal penalty on a Notary does not automatically invalidate a Notarial deed by law. If there is a civil lawsuit to cancel the deed and the Notary has been convicted, any testimony must still adhere to applicable legal provisions. Criminal sanctions apply to individuals acting unlawfully and are condemnatory, in accordance with the Notary Office Act (UUJN) and the Law on Notary Positions (UUJNP), though not detailed explicitly in these regulations. In cases of violations, the Notary is prosecuted under general criminal procedures, with penalties set through a legally binding court ruling (Whardhani, 2017).

3. Cancellation Due to Administrative Events

A Notarial deed is considered the strongest form of evidence, possessing perfect evidentiary power; however, violations of legal provisions in its creation can result in the deed losing its authenticity, reducing it to the status of a private document. If a deed is void, all legal actions it regulates are also nullified, particularly when an authentic deed is required by regulation. However, if authenticity is not mandatory for the deed, both the deed and the legal actions outlined within it remain valid, as long as they reflect the parties' intentions. Conversely, if the agreement requirements are unmet or there is a defect in the subject matter of the agreement, the deed is considered null, such as in cases involving land sales based on falsified evidence (Erliyani, 2020).

D. Legal Consequences of Copies of Deeds Cancelled by the Court

In Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary (UUJN), a Notary is defined as a public official authorized to make authentic deeds and hold other authorities as stipulated in the law or based on other statutory regulations. As an official appointed by the government, the Notary is responsible for meeting the public's needs for legal documents with binding legal force, in a passive role, waiting for individuals to come seeking their services.

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"A Notary is a public official authorized to create authentic deeds and other authorities as referred to in this law."

Furthermore, the explanation of the UUJN states that a notary is a public official authorized to create authentic deeds, provided the creation of such deeds is not specifically designated for another official. The term "Notary" refers to an official with duties related to public interest, categorizing them as public officials who serve the needs of the community.

Notary's Authority

The duties and authority of notaries are regulated in Article 1, paragraph 1 of the UUJN, which includes the creation of authentic deeds and other authorities as stipulated in the UUJN. According to Article 15, paragraph (1) of the UUJN, notaries are authorized to (Adjie, 2009):

1. Create authentic deeds regarding all actions, agreements, and provisions that are required by laws or desired by the interested parties.
2. Ensure the certainty of the date of the deed's creation, keep the deeds, and provide copies and excerpts of the deeds, as long as the creation of the deeds is not assigned to another official or person designated by law.

In addition, Article 15 paragraph (2) of the UUJN provides additional authority to notaries to:

1. Authenticate signatures and establish the certainty of dates for private documents through registration in a special book.
2. Record private documents in a special book.
3. Create copies of private documents.
4. Certify the conformity of photocopies with the original documents.
5. Provide legal counseling related to the creation of deeds.
6. Create deeds related to land matters.
7. Create auction minutes.

Definition of Authentic Deed

In Indonesian civil law, there are two types of deeds: authentic deeds and private deeds. Authentic deeds, which are created by a notary, have higher legal force compared to private deeds, which do not possess the same formalities.

Some definitions of authentic deeds from legal experts include:

1. **Subekti:** "A document that is intentionally created to serve as evidence of an event and is signed."
2. **M. Abdurrachman:** "A letter that is intentionally created and signed to serve as evidence of an event."
3. **R. Tresna:** "A letter that is signed and contains information about events or matters that serve as the basis for a right or agreement."

The official definition of an authentic deed is also stated in Article 1868 of the Civil Code, which states that an authentic deed is: "An act that is made in the form prescribed by law by or before an authorized public official at the place where the act is executed."

The elements that must be fulfilled for a deed to be considered an authentic deed include:

1. The form and composition are determined by law.
2. Made before an authorized public official.
3. Has a recognized legal standing.

Copy of Deed

Notaries are obligated to create and provide copies of acts that have enforcement power, commonly referred to as the grosse act, excerpts of the act, or copies of the act. According to the Notary Law (UUJN-P) Article 1, number (9), a copy of an act is:

"A verbatim copy of the entire Act, and at the bottom of the copy of the Act, the phrase 'issued as a copy with the same wording' is stated."

However, both the UUJN and UUJNP do not regulate the cancellation of acts and the notary's obligation to withdraw copies of acts, resulting in a legal vacuum that creates uncertainty.

Cancellation of Deed

When a dispute arises concerning an act, and if that act is declared null and void by the court, the legal consequences will affect all copies of the act that have been issued. The notary, as the maker of the act, must pay attention to the validity of the agreement and the essential requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, which are:

1. The agreement of those who bind themselves.
2. The ability to make a contract.
3. A certain thing.
4. A lawful cause.

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If these requirements are not met, the agreement may be requested to be annulled. In practice, when the parties agree to cancel the act that has been made, the steps taken must comply with the applicable legal provisions, including regarding the impact on copies of the act that already exist.

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A. Characteristics of Authentic Notarial Deeds

Notarial authentic acts are official documents that possess high evidentiary power and are created by authorized officials, such as notaries, Land Deed Officials (PPAT), or other officials in accordance with applicable regulations. These authentic acts are structured in forms and formats determined by law, making them valid and irrefutable evidence. The main difference between authentic acts and private deeds lies in their creation; private deeds are made without involving public officials and do not adhere to strict legal provisions. In terms of evidentiary strength, authentic acts hold greater power due to their regulated content and format, while private deeds only have evidentiary force that can be upheld if recognized by the parties involved. Both authentic acts and private deeds aim to provide valid proof for transactions or agreements made between parties (Khairandy, 2014).

The structure of a notarial deed consists of three main parts: the head of the deed, the body of the deed, and the closing of the deed, each serving different functions and containing distinct information. The head of the deed includes information about the notary who created the deed, as well as the identities of the parties present at the time the deed was made. This section also states the title of the deed, deed number, time, day, month, year, and the location of the notary's office. The body of the deed contains further details about the contents of the agreement made, including the statements provided by the parties or declarations witnessed by the notary. Finally, the closing of the deed includes information about the time and place the deed was signed, details regarding witnesses, and confirmation that the deed has been read and signed by all parties involved. The overall structure aims to provide clarity, validity, and legal certainty for all parties involved in the agreement (Adjie, 2013).

The importance of subjective and objective requirements in the creation of a notarial deed cannot be overlooked, as both determine the validity of an agreement. The subjective requirements relate to the legal capacity of the parties to enter into an agreement, which includes the existence of mutual consent and the ability to act legally. On the other hand, the objective requirements encompass the subject matter of the agreement, which must be specific, and the purpose of the agreement, which must not contravene the law, morality, or public order. If either of these requirements is not fulfilled, the agreement may be annulled. For example, if an agreement that is required to be executed in the form of a notarial deed is not done, the agreement is considered null and void, meaning it is regarded as if it never existed and has no legal effect. Therefore, a notarial deed not only serves as evidence but also acts as a guarantee of legal certainty that protects the rights and obligations of the parties involved in the transaction.

B. Formal and Material Requirements for Making an Authentic Deed

An authentic deed is an official document created by or in the presence of a notary, and the presence of the notary as the authorized party in the creation of this deed is crucial to ensure that the deed meets the legal requirements outlined in Article 1868 of the Civil Code (KUHPerdata). These requirements include the agreement between the parties involved, the legal capacity to perform legal acts, a clear subject matter of the agreement, and the existence of lawful authority. If any of these conditions are not fulfilled, the deed cannot be considered authentic and will only have the force of a private writing. This underscores the importance of adhering to the established procedures to ensure that the deed has valid legal force (Victor, 1993).

The advantages of an authentic deed lie in its perfect evidentiary power, where this deed can stand alone without requiring additional evidence, unless there is contrary proof. Additionally, an authentic deed must meet both formal and material requirements, with formal requirements encompassing information that must be included in the deed, such as the identities of the parties, the time and place of creation, and the witnesses present. During the creation process, the notary is responsible for ensuring that all information and procedures are correctly followed, allowing the authentic deed to serve as a strong and reliable piece of evidence in the legal context (Sugeng, 2012).

In practice, the creation of an authentic deed requires meticulousness and caution to maintain the validity and legal strength of the deed. This deed plays a crucial role in providing legal certainty for the parties involved in an agreement, as well as helping to prevent legal disputes in the future. Therefore, a deep understanding of the requirements that must be met in the creation of an authentic deed is essential for notaries and other legal practitioners, ensuring that the resulting documents are reliable and recognized within the legal system.

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C. Notary's Responsibility for Deeds Canceled by the Court

The notary's responsibility regarding deeds that have been annulled by the court encompasses various aspects, especially concerning the material and formal truth of the deed. The terms 'nullity' and 'annulment' in contract law refer to situations where a contract lacks legal consequences, either due to the failure to meet objective or subjective requirements. Nullity by law means that the deed has no legal consequences from the moment it is made, while annulment depends on the decision of certain parties. The notary is responsible for the accuracy of the contents of the deed made in their presence, and if there are mistakes, they may be subject to civil or criminal liability. This responsibility includes the obligation to ensure that all formal and material requirements have been fulfilled, as well as maintaining the integrity and confidentiality of the information from the parties involved. If the deed is contested, the parties may request the annulment of the deed or sue to change the status of the deed to that of a private document. In situations where one party feels aggrieved, they can file a lawsuit for damages against the notary if they can prove that the loss was a direct result of an error in the deed (Sudiko, 2005).

Civil Liability of Notaries

The notary's civil responsibility for the material truth of the deeds they create is based on the unlawful act framework as outlined in Article 1365 of the Civil Code, which includes both active and passive actions that may cause harm to others. The elements that constitute an unlawful act include the existence of actions that violate the law, fault, and loss. In the context of a notary, their responsibility is more focused on the formalities of authentic deeds rather than the substantive content of the deed itself. Notaries are expected to act neutrally and provide accurate legal advice; if that advice is incorrect and misleads one of the parties, the notary can be held accountable for any resulting losses. Therefore, a notary has an obligation to provide clear and accurate access to information regarding the law related to the deeds they create, ensuring that the parties are not harmed due to their ignorance (Yuana, 2010).

Criminal Liability of Notaries

The criminal responsibility of a notary is related to actions that violate the law as regulated in the Penal Code (KUHP), even though specific criminal provisions are not explicitly outlined in the Notary Act. A notary or land deed official (PPAT) can face criminal sanctions for acts such as creating or using false documents (Article 263 KUHP), forgery (Article 264 KUHP), or instructing the inclusion of false information in an authentic deed (Article 266 KUHP). Administrative sanctions for notaries/PPATs may range from warnings to dismissal without honor. In criminal cases, the element of fault must be present, whether intentional (opzet) or negligent (culpa); intent can involve a specific purpose, awareness of certain consequences, or knowledge that consequences may occur. Additionally, for criminal responsibility to be applied, the act must fulfill three elements: the prohibited act, the consequence that justifies the prohibition, and the legal violation (Wirjono, 2011).

Notary's Administrative Responsibilities

The administrative responsibility of a notary is closely related to the Notary Act and the professional Code of Ethics, which require notaries or land deed officials (PPAT) to draft deeds properly and accurately, fulfill the requests of interested parties, and produce quality deeds in accordance with the law. Notaries are also obliged to explain the truth of the content and procedures of the deeds to the involved parties and ensure that the deeds have perfect evidential power. Regarding formal aspects, notaries must pay attention to the certainty of dates, the identities of the parties present, and the consistency of the deed copies with the minute. Sanctions for notaries who violate these provisions can range from warnings to dismissal, in accordance with Article 85 of the Notary Act. Furthermore, notaries are required to follow up on the annulment of deeds by the court by issuing a cancellation deed and keeping it in the notary's protocol, which serves as an archive and valid evidence. The minutes of the deed, whether related to annulment or annulled, are an essential part of the notary's protocol, protecting the interests of all parties and supporting the enforcement of law in the future (Ansori, 2009).

IV. CONCLUSION

The legal consequences of a deed minute whose copy has been annulled by the court result in the deed losing its evidential power and being considered null and void due to non-compliance with the requirements established in regulations. In cases of dispute without an agreement on the annulment, the party unwilling to be bound can file a lawsuit in court. If the notary fails to withdraw the minute of the deed whose copy has been annulled, they risk becoming involved in legal issues, including the possibility of being considered complicit in unlawful actions (Article 266 of the Penal Code) if the annulled copy is used as a basis for action. The notary's responsibility regarding the annulled deed is civil in nature, meaning the notary may face a damages claim if it is proven they committed an unlawful act in accordance with Article 1365 of the Civil Code. However, if one party breaches the agreement

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and the notary has fulfilled the requirements for the deed's creation, the notary is not liable for the deed's annulment. On the other hand, if the annulment is due to the notary's negligence, both criminal and civil sanctions may be imposed. The criminal sanctions are not specified in the Notary Act but can refer to the Penal Code, while civil sanctions would involve compensation to the aggrieved party.

Authentic deeds produced by Notaries/PPATs possess perfect evidential strength, and thus to maintain their authenticity, Notaries/PPATs must adhere to established rules and uphold their oath and the dignity of their profession. Article 16 paragraph (1) letter a of the Notary Act emphasizes that Notaries must act with diligence and safeguard the interests of the parties involved in legal actions. Therefore, Notaries should conduct a thorough review of all information included in the deed prior to its signing. Additionally, the public should exercise caution and vigilance when engaging in legal actions to prevent losses that may arise from inaccurate deeds.

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