

**LEGAL CONSEQUENCES OF NOTARY NEGLIGENCE IN MAKING A  
DEED OF LAND SALE AND PURCHASE BINDING AGREEMENT  
(STUDY OF THE DECISION OF THE BANTEN HIGH COURT NUMBER  
119/PDT/2019/PT BTN)**

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**Abstract**

*In carrying out their positions, duties, and authority, notaries must be based on the principle of prudence because otherwise, the Notary may commit negligence. One of the actions that prove that a Notary does not apply the precautionary principle is if in making a deed, the Notary commits negligence. If the negligence can be proven to harm the parties in the deed, he must be responsible for his negligence. Departing from this, the problems examined in this research are regarding the application of the principle of prudence in making the Deed of Land Sale and Purchase Agreement and the legal consequences if the Notary is negligent in applying the principle of prudence in Decision Number 119/PDT/2019/PT BTN. A doctrinal legal research method is used to answer these problems. The research analysis results show that the principle of prudence in the making of the Deed of Land Sale and Purchase Agreement is essential to avoid disputes in the future. Suppose the Notary does not apply the principle of prudence. In that case, the Notary can harm the parties related to the sale and purchase. The Notary in Decision Number 119/PDT/2019/PT BTN can be held liable civilly and criminally, and the related deed can be null and void.*

**I. Introduction**

The notary, as a public official appointed and dismissed by the Minister, is authorized to make an authentic deed regarding all actions, agreements, and provisions required by laws and regulations and / or desired by interested parties to be stated in an authentic deed. The notary himself serves as an extension of the state in civil law, as stated in the statutory provisions, which make notaries the only public officials entitled to provide perfect evidence in the

form of authentic deeds.(Pengurus Pusat Ikatan Notaris Indonesia, 2008) The word Notary comes from the Latin term “nota literaria” which means a sign or writing used to write or characterize messages conveyed by the parties.(M. Syahrul Borman, 2019)

The definition of Notary in Article 1 number 1 of Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on the Position of Notary jo. Law Number 30/2004 on the Position of Notary (collectively referred to as UUJN) which reads, “*Notaris adalah pejabat umum yang berwenang untuk membuat akta autentik dan memiliki kewenangan lainnya sebagaimana dimaksud dalam Undang-Undang ini atau berdasarkan undang-undang lainnya.*” Asserts that the other powers of the Notary in UUJN also include other powers if laws outside UUJN regulate a legal action that must be included in a notarial deed.(Anshori, 2009) In exercising their authority, Notaries are obliged to provide legal protection and guarantees in order to achieve legal certainty for every citizen who uses their services. (Said Salim, 2015). This is done to prevent legal problems from arising from the non-achievement of legal certainty, so Notaries must apply official responsibility in their authority to make authentic deeds.

The inherent nature of an authentic deed is divided into 2 (two), namely authenticity (the power of authentic evidence) and the validity of its legal actions. (Pieter Latumenten, 2018). Notarial deeds can have the power of authentic evidence if they meet the requirements in Article 1868 of the Civil Code (KUHPerdato), namely that the deed must be done by or before a Public Official, the deed must be made in the form prescribed by law, the public official by or before whom the deed is made must have the authority to make the deed. (G.H.S. Lumban Tobing, 2018) If the second condition (letter b) is not fulfilled, the deed loses its authenticity and only has the force of a deed made under hand if the parties' signatures are affixed to it (G.H.S. Lumban Tobing, 2018). This also applies if the deed is not made in the presence of a notary, a public official authorized and appointed by law. Confronters are those who are present and come when signing and reading the notarial deed, not those who are represented in the deed, either in writing or orally, as explained in Article 39 paragraph (2) of UUJN.

In carrying out their positions, duties and authorities must be based on prudence because otherwise, the Notary may commit negligence. The principle of prudence states that notaries, in carrying out their responsibilities and authorities, must always be careful to protect the interests of the parties who have entrusted their duties to them.(Rahman, 2018) The purpose of enforcing the precautionary principle is to ensure that notaries are always on the right signs. With the application of the precautionary principle, it is hoped that public trust in notaries will remain high, so that people are willing and do not hesitate to use notary services. An action must be taken and prepared with careful consideration.

One of the actions that prove that the Notary did not apply the precautionary principle is if in making the deed, the Notary commits negligence. If the negligence can be proven, he must be responsible for his negligence, which can harm the parties in the deed. Responsibility (liability) means being obliged to bear everything so that if something happens, it can be prosecuted, blamed, sued, etc. (Pusat Bahasa Departemen Pendidikan Nasional, 2008) Liability also means a definite risk or responsibility, which depends on or can include all actual or potential rights and obligations, such as losses, threats, crimes, costs, or conditions that create an obligation to carry out the law. (Henry Campbell Black, 1968). Notary accountability can take the form of civil, criminal and administrative sanctions.

Negligence committed by a Notary can be reflected in the case of Decision Number 119/PDT/2019/PT BTN. This case began when Notary S committed negligence by not double-checking the parties to the sale and purchase transaction. The sale and purchase agreement was not carried out by the actual party, which in this case was a fabrication of the Buyer, who used the figure of another person to impersonate the Buyer. Notary S's negligence resulted in issuing the Deed of Sale and Purchase Agreement Number 126 dated July 27, 2006. As a result of his actions, the party who actually and legally owned the object of sale and purchase suffered losses because suddenly the object had the status of a security seizure (*conservatoire beslag*) which then, in the process of auctioning the execution of the security seizure when the decision was issued.

Based on the explanation above, the problem of the application of the principle of prudence by the Notary in making the Deed of Land Sale and Purchase Agreement and the legal consequences if the Notary is negligent in applying the principle of prudence as exemplified in Decision Number 119/PDT/2019/PT BTN which is packaged in this research entitled "Legal Consequences of Notary Negligence in Making a Deed of Land Sale and Purchase Agreement (Study of Banten High Court Decision Number 119/Pdt/2019/PT BTN)".

## 2. Research Method

The type of research used in this research is doctrinal research. Doctrinal research is library legal research conducted by examining library materials or secondary data. (Soerjono Soekanto; Sri Mamudji, 2009) This research was conducted to obtain materials in the form of theories, concepts, legal principles, and legal regulations related to the subject matter. The scope of doctrinal legal research, according to Soerjono Soekanto, includes (Soerjono Soekanto; Sri Mamudji, 2009) :

- a. Research into legal principles.
- b. Research into legal systematics.
- c. Research on the level of legal synchronization vertically and horizontally.

- d. Comparison of law.
- e. Legal history.

This research was conducted using a statutory approach and a case approach. The statutory approach is carried out by examining all existing regulations that relate to the problem under study. (Mukti Fajar N.D. Achmad, 2010) This approach is carried out by examining all laws and regulations related to the problem (legal issue). This statutory approach, for example, is carried out by studying the consistency / compatibility between the Constitution and the Law, or between one Law and another Law. Meanwhile, the case approach is carried out to study the application of existing norms and regulations in the community.

This research used data collection tools, namely literature study or documentary study, to collect secondary data related to the issues raised by studying books, legal journals, research results and legislative documents. The data that has been obtained is then analyzed through an explanatory analysis approach. Explanatory typology is research that strengthens or tests the study's results or the state of existing law to perfect and provide new nuances in applying legal theories or norms.

### 3. Results and Discussion

#### 3.1. The Precautionary Principle in the Making of Deed of Sale and Purchase Agreement

An agreement can be considered valid if it has completed 4 (four) conditions in Article 1320 of the Civil Code. The first requirement is an agreement for those who bind themselves. The agreement is that the parties agree to bind themselves to each other to decide. The second requirement is the capacity to perform an obligation. A person's incapacity can be seen in Article 1330 of the Civil Code<sup>1</sup>. The third requirement is a certain thing. What is meant is that the object in an agreement must be certain or at least can be proven in the future. (*Kitab Undang-Undang Hukum Perdata Pasal 1333-1334*) The last requirement is a halal cause. A lawful cause is the content of the agreement made is prohibited from violating the law, norms of decency and public order. (*Kitab Undang-Undang Hukum Perdata Pasal 1337*) The contract can be canceled if the subjective conditions (agreement and capability) are not

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<sup>1</sup> Pasal 1330 Kitab Undang-Undang Hukum Perdata selanjutnya disebut KUHPerdata menjelaskan bahwa terdapat 3 (tiga) golongan orang yang dinyatakan tidak cakap melakukan perbuatan hukum. Pertama, orang yang belum dewasa yang termaksud didalamnya anak yang belum mencapai umur dewasa maupun dan belum pernah kawin. Kedua, Orang yang berada di bawah pengampuan sesuai dengan Pasal 433 KUHPerdata. Ketiga, perempuan bersuami. Golongan ketiga yaitu perempuan bersuami tidak lagi dinyatakan sebagai tidak cakap melakukan perbuatan hukum berdasarkan SEMA Nomor 3/1963 jo Pasal 31 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

implemented. Can be canceled means that one of the parties can request the cancellation of the contract through a stipulation or court decision.(Kosasih, 2021) Conversely, the agreement is null and void if the objective conditions (a sure thing and a lawful cause) are not fulfilled. Null and void means that the agreement between the parties is considered to have never existed, so the parties cannot ask the court to perform the performance for the other party (Kosasih, 2021).

Agreements can be categorized into 2 (two) parts, namely named agreements (*nominaat*) and unnamed agreements (*innominaat*).(*Kitab Undang-Undang Hukum Perdata Pasal 1319*) One type of agreement named in the Civil Code is a sale and purchase agreement. Sale and purchase itself is actually a relationship between a seller who promises to transfer property rights to an object and a buyer who promises to provide a number of rewards for the acquisition of property rights.(Subekti, 2014) Sale and purchase can occur if the parties have agreed on the object and the reward for the object, where the first party, namely the seller, should deliver the object of sale and purchase, and the second party, namely the buyer, has the responsibility to provide the reward for the object of sale and purchase by the predetermined price. (Subekti, 2005). The sale and purchase agreement is contained in Articles 1457 to 1540 of the Civil Code. In buying and selling, there are two important aspects, namely :(Dewi Wulan Fasya, 2015)

- a. Selling activities that indicate the existence of an activity that has the purpose of reducing the amount of the seller's assets as a form of achievement or obligation that must be fulfilled; and
- b. Buying activities are reciprocal to selling activities to give birth to an activity that aims to collect rights in the form of property, whether movable, immovable or tangible.

To conduct a sale and purchase transaction in Indonesia, a binding agreement can first be made through a sale and purchase binding agreement or sale and purchase agreement (PPJB). The sale and purchase binding agreement (PPJB) is an obligatory agreement made before the sale and purchase of land so that it only puts the rights and obligations between the two parties and does not transfer the ownership of the land.(Subekti, 2014) The content of the PPJB is in the form of clauses proposed by the parties that include the agreed conditions and can be fulfilled before the ratification of the main agreement.(Gunawan, 2010) The legal basis of the PPJB is regulated in Article 1338 paragraph (1) of the Civil Code by utilizing the open system and the principle of freedom of contract as adopted by Book III of the Civil Code. Article 1338, paragraph (1) of the Civil Code reads, "*semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya*". The principle of freedom of contract, as contained in Article 1338 paragraph (1) of the Civil Code, allows for developments in making an agreement in

accordance with the needs of the community but still pays attention to the provisions and conditions for the validity of the agreement in Article 1320 of the Civil Code so that the agreement can be considered legally valid.

PPJB in practice can be made in an authentic deed which attaches authenticity (the strength of authentic evidence) and the validity of its legal actions. (Pieter Latumenten, 2018) This authenticity is related to the format of the deed determined by law. Still, the validity of the legal acts in a deed is not the responsibility of the Notary. There are 3 (three) requirements for a deed to be considered authentic, namely (1) the deed must be made before an authorized public official (Notary or PPAT); (2) the deed must be made in the form prescribed by law so that if there are things that are not in harmony, it cannot be called an authentic deed; and (3) the deed must be made in the working area of the authorized Public Official. If the three elements of an authentic deed cannot be fulfilled, then the authentic evidence strength of the deed is only recognized as a deed under the hand (*Kitab Undang-Undang Hukum Perdata Pasal 42*). The authentic deed that Notary makes or issues consists of 2 (two) types, namely as follows :

a. Akta Relaas

Akta relaas or akta pejabat (*ambtelijke akten*) is a deed made by a Notary to be evidence for the confronting parties and described or witnessed by the Notary in his authority. (Rudi Indrajaya; et.al, 2020) Akta Relaas contains a description of what was seen and done by the official. (Jordan Pradana dan Fauzi Syam dan Syamsir, 2022)

b. Akta Partij

Akta Partij or deed of the parties is a deed made in the presence of (ten overstaan) Notary as an authorized public official and at the request of interested parties. (Jordan Pradana dan Fauzi Syam dan Syamsir, 2022) This deed contains information that is desired by the parties who ask the Notary to make related matters. This deed can only be canceled by the parties who wish to do so (Prajitno, 2013).

PPJB is included in the form of a type of deed of partij because the making of it is desired by the interested parties, namely the seller and the buyer. (Adela Destaliya dan Mohamad Fajri Mekka Putra, 2018) The parties must explain and clarify their wishes to be stated in an authentic deed by appearing before the Notary. (Budiono, 2008) The notary will hear, summarize, compile, and formulate information from the confrontants into an authentic deed so they confrontants can sign it (Moechthar, 2017). Based on this explanation, it can be concluded that the PPJB contains information from the confronters in the form of an authentic deed. To guarantee the authenticity of a deed, the Notary must also find out and request supporting data and the confronters' identity to fulfill the confronter requirements' provisions in Article 39 of the UUJN. Article 39 of the UUJN reads :

- “(1) Penghadap harus memenuhi syarat sebagai berikut:*  
*a. paling rendah berumur 18 (delapan belas) tahun atau telah menikah; dan*  
*b. cakap melakukan perbuatan hukum.*
- (2) Penghadap harus dikenal oleh Notaris atau diperkenalkan kepadanya oleh 2 (dua) orang saksi pengenal yang berumur paling rendah 18 (delapan belas) tahun atau telah menikah dan cakap melakukan perbuatan hukum atau diperkenalkan oleh 2 (dua) penghadap lainnya.*
- (3) Pengenalan sebagaimana dimaksud pada ayat (2) dinyatakan secara tegas dalam Akta.”*

The obligations of the Notary towards the face are limited to the authority he/she receives as stipulated in Article 15 of the UUJN which includes :

- a. Make authentic deeds concerning civil actions required by law or desired by the parties;
- b. Guaranteeing the certainty of the date of deed making, deed storage, provision of grosse, copy, and deed quotation;
- c. To certify signatures and determine the certainty of the date of letters under the hand by registering in a particular book;
- d. Record the letter under the hand by registering it in a particular book;
- e. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned;
- f. Certify the suitability of the photocopy with the original letter;
- g. Provide legal counseling in connection with the making of the deed;
- h. Making deeds related to land;
- i. Making deeds of minutes of auction; or
- j. Other authorities stipulated in laws and regulations.

To carry out their authority and position, notaries are obliged to act trustworthy, honestly, carefully, independently, and impartial and safeguard the interests of the parties involved in legal acts as stipulated in Article 16, paragraph (1) letter a. “careful” relates to thoroughness, accuracy, and prudence in carrying out their duties. Notaries must be thorough, careful, and careful in recognizing the confronters.(Rahman, 2018) The precautionary principle states that notaries, when carrying out their functions and positions, are obliged to apply the precautionary principle to protect the interests of the public entrusted to them. Thus, this prudential principle obliges Notaries to always be careful in carrying out their duties as public officials so that they can always carry out statutory orders based on professionalism and good faith.

The principle of prudence is a limitation for notaries to perform their duties consistently at the correct limit and avoid making mistakes that can harm the faces or parties to the agreement. Notaries in carrying out their responsibilities and positions are very important to carry out the principle of prudence in the process of making authentic deeds, considering that there are often legal problems with authentic deeds made by notaries because there are parties who commit crimes such as providing false letters and false information to false parties in deeds made by notaries. The forms of the prudential principle that notaries should carry out in the process of making deeds are: (1) recognize the identity of the confronter; (2) carefully check the data of the subject and object of the confronter; (3) provide a grace period in the deed process, act carefully, carefully and thoroughly in the deed process; and (4) fulfill all the technical requirements for making deeds and report if there are indications of money laundering in transactions at the Notary. (Ida Bagus Paramaningrat Manuaba, 2017)

The obligation of the Notary to examine all the completeness and validity of the evidence or documents shown and hear the testimony or statements of the confronters is something that should be done in making a deed because if the Notary is not careful in examining essential facts, it means that the Notary does not apply the principle of prudence in making the deed related to the deed. Dalam pembuatan akta jual beli, Notaris harus menerapkan prinsip kehati-hatian karena apabila tidak menerapkan prinsip kehati-hatian maka Notaries can be detrimental to the parties involved in buying and selling. The parties related to buying and selling, especially land, are not only sellers and buyers. Other parties related to the sale and purchase of land include the National Land Agency, which will be tasked with transferring rights based on the sale and purchase deed made by the Notary. Notary prudence can also be applied when the Notary will identify the parties to the agreement. For example, whether the seller wants to sell the land and the buyer wants to buy the land and from where the parties can get to know each other to make a sale and purchase transaction.

Checking the identity of the confronter on the authenticity of the deed is an obligation for the Notary in requesting documents or various letters needed to be contained in the deed, so the Notary is obliged to request a copy of the identification card that can be explained in the deed minutes later. The identification card can later be rechecked through the online system of the Population and Civil Registry Office and ask and match directly the correctness of the biodata, such as the date and address in the Identity Card, to the confronters. This is one of the ways to apply the precautionary principle in recognizing faces. Suppose the person facing the deed is not appropriate in the Identity Card. In that case, it will be seen physically and behaviorally, and it can be seen directly that there are irregularities and differences. In this

regard, the Notary must ensure that the confronter in the deed he wants to make uses the original identity and that it is the person who is facing him.

Notaries can reason about the relationship between the parties before entering into a sale and purchase agreement, which is done to see whether the parties know each other, which is then followed by whether the party facing is a party who has the authority to make a sale and purchase, with his intelligence. Notaries must have 3 (three) intelligences to carry out their positions properly and be careful, the three intelligences are intellectual, emotional, and spiritual intelligence. The three intelligences can support the implementation of the Notary position so that the Notary can be more careful in making a deed. The Notary should be able to catch if one of the parties is not serious about buying and selling, such as engineering, by using other people's figures as if they are the seller or buyer so that the Notary will not harm the parties.

If the Notary does not apply the precautionary principle, then the Notary can be held accountable for their position, duties, and authority. For a Notary as a public official, 2 (two) theories underlie the role of public official accountability, namely (Ridwan Ridwan HR, 2018):

- a. *Teori fautes personnelles*, This theory focuses on humans as individuals and provides a statement about whether the losses obtained by third parties are delegated to officials because their actions have caused harm to third parties.
- b. *Teori fautes de services*, This theory explains if the loss to a third party is delegated to the agency of the official concerned. This theory imposes responsibility on the position so that in its application, the losses that arise are harmonized with the mistakes made, whether severe or minor, that can impact the responsibilities that must be borne.

The responsibility carried out by the Notary can be seen in the imposition of civil, criminal, and administrative sanctions. Civil liability is given with the imposition of civil sanctions. Civil sanctions are given for things that occur due to default and illegal acts (*onrechtmatigedaad*). Civil sanctions can be reimbursed for costs, compensation, and interest. This sanction can be imposed on the Notary in the event of a lawsuit by the parties if the deed that the Notary makes is only binding evidence as a deed under hand or becomes null and void. Furthermore, administrative liability is regulated in Article 6, paragraph (1) of the Notary Code of Ethics, which is divided into 5 (five) types, namely in the form of oral reprimand, written reprimand, honorable dismissal, and dishonorable dismissal. If a Notary commits an act that violates the Code of Ethics, one of the provisions of administrative sanctions that can be given is temporary dismissal from membership of the Association. This is further

explained in Article 9 paragraph (1) of the UUJN, that the reasons for a Notary who can be temporarily dismissed from office include :

- a. in the process of bankruptcy or postponement of debt payment obligations;
- b. is under guardianship;
- c. commits a disgraceful act;
- d. commits a violation of the obligations and prohibitions of office and the code of ethics of a Notary; or
- e. is undergoing a period of detention.

The application of administrative sanctions against Notaries is carried out by the Notary Supervisory Council, which provides preventive efforts, to force compliance and applies repressive sanctions, to force compliance so that these sanctions can be implemented. Then criminal liability can be given through criminal sanctions to the Notary if the Notary's legal actions against the formal aspects of the deed are carried out intentionally, consciously, and planned. If the deed that the Notary makes or the making of which is carried out in front of the Notary has been agreed to be the basis of a criminal offense which, if tested, will be contrary to the provisions in the UUJN. The Notary Supervisory Council is a party that has the authority to assess whether a Notary's action is a criminal offense. The UUJN does not regulate criminal sanctions against Notaries so if Notaries commit criminal offenses, they can be subject to the provisions in the Criminal Code.

### **3.2. Legal Consequences of Notary Negligence for Not Applying the Precautionary Principle in Decision Number 119/PDT/2019/PT BTN**

This case began when the Appellant (Third Party Plaintiff) filed a lawsuit against the Appellant (Defendant and Co-Defendant) as filed for the first time through the Tangerang District Court with register number 501/Pdt.Plw/2018/PN.Tng., Whereas the Defendant and the Third Party Plaintiff have an agreement in the form of a binding sale and purchase of land and power of attorney over the land located in Tangerang City as recorded on the Certificate of Title (SHM) No. 222/2001 with Measurement Letter No. 84/2001 and SHM No. 290/2002 with Measurement Letter No. 56/2002 in the name of the Defendant as the first party or the owner who physically controls it. The Third Party Complainant is the second party who wishes to purchase the land as referred to in the Deed of Sale and Purchase and Power of Attorney No. 126 made before Notary S dated July 27, 2006 (from now on referred to as the PPJB Deed). Since the signing of the Deed of Sale and Purchase and Power of Attorney, the Third Party Plaintiff has possessed the original letters and/or documents relating to the ownership of the object of the sale and purchase and power of attorney and has occupied the physical object without interference or obstruction from anyone and anything.

However, in 2017, when the Third Party Complainant wanted to make a Sale and Purchase Deed and change the name of the SHM to his own, the Third Party Complainant checked with the National Land Agency office.

As a result of the check, it was found that a security seizure had been placed on the object of the sale and purchase agreement and a power of attorney by the Tangerang District Court in connection with the civil lawsuit Case Number 341/Pdt.G/2012/PN.Tng between the Defendant as the Defendant and the Co-Defendant as the Plaintiff. However, the Third Party Plaintiff was not aware of the civil lawsuit or the court's placement of a security seizure in relation to the object of the sale and purchase agreement and the power of attorney. The Third Party Complainant did not receive any information or notification from anyone, including from the Respondent or the Tangerang District Court, so it was only when he filed a check that he found out that the land object he was referring to had been included in the security seizure on behalf of the Seller in the PPJB Deed.

Against the lawsuit, the Defendant filed an answer arguing that this case started in December 2007 when the defendant committed a criminal act of fraud against cash belonging to the Defendant, resulting in the Defendant (who fled) being sentenced to 2 (two) years imprisonment. Based on the criminal verdict, the execution of bail confiscation was stipulated, which was then continued with the auction of the execution of bail confiscation. However, during the auction process of the execution of the collateral seizure, a case of resistance was filed by the third-party opponent. According to the testimony of the Co-Defendant, the PPJB Deed made by Notary S was the result of engineering by the Co-Defendant by using the figure of another person, who in this case is the Third Party Plaintiff as the Buyer, by taking advantage of the negligence of Notary S until the PPJB Deed was issued.

Regarding the lawsuit filed by the Third Party Claimant, the Panel of Judges declared that the lawsuit could not be accepted for the following reasons :

- a. That based on the applicable law, the PPJB Deed is an agreement made by a Notary, not a PPAT. Thus, if the PPJB Deed is not made by a party authorized to make deeds.
- b. The PPJB Deed is not the same as the Sale and Purchase Deed (AJB), so the Third Party Plaintiff has no authority to transfer the right to land and building based only on the PPJB Deed. Thus, the object in the PPJB Deed is still the property of the Defendant (Seller in the PPJB Deed).
- c. That the Stipulation of Security Confiscation Number 341/FEN/CB/PDT.G/2012/PN/TNG which has permanent legal

force can be implemented in accordance with the applicable provisions.

The Tangerang District Court has handed down Decision Number 501/Pdt.Plw/2018/PN.Tng with the following ruling :

***“Dalam Eksepsi***

*Menyatakan eksepsi dari Turut Terlawan tidak dapat diterima;*

***Dalam Pokok Perkara***

- 1. Menyatakan gugatan Perlawanan Pihak Ketiga (darden verzet) tidak dapat diterima;*
- 2. Menghukum Pelawan Pihak Ketiga untuk membayar biaya yang timbul dalam perkara ini sejumlah Rp. 5.716.000,- (lima juta tujuh ratus enam belas ribu rupiah);”*

Against the Decision, the Third Party Plaintiff filed an appeal as recorded under register number 119/Pdt/2019/PT BTN. The Third Party Plaintiff appealed because he rejected and objected to Decision Number 501/Pdt.Plw/2018/PN.Tng mentioned above stated that his lawsuit could not be accepted because it was considered erroneous and detrimental to the rights and interests of the Third Party Plaintiff. Furthermore, on the grounds of appeal, the Panel of Judges at the appellate level considers that the Panel of Judges at the first level is correct and correct according to the law so that the Panel of Judges at the appellate level decides the case with the following ruling :

***“Mengadili***

- 1. Menerima permohonan pembanding dari Pembanding/semula Pelawan Pihak Ketiga;*
- 2. menguatkan Putusan Pengadilan Negeri Tangerang Nomor 501/Pdt.Plw/2018/PN.Tng tanggal 30 Juli 2019 yang dimohonkan banding tersebut;*
- 3. Menghukum Pembanding/semula Pelawan Pihak Ketiga membayar biaya perkara ini dalam kedua tingkat peradilan, yang dalam tingkat banding ditetapkan sejumlah Rp150.000,00 (seratus lima puluh ribu rupiah);”*

Based on the above case, it can be seen that there is information that explains if there is an indication of Notary negligence in checking the parties' identity, which harms one party or the other party. Notaries who commit negligence to the detriment of other parties should be prepared to deal with the lawsuit of the injured party, where the lawsuit occurs due to unlawful acts. However, the reason for the party suffering a loss to request reimbursement of costs, compensation, and interest to the Notary must first be proven, including whether the Notary's fault caused the loss. For parties who feel harmed by a deed made by a Notary, the party can sue civilly the existing Notary.

With these indications, the Notary should also be included in the lawsuit. It is possible that this case was initiated due to the Notary's negligence in carrying out his duties and authority to make deeds, namely negligence because he did not check the identity carefully and thoroughly. If the Notary did commit negligence, as previously explained, then in addition to the Notary, civil and criminal liability can be held. Notaries can also be subject to administrative sanctions for taking actions contrary to Article 16 paragraph (1) letter a of the UUJN. Suppose it is true that the Notary participated in carrying out and planning the engineering with the issuance of the PPJB Deed. In that case, the Notary violated the provisions of the UUJN and the Notary Code of Ethics and did not carry out the oath pronounced when obtaining a license to carry out his profession as a public official.

Article 4, paragraph (2) of the UUJN states that notaries should take an oath or promise of notary office before carrying out their duties and before the Minister of Law and Human Rights. The article reads :

*"Saya bersumpah/berjanji:*

*Bahwa saya akan patuh dan setia kepada Negara Republik Indonesia, Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Undang-Undang tentang Jabatan Notaris serta peraturan perundang-undangan lainnya.*

*Bahwa saya akan menjalankan jabatan saya dengan amanah, jujur, saksama, mandiri, dan tidak berpihak.*

*Bahwa saya akan menjaga sikap, tingkah laku saya, dan akan menjalankan kewajiban saya sesuai dengan kode etik profesi, kehormatan, martabat, dan tanggung jawab saya sebagai Notaris.*

*Bahwa saya akan merahasiakan isi akta dan keterangan yang diperoleh dalam pelaksanaan jabatan saya.*

*Bahwa saya untuk dapat diangkat dalam jabatan ini, baik secara langsung maupun tidak langsung, dengan nama atau dalih apa pun, tidak pernah dan tidak akan memberikan atau menjanjikan sesuatu kepada siapa pun."*

Indications of Notary negligence due to not checking the identity of the parties correctly or due to indications of engineering the party who becomes the Facing is not a party authorized to agree not only to give legal consequences to the Notary, who must be accountable for his negligence but can also impact the Deed he made. The legal effect of a deed made with Notary negligence is that the Deed can be canceled or become null and void. Can be canceled means that one of the parties can request the cancellation of the agreement through a stipulation or court decision.(Kosasih, 2021) Conversely, the agreement is null and void if the objective conditions are not met. Null and void is a sanction or civil liability for a deed that contains a legal defect. The legal defect is the cause of nullification. A Notarial Deed can be null and void if it does not fulfill the objective elements of the agreement.

The result of a null and void agreement is that the legal act performed does not have legal force, so the legal act is not valid or recognized since the enactment or signing of the deed. In short, null and void means that the legal action in the deed is considered to have never occurred. Canceled by law is different from being canceled. The differences are as follows :

- a. Canceled by law, as a result, the legal action carried out does not have legal consequences from the time of the related legal action, in practice, canceled by law based on a court decision with permanent legal force.
- b. Cancellable, as a result of which the legal action executed does not have legal effect from the time of the cancellation and if the cancellation or validation of the legal action depends on a particular party who is the source of the cancellation of the legal action. Deeds whose sanctions can be canceled remain valid and binding until a court decision with permanent legal force to cancel the deed.

#### **4. Conclusion**

The principle of prudence in making the Deed of Land Sale and Purchase Agreement is necessary to avoid future disputes. In carrying out their duties and positions, notaries are very important in implementing the precautionary principle in making authentic deeds because some parties commit crimes, such as providing false letters and false information to false parties in the deeds made by notaries. The principle of prudence is present as a limitation for notaries always to perform their duties at the correct limit and not make mistakes that can harm the faces or parties to the agreement. In making a deed of sale and purchase, the Notary must apply the precautionary principle because if he does not apply the precautionary principle, the Notary can harm the parties related to the sale and purchase. Notary prudence can also be applied when the Notary will identify the parties to the agreement. For example, the authenticity of the identity of the parties, whether the seller wants to sell the land and the buyer wants to buy the land and where the parties know each other so that they can make a sale and purchase transaction. Because if you do not apply the precautionary principle, the Notary can be held legally responsible by parties who feel harmed by his actions.

The legal consequences of the negligent actions of the Notary, as explained in Decision Number 119/PDT/2019/PT BTN, are that Notary S can also request compensation from the party who feels harmed by his actions. Moreover, suppose it can be proven that Notary S participated and did deeds related to engineering the sale and purchase. In that case, Notary S may be subject to criminal and administrative liability for violating the UUJN and the Notary Code

of Ethics. In addition, the legal consequences of the deed made by Notary S can also be null and void.

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