

Proof of Coercion and Fraud in the Making of Notarial Deeds Case Study of South Jakarta District Court Decision Number 321/Pdt.G/2016/PN. Jkt. Cell

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Abstract

An agreement is one of the sources of engagement regulated in Chapter II of Book 3 of the Civil Code which can be stated in the form of a Notarial Deed. Authentic deeds clearly stipulate rights and obligations, providing legal certainty. In dispute resolution, authentic deeds function as the strongest written evidence. However, even with perfect evidentiary power, a Notarial Deed cannot be separated from efforts to cancel the contract. Some of the reasons for cancellation are due to defects in the agreement due to elements of coercion and/or elements of deception as stated by the Plaintiff in South Jakarta District Court Decision Number 321/Pdt.G/2016/PN. Jkt. Cell. Based on the research results, the Plaintiff is obliged to provide clear evidence. When compared with the Plaintiff's evidence, the evidence presented by the Plaintiff is not sufficient to prove the argument of coercion or fraud because the Plaintiff's Witnesses did not know that the Plaintiff and the Defendants had entered into a Sale and Purchase Agreement. In the process or attempt to cancel a notarial deed, the evidence must be clear and in such a way that the party who has the notarial deed does not need other evidence to state the truth of the notarial deed. With this formulation, the judge no longer needs to test its truth or in other words, an authentic deed has perfect evidentiary power both physically and materially.

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1. INTRODUCTION

Agreements are one of the sources of engagement regulated in Chapter II of Book 3 of the Civil Code. An agreement is an act by which one or more people bind themselves to one or more other people. Abdulkadir Muhammad [1, 225] formulated an agreement as an agreement in which two or more people bind themselves to each other to carry out something regarding assets. The form of agreement is usually in the form of a written deed or called a contract. Contracts are often considered a type of agreement, but there are fundamental differences between the two. A contract is an agreement prepared in written form, while an agreement includes all forms of agreement between two parties in which one party promises the other party to do something. Agreements do not require written form, so contracts can be viewed as agreements in a narrower sense, namely those in written form. Thus, the contract can be considered an agreement [6].

For the parties, often to secure the contents of the agreement or ensure that the agreement has perfect proof, it is written down in the form of a Notarial Deed. The duties and authority of a notary are closely related to agreements, acts and provisions which give rise to rights and obligations between the parties, namely providing guarantees or evidence of these acts, agreements and decrees so that the parties involved in them have legal certainty. Article 1 paragraph (1) in conjunction with Article 15 paragraph (1) of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN) expressly states the duties and authority of notaries, namely making authentic deeds regarding all acts, agreements and provisions, whether ordered by law or desired by interested parties.

In making an agreement, a notary is obliged to fulfill the elements of Article 1320 of the Civil Code, namely 1. the agreement of those who bind him/herself; 2. the ability to create an agreement; 3. a particular subject matter; 4. a cause that is not prohibited. Authentic deeds clearly define rights and obligations, provide legal certainty, and are expected to prevent disputes from arising. In resolving disputes, authentic deeds function as the strongest written evidence as regulated in Article 1870 of the Civil Code [2]. However, even with perfect evidentiary power, a Notarial Deed cannot be separated from efforts to cancel the contract. Some reasons for cancellation are due to defects in the agreement due to elements of coercion and/or elements of deception. Normatively, stating that there is an element of coercion in civil law which can cancel an agreement is regulated in Article 1324 of the Civil Code and the element of deception is regulated in Article 1328 of the Civil Code.

The annulment attempt was submitted to court as in the case of South Jakarta District Court Decision Number 321/Pdt.G/2016/PN. Jkt. Cell. The Plaintiff argued that Defendant I had persuaded, forced and used deception to get the Plaintiff to sign the PPJB Deed and Absolute Power of Attorney to Sell with Defendant II, Defendant III, Defendant IV with a purchase price of Rp. 9,500,000,000., (nine billion five hundred million rupiah), while the price of the land on the market is around twenty billion rupiah [11]. This article aims to analyze the evidence and consideration of the panel of judges regarding attempts to cancel a notarial deed due to allegations of coercion and/or deception by one of the parties.

2. RESEARCH METHOD

The research method used is the normative juridical legal research method, namely legal research carried out on primary legal materials consisting of statutory regulations or other literature, as well as research on legal principles and legal systematics related to answering problems in this research [3].

The problem approach used in this research is the statutory approach (*statute approach*), conceptual approach (*conceptual approach*), and case approach (*case approach*). Legislative approach (*statute approach*) is an approach that is done by reviewing all laws and regulations that are related to the legal issue that is being faced [3]. Case Approach (*Case Approach*) is an approach in normative legal research in which researchers try to build legal arguments from the perspective of concrete cases that occur in the field or based on decisions that have permanent legal force relating to the issue at hand [3]

3. RESEARCH RESULTS AND DISCUSSION

3.1. Case Chronology

The parties in the case at the South Jakarta District Court Number 321/Pdt.G/2016/PN. Jkt. Cells are described as follows:

THE PARTIES	
PLAINTIFF	ACCUSED
Achmad Zunaidi	<ul style="list-style-type: none"> - Defendant I Muhanto Hatta; - Defendant II Mohammad Hidayat Hasan; - Defendant III Nizar Sungkar; - Defendant IV Hans Narpati; - Defendant V Indrasari Kresnadjaja (Notary); - Defendant VI PT. Nadhira Parahita Pratama
PLAINTIFF INTERVENTION (TUSSENKOMST / DEFENDING	FOR ALSO SUED

THEIR OWN INTERESTS)	
- Hary Gabriel Plaintiff Intervention I	- Also, Defendant I Dino Olivan;
- Bank Negara Indonesia, Intervention Plaintiff II	- Also, Defendant II Syarifah Maya Rozana;
	- Also, Defendant III, South Jakarta Administrative City Land Office

The plaintiff is the legal owner of land measuring $\pm 1,106$ m² located on Jl. Kemang Utara RT 005 RW 001, Bangka Village, Mampang Prapatan District, South Jakarta Municipality with the following boundaries: to the north it borders the residence of Muniroh H. Ishak (M.3879), to the south it borders Jl. Kemang Utara Raya, to the East borders the residence of H. Ishak Bin Madehir (M.3883) and to the West borders the residence of Sahro (M.3881) ("Land"), based on Certificate of Ownership No. 3882("Land Certificate").

The Plaintiff needed funds, so on September 3 2014 the Plaintiff borrowed a sum of money from Bank Tabungan Negara ("Bank BTN") with the land encumbered with a mortgage. Then Defendant I came to meet the Plaintiff and promised to complete and pay off the loan at Bank BTN and the PLAINTIFF didn't need to spend any money at all, in fact DEFENDANT I promised to give Rp. 200,000,000, - (two hundred million rupiah) to the PLAINTIFF. 5. Whereas because he was persuaded by the promise of DEFENDANT I, on January 16 2015, the PLAINTIFF agreed to sign a Rental Agreement with DEFENDANT I, which basically contained: a. ACCUSED I rented the PLAINTIFF's Land Certificate for 1 (one) year. b. ACCUSED I is obliged to pay rental compensation amounting to Rp. 200,000,000, - (two hundred million rupiah) for 1 (one) year.

DEFENDANT I asked the PLAINTIFF to sign a Sale and Purchase Agreement with Deed No. 32 dated 23 January 2015 ("PPJB No. 32") as well as the Power of Attorney to Sell dated 23 January 2015 ("Deed No. 33") made by DEFENDANT V. Based on Deed No. 33 above, then on November 2 2015 between the PLAINTIFF and DEFENDANT II, DEFENDANT III, and DEFENDANT IV signed a Deed of Sale and Purchase No. 100/2015 dated 2 November 2015 ("AJB No. 100/2015") made by ACCUSED V. ACCUSED I, with all his deception, persuaded the PLAINTIFF to sign all documents which the PLAINTIFF himself did not understand and did not know what the content and function meant. document provided by DEFENDANT I to be signed by the PLAINTIFF. Based on PPJB deed no. 32 dated 23 January 2015 made by ACCUSED V. ACCUSED II, ACCUSED III and ACCUSED IV have made payments for the purchase of land belonging to the PLAINTIFF in the amount of Rp. 8,599,660,333, - (eight billion five hundred ninety-nine million six hundred sixty thousand three hundred thirty-three) to the account of ACCUSED VI.

Defendant I argued that he was only a liaison between the Plaintiff and Defendant II, Defendant III and Defendant IV, where the Plaintiff needed funds to repay his loan to PT Bank Tabungan Negara (Persero) Tbk, and what Defendant I knew was a loan of a certain amount of money to Defendant II, Defendant III and Defendant IV amounting to IDR 9,500,000,000 (nine billion five hundred million rupiah) and Defendant I also do not know why Defendant II, Defendant III and Defendant IV, provided a loan to the Plaintiff by carrying out a PPJB. Defendant I also denied that he had deceived the Plaintiff because Defendant I was only trying to help and assist the Plaintiff in getting a loan and to be able to pay off the Plaintiff's debt which was used for PT's working capital. Nadhira Parahita Pratama, where the Plaintiff is the Commissioner.

Defendant II, Defendant III and Defendant IV, also do not have good intentions, because how could land covering an area of 1106 M2 with Certificate of Ownership No.3882, located on Jalan Kemang Utara Raya No.5 E Rt.005/Rw.001, Kelurahan Bangka, Mampang Prapatan District, South Jakarta is only valued at Rp. 9,500,000,000, - (Nine billion five hundred million rupiah) while the market price of the house in question that Defendant II, Defendant III and Defendant IV know is around Rp. 25,0000,000,000, - (twenty-five billion rupiah) this proves that Defendants II, III and IV, committed fraud under the pretext of lending funds and immediately carried out PPJB on the loan funds, because they knew the value of the land was more than the value of the Plaintiff's loan so it was very reasonable if the PPJB was declared invalid and null and void by law.

3.2. Discussion

An agreement occurs because it is based on the principle of freedom of contract between two parties who have a balanced position. In relation to the principle of freedom of contract in an agreement, where the parties freely determine the content of the agreement in accordance with the principle of freedom of contract as set out in book III which adheres to an open system (*open system*), Article 1338 paragraph (1) states that "All agreements made legally apply as law for those who make them". Where this principle means that by making an agreement or in other words the parties have agreed, the agreement is valid and binding for the parties who made it. Based on the Civil Code (KUHPerdata) Article 1338 paragraph 1. Based on the explanation outlined above, it has been made very clear that every agreement cannot be canceled unilaterally, meaning that the agreement is not binding between the people who made it. Article 1265 of the Civil Code (Civil Code) states that if a condition cannot be fulfilled, then that condition terminates the agreement and brings everything back to its original state, as if there had never been an agreement [5]

In relation to the land sale and purchase agreement, the transfer of ownership rights through the sale and purchase of immovable property is called levering. For levering to be valid in the causal system, there are two requirements that must be met, namely: 1. The validity of the title (legal basis) on which the levering is carried out. Levering is carried out by people who have the right to act freely (*power of decision*) of the goods he handed over. The title of the obligatory agreement which is the basis for the levering, in this case is the sale and purchase of land. Meanwhile, the person who acts freely is the owner of the item himself or the person authorized by him.

Cancellation of an agreement is recognized by the Civil Code (Civil Code) and cancellation of the agreement must meet the specified cancellation requirements. Cancellation of an agreement results in the agreement being deemed to have never existed, of course giving rise to new legal consequences for the parties to the agreement. Several reasons for cancellation include those regulated in Article 1321 of the Civil Code, namely "There is no valid agreement if the agreement was given by mistake, or was obtained by force or fraud." Fraud is carried out intentionally to influence another party to the wrong goal or to have a false image. Deception is not just lying, but using all the efforts of reason, deception with words or silence which creates a mistake in one's will [10], while coercion is not coercion in the absolute sense, because in such a case the agreement does not occur at all (void) by law), a person whose will is not free under threat, the agreement can be canceled. People who are under physical torture or whose hands are held by someone stronger are forced to sign a letter [10].

Canceling an agreement must be done by filing a lawsuit with the court and not filing a petition, so that the court will issue a constitutive decision to cancel the agreement and not issue a court order [7]. In relation to buying and selling, if the title is invalid (canceled) or is later canceled by a judge (for example due to coercion, mistake or fraud), then the leveraging is also canceled. Thus, the transfer of ownership rights is also deemed to have never occurred. Likewise, if the person who transfers the property rights turns out to not have the right to do so, because he is not the owner, nor is he a person specifically authorized by him [4, 12-13]. According to Subekti, cancellation of an agreement can be done in two ways, namely first, the interested party actively asks the judge to cancel the agreement. Second, wait until he is sued in front of a judge to fulfill the agreement. In front of the court, he as the defendant stated that he had agreed to the agreement when he was still incompetent, or he agreed because he was threatened, or because he was mistaken about the object of the agreement or because he was deceived [9].

In the case at the South Jakarta District Court Number 321/Pdt.G/2016/PN. Jkt. Sel, the Plaintiff filed for cancellation of the agreement due to coercion and fraud by arguing 3 (three) main points with the following evidence:

1. The Plaintiff argued that the PPJB made between the Plaintiff and Defendants II, III and IV was the result of deception and coercion because the Plaintiff was in debt at Bank BTN and needed money;
2. That this deception was carried out by Defendant I with the promise that he could complete and pay off the loan at Bank BTN and the PLAINTIFF did not need to spend any money at all, in fact DEFENDANT I promised to give Rp. 200,000,000, - (two hundred million rupiah) to the PLAINTIFF.
3. Another trick was that the Plaintiff did not know that the signed deed was a deed that resulted in the transfer of land rights.

The evidence provided by the Plaintiff to support his statement is:

1. Witness Marsono Bin Sardi;
2. Witness Nurdin;

Based on the analysis of the decision, the author's view of the Plaintiff's arguments and evidence is as follows:

- Basically, an authentic deed contains formal truth based on information submitted by the parties to the Notary. The notary has the responsibility to ensure that the contents of the deed are truly understood and in accordance with the wishes of the parties, by reading the deed so that the contents are clear, as well as providing access to information, including relevant laws and regulations, for the parties signing the deed. In this way, the parties can make decisions freely and agree on the contents of the notarial deed that they will sign. Furthermore, in the process or attempt to cancel a notarial deed, the evidence must be clear and in such a way that because of its nature as perfect evidence, the party who has the notarial deed does not need other evidence to state the truth of the notarial deed. With this formulation, the judge no longer needs to test its truth or in other words, an authentic deed has perfect evidentiary power both externally and materially [8].
- That the clear evidence, when compared with the Plaintiff's evidence, is in line with the opinion of the Panel of Judges that the evidence presented by the Plaintiff is not sufficient to prove the argument of coercion or fraud because the Plaintiff's Witnesses did not know that the Plaintiff and Defendants II, III, and IV had entered into an Agreement. Purchase and Sale Agreement.

- The Plaintiff's Witnesses were not present when the Plaintiff signed the Sale and Purchase Agreement (PPJB). Furthermore, the Witnesses only learned about the existence of the PPJB from the Plaintiff (*evidence of hearing*). The Witnesses never read or saw the contents of the PPJB.
- Before the parties signed the PPJB, the Notary (Defendant V) had read and explained the contents of the PPJB, meaning that the Notary had carried out his obligations as required in Article 16 paragraph (1) letter M of the Notary Position Law.

Article 16 paragraph (1) letter M UUJN states, "In carrying out his office, a Notary is obliged to read the Deed in front of the audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a Deed of Will privately. , and signed at that time by the presenter, witness, and Notary

The explanation of the Notary Department Law also states:

An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. However, the Notary has the obligation to ensure that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed become clear, as well as providing access to information, including access to statutory regulations. related to the parties signing the deed. Thus, the parties can decide freely to agree or disagree with the contents of the Notarial Deed they will sign.

- That the PPJB was signed directly by the Plaintiff, after being read and explained by a Notary. This means that by signing the PPJB, even though the contents and intentions of the PPJB have been read, the Plaintiff agrees to it. This agreement was followed up by the Plaintiff by giving a Transfer Order to Defendant II, Defendant III and Defendant IV as part of the Plaintiff's awareness of receiving the money to purchase the land.

4. CONCLUSION

Based on the results and discussion, it can be concluded as follows:

Basically, an authentic deed contains formal truth based on information submitted by the parties to the Notary. The notary has the responsibility to ensure that the contents of the deed are truly understood and in accordance with the wishes of the parties, by reading the deed. In resolving disputes, authentic deeds function as the strongest written evidence as regulated in Article 1870 of the Civil Code. However, parties who feel that the notarial deed was forced or deceived by the parties to the agreement can still request cancellation of the agreement.

Proof that the deed was made under deception and coercion must be clear and consistent, because the party who has the notarial deed does not need other evidence to state the truth of the notarial deed. With this formulation, the judge no longer needs to test its truth or in other words, an authentic deed has perfect evidentiary power both externally and materially.

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