



**The Notary's Responsibility Against the Legalization of the Statement of Cancellation of  
the Sale and Purchase Agreement Unilaterally  
(Civil Case Case Study Number: 87 / Pdt.G / 2019 / Pn-Pdg)**

Wike Rialita Sari; Dahlil Marjon; Beatrix Benni

Faculty Of Law, Andalas University, Padang, Indonesia

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**Abstract**

The authority of the notary to legalize the statement letter of the cancellation of the sale and purchase agreement unilaterally including the deed under hand, is regulated in Article 15 paragraph (2) letter a Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. Based on this article, the notary has the authority to legalize or ratify signatures and determine the date of the letter under hand by registering in a special book. This authority raises a legal issue whether the notary is actually responsible for the underhanded deed material which he has legalized. For this reason, this study aims to provide an explanation of 1. What is the authority of the notary in legalizing underhand letters? 2. What is the responsibility of the notary for the statement of cancellation unilaterally the sale and purchase agreement under his legalized hand. In this paper, empirical juridical research is used, namely an approach that is based on legal rules in examining existing problems associated with their implementation in society. The responsibility for this authority is the formal correctness of the deed under hand which is legalized by checking the certainty of signatures and dates of the parties, besides that the notary must also pay attention to the material correctness of whether the underhand letter which is legalized does not conflict with statutory regulations, decency and order. general. 2 The notary's responsibility for the legalization of a statement of unilateral cancellation of the underhand sale and purchase agreement is the moral responsibility before the letter is legalized. By providing legal advice and explanations of the law to the parties concerned that the cancellation of the unilateral agreement legalized by the notary does not invalidate the agreement. Cancellation of the agreement can be done if there is an agreement between the two parties in the agreement to terminate the agreement. The cancellation can be carried out unilaterally by one of the parties if there is a deviation in the implementation of the contents of the agreement or an illegal act (*onrechtmatige daad*) or according to the provisions of law and not a notary who can cancel the agreement letter without the parties agreeing.

**Keywords:** *Responsibility, Under Hand Letters, Legalization*

**Introduction**

Talking about the notary profession, first seen from the legal provisions governing the notary institution itself. Provisions regarding notaries have been specifically regulated in the form of legislation, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. In Article 1 Paragraph (1) of the Law on the Position of Notary, Notary is a public official who is authorized to make authentic deeds and has other powers as

referred to in this Law or based on other Laws. The Law on Notary Position was formed because of Reglement op Het Notary Ambt in Indonesie which regulates the position of notary public or better known as the Regulation of Notary Position, as lastly amended in the State Gazette Year 1945 Number 101.<sup>1</sup> With the promulgation of the Law on the Position of Notary Public, the Notary Position Regulation and its implementing regulations as referred to in Article 91 of the Law on Notary Position are declared invalid and no longer in accordance with legal developments and the needs of society.<sup>2</sup>

In Article 15 of the Law on the Position of Notary, it states that the authority of a notary is to make authentic deeds regarding all actions, agreements and decisions required by laws and / or that which the parties want, which is stated in an authentic deed. In addition, notaries also have other powers in the legality of an agreement. Legalization of an agreement by a notary is a binding effort so that the agreement has definite legal force, because by legalizing an agreement by a notary, it will make the agreement an authentic deed for the parties concerned,<sup>3</sup>

Regarding the notary's authority to legalize a letter under the hand is regulated in Article 15 paragraph (2) letter a of the Law on Notary Position, namely the notary is authorized to ratify signatures and determine the certainty of the date of the letter under hand by registering in a special book, recording the letters below. hands by registering in a special book. From the information in the article above, it can be explained that legalization is an underhanded legalization of the deed made by the parties, read by the notary and signed by the face of the notary at that time to guarantee the certainty of the date of the deed concerned, and the signing is done before notary as the public official authorized for that<sup>4</sup>.

In practice, there are still parties appearing to a notary public to ask for the legalization of a sales and purchase agreement made under hand before the transfer of rights in the form of a Sale and Purchase Deed, many factors cause them to use the sale and purchase under their hands before they bind it in the form of a Deed. Sale and Purchase made by a Notary or Land Deed Making Official. However, even though in formulating the articles and determining the contents of the sale and purchase agreement legalized by the notary are the parties, the notary must be in a neutral position in his legal actions against the parties, in fact, the notary is often made the "defendant" or "co-defendant". in court, where the position of the role has absolutely no substance to make policies or decisions, but only to accommodate the wishes of both of them. With such a neutral position, the notary is expected to provide legal education and is deemed to understand the contents and intentions contained in the agreement.

Legalization of underhand deeds is sometimes used for certain personal interests, which are sometimes not the same as the time they were made. For example, under-hand deeds made at this time are dated in the month and year ago, because there is no obligation to report under-hand deeds, who can guarantee that the underhand deeds are properly made on time.

Therefore the responsibility of the notary regarding the deed under the legalized hand is the responsibility of the formal correctness of the deed. The notary is only responsible for the authenticity of the signatures of the parties by matching the signatures of the parties according to the identities they show and determining the certainty of the date of the deed under signature only. By acknowledging the authenticity of the signature on the deed under hand, the power of formal proof of the deed under hand is the same as the power of formal proof of an authentic deed. However, if the

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<sup>1</sup> *Law of the Republic of Indonesia Number 33 of 1954 concerning Notary Representatives and Temporary Notary Representatives* Jakarta, Indonesia: State Gazette Year 1954 Number 101, Supplement to State Gazette Number 700, 1954)

<sup>2</sup> Habib Adjie, Indonesian Notary Law: Thematic Interpretation of Law Number 30 of 2004 concerning the Position of Notary Public, PT Refika Aditama, Bandung, 2009, p. 14

<sup>3</sup> Soebekti, Interpretation of the Civil Code, Citra Aditya Bhakti. Bandung, 1990 p. 98

<sup>4</sup> Sjaifurrachman and Habib Adjie, Notary Responsibility Aspects in Making Deeds, Mandar Maju, Bandung, 2011, p. 90

underhand deed legalized by the notary contains untruth that is neither known nor known to the notary in order to get a bigger profit, it will cause legal problems in the future.<sup>5</sup>

In terms of material or the correctness of the contents of the letter under the hands legalized by a notary, it also often creates legal problems in the future, due to the lack of public knowledge of legalization by the notary as well as the notary's socialization of what the notary's responsibility and authority are regarding the deeds he makes to the parties who come to the notary.

Often notaries are sued for the material or correctness of the contents of the deeds that are legalized, which raises legal issues. The legal issue is that in the Notary Position Law, notaries are not obliged to check the truth of the deed under the hands of which legalization is requested, but in practice notaries are often made defendants regarding the material of the deed which is legalized, where the notary is only obliged to read the contents of the deed to the parties and only ask questions. is it true that the contents of such a deed are desired by the parties.<sup>6</sup>

As one of the cases that will become a research study in writing this thesis, namely the lawsuit Number: 87 / Pdt.G / 2019 / PN-Pdg in the Padang District Court. In a case filed with the initials MZ (Plaintiff) as Buyer II. MSL (Defendant I) as Seller, OTR (Defendant II) as Buyer I and EY, SH, M.kn as Notary and PPAT (Defendant III).

Described in the case, there was a legal action, namely the Sale and Purchase Agreement where the Plaintiff asked to continue the Sale and Purchase Agreement legalized by Defendant III and cancel the Unilateral Sale and Purchase Agreement Cancellation Statement Letter legalized by Defendant III dated November 21 2018 Number Leg.200 / EY / 2018 . During the trial, it was found that the Plaintiff together with Defendant II were Housing Developers known as Lubuk Ameh Housing, entered into a Sale and Purchase Agreement with Defendant I on a plot of land with Ownership Certificate Number 35 / Kelurahan Beringin, with an area of  $\pm$  5,260 m2 (approximately five thousand two hundred sixty square meters) of land which is located at Koto Tengah as illustrated by the Situation Picture March 19, 1986, No.861 / 1986, on behalf of the initials MSL and their clans, namely M, S,

In carrying out the contents of the agreed sale and purchase agreement, the Plaintiffs actively cleared the land because the Deed of Sale and Purchase of land would be signed and reversed on behalf of the Plaintiff and Defendant II later. The plaintiff has spent a lot of funds for working on the land, including financing the management of inheritance, transfer of name, fees for acquisition of land and building rights (BPHB) and income tax (Pph) of people's land. In addition, the Plaintiffs carried out landfilling and land clearing (Land Clearing), giving fees to youth for laying the foundations, depositing additional investment money to Defendant II, and loan money to members of Defendant I.

After four months of the agreement, Defendant I (Seller) came to Defendant III as a notary public to cancel the Sale and Purchase Agreement and legalize the Unilateral Sale and Purchase Agreement Cancellation Statement Letter Number: Leg.200 / EY / VII / 2018, which is the agreement letter. The sale and purchase was Defendant III who legalized it. Because the Sale and Purchase Agreement was canceled at the will of Defendant I and Defendant II, the Property Rights Certificate that was entrusted to Defendant III was returned to Defendant I who was the owner and his clan.

On this basis, the Plaintiff in his lawsuit was an act against the law (*onrechtmatige daad*). The unlawful act was the statement of the unilateral cancellation of the Sale and Purchase Agreement by Defendant II and Defendant I which was legalized by Defendant III, which harmed the Plaintiff as a Party both materially and non-materially.

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<sup>5</sup>*Ibid*, p. 90, p. 97

<sup>6</sup><https://media.neliti.com/media/publications/213250-tanggung-notaris-terhadap-kebenyahan.pdf>, accessed on November 4, 2019, at 20.00 WIB

Here the author examines more deeply what are the reasons for the agreement between the plaintiff and the defendant which has been legalized by the notary being canceled and why the notary was made a defendant as well. The answers to all of that will be the author's answer in Chapter III after doing research.

Based on the brief description above, this research will discuss how the notary's responsibility is related to his authority to legalize the underhand sale and purchase agreement cancellation letter in this case. Due to several problems that arise regarding the canceled agreement statement, it can be caused by the parties as well as the negligence and error of the Notary. A brief description of the above problems is interesting to do research.

## ***Result and Discussion***

According to Prof. Subekti, the definition of an engagement is a legal relationship between two people or two parties, based on which one party wishes to demand something from the other party, and the other party is obliged to fulfill that demand.<sup>7</sup> Meanwhile, according to Article 1313 of the Criminal Code, "An agreement is an event in which a person promises to someone else or where the two people promise each other to carry out something".<sup>8</sup> Therefore, an agreement that arises either from the agreement will give birth to rights and responsibilities that can be demanded and must be fulfilled by each party. An agreement that is born from the agreement, the parties agree to bind themselves in an agreement.

Based on the provisions of Article 1338 of the Criminal Code states that: "All agreements made legally are valid as laws for those who make them. An agreement cannot be withdrawn other than by the agreement of both parties, or for reasons which are stated by law to be sufficient for that. An agreement must be executed in good faith, as for what is meant by an agreement that must be carried out in good faith is that the agreement must be carried out according to propriety and fairness.

In making an agreement, the conditions must be met so that the agreement is valid and can be held accountable before the law. In the Civil Code, Articles 1320 to 1337 explain the legal terms of an agreement. regarding the validity of an agreement, namely the agreement of those who bind themselves, the ability to make an agreement, a certain matter, a lawful cause. The first and second conditions are called subjective conditions, in which if these conditions are not met, then the agreement made can be requested for cancellation by his party, while the third and fourth conditions are stated as objective conditions, in which if the two conditions cannot be fulfilled then the agreement will be null and void by law. . This results in the agreement being considered never to exist.

As a result of a valid agreement law, namely fulfilling the requirements in Article 1320 of the Civil Code, which is valid as law for the parties making it, it cannot be withdrawn without the consent of both parties or for sufficient reasons according to the law, and must be carried out in good faith. If you want to withdraw or cancel the agreement, it must obtain the approval of the other party, so it must be agreed again. However, if there are sufficient reasons according to the law, the agreement can be withdrawn or can be canceled unilaterally.

It is different in an agreement where if one of the parties feels that the other party has not exercised its rights and obligations in accordance with the previously agreed agreement, then the party can claim the fulfillment of their rights by filing a suit for default or suit against the law in court. Therefore, the implementation of the agreement must be in good faith, namely paying attention to the interests of the parties by observing the norms of compliance and morality.

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<sup>7</sup>Indonesia, the Civil Code (Burgelijk Wetboek), translation, Prof. R. Subekti SH and R. Tjitrosudibo, Cet. 38., Edition, PT pradnya paamita, Jakarta 2007, Article 1313

<sup>8</sup>Subekti, Agreement Law, PT Intermasa, Jakarta :, 2002, Cet. 19, p. 1

In the context of Indonesian Agreement Law according to the Civil Code, there are several reasons for canceling the agreement. The reasons can be grouped into the following five categories:

1. The non-fulfillment of the requirements stipulated by law for this type of formal agreement, which results in the agreement being null and void.
2. The validity of the agreement is not fulfilled, which results in:
  - a) Agreement is null and void
  - b) Agreement can be canceled
3. Fulfillment of the conditions for cancellation of the type of conditional agreement.
4. Cancellation by a third party based on mutual agreement
5. Cancellation by a party that is given special authority based on law.

Cancellation of an agreement on an agreement can be interpreted as the unwillingness of one of the parties to fulfill the achievements agreed by both parties in the agreement. At which time the other party still intends to fulfill the promised achievements and wants to continue to receive counter-performance from the other party.

From Article 1338 paragraph (2) of the Civil Code, it is clear that the agreement cannot be canceled unilaterally. Because if the agreement can be canceled unilaterally, it means that the agreement is not binding between the people who made it. If seen from Articles 1266 and 1267 of the Civil Code, it is clear that the conditions for cancellation are stipulated if one of the parties does not fulfill their obligations. The request must be submitted to the Court, this is intended so that in the future neither party can cancel the agreement unilaterally on the grounds that one of the other parties does not fulfill its obligations (default).

According to Article 1266 of the Civil Code, there are three things that must be considered as a condition for the cancellation to be carried out. The three conditions are a reciprocal agreement, there must be default, there must be a judge's decision. The reciprocal agreement is where both parties fulfill their respective obligations, namely achievements. If one of the parties breaks the promise or defaults regarding the principal terms of the agreement, then a lawsuit requesting cancellation of the agreement can be submitted to the judge. However, if the cancellation does not meet these requirements, it can be said that the act of cancellation violates the law, namely article 1266 of the Civil Code.

In addition, if seen from the reasons for the cancellation of the agreement. If the cancellation of the agreement contains arbitrariness, or uses its dominant position to take advantage of a weak position (detrimental situation) on the opposing party, then this is considered an illegal act because it harms the opposing party outside of the implementation of the obligations regulated in the agreement, so it is not a default, but more towards violating his legal obligation to always have good faith in the agreement.

According to the concept put forward by Hans Kelsen regarding legal obligation, it is the concept of legal responsibility (liability). This concept states that a person is said to be legally responsible for a particular act is that he can be subject to a sanction in the case of the opposite act.

The responsibility of a notary is in accordance with the notary's own definition contained in Article 1 number 1 of the Law on Notary Position as a public official who is authorized to make authentic deeds and has other authority as referred to in this law or based on other laws. Responsibility is a condition of being obliged to bear everything, responsibility is also human awareness of his or her behavior or actions, whether intentionally or unintentionally.

According to Habib Adjie, responsibility also means taking action as a manifestation of awareness or realization of all the effects that result from what he has done. Notary as a public official, where the final product is an authentic deed, which is bound by the provisions of civil law,

especially in the law of evidence. Deeds do not meet the requirements as State Administration decisions that are concrete, individual and final and do not result in civil law consequences for a person or civil legal entity because deeds are a formulation of the wishes or will of the parties as stated in a notary deed made before or by a notary and not. will of the notary.<sup>9</sup>

Based on the case researched by the author in the civil case No.87 / PDT.G / 2019 / PN-PDG which was explained earlier, where at point 12 in the case, Defendant III has made a Statement of Cancellation of the Sale and Purchase Agreement unilaterally, that the Letter The statement of cancellation of the unilateral Sale and Purchase Agreement legalized by Defendant III was also confirmed by Defendant III.<sup>10</sup> Starting from the role of Defendant III as a notary legalizing the Sale and Purchase Agreement Number: Leg: 146 / EY / VII / 2018 on June 26, 2018 which was held by Defendants I and II together with the Plaintiffs.

Based on an interview with Defendant III, regarding what was the basis for Defendant III to legalize the letter, he said that this wish was only the wish of Defendant I, in which he wanted the cancellation of the Sale and Purchase agreement unilaterally. Defendant III based on the results of the interview did not know the reasons for the cancellation of the agreement unilaterally when asked to legalize the Statement of Cancellation of the Sale and Purchase Agreement unilaterally, then it was discovered that Defendant I's reason for canceling the underhand sale and purchase agreement was during the trial process. According to Defendant III, it was found that Defendant I had personal debts to other parties that were not included in the said sale and purchase agreement. From these circumstances, according to Defendant III,

Based on the Plaintiff's claim in Civil case No.87 / PDT.G / 2019 / PN-PDG, the Plaintiff is the Party (one of the buyers) of the agreement was not informed beforehand. On this basis the plaintiff filed a lawsuit to the Court because of an illegal act (*onrechmatige daad*) felt that Defendant I had harmed him.

Furthermore, Defendant III, in terms of legalizing the statement of the cancellation of the sale and purchase unilaterally, Defendant III is of the opinion that it is legal to do so, but only legalizes the Statement of Cancellation of the Sale and Purchase Agreement, not the party that can cancel the Agreement. In other words, he was of the opinion that he only validated the signature of Defendant I, namely the Seller, or the party to the agreement as stated in the statement, that it was true that the signature was the signature of Defendant I.

In line with the above statement, in the process of legalizing the cancellation statement, Defendant III after being asked by Defendant I was willing to legalize the letter, but he said that before the legalization process was carried out, Defendant gave suggestions to Defendant I to notify another party (the Plaintiff ) in the agreement so that Defendant I. In this case Defendant III only suggested that Defendant I's wishes be deliberated first, but Defendant I still wanted to make a Statement Letter of Cancellation of the Sale and Purchase Agreement which was unilaterally legalized by a notary public.<sup>11</sup>

If the agreement is null and void, it means that from the beginning there has never been an agreement, and thus there has never been an engagement. Meanwhile, the meaning of an agreement that can be canceled is meant if the agreement does not fulfill the subjective element of the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely agreement on the parties and the ability of the parties to take legal actions.

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<sup>9</sup>Habib Adjie. Op. Cit. p. 163-164

<sup>10</sup> Interview with Notary EY on February 20, 2020 at 13.30 WIB

<sup>11</sup> Results of Interview, EY, Notary in Padang City, on February 20, 2020 at 13.30 WIB

In the event that the deed under the recognized hand is to be canceled, namely by agreement of both parties, because an agreement was born because of the agreement of both parties. Another way to cancel an agreement that one party wants to cancel is possible, namely requesting a cancellation through the court. Cancellation by a judge can cancel the deed if there is evidence of the opponent which strengthens the cancellation. A judge's decision is needed in the cancellation process, because as long as the cancellation is not requested then the deed is valid or valid. In the event that it is canceled by law, if there is no dispute there is no need to cancel it it is decided by the judge but if a dispute over cancellation occurs it needs to be decided by the judge and when the cancellation is retroactive since the agreement was made.

According to the Notary, Muhammad Ishaq as the Chairperson of the Indonesian Notary Association of West Sumatra also said that the under-hand letter legalized by the notary wanted to be canceled, with the agreement of both parties to cancel the agreement, it could be orally or in front of a notary. In addition to the agreement which is requested for cancellation by only one party, the judge can cancel the deed if there is evidence of the opposing force that strengthens the cancellation. A deed can also become null and void if an objective condition of an agreement is not fulfilled, and a deed can be canceled if the subjective conditions in an agreement are not fulfilled.<sup>12</sup>

A deed can also become null and void if an objective condition of an agreement is not fulfilled, and a deed can be canceled if the subjective conditions of an agreement are not fulfilled. In addition, it can also cancel the deed under hand regarding the authority of a notary on Article 15 paragraph (2) of the Law on the Position of Notary Public, if the terms and procedures regulated in accordance with the Law on Legalization and Waarmerking are not fulfilled.

The cancellation of a legal act does not mean that the legal action is valid, it is valid if a cancellation claim is not filed within a certain time. In the event that a party who is underage and incompetent is deemed unable to carry out his interests properly, then that party is authorized by law to avoid the consequences, as long as the party concerned is incapable, by submitting a cancellation request to Judge.

The purpose of this cancellation is that the opposing party cannot submit a request for cancellation to the judge. Based on this, it can be seen that cancellation is an individual's protection against himself, while cancellation is a person's protection against other people. In the case of cancellation, a judge's decision is needed, because as long as the cancellation of the agreement or deed is not requested, it is valid or valid. In the event that it is null and void, if there is no dispute, there is no need for the cancellation to be decided by a judge, but if a dispute occurs then it is necessary for the cancellation to be decided by the judge and when the cancellation applies retroactively from the time the agreement was made.

If the parties feel that the notary deed has not achieved the desired goal or must be changed according to the circumstances, then the parties together and agree to come before the notary to cancel the contents of the deed concerned. Cancellation of a notary deed can only be done upon agreement. If a notary deed is disputed by the parties, then what the parties can do:

- a) The parties come back to the notary to make a deed of cancellation of the deed, then by making the deed the canceled deed is no longer binding on the parties, and the parties bear all the consequences of the cancellation.
- b) If the parties do not agree to cancel the deed, then one party can sue the other party with a lawsuit to degrade or reduce the power of the notary deed to an underhand deed. After the deed is degraded, the judge examining the lawsuit can provide a separate interpretation of the notarial deed that has been degraded, whether it remains binding on the parties or is it canceled. This depends on the proof and judgment of the judge.

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<sup>12</sup>Interview Results, Muhammad Ishaq, Chairman of the West Sumatra Notary Association (INI), Academics and Notaries / PPAT in Padang City, on March 7, 2020, at 10.30 WIB

- c) If one of the parties feels that the notary deed has suffered a loss, the party concerned can file a lawsuit in the form of a claim for compensation to the notary concerned, with the obligations of the plaintiff, where in the lawsuit it must be proven that the loss is a direct result of the notary deed.

In this case, the plaintiff must be able to prove what was violated by notary of the deed concerned. If for example the parties do not agree with the deed in question to be canceled or they have a dispute, one of the parties can file a lawsuit against the other party to the public court to cancel the contents of the deed so that it is no longer binding, which the parties can cancel, either by agreement or through a court decision. is the content of the deed, because the content of the deed is the will of the parties. The formal aspect of a notary deed is the responsibility of the notary, which can also be canceled by the parties if it can be proven through a court decision

Cancellation in this way is in line with the decision of the Supreme Court of the Republic of Indonesia number 1420 L / Sip / 1978, dated May 1, 1979, that court cannot cancel a notarial deed concerned has no legal force, meaning only the parties can cancel it.

In this connection, the authority of the notary in legalizing the statement letter for the cancellation of the Sale and Purchase Agreement unilaterally is not the authority of the notary to issue or ratify the cancellation statement. If the agreement is to be terminated unilaterally, the request for cancellation must go through a judge. According to Article 1320 of the Civil Code, point 3 states that "the agreement must be carried out in good faith", so the cancellation must also be terminated in good faith. In this case the Defendant I wanted to terminate the Agreement not because the Plaintiff did not fulfill its obligations.

As a legal event, including a sale and purchase agreement, it cannot be separated from the occurrence of problems by one or both parties. The form of the problem is default. The result of these problems is the incidence of losses for the injured party. The loss must be compensated by the parties who are charged by law to compensate the loss.

In case it is null and void, if there is no dispute there is no need nullification it is decided by the judge, but if a dispute occurs then it is necessary that the cancellation is decided by the judge and when the cancellation is retroactive since the agreement was made. In the event that a deed under a recognized hand is requested for cancellation, then the judge can cancel the deed if there is evidence of the opponent, a deed can also be null and void if an objective condition of an agreement is not fulfilled and a deed can be canceled without fulfilling the subjective conditions of an agreement. , apart from that, the cancellation of the deed under hand regarding the authority of a notary in article 15 paragraph (2) of the Law on Notary Office, if the terms and procedures regulated in accordance with the provisions of the Law on Notary Position on Legalization, Waarmerking, Coppie Collatione and Validation of compatibility of the photocopy with the original letter. The method when an agreement is terminated is an agreement between the two parties or a judge who cancels the agreement, and not a notary who cancels an agreement without the consent of both parties. Presumably Defendant III as a notary should also suspect that the result of the agreement being canceled, could benefit the parties or disadvantage one of the parties..

With this peace, the letters relating to the sale and purchase agreement in this case are no longer valid, namely the Sale and Purchase Agreement Letter Number Leg / 1a46 / EY / VII / 2018 dated July 26, 2018, as well as the cancellation statement. The sale and purchase agreement unilaterally does not apply either.

Defendant III's responsibility in this peace agreement is only in Article 8 of this peace agreement, that it only accepts the entire contents of this peace agreement letter. Matters related to the Property Rights Certificate which is used as a guarantee in this peace agreement, because with this



peace the parties promise to bind themselves not to file a civil or criminal lawsuit or counterclaim against the Certificate of Property No.35 / Ket. Beringin, Koto The object of sale and purchase in the Sale and Purchase Agreement of the parties Number Leg / 1a46 / EY / VII / 2018 dated 26 July 2018 legalized by Defendant III.

Continuing the interview with Defendant III, the writer found that there were no illegal acts committed by the Plaintiff so that Defendant I was canceled as a seller. Defendant I's wish to cancel the agreement was due to other reasons not related to the performance in the agreement. This should be known as the reason for not legalizing the Statement Letter for the Cancellation of the Sale and Purchase Agreement by Defendant III. In other words, Defendant III should refuse not to legalize the letter and suggested canceling the agreement through a judge's decision in court.

According to Defendant III's further explanation, Defendant I plans to borrow a Certificate of Ownership on the land which is the object of the agreement, in which the Ownership Certificate of this land will be reversed in the name of the Plaintiff and Defendant II as the Buyer in the Agreement Letter. Because of the wish of Defendant I, what was entrusted to Defendant III wanted to be temporarily borrowed from Defendant I who was the owner and his people. However, in practice Defendant III was not willing to lend the title of ownership to the land. Defendant III suggested only to issue a power of attorney. From here, Defendant III as a notary who is considered to be aware of the law refused to legalize the Statement of Cancellation of the Sale and Purchase Agreement unilaterally because there will be new legal consequences that change the legal consequences of the sale and purchase agreement. For example, if the agreement is canceled it will result in the Plaintiff losing the rights agreed in the sale and purchase agreement.

In article 16 paragraph (1) letter e it states that there are several things according to the provisions of the law, a notary can refuse his authority not to make authentic deeds or deeds under the hands desired by the parties who appear to the notary if they are not suitable or violate with statutory provisions. If linked to this article, the notary has the obligation to refuse on the grounds that the legalization of this Statement of Cancellation of the Sale and Purchase Agreement should have been known to have resulted in legal consequences that will be born later that are not according to the wishes of the parties.

The moral responsibility of the notary in this case should be to ensure that the cancellation of the agreement desired by Defendant I is known and approved by all parties. This moral responsibility can be linked to the authority of a notary in Article 15 paragraph (2) letter e of the Notary Position Law, which is to provide legal counseling in connection with making deeds. Legal counseling is given regarding the legal consequences that will arise after the agreement is canceled, the correct process according to law to cancel the agreement. This means that the notary is responsible for explaining how it should be if an agreement is canceled. What rights and achievements arise to the parties after the cancellation of the agreement.

The legal counseling referred to was regarding the material of the deed provided by Defendant III or a notary in this case so that the parties could choose how to cancel the agreement by considering Article 1320 of the Civil Code, namely the legal terms of the agreement. That the Agreement can be carried out at the will of the parties. Likewise, the cancellation of the agreement, the parties must agree too.

For this reason, the authors assess the negligence of the Defendant III as a notary on his authority to legalize the Undertaking Statement of Sale and Purchase Agreement. The notais should have asked the party wishing to cancel the agreement unilaterally, what was the basis for the cancellation, whether there was an illegal act by one of the parties or one of the parties not fulfilling its obligations (default) so that the other party wanted to terminate the agreement.

Regarding the aforementioned matters, the author observes the actions that should have been taken by Defendant III in legalizing the Statement Letter of the cancellation of the Sale and Purchase Agreement unilaterally stated by one of the parties should not immediately legalize the Letter. There is counseling and legal remedies against the parties first, by presenting all parties to the agreement, due to the agreement that was born with the agreement of both parties. Defendant III as a notary should have found out what caused the cancellation of the agreement, whether the other party or the Plaintiff had committed a legal act or not.

This is where the authors consider that there is a notary's moral responsibility for the legalization of the Statement of the Cancellation of the Sale and Purchase Agreement unilaterally in this case. It is the same as explained by the Notary Indradjaja that the notary should refuse to legalize the Statement of Cancellation of the Sale and Purchase Agreement unilaterally in this case.<sup>13</sup> The notary should explain to the parties that to cancel an agreement is the agreement of the parties or through a judge's decision if one of the parties does not agree. According to him, in this case, the notary should refuse to legalize the cancellation of the sale and purchase agreement unilaterally only desired by one party. This obligation is also stated in Article 16 paragraph (1) letter e regarding the obligations of a notary, namely to provide services in accordance with the provisions of this Law, unless there is a reason for refusing it.

The notary should also be morally responsible in the legal relationship of the parties, where the notary as a public official who maintains the wishes of the parties who are considered to know the law and also provides legal education before making the deed that the parties want. In the case of cancellation, a judge's decision is indeed necessary, because as long as the cancellation of the agreement or deed is not requested, it remains valid for the parties who made it.

Given that the notary basically only records what the parties say and is not obliged to investigate the material truth of its contents, it is not true that the judge cancels it. Notary errors can occur regarding the contents of the deed that they make because the parties as the parties provide false information (intentionally or not). However, because the contents of the deed have previously been confirmed to the applicant by reading them before signing them, the notary cannot be held accountable for either criminal or civil.

Based on an interview with Judge Gustiarso (Padang District Court Judge Class 1A) said that in a civil case in court, what the Plaintiff means is someone who "feels" that his rights have been violated by someone else. The other person, namely the defendant's name, is a person who is "deemed" to have violated the rights of others, he quoted this statement from Retno Wulan Sutantio's explanation in her book "Civil Procedure Law in Theory and Practice". The meaning of Retno Wulan Sutantio's statement is that everyone can be presented as a defendant, but it is not certain that the defendant violates the rights of the plaintiff.<sup>14</sup>

The same is the case with a notary, which is the same as any other individual, and that anyone can be filed as a defendant, a notary can also be sued in a civil case.

From the results of the author's research, there are several responsibilities of Defendant III as a notary for the unilaterally legalized Statement of the Cancellation of the Sale and Purchase Agreement, namely:

1. Liability in Civil Code.

Notaries have civil obligations on the deeds they make, including legalization if they cause harm to other parties. The notary has the responsibility for the deed that he has made, if the deed made by the notary in the future contains a dispute then this needs to be questioned. Is this

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<sup>13</sup> Interview, Indra Djaja, Academics and Notary / PPAT in Padang City, on 06 March 2020

<sup>14</sup> Interview, Gustiarso, Judge of the Padang District Court Class 1 A, in Padang City, March 17, 2020

deed a mistake of the notary public or the parties who do not want to be honest in providing information to the notary public.

In this case Defendant III which legalized the Statement Letter of Cancellation of the Sale and Purchase Agreement unilaterally caused losses to the Plaintiff. Both materially and non-material. However, the type of violation committed by a notary is not classified as an unlawful act, which is stated in Article 1365 of the Civil Code, the act referred to is "every act that violates the law and brings harm to others, obliging the person who caused the loss. because of his mistake to compensate for the loss. " This statement is corroborated by Article 1366 of the Civil Criminal Code, which reads as follows:

"Everyone is responsible not only for losses caused by their actions, but also for losses caused by negligence or carelessness."

In the event that the notary legalizes the statement letter of unilaterally canceling the sale and purchase agreement, it does not constitute a violation of the law or violates the Law of Notary Office, because the letter legalized by the notary or Defendant III in this case is a statement or intention to terminate a sale and purchase agreement. The notary only validates the signature and the date of the letter. which means that it is true that Defendant I is the person who wants to unilaterally cancel the agreement in the agreement. This authority is stated in article 15 paragraph (2) letter b of the Law on the Position of Notary Public. It is different if the notary or Defendant III legalizes the letter of cancellation of the sale and purchase agreement unilaterally, in which the cancellation of the agreement is not the authority of the notary, as explained in Article 1266 of the Civil Code, the request must be submitted to the Court, this is intended so that in the future neither party can cancel the agreement unilaterally on the grounds that one of the other parties does not fulfill its obligations (default), the notary may asked to be accounted for in a civil manner as a person. Therefore, the notary is not responsible for damages to the parties to the agreement.

But as a notary Besides responsible in terms of formality only, does not mean not a Risks in carrying out their authority at will without seeing justice for both parties, in addition to a notary providing legal certainty for the parties. In fact, in Indonesia and other countries in the world justice is upheld first, and if there is a conflict between justice and legal certainty, then justice must be brought up in a problem solving.<sup>15</sup>

Therefore, in the Notary process, the legalization of the Statement of Cancellation of the Sale and Purchase Agreement should ask the presence of all parties to agree to cancel the agreement. After that the notary states the consequences of the cancellation of the agreement, in which the new rights and obligations of each party will be born. The moral responsibility as a person who understands the law, who should suggest the cancellation of the Agreement unilaterally is carried out through the Court through a judge's decision.

## 2. Criminal Liability

A criminal act is an act that is prohibited by a rule of law. The prohibition is accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition. Certainly criminal in this case is a criminal act committed by a notary in his capacity as a public official who is authorized to make deeds and not in the context of an individual as a citizen in general. Meanwhile, the responsibility of the Notary, seen from the criminal aspect, is the criminal responsibility of the Notary against the deed he makes in terms of his capacity as a public official who has the authority to make authentic deeds or deeds under the hands of which are mandated by the Law on the Position of Notary Public.

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<sup>15</sup> Interview, Gustiarso, Judge of the Padang District Court Class 1 A, in Padang City, March 17, 2020

In this case, the authority granted by the Law on the Position of Notary in Article 16 paragraph (2), namely, the authority to legalize deeds under hand. On this authority Notary Public also has the burden of responsibility for obligations and authorities as state officials. Basically, a notary cannot be held responsible for the crime, because the notary is only responsible for the formal side of the deeds.

Based on the description of the case above, Defendant III cannot be held responsible criminal, where the authority to legalize letters under hand is perin case of ratifying the signature and certainty of the date of the legal event contained in the letter. As has been explained by Munir Fuady and Abdul Ghofur Anshori above.

### 3. Administrative Responsibilities

Notaries are said to be administratively responsible when their obligations as state officials are not properly heeded, where their actions are categorized as violating the elements that are expressly regulated in the Law on Notary Position, and the Notary's Code of Ethics for the Indonesian Notary Association (INI).

Administrative notary responsibility can be requested through institution/ notary organizations, it is different with the criminal and civil liability imposed on the notary, which must be done through the court. However, the court, through its decision, can forward it to the Notary organization to follow up on decisions that have been issued by the court.<sup>16</sup>

Generally dropping administrative sanctions for Notaries who commit other actions that are generally regulated in Article 4 of the Notary Association of Indonesia (INI) Notary Code of Ethics are known as violations of:

1. The provisions in the Law on Notary Position;
2. Elucidation of Article 19 paragraph (2) of Law on Notary Position;
3. Fill in the oath of office of a notary;
4. Matters according to the provisions of the Articles of Association, Bylaws, and / or;
5. Other decisions that have been established by the organization Bond Indonesian notaries may not be performed by members.<sup>17</sup>

In the absence of civil, criminal and administrative responsibility for Defendant III after the peace, Defendant III's obligations contained in the contents of Article 8 of the peace agreement were to accept the entire contents of this peace agreement letter, including Defendant III's Moral Responsibility for not doing anything, to carry out the contents of the peace agreement.

## Conclusion

From the results of research and discussion in the previous chapters, it can be concluded as follows:

1. The authority of a notary on legalization of a deed under hand is a binding effort so that an engagement has a definite legal force. Because with the legalization of an engagement by a notary, it will make the engagement authentic for the parties concerned. Regarding the responsibility of the notary's authority to legalize the deed under the hand, namely formal certainty regarding the date, identity and signature of the parties concerned in the agreement. In line with this authority, notaries have obligations that must be considered, which are contained in

<sup>16</sup>Darus, M. Luthfan Hadi, Op., Cit, pp, 57-58.

<sup>17</sup>*Ibid*, 61

Article 16 paragraph (1) of the Law on Notary Position. Notaries must act honestly, thoroughly, independently, and protect the interests of parties involved in law making.

2. Regarding signature certainty, it means that the signature is indeed a party to the agreement, not someone else. because those who legalize the letter are required to know the person who signed the letter by looking at identification such as an identity card and so on. If those who legalize really know the person, then they will sign in front of those who legalize on that same time, day and date.
3. If the deed or agreement letter is canceled with the consent of both parties, it must be submitted to a notary, then the agreement is deemed never to exist, however, If the deed or sale-purchase agreement is under hand Cancellation of a deed is done if it does not meet the subjective requirements at the request of the people certain interested parties, then cancellation of the deed is also carried out if it does not meet the objective requirements, then the agreement becomes null and void without the need for approval from the parties, which is submitted to the notary, but if someone does not agree, they can submit to the court for cancellation of the deed or it is not binding again with provable reasons.

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