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# Cancellation of Notary Deed Based on Agreement of The Parties Through Deed of Cancellation

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**Abstract**

An authentic deed is a form as written evidence that has perfect evidentiary power or so called fautless evidence. A deed can be declared as an authentic deed if it fulfil all the terms in article 1868 of Burgerlijk Wetboek, where the deed is made in the presence of or made by public functionary, namely a notary. As a public functionary that has an authority and obligations that clearly regulated in law, when carrying out his duties a notary must follows the notary's act and the Code of Ethics. A notarial deed cannot be canceled immediately but must go through the correct process to remove the binding status of the deed. This research was conducted to provide an understanding of the proper and correct ways for cancellation of notarial deeds that can be carried out by the parties. The research methods that uses is doctrinal research methods, with secondary data which is divided into 3 legal materials, namely, primary, secondary and tertiary which are analyzed to answer the problems in the thesis. A deed made by a notary has binding legal force for each parties in the deed, as well with regulated third party in the deed. By the process, a deed can be invalidated or annulled if it does not fulfil the formal or material terms, either based on a lawsuit by one of the parties through a the decision of a court from judge, or based on the mutual agreement of the parties through a deed of cancellation.

**Keywords** Annulled Deed; Cancellation of Deed; Notary's Deed

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## 1. INTRODUCTION

Every legal action carried out by the people of Indonesia must certainly comply with and follow the applicable legal rules. Likewise, in terms of proving these legal acts, of course, they must be proven by evidence regulated in the law. According to Article 164 HIR/284 RBg there are five types of evidence, namely written evidence, testimony, allegations, confessions and oaths. Written evidence is known in two forms, namely authentic deeds and underhand deeds. The urgency of making evidence is growing today, as an age progresses, an action can no longer only be proven by 'confession'. Legal acts (*rechthandeling*) are any human actions carried out intentionally and on their will to give rise to rights and obligations regulated by laws and regulations (Son, 2022).

Currently, all legal acts are carried out in written form, in order to ensure certainty, order, and legal protection in relation to legal deeds, agreements, determinations and events made by and before authorized public officials (Nurwulan, 2018). The general official authorized to make the evidence is a notary. Notaries are authorized by the government by attribution through Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, in short called UUJN.

Notaries are authorized to make authentic deeds, and certify deeds under hand such as agreements, wills, and other deeds (Adjie, 2011). The ratification of the deed under the hand is carried out and recorded in a special book and becomes part of the notary protocol. The legalization carried out by the notary serves to certify the signature and determine the certainty of the deed date. Other authorities that notaries also have in UUJN are providing legal counseling relating to making deeds, making deeds related to land, and making auction minutes deeds (Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions, hereinafter abbreviated as UUJN, Article 15 paragraphs (1) and (2)). Even in the explanation of Article 15 paragraph (3) of the UUJN it is said that notaries also have the authority to certify transactions carried out electronically (*cyber notary*), and waqf pledge deeds, as well as aircraft mortgages. G.H.S Lumban Tobing in his book said that before the promulgation of UUJN it was difficult to provide a complete definition of what was the duty and work carried out by a notary, because in practice the duties and responsibilities carried out were very different from what was stated in PJN (Lumban Tobing, 1980). The authority of a notary includes four important things, namely (Lumban Tobing, 1980):

a. A notary public is authorized to the extent and pertinent to the deed made;
b. A notary public is authorized insofar as it concerns persons for the benefit of whom the deed and the profits of the deed are made;
c. A notary public is authorized as far as the place where the deed is made and the legal act is done;
d. A notary is authorized as long as the time and time the deed is made by him.

A notary is principally a general official, because he is a person appointed and given authority by the general authority, in this case through the Minister of Law and Human Rights as an extension of the government. Because of his role as a general official (*opencare ambtenaren*), he is obliged to serve the public in a certain field, in this case the civil field of making evidence (Burman, 2019). Because his main duty is to serve the interests of the community, the notary is also obliged to provide legal consultation and explanation of the rule of law to the party concerned. Do not let the faces who come do not know about the contents of the deed made, as well as the legal consequences. In addition, in Article 37 of the UUJN, a notary is required to provide legal services in the field of notarial without charging fees for the poor class. This is certainly in line with the obligation of a notary in the notary code of ethics to prioritize service to the interests of the state and society. Given the importance of the value

of a deed in proving legal deeds, notaries must be careful and careful in making it. Do not let the deed he made contain legal defects both formal and material and declared degraded or null and void.

"*Acte*" is Dutch for deed as we know it, meaning a signed letter containing a description of the event or deed that is the basis for the birth of rights and obligations in the engagement. The letter from the beginning was deliberately made by the parties as a form of evidence for a legal act (Mertokusumo, 2006). R. Subekti in his book said that what is meant by a deed is a writing intended for the use of evidence against an event in the form of deeds, agreements, and signed provisions (Subekti, 2005). Based on the two opinions above, it can be concluded that a deed has two important elements in it. The first is a writing or a letter that was deliberately made from the beginning and intended as evidence. Second, the writing or letter is signed by the parties whose names are contained in it (Alwesius, 2022). Civil law recognizes the types of deeds that can be used as a means of proof, the two types of deeds are:

1. Authentic Deeds

It is contained in article 1868 of the Civil Code, that a deed can be declared as an authentic deed if it is made in the form specified in the law, made by and/or before a public official authorized to make a deed, and at the place where the deed was made (Civil Code, hereinafter abbreviated as the Civil Code, Article 1868). The elements that must be met in order for a deed to be declared authentic in the article above are described by G.H.S Lumban Tobing in his book as follows (Lumban Tobing, 1980):

a. The Act is obliged to be made "by" (*door*) a notaris named as a *relaas* act or office act (*ambtelijke akten*), or "in the presence" (*ten overstaan*) of a notaris named the partij (*partij-akten*) act;
b. The deed must be made in accordance with the form specified in the law in this case regulated through article 38 of the UUJN;
c. A public officer or notary "by" or "in the presence of" whom the deed is made and shall have the authority to make the deed.

Salim HS in his book entitled Contract Law, Theory and Contract Drafting Techniques mentions the term notarial deed for a deed made before and before an authorized official (Salim HS, 2017). Although in public life there are several officials who are authorized to make other authentic deeds that are not the authority of a notary. These deeds include civil registration certificates, such as marriage, birth, death certificates and so on. So that the person authorized to make the deed is an Officer of the Civil Registration Office. In addition, there is also a deed of auction minutes made by the auction official, and a deed regarding land made by the Land Deed Making Office (PPAT). So not all authentic deeds are notarial deeds, it must be seen first who the authorized official is who made them (Alwesius, 2022).

The evidentiary power of an authentic deed is perfect, based on article 1870 of the Civil Code. Such evidence applies not only to the parties to the deed, but is also attached to the heirs concerned, as well as third parties who get rights in the deed regarding what is contained therein (Civil Code, Article 1870).

So in the event that a case in court presents an authentic deed as one of its evidence, the judge is bound to believe everything explained in the deed and its truth, and is considered sufficient without the need for other evidence (Agiasandirini and Lukman, 2023). The authentic deed has three functions, namely as follows (Salim HS, 2017):

a. As evidence to the parties that it is true that they have entered into certain agreements or legal acts involving the parties to the carriage;
b. As evidence to the parties that what they convey and explain to the notary in the deed is true is the will, desire, purpose of the parties;
c. As evidence to third parties that at that time (hour, day, and date) it is true that an agreement or legal action is entered into by the parties, unless otherwise specified.

An authentic deed made by a notary has an authentic nature not because the law stipulates it thus, but because the deed is made before him as referred to in the article above (Lumban Tobing, 1980). Along with the demands of the times that encourage the need for written evidence of deeds and agreements, generally people choose to make it in the form of an authentic deed, this is considered more efficient and provides definite legal force for the parties in the deed.

2. Deed Under Hand

The deed under hand is signed by the parties concerned in the deed, and is only binding on the parties therein but not against third parties (Salim HS, 2017). Stated in article 1874 of the Civil Code which is a form of deed under hand are letters, lists, household affairs letters and other writings made without the intermediary of a general official. Thus, a deed signed under the hand is only made in the presence of the parties whose names are evident in the deed (Civil Code, Article 1874). The deed under hand is not an authentic deed that has perfect evidentiary power, so if a case occurs in the future, the deed concerned must go through an evidentiary process, unlike an authentic deed that can prove itself. In short, if in the future there is one party who denies the deed, the other party must submit the necessary evidence to prove the objection to the statement. That denial of the contents of the deed is baseless and unjustified (Salim HS, 2017).

An underhand deed that is only made between the parties, is very likely to be denied by either party at a later date. A denial of the deed under the hand may be a denial of the signature affixed, or a statement of it written in the deed. However, in order to avoid denial and prove the truth of the existence of the deed under the hand, the notary has the authority as mentioned in Article 15 paragraph (2) letter a of the UUJN, namely the authority to "certify the signature and determine the certainty of the date of the letter under the hand by registering in a special book" (Article 15 paragraph (2) letter a of the UUJN). This authority is known as 'legalization', so the parties come before the notary with a deed of agreement that has been made first, then sign it before the notary directly. The notary guarantees the correctness

of the signature as well as the date on the deed under the hand. The notary must also check the identity of the applicant whether it is true between what is contained in the deed and the person present to sign (Dinaryanti, 2013). After that, the notary records in a special book regarding the endorsement of letters under hand which are included in the notary protocol.

Apart from the above display, the authentic act and the act under the hand also have differences, as follows (Lumban Tobing, 1980):

a. Authentic deeds guarantee the certainty of the dates in the deed, whereas underhand deeds are not always the case;
b. The deed under hand is more likely to be lost than the authentic deed that the notary requested.

Given the importance of the meaning of an authentic deed made by a notary as evidence, in the process of making, drafting, and signing it the notary must undergo it based on the provisions in the UUJN and the Notary Code of Ethics determined by the Association. In addition, the cancellation of an authentic deed cannot be done immediately, but must go through a cancellation process so that the deed in question becomes void and no longer has binding force for the parties. The cancellation of a notarial deed can be done through filing a lawsuit with the court. The cancellation lawsuit was filed at the will of the party demanding the cancellation of the deed (Adjie, 2017). In addition to a court decision, the deed can also be canceled by the parties through a cancellation deed made by a notary.

## 2. METHOD

The research method used by the author in this study is a doctrinal approach, where this research will refer to applicable written legal norms, both in the form of laws and regulations and other legal literature (Soekanto, 1994). The typology in this study is descriptive analytical. Where the writing of this research will describe the circumstances of the cancellation of the notarial deed based on the agreement of the parties. In writing this study, the author uses secondary data which is divided into three legal materials, namely, primary in the form of applicable laws and regulations, secondary in the form of textbooks and legal journals and tertiary in the form of a Big Dictionary Indonesian.

## 3. FINDINGS AND DISCUSSION

### 3.1 Cancellation and Cancellation of Notary Deed

Notary Public as a person who expresses the will of the parties in a deed must perceptively assess what the confronters want or do not want to be included in the deed. One of the requirements for the authenticity of a notary deed is to be made in the form prescribed by law. The determination of the form of the deed is contained in article 38 of the UUJN, where each deed must consist of the head of the deed, the body of the deed, and the closing of the deed (UUJN, Article 38 paragraph (1)).

a. The head of the deed contains the title of the deed, deed number, hour, day, date, month and year, full name and notary position.
b. The body of the act that contains:
   - Comparison of the faces (full name, place and date of birth, nationality, occupation, place of residence);
   - Description of the acting position of the confronter (for himself, on the basis of authority, and in the department);
   - The contents of the deed containing the will and wishes of the interested parties;
   - Full name, place and date of birth, nationality, occupation, residence of identifying witnesses (if any).
c. The closing of the deed contains a description of the reading of the deed, a description of the signing of the deed, full name, place and date of birth, nationality, occupation, residence of the deed witnesses, and a description of the presence or absence of changes (in the form of addition, strikeout, and replacement, as well as many) in making the deed.

Notary deeds basically have three aspects of proof, namely external, formal, and material evidence, with the following explanation:

1. Outward Proof

Notary deeds have the power of outward proof (*uitwendige bewijskracht*), meaning that they can prove themselves to their authenticity (Lumban Tobing, 1980). Outward proof arises when the deed made is in accordance with the form specified in article 38 of the UUJN, and contains a valid signature by a notary. A notarial deed is an authentic deed, and applies not only to the parties therein but also to third parties. The question in the outward substantiation of the deed is only regarding the authenticity of the signature of the official in the deed (Pramono, 2015) . Regarding its proof in court, the party denying the deed must be able to prove that the deed concerned is defective in its manufacture by presenting valid evidence. (Purnyasa, 2018)

2. Formal Proof

The notary guarantees formal correctness, so the deed he makes contains formal proof (*formele bewijskrach*). The notary concerned states in writing that what is stated in the deed is the truth described by the face, as well as what he heard and witnessed. In the notarial deed, certainty is guaranteed about the time, day, date, month and year when the complainants come to the notary to perform a legal act. Also paragraphs, and signatures imprinted in the deed by the confronters and witnesses. If there is a dispute over the deed in terms of its formal proof, then the party must prove that what the notary saw, heard and witnessed was not true in the deed *of relaa*s. Also the statements and statements of the parties are incorrect in the deed *of partij* (Lumban Tobing, 1980).

3. Material Proof

Material evidence regarding the contents of the deed, where the information obtained by the notary in a legal act in the deed concerned is true and real. The parties prove the validity of a legal act as mentioned in the deed "*preuve preconstitute*" so that the deed has material evidentiary power (Lumban Tobing, 1980).

In addition to these three aspects of proof, a notary deed basically contains an agreement between the parties regarding anything that is desired and agreed between them. Thus, in making a notary deed, it must also meet the provisions of article 1320 of the Civil Code, namely the conditions for the validity of the agreement which are divided into two, namely:

1. Subjective Conditions

The subjective terms of the agreement are attached to the subject matter of the agreement. The subject of the deed is the parties to the deed entering into an agreement and being parties to the deed. If the subjective conditions are not met, a deed can be canceled based on a lawsuit by the party who feels aggrieved to be canceled (*vernitiegbaar*) (Busro, 2011), but if no party objects to the non-fulfillment of these conditions, the agreement is still considered valid and binding on the parties (Salim HS, 2017). The subjective terms of the agreement are divided into two, namely:

- Agreement (*Toesteming*) of the parties

  Agreement is the most important condition for entering into an agreement (Busro, 2011). An agreement occurs because of the adjustment of the will of one party to another, what is adjusted in the deed is the statement, because the will or desire cannot be seen directly without submission by the parties. Based on the offer of one party and the acceptance of the other party, a middle way is taken called agreement (Salim HS, 2017).

- Acting skills

  Proficiency means the ability for the parties to perform a legal act. Because legal actions cause legal consequences in the form of rights and obligations that arise, those who are considered capable are those who can account for their actions (Salim HS, 2017). Article 1329 of the Civil Code says that everyone is capable if not declared incompetent by law. Information about who is declared incompetent is contained in article 1330 of the Civil Code, among others (Busro, 2011):

  a. Immature people: People who are considered immature are people who are not married or have not reached the age of 21. This means that someone under that age is considered incompetent and cannot perform legal actions, but under special conditions if he has been married even though he is not 21 years old at that time, he can be considered capable and can do legal actions.
  b. Person under guardianship: A person under certain special conditions even though legally declared an adult based on his age, can still be declared incompetent if he is under custody.

People who are under pardon are those who are considered stupid, crazy, and dark eyes, this of course must be proven by a medical history written by an expert (Civil Code, Article 433). The person in custody is considered unable to account for his actions, so to represent his actions is carried out by an official guardian appointed by the court.

2. Objective Conditions

An objective condition of the agreement with respect to the matters agreed upon or the object of the agreement. If an agreement does not meet the objective requirements then the agreement has been null or void (*nitiegbaar*) since its inception (Busro, 2011) and is considered to have never existed. There are two objective requirements, namely (Salim HS, 2017):

- The existence of an agreed object (*Onderwerp der Overeenskomst*)

  The object of an agreement is an achievement that is an obligation and must be fulfilled by the parties. An achievement must be determined by its type, and how much it is based on what has been mutually agreed. The existence of the object of engagement can be in the form of tangible or intangible objects such as services and so on. Achievements in agreements in article 1234 of the Civil Code can be in the form of giving a certain item, doing something, or not doing something (Busro, 2011).

- Halal Causes (*Permissible Cause*)

  It is the purpose of the agreement made, regarding the content and will of the agreement must contain intentions and motives that are halal and not prohibited by law, nor violate public order and decency (Busro, 2011).

Like an agreement that binds its makers, a notarial deed is also binding and attached to the parties therein. Article 1338 of the Civil Code says that an agreement made valid applies as law to its makers. The term is known as the principle of *pacta sunt servanda*, even a judge and third parties are obliged to respect the substance of the deed made by the parties like a law. There must be no interference with the contents of the deed for the parties, as long as the deed is declared valid and does not contradict the applicable legal rules. In the development of this principle, the agreement between them does not need to be proven and strengthened by an oath or other additional formalities, because 'agreement' is more than enough (Salim HS, 2017).

The parties determine various things in the deed, regarding its implementation, period, and even how to resolve disputes in the future. Cancellation of a notary deed may occur, because of which the deed is no longer declared valid and has binding force for the parties. The cancellation of a notary deed may include (Adjie, 2017):

**1.** Revocable

**2.** Null and void

**3.** Has the power of proof as an act under hand

In addition to the cancellation of the deed, the term deed cancellation is also known, which also includes (Adjie, 2017):

1. Cancelled by the parties themselves
2. Proven by the basis of legal prejudice

Based on these two terms, it can be concluded that the cancellation of the deed is related to the consequences of the deed, while cancellation is a process to cancel the deed. A notarial deed can be canceled, if it is indicated that it does not meet the formal or material requirements in its construction. This relates to the preparation and signing of a deed that is not in accordance with the provisions of the UUJN, or if the contents of the deed do not meet the legal requirements of the agreement as stipulated in article 1320 of the Civil Code described above. In addition, in article 1868 of the Civil Code which regulates the requirements for authentic deeds, it is affirmed that authentic deeds are made in the form specified in the law. This of course refers to Article 38 of the UUJN regarding the form of the deed, in paragraph (3) letter a it is determined that subjective, and objective requirements are part of the body of the deed. There is confusion between revocable deeds and null and void. So in the event that it is proposed to cancel the deed due to non-fulfillment of subjective conditions, then the entire body of the deed is also canceled, because of the objective conditions that are also included in the body of the deed. If a deed does not meet the subjective requirements, the deed can be canceled, while if it does not meet the objective requirements, the deed is null and void and is considered to have never existed (Adjie, 2017). Based on the consideration of these two matters, although basically the subjective and objective requirements are within the framework of the same deed (deed body) but the UUJN expressly regulates certain violations that make a notary deed null and void, these violations are in the article:

- Violation of article 16 paragraph (1) letter i of UUJN;
- Violation of article 16 paragraph (1) letter k of UUJN;
- Violation of article 44 of the UUJN;
- Violation of article 48 of the UUJN;
- Violation of article 49 of the UUJN;
- Violation of article 50 of the UUJN;
- Violation of article 51 of the UUJN;

So when related to the Civil Code, the use of the term null and void according to the UUJN and Articles 1335, 1336, and 1337 of the Civil Code is inappropriate because it is substantially impossible for a notary to make a deed that clearly does not meet objective requirements (Adjie, 2017).

Regarding the cancellation of the notarial deed in practice, it can be taken in two ways, namely the cancellation of the deed based on a court decision and the cancellation of the deed made by the parties through the cancellation deed. Regarding the cancellation can be explained as follows.

1. Cancellation of Notary Deed based on Court Decision

Supreme Court Decision No. 702 K/Sip/1973 on September 5, 1973, said that *judex factie* amar decision to annul a notary deed could not be justified. Because basically a notary is only a person who is authorized to record a statement and narrative that is desired and submitted by the face or party in the deed. Mayra and Simatupang, 2021) A notary only guarantees formal certainty and has no obligation to ascertain the material truth of the information (Adjie, 2017). Thus, based on the decision, it can be concluded that, basically, the deed made by the parties based on mutual will and agreement cannot be canceled by the court without a lawsuit preceding it. Conversely, what can cancel a deed is the will of the parties themselves at their request to a notary.

The notarial deed is binding on the makers, the principle of *pacta sunt servanda* applies in this case so that no party can interfere with the contents of the deed regarding what is agreed and how it applies to freedom of contract for the parties. Then how can a court decision invalidate a notary deed? This relates to a lawsuit filed regarding the deed. If there is a claim by one party that the deed made by a notary does not meet the physical, formal, and material aspects, then that party has the right to file a claim for cancellation of the deed to the court.

Denial of the external aspect of the deed means that one of the parties denies the form of the deed is not an authentic deed, then in terms of formal aspects, the question is often about (Adjie, 2017):

- Certainty of day, date, month, year and time before a notary.
- Parties to the deed / face facing a notary.
- Signatures of confronters and witnesses.
- A copy of the deed that does not match the contents of the minuta.
- There is a copy of the deed but no minuta is found.
- Minuta act is not fully signed, however, a copy of the act is issued.

Then in the case of party denial of material aspects, then basically the legal act never happened, or not in accordance with what turned out to be in the deed. Notaries basically only guarantee the formal correctness of the deed, and not the material truth. This is because the notary only records and writes the statements of the parties based on the information submitted when the parties face, and includes it in the deed, but the truth and implementation of the contents of the deed is entirely the responsibility of the parties.

If one of the three aspects of proving the deed is not fulfilled, a lawsuit for cancellation of the deed can be filed by one of the parties to the relevant district court. Against the lawsuit, the judge can later

decide that the notarial deed is void and no longer applies to both the parties and third parties. The cancellation of notarial deeds made based on the judge's decision can be found easily through the directory of Supreme Court decisions. Article 178 paragraph (1) HIR, it is said that according to his position or *exofficio*, provides all reasons for the law that are not stated by the litigants. The judge is authorized to receive, examine, and try a case appointed to him both in the criminal and civil spheres. Similarly, filing a claim for cancellation of a notary deed can be submitted to a court judge henceforth on his authority to conduct an examination of the validity of a notary deed. (Syahrul Hermawan &; Qahar, 2021)

One example of the cancellation of a notary deed is found in Kalianda District Court Decision Number 31/Pdt.G/2020/PN. KLA. Regarding the cancellation of a deed of grant by Mr. BK to PT NSU made by notary X. The deed of grant was canceled due to a legal defect of the deed that did not meet the provisions in article 1666 of the Civil Code. Thus, the grant is invalid and the deed of grant is canceled so that it has no binding legal force (Kalianda PN Decision No.31/Pdt.G/2020/PN. KLA).

2. Notarial Deed Cancellation based on Deed of Cancellation

A notarial deed is basically the will and agreement of the parties submitted to the notary to be written later in an authentic deed. Everything related to what is agreed as well as how its implementation is carried out based on the contents of the deed. When executing the contents of the deed, in the process there may be changes in the will and desire of the parties both due to internal and external factors that cannot be avoided. Or because one thing or another the contents of the deed cannot be executed by both parties, then they want the cancellation of the deed.

In the notarial legal order, what is justified is, if there is a problem in the deed, the parties jointly come back to the notary concerned to make a deed of cancellation, so that the previous deed is declared invalid and loses its binding power. Habib Adjie said in his book that the cancellation procedure was correct and in accordance with Supreme Court Decision Number 1420K / SIP / 1978 dated May 1, 1978, that the court could not cancel a notary deed, but could only declare the notarial deed concerned had no legal force. This means that the only way to cancel a notarial deed is to make a deed of cancellation by the notary concerned at the request of the parties. All consequences of the cancellation are borne by the respective parties (Adjie, 2017).

Based on both ways, the cancellation of the deed is basically the content of the deed, because the content of the deed is the agreement and will of the parties. So what they promised in the deed is void (Adjie, 2017). Relating to the formal aspect of the notary deed is the responsibility of the notary, so the formal aspect is not automatically void based on cancellation. Except in court cases where either party can prove a denial of the time, date and signature therein.

### 3.2 Validity of Deed of Cancellation Made by Notary Public Based on Agreement and Request of the Parties

There are no regulations in the UUJN governing the deed of cancellation. The procedure for canceling a deed through a deed of annulment is carried out based on the jurisprudence of the judge stated above. Regarding the exact form of the cancellation deed is also not determined, but because the cancellation deed is also part of the notarial deed, the form must follow and be in accordance with the provisions of article 38 of the UUJN, where there is the head of the deed, the body of the deed and the end of the deed.

As a general official, a notary deed is a product of a general official, so whether or not it is valid can only be made through the principle of legal presumption (*vermoeden van rechtmatigheid*) or *presumptio iustae causa*. This means that a notary deed must be considered valid until someone declares the deed invalid (Adjie, 2017). This principle is used to assess that a notarial deed made is valid until another party proves that the deed is invalid. The statement regarding the value must be filed with the filing of a lawsuit in court. During the course of the judicial process, the deed can still be considered valid as long as there is no court decision with permanent legal force declaring the void or invalidity of a deed. (Prananda & Anand, 2021).

If there is no court decision declaring the deed invalid, then the only thing that can cancel a deed is by the deed itself, that is, the deed of cancellation.

Cancellation is carried out by the parties who come and appear before the notary concerned to make a cancellation of the deed against the deed that has been made before. A deed of cancellation must contain the name of the face that is the same as the name of the deed to be canceled, and then contain a statement of the parties that they have agreed and intend to cancel the deed made earlier. After the deed of cancellation is made, starting from the date of the deed of cancellation, the canceled deed becomes no longer valid and no longer has binding legal force, both for the claimants and other parties. There is no legal rule governing the obligation to make a deed of cancellation, returning to the notary concerned who made the previous deed. So actually a deed of cancellation can be made by any notary, for example the deed of sale and purchase binding agreement number 16 is made before Notary A domiciled in South Jakarta. The preparation of the cancellation deed on PPJB does not require the parties to return to Notary A, they may go to Notary B domiciled in Depok to cancel it through cancellation deed number 22, and it is also valid allowed in the existing notarial legal order. However, this can be a legal loophole for parties who have bad faith. Because there is no reporting obligation for the cancellation of the deed, in the above case, Notary A may never know that the PPJB he made has been canceled and is no longer valid. The party in bad faith may use the existing copy of PPJB to go to Notary A in his position as PPAT to continue the sale and purchase process through the Deed of Sale and Purchase because of the

inclusion of power of attorney in the PPJB, based on this power there is no doubt for PPAT A. If this happens, then the AJB made becomes null and void, because it contains material defects. So in order to avoid this, the notary must always be careful and ensure every truth of the deed given to him.

Regarding the cancellation of a notary deed, even though the contents of the deed are no longer valid, the minuta of the canceled deed remains part of the notary protocol. Although the position of the notarial deed concerned has been stated (Adjie, 2017):

1. Submitted for cancellation by one of the interested parties to the district court and has received a permanent legal decision;
2. Cancel Act;
3. The deed is null and void;
4. Relegated to evidentiary power under the hand;
5. Cancelled by the parties themselves;
6. Canceled based on a court decision that has permanent legal force due to the application of the principle of valid presumption.

However, the provision of a copy remains the responsibility of the notary because the cancellation deed is also a legal act of the parties, therefore in accordance with the provisions of article 16 paragraph (1) letter d of UUJN, the notary is obliged to issue a copy of the deed (UUJN, Article 16 Paragraph (1) letter d). The minuta of the cancelled deed must also remain in the bundle of the notarial deed concerned and be part of the notary protocol. The notary concerned and the holder of the notary protocol are still declared authorized to issue copies at the request of the parties, heirs of the parties, or interested third parties (Adjie, 2017).

## 4. CONCLUSION

Based on the analysis written above, it can be concluded that a notarial deed is an authentic deed that has perfect evidentiary power and binding force both on the parties, heirs, and third parties entitled to the deed. Thus, to cancel a notarial deed must be done correctly to be able to abolish its binding power. The cancellation of a notarial deed can be done in two ways, namely through a cancellation lawsuit to the district court regarding the cancellation of the deed and the second way, namely by requesting a cancellation deed to be made to a notary. If the cancellation of the deed is submitted to the court, the deed concerned is indicated to be legally defective, and does not meet the formal or material requirements of the deed. The party filing the lawsuit must be able to prove the legal defect of the deed, then the district court judge will decide whether a deed is valid or not.

Meanwhile, the cancellation of the deed through the deed of cancellation is carried out by the parties at their request to make a deed of cancellation by the notary concerned. From the date the deed

of cancellation is made, the previous deed becomes invalid and no longer has binding legal force. Although the notarial deed has been canceled through the deed of cancellation, the minuta of the deed is still an integral part of the minuta bundle, and becomes part of the notary protocol.

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