

# ***Onrechtmatige Daad* Notary In The Division Of Joint Property In The Cirebon District Court Decision Number 83/Pdt.G/2022/Pn Cbn**

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## **Abstrak**

*This research aims to identify the causes of onrechtmatige daad Notary in the division of joint property in the decision of the Cirebon District Court number 83/Pdt.G/2022/PN Cbn. This research is a type of doctrinal legal research or normative legal research, with a statute approach and case approach. The sources of legal materials in this research are primary legal materials and secondary legal materials. The technique of collecting legal materials using literature studies and analyzed using the syllogism method using a deductive mindset. The results showed that the causes of Notary irregularities in the making of the deed of division of joint property in the decision of the Cirebon District Court number 83/Pdt.G/2022/PN Cbn, are: a) the absence of good faith from Defendant I and Defendant II (Notary), namely Defendant II (Notary) assisted Defendant I in making the Deed of Separation of Joint property number 66 dated January 26, 2016 without the knowledge, without meeting, without signatures, fingerprints and without explanation from the Plaintiff, the Notary violated Article 16 paragraph (1) letter a, letter b and letter c, Article 44 paragraph (1) b) Defendant II (Notary) did not read the deed in front of the Plaintiff, the Notary violated Article 16 paragraph (1) letter l. Defendant II (Notary) also violated Article 3 paragraph (1) of the Notary Code of Ethics. Defendant II (Notary) committed an act against the law (onrechtmatige daad) Article 1365 of the Civil Code, Defendant II (Notary) is subject to civil liability. Defendant I and Defendant I (Notary) are jointly and severally liable in paying immaterial damages to the Plaintiff, paying court costs and dwangsom fees. Sanctions on the deed made by the Notary become invalid and not legally binding, so that it is declared null and void.*

**Keywords:** *Notary, onrechtmatige daad and division of joint property.*

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## **I. INTRODUCTION**

Article 1 of Law Number 1 of 1974 concerning marriage (hereinafter referred to as UUP), "marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God". Article 38 of the UUP, "a marriage can be broken because of: death, divorce, or court decision". After the dissolution of marriage, many problems will arise, not only the status of the spouses, but also the status of children and marital property. Marital property is property accumulated by the husband and/or wife during the marriage to fulfill the needs of the family. In this case, there is no division of wealth because each party has a joint obligation to obtain income to improve family welfare (Judiasih, 2015). Article 35 paragraphs 1 and 2 of the UUP determine that there are two types of property in marriage, namely joint property/gono gini property and inherited property. As a result of divorce cases, inherited property between spouses cannot be contested, meaning that the scope of property division is limited to joint property. Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position Regulations (hereinafter UUJN) which states that Notaries in carrying out their duties are authorized to make authentic deeds for the parties who wish, be it a marriage agreement deed, or other authentic deeds.

In addition to the UUJN, Notaries must adhere to the Notary Code of Ethics by having professional behavior, namely having moral integrity, honesty, courtesy, and maintaining the dignity of Notaries so as to maintain public trust in providing services. *Onrechtmatige daad* in Indonesian is an unlawful act. Article 1365 of the Civil Code which states "every unlawful act, which brings harm to another person, obliges the person who through his fault causes the loss, to compensate for the loss". Based on this authority, a Notary in carrying out his duties and obligations must be required to provide professional services to the parties. Regarding civil liability, the liability provisions stipulated in civil law apply, namely the provisions of Articles 1365, 1366 and 1367 of the Civil Code (Jaya, Widhiyanti and Endah, 2017: 276-277). The elements of unlawful acts are as follows:

- a) Actions that are not only contrary to the law, but also include actions that violate the rights of others, contrary to the legal obligations of the perpetrator, contrary to the principle of prudence and contrary to applicable norms or rules.
- b) The acts referred to above constitute fault.
- c) Resulting in loss, and
- d) There is a causal relationship between fault and loss.

UUJN has established sanctions for violations committed by notaries against certain laws. These sanctions can be imposed on the position of Notary and/or the deed made by the Notary. Sanctions against Notary deeds can cause the deed to be null and void, or the authentic deed made before a notary can be degraded. In addition to notarial errors, the cancellation of a notarial deed can also be caused by the error or negligence of another party or one of the parties resulting in a lawsuit by the aggrieved party. In reality, many notaries face problems when the deeds they make are declared void by the court due to errors in their making or due to the existence of certain deeds that harm other parties. For example, Notary Suhartono Hakim Djajaputra Jasin, S.H. was involved in a civil case at the Cirebon District Court with case number 83/Pdt.G/2022/PN Cbn, regarding a dispute over the division of joint property. The verdict was that Defendant I and Defendant II/Notary had been proven to have committed irregularities in the form of unlawful acts (*onrechtmatige daad*) in the making of the deed and resulted in the deed made before the Notary being null and void. Based on the description above, the author is interested in examining the causes of *onrechtmatige daad* Notary in the division of joint property.

## II. METHODS

This research is a type of doctrinal legal research or normative legal research. The nature of this research is prescriptive research with a statutory approach (statue approach) and case approach (case approach). The sources of legal materials in this research are primary legal materials in the form of a decision of the Cirebon District Court number 83/Pdt.G/2022/PN Cbn and secondary legal materials in the form of Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning Notary Position, and Amendments to the Code of Ethics of Notaries of the Extraordinary Congress of the Indonesian Notary Association Banten, May 29-30, 2015. The technique of collecting legal materials used is a literature study (library research), analyzed by the syllogism method using a deductive mindset. The deductive method stems from major premises (general in nature), then minor premises (specific in nature) which can then be drawn to a conclusion (Marzuki, 2023).

## III. RESULT AND DISCUSSION

On December 27, 2022 the plaintiff filed a lawsuit against the Defendants, with a letter of claim that was received and registered at the Cirebon District Registrar on December 28, 2022 in register number 83/Pdt.G/2022/PN Cbn, with the subject matter that the Plaintiff and Defendant I are a legal husband and wife who were married on July 22, 1991 and registered at the Cirebon City Civil Registry Office, Marriage Certificate number 53/1991. The Plaintiff and Defendant I did not have a marriage agreement (*Huwelijks Voorwaarden*) or a property separation agreement. The marriage between the Plaintiff and Defendant I has been dissolved based on the Decision of the Cirebon IB District Court number 83/Pdt.G/2015/PN bn dated December 15, 2015 and therefore the Cirebon City Population and Civil Registration Office has issued a Certificate of Divorce number 3274-CR-21012016-0001 dated January 21, 2016. The Plaintiff was once asked by Defendant I to sign 2 (two) blank sheets of paper that were handed over through an employee and or a messenger of Defendant I on the grounds that it would facilitate the administrative process if they wanted to sell one of the assets of the joint property between the Plaintiff and Defendant I. That the signing of 2 (two) blank sheets of paper as mentioned above was carried out at the joint home of the Plaintiff and Defendant I, which is located at Pemuda street number 5 Margasari RT.005/RW.008, Kel. Sunyaragi, Kec. Kesambi, Cirebon City.

In January 2016 Defendant I with the assistance of Defendant II (who is a Notary by profession) unilaterally and or without agreement and without the knowledge of the Plaintiff had made and or issued:

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Deed of Separation of Mixed Assets, namely Deed number 66 dated January 26, 2016, and its derivative deeds, namely Grant Deed number 31 to Grant Deed number 36 dated February 12, 2016. As a result of the grant deeds, they are used as a basis for registering land rights at the Land Office where the object of the joint property is located. R. Wirjono Projudikoro interpreted the word *onrechtmatige daad* as an unlawful act. The word "violating" in the series of words "unlawful act" in question is active, so according to him the most appropriate word to translate *onrechtmatige daad* is unlawful act because the term unlawful act according to R. Wirjono Projudikoro is addressed to the law that generally applies in Indonesia and most of which is customary law (Projudikoro, 2003: 13). Subekti translates Article 1365 of the Civil Code using the term unlawful act (Subekti and Tjitrosudibio: 2002: 346). An unlawful act is an act or action committed by a legal subject that violates established provisions or regulations. According to Wagiono, the conditions for an act to be said to be an unlawful act (Wagiono, 2021) are the existence of an act, the act is carried out in violation of the law, there must be fault and there must be a causal relationship between the act and the loss. Notaries as legal subjects, namely supporters of rights and obligations as well as members of the Indonesian Notary Association association, have obligations that must be obeyed and prohibitions that must be avoided in carrying out their official duties.

Notary mistakes in making deeds that cause other parties to suffer losses can be considered as tortious acts due to negligence. When viewed based on the elements of unlawful acts, R. Wirjono Projudikoro describes them as follows (Projudikoro, 2003):

1. Existence of Actions;
2. Unlawful conduct;
3. Error;
4. The existence of losses suffered, and
5. A causal relationship between the act and the harm caused.

The elements of the unlawful act of R. Wirjono Projudikoro when associated with the Cirebon District Court number 83/Pdt.G/2022/PN Cbn, namely:

1. Existence of Actions

That Defendant II (Notary) has fulfilled this element in that they have intentionally and knowingly violated the Law of Jurisdiction and the Notary Code of Ethics. What was done by the Notary was intentional because the Notary was aware of the consequences that would arise by making the Deed of Separation of Mixed Assets number 66 dated January 26, 2016 and the derivative Grant Deed.

2. Unlawful conduct

An act is unlawful if the Notary has violated the subjective rights of another person, the legal obligations of the perpetrator, the principles of decency, and/or propriety in society. In this case Defendant I and Defendant II (Notary) have violated the subjective rights of the Plaintiff by conspiring and committing forgery of deeds or lies in bad faith, due to inaccuracy and caution and the actions of Defendant I by committing legal smuggling and not notifying the existence of a deed of division of joint property to the Plaintiff so as to cause harm to the Plaintiff is clearly referred to as an unlawful act.

3. Error

The element of fault committed by Defendant II (Notary) in this case includes intentionality where he intentionally and knowingly assisted Plaintiff II to make Deed of Separation of Mixed Assets N 66 dated January 26, 2016 and its derivative Grant Deed which was misused by Defendant I to be used as a requirement for registration of land rights.

4. The existence of losses suffered

This case was an unlawful act committed by Defendant I and Defendant I (Notary) which not only caused material loss but also caused immaterial loss to the Plaintiff. The material loss suffered was due to an imbalance in the division of joint property. The immaterial loss suffered by the Plaintiff was because the Plaintiff did not receive some of the benefits of the mixed property to which the Plaintiff was entitled.

5. A causal relationship between the act and the harm caused. The relationship between what was experienced by the Plaintiff due to the making of the Deed of Separation of Mixed Assets number 66 dated January 26, 2016 without the consent and knowledge of the Plaintiff. As a result of the unlawful acts committed by Defendant I and Defendant II (Notary) not only caused material loss but also immaterial loss to the Plaintiff.

In the case of Cirebon District Court Decision number 83/Pdt.G/2022/PN Cbn the Defendant with the assistance of Defendant II (Notary) made Deed of Separation of Mixed Assets number 66 dated January 26, 2016, then made Deed of Grant number 31 to Deed of Grant number 36 dated February 12, 2016, without the consent and knowledge of the Plaintiff. In this decision, Plaintiff I and Defendant II (Notary) committed unlawful acts, as a result of these unlawful acts the Deed made by the Notary became invalid and not legally binding, so it was declared null and void. Based on the decision of the district court, the judge made his decision which ultimately granted the claim of the Plaintiff which was considered to be appropriate and correct, namely declaring invalid and null and void Deed of Separation of Mixed Assets number 66 dated January 26, 2016 and its derivative deeds, namely: Grant Deed number 31 to Grant Deed number 36 dated February 12, 2016. Article 16 paragraph (1) letter a of the UUJN stipulates that Notaries in carrying out their positions must have trustworthiness, honesty, accuracy, independence, impartiality, and safeguard the interests of the parties involved in legal acts. Article 16 paragraph (11) states, Notary deviating from the provisions as referred to in paragraph (1) letters a through l may be subject to sanctions in the form of: written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal. Defendant II (Notary) in this case violated the aforementioned article because he acted dishonestly, carelessly, which means that the Notary must be careful and thorough in carrying out his duties and favored Defendant I, so that the Notary can be subject to the sanctions listed in the UUJN.

Article 3 paragraph (4) of the Notary Code of Ethics states, "Notaries and other people (as long as they carry out the office of Notary) must: behave honestly, independently, impartially, trustworthy, carefully, with a sense of responsibility, based on laws and regulations and the contents of the Notary oath of office". Sanctions imposed on members who violate the Code of Ethics can be in the form of: reprimand, warning, temporary dismissal from membership of the association, honorable dismissal from membership of the association, dishonorable dismissal from membership of the association. Defendant II violated Article 3 paragraph (4) of the Notary Code of Ethics because in carrying out his duties and positions the Notary acted dishonestly, impartially, carelessly, and without a full sense of responsibility in making the Deed of Separation of Mixed Assets number 66 dated January 26, 2016 and its derivative deed to the detriment of the Plaintiff, so that the Notary can be subject to the sanctions listed in the Notary Code of Ethics. Article 1 paragraph (8) of UUJN which reads "Minuta Akta is the original of the Deed which includes the signatures of the confrontants, witnesses, and Notary, which is kept as part of the Notary Protocol". Article 16 letter (c) of UUJN which reads, "attaching letters and documents as well as fingerprints of the confrontants to the Deed Minute". Article 44 paragraph (1) reads "immediately after the Deed is read out, the Deed is signed by each confronter, witness, and Notary, unless there is a confronter who is unable to sign by stating the reason".

In this case, Defendant I's intention to control the joint property was made clearer and clearer by the assistance of Defendant I (Notary), where the Notary made a deed without the knowledge, without meeting, without the signature, fingerprints and without explanation from the Plaintiff in violation of the law of Defendant II for the benefit of Defendant I. The Notary should have been able to safeguard the interests of the parties. Notaries should be able to safeguard the interests of the parties involved in carrying out a legal action, and Notaries are required to carry out proper procedures in the process of making a deed so that no party is harmed. Article 16 paragraph (1) letter l of the UUJN states that the Notary is obliged to read out the deed in front of the confronter in the presence of at least 2 (two) witnesses and signed at that time by the confronter, witnesses and Notary, and according to the provisions of Article 40 paragraph (1) of the UUJN that every deed read out by a Notary is attended by at least 2 (two) witnesses, unless statutory regulations determine otherwise. Based on the provisions of Article 41 of the UUJN, it is also stated that the Notary's deviation from Article 40 results in the deed only having evidence as a deed under the hand, as stipulated in

Article 16 paragraph (8) of the UJUN which states that if one of the requirements of letter (l) and paragraph (7) is not fulfilled, the deed concerned only has the evidence of a deed under the hand.

The relevant Notary in this case violated the aforementioned article because the Plaintiff never met, appeared or was read the deed of division of joint property by Defendant I (Notary), so that the Deed of Separation of Mixed Assets number 66 dated January 26, 2016 only has the evidentiary power of an underhand deed. If the Notary commits an unlawful act in the form of violating authority and obligations, violating the law of other people's rights, violating decency and decency. A person who suffers a loss due to an unlawful act committed by another person has the right to apply for compensation for the loss suffered to the District Court. The forms of damages for unlawful acts recognized by the law are a) nominal damages; b) compensatory damages, and c) punitive damages (Sjartina: 2022). The requested compensation can be in the form of material and immaterial damages. Loss in the form of material, which is a loss whose amount can be calculated, while immaterial loss, the amount cannot be calculated, for example, his good name is tainted, resulting in death. It is the judge who determines how much the party who suffered the loss should be compensated, even if the party who suffered the loss demands compensation in an inappropriate amount. Article 1246 of the Civil Code determines that the costs, damages, and interest that the Plaintiff may sue for his successor, for the loss he suffered and the profit he should have been able to obtain. Article 1365 of the Civil Code provides the possibility of several types of prosecution, including (Djodjodirjo, 2002):

1. Compensation for loss in the form of money;
2. Compensation in kind or restoration of the original condition;
3. A statement that the act committed is unlawful.

The contents of the Deed of Separation of Joint property number 66 dated January 26, 2016, stated that the share obtained by the Plaintiff was ± Rp. 9,968,000,000, (nine billion nine hundred sixty-eight million rupiah), while the share of Defendant I was ± Rp. 271,190,000,000, - (two hundred seventy-one billion one hundred ninety million rupiah). The Plaintiff felt aggrieved by the division of the joint property, so the Plaintiff in this case claimed material damages of Rp. 130,611,000,000 (one hundred and thirty billion six hundred and eleven million rupiah). The Plaintiff detailed the material loss of the total joint property that was the object of the Deed of Separation of Mixed Property number 66 dated January 26, 2016 amounting to ± Rp. 281,158,000,000, - (two hundred eighty-one billion one hundred fifty-eight million rupiah) which should have been divided by ½ (half) in accordance with the Civil Code and the Marriage Law, each of which received ½ (half) of the total amount of joint property. In addition to the material losses resulting from the unlawful acts (*onrechtmatige daad*) committed by Defendant I and Defendant II, the Plaintiff has also suffered invaluable immaterial losses. The Plaintiff filed a lawsuit for immaterial losses he suffered to the amount of ± Rp. 130,611,000,000, - (one hundred and thirty billion six hundred and eleven million rupiah) multiplied by 6% percent (Bank Indonesia interest rate) per year, namely ± Rp. 7,836,660.000,- (seven billion eight hundred thirty six million six hundred sixty thousand rupiah) multiplied by 6 years, then it is estimated that the immaterial loss suffered by the Plaintiff is ± Rp. 47,019,960,000,- (forty seven billion nineteen million nine hundred sixty thousand rupiah).

*Dwangsom* or forced money is imposed with the aim of putting psychological pressure on the defendant/convicted person so that he/she is forced to execute the judge's decision voluntarily when the decision is legally binding (in kracht), so there is no need for forced execution. Judges are not allowed to impose *dwangsom* arbitrarily/basically with makeshift legal considerations (*summir*). Refusing or granting *dwangsom* must be with adequate consideration, not only the juridical aspects, but also logical, realistic and factual so that the legal interests to be achieved from the application of the institution can be realized, where the *dwangsom* penalty really functions effectively for the settlement of the case concerned (Basir, 2015). Case number 83/Pdt.G/2022/PN Cbn the judge granted the plaintiff's petitum regarding *dwangsom* because the lawsuit was an unlawful act (*onrechtmatige daad*) not a lawsuit regarding debt and credit. Based on the misconduct of Defendant I and Defendant II, which means that a Notary as an individual is liable for offenses committed intentionally and foreseeably with the purpose of causing harm, so Defendant I and Defendant II must be held responsible for their misconduct. In this case Defendant I and Defendant I (Notary) are jointly and severally liable for paying immaterial damages to the Plaintiff.

#### IV. CONCLUSION

##### Conclusion

The cause of Notary irregularities in the form of *onrechtmatige daad* in the division of joint property in the Cirebon District Court Decision number 83/Pdt.G/2022/PN Cbn, was the lack of good faith and imprudence of Defendant I and Defendant I (Notary), which caused harm to the Plaintiff in the form of Defendant II (Notary) assisting Defendant I to make a Deed of Separation of Mixed Property number 66 dated January 26, 2016 without the knowledge, without meeting, without signatures, fingerprints and without explanation from the Plaintiff. b) Defendant II/Notary did not read out the deed in front of the Plaintiff, which should have been an obligation of the Notary.

##### Advice

- Notaries in carrying out their duties and positions must be more careful, thorough and careful in verifying and validating all letters and documents used as the basis for making deeds.
- The Regional Supervisory Council of Notaries (MPDN) should be more responsive to complaints submitted to it, taking swift and firm action against Notaries who commit irregularities against the UUJN and the Notary Code of Ethics.

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