

# Responsibilities of Substitute Sale Deed Official in Deed Cancellation of Not Registered Land (Study of Supreme Court Decision Number 681 K / PDT / 2017)

Benny Djaja<sup>1\*</sup> Christian Wahyu Putra<sup>1</sup>

*1 Faculty of Law, Tarumanagara University, West Jakarta 11440, Indonesia*

*Email: christianwahyu61@gmail.com*

*\*Corresponding author. Email: bennyd@fh.untar.ac.id*

## ABSTRACT

Cancellation according to the Big Indonesian Dictionary is a process, method, act of canceling, invalidation statement. Derived from the word cancel which means invalid. The cancellation was carried out by LDO. LDO must be responsible for canceling sale deed. Sale deed cancellations performed must be under the cancellation procedures in force in Indonesia. And each cancellation will cause a different legal effect for each party. Accordingly, the LDO's responsibility in canceling sale deed which is not registered will be explained here and the legal consequences of canceling the sale deeds that are not registered.

*Keywords: Liability, Land Deed Official, Cancellation of Land Sale deed*

## I. INTRODUCTION

Indonesia is a country of law. If in the Preamble and Body of the 1945 Constitution of the Republic of Indonesia (NRI 1945) prior to the amendment the explicit statement about the rule of law was not stated, it turns out that this was not the case in the original's Explanation 1945 Constitution in the first main point emphasized that Indonesia was A state based on law (*rechtsstaat*) and not based on mere power (*machsstaat*).

Current law must be dynamic by following businesses world development. The business world wants parties who carry out large amounts of financial transactions in agreements to involve the relevant officials. According to R. Subekti, "an agreement is an event where there is a person who promises to another person or two people who promise to do something." Clearly in article 1457 of the Civil Code, regarding the sale and sale deed, it is stated that the sale is an agreement in which one party is bound to submit a material and the other party to pay the price promised. The division of agreements according to Article 1319 of the Civil Code can be grouped into two, namely:

- a. Agreements which by law are given a special name or named agreement, are agreements known by certain names and which have special arrangements in law.
- b. Agreement in law are not known by a certain name or anonymous agreements, namely agreements that have not been specifically regulated in the law.

An example of a named agreement is a sale agreement with land and / buildings on it. The completeness of the land certificate in the Sale of Land besides the

Certificate is also the Binding Agreement of Sale and Sale Deed.

Sale Deed (SD) is authentic evidence made by the Land Deed Official (LDO) for transferring rights to land and / or buildings. The making of the SD has been arranged in such a way through the Regulation of the Head of the National Land Authority of the Republic of Indonesia No.8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian and Spatial Planning, No.3 of 1997 concerning Provisions for Implementing Government Regulation and No. 24 of 1997 concerning Land Registration. Article 1868 of the Civil Code is a deed made in the form determined by the law by or in front of the general authority allowed for that at the place the deed was made.

Sale Deed includes in the authentic deed which is a deed made by or in the presence of an authorized official. Authentic deeds have the power of proof perfect as long as it cannot be proven otherwise. Based on the Code of Ethics of Association of Land Deed Official (ALDO) Article 1, Paragraph 3, 2017, Officials who are authorized to make authentic deeds concerning certain legal acts regarding land rights or Ownership Rights in Flats, are Land Deed Official (LDO). LDO in carrying out its duties and authorities must have a Code of Ethics. Article 1, Paragraph 2, ALDO Code of Ethics for 2017, concerning the moral rules set out in the legislation in force and must be obeyed. The duties and authority of LDO can be seen in PP No.24 of 2016 concerning Regulation on Position of Land deed officials decomposed in Article 2 Paragraf (1), one of which states that LDO may make a Sale Deed related to land matters.

Considering that the task as a LDO is very vulnerable to temptation and the abuse of power for personal interests, the Republic of Indonesia Government Regulation No. 24 of 2016 concerning Amendment to Government Regulation No.37 of 1998 Regulation on Position of the Official for Making Land Deed, is expected to supervise and anticipate mistakes or irregularities by unscrupulous LDO persons. In practice, there are still LDO who do negligence or carelessly. So that we can categorize negligent actions as mistakes because it harms the parties related to the deed. As in the example of a case that has been decided through the Supreme Court Decision Number 681 K / Pdt / 2017. The verdict discusses the existence of a request for cassation from buyer II as the Cassation Appellant formerly Defendant II / Comparator / Buyer II. Against the Respondent Cassation first, the Plaintiff / Seller and Defendant I / Buyer 1; Defendant III., Notary / LDO, as a Substitute for Notary / LDO; Defendant IV as a Bank Notary, the Defendants are hereinafter referred to as the Participants of the Cassation Respondent. The result of the ruling shows that the court of first instance to the last level has assessed that prospective Buyer 1 and Buyer II have violated or did not fulfill the first, namely the principle of justice. The substitute LDO does not register Sale Deed cancellation immediately after the agreement to cancel the agreement is signed by both parties so that the Deed of Purchase is deemed by one party to remain valid and raise legal issues. An error in carrying out the profession can be caused by lack of knowledge, lack of experience, or lack of understanding. Likewise, LDO errors are caused by a lack of knowledge related to the issues desired by the parties. Moral responsibility in carrying out the profession is demanded to always improve the existing deficiencies to be more just, more under human dignity, and so that people can feel happiness. These moral principles form the basis of critical norms that should be done into practice in the proper circumstances.

## **2. RESPONSIBILITIES OF SUBSTITUTE LAND TITLES REGISTRAR IN DEED CANCELLATION OF NOT REGISTERED LAND**

Based on the Supreme Court's Decision Number 681 K / Pdt / 2017, the Decision discussed the existence of an appeal request from Defendant II / Appellant's Cassation Appellant. Against the Respondent Plaintiff / Compared and Defendant I, Defendant III Notary / LDO, as a Notary / LDO Substitute, Defendant IV Notary / LDO, and Co-Defendant, or hereafter referred to as the Participants of Cassation Respondent. Initially, before the Cassation, a lawsuit was filed at the first court in the Bandung District Court with the main case starting in 1992. Defendant I had come to the Plaintiff's Office intending to buy a plot of Land Ownership Number 81 / Sukamiskin Village, an area of 8,295 m<sup>2</sup> (eight thousand two hundred ninety-five square meters), Situation Image Number 1019/1990, April 5, 1990, registered in the Plaintiff's name. Then there was an agreement on the price and method of

buying and selling the land between the Plaintiff and Defendant I. The price agreement was made at Rp.350,000,000.00 (three hundred and fifty million rupiah). Then the Plaintiff was given an advance of Rp.100,000,000.00 (one hundred million rupiahs) and the remaining Rp.250,000,000.00 (two hundred and fifty million rupiahs), it was agreed to be paid and / or repaid after disbursement of house ownership credit on behalf of CV. The Milky Way Kencana owned by Defendants I and Defendant II from the Main Bank of Bandung Branch was approved and disbursed. However, it turned out that the application for home ownership loans from the Main Bank at the request of Defendant I was not approved and / or not disbursed by the Main Bank of Bandung Branch. Then Defendant I and Defendant II automatically cannot settle payment of the Plaintiff and Co-Defendant's property rights. Then the Plaintiff and Defendant I agreed to cancel the sale of the land. So that on April 27, 1997 both of them had made and signed the Sale Deed Cancellation Number 02/01/21/01 / JB / 1993, which had been made by and before Defendant III. The Defendant III and / or the Class I A District Court had not submitted legally the cancellation letter in Bandung.

Based on PP No. 24 of 1997 concerning Land Registration Article 1 paragraph (1) states that: Land registration is a series of activities carried out by the Government on an ongoing, continuous and regular basis, including the collection, processing, accounting and presentation and maintenance of physical and juridical data, in map and list forms, regarding parcels of land and units of flats, including a letter giving proof of rights to existing plots of land only and ownership rights to the unit of flats and certain rights that burden it.

In this case land registration is a must with a Sale Deed. Seller and Buyer make and sign the cancellation letter of the Sale . If it had been canceled, the original Deed of Sale could not be circulated again, so that there was no registration process for transferring land rights at National Land Authority (NLA). Based on Government Regulation No. 24 of 1997 Article 45 paragraph (1) letter g states that the Head of the Land Office refuses to register the transfer of rights or assignment of rights if the legal act referred to in Article 37 paragraph (1) PP No. 24 of 1997 was canceled by the parties before being registered by the land office. The purpose of legal actions in PP No. 24 of 1997 Article 37 paragraph (1) is the transfer of rights to land and ownership rights to a unit of flats through the sale , exchange, grants, income in companies, and other legal acts of transfer of rights, except transferring rights through auctions, can only be registered if proven by deed made by the authorized LDO according to the applicable laws and regulations.

According to the author, land registration provides a requirement where the transfer of rights to land whether registered (in the form of a certificate) or not registered (not yet certified) must use an Authentic Deed made by the Land Titles Registrar (LDO), this is to reduce the risk of future claims, to provide a sense of legal certainty to both the Seller and the Buyer.

Furthermore, Endang Sri Kawuryan at the LDO Prudential Principles seminar on the Making of LDO Related to the Land Registration Publication System in Indonesia, dated June 14, 2020, provided an explanation that based on Article 97 of the Minister of Agrarian Regulation No. 3 of 1997 before carrying out drafting of the transfer or assignment of rights on land or ownership rights of LDO flats, must inspect the land office regarding the suitability of the land rights certificate or the flats concerned with the list at the local Land Office by showing the original certificate. Is it true that the land being traded belongs to the Seller, and whether the land has a burden. After checking, then making the deed. In making the deed, the party carrying out the legal act concerned or the person authorized by it with a written power of attorney under statutory regulations must attend it. Then the LDO must read the deed he made before the parties and was attended by two witnesses before it was signed by the parties, this is further explained in Article 101 paragraph (3) Regulation of the Minister of Agrarian Number 3 of 1997 concerning the provisions of implementing Government Regulation Number 24 of 1997 regarding Land Registration.

In this case the author agrees with what Endang Sri Kawuryan has said. The purpose of reading the deed is for the parties to know about the objects that parties will promise and approve, because in making the deed, it must fulfill the legal conditions of the agreement listed in Article 1320 of the Civil Code, namely the existence of one element of the agreement and also the clarity of the promised object. It must be done carefully because it can cause harm to the parties concerned, including LDO itself. Based on Government Regulation (PP) No. 24 of 1997, transferring land and objects on it was carried out with the LDO. In this case Buyer 1, who wishes to own the Seller's property. An agreement has been made on the price and method of buying and selling the land between Seller and Buyer 1 at a price of Rp.350,000.00 (three hundred fifty million rupiah) by installments. But in the middle of the journey Buyer 1 could not pay the payment, so the Seller and Buyer agreed to cancel the sale of the land. On April 27, 1997 both of them made and signed the Sale Deed cancellation before the Replacement LDO. The cancellation letter had not yet been submitted to the Land Office.

According to Sabrina, if the cancellation is done before registration is made to the Land Office, then the cancellation can be done by notarial deed only because the act of deed in the LDO is a civil deed of the parties. Then if the cancellation is done when it has entered the registration process at the Land Office, based on PP No. 24 of 1997 Article 45, the cancellation must be with a court decision. Under the principles in civil law, when a cancellation is made, all such conditions must be returned to their original state when the aforementioned legal act has not yet occurred. Regarding the LDO cancellation, the cancellation is in the registration process at the Land Office, which according to Article 45 PP No. 24 of 1997 requires a court decision because its cancellation requires a careful review. Whereas the deed of legal actions

which later in the deed of LDO is the act of the parties. If the parties agree or there is no objection, the parties come to the LDO to make the deed of cancellation. However, if the parties are in dispute, one party can submit a cancellation to the General Court or District Court. This method can actually be done to cancel the LDO, which is in the process of registering at the Land Office. So even though the LDO is in the process of registering at the Land Office and there is no dispute, if the parties wish to cancel it, the cancellation can be made with a notarial deed and then submit a request for cancellation by attaching the deed of cancellation. When a cancellation is submitted, the land office has authorize to decide on registration cancellation. According to the Respondent of Cassation or Seller at the time of signing of the Sale Deed, based on Decision Number 681 K / Pdt / 2017 page 3 that the cancellation is valid because it must be registered with the court or local agency to restore the claimant's rights. It is proven by point 9 of the plaintiff's argument. - That the Plaintiff and Defendant I on April 27, 1997 made and signed the Cancellation of Purchase Certificate No. 02/01/21/01 / JB / 1993, which had been made by and before Defendant III. The cancellation letter had not been submitted by the Defendant III and / or the Class I A District Court in Bandung.

In this case a substitute LDO has neglected, which did not register the cancellation of SD to the Land Office immediately after the agreement to cancel the agreement was signed by both parties so that the Sale Act was deemed by one party to remain valid and raise legal issues in the future which day gave birth to a double certificate, while the landowner did not know Ade Budi Permana and did not feel he signed the SD. To the knowledge of the landowner, that the Seller only goes to Defendant IV and Defendant III. After investigating that Defendant III was the LDO Substitute Ade Budi Permana. Therefore, point 14 is required by the Plaintiff to notify the competent authority to submit the decision to cancel the Sale Deed Number 02/01/21/01 / JB / 1993, for a plot of land ownership number 81 / Sukamiskin Village, area of 8,295 m<sup>2</sup> (eight thousand two hundred ninety-five square meters), Situation Drawings Situation Drawings Number 1019/1990, April 5, 1990, recorded in the Plaintiff's name which was made by Ade Budi Permana, the Land Titles Registrar (LDO) in Bandung. Furthermore, in point 6 of the principal case, the plaintiff requests to notify the competent authority to submit the decision to cancel the Sale Deed Number 02/01/21/01 / JB / 1993, for a plot of ownership land Number 81 / Sukamiskin Village, area of 8,295 m<sup>2</sup> (eight thousand two hundred ninety-five square meters), Situation Image Number 1019/1990, April 5, 1990, recorded in the Plaintiff's name, which was made before the Land Deed Official (LDO) Ade Budi Permana in Bandung. Based on Civil Code Article 1338 Paragraph (2) Agreement cannot be withdrawn unilaterally because it is an agreement between the two parties and the reasons stated by law are sufficient for that. It means that an agreement that has been made cannot be canceled unilaterally without the other party agreement. This is very reasonable, so that the interests

of other parties are protected because the agreement was made based on both parties agreement, then the cancellation must be based on the agreement of both parties.

According to the Cassation Applicant or Buyer II, the Reconvention Lawsuit states that the cancellation is invalid because the deed has not been processed registration at BPN and the Sale Deed 02/01/21/01 / JB / 1993 is still valid and the transfer process must continue to proceed as a result. Based on Decision Number 681 K / Pdt / 2017 page 15 that: The Plaintiff of the Reconvention begs the Bandung District Court to Declare the Deed of Purchase Number 02/01/21/0 / JB / 1993, which was made and before the Defendant II participated in the Reconvention / Defendant III in the Convention, valid and legally binding. According to the Judge's Consideration at the Cassation level that the Bandung District Court has granted Decision Number 52 / Pdt.G / 2015 / PN Bdg, dated 19 April 2016 with the following rules, rejecting Defendants II and Defendant IV's exclusions for the whole; in the case: 3. Declares null and has no legal force against SD Number 02/01/21/01 /JB/1993 on a plot of Land Ownership Number 81/Sukamiskin Village, and so on, which was made before an Ade Land Drafting Officer Budi Permana in Bandung. Order the Plaintiff to notify the competent authority to submit the decision to cancel the Purchase Deed Number 02/01/21/01 / JB / 1993 on a plot of Land Ownership Number 81 / Sukamiskin Village, and so on, which was made before an official of the Land deed official Ade Budi Permana in Bandung. The Bandung High Court upheld the judge's consideration that in the appeal level against Defendant II's request with Decision Number 342 / PDT / 2016 / PT BDG., Dated September 5, 2016. Then the Appellant applied for Cassation in the Supreme Court. At the cassation level, the Petitioner discussed the evidence of letter 19 that: Taking this decision *Judex Facti* ignored the law governing the transfer of land rights, namely Article 19 Government Regulation Number 10 of 1961 concerning Land Registration which reads: "Every agreement that intends to transfer rights to land, granting new rights to land, mortgaging land or borrowing money with land rights as dependents must be proven by a deed drawn up by and before an official appointed by the Minister of Agrarian hereinafter referred to in this Government Regulation (official). The Minister of Agrarian Affairs set the deed. "

That proof of transferring land rights is not enough to do only with a private letter. Even more so if the underhanded letter is made to cancel an Authentic Deed. The applicant does not recognize the letter of cancellation of SD as Evidence because it does not balance the strength of the evidence with SD. Then the applicant alludes to the facts of the trial Decision Number 681 K / Pdt / 2017 pages 23-24; That there is a legal sale process for the land, the Cassation Applicant has paid in full as the Buyer; 7.3. An irrefutable conclusion can be drawn, that the obligations which are the responsibility of the Cassation Appellant have been carried out and the law of sale has occurred; 7.4. This means that civilly, the

object has become the property of the Petitioner in Cassation and all rights to use it. Upon the petition of the petitioners, Opinion of the Supreme Court Decision Number 681 K / Pdt / 2017 pages 26-27: That the Sale Deed of the object of dispute Number 02/01/21/01 / JB / 1993 between the Plaintiff of the Convention as the seller and the Defendant I of the Convention as the buyer , has been canceled with the cancellation agreement letter between the Plaintiff of the Convention and the Defendant I of the Convention because Defendant I of the Convention could not pay off the remaining payment, so it is illogical if Defendant II did not know of a quo cancellation; Whereas with the agreement to cancel the sale agreement between the Plaintiff of the Convention and the Defendant I of the Convention, the Sale Deed Number 02/01/21/01 /JB/1993 on the Land of Ownership Number 81/ Sukamiskin Village, and so on, which was made by the Officials Ade Budi Permana Land deed official in Bandung on behalf of the Plaintiff of the Convention, is null and void legal law.

Based on court decisions and legal considerations above, the SD should not need to be numbered because at the time of signing the SD, the owner's wife (Yetty Setianingsih) had not yet signed the SD. It is planned that the wife of the new owner will sign the SD if the purchase fund is approved and disbursed by the Main Bank. But if SD has been numbered according to the author, an error has occurred from LDO because it turns out that it does not fulfill the requirements for the validity of the sale . Henceforth in this case SD has been numbered, so it must proceed to the registration stage of transferring rights at BPN. Regarding the LDO code of ethics Article 4 letter R point (1) of each LDO, both in carrying out official duties and in daily life are prohibited from carrying out other acts which are generally referred to as violations of the LDO code of ethics, including but not limited to violation of the provisions in the LDO Position Regulations and other statutory provisions related to the main duties of LDO. That the cancellation then occurs, the authors interpret SD cancellation as being canceled through the authorized agency. But unfortunately there was no mention of who the authorized agency was and how long the notification process was for that agency. Apart from the lack of a judge in deciding a quo case, according to the writer, the Judge indirectly appoints a substitute LDO as the party responsible for reporting the authentic deed of Purchase Deed to related institutions, namely the Ministry of Agriculture and Spatial Planning / National Land Authority of the Republic of Indonesia where Purchase Deed will be processed. Likewise regarding the transfer of land ownership rights, based on Government Regulation Number 24 of 1997 Article 3 paragraph (1) concerning cancellation of the LDO and Government Regulation Number 24 of 1997 Article 37 paragraph (1) of transferring ownership rights over land through the sale can be registered if proven with a deed drawn up by authorized LDO according to the applicable laws and regulations. In this case the Land Sale Deed cancellation registration is a must, but in practice the

Substitution LDO has been negligent in administration so the Substitute LDO must be responsible for the act. In the opinion of Benny Djaja, Sale Deed should not be further processed to change the name, because the original Deed of Sale which has been signed by the parties should be kept in the same bundle as the letter of cancellation of the Deed of Sale. Inaccuracy in matters of administration makes this case go to court. In the replacement LDO court ruling must be responsible for the cancellation deed he made. Munir Fuady elaborated on legal responsibilities. Responsibilities can be divided into 3 (three) types, namely: (a) Responsibilities with elements of error (intentional and negligence) as contained in Article 1365 of the Civil Code; (b) Liability with an element of error especially negligence as contained in Article 1366 of the Civil Code; (c) Absolute responsibility (without error) as contained in Article 1367 of the Civil Code. Based on the liability above, Decision Number 681 K / Pdt / 2017 is the responsibility with an element of error, especially negligence contained in Article 1366 of the Civil Code which states, "Everyone is responsible not only for losses caused by his actions, but also for losses because of negligence or carelessness. " Where it is necessary to immediately report the cancellation of the Sale Deed to the authorities, but because there are no legal rules regarding the time limit of the reporting, the reporting does not take place so it causes the parties to dispute. The responsibility of the Substitute LDO in canceling the Sale Deed that is not registered is that the Substitute LDO is responsible for the process after the signing of the deed in which the cancellation event occurs after the signing of the SD and therefore is still the responsibility of the Replacement LDO.

The responsibilities of the Replacement LDO in canceling SD which are not registered at the land office are: (1) Moral Responsibility. Morally based on the provisions of the Fourth Congress ILDO held in Bandung in 2017 produced a Code of Ethics of the Association of Land Titles Registrars (ILDO) hereinafter referred to as the LDO Code of Ethics where in Article 4 letter R point (1) it was stated that each LDO, both in the framework of implementing office assignments and in daily life are prohibited from carrying out other acts that are generally referred to as violations of the LDO Code of Ethics, including violations of the provisions in the LDO Position Rules and other statutory provisions related to the main tasks LDO. [10] In this case, LDO should immediately report the Sale a Deed cancellation to the Land Office, but what has happened LDO has neglected to carry out its main tasks in land registration activities. Government Regulation of the Republic of Indonesia Number 24 Year 2016 Regarding Amendments to Government Regulation Number 37 of 1998 Concerning Regulation of Position of Official for Making Land Deed Article 10 and paragraph (1) Code of Ethics for Association for Land Deed Making Officials (ILDO) Article 6, namely for members who commit violations The Code of Ethics can be subject to sanctions in the form of Reprimand; Warning; Suspension (temporary dismissal) of ILDO membership; Onzetting (dismissal) of ILDO membership and / or dishonorable discharge

from ILDO membership. (2) Administrative Responsibilities. Administrative errors made by the LDO Substitute in canceling the Sale Deed of land that is not registered will lead to legal consequences, namely the Substitute LDO can be held accountable. Administrative responsibility is determined in PP No.24 of 1997 concerning Land Registration Article 62 of the Regulation stipulates that the LDO which in carrying out its duties ignores the provisions referred to in Article 38, Article 39 and Article 40 and the provisions and instructions given by the Minister or Official appointed to be imposed with administrative action in the form of a written warning to the dismissal of his position as a LDO, without prejudice to the possibility of claiming compensation by those who suffer losses resulting from the neglect of these provisions. (3) Civil Liability. Civil liability, the LDO Substitute makes a mistake because of negligence there is Article 1366 of the Civil Code, which reads "Everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or lack of be careful ".

And the form of liability is liability based on negligence, meaning that the replacement LDO in the SD cancellation does not immediately register with the land office causing losses to the parties, it is responsible for breach of contract. In this case the Substitute SDO must compensate for the losses caused by his actions.

### **3. LEGAL CONSEQUENCES OF CANCELLATION OF NOT REGISTERED SALE DEED**

Based on District Court's decision upheld by the Bandung High Court with Decision Number 342 / PDT / 2016 / PT BDG., 5 September 2016. Defendant II Yulidaryati was not satisfied with the decision of the appeal and therefore appealed for cassation. The appeal was due to doubt the existence and truth of the cancellation agreement and stated that the agreement was just a lie. Obligations which are the responsibility of the Cassation Appellant have been carried out and legal acts of sale have occurred, which means civilly, the object has become the property of the Petitioner of Cassation and all rights to their use have been strengthened with regulation of RI BPN Number 5 / pct / BPN.RI / 2014. Particularly in the consideration part point c, which states: "that against the cancellation, Drs A Sinulingga as the attorney from Sri Daryati (aka Yulidaryati) as the owner of the Certificate of Ownership Number 81 / Sukamiskin obtained from Darmawan Suriaatmadja based on the Sale Act of July 15, 1993 Number 02/01/21/01 / JB / 1993 whose registration behind his name has not been held at the Bandung City Land Office ... .. and so on "; But the Supreme Court continued to reject the Petition for Appeals and sentenced him as the losing party.

Revocation of Land Rights in the Regulation of the Minister of Agrarian Affairs / head of the National Land Authority Number 3 of 1999 concerning Delegation of the Authority to Grant and Cancellation of Decisions on Granting of Land Rights Article 1 number 12, hereinafter referred to as Regulation of the

Minister of Agrarian Affairs / Head of the National Land Authority (PMNA / KBPN) Number 3 of 1999 "Cancellation of the decision regarding the granting of a right to land because the decision contains legal defects in issuing or carrying out a court decision that has permanent legal force." Regulation of the Minister of Agrarian Affairs / Head of National Land Authority Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights Article 1 number 14, hereinafter referred to as PMNA / KBPN 9/1999, Cancellation of Land Rights means, "Cancellation of decision granting of land rights or certificates of land rights because the decision contains administrative legal flaws in its issuance or to carry out court decisions that have permanent legal law. "Cancellation of land rights in Article 104 paragraph (1) PMNA / KBPN No. 9/1999 covers the products of the National Land Authority service, namely:

a. Decree on Granting of Land Rights; b. Certificate of Land Rights due to Mistaken subject to rights; Error of right object; Error type of right; Extensive calculation error; There are overlapping land rights; c. There is an untruth in physical data and / or juridical data or other errors that are administrative law.

In this case the Substitute LDO has been negligent in issuing a letter of cancellation of the Sale Deed Number 02/01/21/01 / JB / 1993, for which the cancellation letter had not yet been submitted to the National Land Authority (NLA). The SD contained legal defects in the process after the signing of the SD. Substitute LDO should pay attention to transferring land rights through NLA. Then NLA issues SD cancellation letters.

There are several reasons for canceling the agreement according to the Civil Code. We can group these reasons into five categories as follows:

- a. Non-fulfillment of conditions set by law for this formal agreement. which results in an agreement being null and void;
- b. Non-fulfillment of conditions for validity of the agreement, which results in the agreement being null and void, or the agreement can be canceled;
- c. Fulfillment of terms canceled on the conditional agreement;
- d. Cancellations by third parties based on Paulina's actions;
- e. Cancellations by parties who have been given special authority under the law.

Based on this, the cancellation of the SD needs to be done because it has not been settled, as evidenced from the sale deed of the object of dispute Number 02/01/21/01/JB/1993 between the Plaintiff of the Convention as a Seller and Defendant I of the Convention as a buyer, has been canceled with an agreement letter cancellation between the Plaintiff of the Convention and the Defendant I of the Convention due to the Defendant I of the Convention cannot pay off the rest of the payment, vide letter Number 165 / BSK / I / 93 dated January 5, 1993 where all the advance payments for the disputed object have been returned by the Plaintiff I to the Defendant I of the Convention and illogical if Defendant II did not know of a quo cancellation. An annulment decided by a

District Court judge for a substitute LDO may be null and void if the deed of the Substitute LDO does not meet the requirements specified in the law (Article 1320 of the Civil Code), if do not meet subjective conditions (agreed those who bind themselves, competent to do something agreement) and objective conditions (a certain thing and a cause). In this case Sale Deed Number 02/01/21/01 / JB / 1993, on a plot of land ownership number 81 / Sukamiskin Village is declared null and void of legal force. Sabrina, as a Notary and LDO believes that the actions of the LDO Substitute in canceling the Sale Deed that is not registered at the Land Office are acts that are caused by negligence or carelessness. As a result, the deed is null and void, meaning that the deed has no legal force and the Sale Deed can be canceled.

Some findings, then in the cancellation's implementation of the sale deed agreement, if the LDO made has not been legally registered for administrative transfer proceedings to the Land Office, then the cancellation can be resolved by deliberation and consensus by the parties, canceling through the LDO, if the deed those made have already been registered or are in the process of re-registration, the cancellation process must be with a court decision. Legal consequences for cancellation, (1). The sale agreement for the said land is deleted and returned to its original state, prior to the agreement, by: Deliberation and consensus by the parties or through a court decision, based on a lawsuit by one party. (2). For those who suffer losses, the debtor is required to return the replacement costs in the form of returning a sum of cash, fines and interest. Cancellation of the Sale Deed that is not registered will lead to a dispute in the future. For example, the case in Decision Number 681 K/Pdt/2017 as discussed. The legal consequences that are declared nullified before the court or the deed which had perfect legal force became a deed that only had legal force under the hand, all of which was due to negligence from someone Substitutes LDO who made the deed that was not based on the requirements of applicable laws and regulations, because it does not fulfill subjective conditions (their agreement is binding on them and the ability of the party making the agreement).

The cause of the problem arises because of negligence either intentionally or unintentionally by the Substitute LDO, so that the deed only has the power of proof as a private deed or can be canceled, because of failing to fulfill subjective conditions which can be used as an excuse for the injured party demanding compensation to the party Substitute LDO. In this case the cause of the problem arises from an error or negligence of the LDO Substitute in canceling the Sale Deed that is not registered at the Land Office.

Therefore, the LDO Substitution can be held accountable for this matter associate with the cancellation letter of the Sale Deed that has been canceled or declared null and void by law by the Court Decision as a result of finding legal defects in the SD cancellation procedure both administratively and civilly.

The legal consequences of the deed containing legal defects can be interpreted that the sale deed is degraded by the strength of its proof, from an authentic deed to a deed under the hand. This is because it is not as easy as canceling an existing sale deed even though the deed does not meet the material or formal requirements as long as the deed has not been registered with the local Land Office. The wrong registration process can result in the deed having weak legal certainty. Law must protect buyers in good faith when there is a signing on the Deed of Sale. The Sale Deed can be used as evidence for the buyer to submit a claim to the LDO Substitute with a lawsuit for negligence. From this the LDO Substitute is obliged because his actions compensate the loss. As for acts of error because of negligence regulated in Article 1366 of the Civil Code that everyone is responsible, not only for losses caused by acts, but also for losses due to negligence or carelessness. Substitute LDO is then obliged to compensate for the loss if the Court grants the party's claim as a result of issuing the deed. In addition to compensation, other sanctions LDO can receive that as a legal consequence of the act of issuing the deed are administrative sanctions and sanctions. If viewed from PP Number 24 of 1997, the sanctions for violations of Article 39 are stated in Article 62, which states: "LDO which in carrying out their duties ignores the provisions as referred to in Article 38, Article 39 and Article 40 and provisions and instructions. given by the Minister or appointed official is subject to administrative action in the form of a written warning until termination from his position as LDO, without prejudice to the possibility of compensation for claims by parties who suffer losses because of the neglect of these provisions. Thus the LDO can be subjected to sanctions in the form of temporary dismissals up to permanent dismissals. Regarding the violations and dismissal will be further examined by the Regional Supervisory Council (RSP) which will hold a hearing to examine the case regarding the negligence of the LDO. Thus, the parties can also report the Replacement LDO to RSP in advance besides suing to the Court. Temporary termination is determined by the Head of the National Land Authority of the Republic of Indonesia.

Notary Kiki Hertanto, Chairperson of the Association Land deed Official Head Management (Regional Management) confirmed this. He said one of the main tasks of the LDO was to carry out some land registration activities by making a deed as proof that certain legal actions had been carried out regarding land rights or ownership rights which were the basis for registering changes in land registration data resulting from legal actions. Under the main tasks given, LDO has committed violations which have failed to not register SD cancellation. Regarding these violations, RSP has an investigative function against LDO violations. If a violation occurs, the LDO may be subject to sanctions. The form of sanctions is through sequential levels, namely oral, written, temporary suspension, permanent termination. However, in the case of cancellation of SD that is not registered, the LDO is given sanctions by the Head of the National Land Authority of the Republic of Indonesia, which can

be a temporary dismissal until a permanent dismissal. LDO supervision is carried out by the National Land Authority, ILDO, and the Regional Supervisory Council. If a party is injured by the LDO, the party that feels disadvantaged will first report to the MPD in addition to suing to the Court, and the LDO will be called in and given a question where the error lies. If the LDO is not under procedures, the deed is null and void. Coaching for LDO is carried out by National Land Authority (NLA) in the form of a meeting and must be attended by LDO and NLA will provide socialization.

Based on the LDO Code of Ethics Article 3 letter p states that the LDO must perform other actions that are referred to as obligations to be obeyed and implemented, among others: Legislation that regulates the LDO Position, the contents of the oath of office, and LDO obligations. This Seller and Buyer, agreed to cancel the deed so that the LDO can be subjected to administrative sanctions in the form of termination permanently, and also the LDO is required to pay compensation that may be suffered by the parties who feel aggrieved by the acts carried out by the LDO, namely issuance copy of Deed of Sale.

Another problem that arises as a result of the LDO Substitute who did administrative Mal, namely the LDO became a legal defect. The legal consequences in the Sale Deed cancellation are not under the cancellation procedure which results in legal defects that can be caused, because of deviations from the formal requirements and material requirements. This formal requirement deviation is regulated by Civil Code Article 1868 and Regulation of the Minister of Agrarian Affairs / Head of BPN Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration Article 95-102. This deviation in material requirements is regulated by Civil Code Article 1320, in which each agreement must meet subjective and objective conditions. If one condition is not fulfilled, the LDO may be canceled or null and void.

#### **4. CONCLUSION**

We can conclude it that the responsibility of the substitute LDO in canceling the land sale deed that was not registered with Decision No. 681 K / Pdt / 2017 is a moral responsibility where LDO can be held accountable ethically. Substitute LDO will be subject to sanctions in the form of a warning; warning; suspension (temporary dismissal); dismissal or dismissal with no respect by the LDO Trustees. The second is the administrative responsibility whereby the LDO Substitute is subject to administrative action in the form of a written warning until the dismissal from his position by not reducing the possibility of being sued by the parties suffering losses. And the third is civil liability, of which the LDO is responsible for the process after the signing the SD. The form of accountability is a substitute LDO required to compensate for losses caused by its actions.

The legal consequences of the Sale Deed that are not registered become a legal defect in which the cancellation of the Sale Act is not under the cancellation procedure. So the Deed of Sale is null and void. All of this is because of the negligence of the LDO Substitute who did not register the Sale Deed cancellation to the Land Office. Substitute LDO may be subjected to administrative sanctions in the form of temporary dismissal up to permanent dismissal and coaching is conducted in the form of a meeting that must be attended by LDO. In addition, LDO is required to pay compensation that may be suffered by parties who feel aggrieved by the conduct of the LDO.

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