

CHILD'S CONSENT AS A CONDITION IN IMPLEMENTING THE TRANSFER OF PARENTS' ASSETS TO CHILDREN (STUDY IN THE OFFICE OF NOTARY AND LAND DEED MAKING OFFICIALS (PPAT) MALANG)

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Abstract: Article 1666 of the Civil Code defines a grant as an agreement whereby the grantor, at the time of his life, freely and irrevocably, surrenders something for the needs of the beneficiary who receives the handover. A land grant is a gift from one person to another without any substitute and is made voluntarily, without any contravention from the recipient of the gift, and the gift is made while the giver is still alive. However, a parent's gift to children in a family is not the least that can cause jealousy, even family division. This means that a grant that originally had a noble purpose as taqarrub and social care can turn into a family disaster and disaster. This is the duty of the PPAT and the Notary in providing legal counseling so that in making the grant deed later there will be no problem with lawsuits in court. Formulation of the problem 1) How is the process of transferring land grants to children according to statutory regulations. 2) How is the implementation of the transfer of parental assets to children at the Notary Office and Land Deed Making Officer (PPAT) Malang. 3) What are the considerations of the Land Deed Making Official (PPAT) for asking for the child's approval in making a grant deed. The method used is empirical research with a sociological juridical approach. The process of transferring land grants according to laws and regulations must be guided by Article 1682 of the Civil Code which states that no grant except as meant in Article 1687 can be made without a notarial deed, the minutes (original text) must be kept at the notary and if this is not done then the gift is invalid. In other words, every grant, both movable and immovable property (land) should use a notarial deed, specifically land rights, the process must or must use an authentic deed (PPAT deed).

The implementation of the transfer of grants from parents to children at the Malang Notary Office and Land Deed Making Officer (PPAT) is based on interviews with the Malang notary and PPAT, that for the implementation of the transfer of land rights with the grant process, you must use a grant deed made by the Land Deed Making Officer. (PPAT), the grantor is subject to PPH tax and the grantor must pay the BPHTB tax (tax for acquiring land and building rights) and the PPAT is required to submit the grant deed to the Land Agency Office within 7 (seven) working days. Considerations of the Land Deed Making Officer (PPAT) for the approval of children in making a grant deed if the author of the analysis is from the theory of authority, then the making of a grant deed is the authority of the PPAT which is made by the parties and the PPAT is in accordance with Article 1868 of the Civil Code, but in making it must meet the requirements formal and material. Apart from that, as a basis for consideration or additional conditions in making a grant deed, PPAT Malang uses additional conditions with the consent of the child. With the aim that the child is considered to know and understand that the property has been donated to another relative, so as to minimize lawsuits or disputes in the future. Although basically a parent's gift to one of their children is actually permissible without having the permission or approval of the other child.

Keywords: Grant, PPAT/Notary, Approval.

1. Introduction

Grants are an agreement in everyday life, especially in the community, therefore it is important for the community to always understand the grant agreement, including the rules governing grants. Grants which have the meaning of giving or gifts have a social function in people's lives both given by individuals and by institutions¹.

A parent's gift to children in a family is not the least that can cause jealousy, even family breakdown. This means that a grant that originally had a noble purpose as taqarrub and social concern can turn into a family disaster and disaster². The Compilation of Islamic Law adheres to the principle that grants may only be made 1/3 of the total assets owned. If it is carried out in defiance of these provisions, it is hoped that there will be no splits between families, both between children and children and parents³.

Grants made by the grantor to the recipient of the grant on land and/or buildings that have been certified during their lifetime by the grantor must be made using an authentic deed and carried out before the Land Deed Making Officer (PPAT), while for land and/or grants or buildings that have not been certified, then the grant is made before a notary⁴. Because a grant is a legal action made with an authentic deed by the PPAT, one of the PPAT's obligations in making the grant deed is to ensure that the outstanding BPHTB payment has been paid off by the taxpayer by showing proof of the Deposit Letter of Land and Building Rights Acquisition Fees (SSB), then the making and signing of the grant deed can be carried out.

Many issues related to grant issues. The practice of grants in everyday life has been implemented and carried out by the community. In practice, it is often encountered giving grants from parents to their children or one of their children. A grant is an agreement that the grantor during his lifetime, free of charge and irrevocably, surrenders something for the benefit of the grantee who receives the handover (Article 1666 of the Civil Code). Grants can only be made on objects that already exist, if it concerns objects that will only exist in the future then the grant is cancelled (Article 1667 of the Civil Code)⁵.

Based on the description of the research background above, the formulation of the problem that is the focus of this research is:

1. What is the process for transferring land grants to children according to statutory regulations?
2. How is the implementation of the transfer of parental assets to children at the Notary Office and Land Deed Making Officer (PPAT) Malang?

¹ Boedi Harsono, *Indonesian Agrarian Law* (Jakarta: Trisakti University Publisher, 2013), p.507

² H. Chuzaimah T Yanggo and HA Hafiz anshary AZ MA , *Problems of Contemporary Islamic Law*, (Jakarta: PT Pustaka Firdaus, 1995), p. 81

³ Erman Suparman, *Digest of Indonesian Inheritance Law*, (Bandung: CV Mandar Maju, 1995), p. 73.

⁴ Chairani Bustami, *Legal Aspects Related to the Deed of Sale and Purchase Agreement Made by Notary in Medan City* (Thesis, PPs-USU, 2002) p. 96.

⁵ Civil Code (Jakarta: Permata Press, 2010). matter. 410

3. What are the considerations of the Land Deed Making Officer (PPAT) in asking for the child's consent in making a grant deed?

2. Method

This research is an empirical research with an approach. The approach used is the Juridical Sociological approach, which is a research that emphasizes the applicable legal regulations and in this case the research is carried out starting from research on secondary data which is then followed by research on primary data in the field⁶.

Data source

- 1) Primary data in this study will be obtained directly from a notary in Malang City, whether it is something that is examined directly, namely the facts contained in that location.
- 2) Secondary data is obtained from the results of a literature study conducted by the author on literature, books, writings, news, and scientific research results related to this research material which can help the writer complete this research.

This research was conducted at the Notary and PPAT Office in Malang City. By using data collection techniques from interviews, documents, and observations. data analysis using the Qualitative Description analysis method which describes or describes the results of the research into an in-depth essay on the issue being studied⁷.

3. Land Grant Transition Process According to Laws and Regulations

Article 1666 Grant is an agreement whereby a grantor surrenders an item free of charge, without being able to take it back, for the benefit of a person who receives the delivery of said item. The law only recognizes grants between living people.

Article 1666 of the Civil Code defines a grant as an agreement whereby the grantor, at the time of his life, freely and irrevocably, surrenders something for the purposes of the beneficiary who receives the handover⁸. A land grant is a gift from one person to another without any substitute and is made voluntarily, without any contravention from the recipient of the gift, and the gift is made while the giver is still alive.

The advantages and disadvantages of transferring land rights through grants, the advantages of transferring land rights through grants, namely:

- a. Is a gift for free (free / without payment). because it is given free of charge, the recipient of the grant does not receive additional benefits and therefore the grant should not be taxed. However, the Tax Law stipulates that those who are exempt from income tax are only grants from parents to children and from children to parents. So, if the grant is made between siblings, they are still subject to income tax as is the case with ordinary buying and selling
- b. Grants are final and cannot be withdrawn (Article 1666 of the Civil Code)
- c. What can be donated are movable and immovable property. What is meant by movable property, for example, are stocks, bonds, deposits and rights to levy rent.

⁶ Bambang Sunggono, *Legal Research Methods* (Jakarta, Rajawali Press, 2006) p.75.

⁷ Bambang Sunggono, *Legal Research Methodology*, (Jakarta, PT Raja Grafindo Persada, 2002) p. 38.

⁸ Gede Adi Nugraha, 2016, *The Consequences of Bankruptcy on Grant Agreements*, Kerta Semaya Journal of Law Studies, Udayana University, Vol.4, No. 1 ISSN: 2303-0569

Meanwhile, what is meant by immovable property is land/houses, ships weighing more than twenty tons, and so on.

Disadvantages of transferring land rights through grants, namely:

- a. Grants made between husband and wife, unless previously made a prenuptial agreement regarding the separation of assets in marriage. (Article 1678 Civil Code)
- b. A grant with an agreement that the grantor retains the right to at any time sell the goods being donated. The sanction is that the grant is null and void (Article 1668 of the Civil Code)
- c. If in the deed of grant it is stated that by receiving the grant, the recipient of the grant is also obliged to pay off debts other than what has been stated in the deed of grant in question (Article 1670 of the Civil Code)
- d. Awarding of grants in private letters

The rules in the Civil Code governing the procedures for grants include:

1. Article 1682 of the Civil Code

No gift except as meant in Article 1687 can be made without a notarial deed, the minut (original text) must be kept at the notary and if this is not done then the grant is invalid.

2. Article 1683 of the Civil Code

No gift shall bind the grantor or result in anything before the gift is received in firm words by the person being given the grant or by his representative who has been authorized by him to receive the gift that has been or will be granted. If the receipt is not made with the deed of grant, then the acceptance can be made with an authentic deed later, the original text of which must be kept by the Notary, provided that this occurs while the grantor is still alive; in this case, for the grantor, the grant is only valid since the receipt of the grant is officially notified to him.

3. Article 1684 of the Civil Code

Grants given to a woman who is still married cannot be accepted other than according to the provisions of Chapter V of the First Book of the Indonesian Civil Code.

4. Article 1685 of the Civil Code

Grants to minors who are still under parental authority, must be received by the person exercising parental authority. Grants to minors who are still under guardianship or to people who are under guardianship, must be received by a guardian or guardian who has been authorized by the District Court. If the court grants the said power of attorney, the grant remains valid. even though the grantor had died before the granting of power took place.

5. Article 211 Compilation of Islamic Law

stipulates that "grants from parents to their children can be counted as inheritance" For the implementation of the transfer of rights over the Land Deed Official (PPAT) must submit the PPAT deed to the Land Agency Office within 7 (seven) working days as referred to in Article 40 Paragraph (1) and Paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24" " of 1997 concerning Land Registration. The transfer of land rights, and especially land ownership rights can be carried out correctly, a PPAT who will make the transfer of land rights must ensure the truth regarding the land rights (property rights), and regarding the skills and

authority to act from those who will transfer and accept the transfer of rights over the land. In relation to the object of land rights that are transferred, the PPAT must check the correctness of the following documents:

a. Regarding land parcels that have been registered or ownership rights to apartment units, the original certificate of the title concerned. In the event that the certificate is not submitted or the certificate submitted is not in accordance with the lists in the Land Office.

b. Regarding land parcels that have not been registered:

1. Evidence proving the old land rights that have not been converted or a statement from the Village/Kelurahan head stating that the person concerned controls the land parcel in good faith, and there have never been any problems "arising in connection with the ownership of the land.

2. A statement stating that the land parcel in question has not been certified by the Land Office, or for land located in an area far from the position of the Land Office, from the right holder concerned, confirmed by the Head of the Village/Kelurahan and in the event that the letter cannot be submitted, the PPAT must refuse to make a deed of transfer of rights over the land including the ownership rights to the land to be transferred. If the right holder is unable to provide proof of ownership of the land, either in the form of written evidence or other forms that can be trusted, then the bookkeeping of rights can be carried out not on the basis of ownership but based on evidence of physical possession of the land, provided that:

a) Has been controlled for 20 years or more consecutively by the applicant for registration and his predecessors.

b) Mastery is carried out in good faith and openly

c) Strengthened by the testimony of people who can be trusted

d) Domination is not disputed or not in a state of dispute.

In accordance with Article 1666 of the Civil Code which states that gift is an agreement whereby a grantor hands over an item for free, without being able to take it back, for the benefit of someone who receives the delivery of the item. The law only recognizes gifts between living people. But Article 1688 of the Civil Code states that a gift cannot be revoked and therefore cannot be revoked, except in the following cases:

a. If the terms of the grant are not met by the recipient of the grant. If the conditions for the grant are not met or have not been met, the interested parties will only have to fulfill these conditions, or cancel them, for example: for grants privately or with a letter signed by the grantor only without being witnessed by an authorized official

b. The recipient of the grant has been guilty of or assisted in a crime with the aim of killing the grantor, or other crimes.

c. Grant recipients refuse to provide benefits or maintenance to the grantor after the grantor falls into poverty

Consideration of Absolute Shared Rights

Even though it is the will of the owner of the property to grant to whomever he wishes. However, it should be noted that this freedom is also limited, one of which is by the rights of others. This is because in the grantor's assets there is a legitime portie or absolute share of the child as an heir protected by law.

The absolute right is part of the inheritance for each heir whose amount has been determined by law. Can be divided into two, among others:

1. For the Muslim community

This definition is contained in Article 913 of the Civil Code. "For the Muslim community, it can be guided by Article 209 KHI which states that grants must comply with the provisions of the maximum limit, which is one third of the assets of the grantor.

2. For non-Muslims

Meanwhile, non-Muslims can comply with the rules in Article 881 paragraph 2 of the Civil Code. The rule says, "with such an appointment or grant, the one who bequeaths (and grants-ed) cannot harm his heirs who are entitled to an absolute share."

As a precautionary measure so that problems and demands do not arise in the future, it is better if the grant is accompanied by a Letter of Approval from the biological child(s) of the Grant Giver. That is, giving grants must obtain approval from the heirs and does not violate their absolute rights.

Meanwhile, in Article 19967 of the Civil Code, there are several other additional conditions that must be met in the grant process. Among others are :

- The object/goods donated must have benefits for the recipient.
- Objects/items donated must have a form and are not in the planning process.
- The objects/goods donated are not bound by an agreement, such as mortgages, interchangeable assets and others.
- Grant givers and recipients must be of legal age according to Indonesian law.
- The process of grants and land grant documents is made before a notary or PPAT.
- The original notary deed will be kept by a notary appointed by both parties.
- The grant process must be accompanied by a letter of approval from the biological children or heirs of the grantor.

As with the requirements according to Islamic law regarding grants, there are several things that must be met. Among others are :

- Grant givers and grantees are baligh (adults).
- This grant process may not be carried out on children/people who have not yet been born into the world.
- Giver and receiver must both be reasonable, sane and aware of the actions taken.
- Can be done either by women or men.
- Marriage is not a barrier for someone to make a grant.
- It is permissible to give grants to minors, as long as the process is carried out directly without an intermediary in the presence of the recipient's parents (who are not yet adults).
- It is permissible to give grants to people who are not of good mind and mind, it's just that the process must be carried out by the guardian concerned.

The conditions for the granting of grants are valid, among others:

1. The grant recipient is an adult and capable of taking legal action;
2. The grantor has existing assets or goods to be donated;
3. The giver of the grant and the recipient of the grant are not husband and wife in a marriage;
4. The recipient of the grant must be present at the time the grant occurs;

5. The grantor may not promise that he will still have the power to use his ownership rights to the object being donated, such a grant regarding the object is deemed invalid
6. A gift is null and void if it is made on condition that the recipient will pay off debts or other charges besides what is stated in the deed itself or in the list attached;
7. The grantor may provide conditions for controlling the item.

The procedures for grants are:

1. Grants in the form of tangible movable objects or letters of credit can be made without a notarial deed;
2. In addition to these provisions, a notarial deed applies to acts of grants in which the minut (original text) must be kept at the notary and if this is not done then the gift is invalid.

However, if you refer to SEMA 3/1963 which states that Article 1682 of the Civil Code is still valid, then basically you are not required to use a notarial deed.

The mere existence of a deed of grant does not transfer property rights, because this is no different from a sale and purchase which is an obligatoir agreement so that in order to transfer the goods or object of the grant, yurisdiche levering must be carried out (juridical surrender). In order to determine how to leverage an object, we must know, which category a stock belongs to as an object.

Thus the Land Grant Transfer Process according to Legislation, must be guided by Article 1682 of the Civil Code which states that no grant except as meant in Article 1687 can be made without a notarial deed, which minut (original text) must be kept at a notary and if not done If so, the gift is invalid. In other words, every grant, both movable and immovable property (land) should use a notarial deed, specifically land rights, the process must or must use an authentic deed (PPAT deed) which must be made in accordance with Article 1868 of the Civil Code so that the grant deed can be used as a basis for the transfer of rights over the land that has been granted to him.

4. Implementation of the transfer of parental assets to children at the Notary Office and Land Deed Making Officer (PPAT) Malang

In the UUPA it is stated that land rights can be transferred and transferred. The transfer of land rights to other parties, can be through the land grant process which is the gift of one person to another party or another person without being given compensation or wages in the form of counter-performance, the other is given sincerely without voluntary counter-achievement, in practice this grant has been ongoing For a long time in society, from the past until now, the owner of the grant wants that his property can be distributed in accordance with the will of the owner of the property and also the owner wants to know who the property was given to before the grantor dies and therefore the transfer of land rights due to the grant must be carried out in accordance with the applicable provisions. Therefore according to article 19 UUPA Jo article 37 Government Regulation No. 24 of 1997.⁹

It is important to pay attention to the provision of grants based on the rule of law, it is explained that grants are given by an owner who is capable of carrying out legal actions which is marked by the age of maturity, the gift of goods can be in the form of movable

⁹ Weldo Parinussa, Merry Tjoanda, and Barzah Latupono, "*Division of Inheritance to Heirs of the First and Second Marriages in View of the Civil Code*," TATOHI: Scientific Journal of Law 1, no. 4 (2021): 356–363

objects and fixed or immovable objects. This object can be given to adults as well as children who can be represented by their parents or guardians and carried out before a notary¹⁰

Based on the rules in the Civil Code regarding the recording of grants stipulated in Government Regulation No. 24 of 1997 related to assets distributed or donated only in the form of land and objects on it and the deed was made by an official who made the land deed and was known by two witnesses, this is clearly regulated in the rules clearly in the rules because distributing grants cannot be done secretly so that this gift does not harm the main heirs, known as the *legitime fortie*, namely grants that do not harm the main heirs. For this reason, it is recommended that only 1/3 of the grantor's wealth be given so that later there will be no lawsuits from other children who feel disadvantaged, usually the notary asks for the approval of the other children for the grant to be made a deed. However, in practice there are still many people, individuals or legal entities, even heirs and grant recipients, who do not make grants in accordance with established legal procedures and cause difficulties for many parties and also the distribution of inheritance to heirs must be according to law. civil¹¹

Article 211 of the Compilation of Islamic Law stipulates that "gifts from parents to their children can be counted as inheritance". Grants are gifts received when the grantor is still alive. The importance of Article 211 explains whether all gifts given by parents to their children from birth to adulthood can be considered as gifts, or whether gifts are only gifts from parents to their children, limited to verbal or written instructions from parents to their children. Furthermore, according to Article 210 KHI in paragraph (1) states that a person who is at least 21 years old, has good sense without coercion can donate up to 1/3 of his property to another person or institution in the presence of two witnesses to own it. Furthermore, according to Article 212 of the Compilation of Islamic Law, it states that gifts cannot be withdrawn, except for gifts from parents to their children. Cancellation or withdrawal of a gift (grant) is an act that is forbidden, even if the gift occurs between two people who are brothers or husband and wife.

Regarding grants, Article 1666 of the Civil Code reads "Grants are an agreement whereby the grantor, at the time of his life, freely and irrevocably surrenders something for the purposes of the recipient of the gift who receives the handover. The law does not recognize other grants other than grants among people who are still alive. From the above understanding, it can be seen that the elements of a grant are: a grant is a unilateral agreement made free of charge. That is, there is no *contra achievement* on the part of the grantee.

In grants it is always implied that the grantor has the intention of benefiting the party being given the grant. The objects of the grant agreement are all kinds of property of the grantor, both tangible and intangible, fixed and movable objects, including all kinds of receivables from the grantor. Grants are non-refundable. Grants must be made with a notarial deed. A grant is a form of agreement that is made free of charge because one of the parties does not give rewards or parties.

¹⁰ Boedi Harsono, *Association of Land Law Regulations* (Jakarta: Djtangan, 2000), p.34

¹¹ Boedi Harsono, *Indonesian Agrarian Law*, History of the Formation of the Basic Agrarian Law, Content and Implementation (Jakarta: Djtangan, 2007), p.48

This agreement is often referred to as a unilateral agreement. Even though this grant is a unilateral agreement as formulated in Article 1666 of the Civil Code which states that it cannot be withdrawn, but with the consent of the recipient of the grant. However, in Article 1688 of the Civil Code, it is possible for grants to be withdrawn and written off by the grantor, namely: If the conditions are not met, while the gift has been made (Article 913 of the Civil Code), if the recipient of the grant has been found guilty of committing a crime aimed at taking life the grantor, if the recipient of the grant refuses to provide living allowances to the donor, after the recipient of this grant falls into poverty or bankruptcy.¹² With the withdrawal of the grant, all items that have been donated must be immediately returned to the grantee in a clean condition of the burdens attached to the item. For example, the item being donated is being used as collateral for a mortgage or fiduciary right, it must be repaid by the recipient of the grant before the item is returned to the grantor.

According to Article 1689 of the Civil Code, the grantor can claim the grant again, free from all charges and mortgages along with the proceeds and income obtained by the grantee for the object he has donated. Meanwhile, according to Article 1690 of the Civil Code, in essence it states that the object that is donated can remain with the recipient of the grant, if the object has previously been registered. If the prosecution is again carried out by the grantor and is granted, then all the actions of the grantee are considered null and void.

Making land grant certificates is carried out on the basis of the process of transferring rights from a grantor to a grantee. This is in accordance with Law No. 20 of 2000, which states that the transfer of rights over inheritance and grant letters in the form of testamentary land is a tax object. The stages of how to apply for land certificates can be carried out through the office of the Ministry of Agrarian Affairs and Spatial Planning or through the National Land Agency at the domicile of the land. The aim is to find out how to administer the grant land certificate, namely so that those who are given the grant land can have their rights to the land protected in accordance with applicable law, and if at any time the grantor takes it. The law relating to grants is regulated in the Civil Code, precisely in Articles 1666 to Article 1693. This article explains the meaning of a grant, namely an agreement in which the grantor hands over something for free, without being able to take it back. The law in writing only recognizes grants between people who are still alive.¹³

Making land grant certificates is carried out on the basis of the process of transferring rights from an heir to his heirs, transferring rights to inheritance letters and grant letters in the form of testamentary land. The goal in the process of obtaining land grant certificates is that those who are given land grants can have their rights to the land protected in accordance with applicable law, and if at any time the grantor takes them. Article 1666 explains that a grant shows an agreement in which the grantor gives up something for free, without being able to take it back. The law in writing only recognizes grants between people who are still alive.

Thus the implementation of the transfer of grants from parents to children at the Malang Notary Office and Land Deed Making Officer (PPAT) based on interviews with the

¹² Result of interview with notary Herny Wahdaniyah, 15 April 2023

¹³ Interview results with notary Abdullah Nazim Izuddin, April 15, 2023

notary and PPAT Malang, the authors can draw a conclusion that for the implementation of the transfer of land rights with the grant process must use a grant deed that is made by the Land Deed Making Officer (PPAT), the grantor is subject to PPH tax and the grantor must pay BPHTB tax (tax for acquiring land and building rights) and the PPAT is required to submit the grant deed to the Land Agency Office within 7 (seven) working days as referred to in Article 40 Paragraph (1) and Paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24" " of 1997 concerning Land Registration. The aim is that the land office can immediately process and record the legal action and issue certificates of land rights or land ownership rights as the final result of land registration activities.

5. Considerations by the Land Deed Making Official (PPAT) for children's approval in making grant deeds

According to Article 1682 of the Civil Code, land grants must be proven by an authentic deed. In addition, the procedures for land grants must also pay attention to the provisions regarding land law regulated in the BAL and various implementing regulations¹⁴. According to Article 26 paragraph (1) UUPA which states that buying and selling, exchange, grants, gifts by will, gifts according to custom, and other actions intended to transfer property rights and their supervision are regulated by PP No. 24/1997.

Based on the provisions above, it is required that the grant of fixed objects (land) be made in the form of an authentic deed which is a perfect means of proof for the parties and their heirs and the person who gets the rights from him regarding what is contained in the deed. Authentic deed is binding evidence which can be interpreted that the truth of the things written in the deed must be recognized by the judge, that is considered true as long as the truth is there is no other party who can prove otherwise. The PPAT deed as an authentic deed is evidence that has perfect evidentiary power and has an important function for the parties. The functions of authentic deeds (including PPAT deeds) for interested parties are:

- a. As a condition for declaring the existence of a legal act;
- b. As a means of proof;
- c. As the only means of proof.

In addition, the function of the PPAT deed as stipulated in the provisions of Article 2 paragraph (1) of the PJ PPAT states that a PPAT deed as an authentic deed has 2 (two) functions, namely:

- a. As evidence that certain legal actions have been taken regarding land rights or ownership rights to apartment units and;
- b. As a basis for the registration of changes in land registration data resulting from the legal action.

Thus it can be concluded that the functions of the PPAT deed are:

1. It is a condition that must be met or is absolute, without that it means that there is no condition (*conditio sine qua non*) for said legal action.

¹⁴ Harsono, Boedi. *Indonesian Agrarian Law, History of Formation of UUPA, Content and Implementation*. (Jakarta: Trisakti University, 2013) p.45

2. As evidence that legal actions have taken place or have taken place before the PPAT;
3. As evidence that the right to the land which is the object of the said action has been transferred from the seller to the buyer and therefore proves that the recipient of the grant has become the new owner of the land in question;
4. As a means for registration of transfer of rights (transfer of name) at the Land Office.

In addition, in making a grant deed, the Land Deed Making Officer (PPAT) considers the consent of the child, this is because with the consent of the child, it is assumed that he knows and understands that the property has been donated to another relative, thus minimizing lawsuits or disputes in the future.¹⁵ Basically, a parent's gift to one of their children is actually permissible without having the permission or approval of the other child. Unless the grantor is in a state of illness close to death, the grant must obtain approval from his heirs, in this case the approval of other children. However, the amount of grants is usually not small, so that a letter granting a grant to biological children may end up in a lawsuit if there are parties who feel aggrieved. To avoid this, giving grants needs to be accompanied by a letter of approval from biological children or the heirs of the grantor.

In addition, the results of the interviews also show that the process does not require the consent of the child, with the consideration that in the law there is also nothing that regulates it, besides that in practice the approval process will be difficult because the distance or place of residence of each child is far so that the process of making the deed of grants The Official for Making Land Deeds (PPAT) is constrained.¹⁶ The existence of the PPAT position is a legal political policy that applies in Indonesia. Starting from Article 19 paragraph (1) of the UUPA which states that in the context of implementing land registration PP No. 24/1997. Furthermore, in Article 7 PP No. 24/1997 ordered that land registration needs to regulate the position of the PPAT with a government regulation, which ultimately resulted in PP No. 37/1998 which was later amended by PP No. 24/2016. To ensure legal certainty of land rights, the UUPA orders the Government to carry out land registration. In carrying out the land registration, a PPAT position is required which is authorized to produce evidence regarding certain legal actions regarding land rights and ownership rights to flats which will be used as the basis for land registration. Indonesia as a rule of law requires officials who can help regulate legal relations between citizens.¹⁷ So the Land Deed Making Officer (PPAT) will take appropriate policies including in making grant deeds, which will involve the parties directly involved including the approval of children in making grant deeds.

In a legal state, every act of its citizens has legal consequences. So that in order to prevent unwanted things from happening in carrying out these legal relations, the PPAT has been appointed and appointed by the state to handle legal relations between members of the community, in this case the state gives part of its authority to the PPAT to make evidence whose object is particularly regarding land. One of the objectives of Indonesian legal politics is to affirm the functions of law enforcement or law enforcement agencies and to develop their members.

¹⁵ Interview results with notary Abdullah Nazim Izuddin, April 15, 2023

¹⁶ Interview results with notary Abdullah Nazim Izuddin, April 15, 2023

¹⁷ Rusmadi, Murad. *Settlement of Legal Disputes Over Land*. (Bandung: Alumni Publishers, 1991), p..55

With the confirmation of the existence of the PPAT as one of the executors of the law, it means that the PPAT has received legal rights to handle legal relations between communities. In addition, the deed made by the PPAT is a legal product whose truth is acknowledged, namely a product born by legal political policies.¹⁸ The main task of the PPAT is to carry out some of the land registration activities by making deeds as evidence that certain legal actions have been taken regarding Land Rights and Ownership Rights over Flats Units, which will be used as the basis for the registration of changes to land registration data resulting from the said legal regulations. The PPAT deed is made as a proof that functions to ensure a legal action with the aim of avoiding disputes.

Therefore, the making of the deed must be in such a way, while taking into account the formal and material requirements so as not to cause disputes in the future. The PPAT deed must be drawn up in such a way that it can become a strong basis for registration of transfer of rights and encumbrance of rights. In addition to the main task of making the deed of authentic evidence, the PPAT is also obliged to submit the deed he made to the land office to be registered as soon as possible.¹⁹ The period given is no later than 7 (seven) working days from the signing of the relevant deed²⁰. The obligation to submit the deed he made to be registered is intended so that the land office can immediately process and record the legal action and issue a certificate of land rights or land ownership rights as the final result of land registration activities.

1. PPAT Deed Formal Requirements

Formally the validity of the PPAT deed includes the authority of the official who made it and the procedure/procedure for making it must meet the requirements specified in the applicable laws and regulations. The formality of the deed is still an authentic deed and the implementation of land registration can still be processed at the Land Office. However, if a dispute arises and the interested parties can prove that the deed has been drawn up by not fulfilling one or several procedures/procedures for making a PPAT deed, then the deed may degrade its evidentiary power to become an underhanded deed. Thus if a deed of sale and purchase of land does not meet the requirements mentioned above, the consistency of the strength of evidence becomes weak.

Provisions in Article 95-102 Regulation of the State Minister for Agraria/Head of BPN No. 3 of 1997 concerning Provisions for Implementation of PP No. 24/1997 is a formal requirement of the procedure for making a PPAT deed, which if violated by the PPAT, then the PPAT deed only has the strength of proof as a private deed as long as the parties sign it, and the degradation of the strength of the PPAT deed becomes a deed under the hands since a court decision which has permanent legal force. Changes or degradation from an authentic deed to a private deed does not cause harm, so the PPAT in question cannot be held legally responsible through Article 1365 of the Civil Code. However, if due to the degradation of the strength of the evidence into an underhand deed it causes a loss, where there is a third party who takes advantage of this situation so that one party suffers a loss, the PPAT concerned can be sued for unlawful acts as

¹⁸ Kartikosari, H., & Sesung, R. 2017, *Restrictions on the Number of Making Notary Deeds by the Honorary Council of the Indonesian Notary Association*. Journal of Panorama Hukum, 2(2), 167–184

¹⁹ Urip Santoso, *Registration and Transfer of Land Rights*, (Jakarta, Cet. 2, Kencana, 2010) p.55

²⁰ Interview results with notary Abdullah Nazim Izuddin, April 15, 2023

stipulated in Article 1365 of the Civil Code²¹. Formally, the factors that can cause a PPAT deed to become legally flawed, if there is a deviation from the provisions of Article 95-102 PMNA/Ka BPN 3/1997 in conjunction with Articles 1868 and 1869 of the Civil Code, then the authentic deed can be reduced or its evidentiary strength degraded from having perfect evidentiary strength only has the power of proof as an underhanded deed, if the public official who made the deed is not authorized to make the deed or if the deed is flawed in its form, because during the process of making the deed there are one or more deviations from the formal requirements of the procedure or procedures for making a PPAT deed, whether intentional or due to negligence and/or negligence of the PPAT concerned.

2. PPAT Deed Material Requirements

The material requirements for legal actions stated in the PPAT deed are guided by the characteristics of the legal act and the legal relationship of the parties in the deed. For example, in buying and selling, the characteristics are the elements of seller, buyer, object being traded, price and payment as well as physical handover. Likewise for other legal actions following the characteristics of the legal action and the legal requirements for the agreement according to Article 1320 of the Civil Code. The PPAT deed can be canceled. According to the material requirements in making a PPAT deed, a person is incompetent and has no authority to take legal action, that is, one or the appearers in the agreement are incapable of acting within the law, and/or do not have the authority to take legal action or action certain.

Violation of these material (subjective) requirements causes the sale and purchase deed made by the relevant PPAT to be requested for cancellation by incompetent parties and/or their legal representatives, so that one of the parties to the agreement or a third party, can apply for cancellation of the agreement either before the agreement born of the agreement is executed or thereafter. Articles 1451 and 1452 of the Civil Code stipulate that each cancellation has the effect that the objects and people restored are the same as before the agreement was made. So the agreement that has been made will remain binding on the parties as long as it is not canceled (by the judge) at the request of the party entitled to request the cancellation.

The PPAT deed is null and void. In relation to the formal requirements regarding the procedure or procedures for making a PPAT deed, including regarding the objective requirements for legal action, it is prohibited by laws and regulations, for example, land with ownership rights is carried out by buying and selling to legal entities (PT), while in the UUPA, legal entities (PT) are prohibited from owning land with the status of ownership rights. Thus the deed of sale and purchase contains legal actions that are prohibited by laws and regulations. Violation of these material (objective) requirements causes the sale and purchase deed made by the relevant PPAT to be declared null and void by law or canceled by itself, meaning that an agreement was never born from the start. A mistake made in carrying out any position is called *beroepsfout*. PPAT errors in carrying out their positions are sometimes caused by a lack of PPAT knowledge of issues requested by clients, both from legal and other aspects.

²¹ Kevin Hernando Pratama, Responsibilities of the Land Deed Making Officer (PPAT) in Making Sales and Purchase Deeds Made Without the Knowledge and Approval of the Object Owner in Decision Number 347/Pdt.G/2017/PN.Jkt.Tim

PPAT violations or mistakes (*beroepfout*) in carrying out their positions can cause harm to clients or other parties.²² Mistakes made by the PPAT in carrying out their duties can result in the deed he made. The cancellation of the deed made can cause the PPAT to be obliged to provide compensation.

According to Article 1682 of the Civil Code, grants must be proven by an authentic deed. In addition, the procedures and procedures for grants must also pay attention to the provisions regarding land law regulated in the UUPA and various implementing regulations.²³ According to Article 26 paragraph (1) UUPA which states that buying and selling, exchange, grants, gifts by will, gifts according to custom, and other actions intended to transfer property rights and their supervision are regulated by PP No. 24/1997. Based on the provisions above, it is required that the grant of fixed objects (land) be made in the form of an authentic deed which is a perfect means of proof for the parties and their heirs and the person who gets the rights from him regarding what is contained in the deed.

Grant legal actions whose object is land rights must be proven by a deed made before the PPAT, as evidence that the grant has been implemented by the grantor and grantee. With the land grant deed made by the PPAT and continued with the registration of the transfer of title (transfer of title) certificate, the result is that land rights are transferred from the grantor to the grantee²⁴. With the transfer of land rights, the recipient of the grant whose name has been recorded in the certificate of land rights has the authority to take management and ownership actions, including making collateral for a debt or even transferring (selling) the object of the grant to another party.

The PPAT deed is a means of proving that a legal action (in this case a grant) has been carried out, if the legal action (grant) is cancelled, then the PPAT deed will no longer function as evidence against the legal action. If the legal action is canceled or canceled based on a court decision, the PPAT who made the deed can be held liable, if it can be proven that the PPAT was guilty in carrying out his position (*beroeptsfout*)²⁵. According to the laws and regulations relating to the duties and authorities of the PPAT, it is stated that when the PPAT in charge of carrying out his position is proven to have committed a mistake/violation, the PPAT can be subject to and given administrative sanctions, but it is not regulated regarding civil sanctions and criminal sanctions against the PPAT, then if there is a violation that causes civil loss and if it fulfills a criminal offense, it can be sued civilly according to the Civil Code and be prosecuted according to the criminal law contained in the Criminal Code.

Thus the Consideration of the Official for Making Land Deeds (PPAT) for the approval of children in making a grant deed if the author analyzes from the theory of authority, the making of a grant deed is the authority of the PPAT which is made by the parties and the PPAT in accordance with Article 1868 of the Civil Code, but in making it must meet the formal and material requirements. Apart from that, as a basis for consideration or additional conditions in making a grant deed, PPAT Malang uses additional conditions with the consent of the child. With the aim that the child is considered to know and

²² Habib Adjie, *Indonesian Notary Law*, (PT. Refika Aditama, Bandung, 2014) p.56

²³ Harsono, Boedi, *Indonesian Agrarian Law (History of the Formation of the Basic Agrarian Law, Contents, and Implementation)* (Jakarta; Djtangan, 2006), p.67

²⁴ A. P Parlindungan, 1993, *Commentary on the Basic Agrarian Law*, (Bandung: Mandar Maju, 1993) p.34

²⁵ Interview results with notary Abdullah Nazim Izuddin, April 15, 2023

understand that the property has been donated to another relative, so as to minimize lawsuits or disputes in the future. Although basically a parent's gift to one of their children is actually permissible without having the permission or approval of the other child.

6. Conclusion

- a. The process of transferring land grants, according to laws and regulations, must be guided by Article 1682 of the Civil Code which states that no grant except as meant in Article 1687 can be made without a notarial deed, the minut (original text) must be kept at the notary and if not done so then the grant is invalid. In other words, every grant, both movable and immovable property (land) should use a notarial deed, specifically land rights, the process must or must use an authentic deed (PPAT deed) which must be made in accordance with Article 1868 of the Civil Code so that the grant deed can be used as a basis for the transfer of rights over the land that has been granted to him.
- b. Implementation of the transfer of grants from parents to children at the Malang Notary Office and Land Deed Making Officer (PPAT), based on interviews with the notary and PPAT Malang, the authors draw a conclusion that for the implementation of the transfer of land rights with the grant process, you must use the deed of grant granted made by the Land Deed Making Officer (PPAT), the grantor is subject to PPH tax and the grantor must pay the BPHTB tax (tax for acquiring land and building rights) and the PPAT is required to submit the grant deed to the Land Agency Office within 7 (seven) working days as stipulated in the meaning in Article 40 Paragraph (1) and Paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24" " of 1997 concerning Land Registration. The aim is that the land office can immediately process and record the legal action and issue certificates of land rights or land ownership rights as the final result of land registration activities.
- c. Considerations by the Official for Making Land Deeds (PPAT) for the approval of children in making a grant deed. formal and material requirements. Apart from that, as a basis for consideration or additional conditions in making a grant deed, PPAT Malang uses additional conditions with the consent of the child. With the aim that the child is considered to know and understand that the property has been donated to another relative, so as to minimize lawsuits or disputes in the future. Although basically a parent's gift to one of their children is actually permissible without having the permission or approval of the other child.

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